

WORLD LAW: COMMENT

INTERNATIONAL RECOGNITION AND PROTECTION OF FUNDAMENTAL HUMAN RIGHTS

IN 1963 the United Nations adopted a series of resolutions condemning South Africa for its policy of *apartheid* and for repressing those persons situated in the country and its trust territory of South West Africa who displayed opposition to the policy. The first of these resolutions called upon South Africa to abandon the arbitrary trial of political prisoners under laws prescribing the death penalty for opposing *apartheid* and urged that all persons imprisoned or otherwise restricted because of such opposition be unconditionally released.¹ Subsequent resolutions, characterizing South Africa's policy as a serious threat to international peace and security and abhorrent to the conscience of mankind, called upon member nations to refrain from exporting military equipment and petroleum products to South Africa.² Moreover, the Secretary-General was directed to make a study of the South African situation in order to determine what role the United Nations could play in resolving the growing crisis. South Africa's policy is in derogation of United Nations Charter provisions and of South Africa's general obligations as a member of the United Nations, and it raises the question of the extent to which human rights are universally recognized and protected by treaties or general principles of international law.

Various doctrines of natural law have given rise to the concept that every individual has certain inherent fundamental rights worthy of protection.³ Although this concept has been recognized as a principle of constitutional law in civilized states,⁴ its acceptance as

¹ Gen. Ass. Res. 1881 (XVIII), U.N. GEN. ASS. OFF. REC. 18th Sess., Supp. No. 15, at 19 (A/5515) (1963). The vote was 106-1. See 10 U.N. REV. 8 (Nov. 1963).

² Gen. Ass. Res. 1899 (XVIII), U.N. GEN. ASS. OFF. REC. 18th Sess., Supp. No. 15, at 46 (A/5515) (1963); and Security Council Res., U.N. SECURITY COUNCIL OFF. REC. 18th year, Supp. Oct.-Dec. 1963, (S/5471) (1963). See 11 U.N. REV. 21 (1964; 11 U.N. REV. 14 (1964).

³ It has been stated that these fundamental rights "*inhere in the individual* and are not derived from the state." JESSUP, A MODERN LAW OF NATIONS 90 (1959). (Emphasis added.)

⁴ See 1 OPPENHEIM, INTERNATIONAL LAW 736-37 (8th ed. Lauterpacht 1955). Recognition of this concept is found, for example, in the preambles to the United Nations

an international legal principle has proved to be extremely difficult, due in large part to the fact that states have long adhered to the view that a state's authority over all persons within its territory is supreme.⁵ Moreover, rules of international law are based on the common consent of nations.⁶ Thus, states traditionally have been considered the principal "subjects" of international law.⁷ Rights conferred and duties imposed by this law fall as a rule on the states.⁸ Individuals are affected by these rights and duties only to the extent that states grant or impose them as a matter of domestic law. Thus individuals have been considered the "objects" of international law and the protection of any rights they may be thought to have under

draft Covenants on Civil and Political Rights, and on Economic, Social and Cultural Rights. See text accompanying notes 42-47 *infra*. These preambles state that equal and inalienable rights for all members of the human race derive from the inherent dignity of the human person and are the foundation of freedom, justice and world peace. U.N. Doc. No. A/5655 (1963).

⁵ This view is generally referred to as the principle of sovereignty and in its entirety declares that a state is the supreme authority over all persons and property within its territory and over its citizens wherever they may be. See 1 OPPENHEIM, *op. cit. supra* note 4, at 286-88.

The Soviet Union is perhaps the most adamant and outspoken proponent of the concept of absolute sovereignty. Professor V. M. Koretsky, the Soviet member of the International Court of Justice, has been quoted as stating that sovereignty is among "the fundamental democratic principles of international law . . ." SOVEREIGNTY WITHIN THE LAW, ch. 17 (Larson ed. Fall 1964). So far as the Soviet Union's position within the family of nations is concerned, "Soviet policy makers still want Soviet sovereignty to be unchallengeable." *Id.* ch. 17.

It is said that the territorial concept of sovereignty has been superseded by a personal concept—that today the core of sovereignty "lies in the emotional bonds of nationalism." The result of this subtle change has been to confirm rather than weaken a state's opposition to intrusions into the "sacred field" of domestic treatment of its individuals. In no other area is the resistance to international enforcement machinery thought to be more vigorous than in the relations between a state and its subjects. Hoffmann, *Implementation of International Instruments on Human Rights*, 1959 AM. SOC'Y INT'L L. PROC. 235, 236.

⁶ 1 OPPENHEIM, *op. cit. supra* note 4, at 17. Once rules have been established by common consent, such consent is also necessary to alter them. Thus a state cannot, without violating international law, unilaterally declare that it will no longer be bound by certain principles of that law. *Id.* at 18.

⁷ Because rules of international law are based on the common consent of states, because international law is a law between states, and because it is a law primarily used to regulate the conduct of states, and not of individuals, states have been considered to be its principal subjects. 1 OPPENHEIM, *op. cit. supra* note 4, at 19, 636. See generally 1 OPPENHEIM, *op. cit. supra* at 19-22, 636-40; BRIERLY, *THE OUTLOOK FOR INTERNATIONAL LAW* 108 (1944). But Jessup believes that today the traditional view is no longer generally accepted and that individuals as well as states are now considered to be the subjects of international law. JESSUP, *op. cit. supra* note 3, at 15-17.

⁸ There are a few instances where individuals are specifically accorded certain rights and duties under international law. See 1 OPPENHEIM, *op. cit. supra* note 4, at 637.

this law depends upon the willingness of the states to act in their behalf.⁹

Two consequences follow from the foregoing principles. First, in the absence of treaty provisions, an individual has no legal standing before an international court to complain that his rights have been violated by the state in which he resides. Secondly, he can have no international rights as against his own state. As a result, formidable obstacles confront any attempt to give international legal recognition and protection to human rights.

There exists, however, a compelling reason for international recognition of such rights. International law, by preventing a state from mistreating its own nationals, enhances world peace. Experience has shown that the systematic denial by a state of its nationals' fundamental human rights can create a dangerous situation. First, such denial invariably creates a domestic conflict with the ever present possibility of civil war. Were such a war to result, it might erupt into an international conflict. The internal struggle in the Congo, though not based on the issue of individual rights, is a case in point. The danger that the Congo struggle might turn into a major war at one time seemed considerable as Russia sided with the rebellious native faction against the United Nations and the United States, both of which backed the government in power. Secondly, experience has shown that a state which denies the fundamental rights of its own people is not likely to respect such rights where other peoples are concerned.¹⁰ The atrocities of the Nazi

⁹ Individuals are considered to be the objects of international law insofar as it is directed toward them and insofar as they are the "thing" sought to be regulated or protected by it. See Manner, *The Object Theory of the Individual in International Law*, 46 AM. J. INT'L L. 428, 428-29 (1952). The object theory is criticized as a juridically inadequate and unrealistic reflection of international law as it exists today. *Id.* at 430-32, 449. See generally, BRIERLY, *op. cit. supra* note 7, at 108; JESSUP, *op. cit. supra* note 3, at 17; 1 OPPENHEIM, *op. cit. supra* note 4, at 19-20, 636-42; MacChesney, *International Protection of Human Rights in the United Nations*, 47 Nw. U.L. REV. 198, 198-201 (1952).

¹⁰ See Falk & Mendlovitz, *Towards a Warless World: One Legal Formula to Achieve Transition*, 73 YALE L.J. 399, 413 n.37 (1964); 1 OPPENHEIM, *op. cit. supra* note 4, at 736-37. General Marshall was aware of this danger when he addressed the General Assembly of the United Nations in Paris in 1948: "Systematic and deliberate denial of basic human rights lies at the root of most of our problems and threatens the work of the United Nations. It is not only fundamentally wrong that millions of men and women live in daily terror of secret police, subject to seizure, imprisonment, and forced labor without just cause and without fair trial, but these wrongs have repercussions in the community of nations. Governments which systematically disregard the rights of their own people are not likely to respect

regime and of the present South African government are contemporary examples. Such behavior on the part of some states has strengthened the belief that international legal recognition and protection of human rights is essential to the maintenance of world peace.

There are other reasons for seeking such international recognition and protection of human rights. The individual ought to be the ultimate concern of international law as he is under most domestic legal systems.¹¹ Therefore he should be afforded some means of securing the protection of that law. Furthermore, most states ostensibly seek to achieve through freedom the well-being and full development of the human personality. It should be possible for states to agree on some standard of human rights. This has been done, but, unfortunately, recognition of a standard is not synonymous with a willingness on the part of state *A* to allow states *B*, *C*, and *D* to insure that state *A* measures up to this standard. This is precisely where the problem lies today.

The idea that the protection of human rights ought to be a matter of international responsibility was recognized and accepted even before the two world wars. This recognition was manifested almost entirely in the form of treaties. In the Berlin Treaty of 1878, several countries were compelled to recognize the religious freedom of their nationals.¹² After World War I, the Minority Treaties were executed whereby the signatories agreed to the just and equal treatment of racial, religious, and linguistic minorities.¹³ In 1919 the International Labor Organization was created, with the fundamental objective of attaining conditions under which all human beings can pursue both their material well-being and their spiritual development in conditions of freedom, dignity, economic

the rights of other nations and other people, and are likely to seek their objectives by coercion and force in the international field." As quoted in Cohen, *Human Rights Under the United Nations Charter*, 14 *LAW & CONTEMP. PROB.* 430, 436 (1949).

¹¹ Is not the protection of the individual the ultimate *raison d'être* of all legal systems? Speaking of the individual's status under international law, Lauterpacht states that "no legal order, international or other, is true to its essential function if it fails to protect effectively the ultimate unit of all law—the individual human being." LAUTERPACHT, *INTERNATIONAL LAW AND HUMAN RIGHTS* 78-79 (1950); see Manner, *supra* note 9, at 430.

¹² See 1 OPPENHEIM, *op. cit. supra* note 4, at 712.

¹³ The principal minority treaties are cited in 1 OPPENHEIM, *op. cit. supra* note 4, at 713 n.1. See generally 1 OPPENHEIM, *op. cit. supra* at 711-16 and authorities cited therein.

security, and equal opportunity.¹⁴ Under the Slavery Convention of 1926, the signatories agreed to undertake to bring about the suppression and prevention of slave trade in all its forms.¹⁵ After World War II, the General Assembly of the United Nations adopted the Convention on the Prevention and Punishment of the Crime of Genocide. The convention declares that this crime, as defined in the convention, is punishable under international law, and that both private individuals and rulers and public officials can be punished for its commission.¹⁶ Thus it can be seen that there is a growing awareness and conviction among the nations of the world that the question of human rights is an international one and should be dealt with at that level.¹⁷

Perhaps the most important expression of international concern

¹⁴ 1 OPPENHEIM, *op. cit. supra* note 4, at 718. The International Labor Organization was created by virtue of the Peace Treaties of 1919-21 as an autonomous part of the League of Nations. Upon the League's dissolution, the Organization entered into a relationship with the United Nations as a specialized agency. See generally 1 OPPENHEIM, *op. cit. supra* at 716-32, and authorities cited at 716-17.

¹⁵ March 23, 1929, 46 Stat. 2183, T.S. No. 778; 60 L.N.T.S. 253 (1927). The convention was negotiated at Geneva under the auspices of the League of Nations. See generally 1 OPPENHEIM, *op. cit. supra* note 4, at 732-35. Notwithstanding the convention's almost universal acceptance, a commission appointed in 1950 by the Economic and Social Council of the United Nations unanimously concluded that slavery in its crudest form still exists in the world today.

¹⁶ 78 U.N.T.S. 277 (1951); Gen. Ass. Res. 260 (III), U.N. GEN. ASS. OFF. REC. 3d SESS. I, Supp. Sept.-Dec. 1948, at 174 (A/810) (1948). See generally 1 OPPENHEIM, *op. cit. supra* note 4, at 749-51.

¹⁷ Other human rights conventions in force include: Convention Concerning Freedom of Association and Protection of the Right to Organize, 68 U.N.T.S. 17 (1950); Convention Concerning the Application of the Principles of the Right to Organize and to Bargain Collectively, 96 U.N.T.S. 257 (1951); Convention Concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, 165 U.N.T.S. 303 (1953); Convention Relating to the Status of Refugees, 189 U.N.T.S. 137 (1954); Convention on the Political Rights of Women, 193 U.N.T.S. 135 (1954); Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 266 U.N.T.S. 3 (1957); Convention on the Nationality of Married Women, 309 U.N.T.S. 65 (1958); Convention Relating to the Status of Stateless Persons, 360 U.N.T.S. 117 (1960). For a description of those human rights conventions concluded under the auspices of the United Nations, see Schwelb, *International Conventions of Human Rights*, 9 INT'L & COMP. L.Q. 654 (1960). See generally 1 OPPENHEIM, *op. cit. supra* note 4, at 736-56. Referring to the now numerous human rights declarations and conventions, Jenks recently stated: "[M]atters have now reached the stage of development at which international guarantees of human rights must be regarded as one of the main substantive divisions of international law." JENKS, *THE COMMON LAW OF MANKIND* 45 (1958).

Modern communications and transportation have no doubt played a part in making existing social conditions and the denial of human rights a matter of world wide concern. Bebr, *International Protection of Human Rights and Freedoms*, 29 PHIL. L.J. 312 (1954).

for human rights is found in the United Nations Charter. It is this Charter, a treaty, which defines South Africa's responsibility to promote and protect the rights of its own nationals. The Preamble declares that the peoples of the United Nations are determined "to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small" One of the purposes of the United Nations is "to achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion."¹⁸ The General Assembly has the duty to assist in carrying out this purpose.¹⁹ The Economic and Social Council is required to set up a commission to promote human rights.²⁰ And there are other provisions in the Charter the total effect of which are to show a strong disposition on the part of the United Nations to concern itself with the advancement of human rights.²¹

Even in the United Nations Charter, however, there is no provision stating *expressis verbis* that a legal obligation rests on the member-states to observe and enforce fundamental human rights.²² The closest the Charter comes to expressing such an obligation is in article 56 where it is stated that "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." Article 55 states that the United Nations shall promote universal respect for, and observance of, human rights and fundamental freedoms for all.²³ The Charter does not, however, authorize inter-

¹⁸ U.N. CHARTER art. 1, para. 3.

¹⁹ U.N. CHARTER art. 13, para. 1.

²⁰ U.N. CHARTER art. 68.

²¹ See generally 1 OPPENHEIM, *op. cit. supra* note 4, at 738-39. Nowhere, however, does the Charter specifically define human rights.

²² It is suggested that in such a basic constitutional instrument as the Charter there is probably no basis for arguing that its parties are not under a duty to respect and observe one of the objects of the organization, in this case the promotion of, and respect for, human rights and fundamental freedoms. 1 OPPENHEIM, *op. cit. supra* note 4, at 739-40.

²³ Lauterpacht states that as a matter of good faith, articles 55 and 56 can only be meant to impose upon the members "a moral—and, however imperfect, probably a legal—duty to use their best efforts, either by agreement or, whenever possible, by enlightened action of their own judicial and other authorities, to act in support of a crucial purpose of the Charter." 1 OPPENHEIM, *op. cit. supra* note 4, at 739-40.

ference, individually or collectively, where a member-state is abusing its nationals' fundamental rights, except insofar as such interference is incidental to Security Council action under article 39.²⁴ To the contrary, article 2 (7) expressly states that the United Nations shall not have any authority to "intervene in matters which are essentially within the domestic jurisdiction of any state or . . . require the Members to submit such matters to settlement under the present Charter"²⁵ Thus it seems that the United Nations clearly has no right to intervene in behalf of individuals whose fundamental rights are allegedly being violated by their parent state, so long as such violations do not adversely affect the interests of other states thereby threatening international peace and security. This assumes, of course, that a state's recognition and protection of human rights is by definition a matter essentially within its domestic jurisdiction.²⁶

²⁴ Article 39 states: "The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security." Article 41 authorizes the Security Council to call upon the members of the United Nations to completely sever communications, and economic and diplomatic relations, with any state considered guilty of acting within the scope of article 39. Article 42 states that if the Security Council considers article 41 measures to be inadequate, "it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations."

²⁵ "Intervention," as used in the Charter, and as used generally in international law, means "dictatorial interference." 1 OPPENHEIM, *op. cit. supra* note 4, at 305, 415-16; KELSEN, *PRINCIPLES OF INTERNATIONAL LAW* 63-64 (1952); see generally Henkin, *Force, Intervention, and Neutrality in Contemporary International Law*, 1963 AM. SOC'Y INT'L L. PROC. 147, 154-59. The classical concept of intervention involved the use of measures of compulsion, but as used in the Charter the term is not conceived to be that narrow. It is a more comprehensive term which includes modern techniques ranging from subversion to hostile propaganda where used to undermine the internal autonomy of another State. Falk, *The United States and the Doctrine of Nonintervention in the Internal Affairs of Independent States*, 5 HOW. L.J. 163, 166 (1959). The United States position is that, as used in article 2 (7), the term denotes "interference of an imperative character, depriving a state of its customary discretion"; that to give a loose meaning to the term which would embrace all actions having an impact within member states would have the effect of nullifying significant provisions of the Charter. Plimpton, *Principles of International Law Concerning Friendly Relations and Cooperation Among States: International Law and Nonintervention*, 50 DEP'T STATE BULL. 133, 137 (1964).

²⁶ Whether a matter lies essentially within the domestic jurisdiction of a state is said to depend in the first instance on the scope and content of international law. Today, states recognize international obligations as to matters previously considered within their unfettered discretion. Moreover there has been a marked growth of voluntary treaty relationships in which states have assumed international obligations for matters previously considered within their domestic jurisdiction. Nor can a matter

On the other hand, article 2 (7) does not rule out action by way of discussion, study, inquiry and recommendation that falls short of intervention.²⁷ Thus it in no way vitiates the power of the General Assembly and the Economic and Social Council—whose functions are limited to studying, discussing, recommending, and promoting²⁸

lie essentially within a state's domestic jurisdiction if it would be likely "to endanger the maintenance of international peace and security" within the meaning of article 33 of the Charter. This fact has been repeatedly recognized in the United Nations. Plimpton, *supra* note 25, at 139.

Judge Jessup states that "the treatment by a state of its citizens is *no longer* a matter which, under Article 2, paragraph 7 of the Charter, is 'essentially within the domestic jurisdiction.'" JESSUP, *op. cit. supra* note 3, at 87 (1952). (Emphasis added.) The American delegation to the United Nations has taken the position that article 2 (7) was not intended "to put an absolute ban on the consideration of matters relating to human rights in connection with the appropriate consideration of conditions affecting the friendly relations between states.... [However it is] not easy to determine with precision what constitutes interventions in domestic affairs, or what sort of deliberate and systematic disrespect for or disregard of human rights takes a matter out from the realm of domestic concern and makes it a matter of international concern.... [It is] a part of statesmanship to proceed cautiously in this delicate field of human rights and fundamental freedoms so as to avoid serious repercussion on sensitive domestic policies and strong reaction against wholesome international efforts in this field." Cohen, *supra* note 10, at 434-35.

²⁷ I OPPENHEIM, *op. cit. supra* note 4, at 416. A recommendation, though not implying a legal obligation to accept it, may amount to intervention and thus come within article 2 (7) if it is calculated to exercise direct pressure upon a state. *Ibid.* See MacChesney, *supra* note 9, at 203; see generally Falk, *supra* note 25. "[T]he determination whether action by a United Nations organ has the imperative element which is important to the concept of 'intervention' is necessarily one to be answered in the context of a sophisticated analysis of the language of the [organ's] resolution and the attendant circumstances." Plimpton, *supra* note 25, at 139. It is stated that the General Assembly, for example, has of late borne greater responsibility because of the weakening of the Security Council due to abuse of the veto. The Assembly has sought and found means to give its actions effectiveness commensurate with this responsibility. To assert, in this light, that its resolutions "are necessarily devoid of any element of the imperative even where such resolutions... are only recommendatory is to shut our eyes, for example, to General Assembly resolutions establishing and regulating military-type forces." *Id.* at 138. On the other hand article 2 (7) is not intended to preclude discussion, or, under appropriate circumstances, expressions of opinion or recommendation, as for example where the Assembly is considering the promotion and protection of human rights in a particular country. *Id.* at 137. Moreover, article 2 (7) does not rule out interference "pure and simple" which is to be distinguished from "dictatorial interference." Examples of the former are: good offices, mediation, intercession, and cooperation. I OPPENHEIM, *op. cit. supra* at 305.

It has been noted that one of the problems involved with any authorization of intervention is that it creates "a manipulative nexus that can itself be used as a justification for an abusive intrusion upon the legitimate orbit of autonomy of another State. An intervening State may claim to protect human rights so as to hide its dominant motive which is remote from altruism.... In this respect the collective machinery of the United Nations... is an important step towards a desirable improvement in the quality of international order...." Falk, *supra* note 25, at 167-68.

²⁸ U.N. CHARTER arts. 10, 11, 13, 60, 62, 68.

—to act in accordance with the purposes of the Charter in promoting human rights. Nor does article 2(7) limit the Security Council in cases arising under article 39.²⁹ Article 39 authorizes the Security Council to take cognizance of situations threatening international peace and security, and authorizes enforcement action to maintain or restore peace and security insofar as such situations require.³⁰ Should the Security Council decide that a state's violation of human rights constitutes a threat to or breach of international peace, it could act under article 39, intervening if necessary, to maintain or restore the peace.³¹

²⁹ Article 2(7) states that the principle contained therein "shall not prejudice the application of enforcement measures under Chapter VII." Article 39 is found in Chapter VII. See note 24 *supra*.

³⁰ There is no inconsistency in terms between article 2(7) and article 39. Once a matter becomes a threat to international peace and security, it is of legitimate international concern and can no longer be said to be of essentially domestic character. "On the other hand, the fact that a question or dispute is bound to have international repercussions, however grave, is probably not in itself sufficient to remove a matter from the sphere of domestic jurisdiction. To hold otherwise would mean to make it possible for any State or any party to a dispute to circumvent a provision, which must be given *some* meaning, of the Charter by the simple device of raising the dispute in the international sphere or by adopting a threatening attitude menacing the peace of the world." 1 OPPENHEIM, *op. cit. supra* note 4, at 418.

³¹ Such a decision by the Security Council would seem to be more than a remote possibility. Members of the Afro-Asian bloc have recently warned the General Assembly that South Africa's policy of *apartheid* is becoming a threat to international peace and security. Professor Quincy Wright has expressed the view that unless common values in the field of human rights are developed, peace will be difficult to maintain; if no restrictions are placed on a state's treatment of its nationals, war is likely to result. 1959 AM. SOC'Y INT'L L. PROC. 254. See generally Cohen, *supra* note 10, at 435-36. On the other hand, intervention may well be more of a threat to international peace than a state's continued violation of human rights. Hoffman, *supra* note 5, at 243. South Africa may be a case in point. It is said that as a result of Afro-Asian repugnance over that government's policies, South Africa has intensified its efforts to carry *apartheid* to its ultimate refinement. N.Y. Times, Oct. 20, 1963, § 4, p. 3, col. 1.

Russia has taken a strong stand against South Africa's racial policy, presumably on the basis that the policy is that of white colonialists. In condemning the policy the Soviet Union has suggested that measures even more severe than the Cuban blockade might be used against South Africa. 10 U.N. REV. 22-24 (Aug.-Sept. 1963). Thus it appears that Russia would not prevent the Council from intervening were it felt that South Africa's policy had become a threat to international peace. This position, however, would be inconsistent with Russia's strongly stated views opposing any interference in the internal affairs of other states. See INST. OF LAW OF THE ACAD. OF SCIENCES OF THE U.S.S.R., INTERNATIONAL LAW 137-38; Crane, *Soviet Attitude Toward International Space Law*, 56 AM. J. INT'L L. 685, 712-13 (1962). The position of the United States has not always been unlike that of the Soviet Union. In 1955 Secretary of State Dulles stated that questions of human rights and fundamental freedoms "lie outside the proper sphere of international obligation and are essentially domestic matters within the exclusive jurisdiction of each State." Testimony before the Sub-

Article 2 (7) would not in fact seem to impose a limitation on the organs of the United Nations in promoting and encouraging the protection of fundamental human rights and freedoms.³² Nowhere, however, does the Charter authorize individual or collective enforcement action for the express purpose of preventing a member state from abusing the fundamental human rights of its own nationals, unless such authority can be inferred from article 56.³³ Thus while it cannot be said that the Charter provides any guarantees to an individual regarding the protection of his fundamental rights, it does impose a moral, and possibly a legal,³⁴ duty on the part of

committee on Constitutional Amendments of the Senate Judiciary Committee, May 2, 1955, appearing in *Documents on American Foreign Relations* 76-82 (1955).

However, in his address to the 18th General Assembly of the United Nations, September 20, 1963, the President of the United States strongly implied that the question of "discrimination and persecution on grounds of race and religion anywhere in the world, including our own nation" is no longer a domestic one. He said, "Our concern is the right of all men to equal protection under the law—and since human rights are indivisible, this body [the United Nations] cannot stand aside when those rights are abused and neglected by any member state.... [A]bsolute sovereignty no longer assures us of absolute security." With regard to the role of the United Nations in preserving international peace, see generally Falk & Mendlovitz, *supra* note 10, at 412-21.

³² "The scope of that task is restricted not by the domestic jurisdiction clause of Article 2 (7), but by the limitations imposed upon the powers of the General Assembly and of the Economic and Social Council by the general scheme of the Charter. But there is no question of Article 2 (7) nullifying the possibilities of the solemn and numerous provisions in the matter of human rights and freedoms." 1 OPPENHEIM, *op. cit. supra* note 4, at 416-17, n.3. It has been suggested, however, that article 2 (7) does impose some restrictions on the United Nations in its efforts to protect human rights, but that the organization has shown a willingness to disregard these constraints in order to solve festering domestic social problems. It is urged that the United Nations should develop techniques of "precautionary intervention" to be used where such problems exist in order to prevent their escalation into cold war crises. Falk & Mendlovitz, *supra* note 10, at 413. See 1 OPPENHEIM, *op. cit. supra* at 418-19 (examples of United Nations action in what might be thought to be solely domestic issues); MacChesney, *supra* note 9, at 204-05. *But see* Kelsen, *Limitations on the Functions of the United Nations*, 55 YALE L.J. 997 (1946), regarding the disintegrating effect of article 2 (7).

³³ See text accompanying notes 22-24 *supra*.

³⁴ "[T]he observance of fundamental human rights...has become a matter of legitimate concern for the United Nations and its members. Though imperfect from the point of view of enforcement, the relevant provisions of the Charter constitute legal obligations of the members.... The fundamental human rights and freedoms acknowledged by the Charter must henceforth be regarded as legal rights recognized by International Law." 1 OPPENHEIM, *op. cit. supra* note 4, at 740-42. Judge Jessup has stated, "It is already the law, at least for Members of the United Nations, that respect for human dignity and fundamental human rights is obligatory. The duty is imposed by the Charter, a treaty to which they are parties." JESSUP, *op. cit. supra* note 3, at 91. Thus, "it would no longer be possible for a state to brush aside international representations concerning a violation

state-signatories to use their best efforts to act in support of and in compliance with the purposes of the Charter.³⁵

In view of the purposes enumerated in the Charter, and perhaps because of its inherent limitations insofar as it fails to enumerate specific human rights and provide for their enforcement, several significant steps have been taken to implement it. In 1948 the General Assembly adopted the Universal Declaration of Human Rights which rather generally defines broad fundamental freedoms and human rights.³⁶ It states that everyone, without distinction of any kind, has the right: to life, liberty, and security of person; to the equal protection of the law without discrimination; to be free from subjection to arbitrary arrest; to a fair and public hearing by an independent and impartial tribunal; to be presumed innocent until proved guilty; to be free from arbitrary interference with privacy; to freedom of movement; to hold property; to freedom of thought, conscience, religion, opinion and expression; and to peaceful assembly and association.

The declaration is important, first, because it defines and gives an authoritative exposition of human rights and fundamental freedoms. Secondly, it is important because it officially recognizes that there are fundamental human rights which are universal and

of those rights on the ground that the victims were its citizens and that international law leaves a state free to deal with its own as it wills." *Id.* at 87. "Even without further treaties, the provisions of the Charter constitute legal obligations, inadequate in definiteness, to be sure, but permitting gradual development." MacChesney, *supra* note 9, at 205. But, referring to the various provisions of the Charter which concern the recognition and protection of human rights, it has been stated that "it is hardly possible to interpret these provisions as constituting legal obligations of the members to treat their subjects in conformity with this principle [of respect for fundamental human rights]." KELSEN, *op. cit. supra* note 25, at 144.

³⁵ The existence per se, however, of a duty to comply is by no means tantamount to enforcement of such duty. In discussing the contrast between the failure of attempts to enforce human rights on a world scale and the success of such attempts in Europe, Hoffmann states that the United Nations has traveled a road to frustration because it has attempted since its inception to define human rights without setting up international machinery for their enforcement. Hoffmann, *supra* note 5, at 235. For his appraisal of the present status of human rights in the United Nations, see *id.* at 238.

³⁶ Gen. Ass. Res. 217 (III), U.N. GEN. ASS. OFF. REC. 3d Sess. 1, Supp. Sept.-Dec. 1948, at 71 (A/810) (1948). The declaration is deficient in that its provisions are insufficiently precise to enable states to determine the exact nature and scope of their obligations. It has been stated that the reason for this is undoubtedly the fact that different states attach different values to the fundamental rights enumerated in the declaration. These rights mean different things to different people. See Boyle, *International Law and Human Rights*, 23 MODERN L. REV. 167, 168 (1960).

of international concern. In voting for the declaration's adoption, states officially declared that they recognize such rights for all peoples.³⁷ It would ill-behoove one of them to say at a later date that there are no universal fundamental rights, or that the recognition of such rights, if they exist, is solely a question for each nation to decide.³⁸ The fact that the declaration is not a legally binding instrument does not lessen its impact in this respect.³⁹ Perhaps the absence of a binding obligation made states more willing to subscribe to the declaration's broad terms; nevertheless they certainly were aware that in doing so they were recognizing and giving moral and, perhaps ultimately, legal force to the principle that there do exist certain universal inherent fundamental human rights.⁴⁰ Thus, although from a practical point of view the declaration is of limited importance, it is significant in the quest to secure the recognition and protection of human rights.⁴¹

³⁷ The declaration was adopted by the General Assembly without a dissenting vote.

³⁸ However in spite of the fact that the Soviet Union signed the declaration (allegedly to avoid unnecessary censure from world opinion), the question of human rights and fundamental freedoms constitutes a deep division between the democratic and Marxist conceptions of law and justice. See Korowicz, *Protection and Implementation of Human Rights within the Soviet Legal System*, 1959 AM. SOC'Y INT'L L. PROC. 248.

³⁹ The declaration is a resolution of the General Assembly. Assembly resolutions generally take the form of recommendations which impose no legal obligations on member states. See U.N. CHARTER arts. 10-17. States, therefore, are not bound to recognize the rights enumerated in the declaration, nor is there any provision for enforcement of those rights. Article 8 of the declaration states that one's remedy lies in appealing to competent national tribunals, not to an international body. Nor, it is argued, is there any warrant for the assumption that the declaration can be properly resorted to for an interpretation of the relevant provisions of the United Nations Charter. See generally LAUTERPACHT, *op. cit. supra* note 11, at 397-417; 1 OPPENHEIM, *op. cit. supra* note 4, at 744-46. *But see* MacChesney, *supra* note 9, at 206-07, who maintains that though the declaration does not have the force of law, it "should be regarded as an expression of public policy and as an interpretation of the Charter . . ." Nevertheless, the declaration is a forceful statement of universal beliefs and common goals. In its preamble the General Assembly proclaimed it to be a "common standard of achievement" by which nations might strive, "by progressive measures, national and international, to secure . . . universal and effective recognition and observance [of these rights and freedoms] both among the people of Member States themselves and among the peoples of territories under their jurisdiction."

⁴⁰ Since the declaration is not an international convention (a legal instrument), it would appear to be outside international law. It is an embodiment neither of international custom and therefore evidence of a general practice accepted as law, nor of general principles of law recognized by civilized nations. See STAT. INT'L CT. JUST. art. 38. Thus it cannot be invoked as the source of an international legal obligation. Regarding the declaration's moral force, see 1 OPPENHEIM, *op. cit. supra*, at 417-24.

⁴¹ See 1 OPPENHEIM, *op. cit. supra* note 4, at 394-96. It is thought that the declara-

Shortly after the United Nations was founded, its Commission on Human Rights began drafting the international covenants on human rights. The products of this effort are two covenants, one on civil and political rights and the other on economic, social and cultural rights. The value of these instruments is apparent: First, they would define more explicitly the scope and standards of those human rights considered fundamental in the Declaration of Human Rights.⁴² Secondly, to the extent they are ratified, they would give substantial legal efficacy to the general obligations now imposed by the Charter. Finally, they would provide a means for implementing the rights contained therein.

During the 1963 session of the General Assembly, the Third (Social, Humanitarian and Cultural) Committee adopted the last of the substantive articles for both draft covenants.⁴³ The covenants

tion represents "the point of departure for a universal system of rights and guarantees common to all legal systems..." but that such a system can be successfully established only if there is a wider acceptance of common ideals of political freedom, including recognition of the legitimacy of organized public opposition to the doctrines and policies of the government in power. JENKS, *op. cit. supra* note 17, at 166-67. In the fifteen years since it was adopted, the declaration has clearly influenced the actions of governments, intergovernmental organizations, the judiciary and the common man. It has been cited: in resolutions and recommendations of the United Nations; in a number of international conventions; in numerous regional and other multilateral and bilateral treaties and declarations; in the constitutions and laws of states; and, in judicial decisions and opinions. For specific examples of its influence, see U.N. OFFICE OF PUBLIC INFORMATION, *THE UNIVERSAL DECLARATION OF HUMAN RIGHTS: A STANDARD OF ACHIEVEMENT* 18-32 (U.N. Pub. Sales No. 1963.1.13). See generally Schwelb, *The Influence of the Universal Declaration of Human Rights on International and National Law*, 1959 AM. SOC'Y INT'L L. PROC. 217.

⁴² But see Moskowitz, *The Covenants on Human Rights: Basic Issues of Substance*, 1959 AM. SOC'Y INT'L L. PROC. 230 for a discussion of the question whether the covenants, as drafted, can give substance to the principle of human rights.

⁴³ The draft Covenant on Civil and Political Rights sets forth, in part, the rights of men as follows: the inherent right to life; the right to be free from torture, or cruel, inhuman or degrading treatment or punishment; the right to be free from slavery; the right to liberty and security of person, including freedom from arbitrary arrest; the right to be treated with humanity if arrested; the right to be free from imprisonment for inability to fulfil a contractual obligation; the right to move freely within and without one's own state; the right to protection as an alien; the right to be equal before the courts; the right to be free from retroactive legislation; the right to be recognized everywhere as a person before the law; the right to be free from arbitrary or unlawful interference with privacy, family, home, or from unlawful attacks against honor and reputation; the right to freedom of thought, conscience and religion; the right to hold opinion without interference; the right of peaceable assembly; the right to freedom of association; the right to protection of the family; the right to protection as a child; the right to participate in public affairs; the right to vote and be elected; the right to equality before the law without discrimination and to

are explicit as to the rights to be protected and each places a positive obligation on the states to insure such protection. The Covenant on Civil and Political Rights declares that each state

...undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in this Covenant, without distinction of any kind ... [and to insure] that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.⁴⁴

The Covenant on Economic, Social and Cultural Rights declares that each state

undertakes to take steps, individually and through international assistance and co-operation ..., to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in this Covenant by all appropriate means ...⁴⁵

Agreement has not been reached, however, on the measures of implementation to be adopted in the covenants. Basically, the Commission on Human Rights has proposed that with respect to the Covenant on Civil and Political Rights, a system of reports by state parties be established concerning legislative or other measures, including judicial measures, that have been adopted by the states to implement the rights contained in the covenant. Additionally, it is proposed that a Human Rights Committee be established to which state parties may submit complaints concerning failure of other state parties to give effect to any provision of the covenant.⁴⁶ Further-

equal protection of the law; the right to enjoy, as a minority, one's own culture, religion, and language. U.N. Doc. Nos. A/5655 (1963), A/C.3/L.1062 (1963).

The draft Covenant on Economic, Social and Cultural Rights sets forth the following rights: the right to work; the right to the enjoyment of just and favorable conditions of work; the right to form trade unions; the right to social security; the right to provide special protection to the family; the right to have an adequate standard of living; the right to be free from hunger; the right to enjoy the highest attainable standard of physical and mental health; the right to have an education; the right to take part in cultural life; the right to enjoy the benefits of scientific progress. U.N. Doc. No. A/5655 (1963).

⁴⁴ U.N. Doc. No. A/5655, art. 2 (1963).

⁴⁵ U.N. Doc. No. A/C.3/L.1062, art. 2 (1963).

⁴⁶ The proposed draft Covenant on Civil and Political Rights contains no provision establishing an individual right of petition. All such proposals made in the Human Rights Commission sessions were either rejected or withdrawn. Arguments against any type of non-state petition included the following: only states are subjects of international law; international responsibility for the promotion of human rights is a relatively recent development and it would be unwise to adopt measures unacceptable

more, the covenant would give the International Court of Justice compulsory jurisdiction over state parties thereby enabling them to bring a dispute before the Court if the Committee is unable to reach a friendly solution. With respect to the Covenant on Economic, Social and Cultural Rights, a system of periodic reports by state parties would be established concerning the progress made in achieving the observance of the rights contained in the covenant.

It appears that the adoption of measures of implementation will not soon be forthcoming, in spite of the Third Committee's recommendation to the General Assembly that a special effort be made at the 1964 session to adopt the entire text of the draft covenants.⁴⁷ Implementation goes to the heart of the covenants and requires a degree of commitment heretofore unnecessary. Because of the fact that member states are wedded to such fundamentally divergent political, economic, and social systems, the task of agreeing on measures of implementation is going to be an exceedingly difficult one.⁴⁸

to many countries; and, the covenant provisions will be fully safeguarded by the proposed system of state-to-state complaints. U.N. Doc. No. A/5411, para. 42 (1963); U.N. Doc. No. A/5411/Add.1 (1963). There is a natural reluctance on the part of some states to agree to international judicial or administrative enforcement of human rights at the instance of the individual. 1 OPPENHEIM, *op. cit. supra* note 4, at 744 n.1. Kelsen maintains, however, that without subjecting state parties to the jurisdiction of a tribunal to which individuals have access, and without imposing an obligation upon these states to comply with the decision of the tribunal, there can be no effective enforcement of the covenants. KELSEN, *op. cit. supra* note 25, at 143-44.

⁴⁷ U.N. Doc. No. A/5665 (1963). The Third Committee's recommendation seems particularly optimistic in view of the fact that adoption of the substantive articles extended from the tenth to the eighteenth session of the General Assembly.

⁴⁸ Jenks, speaking of the arduous task of drafting the Covenants, states that "even when a concept is understood in much the same manner in two different States, its practical application may vary considerably by reason of differences in political systems, traditions and methods, in economic conditions and in social and cultural background, and in particular by reason of differences in the procedural remedies available for the enforcement of the civil right..." JENKS, *THE COMMON LAW OF MANKIND* 165 (1958). See generally BRIERLY, *op. cit. supra* note 7, at 110-17; Hoffmann, *supra* note 5, at 241; *Human Rights among Diverse World Orders*, 1959 AM. SOC'Y INT'L L. PROC. 217-54.

The United States has not ratified any of the human rights treaties. It is suggested that one reason for this is that in nations which are based on a federal structure, the federal government's power to intervene in the treatment by a domestic state of its citizens is limited and therefore any obligation undertaken in accordance with a treaty might be somewhat nominal. 1 OPPENHEIM, *op. cit. supra* note 4, at 744 n.1. *But see* United States v. Pink, 315 U.S. 203, 230-31 (1941); Missouri v. Holland, 252 U.S. 416, 432-34 (1919). It is said that the draft Covenant on Civil and Political Rights has been unacceptable to the United States primarily because article 4 states that "in time of public emergency which threatens the life of the nation... the States Parties thereto may take measures derogating from their obligations under this Covenant..." Some

Today there does exist one promising example of international cooperation in seeking to protect human rights. Since 1953 there has been in force the European Convention for the Protection of Human Rights and Fundamental Freedoms. This convention was drafted by the Council of Europe and today all but two of the Council's sixteen member states have ratified it.⁴⁹ It guarantees to all persons within the jurisdiction of the state parties a number of rights and freedoms taken from the Universal Declaration of Human Rights and now defined in much greater detail. Furthermore it provides the international machinery for implementation of these rights, *viz.* the European Commission of Human Rights and the European Court of Human Rights. Petitions alleging that a state party has violated the convention are submitted in the first instance to the Commission by either state parties or by *individuals*.⁵⁰ The Commission's task is one of conciliation. It seeks to investigate the alleged violation and conclude a friendly settlement between the parties. If unsuccessful, it is required to submit a report to the Committee of Ministers of the Council of Europe

fear that under this article "the Executive alone could, in such circumstances, solely on the authority of the Human Rights Covenant, curb the freedom of the press, impose martial law, take over all industry and labor." 1959 AM. SOC'Y INT'L L. PROC. 252-53. It is highly questionable though whether this reflects respectable United States constitutional law. For a discussion of the importance of United States ratification of human rights treaties, see Gardner, *Human Rights—Some Next Steps*, 49 DEP'T STATE BULL. 320 (1963).

Russia, on the other hand, has urged adoption of the draft Covenants stating that their conclusion must not be unduly delayed by the consideration of measures of implementation; that these measures must correspond to generally recognized norms of international law, *viz.* those "which take into account the sovereign rights, the particular economic, social and national characteristics of the various States"; any measures "that would open the door to interference in the internal affairs of States would be contrary to the Purposes and Principles of the United Nations, . . ." U.N. Doc. No. A/5411/Add.1 (1963). This statement would seem to underscore the apparent Communist philosophy that the way to get ahead in the United Nations and other international organizations is to talk a good game, at the same time insuring that there will be no necessity to play it in any effective manner inimical to the best interests of the Communists. See notes 31, 38 *supra*.

⁴⁹ The Council of Europe was established in 1949 by a group of ten western European countries and now includes as members the following sixteen countries: Austria, Belgium, Cyprus, Denmark, the Federal Republic of Germany, France, Greece, Iceland, Ireland, Italy, Luxembourg, the Netherlands, Norway, Sweden, Turkey, and the United Kingdom. All the states which have ratified the European Convention are members of the Council; however two members of the Council, Cyprus and France, have not ratified the Convention.

⁵⁰ Petition by individuals is only available if the state party against whom it is directed has expressly recognized such right in advance. To date ten of the fourteen state parties have done so. The United Kingdom, Greece, Italy, and Turkey have not.

and to the defendant state setting forth the facts and whether in its opinion a violation of the convention has occurred. The Committee of Ministers must then decide whether the convention has been violated, unless the matter is referred to the court within three months from the report's transmission to the Committee. The convention provides that a case may be referred to the Court only by the Commission, the state party which submitted the petition, the state party of the alleged victim, or the state party against whom the petition has been brought.⁵¹ However, in the first case to reach the Court, it demonstrated its willingness to allow an individual to be heard.⁵² For the first time in history there exists, therefore, an international convention on human rights which guarantees to all persons within the treaty's jurisdiction the protection of fundamental human rights and freedoms.⁵³ Moreover, this convention includes the right of individual petition, not only against a foreign government but against the petitioner's government as well. Though it has been in existence for only several years, the Convention seemingly bodes well for the future.⁵⁴

⁵¹ See generally Robertson, *The European Court of Human Rights*, 9 AM. J. COMP. L. 16-17 (1960). For a case to be taken before the Court, the parties must have accepted the Court's compulsory jurisdiction or have agreed to it *ad hoc* in the particular case. To date, eight state parties have accepted its compulsory jurisdiction: Austria, Belgium, Denmark, the Federal Republic of Germany, Iceland, Ireland, the Netherlands, and Luxembourg.

⁵² *Lawless* case (*Lawless v. Ireland*), No. 1/61, Judgment of July 1, 1961, of the European Court of Human Rights. The case was brought before the court by the Commission. In its judgment the court stated that the individual-petitioner was entitled to receive the commission's report, to comment on it before the commission, and could be called to address the Court. See 1962 DUKE L.J. 249 for an account of the case. See Hoffmann, *supra* note 5, at 236 for a discussion of the practical objections to the right of individual petition before an international tribunal. With regard to the court, see generally Robertson, *The European Court of Human Rights*, 9 AM. J. COMP. L. 1 (1960).

⁵³ The convention is presently in force in a combined area of 236 million inhabitants.

⁵⁴ From 1954 to 1961, the Commission received 3 state petitions and 1310 individual ones. Of the latter, only seven were declared by the Commission to be admissible. It has great discretion to decide whether or not a petition should be admitted. It may dismiss petitions if found to be incompatible with the convention, manifestly ill-founded, abusive of the right of petition, or if other available remedies have not been exhausted. Of the seven admitted petitions, one has been decided by the Court, one by the Committee of Ministers, and five are pending. Both decided cases held that the convention had not been violated. See generally ROBERTSON, *THE COUNCIL OF EUROPE—ITS STRUCTURE, FUNCTIONS AND ACHIEVEMENTS* (1956); WEIL, *THE EUROPEAN CONVENTION OF HUMAN RIGHTS* (1964); Robertson, *The European Court of Human Rights*, 9 AM. J. COMP. L. 1 (1960); Robertson, *The European Convention on Human Rights*, 1950 BRIT. YB. INT'L L. 145; Schindler, *The European Convention on Human Rights in Practice*, 1962 WASH. U.L.Q. 152.

Finally the question arises whether, in the absence of a treaty, there is any principle of international law which authorizes one state or a group of states to intervene in the affairs of another state in order to protect human rights where it is alleged that the latter state is failing to recognize and protect the rights of its people.

It has occasionally been said that international law guarantees to all individuals certain fundamental rights.⁵⁵ However, it is a generally recognized rule of international law that apart from treaty obligations, a state is entitled to treat its nationals at its own discretion, and the manner in which it treats them is not a matter of international concern.⁵⁶ It follows that international law does not authorize intervention for the purpose of protecting human rights.⁵⁷ However, the rule against intervention exists primarily as a restriction imposed upon states to protect the independence of states within the international community.⁵⁸ Thus it is said, the rule cannot accurately extend to collective action undertaken in the general interest of States or for the collective enforcement of International Law. This means that while prohibition of intervention is a limitation upon States acting in their individual capacity in pursuance of their particular interests, it does not properly apply to remedial or preventive action undertaken by or on behalf of the organs of international society.⁵⁹

Falk states:

Thus it seems possible to grant that intervention, especially if it is a consequence of a collective decision by an international organization,

⁵⁵ See 1 OPPENHEIM, *op. cit. supra* note 4, at 640, and authorities cited therein.

⁵⁶ 1 OPPENHEIM, *op. cit. supra* note 4, at 312, 736.

⁵⁷ It is suggested that today the doctrine of non-intervention in its traditional sense is obsolete because it is not "fashioned to catch the more subtle modalities of coercion" but "only the cruder, physical forms." McDougal & Lasswell, *The Identification and Appraisal of Diverse Systems of Public Order*, 53 AM. J. INT'L L. 1, 21 (1959). For a criticism of the traditional doctrine of nonintervention, see LOEWENSTEIN, *POLITICAL RECONSTRUCTION* 14-85 (1946). See note 25 *supra*.

⁵⁸ 1 OPPENHEIM, *op. cit. supra* note 4, at 319. In view of the stated purpose for the rule, it has been suggested that at times, "counter-intervention" by one state may be necessary and proper to off-set the intervention of another state into a third, thus insuring that the independence of that third is protected. Falk, *supra* note 25, at 168-69.

⁵⁹ 1 OPPENHEIM, *op. cit. supra* note 4, at 319-20. On several occasions the countries of North and South America have said that the prohibition of intervention refers to individual intervention on the part of states. For example, while in the Act of Chapultepec, adopted in 1945, the American states reaffirmed their opposition to individual intervention, they gave expression to the principle of collective security which, but for its collective nature, would seem to amount to intervention. See 1 OPPENHEIM, *op. cit. supra* note 4, at 320 n.1; Fenwick, *Intervention: Individual and Collective*, 39 AM. J. INT'L L. 645, 663 (1945).

may be desirable to protect men against severe abuses from their own State; it is a way to refuse the absolute claims of internal sovereignty to override a higher commitment to a minimum standard of human dignity. Here at least, world community values take precedence over internal political autonomy.⁶⁰

There is some sentiment, therefore, that collective humanitarian intervention be recognized as a proper rule of conduct in certain extreme cases. It is argued that at some point there is a limit to a state's discretion, and when it renders itself guilty of cruelties against its nationals, and persecutes them in such a fashion that there results a denial of their fundamental rights sufficient to "shock the conscience of mankind, intervention in the interest of humanity is legally permissible."⁶¹ World consensus may be reaching the point where, although international law still does not expressly authorize collective intervention, the world community will not condemn it if undertaken solely for humanitarian purposes.⁶²

Today nations are increasingly regulating their conduct so as not to violate internationally recognized principles of behavior. The economic and political pressure that can be brought to bear on transgressors, before the United Nations and elsewhere, is suffi-

⁶⁰ Falk, *supra* note 25, at 168. Falk stated recently that where such a denial of human rights exists, collective intervention in the form of a "graduated scale of supra-national coercion" should be taken, but only if the offending society is located outside the Soviet and American spheres of dominance. Falk & Mendlovitz, *supra* note 10, at 413. See also Falk & Mendlovitz, *supra* at 420.

⁶¹ I OPPENHEIM, *op. cit. supra* note 4, at 312, and authorities cited therein. See Cohen, *supra* note 10, at 435-36.

⁶² See Falk, *supra* note 25, at 166-67. It is said that certain interventions take place by right, and others, "although they do not take place by right, are nevertheless permitted by International Law." I OPPENHEIM, *op. cit. supra* note 4, at 305. In 1923, it was stated that where there is an extreme case of human barbarity, "there is nothing in the law of nations which will brand as a wrongdoer the state that steps forward and undertakes the necessary intervention. . . . There is a great difference between declaring a national act to be legal, and therefore part of the order under which states have consented to live, and allowing it to be morally blameless as an exception to ordinary rules. . . . To say that it is no rule [referring to the rule of non-intervention] because it may laudably be ignored once or twice in a generation, is to overturn order in an attempt to exalt virtue. An intervention to put a stop to barbarous and abominable cruelty is a question rather of policy than of law. It is above and beyond the domain of law. It is destitute of technical legality, but it may be morally right and even praiseworthy to a high degree." LAWRENCE, THE PRINCIPLES OF INTERNATIONAL LAW 127-28 (7th ed. Winfield 1923). (Footnotes omitted.) Although this statement probably does not represent world opinion today with respect to individual intervention, even for humanitarian purposes, it seemingly embodies, for the most part, the sentiment of much of the world community insofar as collective intervention for humanitarian purposes is concerned.

ciently well-defined that it can amount to a sanction no nation will willingly or at least lightly impose upon itself. In addition, the nuclear-age realization that flagrant denials of human rights can threaten international peace and security has tended to cause a re-examination of the traditional view that a state's treatment of its nationals is solely a matter within its domestic jurisdiction.⁶³ Thus it is not unreasonable to expect that, in due course, treaties similar to the European Convention may be adopted by other states whose principles coincide.⁶⁴ This approach is in accord with the suggestion that rather than attempting to universally enforce one common standard of fundamental human rights, a more flexible, pluralistic approach involving interlocking and overlapping arrangements and organizations should be taken. "[A] network of agreements of varying scope and intensity in which nation-states would be caught and through which state sovereignty would be emptied of much of its harshness and traditional content" should be employed with diversity and pragmatism as the lodestar.⁶⁵

Efforts to achieve world recognition and protection of human rights have, for the most part, proceeded with moderation. Perhaps this is necessary. It has been suggested that world peace and order require that the promotion of human rights should be based on

⁶³ Even as the nuclear age was born, Brierly, assessing the causes of World War II, stated an opinion arguably even more relevant in 1964: "[T]o-day [1944] the appalling vista which totalitarianism has opened out is forcing us to question the expediency of maintaining this limitation [that a state's treatment of its subjects is a matter of domestic jurisdiction and not one of international concern] on the range of the law. We are reminded that the boundaries of domestic jurisdiction are not fixed by any immutable principle.... There is therefore nothing in the nature of international law as such which makes it impossible for the conduct of states towards their own subjects to be brought within its range; the only question is whether states will decide to use international law in this way.... Whatever the theory of the law may be, it never has been true in fact, and to-day it is wildly untrue, to say that the kind of government that a state chooses to set up for its own people is a matter which does not affect other states. There is room in the society of states for great variety in systems of government, but there is also a standard of decency below which the general body of civilized states cannot allow the government of one among them to fall without danger to themselves." BRIERLY, *op. cit. supra* note 7, at 108-09.

⁶⁴ In such limited homogeneous groups, a great degree of interdependence exists, and this gives the majority sufficient coercive machinery—largely economic and political—to enforce the treaty in the face of breaches by the minority. Furthermore, such limited agreements are in fact a concrete step in the right direction; they give the individuals whose states are signatories some guarantee of protection against tyrannical interference by those states. Eventually, one would hope that these various group treaties would be joined in an international convention. Boyle, *International Law and Human Rights*, 23 MODERN L. REV. 167, 171-72 (1960).

⁶⁵ Hoffmann, *supra* note 5, at 244.

a return to modesty in thinking, a realistic appraisal of possibilities "[S]o long as the individualistic distribution of power among states persists . . . peace will serve justice better than justice will serve peace"; similarly, in such a world, order will serve human dignity better than a deliberate offensive for human dignity will serve order.⁶⁶

Against this caveat must be balanced the consideration that daily thousands of human beings are being deprived of their most fundamental rights. International law can play an important role in reaffirming and securing these rights. First, however, its comprehensive features must be clarified in order that they may become universally known, understood, and accepted.⁶⁷ This is a task for all men committed to human dignity values. We must "devise and execute a strategy of communication which will create in the effective decision-makers of the world the appropriate predispositions to put such an international law into controlling practice."⁶⁸ Herein, it is said, lies the most insistent contemporary challenge to lawyers and non-lawyers alike.⁶⁹

c.b.b.

⁶⁶ *Ibid.*

⁶⁷ It has been urged that to achieve universal recognition and support of the principle that there exist certain fundamental human rights which the international community has a responsibility to protect, a world-wide program of public education be instituted to acquaint all peoples with this principle and to promote their general understanding and enlightenment of it. Bebr, *supra* note 17, at 344. "World law to be effective must be rooted in sentiments deeply cherished throughout the world and not simply in national sentiments however strong they may be in some countries. Law can and should stimulate conscience; but it can do so only within limits. World law to be effective must be backed by world opinion and the conscience of mankind. If—and only if—we develop a universal conscience can we have universal law." Cohen, *supra* note 10, at 433.

⁶⁸ McDougal, *Perspectives for an International Law of Human Dignity*, 1959 AM. SOC'Y INT'L L. PROC. 107, 131.

⁶⁹ *Ibid.* McDougal states that lawyers are particularly equipped to help clarify the comprehensive features of an international law expressing values of human dignity, not by excessive emphasis on legal techniques, but by "the consistent and systematic employment of a policy-oriented, contextual approach, making use of all relevant skills of thought, in inventing, evaluating, and adopting the techniques most appropriate to securing demanded outcomes." *Ibid.*