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HUMAN RIGHTS, CHILE AND INTERNATIONAL ORGANIZATIONS

Thoreau, in his 1849 essay, "Civil Disobedience," wrote that "the State never intentionally confronts a man's sense, intellectual or moral, but only his body, his senses. It is not armed with superior wit or honesty, but with superior physical strength."¹ Thoreau recognized the effect of state tyranny on humanity. Though an anarchist then,² he might be in favor of an international legal regime for the protection of human rights today.³

1. Thoreau, *Civil Disobedience*, in THOREAU: WALDEN AND OTHER WRITINGS 85, 97 (J. W. Krutch ed. 1962).

2. *Id.* at 85.

3. Philosopher Robert Nozick of Harvard would probably make an argument against a human rights regime. See reviews of his book *Anarchy, State, and Utopia* (1975) in NEWSWEEK, Mar. 31, 1975, at 81, and Singer, *The Right to be Rich or Poor*, N.Y. REV. BOOKS, Mar. 6, 1975, at 19.

The power of the state is the most serious threat to an individual's human rights but there are other menaces such as multinational corporations:

If the emergent multinationals [corporations] are not effectively subject to national legislation, they are even less subject to the United Nations or regional international governmental organizations (IGOs). This is so for two stark reasons: first, both regional and world IGOs are, in practice, simply the creatures of the strongest national government(s) within them. . . .

Furthermore, human-rights IGOs—for example, the UN Commission on Human Rights is an appropriate model—constitute no effective check on the dehumanizing tendencies of either multinational corporations or member states. . . .

Scoble & Wiseberg, *Human Rights and Amnesty International*, 413 ANNALS 11, 16 (1974) [hereinafter cited as Scoble & Wiseberg]. ITT must bear some responsibility for violations of human rights in Chile because of its involvement in the overthrow of the Allende Government by volunteering funds to the CIA. N.Y. Times, July 25, 1975, at 1, col. 1; Sept. 17, 1974, at 10, col. 5; June 22, 1973, at 1, col. 2; Mar. 28, 1973, at 3, col. 1; Mar. 21, 1973, at 1, col. 4. (The United States and the CIA, of course, were also integrally involved in the Chilean upheaval. N.Y. Times, Feb. 10, 1975, at 1, col. 7; see also Wicker, *The Right Focus on the C.I.A.*, N.Y. Times, Feb. 14, 1975, at 37, col. 1).

Increased complexity and industrialization and the response of law may come to a head in the further development of international law and the spread of multinational corporations. International law may develop as a response to the demands of the global commerce of national corporations instead of to humanitarian needs. I believe this is an implication of Shirley Hazzard's article, *The United Nations: Where Governments Go to Church*, THE NEW REPUBLIC, Mar. 1, 1975, at 11, 12. See also Heilbroner, *None of Your Business*, N.Y. REV. BOOKS, Mar. 20, 1975, at 6. For another perspective, see Bliss, *Risky Game of International Clout*, Chicago Daily News, Apr. 9, 1975, at 27, col. 1 and *The New Global Lords*, Chicago Daily News, Apr. 5-6, 1975, § 2, at 17, col. 1.

The more industrialized and technologically advanced a society or a complex of societies becomes, the more tenuous does the status of the individual become in the state.⁴

Within the restrictions of a review essay, this comment examines contemporary human rights in the context of definition, violation and enforcement. Several publications in the last two years have dealt with the existence and law of human rights, the violation of human rights in Chile⁵ and the work of international organizations in the area of human rights.⁶

I. HUMAN RIGHTS: THEIR EXISTENCE AS LAW

For Americans, it may not be difficult to point to fundamental human rights; the Bill of Rights offers a guide to at least some of these. However, conceptions of and priorities concerning fundamental rights vary from one nation to another so that international agreement is difficult. For example, the third world may justifiably emphasize cultural and economic rights as much as civil and political rights. Even if predominance of one type or set of rights over another is not important, defining and determining basic human rights defies agreement, if not consensus. While it is true that nations have broadly assented to what human rights are,⁷ differences do arise as to when or if those rights have been violated. Despite the fact that the Universal Declaration of Human Rights, international covenants and regional conventions refer to commonly accepted human rights, one is compelled to look beyond these documents for meaningful definitions.

4. Perhaps the proliferation of corporate venturousness throughout society has displaced the characteristics of industrialization of society. See generally M. MINTZ & J. COHEN, *AMERICA, INC.* (1971).

5. See N.Y. Times, Sept. 13, 1974, at 1, col. 6 for a survey of the serious conditions in Chile one year after the coup.

6. For a survey of the area of human rights, see *Symposium on International Human Rights*, 21 DEPAUL L. REV. 271 *et seq.* (1971). Essential to any study of the protection of human rights is L. SOHN & T. BUERGENTHAL, *INTERNATIONAL PROTECTION OF HUMAN RIGHTS* (1973) [hereinafter cited as SOHN & BUERGENTHAL].

7. UNIVERSAL DECLARATION OF HUMAN RIGHTS. Because the Declaration is such a significant and basic document, it is cited just as the U.N. Charter or U.S. Constitution is—without a specific reference or source. However, the document can be found in the following: G.A. Res. 217 A, 3 U.N. GAOR, U.N. Doc. A/810 (1948); HUMAN RIGHTS: A COMPILATION OF INTERNATIONAL INSTRUMENTS OF THE UNITED NATIONS, U.N. DOC. ST/HR/1 (1973); L. SOHN & T. BUERGENTHAL, *BASIC DOCUMENTS ON INTERNATIONAL PROTECTION OF HUMAN RIGHTS* 30 (1973) (this is a supplement to SOHN & BUERGENTHAL, *supra* note 6) [hereinafter cited as BASIC DOCUMENTS].

Nations have bound themselves by law to recognize human rights through international covenants and regional conventions.

In 1973, on the 25th anniversary of the adoption of the Universal Declaration, the United Nations issued *Human Rights: A Compilation of International Instruments of the United Nations*.⁸ The publication contains no analysis, annotations or commentaries but only the complete texts of forty-one human rights instruments. The value of the text is in its inclusion of the international human rights law promulgated under the auspices of the United Nations.⁹ The *Compilation* differs from Professors Sohn and Buergenthal's supplement¹⁰ to their recent text, *International Protection of Human Rights*,¹¹ in that *U.N. Compilation* contains only United Nations instruments, notably the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. Moreover, it includes conventions that may not be considered human rights law but bear on human rights. The Declaration on the Granting of Independence to Colonial Countries and Peoples,¹² the Convention Relating to the Status of Refugees,¹³ and the Convention on the International Right of Correction¹⁴ are three examples. On the other hand, the professors' supplement contains a greater cross-section of documents than does *U.N. Compilation*; for example, the European Convention for the Protection of Human Rights and Fundamental Freedoms,¹⁵ the American Convention on Human Rights¹⁶ and various "Documents of Historical Importance."¹⁷

The *Human Rights Bulletin*, published by the Division of Human Rights of the United Nations Secretariat, is a research tool for those involved in human rights but it is not a supplement to the *U.N. Compilation*. It does not have in-depth analysis of human rights development but is intended to "facilitate research by those who are interested in undertaking independent studies of United Nations human rights programmes."¹⁸

8. HUMAN RIGHTS: A COMPILATION OF INTERNATIONAL INSTRUMENTS OF THE UNITED NATIONS, U.N. Doc. ST/HR/1 (1973) [hereinafter cited as U.N. COMPILATION].

9. Some may take issue, however, since *U.N. Compilation* does not include the draft, Standard Minimum Rules for the Treatment of Prisoners.

10. BASIC DOCUMENTS, *supra* note 7.

11. *Supra* note 6. Both the text and supplement were reviewed in Coleman, Book Review, 23 DEPAUL L. REV. 1010 (1974).

12. U.N. COMPILATION, *supra* note 8, at 20.

13. *Id.* at 66.

14. *Id.* at 79.

15. BASIC DOCUMENTS, *supra* note 7, at 125.

16. *Id.* at 209.

17. *Id.* at 235 *et seq.*

18. *Introduction*, 3 HUMAN RIGHTS BULL. 3 (1970).

Despite disclaiming as its purpose the presentation of "a survey of the activities of the United Nations and the specialized agencies in the field of human rights," the *Bulletin* belies its disclaimer.¹⁹ The *Bulletin* reports on the work of ad hoc Working Groups of Experts, meetings of parties to the conventions, seminars on human rights, sessions of the Human Rights Commission and the various sub-commissions, the human rights activities of the specialized agencies and other United Nations agencies. It also publishes excerpts on human rights from the *Annual Report of the Secretary-General on the Work of the Organization*, General Assembly and Economic and Social Council (ECOSOC) resolutions on human rights, conventions and drafts of conventions; moreover, it lists resolutions, documents and publications on human rights generally. The *Bulletin* gives the status of signatures, ratifications, accessions and successions to human rights covenants and conventions.²⁰

An inspection of these and other publications might lead one to conclude that human rights, as a legal concept, implies solely civil and political rights.

Human rights is a broad, constantly changing concept which we take to include the following irreducible minima: (1) physical security—that is, a right to life; (2) freedom of religion; and (3) the combined political rights of association, communication and other peaceful opinion-transmission processes to one's rulers.²¹

However, human rights are not so limited; a glimpse of the organization of *U.N. Compilation* clearly establishes this fact. Human rights encompasses self-determination of peoples, discrimination, war crimes and genocide, slavery and forced labor, "nationality, statelessness, asylum and refugees,"²² employment and the right to enjoy culture.²³ Nevertheless, the blatant violations of human rights are usually those of a civil and political nature. Hence the concern of many is not only with the Universal Declaration but with the International Covenant on Civil and Political Rights²⁴ and the regional conventions.²⁵

19. *Id.* Its usefulness as a research tool can be seen in note 24 *infra*.

20. See generally HUMAN RIGHTS BULL.

21. SCOBLE & WISEBERG, *supra* note 3, at 12.

22. U.N. COMPILATION, *supra* note 8, at v.

23. See generally *id.*

24. *Opened for signature* December 16, 1966, G.A. Res. 2200 A, 21 GAOR Supp. 16, U.N. Doc. A/6316, at 52 (1966); U.N. COMPILATION, *supra* note 8, at 7. Covenant has not entered into force. By article 49, 35 nations must ratify it and as of June 1974, only twenty-seven had done so. 11 HUMAN RIGHTS BULL. 27 (1974). The ratifiers include the Soviet Union, 10 HUMAN RIGHTS BULL. 55 (1973), and Chile, 7 HUMAN RIGHTS BULL. 42 (1972), but not the United States.

25. European Convention for the Protection of Human Rights and Fundamental

A perusal of the Civil and Political Rights Covenant reveals the problem of interpretation or "broadness" referred to above. Some of the provisions are general, even vague. Common assent necessitates this. But specific clauses are clear. Article seven, for example, requires that "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation." Nations may quibble, but there can be little doubt of the intent to prevent brutal intimidation such as interrogation procedures employing physical beatings.²⁶ The European and American Conventions reflect a similar intent.²⁷ Thus, the purpose of international human rights law becomes clear despite the lack of precision. Certain acts are intended to be outlawed and when those acts are committed they can be recognized. With this common understanding, four separate reports independently concluded that human rights have been violated in Chile since September 11, 1973, when a military coup overthrew the Marxist Government of the duly elected president, Dr. Salvador Allende Gossens.²⁸

Freedoms, *opened for signature* November 4, 1950, 213 U.N.T.S. 221 [hereinafter cited as European Convention]; COUNCIL OF EUROPE, EUROPEAN CONVENTION ON HUMAN RIGHTS: COLLECTED TEXTS 1 (1974); BASIC DOCUMENTS, *supra* note 7, at 125, which has been in force since 1953. American Convention on Human Rights, *opened for signature* November 22, 1969, O.A.S. Doc. OEA/Ser.L/V/II.23, doc. 21, at 50 (1970) [hereinafter cited as American Convention]; BASIC DOCUMENTS, *supra* note 7, at 209, which is not yet in force.

26. Various articles have confirmed the use of torture and confinement of political prisoners from the Soviet Union and Czechoslovakia to the Philippines and South Korea. Kovanda, *Czechoslovakia's Imprisoned Conscience*, N.Y. REV. BOOKS, Mar. 20, 1975, at 25; Gandelman, *Civil Rights Put in Limbo in Most of S. Asia*, CHICAGO DAILY NEWS, Jan. 6, 1975, at 24, col. 3; Shelton, *The Geography of Disgrace: A World Survey of Political Prisoners*, SATURDAY REV./WORLD, June 15, 1974, at 14; U.S. DEP'T OF STATE, SPECIAL REPORT NO. 5, HUMAN RIGHTS IN THE REPUBLIC OF KOREA (Sept. 1974); *Talk of the Town*, NEW YORKER, May 12, 1973, at 31. India's detention of political opponents without the recognition of civil liberties is not new, it has only drastically increased in recent weeks. See N.Y. Times, July 25, 1975, at 3, col. 1; July 24, 1975, at 1, col. 7; July 23, 1975, at 1, col. 5.

See also AMNESTY INTERNATIONAL, REPORT ON TORTURE (American ed. 1975). I had hoped to review the American edition, an update of the British edition of 1973, but it was not available until after the press deadline.

27. Article three of the European Convention, *supra* note 25, reads, "No one shall be subjected to torture or to inhuman or degrading treatment or punishment." Article 5(2) of the American Convention, *supra* note 25, states, "No one shall be subjected to torture or to cruel, inhuman or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person."

28. The four Reports which are reviewed to different degrees in this essay are: AMNESTY INTERNATIONAL, CHILE: AN AMNESTY INTERNATIONAL REPORT (1974) [hereinafter cited as AMNESTY REPORT]; CHICAGO COMMISSION OF INQUIRY INTO STATUS OF HUMAN RIGHTS IN CHILE, REPORT (1974) [hereinafter cited as CHICAGO

II. CHILE: VIOLATIONS OF HUMAN RIGHTS

The Report of the Chicago Commission of Inquiry into the Status of Human Rights in Chile and *Chile: An Amnesty International Report* are perhaps better known than other reports examining human rights violations in Chile because they have been discussed in other publications.²⁹ The most comprehensive report—the largest, at any rate—is the *Report on the Status of Human Rights in Chile* by the Inter-American Commission on Human Rights of the Organization of American States (O.A.S.). A fourth report is that done by the respected International Commission of Jurists.³⁰

The *Reports* confirm each other's observations. This is important because, as each *Report* makes evident, accurate statistics and information were not always available;³¹ moreover, sources are sometimes, regrettably but understandably, not given in order to protect those individuals involved.³² While the Junta permitted the visits by the four investigatory bodies, it was not as cooperative as it could have been.³³ Members of the Chicago Commission "were impressed by the fact that those Junta representatives [interviewed] felt most assured that they can present obviously transparent lies with utmost impunity."³⁴

Each *Report* emphasizes that the question of justification for the overthrow of the Allende Government was not a part of its investigatory work.

REPORT]; INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, REPORT ON THE STATUS OF HUMAN RIGHTS IN CHILE, O.A.S. Doc. OEA/Ser. L/V/II.34, doc. 21 corr. 1 (1974) [hereinafter cited as O.A.S. REPORT]; INTERNATIONAL COMMISSION OF JURISTS, FINAL REPORT OF MISSION TO CHILE TO STUDY THE LEGAL SYSTEM AND THE PROTECTION OF HUMAN RIGHTS (1974) [hereinafter cited as JURISTS REPORT].

29. *E.g.*, *Terror in Chile*, N.Y. REV. BOOKS, May 30, 1974, at 38. In this essay, more attention will be paid to these two reports than the other two.

30. The *Jurists Report* and the *O.A.S. Report* were cited by the United Nations and vociferously criticized by the Chilean delegation. 31 U.N. ESOSOC 1, U.N. Doc. E/CN.4/1174/Add. 1 (1975).

31. *See, e.g.*, AMNESTY REPORT, *supra* note 28, at 16; and CHICAGO REPORT, *supra* note 28, at 3.

32. *See generally* CHICAGO REPORT, *supra* note 28, at 3, 7.

33. INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, WORK ACCOMPLISHED BY THE O.A.S. IN THE FIELD OF HUMAN RIGHTS IN 1974, O.A.S. Doc. OEA/Ser.L/V/II.34, doc. 29, at 9-10 (1975).

The Commission visited many detention centers where its members spoke freely with prisoners. Although the Commission was provided with ample facilities by the Government of Chile, it was not permitted to visit three establishments, generally pointed out by prisoners as the principal centers at which physical and psychological pressures were applied, because they had been declared military zones.

Id.

34. CHICAGO REPORT, *supra* note 28, at 8.

The common purpose is to determine the truth or falsity of the allegations of human rights violations.³⁵ Interestingly, none of the *Reports* acknowledge the fact of Chile's ratification of the International Covenant on Civil and Political Rights. That the Covenant is not yet in force does not mean it is not a customary expression of international human rights law.³⁶ On the basis of fifty-one nations having signed and twenty-seven nations having ratified³⁷ the Covenant and on the basis of the General Assembly's Universal Declaration of Human Rights, a customary acceptance of international human rights law is expressed.³⁸

The Chicago Commission of Inquiry into the Status of Human Rights in Chile is an ad hoc group which was established to do what its name indicates. "Of particular concern . . . were . . . the circumstances surrounding the death of Frank Teruggi Jr. [a Chicago native and son of one of the Commission members] and the role of the United States Embassy in protecting United States citizens."³⁹ The Commission was com-

35. *Id.* at 1-2; AMNESTY REPORT, *supra* note 28, at 7-14; JURISTS REPORT, *supra* note 28, at 3; O.A.S. REPORT, *supra* note 28, at 1.

36. Aside from a moral obligation emanating from the fact of ratification of a treaty not yet in force, a legal obligation can also be incurred. Hence it can be argued that Chile had incurred such an obligation on the basis of international legal custom and the "general principles of law recognized by civilized nations." I.C.J. STAT. art. 38, para. 1. Cf. H. LAUTERPACHT, PRIVATE LAW SOURCES AND ANALOGIES OF INTERNATIONAL LAW 60 *et seq.* (1927, reprinted 1970).

In HEARINGS ON THE INT'L PROTECTION OF HUMAN RIGHTS BEFORE THE SUBCOMM. ON INT'L ORGANIZATIONS AND MOVEMENTS ON THE HOUSE COMM. ON FOREIGN AFFAIRS, 93d Cong., 1st Sess., at 203 (1973) [hereinafter cited as *Fraser Report*], Professor Thomas Buergenthal of Buffalo elaborated on this view when speaking of Brazil's obligation to observe human rights law. (These *Hearings* have become known as the *Fraser Report*, named after the chairman of this subcommittee, Rep. Donald Fraser of Minnesota. It is deserving of a review in itself but that is beyond the scope of this Comment).

37. 11 HUMAN RIGHTS BULL. 27 (1974).

38. In addressing itself to the suspension of some legal guarantees during "convulsive periods" of government upheaval, the *O.A.S. Report* stated that the American Convention on Human Rights was to be the "normative system" to be applied to such change. Though failing to note Chile's ratification of the International Covenant on Civil and Political Rights, the *O.A.S. Report* informs us that Chile is a signatory to the American Convention on Human Rights (which is also not in force). This only serves to reinforce the view that international human rights law is binding even if the Conventions are not in force or have not been ratified. O.A.S. REPORT, *supra* note 28, at 2-3.

39. CHICAGO REPORT, *supra* note 28, at 2. The *Report* leaves no doubt that the United States did little to protect its citizens who were caught up in the tragic events. But this reflects the American policy towards the coup. The United States abstained from voting on a resolution concerned with Chilean violations of human rights adopted by the United Nations General Assembly. The United States delegation's rationale for not voting was ". . . we are asked to vote on a resolution which provides not even a hint that there has been improvement in the situation in Chile since the

prised of a cross-section of Chicago citizens including teachers, clerics and labor union members.⁴⁰

The *Report* itself is divided into two parts of which Part I is an introduction and summary analysis of the major areas of concern. The areas are: distinctions between "state of war" and "state of seige," torture and searches and seizures, detentions and executions, right to counsel, the state of the economy and trade unions, social services and the media.⁴¹ Part II consists of interviews with officials and protected sources and "chance encounters"⁴² and a compilation of documents. The documents furnish

Human Rights Commission communicated with the Chilean Government. . . ." U.S. DEP'T OF STATE, SPECIAL REPORT No. 13, U.S. POSITIONS AT 29TH U.N. GENERAL ASSEMBLY 18 (Feb. 1975). The United States did say that its abstention was also based on the view, which is true enough, that "some of the cosponsors have denounced reported violations of human rights in Chile in the strongest terms while many of these same rights do not exist in their own countries." *Id.* However, it is not unreasonable to conclude that more sinister motives have prompted a patronizing or supportive attitude towards the Chilean Junta. See *How to Lie in Washington and Get Away With It*, N.Y. REV. BOOKS, July 17, 1975, at 39.

40. CHICAGO REPORT, *supra* note 28, at 1.

41. The "summary analysis," which comes before the documents, consists of topical paragraphic statements with reference to the documents in Part II. *Id.* at 7-8.

The Report is organized topically to cover the subjects listed above. As its purpose is exclusively to present the findings of eight days of investigations and interviews, no attempt is made to reach any summary judgment concerning these findings. The Report represents the findings of the twelve members of the Commission and may include information available elsewhere. Such duplication is unavoidable and in fact corroborates the findings.

On the other hand, it must be emphasized that this Report is in no way intended to provide complete information on the present state of human rights in Chile. It covers only the information obtained *first hand* by the members of the Commission during its stay in Chile. No attempt has been made to draw upon any other sources.

Id. at 7.

42. *Id.* at I-III.

The members of the Commission interviewed more than 65 persons. Among them were the Junta Minister of the Interior, General Oscar Bonilla; Vice Minister of Justice Max Silva; Jose Miguel de la Cruz, official in the Ministry of Foreign Relations; the Chief of the Estadio Chile Prison; the Chief of Detention Camps and Prisons; officials of labor unions retained by the Junta; United States Ambassador David Popper; other officials of the U.S. Embassy; the ambassadors and high ranking officials of some Western European embassies; personnel of private American organizations in Santiago; the executive secretaries of Committee No. 1 (refugees) and Committee No. 2 (Chileans); the director and manager of the Bank of Israel; leaders of the Christian community. In addition, evidence was obtained from prisoners in the Estadio Chile Prison, relatives of persons detained or executed, trade union officials removed by the Junta and numerous individuals who cannot be identified. Some of the evidence is available in the form of written eye-witness accounts, written depositions and official

fascinating but distressing accounts of the sufferings and deaths of many individuals.⁴³

The *Amnesty Report*, in contrast, is in narrative rather than outline form.⁴⁴ It begins with a background synopsis of the Allende Government and its overthrow by the Junta without apologizing for either.⁴⁵ The *Report* then continues with succinct abstracts of the broad but serious issues of "political prisoners," executions and disappearances, torture and refugees. The appendix contains specific cases and a chronology of Amnesty International's investigatory activities in Chile.⁴⁶

Because, from its inception, Amnesty International has been concerned with prisoners who have been jailed and tortured for their political beliefs, Amnesty limited its investigation and report to "the situation of political prisoners, their identity, their legal situation, their treatment and conditions."⁴⁷ In the course of its observations, Amnesty found that the Chilean judiciary was either unable or unwilling to act independently of the Junta. Consequently, greater emphasis is placed on the "analysis of military justice in Chile and a description of the severe and almost insurmountable problems facing lawyers who have attempted to give a serious defence to political prisoners."⁴⁸

If there is skepticism or misunderstanding about what prisoners in Chile face, one might consider the view of the Chilean military physician⁴⁹ who in a policy statement determined the existence of five categories or degrees of support for the Popular Unity Government of Allende: extremists, activists, ideological activists, militants and sympathizers. The first two were considered "irredeemable" by the doctor.⁵⁰ This view hardly reflects an intent to unite the country; indeed it seems to be a policy reflecting imprisonment without cause—or cause consisting of nothing other than political belief or activity. An "accused" might be guilty only because he supported a previously legitimate government—legitimate at least up to Sep-

documents. Several of these documents are appended to this Report.

Id. at 6.

43. *Id.* at IV, 1.

44. Compare AMNESTY REPORT, *supra* note 28, with CHICAGO REPORT, *supra* note 28.

45. AMNESTY REPORT, *supra* note 28, at 9-14.

46. *Id.* at 70 *et seq.*

47. *Id.* at 7.

48. *Id.*

49. Dr. Augusto Schuster Cortes. CHICAGO REPORT, *supra* note 28, at IV, 11.

50. *Id.*

tember 11, 1973.⁵¹ Here is the crucial issue for justice under the Junta: whether the activities of an individual were in support of or against the Popular Unity Government.⁵² This defies all requirements of legal notice not to mention the freedoms of expression and association; nevertheless, such is the burden of the political prisoner.⁵³ The central question for observers is whether the Junta's framing of the issue mocks basic standards of justice.

The *Reports* vary on the number of political prisoners held in Chile. Amnesty reported that official government figures were given at 3,000 to 4,000 while the Church estimated 10,000 people in detention one year

51. Members of the Chicago Commission were told "only the guilty are being detained." *Id.* at 16. The question, of course, is guilty of what.

52. AMNESTY REPORT, *supra* note 28, at 52-53.

In other words the prosecution has claimed that all those political parties which formed the constitutionally and democratically-elected government of President Allende were rebellious forces, organized in a military fashion, which were the *enemy* of the Chilean people *even before the military coup*.

The paradoxical nature of this argument is clear to any observer. It suggests that all members of the military who in any way collaborated with the constitutional government before the coup, could be charged with high treason. Small wonder that many lawyers have pointed out that, in accordance with this interpretation, both President Pinochet (Commander-in-Chief of the Army during the Allende government) and Foreign Minister Huerta Diaz (who held a ministerial post during the Allende government) could be charged on the same ground, because of their past collaborations with the Popular Unity government.

Id.

53. See O.A.S. REPORT, *supra* note 28, at 170; see also AMNESTY REPORT, *supra* note 28, at 9.

Since September 1973 the junta has attempted to justify its actions by arguing that equivalent violations of human rights took place under the Allende government. It is important to examine this claim in some detail.

In January 1974 the Chilean Foreign Ministry, rejecting the report of Amnesty International's mission to Chile, commented in a news release:

Amnesty International's impartiality is somewhat placed in doubt by its almost incredible lack of interest in protecting human rights in Chile during Allende's government. During that period human rights were systematically trampled on through political assassination, arbitrary arrests of journalists and professional people, torture of political adversaries, illegal seizures, etc.

It is difficult to substantiate these allegations. Political arrests certainly took place under Allende. . . . Such political arrests occurred mainly during the periodic states of emergency that were proclaimed throughout the three years of the Allende government. Yet detained persons were released within a few days, on the termination of the State of Emergency. Restrictions also were placed sporadically on the freedom of the press. . . . Yet such restrictions were temporary, in contrast to the permanent dissolution since the coup of all newspapers which supported the Allende government.

Id.

ago.⁵⁴ The *Chicago Report* gives the figure of 18,000 as of January 1974,⁵⁵ while the *O.A.S. Report* is more conservative in its estimation that 5,500 were detained as of July 1974.⁵⁶ Whatever the figure, there is no disagreement that detainees are now being held incommunicado⁵⁷ for indefinite periods⁵⁸ without charge or known charge.⁵⁹ The last assertion can be amended to the extent that while some have been held without charge in "administrative detention,"⁶⁰ others are actually charged with participation in the previous government⁶¹ or with "Marxism" under the Junta's Decree Law 77.⁶² This is in clear and unequivocal violation of the American Convention on Human Rights: "right to personal liberty" (article seven),⁶³ "freedom of thought and expression" (article 13), "free-

54. Spring 1974. *Id.* at 16.

55. CHICAGO REPORT, *supra* note 28, at 3.

56. O.A.S. REPORT, *supra* note 28, at 169. The figure was recently put at 8,000 prisoners in an article in N.Y. Times, Feb. 23, 1975, at 17, col. 1.

57. CHICAGO REPORT, *supra* note 28, at 16.

58. AMNESTY REPORT, *supra* note 28, at 15.

59. *See, e.g.*, CHICAGO REPORT, *supra* note 28, at 16.

60. JURISTS REPORT, *supra* note 28, at 26.

61. AMNESTY REPORT, *supra* note 28, at 15.

Most tried prisoners have been charged with direct or indirect participation in Plan Z [alleged by the Junta to be a self-directed coup by Allende and his supporters]. Other prisoners charged under the Law of Internal Security have been accused of such ambiguous offences as the propagation of Marxist doctrine, or even participation in university demonstrations or land "invasions" several years before the time of the military coup. Recent trials indicate that the juridical basis for the charges is the tenet that *all political parties that supported the Allende government* were organized in a military fashion—and *were acting outside the law* (emphasis added). By this juridical interpretation, all Chileans who were "activists" within the Popular Unity government in any field . . . may be liable to dismissal from their profession or prosecution for "criminal offences".

Id.

62. O.A.S. REPORT, *supra* note 28, at 170.

The Commission found that, as a result of Decree-Law 77, Marxism is generically considered as a felony. The term "Marxism" is used as though it were a label for a crime. Consequently, any individual professing Marxist ideology is considered as a criminal, regardless of whether he can be shown to have actually committed acts defined as crimes under criminal law. He can therefore be punished for "what he is" or for "what he thinks", regardless of "what he does". The commission of the same act in the same circumstances can give rise to different legal consequences depending on the persons who committed the act and their political ideology, without any rule of justice or reasonableness to justify such disparity of treatment.

Id.

63. Article 7 of the American Convention, *supra* note 25, reads:

1. Every person has the right to personal liberty and security.
2. No one shall be deprived of his physical liberty except for the reasons

dom of association" (article 16), and the "right to equal protection before the law" (article 24). Under the International Covenant on Civil and Political Rights, essentially the same provisions have been violated by the Junta: articles 9,⁶⁴ 14,⁶⁵ 19,⁶⁶ 21⁶⁷ as well as the appropriate *ex post facto* clause, article 15: "No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed."⁶⁸

Article 6 of the International Covenant states: "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his right." Article 4(4) of the American Convention is more emphatic: "In no case shall capital punishment be inflicted for political offenses or related common crimes." Yet executions seem to have occurred with regularity. If it were not a matter of official summary executions,⁶⁹ then it is a simple issue of disappearance⁷⁰

and under the conditions established beforehand by the constitution of the State Party concerned or by a law pursuant thereto.

3. No one shall be subject to arbitrary arrest or imprisonment.

4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him.

64. U.N. COMPILATION, *supra* note 8, at 9:

1. 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 procedure as are [sic] established by law.

2. Anyone [sic] who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

65. *Id.* at 10:

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. . . .

Considering the abdication of the judiciary's responsibility to the Junta, this is quite relevant. JURISTS REPORT, *supra* note 28, at 15 *et seq.*, 35.

66. U.N. COMPILATION, *supra* note 8, at 11:

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

67. *Id.* at 11: "The right of peaceful assembly shall be recognized. . . ."

68. *Id.* at 10. See generally JURISTS REPORT, *supra* note 28, at 10-11.

69. *Id.* at 20. See JURISTS REPORT, *supra* note 28, at 20-21. See also N.Y. Times, Sept. 24, 1973, at 4, col. 5.

70. AMNESTY REPORT, *supra* note 28, at 34-36.

or *ley de fuga*—"shot trying to escape."⁷¹ In few, if any, of the cases were legal proceedings instituted before the executions occurred.⁷² Indeed, General Stark's death trip through northern Chile before October 24, 1973, may have exemplified the typical "legal execution." According to the *Amnesty Report*, "68 prisoners were suddenly executed in five separate towns."⁷³ Again, there is a variance among the reports as to the actual number summarily executed but all the *Reports* agree that "a vast" if "unknown number of people—estimates range from 5,000 to over 30,000—have lost their lives in Chile since the military coup."⁷⁴ Fortunately, further executions have not been carried out for more than a year.⁷⁵

While the executions have stopped, other violations of human rights have continued. The right to counsel is ignored, habeas corpus or *amparo* is suspended, torture remains.⁷⁶ The violation of the international covenants' provisions of right to legal assistance⁷⁷ is part of a larger issue. It is the failure of judicial protection and the judiciary's abandonment of jurisdiction to the military courts.⁷⁸ The Chilean Supreme Court did this

71. JURISTS REPORT, *supra* note 28, at 21. "As of December 11, 1973, there have been at least 42 published reports of more than 410 persons killed while 'attempting to escape.'" CHICAGO REPORT, *supra* note 28, at 3. The "law of flight" was dictated by the Junta in the form of Decree Law no. 5. O.A.S. REPORT, *supra* note 28, at 152.

72. AMNESTY REPORT, *supra* note 28, at 34.

73. *Id.* at 32. This is confirmed by both the CHICAGO REPORT, *supra* note 28, at 19-20, and JURISTS REPORT, *supra* note 28, at 21.

74. AMNESTY REPORT, *supra* note 28, at 31.

75. *Id.* at 33. N.Y. Times, Sept. 3, 1974, at 13, col. 1, reported two more executions in 1974.

76. N.Y. Times, Sept. 11, 1974, at 15, col. 1; NEWSWEEK, Mar. 31, 1975, at 51.

77. The International Covenant on Civil and Political Rights, art. 14, provides:

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it. . . .

U.N. COMPILATION, *supra* note 8, at 10. For examples of violations of 3(a) and (b), see text accompanying notes 54-68 *supra*.

78. AMNESTY REPORT, *supra* note 28, at 43-44. "All trials have been conducted by military courts. . . ." *Id.* at 37.

formally by ruling that it lacked jurisdiction to rule on habeas corpus (*amparo*) for prisoners because "military Tribunals in Time of War" have this power.⁷⁹ However, the question of the lack of judicial and legal guarantees can be isolated in order to focus on the denial of legal counsel.

Amnesty found that lawyers were unable on many occasions not only to obtain the files on their clients but to consult with them; there is the case of one "lawyer who first read in the Chilean press that his client had been sentenced by a military tribunal."⁸⁰ The Junta, of course, is to blame but the Supreme Court and Chilean Bar Association must share responsibility. In an interview with the Amnesty delegation, the president of the Supreme Court, who had previously been "hostile to the Allende Government," was unconcerned with the extension of an official "state of war" and lack of legal guarantees.⁸¹ Nor has the Bar Association, which had been critical of the Popular Unity Government, "condemned the violations of human rights under the junta."⁸² For those lawyers willing to undertake legal defenses, there were risks, either to them or to their clients. Some attorneys were imprisoned while the clients of others suffered.⁸³

79. *Id.* at 43-44. "The fundamental point, however, is that the Minister of Justice has virtually no power in Chile, for as long as the state of siege lasts." *Id.* See also JURISTS REPORT, *supra* note 28, at 22.

80. AMNESTY REPORT, *supra* note 28, at 43.

Lawyers have *not* been granted facilities to undertake defence of prisoners without difficulty, but have consistently been harassed, and have frequently been prevented from consulting their client. Lawyers have *not* been able to obtain the dossiers to the trials in order "to prepare the defence in a responsible and serious manner", but have sometimes been given a period of only *three* hours in which to prepare the defence.

Id.

81. *Id.* at 44-45.

82. *Id.* at 45. One organized exception to the blanket acceptance of the Junta and its policies in Chile is the Committee of Cooperation for Peace.

In October 1973, the one organization that did try to intercede on behalf of *all* political prisoners was the Committee of Cooperation for Peace, a committee set up under the auspices of several Chilean churches. . . .

The Committee of Cooperation for Peace has performed a task of great importance during the first year of military rule. With the support of the Roman Catholic Church hierarchy (the only organization in Chile which has been able to criticize the junta openly) it has had a certain degree of protection. It now has the support of Christian Democrat and even some pro-junta lawyers throughout Chile. . . . Up to the end of October, when the courts martial were convened in total secrecy, it was often impossible to arrange for any form of legal defence. On other occasions, the committee had to find lawyers who would attempt to prepare a legal defence in a matter of two to three hours. By June 1974 the committee has been recognized both within Chile and abroad as the organization most equipped to fight for increased guarantees for political prisoners.

Id. at 46-48.

83. *Id.* at 48.

In the first months after the coup, individual lawyers were reluctant to

Amnesty International has concluded that three "stages" of legal protection are discernible. At the earliest stage, immediately following the overthrow, there existed no legal defense. The second period was marked by exceedingly difficult obstacles to preparing a defense for the accused. At the final level, Amnesty observed a more efficient operation of the military courts but noted the existence of the same barriers to defending political prisoners.⁸⁴ Though the various *Reports* differ in degree, they all agree that there has been a lack of access to lawyers.⁸⁵

The descriptions of the official policy⁸⁶ of torture in Chile do not only upset but immunize one to the plight of each individual. Representatives of the Junta, as might be expected, deny the use of torture as an institutionalized policy and procedure for interrogation but admit there may have been isolated examples.⁸⁷ Their position is difficult to accept. If the *Reports*⁸⁸ as well as other sources⁸⁹ have been able to "uncover" the pervasive use of torture—including the actual examination of some of those allegedly tortured—and if the Junta is still unaware, it can hardly claim the status of an informed and legitimate government effectively fulfilling its role.

Torture may have decreased in use since September 11, 1973,⁹⁰ but it has "become commonplace" in its "calculated and systematic" application.⁹¹ One of the brutal examples presented by the Chicago Commission⁹² and Amnesty International⁹³ is that of Victor Jara, the Chilean poet

criticize the junta openly, and the majority were unwilling—or unable—to undertake the defence of political prisoners. Many lawyers were harassed; others were imprisoned. One lawyer was prevented from defending political prisoners because he found that military tribunals deliberately passed exaggeratedly high sentences for every prisoner whom he attempted to defend. Another lawyer was physically assaulted in the north of Chile by military troops, simply because he had undertaken the defence of a political prisoner.

Id.

84. *Id.* at 46-47.

85. CHICAGO REPORT, *supra* note 28, at 17; JURISTS REPORT, *supra* note 28, at 13-19, 22; O.A.S. REPORT, *supra* note 28, at 140, 146. See generally *Recommendations*, O.A.S. REPORT, *supra* note 28, at 171.

86. AMNESTY REPORT, *supra* note 28, at 60.

87. U.N. Doc. E/CN.4/1174/Add.1, Annex I, at 4 (1975).

88. AMNESTY REPORT, *supra* note 28, at 57-63; CHICAGO REPORT, *supra* note 28, at 9-14, 17-19; JURISTS REPORT, *supra* note 28, at 24-26; O.A.S. REPORT, *supra* note 28, at 77-82.

89. See AMNESTY REPORT, *supra* note 28, at 59, for "other sources." See also N.Y. Times cited in notes 5 and 76, *supra*.

90. AMNESTY REPORT, *supra* note 28, at 62.

91. *Id.* at 60.

92. CHICAGO REPORT, *supra* note 28, at IV, 1. For his final poem, a testament to his sufferings, see *id.* at IV, 2.

93. AMNESTY REPORT, *supra* note 28, at 62.

and musician, who was tortured and killed. Some of the places of detention used for torture are known but they were not the generally "recognized places of detention."⁹⁴ Not surprisingly and despite Junta denials, there is evidence that the Brazilian police, noted for its expertise in torture methods,⁹⁵ has been involved.⁹⁶

All this points to a mockery of the Universal Declaration of Human Rights.⁹⁷ But in "this crucial field [of prisoners of conscience], few members of the United Nations have lived up to their obligations."⁹⁸ Some countries, notably Chile, have violated even the very minimal standards established by human rights law.

III. INTERNATIONAL ORGANIZATIONS: ENFORCEMENT OF HUMAN RIGHTS

State sovereignty is the obstacle limiting an international organization's

94. *Id.* at 27.

95. An artistic statement on this is the French film "State of Siege," directed by Costa-Gavras and starring Yves Montand.

96. AMNESTY REPORT, *supra* note 28, at 25-26. "All the lies invented by the military about foreign intervention in the Allende government will be unmasked. It is they who have summoned the Brazilian police in order to receive a new type of training—the torture of political prisoners." A Brazilian, detained by the Chile Junta, quoted in *id.*

97. *See* note 7 *supra*. The Declaration is not a legal instrument nor a moral imperative as the intentions of the drafters and members of the General Assembly in 1948 made clear. However, it has the effect of being a declaratory prelude or preamble to an international bill of rights; *i.e.*, the existing human rights covenants and conventions. *See generally* Lauterpacht, *The Universal Declaration of Human Rights*, 25 BR. Y.B. INT'L L. 354 (1948).

98. Morris, *Prisoners of Conscience*, N.Y. Times, Nov. 11, 1972, at 33, col. 6. It is also worth quoting from *Atlas*:

Whether a man "goes out of his mind" from the pain of needles under his fingernails or from an electronically induced delirium, the final effect remains that of an unbearable sense of loss, not only of control but ultimately of identity. He becomes, in Sartre's words, "detached from his real self." It is in this utter diminishment of humanity that torture reveals its ultimate character.

Clavel, *The Kafkaesque World of Torture*, ATLAS, June 1974, at 34 (adapted from CANADIAN F.). The essence of this "detachment" is stated in different words in an "account of conditions in the Chile Stadium [in Santiago], written by a group of Brazilians detained there." AMNESTY REPORT, *supra* note 28, at 19.

The climate of tension even affected the soldiers, who after days addressed themselves to the prisoners and tried to calm them, confessing that they too were affected by the tension. This tension reached such a level that, when the commander talked of peace and calm in one of his speeches, he was mechanically applauded by the prisoners, thus creating a surrealistic picture. This applause represented all the protest or impotency of the prisoners faced with terror and violence.

Id. at 23.

effective response to human rights violations, and a restriction which thoroughly pervades any discussion of international enforcement.⁹⁹ Whether writers note this or not, it is always implicit. Even those nations supporting the United Nations have no desire to give up their sovereignty. The Charter of the United Nations recognizes this¹⁰⁰ and Oscar Schachter, long associated with the United Nations, has confirmed it, stating that coercion from outside a state is "regarded as inimical" by that state.¹⁰¹

The role of the United Nations as an intervenor in internal conflicts is one of the particular areas studied in *Law and Civil War in the Modern World*, edited by John Norton Moore under the auspices of the Panel on the Role of International Law in Civil Wars of the American Society of International Law. The purpose of the "culminating study" of the Panel's Civil War Project is a "theoretical inquiry concerning the role of law in civil wars and how law and legal institutions might be made more relevant to the challenge."¹⁰² According to Moore, *Law and Civil War* "builds on . . . earlier studies"¹⁰³ and is an attempt to "probe" the "emerging [international] legal order" and to devise a framework for analysis of both legal structure and "revolutionary and interventionary violence."¹⁰⁴

99. This accounts for the seeming impunity with which a nation violates human rights. The issue of state sovereignty permeates international law and confounds international lawyers. The lack of enforcement measures in international law is one of the resulting criticisms. Whether the discussion centers on international force or other modes of coercion, the conclusion remains the same. For a recent discussion of whether the "force of law" or "law of force" rules in international society, see *THE USE OF FORCE IN INTERNATIONAL RELATIONS* (F. Northedge ed. 1974).

100. U.N. CHARTER art. 2, paras. 1 and 7. Paragraph 7 reads:

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

101. Schachter, *The United Nations and Internal Conflict*, in *LAW AND CIVIL WAR IN THE MODERN WORLD* 401, 406 (J. N. Moore ed. 1974) [hereinafter cited as Schachter].

102. Moore, *Introduction*, in *LAW AND CIVIL WAR IN THE MODERN WORLD* xix (J. N. Moore ed. 1974) [hereinafter cited as *Introduction*].

103. *Id.* at xx. See, e.g., *THE ARAB-ISRAELI CONFLICT* (J.N. Moore ed. 1974); W. KANE, *CIVIL STRIFE IN LATIN AMERICA: A LEGAL HISTORY OF U.S. INVOLVEMENT* (1972); *THE INTERNATIONAL LAW OF CIVIL WAR* (R. Falk ed. 1971); 1-3 *THE VIETNAM WAR AND INTERNATIONAL LAW* (R. Falk ed. 1967, -70, -72).

104. *Introduction*, *supra* note 102, at xx. One of the frameworks for analysis presented is the "New Haven approach" or "minimum world order" view of McDougal and Lasswell, i.e., their complex policy-oriented approach. *Introduction*, *supra* note 102, at xxi, and Moore, *Toward an Applied Theory for the Regulation of Intervention*, in *LAW AND CIVIL WAR IN THE MODERN WORLD* 3, 7, 12-18 (J.N. Moore ed. 1974). Offering this analysis is a response to the lack of an accepted framework. "A principal shortcoming of the work to date on revolution and intervention—

International law has no standards for establishing responsibility for and effectively resolving conflicts, whether internal or not.¹⁰⁵ One of the reasons could be that the causes of conflicts, especially internal conflicts, are "self-determination, human rights, and modernization, combined with a variety of intense ideological conflicts."¹⁰⁶ Another, and more obvious, reason is that under Article 2(7) of the Charter,¹⁰⁷ the United Nations may not intervene in matters "deemed essentially domestic,"¹⁰⁸ consequently, intervention has occurred where the issue was not characterized as "domestic."

Despite the legal possibility of intervening in the affairs of a state, the United Nations has no "hierarchy" of priorities when it comes to determining whether an internal problem becomes a serious threat to international peace.¹⁰⁹ Given the possibility that an internal problem may breach the peace, it is unlikely that the United Nations will act if intervention is not in the "perceived interests of the majority of states."¹¹⁰ Schachter notes that among the goals which the United Nations has "perceived" as justifying intervention are "international peace and security," threats to a nation's sovereignty and independence, "[p]romotion and protection of fundamental human rights," and "[a]lleviation of massive suffering."¹¹¹ He states that human rights violations have usually been involved in most of those internal conflicts which have received attention in the "international forum" and have involved the United Nations. But Schachter is also candid in pointing out a sometimes tragic flaw:

While it is undeniable that the promotion and protection of human rights is an aim of the United Nations, it is an aim that in the understanding of most member states is to be pursued through general recommendatory resolutions or international conventions of lawmaking character. Interventionist "action" by the Organization to redress violations of human rights *has*

whether that of international lawyers, political scientists, or international-relations theorists—is the lack of a commonly accepted framework (incorporating all of the intellectual tasks) for relating individual effort." *Id.* at 37.

105. *Introduction, supra* note 102, at xvi-xvii.

106. *Id.* at xi.

107. *See* note 100 *supra*.

108. Schachter, *supra* note 101, at 402.

109. *Id.* at 404.

110. *Id.* at 403.

111. *Id.* at 404.

[A]lleviation of massive suffering does not expressly appear as a purpose or principle of the Charter, though in some cases it may be regarded as an aspect of basic human rights, more particularly the "right to life" or protection against genocide. It has its own justification, however, and is supported by a general consensus that the international community should seek to alleviate mass distress among victims of civil strife, at least through providing material supplies and technical services.

Id. at 408.

not been regarded as legitimate except in the case of large scale racial discrimination or presumably the threat of genocide.¹¹²

This view generates a rather cynical air. If the United Nations has such a policy regarding human rights, then Schachter makes an elaborate justification for inaction. He posits a finely devised United Nations system but then tells us, in effect, that when it comes to intervening for human rights purposes, the United Nations can do little.¹¹³ Nothing more can be done in the United Nations, when violations of fundamental human rights occur, as in Chile, than to protest, inquire,¹¹⁴ offer resolutions and publish reports. It is this weakness that prompts discussion of the "humanitarian intervention" by a foreign state in the internal conflict of another,¹¹⁵ for example, India's aid to Bangladesh.¹¹⁶ The late Professor Wolfgang Friedmann, who would not dismiss the use of humanitarian intervention out of hand, was very wary of it because it is a concept that lends itself to political abuse as much as to genuine humanitarian concern.¹¹⁷

The success of regional international organizations is only a little better according to one author contributing to *Law and Civil War in the Modern World*.¹¹⁸ Ms. Frey-Wouters concedes that the Inter-American Commission on Human Rights of the O.A.S. "performed a valuable role in the Dominican Republic,"¹¹⁹ similarly, in Chile, the Commission energetically pursued its investigation of human rights violations, producing a compre-

112. *Id.* at 408 (emphasis added).

113. That seems to be the view of Shirley Hazzard in *The United Nations: Where Governments Go to Church*, *NEW REPUBLIC*, Mar. 1, 1975, at 11. In her strident manner she describes the UN as an inflated organization, dashing the hopes of humankind but responsive to the major powers. She could be right although the last session of the General Assembly could be interpreted as indicating otherwise.

114. Schachter, *supra* note 102, at 428-29.

115. Brownlie, *Humanitarian Intervention*, in *LAW AND CIVIL WAR IN THE MODERN WORLD* 217 (J. N. Moore ed. 1974); Lillich, *Humanitarian Intervention: A Reply to Ian Brownlie and a Plea for Constructive Alternatives*, in *id.* at 229. See Falk, *Comment 1*, in *id.* at 539, 544-45, for caustic remarks on the Brownlie-Lillich debate.

116. One wonders if India's humanitarian concern—or any country's concern—for Bangladesh would have been so keen had it not coincided with India's design to weaken Pakistan. Friedmann, *Comment 4*, in *LAW AND CIVIL WAR IN THE MODERN WORLD* 574, 577 (J.N. Moore ed. 1974).

117. *Id.* at 577.

118. Frey-Wouters, *The Relevance of Regional Arrangements to Internal Conflicts in the Developing World*, in *LAW AND CIVIL WAR IN THE MODERN WORLD* 458 (J. N. Moore ed. 1974) [hereinafter cited as Frey-Wouters]. "Regional organizations have engaged in generally ineffective activities intended to safeguard fundamental human rights, particularly against a threat of widespread loss of life." *Id.* at 483.

119. *Id.* at 484.

hensive study.¹²⁰ Nevertheless, she laments the fact that the O.A.S. suffers from domination by the United States.¹²¹ Frey-Wouters characterizes the regional institutions as lacking sufficient resources necessary to sustain a dynamic and effective structure; as being completely subservient to the member states; and as possessing secretariats for administrative purposes only and having no executive capacity which enables them to initiate independent projects.¹²² Moreover, internal conflict is ignored as a concept, and intervention is viewed as undesirable in all cases but those determined to be a threat to the other nations of the region.¹²³

While *Law and Civil War in the Modern World* explores intervention in the internal conflict of a nation by other states, non-governmental groups or "public" international organizations, *International Organization: Law in Movement* is concerned with international organizations, not in the context of intervention but in the context of their overall work.¹²⁴ The latter volume is likable but uneven; the essays are informative but only a few stand out. One of these is Schachter's article describing the characteristics of the United Nations, notably its circumspection and inhibition.¹²⁵

John McMahon, in whose honor *International Organization* was published, addresses the problem of what an international organization can do under its constitutive instrument or charter.¹²⁶ Though he focuses on the Court of the European Communities, his analysis is applicable to international organizations generally. One of McMahon's premises is that whether judicial interpretation of a charter is provided for or not, the routine practice or work of an institution, with the charter as its guide, amounts to interpretation. In other words, theory becomes practice through "day-to-day application."¹²⁷ McMahon urges breaking the fetters

120. O.A.S. REPORT, *supra* note 28.

121. Frey-Wouters, *supra* note 118, at 462-63.

122. *Id.* at 460.

123. *Id.* For those interested in scholarly debate descending to the level of friendly academic rivalry, see Farer, *On Professor Moore's Synthesis*, in *LAW AND CIVIL WAR IN THE MODERN WORLD* 549 (J.N. Moore ed. 1974) and Moore, *On Professor Farer's Need for a Thesis: A Reply*, in *id.* at 565.

124. INTERNATIONAL ORGANIZATION: LAW IN MOVEMENT—ESSAYS IN HONOUR OF JOHN MCMAHON [hereinafter cited as INTERNATIONAL ORGANIZATION] (J. E. S. Fawcett & R. Higgins eds. 1974).

125. Schachter, *Some Reflections on International Officialdom*, in INTERNATIONAL ORGANIZATIONS, *supra* note 124, at 53. Schachter here offers personal observations, based on almost three decades with the U.N.

126. McMahon, *The Court of the European Communities: Judicial Interpretation and International Organization*, in INTERNATIONAL ORGANIZATION, *supra* note 124, at 1.

127. *Id.* at 2.

It is also important to note that the routine, day-to-day application of the

of traditional interpretation of treaties, at least in the case of charters. Quoting Lord McNair, he believes one should see the "differing legal character of the several kinds of treaties."¹²⁸ A constitutive instrument is analogous, in his view, to a "written constitution such as that of the United States."¹²⁹ Moreover, implied powers are required in order to fulfill the expectations of express powers.¹³⁰ Flexibility and adaptation are essential because the drafters and signatories could not have foreseen contingencies.¹³¹ An implication to be drawn from McMahon's perception is that in the area of human rights, the United Nations has failed to practically apply and interpret the Charter and the Universal Declaration of Human Rights. The result has been, of course, the role of the United Nations as a restricted bystander-guardian of human rights.

For Ian Brownlie, the United Nations could and should be seen as a form of government with characteristics similar to those of federal systems.¹³² Though he offers nothing new, his insights are trenchant. According to Brownlie, many have traditionally made "national law the measure of the validity of international law."¹³³ This view has been carried to the extent that the concept of international law is frequently seen as a myth to which can be attributed faults and failings which could just as well be laid at the feet of any nation.¹³⁴

Judicial settlement of disputes is seen by one of the editors, Rosalyn Higgins, as a possible alternative to negotiations or intervention.¹³⁵ She

contents of a constitutive instrument will inevitably involve its interpretation. . . . It is by means of such practical application and interpretation that the charter of any international organization becomes a viable instrument responding to the needs of an evolving international society and providing scope for change and adaptability.

Id.

128. *Id.* at 23.

129. *Id.*

130. *Id.* at 17.

131. *Id.* at 24.

132. Brownlie, *The United Nations as a Form of Government*, in INTERNATIONAL ORGANIZATION, *supra* note 124, at 26, 29.

133. *Id.* at 26.

134. *See id.* at 27.

Thus even the more able student will readily refer to the relative invulnerability of the Smith regime in Rhodesia . . . in terms of the "ineffectiveness of the United Nations" and will find it difficult to accept that the situation could also be said to be a test of the efficacy of the legal system of the United Kingdom.

Id.

135. Higgins, *The Desirability of Third-Party Adjudication: Conventional Wisdom or Continuing Truth?*, in INTERNATIONAL ORGANIZATION, *supra* note 124, at 37.

admits courts have limitations and even acknowledges Lord McNair's statement that international courts do not "contribute substantially to the peace of the world."¹³⁶ A basic restraint is the fact that courts of law comprise the adjudicatory system while courts of economic and social policy do not.¹³⁷ The solution might be found in "specialist courts" and "regional courts."¹³⁸ In the human rights arena, such a court, with both peculiarities, exists, the European Court of Human Rights. Unfortunately it is the only one of its kind; however, there is provision for the organization of an Inter-American Court of Human Rights in the American Convention of Human Rights.¹³⁹

However interesting and informative the remaining articles in *International Organization* are, they are less important to the discussion of human rights. The book is not a solid study of international institutions but it offers insights to particular phases of international organizational work.

Despite the failure or inability of the United Nations and other international organizations to intervene in states or enforce human rights law, there have been significant accomplishments. The United Nations has been responsible for drafting and opening for signature and ratification the international human rights covenants and for setting up the Commission on Human Rights for purposes of channeling protests, undertaking inquiries and initiating publicity. Furthermore, world opinion and pressure should not be dismissed as a remedy to be used by international organizations. Because nations couch their more devious plans in legal terms and justify their transgressions by invoking a legal principle, and because states do not want to be accused of being lawless, a much more effective use of world opinion could be made. Public international organizations could take a lesson from private organizations such as Amnesty International.¹⁴⁰

136. *Id.* at 41-42.

137. *Id.* at 43.

138. *Id.* at 43-44.

139. American Convention, *supra* note 25, ch. VIII.

140. A distinction is made between public and private international organizations. Examples of the former are, of course, the United Nations, the Organization of American States and the Asian Development Bank. Under international law, they are considered "subjects" of that law along with nations. See W. FRIEDMANN, O. LISSITZYN & R. PUGH, *INTERNATIONAL LAW 202 et seq.* (1969). Cf. J. L. BRIERLY, *THE LAW OF NATIONS 94 et seq.* (6th ed. H. Waldock 1963). An example of a private international organization is Amnesty International. It is not a "subject" of international law. (It does have the status of non-governmental organization with the UN.)

Amnesty, with its more unassuming goals, has proved to be an effective "inter-venor" in the protection of human rights. This is not meant to cast aspersions on the public institutions. The United Nations has worked earnestly and under severe handicaps to have human rights covenants drafted, signified and ratified. However,

Amnesty was founded in London in 1961 in response to the imprisonment of and lack of legal defense for political prisoners in Portugal.¹⁴¹ Its work has been on behalf of those imprisoned for their political beliefs—prisoners of conscience. Within the last few years it has turned its attention to the torture of prisoners, but not to the exclusion of other concerns of political prisoners. Its goals are modest and its solutions are specific; for example, Amnesty has recommended that the United Nations and other concerned groups help Chilean prisoners of conscience by financing lawyers to defend them.¹⁴² It has been able to mobilize public opinion in many countries with surprising success.¹⁴³ Yet in the context of mass violations of human rights, one cannot be too impressed with the performance of either private or public international organizations. Hence it is tautologous to say that international organizations must be strengthened. Professor Friedmann concluded that

[I]ntervention is an aspect of restriction of state sovereignty in the name of a higher principle and authority. The only way to achieve this authority is the strengthening of authoritative international institutions. But this cannot be attained without the necessary moral consensus.¹⁴⁴

CONCLUSION

One conclusion that unfortunately might be drawn from this discussion of human rights, their violation in Chile and their enforcement by international organizations, is that human rights law—or international law for that matter—is ineffective, even worse, that it does not exist. This conclusion, however, not only denies legal history but also ignores what law itself is. Mr. Justice Douglas has written,

[T]he true gauge of law is not command but conduct. Those who move to the measured beat of custom, mores, or community or world mandates are obeying law in a real and vivid sense of the term. Law is a force that shapes and moulds the affairs of men. The fact that there may be no court to enforce a rule of conduct does not prove that no international law exists.¹⁴⁵

its human rights work is hindered by the considerations of state sovereignty and political consequences. See Scoble & Wiseberg, *supra* note 3. See also part II in text, *supra*, for an example of the work of Amnesty International.

141. Scoble & Wiseberg, *supra* note 3, at 16. This is a fine survey of Amnesty and its work.

142. F.C. Newman, B.W. Sumner & R. Plant, Report of Mission to Santiago, Chile, 1st-8th November, 1973, at 6 (Report for Amnesty International, not dated).

143. FRASER REPORT, *supra* note 36, at 410.

144. Friedmann, *Comment 4*, in *LAW AND CIVIL WAR IN THE MODERN WORLD* 574, 581 (J.N. Moore ed. 1974).

145. Douglas, *The Rule of Law in World Affairs*, in *A WORLD WITHOUT WAR* 145, 148 (Washington Square Press ed. 1961).

Perhaps the conclusion that should be drawn is that international law will continue to develop. Whether it will develop in response to the needs of individuals or the demands of institutions, however, is the only issue.

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