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THE "HUMAN RIGHTS PROGRAM": THE VENEER OF CIVILIZATION THICKENS

M. C. BASSIOUNI*

THE STRUGGLE for human rights is recorded in the history of mankind. Throughout that history, the relentless pursuit of human rights appears as the most consistent manifestation of human aspirations.¹

What is "human rights?" It is everything—life, liberty, human dignity, and justice. It encompasses all that which pertains to mankind in its universal context and is, therefore, universal in scope and application. To those who ascribe to the values of life only things material, this definition may appear esoteric. Beyond that, however, all that which touches upon the quality of life, in an inclusive sense, is ultimately a question of human rights.

In his article entitled *Ideological Interpretation of Human Rights*, Professor Cornelius Murphy demonstrates the significance of ideology as the philosophical foundation of human rights. Divergent ideologies provide different premises as a basis for the theory, application, and interpretative implementation of human rights. The author rightly implies that a naturalistic perspective of mankind is at the very foundation of human rights. As such, these rights should be advanced on a basis which transcends mere phenomenological awareness of the existence of man. This demonstrates the author's philosophical bend, who rejects the existential approach and relies on the premise that human rights stem from naturally endowed,

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1. DEL RUSSO, INTERNATIONAL PROTECTION OF HUMAN RIGHTS (1971); ROBERTSON, HUMAN RIGHTS IN PERSPECTIVE: AN HISTORICAL INTRODUCTION (1965); and VERZIJL, HUMAN RIGHTS IN HISTORICAL PERSPECTIVE: DOCUMENTS (1958).

inalienable rights inherent to mankind. The author also advances the concept that human rights are the embodiment of commonly shared values: they have been recognized as world community aspirations because they emanate from the basic values of mankind. This, however, is a sociological appraisal which may find itself in conflict with a pure natural law theory. The author concludes that human rights bridge the ideological gap between Marxist and Western European conceptions of democracy. His discussion of what appears to be the extremities of the ideological gap is limited to a contrast between certain basic positions advanced by the proponents of Western democracy and Marxist conceptions. It must be noted, however, that these two ideological currents rest on European cultural values and ignore other cultural values, such as Muslim conceptions and Asian philosophies.² Even so, Professor Murphy's thesis is valid because human rights can be the meeting ground for different political ideologies.

The era of human rights cannot be limited in time, as some authors advance. All too often the statement is made with reference to human rights that it is the product of the period between World War I and the present. This is not true. Aristotle spoke of human rights, as did Cicero, St. Augustine, and El-Shaybani.³ These and others advanced the cause of humanitarian regulation of armed conflicts. Grotius,⁴ one of the acknowledged founders of contemporary International Law, discussed rules of warfare in reliance on the writings of Vittoria and Suarez, who were Aristotelian Thomistic theorists and who also borrowed from the Arabs many a humanitarian notion.⁵

The last few decades, however, have seen the culmination of a

2. See SINHA, *NEW NATIONS AND THE LAW OF NATIONS* (1967); Bassiouni, *Islam: Concept, Law and World Habeas Corpus* (with an introduction by M. Zaffrulla Khan, Chief Justice of the International Court of Justice) 1 RUTGER CAMDEN L.J. 160 (1969); Carlston, *World Order and International Law*, 20 J. LEGAL ED. 1 (1967).

3. See RHYNE, *INTERNATIONAL LAW* 23-24 (1971) wherein this historical development is retraced. See also KHADDURI, *THE ISLAMIC LAW OF NATIONS* 749-805 (1966) which contains a translation of El-Shaybani's case method, teaching of international law.

4. GROTIUS, *DE JURE BELLI AC PACIS LIBRI TRES* (2d ed. F.W. Kelsey Transl. 1964).

5. See RHYNE, *supra* note 3.

notion which constitutes the most significant development in the World Community since early man's socialization, *i.e.*, the emergence of the individual as a recognized juridical unit endowed with certain rights and prerogatives.⁶ This challenge to the traditional notion of state sovereignty has been the foundation of the "Human Rights Program." Since the individual became a recognized subject of the international legal order, it followed that basic human rights could no longer be violated by authoritative decision-makers acting under the protection of the national sovereignty doctrine.⁷

This development is not due in small measure to the realization that deprivatory conditions which affected specific groups revealed the corollary between such conditions and threats to world order. Indeed, it is constantly made clearer by contemporary events that serious and persistent violations of human rights threaten world peace. It should be noted, however, that the emergence of human rights followed the application of the principle of individual international responsibility for international crimes. The Nuremberg and Tokyo war crimes trials were based on this principle, and individual violators could no longer argue that they were acting as representatives of a state or in obedience to superior orders.⁸ With individual responsibility established, the claim for individual rights could no longer be skirted by the world community as being exclusively a matter of domestic law. Among the many precepts for which Nuremberg and Tokyo stand is the formal acknowledgment of the rational nexus between individual responsibility and individual rights. The punishability of the individual under international law precipitated the demands for sanctions to protect the individual from violations of human rights. The fundamental proclamation of

6. See, *e.g.*, Jessup, *The Subjects of a Modern Law of Nations*, 45 MICH. L. REV. 383 (1947); Lauterpacht, *The Subjects of the Law of Nations*, 63 L.Q. REV. 438 (1947); Tucker, *Has the Individual Become the Subject of International Law?*, 34 U. CIN. L. REV. 341 (1965). For a Russian perspective, see Korowicz, *The Problem of the International Personality of Individuals*, 50 AM. J. INT'L. L. 533 (1956).

7. See DEL RUSSO, *supra* note 1; and DROST, *THE CRIME OF STATE; PENAL PROTECTION FOR FUNDAMENTAL FREEDOMS OF PERSONS AND PEOPLES* (1959).

8. WOETZEL, *NUREMBERG TRIALS IN INTERNATIONAL LAW* (1965); and Bassiouni, *The War Power and the Law of War: Theory and Realism*, 18 DE PAUL L. REV. 188 (1968) (with references at 195). See also Dinstein, *The Defense of "Obedience to Superior Orders"* in *INTERNATIONAL LAW* (1965).

such aspirations came in the Universal Declaration of Human Rights (1948), which is the cornerstone of subsequent international codifications. Since then an unprecedented outpour of concern for the protection of basic human values has been translated into many treaties, conventions, agreements, and protocols for the protection of human rights (see their compilation in the Appendix).

Considering also the multitude of writings of scholars, one can conclude that a virtual "Human Rights Program" is in progress, yet the difficulties inherent to this program remain substantial. Among these difficulties is the latent ambiguity of what constitutes "human rights," even though in terms of the ultimate development of that "program," such ambiguity may provide a needed flexibility. Another difficulty with the "program" is that the present formulation of world community aspirations (by the elaboration of treaties) is still a far cry from the translation of these aspirations into world community authoritative prescription.⁹

The "Human Rights Program" is, nonetheless, the most positive contribution made by the United Nations since its creation. Discussing the United Nation's role, Professor Ved Nanda examines the *Implementation of Human Rights—Steps Taken by the United Nations and Regional Organizations*. Very perceptively, the author states the problem not as ideological or philosophical but as one of implementation which he sees as arising primarily in two areas: the creation of effective machinery and procedures for implementation at the national, regional, and international level; and, the development of formal and informal structures of international cooperation in protecting human rights.

Professor Nanda points out that the formulation of a consensus as to the recognition of certain basic values generated world community expectations that basic human rights emerging from such a consensus will be protected. Professor Nanda proceeds to discuss the enforcement issue in its historical context within the United Nations. The thrust of the author's approach is to pursue alternatives among national and regional, as well as international implementation devices.

9. McDUGAL and FELICIANO, *LAW AND MINIMUM WORLD PUBLIC ORDER* (1960).

The uneven progression of the "Human Rights Program" suggests that it is advisable to increase the possibility of successful implementation by encouraging alternative channels and diverse mechanisms and devices. In this vein Professor Nanda discusses regional arrangements such as the European system and the Inter-American system. These two major systems are covered in detail by two other articles. Dr. Linke writes on *The Influence of the European Convention of Human Rights on National European Criminal Proceedings*, showing the impact of this pioneering European experiment on national procedures. Indeed, fifteen European nations signed the European Convention on Human Rights which established a commission and a court of human rights. This is the only international forum which grants an individual standing to sue a state for violations of his human rights under the Convention. Such a supra-national structure is likely to develop elsewhere whenever a set of interlocking factors exist, manifesting the existence of commonly shared basic values in a given group.

An attempt to undertake a systematic examination of such a framework is made in another forum by Professors Myres McDougal, Harold Lasswell, and Lung-Chu-Chen.¹⁰ Starting with a world society premise, they ascertain those interlocking values which fit their perception of a "world social process." These values are: respect (recognition and honor), enlightenment (the gathering, processing, and dissemination of information), well-being (safety, health, and comfort), wealth (control of resources), skill (opportunity to acquire and exercise capability in vocations, professions, and the arts), affection (intimacy, friendship, and loyalty), and rectitude (participation in forming and applying norms of responsible conduct).¹¹ The European experiment proves the validity of their theory.

Attorney Fernando Fournier, in his article entitled *The Inter-American Human Rights System*, discusses the Latin American experience and the emergence of a system embodied in the Inter-American treaties. The prospect of an Inter-American system developing along the lines of the European system is not unlikely,

10. *Human Rights and World Public Order: A Framework for Policy-Oriented Inquiry*, 63 AM. J. INT'L. L. 237 (1969).

11. *Id.* at 267.

even though a question of "ideology" in the sense of Professor Murphy's approach might prove to be the stumbling block in its attainment.

National implementation measures and the degree of their success can be assessed from the articles of Dr. Linke and attorney Fournier.

A specific study of the judicial significance accorded to human rights in the United States is offered by attorney Bruno Bitker. In his article entitled *Application of the Universal Declaration of Human Rights Within the United States*, he explores the application of specific provisions of the Universal Declaration of Human Rights in the courts of the United States. This article shows how a national judicial system has developed protection of human rights parallel to an existing international model. The difference between such a system and the European one is national versus supra-national implementation. As Professor Nanda proposes in his article, it is immaterial which of the two options are pursued if the desired result is ultimately attained.

Infringement of human rights is a process of social interaction which results in the value deprivation of the individual. As such, it is not geographically limited, but part of a repetitive world social process whereby deprivatory conditions exist by virtue of groups employing strategies to attain goals which deny the co-existing pursuit of different goals by other groups.¹²

The value-oriented goal of this analytical framework leads to the conclusion that gradual elimination of violative conduct can best be achieved by the transformation of social values which tolerate such conduct. Several examples already point to this, such as the elimination of slavery, the process of decolonization, and the struggle against racial discrimination. Even the shocking instances of genocidal proportions in Biafra and Bangladesh revealed the extent of world concern and, in the latter case, resulted in India's humanitarian intervention. The success of Europe's system points to the future realization of human aspirations. Even historically ineffective structures like the United Nation's Human Rights Commission are the subject of renewed interest. As late as March 28, 1972, petitions signed by 17,000 Lithuanians were desposited therewith in

12. McDUGAL and FELICIANO, *supra* note 9.

protest against violations of their religious rights by the U.S.S.R.¹³ This and other events are causing the United Nations to consider creating a world ombudsman, a "High Commission of Human Rights" to investigate and conciliate human rights violations (Secretary-General Waldheim is somewhat assuming this role in his efforts to resolve the problem of South-West African and apartheid in South Africa and Rhodesia.)

An avenue which this writer has advanced in reliance on previous proposals is to create an International Criminal Court which would have jurisdiction over international crimes, including serious violations of human rights.¹⁴ Such a project has been advocated in several ways since the end of World War I.¹⁵ It is a far cry from being realized, but in 1953 the International Law Commission proposed a draft code for an International Criminal Court.¹⁶ In 1954 it elaborated a draft Code of Offenses Against the Peace and Security of Mankind.¹⁷ Neither proposal was acted upon. The 1948 Genocide Convention remains dead letter law as do most human rights conventions with notable exceptions in Europe. Concurrently, more sanctions have been developed in the areas of hijacking,¹⁸ and international control of illicit drug traffic.¹⁹ The assumption made by the writer is that the progress of the "Human Rights Program" is likely to follow the advances of individual responsibility before the world community as its history so far indicates. The new strategy proposed by this writer is therefore to convert the shield (protection of human rights) into a sword (international criminal responsibility), transforming world community aspirations into proscriptions. International

13. Chicago Sun-Times, March 28, 1972, at 1.

14. See I & II BASSIOUNI and NANDA, *INTERNATIONAL CRIMINAL LAW* (in print, 1972).

15. Its major proponent was the late V. V. Pella. See among his writings, *Towards An International Criminal Court*, 44 AM. J. INT'L 37 (1950) and more recently, *TOWARD A FEASIBLE INTERNATIONAL CRIMINAL COURT* (Stone and Woetzel eds. 1971).

16. See 1953 report of the Committee on International Jurisdiction, 9 U.N. GAOR Supp. 12, U.N. Doc. A/2645 (1954); and MUELLER and WISE, *INTERNATIONAL CRIMINAL LAW* 587 (1965).

17. 9 U.N. GAOR Supp. 9, U.N. Doc. A/2693 (1954); and MUELLER and WISE, *supra* note 16, at 626.

18. See I Symposium on Aero-Space Law, 20 DE PAUL L. REV. 323 (1970).

19. Bassiouni, *The International Narcotics Control Scheme: A Proposal* 46 St. John's Law Rev. — (1972).

criminal law should become the means and method of human rights guarantees. Progress continues to follow an uneven pattern but optimism is warranted.²⁰ The "Human Rights Program" is moving but this is due to *people*, (rather than states), who now claim their rights and are willing to enforce such claims because their basic values accept no less.

APPENDIX

CHART SHOWING RATIFICATIONS OF THE INTERNATIONAL CONVENTIONS OF HUMAN RIGHTS

(As of April 1970)*

TABLE OF CONVENTIONS

GENERAL CONVENTIONS

1. International Covenant on Economic, Social and Cultural Rights, December 16, 1966, U. N. Doc. A/CONF. 32/4 at 3 (not in force, 6 ratifications).
2. International Covenant on Civil and Political Rights, December 16, 1966, U.N. Doc. A/CONF. 32/4 at 8 (not in force, 6 ratifications).
3. Optional Protocol to the International Covenant on Civil and Political Rights, December 16, 1966, U. N. Doc. A/CONF. 32/4 at 16 (not in force, 3 ratifications).
4. European Convention on Human Rights, November 4, 1950, 213 U.N.T.S. 221 (entry into force on September 3, 1953—16 ratifications).
- 4a. Protocol to the European Convention on Human Rights, March 20, 1952, 213 U.N.T.S. 262 (entry into force on May 18, 1954—16 ratifications).
- 4b. Protocol No. 2 to the European Convention on Human Rights, Conferring upon the European Court of Human Rights competence to give advisory opinions, May 6, 1963, Council of Europe, European Convention on Human Rights, Collected Texts, 1966 (not in force, 14 ratifications).
- 4c. Protocol No. 3 to the European Convention on Human Rights, amending Articles 29, 30 and 34 of the Convention, May 6, 1963, Council of Europe, European Convention on Human Rights, Collected Texts, 1966 (not in force, 14 ratifications).

20. See Nanda and Bassiouni, *Slavery and Slavetrade, Steps Toward Eradication*, 12 SANTA CLARA LAWYER — (1972).

* As of publication date, this is the latest compilation available. See 3 HUMAN RIGHTS JOURNAL 357 (1970).

- 4d. Protocol No. 4 to the European Convention on Human Rights, securing certain rights and freedoms other than these already included in the Convention and in the first Protocol thereto, September 16, 1963, Council of Europe, European Convention on Human Rights, Collected Texts (entry into force on May 2, 1968—8 ratifications).
- 4e. Protocol No. 5 to the European Convention on Human Rights, amending Articles 22 and 40 of the Convention, January 20, 1966, Council of Europe, European Convention on Human Rights, Collected Texts (not in force, 11 ratifications).
- 4f. European Agreement relating to persons participating in proceedings of the European Commission and Court of Human Rights, May 6, 1969, Council of Europe, European Treaty Series, No. 67 (not in force, no ratification).
5. European Social Charter, October 18, 1969, 529 U.N.T.S. 89 (entry into force on February 26, 1965—9 ratifications).
6. American Convention on Human Rights, November 22, 1969, H.R.J. Vol. III—1 (not in force, 1 ratification).

HUMANITARIAN CONVENTIONS

7. Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, August 12, 1949, 75 U.N.T.S. 31 (125 ratifications).
8. Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea, August 12, 1949, 75 U.N.T.S. 85 (125 ratifications).
9. Geneva Convention relative to the Treatment of Prisoners of War, August 12, 1949, 75 U.N.T.S. 135 (125 ratifications).
10. Geneva Convention relative to the Protection of Civilian Persons in Time of War, August 12, 1949, 75 U.N.T.S. 287 (125 ratifications).

PROTECTION OF THE PERSON

11. Convention on the Prevention and Punishment of the Crime of Genocide, December 9, 1948, 78 U.N.T.S. 277 (entry into force on January 12, 1951—75 ratifications).
12. Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, November 26, 1968, Annex to General Assembly Resolution 2391 (XXIII) of November 26, 1968 (not in force, 8 ratifications).
13. Slavery Convention signed at Geneva on September 25, 1926, as amended by Protocol, December 7, 1953, 212 U.N.T.S. 17 and 182 U.N.T.S. 51 (entry into force on July 7, 1955—66 ratifications).
14. Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, September 7, 1956, 266 U.N.T.S. 3 (entry into force on April 30, 1957—75 ratifications).

15. Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, March 21, 1950, 96 U.N.T.S. 271 (entry into force on July 25, 1951—39 ratifications).
16. I.L.O. Convention (No. 29) concerning the Forced Labour, 1930, I.L.O. Conventions et Recommandations, 1919-1966, Geneve 1966 at 181 (105 ratifications).
17. I.L.O. Convention (No. 105) Concerning the Abolition of Forced Labor, June 25, 1957, 320 U.N.T.S. 291 (entry into force on January 17, 1959—88 ratifications).

ELIMINATION OF DISCRIMINATION

18. International Convention on the Eliminations of All Forms of Racial Discrimination, December 21, 1965, U. N. Doc. A/CONF. 32/4 at 23 (entry into force, January 4, 1969, 37 ratifications).
19. I.L.O. Convention (No. 100) concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, June 29, 1951, 165 U.N.T.S. 303 (entry into force on May 23, 1953—69 ratifications).
20. I.L.O. Convention (No. 111) on Discrimination in Employment and Occupation, June 25, 1958, 362 U.N.T.S. 31 (entry into force on June 15, 1960—71 ratifications).
21. UNESCO Convention Against Discrimination in Education, December 14, 1960, 429 U.N.T.S. 93 (entry into force on May 22, 1962—54 ratifications).
- 21a. Protocol instituting a Conciliation and Good Offices Commission to be responsible for seeking a settlement of any disputes which may arise between State Parties to the Convention Against Discrimination in Education, December 10, 1962, U.N. Doc. A/CONF. 32/4 at 33 (entry into force on October 24, 1968—19 ratifications).

PROTECTION OF ALIENS, REFUGEES, AND STATELESS PERSONS

22. O.A.S. Convention on Asylum, February 20, 1928, International Conferences of American States, 1889-1928 at 434 (14 ratifications).
23. O.A.S. Convention of Political Asylum, December 26, 1933, International Conferences of American States, 1st Supplement, 1933-1940 at 116 (14 ratifications).
24. O.A.S. Convention on Diplomatic Asylum, March 28, 1954, International Conferences of American States, 2nd Supplement, 1942-1954 at 334 (11 ratifications).
25. O.A.S. Convention on Territorial Asylum, March 28, 1954, International Conferences of American States, 2nd Supplement, 1942-1954 at 345 (9 ratifications).
26. O.A.S. Convention relative to the Rights of Aliens, January 29, 1902, International Conferences of American States, 1889-1928 at 90 (10 ratifications).

27. O.A.S. Convention establishing the Status of naturalized citizens who again take up their residence in the country of their origin, August 13, 1906, International Conferences of American States, 1889-1928 at 131 (10 ratifications).
28. O.A.S. Convention on Status of Aliens, February 20, 1928, International Conferences of American States, 1889-1928 (15 ratifications).
29. Convention relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 137 (entry into force on April 22, 1954—58 ratifications).
- 29a. Protocol relating to the Status of Refugees, January 31, 1967, U. N. Doc. A/CONF. 32/4 at 70 (entry into force on October 4, 1967—37 ratifications).
30. O.A.V. Convention governing the specific aspects of refugee problems of Africa, September 10, 1969, III—1 H.R.J. (not in force, 1 ratification).
31. Convention relating to the Status of Stateless Persons, September 28, 1954, 360 U.N.T.S. 117 (entry into force on June 6th, 1960—21 ratifications).
32. Convention on the Reduction of Statelessness, August 30, 1961, U. N. Doc. A/CONF. 32/4 at 53 (not in force, 2 ratifications).

PROTECTION OF WOMEN

33. Inter-American Convention on the Granting of Political Rights to Women, May 2, 1948, International Conferences of American States, 2nd Supplement, 1942-1954 at 229 (15 ratifications).
34. Inter-American Convention on the Granting of Civil Rights to Women, May 2, 1948, International Conferences of American States, 2nd Supplement, 1942-1954 at 230 (14 ratifications).
35. Convention on the Political Rights of Women, March 31, 1953, 193 U.N.T.S. 135 (entry into force on July 7, 1954—65 ratifications).
36. O.A.S. Convention on the Nationality of Woman, December 26, 1933, International Conferences of American States, 1st Supplement, 1933-1940 at 106 (13 ratifications).
37. Convention on the Nationality of Married Women, February 20, 1957, 309 U.N.T.S. 65 (entry into force on August 11, 1958—39 ratifications).
38. Convention on Consent on Marriage, Minimum Age For Marriage and Registration of Marriages, December 10, 1962, 521 U.N.T.S. 231 (entry into force on December 9, 1964—21 ratifications).

PROTECTION OF WORKERS

39. I.L.O. Convention (No. 87) on Freedom of Association and Protection of the Right to Organize, July 9, 1948, 68 U.N.T.S. 17 (77 ratifications).

40. I.L.O. Convention (No. 98) on Right to Organize and Collective Bargaining, July 1, 1949, 96 U.N.T.S. 247 (entry into force on July 18, 1951—90 ratifications).
41. I.L.O. Convention (No. 122) concerning employment policy, July 9, 1966, U.N. Doc. A/CONF. 32/4 at 83 (entry into force on July 15, 1966—31 ratifications).

PROTECTION OF THE FREEDOM OF INFORMATION

42. Convention on the International Right of Correction, March 31, 1953, 435 U.N.T.S. 191 (entry into force on August 24, 1962—9 ratifications).

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