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WORLD HABEAS CORPUS: OMBUDSMAN FOR MANKIND

Luis Kutner*

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There exists a solidarity among men as human beings that makes each co-responsible for every injustice in the world, especially for crimes committed in his presence or with his knowledge. If I fail to do whatever I can to prevent them, I, too, am guilty.

KARL JASPERS

I. INTRODUCTION

Seldom in the history of mankind have more challenging and dangerous problems confronted humanity. Science and material progress, socialization, democratization, population growth, and the erosion of basic ethical standards are repeatedly changing the ecology of mankind. Every sphere of human activity necessitates a complete reappraisal of individual, national, and international relationships. Differing political, cultural, and social ideologies should not inhibit such a total reappraisal.

World Habeas Corpus as an Ombudsman for mankind epitomizes the social and ethical responsibility of a global society. It suggests that the

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history of the skills and experience that have evolved must be used for
the betterment of society as a whole. It suggests that the immutable prin-
ciples of justice upon which a proper legal system should be founded do
not alter. It asserts that law, as all other human institutions, should never
be static; it must constantly undergo an evolutionary process to meet
changed and changing circumstances.

The invasion of Czechoslovakia came as a shock to the many people
who believed that the countries of Eastern Europe were starting on a firm
course toward legality and respect for civil rights. The deterioration of
legality and respect for civil rights, more particularly in the field of
human freedom, became more pronounced after the invasion of Czecho-
slovakia by the armies of the U.S.S.R., Poland, Bulgaria, East Germany,
and Hungary.

In Poland, a purge was carried out in the army and in the govern-
mental administration against progressive elements and persons of Jewish
origin. Students were arrested and tried for taking part in the demonstra-
tions that were held in November 1968 in Lodz and Warsaw and were
sentenced to lengthy terms of imprisonment. All of the trials were held in
secrecy. Neither the fellow students of the accused nor their professors
were allowed to appear before the court. The newspapers did not report
the proceedings although they attacked the accused in violent terms. The
technique of holding trials in camera and simultaneously organizing a
vilifying press campaign had not been used in Poland since 1956. Soviet
Russia unmasked itself as barbaric, ruthless, and oppressive. It also con-
fessed the mockery of the institution of Communism. The deprivations
and opppression of three-million Jews clearly indicts the Soviet System.

The regime in Greece typifies the viciousness of totalitarian regimes.
All fundamental freedoms of citizens have been suspended. The total-
itarian groups in the country grow steadily. Political trials are rampant,
and most of the accused are being tried for their political opinions or
simply as liberal intellectuals.

In Latin America de facto military regimes gained strong footholds.
The overthrow of Argentina’s constitutional president in 1966 was per-
haps the first break in the trend of all but a few Latin American nations
toward constitutional government. In October 1968, coup d'états over-
threw Fernando Belaunde, President of Peru. The Peruvian takeover was
followed by a revolt in Panama on October 11, 1968, against the President
of the Republic, who had taken office only a few days earlier. In Decem-
ber 1968, Brazil, the largest country in South America, suffered the
same fate. In Brazil an ostensibly democratic government—which it had
come into power in circumstances that were hardly democratic—abruptly
became an overt military dictatorship.

The coup d'état governments and concomitant military juntas pro-
mulgate revolutionary law. While vague lip service is paid to the indepen-
dence of the judiciary—usually by reorganized judiciaries—the revolu-
tionary laws always contain ambiguous provisions that can be interpreted in the most convenient way; the dictatorship thus has a free hand, and the individual is left to the mercy of the authorities.

In Maghreb, Algeria, Morocco, and Tunisia, it is the common practice to resort to preventive detention, that is, detention in the absence of a court order or other judicial safeguards. A trial may eventually be held, often after a long delay and without any proper judicial investigation or legal safeguards. But the overall intention of the authorities is either to dispose of opponents who are considered dangerous or to shelve a problem which they are unable or unwilling to resolve. President Ben Bella has been placed under detention with several of his advisers since June 19, 1965, the day he was overthrown.

On July 1, 1967, Mr. Moise Tshombe, former Prime Minister of the Congo, was traveling between two of the Balearic Islands in a private airplane which was forced to land in Algiers. He and others were victims of abductions from aircraft which were either flying over the high seas or over Algerian Territory. The Congo (Kinshasa) which had sentenced him to death in absentia, applied for his extradition. In spite of the very debatable opinion of the criminal division of the supreme court, the Algerian authorities refused to hand him over. A Petition for World Habeas Corpus was filed before the Human Rights Commission of the United Nations by Madame Ruth Tshombe, his wife, and service was made on the respondents, the Congo, Spain, Algeria, and Great Britain. President Houari Boumedienne of Algeria reversed the Algerian Supreme Court after service was made on the Algerian Mission. Boumedienne was confronted with the argument that the precedent of Algeria in extraditing Tshombe could rebound to Boumedienne's disadvantage in the event the political climate in Algeria changed, and he might have the status of an exile.

On July 1, 1969, the Algerian Government announced that Tshombe had died of heart failure early Sunday, June 30, 1969. It further announced that an autopsy report signed by twelve doctors apparently put an end to rumors that Tshombe, depressed by seemingly limitless imprisonment, had committed suicide. This writer, as Tshombe's counsel, categorically repudiates the report as utter nonsense, having received information of Tshombe's excellent health on June 10, 1969. The Petition for World Habeas Corpus filed on behalf of Moise Tshombe was the undisputed catalyst in the ever-expanding movement to compel the Human Rights Commission, a subsidiary of the Economic and Social Council of the United Nations, to consider investigation of the Human Rights complaints. The petition established the efficacy of the right of individual petition to remedy arbitrary detention. The concept of World Habeas Corpus was used in behalf of Joseph Cardinal Mindszenty in 1949 and 1950. William N. Oatis, Associated Press correspondent, was freed from
confinement in Prague, Czechoslovakia, largely upon the moral weight of
the Petition for the Writ of World Habeas Corpus filed in his behalf. The
Tshombe matter undoubtedly has caused the United Nations to consider
the establishment of machinery to investigate the thousands of complaints
received every year alleging violations of human rights.

Some 500,000 Spanish Republicans defeated in the Spanish Civil
War in 1939 chose exile rather than life under Fascism. Within a year
after being interned in camps in the South of France, thousands were
fighting again for the Allied Forces and in the French resistance. Be-
trayed by Vichy and victimized by the Nazis, they were forced into slave-
labor battalions or deported to Dachau, Buchenwald, Auschwitz, and
Mauthausen. Despite Franco’s amnesty, they do not return home because
they face reprisals.

Worldwide support for the concept of World Habeas Corpus is
growing. There is a growing interest in the preservation of human rights
in armed conflicts. Peace is the underlying condition for the safeguard of
individual liberty but, unfortunately, armed conflicts continue to plague
the world. Erosion of the humanitarian principles enshrined in the Hague
and Geneva Conventions of 1949 begs for the concept of World Habeas
Corpus as the Ombudsman for mankind. The medieval and barbaric
dehumanization of prisoners of war, and the execution and inhumane
treatment of persons who struggle against regimes engaged in war, either
as defenders or invaders, emphasize the need for better protection of
civilians, prisoners, and combatants.

World Habeas Corpus as the Ombudsman for mankind can play an
important role in the control, containment, and correction of the wide-
spread violence and brutality of our times—including massacres, summary
executions, tortures, inhuman treatment and killing of civilians in armed
conflicts, and the use of chemical and biological means of warfare includ-
ing napalm bombing. World Habeas Corpus can be the buffer to prevent
counterbrutality that further erodes human rights.

II. PREREQUISITES FOR INJUSTICE

Silence, secrecy, apathy, and indifference are the prerequisites for
tyranny, brutality, oppression, and injustice. This proposition was best
illustrated by Bernard Melamud's novel and movie, The Fixer, which is
based upon a historical occurrence in Czarist Russia. The hero is abruptly
detained and secreted in a prison where he is subject to constant brutality
and torture in an attempt to make him confess to a fabricated charge of
ritual murder. The oppressors are able to go forth with their diabolical
scheme only as long as the detention is kept secret. The triumph occurs
when the hero's detention becomes widely known and a public clamor
develops for him to be brought to trial. The present rules of the Soviet
Union have also demonstrated their capacity for similar schemes as man-
ifested by the sentencing to hard labor of the individuals protesting the Czech occupation and of those seeking to expose the fact that persons were arrested for making such protests.¹

The unspeakable terror and barbaric, degrading, and dehumanizing tortures inflicted by the Greek military junta goes unnoticed. The irony is that the junta is receiving substantial aid from the United States. The Greek victims are convinced that this is American democracy in action.²

The desire of the bureaucrat and those with vested interests to keep facts regarding injustice and brutality a secret is a common, universal phenomenon. During World War II not only did the Nazis attempt to keep secret the conspiracy and the carrying out of genocide against the Jewish people, but so did certain bureaucrats in the United States State Department who, for various (sinister or stupid) reasons, kept these facts from being disseminated to the American people and thereby thwarted public protest.³ Likewise, some politicians and established bureaucrats have long attempted to suppress the fact that hunger prevails among certain segments of the population in the United States.⁴

Though the United Nations Charter, the Universal Declaration of Human Rights, and a number of international conventions have proclaimed norms respecting individual human rights, these rights have been arbitrarily infringed upon throughout the world. Suppression is by no means confined to China, the Soviet Union, and their allies, but is ubiquitous in what has been euphemistically called the “free world.” Thousands of individuals are being imprisoned for their political beliefs in the so-called “free nations,” including: Rhodesia, Nigeria, Iran, Pakistan, Greece, Kenya, Portugal, Malawi, Angola, Mexico, Argentina, Burma, Algeria, South Africa, Tanzania, Sierra Leone, Singapore, Zambia, Upper Volta, Thailand, India, Gabon, Haiti, South Korea, Tunisia, Paraguay, South Vietnam, Bolivia, Uganda, Malaysia, Indonesia, Syria, Panama, Brazil, and Spain.⁵ Even the United States cannot claim consistent respect for human rights. Persons have been imprisoned for actions traceable to political or religious beliefs unacceptable to the government, such as practicing a minority religion, advocating cultural or national autonomy, attempting to organize a political party in opposition to the one in power, performing actions the government or armed forces considered insulting, organizing independent unions for the purpose of bargaining or striking, refusing military service for reasons of conscience, and organizing peaceful and public actions directed at changing governmental policy.⁶ In many

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¹. N.Y. Times, Feb. 24, 1969, at 32, col. 6 (city ed.).
³. See generally H. Morse, While Six Million Died (1967).
⁶. That there is more political hypocrisy and social prudery in Russia than in America offers us no excuse for self-congratulation. The brutality of the Paris Police does not sweeten Chicago’s reputation; the absence of civil liberties in
countries individuals are held under the principle of preventive detention regardless of whether they have in fact committed a crime.  

III. THE WRIT OF HABEAS CORPUS

A. Magna Carta

In municipal law, institutional remedies may exist to protect individual rights. In states which adhere to the common-law tradition, the Writ of Habeas Corpus has emerged as the buckler and shield against arbitrary detention. The Great Writ has its origins in the Magna Carta when the feudal barons sought protection against the arbitrary acts of the king. The thirty-ninth clause stated that “no free man shall be taken, or imprisoned, or disseised, or outlawed, or exiled, or in any way destroyed, nor will we go against him or send against him, except by lawful judgment of his peers or by the laws of the land.” But “free men” meant only the barons and their sort, and was not intended to include ordinary men.

The Magna Carta or Magna Charta, issued by King John at Runnymede, in June 1215, is the most important instrument of English constitutional history, though it remained unsigned, as the barons and King John were illiterate. John, by his continual extortions of money and his violations of feudal customs, had aroused not only the barons, but also many of the lesser gentry, the knights, and the townspeople. In addition, a large group of churchmen, headed by Stephen Langton, opposed the King, even after John’s reconciliation with the Pope. The lower classes—serfs and artisans—were not actively rebellious; but, though the uprising of 1213-15 was dominated by the barons, it was in a sense a national reaction. The King, faced by superior force, was compelled to enter into parleys with the barons at Runnymede. Finally, after some attempts at evasion, John set his seal to the preliminary draft of demands presented by the barons, and after several days of debate a compromise was reached (June 19). The resulting document was put forth in the form of a charter freely granted by the King, though in actuality its guarantees were extorted by the barons.

The original charter, in Latin, was a narrative, unparagraphed, document drawn up in the ordinary form of a contemporary grant of land or privileges. It was first titled the Articles of the Barons. The wording was vague and of transient significance. The convenience of modern commentators has necessitated the adoption of a traditional division of some seventy clauses (articles), a division often unfortunate in that it suggests a separation in language where the originators of the Charter were clearly following out a line of thought. The intention of the men who drew up the

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Moscow does not cast a pleasing light on the Algiers Motel. We're all tarred with the same brush, some more heavily than others.


charter was to state the law as it should be. Its clauses were regarded with veneration long after they were out of date and men read into them meanings which would have surprised the original draftees. Seventeenth-century lawyers, ignorant of the law of the early thirteenth century and knowing nothing of the conditions of that time, saw in the Charter a solemn grant to the people of England of rights which the Stuart Kings were withholding.

In some respects the Charter was a reactionary document; its purpose was to insure feudal rights and dues and to guarantee that the King would not encroach upon baronial privileges. Articles specifically protecting villeins and tenants were few. The barons, however, did seek to retain the constitutional advances made under John's predecessors. There were provisions guaranteeing the freedom of the Church and the customs of the towns, special privileges being conferred upon London. The Charter definitely implies that there are laws protecting the rights of subjects and communities which the King is bound to observe or, if he fails to do so, will be compelled to observe by force. Most important were the vaguely worded general grants against oppression of all subjects, which later came to be interpreted as guarantees of trial by jury and of habeas corpus. Such interpretations, however, were the work of later scholarship and are not explicit in the Charter itself. The true meaning of the Charter, indeed, has only been determined by recent study, but its importance in the development of the British Constitution is not vitiated by the fact that many of the early interpretations of its provisions were based upon bad historical work or false reasoning.

As an actual instrument of government the Charter was at first a failure. John repudiated it as a grant made under coercion, and he was released from its observance by Pope Innocent. The clumsy machinery set up to prevent the King's violation of the Charter never had an opportunity to function, and civil war broke out the same year. On John's death in 1216, the Charter was reissued in the name of young King Henry III, but with a number of significant omissions relative to safeguards of national liberties and restrictions on taxation. In another reissue the following year, clauses relating to the forests were combined into a Forest Charter; the remaining larger group, in what was substantially to be its permanent form, became known as the Great Charter or Charter of Liberties. In later years it became a symbol of the supremacy of the constitution over the King, as opponents of arbitrary royal power extracted from the Great Charter various "democratic" interpretations. This movement reached its height during the Puritan Revolution of the 17th century in the work of parliamentary apologists such as Sir Edward Coke. It came to be thought that the Charter forbade taxation without representation, that it guaranteed jury trial, and even that it invested the House of Commons (nonexistent in 1215) with great powers. These myths persisted until the nineteenth century, when extremists among scholars began to
maintain that the Magna Carta was a completely reactionary, not a progressive, document—it was merely a guarantee of feudal rights. It is generally recognized now that it was more than that; the Charter did definitely set forth the theory that the power of the King was not supreme. But most important was the fact that it could later be interpreted as it was.

There are four extant copies of the Charter of 1215. The original seventy clauses have been modified and reworked. There are some authorities who maintain that there were only 37 original articles forced upon King John by his rebellious noblemen and that the revised and modified versions that were published during the succeeding monarchies in 1216, 1217, and 1225 indicate the dates of repeal. The 1225 version, issued in the reign of King Henry III, is a document upon which English law has been based. But over the past one hundred years, Parliament has repealed 27 of the original 37 (or 70) provisions. Under the Statute Repeals Bill (1969), Parliament unmade in one stroke eight of the remaining articles that have come to be synonymous with liberty and freedom to the British.

The surviving articles are the declaration of liberties and the preservation of the rights and privileges of cities, boroughs, and towns. The eight clauses which were repealed concern widowhood and doweries, the relationship between the crown and its debtors, the treatment of foreign merchants in wartime and peace, and the crown’s right to a certain quantity of wine from import cargoes. As for the law ordering the attainder of several persons guilty of the horrendous murder of his late sacred majesty, King Charles I, its repeal date closed the books on the crime of the 17th century. As every schoolboy knows, there was no murder in the first place. Charles I was executed by Oliver Cromwell’s government. After the Restoration, though, the British have waited to do the right thing by Charles’ memory and some of them—it seems—believe sufficient homage has been paid.

B. The Great Writ

In 1679, Parliament passed the Habeas Corpus Act which provided direct, certain, and quick relief from arbitrary imprisonment at all times and all places, with heavy penalties for those who did not observe the law. The Writ of Habeas Corpus, as embodied in the Habeas Corpus Act and subsequent legislation, envisions that any person who is detained has the right to appeal to a court of chancery for issuance of the writ. On the return of the writ, the prisoner, or detainee, appears before the court which inquires into the legality of his detention. It is a swift remedy, requiring that the return be within a reasonable time. The writ is premised on an impartial judiciary which inquires into the fairness of the proceedings under which the individual is detained or imprisoned. Though procedural, it is a substantive guarantee of individual liberty and the right to

physical security because its very existence acts as a deterrent to the exercise of arbitrary power and illegal practices.10

The writ applies to commitment or detention by the King, the State, or by others.11 It extends to anyone having custody of the person and applies to protect all persons, nobles or commoners, citizens or aliens. The writ is the guarantor of due process, embodying the procedural safeguards expressed in constitutions and case law, including the right to have specific knowledge of the crime alleged; the right to admission to bail if the offense is bailable; the right to be free from torture or the threat of torture to induce confession; the right to be free from being forced to testify against oneself; the right to be free from double jeopardy; the right to be free from cruel and unusual punishment; the right to confront and cross-examine one's accusers; and the right to an impartial hearing.

C. Limitations of Writ of Habeas Corpus

Though the Writ of Habeas Corpus has emerged as a potent weapon for the protection of the security of the individual and a bulwark against tyranny, the writ has its limitations. It is generally peculiar to those states imbued with the common-law tradition.12 Other legal systems have the Writ of Amparo and Habeas Corpus but not in the American law tradition. Even in states which have the writ, circumstances exist where it may be suspended. For example, the United States Constitution permits suspension of the writ in cases of rebellion and threats to the public safety.13 Moreover, the writ is applicable only in cases where the individual is illegally detained. It does not exist as a remedy where other civil liberties are infringed upon, such as the denial of the exercise of free speech or religion or the expropriation of property. The writ is essentially a judicial remedy and does not function as a protection from arbitrary administrative actions.14 In some states where the writ exists, it may not apply when the individual is detained because of administrative action.

IV. The Ombudsman

Traditionally, the individual is protected from arbitrary administrative action by the nature of the administrative process in what may be
regarded as the administrative state. The bureaucratic tradition, as it has
developed in continental Europe and been adapted in the United King-
dom, the Commonwealth, and North America, is characterized by ad-
herence to rules which are applied impersonally. Nevertheless, cases of
arbitrary action may arise. A remedy for instances of arbitrary action
which emerged in the Scandinavian countries is the Ombudsman. The
Ombudsman functions as an adjunct of Parliament to receive complaints
from citizens alleging administrative abuse and to investigate and inter-
vene with the respective government agency on behalf of the citizen. The
Ombudsman does not act in an adversary capacity as counsel for the
complaining party but tries to remain independent of both citizen and
government. His role is to understand both sides of the issue, to define
and articulate to both parties the nature of the grievance and the govern-
ment action, and to bring about a satisfactory resolution of a citizen’s
complaint. In the process, the Ombudsman may be instrumental in insti-
tuting administrative changes. In some countries he may have the au-
thority to compel action, while elsewhere his power is limited to persuasion
and employing the sanction of public opinion.

The Ombudsman as an institution has been adopted in the United
Kingdom, Canada and New Zealand. An analogous institution of the
procurator exists in Poland. Proposals have been made for instituting
Ombudsman institutions in the United States at both the federal and
local level, though the functioning of such an institution has been ques-
tioned within the context of the tradition of separation of powers. A
number of local Ombudsman experiments have been instituted for pro-
tecting and asserting the rights of the poor. The proposal has also been
made for the establishment of a Peoples’ Counsel to articulate the com-
plaints of the poor before governmental agencies. Indeed, the Ombuds-
man is particularly suitable as an institution for articulating the com-
plaints of the weak and oppressed.

V. WORLD HABEAS CORPUS AND THE OMBUDSMAN
AS INTERNATIONAL INSTITUTIONS

A. World Habeas Corpus

The Writ of Habeas Corpus and the Ombudsman may be analogized
and expanded as international institutions for the protection of human
rights. The proposal has been made to universalize the Writ of Habeas

State, 16 Adm. L. Rev. 212 (1964).
18. Gellhorn, The Ombudsman’s Relevance to American Municipal Affairs, 54 A.B.A.J.
134 (1968).
Corpus through World Habeas Corpus. The concept was first enunciated by the author in 1931 in reaction to the rise of the Nazi dictatorship with its atavistic repudiation of all notions of human rights. It is based on the premise that man is the subject and ultimate beneficiary of domestic and international law and should have the liberty, integrity, and freedom of his person guarded and guaranteed by regionally accessible international courts created by a constitutionally ratified treaty-statute which would not impair the sovereignty of the signatory states. The proposed system of World Habeas Corpus would reflect diverse legal systems and cultures by the establishment of regional tribunals delineated to reflect both practical considerations of geographical proximity and legal traditions.

Nine Circuits have been tentatively proposed, including a Communist-Orient, U.S.S.R.-Eastern European, Western European, Islamic, Southern Africa, Non-Communist Orient, Austral-Oceanic, Latin American, and Anglo-American circuits. Each circuit would be composed of seven judges, at least four of which would be nationals of the states within the region. The judges would be chosen from lists of prominent jurists submitted by the states in each of the circuits. The circuit system would be capped by a nine-member supreme court comprised of one justice from each circuit chosen by the judges of the circuit tribunal. Any detained person anywhere or any person in his behalf could invoke the jurisdiction of the circuit court by a Writ of World Habeas Corpus after exhausting all municipal recourse. The court would determine the legality of the detention. In cases where the court determines the detention was proper, appeal could be made to the supreme court. The circuit courts would consider, within the context of the jurisprudential system affected, whether


21. In Latin America an effort has been made to make uniform the Writ of Amparo. Article XVIII of the American Declaration of the Rights and Duties of Man provides for Amparo as a means to protect the individual rights. It has also been suggested as an international remedy. Zamudio, supra note 12 at 89.
the detention of petitioner was proper by a balancing of interests and
values. On appeal, the supreme court would consider whether, within the
context of conditions in the region and universal principles of justice, the
circuit court decision should be reversed. The petitioner would be ac-
corded the right to counsel, interpreters and other means necessary for
access to the tribunals.

B. World Habeas Corpus as an Ombudsman for Mankind

The proposal for World Habeas Corpus is envisaged as functioning in
a role analogous to that of a world Ombudsman. It would be readily avail-
able upon an individual Petition to Provide Assistance. In the course of
reaching a decision, the tribunal might well decide to conduct an inde-
dependent investigation of the circumstances surrounding the detention. It
may attempt to negotiate with the authorities who have placed the indi-
vidual, or individuals, under detention to effect his release or to alleviate
the conditions which lead to a deprivation of human rights.

The function of a tribunal hearing a petition for a Writ of World
Habeas Corpus is to declare whether the detention was arbitrary. It does
not have any enforcement functions. This is, indeed, characteristic of
judicial tribunals, whose judgments are purely declaratory. The enforce-
ment of judicial decrees, even in the case of municipal tribunals, is not a
judicial but an administrative or political function. The distinguishing
feature of an international tribunal is that it does not have the means for
enforcement, while a national court functions for and in the name of a
sovereign entity. The tribunal may, however, suggest means for enforce-
ment in the decree.\(^2\) Similarly, an Ombudsman in the municipal context
does not, in many instances, have any enforcement powers in making
determinations as to the exercise of arbitrary action and seeking concil-
iation. Its main sanction is public opinion. This, indeed, is the ultimate
sanction for World Habeas Corpus. Therefore, the proposal for World
Habeas Corpus may properly be regarded as a proposal for an Ombuds-
man for mankind.

World Habeas Corpus was conceived as a proposal for dealing with
the arbitrary detention of individuals and perhaps groups of individuals.
The proposed writ may be extended to the protection of the rights of the
family such as determining the custody of children, the rights of wives in
forced marriages, or the prevention of a movement or a migration which
results in a separation of the family unit.\(^3\) It does not apply to other types
of arbitrary governmental action.

A proposal has been made for Habeas Proprietatem, a modified Writ
of World Habeas Corpus, to apply to the arbitrary seizure of property


\(^3\) Kutner, Due Process of Family Privacy: World Civil Liberty and World Habeas
without compensation. The Writ of Habeas Marinus has also been proposed for dealing with problems arising in the uses of the sea. A proposal has also been made for the extension of World Habeas Corpus to prisoners of war as a means for enforcing the Geneva Conventions. These extensions, along with World Habeas Corpus, could be developed within the context of a World Ombudsman. Such an Ombudsman would consider other areas where human rights are infringed upon, such as the right to religious liberty, freedom of expression, and the according of equal rights regardless of ethnic or racial origin. Such an Ombudsman also would consider cases involving the denial of social as well as civil rights, such as the right to organize labor unions and to an adequate livelihood.

The proposal for World Habeas Corpus has received the endorsement of eminent jurists and statesmen throughout the world. Former United Nations Ambassador Arthur Goldberg has regarded World Habeas Corpus as a "long stride toward world peace." Justice William J. Brennan, Jr., regards World Habeas Corpus as a "concrete program" to make the Universal Declaration of Human Rights "a legally binding commitment." Justice Kotaro Tanaka of the International Court of Justice states need for World Habeas Corpus: "[a] most elementary and primary necessity or 'conditio sine qua non' of the world community [is] that there shall exist no vacuum in the world in regard to the Habeas Corpus and that therefore the natural law principal of the Habeas Corpus shall be vested with positive effect as soon as possible." Winston Churchill acclaimed World Habeas Corpus as the difference between tyranny and liberty.


29. Cited in Kutner, *World Habeas Corpus: Human Rights and World Community*, 17 DEPAUL L. REV. 3 (1967). Tran Tam, The Secretary General of the International Association of Criminology, has written a series of articles on World Habeas Corpus which have appeared in the Saigon Daily News during March, 1969, characterizing the concept and movement as "vital to the enduring problems of today's divided world" (March 2, 1969) and urging that "the ultimate reality of world Habeas Corpus is as inevitable as a mathematical logical system in science." He further quotes Justice Silvio Tavolaro, President of the Supreme Court of Cassation of Italy that "the actuation of World Habeas Corpus, through the institution of a World Court system, will be the most important task of our civilization and the main achievement of human progress." Saigon Daily News, March 8, 1969.

VI. WORLD STATUS OF THE INDIVIDUAL

A. Development Since World War II

The support for World Habeas Corpus has reflected the fact that the individual has come to be accorded a new status in international law, particularly since World War II. The trial of individuals by international tribunals as war criminals meant holding the person responsible for violations of international law. The converse of the proposition that the individual may be held responsible for his acts is that he must be accorded international rights.31

In the nineteenth century, a concern for individual rights was manifested in the adoption of the conventions for the prohibition of slavery.32 Following World War I, the League of Nations Mandate Arrangements, the Minorities Treaties involving the states of Central and Eastern Europe, and the International Labor Organization Conventions contained provisions involving the protection of individual rights.33 But in the 1930's the notion still prevailed in too many places that human rights was primarily a matter of domestic concern. With the brutal suppression of human rights by the Nazi dictatorship, the international community developed a universal concern for the protection of human rights which evolved into a norm of international law shared by all members of the world community.

The establishment and work of the International Labor Organization (ILO) contributed to the development of international protection of human rights. It introduced a quasi-legislative function into the international community, showing the feasibility and importance of laying down rights in binding international instruments based on constitutional principles and amplified by case law. Through its standard-setting activities the International Labor Organization established a form of international common law covering large sectors of human rights, relevant to economic and social rights as well as to civil and political rights. The machinery developed by the International Labor Organization for implementing these rights was most advanced. A reporting system and a system for hearing complaints was developed.34

The protection of human rights became an obligation of international law with the adoption of the United Nations Charter. The Preamble

32. Id. The first concern for human rights was manifested even earlier with the Peace of Westphalia in 1648 which ended the Thirty Years War and adopted the principle of toleration for Catholic and Protestant communities.
asserts the task of the United Nations as a reaffirmation of 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." Article 1, paragraph 5 proclaims of the achievement of "international cooperation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights for all without distinction as to race, sex, language and religion" as one of the purposes of the Charter. Some writers have coupled this provision with Article 56 which asserts 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(a)" to contend that member states are thereby obligated to protect the fundamental human rights of their subjects.35 These fundamental human rights remained undefined, however, because the delegates at the San Francisco conference lacked the time (or foresight) to formulate a Bill of Rights.36 Article 7, paragraph 7 of the Charter which precludes the United Nations from interfering in matters which are "essentially within the domestic jurisdiction of any state" may not be invoked since the member states have obligated themselves to promote fundamental human rights. Moreover, the denial of human rights, e.g., apartheid in South Africa, racial discrimination in Rhodesia, or the persecution of Jews in Iraq, threatens world peace. Member states are obliged by Article 56 to promote fundamental human rights, and the matter is not essentially domestic.

In the contemporary world it is virtually impossible to delineate

35. M. Ganji, International Protection of Human Rights (1962). Humphrey, The UN Charter and the Universal Declaration of Human Rights, in Luard, supra note 33, points out that the promotion of protection for human rights was conceived by the Dumbarton Oaks proposals and that at San Francisco the delegates of Chile, Cuba, and Panama proposed the protection of specific rights. The Charter contains seven specific references to human rights. The first is in the preamble. The second is in article 1 which puts the achievement of international cooperation in promoting and encouraging respect for human rights on the same footing as the maintenance of international peace and security. The third reference is article 13 authorizing the Assembly to initiate studies and make recommendations for the purpose of assisting in the realization of human rights. The fourth reference is article 55; the sixth reference is article 68 providing for the Economic and Social Council to establish the Commission on Human Rights; and a seventh reference is article 76 declaring that one of the basic functions of the trusteeship system is to encourage respect for human rights. However, every article which refers to the purposes of the United Nations also refers, by incorporation, to human rights. Article 10, under which the General Assembly may discuss any question or any matter within the scope of the Charter, gives it the right to discuss human rights. Article 66, para. 2, which authorizes the Economic and Social Council, with the approval of the General Assembly, to "perform services" at the request of member states is the constitutional basis for the advisory service program in human rights under which the United Nations provides experts, awards, fellowships, and organizes seminars in human rights. For the legislative history of these articles, see Huston, Human Rights Enforcement Issues of the United Nations Conferences on International Organizations, 53 Iowa L. Rev. 272 (1966).

matters of essentially domestic concern. As Professor Henkin reflected in commenting on United Nations' practice:

Governments may continue to claim that how they treat their own inhabitants is of concern to them alone; increasingly it is a losing claim with little hope that it can prevail in politics if not in law. The international concern with human rights has international consequences spilling back into international behavior. The political organs of the United Nations hardly refrain from discussing any human rights issues which any member puts on the agenda, whether forced labor in the Soviet Union or the treatment of Buddhists in Viet Nam, and though impossible to prove, one may assert with whatever confidence, that the existence of the General Assembly, Economic and Social Council and the Human Rights Commission with the ever present threat of investigation and criticism help to deter governments from blatant violation. No doubt, too, new international concern with human rights influences the judgment of international institutions.37

The Universal Declaration of Human Rights defines "fundamental human rights and human freedom," setting forth a common standard of action for their promotion. Though the Declaration may not originally have been intended to have binding effect, its adoption by the unanimous vote of all the delegations, its invocation in subsequent General Assembly resolutions, and its incorporation in the constitutions of many states have made it a part of international law.38 Some commentators regard the Declaration as having quasi-legislative status as a resolution of the General Assembly,39 while others consider it merely to be declaratory.40 The

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38. Humphrey, supra note 35. Professor Louis B. Sohn states: On the one hand, the Declaration derives its strength from being an authoritative interpretation of the Charter. On the other hand, the Declaration strengthens the obligations of the Charter by giving a more precise meaning to the general phrases of the Charter. Step by step, the United Nations has proceeded to enforce more vigorously the obligations of member states to observe human rights and fundamental freedoms, and almost all members have accepted this gradual extension of United Nations Powers in this area. Many traditional rules of the international law may have been changed through these developments; but those who are traditionally inclined can trace the new obligations to the consent of the member states, given by their acceptance of the Charter, their unanimous approval of the decisions of the United Nations which rely on the binding character of the Declaration. In a relatively short period, the Universal Declaration has thus become a part of the constitutional law of the world community; and together with the Charter of the United Nations, it has achieved the character of world law superior to all other international instruments and to domestic law.
sounder view is that some of the General Assembly resolutions, particularly those which are to be followed by the adoption of a convention, are intended to be expressive of international law. The Declaration would fit this category, having been intended to precede the adoption of the covenants. It has become a basic norm of human rights law.

B. The United Nations Conventions

The United Nations has also sought the protection and promotion of human rights through the drafting of covenants. A series of treaties have been adopted, beginning with the Genocide Convention which has been in force since 1951, committing the parties to prevent and punish within their territories the destruction of any national, religious, or ethnic group. Other United Nations Conventions now in force deal with the rights of refugees, stateless persons, the political rights of women, the nationality of married women, and slavery. Also in force are ILO Conventions on forced labor and discrimination in employment and a UNESCO Convention on discrimination in education. In various stages of adoption are conventions on religious freedom, racial discrimination, consent to and minimum age of marriage, reduction of statelessness, and the international right to transmit news. The United Nations and the specialized commissions have also formulated declarations or recommendations by members on specific subjects prior to incorporation in conventions, such as the declaration on racial discrimination. Occasionally, declarations have been adopted without subsequent convention, such as the declaration concerning the social and physical well-being of children, because the subject matter was considered inappropriate for legal treatment.

In many instances, however, conventions and declarations have been adopted without thought for enforcement. One approach toward imple-

42. R. Gardner, In Pursuit of World Order 241-42 (1964). Mrs. Roosevelt stated at the time of the adoption of the Declaration in 1948 that: “It is not a treaty; it is not an international agreement. It is not and does not purport to be a statement of law or of legal obligation. It is a declaration of basic principles of human rights and freedoms to be stamped with the approval of the General Assembly by formal vote of its members, and to serve as a common standard of achievement for all peoples of all nations.” Whiteman, Mrs. Franklin D. Roosevelt and the Human Rights Commission, 62 AM. J. INT’L L. 918, 920 (1968).
43. Gardner, supra note 42 at 242. Aside from the ILO Labor Conventions and the 1949 humanitarian conventions of the Red Cross, two major categories of universal conventions have been adopted since 1948. The single purpose conventions are one category, safeguarding either a freedom or a particular right: genocide in 1948; against statelessness in 1951 and 1954; slavery and its concealed forms in 1956; forced labor in 1957; elimination of discrimination based on sex; equal pay in 1951; the political rights of women in 1953; nationality of married women in 1957; consent to marriage in 1962; the elimination of discrimination in the matter of employment and profession (ILO 1958); education (UNESCO 1960); and racial discrimination in 1965. These conventions, by establishing international standards, removed such matters from purely domestic competence and introduced reports. The second category consists of the two multi-purpose conventions implementing the Declaration in 1966. Cassin, Twenty Years After the Universal Declaration, Special Issue, Part One, J. INT’L COMM. JURISTS 1, 4-5 (1967).
mentation has been the initiation of a system of periodic reporting by member states as to the progress they have made in promoting human rights. The Human Rights Commission and its subcommissions have conducted global research studies. The Secretariat has conducted regional studies through seminars and fellowships. The Human Rights Commission has proposed the establishment of a United Nations High Commissioner of Human Rights who would receive reports of violations of human rights, conduct investigations, and attempt to resolve problems by negotiation. His function would be similar to that of an Ombudsman in municipal law. The proposal would provide the United Nations with a modest but useful instrument for the fulfillment of its mandate under Article 13(1) of the Charter to assist in the realization of human rights and fundamental freedoms for all. The High Commissioner would complement other implementation machinery by giving advice and assistance to United Nations organs requesting it and by taking detailed information of particular problems. The Commissioner would render assistance to governments who request help by undertaking inquiries. Having independent status, the Commissioner would be able to make objective findings. The proposal could be extended to provide for assistance at the request of individuals or groups of individuals. The proposal has been submitted by the Human Rights

44. Gardner, supra note 42. Hoare, The UN Commission on Human Rights, in LUARD, supra note 32.
47. The international machinery for such proposals is described in the Analytical and Technical Study prepared by the Secretary General at the Request of the Commission on Human Rights for the Working Group to study the proposal to create the institution of a United Nations High Commissioner for Human Rights, U.N. Doc. E/CN.4/AC.21/L.1, at §§ 158-92 (1966) and in the Study of the Methods used by the United Nations in the Field of Human Rights, U.N. Doc. A/CONF.32/6 chs. III, V (1967). They include the machinery established by agreement between the United Nations and the International Labor Organization, but without the intercession of a treaty between states, for the protection of freedom of association; the United Nations High Commissioner for Refugees; the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples with a comprehensive system of subsidiary organs; and the Special Committee on the Policies of Apartheid of the Government of the Republic of South Africa.

Repeatedly attempts too have been made to make the United Nations Commission of Human Rights itself an organ of implementation. For several years the General Assembly, the Economic and Social Council, and the Commission on Human Rights have been considering the implementation of human rights through a United Nations High Commissioner for Human Rights or some other appropriate international machinery. In 1967, the Commission on Human Rights, U.N. Doc. E/4322 (1967) and the Economic and Social Council, 42 U.N. ECOSOC 18 (1967) decided by majority vote to recommend to the General Assembly the establishment by resolution of the Office of a United Nations High Commissioner for Human Rights as a subsidiary organ of the General Assembly. At its 1967 session, the General Assembly decided by majority vote to give high priority to the consideration of this question at its Twenty-Third (1968) Session. G.A. Res. 2333, 22 U.N. GAOR — (1967). The reporting arrangements instituted under various provisions of the Charter (Acts. 64, 73(e), 87(a) and 88), particularly the system of triennial reports describing developments, and the progress
Commission to the Economic and Social Commission and the General Assembly for adoption.

This proposal would institutionalize what has become established in international practice. Disputes have invariably involved disagreements with regard to underlying facts, thereby creating a credibility gap and requiring the formation of an ad hoc factfinding body which makes an investigation and submits its findings to the parties concerned and to the international community. In the process, efforts may be made to promote conciliation.48 Factfinding procedures were included in the arbitration treaties which were adopted at the turn of the century and have been embodied in the General Act for The Pacific Settlement of Disputes of 192849 and the Model Rules of Arbitration of the International Law Commission.50 The League of Nations formed ad hoc factfinding bodies to investigate disputes during the 1920's and 1930's, and the United Nations has continued the practice. In three instances the factfinding mission dealt with matters which may be said to affect human rights, including the United Nations Mission to Malaysia of August 8, 1963, to determine the wishes of Sabah (North Borneo and Sarouk) as to support for federation in a dispute which involved the Philippines and Indonesia; the United Nations Mission to Omar, a British protectorate involved in a dispute with Iraq; and a United Nations Mission to Viet Nam to determine whether Buddhists were denied religious rights. The Human Rights Commission established an ad hoc group to investigate the rights of prisoners, detainees, and other persons in police custody in South Africa.51 The International Labor Organization is empowered to establish a Commission to investigate the observance of conventions and to collect and distribute information.52 The Committee on Freedom of Association of the International Labor Organization has investigated complaints and negotiated settlements regarding problems.53 The factfinding and council-
A landmark case illustrating the effective protection of human rights by international authority involves the hearings by a subcommittee of the European Commission on Human Rights as to allegations of medieval, sadistic torture of prisoners by the Greek military regime. The case is

of movement, the right of any person arrested to a prompt and fair trial by an impartial and independent tribunal, and the nonretroactivity of penalties. These wider civil rights do not in themselves fall within the area of responsibility of the ILO, but their enjoyment is a precondition for the achievement of the objectives. *Id.* at 13.

The Committee on Freedom of Association is appointed by the ILO Governing Body and consists of nine members: three from governments, three employers, and three workers. Its procedure is governed by rules to assure its impartiality. *Id.* at 26.

54. The United Nations High Commissioner for Refugees is nominated by the Secretary General of the United Nations and elected by the General Assembly to provide protection for refugees and to seek permanent solutions to the problem of refugees by assisting governments and, subject to the approval of the governments concerned, private organizations to facilitate the voluntary repatriation of such refugees, or their assimilation, within new national communities. His work is nonpolitical and is humanitarian and social, relating to groups and categories of refugees. The High Commissioner is empowered by the statute to administer any funds, private or public, which he receives for assistance and to distribute these funds. He reports annually to the General Assembly and the Economic and Social Council and is free to make his views known to these organs or to any of the specialized agencies. See *Human Rights: A Compilation of International Instruments of the United Nations*, U.N. Doc. A/CONF./32/4 (1950).

55. The European Convention on Human Rights established the European Commission on Human Rights and a European Court on Human Rights. An individual who has been denied his rights may, after the exhaustion of all domestic remedies, make application to the Commission, which will examine the matter and seek to resolve the issue by conciliation. It may issue a report and then refer the matter to the court, which may also hear matters referred to it by a contracting party which had filed a complaint with the Commission or by a contracting party against which an application had been filed. Under the Convention, an individual may make application to the Commission by presenting the case in person or by inducing a government to act on his behalf. Though an individual may not present his case before the court, he is permitted to communicate his views. A. McNAIR, *The Expansion of International Law* (Hebrew University, Lionel Cohen Lectures, 1962); Mashaw, *Federal Issues In and About the Jurisdiction of the Court of Justice of the European Communities*, 40 Tul. L. Rev. 21 (1965); Schweb, *The Protection of the Rights of Property of Nationals under the First Protocol of the European Convention on Human Rights*, 13 Am. J. Comp. L. 518 (1964). However, the only case of an individual petition decided on its merits was the "Lawless" case. "Lawless" Case, [1961] EUR. CONV. ON HUMAN RIGHTS Y.B. 1 (merits).

56. The Statute of the Commission adopted in 1960 by the Council of the Organization of American States empowered the Commission to make recommendations to the government of the member states for the adoption of progressive measures of human rights; to prepare studies; to obtain information from governments; and to advise the Organization of American States. By its own interpretation of the Statute the Commission has received and reviewed communications from individuals and groups, studies, conditions and held meetings and public hearings, and made findings and recommendations. The Commission played a significant role in the Dominican affair in 1965 when, with the recommendation of the Secretary General of the OAS, it saved lives and protected the rights of individuals in the conflict. It also reported on the conduct of the presidential election. Cabranes, *The Protection of Human Rights By the Organization of American States*, 62 Am. J. Int’l L. 889 (1968).
significant in that governments not directly involved in the controversy, Norway, Sweden, Denmark, and Holland, filed an application with the European Human Rights Commission charging the Greek junta with violating the basic articles of the European Convention for the Protection of Human Rights. The subcommittee held hearings during November and December of 1968 at Strasbourg. A Greek delegation of officials, including military police, and the prisoners arrived. Two of the prisoners were thought by the Greek police to be "tame" witnesses who would deny torture, having been previously threatened with the prosecution of members of their family. But two of the prisoners managed to elude their captors. They testified before the Commission and also told the story to the press. One of the former prisoners, Constantin Melitis, who had been the driver of a car in which a former leftist deputy was arrested, revealed that he had been savagely beaten and that his cheek bone was shattered. He had broken under tortures which included mock execution and electric torture with electrodes attached to the genitals. The other prisoner, Pandelas Marketakis, who was arrested in Crete after an explosion in a factory, revealed he had endured 75 days of systematic torture, nearly dying of internal bleeding. When finally released, the police spread the

57. The Governments of Denmark, Norway, Sweden, and the Netherlands instituted proceedings against the Government of Greece in September 1967, before the European Commission on Human Rights. They charged that certain civil and political rights guaranteed by the European Convention on Human Rights had been violated by measures undertaken by the Greek Government which had come into power following the coup d'etat of April 21, 1967, in that the establishment of a state of siege, use of extraordinary tribunals, and suspension of constitutional guarantees of personal rights and freedoms had contravened article 5 (freedom from arbitrary arrest and detention), article 6 (right to a fair trial), article 8 (freedom from interference with person's private and family life, home, and correspondence), article 10 (freedom of expression), article 11 (right of peaceful assembly and association), article 13 (right to effective local remedies for the protection of rights set forth in the Convention), and article 14 (protection from discriminatory interference with rights and freedom guaranteed by the Convention). Application was taken under article 24 of the Convention which provides that any contracting party may refer to the Commission through the Secretary-General, any alleged breach of the Convention by another contracting party and a resolution adopted by the consultative assembly of the Council of Europe on June 23, 1967, expressing concern of the situation in Greece and of the violations of human rights.

The Greek Government, acknowledging it was bound by the Convention, invoked article 15 which authorized derogations from the terms thereof in time of emergency as the Consultative Assembly had failed to take any action regarding the Turkish government in a revolutionary overthrow in 1960 and questioned competency of the Commission to examine the domestic acts of a revolutionary government. The Greek Government also argued that a resolution of the Consultative Assembly on September 27, 1967, threatening Greece with suspension, was prejudicial to a fair consideration of the complaint by the Commission. The Commission ruled in favor of the Complainants, holding that action or lack of action in one case is not binding in a subsequent case, that the Commission has competence and can hear a case of a revolutionary government, and that it functions independently in considering the case and is not affected by the attitude of the Consultative Assembly. The question of exhaustion of domestic remedies did not apply in that the purpose was to determine the compatibility of legislative and administrative measures in Greece with the Convention. The Commission accordingly declared the applications admissible. Denmark, Norway, Sweden, the Netherlands v. Greece, Applications Nos. 3321/67, 3322/67, 3323/67, EUR. COMM. OF HUMAN RIGHTS, Jan. 24, 1968, reported in 62 AM. J. INT'L L. 988 (1968) and commented on in Buergenthal, Proceedings against Greece under the European Convention of Human Rights, 62 AM. J. INT'L L. 441 (1968).
word the prisoners had betrayed their comrades. Isolated and without work, they were cultivated to be used as prosecution witnesses.

Other witnesses before the commission related to the press various accounts of bestial torture. One witness who had been formerly in charge of the security police and later defected told of watching Greeks being tortured, of picking bodies up on the beaches around Athens, of a secret interrogation center where he was shown the latest torture equipment, and of a police list of one thousand names of persons in hiding who were to be killed or tortured upon capture. Another witness revealed that in his presence the Minister of Interior gave orders to torture and kill specific prisoners. A woman witness, arrested for passing out a freedom poem, was molested and beaten all over her naked body with a plaited steel wire and then her brother, an army draftee, was brought in and forced to beat her himself. A third witness, a woman, who was brought from Greece and guarded was seen always in tears but disappeared from Strasbourg and was not allowed to testify.

The case is significant in that governments not directly involved realized that the violations of Human Rights are their business as Europeans. The case may make or break the Commission, which plans to hear testimony in Greece and then submit a report to the Council of Ministers if a settlement is not reached. If the Commission is unable to protect such a basic right as freedom from torture, it will prove to be worthless. In the background lurks the American State Department, dictated to by considerations of Real Politic, which is pressuring the Commission to soft-pedal the matter and has recognized the Greek regime, sending monetary and military assistance. A resolution adopted by the Assembly of the Council of Europe, however, denounced the draft Greek constitution which was drawn up by the military regime. It stated that the Constitution "does not conform to democratic principles, that the conditions preceding the referendum on the draft constitution have made a free and democratic campaign impossible ... and that it cannot therefore be considered a free expression of the popular will." The Resolution further condemned "the continued refusal of the Greek Government to re-establish human rights and fundamental freedoms and to ensure the rapid return to a democratic parliamentary regime."358

D. The Failure to Protect Human Rights

Established international institutions have not been generally effective in promoting and protecting human rights. The United Nations efforts, such as the dispatch of factfinding commissions, have been spasmodic and not entirely independent of political considerations. The European Commission on Human Rights and the Inter-American Commission have not been used as effectively as they might. There has been a tendency to

avoid controversy. The American State Department, concerned with *Real Politic*, has also failed to manifest any real concern for violations of human rights.

VII. THE WORLD HABEAS CORPUS OMBUDSMAN CAN ELIMINATE LACUNA

A. United Nations Proposal

The proposal for the establishment of an international Ombudsman should be considered within the context of the "ombudsman-like" convention approved in 1966 by the General Assembly of the United Nations with the adoption of the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and the Optional Protocol to the International Covenant on Civil and Political Rights. Each Covenant will come into force when ratified by 35 nations, with ten nations sufficing for the Protocol, once the Civil and Political Rights Covenant becomes effective. The drafts were considered from 1947 through 1954 by the Human Rights Commission and submitted in 1954 to the Economic and Social Council, which submitted them to the General Assembly. The substantive provisions were considered and revised by the General Assembly in 1963 when the Main or Third Committee considered measures of implementation. At the 21st Session in 1966, the Third Committee started an article by article consideration of measures of implementation and completed their drafting at the same session, making fundamental changes. The draft measures, as presented by the Commission on Human Rights in 1954, provided for the implementation of the Covenant on Civil and Political Rights by complaints (by a State Party that another State Party was not giving effect to a provision of the Covenant) to a Human Rights Committee which could ascertain the facts and make its good offices available for friendly settlement. The Human Rights Committee was to be composed of nationals of states parties to the Covenant, elected by the International Court of Justice but serving in their individual capacities. The Committee would consider the facts and present an opinion as to whether a breach occurred and might recommend that the Economic and Social Council request the International Court of Justice for an advisory opinion on any legal question. Recourse could also be had to the International Court of Justice if the Human Rights Committee failed to resolve the matter.

Proposals to grant to individuals or nongovernmental organizations the right to petition the Human Rights Committee or to vest it with the power to deal with alleged violations *ex officio* were consistently rejected. However, by 1966, when the General Assembly considered the Covenants,

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similar proposals of the Commission on Human Rights had been included in the Protocol instituting the Conciliation and Good Offices Commission on Discrimination in Education of 1962 and in the Racial Discrimination Convention. The latter had also provided for petitions from individuals where state parties had accepted the competence of the Committee. Though the Racial Discrimination Convention was adopted unanimously, there was no agreement on considering its procedural arrangements as a precedent for the Covenant on Civil and Political Rights.

B. Traditional Opposition to Individual Right of Petition

In the course of the General Assembly debates on the Covenant on Political and Civil Rights, the Soviet Union and its allies continued their traditional opposition to the establishment of an international organ to investigate complaints of violations, contending that this constituted an interference in the domestic affairs of states and was therefore contrary to Article 2(7) of the United Nations Charter. They also opposed the granting of a right to petition an international authority. The Afro-Asian group also opposed acceptance of the interstate complaints procedure. Western delegates argued that the Racial Discrimination Convention should be an inspiration for drafting the implementation clauses of the Covenant and that the aim was not to defend the rights of governments but the rights of individuals and groups. A group of Afro-Asians sought to bridge the cleavage between adherents to undiminished national sovereignty and the advocates of effective international measures by proposing an intermediate solution which was the approach finally adopted.

The Covenant on Political and Civil Rights establishes a Human Rights Committee consisting of eighteen individuals elected by the states parties. Each state may nominate not more than two persons who must be nationals of the nominating state. In the election, consideration is to be given to equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems. Article 28(2) requires that the persons chosen be of “high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.” Article 8 of the Racial Discrimination Convention and the UNESCO protocol on Discrimination in Education (Article 2) also require “acknowledged impartiality.” Though the Covenant provides that he serve in his personal capacity, it does not stipulate

63. Schwelb, supra note 60.
64. Id. at 834-35.
that he be independent of his government. But while under the Racial Discrimination Convention the expenses of the committee member is paid by a state party, members of the Human Rights Committee receive emoluments from United Nations sources.

The Committee's functions are to study reports by states parties and to transmit the reports and such general comments it may consider appropriate to the states parties (it may also transmit those comments to the Economic and Social Council), and to consider "communications" from a state party that another state party is not giving effect to the provisions of the Covenant and provide its good offices for a friendly solution. These activities, however, may be undertaken only if both states have declared that they recognize its competence to receive and consider such communications from states. With regard to states parties to the Optional Protocol, the Committee is competent to receive and consider communications from individuals who claim to be victims of a violation by a state which is a party both to the Covenant and the Optional Protocol of any of the rights set forth in the Covenant, but when dealing with communications from individuals, the Committee is not to offer its good offices but to forward its views to the state party concerned and the individual. The Committee shall submit to the General Assembly an annual report on its activities in which a summary of the activities of the Committee under the Optional Protocol shall be included.

The requirement that states submit reports under article 40 of the Covenant on Political and Civil Rights does not mean that it is open to states parties to give effect to the Covenant only progressively.\(^5\) The immediacy of obligations under article 2 (1) is not affected. The Committee is to study the reports and make general comments and recommendations. The reports by states parties are the only source which the Committee may use. In contrast, the Committee on the Elimination of Racial Discrimination is expressly authorized by article 9(1) of the Racial Discrimination Convention to request further information from states parties. The power of the Committee on Political and Civil Rights to request supplementary reports may be inferred, however. The Committee is not authorized to use nongovernmental material in its work. The reporting system differs from the 1956 United States sponsored program of practical action in that this scheme and also that of the Covenant on Economic, Social and Cultural Rights, the organ examining the reports, consist of government representatives sharing "the common interest of governments in protecting each other against criticism." While under the Covenant on Civil and Political Rights, reports will be examined by a body of more or less independent experts.

C. ILO

To limit the filing of complaints to states parties is of limited effect. Since the establishment of the International Labor Organization, only two

\(^5\) Schwelb, supra note 60 at 839-41.
complaints by states have been filed under article 26 of the constitution of that organization. The two that were filed, Ghana against Portugal and Portugal against Liberia, were motivated by foreign policy considerations. Between 1953 and 1967, only three interstate applications were referred to the European Commission on Human Rights; and all three were connected with political controversies—two regarding Cyprus and one involving a dispute between Austria and Italy as to a German-speaking element in the province of Bolzano. The only exception was the complaint of the Scandinavian Governments as to the violation of civil rights in Greece. In contrast, the European Commission on Human Rights has heard more than 3,100 complaints from individuals since 1955. Therefore, efforts have been made to vest authority in nongovernmental entities to file complaints. Article 24 of the Constitution of the International Labor Organization permits the filing of complaints by associations of employers or workers.

The European Convention on Human Rights grants the right of petition to persons, nongovernmental organizations or groups of individuals. A similar right is extended by the Optional Protocol to the Covenant on Civil and Political Rights. However, the optional element applies also to interstate complaints. Under Articles 41 and 42 the optional procedure is applicable only in regard to a state which has declared "that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant." The state initiating the procedures as well as the state against which the complaint is made must have made a declaration recognizing the competence of the Committee. The complaining state need not assert that its own rights have been infringed upon. The state against which a complaint is made must be given an opportunity to reply and all domestic recourse must be exhausted. Six months must elapse after receipt by the receiving state of the communication without achieving a satisfactory adjustment. The Committee may seek all relevant information and attempt a conciliation. A solution shall be sought, and the Committee shall make its good offices available to the parties. It shall submit a report to the parties. An ad hoc conciliation commission may be appointed with the consent of the parties, consisting of five persons acceptable to the states parties concerned. The Commission may make recommendations.

A separate protocol permits the right of petition by individuals or groups. This inclusion in a separate protocol was due to the opposition of the Soviet Union and its allies to the principle of an individual's locus standi in international proceedings. Inserting this provision in the Covenant, even though it would have been of an optional character, may have implied the recognition of the permissibility of the right of petition by all employers or workers.

66. Id. at 845-46.
states which would have voted for, signed, ratified, or acceded to the Covenant, including states which would have decided not to accept the right of petition as applying to themselves. The Covenant was adopted unanimously and the Optional Protocol was approved with only two opposing votes, Niger and Togo, though with a considerable number of abstentions. The Racial Discrimination Convention had been unanimously adopted in 1965, despite the fact that it contained an optional right of petition. In law, however, there is no difference between inserting an optional clause in the body of a treaty and the establishment of an optional protocol.

As of August 1968, 14 states approved the Optional Protocol. Individuals who may submit communications to the Committee in accordance with the Protocol must be subject to the state's jurisdiction, that is, under the physical control of the state party to the Protocol or a national. Only an individual claiming to be a victim of a violation can validly submit a communication. Unlike the European Convention on Human Rights which refers to the right of petition "from any person, nongovernmental organization or group of individuals," and the Racial Discrimination Convention which refers to "communications from individuals or groups of individuals," the Optional Protocol mentions only "individuals." It would appear, however, that if an individual may submit a communication, a group of individuals may do so. Since nongovernmental organizations are legal persons different from the individuals who form them, they may be excluded under the Protocol. Communications are inadmissible (Article 3) if anonymous; the Committee considers it an abuse of the right of submission, or incompatible with the provisions of the Covenant, and the Committee would then take no action. If none of these obstacles exist, the Committee brings the communication to the attention of the state alleged to be violating a provision of the Covenant which has the obligation to submit, within six months, written explanations clarifying the matter and the remedy, if any, that it may have taken. The Committee will not consider the matter if it is being examined under another procedure of international investigation or settlement. The individual must have exhausted all domestic remedies. The Committee must hold closed meetings in considering the communications. Unlike the European Convention, the Protocol is silent as to oral communications. It evaluates the situation and forwards its views regarding the situation. No further proceedings are contemplated.

The Covenant on Economic, Social and Cultural Rights provides for progressive compliance by states. Accordingly, implementation under Article 16 of the Covenant provides for the submitting by states of re-

68. Schwelb, supra note 60 at 862.
69. Id.
70. Id.
ports on the measures which they have adopted and the progress made in achieving the observance of the rights which are enumerated. The reports are to be submitted to the Secretary-General of the United Nations, who shall transmit copies to the Economic and Social Council and the specialized agencies. Article 17 provides that the reports are to be submitted in stages according to a program established by the Economic and Social Council, which may make arrangements with the specialized agencies in respect of their reporting to it on the progress made in achieving the observance of the provisions of the Covenant.

D. The High Commissioner

The Convention against Racial Discrimination had set the pattern for the implementation procedures of the Covenant on Civil and Political Rights and the Optional Protocol. These procedures reflect the regional practice of the European Convention on Human Rights. The proposal for the establishment of a High Commissioner on Human Rights as proposed by the Human Rights Commission is a logical outgrowth of this development. The Commissioner would assist in the implementation of the Covenants and would work with the implementation procedures already formulated. These procedures could be combined with the adoption of a system of World Habeas Corpus tribunals. All these procedures would supplement each other. Where appropriate, the High Commissioner, the Human Rights Committee, or the Committee on Elimination of Racial Discrimination would refer the matter to a regional International Court of World Habeas Corpus. The efforts of Regional Organizations, such as the European Commission on Human Rights or the Inter-American Commission, would also be coordinated with the proposed universal entities. A regional entity would likewise be able to seek the assistance of a World Habeas Corpus tribunal, or such a tribunal could elect to refer the matter to one of the regional entities. This would result in the development of an international Ombudsman system coordinated to make the “oughts” of international declarations of human rights into a reality.\(^{72}\)

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72. Proposals have emerged from an ad hoc study group appointed by the Commission on Human Rights in 1967 and from human rights conferences in Montreal, Teheran, and Geneva. These proposals include the establishment of a United Nations Organization for the Promotion of Human Rights (UNOPHR), with the same status as UNCTAD and UNIDO. UNOPHR is to take over functions now scattered among various other United Nations bodies and to exercise more efficiently present United Nations powers, and it is to be established by a General Assembly Resolution. The main organ of the new organization would be a Human Rights Council which would combine the powers exercised by the Economic and Social Council and the Commission on Human Rights. Another proposal recommends that the Third Committee of the Assembly, dealing presently with “social, humanitarian and cultural questions,” become the Human Rights Committee of the General Assembly to deal more effectively with the problems in this area. The Montreal Assembly for Human Rights proposed that at some future time the peoples of the United Nations be directly represented in a permanent world forum, an Assembly on Human Rights, to discuss human rights problems of a general nature and advise the General Assembly on policy matters in the human rights field. Pending the establishment of the Human Rights Committee when the Covenant enters into
E. Functioning of Regional International Court of World Habeas Corpus

Effective international jurisdiction must be free to act and capable of acting on receipt of a complaint without the intervention of a government. In other words, it must be automatic. This is what has been envisioned for the proposal for World Habeas Corpus. This, however, has been the defect of presently established international jurisdictions. The composition of such a court must be above suspicion of bias, selected on a nonpolitical basis. Adjudication, however, cannot be the only means for protecting human rights. Many problems are not properly subject to resolution, and states may well be reluctant to submit matters involving the fate of a considerable segment of its population to determination by an outside tribunal.

Clearly, the proposal for a United Nations High Commissioner of Human Rights with power of negotiation is needed to supplement the work of a tribunal. However, the jurisdiction of such a commissioner should likewise be automatic. He should be independent of bias and political influence. Many governments would themselves find such an instrument beneficial. Many of the newly independent states are frequently faced with complex problems regarding human rights which require advice and assistance. They have no place to turn. Moreover, a government may feel itself unjustly accused of deprivation of human rights or war crimes and seek to clear its reputation. For example, Nigeria established a significant precedent when, in September 1968, it voluntarily invited international observers from the Organization of African Unity, the United Nations, and other countries to investigate Biafran allegations of genocide. Though the Nigerian government has guaranteed freedom of movement, it also guarantees the safety of the observation teams thereby restricting movement to certain military areas. The observers usually travel for a week and then spend a week reporting on what they saw. They have also visited prisoner of war camps. The observers have reported that the Ibos are properly cared for in the occupied areas and properties were being maintained with monies collected and put in the bank. The observers have not visited the Biafran territories.

The proposed system would also encompass the efforts of private organizations in protecting and promoting Human Rights, such as the Anti-Slavery Society, the International League for the Rights of Man, and the International Commission of Jurists, which have conducted fact-force, an Interim Human Rights Committee would be established as part of UNOPHR to deal with special human rights problems in a continuous and consistent manner. Proposals were also considered for the establishment of regional commissions on human rights in areas where such bodies do not exist. Sohn, United Nations Machinery for Implementing Human Rights, 62 Am. J. Int'l L. 909 (1968).

73. MacBride, supra note 46.
finding investigations and spotlighted world attention as to instances of violations of human rights. These and other organizations would be able to file complaints and submit reports of matters on which the proposed Commissioner and regional International Courts of World Habeas Corpus, acting as Ombudsmen, would undertake further action. They would assist in fact-finding and conciliation and in implementing decrees and recommendations. Most importantly, they would be a force in mobilizing the sanction of world opinion.

World public opinion has been a factor in promoting respect for human rights. Universal protest against restrictions upon Jewish religious and national expression in the Soviet Union has induced the Soviet authorities to ease these restrictions and to manifest a sensitivity to world criticism. This was demonstrated in the birthday celebration in honor of the Chief Rabbi of Moscow at which time the Soviet authorities sought to answer these criticisms by announcing permission for the baking of unleavened bread, the printing and distribution of prayer books, and certain other religious activities.\(^\text{76}\)

When the government of Iraq publicly hanged nine Jews on fabricated charges of spying, it received the full brunt of world condemnation. Other Arab governments deplored the action.\(^\text{77}\) Significantly, as of this writing, Iraq has not announced the hanging of any more Jews, though there have been hangings of Muslims. Jews as well as Muslims have been imprisoned.\(^\text{78}\)

One organization which has made use of public protest is Amnesty International, which engages in such tactics as letter writing, press releases, and the picketing of tourist offices to seek the release of individuals detained because of the expression of conscience or the holding of certain religious or political beliefs. Illustrative of its activities is the case of B. P. Koirala and Ganesmen Singh of Nepal. Koirala was the country’s Prime Minister—the only democratically elected head of the only democratic government in the history of Nepal—and Singh was his Minister of Transportation. In 1960, King Mahendra overthrew the government and jailed Koirala, Singh, and other exgovernment officials. In 1967, the King visited Washington, seeking increased aid. During the parade in his honor down Pennsylvania Avenue, Amnesty International displayed a seven-foot banner, calling for Koirala’s release. A news story appeared in the Washington Post. Representative Leonard Farbstein, Chairman of the House Subcommittee on Foreign Economic Policy, received hundreds of postcards urging him to act on behalf of the prisoners. The Congressman contacted the State Department which responded evasively by letter, but apparently acted firmly, telling the Nepalese government of

\(^{76}\) Chicago Sun Times, March 17, 1969, at 16, col. 4.
\(^{77}\) Weisel, At the Bagdad Market Place, Jewish Daily Forward, Feb. 1, 1969, at col. 1 (in Yiddish).
American public concern regarding the prisoners. Within a month they were released. Though the American State Department may be little concerned about political prisoners, the right combination of public concern and Congressional pressure may prod it to intercede. Amnesty is also concerned about men and women arrested in the United States for their political and religious views because of their refusal to take arms in the Viet-Nam War on the grounds of conscience. Their cause, however, is championed by Amnesty chapters in other countries. The cause of prisoners of conscience must be adopted by Amnesty-affiliated members who are not of the same nationality. The purpose of this policy is to stress that the violation of human rights is a violation of a universal, and not merely a national, right; and to increase the likelihood of the case being objectively judged as one of conscience.70

F. A War-Crimes Tribunal

The proposed system for the protection of human rights would also encompass the establishment of a war-crimes tribunal to try and punish individuals who conspire and act to deprive individuals and groups of fundamental human rights.80 A permanent ad hoc International War Crimes Tribunal would be established which would act prophylactically to deter war crimes by providing an authoritative institution to focus the moral and political forces of the world on international criminal action. Such a tribunal would bring to trial the perpetrators of war crimes. Since peace is a fundamental human right, the perpetration of war is a denial of human rights. Such a tribunal would also punish acts of genocide or conspiracy to commit genocide or politicide. The General Assembly of the United Nations has also made the perpetration of racial discrimination a war crime.81

The need exists for an independent, unbiased tribunal to try war crimes. In the past war criminals have been tried by the victors, as at Nurenberg, or by municipal tribunals which are incapable of unbiased judgment. The standards of guilt and the governing law regarding war crimes cannot be equally applied by a municipal tribunal. This problem is particularly acute with regard to the application of the superior orders principle.82 The War Crimes Tribunal herein proposed would operate as a part of the system for protecting human rights, would include World Habeas Corpus and the Ombudsman. The War Crimes Tribunal jurisdiction would be invoked only where this approach would be appropriate.

G. Human Rights—A Fact of Life

International concern with human rights is a fact of life. The choice is between orderly, well-regulated, impartial, judicial or quasi-judicial procedures or an anarchic free-for-all of political activities where the accident of political alignments and voting majorities prevail in the place of the objective establishment of facts and the neutral application of law. Due to the nonexistence of regulated procedures, human rights activities have been taken over by the political organs of the United Nations. The Commission on Human Rights decided, on its formation in 1947 and as approved by the Economic and Social Council, that it would have no power to take any action concerning the violation of human rights. But the rule broke down in 1966-67 with the general abhorrence of racial discrimination and apartheid. The General Assembly invited the Economic and Social Council and the Commission to urgently consider to put a stop to violations of human rights. The Economic and Social Council instructed the Commission, in 1967, to consider the question of the violation of human rights, including policies of racial discrimination, segregation, and apartheid in all countries, with particular reference to colonial territories. In 1967, the Commission appointed a Rapporteur and an ad hoc study group to investigate discrimination in South Africa. Subsequently, the Commission received authority from the Council to study situations revealing a consistent pattern of violations of human rights as exemplified by the policies of apartheid and racial discrimination.

When the Subcommission on Prevention of Discrimination and Protection of Minorities drew attention not only to the situation in South Africa, Southwest Africa, Southern Rhodesia, and the Portuguese territories but also to violations of human rights in Greece and Haiti, the Asian and African members of the commission objected, thereby manifesting a double standard. These delegates felt little regard for the rights of Europeans or Latin Americans. A similar double standard has been manifested by Secretary-General Thant, who has supported efforts by Arab governments to send United Nations representatives to investigate allegations of violations of human rights of Arab inhabitants in territories occupied by Israeli forces while rejecting Israel’s demands for taking similar action to investigate the allegations as to deprivation of the rights of Jews in Arab states.

84. Id.
VIII. Conclusion

Humanity demands that the universal principles of fundamental human rights be applied equally to all peoples. Human beings will no longer passively tolerate the systematic and sustained violation of their rights and denial of their freedom and are not merely looking to the United Nations to pass resolutions on their behalf. They are now organizing, protesting, and threatening; some are even prepared to wrest these rights forcibly from those elements that would still deny their exercise. The world community must provide the mechanism for the peaceful undertaking of this world revolution through a rule of law.\footnote{Human Rights—The Law Has Been Set Down, But It Has Not Been Implemented, War/Pace Report at 8-9 (1969).}

The year 1968 has witnessed the start of a world-wide revolt against authority. The permanent revolt against anti-humanistic institutions and modes of conduct and thought has arrived.\footnote{Benson, The Irrepressible World Revolt, \textit{New Republic}, Feb. 8, 1969, at 10.} The humanist idea, as derived from the renaissance, conceives of the individual as autonomous in his self-expression while existing in a harmonious order. This ideal of individualism has been furthered by technology and modernization the process by which historically evolved institutions are adapted to the rapidly changing functions that reflect the unprecedented increase in man’s knowledge, permitting control over his environment, that accompanied the scientific revolution. The 1968 revolts may well have challenged the assumptions of those who believed modernization would lead to the subjugation of the individual by bureaucratic and authoritarian control. The downfall of Stalinist Party Secretary Novotny of Czechoslovakia, the McCarthy movement in the United States, the near overthrow of President DeGaulle, the campus uprisings from Turin to Tokyo, and the beginning of intellectual ferment in the Soviet Union, point to a refusal of individual subjugation.

By its very nature, modernization functions as a liberating force. Bureaucratic institutions develop to a climax and then are toppled, with the toppling of one system leading domino-like to the toppling of others. Since 1945, a worldwide desire exists to gain the benefits of the scientific revolution as man has sought to better his lot. Nations whose people are motivated by the goal of continually raising their level of material well-being must continually upgrade their median education level resulting in greater individual and culture group autonomy and the greater participation of all men in all forms of collective decisionmaking. With these developments, a greater striving for the securing of human rights develops. The struggle goes on, despite temporary reverses, such as in Greece, Brazil, Korea, and Spain, or in the return of suppression in Czechoslovakia.\footnote{In Brazil, the revolutionary military regime has closed congress, abrogated constitutional processes by decree, and curtailed labor union activity and expression of dissent. Dean, \textit{Brazil: The Tanks Roll}, \textit{The Nation}, Jan. 6, 1969, at 8; In Spain the Franco regime de-}
The worldwide struggle for human rights is being undertaken within the context of universal revolution with international communication and international contact resulting in the emergence of transnational man. Within this context, international law has developed vertically in a step-by-step process, culminating in establishing the individual as the subject of international law. World Habeas Corpus and a World Ombudsman are the logical outgrowth of this development as international institutions are modernized to reflect this development. The goals of international law are threefold: to shape new forms for agreement and confining disagreement; creating liberty under law; and developing new instruments for cooperation. World Habeas Corpus and the system for a World Ombudsman clearly furthers these goals.

The old order of compartmentalized national entities which perpetuate bureaucratic institutions and tyrannous military regimes capable of suppressing all dissent and of detaining individuals without the principles of due process of law is crumbling. Man as an end in himself is emerging.

On the other hand, man is also capable of submerging his fellow human beings. In 1968, the world refugee population was estimated to be seventeen million, including six million five hundred thousand in Europe. They are on every continent and in more than eighty countries. Whether man, woman, or child, the refugee is a tragic result of the violent past and fermentation that characterize our time. Wherever the refugee is—whether Africa, Asia, Europe or Latin America or in the United States—he, by his rootlessness and need, personifies modern man’s inability to cope with his personal life (devoid of legal redress), his religion, his ambitions, and his hunger with due concern for his fellow man. The most dramatic increases in refugees are in the Middle East, South Vietnam, and Africa. Their arbitrary detentions and restraints mocks the world’s alleged concern for human rights.

The holocaust of the six million Jews is becoming a dim and hazy memory to the youth of today. The Nazi terror is being looked upon as merely another historical event in the long history of Jewish martyrdom.

The Commission on Human Rights took up the charges against the Greek regime in 1967 by the Scandinavian countries; consideration of them has been delayed by the junta’s unsuccessful challenge to the Com...
mission's jurisdiction. During December of 1968, the Commission heard numerous witnesses describe the tortures and other violations of human rights which had taken place in Greece under the junta while others contradicted the revolting colonel's assertions that their overthrow of Greek democracy and suppression of human rights had been justified by a danger of communist insurrection.

The Soviet Union has yet to fulfill its commitment and allow Russian Jews to be reunited with their families in other nations. Three million Jews of the Soviet Union are being denied their basic legal right of repatriation. This basic right has been affirmed and reaffirmed under international law, by the League of Nations, the United Nations, and the World Court. The Declaration of Human Rights incorporated into the Charter of the United Nations guarantees a free choice of national domicile and the unrestricted freedom of movement to all people. The Soviet Union is a signatory to that document and is legally and morally obligated to honor it. The International League for the Repatriation of Russian Jews has ascertained, by concrete evidence, that it is the aim of the Soviet Government to liquidate Jews in Russia. There is conclusive proof that Russian Jews are living in virtual slavery and fear cultural extinction. The Grand Council of Columbia Associations in Civil Service, an organization of eighty thousand Americans of Italian origin, have spoken out against the plight of Soviet Jews.

The United States and its several presidents have declared their support for the goal of achieving human rights for all men. The United Nations Charter, which came before the United States Senate in 1965, was ratified by a vote of 89 to 2 with strong support from both sides of the aisle. In 1967, the Senate ratified the Supplemental Convention on Slavery and, in 1968, ratified the refugee protocol. The Genocide Convention is yet to be adopted by the United States Senate. Genocide is defined as the deliberate destruction or persecution of national, racial, religious, or ethnic groups. It is obviously contrary to the founding spirit of the United States, as embodied in the Declaration of Independence, the Constitution, and the Bill of Rights. When the General Assembly of the United Nations on December 9, 1948, adopted the Genocide Convention, the Ambassador to the United States Mission voted for its adoption. As of this writing, the United States (Senate) has yet to ratify the Genocide Convention.

Under the rubric of individual human rights, there has been a withdrawal of the rationalization of the demands of states, in terms of power and sovereignty, to an emphasis upon the claims of individuals, particularly in terms of respect, recognition, and the right to participation in social processes. Two elements merge in the whole area of international law of human rights: the fact of formulated principles and the perception of how the human environment can be modified to enhance human dignity.

The religion of domestic jurisdiction and the domain of international law is leaning away from the residual and absolute sovereignty of the states. Competence of international law is no longer a fluctuating boundary un-concerned with individuals as subjects of international law. Under Article 2(7) of the United Nations Charter, there is a growing view that this clause does not exclude international measures to vindicate human rights which have been abridged by a state of its treatment of its own nationals or any person within its borders.

The international community is making an earnest attempt to reinstate man with his right physical and spiritual claims in the place of importance in the cosmic scheme. World Habeas Corpus, a cosmos concept for cosmos man, competently formulates the launching of an enterprise in the world of morals, politics, and law that argues that the whole category of human rights now constitutes a "matter" within the concern of international law. Under World Habeas Corpus, collective human rights and individual human rights are competently recognizable. The only problem is to establish the terms of the reconciliation. It is in the interest of mankind that each individual should enjoy the fundamental freedom necessary to the human demands of personal physical autonomy, truth, justice, integrity, dignity, and love. It is the purpose of World Habeas Corpus to enunciate an international legal order, under the banner of collective human rights, that will give force to individual human rights. Furthermore, the resolution of the problems of human rights and the equitable distribution of natural resources can provide a directly meaningful path to international conflict resolution.

The animating conception of any international law of human rights is, at its core, a humanistic world view; a conception of the human being as an end in himself and a legitimizer of power and not as an instrument of a corporate society, deriving his right to existence from that society. This root conception of "international concern" antedates the so-called "modern law of nations," with its dogmatic emphasis upon state sovereignty, and goes back to the very origins of international law and sources of humanism. With the advent of the nation-state system, this conception was relegated to the position of marginal exception. The enlightenment's reinstatement of the individual as of central concern has only now begun to reshape the basic constitutive structures of the world process of decision. Decisions in regard to human rights, as to all areas of public order, must inevitably involve a careful balancing of legitimately complementary interests: the total value welfare of an individual

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92. McDougal, Lasswell, & Lung-chu Chen, Human Rights and World Public Order: A Framework for Policy-Oriented Inquiry, 63 AM. J. INT'L L. 237, 69 (1969); see also McClellan, The Role of the Ombudsman, 23 U. MIAMI L. REV. 463-75 (1969). McClellan makes the point that the necessity for an Ombudsman is a clear admission of government failure to correct injustices to the citizens, and the failure of the administrators of government departments to deal properly with complaints when they are received.
taken alone, with the total value welfare of other individuals, both taken alone and as components of groups. For better securing the destinies of a world community process centered upon man, it is, therefore, crucial that the basic policies of a public order of human dignity be more appropriately articulated and applied.92

World Habeas Corpus and a system of World Ombudsman provide the means for articulating and applying these goals as the battering rods crumbling the fortifications of tyranny.