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PROGRESS IN THE INTERNATIONAL PROTECTION OF HUMAN RIGHTS



Introduction

Good news is not news. One of the most optimistic developments since 1945 has been the international protection of human rights. The protection of human rights has long been a theme in national politics. Since 1945 that concern has gone global.

The 20th century saw both some of history's worst violations of human rights and yet also some of the most spectacular international advances in their protection. There is a still long way to go. But, at least in terms of international law, there is the recognition that human rights are now a global (and not merely a national) issue. Human rights are still being violated. But people know their rights are being violated, and so there is less resigned acceptance that such violations are an inevitable part of life. Additionally, people in other countries have a greater sense of obligation to assist others whose rights are being violated. This is still not the creation of some form of "international family" but there is a greater sense of "community" than ever before. Additionally, respect for human rights is now a criterion in assessing countries. For example, China lost out in the bidding for the 2000 Olympic Games (which went to Sydney) and had to promise to do better, among other things, in the protection of human rights in order to secure the 2008 Games.

This article begins with an examination of what are "human rights" and how they have become such an important fixture on the international agenda. It then examines what forms the "progress" in the international protection of human rights has taken. It concludes with some ideas on how to embed human rights in political culture.



Defining “Human Rights”



What are “Human Rights”?

Human rights are fundamental privileges or immunities to which all people have a claim. They are not "given" by governments because they are derived automatically as a result of someone being a member of humankind. Since governments cannot "give" human rights, they should not try to take them away. Human rights thinking - especially since 1945 - is based on the assumption that in essence all human beings have a common core. Human beings may be divided on gender lines, speak different languages, have different skin colours, and follow different religions. But fundamentally there are great similarities and these similarities are manifested partly in the rights that all humans enjoy.

The UN Charter's Preamble reaffirms "faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small". Article 55(c) states that one of the UN's purposes is to achieve "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion". In Article 56 "All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55".

The basic UN human rights document is the 1948 Universal Declaration of Human Rights (UDHR). Among its 30 Articles are: the right to life, liberty and security of person; equality before the law; freedom of movement and residence; freedom from torture or cruel, inhuman or degrading treatment or punishment; the right to seek in other countries asylum from persecution; freedom of thought, religion and conscience; the rights to vote and to participate in government; the right to education; the right to work; the right to form and join trades unions; the right to an adequate standard of living; the right to health protection; and the right to participate fully in cultural life.

Human rights are divided into two general categories, and then one category is further divided into three sub-categories. Almost all human rights apply to individuals. There is, however, one collective human right: the right to self-determination (that is, for a "people" to run their own affairs).

The collective right to self-determination - although the term itself is modern - has a long history. For example Moses in leading the Hebrews out of Egypt was the leader (in our terms) of a "national liberation movement" and the Hebrews were seeking "self-determination". George Washington, Ho Chi Minh and Nelson Mandela are further examples of leaders of peoples wishing to exercise their right of self-determination.

The category of individual human rights may be divided into three sub-categories. The oldest human rights are civil and political ones, such as the rights to a fair trial and to take part in politics. Second, just over a century ago, as European countries started to create "welfare states", so recognition was given to economic and social rights, such as the rights to work and equal pay for equal work. Third, there are the new "rights of solidarity", which can only be attained through the united efforts of all the global actors (not just governments). For example, the right to a healthy environment began at the 1972 UN Conference on the Human Rights (principle 1 of the Stockholm Declaration). It has become a rallying point for environmental NGOs and got further attention in inter-governmental documents (such as the Rio Declaration on Environment and Development at the 1992 UN Conference on Environment and Development).

It is only by looking back over some decades that it becomes clear just how much progress has been made. For example, about a century ago it was quite common for white people to argue – and for some non-white people to accept – that white people were somehow superior to non-whites and that they were destined to run the world. Racial superiority was justified on scientific grounds. There is still some racism but few people claim that it is somehow based on scientific research. On the contrary, overt racism is now illegal in most countries (such as in the media and school text books).

✓ **Early Human Rights Campaigns**

The roots of the 1948 Universal Declaration of Human Rights go back a long way. Jimmy Carter, the former US President, traced the origins back to the Old Testament Law and Prophets:

I have been steeped in the Bible since childhood, and I believe that anyone who reads the ancient words of the Old Testament with both sensitivity and care, will find there the idea of government as something based on a voluntary covenant rather than force - the idea of equality before the law and the supremacy of law over the whims of any ruler; the idea of dignity of the individual human being and also of the individual conscience; the idea of service to the poor and oppressed.

Formal human rights declarations have appeared throughout history, such as the Magna Carta in 1215, the French Bill of Rights of 1789 and the Bill of Rights attached to the United States Constitution in 1791. These obliged national governments to respect the civil and political rights of their own citizens.

However, the idea of foreign intervention in the protection of human rights was contrary to the principle of state sovereignty. For example, the 19th century ill-treatment of Christians in the Ottoman Empire attracted criticism. In the first "modern" British political campaign, William Gladstone in 1876 (the "Midlothian campaign") spoke at public meetings against the Turkish atrocities and the lack of action by the British Prime Minister Benjamin

Disraeli. But there was little international intervention in Ottoman affairs; Gladstone as Prime Minister was no more effective on this matter than Disraeli had been.

As the international lawyer JL Brierly pointed out: "Under customary law no rule was clearer than that a state's treatment of its own nationals is a matter exclusively within the domestic jurisdiction of that state, that is, is not controlled or regulated by international law." The 20th century's record of the protection of human rights is an account of that principle being eroded. As will be examined later, there has been an erosion of state sovereignty that would have seemed inconceivable to international lawyers half a century ago. For example, China claimed in the mid-1990s (at the time of the first Olympics bid) that human rights were a domestic matter; it has now had to accept that this is not the prevailing view of the international community and so it has promised to do better in order to host the 2008 Games.

✓ The League of Nations

During World War I, there was an extensive debate on why the war started. Most Allied leaders took the view that it was Germany's fault and so Germany had to be punished after it was defeated. US President Woodrow Wilson, leader of the Associated Powers, argued that the basic system of competing nation-states was at fault and that if the war had not started in 1914, it would have started at some other time. He argued that the system itself had to be changed and countries ought to learn to co-operate far more.

The League of Nations was formed to facilitate international co-operation. By UN standards, it was a tentative beginning. The League's Covenant - unlike the UN's Charter - contained no reference to "human rights". Indeed, at the 1919 Paris Conference, the idea that the Covenant would contain an explicit reference to human rights was quickly dropped because countries with restrictive immigration policies (such as the US and Australia) feared that Japan would use the Covenant as another attempt to force them to liberalize their immigration policies. Instead, the League was concerned to get countries to co-operate with each other across national boundaries - rather than get involved in the internal affairs of countries.

However, President Wilson was anxious that the League should have a role in the protection of minority populations. He argued that World War I began partly as a result of minority populations in the Austro-Hungarian Empire being badly treated and that unstable regions like the Balkans could destabilize affairs between other countries. He said that all peoples should be given the right to self-determination and so should be able to govern themselves. Thus, the League was given the task of protecting minorities in the territories of the defeated Axis Powers.

The inter-war minority treaties were major breakthroughs in the protection of human rights. The treaties were the 1920 Danzig Convention, 1920 Finland (Aaland Islands) Convention,

1922 Geneva Convention on Upper Silezia, and the 1924 Memel Convention. Each treaty gave individuals the right to petition the League about alleged human rights violations. A League high commissioner examined the complaints and raised them with the government concerned. The system applied only to the defeated countries and some of it fell into abeyance once Hitler came to power in 1933 and withdrew Germany from the League.

By contrast, the system never applied to the Allied and Associated powers. As historian Elizabeth Wiskemann pointed out, this was a major distinction: "Italy as a Great Power was not bound by a Minorities Treaty; in any case her Yugoslav and her smaller German-speaking minorities (rather over five hundred thousand and two hundred thousand respectively) were condemned to ruthless Italianization under the Fascists".

✓ The United Nations

During World War II, consideration was given to a replacement for the League. There was no question that the League had to be replaced - rather than abolished - because the Allied countries recognized that there had to be some form of machinery to co-ordinate affairs between countries. Winston Churchill said that World War II should be called the "Unnecessary War" in that it "could easily have been prevented if the League of Nations had been used with courage and loyalty by the associated nations".

Human rights received considerable attention during the drafting of the UN Charter. Hitler had shown that a country that violates human rights at home may eventually violate human rights overseas. As US Secretary of State George Marshall was to tell the UN General Assembly session that adopted the Universal Declaration of Human Rights (UDHR): "Governments which systematically disregarded the rights of their own people were not likely to respect the rights of other nations and other people, and were likely to seek their objectives by coercion and force in the international field".

Thus, it was necessary to try to nip such potential violations in the bud.

Additionally, the Allied countries were embarrassed that none of them had complained officially between 1933 (when Hitler came to power) and 1939 (the onset of World War II) about the treatment of Jews. They claimed at the time that countries were not allowed to interfere in the internal affairs of other countries - and this ban prohibited even making criticisms of other countries' internal policies.

It was proposed that the UN Charter should have an international bill of rights attached to it (as per the model of the US Constitution). There was not enough time for this to be written and so it was agreed that priority should be given to this task as soon as the UN came into being (October 24 1945). The work was overseen by Mrs Eleanor Roosevelt, widow of the US President.

The Universal Declaration of Human Rights (UDHR) was adopted by the UN General Assembly on December 10 1948. It was adopted with no negative votes. But there were some abstentions: the USSR and its satellite countries (Byelorussia, Czechoslovakia, Poland, Ukraine and Yugoslavia) did not vote for it because of the UDHR's right to own property, South Africa opposed the principle that blacks were equal to whites, and Saudi Arabia disagreed with the principle that women were equal to men. (Honduras and Yemen were absent). It is a sign of the progress in the protection of human rights that these governments would not now abstain if there were a vote on the Declaration today.

All UN General Assembly declarations are expressions of governmental opinion - they are not binding on anyone (including governments which vote for them). The next stage is to convert a declaration into a treaty - which is binding on all governments that ratify it.

The UDHR was used as the basis of two treaties: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, both completed in 1966. Two treaties were written because of the different problems of implementing the two types of rights. Civil and political rights are rights that the individual has against his or her own government - and so since the government is the potential violator of those rights, it is also the protector of them. Economic, social and cultural rights require, by contrast, the active involvement of the government in the life of the country, so as to ensure, for example, that the economy is growing in such a way as to provide opportunities for employment and that there is equal pay for equal work. A government can claim, however, that although it is in favour of full employment, for example, the economic conditions do not permit it. Thus, both treaties have a common system of periodic reports. Each government ratifying each treaty agrees to provide the UN on a regular basis with a report on what it has been doing to respect the human rights listed in the treaty.

The International Covenant on Civil and Political Rights also provides for a system of state-to-state complaints. Governments that agree to be bound by this system agree that the UN may receive complaints from other governments that have also agreed to this system and to investigate the complaints. This is a system of encouraging governments to encourage each other to respect civil and political rights. The First Optional Protocol to this Covenant goes a step further. Governments that agree to be bound by the Protocol agree that the UN may receive complaints from their own citizens and investigate them.

✓ Progress in Protecting Human Rights

At first sight, these implementation measures all seem very mild. Even if the UN's investigation finds that a government has behaved badly, the UN has no power to do anything about its findings other than make them public. For example, there is no world police force to "arrest" a "guilty" government and there is no "world prison" for guilty governments. Additionally, the UN's human rights budget is minute - much less than, for example, the total funds spent each year by human rights non-governmental organizations (NGOs) in the US. However, when viewed in the context of the history of human rights violations, the progress in the protection of human rights, the post-1945 developments have been spectacular.

✓ Human Rights are Part of the Political Vocabulary.

Political claims are expressed in terms of "human rights". Even if people are unfamiliar with the details of the UN's declarations and treaties, there is widespread interest in human rights and people are now more likely than even before to oppose abuses of governmental power that violate human rights. People are still treated badly - but they now know their rights are being violated. People are not dying in ignorance. Human rights issues can become major political issues, such as the controversy over the March 2002 Zimbabwe presidential election.

Additionally, there is far less resigned acceptance that somehow human rights violations are inevitable. The dramatic growth since 1948 of human rights NGOs, and the acceptance of human rights issues by other NGOs (such as religious organizations) indicates just much interest there is in human rights issues. Many ordinary people believe that they can work for a better world.

✓ Human Rights and Wealth

The human rights revolution has been aided by the growth of a global middle class. As societies become richer, so there is more popular attention to human rights matters. As the US economist John Kenneth Galbraith has pointed out:

A poor peasantry, scattered over the landscape, working from dawn to dusk in order to live, can, with little effort, be controlled and politically disenfranchised. For accomplishing this, there is the amply available assistance of the landlords. The vast and functionally inevitable contingent of scientists, journalists, professors, artists, poets, self-anointed saviours of the public soul and students - especially students - all of them seeking and then demanding participation in the modern industrial society, cannot be similarly manipulated.

South Korea is an example of where modernization and wealth-creation have resulted in the overthrow of the tradition of dictatorship. Indeed, South Korea's Kim Dae Jung was kidnapped in Tokyo three decades ago by agents of the then South Korean dictatorship who intended to kill him and dump his body in the sea. He escaped from that assassination attempt and others (though one left him with a permanent limp). He survived six years in prison. Now he is president of a democratic South Korea. In Taiwan, the Vice President is Annette Lu, a one-time Amnesty International "prisoner of conscience" (as was Kim Dae Jung). She is the most senior woman ever elected to a ruling position in 5,000 years of Chinese history. Similar upsurges of interest in human rights have occurred in the Philippines and Indonesia

Dictatorial leaders have a dilemma: if they wish to have rapid economic development, they run the risk of being deposed by the beneficiaries of their policies. A military-backed regime cannot run a modern industrial state. It can control peasants and it can run a largely agricultural society. But you cannot design computers with bayonets. There has to be a free flow of information in a modern industrial state. This process enables people to discuss not only technical matters, such as computer design, but also the wider issues of how society is governed.

A peasant society anxious about where the next meal is going to come from, is more focussed on the immediate issues of survival rather than how society is governed. By contrast, a middle class has time to think of other than immediate issues of survival and it has opportunities to discuss issues with other people (including people overseas). A peasant society has a poverty-consciousness: it is poor and it expects to remain that way. It will not like the poverty but it can see little opportunity to escape. But as a society becomes richer, so there are rising expectations: people expect to do even better in the future. A middle class feels empowered about its destiny. It is less deferential to the ruling elite. It will be less willing to accept that certain are born to rule or that they should have special privileges.

Meanwhile, there seems to be a descending scale of repression in many countries. Not every leader today has the stomach of Pol Pot for the mass murder of their perceived opponents. The USSR is the best example. Stalin was the 20th century's largest mass murderer, but his successors were less violent towards their own critics. For example, in the 1956 Hungarian uprising, Imre Nagy was killed and his body was thrown into a mass grave. But in 1968's "Prague Spring" Dubcek was moved sideways into a minor public service job and so he was still alive for Czechoslovakia's "Velvet Revolution" and then had a senior parliamentary position.

Additionally, the international mass media have made controlling an unruly country with student and middle class activists more difficult than in the old days. Suharto came to power in the mid-1960s amid a civil war in which at least 500,000 people were killed. He could not use the same tactics in the 1990s. The whole world was watching. He was swept from power. Similarly, I was in Manila in January 1986 for the "people power" revolution that brought Mrs Aquino to power and I saw how the Marcos regime was prevented from using brute force by the risk of adverse mass media coverage and the refusal of the armed forces to do so. Governments

may be able to control their own media but they cannot control so easily the foreign media or the capacity of their citizens to get access to foreign media coverage.

Finally, a modern industrial state is interconnected to the global economy. Harsh repression is bad for the country's business image and can scare off foreign investment. Business leaders may have some loyalty to their own country and their government, but they also have to think about the bottom line: violence is bad for business. Leaders can come and go: business goes on.

✓ Growth of Treaties

The UN has produced a diverse range of declarations and treaties flowing from the UDHR. Among some of the more notable treaties are:

The 1951 Convention on the Prevention and Punishment of the Crime of Genocide, provides for the prosecution of anyone charged with commissioning acts intended to destroy, in whole or in part, a national, ethnic, racial or religious group.

The 1969 International Convention on the Elimination of All Forms of Racial Discrimination prohibits discrimination and the dissemination of ideas based on racial superiority or hatred.

The 1981 Convention on the Elimination of All Forms of Discrimination against Women addresses discrimination in public life, education, employment, health, marriage and the family.

The 1987 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment holds governments responsible for preventing torture and punishing torturers, even those acting under orders.

The 1990 Convention on the Rights of the Child defines primary health care and education, among others, as rights of all children.

There is, then, a large collection of UN treaties - all of which have been written in the last 50 years. There is no precedent at all for this level of inter-governmental action on human rights

✓ Techniques for Protecting Human Rights

The UN is also creating a network of techniques to assist governments protect human rights. For example, UN officials have helped the new governments in Eastern Europe devise electoral reforms and it has advised on the creation of national human rights institutions. The UN also has advisory services and technical assistance in the field of human rights, such as training programmes. The main limitations on this work are the reluctance of governments to admit that they could with international assistance and the UN's chronic financial problems that hinder the provision of services. Even so, it is unprecedented for governments to use such international assistance at all.

✓ Regional Protection of Human Rights

The UN's work is being copied at the regional level. The best example is the Council of Europe (which contains all of Western Europe's countries). The Council's work is particularly good on civil and political rights and the Council's human rights machinery has the power to coerce member-governments to change their policies or risk expulsion from the Council. This happened when the Colonels took over in Greece in 1967 and began torturing their opponents. Greece wanted to join the then European Economic Community (which was separate from the Council) but the EEC's membership would not accept it while it was ruled by an undemocratic government. The Organization of American States is also developing a system for the regional protection of human rights. The Organization for African Unity has encouraged the creation of the African Commission on Human and Peoples' Rights, which began in 1981.

✓ NGOs

People power is enshrined in non-governmental organizations (NGOs). There are thousands of such organizations in each developed western country, such as the women, students, human rights, peace, and environment movements. NGOs provide an alternative opportunity for involvement in public affairs in democratic societies and they are the main vehicle for opposition to dictatorial regimes in the developing countries.

Therefore the protection of human rights has been enhanced by the work of NGOs, notably in their lobbying of governments to improve their human rights records. US political scientist Louise Shelley examined the work of these NGOs, such as Amnesty International:

...the approximately 1,000 human rights organizations have acquired a large, socially and geographically diverse following. Amnesty International, with the largest constituency and the most broad-based agenda, and the other, more narrowly focused groups have raised the

consciousness of large numbers of individuals worldwide and have become important pressure groups. This has been done by forming locally based citizens' groups and also through mass publicity efforts such as the recent live rock concerts sponsored by Amnesty International throughout the world...

The research and fact-finding missions conducted by independent human rights organizations bring credibility to human rights concerns that is not possible when the issues are researched by governmental bodies. Rarely tied to a particular party or movement, the independent organizations are able to serve as a credible voice with different political administrations. Human rights for these groups is a primary concern that does not have to be balanced with the general political strategy of an individual nation.

✓ Erosion of State Sovereignty

The human rights revolution has eroded the principle of state sovereignty, that is, each country governs itself and cannot be forced into accepting international obligations regarding its own treatment of its citizens. The League of Nations recognized this principle. Article 15(8) of its Covenant ruled out any involvement in matters which are "solely within the domestic jurisdiction" of a country. Thus, the League's most innovative area of work - the minority treaties - was the result of the system being imposed on the defeated countries (with the victors not accepting similar obligations for themselves).

The UN Charter's equivalent provision of the League's Covenant Article 15(8) is more flexible. Article 2(7) rules out any involvement in matters

"which are essentially within the domestic jurisdiction" of any country. The use of "essentially" - rather than "solely" - was derived from the need for this provision to be reconciled with provisions which noted the importance of international co-operation on, among other things, protecting human rights. By implication, these provisions foreshadowed some UN involvement in domestic human rights issues.

57 years after it was written, Article 2(7) has been subject to considerable erosion. To the diplomats and international lawyers at the time, the erosion was done incrementally without any apparent dramatic changes. Only by looking back over the past half century, is it possible to see how much of a change has occurred. British international lawyer Rosalyn Higgins (now Dame Rosalyn and a member of the International Court of Justice) in 1963 traced the first 18 years of its erosion. She observed:

What is truly domestic today will not necessarily be so in five year's time. Problems of prostitution and narcotics were once the sole concern of sovereign states; they are now acknowledged to be matters of international concern. Until very recently it has been assumed

that the regard for human rights which a state shows in the treatment of its own citizens was a question of domestic jurisdiction; today this assumption is open to serious doubts.

One of the first cases of the erosion of Article 2(7) concerned South Africa's apartheid policy. In the late 1940s, India raised at the UN General Assembly the racist policies of South Africa. South Africa claimed that this could not be discussed because it was an internal matter under Article 2(7).

But over the decades, the UN General Assembly resolutions took an increasingly strident tone. Australia, incidentally, was one of South Africa's main supporters. Australia supported South Africa partly because it, too, had a racist policy (the White Australia policy) and a record of ill-treatment towards Aboriginal and Torres Strait Islanders. Australia feared that an erosion of Article 2(7) would eventually lead to Australia itself receiving international attention. Australia was one of the last countries to desert South Africa at the UN. The change came with the election of Whitlam's Labor Government in 1972. Australia not only changed its policy on apartheid but it also became reconciled to its own human rights policies (notably on indigenous affairs) being discussed at the UN. Australia no longer claims that its human rights matters are "domestic matters".



From Statements to Implementation



Periodic Reports

Progress in the international protection of human rights continues to roll along. Getting governments accustomed to external involvement in their human rights affairs began in a gentle way: asking governments to submit periodic reports on what they have been doing to ensure respect for the rights listed in the treaties they ratify. Starting, then, in the mid-1960s, human rights treaties (such as the two Human Rights Covenants) asked governments to produce periodic reports. Given the different nature of the rights dealt with, the International Covenant on Civil and Political Rights (which entered into force in 1976) requires reports to go to the Human Rights Committee, consisting of independent experts. Reports required under the Economic, Social and Cultural Covenant go to the Economic and Social Council (ECOSOC). Both bodies may make general comments on the reports but governments cannot somehow be "punished" for violating human rights.

Governments have been slow to submit reports. Also the UN human rights staff have themselves been hampered in the examination of the reports because of a shortage of funds (which come from governments) and so there is a shortage of staff. Governments evidently do not

mind the UN's slow work in this area. The UN has no power to punish governments for the late submission (or even non-submission) of reports. However, this simple mechanism is, of course, a great deal in advance of what existed in the League's day and so in the long sweep of the history of human rights, this represents a breakthrough.

✓ Right of Petition

Having become accustomed to submitting periodic reports to an inter-governmental body, governments are steeling themselves for the next step.

It is now possible for a government to grant permission for the UN to receive a petition from one of its citizens. Governments, for obvious reasons, are only gingerly moving into this area.

The right of petition was granted in the League's Minorities Treaties. That basic idea (which had only a limited effectiveness at that time) has expanded considerably under the UN. The work has been done in two main ways: the 1503 procedure and the right of petition contained in some UN human rights treaties.

Thousands of people write each year to the UN Secretary-General alleging mistreatment by their governments. The UN is well publicized. Some people think that it is a form of "world government" which can overrule their own national governments and so redress their alleged wrongs. Complaints dealing with human rights used to be sent to the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities but there was little it could do about them. The Sub-Commission had no power to intervene in national affairs. This did not, however, stop people from writing.

Some members of the Sub-Commission (consisting of experts serving in their own capacity) and NGOs lobbied the Commission on Human Rights (consisting of government delegates) to recommend to the Economic and Social Council (ECOSOC) that there be a formal process for receiving and examining the communications. The 1970 ECOSOC Resolution number 1503 was established to deal with "communications relating to violations of human rights and fundamental freedoms, indicating a consistent pattern of serious violations". The communications are passed to a working group to assess, which in turn reports in a closed session back to the Sub-Commission. The UN lacks the power to do much about these communications. Much of this work is done out of the public eye.

1503's main impact was to reassure governments that the right of petition, which operates very well within the Council of Europe system for protecting human rights, could also operate within the UN system. Under the European Convention on Human Rights (Article 25) a government may opt to permit its citizens to complain to the European Commission of Human Rights about alleged violations of the treaty. Providing the petition meets certain criteria (for

example, all domestic remedies have been exhausted), the Commission will examine the petition. If it finds that there is substance to the complaint, it will encourage the government to change its policy. If the government refuses to do so, then the case goes to the European Court of Human Rights, with Commission acting for the complainant.

Some UN human rights treaties now contain a provision whereby a government may explicitly state that it permits the UN to receive petitions from its citizens claiming that the rights contained in the treaties have been violated. For example, Australia, like almost all governments, has been tentative about accepting this provision. In 1980, Australia ratified the International Covenant on Civil and Political Rights (ICCPR). But it did not accept the Optional Protocol that contained the right to petition by aggrieved citizen. Such a complaint would go to Human Rights Committee. The Optional Protocol is a major step forward because it puts an aggrieved citizen on a par with their government at a body above the national level. Thus, only about a third of the UN's membership has accepted it; Australia's caution was on a par with most other countries. However, thanks to pressure from Australian human rights NGOs plus an appreciation of the experiences of countries that already had accepted the Optional Protocol without much difficulty (such as Canada and New Zealand), Australia ratified it on September 25 1991. On Christmas Day 1991, when the Optional Protocol came into effect for Australia, Tasmanian gay activist Nick Toonen filed a petition complaining about Tasmania's legislation (the 1924 Criminal Code) that discriminated against homosexuals. Tasmania was the only Australian State that still outlawed all forms of same sex relationships between consenting adults in private (though the law had not been implemented since 1981). The case was an instance of a person using an international treaty to protect himself against the parochialism of Tasmania's legislation. Since Tasmania's law was similar to that of some other countries (particularly in the Islamic world), the Australian Government expected the petition to fail. But the UN Human Rights Committee, instead of dealing with the issue of homosexuality, treated it as a case of privacy, and said that the Tasmanian law violated Australia's obligations to respect privacy. The Australian Government then introduced legislation to over-ride State legislation in order to protect the right to privacy (the 1994 Human Rights [Sexual Conduct]).

✓ Punishing Crimes

There is the growth area of punishing war crimes and the violations of human rights. The 1990s saw the creation of ad hoc international tribunals on Former Yugoslavia and Rwanda. There have also been "truth commissions" (with the South African one probably the most effective example). There was also the 1998 arrest of General Augusto Pinochet in the UK, which forced the hand of Chilean authorities eventually to put him on trial. The coming into effect of the Rome Treaty on the International Criminal Court will also add to this momentum. A whole new chapter on the international protection of human rights is about to be written.

✓ **Going Beyond Governments**

The protection of human rights is a never-ending task. There is also, first, the problem of "non-state actors" - in other words, entities other than governments that can also inflict suffering on people by violating their human rights. Although governments have to assume an increasing responsibility for the protection of human rights, they are not the only actors that threaten human rights and the human dignity of people. The group behind the September 11 2001 attack on New York is an example of a non-state actor. In an increasing number of countries there has been the emergence of situations in which private power groups (death squads, insurgency groups, drug mafias, multinational corporations, religious movements, ethnic groups etc) actually control the economic and political situation and are responsible for serious human rights violations. In countries like Lebanon or Colombia in the 1980s and 1990s, the civil government lost its control and could no longer to be held fully responsible for the human rights situation. Other countries like Peru, Burundi or Sri Lanka have shown similar tendencies.

Second, there have been serious human rights violations by transnationals corporations in Southern half of the world, for example the Shell corporation in Nigeria. The regulation of transnational corporations by international law represents a whole new challenge. Again, this is a comparatively new task because there were major corporations before World War II.

✓ **Embedding a Global Culture of Human Rights**

The growing culture of the international protection of human rights is here to stay. Economic and social development is now too heavily reliant upon it. A human rights education culture makes people easy to lead but difficult to coerce; it makes them easy to govern but impossible to enslave.

First, the burden of running the world, of providing the expertise for scientific and technological progress and of providing the artistry for culture has, for centuries, been carried by a minority of the world's population: white men. Civil and political rights guarantee the full involvement in national and international affairs of all people. The world's destiny will be decided by all races and both sexes. Men in Africa, Asia and Latin America and women around the world are only beginning their involvement in shaping the world's destiny. There is a vast amount of brainpower yet to be tapped.

Second, respect for human rights should reduce the need for money to be spent on armed forces, police and intelligence services in that a government will have less fear of domestic rebellion. More money can then be made available for economic and social development.

Finally, "open societies" have for centuries made more economic and social progress than "closed societies". This progress depends on the free flow of ideas. If that flow is hindered and, instead, everything is derived from the one source, then stagnation sets in. Economic growth does not come from the barrel of a gun.

To conclude, while there are many aspects of international relations that seem pessimistic, it is important to recognize the progress made in the international protection of human rights. This is not a reason for complacency but it is a sign of hope.

Keith Suter

NOTES

1. For collections of the main UN documents, see: [The United Nations and Human Rights 1945-1995](#), New York: United Nations, 1995; Symonides
2. J ed. [The Struggle Against Discrimination](#), Paris: UNESCO, 1996.
3. Stone P. [Did We Save the Earth at Stockholm? The People and Politics in the Conference on the Human Environment](#), London: Earth Island, 1973: 148.
4. "The Rio Declaration on Environment and Development", [Agenda 21: The United Nations Programme of Action from Rio](#), New York: United Nations, 1992: 9.
5. Jimmy Carter quoted in: Pippert W. "Does President Carter's Christianity Count?" *Australian Church Record* July 30 1979: 8.
6. Briery J.L. [The Law of Nations](#), Oxford: Clarendon Press, 1963: 291.
7. Wiskemann E. [Europe of the Dictators 1919-1945](#), London: Fontana, 1971: 66-7.
8. Quoted in: Noel-Baker P. [The First World Disarmament Conference 1932-3 and Why it Failed](#), Oxford: Pergamon, 1979: 6.
9. . Quoted in: Stein E. "International Law in Internal Law: Toward Internationalization of Central-Eastern European Constitutions", [American Journal of International Law](#), July 1994: 427.
10. Galbraith J.K. [The Culture of Contentment](#), Boston: Houghton Mifflin, 1992: 8.
11. [National Institutions for the Promotion and Protection of Human Rights](#), Geneva: UN Centre for Human Rights, 1993.

12. Shelley L "Human Rights as an International Issue" The Annals of the American Academy of Political and Social Science, November 1989: 45-6.
13. Higgins R. The Development of International Law Through the Political Organs of the United Nations, Oxford: Oxford University Press, 1963:
14. See: Suter K. Australia's Changing Policies Towards Apartheid, New York: United Nations Centre Against Apartheid, 1985.
15. In the early 1970s, as the Human Rights Secretary of the UK UN Association, I was involved in a team working on a complaint to the European
16. Commission about a person on the Isle of Man who was flogged with a cat o' nine tails as a result of committing a criminal offence. We regarded this as a
17. cruel and inhumane punishment. The British Government claimed that it had no right to interfere in the domestic criminal matters of the Isle. The
18. European Commission thought differently and eventually the Government agreed to ensure that this flogging was stopped.