

INTERNATIONAL LAW AND BASIC HUMAN RIGHTS

Rita E. Hauser

I realize at the outset that the traditional approach to international law would negate the very subject of my lecture, for it has long been held by many that international law can take no cognizance of individual human rights; its only proper subject of concern is states. Kelsen and his disciples might well argue the opposite view: that in the final analysis individuals alone are the subjects of international law.

Without resolving that thorny dispute, it is fair to state that while international law is *primarily* concerned with the rights, duties, and interests of states, it also long ago recognized the rights, duties, and interests of individuals as well. The Permanent Court of International Justice authoritatively ruled in 1928 in the *Danzig Railway Officials'* case that if by a particular treaty the parties intended to confer

rights on individuals, those rights should be recognized and enforced under international law.

The best illustration of this rule would be found in the Geneva Conventions of 1949 dealing with Prisoners of War and the Protection of Civilian Persons in Time of War. Articles 297 and 304 of the Treaty of Versailles of 1919 concerning the protection of national minority groups and affording them the right of redress might also be mentioned.

Yet, it is also correct to note that the trend toward defining and protecting the basic rights of individuals is very new, having come to full fruition with the adoption of the United Nations Charter in 1945. A bit of historic reference here proves the point.

Not very long ago, just 50 years back, the victorious powers of World

War I met in Paris to lay down some sense of international order which would serve to prevent another holocaust. Japan, one of the victors, proposed that the following provision be included in the Covenant of the League of Nations:

The equality of nations being a basic principle of the League of Nations, the High Contracting Parties agree to accord, as soon as possible, to all alien nationals of States members of the League equal and just treatment in every respect, making no distinction, either in law or in fact, on account of their race or nationality.

This Japanese proposal met with serious resistance on the part of the British and United States Governments. David Hunter-Miller, the historian of the drafting of the covenant, reports on a fascinating discussion between Colonel House, President Wilson's main adviser, and Mr. Balfour, the British Foreign Secretary. Colonel House wrote out a pencil memorandum which he showed Mr. Balfour and which commenced with the proposition, taken from the Declaration of Independence, that all men are created equal. Mr. Balfour replied that that was an 18th century proposition which he did not believe was fully true. In his view it was true in a political sense that all men in a given nation were equal, but not that a man in central Africa was created equal to a European. David Hunter-Miller further records that there was agreement between the British and American delegations that any text which would make the general subject of equality of people a matter of international cognizance was totally unacceptable.

At a later stage Japan urged that, at the least, the concept of equality be expressed in the preamble to the covenant and moved for adoption of language which called for "the principle of

equality of nations and just treatment of their nationals." There was a vote on this Japanese proposal which was supported in the competent Commission by the majority of nations there, but President Wilson, who presided over the meeting, ruled that the proposition had not been adopted. Thus, the Covenant of the League of Nations was silent on human rights.

Another world war, the pernicious racial doctrines of nazism, genocide, the fight to destroy the 19th century colonialism—all this in the 25 years following the Paris Peace Conference of 1919—resulted in a very different document which is the Charter of the United Nations and in which the penmanship of Americans is seen throughout. "To save succeeding generations from the scourge of war" and "to reaffirm faith in . . . the dignity and worth of the human person, in the equal rights of men and women and of nations large and small"—these are the words of the preamble. And the very purposes of the United Nations, as stated in article I, are to maintain peace and to promote respect for human rights and fundamental freedoms for all. Throughout the charter a link is forged between respect for basic human rights and freedoms and the achievement of world peace and security. As President Kennedy phrased it in his memorable speech at American University in 1963: "Is not peace in the last analysis basically a matter of human rights?"

The operative parts of the U.N. Charter go further, imposing a binding legal obligation on all Members to take joint and separate action to promote universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion. The charter requires establishment of a commission of human rights—the only commission spelled out in that document—and one which has been the focal point of international human rights activity. It has been marked by great figures,

including one of my predecessors, Mrs. Eleanor Roosevelt, and, of course, René Cassin of France, who won the Nobel Peace Prize in 1968 for the efforts he made in the Commission.

The Commission has done its work in two major stages. The first stage, the longest, centered on the development of a body of international law on the subject of human rights, beginning with the drafting and acceptance in 1948, without a single dissenting vote, of the Universal Declaration of Human Rights. I was interested to read a recent study in the *American Journal of International Law* demonstrating the extent to which the great documents of the U.N. had been cited and quoted in resolutions and debates. It was interesting to note that after the charter itself, far and away the document which has had the greatest citation was the Universal Declaration of Human Rights. I would like to pause for a moment and review very briefly what is in that declaration, because it is extremely interesting in terms of our own contemporary politics.

The declaration (which I believe is not binding law, although some more way-out thinkers would argue it is) sets a common standard of achievement for all people. The first part of it is familiar to us, and we had a large hand in drafting it. These are the principles that are in our own Bill of Rights: the principles of free speech; of free press; of the right of life, liberty and the security of person; that no one shall be subjected to cruel and inhuman punishment; that no one shall be tried without due process; that no one shall be subject to arbitrary arrest, detention, or exile; and that no one shall be denied the right to immigrate and emigrate.

The second part of the declaration, which the United States paid less attention to in 1948, has become, perhaps, even more important than the first. These remaining articles deal with economic and social rights such as the

right to work, the right to a decent education, the right to good housing and decent health, the right to be protected against the hazards of old age and sickness and unemployment, the right of people to be protected in their access to culture. These are rights—I call them rights because the declaration calls them rights—which in our own country, as you well know, have come to be accepted and enforced only after two decades of great strife. These rights, of course, are paramount to much of the world today, to the vast majority of the world which is poor and undeveloped and in which education, housing, and health are primary in the policies of the particular country. The declaration itself has formed the basis for much of the policy of our own Government as well as others in dealing with troublesome issues in the world. I would like to review just a few of these issues with you because I think they point out my basic thesis. These are the issues that are the sources of conflict and the basis of much of international politics today.

Let us take a look at a very easy one in terms of a country that has a legal and cultural background similar to our own—the strife in Northern Ireland. That strife has been properly characterized by the Royal Commission investigating it as a problem of human rights. The Catholic minority, according to the Royal Commission, has suffered from certain ills—lack of education, decent housing, access to good jobs, the right to participate fundamentally in the life of the community. And it concluded, borrowing language that we know well, the Catholics are the first to be fired, the last to be hired, the people who live in dismal economic circumstance. On top of that, the problem is exacerbated by five centuries or more of conflict between Protestants and Catholics; as, I would venture to say, our own domestic problems are exacerbated by nearly two centuries of distance between blacks and whites. Many who are close to that

situation believe it is not getting better at the moment, and that if it does not get better, it will give rise to international strife of a serious order. Indeed, the Republic of Ireland did make an attempt to bring the question last year before the Security Council, and only after a great deal of persuasion and open acknowledgment by the British that there was a serious problem of human rights violations did they desist for the time. There, I point to you, is a problem pregnant with conflict, one which would be extremely distressing to us and to our closest ally, and one which is fundamentally based on human rights considerations.

We can move to another part of the world and see an even more blatant illustration—that prevailing in southern Africa. After 20 years of debate, resolutions, and condemnations in the U.N., little headway has been made in changing the basic policies and positions of the Governments of South Africa and Rhodesia; policies based on apartheid and on practices which are now, if nothing else, anachronistic. No one, I think, who has studied the African scene will disagree with me when I say that sometime in the future, although I cannot say exactly when, that part of the world will be subject to violence and explosions of hatred, brutality, and force if the present policies continue unabated. And, unfortunately, they appear to be continuing unabated.

In this brief review of the world, I want to turn to another country, one, I think, most interesting to all of us: the Soviet Union. To my mind there is nothing more exciting, more radical, if you like, that has happened in the Soviet Union since the Revolution of 1917 than the events of the last few years in the human rights field. A substantial number of the intellectual community, and by that I include not only writers and cultural people but the elite of the scientific community, have drawn together in a common

brotherhood which consists essentially of their demanding the enforcement in the Soviet Union of some of these rights we have talked about: the right of free speech and free expression; the right to think as one sees fit; the right to assemble; the right to deal with one another in a freer atmosphere.

Last year the Human Rights Commission received two petitions which were smuggled out of the Soviet Union after the post office and the U.N. Information Office refused to transmit them. Various distinguished people had the courage to sign their names to a complaint that their own government was not enforcing the basic rights provided in the declaration and, in effect, they made a plea to the world at large to help them get this enforcement. The results, of course, were predictable. In the debates the Soviet delegate, in answer to charges on this question, maintained that it was all a CIA plot, a hoax, and so on. I am glad to say that few U.N. delegates believed these Soviet accusations. And in the Soviet Union the results were equally predictable. Quite a number of those who had signed the petition lost their jobs, were sent to isolated universities, and one or two were imprisoned. And yet the drive persisted, finally culminating in an extraordinary event which occurred this spring when a leading Soviet biologist, Zhores A. Medvedev, was placed in an insane asylum, presumably because various of the theories of biology he had been advancing were not acceptable to the Kremlin elite.

I have been told by those who monitor the Soviet press and television that there was not a word of this incarceration reported anywhere in the Soviet Union. Yet within 48 hours of the incarceration, all those who had to know in the Soviet Union knew about it, and within days, they had drafted a petition, signed chiefly by their top physicist, petitioning the leadership in the Kremlin to release the biologist on

grounds of intellectual freedom. I think that the Kremlin must have been non-plused; surely they were taken aback by the fact that the petitioners included numerous scientific laureates and Lenin prizewinners—in other words, the elite of their intellectual establishment. Within 2 weeks the biologist was released. This, of course, has given heart to many people who wish to see a freer and more open atmosphere, and at the same time it has given great concern to the leadership of the Soviet Union who are not quite willing to acknowledge the possibility that their kind of system can be coupled with freedom of thought.

I have illustrated to you briefly three different areas of the world where human rights problems are acute and where the people involved have called upon the world community for enforcement of their internationally accepted rights. There are other areas in the world where failure to enforce these rights, indeed to grant them in any way, has already given rise to serious conflict. The most obvious illustration is that in the Middle East where a large body of people, the Palestinian refugees, have been denied their basic human right to nationhood and to just treatment and where the end result of that situation is now visible. I would even say, at the risk perhaps of being disagreed with, that the conflict in Vietnam is essentially, at its roots, a conflict in human rights, a conflict of self-determination, and one in which the crucial events in the history of that area have produced the strongly held view of many that justice was not afforded as originally contemplated by the Geneva Accords. And I would venture to say that when the final document of peace is signed, it will provide for a general access to government, for the right to participate in the political life of the entities that will result from the end of the conflict.

Having outlined all of these various rights that stem from the Universal Declaration, I wish to note a further

development of law undertaken by the Commission: the drafting of major treaties in the field of human rights. These treaties deal with subjects as diverse as the political rights of women, forced labor, rights of refugees to emigrate, and the famous Genocide Convention by which the world has made genocide a crime under international law.

I think you probably all know that 76 countries have ratified the Genocide Convention and provided enabling legislation, but our own is not among them. After the Foreign Relations Committee tabled that convention in 1949 and after the famous Bricker amendment debate of the fifties, the matter seemed to be dead. President Kennedy tried again in 1963 when he submitted to our Senate the Conventions on Forced Labor and Political Rights of Women, neither of which got out of committee. Only two protocols, dealing with refugees and slaves, have passed the Senate. This year the Nixon administration made another effort to gain ratification of the Genocide Convention. Hearings were held in which I participated, and there seemed to be some strong interest on the part of many Senators. I am hopeful that in the session after the current recess, or maybe in the next session, the Senate will see fit to ratify that convention and add us to the long list of ratifiers.

I confess to not being optimistic that the United States will become an active participant in the ratification of many other of the human rights treaties, particularly the last and most important of all, the Convention on the Elimination of All Forms of Racial Discrimination.

It is curious to note that while a good number of our Senators find it quite correct to comment publicly on the treatment, let us say, of Jews by the Soviets, Iboes by the Nigerians, or Anguillans by the British, they cannot accept the idea that the rest of the

world would see fit to comment on the way in which our Government treats its own citizens. This only points out that there is fundamental resistance in America, as there probably is in many other places, to the idea that the world community at large should be concerned with the most basic of relationships between citizens and the citizens' own government. In our country there is strenuous resistance to this idea, and it is a resistance that is held in many high places.

I should add that while many countries have ratified these treaties, not all respect them. Some countries have chosen to pick and choose which treaties they will ratify. For example, the Soviet Union, which has ratified all the racial and discriminatory treaties, stays away from treaties dealing with forced labor. The South Africans have ratified only one treaty dealing with traffic in persons, which is a euphemism for white slavery. Others have not signed treaties which do not accord with their own particular practices. And, as I said, probably most discouraging of all are the many countries, especially the newer countries, which ratify them all as a whole and then proceed to ignore them. But this is a fundamental problem of enforcement of law not relevant only to human rights, but relevant to the whole area of international law. I think it is fair to say that the basic problem you see here is the problem of sovereignty, and it is a problem which is acute in the U.N. system.

Each time an attempt is made in the U.N. to pierce the curtain of a country and say, "Look here, what you are doing about these large groups of people, this or that minority, is violative of basic human rights," the country in question will frequently reply, invoking article 2(7) of the charter, in plain English: "This is none of your business; this is my business. It has to do with a matter internal to my own country." And yet, as a matter of law since the

adoption of the charter, this is not a sufficient defense. Where there are gross and persistent violations of human rights, I believe it correct to say that the world at large, by adoption of the U.N. Charter and subsequent declarations and treaties, has indicated it is the world's concern. This is the policy which accounts for our attacks on other countries whose practices we do not deem acceptable and consistent with basic articles of the Universal Declaration.

It is obvious, I am sure, that the choice of countries we attack turns on political factors as well as human rights considerations. It would be anomalous for us, for example, to raise the Irish question in the U.N. and put a very friendly and close ally in difficulty. Maybe that is wrong. I have often thought that our own position is substantially weakened on these questions by the fact that we do not point the finger equally around the world. We have, of course, pointed it quite persistently at the Soviet Union and others in the Eastern bloc. We have also done so in parts of the Arab world, such as the public hangings by Iraq 2 years ago of various people alleged to be spies who were summarily executed without benefit of trial, counsel, or anything else resembling due process. We have been a little more hesitant in pointing the finger at countries which are friends, perhaps not as intimate a friend as the United Kingdom, and I think particularly of two places at the moment: Greece and Brazil. In both countries there are deep-seated problems of human rights violations; our own country has not been in the lead in trying, at least in the public forum, to get some enforcement of basic rights in these places. I cannot but state my own point of view that I think it is a mistake, for our credibility has been severely hampered by the fact that we do pick and choose those countries we wish to single out for some measure of verbal condemnation.

Perhaps the answer to this political dilemma lies in utilization of the regional institutions that have developed to deal with human rights problems and where at least there is a similarity of background, language, tradition, and legal systems. The one organization in the world today that is obviously functioning very well and is exemplary is the European Community, which adopted a Convention on the Protection of Human Rights and Fundamental Freedoms in 1950 with a commission to investigate and report on violations. A Human Rights Court was set up in 1959 which functions well. It is through this mechanism that the Greek case was raised by the Scandinavian countries, investigated, debated, and because of fear of immediate expulsion from the Council of Europe, the Greek Government chose to resign. This event harmed Greece considerably in her standing in the world community, and I like to believe that the measures of the last few months whereby the Greek Government released large numbers of people held in prison and loosened some practices as to dissidents stem from the action of the European Community.

The Latin American countries have long had a Committee on Human Rights within the OAS. Last year the Latins met in Costa Rica and with our assistance drew up a convention modeled on the European system for protection of human rights. It is yet to be fully ratified. There is a similar embryonic development in the African countries through the Organization of African Unity.

The development of human rights law which I have traced today is relatively new in international law. It reflects the press of mankind for justice and equality, which is, to me, the drama of our times. That press led to the adoption in the U.N., over strenuous Soviet opposition, of a procedure to review complaints and petitions from individuals coming from everywhere in

the world. These come to the U.N. in the thousandfold each year, but we have never had a procedure to deal with them officially. Indeed, there have been many petitions sent in on the subject of our own racial problems. I do not find this difficult to digest, for it seems to me if we are willing to point out what is wrong elsewhere, then others will equally well point out what they see as wrong here. The only correct approach is some form of free and open debate. It is a pleasure on that score to be an American representative, as one can say in the international forum that we acknowledge our problems, we have taken this and that step to try to correct them, we are working on it. This contrasts markedly with the attitude of most other countries which, when the finger is pointed, immediately say, "This is not so; this is a lie; it does not exist." And I think that aspect of our demeanor in the United Nations and elsewhere has, despite everything, truly shown others that America is, in essence, a free country, an open country, a country in distress at the moment internally but one which is willing to acknowledge the existence of the problem and search in fair fashion for an answer.

In conclusion, then, I would like to indicate that I have outlined very briefly for you what is really a great development in the history of international law. It is one which we have the privilege of seeing unfold before us and one to which we can contribute substantially. I think there will be breakthroughs in traditional doctrines of international law which in the past have prohibited a serious concern with individual rights. Perhaps I can sum it up in a comment once made by Professor Paul Freund of the Harvard Law School who noted that: "History itself is a tension between heritage and heresy which law in its groping way seeks to mediate."

I believe international law is groping to mediate today between the traditionalists who isolate individuals from

the processes of law and those heretics who would even now permit frontal attacks on sovereign states by alleged victims of human rights violations. I think it must be perfectly clear to you

from all I have indicated that I have little doubt that the heretics will prevail in the not-too-distant future, perhaps for no other reason but that heretics always fight the hardest.

