The International Protection of Human Rights

by David Johnson

On 16 December 1966 the General Assembly of the United Nations adopted three important instruments concerning human rights. These were the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights, both adopted unanimously; and also an Optional Protocol to the Covenant on Civil and Political Rights, which was adopted by majority vote. The adoption of these texts represents one more step in the slow, but on the whole steady, progress towards an International Bill of Rights. When this project was first mooted after the Second World War, it was realized that at least three distinct stages would be necessary. First, there would have to be broad international agreement on the rights to be enjoyed by every human being. Secondly, States would have to accept a definite legal obligation to afford these rights to all persons within their jurisdiction. Thirdly, there would have to be provisions for enforcement.

These proposals sound simple enough, but it is as well to realize how revolutionary they were at the time and how many and serious are the obstacles that still have to be overcome before they can be implemented.

Traditional international law was a legal system applying essentially between States, although it made provision also for what the International Court of Justice has called 'instances of action upon the international plane by certain entities which are not States'. Such instances have been performed by a miscellaneous collection of entities including the Holy See, the Sovereign Order of Malta, international institutions such as the United Nations and the Specialized Agencies, and even rebels granted belligerent status without yet having been recognized as States. But traditional international law also regarded the individual as an object, not a subject. The individual thus had no protection for his rights as a human being beyond what the constitutional law of his own State did (or did not) afford him. It is true that international law was always much concerned with the rights of foreigners, but this can be misleading. The right claimed was the right of State A to protect its nationals in State B, and if State A proceeded in such a case it did so on its own account and not on behalf of its nationals. State A could make such arrangements with State B as it thought fit. It could decide to leave its nationals abroad to their fate, or to settle their claims at its discretion; and even if compensation from State B

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was obtained, State A was not obliged to reimburse the actual victims, although of course it usually did so. The way a State treated its own citizens was considered a matter of 'domestic jurisdiction' and interference from outside was rigorously excluded apart from a vague right of 'humanitarian intervention', usually employed by strong Powers against weak ones. Even the right of a State to offer protection to its own nationals abroad was vigorously attacked in the name of the doctrine of 'non-intervention', which was especially developed by the Latin American States.

The position changed somewhat after the First World War. Fourteen States, mostly in Eastern Europe, accepted international obligations in the matter of treatment of ethnic minorities in their territories. International obligations were also accepted by the Mandatory Powers in the League of Nations Mandates, and these and more were later taken on by the Administering Authorities for the trust territories set up under the International Trusteeship System of the United Nations. Governments accepted international obligations too in the field of social welfare through agencies such as the International Labour Organization. But the old dislike of outside interference in what are thought to be internal matters persists among many Powers, regardless of ideology. For instance, Moscow is little less inclined to insist upon the doctrine of 'domestic jurisdiction' than is Pretoria, while London, Paris and Washington, for all their liberal protestations, are not exactly keen to accept the view that the United Nations may freely discuss their internal problems and deliver admonitions upon the way they are handled. There is no reason to suppose that the present administration in Peking is any more ready to admit foreign intervention in Chinese affairs than the rulers of that country have been for thousands of years.

The Charter of the United Nations (1945) contains many references to human rights. It states that one of the purposes of the United Nations is 'to achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion' (Article 1[3]). The General Assembly is charged to initiate studies and make recommendations for this purpose (Article 13[1]) which is made the special responsibility of the Economic and Social Council and the Commission on Human Rights, a subsidiary organ of the latter (Articles 62 and 68). All members of the United Nations 'pledge themselves to take joint and separate action in cooperation with the Organization' for the achievement of this purpose (Article 56). All this sounds impressive, until it is set beside the corresponding weaknesses of the United Nations, such as 'the sovereign equality' of the Members (Article 2[1]); prohibition of intervention of the

United Nations 'in matters which are essentially within the domestic jurisdiction of any state' (Article 2[7]) and the fact that the General Assembly and the Economic and Social Council can, broadly speaking, only make recommendations without legislative force. Moreover, the duties actually imposed upon Members by the Charter in the matter of human rights were far from specific.

Much has happened since 1945 and many of these weaknesses have been overcome. But progress has been piecemeal. A step forward was taken in 1948 when the General Assembly adopted the Universal Declaration of Human Rights. However much cynics scoff, this instrument is sure to take its place as one of the great historical documents, along with the Virginia Bill of Rights (1776), the American Bill of Rights (1791) and the Declaration of the Rights of Man and the Citizen adopted by the French National Assembly in 1789. It bears witness to the fact that, in the century of 'the common man', human rights can no longer be anything but a universal concept. Although some have tried to claim that the Universal Declaration is an authoritative definition of the human rights already referred to in the Charter, and is therefore legally binding, it was made quite clear by governments at the time—and has not been seriously disputed since—that the Universal Declaration amounted to a moral commitment only. Even then the countries of the Soviet bloc, and also Saudi Arabia and South Africa, abstained on the vote.[1]

Since 1948 the influence of the Universal Declaration has been felt in three main ways. First, it has inspired further United Nations action in the field of human rights. Secondly, it has inspired similar efforts by regional international organisations. Thirdly, it has not been without effect upon domestic legislation in individual countries. It is difficult to disentangle these varied results of the Declaration. But, although the British public may not realise it, the Race Relations Act of 1965, as well as the even more recent proposals to strengthen that Act, were in part a response to international as well as internal pressures.

Further United Nations activity has been patchy and perhaps more impressive on paper than in reality, although the cumulative effect may be greater than we can at present comprehend. Among a considerable number of instruments that have been adopted since 1948 the most important are the Convention on the Status of Refugees (1951), the Convention on the Political Rights of Women (1952),[2] the Convention relating to the Status of Stateless Persons (1954), the Declaration on the Rights of the Child (1959) and the

[1]An interesting parallel could be drawn between these faltering steps to promote the international protection of human rights in 1945-48 and the timid measures proposed by the Congress of Vienna for the prohibition of the slave trade in 1815. It is a sobering thought that, although in the subsequent 150 years efforts to stamp out slavery and the slave trade have been largely successful, they still have not been entirely so.

[2]In British terms the admission of women to the House of Lords may have owed something to this Convention.

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Convention on the Elimination of All Forms of Racial Discrimination (1965).

Depending upon one's point of view, it is either a good or a bad thing that, within the United Nations, the movement for the protection of human rights has become mixed up with, indeed almost subordinated to, the movement for decolonization. This is reflected in the fact that both the Covenants adopted in 1966 begin with a common article which opens with the words 'All peoples have the right of self-determination'. It is true that an individual cannot be truly free if he is living in an oppressed society. Nevertheless, one may doubt the wisdom of appearing to base individual human freedoms on a vague collective concept such as 'the right of self-determination', which has shown itself to be as elusive as a legal right as it is powerful as a political slogan.

It may be asked why it was necessary to adopt two Covenants instead of one. From quite early on, it was recognized that, when it is a matter of asking governments to undertake legal commitments, 'civil and political' rights are in a different category from 'economic, social and cultural rights'. The former have a long tradition in constitutional law through instruments such as *habeas corpus*. The latter date only from the era of the Welfare State, are more difficult to define, and are even more difficult to guarantee. It is one thing for governments to accept the duty of granting, subject to safeguards in the interests of pubiic order, rights such as free speech and freedom of association. It is another thing to expect governments to accept sweeping obligations in such fields as 'the right to work', 'the right of everyone to education' and 'the right of everyone to an adequate standard of living'. Consequently, whereas the Covenant on Civil and Political Rights provides for a Human Rights Committee with limited powers of investigation, the Covenant on Economic, Social and Cultural Rights requires of States only that they submit reports to the Economic and Social Council. So far as the Covenant on Civil and Political Rights is concerned, the proposed Human Rights Committee (which will have 18 members) will study and comment on reports submitted by the States Parties. In the case of States Parties who make the necessary declaration under Article 41, the Committee will also be empowered to hear and report upon complaints made by one State Party against another. Moreover, the Optional Protocol to this Covenant provides that, in the case of States who become Parties to it, the Committee shall be competent 'to receive and consider . . . communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant'.

These methods of limited enforcement are based on—although they do not go as far as—those already in operation under the European Convention on Human Rights, which was signed in Rome in 1950 under the auspices of the Council of Europe. This

Convention, which has nothing whatever to do with the other Treaty of Rome (i.e. the Treaty establishing the European Economic Community of 1957), is a realistic document under which most States in Western Europe have undertaken mutual obligations 'to secure to *everyone* within their jurisdiction' a wide range of civil and political rights. Under Article 63 the United Kingdom extended the application of the Convention to its overseas territories. The Convention has been supplemented by a number of protocols, the most important of which, signed in 1952, deals with the right to property, the right to education and the right to free elections. This protocol provides that 'in the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions'. However, the United Kingdom Government made a reservation accepting this principle 'only so far as it is compatible with the provision of efficient instruction and training, and the avoidance of unreasonable public expenditure'. As already pointed out, the European Convention is mainly concerned with civil and political rights, but it was followed by the European Social Charter, signed at Turin in 1961. A further protocol, signed in 1963, covers freedom from imprisonment on the ground of inability to fulfil a contractual obligation; freedom to leave any country, including one's own; freedom from expulsion from, and the right of entry into, the country of which one is a national; and prohibition of the collective expulsion of aliens.

The European Convention, which provides for a European Commission of Human Rights and also a European Court of Human Rights,[1] is the most successful example of the international protection of human rights so far.

Although the vast majority of petitions submitted to the European Commission of Human Rights by individuals have been declared inadmissible—owing presumably to the petitioners not being apprised of the exact terms of the Convention—the Convention has not been altogether without results. Austria has amended her criminal procedure; Norway has relaxed her ban on Jesuits; and Belgium has amended a law dealing with the punishment of wartime collaborators. However, in an important and protracted case, the Court found that the Irish Government, in detaining a member of the I.R.A. without trial for five months, had not violated the Convention. The Court is at present considering the extremely important problem of the education of French-speaking children in those parts of Belgium where Flemish is prescribed as the exclusive medium of instruction in primary and secondary schools.

Even before the United Nations adopted the Universal Declaration, the Ninth International Conference of American States,

[1]This sits in Strasbourg and is not to be confused with the Court of Justice of the European Communities (European Economic Community, European Coal and Steel Community and European Atomic Energy Community) which sits in Luxembourg.

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meeting in Bogota in 1948, adopted the American Declaration of the Rights and Duties of Man. It also set up the Organization of American States, in the Charter of which 'the American States proclaim the fundamental rights of the individual without distinction as to race, nationality, creed or sex'. An Inter-American Commission on Human Rights was established in 1960. In the Americas, however, the problem of human rights has been more than usually bedevilled by political and ideological issues. An official report with the cumbrous title of 'The Relationship between Violations of Human Rights or the Non-exercise of Representative Democracy and the Political Tensions that Affect the Peace of the Hemisphere' tells its own story. Not surprisingly, the problem of ensuring international protection of human rights is proving exceptionally difficult in a region which has made almost a fetish of the principle of non-intervention. Article 15 of the Charter of the O.A.S. itself says: 'No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State.'

It has already been mentioned that some European States extended the application of the European Convention on Human Rights to their overseas territories. A problem arose when these colonies obtained their independence. This has largely been met by many such colonies inserting in their constitutions provisions based either on the Universal Declaration or on the European Convention. Also, in the Charter of the Organization of African Unity (O.A.U.), signed at Addis Ababa in 1963, the African States reaffirmed their adherence to the principles of the Charter of the United Nations and the Universal Declaration of Human Rights.

To sum up. The example of Europe shows that, at least in a region where all countries share similar ideals, international treaties on human rights can play a modest role in helping States to raise their standards if these have fallen behind those of their neighbours. This kind of progress is not yet possible in the world at large, but it would be premature to dismiss the efforts of the United Nations in the field of human rights as altogether without value. It was none other than Pope John XXIII who said of the Universal Declaration of Human Rights that it 'should be considered a step in the right direction, as it were, an approximation towards the establishment of a juridical and political organization of the world community'.[1]

[1] *Pacem in Terris*; Encyclical Letter of April 11th, 1963, paragraph 144, translated by the Rev. H. E. Winstone, M.A. (Catholic Truth Society, S.264.)

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