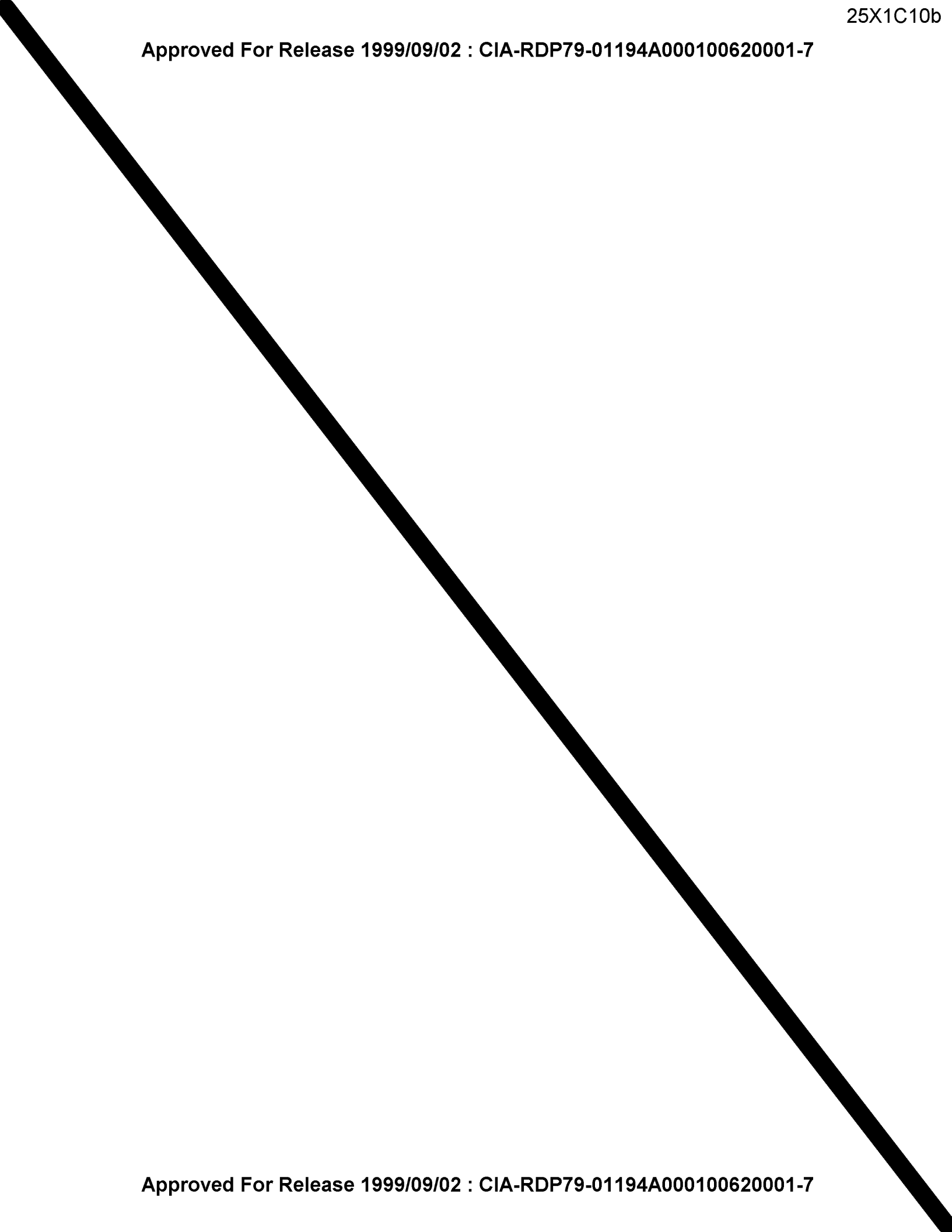

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Human Rights

To publish a survey of human rights in the world in 1974 is to undertake a task more necessary than pleasant. To whomever does not know it, it will be apparent from the pages that follow that the struggle for human rights today is almost everywhere a defensive one.

The high hopes that followed the defeat of nazism and fascism in 1945, and which inspired the adoption of the United Nations declaration and the European Convention on human rights, have not been fulfilled. There must be fewer individuals in the world today who can live in confidence that their basic human rights will be respected than there were in the late 1940s—certainly as a proportion of the world's population, and probably in absolute terms as well.

Why should this be ? One reason can be ruled out straight away. It is not for lack of concern or awareness of the problem. Probably there have been more speeches, petitions, reports and protests about human rights in the past 30 years than in the whole history of the world. What is true, however, is that people's interest in the problem is too often selective, and this is especially true when human rights are discussed in intergovernmental forums, such as the United Nations or the Council of Europe.

A Soviet delegate may wax eloquent about the sufferings of Palestinian refugees or of political prisoners in Chile, but if someone else raises the question of Pakistani prisoners of war in India he will show no interest, and if the subject of Soviet dissidents comes up he will get positively angry.

To mention the Soviet Union may be to take an unfair, because an extreme, example. In the Soviet case the explanation is probably simple bad faith. It is unlikely that the Soviet leaders are seriously interested in human rights at all —not even those of the Palestinians or Chileans.

Their affectation of such a concern for propaganda purposes may be hypocritical—but if so, like all hypocrisy, it is the tribute vice pays to virtue. It means that even the cynics in the Kremlin assume the existence of an international public opinion which does care about human rights. And the campaign in the west on behalf of Soviet dissidents must confirm them in that assumption.

But even the bona fide advocate of human rights is too often selective in his advocacy. The Americans who put pressure on the Soviet authorities to allow Jews to emigrate to Israel undoubtedly do so out of genuine philanthropic concern. But few of them attempt to put the same pressure on the Israel authorities to allow Palestinians to return to their homes.

Conversely, many Arabs feel a strong and sincere moral indignation about Israel's treatment of Palestinians, but scarcely a qualm about the killing of Israeli women and children by Arab terrorists. Yet the essence of human rights is that they belong equally to all human beings, and not only to those who happen to be on one's own side.

In truth almost everyone has a tendency to assent to the idea of human rights as a general proposition, but to feel that exceptions may be justified in the interests of their own country or community because of the extreme pressure to which it is subjected and the ruthlessness of its enemies. That is how we feel about the IRA. But it is also how the Chilean Government feels about the supporters of President Allende or how white South Africans feel about African nationalism and so on.

It is only in a strong, united and self-confident society that human rights can be easily guaranteed. The greater the pressure on a society, the greater the chance that it will sacrifice human rights to its own defence.

Today there is hardly a society in the world which is not under pressure of some sort, in the sense that its system of authority is seriously contested by at least a minority of its members. The pressure results, to a large extent, from the aspiration of the poor—both poor countries and poor people in rich countries—to a higher standard of living.

In much of the industrial world it has been possible so far, if not to satisfy that aspiration, at least to appease it, so that the existence of a liberal democracy guaranteeing basic human rights still seems worthwhile to the great majority of the population. But in the underdeveloped world standards of living are so low that for most people human rights are virtually meaningless : so that it is not surprising if governments feel that economic development is the

only priority, and that formal human rights can in practice be ignored.

Industrialization in the big western countries was carried out at a time when great inequality was taken for granted, and in most cases before the introduction of universal suffrage. Today in the Third World the most successful governments economically are authoritarian ones, whether of left or right (though most of the unsuccessful ones are authoritarian too).

It may be that human rights are bound to be roughly treated until a certain level is reached at which they have some meaning for the mass of the population. If so, our responsibility in the west is all the greater, since it may be our task to keep human rights alive until the rest of humanity is able to share them.

Declaration stronger than all the armies of Napoleon—or nonsense on stilts?

by James Fawcett
president, European Commission of Human Rights

English sages have been divided on the value of bills of rights. Lord Acton said the Declaration of the Rights of Man (1789) was a piece of paper stronger than all the armies of Napoleon, but Bentham called the "inalienable and imprescriptible rights", set out in that declaration, "nonsense on stilts".

The 1958 report of the Nigerian Minorities Commission was perhaps nearer the truth than either in saying that a statement of basic rights, whether in or outside the constitution, was a first line of defence. In the Commonwealth, Canada, New Zealand, Cyprus, India, Nigeria and Sierra Leone are among the countries that have adopted bills of rights, as part of the constitution or as directive principles of legislation and government; and a comprehensive Human Rights Bill has recently been introduced in the Australian Parliament.

The Universal Declaration of Human Rights, adopted by the United Nations General Assembly in 1948 as "a common standard of achievement for all peoples and all nations", and its first offspring, the European Convention on Human Rights, have in part been models for these domestic bills of rights.

The European Convention was drafted in the Council of Europe in 1949-50, with the active support from Britain of Winston Churchill, David Maxwell Fyfe (later Lord Kilmuir) and other parliamentarians, and came into force in 1953. A European Commission of Human Rights was set up, its members—one from each convention country—acting in their individual capacity.

Applications are brought to the commission by individuals, groups of individuals, or non-governmental bodies, claiming to be victims of breaches of the European Convention by one of the convention countries, if it has recognized this right of application. Austria, Belgium, Denmark, West Germany, Iceland, Ireland, Italy, Luxembourg, The Netherlands, Norway, Sweden and the United Kingdom have recognized the right, but Cyprus, France, Malta and Turkey have not yet done so.

Legal aid, financed by the Council of Europe, is available to applicants on the customary conditions. Any convention country may also refer to the commission alleged breaches of the European Convention in another convention country; for example, Norway, Sweden, Denmark and The Netherlands referred the situation in Greece to the commission in September, 1967, and its report played a part in the removal of Greece from the Council of Europe; and Iceland has referred alleged breaches of the convention by the United Kingdom in internment and interrogations in Northern Ireland.

The task of the commission is to investigate complaints; and endeavour to bring about a settlement with the government concerned. If no settlement is reached the commission makes a report of the facts to the Committee of Ministers of the Council of Europe and gives its opinion whether there has been any breach of the convention. At that stage, the case may be referred by the commission or by the government concerned to the European Court of Human Rights for a binding judicial decision; otherwise the Committee of Ministers must decide whether there has been a breach.

The functions of the commission are essentially independent inquiry and persuasion. It is in no sense a court of law, though some of its members have had judicial experience in their countries, and it can rightly give no orders to governments. But in the thousands of applications it has dealt with since its creation in 1954 it has had an influence both in the protection of individuals, and on legislation and administrative practices, in convention countries.

Also in 1949 the United Nations began the task, which took 17 years to complete, of translating the "common standards of achievement" of the universal declaration into enforceable rights. Two covenants were drafted—on civil and political rights, and on economic, social and cultural rights, called respectively in United Nations shorthand, legal rights and programme rights.

It was recognized from the beginning that the first of these groups, traditionally called civil liberties in Britain, may be directly enforced through courts or parliaments; while the second, such as the right to education, are essentially claims, and may thus only be met over time through dedicated social policy and persistent reform.

It was seen that it was necessary to mark out programme rights even more than legal rights, not only because time and change were needed to secure them, but because without them legal rights may give little comfort: there was a time when a hungry man who stole a sheep got a fair trial but was still hanged.

The United Nations covenants were adopted by the General Assembly by virtual unanimity but are not yet in force and, given the slow rate of ratification by countries, will not be for a long time to come. However, they are not only far wider and more articulated than the universal declaration, but, if a world view of human rights is possible, they are more representative of that view; for the universal declaration was adopted by 48 United Nations members, of which there were only four from Africa and three from Asia, and eight members, including the Soviet Union and Saudi Arabia abstained.

The covenants must then, even though not in force, be taken as having replaced the universal declaration as world statements of "common standards of achievement" of human rights.

The UN Commission on Human Rights is primarily a promotional body, but it has undertaken some specific inquiries, and its sub-commission on prevention of discrimination and protection of minorities has been empowered since 1970 to consider "all communications, including replies of governments thereon . . . which appear to reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms". This sub-commission has undertaken a number of investigations.

The International Labour Organization, an older brother of the United Nations, has also sponsored since 1919 more than 130 international conventions covering labour in industry, agriculture and shipping. Some of these conventions stand out in protecting basic rights, through the effective ILO reporting methods and the sanction of reprisals for unfair competition; for example, conventions on forced labour, the right to organize, collective bargaining, equal remuneration, minimum standards of social security, and discrimination in employment and remuneration.

Nationally, the ombudsman system, as a check on maladministration in central and local government, is taking wider hold. Originating in Scandinavia, there are now similar systems in a number of countries, but differing in some ways—such as whether the ombudsman or commissioners (as the case may be) are linked to parliament, or are limited in their tasks to central government, or can take the initiative in inquiring into maladministration.

Examples are the Scandinavian ombudsman, the Parliamentary Commissioners in New Zealand, Britain and Northern Ireland; the Médiateur in France; the tribunal in Tanzania; and the civil rights commissions in more than 20 states of the United States that are principally designed to check discrimination.

More specialized are the military ombudsman in West Germany, and the Procurator General in the Soviet Union, who is concerned with maladministration in the courts and has a number of regional offices. Zurich has established its own ombudsman, who manages to deal with many of the complaints by personal contact.

The tireless work of the press and of other non-governmental bodies, such as the Minority Rights Group and the National Council of Civil Liberties in Britain, and Amnesty, uncovers and fills many gaps in the protection of basic rights.

Events and trends in the past 25 years of efforts to codify human rights have altered the perspectives, and perhaps the priorities, as seen in 1950. To illustrate: the pressures, particularly urban, of rapid increases in population have put in question rights to life and to found a family, set out in, for example, the European Convention, and also in the Inter-American Convention on Human Rights (1969), which would extend the right to life "in general, to the moment of conception"; proposals that abortion be unrestricted, or that sterilization be in certain cases compulsory, or that family growth be limited by punitive taxation, could be irreconcilable with these stated rights.

The widening recognition of the need to regulate more closely in the common interest the uses of land and water, and other natural resources, must raise sharp and continuing questions of property rights.

Probably [illegible] ditionally been taken more for granted, or more vigorously defended, as a basic right than that of property. But the declaration of principles by the Stockholm Conference on the Human Environment (1972) calls at a number of points for planning, management and control of resources, which must reduce or restrict established property rights.

Further, while the universal declaration said that "everyone has the right to own property alone as well as in association with others. No one shall be arbitrarily deprived of his property", we search the pages of the United Nations convenants in vain for such a principle: in fact, with the assent of more than 100 countries they do not mention a right of property at all. *Verbum sapienti.*

But demands for economic self-determination and security have been intensified in face of the multinational corporations and the presence of many foreign workers or traders. So the Economic, Social and Cultural Rights Covenant states that "developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present covenant to non-nationals".

The multinational corporations are skilled at presenting a face of innocence and political helplessness, but there is no doubt that their economic power or influence, whether abused or not, is greater than that of many governments. Against them the clause in the covenant may be justified; but as it is also to be read as a means of erosion of the long-accepted minimum standard of treatment of foreign workers or traders, it can only be of comfort to General Amin.

Liberal democracy sees human rights largely in terms of the protection of the individual against the state, but in the industrialized countries at least the state is in decline in face of the technologies of communications, resource management and industrial organization; its institutions, whether liberal or dirigiste, are, to borrow Walter Bagehot's distinction, becoming increasingly theatrical rather than efficient.

Hence simple enunciations of the freedom to receive and impart information, and of respect for private life, and of the limited public restrictions permitted on them, lose most of their traditional force in such contexts as subliminal advertising, direct satellite broadcasting, secrecy on sources of environmental pollution, personal data compilation and retrieval, and industrial espionage.

Some of these forces are virtually beyond public restriction or control, as the Soviet Union is acutely aware in the case of direct satellite broadcasting; and it is in any case meaningless to claim either the freedom of information, or the power to restrict this freedom, in such areas without a clearer view of common interests than we have begun to form.

Minorities the most vulnerable and the most difficult to help

by Clifford Longley
Religious Affairs
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No group is more vulnerable to oppression than a minority within a majority, a group set apart from the rest by differences of race, religion, origin or some other cultural parameter. This was no doubt why Gandhi set the treatment of minorities as the supreme test of any society's claim to be truly civilized. This is also why there is no more urgent, nor intractable, problem in the whole field of human rights: minorities suffer worst of all, and are hardest to help.

At first sight, their plight looks hopeless. The United Nations charter, although recognizing that human rights cannot be denied to any group, however it is to be distinguished, also enshrines the principle that the internal affairs of a state are no concern of another, or of the world organization.

The European Convention on Human Rights breaches this rule, allowing the ultimate remedy of expulsion from the Council of Europe for any state flagrantly in defiance of the convention. But the worst cases of the oppression of minorities are no longer in Europe.

Each distinct minority has its own distinct problems, but it is wrong to think they have nothing in common. Not only are the mechanisms of oppression universal—the denial of cultural identity in language or religion; the ruthless suppression of self-assertion; discrimination in jobs, housing, education—but so, by and large, are the causes.

Mr Ben Whitaker, former Labour MP and now director of the Minority Rights Group in London, says: "Ethnocentricism, the belief in the extraordinary values of one's own group, coupled with a suspicion of anything different, permeates homes, schools, books, and newspapers throughout the world.

"Prejudices, which are often used as pretexts for denigrating political, social, or economic opponents, provide men with excuses to exploit other classes, races or women. Leaders use them as calculated weapons: the led, from the need for security, shelter behind such blinkers and thereby are diverted from focusing upon the real causes of the injustices they are suffering.

"Minorities often reveal wider social problems. Much inter-ethnic conflict is due not to pluralism but to societies' imbalance of power. Prejudice, which is also capable of being self-fulfilling, can be reinforced by competition in jobs, sex or housing; and less well-off people are obviously those who are most vulnerable to a threat to their basic existence."

This is an important diagnosis, not least because it comes from the man who heads the one organization in the world to have studied the question of minority rights globally. The MRG has 19 different case histories to its credit, ranging from religious minorities in Russia to the gypsies of Europe, from the Nagas of India to the Montagnards of Vietnam.

This is the role of minority-as-scapegoat for social injustice, minority-as-distraction from social injustice, the traditional lot of Jews in Europe and now blacks in contemporary Britain. It perhaps explains why the

worst persecution of minorities appears to happen in the most socially disturbed, least just, or poorest societies.

If the relationship is in part causative and not accidental, as Whitaker's analysis would suggest, then the theory would tie any genuine long-term improvement in the status of a minority to the general improvement in the level of justice and prosperity in society as a whole. It is something of a challenge to paternalistic liberalism, which traditionally concentrates its efforts on alleviating the day-to-day symptoms of discrimination and oppression.

An unjustly treated minority is itself a symptom of deep-seated ill-health in society, and any cure would have to be directed at society itself. In that sense Gandhi's dictum is a penetrating insight into the nature of injustice rather than a gentle statement of the almost-obvious.

If injustice to minority groups is usually to be found as a product of general injustice, the minority is likely to suffer more than the general population from the manifestations of that injustice.

A regime that denies its majority its human rights is likely to be even more ruthless in its dealings with its minorities. And these regimes are, of their nature, less susceptible to outside pressures; they are less likely to have any semblance of democracy, or a free press, or unfettered courts.

Minorities also represent a special threat. Permanently reminded by discrimination of their separate identity, there is an ever present risk that they might begin to assert that identity.

Republicanism in Northern Ireland, Black Power in the United States, Basque nationalism, the Biafran rebellion, the Kurdish revolt, and the militancy of the Jews of Russia all tell the same tale. No country that screws down the lid on a minority group can escape the consequences, and all too easily the situation can progress down a descending spiral of harsh legislation, persecution, police brutality, and torture.

The ultimate logic, as the world knows, leads to the gas chambers. There is no other "final solution" to any minority problem at that end of the scale: each step leads to the next. Only a deliberate change of direction towards a fair, free, and just society can even secure relief for oppressed minority groups.

That, basically, is the problem facing any organization which takes up the cause of a minority under pressure. The radical remedies required are quite outside its control. But some steps are possible as recent history has shown. It does appear that certain forms of private and public pressure from outside can check the descent of the spiral of repression, forcing states to a greater toleration of minority self-expression than they might otherwise like, if left to their own devices.

In the case of minority rights, outside organizations of this kind have a particular responsibility. Only a few of the world's major minority groups can look to the protection of a neighbouring country, as the Roman Catholic religious and ethnic minority in Northern Ireland can look to the Republic, or as the Jews of Russia can look to Israel and to the Diaspora communities for help.

Even societies marked by a high degree of political repression recognize that their standing in the world cannot be allowed to deteriorate too far. Public opinion outside their own frontiers is important to them, more important in some cases than opinion among their own citizens. This presents organizations like MRG with one useful source of political leverage. For failing all else, recalcitrant governments can be brought to the bar of world opinion, and obliged to answer for their conduct.

Is it sufficient to leave the defence of the world's most defenceless communities to one small privately financed British organization? Although now becoming recognized throughout the world for its work in this field, that in itself represents a danger as well as a tribute. Humanitarian organizations can too readily assume that minority rights are being cared for by others, and need no additional effort.

The International Committee of the Red Cross, Amnesty International, the churches and other religious institutions, and those governments which conduct their international relations with an element of altruism, are no doubt happy to join in a chorus of condemnation once a situation of minority oppression is exposed, but who is to do the exposing? Almost by definition, there is no outside vested interest that can benefit by such exposure in the majority of cases. There are neither votes nor profits to be made out of, say, the Montagnards, the Biharis, or the Untouchables.

A United Nations Commissioner for Minorities, working along the lines of the United Nations Commissioner for Refugees, is urgently required to direct and focus world attention, backed by resources proportionate to the need—which MRG freely admits it does not possess.

A United Nations Commissioner in this field would be a far more formidable ally for a minority to have. It would be much more difficult for any state to get away with a policy of reprisal if the United Nations itself—for all its faults—was watching and seen to be watching.

If the United Nations is to befriend the friendless in this way, it will only be when the world community has reached a level of maturity advanced enough to put aside self-interest. There are few governments in the world without a minority skeleton somewhere in the cupboard.

Eight complaints—and signs of possible strength in fragile investigation procedure

by Niall MacDermot
secretary-general,
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When the Human Rights Commission of the United Nations met early this year in New York it was called upon to consider for the first time under a new procedure a number of complaints of violations of human rights in eight widely differing countries. If the results were disappointing to many people, at least the new procedure was not strangled at birth as some had feared would happen.

The commission is composed of representatives of governments, and most governments, being afraid of exposure, were reluctant to develop an institution that might be used against them. Twenty years later, however, under the pressure of international opinion and with a changing political climate, a number of governments became so motivated by other factors that they were ready to make some advances towards the international protection of human rights. This arose in particular in relation to colonialism and racial discrimination in southern Africa.

As a result of a decision by the Economic and Social Council in 1966, the Human Rights Commission in March, 1967, asked its subcommission to prepare a report containing information "from all available sources" on violations of human rights and to bring to the attention of the commission "any situation which it had reasonable cause to believe revealed a consistent pattern of gross violations of human rights and fundamental freedoms".

A course of action was set in force which led to the adoption in 1970 by the council of an important resolution (No 1503) establishing a detailed procedure for the investigation of complaints similar to that recommended by the subcommission in 1967.

For many years the Secretary General has received between 20,000 and 30,000 complaints a year of violations of human rights in all parts of the world. Many are repetitive and often in vague and general terms. Many others, however, are specific and merit inquiry. Under the new procedure admissible communications may originate from individuals or groups who are victims of violations, from persons having direct knowledge of violations, or from non-governmental organizations acting in good faith and not politically motivated and having direct and reliable knowledge of such violations.

The new procedure calls for examination of these complaints in three stages. First, the United Nations secretariat refers the "communications", as complaints are euphemistically termed, to a working party of the subcommission. This meets for 10 days to consider them and refers those which "appear to reveal a consistent pattern of gross and reliably attested violations" to the subcommission. This in turn considers them for about two days and then decides whether to pass on to the Human Rights Commis-

sion.

In the first year of the new procedure the subcommission decided not to refer to the commission any of the three cases (Greece, Iran and Portugal) sent to it by the working party. Instead it sent them back to the working party to consider them further in the light of replies from governments. In this way a year was lost.

In the second year the working party referred eight cases to the subcommission (Brazil, Guyana, Indonesia, Iran, Burundi, Tanzania, Portugal and the United Kingdom). A judicious balance was maintained, two countries being selected from four of the five blocks into which the nations are unofficially grouped within the United Nations, the Soviet block alone escaping scrutiny.

The third stage was reached for the first time this year. The Human Rights Commission, after examining the situations referred to it, is asked to determine "whether it requires a thorough study by the commission and a report and recommendations thereon to the Economic and Social Council", or "whether it may be a subject of an investigation by an ad hoc committee to be appointed by the commission, which shall be undertaken only with the express consent of the state concerned and shall be conducted in constant cooperation with that state and under conditions determined by agreement with it".

The distinction between a "thorough study" and an "investigation" is not very clear, save that an investigation, depending as it does on the cooperation of the government concerned, is less likely to occur, but if it does, will presumably have the advantage of including evidence from both sides.

It is important to realize that this procedure is in essence a political and not a judicial one. It is more akin to an inquiry on the national plane by a parliamentary committee than to a decision by a court of justice. To be realistic, it will be difficult to obtain even the degree of impartiality sometimes found in parliamentary committees.

This does not mean that the procedure is valueless. It is a way of bringing pressure on governments to mend their ways with respect to human rights. Also, the very existence of the procedure shows that "consistent patterns of gross violations of human rights" are not, in the words of article 2(7) of the charter, "matters which are essentially within the domestic jurisdiction of any state" and, therefore, excluded from United Nations intervention.

Of the eight cases referred this year to the Human Rights Commission it is believed that the complaints against Brazil referred to the torture and ill-treatment of prisoners; those against Guyana to racial discrimination, particularly in employment in the public service; against Indonesia to the prolonged detention without trial and ill-treatment of tens of thousands of political suspects; against Iran to the torture of political prisoners by the secret police; against Burundi to the tribal massacres of the Hutus by the ruling Tutsi minority; against Tanzania to the forced marriages of girls of Persian descent in Zanzibar; against Portugal to the ill-treatment of prisoners both in Portugal itself and in the overseas territories; and against the United Kingdom to the preventive detention and alleged ill-treatment of suspects in Northern Ireland.

It is understood that there was little discussion in the commission of the merits of these complaints. Attention focused on the procedure to be adopted in handling them. Most if not all of the Soviet block, who have been hostile to the new procedure from the beginning, sought to have all these complaints referred back to the subcommission, which would effectively have killed it.

The majority eventually decided to set up a working party of the commission itself, to meet in a year's time to consider the complaints again in the light of any further replies from governments and any other relevant information available, and to report back to the commission. This decision illustrates the extreme sensitivity of the commission in dealing with complaints against governments in cases other than those which are repeatedly raised by members of the commission.

Governments have an opportunity to reply to all communications at the outset before they are referred to the working party of the subcommission, and again at all subsequent stages. To give governments yet another year to reply to complaints, of which at least two were first considered by the subcommission two years ago, is to reduce severely the effectiveness of an already weak procedure.

None the less, many people with long experience of the struggle for more effective procedures within the United Nations felt satisfied with the progress made this year.

The advantage of the Resolution 1503 procedure is that it is the only procedure, universal in its application, for considering complaints by individual victims and by interested non-governmental organizations concerning violations of human rights. It is a tender plant, which needs careful nourishment.

Efforts to enforce the western tradition

"Human rights" is a fairly new name for what were once called "the rights of man". Mrs Roosevelt encouraged the United Nations to speak of human rights when she found that the rights of man were not understood in some parts of the world to include the rights of woman.

In the seventeenth century John Locke, the philosopher, and others, spoke of "natural rights", because the rights in question were derived from "natural law", or the universal principles of justice, rather than from the imperatives of positive law. This last distinction is, of course, the crucial one. A right can be one of two things: an entitlement a person has, because the authority and force of positive law decrees and upholds it; or a right may be something a person ought to have, because of a morally compelling claim to it.

Affirmations of human rights are characteristically affirmations of rights in the second sense: and there is a very ancient western tradition of belief both in the reality of natural law—a law higher than the edicts of princes—and of the universal rights which this law confers on all rational, sentient beings.

Greeks, Stoics, Romans, medieval Christians and modern rationalists have sustained much the same concept of basic moral rights which every human being possesses simply by virtue of being human. They are not the kind of rights that are conferred exclusively by a particular society. They are not rights that are earned. They are universal, and they are inherited, so to speak, with humanity itself. Their very generality, however, makes it hard to discern these rights clearly.

Hence, various attempts have been made to set down lists of human rights. John Locke, most often quoted as an authority on the subject, wrote of the rights to life, liberty and property.

The Bill of Rights enacted by the English Parliament after the "Glorious Revolution" in 1689 named also the right to trial by jury and prescribed that there should be neither excessive bail nor excessive fines, and outlawed cruel and unusual punishments. Locke's reasoning and the example of the English Bill of Rights had a great influence throughout the world. When the American states gained their independence, several issued declarations of rights adding to those that the English had named, the right to happiness, or, in more cautiously worded documents, the right to the pursuit of happiness.

The United States Constitution of 1789, with concurrent amendments, defined these rights in somewhat greater detail, and understandably so since its purpose was to translate moral rights into positive rights, by making them enforceable in American positive law.

Stirring but abstract document

The famous French *Déclaration des Droits de l'Homme et du Citoyen*, which came out at much the same moment in history, named more or less the same civil and political rights, in language inspired more by English and American theory than by anything that belonged to French experience. It was a stirring document. But it had one great defect. It was abstract and idealistic, and had no force in positive law, as had both the English Bill of Rights and the American Constitution. It was no more than a declaration.

In 1948 there appeared another declaration on the same lines, the Universal Declaration of Human Rights, passed and proclaimed by the United Nations. This was both less

and more than had been promised when the United Nations was founded during the Second World War, and charged with what Churchill called the mission of enthroning human rights. The United Nations declaration fell short of that objective because it provided no machinery for passing from the abstract exercise of naming human rights to the concrete exercise of upholding them.

At the same time it went beyond the original purpose by naming besides the traditional natural rights to life, liberty, fair treatment and so forth, various other more idealistic rights, such as the right to a decent standard of living, medicine and holidays with pay.

This introduction of "economic" rights was partly in response to the presence of the communist powers in the United Nations. The civil and political rights of the great western tradition hold an equivocal place in Marxist philosophy, while the material and economic needs of men are better understood.

The Council of Europe has achieved more. The European Convention for the Protection of Human Rights, drawn up in Rome in 1950, was followed by the institution at Strasbourg of a Commission and a Court of Human Rights, bodies to which the individual has access as a petitioner if he believes that his rights as set out in the European Convention have been violated.

Universal, not just European

It is perhaps ironic that access to the Strasbourg institutions is limited to the inhabitants of countries where political and civil human rights, that is, human rights as they have been understood in the western tradition, are already generally well respected by the governments concerned.

But if the western understanding of human rights is to some extent culture-bound, the rights set forth in the European Convention are not intended to be the rights of Europeans only, but to be the rights of all men. The European Convention is just as much a universal document, in this sense, as are the Universal Declaration and the Covenants of the United Nations. The European Convention confers some positive rights on inhabitants of member states, but it claims moral rights for everyone; and indeed it would make no sense as a statement of human rights if it did not do so.

It is tempting to agree with Bentham's contention that no assertion of right makes sense unless it is an assertion of positive right, rights actually enjoyed. But we should not agree with him too hastily. The word "right" does have its two meanings, both equally legitimate. Speaking of a moral right is just as sensible as talking of a positive right. Indeed, a large part of the justification of a claim to a positive right must be that it is a morally compelling claim.

Way to persuade people

To establish that a thing ought to be is the way to persuade people that it shall be. To say, for example, that all men have a right to freedom of movement is to dispute the justice of those governments which refuse to allow people to move freely.

And this is not to make anything so vague and utopian as a statement of aspiration and ideals; it is to indict, from the perspective of justice and morality, governments which restrain men's freedom, dignity and so forth. It is inevitable that the rights of one individual collide from time to time with those of another. Also, there may occasionally be a conflict between the rights of the individual and the security of the nation. But security in general is not something which is at odds with human rights, because it is itself a human right; it is a part of the right to life.

The security of the individual is bound up with the security of the community: the private enjoyment of the right depends on the common enjoyment of the right. The demand for liberty and security is not a demand for two things that can only with difficulty be balanced or reconciled: it is a demand for two things that naturally belong together. Part of the western understanding of human rights is the belief that a free country is safer than an unfree country. History gives us good grounds for continuing to think this is true.

Maurice Cranston

Variety of attitudes in Third World

The origins of thinking on "human rights" in the so-called Third World of Asia, Africa and Latin America can be summarized in two propositions. First, many individual politicians and intellectuals, revolutionary and gradualists alike, learnt the political morality of the West, often in highly idealized form, either in the various metropolitan centres of colonial empires or in local institutions permeated by European political thought.

Secondly, these same individuals not unreasonably started to make claims, in orthodox terms, that the principles so smugly professed by Europeans should be applied to non-Europeans—in other words, their political and economic masters should give full faith and credit to their own concepts.

The political and moral foundations of many well-known figures in Africa and Asia are by no means radical: not surprisingly they are Christians, Muslims or Hindus. Dr Kaunda espouses humanism. Mr Nyerere's socialism is akin to Tom Paine's Rights of Man and not to revolutionary socialism.

Even when such figures resort to planning and state control of various kinds, the approach has tended to be that of Lloyd George's war cabinet—that major problems (poverty, malnutrition and the like) call for special measures as a matter of expediency rather than doctrine.

A constant in the history is the Afro-Asian appealing to the European's moral pretensions on the simple principle [illegible]

Paris Peace Conference in 1919 the Japanese delegation (qualified members of the "heavy squad" since victory in the Russo-Japanese war) had the temerity to ask that the League of Nations Covenant should include guarantees of racial and religious equality. This met with a refusal from other delegations: and thus it was that (apart from mandates) 1919-20 human rights standards were insisted upon only in minorities treaties affecting defeated states and states such as Poland which were "probationers" and products of the work of the Allied Supreme Council.

It is typical that, when the French turned their forces on Ho Chi Minh's infant republic in 1945 he defended his policy of setting up a provisional government by saying: "Not only is our act in line with the Atlantic and San Francisco charters, solemnly proclaimed by the allies, but it entirely conforms with the glorious principles upheld by the French people, viz liberty, equality and fraternity."

Since about 1955 a large number of Afro-Asian states, including the new China, have been active in international life, and it is now possible to give a reasonably clear picture of the special elements in the attitude of the developing states towards human rights. This picture of "special elements" involves a risk of creating distortions. First, the background of ideas is fairly orthodox—a matter already emphasized. Secondly, the developing states exhibit considerable variety of theory and practice.

Nevertheless, certain themes have emerged with clarity and persistence. In the first place, the developing states wish to give emphasis to economic and social rights as necessary companions to the classical civil and political rights. When the human rights covenants were put in final form in 1966 by the United Nations Organization there were two instruments, an international covenant on civil and political rights and an international covenant on economic, social and cultural rights.

The importance attached to the latter by the developing countries is well attested, in principle if not always in practice. Economic, social and cultural rights are exemplified by the right to work, the right to social security and the right to education.

Such rights complement civil and political rights: thus for example, the poor man has little chance of reasonable access to modern and urban justice in the higher courts in the absence of legal aid. The strategy of looking at the economic foundations and at the insufficiency of formal equality involves insisting on positive state provision.

The nodal points of Third World thinking on human rights are: the principle of self-determination; the principle of racial equality; insistence upon the economic foundations of human rights. Apart from these, politicians and lawyers of the Third World would argue that their approach is not unorthodox and that their special inter-

ests are not antithetical to the civil and political rights but rather complementary and even necessarily antecedent.

This may be so in a general way, but there are tensions that are too often ignored. One category of tensions derives from the psychological and political sources of scepticism. These are genuine enough, but are sometimes used to excuse the more or less autonomous deficiences of Third World governments and élites, whose standard of living is generally in inverse proportion to the contribution they make to social and economic progress.

The sources of Third World scepticism are familiar. First, resentment at past degradation and exploitation. The practices of western civilization in China, the Belgian Congo, French Equatorial Africa and other areas, are well described by professional historians. It is perhaps time that the West disowned some of its bad practices, much in the same way as it calls for the Soviet authorities to disown Stalinist practices.

Corrosive impression of hypocrisy

Secondly, and connected with the first, is the corrosive impression of hypocrisy resulting from an unctuous concern for the rule of law *after* independence contrasted with forced labour, racialism and settler-inspired expropriation of the best land in some colonies, *before* independence.

Thirdly, there is the feeling that western societies readily resort to emergency powers and national government in contexts described by them as justifying crisis measures, but fail to accept underdevelopment, poverty-line situations and actual famine as crises ranking with those normally created only by war in affluent states.

Fourthly, there is a realization that western official opinion tends to become sensitive to human rights only when a régime is unsound politically, and in relation to protection of foreign investment. Sukarno's Indonesia was the object of much criticism; but although no more attached to the rule of law than the previous régime, it has been free of adverse comment. Indeed, while *The Times* was reporting massacres of not fewer than 300,000 in 1965-66, a sterling credit was extended by the Labour Government.

The sources of tension itemized so far are important in their effects but they are superficial: the problems of substance will remain even if the Third World chooses to ignore the past and the hypocrisy of some of its critics. The pervading and more serious sources of difficulty are what may be called structural problems.

These matters of essence can best be indicated by example. The principle favouring economic development as a major objective may conflict with the idea that hours and conditions of work should conform to standards set by ILO conventions.

There is "the threshold of equal relations" or "bad foundations" problem: that is, if a group of aliens or a particular racial group of citizens have economic dominance or actual monopoly, then overtly "discriminatory" action may sometimes be considered necessary to effect a distributive justice.

There are dominant minorities as well as persecuted minorities. To apply a static human rights model to a society built on a dominant minority may result in a perpetuation of a rigid social hierachy in which racial or religious distinctions are aligned unhappily with economic divisions within a community.

For economically depressed groups, such as Canadian Indians and Eskimoes, "benevolent discrimination" may be called for in matters of federal funding of schools and the like. "Levelling up" operations, such as racial quotas to increase intake in universities, may cause resentment in groups whose position is threatened by such policies.

The more ambitious and sophisticated human rights models now presented in various modern constitutions and international conventions raise in an acute form an old problem. Standards have to be set before enforcement can occur, and the standards tend to be ahead of the situation on the ground—otherwise no regulation would be necessary.

In human rights matters, standards have tended to go too far ahead of the social and political facts in many societies. International standards are mostly reliant on national systems for enforcement. The developing states may suffer at least as much as other states in having manifest incompatibilities between the principles espoused by their statesmen in United Nations bodies and the backward social structure of th states concerned.

Ian Brownlie

Soviet Union: curbs contradict constitution in practice and in law

by Richard Davy

The Soviet Union comes in for steady and severe lambasting on the subject of civil rights. This is not because its record is necessarily worse than that of other countries. There are plenty of places where the law is more arbitrarily applied and the rights of the citizens more grossly disregarded.

But the Soviet Union is a great power with extensive political influence beyond its borders. It also claims to be the chief centre of an ideology propagated by political parties all over the world. It makes high claims for the values on which its system rests and the benefits which it accords its citizens.

For all these reasons the Soviet Union's attitude towards human rights is a matter of legitimate interest abroad and the subject of special scrutiny. This is often deeply resented by the Russian Government, which likes to draw a sharp line between internal and external affairs. But at least it demonstrates the importance of the Soviet Union. Moreover, to a large extent the standards by which the Soviet Union is judged are those which it itself professes. The civil rights movement in the Soviet Union is concerned primarily with upholding the law, not changing it.

The constitution guarantees freedom of speech, freedom of the press, freedom of assembly, including the holding of mass meetings, and freedom of street processions and demonstrations. It also recognizes freedom of religious worship and "freedom of anti-religious propaganda". In practice and in law, however, these freedoms are curbed, mostly in the name of the defence of socialism.

That the situation has improved a lot since the days of Stalin goes without saying. At that time anyone could be whisked away at any time for any reason, or for no reason, and imprisoned or executed without trial. After 1953 the criminal code and the principles of procedure were changed. The powers of the KGB were reduced and those of the procurators increased. The law began to have real meaning.

Mr Khrushchev also promised to reform the constitution to create "still stronger guarantees of the democratic rights and freedoms of the working people and guarantees of the strict observance of socialist legality". But little progress was made before he was deposed, and his successors gradually abandoned the idea, perhaps partly because dissidents were beginning to appeal more often to the guarantees of free speech and assembly in the existing constitution. To have given them better guarantees would have encouraged them. To have qualified the guarantees even more would have been difficult to explain.

By the mid-sixties there were more signs of regression. The new forms of the law mostly survived but they began to be bent or curtailed for political purposes. The trial of the two writers, Sinyavsky and Daniel, in 1966 was a turning point which provoked the first conspicuous wave of protest among intellectuals. At about the same time there were trials of Ukrainian intellectuals, and pressures increased on minority religious groups such as Jews, Baptists, and Pentecostalists.

Two years later there were harsh measures against those who protested against the invasion of Czechoslovakia. Now the entire dissident movement has been reduced to a shadow of its former self as its members have been tried, exiled, committed to mental hospitals, or expelled from the country—although it has recently resumed publication of the underground *Chronicle of Current Events*.

Several basic problems inhibit the extension of human rights in the Soviet Union. In the first place the communist system rests on the assumption that the party represents the interests of all the people and is the repository of all wisdom and authority. If the party is right, dissent must be wrong. The concept of legitimate con-

flicts of interest is absent except in limited spheres. Hence there can be no separation of powers, no right of dissent, and still less any positive value in dissent.

Nor can there be any room for the idea of the rule of law as such. The law is the servant of the party and an expression of its political authority, so it can be used without qualms against anyone who questions this authority. Individual "rights" in this sphere have had little place in Russian history or in communist ideology.

Hence the failure of many dialogues with western critics. The assumptions from which they start are different. Hence, too, the elasticity of Soviet law, which provides penalties for many activities which would not be regarded as crimes in the west. The two provisions most commonly used against dissidents are Articles 70 and 190-191 of the criminal code. Article 70 provides for up to seven years' loss of liberty and five years' exile for "anti-Soviet agitation or propaganda" and spreading "slanderous fabrications defaming the Soviet political and social system".

Article 190-191 provides penalties of up to three years' deprivation of liberty for the systematic dissemination, orally or in writing, of deliberate anti-Soviet fabrications. These articles enable legal proceedings to be taken on the basis of relatively subjective assessments of what constitutes anti-Soviet activity.

There is also another forward line of defence by the state which is often underestimated abroad. In a system where the party's authority is absolute the individual is dependent on its good graces for his job, his house, the education of his children, his permission to reside in a certain place, and his passport to travel.

This gives the party a series of graded sanctions against dissenters which require no legal proceedings, no trials and no formal justification. They are used far more than is generally recognized, and can be effective, especially against members of the intelligentsia with good jobs and growing families.

The situation is, however, more complicated than this. There are a number of conflicting needs which can be used by those pressing for greater freedoms. First, the Soviet Union wishes to appear as a country which offers its people more "real" freedom and rights than other countries. It lays particular emphasis on the guaranteed right to work, to education, to leisure and to social security.

Ever since Lenin, Soviet spokesmen have disparaged "bourgeois" freedom as nothing more than the freedom to oppose or undermine the progress of socialism and hence the interests of the people. But the mere fact that the system is forced to use words such as freedom and democracy exposes it to pressures to give these words more substance.

Second, the interest which the outside world shows in the Soviet Union provides a certain protection for better known dissenters, particularly in culture. Whatever Soviet spokesmen may say about the "real" freedoms enjoyed by their people they show signs of embarrassment, and admit adverse effects on their foreign policy, when world opinion is alienated by the persecution of individuals.

Third, there is probably more support than is generally recognized for Dr Sakharov's argument that science and technology cannot flourish in an atmosphere of intellectual repression. The Soviet leaders are acutely aware of the limits of their technology and the failure of their system to generate real innovation. They are unwilling to draw the necessary conclusions.

But there is a new and highly educated generation growing up which was not conditioned by Stalinism and is likely to press for freer discussion and freer contacts with the West, if only in the interests of efficiency. They may or may not have had much interest in cultural freedom, but they can hardly fail to extend some of the limits of the present system.

Finally, the apparatus has some interest in basic legality since it was itself a victim of the breakdown of legality under Stalin. In an orderly state people need to know where they stand, and it is in almost everyone's interest that the application of the law should be reasonably regulated and predictable.

This provides the civil rights movement with levers that it can use to its own benefit. There is no doubt that the determination with which dissidents have insisted on their rights under the law and on proper procedures has made the authorities more careful.

It does not stop people being sent to prison camps or mental hospitals. It does not stop people being persecuted in extra-legal ways. But it has probably limited abuses of the law, and it has certainly established a number of permanent footholds in the rock face up which the dissidents struggle to make their precarious ascent.

There always seems to be at least one step back for every two forward, but when one looks at the press conferences given by Dr Sakharov in Moscow and the endless telephone calls to the West by Soviet Jews, it is difficult to regard the situation as wholly static.

Even in the West governments represent biggest threat to freedom of expression

by Michael Scammell

Most societies and most political systems claim either to have established freedom of expression or else to be moving towards it, maintaining simultaneously that their press is independent. In the United States, for instance, the right to freedom of expression is embodied in the First Amendment to the constitution, while Soviet Russia's constitution, which has served as a model for most other communist constitutions, also guarantees its citizens freedom of expression.

The words are the same, but clearly they mean different things in different places, and the problem can be resolved only by reference to John Stuart Mill's classic distinction between "freedom from" and "freedom to".

In the United States the press is guaranteed "freedom from" government interference and is expected to behave as a "fourth estate"; but in Soviet usage the press is in no sense free from government control (though it might perhaps be said to be free from "bourgeois control"), but is held to be "free to" advance the interests of the proletariat—as interpreted by the Soviet Communist Party. It is not free to advance anyone else's interests, however, nor the proletariat's interests as interpreted by anyone other than the party leaders.

In general the press and radio and television in communist countries are regarded primarily as sources of power and only secondarily as providers of information. For this reason they are assigned flatteringly important positions in the social hierarchy, while agitation and propaganda ("agitprop") are given a high priority. In return for the privileges this brings they are expected to submit to rigid control by the government.

It would be a mistake, however, to overlook the differences that do exist between the various communist countries, or the fact that within each country the media are usually in a transitional state, moving either towards or away from relatively greater freedom of expression. True, the limits within which this movement takes place are usually narrow (the variations between the countries being defined by the placing of the limits), but there are considerable differences between the guardedly "free" (and officially "uncensored") press of Poland today and that of neighbouring Czechoslovakia or East Germany.

Similarly, the Soviet press under Khrushchev was somewhat freer than it is now, while Yugoslavia, which had early sixties until two years ago, was a model of what can be achieved by a Marxist government.

In the recent controversy over the eight Belgrade philosophers whom the League of Communists wanted to remove from their university posts, some prominent European socialists even referred to "Marxist freedom of expression" in their appeals to President Tito.

However, what happens when the press in a communist country too obviously exceeds the limits laid down for it was vividly illustrated by the events in Czechoslovakia in 1968, after the press had played a leading role in the democratization of the country. Meanwhile it is still the dark ages for press freedom in Romania, Bulgaria and Albania (in Europe), for all the communist countries of Asia, including China (which even seems to be travelling backwards if that is possible), and, after a brave experi-

mental start, for Cuba in the western hemisphere.

It might seem from this as if press freedom had something to do with ideology and was linked to the old opposition between communism and capitalism, and it is true that Lenin provided a persuasive ideological rationale for control of the press. But the picture is immensely more complicated than that. Iran calls itself capitalist and is an aggressive advocate of free enterprise economics, yet it possesses one of the most tightly controlled and rigidly censored presses. Brazil holds itself out as a model of capitalist development for the whole of Latin America, yet press censorship is an openly acknowledged tool of the government and sets an entirely different kind of pace for the rest of the continent.

Spain, Greece, Turkey and, until recently, Portugal, are all capitalist states in which the press has been tightly controlled, while the looking glass "free world" states of South Korea, South Vietnam and Taiwan do not differ greatly from their communist opposite numbers in their attitude to censorship of the press. And if we look at Chile, the Marxist Allende would appear to have been a far greater devotee of press freedom than his capitalist successor, General Pinochet.

It is plain, therefore, that we must look elsewhere for the key to freedom of expression, and I would suggest that the true distinction must be sought in terms of economic and political pluralism. True freedom of the press flourishes in relatively restricted areas of the globe and is usually to be found (no great surprise, this) in parliamentary democracies—in most of West Europe, in North America, in the former British dominions of India, Australia and New Zealand, and in Japan.

The outstanding omission here is South Africa, where freedom of the press is virtually non-existent for blacks, and for whites is seriously curtailed (and is threatened with further curtailment after Mr Vorster's election victory). Even here, however, the outcome of the struggle is not a foregone conclusion; and indeed, a great question mark hangs over almost the whole of Africa, where ex-colonial countries are struggling to reconcile the imported institutions of their former conquerors with older traditions.

Similar problems beset most of South-East Asia and Central and Latin America, and these are the battlegrounds on which the struggle for press freedom is being fought. Again it is those states that have established, or preserved, a pluralist political order that have been most successful in defending freedom of expression.

Generalizations of this kind force one to paint in broad strokes, and most of the qualifying detail has to be omitted. One complicating factor that cannot be sidestepped, however, is the problem of finance. Newspapers (not to speak of television programmes) are expensive things to produce, and as the necessary technology becomes more complex so does the demand grow for ever larger amounts of capital.

In developing countries, the number of people or institutions with the necessary means is strictly limited, and the usual sources of finance can be boiled down to three categories: political parties, wealthy individuals or groups of individuals, and foreign capital — particularly from West European or American communications groups.

The presence of all three in a country is usually a sign of health, but all three have their problems. Political parties, particularly if they attain power, have a tendency to swallow up their rivals when conditions are ripe (as in Zambia or Tanzania) and put both them and their newspapers out of business.

Wealthy individuals with both the means and the desire to invest in the press are few and far between, and they tend to be absorbed into the political establishment. Foreign-owned newspapers or agencies, although often bringing with them valuable traditions of impartiality and professionalism, are always vulnerable to the charge of serving foreign interests and frequently (for example in Argentina) fall foul of nationalist passions.

Another difficulty is that even a pluralist press is open to the charge of control by a narrowly defined, self-perpetuating oligarchy whose members' interests are identical, so that apparent diversity is only a sham. This charge is a potent weapon in the hands of politicians with demagogic talents and has been used with particular effect by the governments of Ceylon and Singapore. It is frequently heard, too, in relation to the "free" press of the parliamentary democracies; and while the details of such charges are often wildly exaggerated, concentration of ownership represents one of the biggest potential dangers to freedom of expression throughout the western world.

Nevertheless, here as elsewhere, it is governments that represent the biggest threat to freedom of the press, and in no area is this clearer than in television. So far I have treated television as an extension of newspapers, and in the context of the extreme situations which prevail in most parts of the world there is little or no distinction between them. But in the western world the distinction is significant, for in most countries the television services come under the direct control of the government.

The reasons for this are complex. They have something to do with the problems of finance. There is also the question of monopolies, for most television services are either complete or quasi-monopolies, and in most parliamentary states commercial monopolies are outlawed. But above all it has to do with power.

Television is universally recognized to be the most influential and powerful medium of communication yet invented, and as such is held to be too potent an instrument to be allowed out of the control of government. In this respect, although the analogy cannot be taken too far, television, in relation to the political power, stands roughly where newspapers stood two centuries ago.

It may be objected that this is a simplification of the complex arrangements for television that have been worked out in various countries, and indeed it is. In the United States, for instance, and in a number of United States satellites in Latin America and Asia, commercial networks exist apparently independently of the governments concerned.

But if one examines the licensing arrangements involved, it is quickly apparent that in principle the system bears a strong kinship with the licensing of newspapers in England up to the end of the seventeenth century, and their freedom is the freedom to make money rather than political or religious propaganda.

Similarly the BBC in Britain is regarded as being even more politically independent than the American networks. Yet one only has to imagine either the BBC or the networks broadcasting programmes of communist propaganda, or urging the population to convert to Roman Catholicism, to realize [illegible] the sort of freedom now taken for granted by the printed word.

So what, if any, is the future for free speech? For three quarters of the globe the problem is intimately bound up with the wider struggle for a whole range of political freedoms and cannot readily be separated from them.

In communist countries, either the dictatorship of the proletariat will wither away and yield to a diversification of political and economic power, bringing freedom of expression with it, or else it will institutionalize monolithic unity and remove all desire for that freedom. In the parliamentary democracies, either the present freedoms will be refined and adapted to meet the new technological and economic challenges, or else a loss of nerve will set in and they will yield to the tempting simplicities of authoritarianism.

As for the Third World countries, they will choose the paths that seem most successful from among the other two. And if it is objected that this is too Eurocentric and too parliamentarian a point of view, one can only say that freedom of expression itself is a parliamentary concept and the Declaration of Human Rights the culmination of a particular strand in European history.

The author is the editor of Index on Censorship.

International law has scarcely come to terms with mass papers—much less broadcasting

by Cedric Thornberry

Voltaire's dictum, "I detest what you say, but will fight to the death for your right to say it", expresses a metaphysical faith in humanity, reason and aspiration. It is not always clear today how such a concept, protecting the dissident pamphleteer, can be adapted to press and television.

The Universal Declaration of Human Rights sustains the standard. For Western Europe, article 10 of the Human Rights Convention contains a detailed provision. It guarantees the right to freedom of expression, which right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

The licensing of radio, television and cinemas is permitted, however, and the right made subject to various limitations. These include restrictions necessary for national security, the prevention of disorder or crime, the protection of health, morals, the reputation or rights of others, the prevention of disclosure of information received in confidence, and for maintaining the authority and impartiality of the judiciary. To justify a restriction, a government must show that it is reasonable.

Article 10 must also be read in conjunction with articles on the right to respect for private and family life, home and correspondence, and with the implications of the article guaranteeing a fair trial (no prior judgments by the press). It may also have to be read in association with articles on peaceful enjoyment of property (in the context of police search and seizure operations), and with more general articles on abuse of rights by individuals and of powers by governments.

Many deem freedom of expression the primordial right, even among basic rights, the hallmark of the open society. The United States Supreme Court has a vast and illuminating jurisprudence on the First Amendment (freedom of the press). It has emphasized that this amendment protects the pre-eminent right in a democracy, the condition precedent to the enjoyment of all other rights.

In this context, it is paradoxical that proceedings in the European Human Rights Commission should themselves be held *in camera*. The reason is that governments would not have permitted the development of the commission on any other terms. Though explicable, the limitation could undermine the ideal itself.

Without an informed European opinion the jurisdiction of the commission could be brittle, easily destroyed at governmental displeasure. Last autumn, when Britain's continuance of the commission's jurisdiction seemed in doubt, the press came to play an important and distinguished role on behalf of the ordinary citizen.

In the United Nations international advancement of freedom of expression has been hesitant. A sub-commission on freedom of information and the press was suppressed in 1952. Despite some admirable United Nations studies a draft convention has lain inoperative for many years.

It has been hard to reconcile different ideological standpoints on essentials. Some developing nations tend, understandably, to view the concepts as dispensable luxuries. Governments of all shades are prone to emphasize and extend the limitations rather than the freedoms. In general it has rested with non-governmental organizations to strive for more effective international standards, chiefly in the area of the mass media.

Activity has continued, however, in the Council of Europe. Progress has, sadly, been slow. An imaginatively-conceived symposium on human rights and mass communications was held at Salzburg in 1968. Its report emphasizes the international legal vacuum since the rise of the mass media. International law has scarcely come to terms with the mass circulation newspaper, much less with the issues raised by broadcasting.

The British press is understandably perturbed at the inroads a possible law of privacy could make on its democratic role. The tendency towards official secretiveness does not abate, and the function of an independent press is thereby enhanced.

Law in Western Europe is attempting to resolve these conflicts, but the current British debate seems isolated from the international discussion. International law tends to uphold a concept of privacy, though its detail has yet to be formulated in case law. Such formulation seems certain; it is only a question of time. The European convention provides a framework within which the issues can be argued.

Curiously, little case law has accumulated under article 10 of the European convention. In the early de Becker case it was held that it was unlawful for Belgium to debar permanently a convicted journalist, even one collaborating with the Nazis, from participating in the publication of a newspaper. In the Greek case the commission emphasized that exceptions to the basic freedom may not be so vague as to leave the individual uncertain where he stands.

The Televizier case relates to Dutch restrictions on the publication of information about television programmes. One of the first cases from Italy, the Telebiella case, which awaits a decision on admissibility, may raise important issues about state television monopolies: the applicant asserts a breach of freedom of expression arising from the official closure of his cable-television company. In the Handyside case against Britain other issues are raised.

This case arose from the successful obscenity prosecution in 1971 of the *Little Red Schoolbook*. After an oral hearing the case was admitted last month by the commission for investigation, the publisher and the British Government being required to produce further pleadings on the merits in compliance with the convention's provisions on fact-finding and "friendly settlement". The application may still be dismissed by the commission at any stage.

The issues touch on the use of "search and seizure" warrants by the police under the Obscene Publications Acts, and the adequacy of the current legal definition of obscenity, among other things. Allegations of political discrimination have been dismissed as being manifestly ill-founded.

Contesting the case, the British Government emphasizes the right of the state to limit freedom to protect the morals of teenagers. The matters now under inquiry by the commission go to the heart of some convention guarantees and, as in many such cases, may be more important than the initial publication itself.

Yet major areas of European dispute on expression have still not been referred to the commission. Aspects of official secrecy, the "conspiracy to corrupt public morals" concepts of the *Ladies Directory* and Knuller cases, last year's dismissal of Irish television governors, customs' seizures of books—these are some of the many areas of freedom of communication which may raise critical but still unlitigated issues.

It is at least arguable that press and publishing in Britain may be especially at risk. There is no principle of freedom of the press recognized by law. There is a constant danger of creeping limitation, unilluminated by discussion of fundamentals.

The European commission could provide a suitably detached forum. It is believed, for instance, that in one case unrelated to freedom of the press, the right not to disclose journalistic sources was incidentally claimed and not challenged in the commission. It is to be hoped the British Government may soon decide to accept the commission's jurisdiction on the right of individual petition on a permanent basis, thus bringing Britain into line with some of its more enlightened European neighbours.

Enormous influence of Universal Declaration not matched by successful UN action

by Marcel Berlins

The internationalization of human rights did not start with the United Nations Universal Declaration of 1948. But that document has dominated the human rights scene for the past 25 years. With few exceptions agencies today concerned with the protection of rights on a regional or world front base their own principles on it.

In some cases the wording is followed almost verbatim. Other organizations have adapted the principles to conditions governing the area they serve, or have extended, or sub-divided them. But the source remains the same.

The enormous influence which the words of the Universal Declaration have had has not been matched by successful action by the world body to see that they are adhered to. The declaration was supposed to be the first step in the creation of an international machinery for the protection of human rights. It was not designed to be binding.

The second step involved drawing up covenants, which would impose legal obligations on signatory states; the third stage was to be the establishment of a machinery for enforcement.

In 1966, two covenants were agreed on by the General Assembly (a single one having proved impractical); the first on economic, social and cultural rights, the other on civil and political rights. But these covenants have not yet come into force because the necessary minimum of 35 ratifications from member states have not yet been received.

The machinery for implementation provided for a system obliging states to report regularly what they had done to carry out their responsibilities under the covenants to a human rights committee, which in turn could eventually have the matter raised before the General Assembly. This procedure has not yet come into operation, but it would not amount to anything like satisfactory legal control over a member state's behaviour.

The ultimate decision on action to be taken against a defaulting state would have to be taken in a political not a judicial forum. The same is true of the various United Nations commissions and sub-commissions dealing with particular aspects of human rights.

The European Convention on Human Rights is the most successful of the Universal Declaration's offspring. Drawn up under the aegis of the Council of Europe, it came into force in 1953 and has now been ratified by almost all the members of the council. It states that its purpose is "to take the first steps for the collective enforcement of certain of the rights stated in the Universal Declaration".

In addition to the main convention five protocols have come into operation, two of them committing states ratifying them to guaranteeing further rights not included in the original convention. The convention provides for an elaborate machinery of enforcement, the most important aspect of which is the establishment of a Court and a Commission of Human Rights, which sit in Strasbourg, to ensure the observance of a state's obligations towards its citizens. The striking and original feature of the convention is that it allows individuals (as well as states and organizations) to petition the commission with allegations of a breach by their government of its obligations towards them. If the commission, which consists of as many members as there are countries subject to the convention, finds the complaint to be initially admissible (most are not), it embarks on a complicated procedure of finding out the facts. This may involve a hearing in which the complainant and the state against which the allegation is made are represented.

It is also concerned to try to effect a friendly settlement between the parties. If this fails, the commission prepares a report, which contains its decision on whether it considers that a breach of the convention has occurred. The report goes to the Committee of Ministers of the Council of Europe and to the state involved. Either the case may be then referred to the European Court of Human Rights, by the commission or the state, or the final decision can be left to the Committee of Ministers which could then, if it confirms that violations have occurred, put pressure on the culpable state to take appropriate remedying

When a case goes up to the court (so far only a dozen or so have reached that stage) there will again be a hearing followed by a decision which, unlike that of the commission, will be binding. The court may also award damages to an injured party, and, probably more importantly, may by its decision in effect call on the state to change those laws or conditions prevailing which led to the complaint being made. Some countries which have ratified the convention have not accepted the jurisdiction of the court, in which case the Committee of Ministers is the only possible final arbiter.

Ultimately there are no sanctions to back up a decision of the court or of the ministers. At that stage the issue becomes political rather than legal. In one case, Greece preferred to leave the Council of Europe rather than submit to decisions against it. Nevertheless, in all but its final stage, the protection of human rights under the convention is supervised by independent legal and judicial control without political considerations having any say.

The institutions created by the convention, for all the cumbersome procedures governing them, have proved to be of considerable practical effect and influence. Indeed, the only other major regional convention—encompassing most American countries in both hemispheres—has fed on the European example and drawn heavily on its experience.

The American Convention on Human Rights also provides a complaints procedure for citizens complaining of an infringement of their basic rights, based on the European pattern, and involving a commission and a court. The commission, however, has more to do than its European counterpart, for in addition to the adjudication of complaints it is required actively to promote human rights, by making recommendations to governments about their conduct and requesting them to report on their progress. The Permanent Arab Commission of Human Rights (an offshoot of the Arab League) is purely promotional rather than judicial, although a procedure for the settlement of complaints is envisaged eventually.

One of the few pre-United Nations organizations which has proved effective in protecting civil liberties is the International Labour Organization (ILO), formed in 1919. The main emphasis is on the body of rights connected with employment.

Much of its work is taken up by the preparation of conventions and recommendations on specific topics which, when passed by its assembly (which uniquely consists of representatives of governments, organized labour and employers) and ratified by its member states, become binding on them. Well over 100 conventions are in force today, for a varying number of states. The six conventions which deal more than any others with human rights issues, such as forced labour, freedom from discrimination, have been ratified by most member states.

The ILO's method for supervising the implementation of these conventions centres around the regular reporting by states on the measures they have taken to adhere to the conventions. These reports are examined by an independent committee of experts who would then comment on them and submit their views to the annual main conference. Because of the high standing of the committee of experts its opinions, especially when they disclose breaches by a state, are of great influence, and have often resulted in the Government making changes in its laws.

The ILO constitution also allows for the making of representations alleging breaches, and for a complaints procedure which could eventually involve investigation by a commission of inquiry and a reference to the International Court of Justice.

The European Social Charter (under the umbrella of the Council of Europe) guarantees 19 fundamental social and economic rights. It, too, uses a reporting procedure whereby members of the council send a biennial report on steps they have taken to carry out their obligations under the charter.

This report is considered by three separate agencies which submit their comments to the council's committee of ministers which in turn, if necessary, puts pressure on governments which have defaulted on their obligations to remedy their

breaches. The achievement of the charter has been that almost all the members of the Council of Europe have in some way altered their own laws as a result of adverse comment by one or more of the three agencies. For instance, on the subject of forced labour for seamen, six countries have had to amend their legislation. This sort of experience has been repeated in other spheres.

Not only government agencies concern themselves with human rights. A number of non-government bodies have been involved in the protection of civil liberties around the world. Prominent among them is the International Commission of Jurists, a Geneva-based organization which numbers among its members lawyers of high calibre, many of them judges and professors of law, from a number of countries. The commission's main concern is to see to it that the rule of law is upheld and to this end it closely watches legal developments all over the world, and it documents and publishes cases where internationally accepted standards of justice have not been met.

Worldwide perspective unites teachers of the new discipline despite their discord

by Cedric Thornberry

The birth of international human rights law may, rather arbitrarily, be given as 1945, with the United Nations Charter. Twenty years passed before the new concepts came to be systematically taught and studied in the western world. It has now become almost an academic growth industry, but there is still uncertainty over the scope of the new field of study, and the most effective methods of analysis and propagation.

In the 1960s there was an almost simultaneous start to international human rights courses in a handful of law schools in the United States, Britain, and Western Europe. "Human rights" were taught, and still are in some cases, as a part of other legal and political science subjects. But it became increasingly evident that the special character of international human rights law precluded the possibility of treating it in any adequate manner within existing academic structures.

There are three reasons for this: it cannot be given as a part of an internal course because its framework is international; it cannot be treated as a part of general international law because its perspectives and values are different from, and at times controvert, those of normal inter-state law; and its concepts, for instance what is meant by "inhuman treatment", require a multiple discipline approach which is not normal in general legal studies.

Starting apparently at the London School of Economics, a handful of specific full-unit courses now exist at various law schools in Britain at both graduate and undergraduate levels. Overseas, [illegible]

Cassin, a French pioneer from the early United Nations days, devoted his Nobel Prize to the establishment in Strasbourg of an International Human Rights Institute.

In the United States, well supported courses now exist at Berkeley, Harvard, Columbia and elsewhere. Unesco is studying the nature of the present academic development with a view to creating a human rights faculty at the proposed United Nations university.

It is hard to explain this rapid and recent development, though it may have something to do with an unease at the inadequacy of the modern state to control its own official mechanisms. Pioneers such as the late Sir Hersch Lauterpacht had researched, proselytised, published in the early years after the Second World War.

Though their intellectual achievements may remain unmatched, the development of hard political and legal substance lagged behind their vision. This was especially true of the universal level, at the United Nations where work was in many ways sadly disappointing. However, during the 1950s there were remarkable developments in the Council of Europe through the European Human Rights Convention.

By the end of the 1960s a large body of international law had been created and awaited analysis. There were signs during International Human Rights Year in 1968, 20 years after the promulgation of the Universal Declaration of Human Rights, that the older aspirations were being refreshed by new political initiatives.

For instance, there were [illegible] United Nations Human Rights Commission, an adjunct of the Economic and Social Council, was to be allowed by governments to take part of its mandate more seriously, by examining the complaints of those denied their basic human rights throughout the world. Specialists began to lay emphasis on making internationally created standards effective.

The Scandinavian governments launched their unprecedented international human rights cases against the Greek military junta before the European Human Rights Commission in Strasbourg. This case, which from some viewpoints also represented an unprecedented failure of the new machinery, inaugurated the new and still unfolding era in which the commission has been presented with a series of cases touching upon basic issues of state rights and human freedoms.

Finally, an event of great national and European importance, Britain at last accepted the right of individual petition to Strasbourg. Henceforth the aggrieved citizen could have his claim of denial of human rights decided not by a British but ultimately by a European and international standard.

For myself, associated with these new developments in Britain, the catalytic experiences were part British and part international. Questions of race, Northern Ireland, and other questions in the late 1960s seemed to invite new forums for debate and the application of fresh standards — standards which might be more satisfactory than those then available in Britain.

As a newspaper correspondent in—and at one time deported from—[illegible] Greece, and as a participant in the subsequent Scandinavian cases in Strasbourg, I had been sharply reawakened to the need for the existing international machinery. Above all I was aware of the vast problems of making that machinery effective. Major omissions in the traditional academic treatment of international law and relations had become apparent, and these underlined a number of possible misconceptions. For me, the Lauterpacht aura, so strong at Cambridge in the 1950s, was still strong.

There is still discord among teachers of the new discipline. The various courses have varying emphases. This seems both useful and creative, provided there is agreement on certain basic premises. What gives unity is the international perspective.

The subject of study is the rudimentary common law of mankind in his relationship with state authority. The sources of such law are manifold: treaties, the case law of international tribunals, the practice of international organizations, the tenets of philosophy, expediency and aspiration. Constitutional dogma and internal case laws are of some, though uncertain, value by way of analogy. The very different context in which domestic laws and courts operate must continually be borne in mind.

The danger, with such diffuse sources, is clear. Standards may be so vague, so imprecise, as to become mere generalities. Discussion, without an adequate frame of reference, may be so broad and unstructured as to verge upon self-indulgence, beyond intellectual acceptability. Yet no law can be an instrument of mathematical certainty. [illegible] education must include the encouragement of discus-

sion about possible court judgments in a notional situation.

The amount of positive law now available to student, advocate, judge or academic, seeking to apply an international human rights standard is immense and can be overwhelming. In the area of those human rights which touch upon social rights, a tribunal could be almost engulfed.

It might be referred, not only to more than 130 multilateral treaties concluded under the International Labour Organization, together with that body's practice and dispute settlement; but to more than 6,000 cases decided over the past 20 years by the European Human Rights Commission, not to mention the decisions of national tribunals purporting to apply the European Convention; to the treaties and practice of the United Nations and its various agencies; and to the work of the supervisory authorities applying the European Social Charter.

Only then might the international tribunal refer to decisions of domestic agencies enforcing, against national perspectives, internal laws. The immensity of international human rights law material is probably not even now known to the majority of international lawyers, not to mention those whose legal specializations are internal. Indeed international human rights law may already have passed the critical point which long since prevented the international lawyer from having other than a nodding acquaintance with some areas of the subject.

International human rights law is about the values, deemed common among the cultures and ideologies of the world, affecting the relationship between individual and state. There is room for scepticism over the notion that in a world deeply divided by politics, race and underdevelopment, such common values may be found. Yet against this scepticism must be set such facts as the two United Nations covenants of 1966.

They establish a universal catalogue of basic civil and political, economic, social and cultural rights. Neither is yet in force. Britain has not ratified either. But the study of this subject encourages the long view of history as well as the perception of short-term gains. Did not the crudest form of chattel-slavery, surely the most blatant denial of human rights, prevail in all areas of the world for millennia, until the relative yesterday of abolition?

Common, limited agreement is possible. But cultural differences are also real. Communist and developing nations may see other priorities than the lawyers of liberal capitalism. Neither should dismiss the other's standpoint. Yet one of the most difficult exercises for the teacher steeped in one society's values is to present those of another which may be quite alien. But if the discipline is to have any pretension to universality, the attempt must be made. Because the differences exist there is a marked tendency towards regionalism among countries of close cultural backgrounds.

Thus most European courses, after dealing with the historical origins of the subject, and emphasizing the diversity of its ideological sources, treat developments in the United Nations and its specialized agencies, before homing in on the detailed practical experience of the European Human Rights Convention.

The student must be appraised of the differences between national and international societies. The importance of this is clearly seen when considering questions of effectiveness, how law evolves, agencies and structures, including the role of non-governmental organizations, which substitute in international society for the absent organs of law creation and enforcement.

It may be important to encourage the student to evaluate the underlying forces affecting the law's development, because they so intimately affect what the law is and will be in a concrete instance. He should perceive the difference between this and other international law: there is little immediate state interest in creating effective international human rights techniques which, while depending often on the state for their evolution, detract from state power. This compares for example, with the law of the sea, where there is immediate common state interest in evolution and agreement.