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# THE INTERNATIONAL BILL OF RIGHTS: SCOPE AND IMPLEMENTATION

JOHN P. HUMPHREY\*

The international community first began to consider the possibility of adopting an International Bill of Human Rights at the United Nations Conference on International Organization in the psychologically appropriate year of 1945. The traumatic experiences through which the world had just passed, including the studied violation of basic rights by the government of one of the most civilized countries, provided the catalyst to revolutionize traditional concepts of the relation of international law to individuals. The Second World War and the events preceding it set forces in motion that radically changed the content and very nature of international law. Traditional international law, *jus inter gentes*, which had governed only the relations of states, was to become a new kind of legal order for which the old name was no longer appropriate. International law became world law.

This radical change in the nature of international law is reflected in the Charter of the United Nations, which was signed on June 26, 1945; references to human rights run through the Charter like a golden thread. One of the principal purposes of the United Nations is "[t]o achieve international co-operation . . . in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion."<sup>1</sup> To that end member states pledged themselves "to take joint and separate action in cooperation with the Organization."<sup>2</sup> Several governments represented at the Conference were prepared to go much further; these delegations sought to entrench a Bill of Rights in the Charter in much the same way a Bill of Rights has been embedded in the United States Constitution.<sup>3</sup> The attempt failed, but, largely because of an energetic lobby conducted by

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1. U.N. CHARTER art. 1, para. 3.

2. *Id.* art. 56. Specific references to human rights also are found in the preamble and in articles 13, 62, 68, and 76. Additionally, every article that refers to the purposes of the United Nations refers to human rights by incorporation.

3. See Humphrey, *The U.N. Charter and the Universal Declaration of Human Rights*, in *THE INTERNATIONAL PROTECTION OF HUMAN RIGHTS* 39 (E. Luard ed. 1967).

nongovernmental organizations,<sup>4</sup> the Charter called on the Economic and Social Council to set up a Commission on Human Rights. President Truman stated in his closing speech to the Conference that this body was expected to draft an International Bill of Rights.<sup>5</sup>

At its second session, in December of 1947, the Commission on Human Rights decided that the proposed Bill would have three parts: a declaration, an international multilateral convention (later to become the Covenants), and measures of implementation. Working rapidly by United Nations standards, the Commission prepared a draft of the first part of the Bill in time for it to be adopted by the General Assembly on December 10, 1948, as the Universal Declaration of Human Rights.<sup>6</sup> The momentum with which the Commission had begun its work then slackened, however; the draft of the remaining parts of the Bill was not completed until 1954.<sup>7</sup> The General Assembly had decided in the interim that there would be two Covenants instead of the one originally contemplated: a Covenant on Economic, Social and Cultural Rights and a Covenant on Civil and Political Rights. The measures for implementation recommended by the Commission were incorporated as part of these two instruments. Twelve years later the Covenants, considerably amended, together with the Optional Protocol to the Covenant on Civil and Political Rights, were approved by the General Assembly and opened for signature.<sup>8</sup> With the ratification of the two Covenants, the Bill's long period of gestation has now ended.

#### THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

The Universal Declaration of Human Rights is not a perfect document. For example, it does not include the fundamental right, recognized even in some authoritarian countries, to petition national authorities; nor does it recognize a right to petition the United Nations. Its treatment of the problem of political asylum is unsatisfactory,<sup>9</sup> and there is no

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4. *Id.*

5. 13 U.S. DEP'T OF STATE, BULL. NO. 314, at 5 (1945).

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

7. G.A. Res. 833, 9 U.N. GAOR Supp. 21, at 20, U.N. Doc. A/233 (1954).

8. International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights and Optional Protocol to the International Covenant on Civil and Political Rights, G.A. Res. 2200, 21 U.N. GAOR Supp. 16, at 49, U.N. Doc. A/6316 (1966).

9. Article 14 recognizes only the right "to seek and to enjoy in other countries asylum from persecution." Universal Declaration of Human Rights, *supra* note 6, art. 14(1).

mention of the protection of minorities. Nevertheless, the adoption of the Declaration may well have been one of the greatest achievements of the United Nations. It provides the framework for the international recognition of those human rights and fundamental freedoms that were left undefined by the Charter. In the tradition of Magna Carta, the American Declaration of Independence, the French Declaration of the Rights of Man, and other historic statements, the Universal Declaration of Human Rights enshrines on the international level a universally accepted philosophy of freedom for the 20th century moving beyond the historic declarations by recognizing that civil and political rights can have little meaning without economic, social, and cultural rights. Its moral and political authority is equal to that of the Charter itself.

The Universal Declaration of Human Rights was not intended to be binding on states as part of positive international law<sup>10</sup>; not only are resolutions of the General Assembly ordinarily not binding, but the Declaration was to be only one part of an International Bill of Rights which was to include a covenant having substantially the same content as the Declaration and which would be binding on those states that ratified it. If the Declaration had been intended to be binding, a covenant would have been unnecessary. Further, though some delegations attempted to breathe legal life into the Declaration by asserting that it was an authentic interpretation of the human rights provisions of the Charter or that it set forth general principles of law, others insisted more convincingly that it was not binding.<sup>11</sup> In the more than a quarter of a century since its adoption, however, the Declaration has been invoked so many times both within and without the United Nations<sup>12</sup> that lawyers now are saying that, whatever the intention of its authors may have been, the Declaration is now part of the customary law of nations and therefore is binding on all states.<sup>13</sup> The Declaration has become what some nations wished it to be in 1948: the universally accepted interpretation and definition of the human rights left undefined by the Charter.

Because the Universal Declaration of Human Rights was not meant to be binding, no attempt was made until the middle 1950's to devise procedures for its international implementation. In 1956, the Economic

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10. See 3 U.N. GAOR 934, U.N. Doc. A/177 (1948).

11. See 3(1) U.N. GAOR 852-930 (1948).

12. Situations in which the Declaration has been invoked are summarized in UNITED NATIONS, UNITED NATIONS IN ACTION IN THE FIELD OF HUMAN RIGHTS (1974).

13. This claim is applicable only to those provisions that are justiciable. Philosophical assertions, such as those set forth in article 1, are not justiciable.

and Social Council, acting under article 64 of the Charter, asked all states that were members of the United Nations to report every 3 years on the progress they were making in the realization of the rights proclaimed by the Declaration and of the right to self-determination. This system was changed in 1965, when states were asked to report in continuing 3-year cycles. In the first year, progress in achieving civil and political rights was to be reported; in the second, progress in economic, social, and cultural rights; in the third, progress in freedom of information. The length of each cycle was extended in 1971, so that states now report only biannually and on any particular topic only once every 6 years, a change that considerably diluted the potential usefulness of the system.

Periodic reporting is the implementation system with which the international community has had the longest, and probably the best, experience. The system established by the Constitution of the International Labor Organization has been particularly successful.<sup>14</sup> The annual reports by member states on the measures they have taken to give effect to the International Labor Organization conventions are examined regularly by a committee of independent experts whose findings are considered every year by the Committee on the Application of Conventions of the International Labor Conference. Representatives of governments appear before this committee to explain any discrepancies noted between their obligations under the conventions and their national law and practice.

The United Nations system has not worked like the prototype provided by the International Labor Organization, chiefly because there is no critical examination of the reports by independent experts.<sup>15</sup> It seems that this system, which potentially is so useful, is in the process of withering away. In accordance with the 6-year cycle, the Human Rights Commission at its 31st session considered reports on economic, social, and cultural rights. But only some 47 governments reported, a figure that compares unfavorably with the 41 that reported in the first round of reports, covering the years 1954 to 1956, and the 57 that

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14. I.L.O. CONST. art. 22.

15. In 1965 the Economic and Social Council decided that the reports should be sent for preliminary examination to the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities, but this body showed so little relish for the assignment that its mandate to study the reports was terminated. See Humphrey, Report of its Committee on Human Rights to the Buenos Aires Conference of the International Law Association, Report of the 53d Conference 440 (1968).

reported in the second round (1956-59), when there were far fewer member states. The Commission devoted only one meeting to the reports and adopted a resolution drafted by its Ad Hoc Committee on Periodic Reports, which met only briefly. The resolution commends "the notable efforts made by the reporting governments . . . to promote the enjoyment of economic, social and cultural rights by increasing numbers of their population," and goes on in 10 short paragraphs to set forth a series of harmless generalities, hardly a critical assessment. Apart from the fact that the reporting governments presumably had to review their legislation in order to prepare the reports, the operation does not seem to have served any useful purpose. The euphemistic assessment rendered by the Commission perhaps could be expected; what is disturbing is the inability of the Commission, after 20 years, to set up a procedure for the critical and objective examination of the periodic reports.

Another United Nations mechanism for the international implementation of the rights proclaimed by the Declaration, which on paper has great potential, is the system created in Resolution 1503<sup>16</sup> by the Economic and Social Council. At the time of its adoption, this resolution appeared to be a real breakthrough.<sup>17</sup> It requests the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities to "refer to the Commission on Human Rights particular situations which appear to reflect a consistent pattern of gross and reliably attested violations of human rights requiring consideration by the Commission."<sup>18</sup> To that end the Sub-Commission set up a working group that is authorized to examine all communications received by the United Nations alleging violations of human rights. The Commission is then to examine any situation so referred to it and decide whether it requires a thorough study to be followed by a report and recommendations to the Economic and Social Council, or whether it should be investigated by an ad hoc committee with the consent of the state concerned. More than 5 years after the adoption of Resolution 1503 the Commission has still to take any action under it, though the Sub-Commission has brought a number of "situations" to its attention. It is difficult, however, to know exactly what is happening because all the discussions relating to the resolution are conducted in secret meetings.

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16. 48 U.N. ECOSOC, Supp. 1A, at 8, U.N. Doc. E/4832 (1970).

17. Humphrey, *The Right of Petition in the United Nations*, 4 HUMAN RIGHTS 463 (1971).

18. 48 U.N. ECOSOC, Supp. 1A, at 8, U.N. Doc. E/4832 (1970).

The Human Rights Commission obviously does not relish the mandate given it by the Council under Resolution 1503. This is not because it is unwilling to discuss specific infringements on human rights in particular countries; rather, it seems to depend on the manner in which complaints are brought before it. As the Commission becomes more politicized, it is more disposed to discuss allegations brought to its attention by states or United Nations bodies whose members are states, but it eschews complaints emanating from individuals or nongovernmental organizations, the consideration of which Resolution 1503 was meant to permit. At its 31st session in 1975, the Commission discussed allegations that human rights were being violated in Chile, Cyprus, the Middle East, and southern Africa. It is highly significant that all these discussions, unlike the discussions of complaints brought to its attention by the Sub-Commission, were conducted in open meetings. Despite the radical developments in the theory of international law brought about by the Declaration, the individual is still a pariah at Turtle Bay.

It is probably a healthy sign that the Human Rights Commission has become less inhibited about discussing specific violations in particular countries and the precedents now being created are important for the development of an international law of human rights. What is disturbing is that the Commission's choice of cases for consideration and of the action it takes on them is only too often determined by political considerations and the hazards of voting patterns. Hence the accusations that it criticizes conduct in certain countries that goes unnoticed in others, and that the standards that regulate its proceedings are not the same for all countries. Human rights cannot and should not be divorced from politics and in a political organization like the United Nations they always will be discussed in political contexts, but there should be an opportunity in the Organization for complaints of individuals protesting the violation of their rights to be considered objectively on their merits, particularly if there are gross violations following consistent patterns. Resolution 1503, if allowed to operate as it was intended, would permit consideration of such complaints, but there is no guarantee that even in that case there would be a fair and objective hearing. For the Commission is composed of politically motivated states represented by instructed delegates; the members of any ad hoc committee of investigation set up under the resolution presumably would be equally politically motivated. What is needed is some judicial or quasi-judicial body, composed of independent persons acting in their personal capac-

ity, before which individual complaints could be brought with some hope that they would be examined fairly and objectively. Resolution 1503 was, however, a step in the right direction. Given a measure of goodwill by governments and the support of an alert public opinion, it could still become the basis of an effective implementation system.

### THE COVENANTS

It is important to remember in any discussion of the Covenants<sup>19</sup> that, unlike the Universal Declaration of Human Rights, they will apply only to those states that ratify them. The Covenants, moreover, can be ratified with reservations and a state can ratify them without accepting the provisions contained in them for international implementation apart from those relating to reporting.

The rights cataloged and defined by the two Covenants are substantially the same as those set forth in the Declaration, but there are important differences. Unlike the Declaration, each of the Covenants recognizes the right of "all peoples" to self-determination.<sup>20</sup> There is no mention in either Covenant of the right to own property or of the right not to belong to an organization. The Covenant on Civil and Political Rights gives states that are parties to the Covenant the right to take measures derogating from their obligations under it "[i]n time of public emergency which threatens the life of the nation."<sup>21</sup> The Cove-

19. International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights and Optional Protocol to the International Covenant on Civil and Political Rights, G.A. Res. 2200, 21 U.N. GAOR Supp. 16, at 49, U.N. Doc. A/6316 (1966).

20. International Covenant on Civil and Political Rights, art. 1(1), 21 U.N. GAOR Supp. 16, at 53, U.N. Doc. A/6316 (1966) [hereinafter cited as Covenant on Civil and Political Rights]; International Covenant on Economic, Social and Cultural Rights, art. 1(1), 21 U.N. GAOR Supp. 16, at 49, U.N. Doc. A/6316 (1966) [hereinafter cited as Covenant on Economic, Social and Cultural Rights].

The word "peoples" is left undefined. The current philosophy of the United Nations is that only colonial peoples have the right to self-determination. Once this right has been exercised, it cannot be asserted again. Nor does the right to self-determination include a right to secede except, of course, for colonial peoples. See Declaration of 1960 on the Granting of Independence to Colonial Countries and Peoples, G.A. Res. 1514, 15 U.N. GAOR Supp. 16, at 66, U.N. Doc. A/4684 (1960).

21. Covenant on Civil and Political Rights, *supra* note 25, art. 4(1). It is unclear whether the states themselves decide if there is a public emergency that justifies derogation from their obligation. Cf. "Lawless" Case, [1961] Y.B. EUR. CONV. ON HUMAN RIGHTS 438, 472: "[I]t is for the [European Court of Human Rights] to determine whether the conditions laid down in Article 15 [of the European Convention] for the exercise of the exceptional right of derogation have been fulfilled . . ."

nant on Economic, Social and Cultural Rights recognizes the right to strike,<sup>22</sup> not set out in the Declaration.

Another important difference between the Declaration and the Covenant is their approach to the difficult question of permissible limitations on the enjoyment of the rights set forth in each document. The Declaration deals with the matter in one short paragraph: "In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society."<sup>23</sup> The state of the economy and the rules of supply and production impose far-reaching natural limitations on the enjoyment of the largely collective rights recognized by the Covenant on Economic, Social and Cultural Rights. For this reason that instrument permits fewer limitations on the rights recognized by it than do the Declaration and the Covenant on Civil and Political Rights.<sup>24</sup> Article 4 of the Covenant on Economic, Social and Cultural Rights, applicable to the whole instrument, states that "the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society."<sup>25</sup> The article on trade union rights permits limitations in the interests of national security, public order, and the rights and freedoms of others; additionally, the right to strike must be exercised "in conformity with the laws of the particular country." "[L]awful restrictions" on the exercise of trade union rights by members of the armed forces, the police, and the state administration also are permitted by the article.<sup>26</sup>

The limitations permitted by the Covenant on Civil and Political Rights are much more far-reaching than those permitted by the Declaration or by the other Covenant; there are therefore greater possibilities

22. Covenant on Economic, Social and Cultural Rights, *supra* note 20, art. 8(1)(d).

23. Universal Declaration of Human Rights, *supra* note 6, art. 29(2). In various articles of the Covenant on Civil and Political Rights, special meaning is given to the term "public order." See notes 29-35 *infra* & accompanying text. This definition raises the question of whether "public order" as used in the Declaration refers to the ordinary meaning of the term as an absence of disorder or to its broader civil law meaning.

24. Trade union rights are subject to greater limitations because juridically they are really civil and political rights. See note 26 *infra* & accompanying text.

25. Covenant on Economic, Social and Cultural Rights, *supra* note 20, art. 4. Note the use of the words "provided by the state." See *id.*

26. *Id.* art. 8.

of abuse and the legal problems involved in their interpretation are more difficult. In addition to article 4, which permits derogations in times of public emergency, there are six articles<sup>27</sup> that permit limitations on the enjoyment of these rights. The language used in these articles is similar to that used in the article of the Covenant on Economic, Social and Cultural Rights referring to trade union rights; the same concepts of national security, public order, and the rights and freedoms of others are mentioned. Three of the articles<sup>28</sup> also mention "public safety," most of them mention "public health," and all six include "morals." Almost all of these potential restrictions on the exercise of individual rights are circumscribed by the provision that the permissible limitations must be "necessary"; any limitation of the right to a public hearing and the rights of assembly and association must be "necessary in a democratic society."

Because the Covenants have now come into force, the meaning and scope of these permissible limitations have become questions of topical urgency. It is not possible to discuss them all here, but because of its importance and the abuse to which it could give rise, some further reference must be made to the concept of "public order" as it is used in the articles of the Covenant on Civil and Political Rights relating to freedom of movement, the right to a public hearing, freedom of expression, and the freedoms of assembly and association. "Public order" apparently has no precise legal meaning in common law jurisdictions; in its ordinary English use the term implies simply the absence of disorder. Therefore, the drafters of the Covenant thought that it was necessary to give the concept the special meaning it was said to have in civil law jurisdictions. Thus, the English text of article 12 on freedom of movement states that "[t]he above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant."<sup>29</sup>

There seems to be little doubt that the civil law concept of *ordre public* means something more than the absence of disorder, but its pre-

27. Covenant on Civil and Political Rights, *supra* note 20, art. 12 (freedom of movement); *id.* art. 14 (public court hearings); *id.* art. 18 (freedom to manifest religion); *id.* art. 19 (freedom of expression); *id.* art. 21 (freedom of assembly); *id.* art. 22 (freedom of association).

28. *Id.* arts. 18, 21, 22.

29. *Id.* art. 12(3).

cise meaning is elusive. At least one outstanding French authority has said that it is impossible to define the concept.<sup>30</sup> An extreme view would have it mean something very near to *raison d'état*, an interpretation that would justify the grossest violations of human rights. It is worth recalling the view expressed by the representative of Spain in the Third Committee of the General Assembly: "In every country the established order could be endangered by the clash of different political, legal and philosophical systems; the State should therefore be able to invoke considerations of public order to safeguard its integrity and sovereignty."<sup>31</sup> Articles that appeared in the Soviet press after the Soviet Union ratified the Covenants in September of 1973 interpret the limitations clauses to permit the restrictions imposed on the enjoyment of human rights in that country.<sup>32</sup> If *ordre public* means anything like this, the inclusion of the concept in the Covenant could well be its Achilles' heel. It is obvious that it does not have this meaning, for whatever the concept may mean in civil law jurisdictions, such an extreme interpretation would defeat the very purposes of the instrument. Moreover, in three of the articles,<sup>33</sup> the concept is qualified by references to "a democratic society." It must be remembered, however, that, unlike the European Convention for the Protection of Human Rights and Fundamental Freedoms,<sup>34</sup> the Covenant creates no judicial or even quasi-judicial apparatus for its interpretation. Nor, unlike the International Convention on the Elimination of All Forms of Racial Discrimination, does it provide for any reference of disputes to the International Court of Justice.<sup>35</sup> If the instrument is to be interpreted by the states that are parties to the Covenant themselves, the inclusion of such an uncertain and potentially dangerous criterion as *ordre public* leaves the door wide open to abuse.

As originally envisioned, the third part of the International Bill of Rights was to contain measures of implementation. The mechanisms for international implementation provided by the Covenants are weak. The Covenant on Economic, Social and Cultural Rights creates no new organic machinery and depends exclusively on reporting for its international implementation. The reporting system contemplated by it adds

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30. C. Civ. art. 6 (Code Civil Annoté Fuzier-Herman & Demogue 1935).

31. 14 U.N. GAOR 240, 3d Comm., U.N. Doc. A/C.3/S.R. 956 (1959).

32. N.Y. Times, Sept. 28, 1973, § 1, at 1, col. 4.

33. Covenant on Civil and Political Rights, *supra* note 20, arts. 14, 21, 22.

34. European Convention for the Protection of Human Rights and Fundamental Freedoms, *opened for signature* April 11, 1950, 213 U.N.T.S. 221.

35. G.A. Res. 2106, art. 22, 20 U.N. GAOR Supp. 14, at 47, U.N. Doc. A/6014 (1965).

nothing to, and is indeed weaker than, the existing reporting procedures for the implementation of the Universal Declaration of Human Rights.<sup>36</sup> However ineffectively the procedures for the implementation of the Declaration may have operated so far in practice, they have great potential inasmuch as they apply to all member states of the United Nations regardless of whether the states have ratified the Covenant.

By article 16 of the Covenant on Economic, Social and Cultural Rights, the ratifying states undertake to report "on the measures which they have adopted and the progress made in achieving the observance of the rights recognized" in the Covenant.<sup>37</sup> The reports, which are to be made in stages following a program to be established by the Economic and Social Council, are sent to that body for consideration and may be forwarded by it to the Human Rights Commission "for study and general recommendation or, as appropriate, for information."<sup>38</sup> The Council from time to time may also make its own reports to the General Assembly with "recommendations of a general nature and a summary of information received from the States Parties."<sup>39</sup> The requirement that all recommendations are to be of a general nature would seem to preclude either the Council or the Commission from making any special reference to any violation by a state of its obligations under the instrument. The obligations of each signatory nation are, in any event, limited by article 2 "to [taking] steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures."<sup>40</sup>

The provisions for the implementation of the Covenant on Civil and Political Rights are more elaborate. Not only are the contracting states obliged to report on progress achieved, but provision is made for the conciliation, on an optional basis, of disputes. There will be a Human Rights Committee of 18 members elected by the contracting parties to

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36. See notes 14-15 *supra* & accompanying text.

37. Covenant on Economic, Social and Cultural Rights, *supra* note 20, art. 16(1).

38. *Id.* arts. 17, 19.

39. *Id.* art. 21.

40. *Id.* art. 2(1). Under article 2, however, developing countries may discriminate against non-nationals: "Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals." *Id.* art. 2(3).

serve in their personal capacity. The Committee will have two functions, the first of which will be to consider the reports that a party must submit within 1 year after the instrument comes into force for the country concerned and "[t]hereafter whenever the Committee so requests"<sup>41</sup> on the measures that the country has adopted giving effect to the rights recognized by the instrument and "on the progress made in the enjoyment of those rights."<sup>42</sup> If the experience of the Committee on the Elimination of All Forms of Racial Discrimination created under the Racial Convention of 1966 can be taken as a guide, it is probable that the new Human Rights Committee will be concerned chiefly with the examination of these reports. It therefore should be noted that though the Committee may study the reports, its only stated powers in relation to them will be to transmit its own reports with "such general comments as it may consider appropriate"<sup>43</sup> to the contracting states and to transmit these comments with copies of the reports received from the states to the Economic and Social Council.

The second function of the Human Rights Committee will be to receive and consider communications (complaints) from one state party to the Covenant alleging that another state party is not fulfilling its obligations. This will be possible only if the disputants have recognized the competence of the Committee, under article 41, to receive such communications.<sup>44</sup> A state that ratifies the Optional Protocol to the Covenant<sup>45</sup> will also recognize the competence of the Committee "to receive

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41. Covenant on Civil and Political Rights, *supra* note 20, art. 40(1). This system should be compared with the reporting requirements of the International Convention on the Elimination of All Forms of Racial Discrimination. Under that system, parties report within 1 year after the Convention comes into force and thereafter every 2 years and when the Committee on Racial Discrimination requests a report. G.A. Res. 2106, art. 9(1), 20 U.N. GAOR Supp. 14, at 47, U.N. Doc. A/6014 (1965).

42. Covenant on Civil and Political Rights, *supra* note 20, art. 40(1). These requirements and the provisions of article 2, by which signatory states engage to undertake legislative reforms to give effect to rights recognized in the Covenant, show that the drafters of the Covenant intended to put an element of progressiveness into the realization of all rights set forth in the Covenants. Again, this is to be compared with the International Convention on the Elimination of All Forms of Racial Discrimination through which the contracting parties undertake to pursue a policy of eliminating racial discrimination "without delay." G.A. Res. 2106, art. 2(1), 20 U.N. GAOR Supp. 14, at 47, U.N. Doc. A/6014 (1965).

43. Covenant on Civil and Political Rights, *supra* note 20, art. 40(4). Note the use of the word "general."

44. The provisions of article 41 come into force when ten states have made declarations under it. These declarations may be withdrawn at any time. *Id.* art. 41(1).

45. Optional Protocol to the International Covenant on Civil and Political Rights, 21

and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant.”<sup>46</sup>

Once the Human Rights Committee receives a communication, its powers are limited. If the communication comes from a state party, the Committee makes its good offices available to the disputants “with a view to a friendly solution of the matter on the basis of respect for human rights and fundamental freedoms”<sup>47</sup> as recognized by the Covenant. If no “friendly solution” is reached, the Committee makes a report that is communicated to the disputants; this report is confined to a brief statement of the facts, including the written submissions and a record of the oral submissions made by the disputants. That is not necessarily the end of the matter, because “with the prior consent of the States Parties concerned”<sup>48</sup> the Committee then may appoint an ad hoc Conciliation Commission consisting of five persons serving in their personal capacity who must be acceptable to the disputants. The Conciliation Commission makes its good offices available to the disputants, considers the matter, and within 12 months must make a report to the chairman of the Human Rights Committee for transmission to the parties concerned. Assuming that no amicable solution is reached, this report again is limited to a statement of the facts; unlike the Human Rights Committee, however, the Conciliation Commission may give “its views on the possibilities of an amicable solution of the matter.”<sup>49</sup> More limited in power than the European Commission of Human Rights, neither the Committee nor the Conciliation Commission will have any right to give its opinion whether the facts disclose a breach of the obligations imposed on states by the Covenant. Nor is there any provision for referring the dispute to any tribunal such as the European Court of Human Rights.

The implementation provisions of the Optional Protocol are more sketchy than those of the Covenant.<sup>50</sup> It is clear, however, that when the Committee considers communications coming from individuals, its meetings are to be closed and the complainant will not have an oral

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U.N. GAOR Supp. 16, at 59, U.N. Doc. A/6316 (1966) [hereinafter cited as *Optional Protocol*].

46. *Id.* art. 1.

47. Covenant on Civil and Political Rights, *supra* note 20, art. 41(1)(e).

48. *Id.* art. 42(1)(a).

49. *Id.*

50. The Optional Protocol was adopted by a much smaller majority than the Covenant. It therefore is likely to be ratified by fewer states.

hearing.<sup>51</sup> The Committee, under article 5, "shall consider communications received under the present Protocol in the light of all written information made available to it by the individual and by the State Party concerned."<sup>52</sup> After studying the complaint, the Committee is to forward its views to the state party and to the individual concerned.<sup>53</sup> There is no question, under the Protocol, of a dispute being referred to a Conciliation Commission. It should be mentioned, finally, that, unlike article 25 of the European Convention<sup>54</sup> and article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination,<sup>55</sup> the Protocol gives nongovernmental organizations and groups of individuals no right of petition. The omission is important because often a wronged individual will not be able to bring a complaint before the Committee without the aid of some organization acting in his behalf.

### CONCLUSION

The ratification of the Covenants will undoubtedly be greeted with a certain fanfare, and certainly it is laudable that a number of states now will be bound by treaty to respect the rights set forth in these instruments and to provide machinery for the implementation of those rights on the national level. Because the Universal Declaration of Human Rights is now part of the customary law of nations, the most important thing that could have been accomplished by the Covenants has not been achieved: the creation of an effective system of international implementation, which originally was to have been the third part of the International Bill of Human Rights. There is no provision in the instruments for judicial or quasi-judicial determination of disputes or for the application of sanctions. States can ratify the Covenants without accepting even the weak provisions that they do contain for their international implementation, apart from the obligation to report. States

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51. Optional Protocol, *supra* note 45, art. 5. It is interesting to compare these stipulations to the language on fair trial of article 14 of the Covenant. See Covenant on Civil and Political Rights, *supra* note 20, art. 14.

52. Optional Protocol, *supra* note 45, art. 5(1).

53. *Id.* art. 5(4). Note that, unlike the provision of the Covenant on Civil and Political Rights, *supra* note 20, art. 42(7)(c), this language is not qualified by the words "on the possibilities of an amicable solution of the matter." This would seem to be a result of hasty drafting rather than an indication of any intention to give broader powers to the Committee when it is dealing with complaints from individuals.

54. European Convention for the Protection of Human Rights and Fundamental Freedoms, *opened for signature* April 11, 1950, art. 25, 213 U.N.T.S. 221.

55. G.A. Res. 2106, art. 14, 20 U.N. GAOR Supp. 14, at 47, U.N. Doc. A/6014 (1965).

can and do make reservations; further, even if they do recognize the competence of the Human Rights Committee and of ad hoc Conciliation Commissions to consider complaints, the continued agreement of the state is required at almost every stage of the proceedings. Even more fundamentally, the Covenants will oblige only those states that ratify them, so that their protection is unlikely to extend to many of the countries where human rights are least respected.

Because the Covenants lack effective implementation procedures, the attention of lawyers still is riveted on the Universal Declaration of Human Rights and the mechanisms based on the Charter for its implementation that, if they can be made to work, will extend the protection of the Declaration to all member states. It can be anticipated that now that the Covenants have come into force, the cry will go up that these mechanisms are no longer necessary and should be scuttled. The argument is specious and should be rejected.