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THE UNITED NATIONS AND HUMAN RIGHTS AND THE CONTRIBUTION OF THE AMERICAN BILL OF RIGHTS*

By Mr. Jan Martenson**

We are living in truly momentous times. A tide of democracy and demands for respect for human rights continues to sweep our globe. Democracy is returning to many countries, and in others the people are electing democratic governments for the first time. If successful, these changes towards democracy and respect for human rights may well mark one of the turning points in the course of human destiny. However, success for those struggling for democracy and respect for human rights depends not only on their own efforts but on understanding and support from other democratic societies. Sadly, elsewhere, just demands for freedom have been met by the tragic use of force and repression which deeply concerns us all and represents a fundamental challenge for the future.

We are also entering a new era in international affairs. The end of the Cold War and the renewed realization of the importance of multilateralism enable us to pursue the ideal of the founders of the United Nations with renewed vigor. Our Organization's structure, mandates, and means are being scrutinized to enable it to respond effectively to the challenges of the twenty-first century. Nowhere is this more true than in the field of human rights. The challenges facing the international community in responding to the just demands of the peoples of the world for justice, democracy, development, and respect for human rights are enormous and will require the best efforts of every member of that community and an effective and strong United Nations.

For those of us privileged to live in democracy — some with histories hundreds of years old — today's changes present their own personal challenge. Is our democracy as deep as it must be to last? Is it as all-encompassing as it needs to be to ensure the adherence of all its citizens? These are essentially human rights questions; each generation must face them anew and the quality of life of succeeding generations depends on the answers to those questions.

You will thus understand why it is a particular honor and privilege for me to be here today as you celebrate the 200th anniversary of your Bill of Rights and, through that document, the achievements of the United States in recognizing and protecting the fundamental dignity of the human person. The adoption of the first ten amendments to the Constitution in 1787 has proven to be not only of immense significance for human rights within your country but also of primary importance for the protection of human rights worldwide.

The seeds of the human rights clauses of the Constitution and those of the Bill of Rights were brought to the New World from the Old by America's early settlers. They fled persecution and came seeking freedom of religion and a better life for themselves and their families. The struggle for liberty that was also taking place in Europe reinforced their belief in their right to take part in government, to personal liberty and security, to fair

* These remarks were the Keynote Address, delivered October 22, 1991, at the Conference for the United States Federal Judiciary in Honor of the Bicentennial of the Bill of Rights in Williamsburg, Virginia.

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trials, and to a Government which would foster an economic and social system in which they had hopes of prospering.

Many colonial era documents attest to the deep attachment of the people to these basic rights. I am thinking, for example, of the Fundamental Orders of Connecticut (1639), the Massachusetts "Body of Liberties" (1641) and the Virginia Bill of Rights (1776). It was the consistent violation of these rights, catalogued in the Declaration of Independence of 1776, that led the colonies to exercise what today we would call their right to self-determination. In that seminal human rights document, they declared their belief in the self-evident truths that "All men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty and pursuit of happiness." These were the standards by which Governments were to be judged and these standards expressed, simply and eloquently, the fundamental objective of the continuing American experience and of women and men everywhere.

In the 1787 Constitution and the Bill of Rights, the newly independent States sought to create the institutional structures and limits on governmental power which they believed would ensure democratic Government and safeguard individual and public liberties. They responded to the philosophy of the Declaration of Independence by guaranteeing *habeas corpus*, prohibiting *ex post facto* laws, providing for an independent judiciary, laying down procedural guarantees in criminal trials, providing for freedom of religion, speech and assembly, protecting the enjoyment of property, and providing means to promote progress in the sciences and useful arts. Very similar concerns are reflected in other contemporary human rights documents, in particular, the 1789 French Declaration of the Rights of Man and of the Citizen.

The Constitution and Bill of Rights owe their value today to the women and men who struggled to give meaning to the rights they were intended to protect and to foster an open and tolerant society. In their hands, the prohibitions on governmental action became tools to progressively define human rights and fundamental freedoms, and to extend their enjoyment both to ever larger sectors of society and to expanding areas of human activity. A remarkable achievement of the American people, their lawmakers, and their judges has been the adaptation of the demands of human dignity born of a rural and agricultural society to the industrial era in which the rights of individuals and groups must be protected from many different dangers coming from very different sources. For recent examples, we need only to think of the Civil Rights Acts of 1964 and 1965 and the very recent — and much admired — act addressing the rights of disabled persons.

America has thus made a major contribution to the human rights heritage of humankind. Those familiar with American legal documents can see their concepts and works echoed in many national and international instruments and in the judgements of national and international tribunals. This contribution has been made through constitutional and legislative tests, judgments of American courts, and the often courageous efforts of individual American women and men and their private organizations to promote and ensure respect for human rights. Do we not see today, all over the world, in the steadfast opposition to human rights violations by women and men, judges, lawyers, journalists, and human rights advocates a reflection of the American Freedom Marchers of the 1960s? Their nonviolent example continues to inspire many around the globe.

With the founding of the United Nations in 1945, the international community began efforts to promote respect for human rights on a universal basis. The barbarous acts of World War II, which outraged the conscience of mankind, convinced many that ensuring respect for human rights on the national level was crucial to ensuring international peace; promoting human rights was thus repeatedly emphasized as an important post-war international task. In January 1941, President Roosevelt laid down the Four Freedoms — freedom of speech, freedom of worship, freedom from want, and freedom from fear — "everywhere in the world" as America's international goals and

repeated this commitment in the Atlantic Charter of 1941 and the 1942 Declaration on the United Nations.

Major credit for ensuring that specific references to human rights were included in the United Nations Charter of 1945 belongs to the non-governmental organizations — many of them American — active at the San Francisco Conference. The United States Government had taken the unprecedented step of including non-governmental organizations as observers in its delegations and they successfully lobbied to improve the human rights content of the Charter by including a reference to the establishment of a human rights Commission. Secretary of State Settinius said that the inclusion of a human rights clause in the Charter might "well prove one of the most important and significant achievements" of the Conference. Time certainly has proved him right.

The reference in the Charter that, in my view, best catches the spirit of the Four Freedoms and the objectives of the drafters of the Declaration of Independence occurs in its preamble, where the "Peoples of the United Nations" set for their organization the task of promoting "better standards of life in larger freedom."

As soon as the Charter was adopted, priority was given to drafting the Universal Declaration of Human Rights carried out under the inspired chairpersonship of Mrs. Eleanor Roosevelt. Their task was somewhat different than that of the authors of the Bill of Rights. The Universal Declaration was to lay down the content of fundamental human rights as standards of achievement for all societies; national legislation would then be called upon to fix limits on governmental power and mandate needed action.

The 1948 Declaration proclaims a wide range of human rights as it seeks to firmly protect the human right to existence and the necessary means of existence: the rights to physical integrity, to moral and spiritual freedom, and to the fundamental right to take part in Government. Thus we see, for example, the following rights proclaimed: the right to life, freedom from arbitrary arrest, basic guarantees in judicial procedures, the right to an effective remedy, the right to privacy, freedoms of speech, opinion, religion, association and the right to own property. Other rights provided include the right to work, to an adequate standard of living, to education, and to take part in the cultural life of the community. All these rights are to be enjoyed by "everyone . . . without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." Non-discrimination is a fundamental principle of our human rights work.

In the short period of time since the proclamation of the Declaration, the United Nations has approved a true international code of human rights. Well over 70 international human rights instruments have been adopted within the United Nations system. Key treaties are the International Covenant on Economic, Social and Cultural Rights (ratified by 102 States), the International Covenant on Civil and Political Rights (ratified by 98 States), and the International Convention on the Elimination of All Forms of Racial Discrimination (ratified by 129 States). The Convention on the Rights of the Child, adopted in 1989 and already binding on 98 States, will be significant in the future. A Convention protecting women from discrimination in the enjoyment of human rights also exists and the United Nations has a wide range of activities promoting the equality of women and respect for their human rights.

These instruments give precision to the rights which were recognized in general terms in the Universal Declaration and to other rights whose importance has emerged over the years. The human rights concerns of the American Constitution, the Bill of Rights, and subsequent amendments are largely covered. American jurists, diplomats, and non-governmental organizations have made and continue to make important contributions to all our activities, including the drafting of standards. When resubmitting the International Covenant on Civil and Political Rights to the Senate for ratification, President Bush wrote recently:

[T]he Covenant codifies the essential freedoms people must enjoy in a democratic society, such as the right to vote, freedom of peaceful assembly, equal protection of the law, the right to liberty and security, and freedom of opinion and expression. Subject to a few essential reservations and understandings, it is entirely consonant with the fundamental principles incorporated in our own Bill of Rights.

Implementation of international human rights standards presents specific challenges and difficulties not faced so sharply on the national level. States must be persuaded, through moral, political, economic or other pressure, to respect human rights; no public force is available to coerce States or leaders. The final objective is to ensure that national systems function to effectively protect human rights rather than decide on specific cases in international fora. The special conditions attendant on international implementation must not cause us to lose sight of the basic fact that we know with precision what human rights are and when they are violated.

Not only do we have an international code of standards protecting human rights, but the United Nations has also developed a wide range of procedures for overseeing respect for those standards. First, we examine reports from States' Parties by committees of independent experts who discuss with government representatives — often at the ministerial level — respect for civil and political rights, economic, social and cultural rights, the elimination of racial discrimination, equality of women, and the prohibition of torture. These rights will be expanded in the near future to include respect for the rights of the child. These examinations are searching and critical and it is not unusual for States to report modification in practice or law as a result of questions raised by committee members. Two Committees are empowered to deal with individual complaints, that is, complaints that individuals can bring against their own government once they have exhausted domestic remedies. This is indeed a unique feature of international law. Here again, committee decisions on such complaints can result in basic changes in national law and practices, as well as in compensation. Many of these decisions have dealt with elements of a fair trial and with questions of unlawful detention.

Three other methods of implementing United Nations human rights norms have evolved over the years. One such method is the consideration by the Commission on Human Rights, through special rapporteurs on individual countries or on thematic issues such as arbitrary or summary executions, torture, or disappearances.

Special rapporteurs make visits to countries and prepare detailed reports that are reviewed by the General Assembly and which may result in resolutions requiring modification in the legislation or practices. These reports are also scrutinized by the media which focus the attention of international public opinion on perpetrators of human rights violations.

The pioneering effort of the United Nations in this field, the Working Group on Enforced or Involuntary Disappearances, was established with strong United States support. That Working Group developed the methods, including the urgent action cables, used by the Special Rapporteurs on Torture and Summary or Arbitrary Executions. The latest addition to our machinery is the Working Group on Arbitrary Detention which will greatly expand the scope of United Nations action in the field of human rights.

These mechanisms constitute the core of our "urgent action" or "rapid response" capability. Numerous urgent action cables are sent to Governments in response to allegations of individual human rights violations. In 1990 alone, over 1,000 particularly urgent cases were transmitted to Governments by telegram and many more were sent by letter. The results of these initiatives and the responses of the governments are contained in public reports debated in the Commission on Human Rights.

The second mechanism is the study of human rights situations in specific countries or territories by the Commission and the General Assembly. Situations such as that in South Africa, the occupied territories in the Middle East, Afghanistan, Cuba, Iran, Iraq, El Salvador, Romania and occupied Kuwait have been studied. Often these investigations involve on-site visits for meetings with non-governmental organizations, alleged victims, and the government.

Finally, we can refer petitions from individuals and organizations which allege serious, widespread, and systematic violations of human rights to the consideration by human rights organs. In 1990, over 120,000 such petitions or appeals were processed; governments were asked to comment and the matter was prepared for review by the competent bodies responsible for identifying serious situations meriting further United Nations intervention. The Secretary-General, within his Charter-based good offices functions, contacts governments in serious human rights cases and it is gratifying that these communications are often rather effective.

I should point out that in all our endeavors for the protection and promotion of human rights, we are assisted by countless non-governmental organizations, such as Amnesty International and the International Commission of Jurists. These organizations operate in basically every country of the world and provide us with timely information about alleged human rights violations.

Since the very beginning of my mandate in human rights in 1987, I have been convinced of the need for an action-oriented approach by the United Nations in the field of human rights. My philosophy has been based on the three pillars of Legislation, Implementation, and Information/Education. Although the legislative process is today essentially behind us, high priority is given to the implementation of human rights standards. I have thus revitalized and given prominence to a program of technical cooperation in the field of human rights because it offers a unique opportunity for the United Nations to assist countries in building solid foundations for the complex construction of democracy and development.

The program of technical cooperation in the field of human rights provides governments, at their request, with various forms of assistance ranging from the drafting of new democratic constitutions to the establishment of national human rights infrastructures; from providing expert advice in connection with holding free and fair elections or the elaboration of democratic legislation to the training of administrators of justice and other relevant sectors of society; from offering specially-tailored human rights fellowships to qualified nationals to translating and printing into local languages international human rights instruments.

The dramatic advances toward democracy in Eastern Europe over the last few years have provided unique opportunities to act concretely to promote respect for human rights. Thus, providing support for the democratization process in Eastern and Central Europe has become a prime focus of our advisory services and technical assistance activities. In 1988, we organized the first regional human rights workshop for Central and Eastern European countries in Moscow, which was followed by a similar activity in 1989. Last year, we held a European workshop on human rights issues in Kiev, Ukrainian SSR, which was attended by representatives of the CSCE countries, and on August 26 this last year, just one week after the failed *coup d'etat*, I opened a workshop in Moscow on international human rights instruments for judges, lawyers, and senior legal staff from all over the Soviet Union. Expert assistance has also been provided to Romania and Albania in connection with the technical and legal aspects of their elections, to help ensure that they would be both free and fair.

Assistance in inscribing human rights into constitutional law has also been an important part of our program. Last December and January, seminars were organized

respectively in Geneva for Romanian parliamentarians dealing with human rights in the drafting of the new constitution, and in Sofia, Bulgaria, for members of the relevant committee of the National Assembly. In February 1991, a committee of experts visited Bucharest to discuss the draft with those involved in its preparation. Similar assistance has been provided to Mongolia. Finally, agreements for wide-ranging projects of cooperation aimed at setting up or strengthening infrastructures for human rights have been concluded with Bulgaria and Poland and similar discussions are underway with other countries in the region.

Opportunities for promoting respect for human rights have also opened up in Africa and Latin America. Our program provides, *inter alia*, support to the African Commission on Human and Peoples' Rights on that continent. In Latin America, several countries' programs are underway, and we are developing closer cooperation with the Inter-American Commission on Human Rights.

In Asia, many new opportunities for increased cooperation in the field of human rights have emerged. The Centre was recently involved in assisting the government of Mongolia in drafting its new Constitution to ensure universally accepted rights. Furthermore, the Centre has been particularly active in the Philippines, India, and Indonesia in connection with specific programs of cooperation in the areas of training and institution-building for human rights. Also in this region, we have created a network of human rights centers.

An important element in strengthening national protection is providing information to the general public as well as to persons professionally interested in human rights. Indeed, in order to realize human rights, people have to know them. Thus, we have started a World Public Information Campaign for Human Rights, the main aim of which is to create a universal culture of human rights. A well informed constructive body of public opinion in favor of human rights and an attentive media can be very powerful tools in the protection and promotion of human rights. Through this campaign, we have greatly increased the availability of information on human rights, and we are now planning with the national programs of many governments for wide dissemination of information on human rights.

Many of the concerns of the drafters of the United States Constitution and Bill of Rights are on the top of the United Nations human rights agenda today. Growing importance is being placed on ensuring the independence and impartiality of the judiciary and lawyers throughout the world; international criteria have been set and cases of alleged violations of these principles are taken up with governments and discussed in public. Independence of the judiciary is of first importance, but in the view of the United Nations, it achieves its full meaning only when coupled with a commitment to protect human rights. Other issues dealt with are the criteria for a fair trial (on the basis of a report by a Soviet jurist, Mr. Chernichenko and an American judge, Judge Treat), the treatment of detained juveniles, and freedom of expression and opinion.

The human rights aspects of recently emerged problems are also being explored, for example, discrimination against HIV-infected people, computerized personal files, and the rights of persons suffering from mental illness and their access to care; declarations of principles have been adopted recently by the General Assembly on the latter two. These various reports and standards will certainly provide food for reflection and perhaps form the basis of action for those interested in promoting human dignity.

In pursuing our objective of improving the enjoyment of human rights for individuals in every part of the world, we have learned a number of fundamentally important things. The first is that the protection of human rights is a crucial element to achieving progress in our other objectives of securing international peace and security and promoting economic and social development, just as peace, security, and development are

important for human rights. As the Secretary-General has said, "Resolution of conflicts, observance of human rights and the promotion of development together weave the fabric of peace; if one of these strands is removed, the tissue will unravel."

Second, we now understand that human rights, that is, life, liberty, and the pursuit of happiness, are so interrelated that progress must be sought in all areas at once. There are no "second class" human rights.

Third, real progress depends upon a holistic approach, focusing on all the rights of the individual in a particular circumstance. This approach was adopted in the Convention on the Rights of the Child.

Fourth, as the framers of the American Constitution knew so well, democracy is essential to human rights. To achieve respect for human rights, we must promote democracy. Effective participation of citizens in public affairs with respect for all the attending human rights, such as freedom of speech, association, and press, is required for true democracy. Democracy is not only a basic human right, but also a necessary ingredient for broader respect for other human rights. While democracy offers the greatest chance for the development of the potential of each individual, human rights represent the very substance of democratic institutions and the real guarantee for a life of dignity and justice for all without any exception.

However, we also know democracy is not enough in itself to ensure the enjoyment of other human rights and that sustaining democracy and the stability necessary for progress requires the promotion of social justice. As the Secretary-General has said, "Genuine political democracy has little chance to survive, and stability is bound to prove elusive, without social justice." Thus, not only do we assist in the consolidation of democracy, for example through expert assistance in drafting constitutions and the legal and technical aspects of free elections, we also try to promote the rights of such vulnerable groups as children, the extremely poor, migrant workers, indigenous populations, minorities, and other disadvantaged groups, and to advance other rights, such as the right to food, housing, and others.

The importance of democracy is also recognized in other areas of United Nations activity, particularly in development. The concept of good governance and its relationship to human rights, popular participation, and democracy has already received extensive debate with governmental and intergovernmental agencies for development cooperation. Clearly, good governance is now understood to require appropriate observation of certain norms regarding the promotion of fundamental human rights and the encouragement of institutional pluralism, including the operation of non-governmental organizations. The new emphasis on participatory development also implies more democracy, a greater role for local organizations and self-government, respect for human rights, and effective and accessible legal systems. We welcome these trends and would submit that during the 1990's, development cooperation should become a more central political concern in both developed and developing countries. Sustainable development can only occur where individuals are allowed to operate in open and fair legal systems, devoid of arbitrary behavior. Therefore, pluralism, democracy, and openness create the necessary environment for accountability and transparency in public life.

In the two hundred years since the Bill of Rights was adopted, the United States has made much significant progress in protecting the human rights of its people and, through those achievements, has made an indelible mark on the international law of human rights. Many other nations have also significantly expanded the freedom of their citizens and the United Nations has benefitted from their progress. Our standards are designed to incorporate the best achievements of the various forms of civilization and the principal legal systems of the world. I can say with some assurance that the United Nations' human rights standards are high. Yet I dare say no country can truthfully affirm

that it respects them all, and no nation could say it has nothing to learn or no improvements to work for. This is a challenge faced by the international community as a whole.

Unfortunately, our work in promoting respect for human rights has its darker aspects. Alongside the undeniable progress in setting and implementing standards, we must admit with sadness and dismay the barbaric realities of the world. All too often indiscriminate force is used to brutalize populations into submission. Today, public opinion increasingly demands that the gulf between our aspirations and the facts be narrowed.

The Secretary-General recently placed this dichotomy squarely before the international community. Noting that the progress made in promoting human rights has been mostly in conditions of relative normalcy with responsive governments, he wrote, "When human wrongs are committed in systematic fashion and on a massive scale — instances are widely dispersed over both time and place — the intergovernmental machinery of the United Nations has often been a helpless witness rather than an effective agent for checking their perpetration." He thus stated his conviction that the protection of human rights "now involves more a concerted exertion of international influence and pressure through timely appeal, admonition, remonstrance or condemnation and, in the last resort, an appropriate United Nations presence, than what was regarded as permissible under traditional international law." In that regard he went on to say, "It is now increasingly felt that the principle of non-interference with the essential domestic jurisdiction of States cannot be regarded as a protective barrier behind which human rights could be massively or systematically violated with impunity."

This is one of the principal challenges for the future: to devise ways of dealing with governments and authorities who systematically and massively violate basic human rights. The international debate is now open on this delicate question: How can we establish the balance between respect for fundamental human rights — especially in situations of massive and systematic violation — and the national and international prerogatives of States reflected in the concept of sovereignty? The end of the cold war, which in the past has so distorted international relations, now permits us to come face to face with this reality and to raise the fundamental questions required for its solution. As democratic governments increase in number, so do our chances of finding the means for effective international action.

The future of our Human Rights Program will be reviewed at the World Conference on Human Rights scheduled for 1993 in the city of Berlin. Broadly speaking, the objectives of the Conference are to review and assess at a high level progress in human rights since the adoption of the Universal Declaration; to identify obstacles and ways in which they may be overcome; to examine the relationship between development and the enjoyment by everyone of economic, social and cultural rights, as well as civil and political rights; to examine ways to improve the implementation of human rights standards and instruments; to evaluate the effectiveness of the methods and mechanisms used by the United Nations; and to make concrete recommendations for improving the effectiveness of the resources needed to that end.

Whether our means be the drafting and implementation of international standards, the training of lawyers and judges, providing public information, or responding to massive violations, the objective of our human rights program is simple: to help change the way people live. Is this not the vision, and the challenge, of Eleanor Roosevelt, who wrote in 1958:

Where, after all, do universal human rights begin? In small places, close to home — so close and so small that they cannot be seen on any map of the world. Yet they are the world of the individual person; the

neighborhood he lives in; the school or college he attends; the factory, farm or office where he works. Such are the places where every man, woman and child seeks equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere.

And are these not also the objectives which the American colonists set for themselves well over 200 years ago in the Declaration of Independence?

We are entering a new era of great promise for democracy and the protection of human dignity. The challenges faced nationally in the strengthening of democratic institutions and in ensuring respect for human rights are formidable. One very disturbing aspect of today's world is the apparent rise in racism and racial hatred, in particular against migrant workers, refugees, and minorities, and the resurgence of that age-old evil of anti-semitism. We must take effective action nationally and internationally against all forms of racism as an essential part of our work for human rights and democracy.

Thanks to its history of achievements, the United States has a solid foundation on which to build the future. We wish you every success in these crucial endeavors, for your success will strengthen our own international efforts to bring peace, liberty, and development to every inhabitant of our globe.