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# INTERNATIONAL HUMAN RIGHTS LAW AND INSTITUTIONS: ACCOMPLISHMENTS AND PROSPECTS

Thomas Buergenthal\*

## I. INTRODUCTION

Evaluating accomplishments and prospects in the area of international human rights law recalls the oft-used rhetorical question about whether the glass is half empty or half full. As far as human rights are concerned, if the question is “how much has been achieved,” the answer must be “a great deal.” If the question is “how much remains to be achieved,” the answer will be the same: “a great deal.” Has a great deal more been achieved than remains to be accomplished? Yes and no; it all depends where we start and what we consider to be achievements.

Tonight I propose to examine these questions and to introduce you to international human rights law and the institutions that apply it. This cannot, of course, be done in any great depth in a relatively short lecture. Let me, therefore, apologize in advance for what must of necessity be a superficial treatment of a topic that would require many more hours to exhaust, by which time you and I would be sound asleep.

To begin, it might be worthwhile to reflect upon the fact that probably at no other time in the history of mankind have more human beings believed that they are entitled to the enjoyment of human rights than today. The yearning for a society in which human rights are respected has become a universal phenomenon of our times, which is of great significance for the achievement of this goal.

Please do not misunderstand me, I am not suggesting that at other times in history human beings did not wish to be treated with dignity or have their rights protected. Of course they did. What I am suggesting is that never before have as many people around the world believed that they have human rights, that the rights are entitled to be respected, and that it is the obligation of government to respect and to protect them. In the past, the vast majority of humankind accepted its

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suffering as preordained or unavoidable. That is no longer true. People may suffer today as much or more than at other times in history, and they may have to tolerate their suffering, but they view it as illegal and unjust. On the whole, they consider governments that engage in large-scale violations of human rights as lacking legitimacy for that very reason.

How do we explain this phenomenon, and what consequences does it have? One very important consequence, and I shall return to it, is that today the struggle against governmental oppression and abuse has gained international legitimacy. This legitimacy is in itself a major factor in the struggle to improve the state of human rights in the world. The struggle gained legitimacy, in part at least, because of the very profound transformation that international law has undergone since the end of World War II and the establishment of the United Nations. Let me now trace that transformation.

## II. THE UNITED NATIONS CHARTER

### A. *Birth of Fundamental Principles*

The international law of human rights as we know it today is a post-World War II phenomenon.<sup>1</sup> It is closely related to the monstrous violations of human rights that were committed during the Hitler era. Pre-World War II international law did not, with minor exceptions, regulate the manner in which governments treated their own nationals. In those days, international law was not violated if a state denied basic human rights to its own citizenry. Since such conduct was not regulated by international law, it remained *ipso facto* a subject within the exclusive domestic jurisdiction of each nation. This fact gave governments a valid legal basis for claiming that any protest by another government against their human rights violations was an unlawful intervention in their domestic affairs. It also served as an excuse for governments wishing to remain silent in the face of massive violations of human rights by other governments.

The need for international legal norms and institutions addressing human rights violations became apparent in the 1930's and 1940's. As early as 1941, President Franklin D. Roosevelt called, in his famous "Four Freedoms" speech, for "a world founded upon four essential human freedoms," namely, "freedom of speech and expres-

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1. For an excellent overview of the entire subject, see Sohn, *The New International Law: Protection of the Rights of Individuals Rather than States*, 32 AM. U.L. REV. 1 (1982). For material on pre-World War II human rights practice, see L. SOHN & T. BUERGENTHAL, INTERNATIONAL PROTECTION OF HUMAN RIGHTS 1-373 (1973).

sion,” “freedom of every person to worship God in his own way,” “freedom from want,” and “freedom from fear.”<sup>2</sup> Roosevelt’s vision became the clarion call of the nations that fought the Axis in the Second World War and that founded the United Nations.

The human rights principles which ultimately found their way into the Charter of the United Nations fell far short of the expectations aroused by Roosevelt’s vision and wartime rhetoric. This should not surprise anyone, for each of the principal powers victorious in World War II had serious human rights problems on its hands. The Soviet Union had its *Gulag*, the United States its *de jure* racial discrimination, France and Great Britain their colonial empires. It was obviously not in the interest of these nations to create the effective international system for the protection of human rights that various smaller nations advocated. Although the big powers succeeded in significantly weakening the human rights provisions ultimately included in the United Nations Charter, these provisions nevertheless laid the legal foundation for the development of contemporary international human rights law.

### *B. Human Rights Principles of the United Nations Charter*

The United Nations Charter<sup>3</sup> is both the constitution of the Organization and a legally binding multilateral treaty. Article 1, paragraph 3 of the Charter declares that one of the purposes of the United Nations is “[t]o achieve international cooperation . . . in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.”<sup>4</sup> The obligation of the Organization for achieving these purposes is set out in Article 55:

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

. . . .

(c) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.<sup>5</sup>

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2. WORLD PEACE FOUNDATION, 3 DOCUMENTS ON AMERICAN FOREIGN RELATIONS 26, 33 (1941).

3. Reprinted in R. LILlich, INTERNATIONAL HUMAN RIGHTS INSTRUMENTS 10.1 (1985).

4. *Id.* at 10.1–10.2.

5. U.N. CHARTER, art. 55, reprinted in R. LILlich, *supra* note 3, at 10.4.

In Article 56 the Member States “pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55.”<sup>6</sup>

You will note that the “pledge” of the Member States under Article 56 is limited to promoting “the achievement of the purposes set forth in Article 55.” The Member States did not, consequently, undertake “to observe” or “to respect” the human rights identified in Article 55(c). They assumed instead the more ambiguous obligation to “promote . . . universal respect for, and observance of, human rights and fundamental freedoms . . .”<sup>7</sup> The Charter, however, does not specifically define or list the rights and freedoms that are to be promoted.

Although these Charter provisions created only weak and vague obligations, they were very important from a legal point of view: they transformed human rights, once only a matter of domestic concern, into the subject of international treaty obligations. As such, human rights could conceptually no longer be considered exclusively within the domestic jurisdiction of the Member States of the United Nations.

### *C. The United Nations Charter as a Foundation for International Human Rights Law*

These modest beginnings ushered in a process that gradually internationalized human rights and humanized international law.<sup>8</sup> The Charter spawned a vast body of international human rights law, encompassing numerous international agreements and instruments, adopted by the United Nations, its specialized agencies, and such regional intergovernmental organizations as the Council of Europe, the Organization of American States and the Organization of Africa Unity.<sup>9</sup> This law has not, of course, put an end to human rights violations. It *has* created an international climate, however, that is increasingly sensitive to their illegality, less willing to tolerate them, and more responsive to public and private efforts to prevent them. These new attitudes are reflected in the establishment of intergovernmental and nongovernmental international and regional institutions and organizations for the promotion and protection of human rights. The international condemnations and pressure to which recalcitrant governments

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6. *Id.* art. 56, reprinted in R. LILLICH, *supra* note 3, at 10.4.

7. *Id.* art. 55, para. c, reprinted in R. LILLICH, *supra* note 3, at 10.4.

8. See Buergenthal, *A Challenge for the Universities*, 31 UNESCO COURIER 25, 28 (1978).

9. For an overview, see HUMAN RIGHTS IN INTERNATIONAL LAW: LEGAL AND POLICY ISSUES (T. Meron ed. 1984) [hereinafter HUMAN RIGHTS].

are increasingly being subjected tend to have a prophylactic and ameliorative effect.

As governments come to realize that they must pay a higher political price for violating their international human rights obligations, the world's human rights situation cannot but improve. Do not for one moment believe, however, that the struggle has been won. It has not; we have a long way to go. Human rights are still being violated on a massive scale in many parts of the world, and it will take many years and much effort to put an end to these violations. The slow progress is largely attributable to the fact that the vast majority of governments prefer a world in which they do not have to account either to their own people or to international institutions for their conduct. Because there is still such a long way to go, it is useful to review where we are today, more than forty years after the Charter of the United Nations was adopted. What does international human rights law now consist of and what institutions have been established?

### III. THE INTERNATIONAL BILL OF HUMAN RIGHTS

When the United Nations Charter was being drafted in San Francisco in 1945, various smaller countries attempted to append a bill of human rights. This effort failed, but its proponents extracted a promise that the drafting of such an instrument become the first order of business of the United Nations. The promise was kept. But it was soon recognized that there was no agreement on what should be included in a bill of rights. More importantly, there was serious disagreement about the manner in which specific rights should be drafted, what exceptions and limitations should be permitted, and what international institutions should be established to supervise governmental compliance. When these disagreements threatened to bog down the drafting process indefinitely, the Member States decided to proceed in stages. The first stage was to consist of the adoption of a human rights declaration drafted in general terms. This declaration was to be followed by one or more human rights treaties, which would spell out specific legal obligations and establish an international enforcement system.

The first stage of this drafting process proved relatively easy; by 1948 the United Nations had proclaimed the Universal Declaration of Human Rights. The second set of documents—the International Covenants on Human Rights—took eighteen years to draft. They entered

into force ten years later in 1976.<sup>10</sup>

What took so long? The reluctance of governments to assume specific and binding international legal obligations requiring them not to violate human rights. Why was it so easy to get the Universal Declaration adopted? Because it was deemed to be nonbinding and because it established no enforcement machinery. Why did the governments comprising the United Nations bother to proclaim it? Because they knew that people all over the world are "for" human rights, and a little hypocrisy makes for good politics everywhere. By voting for the Declaration, governments were able to claim that they were strong supporters of human rights without, supposedly, assuming any risks or legal obligations. What they did not reckon with is the force that ideas have when their time has come. The story of the transformation of the Universal Declaration proves that point.

#### A. *The Universal Declaration*

The United Nations Charter internationalized human rights; but the Universal Declaration of Human Rights<sup>11</sup> has become the centerpiece of the international human rights revolution.<sup>12</sup> The Declaration is the first comprehensive statement enumerating the basic rights of the individual to be promulgated by a universal international organization. As such, it ranks with the Magna Carta, the French Declaration of the Rights of Man, and the American Declaration of Independence as a milestone in mankind's struggle for freedom and human dignity. Its debt to these great historic documents is unmistakable. "All human beings are born free and equal in dignity and rights," proclaims Article 1 of the Universal Declaration,<sup>13</sup> and Article 28 adds "[e]veryone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized."<sup>14</sup> The legal and political importance that the Universal Declaration acquired

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10. See generally Sohn, *A Short History of United Nations Documents on Human Rights*, in *THE UNITED NATIONS AND HUMAN RIGHTS* 39 (1968) (18th Report of the Commission to Study the Organization of Peace).

11. G.A. Res. 217A (III), U.N. Doc. A/810, at 71 (1948) [hereinafter *UNIVERSAL DECLARATION*], reprinted in R. LILICH, *supra* note 3, at 440.1.

12. Tomuschat, *Human Rights in a World-Wide Framework: Some Current Issues*, 45 *ZEITSCHRIFT FÜR AUSLÄNDISCHES ÖFFENTLICHES RECHT UND VÖLKERRECHT* 547, 550 (1985); Humphrey, *The Universal Declaration of Human Rights: Its History, Impact and Juridical Character*, in *HUMAN RIGHTS: THIRTY YEARS AFTER THE UNIVERSAL DECLARATION* 21 (B. Ramcharan ed. 1979).

13. *UNIVERSAL DECLARATION*, *supra* note 11, art. 1, reprinted in R. LILICH, *supra* note 3, at 440.1.

14. *Id.* art. 28, reprinted in R. LILICH, *supra* note 3, at 440.5.

over the years remains unmatched by any other international human rights instrument. The Declaration is an historical milestone in yet another respect: it recognizes that individuals have not only civil and political rights but also economic, social, and cultural rights and proclaims both of these categories of rights.

The Declaration's list of civil and political rights includes the right to life, liberty, and security of person; the prohibition of slavery, torture, and cruel, inhuman, or degrading treatment; the right not to be subjected to arbitrary arrest, detention, or exile; the right to a fair trial in both civil and criminal matters; the presumption of innocence and the prohibition against the application of *ex post facto* laws and penalties. The Declaration recognizes the right to privacy and the right to own property. It proclaims freedom of speech, religion, and assembly. The Declaration acknowledges the right to freedom of movement and provides in Article 13 that everyone has the right to leave any country, including his own, and to return to his country. Important political rights are proclaimed in Article 21 of the Declaration, including the right to take part in the government of one's country, directly or through freely chosen representatives.

The economic, social, and cultural rights proclaimed in the Declaration have their starting point in the proposition, expressed in Article 22, that "[e]veryone, as a member of society . . . is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality."<sup>15</sup> The Declaration accordingly proclaims the individual's right to social security, to work, and to "protection against unemployment."<sup>16</sup> The right to education is dealt with in Article 26 of the Declaration, which provides, among other things, that education shall be free "at least in the elementary and fundamental stages."<sup>17</sup> It established a "prior right" of parents "to choose the kind of education that shall be given to their children."<sup>18</sup> Article 27 of the Declaration deals with cultural rights and proclaims that every human being has "the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits."<sup>19</sup>

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15. *Id.* art. 22, reprinted in R. LILLICH, *supra* note 3, at 440.4.

16. *Id.* art. 23, reprinted in R. LILLICH, *supra* note 3, at 440.4.

17. *Id.* art. 26, reprinted in R. LILLICH, *supra* note 3, at 440.4.

18. *Id.*

19. *Id.* art. 27, reprinted in R. LILLICH, *supra* note 3, at 440.4.



The Declaration recognizes that the rights it proclaims are not absolute. It permits a state to enact laws limiting the exercise of these rights solely for the purpose of securing "due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society."<sup>20</sup> A government's authority to impose such restrictions is further limited by the stipulation that "[n]othing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein."<sup>21</sup>

The Universal Declaration is not a treaty. It was adopted by the United Nations General Assembly in the form of a resolution<sup>22</sup> that has no force of law, and it was not intended by the Assembly to create binding legal obligations. Contrary to popular myth, it was not signed, nor is it an instrument intended to be signed. The Declaration was designed, as its preamble indicates, to provide "a common understanding" of the human rights and fundamental freedoms referred to in the United Nations Charter, and to serve "as a common standard of achievement for all peoples and all nations . . . ."<sup>23</sup>

Time, however, transformed the normative status of the Universal Declaration. Today few international lawyers would deny that the Universal Declaration imposes some international legal obligations. There is dispute, however, about whether all the rights it proclaims are binding and under what circumstances, and about whether its obligatory character derives from its status as an authoritative interpretation of the human rights obligation contained in the United Nations Charter, or its status as customary international law.<sup>24</sup>

Whatever the outcome of this legal debate, it is less important than the fact that no government today would dare to contend publicly, be it for legal or political reasons, that it is free to violate the Universal Declaration. The Declaration gained this special politico-legal status in part because the effort to draft and adopt the Covenants remained stalled in the United Nations for almost two decades, while the need

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20. *Id.* art. 29, para. 2, reprinted in R. LILLICH, *supra* note 3, at 440.5.

21. *Id.* art. 30, reprinted in R. LILLICH, *supra* note 3, at 440.5.

22. See *supra* note 11.

23. UNIVERSAL DECLARATION, *supra* note 11, reprinted in R. LILLICH, *supra* note 3, at 440.1.

24. See RESTATEMENT (REVISED) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 701 reporter's notes 4-6 (Tent. Draft No. 6, vol. 1, 1985) [hereinafter RESTATEMENT FOREIGN RELATIONS]; see also Sohn, *supra* note 1, at 16-17; Henkin, *Human Rights*, in 8 ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW 268 (R. Bernhardt ed. 1985).

for authoritative international human rights standards became ever more urgent. As time went on, the mere existence of the Declaration as the only United Nations human rights instrument of general applicability endowed it with greater and greater legitimacy. Whenever governments, the United Nations, or other international organizations had to deal with human rights issues, they referred to and drew on the standard set out in the Declaration, until it came to symbolize “human rights” the world over. This phenomenon, in turn, gave even greater strength to the belief, now very widely held, that all governments have an “obligation” to ensure the enjoyment of the rights the Declaration proclaims. This belief finds expression in many international instruments. A good example is the Helsinki Final Act, which contains the following language: “In the field of human rights and fundamental freedoms, the participating States will act in conformity with the purposes and principles of the Charter of the United Nations and with the Universal Declaration of Human Rights.”<sup>25</sup>

In my view, the legal obligations which the Universal Declaration as a whole creates for governments derive from the duty the United Nations Charter imposes on them to “promote” human rights. A government which systematically denies the rights the Declaration proclaims violates this obligation. For example, South Africa’s obligation to do away with the system of apartheid derives in part from the principle of nondiscrimination enshrined in the United Nations Charter, read together with the Universal Declaration, which, according to United Nations legal practice, provides the most authoritative definition of the human rights and fundamental freedoms to which the Charter refers.<sup>26</sup> This view is not in conflict with the proposition that various specific rights proclaimed in the Universal Declaration have in the meantime also acquired the status of customary international law and thus impose additional legal obligations.<sup>27</sup>

### *B. The Covenants*

The International Covenants on Human Rights consist of three separate treaties—the International Covenant on Civil and Political

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25. HUMAN RIGHTS, INTERNATIONAL LAW AND THE HELSINKI ACCORD 167 (T. Buergenthal ed. 1977).

26. Henkin, *The International Bill of Rights: The Universal Declaration and the Covenants*, in INTERNATIONAL ENFORCEMENT OF HUMAN RIGHTS 1, 6 (R. Bernhardt & J. Jolowicz ed. 1987) [hereinafter INTERNATIONAL ENFORCEMENT].

27. RESTATEMENT FOREIGN RELATIONS, *supra* note 24, § 702.

Rights,<sup>28</sup> the Optional Protocol to the International Covenant on Civil and Political Rights,<sup>29</sup> and the International Covenant on Economic, Social and Cultural Rights.<sup>30</sup> These treaties were adopted by the United Nations General Assembly in 1966. Another decade passed before thirty-five states—the number required to bring the two Covenants into force—ratified them. Two more years elapsed before the Optional Protocol entered into force; it took that long to get ten states to subject themselves to the very weak individual petition system that is provided for by the Protocol.

The Covenants were designed to transform the general principles proclaimed in the Universal Declaration into binding treaty obligations. This meant that the lofty rhetoric of the Declaration had to give way to precise statutory language, and that exceptions, limitations, and restrictions on the exercise of various rights had to be spelled out in considerable detail. The Covenants also sought to establish an international machinery to ensure governmental compliance.

Given the great reluctance of many governments to assume unambiguous international obligations to safeguard human rights, and to accept effective international supervision, it is not surprising that the drafting of the Covenants remained mired in legalistic squabbles and parliamentary maneuvers for many years. The fact that the Covenants were ultimately adopted and are in force today is, therefore, a significant accomplishment. A strong system of international controls had to be sacrificed to achieve adoption, however. This is a perennial problem in the international human rights field.

The Covenants have a number of common substantive provisions. Two of these deal with what might be described as “group” or “collective” rights. Article 1, paragraph 1 of both Covenants proclaims that “all peoples have the right of self-determination.”<sup>31</sup> Article 1, paragraph 2 of both instruments also recognizes that “[a]ll peoples” have the right to freely dispose of their natural resources and that “[i]n no

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28. G.A. Res. 220 (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966) [hereinafter CIVIL AND POLITICAL COVENANT], reprinted in R. LILLICH, *supra* note 3, at 170.1.

29. G.A. Res. 220 (XXI), 21 U.N. GAOR Supp. (No. 16) at 59, U.N. Doc. A/6316 (1966) [hereinafter OPTIONAL PROTOCOL], reprinted in R. LILLICH, *supra* note 3, at 370.1.

30. G.A. Res. 220 (XXI), 21 U.N. GAOR, Supp (No. 16) 49, U.N. Doc. A/6316 (1966) [hereinafter ECONOMIC, SOCIAL AND CULTURAL COVENANT], reprinted in R. LILLICH, *supra* note 3, at 180.1.

31. CIVIL AND POLITICAL COVENANT, *supra* note 28, reprinted in R. LILLICH, *supra* note 3, at 170.1; ECONOMIC, SOCIAL AND CULTURAL COVENANT, *supra* note 30, reprinted in R. LILLICH, *supra* note 3, at 180.1.

case may a people be deprived of its own means of subsistence.”<sup>32</sup> Both Covenants also bar discrimination based on race, color, sex, language, religion, political or other opinion, national or social origin, property, or birth.

The catalog of civil and political rights spelled out in the Covenant on Civil and Political Rights is formulated with greater juridical precision and is somewhat longer than the list of comparable rights proclaimed in the Universal Declaration.<sup>33</sup> An important addition is the provision which bars states from denying members of ethnic, religious, or linguistic minorities the right, “in community with other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.”<sup>34</sup> Some rights that the Universal Declaration proclaims are not guaranteed by the Covenant on Civil and Political Rights. Among these is the right to own property. This right was not included in the Covenant because the different ideological blocs represented in the United Nations were unable to agree on its scope and definition.

The Covenant on Economic, Social and Cultural Rights contains a longer and more comprehensive list of economic, social, and cultural rights than does the Universal Declaration.<sup>35</sup> This Covenant recognizes the right to work; the right to enjoy just and favorable conditions of work and to form and join trade unions; the right to social security, the protection of the family, and an adequate standard of living; the right to enjoy the highest attainable standard of physical and mental health; and the right to education and to take part in cultural life.

The decision to have two separate treaties, one for civil and political rights and another for economic, social, and cultural rights, was dictated in part by the consideration that these two broad categories of rights require very different methods of implementation. In general, all a government has to do to respect civil and political rights is to adopt and enforce appropriate laws on the subject. This approach will in most cases not work with regard to economic, social, and cultural

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32. CIVIL AND POLITICAL COVENANT, *supra* note 28, reprinted in R. LILICH, *supra* note 3, at 170.1; ECONOMIC, SOCIAL AND CULTURAL COVENANT, *supra* note 30, reprinted in R. LILICH, *supra* note 3, at 180.1.

33. See generally THE INTERNATIONAL BILL OF HUMAN RIGHTS: THE COVENANT ON CIVIL AND POLITICAL RIGHTS (L. Henkin ed. 1981) [hereinafter THE INTERNATIONAL BILL OF HUMAN RIGHTS]; Lilich, *Civil Rights*, in HUMAN RIGHTS, *supra* note 9, at 115.

34. CIVIL AND POLITICAL COVENANT, *supra* note 28, art. 27, reprinted in R. LILICH, *supra* note 3, at 170.8.

35. For an overview, see Alston & Quinn, *The Nature and Scope of States Parties' Obligations Under the International Covenant on Economic, Social and Cultural Rights*, 9 HUMAN RIGHTS Q. 156 (1987).

rights. Their implementation usually necessitates economic and technical resources, training, and time. Consequently, most governments cannot assume the same legal obligations for both categories of rights.

A State Party to the Covenant on Civil and Political Rights is under an immediate legal obligation to comply with its provisions. This is not the case under the Covenant on Economic, Social and Cultural Rights. The latter Covenant requires progressive, as distinguished from immediate, implementation, and merely obligates each State Party "to take steps . . . to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures."<sup>36</sup> Had this "progressive" or "promotional" approach not been adopted, few governments, if any, could in good faith have agreed to be bound by this Covenant.

Each Covenant has its own international machinery to encourage and to supervise compliance by the parties to these treaties. The Covenant on Economic, Social and Cultural Rights provides for a reporting system that requires the Member States to file periodic reports concerning the measures they have adopted and the progress they have made in achieving the observance of the rights the Covenant guarantees. These reports are submitted to the United Nations Economic and Social Council, which recently established a special committee of experts, elected in their personal capacities, to review them.

The Measures of Implementation of the Covenant on Civil and Political Rights consist of a reporting system and a complaint procedure. The reporting system resembles that of the Covenant on Economic, Social and Cultural Rights and provides that the reports be submitted to a body known as the Human Rights Committee, which consists of eighteen experts elected in their individual capacities. The States Parties are required to report to the Committee "on the measures they have adopted which give effect to the rights recognized" in the Covenant.<sup>37</sup> The Committee studies this information and reports its findings and conclusions to the States Parties as well as to the Economic and Social Council and the United Nations General Assembly.<sup>38</sup>

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36. ECONOMIC, SOCIAL AND CULTURAL COVENANT, *supra* note 30, art. 2, para. 1, *reprinted in* R. LILLICH, *supra* note 3, at 180.1.

37. CIVIL AND POLITICAL COVENANT, *supra* note 28, art. 40, para. 1, *reprinted in* R. LILLICH, *supra* note 3, at 170.11.

38. T. MERON, HUMAN RIGHTS LAW-MAKING IN THE UNITED NATIONS: A CRITIQUE OF INSTRUMENTS AND PROCESSES 123 (1986).

In addition to the reporting system, the Covenant on Civil and Political Rights establishes a procedure enabling States Parties to file charges against other States Parties; however, this procedure is optional. This means that it may only be invoked by and against states whose governments, by means of a special declaration, have authorized the Human Rights Committee to deal with complaints. The procedure establishes a mediation and conciliation process, but no binding adjudication or arbitration is provided. The Optional Protocol to the Covenant on Civil and Political Rights establishes a similar, albeit even weaker, complaint mechanism for dealing with complaints by individuals charging States Parties to the Protocol with violations of the Covenant.<sup>39</sup>

Here you can see how reluctant many states are to accept international supervision and to empower international institutions to determine whether they are complying with their human rights obligations. What they fear most are adverse findings by impartial international bodies—courts, commissions, quasi-judicial tribunals—whose legitimacy they cannot readily impugn. Even when such bodies lack the power to enforce their decisions, which is usually the case, they are still a threat because governments fear adverse publicity from reputable international bodies. That is why the international supervisory machinery of the Covenants is so weak; that is also why it is so important to continue pushing for impartial international human rights institutions with judicial and quasi-judicial powers.

#### IV. OTHER UNITED NATIONS HUMAN RIGHTS TREATIES

The instruments I have described for you up to now—the Universal Declaration and the International Covenants on Human Rights—are collectively known as the International Bill of Human Rights. Within the United Nations system, there are a large number of other human rights treaties that supplement the International Bill of Human Rights. These instruments deal with specific subjects, including genocide, slavery, racial discrimination, torture, women's rights, and so on. Various United Nations human rights treaties, among them the Convention on the Prevention and Punishment of the Crime of Genocide and the International Convention on the Elimination of all Forms of

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39. Mose & Opsahl, *The Optional Protocol to the International Covenant on Civil and Political Rights*, 21 SANTA CLARA L. REV. 271 (1981); Robertson, *The Implementation System: International Measures*, in *THE INTERNATIONAL BILL OF HUMAN RIGHTS*, *supra* note 33, at 332, 351.

Racial Discrimination, have been ratified by much larger numbers of states than the Covenants and some have somewhat more effective methods of international supervision.<sup>40</sup>

## V. ASSESSING THE UNITED NATIONS HUMAN RIGHTS EFFORTS

In assessing the human rights efforts of the United Nations over the past four decades, one is struck by the fact that as far as lawmaking is concerned, the United Nations has revolutionized the international law on the subject.<sup>41</sup> Human rights have become a subject of international concern; the body of international law applicable to human rights is unmatched in sheer volume by any other branch of international law.

The real problem, of course, is that much of that law is being violated daily, often on a massive scale, in many parts of the world. It has always been easier, and it will always be easier, to promulgate human rights law than to obtain compliance with it. This is as true on the national plane as on the international.<sup>42</sup> Even here in the United States, where our Constitution and our Declaration of Independence proclaim the principle of equality and many other rights, the task of transforming rhetoric into reality has proved difficult and is still far from accomplished.

Nevertheless, the existence of international human rights law has had an important socializing impact on the international community. Governments have gradually learned that there is a political price to be paid for engaging in large-scale violations of human rights. That awareness cannot but affect their conduct, either because they need economic and military aid, or because their domestic power base may be weakened by international condemnation. The International Bill of Rights and the many other human rights treaties—whose existence is much better known around the world than in the United States—legitimize the struggle of the victims of oppression, and give them faith that their struggle is just, and that the law is on their side. This is true in the Soviet Union, in Chile, in South Africa, in all parts of the world where people are suffering large-scale violations of human rights.

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40. For a useful overview, see UNITED NATIONS ACTION IN THE FIELD OF HUMAN RIGHTS, U.N. Doc. ST/HR/2/Rev.1, U.N. Sales No. E.83.XIV.2 (1983).

41. Professor Sohn characterizes what has taken place as a "silent revolution." Sohn, *supra* note 1, at 1.

42. Buergenthal, *The Demand for Freedom: Remarks*, 75 PROC. AM. SOC'Y INT'L. L. 94 (1981).

When law, whether domestic or international, mirrors the aspirations of society and captures its imagination, it acquires a moral and political force whose impact can rarely be predicted and often far exceeds the wildest expectations of its particular lawmaker. Those who believe that Realpolitik means only military and political power have not learned the lesson of history about the force of ideas and the irony of hypocrisy. Many of the countries which have voted in the United Nations for human rights instruments without any intention of complying with them gradually find that these instruments impose restraints on them and limit their freedom of action. The cynics tend to miss this point.

## VI. REGIONAL HUMAN RIGHTS SYSTEMS

The United Nations' normative activities remain a first step in the uphill struggle to reduce human rights violations in the world. These activities have also played an important role in encouraging the establishment of regional human rights systems. Three such systems are in existence today, one in Europe, one in the Americas, and the third, which came into being only a few months ago, in Africa.

The European system is the oldest of the three and is generally considered to be the most effective.<sup>43</sup> It was created in the 1950's, when a group of democratic nations in Europe decided that it would take the United Nations too long to establish an effective international system for the protection of human rights. Not wanting to wait, they concluded the European Convention for the Protection of Human Rights and Fundamental Freedoms.<sup>44</sup> This treaty was adopted within the framework of the Council of Europe, which is an organization of twenty-one Western European nations.

The European Convention guarantees basic civil and political rights. On the international plane, these rights are enforced by means of individual petitions and interstate complaints filed with the European Commission of Human Rights, followed by appeals to the European Court of Human Rights. The European Court of Human Rights currently hears between thirty and forty cases annually. The number of complaints dealt with by the European Commission, whose task it is to screen them, is substantially larger. The decisions of the European Court are routinely complied with by European governments.

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43. Higgins, *The European Convention on Human Rights*, in HUMAN RIGHTS, *supra* note 9, at 495; Jacobs, *The European Convention on Human Rights*, in INTERNATIONAL ENFORCEMENT, *supra* note 26, at 31.

44. Signed Nov. 4, 1950, 213 U.N.T.S. 222, *reprinted in* R. LILICH, *supra* note 3, at 500.1.



As a matter of fact, the system has been so effective in the last decade that the Court has for all practical purposes become Western Europe's constitutional court. Its case law and practice resembles that of the United States Supreme Court.<sup>45</sup> It is obvious, of course, that the success and effectiveness of this system can be attributed to the democratic climate and economic health of Western Europe.

The inter-American system for the protection of human rights functions within the institutional framework of the Organization of American States ("OAS").<sup>46</sup> The OAS is a regional intergovernmental organization that includes thirty-one Latin American and English-speaking nations of the Americas, including the United States, but not Canada. The human rights instruments applicable in the inter-American system are the American Declaration of the Rights and Duties of Man and the American Convention of Human Rights.

Although the American Declaration, not unlike the Universal Declaration, was not deemed to be legally binding at the time it was proclaimed in 1948, it has now been accepted as a normative instrument of the inter-American system that contains the authoritative catalog of the human rights which all States Parties to the OAS Charter are required to promote. The Declaration enumerates civil and political rights as well as some economic, social, and cultural rights. The American Convention on Human Rights is a treaty, concluded under the auspices of the OAS, that guarantees basic civil and political rights only. It entered into force in 1978 and has to date been ratified by twenty out of thirty-one OAS member states, including all but three—Brazil, Chile, and Paraguay—of its Latin American members; Brazil appears to be close to ratification. By contrast, the United States and all but three of the Commonwealth Caribbean nations—Barbados, Grenada, and Jamaica—have not adhered to the Convention.

The institutional structure established by the American Convention is modeled on that of the European Convention.<sup>47</sup> The Inter-American Commission on Human Rights and the Inter-American Court have functions similar to those of their European counterparts. The Inter-

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45. See Frowein, *Recent Developments Concerning the European Convention on Human Rights*, in *LAWS, RIGHTS AND THE EUROPEAN CONVENTION ON HUMAN RIGHTS* 11, 27 (J. Sundberg ed. 1986).

46. See Buergenthal, *Implementation in the Inter-American Human Rights System*, in *INTERNATIONAL ENFORCEMENT*, *supra* note 26, at 57; T. BUERGENTHAL, R. NORRIS & D. SHELTON, *PROTECTING HUMAN RIGHTS IN THE AMERICAS: SELECTED PROBLEMS* (2d ed. 1986).

47. Buergenthal, *The American and European Conventions on Human Rights: Similarities and Differences*, 30 *AM. U.L. REV.* 155 (1980); Frowein, *The European and the American Conventions on Human Rights—A Comparison*, 1 *HUM. RTS. L.J.* 44 (1980).

American Commission has additional powers that derive from its status as an OAS Charter organ. The Court also has very extensive advisory jurisdiction, which is substantially broader than that conferred on the European Court.<sup>48</sup> Since the human rights problems facing the Americas tend to be much more serious than those of Western Europe, the Inter-American Commission and Court cannot point to the significant successes that have been made in Europe. This is not to say that the inter-American system has made no important contributions to the improvement of the human rights conditions in the Americas. It has and continues to do so, but the task is much more difficult because the problems of the region, particularly in Latin America, are so very difficult.

The newest of the three existing regional human rights systems is that established by the African Charter on Human and Peoples' Rights.<sup>49</sup> This Charter is a treaty adopted in 1981 under the auspices of the Organization of African Unity and which entered into force on October 21, 1986. It differs from the European and American Conventions in a number of important respects. The African Charter proclaims civil and political as well as economic, social and cultural rights. It deals not only with individual but also with peoples' rights,<sup>50</sup> and it proclaims duties of the individual as well as rights. The rights guaranteed in the African Charter are drafted with less juridical precision and permit more restrictions than the two other regional instruments. The Charter establishes an African Commission on Human and Peoples' Rights, but it does not provide for a court. In general, the enforcement machinery or so-called "measures of implementation" of the African Charter resemble those of the United Nations Covenants more than the other two regional instruments. Some language of the African Charter is broad enough, however, to permit the African Commission, if it is so inclined and the political climate is ripe for it, to be quite creative and to develop more effective enforcement techniques than would be possible under the Covenants.

## VII. CONCLUSION

I have given you a very cursory overview of existing international human law and institutions. I have not mentioned the important work

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48. Buergenthal, *The Advisory Practice of the Inter-American Human Rights Court*, 79 AM. J. INT'L L. 1 (1985).

49. Gittleman, *The African Charter on Human and Peoples' Rights: A Legal Analysis*, 22 VA. J. INT'L L. 667 (1982).

50. Marie, *Relations Between Peoples' Rights and Human Rights: Semantic and Methodological Distinctions*, 7 HUM. RTS. L.J. 195 (1986).

of the International Labor Organization in this field, nor have I spoken about UNESCO. The activities of the International Committee of the Red Cross in the development of humanitarian law, a fascinating area, have not been considered, nor have I dealt with the important work being done by nongovernmental international human rights organizations such as Amnesty International. In short, I have presented more than the tip of the iceberg, but less than the whole, for there is much activity in this field.

Much more remains to be done, of course. What are the prospects for the future? In an American law school setting, it is particularly important to point out that law and courts cannot solve all societal ills and problems. We forget that quite often. Because of our history and the achievements of law and courts in our society, we tend to believe in the omnipotence of law and ascribe powers to it that it does not have, particularly in other societies. Many human rights violations being committed around the world are closely tied to longstanding political, economic, and social ills that cannot be cured overnight by legislation and judicial institutions, however progressive, imaginative, or well-meaning. Prejudice, ignorance, hunger, disease, greed, and political corruption are at the heart of so many violations of human rights in the world we live in. They take time, political vision, education, economic and technical resources to combat. It is sad, but true, that mankind's universal yearning for human rights tends to be egocentric: we believe that *we* are entitled to the enjoyment of human rights, but we do not necessarily always believe that others are also entitled to the same rights.

Of course, law and legal institutions, particularly if they enjoy political legitimacy, do have a significant impact on the behavior of people and governments. That is why the lawmaking process in the international human rights field is so important and needs to be encouraged. It gives legitimacy to the struggle for human rights in many parts of the world; it serves, more often than we probably know, to restrain repressive governmental behavior, and it provides the international community with internationally accepted standards by which to judge and condemn violations of human rights. In the long run, this contributes to a world climate which is less and less tolerant of governments that violate human rights, which in turn helps to reduce such violations.

Those of us who work in the human rights field are often close to despairing, for there is still so much cruelty and inhumanity all around us. But there are occasions for rejoicing: the fall of the Marcos and

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Duvalier regimes, the demise in the past years of many military regimes in Latin America, the large-scale release of dissidents in the Soviet Union. These and similar developments give others in the world hope for a better tomorrow. It is that hope that must be kept alive and reinforced by those of us who are fortunate enough to live in free societies. Without that effort, the fulfillment of mankind's yearning for human rights will become an empty dream.