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The Baha'is of Iran: A Proposal for Enforcement of International Human Rights Standards

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NOTES

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"The Baha'is community, persecuted from its very inception . . . probably represents the clearest case of religious persecution in the world today."

-Allen K. Jones, U.S. Committee for Refugees, 1984.

"[T]he treatment of Baha'is is motivated by religious intolerance and a desire to eliminate the Baha'is Faith from the land of its birth.' This comes close to an allegation of genocide."

-International Commission of Jurists, 1982.

I. INTRODUCTION

Governments, scholars, and jurists have long criticized the inability of the international legal community to enforce human rights standards. The Preamble to the United Nations Charter states that its purpose is, *inter alia*, "to reaffirm faith in fundamental human rights."¹ Despite the Charter's lofty ideals, widespread, egregious human rights violations continue today. As one scholar notes, the community of nations is "[f]aced with the problem of the *de facto* inability and political unwillingness both of the United Nations and of other regional organizations to take any significant action . . . to remedy even extreme situations of human rights violations"²

The recent persecution of Iran's Baha'i population clearly illustrates the inadequacy of existing mechanisms to enforce human rights standards. Neither the accepted legal procedures nor their alternatives provide satisfactory relief to persecuted minorities. Using the Baha'is' persecution as its focus, this Note will critically evaluate these enforcement mechanisms. It will then propose a new regime to halt or prevent gross disregard for human rights protected under international law.

II. IRAN'S PERSECUTION OF THE BAHAI'S

Iran's present persecution of its 300,000 Baha'is, the country's largest religious minority group, represents an extreme example of post-Charter human rights violations.³ Since the overthrow of Shah

1. U.N. CHARTER preamble; *see also id.* art. 1, para. 3.

2. Fonteyne, *The Customary International Law Doctrine of Humanitarian Intervention: Its Current Validity Under the U.N. Charter*, 4 CAL. W. INT'L L.J. 203, 245-46 (1974).

3. *See generally* G. NASH, IRAN'S SECRET POGROM, THE CONSPIRACY TO WIPE-OUT THE BAHAI'S OF IRAN, 1844-1984 (1984); Bordewich, *Iran: Holy Terror on Baha'is*, THE ATLANTIC, Apr., 1987, at 26; Clifton, *Death Inside Khomeini's Jails*, NEWSWEEK, June 18, 1984, at 57; Frelick, *Iran's Bahai'is [sic]: Victims of Continuing Genocide*, THE CHRISTIAN CENTURY, Dec. 3, 1986, at 1095 (author is Policy Analyst for U.S. Committee for Refugees); Woodward & Huck, *Iran's Holy War on Baha'is*, NEWSWEEK, Jan. 25, 1982, at 73.

Reza Pahlavi in 1979 and the installation of an Islamic theocracy under Ayatollah Ruhollah Khomeini, "198 Baha'is have been put to death, 767 are imprisoned, some 10,000 made homeless, and over 25,000 forced to flee their country."⁴ The Iranian government persecutes the Baha'is on a purely religious basis, as "*Mahdur al-damm* or those whose blood may be shed with impunity."⁵

The Baha'is' persecutions are tantamount to systematic genocide. In addition to summary arrest, torture, and execution,⁶ the Iranian

The Baha'i Faith, an independent world religion with members in more than 100,000 localities in over 340 countries and territories, originated in Persia (now Iran) in 1863. Baha'u'llah ("Glory of God" in Arabic), a Persian nobleman, was the prophet-founder of the Baha'i Faith. At the Muslim clergy's instigation, Baha'u'llah's forerunner, the Bab ("The Gate") and 20,000 of his followers were killed by Nasiri-Din Shah's army in 1851. The Sultan of Turkey banished Baha'u'llah, and had him imprisoned in Akka, Palestine (now Acre, Israel) for most of his life.

Baha'u'llah's central teachings are:

- that there is one God, the source of all religions, and that humanity must be unified;
- that Divine Revelation is progressive, and all the great religions are of the same origin, representing successive stages of society's spiritual development;
- that people must eradicate all forms of prejudice;
- that the sexes must be equal in all aspects of life;
- that the races are equal;
- that universal education is essential;
- that each individual must independently investigate the truth, and develop a good character.

Baha'i law stresses daily prayer, abstention from alcohol and narcotics, and non-alignment with any government or political party. Baha'is obey the laws and authority of the government under which they live, and shun all forms of subversive activity.

Because Baha'u'llah claimed to be a Prophet of God after Muhammad, Iran's fundamentalist clergy brands Baha'is "murtad," or heretics. Baha'is have traditionally been persecuted on this basis. See generally E. BROWNE, *A TRAVELLER'S NARRATIVE* (1893); J. ESSELMONT, *BAHA'U'LLAH AND THE NEW ERA* (1930); J. HUDDLESTON, *THE EARTH IS BUT ONE COUNTRY* (1976).

4. Address by President Reagan, Human Rights Day Ceremony (Dec. 10, 1985). Among the 16 Baha'is hanged in June, 1983 were ten women and girls. One, Mona Mahmoudnizhad, was 16. N.Y. Times, June 22, 1983, at A27, col. 5. "Teheran's revolutionary prosecutor, Assadollah Lajeari declared: 'of course, even a 9 year old can be executed if it was proved to the court that he or she is grown enough.'" Note, *Justice in Iran*, 27 INT'L COMM'N JURISTS REV. 4, 5 (1981).

5. Note, *Persecution of the Baha'is in Iran*, 34 INT'L. COMM'N JURISTS REV. 8, 9 (1985). "[T]he available evidence clearly indicates that the Baha'is are being persecuted because of their religious beliefs, and not because of their alleged past activities. The root cause is that Baha'ism is regarded as heresy and is persecuted as such." *Id.* at 10; see also S. Con. Res. 73, 96 Stat. 2670 (1981).

6. See Note, *supra* note 4, at 8. The Baha'is have been subject to "systematic persecution . . . including summary arrests, torture, beatings, executions, murders, kidnappings, disappearances, abductions and many other forms of harassment." *Id.*

The National Assembly of the Baha'is of the United States has published photocopies of numerous Iranian government documents and judicial opinions that state unequivocally that teaching the Baha'i Faith or belonging to Baha'i institutions are capital offenses. Note, *supra* note 5, at 10; see also BAHA'I INTERNATIONAL COMMUNITY, *THE BAHA'IS IN IRAN* 71-86 (1981) [hereinafter BAHA'I INT'L COMMUNITY].

government denies Baha'is jobs,⁷ pensions,⁸ education,⁹ freedom to travel abroad,¹⁰ and freedom to marry¹¹ in violation of international law.¹² The Baha'is have no domestic legal recourse because the 1979 Iranian Constitution conspicuously fails to protect their rights.¹³

The Baha'is' plight underscores the failing of U.N. mechanisms that are intended to enforce human rights standards, and the frustration of notable publicists who advocate direct, unilateral, third party protection of persecuted individuals.¹⁴ Yet, even the advocates of humanitarian intervention concede that a unilateral self-help doctrine is "open to potential abuse" when third party states act for political or military gains.¹⁵ They acknowledge that the best solution would utilize the collective machinery of the U.N. Charter.¹⁶

Iran's persecution of the Baha'is is not merely another flagrant human rights violation. Rather, the Baha'is' persecution offers a clear-cut indictment of the U.N. mechanisms for world response to serious, continuing human rights violations. As a result, the Baha'is' persecution should trigger a resolution for new procedures that would effec-

7. See Note, *supra* note 5, at 9; see also BAHAI INT'L COMMUNITY, *supra* note 6, at 76.

8. See Note, *supra* note 5, at 9. "The Chief Justice of Iran, Ayatollah Moussavie Ardebili, ordered that Baha'is who had formerly been in government service *must return all their salary*, including money paid to them under the Shah's regime, failing which they are liable to imprisonment." *Id.* (emphasis added).

9. See Letter from University of Medical Science to a Baha'i student (Apr., 1982) reprinted in BAHAI INT'L COMMUNITY, *supra* note 6, at 74 (stating that the student is being expelled because of his "belief in Baha'ism"); see also BAHAI INT'L COMMUNITY, *supra* note 6, at 17.

10. See Note, *supra* note 4, at 6. The Iranian "Ministry of Foreign Affairs on 12 August 1981 ordered Iranian embassies to draw up a list of Baha'is . . . living in their jurisdiction. It also *prohibited the renewal of their passports* and has ordered instead the delivery of a 'transit paper' which is valid *only for a return to Iran.*" *Id.* (emphasis added).

11. See Note, *supra* note 5, at 10.

12. See *id.* For a discussion of whether binding international law has been violated, see *infra* text accompanying notes 17-23.

13. "The Iranian Zoroastrians, Jews and Christians are the only recognized minorities who . . . are free to perform their own religious rites, and . . . act in accordance with their religious regulations." ISLAMIC REPUBLIC OF IRAN CONST. art. 13, reprinted in 7 CONSTITUTIONS OF THE COUNTRIES OF THE WORLD (F. Blaustein & G. Flanz eds. 1986).

The President of the Revolutionary Court in Shiraz construed article 13 to make participation in Baha'i institutions and activities unconstitutional. "[I]n accordance with Article 13 of the Constitution any activities on the part of the Baha'is are against the Constitution, . . . and according to the Constitution those who commit such crimes are considered criminals." Khabar-i-Junub, Feb. 22, 1983, at 1, col. 1, reprinted in BAHAI INT'L COMMUNITY, MAJOR DEVELOPMENTS JULY 1982-JULY 1983, THE BAHAI'S IN IRAN 27 (1983) [hereinafter MAJOR DEVELOPMENTS].

14. See Lillich, *Forcible Self-Help by States to Protect Human Rights*, 53 IOWA L. REV. 325 (1967).

15. *Id.* at 345-46.

16. *Id.* at 345 n.116; see also Falk, *The United States and the Doctrine of Nonintervention in the Internal Affairs of Independent States*, 5 HOW. L.J. 163, 172-73 (1959).

tively enforce human rights standards without having to resort to unilateral humanitarian intervention.

In the following sections, this Note examines the provisions of international law that Iran violates by its persecution of the Baha'is. It demonstrates the ineffectiveness of present enforcement methods and proposes a resolution under which continued human rights violations will bring swift, predictable, *tangible* consequences to the violator. The Note asserts that such a concrete standard of enforcement will serve several purposes. First, it will provide a predictable response to flagrant human rights violations. Second, it will stop violations through standard U.N. procedures without immediate resort to military action. Third, it will undercut justification for humanitarian intervention and thereby reduce the chance of such intervention occurring.

III. IRAN'S PERSECUTION OF THE BAHA'IS VIOLATES INTERNATIONAL LAW

A. THE PERSECUTION OF THE BAHA'IS VIOLATES THE U.N. CHARTER AND BINDING MULTILATERAL CONVENTIONS

Article 38 of the Statute of the International Court of Justice is "generally regarded as a complete statement of the sources of international law."¹⁷ In determining applicable international law, article 38 directs the court to look to: "(a) international conventions . . . ; (b) international custom . . . ; (c) the general principles of law recognized by civilized nations; (d) . . . judicial decisions and the teachings of the most highly qualified publicists . . . as subsidiary means for the determination of rules of law."¹⁸

Consistent with article 38, the court determines applicable international law through its interpretation of treaties and customs.¹⁹ As shown below, Iran's treatment of the Baha'i minority breaches both multilateral conventions and international custom.²⁰ Specifically, Iranian persecution of the Baha'is violates article 55(c)²¹ and article 56²² of the U.N. Charter. It also violates three binding international agreements: 1) the International Covenant on Civil and Political Rights²³ (ICPR); 2) the Convention on the Prevention and Punish-

17. I. BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 3 (3d ed. 1979).

18. U.N. CHARTER app. 2, art. 38.

19. H. STEINER & D. VAGTS, *TRANSNATIONAL LEGAL PROBLEMS* 278 (2d ed. 1976).

20. See *supra* and *infra* text accompanying notes 17-84.

21. U.N. CHARTER art. 55(c).

22. *Id.* art. 56.

23. International Covenant on Civil and Political Rights, Dec. 16, 1966, G.A. Res. 2200 (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966) [hereinafter ICPR].

ment of the Crime of Genocide²⁴ (Genocide Convention); and 3) the Convention Concerning Discrimination in Respect of Employment and Occupation²⁵ (I.L.O. No. 111). Moreover, Iran's persecution of the Baha'is violates customary international law.

1. *The United Nations Charter*

Article 55(c) of the U.N. Charter provides: "The United Nations shall promote . . . universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, language, or religion."²⁶ Article 56 provides: "All Members *pledge themselves* to take joint and separate action in cooperation with the organization for the achievement of the purposes set forth in article 55."²⁷

Although there is some debate, compelling authority indicates that violations of article 55(c) and article 56 constitute a violation of international law. The *Advisory Opinion on the Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276* provides convincing authority for this conclusion.²⁸ In that opinion, the International Court of Justice (ICJ) reviewed whether the U.N. General Assembly had acted *ultra vires* in terminating South Africa's mandate to administer South West Africa.²⁹ The ICJ held that South Africa's policy of racial discrimination violated the Charter.³⁰ The ICJ, therefore, "[left] no doubt that, in its view, the Charter does impose on the members of the United Nations legal obligations in the human rights field."³¹ Similarly, in 1968, the Assembly for Human Rights adopted the Montreal Statement, which states: "The Charter of the United Nations, the constitutional document of the world community, creates

24. Convention on the Prevention and Punishment of the Crime of Genocide, *opened for signature* Dec. 9, 1948, 78 U.N.T.S. 277 [hereinafter Genocide Convention].

25. Convention Concerning Discrimination in Respect of Employment and Occupation, (I.L.O. No. 111) June 25, 1958, 362 U.N.T.S. 32 [hereinafter I.L.O. No. 111].

26. U.N. CHARTER art. 55(c).

27. *Id.* art. 56; *see also id.* arts. 1(3), 13(1), 76(e) (emphasis added).

28. *Advisory Opinion on the Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276*, 1971 I.C.J. 16 [hereinafter *Advisory Opinion*].

29. *Id.* After World War I, the League of Nations asked South Africa to administer Namibia, a former German colony, on the League's behalf. In 1966, the U.N. terminated the League's mandate because of South Africa's policy of forcibly separating different racial and ethnic groups in Namibia, and its practice of excluding the indigenous population from certain opportunities. *Id.* para. 130.

30. *Id.* para. 131.

31. Schwelb, *The International Court of Justice and the Human Rights Clauses of the Charter*, 66 AM. J. INT'L L. 337, 348 (1972). The ICJ holding confirms that all the obligations under Article 55, including freedom of religion, constitute binding legal obligations under Article 56.

binding obligations for members of the United Nations with respect to human rights.

The human rights provisions of the Charter . . . have the force of positive international law."³²

Finally, the *travaux préparatoires* of the Charter draftsmen reflect an intent to bind member states to the Charter provisions. In both the English and French versions, the drafters incorporate the language of legal obligation. A "plain meaning" construction of the article 56 text furnishes "at least a prima facie conclusion that [its] pledge was intended to constitute a legal commitment on the part of the members."³³

Critics of the argument assert that the Charter pledge is not a true obligation. They maintain that a state's human rights policies are a matter of domestic jurisdiction under U.N. Charter article 2(7).³⁴ Article 2(7) states that "[n]othing in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state"³⁵ The critics conclude that the Charter's human rights pledges are merely aspirational rather than binding.

In contrast, the widely acclaimed human rights publicist Hersh Lauterpacht reads the Charter to state binding obligations. Lauterpacht rejects the assertion that article 2(7) reduces the Charter's human rights obligations to a mere "euphemistic declaration."³⁶ According to Lauterpacht, the protection of human rights is a fundamental, *international* obligation, that falls outside of article 2(7). He rightly concludes that "[t]his interpretation of the Charter has much more to commend it than one which reduces it to an absurdity."³⁷ Richard Lillich, Chairman of the International Law Association's Sub-committee on the International Protection of Human Rights, supports Lauterpacht's interpretation. He states that "[n]early all states in the international community already are bound by the human rights provisions in the U.N. Charter."³⁸

In summary, article 55(c) and article 56 constitute binding obligations under international law. Iran's gross mistreatment of the Baha'is

32. Montreal Statement of the Assembly for Human Rights, Mar. 22-27, 1968, reprinted in R. LILlich & F. NEWMAN, INTERNATIONAL HUMAN RIGHTS: PROBLEMS OF LAW AND POLICY 66, 66-67 (1979).

33. Schacter, *The Charter and the Constitution: The Human Rights Provisions in American Law*, 4 VAND. L. REV. 643, 648 (1951).

34. U.N. CHARTER art. 2, para. 7.

35. *Id.* See generally H. KELSON, THE LAW OF THE UNITED NATIONS 29-52 (1950).

36. Lauterpacht, *The International Protection of Human Rights*, 70 RECUEIL DES COURS 5, 24 (1947).

37. *Id.* at 27-28.

38. R. LILlich & F. NEWMAN, *supra* note 32, at 66.

violates these articles and consequently violates international law.³⁹

2. *International Covenant on Civil and Political Rights (ICPR)*

Iran's persecution of the Baha'is violates the ICPR⁴⁰ in several significant ways. For example, according to the U.N. Human Rights Committee, Iran's treatment of the Baha'is appears to violate ICPR articles 18 (freedom of thought, conscience and religion),⁴¹ 23 (the right of marriage and family),⁴² 25 (participation in public affairs),⁴³ and 27 (the right of a religious minority to practice and profess its beliefs).⁴⁴ Iran's persecution of the Baha'is violates articles 7 (prohibiting torture),⁴⁵ 9 (prohibiting arbitrary arrest),⁴⁶ 12 (prohibiting the denial of passports to leave Iran),⁴⁷ and 20 (prohibiting governmental advocacy of religious hatred).⁴⁸ Iran's most flagrant ICPR violation, however, is its disregard of article 6 (the right of life),⁴⁹ specifically article 6(5) (no death penalty for persons under 18). Iran violated article 6(5) when it hanged Mona Mahmudnizhad, a sixteen-year-old Baha'i, on June 19, 1983.⁵⁰

The ICPR binds Iran in two ways. First, the ICPR defines and implements the obligations listed in the Charter.⁵¹ Second, it binds Iran as a treaty signatory. The fundamental principle of the law of treaties, *pacta sunt servanda*, requires all treaty signatories to honor a treaty's stipulations. The principle states: "Every treaty is binding upon the parties and must be performed by them in good faith . . ."⁵² As a treaty signatory, therefore, Iran must incorporate the ICPR's

39. See generally P. JESSUP, A MODERN LAW OF NATIONS—AN INTRODUCTION 91 (1948) (stating that "it is already the law . . . that respect for . . . fundamental human rights is obligatory"); Wright, *National Courts and Human Rights—The Fujii Case*, 45 AM. J. INT'L L. 62, 73 (1951) (stating that the Charter's human rights provisions impose binding legal obligations); Scelle, [1949] 1 Y.B. INT'L L. COMM'N 169, U.N. Doc. A/CN.4/SR23/1949.

40. ICPR, *supra* note 23.

41. *Id.* art. 18.

42. *Id.* art. 23.

43. *Id.* art. 25.

44. *Id.* art. 27; see Note, *supra* note 5, at 10.

45. ICPR, *supra* note 23, art. 7; see also Note, *supra* note 4, at 6.

46. ICPR, *supra* note 23, art. 9; see also Note, *supra* note 4, at 8.

47. ICPR, *supra* note 23, art. 12; see also Note, *supra* note 4, at 8.

48. ICPR, *supra* note 23, art. 20; see also Note, *supra* note 5, at 10.

49. ICPR, *supra* note 23, art. 6.

50. See N.Y. Times, June 22, 1983, at A27, col. 5; see also Note, *supra* note 4, at 5 (statement of revolutionary prosecutor indicating that execution of minors is lawful in Iran).

51. *The United Nations and Human Rights*, 18 COMMISSION TO STUDY THE ORGANIZATION OF PEACE 11, 33-34 (1967); see also Tuttle, *Are Human Rights Really Objectionable?*, 3 INT'L LAW. 385, 934 (1969).

52. Vienna Convention on the Law of Treaties, May 23, 1969, U.N. Doc. A/CONF.39/27 at 289, reprinted in 8 I.L.M. 679 (1969).

human rights provisions into its constitution and laws.⁵³ As discussed below, the ICPR continues to bind Iran even though the Shah signed the ICPR before Khomeini came to power.⁵⁴

Iran, however, disputes that the ICPR binds it completely. In its response to Human Rights Committee inquiries on the status of the Baha'is, Iran stated that "in the case of differences between the Articles of the Covenant [the ICPR] and the teachings of Islam, the tenets of Islam [will] prevail."⁵⁵ The Human Rights Committee rejected Iran's attempt to withdraw from its obligations under international law.⁵⁶ Under the doctrine of *pact sunt servanda*, Iran's obligations under the ICPR continue until it *formally* denounces them. Although Iran disputes the binding effect of the ICPR, it has neither denounced, derogated from, nor attached any reservations to the ICPR since the succession of the Khomeini government.⁵⁷

3. *Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention)*

Iran's persecution of the Baha'is also violates the Genocide Convention. Iran has signed and ratified the Genocide Convention,⁵⁸ and has neither denounced it nor announced any reservations.⁵⁹ Yet, Iran's treatment of the Baha'is closely resembles the form of genocide described by article 2(a)-(c) of the Convention. Article 2(a)-(c) defines genocide as the killing of the members of a group and the creation of "conditions of life calculated to bring about [a group's] physical destruction in whole or part."⁶⁰ According to the State Department, the Iranian Government continues to sponsor summary executions of large numbers of Baha'is.⁶¹ Iran has also banned all Baha'i religious and institutional activities. This ban "provides the legal basis on

53. ICPR, *supra* note 23, art. 2, paras. 1-2; *see also* P. SIEGHART, *THE INTERNATIONAL LAW OF HUMAN RIGHTS* § 6.33 (1983).

54. *See infra* text accompanying notes 74-91.

55. Note, *supra* note 5, at 10.

56. *Id.*

57. MULTILATERAL TREATIES DEPOSITED WITH THE SECRETARY-GENERAL, STATUS AS AT 31 DECEMBER 1985, at 126-46, U.N. Doc. ST/LEG/SER.E/4, U.N. Sales No. E.86.V.3 (1986) [hereinafter MULTILATERAL TREATIES].

58. Genocide Convention, *supra* note 24.

59. MULTILATERAL TREATIES, *supra* note 57, at 93-100.

60. Genocide Convention, *supra* note 24, art. 2.

In the present Convention, genocide means *any* of the following acts committed with intent to destroy in whole or in part, a . . . religious group as such:

- a. Killing members of the group;
- b. Causing serious bodily or mental harm to members of the group;
- c. Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part

Id. (emphasis added).

61. U.S. DEP'T OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1983, at 1262 (1984).

which the regime can move against all Baha'is in Iran if it chooses to do so. . . .⁶² This concern is reinforced by the arrests of 190 Baha'is in the four months following the proclamation."⁶³ Finally, while the Human Rights Commission (HRC) has not formally charged Iran with genocide, the International Commission of Jurists believes the HRC statements come "close" to such as an allegation.⁶⁴ The Commission finds support in the HRC's observation that Iran apparently desires to "eliminate the Baha'i Faith from the land of its birth."⁶⁵

4. *Convention Concerning Discrimination in Respect of Employment and Occupation (I.L.O. No. 111)*

Iran's continuing mistreatment of the Baha'is also violates I.L.O. No. 111. As a state party to I.L.O. No. 111,⁶⁶ Iran may not make "[a]ny distinction, exclusion or preference . . . on the basis of . . . religion . . . which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation."⁶⁷ Despite the Convention's prohibition, the Iranian government carried out a wholesale "purge" of all the Oil Ministry's 472 employees that belonged to "the misguided Baha'i group."⁶⁸ The Ministry of Education also dismissed all Baha'is, citing the fact that "the employment of Iranians who are not followers of recognized religions . . . in Government Offices is against the law."⁶⁹ On June 15, 1983, the International Labor Organization (I.L.O.) informed the Iranian representative that this practice violated I.L.O. No. 111.⁷⁰

5. *Customary International Law*

In addition to violating portions of the U.N. Charter and various multilateral conventions, Iran's persecution of the Baha'is also violates customary international law. Specifically, the persecution violates the customary international law restated in the non-treaty Universal Declaration of Human Rights (UDHR).⁷¹ The Iranian government practices listed above violate articles 3 (right to life),⁷² 5 (prohibiting

62. *Id.* at 1256.

63. *Id.* at 1263.

64. Note, *supra* note 4, at 8.

65. *Id.*

66. I.L.O. No. 111, *supra* note 25.

67. *Id.* art. 1, para. 1(a).

68. Etela'at, Apr. 6, 1983, *reprinted in* MAJOR DEVELOPMENTS, *supra* note 13, at 31.

69. Circular letter from Muhammad' Ali Raja'i, Guardian of the Ministry of Education (June 30, 1980), *reprinted in* BAHAI INT'L COMMUNITY, *supra* note 6, at 76.

70. BAHAI INT'L COMMUNITY, *supra* note 6, at 6.

71. Universal Declaration of Human Rights, Dec. 10, 1948, G.A. Res. 217A (III), U.N. Doc. A/810, at 71 (1948) [hereinafter Universal Declaration].

72. *Id.* art. 3.

torture),⁷³ 7 (right to equal protection under the laws),⁷⁴ 9 (freedom from arbitrary arrest),⁷⁵ 13 (freedom of travel out of Iran),⁷⁶ 18 (freedom of religion),⁷⁷ 22 (right to social security),⁷⁸ 23 (right to work),⁷⁹ and 26 (right to education).⁸⁰

International opinion holds that the UDHR constitutes binding law to the extent that it defines and implements the U.N. Charter's human rights provisions.⁸¹ Admittedly, only those states that recognize the UDHR norms as general legal principles will make those norms part of customary international law.⁸² However, "by juridical consensus the rules and principles enunciated in the Declaration are now widely recognized as forming part of the customary law and therefore binding on all states."⁸³ The UDHR thus binds Iran whether or not Iran recognizes the UDHR as customary international law.

B. SUCCESSION OF MULTILATERAL AGREEMENTS FROM THE SHAH TO KHOMEINI

The present Iranian government does not dispute that the multilateral treaties signed under the Shah succeed to the present regime. On a practical level, "Khomeini accepts the doctrine of state succession as applicable to Iran. He has paid the Shah's debts and collected what outsiders owed the Shah's government."⁸⁴ The agreements succeed for two reasons: 1) Iran has continued as the same integrated, independent state before and after the 1979 revolution; and 2) the agreements are fundamental and humanitarian in nature. Furthermore, under all theories of succession, the multilateral human rights agreements signed under the Shah succeed to Khomeini. Three basic theories of succession bind present day Iran to the multilateral human rights agreements: 1) negativist succession theory; 2) universalist succession theory; and 3) modern hybrid succession theory.

73. *Id.* art. 5.

74. *Id.* art. 7. The President of the Shiraz Revolutionary Court stated on February 22, 1983, that "it is absolutely certain that in the Islamic Republic of Iran there is no place whatsoever for Baha'is and Baha'ism." See Khabar-i-Junub, Feb. 22, 1983, at 1, col. 1, reprinted in MAJOR DEVELOPMENTS, *supra* note 13, at 27.

75. Universal Declaration, *supra* note 71, art. 9.

76. *Id.* art. 13.

77. *Id.* art. 18.

78. *Id.* art. 22; see also Note, *supra* note 5, at 9 (statement of Chief Justice).

79. Universal Declaration, *supra* note 71, art. 23.

80. *Id.* art. 26.

81. R. LILLICH & F. NEWMAN, *supra* note 32, at 66.

82. *Id.*

83. Humphrey, *Human Rights and the Peace of Nations*, 31 INT'L COMM'N JURISTS REV. 71, 72 (1983).

84. Statement of Dr. Firuz Khazemzadeh, Professor of Near Eastern Studies, Yale University (Mar. 1986).

1. *Negativist Succession Theory*

From the 19th century until very recently, negativism was the most dominant theory of state succession. Simply defined, negativism "regard[s] all treaties as lapsing upon the succession of states."⁸⁵

Negativism turns on the fundamental distinction between succession of *states* and succession of *governments*. A succession of states occurs when one sovereign state substitutes itself for another through "(a) cession, (b) annexation, (c) emancipation, (d) formation of a union, and (e) federation."⁸⁶ A complete change in state identity or personality creates a succession of states.⁸⁷ By contrast, the 1979 Iranian Revolution represents a succession of *governments*. A succession of governments occurs "when a new leader is chosen, a party is voted in or out of office, or a coup is successful . . ."⁸⁸ Even revolutions that involve sweeping changes in governmental philosophy, such as the revolutions in Cuba, Nicaragua, and Iran, result only in successions of governments. A succession of states does not result because the territories and people do not change.⁸⁹ As one commentator noted, "Change of government does not affect the personality of the State, and hence a successor government is required by international law to perform the obligations undertaken on behalf of the State by its predecessor."⁹⁰ Thus, international obligations undertaken by the Shah continue to bind the present Iranian regime, especially because such "practice is tending toward a *de facto* succession to at least those conventions which have a humanitarian aim."⁹¹

The policy rationale for negativism is the third world concern that *newly independent states* should not acquire the treaty obligations of their recently deposed colonial rulers. This "clean slate" theory permeates the 1978 Vienna Convention on Succession of States in Respect of Treaties.⁹² Article 2(1)(f) of the Convention defines a newly independent state as, "a successor state the territory of which immediately before the date of the succession was a dependent territory

85. Note, *Succession of States in Respect of Treaties: The Vienna Convention of 1978*, 19 VA. INT'L L.J. 885, 887 (1979); see also D. O'CONNELL, *THE LAW OF STATE SUCCESSION* 130 (1956).

86. 1 D. O'CONNELL, *INTERNATIONAL LAW* 365 (2d ed. 1970).

87. D. O'CONNELL, *supra* note 85, at 3-4.

88. Note, *supra* note 85, at 888.

89. *Id.* at 888 n.15.

90. 1 D. O'CONNELL, *supra* note 86, at 394.

91. 1 D. O'CONNELL, *INTERNATIONAL LAW* 435 (1st ed. 1965).

92. Vienna Convention on Succession of States in Respect of Treaties, *opened for signature* Aug. 23, 1978, U.N. Doc. A/CONF.80/31, *reprinted in* 17 I.L.M. 1488 (1978) [hereinafter *Vienna Convention*]. See generally Castren, *Obligations of States Arising from the Dismemberment of Another State*, 13 ZEITSCHRIFT FÜR AUSLÄNDISCHES ÖFFENTLICHES RECHT UND VOLKERRECHT 753, 754 (1951). See also D. O'CONNELL, *supra* note 85.

. . . ."⁹³ Iran obviously fails to meet this criterion. Therefore, the "clean slate" rule does not apply to Iran.⁹⁴ The Convention drafters would *presume* that present day Iran succeeds to the obligations of its predecessor government.⁹⁵

2. *Universalist Succession Theory*

"Universalist" theory holds that all treaties automatically devolve upon the successor government *ipse jure*. Under this theory, present-day Iran automatically succeeds to the bundle of rights and duties acquired during the Shah's regime.⁹⁶ Advocates of universalism argue that this prevents indiscriminate treaty terminations following mere shifts in governmental control. If "international agreements are viti-ated by every change of sovereignty . . . the chances of law effectively regulating State conduct appear remote."⁹⁷ This argument is most compelling in the context of multilateral human rights agreements; a coup should not divest an entire population of universally recognized human rights.

3. *Modern Hybrid Succession Theory*

Modern "hybrid" succession theory developed as a middle-ground between negativism and universalism. Hybrid succession theory rejects the "clean slate" theory as to multilateral legislative instruments having the force and effect of customary international law.⁹⁸ Under this theory, newly independent states would only succeed to instruments having the force of customary international law.

Like negativist and universalist theory, hybrid succession theory would also bind Iran to the agreements. Iran could escape succession only by formally denouncing the agreements. For example, Iran has unilaterally terminated two articles of a Treaty of Friendship with the Soviet Union on the basis of *rebus sic stantibus*,⁹⁹ due to fundamental

93. Vienna Convention, *supra* note 92, art. 2(1)(f).

94. *Id.* art. 16.

95. See Crawford, *The Contribution of Prof. D.P. O'Connell to the Discipline of International Law*, 1980 BRIT. Y.B. INT'L L. 1, 21; see also *Summary Records of the 1156th Meeting*, [1972] 1 Y.B. INT'L L. COMM'N 31, 32-37, U.N. Doc. A/CN.4/202; A/CN.4/214/Add.1 and 2; A/CN.4/224/Add.1; A/CN.4/249; A/CN.4/256/1972 (statements of Sir Humphrey Waldock, Special Rapporteur).

96. Note, *supra* note 85, at 886.

97. *Id.* at 890-91.

98. See Jenks, *State Succession in Respect of Law Making Treaties*, 1952 BRIT. Y.B. INT'L L. 105, 107; see also La Forest, *Toward a Reformulation of the Law of State Succession*, 1966 AM. SOC'Y INT'L L. PROC. 103.

99. The doctrine allows a release from binding treaty obligations if the petitioning nation can demonstrate a fundamental change of circumstances that would make performance under the treaty impossible. See 2 D. O'CONNELL, *STATE SUCCESSION IN MUNICIPAL LAW AND INTERNATIONAL LAW* 2-3 (1967); see also Vienna Convention, *supra* note 92, art. 17(2); Note, *supra* note 85, at 893.

differences between the present Koran-based government and the Shah's secular government.¹⁰⁰ This is the only treaty, however, that the Khomeini government has formally denounced.¹⁰¹ Until Iran formally denounces the multilateral human rights agreements, the agreements continue to bind it.

IV. THE INEFFECTIVENESS OF EXISTING PROCEDURES FOR ENFORCING HUMAN RIGHTS STANDARDS

The weak link between international human rights standards and state action under these standards is enforcement. This weak link provides "an argument to some that [enforcement] does not exist."¹⁰² Yet, some writers defend the effectiveness of international enforcement methods.¹⁰³ They point out that the methods are still new and that states *do* change internal policies as a result of U.N., diplomatic, and world public pressures.¹⁰⁴

These enforcement procedures depend, however, on assumptions that, when unfounded, leave no enforcement *alternatives*. The procedures rest on two assumptions: 1) that a recognized legal "duty" or "obligation" under international law provides protection in itself; and 2) that adverse world public opinion has an impact on a state's domestic human rights policies as the "ultimate sanction of international law."¹⁰⁵

The second assumption mistakenly presumes that mere public denouncement will force a state to comply with its sense of duty. In a state like present-day Iran which ignores world opinion, procedures that rely on a nation's sense of duty and fear of adverse opinion fail to restrain "renegade" nations.¹⁰⁶ Only *adequate* sanctions will force Iran to comply with its international obligations.

Justice Oliver Wendell Holmes succinctly described how the law can deter those lacking any moral reason to comply. Holmes noted:

100. Telephone interview with Mr. Amir Zamani, Advisor for Public Relations, Islamic Republic of Iran, United Nations Mission (Apr. 15, 1987).

101. *Id.*

102. Shelton, *International Enforcement of Human Rights: Effectiveness and Alternatives*, 1980 AM. SOC'Y INT'L L. PROC. 6, 7.

103. *Id.*

104. See R. LILlich & F. NEWMAN, *supra* note 32, at 16-22, 34-35. In January, 1969, the government of Iraq began publicly hanging Jewish citizens alleged to be Israeli spies. The U.N. deplored the executions but took no official action. Iraq eventually relented after press reports brought world condemnation and pressure from other Arab governments to stop the killing. *Id.*

105. INTERNATIONAL LAW ASSOCIATION, REPORT OF THE FIFTY-SEVENTH CONFERENCE, MADRID 524 (1976) [hereinafter INTERNATIONAL LAW ASSOCIATION].

106. Shelton, *supra* note 102, at 16. "We still haven't solved the problem of the Ugandas and Cambodias, and under current procedures we may not be able to." *Id.*

We fill the word ["duty"] with all the content which we draw from morals. But what does it mean to a bad man? Mainly, and in the first place, a prophecy that if he does certain things he *will be subjected to disagreeable consequences by way of imprisonment or compulsory payment of money.*¹⁰⁷

Transferred to an international context, an "amoral government," a Holmesian "bad man," will not comply with moralistic urgings unless threatened with punishment. Regrettably, present enforcement procedures do not prevent recalcitrant governments from violating human rights: the procedures simply have no teeth.

A. ACCEPTED U.N. PROCEDURES FOR ENFORCING HUMAN RIGHTS STANDARDS

1. *Self Reporting by States*

The I.L.O. Constitution and the U.N. Charter require member states to periodically report on their compliance with the human rights standards articulated in these documents. The I.L.O. has a Committee of Experts on the Application of Conventions that reviews member reports and submits them to the International Labor Conference.¹⁰⁸ The U.N. Economic and Social Council (ECOSOC) requires reports from state members at three-year intervals.¹⁰⁹ ECOSOC forwards the reports to the Commission on Human Rights.

The obvious criticism of self-reporting is that it is self-serving. States fearing adverse reactions from published reports may enact laws that comply with the various standards; however, the state may still ultimately ignore the standards.¹¹⁰ Moreover, self-reporting will not result in compliance with human rights standards when a nation does not fear adverse world opinion.¹¹¹

2. *Interstate Protests*

The ICPR and other documents permit member states to file official complaints against other member states. States seldom file complaints, however, because they consider the process too susceptible to political manipulation.¹¹²

More often, a state will protest egregious human rights violations in a formal representation, a *demarche*, or simply protest through public statements to the press. These methods may produce positive results. For example, public pressure convinced the Shah to withdraw

107. Holmes, *The Path of the Law*, 10 HARV. L. REV. 451, 463 (1897) (emphasis added).

108. Shelton, *supra* note 102, at 8.

109. *Id.*

110. Note, *supra* note 5, at 10.

111. *Id.*; see also BAHAI INT'L COMMUNITY, *supra* note 6, at 1-6.

112. Shelton, *supra* note 102, at 11.

his support of widespread attacks on the Baha'i community in 1955.¹¹³ In that case, public pressure was effective only because the Shah was concerned about world public opinion.¹¹⁴

In contrast, recent state protests against Iran have not brought any positive results and have often preceded violence. On July 17, 1982, seventeen governments made a joint *demarche* to the Iranian government protesting its treatment of the Baha'is.¹¹⁵ Sixteen governments made a similar *demarche* on Dec. 27, 1982.¹¹⁶ In each instance, Baha'is were summarily executed within days of the protests.¹¹⁷ On May 21, 1983, President Reagan made a personal plea to Khomeini to commute the death sentences of twenty-two Baha'is "not guilty of any political offense or crime."¹¹⁸ On May 28, 1983, Khomeini publicly criticized Reagan's plea of mercy for a "bunch of people who don't even belong to any religion."¹¹⁹ Sixteen of those Baha'is, including 10 women, were hanged on June 16 and 18, 1983, and another was executed on July 1, 1983.¹²⁰

3. *Petition Procedures*

In June, 1967, the U.N. Human Rights Commission (HRC) and the Sub-Commission on Prevention of Discrimination and Protection of Minorities (Sub-Commission) received authorization to hear complaints from governments under ECOSOC Resolution 1235.¹²¹ The HRC subsequently received authorization to hear complaints under Resolution 1503.¹²² Commentators considered Resolution 1503 a breakthrough for human rights because it allowed individuals and non-government organizations (NGO's) to petition the Sub-Commission directly.¹²³ Resolution 1503 thus represents an improvement over

113. BAHAI INT'L COMMUNITY, *supra* note 6, at 38.

114. Watson, *The Limited Utility of International Law in the Protection of Human Rights*, 1980 AM. SOC'Y INT'L L. PROC. 1, 3. "Without a coercive element international law is not well equipped to deal with the tyrant or dictator who has realized that for him the short-term gains of ignoring the human rights of his subjects far outweigh the long-term losses (if any) of adverse public opinion . . ." *Id.*

115. MAJOR DEVELOPMENTS, *supra* note 13, at 2.

116. *Id.* at 3.

117. *Id.*

118. N.Y. Times, May 22, 1983, at A1, col. 1.

119. N.Y. Times, May 29, 1983, at A3, col. 2.

120. N.Y. Times, July 3, 1983, at A3, col. 2.

121. E.S.C. Res. 1235(XLII), 42 U.N. ESCOR Supp. (No. 1) at 17, U.N. Doc. E/4393 (1967).

122. E.S.C. Res. 1503(XLVIII), 48 U.N. ESCOR Supp. (No. 1A) at 8, U.N. Doc. E/4832/Add. 1 (1970).

123. R. LILLICH & F. NEWMAN, *supra* note 32, at 337. Secretary-General U. Thant had previously disallowed individual petitions. *Id.* at 335. An "NGO" is any interested, non-government group given consultative status at the U.N. Amnesty International, the Red Cross, and the Lawyers Committee for Human Rights are well-known NGO's.

previously adopted enforcement procedures. Its effectiveness, however, relies too much on state cooperation.

The 1503 procedure involves three steps: 1) a "Working Party" under the Sub-Commission gathers all communications to see if there are "reliably attested" human right violations; 2) the Working Party shows the gathered information to the Sub-Commission, which decides whether to pass it on to the HRC; and 3) the HRC decides whether to investigate further, or appoint an investigating committee, which requires the *consent* of the state in question.¹²⁴ The HRC keeps confidential all communications between itself and the investigated state.¹²⁵

The ultimate objective of the 1503 procedure is to elicit information.¹²⁶ The HRC does not literally enforce human rights standards through application of 1503. Therefore, Resolution 1503 fails to prevent human rights violations for two reasons. First, fact finding, unlike enforcement, poses no threat to a "bad" government. Second, a 1503 investigation depends on the violator's cooperation.

Investigations revealing violations may cause the HRC, ECOSOC, General Assembly, or Secretary-General to denounce the violator's actions. While official censure may have, for example, influenced Israel to leave Lebanon, it will not affect less sensitive governments.¹²⁷ Even when the system works, the violating state may simply ignore the Secretary-General's investigations and pleas. Critics thus assail the 1503 procedure as time-consuming and ultimately ineffective.¹²⁸

Ironically, the 1503 procedure fails when its success is most vital: cases of extreme and protracted human rights violations. The resulting frustration with Resolution 1503 has led to unilateral intervention in two instances: Tanzania's invasion of Uganda, and Vietnam's invasion of Kampuchea.

Amnesty International has estimated that during the eight-year reign of Ugandan dictator Idi Amin, as many as 300,000 citizens were

124. *Id.* at 338.

125. Note, *Commission on Human Rights*, 24 INT'L COMM'N JURISTS REV. 29, 34 (1980).

126. See generally Shelton, *supra* note 102, at 14. Shelton defines the objective of 1503 as "the study of situations which appear to reveal a consistent pattern of gross and reliably attested human rights violations and fundamental freedoms and is not for redress of individual violations." *Id.* By contrast, European procedure provides for money damages to individual victims. *Id.* at 13.

127. Note, *The 1982 Session of the U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities*, 77 AM. J. INT'L L. 651, 652 (1983).

128. R. LILlich & F. NEWMAN, *supra* note 32, at 359-71. One critic has commented that "[i]t is becoming increasingly apparent . . . that the 1503 procedure tends to protect rather than restrain governments which violate human rights . . ." Note, *supra* note 125, at 35.

killed.¹²⁹ Many of the victims were tortured.¹³⁰ In 1977, Amnesty's report to the HRC triggered 1503 scrutiny.¹³¹ The President of the HRC stated that "decisions" were made concerning the Uganda situation at the thirty-fourth, thirty-fifth and thirty-sixth sessions.¹³² Amin's mass killings continued unabated for two more years, until Tanzania invaded Uganda and ousted Amin in 1979.¹³³ Although Tanzania justified its action as self-defense, its President Nyerere admitted Tanzania was "punishing" Amin for his cruelty, because the community of nations had failed to do so.¹³⁴ Uganda's new President chided the U.N. for remaining silent during Amin's murderous reign.¹³⁵

A similar situation developed in Kampuchea. Between 1975 and 1978, the Khmer Rouge under Pol Pot killed one third of the Kampuchean population, over two million people.¹³⁶ In 1978, the HRC heard reports of the flagrant violations in Kampuchea, but decided to postpone instituting a 1503 action.¹³⁷ Vietnam subsequently invaded Kampuchea in late 1979 and overthrew Pol Pot. Vietnam justified its intervention in a manner similar to Tanzania, using a "dual war" argument. While stressing that it had been attacked and was retaliating in self-defense, Vietnam also claimed that the Kampuchean people had assisted the overthrow of Pol Pot, citing the "inhuman conditions in which the population of Kampuchea was being kept by the regime in power."¹³⁸

In the instant case, Iran has been under 1503 scrutiny for approximately seven years.¹³⁹ During this period, the Secretary-General and the HRC-appointed Rapporteur have repeatedly urged Iran to stop its persecution of the Baha'is,¹⁴⁰ and to submit reports to the HRC.¹⁴¹ Iran steadfastly refuses to cooperate with the HRC.¹⁴² It continues to

129. N. RONZITTI, *RESCUING NATIONALS ABROAD THROUGH MILITARY COERCION AND INTERVENTION ON THE GROUNDS OF HUMANITY* 102 (1985).

130. *Id.*

131. *Id.* at 193 n.88.

132. *Id.* The content of those decisions was kept confidential in keeping with the 1503 procedure.

133. *Id.* at 102.

134. *Id.* at 102-03.

135. Note, *supra* note 125, at 34.

136. N. RONZITTI, *supra* note 129, at 98.

137. *Committee on Human Rights, Report of the Thirty-Fifth Session, Feb. 12 - Mar. 16, 1979*, ECOSOC Official Records, U.N. Doc E/CN. 4/1347, Supp. 6, 55-56, 135 (1979).

138. N. RONZITTI, *supra* note 129, at 99.

139. Note, *supra* note 4, at 8; BAHAI' INT'L COMMUNITY, *supra* note 6, at 27.

140. Note, *U.N. Commission on Human Rights*, 32 INT'L COMM'N JURISTS REV. 33, 37-38 (1984).

141. Note, *U.N. Commission on Human Rights*, 30 INT'L COMM'N JURISTS REV. 31, 36 (1983); Note, *supra* note 5, at 8.

142. *Commission on Human Rights*, Res. 1986/41, 42 U.N. ESCOR Supp. (No. 2) at 108-09, U.N. Doc. E/1986/22.

imprison, torture, and kill Baha'is.¹⁴³ Seven years of worthless "scrutiny" and "urgings" demonstrate that the 1503 procedure is inadequate to ensure compliance with human rights standards.

It is becoming increasingly apparent to non-governmental organizations, observers—and this view is shared by some delegates—that the 1503 procedure tends to protect rather than restrain governments which violate human rights Many NGO's are beginning to question the usefulness of submitting any further communications to the U.N. under this procedure.¹⁴⁴

In light of 1503's poor track record, it seems incredible that the HRC continues to apply it to the persecution of the Baha'is.¹⁴⁵

B. ALTERNATIVE PROCEDURES FOR ENFORCING HUMAN RIGHTS STANDARDS

1. Chapter VII Procedures

If 1503 procedures fail to abate gross human rights violations, Chapter VII contains the only alternative enforcement methods.¹⁴⁶ Under article 41, the Security Council may direct U.N. members to interrupt economic relations with a state if it determines that the state's actions constitute a "threat to peace, breach of peace, or act of aggression."¹⁴⁷ If the Council concludes that such measures are inadequate, it may request member states to directly intervene.¹⁴⁸

In practice, the "threat to the peace" standard does not readily apply to human rights violations. In cases involving apartheid or racial discrimination, the Council has mustered the required unanimity to impose economic sanctions against Rhodesia and South Africa.¹⁴⁹ However, the Council has been unable to achieve the necessary unanimity in cases of gross human rights violations that actually caused a breach of the peace. For example, the Council failed to achieve unanimity when India invaded Pakistan to protect the Bengali population in December, 1971.¹⁵⁰ As one commentator noted of the Bengali case, "Except for coping with disaster relief and refugee assistance, the U.N. said little and did nothing during most of 1971."¹⁵¹

Relying on Chapter VII for enforcement of human rights standards leads to two problems. First, its implementation is unpredictable because the Council's determination of what is a "threat to" or

143. U.S. DEP'T OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1985, at 1240-41 (1986).

144. Note, *supra* note 125, at 35.

145. "Biafra, Indonesia, Sudan and Burundi are other recent examples of the ineffectiveness of international organizations." Fonteyne, *supra* note 2, at 237.

146. U.N. CHARTER, arts. 39, 41, 42, 48, 51.

147. *Id.* arts. 39, 41.

148. *Id.* art. 42.

149. See generally R. LILLICH & F. NEWMAN, *supra* note 32, at 390-448.

150. *Id.* at 485-542.

151. *Id.* at 487.

"breach of" the peace is completely arbitrary.¹⁵² Second, Security Council action under Chapter VII requires unanimity, in practice a nearly impossible prerequisite.¹⁵³

The Security Council has yet to invoke Chapter VII sanctions against Iran for its persecution of the Baha'is. Chapter VII economic sanctions would be particularly effective because of Iran's struggling economy. The Security Council's failure to invoke Chapter VII is probably due to the Baha'is' passivity in the face of persecution. The Baha'i Faith stresses loyalty to the existing government and exhorts its adherents to follow domestic law. The Security Council cannot initiate Chapter VII proceedings unless the Baha'is react violently to their persecution, thereby triggering the Chapter's "threat to or breach of peace" language. Are the Baha'is less deserving of Chapter VII protection because they remain quiescent in the face of severe persecution? If so, the "threat to the peace" standard only protects oppressed minorities who tend to be violent. Such a paradoxical result is unsatisfactory.

The Baha'is' passivity precludes the possibility of Chapter VII intervention. Moreover, as discussed above, self-reporting, interstate petitions, and 1503 procedures likewise fail to protect the Baha'is. The Baha'i case is therefore a perfect analytical paradigm to fashion a new enforcement procedure. It is, on the one hand, typical of egregious domestic violations by governments unresponsive to 1503 procedures. It is atypical, however, in that the victimized group is a model of passivity and cooperation. Justice requires a new human rights

152. A comparison between the Southern Africa and Bangladesh cases illustrates the arbitrariness of the Council's "threat to" or "breach of" peace determinations. The Rhodesia case appeared to be a victory for human rights advocates because it suggested that gross violations may be construed to constitute threats to the peace automatically, because "practices of indignity and strife which begin as internal in physical manifestation in a single community quickly and easily spread to other communities and become international" R. LILlich & F. NEWMAN, *supra* note 32, at 407. The Bangladesh case, however, once again called into question the ability of the U.N. to respond to human rights violations. Although actual regional military action and bloodshed were present, the Security Council failed to label the situation a threat to the peace or an act of aggression. A liberal reading of article 39 might allow the U.N. to take stronger action if it can resolve that gross violations *do* automatically constitute threats to the peace because of the essential interdependence of nations. See McDougal & Reisman, *Rhodesia and the United Nations: The Lawfulness of International Concern*, 62 AM. J. INT'L L. 1 (1968); Note, *U.N. Sub-commission on Discrimination and Minorities*, 31 INT'L COMM'N JURISTS REV. 37 (1983).

153. For example, Security Council resolutions to impose sanctions on South Africa for its apartheid policies received triple vetoes, from France, the United States, and the United Kingdom, in 1975 and again in 1976. The three states finally reversed their vetoes in 1977 after the murder of black activist Steven Biko. 30 U.N. SCOR Supp. at 47, U.N. Doc. S/11713 (1975); 31 U.N. SCOR Supp. —, U.N. Doc. S/12211 (1976); R. LILlich & F. NEWMAN, *supra* note 32, at 420. The Security Council achieved unanimity only in the 1950 Korean crisis, after the Soviet delegate boycotted. Up until that time, the General Assembly had to usurp the responsibility under the Uniting for Peace Resolution. See Comment, *The "Uniting for Peace Resolution" of the United Nations*, 45 AM. J. INT'L L. 129 (1951).

enforcement procedure that would protect non-violent, persecuted minorities, like the Baha'is, whose oppression falls outside Chapter VII.

2. *Humanitarian Intervention*

The futility of enforcement attempts, as well as the futility of finding a satisfactory legal basis for human rights, has led one commentator to conclude that "the main effect of the universal human rights movement will be a seriously diminished credibility for international law. This will be no less a loss, because it is the product of impeccable intentions."¹⁵⁴ Such cynicism rings true considering the trend toward justifying unilateral armed intervention by a state or states on the grounds of humanitarianism.

Humanitarian intervention is the obvious alternative, besides Chapter VII, to traditional U.N. enforcement mechanisms. Humanitarian intervention, however, has no historic basis and is "radically contrary to article 2(4) of the United Nations Charter."¹⁵⁵ Article 2(4) states: "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any manner inconsistent with the purposes of the United Nations."¹⁵⁶ Article 2(4) arguably prohibits nations from exercising force to stop human rights abuses in other nations.

Professor Lillich advocates the use of forcible humanitarian intervention and its subsequent validation under five criteria: 1) the immediacy of the human rights violation; 2) the extent or degree of the violation; 3) whether intervention was invited; 4) the degree of coercive measures employed; and 5) the relative disinterestedness of the intervening state.¹⁵⁷

Lillich offers a compelling but unsatisfactory solution. First, *ex post facto* review fails to provide security to the community of nations. Allowing states to use force and after-the-fact rationalizations would disrupt the delicate balance of international relations based on sovereignty. Second, Lillich's solution fails to account for article 2(4)'s express ban on force. The solution merely ignores the ban in its advocacy for intervention. Commentators express the justifiable fear that legalizing humanitarian intervention through a restrictive reading of article 2(4) will lead to expansionism under the aegis of human

154. Watson, *supra* note 114, at 6.

155. N. RONZITTI, *supra* note 129, at 108.

156. U.N. CHARTER art. 2, para. 4.

157. Lillich, *supra* note 14, at 344-51.

rights.¹⁵⁸ Finally, legalizing humanitarian intervention may also “erode the psychological constraints of the use of force for other purposes. . . .”¹⁵⁹

Despite the dangers of abuse, commentators conclude that humanitarian intervention should be allowed on a limited scale because no viable alternatives exist. The advocates of intervention must admit that, in the case of the Baha'is, humanitarian intervention is impossible. Iran's strategic importance severely restricts the likelihood of any kind of humanitarian intervention. The intervening nation would not be able to convince a disbelieving world that it invaded for purely apolitical, humanitarian reasons.¹⁶⁰

V. A PROPOSAL FOR AN EFFECTIVE PROCEDURE TO ENFORCE HUMAN RIGHTS STANDARDS

The Baha'is' plight encompasses all the recurrent problems of human rights enforcement procedures that rely on adverse public opinion. Seven years of world protests and 1503 procedures have not stopped the violence.¹⁶¹ The Baha'is' persecution falls outside Chapter VII protection because their passivity prevents threats to or breaches of the peace. Moreover, non-Iranian Baha'is will never threaten to intervene. Because the Baha'is are innocent,¹⁶² their case presents a compelling opportunity to finally resolve the internal conflict between the humanitarian pledges and the proscribed use of force in the Charter.¹⁶³ Iran's gross mistreatment of the Baha'is should force revision of existing enforcement procedures. Otherwise, groups like the Baha'is, arguably deserving *heightened* protection, “fall between the cracks” of present enforcement methods.

Despite a poor track record, the U.N. is capable of enforcing human rights standards with efficiency and predictability. As one commentator stated, “No organization other than the U.N. is in a bet-

158. Fonteyne, *supra* note 2, at 248.

159. Farer, *Humanitarian Intervention — The View from Charlottesville*, in HUMANITARIAN INTERVENTION AND THE UNITED NATIONS 149-52 (R. Lillich ed. 1973). A complete analysis of whether or not humanitarian intervention has a basis in customary international law, and whether it is legal under the Charter is beyond the scope of this Note. For a discussion of humanitarian intervention, see *supra* text accompanying notes 154-59. This Note assumes that legalized *unilateral* humanitarian intervention is too unpredictable and offers too much opportunity for abuse to be legal.

160. See Lillich, *supra* note 14, at 350-51.

161. *Commission on Human Rights*, *supra* note 142.

162. See N.Y. Times, May 22, 1983, at A9, col. 1.

163. Reisman, *Humanitarian Intervention to Protect the Ibos*, in HUMANITARIAN INTERVENTION AND THE UNITED NATIONS, *supra* note 159, at 171. “The preamble and critical first Article of the Charter, framed in the awful shadow of the atrocities of war, left no doubt as to the intimate nexus that the framers perceived to link international peace and security and the most fundamental human rights of all individuals.” *Id.*

ter position to detect breaches or evaluate facts in light of the existing legal rules, to observe and inquire, to take diplomatic, political or military action."¹⁶⁴

The General Assembly or the Security Council should create by resolution the following declaration and procedure:¹⁶⁵

I. Resolved, that all unilateral or multiparty intervention upon the territorial integrity or political independence of any state is a breach of international law and will be considered as an act of aggression for purposes of Chapter VII of the U.N. Charter.

II. When the Subcommission on the Prevention of Discrimination and Protection of Minorities determines that a report on a state reveals "a consistent pattern of gross and reliably attested human rights violations,"¹⁶⁶ and passes the report on to the Human Rights Commission (HRC), it sets in motion a statute of limitations, which begins to run as soon as the State in question is informed that it is under 1503 scrutiny.

III. For two years following date of notice, the HRC shall make all standard inquiries and recommendations under the 1503 procedure to bring about noticeable improvements. If the HRC sees no tangible improvement in the state's human rights record (i.e. change in substantive law or abatement of persecution) within those two years, it may make a "recalcitrant government" recommendation to the General Assembly (GA).

IV. When two years from the date of notice lapse, the recalcitrant government recommendation to the GA becomes automatic, unless expressly waived by the HRC and substantial evidence of improvement exists.

V. The recalcitrant government recommendation remains until rebutted. The recalcitrant government has 90 days to show tangible proof of improvement in its domestic human rights situation. If it does so, the HRC continues to monitor the state.

VI. After 90 days, if the recalcitrant government fails to show proof of improvement, the GA *shall* pass economic sanctions against the recalcitrant government that will be mandatory for all U.N. members.

164. De Schutter, *Humanitarian Intervention: A United Nations Task*, 3 CAL. W. INT'L L.J. 21, 36 (1972).

165. A resolution of this type is within the powers of either the General Assembly or the Security Council, under articles 10 and 25 of the Charter, respectively. See Schwelb, *supra* note 31, at 337. Scholars have debated the idea of incorporating humanitarian intervention into U.N. procedure by General Assembly resolution. According to Prof. Lillich, such a project would take ten years or more to get up through the various committees and onto the floor of the General Assembly. Advocates of reform could expect the same schedule for the present proposal. See INTERNATIONAL LAW ASSOCIATION, *supra* note 105, at 475-540; see also Comment, *supra* note 153, at 129.

166. Shelton, *supra* note 102, at 14.

The GA can remove such sanctions upon tangible proof of improvement.

VII. If there is no improvement for one year after the imposition of economic sanctions, the GA shall exercise military force to compel the recalcitrant government to protect its citizens' human rights. The force shall be multinational and politically disinterested.¹⁶⁷ The GA shall withdraw the force upon satisfactory improvement of the government's human rights record, or satisfactory changes in domestic law.

The recalcitrant government procedure offers four distinct advantages over traditional humanitarian intervention. First, it is completely predictable: it incorporates a time frame and unequivocal notice. Second, it is apolitical. Third, it resolves more satisfactorily the conflict between article 2(4)'s ban on military force and the need to exercise force to stop extreme human rights violations. The procedure allows the recalcitrant government ample opportunity to preserve its protection under article 2(4). The government has exactly three years and ninety days after 1503 notice to improve its domestic human rights practices. If it fails to do so, the recalcitrant government waives its article 2(4) protection by demonstrating its disregard of the Charter's human rights purposes. Under this proposal, the U.N. will tolerate a state *breaching* the preamble while *benefitting* from article 2(4) for exactly three years and 90 days. Finally, the procedure eliminates the need for unilateral armed self-help by states for humanitarian reasons. Such action is expressly outlawed.

It is unlikely that the General Assembly will resort to the proposal's military force provisions. Rather, it will use the entire procedure to obtain leverage during 1503 exchanges. Recall that Uganda was under 1503 scrutiny for eight years, Iran for seven years, with no marked improvements.¹⁶⁸ The proposed procedure gives oppressive governments ample time to improve their human rights record. Yet its provisions do not allow oppressed groups to suffer indefinitely.

VI. CONCLUSION

The proposed procedure is merely a framework for reform of the existing inadequate enforcement mechanisms. Specific details and policy factors may be added. Its main virtue is that it does not allow oppressive governments, such as Iran, to violate fundamental human rights law by simply ignoring world opinion. Even a "recalcitrant government," such as Iran, will follow the lofty ideals of the

167. De Schutter, *supra* note 164, at 35.

168. Note, *supra* note 125, at 34; Note, *supra* note 4, at 8.

U.N. Charter when its violations produce inevitable and harsh consequences.

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