

HUMAN RIGHTS

QUESTIONS & ANSWERS

BY LEAH LEVIN
ILLUSTRATED BY PLANTU



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The author is responsible for the choice and the presentation of the facts contained in this book and for the opinions expressed therein, which are not necessarily those of Unesco and do not commit the Organization.

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Preface

Unesco organized an International Congress on the Teaching of Human Rights in Vienna, Austria, in September 1978.¹ The congress was part of Unesco's contribution to the Thirtieth Anniversary of the Universal Declaration of Human Rights. Two months after the congress took place, the General Conference of Unesco, at its twentieth session, invited Unesco to develop projects relating to the teaching of human rights on the basis of the recommendations of the congress. Among these recommendations was the preparation and publication of teaching materials, which should 'take into account the interests and circumstances of students, so that they might determine their own role in relation to the promotion and protection of human rights' and which should 'focus on both positive and negative conditions related to human rights, and should open exploration of possibilities for concrete action on behalf of human rights'.

A textbook on human rights has already been published by Unesco for university-level education.² In order to provide teaching materials for a more general public and for other levels of education, as well as for activists and non-governmental organizations working for the promotion of human rights, Unesco decided to publish a booklet containing answers to basic questions on the meaning of the internationally recognized human rights and the procedures which exist for their implementation. In the first part, this booklet briefly describes the scope and meaning of international human rights. In the second

1. See *The Teaching of Human Rights. Proceedings of the International Congress on the Teaching of Human Rights, Vienna, 12-16 September 1978*, Paris, Unesco, 1980, 259 pp.
2. Karel Vasak (ed.), *Les dimensions internationales des droits de l'homme*, Paris, Unesco, 1978. A revised and updated English version is to appear in 1981.

part, it explains, in plain language, the meaning of each article of the Universal Declaration of Human Rights.

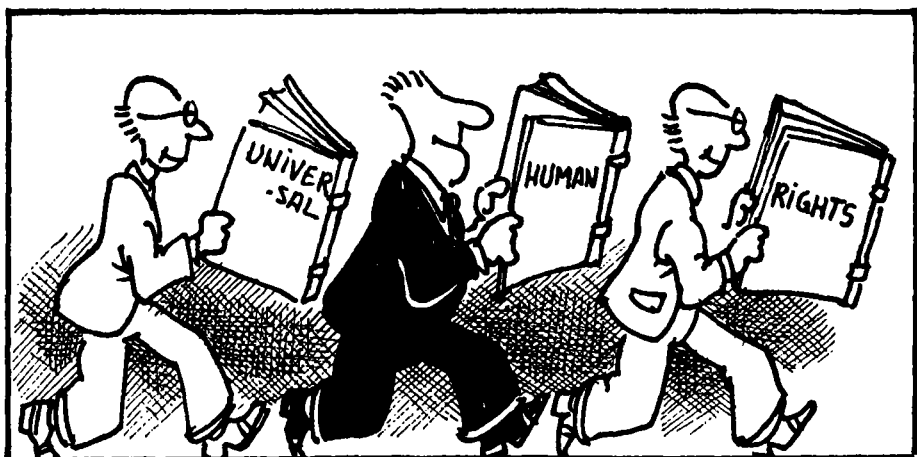
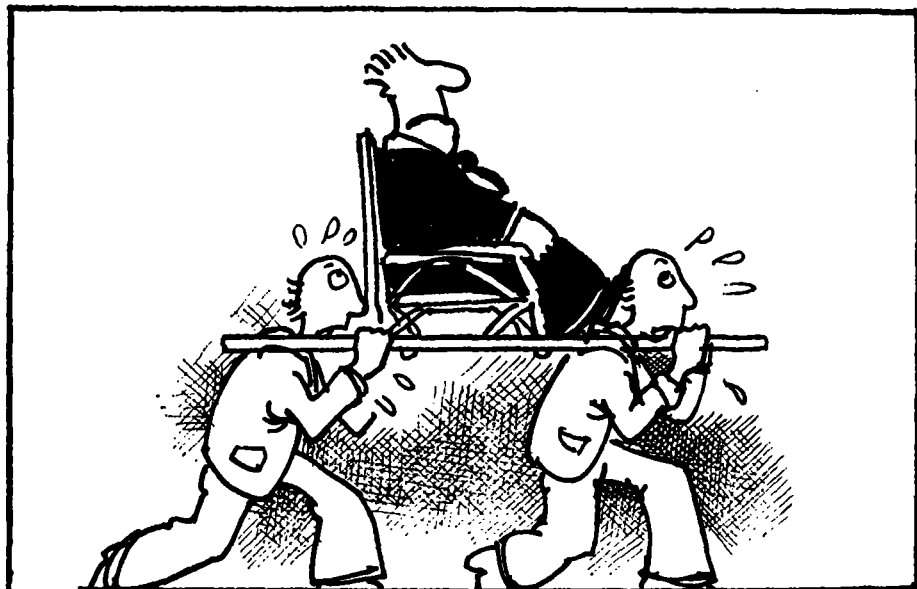
Leah Levin, an active human-rights worker for several organizations, including the Anti-Slavery Society for the Protection of Human Rights, and a member of the United Kingdom National Commission for Unesco, prepared this booklet at Unesco's request. It was first presented as a possible model for such teaching materials at the 1978 International Congress on the Teaching of Human Rights and a shortened version appeared in the *Unesco Courier* (October 1978). The text was brought up to date in 1980 for this booklet. Unesco expresses its warmest thanks to Ms Levin for her contribution to this publication.

Plantu, the well-known French political cartoonist whose drawings appear in several newspapers (including *Le Monde*) has done the illustrations. He has captured, through the popular and therefore potentially highly powerful medium which is his own, the contradictions and aspirations of international human rights. Unesco is very grateful to Plantu for bringing the force of the image to the task of human-rights education.

As regards the content of the text and drawings included in this booklet, the choice of facts and their interpretation are the sole responsibility of the authors and do not necessarily reflect the views of Unesco. Unesco hopes this booklet will make a contribution to the dissemination of knowledge about human rights, which, in the last analysis, is a fundamental condition for the respect for these rights.

The conclusion of the International Congress on the Teaching of Human Rights provides a suitable definition of the ultimate aim of this booklet:

The young people we shall teach long for new cultural forms, creativity, new models and symbols. We offer them a project worthy of their enthusiasm and of their search for commitment, a project allowing them to make their own contribution to the construction of society. In mankind's long march towards its destiny, what better contribution could we make than to ensure that human rights are effectively included in man's future conquests and aspirations?



PLANTU

First appeared in *Pauvres chéris*, Paris, Éditions du Centurion.

We the peoples of the United Nations determined

...

to reaffirm 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, and

to establish conditions under which justice
and respect for the obligations arising from
treaties and other sources of international law
can be maintained, and

to promote social progress and
better standards of life in larger freedom,

...

Preamble, United Nations Charter

... the General Assembly proclaims this Universal
Declaration of Human Rights ... to the end that every
individual and every organ of society, keeping this
Declaration constantly in mind shall strive by teaching and
education to promote respect for these rights and freedoms ...

Universal Declaration of Human Rights

LET'S SEE-THERE'S
"DEATH SENTENCE"
"DEFAME"
"DICTATORSHIP"
"DISCRIMINATION"...

... BUT
I CAN'T FIND
"DIGNITY"



International human rights: protecting people against violations by states

■ *What is meant by human rights?*

The concept of human rights has two basic meanings. The first is that inherent and inalienable rights are due to man simply because of being man. They are *moral rights* which are derived from the humanness of every human being, and they aim at ensuring the dignity of every human being. The second meaning of human rights is that of *legal rights*, established according to the law-creating processes of societies, both national and international. The basis of these rights is the consent of the governed, that is the consent of the subjects of the rights, rather than a natural order, which is the basis of the first meaning.

■ *How is this idea reflected in practice?*

Human life and human dignity have been disregarded and violated throughout history and continue to be violated today. Nevertheless, the idea of rules common to all human beings without discrimination dates back many centuries. It is often called 'natural law', which implies the concept of a body of rules that ought to prevail in society. The principle of equality, recognized in natural law, was long accepted as the source and standard of political rights. Yet there has always been some justification offered for discriminating between the rights

of people, on the basis of a fallacious claim that some were less capable than others or even genetically inferior. Such arguments were used to justify slavery before the nineteenth century; and they have been used to justify discrimination against women (sexism) and discrimination against people because of the colour of their skins (racism), throughout history and in modern times.¹

The principle of the equality of all members of the human race, like many other basic principles which underlie what we today call human rights, can be found in virtually every culture and civilization, religion and philosophical tradition.² One of these traditions is that of 'natural law'.

During the eighteenth century the early ideas of natural law developed into an acceptance of natural rights as legal rights, and these rights for the first time became a basic part of national constitutions, thus reflecting an almost contractual relationship between the state and the individual which emphasized that the power of the state derived from the assent of the free individual. The American Declaration of Independence and the French Declaration of the Rights of Man and of the Citizen were based on this premise. During the nineteenth and twentieth centuries this principle was adopted by a number of European, Latin American and Asian states and supplemented by important new social and economic rights. During the 1960s, when a large number of African states became independent, they too recognized the importance of human rights in their new constitutions, sometimes by incorporating the Universal Declaration of Human Rights into them. Despite the recognition accorded to human rights in national constitutions, these rights are sometimes limited or eliminated by legislation or by arbitrary means and are often widely violated by states in spite of their status as legal rights.

1. See on the subject of discrimination, including racism, sexism and colonialism, Betty Reardon, *Discrimination*, Sydney, New York, Toronto and London, Holt, Rinehart & Winston, 1977, 104 pp.
2. Two important publications examine the contributions of various streams of thought on human rights: *Human Rights, Comments and Interpretations*, London and New York, Alban Wingate, 1948 and *Birthright of Man*, Paris, Unesco, 1969.

■ *Is there any other way of promoting the protection of human rights?*

The state is the guarantor and protector of human rights and, according to a traditional rule regulating the relations between states, governments in principle have no right to intervene in the affairs of another state.

Since the end of the First World War, however, there has been a growing belief that governments alone cannot be left to safeguard these rights, and that they require international guarantees. The League of Nations, although its mandate did not mention human rights, nevertheless tried to undertake the protection of human rights through international means. The League's concerns were, however, limited to the establishment of certain conditions for the protection of minorities in a few countries.

The major pressure for the internationalization of human rights followed the Second World War, during which totalitarian regimes grossly violated human rights in their own and occupied territories, and were responsible for the elimination of entire groups of people because of their race, religion or nationality. The experience of that war resulted in a widespread conviction that effective international protection of human rights was one of the essential conditions of international peace and progress. This conviction was subsequently reflected in and reinforced by the Charter of the United Nations. Article 1 of the Charter states that one of the aims of the United Nations is to achieve international co-operation in 'promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion'. Article 55 expresses a similar aim; and in Article 56 all members of the United Nations 'pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55'.

The provisions of the Charter have the force of positive international law because the Charter is a treaty and therefore a legally binding document. All United Nations Member States

must fulfil in good faith the obligations they have assumed under the Charter, including the obligation to promote respect for and observance of human rights, and they are committed to co-operate with the United Nations and other nations to attain this aim.

■ *Why do states resist international scrutiny of their compliance with their duties to promote and protect human rights under the Charter?*

One of the Articles of the Charter (Article 2(7)) states that the United Nations should not intervene 'in matters which are essentially within the domestic jurisdiction of any State . . .'.

This provision is often invoked by states which do not want their affairs discussed, particularly when they have contravened their undertakings in respect of human rights, even though they may be prepared to discuss the affairs of other states. These same governments have supported United Nations resolutions which sanctioned investigation into the affairs of other Member States. The rule of non-intervention is an accepted rule of inter-state relations but it is sometimes used abusively and selectively for political reasons. As a result some governments have taken different positions at different times. A widely accepted interpretation of Article 2(7) maintains that 'intervention' relates essentially to 'physical' intervention and does not therefore preclude discussion and examination of the conduct of states, with regard to matters within their domestic jurisdiction. There is no simple answer to the question of the correct application of the rule of non-intervention. It can be argued that the less it is used, the better the chances will be for promoting and protecting human rights.

■ *Does it follow that the United Nations Charter can have an effect on actual situations?*

The Charter recognizes that peace and stability among nations is related to the recognition of and respect for human rights

and seeks to establish conditions under which both peace and human rights can be achieved. It also establishes a close link between human rights and other worldwide concerns such as the promotion of economic and social progress.

Since the signing of the Charter, great changes have taken place in the world, especially regarding decolonialization, and many new nations have become members of the United Nations and thus bound by the Charter. However, as the principles of the Charter are of a general nature, it was necessary to establish more specific definitions of human rights and freedoms in order that these objectives of the Charter could be pursued concretely and a system of human rights protection could be established.

■ *How was this done?*

In 1945, a United Nations Commission on Human Rights was created and entrusted with the task of drawing up an International Bill of Human Rights, defining the rights and freedoms referred to in the Charter.

The first part of the Bill of Human Rights was realized on 10 December 1948, when the General Assembly unanimously adopted the Universal Declaration of Human Rights 'as a common standard of achievement for all peoples and all nations'.

■ *What are the rights proclaimed in the Universal Declaration?*

These rights can be broadly divided into two kinds of rights. The first refers to civil and political rights which include the right to life, liberty, security of person; freedom from torture and slavery; political participation; rights to property, marriage and the fundamental freedoms of opinion, expression, thought, conscience and religion; freedom of association and assembly.

The second are economic, social and cultural rights which

relate to work, a reasonable standard of living, education and freedom of cultural life. In addition, the first article of the Declaration expresses the universality of rights in terms of the equality of human dignity; and the second article expresses the entitlement of all persons to rights set out without discrimination of any kind. The priorities underlying the rights proclaimed in the Declaration are contained in the Preamble to the Declaration, which starts by recognizing the 'inherent dignity, and the equal and inalienable rights of all members of the human family'. The second part of this brochure describes what is meant by each of the articles of the Universal Declaration.

■ *Do states who were not at the time members of the United Nations accept the Universal Declaration?*

The impact of the Declaration and the use made of it bear out the universal acceptance of the Declaration, and it has become a norm of reference in human rights for all countries.

In a formal sense, parts of the Declaration have been cited in many national constitutions and other international instruments, including regional treaties and conventions, as well as in many subsequent United Nations instruments agreed to by Member States. Governments have no hesitation in invoking the Declaration when accusing other countries of violating human rights, thereby affirming the universal validity of the Declaration.

The Universal Declaration, together with the Charter, served both as an inspiration and a means for the millions of people under colonial rule to achieve self-determination. The universality of the claim to human rights provided the justification for the liberation of these oppressed peoples. In 1961 President Nyerere of the United Republic of Tanzania, addressing the United Nations General Assembly, said, 'We shall try to use the Universal Declaration of Human Rights as a basis for both our external and internal policies.'

■ *Is the Universal Declaration legally binding upon states?*

The Declaration is not, as such, a legally binding document, but by their actions and use of the Declaration states have endowed the Declaration with a legitimacy which allows it to be invoked both legally and politically at the international and domestic levels. In 1962, the Legal Adviser of the United Nations defined a declaration in United Nations practice as 'a solemn instrument resorted to only in very rare cases relating to matters of major and lasting importance when maximum compliance is expected'.

The consensus of the international community was expressed at the Tehran Conference on Human Rights in 1968; that the Universal Declaration 'states a common understanding of the peoples of the world concerning the inalienable rights of all members of the human family and constitutes an obligation for the members of the international community'.¹ There is no legal sanction to compel states to meet this obligation. As with other areas of international law and practice the main sanction available to the international community is the withdrawal of their confidence by states from those which are unwilling to co-operate to discharge their obligations.

■ *What other instruments make up the International Bill of Human Rights?*

The Universal Declaration of Human Rights was the first tier of a three-tier objective.

The second and third parts of the International Bill of Human Rights were adopted by the General Assembly on 16 December 1966. These consisted of two Covenants—the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, together with the Optional Protocol to the Covenant on Civil and Political Rights. In adopting these instruments

1. Proclamation of Tehran, para. 2, adopted at the International Conference on Human Rights, 13 May 1968.

agreement was reached by the international community, not only on the contents of each right, set forth within the Universal Declaration, but also in respect of the conditions under which states could derogate from or restrict these rights.

■ *How do the International Covenants differ from the Declaration?*

First, the Covenants are legally binding treaties. Second, upon agreeing to become parties to the Covenants, states accept procedures for the implementation of the texts, including the submission of reports on their compliance with the provisions of the Covenants. Third, although the General Assembly adopted the Covenants in 1966, they only entered into force in 1976, when each Covenant had been ratified by the required thirty-five states. Fourth, the Covenants are binding only on those states which are parties to them. On 1 September 1981, sixty-six states had become parties to the International Covenant on Civil and Political Rights and sixty-eight states were parties to the International Covenant on Economic, Social and Cultural Rights,¹ and twenty-five had ratified the Optional Protocol.²

1. The states which are parties to both Covenants are: Austria, Barbados, Bulgaria, Byelorussian SSR, Canada, Central African Republic, Chile, Colombia, Costa Rica, Cyprus, Czechoslovakia, Denmark, Dominican Republic, Ecuador, El Salvador, Finland, France, Gambia, German Democratic Republic, Federal Republic of Germany, Guinea, Guyana, Hungary, Iceland, India, Iran, Iraq, Italy, Jamaica, Japan, Jordan, Kenya, Lebanon, Libyan Arab Jamahiriya, Madagascar, Mali, Mauritius, Mexico, Mongolia, Morocco, Netherlands, New Zealand, Nicaragua, Norway, Panama, Peru, Poland, Portugal, Romania, Rwanda, Senegal, Spain, Sri Lanka, Suriname, Sweden, Syrian Arab Republic, Trinidad and Tobago, Tunisia, Ukrainian SSR, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, Uruguay, Venezuela, Yugoslavia, Zaire; those which are parties to the Covenant on Economic, Social and Cultural Rights only are Australia and the Philippines.
2. The states parties to the Optional Protocol are: Barbados, Canada, Central African Republic, Colombia, Costa Rica, Denmark, Dominican Republic, Ecuador, Finland, Iceland, Italy, Jamaica, Madagascar, Mauritius, Netherlands, Nicaragua, Norway, Panama, Peru, Senegal, Suriname, Sweden, Uruguay, Venezuela, Zaire.



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■ *What means are provided for implementation under the Covenant on Civil and Political Rights?*

Article 28 of this Covenant provides for the establishment of a Human Rights Committee consisting of eighteen independent experts, nominated and elected by states parties to the Covenant, who serve in their personal capacity.

The committee has the competence to monitor the implementation of the Covenant's provisions by three means: (a) under Article 40, the committee examines reports from states parties to the Covenant on their compliance; (b) under Article 41, it can consider complaints of one state against another, provided that both have made a special declaration recognizing this role of the committee; (c) under the provisions of the Optional Protocol, the committee can receive and act on complaints of individuals alleging violations by the state of their rights under the Covenant.

Under Article 40 of the Covenant, each state is required to submit a report within one year of becoming party to the Covenant and thereafter whenever the committee so requests. The reports are studied and commented upon by the committee, which also reports annually to the United Nations General Assembly and to ECOSOC.

The reports are examined in public and in the presence of the representative of the state concerned, who may be questioned. The committee may also address comments directly to governments.

■ *How effective is the reporting procedure?*

Since the immediate protection of human rights depends upon compliance at the national level, the effectiveness of the committee is limited as it has no recourse beyond its comments. However, it can be argued that there is a persuasive value derived from the examination of reports in public as governments are generally sensitive to public criticism of their human

rights performance. The principal object of the committee is to develop a constructive dialogue with reporting states and thereby promote the compliance of states with the provisions of the Covenant.

■ *How does the committee deal with inter-state complaints?*

The procedure for inter-state complaints came into effect on 28 March 1979 when the required ten states had made the necessary declaration under Article 41. By 15 November 1980 fourteen states had made the declaration.¹ This procedure provides for a complaint by one state party that another state party 'is not fulfilling its obligations under the present Covenant'. To date no such complaints have been received. The committee will deal with these complaints only after it has ascertained that all domestic remedies have been exhausted and its role will be to effect a friendly solution. If this procedure fails provision is made in Article 42 of the Covenant for the committee, in consultation with the states party, to appoint an ad hoc consultation commission, consisting of five persons who are not nationals of the states concerned, with a view to reaching an 'amicable solution'. All these proceedings are confidential.

■ *How does the committee deal with individual complaints?*

Under the provisions of the Optional Protocol to the Covenant on Civil and Political Rights, the committee can act on complaints by individuals alleging violations of their rights under the Covenant. Only citizens of countries which have

1. The states are: Austria, Canada, Denmark, Finland, Federal Republic of Germany, Iceland, Italy, Netherlands, New Zealand, Norway, Senegal, Sri Lanka, Sweden, United Kingdom of Great Britain and Northern Ireland.

ratified this Optional Protocol can submit written communications to the committee. Representation may also be made by another person on behalf of a victim when the victim is not able personally to appeal to the committee.

The committee examines a complaint in two phases: first on its 'admissibility' and secondly on its 'merits'. To determine the admissibility, the committee applies a number of criteria: the complaint should not be anonymous; it should not be an abuse of the procedure; it should not be under consideration by any other international procedure; and the complainant must have exhausted all possible domestic remedies.

The committee is empowered to bring any individual complaint which it finds admissible to the attention of the state party concerned, which on its part undertakes to provide the committee, within six months, with a written explanation on the matter and the remedy, if any, that it may have undertaken. If deemed admissible, the committee considers the 'merits' of the complaint. Both these phases take place in closed session. The committee takes into account all written information made available to it by the initial author of the communication, the alleged victim and by the state party concerned. The findings of the committee are made public and it forwards its views to the state party concerned and to the individual.

■ *What provision is there for the implementation of the Covenant on Economic, Social and Cultural Rights?*

Under this Covenant states parties to it submit reports to the Economic and Social Council (ECOSOC) as to what progress they have made in achieving the rights recognized. A working group of fifteen of its members, representing states which are parties to the Covenant, has been appointed by ECOSOC to consider these reports. All other states can attend as observers. In addition, the sections of the reports relating to the sphere of competence of Specialized Agencies of the United Nations

System (ILO, Unesco, WHO, etc.) are forwarded to those organizations, whose comments may include descriptions of decisions and recommendations adopted by their competent organs. In 1980, the Working Group began its first examination of reports, but encountered certain difficulties in discharging its responsibility under the present organizational arrangements. ECOSOC has agreed that the composition, organization and administrative arrangements of the Working Group will be reviewed in 1981.

■ *Are there other human-rights instruments besides the International Bill of Rights?*

There are a large number of declarations, recommendations and conventions adopted by the General Assembly and other legislative bodies of the United Nations system which elaborate on specific obligations and safeguards relating to particular human rights set down in the Declaration and the International Covenants and also affirm certain rights not specified in the International Bill of Human Rights. The declarations and recommendations usually apply to all members of the United Nations but do not have the same legal force as the conventions, which are binding only on states which have become parties to them. Among these are conventions relating to the right to life and to the prevention of discrimination.

Genocide

In December 1948 the United Nations General Assembly adopted the Convention on the Prevention and Punishment of the Crime of Genocide. It came into force in 1961 and has now (15 November 1980) been ratified by eighty-five states.¹

1. These states are: Afghanistan, Albania, Algeria, Argentina, Australia, Austria, Bahamas, Barbados, Belgium, Brazil, Bulgaria, Burma, Byelorussian SSR, Canada, Chile, Colombia, Costa Rica, Cuba, Czechoslovakia, Democratic Kampuchea, Denmark, Ecuador, Egypt, El Salvador, Ethiopia, Fiji, Finland, France, Gambia, German Democratic Republic, Federal

Genocide is defined in the Convention as the committing of certain acts with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group. Genocide is designated a crime under international law, whether committed in time of war or of peace.

Prevention of discrimination

The International Convention on the Elimination of All Forms of Racial Discrimination came into force in 1969 and has been ratified (15 November 1980) by 108 states.¹ It represents the most comprehensive United Nations statement regarding discrimination on the grounds of race, colour or ethnic origin. States parties to the Convention undertake to pursue a policy of eliminating racial discrimination in all its forms and to ensure the protection of special racial groups, guaranteeing their

Republic of Germany, Ghana, Greece, Guatemala, Haiti, Honduras, Hungary, Iceland, India, Iran, Iraq, Ireland, Israel, Italy, Jamaica, Jordan, Lao People's Democratic Republic, Lebanon, Lesotho, Liberia, Mali, Mexico, Monaco, Mongolia, Morocco, Nepal, Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Panama, Peru, Philippines, Poland, Republic of Korea, Romania, Rwanda, Saudi Arabia, Spain, Sri Lanka, Sweden, Syrian Arab Republic, Tonga, Tunisia, Turkey, Ukrainian SSR, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, Upper Volta, Uruguay, Venezuela, Yugoslavia, Zaire.

1. These states are: Algeria, Argentina, Australia, Austria, Bahamas, Bangladesh, Barbados, Belgium, Bolivia, Botswana, Brazil, Bulgaria, Burundi, Byelorussian SSR, Canada, Cape Verde, Central African Republic, Chad, Chile, Costa Rica, Cuba, Cyprus, Czechoslovakia, Democratic Yemen, Denmark, Ecuador, Egypt, El Salvador, Ethiopia, Fiji, Finland, France, Gabon, Gambia, German Democratic Republic, Federal Republic of Germany, Ghana, Greece, Guinea, Guyana, Haiti, Holy See, Hungary, Iceland, India, Iran, Iraq, Israel, Italy, Ivory Coast, Jamaica, Jordan, Kuwait, Lao People's Democratic Republic, Lebanon, Lesotho, Liberia, Libyan Arab Jamahiriya, Luxembourg, Madagascar, Mali, Malta, Mauritius, Mexico, Mongolia, Morocco, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Pakistan, Panama, Peru, Philippines, Poland, Qatar, Republic of Korea, Romania, Rwanda, Senegal, Seychelles, Sierra Leone, Socialist Republic of Viet Nam, Somalia, Spain, Sudan, Swaziland, Sweden, Syrian Arab Republic, Togo, Tonga, Trinidad and Tobago, Tunisia, Ukrainian SSR, Union of Soviet Socialist Republics, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United Republic of Cameroon, United Republic of Tanzania, Uganda, Upper Volta, Uruguay, Venezuela, Yugoslavia, Zaire, Zambia.

members full and equal enjoyment of human rights and fundamental freedoms.

A special Committee on the Elimination of Racial Discrimination (CERD) was established under the Convention to supervise governmental compliance. The committee has four functions. The first, and hitherto its main one, is the examination of reports from states parties on the measures they have taken to implement the Convention. The second is to apply the procedure (not yet invoked by any state) which allows the committee to deal with inter-state complaints. The third is to examine complaints from individuals against states, provided that the state concerned has recognized the right of private petition. This procedure is not yet operative as it requires at least ten states to have recognized this right and only seven have done so to date. The fourth function is to provide assistance to the United Nations organs which review petitions from inhabitants of trust and non-self-governing territories. The committee has achieved a measure of success in both getting states to file reports and ensuring that governments are represented at the examination of those reports, thus allowing for additional information to be obtained. The committee refrains from formal condemnation and pursues a strategy of informal dialogue to encourage governments to comply with their obligations. The committee reports annually to the General Assembly of the United Nations and may make 'suggestions and general recommendations', but is dependent upon the General Assembly to endorse and give authority to these.

An additional instrument against discrimination is the Convention on the Elimination of All Forms of Discrimination against Women, adopted by the United Nations General Assembly on 18 December 1979, which entered into force on 2 September 1981, having been ratified by twenty-three Member States.¹ Article 17 of the Convention makes provision for the

1. These states are: Barbados, Byelorussian SSR, Cape Verde, China, Cuba, Dominica, German Democratic Republic, Guinea, Guyana, Haiti, Hungary, Lao People's Democratic Republic, Mexico, Mongolia, Norway, Philippines, Poland, Portugal, Rwanda, St Vincent and the Grenadines, Sweden, Ukrainian SSR, Union of Soviet Socialist Republics.

establishment of a Committee on the Elimination of Discrimination against Women which will consider the progress made in the implementation of the Convention.

■ *Can anyone appeal to the United Nations if he or she feels human rights are being violated?*

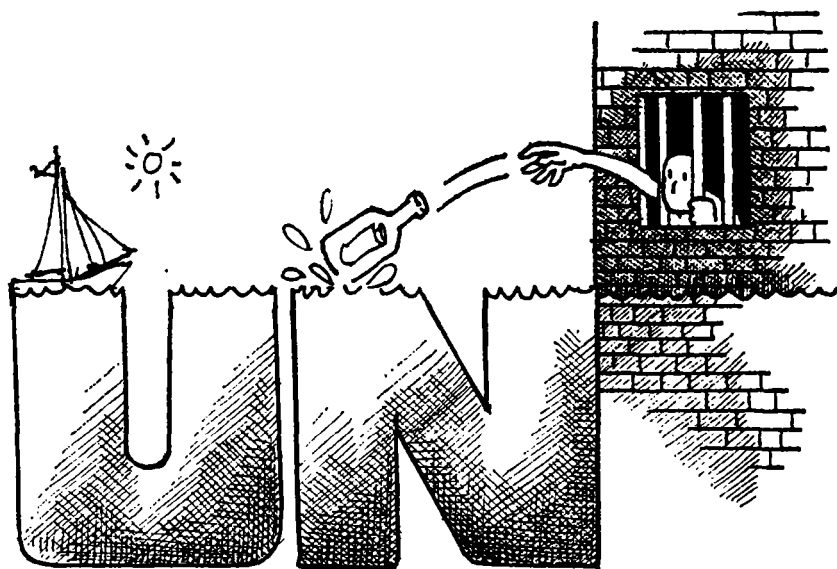
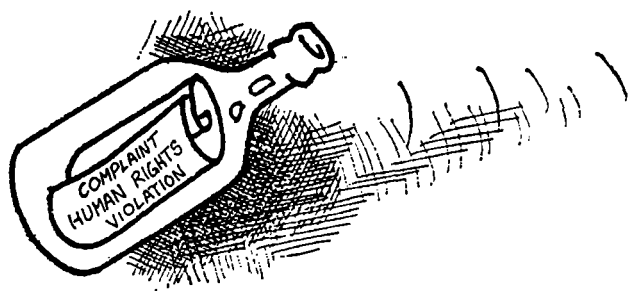
Since its inception, the United Nations has received annually thousands of complaints from individuals and organizations alleging violations of human rights. Between 1951 and 1971 there were 120,000 such communications; there are currently between 20,000 and 30,000 received each year.

■ *What is done about them?*

The Commission on Human Rights, which is a subsidiary body of the Economic and Social Council, is the body primarily responsible for dealing with these complaints, but it has no power, under any of its procedures, to take action in respect of complaints relating to an individual.

When the commission was first established, no provision was made for machinery whereby individuals or groups could seek redress for alleged violations of human rights, and the commission consistently recognized 'that it had no power to take any action in regard to complaints concerning human rights'. A procedure, however, developed whereby two lists of communications were compiled from the complaints received, a non-confidential list dealing with the principles involved in protecting and promoting human rights, and a confidential list made up of complaints against states.

These confidential lists of complaints were handed to members of the commission, and states were informed of the specific complaints against them; but replies received from states were not passed on to the person or organization who made the complaint. The method of dealing with complaints was endorsed by Economic and Social Council Resolution 728F in 1959.

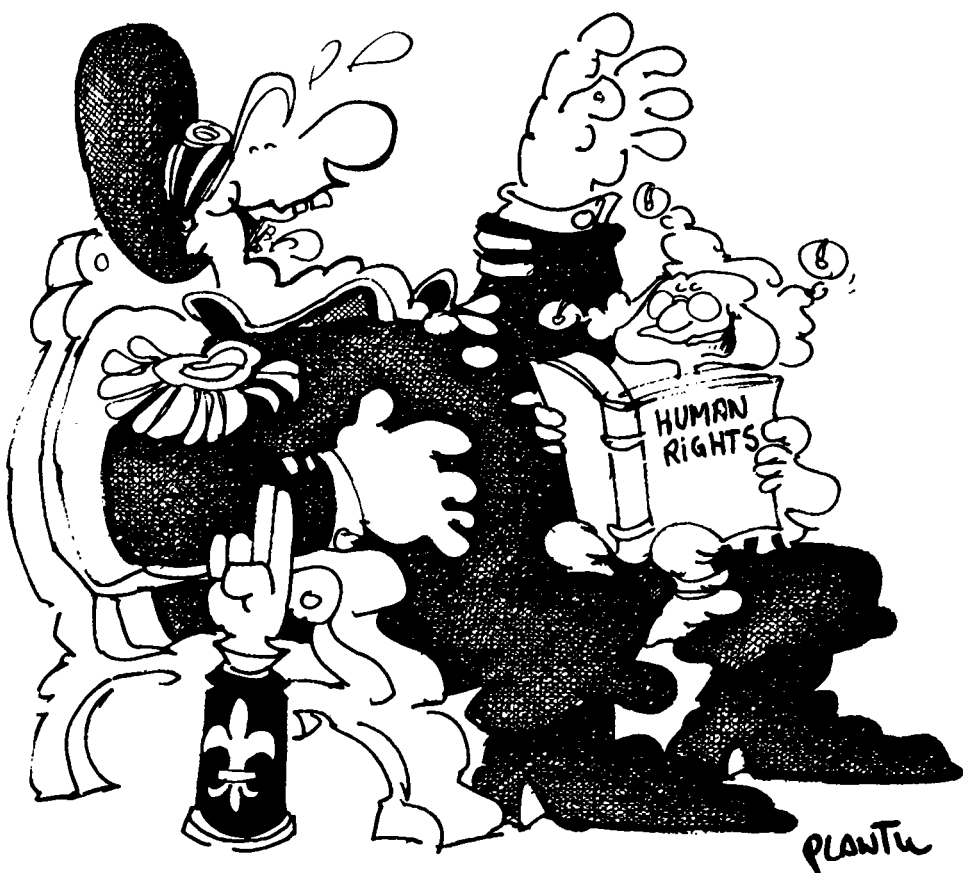


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In the early 1960s, the deep concern that many new nations had about the colonial and racial attitudes in southern Africa prompted a move towards extending the United Nations mandate so that gross violations of human rights could be dealt with. In 1967, the Economic and Social Council adopted Resolution 1235, instructing the Commission on Human Rights to 'make a thorough study of situations which reveal a consistent pattern of violations of human rights, as exemplified by the policy of Apartheid'; and to report and make recommendations to the Economic and Social Council. Fact-finding studies were then initiated and in 1967 the commission established a Working Group of Experts on Southern Africa, which was subsequently assigned the task of looking into alleged violations of human rights in the occupied Arab territories. In 1975, the commission set up a special ad hoc Working Group on Chile.

Despite the fact that these fact-finding groups have not been allowed to enter the territory concerned, except in the case of Chile, all of them have been able to gather a great deal of evidence on which subsequent resolutions of the General Assembly and Commission on Human Rights have been based. In 1979, the commission decided to terminate the mandate of the Working Group on Chile and replaced it by a special rapporteur. Two experts were also appointed to study the fate of disappeared persons in Chile. At the same session, a special rapporteur was appointed to make a 'thorough study' of the situation in Equatorial Guinea. Reports have also been prepared on Bolivia, El Salvador, Democratic Kampuchea and Nicaragua. All these reports are examined in public meetings.

In 1970, Economic and Social Council Resolution 1503 set up a rather complex confidential procedure whereby complaints which reveal 'a consistent pattern of gross and reliably attested violation of human rights and fundamental freedoms' should be examined. For the first time, evidence could be submitted not only by victims of violations but also by any person or group or non-governmental organization with a direct and reliable knowledge of the violations. The complaints are examined in the first instance by a Working Group of the Sub-Commission on the Prevention of Discrimination and the



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Protection of Minorities, which is a sub-commission of the Commission on Human Rights and responsible to it. This working group makes recommendations to the sub-commission, which in turn makes recommendations to a Working Group of the Commission on Human Rights, which in turn makes recommendations to the Commission on Human Rights. The Commission on Human Rights can decide either to make a thorough study of the situation or, with the consent of the state concerned, to appoint an ad hoc committee to investigate the situation and, in either case, to submit their resulting report to ECOSOC. The commission has never taken either action.

The entire procedure under Resolution 1503 is confidential until such time as the Commission on Human Rights makes a recommendation to the Economic and Social Council; hence there has been no official information hitherto regarding the operation of the procedure. Since March 1978, the commission has publicly announced the countries which have been considered at its session that year, under the '1503' procedures. These were: Equatorial Guinea, Malawi, Bolivia, Uruguay, Republic of Korea, Uganda, Ethiopia, Indonesia and Paraguay (1978); Burma, Bolivia, Ethiopia, Indonesia, Malawi, Paraguay, Republic of Korea, Uganda and Uruguay (1979); Bolivia, Ethiopia, Indonesia, Paraguay, Republic of Korea, Uganda, Uruguay, Argentina and the Central African Republic (1980); and Afghanistan, Argentina, Bolivia, Central African Republic, Chile, El Salvador, Ethiopia, German Democratic Republic, Guatemala, Haiti, Indonesia, Japan, Mozambique, Paraguay, Republic of Korea, Uganda and Uruguay (1981).

Beyond the naming of countries under consideration by the '1503' procedure, there is no public debate on these countries during the discussion of violations of human rights. Some governments, protected by the confidentiality of the procedures, have refused to co-operate with the commission. In 1979 this situation arose in the case of Equatorial Guinea and a new precedent was created when the commission announced that the situation could now be discussed in public in view of the government's attitude. A special rapporteur was appointed subsequently during the public discussion to make

a 'thorough study' of the situation in Equatorial Guinea. In 1980, when this report was presented, it was revealed that the commission had been well aware of the atrocities committed in that country since 1974, and had not taken any action. The new government of Equatorial Guinea accepted the designation of a United Nations expert to help that country solve the human-rights problems which remain after the change in regime.

■ *What has prevented these procedures from being more effective?*

The failure of the Commission on Human Rights to take more effective action stems mainly from the inability of the commission to reach agreement among its members. Where such agreement has been reached, as in the cases of southern Africa, the occupied territories of the Middle East, Chile and Equatorial Guinea, the commission was able to initiate action and effective investigation. The commission is made up of representatives of governments, who act on instructions from and reflect the interests of their governments. Although many members are very knowledgeable about and committed to human rights, their positions on human rights matters often reflect more general political considerations. Even the sub-commission, whose membership comprises individual experts serving in their personal capacities, has had occasion to reject attempted undue pressure by governments.

The cumbersome nature of the procedures, lack of flexibility, and the confidentiality with which they are carried out are further obstacles to public appreciation of effective action on these questions.

■ *What measures to deal with human rights violations have been initiated by the Commission on Human Rights?*

For some years the question of involuntary disappearances has been raised in United Nations human-rights bodies, and

documented evidence of thousands of cases has been presented. The practice was shown to be worldwide and hence requiring urgent action.

In March 1980, the commission established a Working Group on Enforced or Involuntary Disappearances. The working group is to meet for a period of one year and is made up of five of the commission's members who serve as experts in their individual capacities to examine questions relevant to enforced or involuntary disappearances of persons. At its first meeting in June, the working group had before it reports relating to fifteen countries from various parts of the world, transmitted by sources including governments, intergovernmental organizations, the European Commission on Human Rights and non-governmental organizations.

■ *Which of the United Nations Agencies have special procedures for the protection of human rights within their own fields of competence?*

United Nations Educational, Scientific and Cultural Organization (Unesco)

Unesco's competence extends to the rights relating to education, science, culture and communications, which includes freedom of opinion and expression.

The procedures whereby Unesco can take action regarding promotion and implementation of human rights are provided for by the conventions and recommendations it has adopted. The method used is a reporting and complaints system.

The Unesco Convention against Discrimination in Education entered into force in 1962 and has been ratified by sixty-nine states (1 September 1981). This convention commits Member States to a national policy which will promote equality of opportunity and treatment in matters of education. States undertake to ensure by legislation, if required, that there is no discrimination in the admission of pupils to educational insti-

tutions, nor any discrimination in the treatment of students. Foreign nationals are assured of the same access to education. The measures for implementation are based on a system of reports from the participating states which are examined by a special Committee on Conventions and Recommendations. The report and comments of the committee are then submitted to the General Conference of Unesco. The only further action taken is in the form of resolutions passed by the General Conference on the basis of the issues raised.

To supplement and strengthen this system, a Conciliation and Good Office Commission was created under a Protocol to the Convention to deal with complaints from states alleging that another Member State is not giving effect to the provisions of the Convention. The commission's mandate is to seek an amicable solution or, failing this, to make a recommendation which could include a request to the International Court of Justice for an opinion. This procedure, however, has never been applied.

Other procedures exist for the implementation of other Unesco instruments relating to such matters as the protection of cultural property and the status of teachers.

*Can Unesco receive complaints
of alleged violations of human rights?*

Unesco has a procedure for handling complaints from victims or any person, group of persons or non-governmental organization having reliable knowledge of an alleged violation of human rights in education, science, culture and communication. After agreement has been given by complainants for their names to be divulged and the government concerned has been informed and asked to comment, the complaints, called 'communications', together with any replies from governments, are examined in closed meeting by the Committee on Conventions and Recommendations, in the presence of a representative of the government concerned. This representative may provide additional information or answer questions from the committee. The committee first examines the admissibility of communications and then, if the communication is admissible and

warrants further action, seeks to help bring about a friendly solution designed to advance the promotion of human rights falling within Unesco's fields of competence. The committee reports in a confidential document to the Executive Board of Unesco, which may take whatever action it considers appropriate, including endorsing a report from the committee of an infringement of rights and appealing to the government concerned to take measures to restore the necessary safeguards of human rights. An average of about 100 complaints are received each year.

This procedure not only concerns individual and specific cases of violations but also 'questions' of massive, systematic or flagrant violations. A 'question' is considered to exist when there is either an accumulation of individual cases forming a consistent pattern of gross violations of human rights or a policy contrary to human rights applied *de jure* or *de facto* by a state. Communications relating to 'questions' of violations of human rights are to be considered in public meetings of the Executive Board and of the General Conference.

Over 400 communications concerning both cases and questions have been dealt with under this procedure and a number of cases have been resolved satisfactorily through the dialogue that is established with the states concerned.

International Labour Organisation (ILO)

The ILO, which has been in existence just over seventy years, seeks to achieve social justice through its activities in the social and labour fields.

The basis of ILO action is the establishment of international labour standards and the supervision of the implementation of these standards by Member States of the organization.

The tripartite system by which the ILO operates requires that all bodies of the organization be composed of representatives of governments, employers and workers, who participate on an equal footing in the decision-making and procedures of the organization.

International labour standards are adopted by the main

body of the ILO, the International Labour Conference, in the form of conventions or recommendations. The conventions, when ratified by Member States, are binding upon them. The conventions relate to the basic human rights concerns of the ILO such as freedom of association, freedom from forced labour and freedom from discrimination in employment and occupation. They also lay down standards in such fields as conditions of work, occupational safety and health, social security, industrial relations, employment policy and vocational guidance and provide for the protection of special categories of workers, such as women, migrants and children.

What provisions are there for seeing that governments adhere to their undertakings?

There are various procedures for supervising and monitoring the implementation of these conventions and recommendations. When states ratify conventions they also undertake to submit periodic reports on the measures they have taken to give effect to the provisions of the convention. A special questionnaire is provided for governments on which to base their reports. These reports must also be sent by governments to the respective workers' and employers' organizations for their comment. A special eighteen-member Committee of Experts on the Application of Conventions and Recommendations examines the reports and comments on the measure of compliance by governments. In its assessment the committee makes allowances for customs and circumstances which may govern implementation but does not take into consideration the ideologies of different economic and social systems. The committee submits a report to the annual conference which is examined by the Conference Committee on the Application of Conventions and Recommendations. Over the years, the ILO's standard-setting and supervisory activities have had a considerable influence in changing the social and labour legislation of Member States and have helped to improve the conditions and lives of working people. From 1964 to 1977 at least 1,100 instances in 130 countries of such changes have been noted by the committee.

It has to be remembered, however, that all governments do

not comply with their obligation to report to the committee. In such cases the ILO tries to establish direct contact with these governments in order to encourage them to do so.

*What other provisions are there
for the implementation of these standards?*

Apart from the supervisory function of the ILO there are two other procedures under the Constitution of the ILO to promote the implementation of labour standards. The first allows any employers' or workers' organization of a Member State to make representation to the ILO claiming that a Member State has failed to comply with its undertaking in respect of a particular convention. The government in question is asked to comment. The Governing Body of the ILO may, if the government does not reply or if the reply is deemed unsatisfactory, publish the representation together with the government's reply, if any, as well as its own conclusions on whether the matter has been satisfactorily resolved or whether further action or clarification is required.

The second procedure allows a Member State to make a complaint against another Member State if it considers that the latter is not securing effective observance of any convention which they have both ratified. Neither the complaining state nor its nationals need to have been a victim of such a failure to observe the convention; the action is considered to be in the general interest of human rights. A complaint may also be made by the Governing Body, either on its own initiative or on receipt of a complaint from a delegate to the conference. The conference may appoint a commission of inquiry. If the government in question does not accept the findings of the commission it may refer the case to the International Court of Justice. This has not yet happened, as the findings of the commissions of inquiry have always been accepted by the governments concerned. Only a small number of representations and complaints have been made according to the possibilities provided by the ILO Constitution.

*What provision is there
for safeguarding trade union rights?*

In 1950 the ILO, in agreement with the United Nations, established a special procedure for examining allegations of violations of trade-union rights. Complaints may be submitted by workers' or employers' organizations or by governments. In practice most of the complaints are made by national or international trade unions and complaints may relate to all trade-union rights, including those not covered by the two relevant conventions: the Convention (No. 87) concerning Freedom of Association and Protection of the Right to Organize (1948) and the Convention (No. 98) concerning the Application of the Principles of the Rights to Organize and to Bargain Collectively (1949). Furthermore, complaints may be made against any government whether it has ratified the conventions or not. The 'Committee on Freedom of Association' examines these allegations and decides whether to refer complaints for further investigation to a Fact Finding and Conciliation Commission on Freedom of Association. In practice few cases have been referred and the committee has itself executed the main body of work. Since its inception the committee has dealt with over 900 complaints. Whilst in many of these cases no positive results have been achieved the recommendations of the committee have, in other instances, prompted action ranging from the repeal of legislation and the reinstatement of dismissed workers to the release of imprisoned trade unionists. In some cases death sentences on trade unionists have been commuted.

■ *Are there other international systems
for the protection of human rights?*

There are two regional organizations which maintain permanent institutions for the protection of human rights, i.e. the Council of Europe and the Organization of American States.

The Council of Europe has gone farthest in establishing and applying machinery for the protection of human rights under the European Convention on Human Rights, which

came into force on 3 September 1953. Today twenty of the twenty-one Western European Member States of the Council have ratified, and thus become parties to the Convention. The Convention deals mainly with civil and political rights. The concern with civil and political rights is a result of the fact stated in the Preamble, that 'the governments of European countries which are like-minded and have a common heritage of political traditions, ideals, freedom and the rule of law . . .' are therefore resolved ' . . . to take the first step for the collective enforcement of certain of the Rights stated in the Universal Declaration of Human Rights'. The machinery for guaranteeing the enforcement of rights consists of the European Commission of Human Rights, the European Court of Human Rights and the Committee of Ministers. The commission examines complaints by states parties against states parties and also by individuals against states parties, but only, in the latter case, where the government concerned has recognized this optional right of individual petition. At present only fourteen countries have done so.

The commission, if it admits a petition, tries to settle the dispute but, if this fails, will draft a full report including an opinion as to whether or not there has been a violation of the Convention. The commission's proceedings are confidential. The commission's report is forwarded either to the Committee of Ministers of the Council of Europe or to the Court for decision, provided, in the latter case, that the government has accepted the Court's jurisdiction.

The proceedings before the Court are public. The petitioner has always the possibility of presenting his case through the commission's delegated members who take part in the Court's proceedings. If the case is not brought before the Court, it is for the Committee of Ministers to decide whether there has been a violation. These proceedings are confidential and neither the petitioner nor the commission participates. The decision of the Court or Committee of Ministers is binding on both parties to the dispute. This system has worked very successfully, not only in helping redress wrongs suffered by individuals but also in bringing about changes in domestic law to ensure rights.

The Organization of American States (OAS), which includes all the Western Hemisphere, except Canada, Guyana and Cuba, provides the framework for the Inter-American Commission on Human Rights which investigates violations of human rights. The methods used include visiting missions, country studies and acting on individual complaints. Upon receiving reports of large-scale violations of human rights, the commission may undertake a study of the situation. This includes investigation of the facts, hearing witnesses and consultations with the government concerned. Following upon this it may try to obtain permission from the government to visit the country. This has been granted in a number of instances, such as allegations concerning Chile, Dominican Republic, El Salvador and Honduras. The commission can also carry out an on-the-spot investigation at the request of the OAS or a government. During the civil war in the Dominican Republic in 1965, the commission was able successfully to effect humanitarian assistance.

Individual complaints alleging violation of the rights to life, liberty and personal security, equality before the law, a fair trial, freedom of expression, religion and from arbitrary arrest, can be made to the commission. Unlike the European system, states do not have to enter into a separate agreement for this procedure to take place. If the commission considers that the violations are substantiated it will intercede on behalf of the individual with the government concerned, but will not inform the government as to the identity of the complainant. The commission reports annually to the Assembly of the OAS. The commission has been effective in some respects but it is in the final analysis dependent upon the OAS to whom it reports and whose political agencies are empowered to impose sanctions on erring members. It has not thus far been able to obtain such action.

The American Convention on Human Rights of 1969 entered into force in September 1978 when the required ratification by eleven states was reached. The following countries have ratified the Convention: Bolivia, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Granada, Guatemala, Haiti,

Honduras, Jamaica, Mexico, Nicaragua, Panama, Peru and Venezuela. Under the Convention an Inter-American Court of Human Rights has been established in Costa Rica. Article 62 of the Convention provides for the jurisdiction of the Court to extend to all states parties who by declaration or special agreement have recognized the jurisdiction of the Court as binding. To date only Costa Rica has made such a declaration.

■ *Are any steps being taken
to establish regional systems elsewhere?*

No definite steps have been taken to set up any other regional systems, but the idea is receiving some support in Africa. Following a Nigerian initiative, the United Nations General Assembly passed a resolution in December 1977 appealing to states where regional arrangements for the protection and promotion of human rights did not yet exist to give consideration to establishing such arrangements within their respective regions. The Commission on Human Rights, at its March 1978 session, specifically requested the Secretary-General to provide assistance to the Organization of African Unity (OAU), if it so requests, to help facilitate the establishment of a regional commission on human rights in Africa. In July 1979 the OAU passed a resolution calling on that body to draft an African Charter of Human Rights and the Rights of Peoples, and to consider the viability of establishing a regional commission for the protection and promotion of human rights in Africa. This charter was adopted by the Heads of State Meeting in July 1981.

Universal Declaration of Human Rights: what each article means

The first twenty-one articles of the Declaration correspond, for the most part, to what are called civil and political rights and concern the individual's freedom and physical security.

Article 1. All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

■ *Does this mean that all people are equal?*

To be born 'free' also means that all people have an equal right to freedom but we know they are affected throughout life by economic and social as well as civil and political restrictions. According to Unesco's Declaration on Race and Racial Prejudice, adopted in 1978, 'All human beings belong to a single species and are descended from a common stock'.

'Equal' does not mean 'identical' or even 'similar' in terms of physical and mental capacities, talents and respective characteristics. What it does mean is that those differences with which people are born, such as colour of skin, physical features, race and ethnic origins, do not in any way affect their rights as human beings. To discriminate among them on colour, racial or ethnic grounds is a denial of this equality and an injustice. It is also

an injustice in that, for similar reasons, people are arbitrarily denied the possibility of developing their innate capacities.

In order to make it possible for everyone to be treated equally, this article recalls the duty everyone has to treat other people 'in a spirit of brotherhood', that is, as equal fellow human beings.

Article 2. Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 7. All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

These two articles express the guiding principles for the prevention of discrimination—a fundamental principle which permeates the whole of the Declaration. The first one concerns non-discrimination in the application of the Declaration, whereas the second one ensures non-discrimination in the application of law in general, that is essentially the national laws. Article 7 demands that part of the duty of all states is to ensure that no distinction of any kind is made in its legal system on the basis of, for example, race, colour or religion. Furthermore, states have a duty to protect all minorities against any form of discrimination which is in violation of the Universal Declaration. It also means that it is even illegal to 'incite' such

discrimination, that is to encourage others to practise discrimination.

■ *How have people tried to justify racial discrimination?*

The practice of racism and racial discrimination stems primarily from notions of superiority and inferiority of racial or ethnic groups which are used to justify the servitude and even the elimination of 'lesser' beings. Any such theory, according to Unesco's Declaration of Race and Racial Prejudice, 'has no scientific foundation and is contrary to the moral and ethical principles of humanity'. Racial discrimination, however, continues to be a major problem of our time.

Another form of discrimination which also persists today is based on religious differences. In earlier centuries, Protestants and Catholics, Hindus and Muslims, and many other religious groups were in conflict, and various forms of discrimination were practised. These conflicts have not been totally resolved even today. Anti-Semitism is a form of discrimination practised against Jews. It took on a new dimension towards the end of the nineteenth century when theories of racial inferiority were added to the prevalent religious-based prejudices. Anti-Semitic racist theories culminated in the systematic campaign aimed at the elimination of the Jews by the Nazis in Germany.

Religious motives also served as a justification for reducing indigenous peoples in the Western Hemisphere, Africa and Asia to servitude during the sixteenth- and seventeenth-century conquests of new territories by European powers. The conquerors claimed to have had a 'civilizing' mission towards the 'heathens' whom they captured and sold in a profitable slave trade. When this practice was recognized as being in conflict with the Christian ethic of brotherhood, a more convenient rationalization was found in the promotion and acceptance of the notion of the inferiority and even non-human nature of the black person. The economic advantages of cheap labour provided the incentive for prejudice to flourish and allowed social systems to develop on this basis, so that when slavery

was finally abolished, black people were on the lowest rung of the social and economic scale.

Colonialism, which is the subjugation of peoples to foreign control and the exploitation of the natural resources of their countries, also played a significant role in promoting racial prejudice and discrimination. European powers carved up distant lands in their quest for raw materials. The indigenous populations were governed in a paternalistic fashion: at best, this was done under the guise of a civilizing mission which allegedly brought Western values to primitive peoples, while denying them their human rights. In the territories where white settler communities were established, discrimination was practised in every sphere. Many of the practices and legacies of yesteryear have become entrenched in patterns of racial discrimination prevalent today, perpetuating ruling economic, political and social structures. Even erstwhile victims of racial practices have themselves allowed elements of racist doctrine to penetrate their quest for freedom.

The extreme form of racism is the institutionalized separation of races according to a systematic government policy known as 'apartheid'. This is the particular policy of the Government of South Africa. A Special United Nations Convention on the Elimination and Repression of the Crime of Apartheid declares this practice to be a 'crime against humanity' and a serious threat to international peace and security. The United Nations has been endeavouring for several decades to bring about a change in the regime of South Africa, but the white minority, with help from some other countries, has resisted this pressure. The people who suffered under a similar practice in Rhodesia have won their independence and now live under a new black majority government. Their country is now called Zimbabwe.



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Article 3. Everyone has the right to life, liberty and security of person.

■ *Is it the responsibility of the state to ensure these rights?*

Steve Biko, a major black political leader, died on 12 September 1977, while detained without charge or trial by the South African Security Police. When his death was announced the following day, it was intimated that death occurred as a result of a seven-day hunger strike. Public disbelief followed this announcement and two months later the authorities initiated an inquest which revealed that Biko had died as a result of a brain injury suffered while in detention. It was further revealed that, for the first eighteen days of his detention, he was kept naked at the police station and denied any exercise. After this he was transferred to security police headquarters for interrogation and chained hand and foot. During interrogation a scuffle occurred; the security police allege that this must have caused the brain injury from which he later died. Still in chains, Biko was examined afterwards by two medical officers who admitted at the inquest that they had submitted false evidence regarding Biko's state of health. By 11 September Biko was in a semi-coma and was transferred to a hospital at the recommendation of one of the doctors. The hospital was 700 miles away yet he was driven there, naked, in the back of a land-rover. He died a few hours later. The magistrate at the inquest decided that no one was criminally responsible for Biko's death, and the South African Government announced subsequently that there would be no further action taken.

The case of Steve Biko is just one well-documented instance where a state has failed in its responsibility to ensure and protect the life of an individual and was guilty of violating this fundamental right. Unfortunately this right is frequently violated by governments in many parts of the world. There is extensive evidence over recent years of deaths in detention, as well as the disappearances of people for which no account can be obtained.

The United Nations has reported on disappearances in Chile and Uganda and other organizations have reported large-scale disappearances or extra-judicial executions in many other countries.

The most extreme form of the violation of the right to life is killing or harming physically or mentally with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group as such. Such acts are called 'genocide', and we have already seen that there is an International Convention on the Prevention and Punishment of the Crime of Genocide, which declares such acts to be an international crime.

■ *What if the laws of a state allow for the taking of human life through capital punishment?*

Most countries have capital punishment and there is no evidence that it broadly conflicts with popular opinion. Acceptance is based mainly on the moral belief that the death penalty is a just punishment for the taking of a life and will act as an effective deterrent to others who might be tempted to commit similar crimes.

Public opinion for or against capital punishment changes with circumstances. People sometimes oppose the death penalty after a miscarriage of justice or the excesses of a repressive regime, while a single sordid crime or the occurrence of 'new' crimes like highjacking, political terrorism or kidnapping can have the opposite effect. Opinion about the death penalty is influenced strongly by emotional factors. States also make laws to meet their momentary needs. 'State of Emergency' and 'State of Siege' often include provision for the death penalty to be instituted and applied by military tribunals or even by order of government. The United Nations Commission on Human Rights has requested a study on the risks for human rights of emergency legislation of this type.

There are many examples of innocent persons being executed even after the most rigorous of trials.

The death penalty is, and has often been, used by repressive regimes as a tool of oppression against any opposition and as an

instrument for sustaining social injustice and racist policies. The issue of the death penalty is therefore an international human rights concern, although the Declaration does not mention it in this regard.

The International Covenant on Civil and Political Rights says that 'in countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with law in force at the time of the commission of the crime and . . . this penalty can only be carried out pursuant to a final judgement rendered by a competent court'. Summary executions are therefore in violation of international human-rights standards. Amnesty International, a non-governmental organization which received the Nobel Peace Prize in 1977 for its human-rights work, is leading a world campaign against the death penalty.

The General Assembly said in a 1977 resolution that ' . . . the main objective to be pursued in the field of capital punishment is that of progressively restricting the number of offences for which the death penalty may be imposed with a view to the desirability of abolishing this punishment'.

Article 4. No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

■ *What does slavery mean today?*

Conditions of poverty and underdevelopment make it difficult to eliminate this practice. In July 1980 the Minister of Information of Mauritania said: 'Slavery is the most primitive, hateful form of exploitation of man by man. We know it still exists in our country. The previous colonial and neo-colonial regimes tried to cover up the practice. It will be a long process before we are finally rid of this hateful practice.' It has recently been reported that 250,000 slaves still exist in the world today.

However, today's slavery is not the brutal practice associ-

ated with the capture of humans, bonded in chains, and sold on the open market for the enrichment of the colonialist nations of the world. But it is in essence the same exploitation of man by man. Contemporary slavery remains a callous negation of human dignity, and is enmeshed in a web of poverty, ignorance, tradition and greed.

Practices similar to slavery but called by another name are more insidious and affect the weakest and most deprived sectors of society. These are defined by the 'Supplementary Convention on Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery', as debt bondage, serfdom, exploitation of children and servile forms of marriage.¹ Debt bondage is a condition arising from an exchange of personal service for debt, and the redemption of the debt thereby. It is difficult to identify, as it takes many forms and often operates in ways which hide the exploitative nature of the relationship. It is to be found in many parts of the world, associated mainly with agriculture, and in many cases is institutionalized, thus ensuring the acquisition of a servile and defenceless labour force. In its worst form, when the debt is not redeemed, it can result in permanent servitude inherited by child from parent. In some situations where peasants have tried to rebel against this practice they have met with violent repression and suffered consequent intimidation. At the root of this problem is the need for land reform but, as stated in a United Nations report, '... in some countries where land reforms have been undertaken which should help to abolish these forms of serfdom, political power is in fact in the hands of those who themselves exploit the tenants and it is rare for governments to make a real effort to enforce the land reform legislation they have passed . . . '.

The exploitation of child labour is a worldwide problem and sometimes directly linked to the sale of children. The International Labour Organisation, in 1971, estimated that 52 million children under 14 were in regular employment, of

1. Conditions of poverty, underdevelopment and tradition make it difficult to eliminate these practices.

whom 90 per cent are in the Third World. Work conditions are often very bad and remuneration is sometimes minimal or non-existent. These children are of course also deprived of education. Servile marriages relate to situations where women have no rights to refuse marriage or may be transferred from one person to another upon the death of a husband.

Another slavery-like practice affecting women is that of traffic in persons. This is not covered by the conventions on slavery but by the Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others, which only fifty countries have ratified (1 September 1981).¹ That it is widespread is evident from the 1975 Interpol Report which received replies from twenty-eight governments, giving affirmative information and citing forty countries as the sources and destinations of this traffic.

■ *What can be done to eradicate slavery in all its forms?*

Slavery and slavery-like practices constitute a very complex problem, which is complicated by the denial of its existence by many people. The United Nations receives information about such situations through evidence submitted to a Working Group on Slavery consisting of five members of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities. The sub-commission reports to the Commission on Human Rights. Although ninety-three states have agreed to the Supplementary Convention on the Abolition of Slavery, their adherence ultimately depends upon implementation at national

1. These countries are: Albania, Algeria, Argentina, Belgium, Brazil, Bulgaria, Byelorussian SSR, Congo, Cuba, Czechoslovakia, Djibouti, Ecuador, Egypt, Finland, France, German Democratic Republic, Guinea, Haiti, Hungary, India, Iraq, Israel, Italy, Japan, Jordan, Kuwait, Lao People's Democratic Republic, Libyan Arab Jamahiriya, Malawi, Mali, Mexico, Morocco, Niger, Norway, Pakistan, Philippines, Poland, Republic of Korea, Romania, Senegal, Singapore, South Africa, Spain, Sri Lanka, Syrian Arab Republic, Ukrainian SSR, Union of Soviet Socialist Republics, Upper Volta, Venezuela, Yugoslavia.

level. Significant progress towards the eradication of these practices will depend upon wide-scale education of public opinion and social and economic reform.

Article 5. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

■ *What constitutes torture?*

The United Nations Declaration on the Protection of All Persons from Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which was adopted on 9 December 1975, defines torture as ‘. . . any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons’.

■ *Where is torture practised?*

Torture knows no geographical boundaries, nor can it be ascribed to a single political ideology or to one economic system. Non-governmental organizations like Amnesty International and the International Commission of Jurists have substantiated thousands of cases of torture from all parts of the world during the past decade.

■ *Why is it practised and who are the torturers?*

Torture today is not merely the occasional lapse of legal restraints in a few isolated incidents; rather, it reflects a conscious choice of the highest governmental officials to destroy the legal restraints that would inhibit the excesses of that power. Some governments (and some well-established insurgency

movements) use torture as a means of gaining information, of forcing confessions, and of terrorizing the general population.

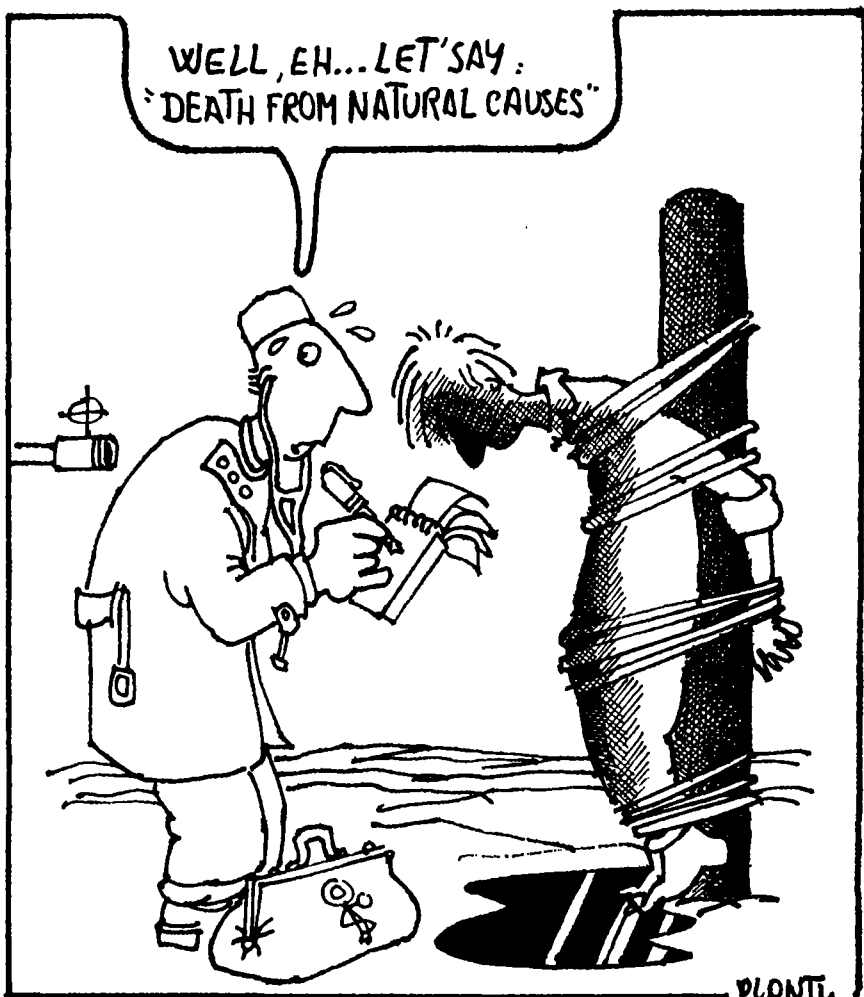
■ *Can torture be justified?*

No, neither morally nor legally. Most national legal systems as well as international law explicitly forbid the use of torture. All Member States of the United Nations are bound by Article 5 of the Universal Declaration of Human Rights, which prohibits torture. Some will argue that, under exceptional circumstances, the use of torture is justified. Should not the state use every means available, they will ask, to obtain information from a terrorist who has put innocent lives in danger? Apart from the clear moral principles that forbid torture categorically, the argument for torture is wrong on several other grounds: first, torture produces false confessions and erroneous information; second, torture offends the principle of just punishment, which is based on a fixed term of imprisonment for a specific offence; third, the use of torture in a single case creates a precedent for its use on a much broader scale and at the discretion of the state.

■ *What can be done to stop torture?*

The granting of full legal rights to a detainee is the obvious means of preventing torture. An independent judiciary and adequate access by the detainee to legal and medical counsel of his or her choice are essential. At the international level, publicity about torture and interventions by governments, intergovernmental and non-governmental organizations on behalf of individuals in danger of torture can help to ensure that the national legal system offers adequate protection to a particular person. Codes of ethics and conduct have been established both to guide and protect the law enforcement officers, the lawyers or the medical personnel who most frequently come into contact with the victims of torture and upon whose courage may depend the exposure of torture cases.

WELL, EH... LET'S SAY:
"DEATH FROM NATURAL CAUSES"



PLONTE

■ *Are any other international instruments regarding torture envisaged?*

In 1977 the General Assembly asked the United Nations Commission on Human Rights to prepare a Draft Convention on Torture and other Cruel, Inhuman and Degrading Treatment or Punishment. Negotiations on this convention are expected to be finished in 1981. In the meantime Member States have been asked to make declarations that they are committed to implementing the provisions of the United Nations 1975 Declaration against torture.

■ *What is meant by cruel, inhuman or degrading treatment of prisoners?*

No internationally accepted definition of this phrase is yet available. Different international experts and organizations include under this rubric such practices as corporal punishment, force-feeding, internment in dark cells, close confinement, reduction of diet, solitary confinement, restraint by means of shackles or other pain-causing devices, interrogation under duress, castration of sexual offenders, biomedical experiments on prisoners, the use of drugs on prisoners, or practices such as female circumcision.

■ *Is there any international code for the treatment of prisoners?*

The United Nations Standard Minimum Rules for the Treatment of Prisoners were first approved in 1955 and have more recently been amended and endorsed by the United Nations General Assembly. These rules are still not adequately available in the necessary languages to those who need to know them. In December 1979 the United Nations General Assembly adopted a Code of Conduct for Law Enforcement Officials. A 'Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment' was submitted to the United Nations General Assembly at its 1981 session.

Article 6. Everyone has the right to recognition everywhere as a person before the law.

Article 7. (Discussed with Article 2, pages 42-44.)

Article 8. Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 6 is the first in a series of articles which cover the more 'legalistic' human rights. The phrase 'person before the law' refers to the recognition which states should give to the right of all persons, for example, to make agreements or contracts which courts will enforce, and start proceedings before courts to ensure that their legal rights are enforced.

A very important part of this article is the word 'everyone'. It indicates that no difference or distinction may be made by a state between any of its own citizens, foreigners, or stateless persons in the enforcement of all the rights which a 'person before the law' possesses.

■ *What can a person do when his or her constitutional or legal rights are violated?*

The aim of Article 8 is to create a right of recourse to a domestic tribunal or a court for a person who feels that his or her constitutional or legal rights have been violated. It does not relate to rights contained in the Universal Declaration, but only to those rights which are guaranteed by the constitution or laws of a nation state itself.

It means that no situation should ever arise where a person is without a 'remedy' when his or her 'rights' are violated. Further, the fact that 'everyone' is specifically mentioned means that the right to a remedy ('the right to sue') may not be restricted to certain groups of people. The word 'competent' refers to courts which have been designated for a certain purpose.

Thus a person who claims that his industrial rights have been violated cannot petition a court which deals with, say, family law. A common practical example of the violation of this right occurs in those countries where torture is specifically illegal but a person is forbidden to allege in court that he has been the victim of such a practice.

Article 9. No one shall be subjected to arbitrary arrest, detention or exile.

■ *Can such treatment ever be justified?*

This article is the first of three articles which deal with the fundamental legal safeguards which all legal systems should offer: freedom from arbitrary arrest, the right to a fair and proper trial and the presumption of innocence. The meaning of Article 9 is self-evident except for the term 'arbitrary'. Two possible interpretations of it are frequently advanced: one is that persons may only be arrested, detained or exiled in accordance with legal procedures; the other is that nobody should be subjected to arrest, detention or exile of a capricious or random character, where there is no likelihood that he or she committed an offence.

The former interpretation is inadequate as laws often allow sweeping powers of arrest and because legal procedures may often themselves be 'arbitrary' or abused. The protection thus offered by the former interpretation is not adequate to meet such threats to human dignity. The latter is therefore the only realistic interpretation. This is borne out by the fact that arbitrary, albeit legal, arrests often seem to be followed by the detainee being subjected to wrongful treatment or torture.

Article 10. Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

■ *How should courts behave?*

Article 10 provides for the basic right to a fair trial. It refers not only to criminal cases but also to civil disputes where one person sues another. The purpose of the article is to guarantee a fair hearing by an independent and impartial tribunal to all those who appear before the courts.

Although it is sometimes argued that notions of 'fair', 'independent' and 'impartial' differ from country to country, we are talking here about the essential requirement that everybody must have a fair chance to state his or her case.

Article 11. (1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

(2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

■ *What is the minimum standard for a fair trial?*

Article 11 covers four basic principles:

The presumption of innocence

This is a simple but important concept. It means that anyone who is charged with a criminal offence should not be treated

as being guilty until guilt has actually been proven. In some countries it is the basis of the right to have bail. This can mean that an accused person may retain his or her liberty pending trial.

The right to a defence

The word 'guarantee' in Article 11 includes, for example, the obligation of a state to ensure that people have both legal representation and proper facilities to establish their innocence, including the right to call witnesses.

The right to a public hearing

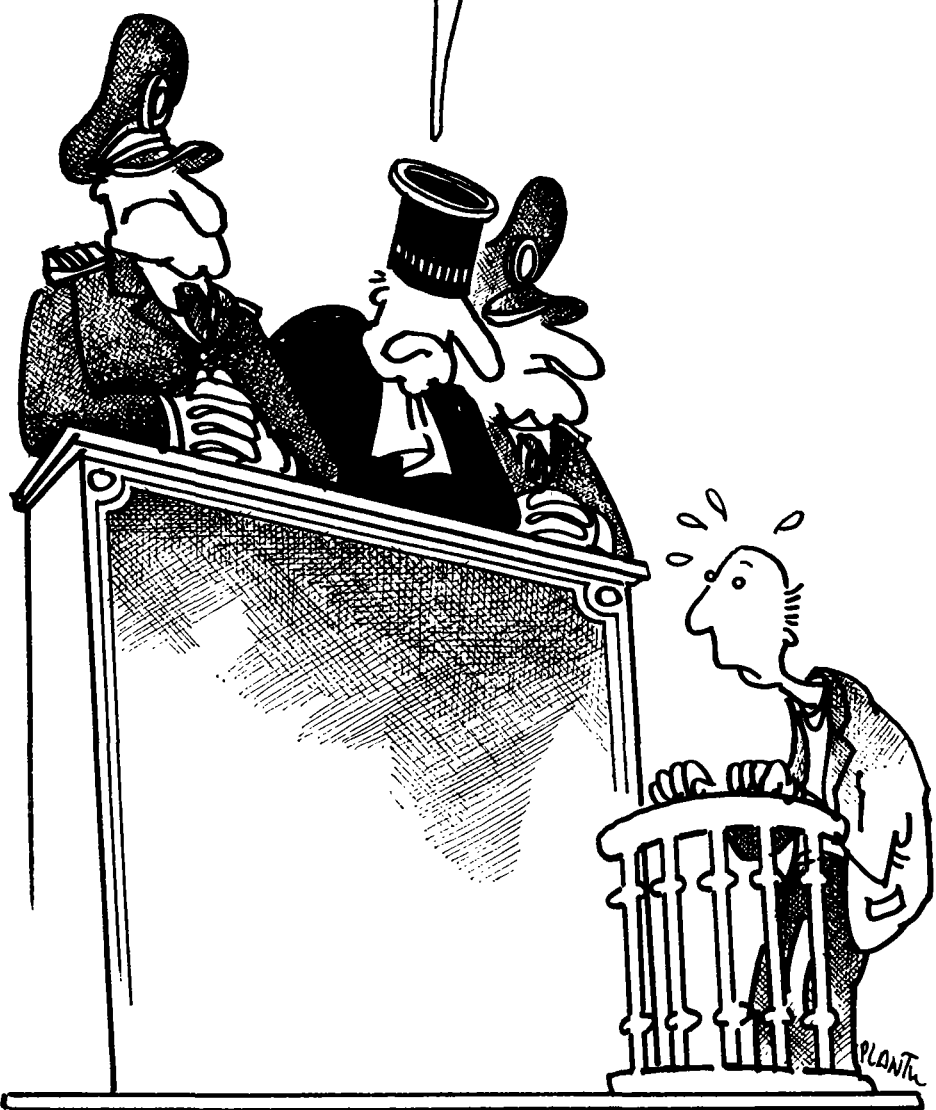
The maxim 'justice should not only be done but should be seen to be done' is implicit here. For persons to have confidence in the law it is necessary that the law be applied openly, and for all to have access to see how legal machinery works. If trials are held in secret there is no guarantee that fundamental rights are in fact being respected. This part of Article 11 imposes a duty on states to show that the law is being fairly and properly applied.

Non-retroactivity of law

This cumbersome phrase involves a very simple idea. A person shall not be punished for those actions which were legal when they were carried out. It also means that, if an act was punishable in one way when committed, no later change in the law may affect the punishment given.

The inclusion of 'international law' is a reference to, for example, the Nuremberg and Tokyo trials of the major war criminals which took place at the end of the Second World War. These resulted in convictions for war crimes, offences which were tried before international tribunals on the basis of laws of worldwide applicability (international law) rather than the specific laws of nation states.

THE PURPOSE OF THIS HEARING
IS TO CONDEMN YOU TO
DEATH BY A FAIR TRIAL.!



Article 12. No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Laws vary as do customs and cultures. The legal interpretations and limitations imposed by governments or more local laws and traditions are equally varied when it comes to 'privacy', 'family', 'home', 'honour' and 'reputation'. The implementation of this right is therefore eventually to be found in national legislation. Particular problems arise as a result of modern electronic devices, such as wire-tapping to listen to telephone conversations, which are a form of 'correspondence', and techniques such as data banks. Abuses are all the more difficult to detect and prove.

Article 13. (1) Everyone has the right to freedom of movement and residence within the borders of each state.
(2) Everyone has the right to leave any country, including his own, and to return to his country.

■ *What valid reasons are there whereby the movement of people both within a country and between countries can be restricted?*

Article 12 of the International Covenant on Civil and Political Rights proclaims the same right and adds that the only restrictions which may be put on this right are those which are provided by law, are necessary to protect national security, public health or morals, or the rights and freedoms of others, and are consistent with the other rights recognized in the same Covenant. According to Article 4 of the Covenant, certain derogations may be made from this right 'in time of public emergency which threatens the life of the nation and the exist-

ence of which has been officially proclaimed'. These exceptions are of a temporary nature, depending on the circumstances. All are based on the legitimate need to protect the safety of others. Thus a natural disaster or epidemic would necessitate certain restrictions on this right, as would international or civil war. Other restrictions may be valid in order to prevent someone with charges pending under the ordinary laws of the country from leaving the country; similarly a person in prison would have to complete his sentence before being free to leave. None of these exceptions implies, in any way, any form of arbitrary or permanent restriction.

■ *In which ways are people precluded from freedom of movement?*

There are some countries who, for political reasons, restrict ordinary travel within their borders to their own citizens or foreigners, or both. Others isolate their political prisoners by confinement to specific areas.

A report of the United Nations Sub-Commission on the Prevention of Discrimination and the Protection of Minorities revealed recently that large-scale restrictions relating to where people could live involved the compulsory removal of hundreds of thousands of people from the towns to the countryside in Democratic Kampuchea.

Within South Africa, where racial discrimination is institutionalized, non-white people are obliged to live in special designated areas. Very often they are, at the same time, deprived of their citizenship and handicapped in their free movement abroad by the removal of their passports. People from all classes of society have been subjected to forcible expulsion from a territory because of their political opposition or dissent. This action in most cases is not based on national legislation but executed through administrative acts of government. These are clear cases of violation. Others are much more difficult to judge because the reasons given are often relevant to the authorized restrictions and derogations mentioned above. For example, states with planned economies may compel people to work, and

hence live, in places according to state-decided priorities. Restrictions on residence are sometimes imposed for certain professions which are particularly needed in certain parts of the country. In the case of a Norwegian dentist assigned against his will to a remote region in the north of his country, the European Commission on Human Rights found no violation of the European Convention on Human Rights.¹

Article 14. (1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.

(2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

■ *What is meant by asylum?*

Asylum implies the provision of refuge and protection for persons who have left their own country for fear of being persecuted.

■ *Why does the Declaration only provide for such persons the right to seek asylum and not the right to be granted asylum?*

Countries were unwilling to accept an obligation to open their borders to large numbers of people, some of whom, they believed, might pose a danger to their national security.

Hence the granting of asylum is not a subjective individual right, but a sovereign prerogative of the state to exercise at its discretion. Many countries have laws granting the right of asylum to certain categories of refugees but there are no uniformly accepted criteria for all countries.

1. This case is called *Iversen v. Norway*.

■ *What international protection is there for refugees?*

The main protection for refugees is contained in the Convention on the Status of Refugees (1951) as expanded by the Protocol (1967), which lays down the standards for their treatment. Seventy-six and seventy-one countries respectively have ratified these two instruments. The security of refugees rests on being granted asylum and on the observance of the principle of *non-refoulement*. This means that no person should be faced with expulsion or compulsory return, either at the border or after having entered another country, to a country where his life or freedom may be threatened for any of the following reasons: race, religion, nationality, political opinion and membership of a particular social group. The widespread acceptance of this principle has provided increased protection for refugees, although regrettably it is not always observed. This protection is not linked with the granting of asylum and a refugee might just be told to move on to another country, which in turn might do the same, thus creating the so-called 'refugee in-orbit' problem. A recent dramatic example is that of people fleeing their country in small boats, looking for a haven.

The United Nations High Commission for Refugees (UNHCR) is responsible for supervising international provisions for the protection of refugees as well as for carrying out extensive assistance functions aimed at the social and economic integration of refugees.

At the end of 1981 there were 10 million refugees and displaced persons, spread over five continents, who were the responsibility of UNHCR. UNHCR seeks to ensure permanent or temporary asylum for refugees and protection from being returned to a country where they fear persecution. Although operating within the mandate of international instruments, implementation of these standards rests with individual governments, and in 1977 the then High Commissioner for Refugees stated that 'international humanitarian standards are in many cases not adequately implemented and only too often violated. Refugees have been the victims of violence and subjected to

torture, subjected to unduly long periods of unjustified detention and to measures of expulsion or return in disregard of the principle of *non-refoulement*'.

Article 15. (1) Everyone has the right to a nationality.

(2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

■ *Why do people need a nationality?*

If the world were one state and all people had the same rights under universal laws there would be no need for a nationality. Since world society is not organized in this way, nationality is one of the attributes necessary both for the material as well as the spiritual well-being of persons within society. Nationality provides the individual with an identity. In a material sense this identity is related to a geographic location and the implicit entitlement to the protection of the laws in operation within the jurisdiction of the state. The state also has responsibilities for the treatment of its nationals by other states. In a spiritual sense, a nationality provides the individual with a sense of belonging and a sense of his own worth.

A severe penalty is thus imposed upon a citizen or group of citizens when deprived of their nationality by a state, usually for political reasons. They become 'stateless' and are dependent for their protection upon the laws and practices of whatever country provides them with refuge.

The individual right to a nationality was a right which could not be agreed upon by Member States, hence Article 24 of the International Covenant on Civil and Political Rights only includes the right of every child to acquire a nationality. The collective right of nationality is included in both International Covenants in terms of the right of all peoples to self-determination. In this sense, all peoples should have the right to determine their own political, economic, social and cultural

development. Alien subjugation, domination and exploitation constitutes a denial of fundamental human rights. Hence the post-Second-World-War dismantling of colonial empires was a vindication of this fundamental right, in political terms. Political controversy and conflicts surround the whole question of nationality. Tribalism, nationalism, patriotism are all emotive words which mean different things at different times and in different circumstances. What is essential and recognized by the article is that nationality is a right from birth. Additional rules for people who have lost their nationality were laid down in the Convention on the Status of Stateless Persons (1954) and the Convention on the Reduction of Statelessness (1961).

Article 16. (1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

(2) Marriage shall be entered into only with the free and full consent of the intending spouses.

(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Attitudes in respect of marriage differ and family laws are often based on specific religious, cultural and social patterns. The rights are stated, but their protection is not uniform. The notion of 'free and full consent' raises special problems for certain cultures and the rules relating to this matter have been set out in greater detail in the United Nations Convention on the Consent to Marriage, Minimum Age for Marriage and Registration of Marriage (1962) and in a recommendation on the same subject adopted in 1965.

Article 17. (1) Everyone has the right to own property alone as well as in association with others.

(2) No one shall be arbitrarily deprived of his property.

Property was placed on the same level as freedom, security and resistance against oppression in the French Declaration of the Rights of Man and of the Citizen (1789). After nearly 200 years of social and economic history the concept of ownership in relation to human rights has evolved and is a very complex and controversial matter today. Although reaffirmed here, the right to property was not included in the International Covenants.

Article 18. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

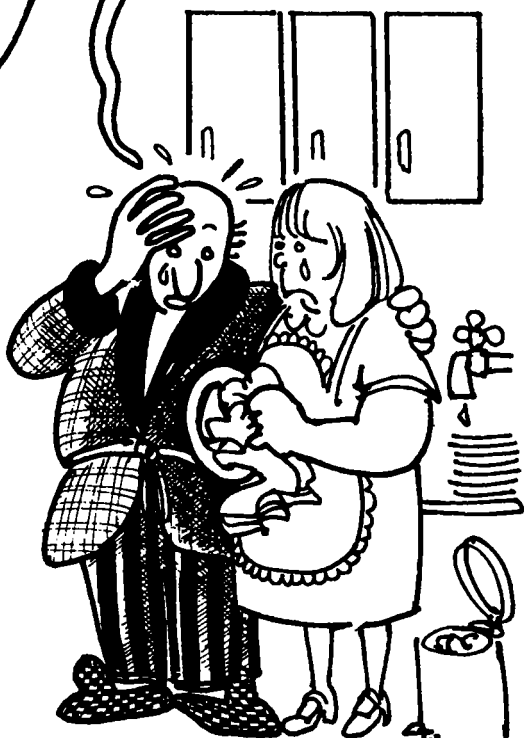
The right to think and change one's mind corresponds to a basic non-material human need. It makes conscientious action, cultural appreciation and religious belief possible.

■ *If these human capacities are so important, why haven't they been protected by incorporating them in an (enforceable) convention?*

States differ widely in their attitude towards religion, ranging from encouraging all to adhere to an official religion to discouraging any religious belief and teaching atheism. There is also the controversial problem of the relation of the conscience of the individual to the social and political context in which he or she lives. Since 1962 the United Nations has been trying to work out agreement on a Declaration on the Elimination of All

FREEDOM!
JUSTICE!
DIGNITY!
PEACE!!

WHAT ARE WE GOING
TO DO WITH HIM WHEN
HE GROWS UP?



PLANT

Forms of Intolerance and of Discrimination based on Religion or Belief. The Declaration was adopted on 25 November 1981.

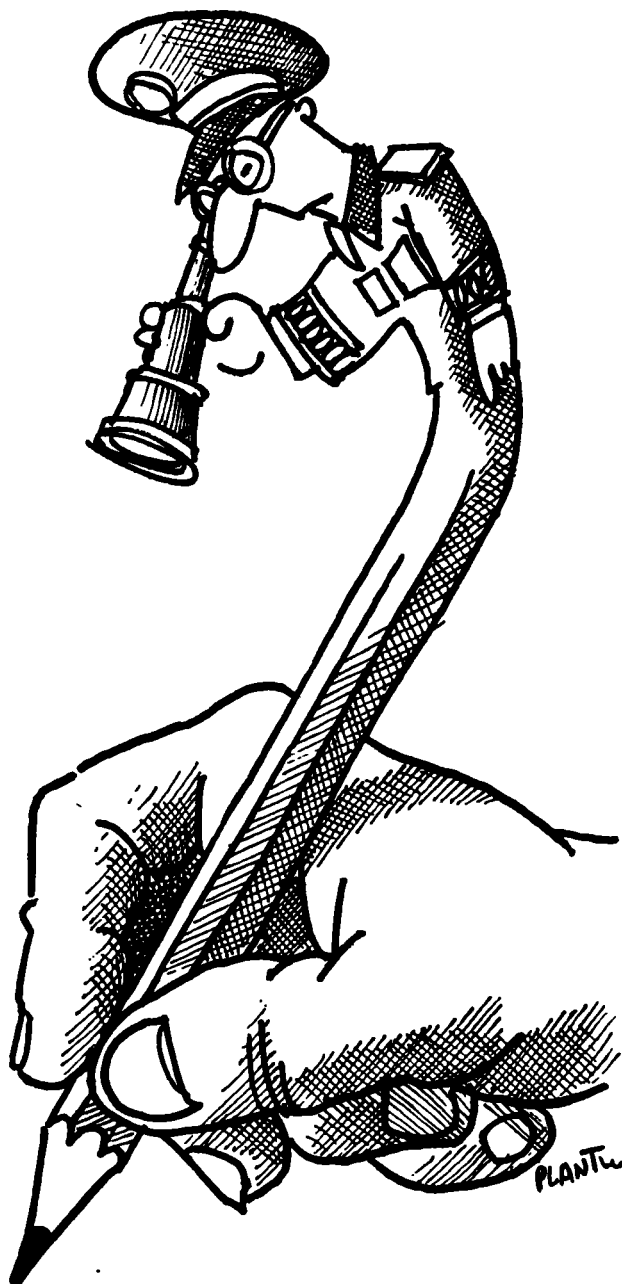
■ *Should religious freedom include the right to change one's religion?*

Some states say no. The right to change religion is not included in the International Covenant on Civil and Political Rights. The problem lies not in the freedom of thought, conscience and religion but in the right to express thoughts, to act in accordance with one's conscience and to practise a religion. These are controversial areas of international human rights law. What is significant is that these rights are generally recognized, but are still widely disregarded by some governments.

Article 19. Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

■ *Is it possible to stifle freedom of opinion and expression?*

The persecution of writers and journalists, banning of books, prohibition of the publication of books, journals and newspapers, state ownership and control of the media and censorship are all known ways in which these rights are restricted. It happens in one way or another in a majority of the countries of the world. These actions are usually carried out within the laws and practices of the country concerned and justified for reasons ranging from irresponsibility to subversion. When these are the actions of repressive regimes, or when carried out under a state of emergency in the name of safeguarding a particular system, fear is the underlying motive of repression: fear of the challenge presented by alternative views and fear in the knowledge that



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freedom of opinion and expression is a basic tool for securing every other fundamental freedom. While governments do succeed in restricting these freedoms within their own jurisdiction, there is no way in which they can ultimately stifle free thought, opinion and expression. Banning books does not erase them and prohibiting their publication does not preclude them from being published and read elsewhere, or from being circulated in improvised form. One author, Edward Galeano, has written: ‘. . . the military don’t burn books any more: they sell them to the paper manufacturers. The paper companies shred them, pulp them and put them back on the market for consumption. It is not true that Marx, Freud or Piaget are unavailable to the public. In book form they are not. But they are in the form of serviettes.’

■ *Are there any international safeguards for the liberty of the press and information?*

This has been a concern of the United Nations since its early days. A draft Convention and a draft Declaration on Freedom of Information have been under consideration since 1959 and 1960 respectively. The obstacles to reaching any agreement on these instruments arises from the fundamentally divergent views among states as to what constitutes ‘freedom of information’.

United Nations action in this field has thus been restricted and the defence of the freedom of the press has been mainly exercised by professional organizations concerned with the press and other non-governmental organizations. Unesco has adopted a number of international instruments relating to the promotion of free flow of ideas through communication media. As part of its programme concerning communications policy it has organized a series of regional intergovernmental conferences, which have tackled the difficult problem of reconciling divergent views in this area. It has also been promoting the recognition of the ‘right to communicate’ as a human right.

The International Commission for the Study of Communication Problems, presided over by the Nobel Peace Prize

winner, Sean MacBride, offered a unique occasion for an in-depth examination of these problems.¹

■ *Are these freedoms absolute?*

According to the International Covenant on Civil and Political Rights the exercise of freedom of opinion and expression 'carries with it special duties and responsibilities'. The Covenant also provides for the prohibition of 'any propaganda for war' or 'any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence'. Freedom of expression is therefore not absolute, although there is no agreement on the exact extent to which it should be limited and many consider that virtually no limitations are justified.

Article 20. (1) Everyone has the right to freedom of peaceful assembly and association.

(2) No one may be compelled to belong to an association.

Freedom of association is the only way in which people collectively can express their aims, exercise pressure as a group and protect the interests of the individual.

To ensure this freedom requires no positive action by the government; on the other hand, governments may restrict this freedom. Whilst it is argued that there are some legitimate reasons why this might be done in certain circumstances, it is all too frequently exercised as a method of repression in violation of this article.

1. See the Report of the Commission: *Many Voices, One World: Towards a New More Just and More Efficient World Information and Communication Order*, London, Kogan Page; New York, Unipub; Paris, Unesco, 1980.



First appeared in *Pauvres chéris*, Paris, Éditions du Centurion.

Article 21. (1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

(2) Everyone has the right of equal access to public service in his country.

(3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

The interpretation of this right in national practice is dependent on constitution and tradition. The principle however is clear: that every human being has the right to participate in govern-

ment at all levels. In practice, this is not always the case. The systematic denial of this right takes the form of foreign domination, which also violates the right of self-determination, or tyranny. Without going to these extremes, there are considerable problems in many countries as regards the assurance of honest and free elections.

Articles 22–27 deal with economic, social and cultural rights, which concern the material security and the economic, social and cultural conditions necessary for the full development of the human potential. The implementation of these rights usually requires a positive act on the part of the state. In reality most of these rights are well out of the reach of the great majority of the world's peoples and therefore are of priority concern to the poor and underprivileged in developing as well as in economically advanced countries.

Article 22. Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

These rights aim at the realization of both material and non-material human needs. Economic growth, although essential, is not sufficient to ensure the general well-being of peoples. Nor does it follow that the economic advantages resulting from such growth will accrue to all sectors of the population and take into consideration human-rights imperatives. Hence national efforts and international co-operation to promote economic and social advancement should also be concerned with creating fairer social structures to ensure the maximization and equitable enjoyment of these rights. In aspiring to these rights, each country has to take into account its own resources and priorities, and then make its own particular choices in respect of

achieving the standards prescribed. The words 'in accordance with the . . . resources of each State' means that a more complete guarantee of these rights is expected from a rich country than from a poor country.

Article 23. (1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

(2) Everyone, without any discrimination, has the right to equal pay for equal work.

(3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

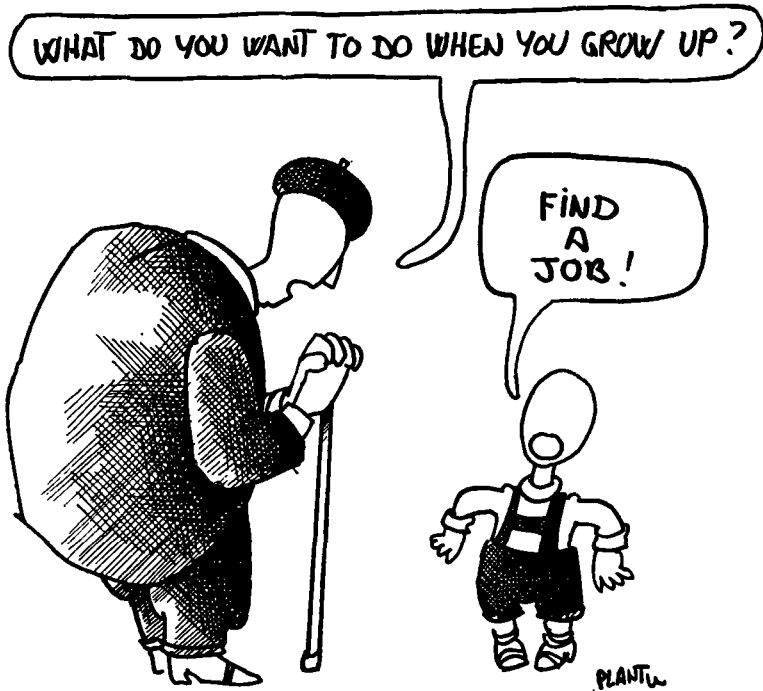
(4) Everyone has the right to form and to join trade unions for the protection of his interests.

■ *Are there any international provisions safeguarding the conditions of work and the rights of workers?*

This is the special concern of the International Labour Organisation which has already been mentioned. The ILO publishes a report each year on the observances of its conventions and recommendations in which all countries are named and their adherence to these instruments commented upon. There are many countries however which have not agreed to these undertakings and they are therefore outside international supervision.

■ *What does the right of free choice of work mean?*

While some people are able to choose the work they want and where they want to work, most are bound to situations of work for reasons of security, availability, qualification and so on, or



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because of discrimination on grounds of colour, sex, religion or ethnic origin. Others are victims of political oppression and are precluded from working. In this sense they are denied freedom of choice. However the right to free choice of work also means the right to leave one's work. This is denied to many people in many situations, the most obvious of which is forced labour. In its 1978 report the International Labour Organisation cites instances of this practice ranging from the imposition of forced labour for recovery of taxes to the imposition of forced labour on thousands of detainees held without trial.

Article 24. Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

During the industrial revolution, it was not uncommon for workers to be on the job over fifteen hours a day and to have no more than one day off a week. Organized labour has progressively obtained the recognition of the limitation of working hours and of the work week. Through the efforts of the ILO these limitations have gained international recognition. Although there have occasionally been doubts expressed about the status of rest and leisure as human rights, this article makes it clear that they are included among universally recognized human rights.

Article 25. (1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

■ *What is meant by the right to an adequate standard of living?*

Different people would give varying answers to this question. But no one can deny that the very least it means is that every person is entitled to satisfy the basic human needs of food, shelter, clothing, household requirements and community services in respect to water, sanitation, health, and education.



It also means that everyone should have the right to work in order to achieve a reasonable life and that security should be provided for those who cannot do so.

Those who are in greatest need should be considered first and development objectives should give priority to the poorest, the most underprivileged and those who suffer deprivation through discrimination.

Article 26. (1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

(2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

(3) Parents have a prior right to choose the kind of education that shall be given to their children.

Priorities in education vary greatly. Whilst compulsory education until the age of 16 prevails in many countries, in a large part of the world the foremost need is to achieve literacy.¹ Over 800 million persons, almost one-third of the world's adult population, are illiterate. Choices in education have to be relevant to the needs of a particular society, and the minimal requirement of free primary education is still a distant goal for many.

The further objective in education which has a universal validity is the full development of the human personality and

1. See *The Child's Right to Education*, Paris, Unesco, 1979.



PLONIT

First appeared in *La démocratie?, Parlons-en!*, Paris, Éditions Alain Moreau.

the strengthening of respect for human rights and fundamental freedoms. Unesco has developed these ideas in the Recommendation on Education for International Understanding, Co-operation and Peace and Education Relating to Human Rights and Fundamental Freedoms (1974).

Article 27. (1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

(2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Unesco has also worked out a number of specific rules relating to this article in such documents as the Recommendation concerning the Participation by the People at Large in Cultural Life and their Contribution to it (1976), the Recommendation on the Status of Scientific Researchers (1974) and various copyright conventions.

Article 28. Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

The very basic requirements for a life of dignity and minimal well-being are denied to a great portion of mankind, who live in conditions of great deprivation. Thus hundreds of millions of the world's people are suffering a gross violation of their fundamental rights to food, shelter and basic requirements for mere survival. Poverty persists even in some of the most economically developed countries. The social order prevailing in most of the world is not yet adequate; nor is the international order, characterized by military expenditure of \$1 million a minute, capable of assuring security to the nations of the world.

■ *What chance is there for improvement?*

Despite several decades of international action devoted to development, the gap between the rich and the poor countries is ever increasing; this indicates that the maldistribution of the world's resources is reinforced by existing policies and institutions. Hence the economic policies and activities of the rich countries in relation to the poor countries are perpetuating and aggravating the poverty of the poor countries.

Developing countries, having won political independence, see themselves stifled by economic dependence and recognize that, in order to right the inequalities, a new structure of international economic life is required: a new international economic order. The rich countries are uneasy and slow to recognize that their own long-term interest in terms of peace, security and humanity lies in effecting by an act of political will a change in the existing economic order. A set of proposed changes in international economic relations aimed at narrowing the gap between the rich and poor nations is spelt out in a number of United Nations General Assembly resolutions on the establishment of a new international economic order and in the Charter of the Economic Rights and Duties of States.

While only one of the documents specifically refers to human rights, these provisions could have a significant impact in promoting the realization of economic, social and cultural rights. The implementation of these rights also requires domestic orders that narrow the disparity between rich and poor within states. In the United Nations system increasing recognition is being given to the notion of the 'right to development' as a human right.

As regards the international order, peace and disarmament have important implications for human rights. Proposals have been made to consider that the 'right to peace' and the 'right to disarmament' are human rights. The increase in international tensions and the outbreak of numerous armed conflicts makes the search for the 'international order', to which this article refers, all the more urgent.

In connection with the international order it is worth

recalling the following paragraph of the Preamble to the Universal Declaration: 'Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom and justice and peace in the world . . .'

Article 29. (1) Everyone has duties to the community in which alone the free and full development of his personality is possible.

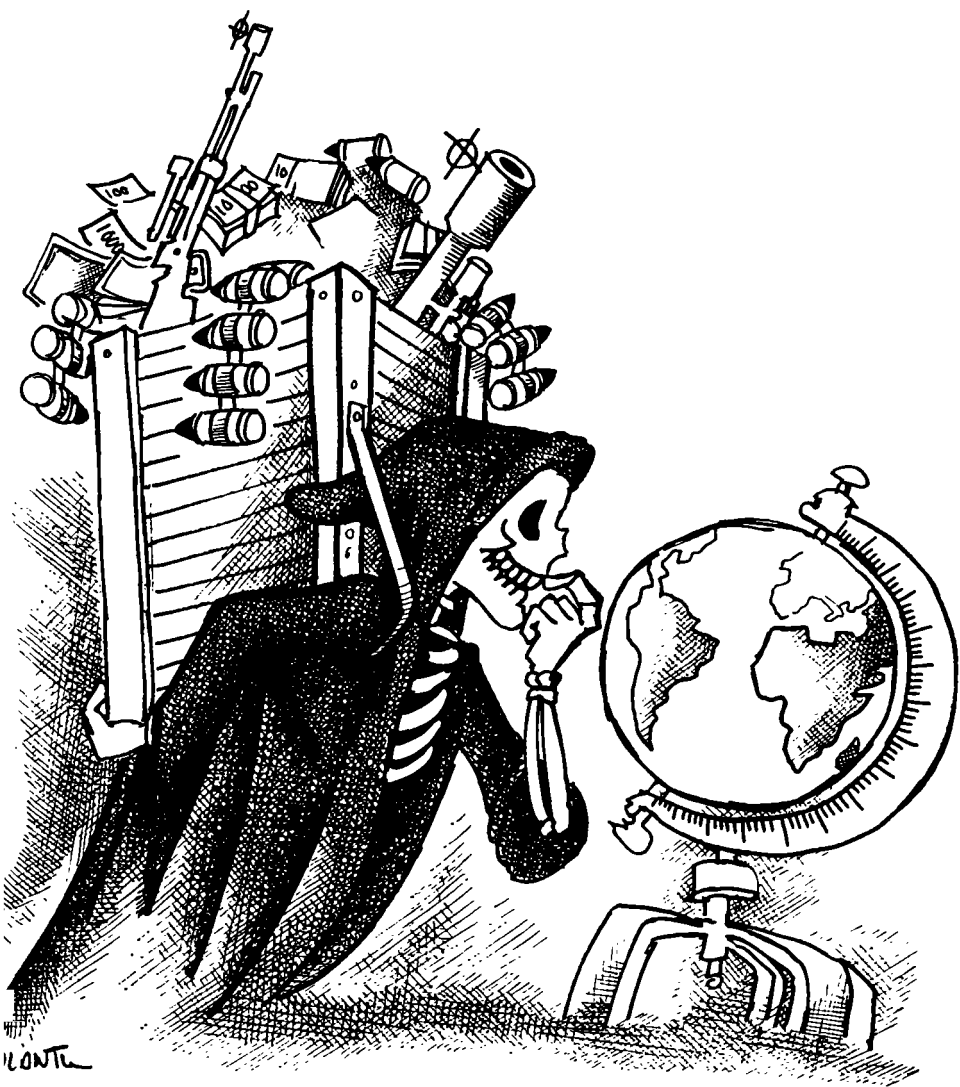
(2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

(3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

■ *Is it justifiable to restrict freedom of political expression and organization in order to concentrate on the advancement of economic and social rights in areas of severe deprivation?*

Many governments argue that they have conflicts of priorities in respect of human rights which are reflected in the Universal Declaration. There is no simple answer. While no direction of causality can be established between rights, there is an interdependence between the civil and political rights and economic, social and cultural rights. The achievement of economic, social and cultural rights will not by itself bring about the achievement of civil and political rights. On the contrary, certain political rights are indispensable to any form of social justice.

The Universal Declaration recognizes that freedom from fear and want for all human beings can only be achieved if



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conditions are created whereby everyone may enjoy economic, social and cultural rights as well as civil and political rights.

The recognition of the interdependence and indivisibility of all human rights and fundamental freedoms was reaffirmed by Member States in an important resolution adopted in 1977 by the General Assembly on the concept which should guide the future work of the United Nations system in the field of human rights.

■ *What kind of duties has the individual?*

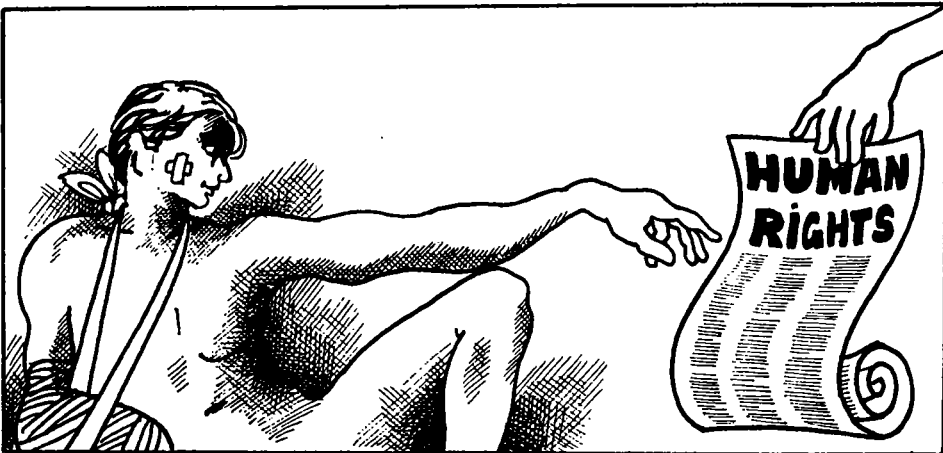
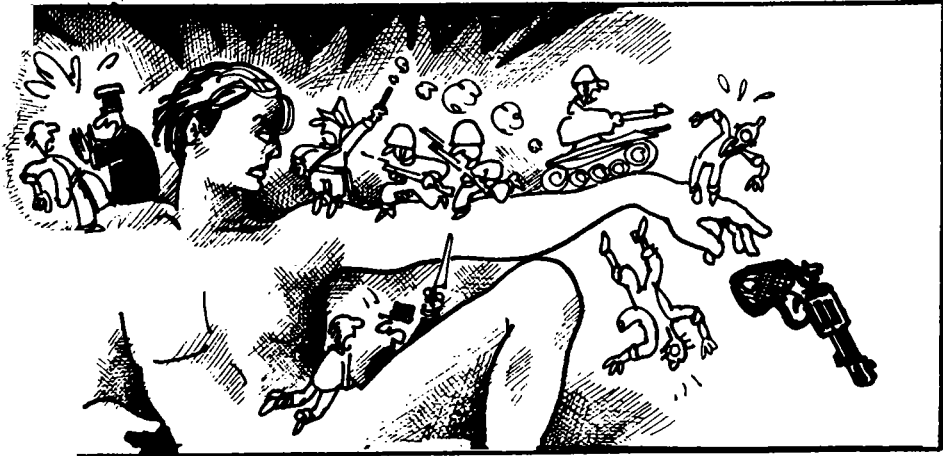
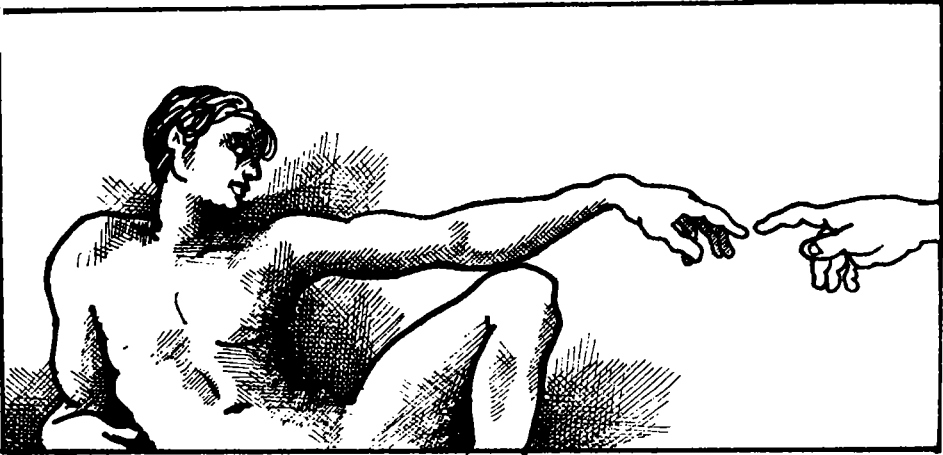
Since it is only in the community that everyone can fully and freely develop his or her personality, it is the duty of everyone in the community to uphold and demand their rights and freedoms and respect those of others in order to create the conditions within the community to make the full enjoyment of these rights and freedoms possible.

The second paragraph of this article establishes a general rule concerning the limitations the state may place on the exercise of human rights in the collective interest.

The laws of a democratic society should provide the framework within which rights and freedoms can thus be exercised. Moreover, it is the duty of the courts and the legitimate concern of everyone to ensure that limitations placed by law upon the exercise of these rights and freedoms are used solely for a valid and recognized purpose and do not exceed the purpose for which they are intended.

Article 30. Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

This means that the Declaration should not be used as a pretext for violating human rights. This rule applies not only to states



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but also to groups and individuals. Thus no one can take an article of the Declaration out of context and apply it in such a way that other articles would be violated. This article, as does the whole Declaration, requires constant vigilance and the courage to stand up for one's rights and/or those of others. This vigilance and courage are the price we must all pay so that some day human rights will apply in practice as well as in theory to all members of the human family.

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