

EDITORIAL COMMENT

UNITED NATIONS MACHINERY FOR IMPLEMENTING HUMAN RIGHTS

The Charter of the United Nations, the Universal Declaration of Human Rights and the other unanimously adopted declarations of the United Nations have established a legislative framework for the protection of human rights throughout the world. The Montreal Statement of the Assembly for Human Rights, of March 27, 1968, expressed the general consensus of international experts that the "Charter of the United Nations, the constitutional document of the world community, creates binding obligations for Members of the United Nations with respect to human rights"; and that the "Universal Declaration of Human Rights constitutes an authoritative interpretation of the Charter of the highest order, and has over the years become a part of customary international law." Similarly, the intergovernmental Proclamation of Teheran, of May 13, 1968, emphasized that the "Universal Declaration of Human Rights states a common understanding of the peoples of the world concerning the inalienable and inviolable rights of all members of the human family and constitutes an obligation for the members of the international community." The Teheran Conference also pointed out that since "the adoption of the Universal Declaration of Human Rights the United Nations has made substantial progress in defining standards for the enjoyment and protection of human rights and fundamental freedoms"; but it added that "much remains to be done in regard to the implementation of those rights and freedoms." More strongly, the Geneva Conference on Human Rights, held from January 29 to 31 by a group of non-governmental organizations, noted that "the implementation provisions adopted by the United Nations are fragmentary and piecemeal in nature, resulting in lack of coordination, and that they all too often respond to the expediency of the moment."

An *Ad Hoc* Study Group, appointed by the Commission on Human Rights in 1967, studied "the question of the ways and means by which the Commission might be enabled or assisted to discharge functions in relation to violations of human rights and fundamental freedoms," but though many interesting ideas were presented to this Study Group, it proved impossible to reach agreement on any recommendations. Taking into account the suggestions considered by the Study Group and the Geneva and Montreal Conferences, the following proposals seem to emerge:

1. *A United Nations Organization for the Promotion of Human Rights (UNOPHR) having the same status as UNCTAD and UNIDO, should be established and should take over the various functions now scattered among a multiplicity of bodies.* It is generally recognized that the present organizational setup in the human rights field is completely inadequate. The agenda of most United Nations organs dealing with human rights mat-

ters are so over-crowded that many items have to be postponed from year to year, and it has become more and more necessary to put the main burden on a few subsidiary organs of the United Nations and on special temporary bodies created to meet various emergency situations. The new organization can be brought into existence by a resolution of the General Assembly in a manner similar to that used in the creation of UNCTAD and UNIDO. As the new organization will not have any new powers, but will merely provide for a more efficient exercise by the United Nations of powers already possessed by it, UNOPHR can be established as a subsidiary organ of the United Nations, and of the General Assembly, under Articles 7 and 22 of the Charter of the United Nations.

2. *Human Rights Council.* The main organ of the new Organization should be a Human Rights Council which should combine the powers exercised at present by the Economic and Social Council and the Commission on Human Rights. While this new Council might have to report to the General Assembly through the Economic and Social Council, the latter would not be required to deal with the substance of the reports of the Human Rights Council. This has been in fact the practice of the Economic and Social Council in recent years, and, with the exception of certain organizational matters, the Council has served merely as a transmission link between the Commission on Human Rights and the General Assembly. The Montreal Assembly for Human Rights agreed that the Commission on Human Rights "has a status within the United Nations family of organizations which is not commensurate with the important responsibilities entrusted to it. It should no longer be merely one of a large number of commissions reporting to the Economic and Social Council and directed as to policy by that Council. It should be raised as soon as possible to the same level as the Economic and Social Council and should report directly to the General Assembly." Like the present Commission on Human Rights the new Council might be composed of 32 members.

3. *Third Committee of the General Assembly.* That Committee of the Assembly deals at present with "social, humanitarian and cultural questions." It has been suggested recently that many of these questions are closely connected with the economic questions considered by the Second Committee of the Assembly and should be transferred to it. The Third Committee could then become the Human Rights Committee of the General Assembly and might be able to deal more effectively with the many problems in this area.

4. *Human Rights Assembly.* The Montreal Assembly for Human Rights considered an interesting new "proposal that at some future time the peoples of the United Nations should be directly represented in a permanent world forum, an Assembly on Human Rights, in which they might be able to discuss human rights problems of a general nature and advise the General Assembly on matters of policy in the human rights field." There is no question that the new organization will need, in addition to a relatively small Council, a policy-making body on which all Members

would be represented. Its organizational rôle would be similar to that of the Conference of UNCTAD, but it might be different both as to composition and functions. Such a Human Rights Assembly would be more representative of the peoples of the world if it were established on principles analogous to those of the various parliamentary assemblies of European and other international organizations, such as the Inter-Parliamentary Union, in which parliaments are represented in accordance with various equitable formulas. Similarly, national parliaments might be directly represented in such a Human Rights Assembly, the number of representatives from each country being to some extent related to that country's population, subject to a few reasonable limitations. In this way a more equitable and more direct representation of all the peoples of the world would be assured and the decisions of the Human Rights Assembly could be brought directly to the attention of national parliaments by members of those parliaments participating in such an Assembly. The Human Rights Assembly would thus provide an effective sounding board for people's grievances, a new method for preparing generally acceptable international declarations and conventions on human rights, and a liaison with national parliaments which are responsible, in the first place, for providing remedies for such grievances, for implementing such declarations, and for ratifying such conventions.

5. *Interim Human Rights Committee.* While the Covenant on Civil and Political Rights provides for a Human Rights Committee, it cannot be established until the Covenant enters into force. In the meantime, the United Nations found it necessary to provide for a review of national reports on human rights by the Commission on Human Rights and for the consideration of cases of *apartheid* and other gross violations of human rights by the Sub-Commission on Prevention of Discrimination and Protection of Minorities and various special committees. It would seem to be desirable to establish as part of UNOPHR an Interim Human Rights Committee which could deal with all these special human rights problems in a continuous and consistent fashion. Its jurisdiction would be limited to those cases and problems which are already considered to be within the competence of the United Nations, and its creation would not impose any new obligations on Member States. Further matters might of course be referred to it by the General Assembly and other United Nations bodies, provided they are within the existing competence of these bodies. In particular, the General Assembly can make use in this connection of its broad power under Article 14 of the Charter to deal with situations resulting from a violation of the basic Purposes of the United Nations specified in Article 1 of the Charter, including violations of human rights obligations contained in paragraph 3 of that article, reinforced by Articles 55 and 56 of the Charter.

6. *Regional Commissions.* The *Ad Hoc* Study Group of the Commission on Human Rights considered various proposals for the establishment of regional commissions on human rights in those areas where such bodies do not exist. Though the success of the European Commission of Human

Rights and the interesting experience of the Inter-American Commission on Human Rights would seem to justify the promotion of similar commissions in other regions, the Study Group merely explored the various issues involved in such proposals and did not present any firm recommendations. The trend of the discussions was, nevertheless, favorable to the creation of additional regional commissions "on the direct and exclusive initiative of the States comprising a given region," with United Nations assistance if requested. In any case, the relationship between the existing and new regional commission on human rights and the new United Nations organization (UNOPHR) is likely to present some difficulties, and may require special agreements between UNOPHR and each regional commission.

7. *Relationship to Other International Organizations.* In addition to the regional organizations, there are several other international organizations, including such specialized agencies as the International Labor Organization and the United Nations Educational, Scientific and Cultural Organizations, which have been active in human rights for many years and which are responsible for the implementation of important international conventions on human rights. While all the United Nations activities should be concentrated in the new organization, this organization should in no way impinge on the work of the other international organizations active in the human rights field. More efficient concentration of the United Nations activities should make it easier to co-ordinate the work of the United Nations with that of these other organizations and thus provide a more effective protection for human rights throughout the world.

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SHOULD THE UNITED STATES RATIFY THE COVENANTS? A QUESTION OF MERITS,
NOT OF CONSTITUTIONAL LAW

The adoption by the General Assembly in December, 1966, of the Covenant on Economic, Social and Cultural Rights as well as the Covenant on Civil and Political Rights with its attached Optional Protocol providing for individual petitions, presents once more the issues of whether the United States Government should seek to ratify these instruments and what obstacles would stand in the way of obtaining Senate consent to their ratification. The writer once considered these questions¹ shortly before the completion of the Human Rights Commission's final drafts in 1954. Although there are a few significant differences between the Human Rights Commission's provisions and those adopted by the General Assembly after protracted consideration by the Third Committee, the issues and arguments remain largely the same.

On the policy level, the basic problem still is whether the United States should ratify these instruments, despite their many imperfections, in view of our past history and our present rôle in the world. On the legal level, the same debate continues as to whether there are any valid constitutional

¹ MacChesney, "International Protection of Human Rights in the United Nations," 47 *Northwestern U. Law Rev.* 198(1952).