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# HUMAN RIGHTS: A GLOBAL ASSESSMENT\*

A. H. Robertson\*\*

## I. Introduction

Any attempt to undertake a "global assessment" of the situation of human rights in the spring of 1977 is fraught with difficulty and danger. The difficulty is immense because the situation varies so much from country to country and continent to continent; no one person, even in an age of computers, can possess all of the information necessary to form a balanced—let alone comprehensive—view of a situation of such complexity. The danger also is great because any account which is incomplete is likely to be criticized by some as both partial in its selection of material and as tendentious as well. Nevertheless, the task is not without attraction because so many of us who usually are forced by circumstances to concentrate our attention and our work on some particular facet or aspect of a global problem rarely have the time or the opportunity even to try to formulate a comprehensive view. We rarely see the wood for the trees.

The following essay might be thought of as a "State of the Union" message on the state of human rights in the world today. But since this must be one brief article rather than a documented report of several hundred pages, the essay will have the character of a summary rather than of a presidential communication. Moreover, because it is bound to be subjective, it cannot do more than recount the impressions of one interested observer. What follows, then, is a summary of the impressions gleaned from many sources and assembled by one individual.

## II. The Negative Aspects

Never before have newspapers carried so much information about human rights—articles both about violations and about interventions designed to protect such rights—as they have done in the first three months of 1977.<sup>1</sup> Indeed, as one looks around the world today as it is portrayed in the press or in reports of both official and non-governmental international organizations, one cannot help being depressed by the mass of information about flagrant violations of human rights that is being published constantly.

It is neither the purpose nor function of this essay to prepare an indictment against any particular country. But it would be unrealistic and irresponsible to ignore the evidence. Without passing judgment on any particular situation, one is still obliged to draw attention to substantial evidence of what has been called

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1 I have derived much information during the first three months of 1977 from the columns of *The Times*, the *International Herald-Tribune* (Paris), *Le Monde*, and *Le Figaro*. Particular mention should be made of Gwertzman, *Human Rights: As Others See Them*, *Herald-Tribune*, Mar. 9, 1977, and of Aron, *Diplomatie americaine et droits de l'homme*, *Le Figaro*, Mar. 14, 1977.

"a consistent pattern of gross violations" of human rights in many quarters. For example, anyone who has attended sessions of the Commission on Human Rights of the United Nations in recent years cannot help being aware of the constant emphasis placed on the problem of racial discrimination in Southern Africa. By definition, the policy of *Apartheid* involves racial discrimination and is therefore violative of human rights. The reports issued by an *ad hoc* group of experts to investigate *Apartheid* named by a committee appointed in 1967 leave little doubt as to the nature of the policy.<sup>2</sup>

Because of the particular situation in Namibia, the International Institute of Human Rights, which was founded by M. Rene Cassin, organized a special conference at Dakar in January 1976, under the auspices of the U.N. High Commissioner for Namibia. This conference led to conclusions similar to those brought to the Security Council's attention in other instances.<sup>3</sup> In many other countries in Africa, there is a sad record of detention without trial and of executions for political opinion; the most glaring recent cases have been in Uganda, where Amnesty International has reported more than 50,000 summary executions. The Ugandan situation led to an unsuccessful British proposal to the Commission on Human Rights that it investigate the situation. Yet this proposal was made nearly three years after the massive expulsion from Uganda of thousands of persons of Asian origin in a striking example of "racial discrimination in reverse."

Studies of South America have also provided extensive evidence of systematic human rights violations in Chile through documents collected by the Commission on Human Rights of the Organization of American States and by the U.N. Commission. In compliance with a resolution of the General Assembly adopted in 1974, the U.N. Commission established an *ad hoc* working group of five members to inquire into the present situation of human rights in Chile.<sup>4</sup> In spite of an initial promise to cooperate, the Chilean government refused the group admittance to the country at the last moment; the group subsequently collected such information as they could from many sources, including Chilean exiles and witnesses who were sent to meetings in Geneva by the Chilean government. The group has since reported to the General Assembly<sup>5</sup> and to the Commission on Human Rights<sup>6</sup> on the extensive violations of human rights they found in Chile; at its last session, the Commission considered an additional report<sup>7</sup> and, in accordance with a proposal made by Cuba and the U.S.A., sent a telegram to the Chilean government calling on it to restore respect for human rights, to stop the practice of torture, and to release political prisoners. In spite of their findings, the attempts of the Human Rights Commission of the Organization of

2 Resolution 2 (XXIII), Mar. 6, 1967; Resolution 5 (XXIII), Mar. 16, 1967.

3 Dakar International Conference on Namibia and Human Rights, *Int'l Inst. Human Rights* (1977). See also A Trust Betrayed: Namibia, U.N. OFF. PUB. INF. (1974).

4 Resolution 8 (XXXI), 1974. There is also a Special Committee to examine Israeli practices affecting the human rights of the population of the territories occupied by Israel in 1967 created by the General Assembly on December 19, 1968. See Schreiber, *La Pratique Recente des Nations Unies dans le Domaine de la Protection des Droits de l'homme*, 2 RECUEIL DES COURS DE L'ACADEMIE DE DROIT INTERNATIONAL [R.C.A.D.I.] 368-71 (1975) [hereinafter cited as *Schreiber*].

5 Documents A/10285 (1975) & A/31253 (1976).

6 E/CN.4/1188.

7 E/CN.4/1221.

American States have been so fruitless that the Commission's Executive Secretary submitted his resignation.

Much evidence has been collected by non-governmental organizations, particularly Amnesty International, of the regular use of torture in various Latin American countries, particularly Brazil. The Brazilian bishops and the Vatican have protested this situation. The human rights records of Argentina and Uruguay are so deplorable that President Carter has considered reducing their American aid. Finally, in Cuba, there are reported to be between 4,000 and 5,000 political prisoners; while in Guatemala, about 15,000 persons are believed to have been killed by political terror squads during the last six years.<sup>8</sup>

Other continents cannot be omitted from this gloomy catalog. In a number of Asian countries, abundant evidence exists of prolonged detention without trial and of inhuman conditions of detention and of executions. Indonesia, Iran, and Iraq are those most frequently accused of such violations. Wholesale massacres in Cambodia have been reported.

The revelations of Solzhenitsyn concerning conditions in detention camps in the Soviet Union are well known as are the charges of other Russian dissidents, both inside and outside the U.S.S.R., who have appealed to the Western democracies for help.<sup>9</sup> It is widely believed that there are 10,000 political prisoners in the Soviet Union, yet the recent United States proposal that the U.N. Commission on Human Rights investigate the situation in the U.S.S.R. has had to be abandoned for lack of support.

All these indications paint a sombre picture of the condition of human rights in 1977. A global assessment of human rights in the world today demands an accounting of the negative aspect and a recognition that violations are widespread and flagrant. There are probably more countries in the world today where fundamental rights and civil liberties are systematically violated than there are countries where they are effectively protected. Amnesty International estimates that there are 60 countries which employ systematic use of torture and that the number of political prisoners world-wide approaches half a million.<sup>10</sup> Therefore, the general picture is in many respects both discouraging and alarming. It is estimated that the principles of liberal democracy, with its respect for fundamental rights, are observed in fewer than thirty countries.

### III. Some Positive Aspects

The human rights picture is not entirely bleak, however. A number of observable features will give comfort to those who are concerned about the state of human rights in the world.

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<sup>8</sup> See Gwertzman, *supra* note 1.

<sup>9</sup> One recalls particularly the television interview of Andrei Sakharov, broadcast in the United States in February; President Carter's letter to Sakharov of 5 February; Vladimir Bukovsky's reception in Washington later that month; the attempt of Andrei Amalrik to see President Giscard d'Estaing in Paris on February 14; and the meeting in Prague at the beginning of March between Max van der Stoep, the Dutch Foreign Minister, and the late Professor Jan Patočka, leader of the "Charter 77 Campaign."

<sup>10</sup> See Report on Torture, AMNESTY INT'L (Dec. 1973), on the occasion of their Paris conference.

### A. *The United Nations*

The most important recent development on the international scene is, of course, the effective enforcement of two United Nations Covenants—the International Covenant on Economic, Social, and Cultural Rights and the International Covenant on Civil and Political Rights.<sup>11</sup> These covenants were approved by the General Assembly on December 16, 1966, but required ratification by thirty-five nations before becoming effective. As a result, it was nearly ten years before the Covenant on Economic, Social, and Cultural Rights entered into force on January 3, 1976, and the Covenant on Civil and Political Rights on March 23, 1976. The first Covenant protects ten economic, social, and cultural rights, while the second protects twenty-three civil and political rights, including the rights of all peoples to self-determination and to the free disposition of their natural wealth and resources. These treaties, however, are not merely reaffirmations of rights already proclaimed in earlier texts. Each Covenant contains its own system of so-called “measures of implementation,” the object of which is to ensure that the obligations assumed by states are effectively carried out. The point of departure for this system of international supervision is the agreement of each nation to submit reports to the United Nations on the manner in which they have discharged their obligations as outlined in the Covenants.

In the Covenant on Economic, Social, and Cultural Rights, the obligation is spelled out as a responsibility “to take steps . . . with a view to achieving progressively the full realization of the rights recognized in the present Covenant”; the national reports will relate to “the measures which they [the individual states] have adopted and the progress made in achieving the observance of the rights recognized herein.” Copies or extracts of these reports will be sent to the pertinent specialized agencies and may also be sent to the Commission on Human Rights. The comments of these bodies and of the states parties will be considered by the Economic and Social Council, which will receive the national reports and may submit reports “with recommendations of a general nature” to the General Assembly.

The requirements imposed by the Covenant on Civil and Political Rights are somewhat more stringent. First, the undertaking “to respect and ensure . . . the rights recognized in the present Covenant” is of more immediate application than the corresponding provision in the first Covenant. Second, there is a similar undertaking to “submit reports on the measures which [the states parties] have adopted which gives effect to the rights recognized herein and on the progress made in the enjoyment of those rights.” Third, provision for a new human rights committee of eighteen members, who serve in a personal capacity, is made. This committee will study the reports submitted by the states parties as well as its own reports. The committee is empowered to send “such general comments as it considers appropriate” to the states parties and to the Economic and Social Council. In addition, the Human Rights Committee will submit an annual report on its activities through the Council to the General Assembly.<sup>12</sup>

11 The history and contents of the two Covenants are summarized in A. H. ROBERTSON, *HUMAN RIGHTS IN THE WORLD* 22-48 (1972).

12 These procedures are described in greater detail in: *Schreiber, supra* note 4, at 338-42, 362-65.

There is also an optional procedure for handling interstate complaints of "communications" concerning human rights. This procedure applies only to states which have expressly accepted the covenant and goes into effect only when ten states have accepted the procedure. The procedure includes: the use of the good offices of the Human Rights Committee, which will examine the communications and written or oral submissions of the states concerned in closed meetings; the possibility of recourse to an *ad hoc* Conciliation Commission if both parties agree. An Optional Protocol to the second Covenant (which also requires ten ratifications to enter into force) establishes a procedure whereby the Human Rights Committee can consider communications from individuals who claim to have been victims of a violation of any of the rights set forth in the Covenant.<sup>13</sup>

By the end of 1976, 40 states had accepted the Covenants and accepted their obligations: eight "Western" states,<sup>14</sup> nine states of the Soviet bloc,<sup>15</sup> nine African,<sup>16</sup> and six Asian countries,<sup>17</sup> five Latin American and three Caribbean countries.<sup>18</sup> Only three countries had accepted the optional procedure for interstate communications;<sup>19</sup> this procedure, therefore, is not yet in force. Fifteen nations had ratified the optional protocol authorizing the Human Rights Committee to consider communications from individuals,<sup>20</sup> with the result that the protocol entered into force at the same time as the Covenant on Civil and Political Rights.

The new Human Rights Committee was elected by the States Parties to the second Covenant on September 20, 1976 and held its first meeting in March 1977. The Committee includes six members from the "western" States,<sup>21</sup> four from Eastern Europe,<sup>22</sup> three from African,<sup>23</sup> two from Asian countries,<sup>24</sup> and three Latin Americans.<sup>25</sup>

The birth of this new system for the international protection of human rights represents the results of labor extending over a period of thirty years, beginning with the drafting of the Universal Declaration in 1946. It is, of course, too early to say how effective the new Covenants will be. However, it is evident that they will be less effective than the system instituted by the European Convention. They do not approach a system of judicial control. The essence of their effectiveness lies in the submission and examination of reports, the formulation by the Human Rights Committee or by the Economic and Social Council

13 See ROBERTSON, *supra* note 11; SCHREIBER, *supra* note 12.

14 Canada, Cyprus, Denmark, Finland, Federal Republic of Germany, Norway, Sweden, the United Kingdom. In addition, Australia, and the Philippines are parties to the First but not to the Second Covenant.

15 Bulgaria, Byelorussia, Czechoslovakia, German Democratic Republic, Hungary, Romania, Ukraine, U.S.S.R., Yugoslavia.

16 Kenya, Libya, Madagascar, Mali, Mauritius, Rwanda, Tanzania, Tunisia, Zaire.

17 Iran, Iraq, Jordan, Lebanon, Syria, Mongolia.

18 Barbados, Chile, Colombia, Costa Rica, Ecuador, Jamaica, Surinam, Uruguay.

19 Denmark, Norway and Sweden.

20 Barbados, Canada, Colombia, Costa Rica, Denmark, Ecuador, Finland, Jamaica, Madagascar, Mauritius, Norway, Surinam, Sweden, Uruguay, Zaire.

21 Canada, Cyprus, Denmark, Federal Republic of Germany, Norway and the United Kingdom.

22 Bulgaria, German Democratic Republic, Romania and U.S.S.R.

23 Mauritius, Rwanda, Tunisia.

24 Iran, Syria.

25 From Colombia, Costa Rica, Ecuador.

of such recommendations "of a general nature" as they consider appropriate, and, in the case of States which have accepted one or both of the optional procedures, the proposal of good offices and attempts at conciliation in response to specific violations. It would be a mistake to expect more stringent obligations in the heterogeneous community of the United Nations. Nonetheless, some critics, when considering the human rights record of some of the nations which have ratified the Covenants, will conclude that the procedures are likely to remain ineffective and that, even after ratification of the Covenants, a state will feel free to continue to violate human rights with impunity. But such criticism is unduly pessimistic and should deter neither efforts to make the system work as its authors intended nor pleas to governments which have not yet ratified or adhered to the Covenants to do so without further delay. It is encouraging that President Carter, in his recent statement to the United Nations in New York, expressed the intention of signing and of asking Congress to ratify the two Covenants; this position can only strengthen the moral force of the initiatives taken by the U.S. government in favor of the protection of human rights throughout the world.

Another more limited, but also useful development in the United Nations is the work of the Committee on the Elimination of Racial Discrimination. This Committee was established under the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination, which was approved by the General Assembly on December 21, 1965, and entered into force on January 4, 1969. By December 31, 1976, a total of ninety-two states had ratified or acceded to this Convention. The Committee consists of eighteen experts who serve in a personal capacity and have the task of reviewing the application of the Convention on the basis of reports submitted by the contracting states. The Committee reports annually to the General Assembly and may make its own suggestions and general recommendations.

Although the results of the work of this Committee have not been spectacular, they are interesting in several respects. The subject matter—the prevention of racial discrimination—is one which, quite rightly, commands ready support in all organs of the United Nations. Two-thirds of the total membership of the United Nations have ratified this Convention. This figure is substantially greater than the number who have ratified the Human Rights Covenants. Perhaps the most positive achievement of the Committee so far has been the acceptance by the contracting states of the practice both of transmitting written reports and also of sending representatives to discuss the content of these reports within the Committee. The dialogue which thus results is in itself a favorable development as it relates to matters which some states previously would have considered as falling within their domestic jurisdiction.

Some of the problems discussed but not yet solved by the Committee include the question of whether the principle of non-discrimination permits differentiation between citizens and foreigners in any given nation. While the Committee does not question the right of a state to restrict such privileges as voting to citizens, the problem arises in regard to such matters as employment and wages. The question has arisen as to whether "positive discrimination" in favor of minority groups is permissible or whether the aim of those working against racial discrimi-

nation should be the integration of the minority into the majority.

A less happy development in the United Nations involves the procedure for dealing with individual communications relating to violations of human rights. The Secretary General receives many thousands of such communications each year. For many years, the Commission on Human Rights insisted that it had "no power to take any action in regard to any complaints concerning human rights." This attitude was approved by the Economic and Social Council in 1947<sup>26</sup> and reaffirmed by the Council in 1959.<sup>27</sup> Various attempts to reverse this negative approach followed in subsequent years, but were regularly countered by the argument, advanced by the Soviet Union in particular, that the consideration of individual complaints by the Commission would constitute "intervention in matters which are essentially within the domestic jurisdiction of states" in violation of Article 2(7) of the Charter.

Nevertheless, the Commission on Human Rights, at its 26th session in 1970, approved a procedure whereby it would be authorized to examine "communications, together with replies, of governments, if any, which appear to reveal a consistent pattern of gross violations of human rights." It is significant that this procedure was passed by a vote of fourteen in favor, seven opposed, and five abstentions. Later in the same year, the Economic and Social Council approved the proposal and authorized the Commission on Human Rights to act in accordance with the new procedure.<sup>28</sup>

It seemed at first that this procedure represented an important breakthrough which would change an attitude which had been described by the Secretary General in 1949 as one which "is bound to lower the prestige and authority not only of the Commission on Human Rights but of the United Nations in the opinion of the general public."<sup>29</sup> These hopes, however, were short-lived, for a triple-screening process was to be involved in the operation of the procedure: These screenings were to be accomplished, first, in a working group of the Sub-Commission on Prevention of Discrimination and Protection of Minorities; second, in the Sub-Commission itself; and, finally, by the Commission on Human Rights which still would not be obliged to consider the complaints filtered to it but could decide whether the complaints required a thorough study and whether they should be the object of an investigation by an *ad hoc* Committee "to be appointed by the Commission after obtaining the consent of the state concerned."

In fact, the Commission on Human Rights also inserted a fourth stage in the procedure when it appointed its own five-member sub-group to examine in detail all matters submitted to it by a subcommission. The results of this cumbersome system have been largely negative and have consisted for the most part of references from one group to another for further study.<sup>30</sup> Moreover, under the

26 Resolution 75 (V), Aug. 5, 1947.

27 Resolution 728 (F), Jul. 30, 1959.

28 Resolution 1503 (XLVIII), May 27, 1970. These developments are described in detail in: L. SOHN & T. BUERGENTHAL, *INTERNATIONAL PROTECTION OF HUMAN RIGHTS* 739-855 (1973).

29 Report by the Secretary General on the Present Situation with Regard to Communications Concerning Human Rights, Doc. E/CN.40165 (1949).

30 *Schreiber, supra* note 4, at 354-59.



terms of the decision of the Economic and Social Council in 1970, the whole procedure is to be reviewed after the entry into force of the Covenant on Civil and Political Rights and the establishment of the new Human Rights Committee. Thus, it is difficult to be optimistic about the future effectiveness of this procedure as a means of examining individual complaints about violations of human rights.

### B. *In Europe*

The most effective system yet developed for the international protection of human rights is that established by the European Convention for the Protection of Human Rights and Fundamental Freedoms, which was concluded by the member states of the Council of Europe and signed in Rome on November 4, 1950. It is perhaps particularly significant that this convention's origins are ultimately linked with the movement for European Unity after the end of World War II.

It was in 1942 that Winston Churchill first proposed the creation, after the end of hostilities, of a Council of Europe as a means of remedying Europe's incessant strife and restoring its former greatness. At Zurich in 1946, he elaborated this "sovereign remedy." At the Congress of Europe at The Hague in 1948, nearly 700 Europeans from sixteen countries called for the creation of a United Europe "throughout whose area the free movement of persons, ideas, and goods is restored," and of a "Charter of Human Rights guaranteeing liberty of thought, assembly, and expression as well as the right to form a political opposition."

The Council of Europe was founded a year later, on May 5, 1949, at St. James' Palace in London as an association of democratic states seeking greater unity among the various members and devoted to the maintenance of the rule of law and the protection of fundamental freedom. Indeed, Article 3 of the statute stipulates that respect for these principles is to be a condition for membership.<sup>31</sup> The "Charter of Human Rights," a guarantee of twelve of the basic rights and freedoms fundamental to a democratic society, followed in 1950. The states contracting this agreement undertook to ensure these rights to everyone within their jurisdiction. A Commission and Court of Human Rights were established to provide a remedy for anyone who believed his or her rights and freedoms, as defined in the Convention, had been violated.

All of these attempts were made in conscious reaction to the bitter experiences of the previous decade. Never had human rights been violated so deliberately and systematically as had been done by the Nazi and Fascist regimes. In an attempt to prevent the gradual resurgence of dictatorships, the Western powers believed the institution of a system of international control "which will sound the alarm to the minds of a nation menaced by this progressive corruption" was necessary.

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31 The origins, functions and achievements of the Council of Europe are described in: A. H. ROBERTSON, *THE COUNCIL OF EUROPE* (2d ed. 1961); *Manual of the Council of Europe*, (1970). The original member states were: Belgium, Denmark, France, Ireland, Italy, Luxemburg, Netherlands, Norway, Sweden and the United Kingdom. The following have acceded subsequently: Greece, Turkey, Iceland, Federal Republic of Germany, Austria, Switzerland, Cyprus, Malta and Portugal.

The rights and freedoms guaranteed in the European Convention are taken from the Universal Declaration of Human Rights of 1949 and include such basic civil liberties as freedom of speech, assembly, association, conscience, and religion; freedom from torture, compulsory labor, and inhuman treatment; the right to liberty, *habeas corpus*, and a fair trial; and, finally, the right of privacy. Later protocols have recognized the right of property, the right to education, the right to participate in free elections, and the right to freedom of movement. Economic and social rights are delineated in the European Social Charters of 1961. Any state party to the Convention—and all members of the Council of Europe except Portugal are such parties—can refer an alleged violation of the Convention to the Commission of Human Rights. This procedure allowed the three Scandinavian governments, along with the Netherlands, to bring a case against the Greek military government in 1967. On the basis of the Commission's report, the Committee of Foreign Ministers determined that the Greek government had violated ten articles of the Convention. Had the Greeks not resigned from the Council of Europe and denounced the Convention in December 1969, they would have been expelled as a result of their disregard for human rights. Happily, a democratic Greece reratified the Convention on Human Rights in 1974 and was readmitted to the Council of Europe.

This same inter-State procedure was employed by the Republic of Ireland against the United Kingdom in a pending case which began in 1971. The case concerns the problem of internment without trial and methods of interrogation in Northern Ireland. The proceedings have been protracted; many witnesses have been examined in Strasbourg and at an airfield near Stavanger in Norway. In January 1976, the Commission of Human Rights submitted its report; the case is now before the Court.

But these are examples of rare instances when one government will bring a case against another government. Such cases are not only rare; they are also undesirable except in highly unusual circumstances. The great majority of suspected violations concern miscarriages of justice due to gaps in the law, archaic procedures, administrative delays, overcomplicated administration, or other similar unintentional causes. It would be absurd to turn these individual problems into disputes between states. But it is necessary for the aggrieved individual to have a remedy and to be able, as a private citizen, to bring his or her case before the European Commission. The great merit of the European Convention is that—for almost the first time in history—it grants the individual access to an international organ which can investigate his or her complaint provided that the state concerned has subscribed to the "right of individual petition." Thirteen countries—Austria, Germany, Belgium, the Netherlands, Luxemburg, Norway, Sweden, Denmark, Iceland, Ireland, Italy, Switzerland, and the United Kingdom—have accepted this right. This remedy is thus available to 200 million people who live within the jurisdiction of these thirteen states.

However, before an individual can exercise the "right of individual petition," he or she must "exhaust his local remedies." Thus, before one can appeal to an international body, he or she must first seek a remedy before a national

court. It would be unfair to engage the international responsibility of the state if a national remedy is available but has not been used. Other rules exist to determine what cases are "admissible"; for example, they must not be anonymous, abusive, or manifestly ill-founded. These rules are applied strictly and, consequently, the great majority of complaints received in Strasbourg are ruled inadmissible at this preliminary stage. By December 1976, of the more than 7,000 individual applications which had been filed with the Commission, only 153 had been declared admissible.

Once a case has been admitted, the Commission of Human Rights has three distinct functions: to establish the facts, to try to reach a friendly settlement, and—if this effort fails—to draw up a report setting out its opinions on the question of violation. The Commission has no decision-making power.

A decision subsequently is taken either by the European Court of Human Rights—if the state concerned is one of the fourteen nations which have accepted its jurisdiction—or by the Committee of Foreign Ministers. For example, the Court of Human Rights has ruled that a two- or three-year period of imprisonment before trial constitutes a human rights violation; the Committee of Foreign Ministers issued the ruling in the case involving the Greek government discussed earlier. Whichever body makes the decision, the governments have agreed to accept as binding the ruling of the Committee of Ministers or of the Court.<sup>32</sup> By the end of 1976, the Court had given judgment on eighteen cases while the Committee of Ministers had taken decisions on twenty-two cases. On a number of occasions, several applications involving the same issue had been joined together in one case.

Issues which have been raised before the Strasbourg organs include: detention without trial in times of emergency (in the Republic of Ireland and in Northern Ireland); methods of interrogation of prisoners (in Northern Ireland); permissible limitations on freedom of expression (in Belgium, the Netherlands, and the United Kingdom); the right to a fair trial (in several countries); the right to a fair trial in criminal appeals (in Austria); discriminatory laws on the use of languages in education (in Belgium); the right to trial within a reasonable time (in Austria and the Federal Republic of Germany); the right to conscientious objection (in the Federal Republic of Germany); the use as evidence of a clandestinely made tape recording (in Austria); trade union rights (in Belgium and Sweden); sex education in schools (in Denmark); the right of a detained person to consult a lawyer in order to institute a civil action (in the United Kingdom); and the question of military discipline (in the Netherlands). The Greek case revealed violations of ten different rights, including the use of torture and the suppression of democratic institutions. As a result of cases brought before the Strasbourg bodies, changes in law and administrative practices have been effected in a number of countries. Norway has even changed its

<sup>32</sup> The operation of the European Convention is described in detail in: J. FAWCETT, *THE APPLICATION OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS* (1969); F. JACOBS, *THE EUROPEAN CONVENTION ON HUMAN RIGHTS* (1975); and A. H. ROBERTSON, *HUMAN RIGHTS IN EUROPE* (2d ed. 1977). The more important decisions of the Commission, the Court and the Committee of Ministers are published in the *YEARBOOK OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS*. By December, 1976, 18 volumes had been published covering the years 1955 to 1975.

constitution in order to respect the right of freedom of religion. Switzerland also has altered its constitution to grant women the right to vote in federal elections.

In this way, standards are being established in Europe to protect the citizen's rights which are increasingly being threatened by the growing power of the modern state. Though it is sometimes troublesome for a particular country to be subjected to a system of international supervision, this is the price which must be paid in order to secure the respect for fundamental freedoms throughout the democratic countries of Europe. As the Commission said on one occasion, the purpose of the states which concluded the Convention "was not to concede to each other reciprocal rights and obligations in pursuance of their individual national interests, but to establish a common public order of the free democracies of Europe with the object of safeguarding their common heritage of political traditions, ideals, freedom and the rule of law."<sup>33</sup>

Thus, formulating a global assessment of the present state of human rights protection in the world, we can record a considerable measure of positive achievement in the framework of the Council of Europe. In November 1975, a Colloquy was held in Rome to celebrate the twenty-fifth anniversary of signing of the European Convention. When their work was finished, the participants were received in the Vatican by Pope Paul VI who referred to the European system as "an important step towards greater justice, not only because it enables injustices to be rectified, but also because it encourages a search for justice." "Should not Europe," the Pope asked, "set an example of a truly human civilization which is not merely concerned with economic and technological development, but also make it a point of honor to defend the rights of human beings?"<sup>34</sup> This question might be asked today not only of Europe but of the whole world.

Three other developments in Europe must be mentioned briefly. The first is the European Social Charter. While the Convention of Human Rights protects civil and political rights, the Social Charter, concluded in 1961, protects economic and social rights in the member states. This Charter specifically protects nineteen separate rights.<sup>35</sup> It provides an arrangement for progressive implementation; establishes a system of international supervision which is largely inspired by the practice of the I.L.O. and is based on the submission of reports by governments and the examination of these reports and the comments of employers and trade unions by a committee of independent experts. Finally, it provides for subsequent discussion of the issues raised by the competent organs of the Council of Europe; such discussion may result in any necessary recommendations being made to governments by the Committee of Ministers.<sup>36</sup> By the end of 1976, eleven states had ratified the Social Charter.<sup>37</sup> It has been in force

33 In the case of *Austria v. Italy*, [1961] Y. B. EUR. CONV. ON HUMAN RIGHTS 116, 140 (Eur. Comm. on Human Rights).

34 Proceedings of the Fourth International Colloquy about the European Convention on Human Rights 289-91, (1976) (Council of Europe).

35 Seven rights are considered of particular importance: the right to work, the right to organize, the right to collective bargaining, the right to social security, the right to social and medical assistance, the right of the family to special measures of protection and the rights of migrant workers.

36 The history and content of the Social Charter are described in A. H. ROBERTSON, *HUMAN RIGHTS IN EUROPE* ch. 8 (1st ed. 1963).

37 Austria, Cyprus, Denmark, France, Federal Republic of Germany, Iceland, Ireland, Italy, Norway, Sweden, United Kingdom.

for over ten years and has effected a number of changes, which have constituted improvements in social policy and administration, in the states which are parties to the Charter. As examples one might mention improvement of systems of social security, increased maternity benefits, new regulations for the protection of young workers, arrangements for the admission of the families of migrant workers into specific nations, and the introduction of the concept of equal pay for men and women.<sup>38</sup>

The second development concerns the law of the European Communities created by the Paris treaty of 1951 and the two treaties of Rome of 1957. Each of the nine states which comprise the Communities are also members of the Council of Europe and are parties to the European Convention on Human Rights. In addition, eight of these nations have constitutional guarantees of human rights in their national constitutions. Therefore, one might expect that the institutions of the European Communities would respect basic human rights and fundamental freedoms. Yet a number of questions arise. How can this assumption be ensured? What is the relationship between the Human Rights Convention of 1950 and the EEC treaty of 1957? Since the European Communities have established their own legal order which is interpreted by their own Court of Justice in Luxemburg, what is the relationship between EEC law and European human rights law?

The Luxemburg Court has tackled these questions in an interesting way in recent years. In the *Internationale Handelsgesellschaft* Case in 1970, the Court ruled that "respect for basic rights forms an integral part of the general principles of law whose observation is ensured by the Court of Justice," and continued: "the protection of these rights, consonant with the constitutional traditions common to member states, must be assured within the context of aims of the Community." In the *Hold* Case in 1974, the Court reaffirmed this principle and elaborated it by stating that the Court must be guided by the constitutional traditions of member states as well as by international treaties on human rights to which the member states are signatories—an obvious reference to the European Convention. In the *Ruttli* Case in 1975, the Luxemburg Court went further and specifically cited several articles of the European Convention and of its Fourth Protocol as a basis for its reasoning. It is evident therefore that the human rights standards of the European Convention are gradually finding their way into Community law; a measure of inter-penetration of the two systems may be expected in the future.<sup>39</sup>

The interest of the Communities in ensuring the effective protection of human rights is further illustrated by an important report prepared by the Commission at the request of the European Parliament in 1976,<sup>40</sup> by references to the question by the Commission and the Court of Justice in their reports on

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38 Wiebringhaus, *La Convention Européenne des Droits de l'Homme et la Charte Sociale Européenne*, 8 HUMAN RIGHTS J. 527, 527-44 (1975); Sur, *La Charte Sociale Européenne—Dix Années d'Application*, [1974] EUR. Y.B. 88, 88-136 (English summary).

39 These developments are summarized more fully in A. H. ROBERTSON, HUMAN RIGHTS IN EUROPE 286-291 (2d ed. 1977), and analyzed in depth in Petersmann, *The Protection of Fundamental Rights in the European Communities*, [1975] EUR. Y.B. 179-206.

40 *The Protection of Fundamental Rights in the European Communities*, BULL. EUR. COMM. Supp. 5/76 (Feb. 4, 1976).

European Union during the previous year,<sup>41</sup> and by the importance attached to "a citizen's Europe" and "the protection of rights" by Mr. Tindemans, the Belgian Prime Minister, in his Report on European Union prepared for the European Council at the request of the "Summit Meeting" of Heads of Government in Paris in December 1974.<sup>42</sup>

The third major development in Europe in recent years is, of course, the signature of the Final Act of the Helsinki Conference on August 1, 1975, and the subsequent reactions to it in Eastern Europe, in the West, and in the United States.

### C. *In the Americas*

In the Western Hemisphere there is considerable cause for concern at the scant progress made towards bringing into force the American Convention on Human Rights concluded in San Jose de Costa Rica on November 22, 1969, but actually begun in 1959.

Even earlier, in 1948—seven months before the General Assembly of the United Nations approved the text of the Universal Declaration—the Organization of American States had adopted the American Declaration on the Rights and Duties of Man. At a consultation meeting of the Ministers for Foreign Affairs at Santiago in 1959, the participants decided to establish an Inter-American Commission on Human Rights and to charge the Inter-American Council of Jurists to prepare a draft convention. The draft thus prepared, as well as two other drafts submitted by Chile and Uruguay, was discussed at the OAS Conference in Rio de Janeiro in 1965. Then, after further discussions, and a revision of the draft convention effected by the Inter-American Commission, a Specialized Conference on Human Rights was held in San Jose, November 7-22, 1969, at the conclusion of which the Convention was signed by the representatives of twelve states.<sup>43</sup>

The American Convention is in many respects similar to the European Convention,<sup>44</sup> although it includes additional rights and some of the definitions it employs are more liberal than those in its European counterpart; it includes a system of international control which functions through the existing Inter-American Commission and a new Inter-American Court of Human Rights. The most singular aspect, however, is the provision that acceptance of the Commission on Human Rights' competence to consider individual petitions is not an optional provision (as in the European Convention and in the UN Optional Protocol) but is a binding obligation which follows automatically from ratification. On the other hand, the procedure of interstate complaints is optional and only applies to those states which have expressly indicated their agreement to this procedure.

The American Convention on Human Rights, requires eleven ratifications

41 BULL. EUR. COMM. Supp. 5/75 & 9/75.

42 BULL. EUR. COMM. Supp. 1/76. Chapter IV of the Tindemans Report is devoted to this question.

43 Chile, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Nicaragua, Panama, Paraguay, Uruguay, Venezuela. The history of the Convention and its contents are summarized in A. H. ROBERTSON, HUMAN RIGHTS IN EUROPE 111-39 (1972).

44 *Id.* at 249-73.

to enter into force. So far only three ratifications, those of Colombia, Costa Rica, and Venezuela, have been deposited. While it is unrealistic to expect a number of the Latin-American Republics under their present authoritarian governments to ratify a convention containing a system of international supervision of the observance of human rights, it would seem that some other states might be induced to take this step and thus enhance their reputation for respect for the rule of law. There has been talk of concluding a Protocol which would reduce the number of ratifications necessary for the convention to enter into force. Might not certain states in the Caribbean area which are members both of the OAS and of the British Commonwealth and which have ratified the U.N. Covenants also become parties to the American Convention? And is it too much to hope that President Carter, who has expressed the intention of asking the Congress to ratify the UN Covenants, might do the same for the American Convention? Such actions would constitute a significant step towards the more effective protection of human rights in the Western Hemisphere.

#### D. *The Institution of the Ombudsman*

The institution of the ombudsman is still another major step in the protection of human rights. Although not consciously conceived as a mechanism for the protection of human rights as such, this system does protect the citizen against maladministration on the part of the public authorities.

The institution of the ombudsman originated in Sweden as early as 1809. Thus, since the Swedish ombudsman is the prototype, it is appropriate to define the ombudsman by describing his functions. The ombudsman is an independent, high-level official, appointed by and responsible to the Parliament who supervises the observance of the law by all executive officials and the judiciary. The Constitution of 1809 prescribed that the Riksdag (Parliament) should appoint a "Justitieombudsman" of known legal ability and outstanding integrity to serve as Representative of the Riksdag. The first ombudsman was appointed in the following year.

In order to fulfill his obligations, the ombudsman may receive complaints from individual citizens who feel that they have been unfairly treated by government departments; he then investigates the charges and tries to arrange a satisfactory solution, usually by making an appropriate recommendation. It is important to note that he does not have power to give instructions to executive agencies, although he does have great power of persuasion backed up by his right to report his findings to Parliament if he is dissatisfied with the action taken on his recommendation.

The ombudsman system has evolved over the years. In 1915, the Riksdag appointed a separate "Militieombudsman" (Military Commissioner) to supervise the action of the military authorities. However, since the end of the Second World War, the work of the Militieombudsman has diminished, while that of the Justitieombudsman has increased. Consequently, in 1967, the Riksdag undertook a radical reform of the system. The two existing offices were merged into one post, but three persons, each with the title of Justitieombudsman and with a

common staff of assistants, were appointed by the Riksdag for terms of four years each. Today, the ombudsmen have a staff of fifty, about half of whom are lawyers. The ombudsmen constitute a triumvirate with equal powers and divide the work among themselves according to its substance. One ombudsman supervises the Courts of Justice, the public prosecutors, the police, and the armed forces; the second supervises the field of social welfare, insurance, and education; the third handles cases relating to taxation, execution of judgments, and other matters of civil administration.

Today, the supervisory competence of the ombudsman extends, with few exceptions, to the acts of all national and municipal officials, but not to those of members of the government. The purpose of this supervision is the guarantee that laws and statutes are observed and that officials perform their duties properly. In particular, the ombudsmen are required to ensure that no unlawful constraints are imposed on personal liberty. If in the course of their work, they observe defects or omissions in the law, they are required to draw attention to these problems and to make suitable recommendations.

In order to discharge his functions, the ombudsman has access to all official files and documents. No document may be kept from him on grounds of secrecy. All officials are obliged by law to give him any information or other assistance that he requires.

In serious cases of breach of duty or improper administration, the ombudsman may institute a prosecution; but this action occurs rarely—only about six times a year. In less serious cases, the ombudsman issues an admonition; this is a more effective sanction than one might guess, for such decisions are reported in the press and recorded in the published Annual Report to the Parliament. If the ombudsman considers an act of a public official inadequate or unwise even if it is not illegal, he can issue a recommendation to solve the problem and to improve the procedures of the department involved in the future. The ombudsman may also support a claim for compensation if the victim has suffered injury or a request for retrial if the ombudsman thinks that the accused has been wrongly convicted.

Anyone may complain to the ombudsman without restriction regarding nationality or residence, direct interest in the matter, or exhaustion of other remedies.

When adopting the ombudsman law of 1968 the Riksdag emphasized the importance of the ombudsman, undertaking investigations on his own initiative. Such investigations constitute an important part of his work; they may relate to matters revealed incidentally during the examination of a complaint, to matters discovered during an inspection, or to allegations originally made in the newspapers or other sources.

A third function of the ombudsman is inspections of courts, prisons, administrative boards, and agencies, including those of the central government departments in Stockholm. Each of the three ombudsmen spends about thirty days a year on such inspections, each of which usually takes several days. The inspections extend to courts, prosecutors, police authorities, prisons, mental homes, and military establishments as well as executive agencies. The inspection of the



agencies usually begins with the people in charge and includes interviews with members of the staff and—in the case of prisons and mental homes—with the inmates. At the end of the inspection, the ombudsman makes any recommendations which he deems appropriate. This activity undoubtedly has a preventive value in that it helps to prevent situations from arising which, if unchecked, might give rise to violations of citizens' rights and the filing of complaints. Since so much of human rights law is concerned with protection of the rights of individuals against improper interference by the public authorities and on guarantees that officials insure and respect the rights of citizens, it is evident that the ombudsman has much in common with human rights legislation, even though ombudsmen (as well as persons exercising similar functions but with different titles) are also called upon to deal with problems outside the scope of human rights law.

From this summary account of the institution of the ombudsman in Sweden, several conclusions can be drawn:

1. The system has amply justified itself over a period of more than 150 years.
2. The system affords a simple and inexpensive remedy to any individual who believes his or her rights have been violated by the public authorities.
3. The system of investigations and inspection on the ombudsman's own initiative means that there is a permanent watchdog over the acts of the administration in the interests of the individual.
4. The institution of the ombudsman affords an additional and important guarantee of the rights and liberties of the citizen.

The institution of the ombudsman has spread rapidly around the world in recent years.<sup>45</sup> The system has been adopted with local variations in Finland, Denmark, Norway, the Federal Republic of Germany (for the armed forces), the United Kingdom (in the form of the "Parliamentary Commissioner for Administration," with separate "Local Commissioners" for local government), in Northern Ireland, in France (in the person of the "Médiateur") and in Switzerland (for the city of Zurich). Nor have these developments been limited to Europe. In a 1962 Act of Parliament, New Zealand became the first *common law* country to introduce the institution.<sup>46</sup> Israel introduced a variation in 1971

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45 On the ombudsman in general, see THE OMBUDSMAN—CITIZEN'S DEFENDER (2d ed. 1968); W. GELLHORN, OMBUDSMEN AND OTHERS (D. Rowat, 1967); A. LEGRAND, OMBUDSMAN SCANDINAVE: ETUDES COMPARÉES SUR LE CONTROLE DE L'ADMINISTRATION, (1970); Frank, *The Ombudsman Revisited*, INT'L B.J. 48 (1975).

Much detailed information on the Ombudsmen and Parliamentary Commissioners in European countries may be found in: Council of Europe Parliamentary Assembly: Meeting of the Legal Affairs Committee with the Ombudsmen and Parliamentary Commissioners in member States (Paris, Apr. 18-19, 1974) (Council of Europe). Information on ombudsmen throughout the world is published in: REPORTS AND NEWSLETTER OF THE OMBUDSMAN COMMITTEE OF THE INTERNATIONAL BAR ASSOCIATION (Allentown, Pa.) [hereinafter cited as *Ombudsman Committee*]. See also A. Robertson, *The Ombudsman in Comparative Law*, (International Faculty for the Teaching of Comparative Law, Strasbourg, No. 1213) (summer, 1955).

46 Paterson, *The New Zealand Ombudsman as a Protector of Citizen's Rights*, 2 HUMAN RIGHTS J. 395 (1969).

whereby the State Comptroller was given jurisdiction, as Public Complaints Commissioner, over complaints against acts of the administration. In Canada, the function of ombudsman has been introduced in most of the provinces; at the federal level, a "Commissioner of Official Languages" already exists, while proposals for an ombudsman with general competence have been introduced in Parliament. In the United States, there is no ombudsman in the classic sense at the federal level, although a number of government departments and commissions have appointed "executive ombudsmen" with the specific task of handling complaints against the administration in which they serve. There are, however, persons discharging the functions of ombudsmen in a number of the states (notably, Hawaii, Nebraska, Iowa, Alaska, and Michigan), while many big cities have appointed a senior official in the mayor's or city manager's office either to deal directly with citizens' complaints or to afford citizens redress. Other similar examples exist in other parts of the world.<sup>47</sup>

The institution of the ombudsman and its introduction, with local variations, in so many countries in recent years affords one more proof of the widespread awareness of the necessity to protect the citizen against the ever-present danger of mistakes and misuse in the exercise of power on the part of the public authorities, as well as a realization that the measures taken for this purpose constitute additional safeguards for human rights and fundamental freedoms.

#### IV. A Balance Sheet

How can we strike a balance between the negative factors and the positive aspects of the condition of human rights in the world today? For that matter, is it possible to strike such a balance? It certainly is not possible to do so with any degree of precision or certainty. It does seem desirable, however, to specify certain indications which may help one to come to his or her own conclusions.

The first point, the recognition that virtually everyone today is in favor of human rights, is perhaps of a more psychological than concrete nature. Although deeds do not always correspond to professions of faith, no government or political leader today dares to admit publicly to being an opponent of civil liberties. Attempts may be made to justify or excuse violations; arguments may be used to explain—perhaps tendentiously or even hypocritically—that certain categories of rights are more important than others; but world public opinion is such that no one dares deny the basic article of faith that "every individual and every organ of society . . . shall strive . . . to promote respect for these rights and freedoms and . . . to secure their universal and effective recognition and observance."

Many factors have contributed to this situation. One might mention the Charter of the United Nations itself, the Universal Declaration of 1948, the U.N. Covenants of 1966, various resolutions of the General Assembly,<sup>48</sup> the Papal encyclical *Pacem in Terris*, the work of the Vatican Commission on "Justice and

<sup>47</sup> In Tanzania, Guyana, Mauritius and Zambia, see *Ombudsman Committee, supra* note 45; Robertson, *supra* note 45.

<sup>48</sup> For example the Declaration on Colonialism of 1960 (reaffirmed in 1962 by 101 votes in favor, with none against and four abstentions) stated that: "All States shall observe faithfully and strictly the provisions of . . . the Universal Declaration of Human Rights. . . ."

Peace," declarations of other churches, the statutes of regional organizations, and the provisions of many national constitutions.<sup>49</sup> Even though one might argue that this lip service to human rights is valueless when practical realities do not correspond to public declarations, such an argument would be a mistake, for the constant reaffirmation of the obligation to respect human rights is something new in the second half of the twentieth century and constitutes an important element in the formation of public opinion throughout the world.

This reference to public opinion is the key to the human rights balance sheet. Gloomy as the human rights picture is in many parts of the world, anyone who has studied history will know that it has been worse at most periods in the past. It is sufficient to recall that the institution of slavery existed for many centuries in most parts of the world, that torture was the standard accompaniment of interrogation at least up until the French Revolution, that atrocities were inflicted on the civilian populations during the religious wars of the sixteenth and seventeenth centuries, that burning at the stake of religious dissidents occurred during the Counter-Reformation, and that there were no rules of humanitarian law until Henry Dunant founded the Red Cross just over a century ago. These forms of cruelty and these inhumanities were not regarded as exceptional or even as reprehensible. They were normal practice; burnings and hangings were a public show—often the occasion for a public holiday. Even in our own time, who can forget the death camps and the gas chambers of World War II?

It would be facile and overly optimistic to assert that these conditions have changed completely. But something has changed. World public opinion has changed; in most countries, national opinion has changed; and for many millions of people throughout the world, individual opinion has changed. Here the mass media have played a cardinal role. In my view, they are playing it well. When new evidence of massive violations of human rights is uncovered, the media report the findings throughout the world. At least they do so where there is freedom of expression. When President Carter receives a Soviet dissident or makes proposals to the United Nations to strengthen its human rights machinery, the fact is known from Alaska to Australia within a matter of hours.

The concern of the man in the street is the best hope for the future. Within this context, I must mention the work and influence of the numerous non-governmental organizations which are tireless in their work for human rights. Three in particular—Amnesty International, which is concerned with prisoners of conscience and the abolition of torture; the International Commission of Jurists, which is devoted to the observance of the rule of law and the right to a fair trial; and the International Institute of Human Rights, which by its publications and annual teaching sessions is spreading the gospel in many countries—deserve special mention. Many other organizations do similar yeoman work. It is undeniable that there is a public conscience which is slowly but surely making itself felt.

Governments, of course, must play the principal role and in the second part

<sup>49</sup> At the International Conference on Human Rights at Teheran in 1968, the Secretary General of the United Nations, U Thant, stated that there were 43 constitutions adopted in recent years which were clearly inspired by the Universal Declaration. (U.N. Doc. A/Conf. 32/41).

of this essay, I have tried to indicate some of the ways in which they are doing so. Other important developments are the Final Act of the Helsinki Conference, the reactions to the Helsinki Agreement both in the East and the West, and President Carter's proposals to the United Nations on March 17, 1977. One can reach a provisional conclusion regarding a global assessment of human rights. Though there are many sombre aspects of the human rights situation in the world, never in recorded history have so many individuals, organizations, and governments labored so constantly to secure the universal and effective recognition and observance of human rights throughout the world as at the present time. That is the basis of hope for the future.