

A United Nations Assessment Project Study

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THE U.N. & HUMAN RIGHTS: THE DOUBLE STANDARD

INTRODUCTION

The United Nations Charter states it quite clearly: all members pledge to promote "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion." These commitments are echoed by the various U.N. treaties on human rights. Indeed, in some respects, the principles of the U.N. are synonymous with concern for the protection of human rights.

Yet here, as in other critical areas, the U.N.'s performance seems sadly disappointing. U.S. Permanent Representative to the United Nations, Jeane Kirkpatrick, in a November 1981 speech described the situation: "No aspect of U.N. affairs has been more perverted by politicization in the last decade than have its human rights activities" Instead of serving as the impartial, international arbitrator in human rights matters, the U.N., with an alarming and growing consistency, plays favorites. Nations outside the ruling bloc are routinely denounced for human rights violations -- real and concocted. But when nations supported by the ruling bloc violate human rights, even to the extent of atrocities, there is barely a murmur of disapproval or even embarrassment. The fact of the matter is, in regard to its human rights commitment, the U.N. operates according to a double standard.

Blatant cases of genocide have been all but ignored: in Indonesia against the Chinese in the late 1960s; in Nigeria against the Ibos in 1966-68; in Pakistan against the Bengalis in 1971; in Burundi against the Hutus in 1972-73;¹ in Iran against

¹ Leo Kuper, Genocide: Its Political Use in the Twentieth Century (New Haven and London: Yale University Press, 1981), pages 153, 75, 79, and 163, respectively.

the Kurds in 1975-77; and in Nicaragua against the Miskitoes in 1981-82. The Soviet invasion of Hungary in 1965, Czechoslovakia in 1968, Afghanistan since 1979, and now Poland, to say nothing of internal repression in the communist bloc, have met with only the mildest censure. On the other hand, Israel, one of the world's freest democracies, is continually excoriated and now is being threatened with expulsion from the U.N.; Taiwan, a country that allows at least some dissent, was expelled a decade ago; and one need not agree with the policy of apartheid to realize that South Africa has been illegally denied participation in the activities of the General Assembly since 1974. Meanwhile, the Palestine Liberation Organization (PLO), a Soviet-backed terrorist organization, enjoys observer status in many U.N. agencies -- including the Commission on Human Rights (CHR) -- and even has access to U.N. funds of which the U.S. is the single most generous contributor.² U.N. money has also gone to the repressive regimes of Angola and Mozambique (\$6.6 million and \$10 million respectively in 1981 alone), and since 1979 Vietnam has received \$26.8 million from the U.N. despite its repressive and aggressive activities. Even Libya has received aid from the U.N. -- \$300,000 since 1979.³

It is quite clear, as Ambassador Kirkpatrick noted in November 1981, that "some persons and some governments have attempted to use human rights [in the U.N. forum] less as a standard and a goal than a political weapon," with the result that "the record of human rights in the U.N. belies the claim to moral seriousness that would fully justify its judgments." For example, the human rights agencies of the U.N. were silent while three million Kampuchians died in Pol Pot's murderous utopia. Resolutions condemning El Salvador, Guatemala, Chile, and Bolivia were voted in 1981, but the Soviets have yet to be chastised for their brutal and illegal chemical warfare in Asia.

The double standard on human rights is especially evident in the activities of the U.N.'s principal organ for implementing human rights, the Commission on Human Rights, but in fact the entire machinery is deeply flawed. The result is what U.S. Representative to the CHR Leonard Garment denounced in 1975 as "a deeply ingrained double standard" to be expected from "those whose attachment to the values of human rights is at best theoretical."

² There is evidence that the PLO may have infiltrated the lavishly funded United Nations Relief and Works Agency (UNRWA) programs for Palestinian refugees in the Middle East. See Thomas G. Gulick, "How the U.N. Aids Marxist Guerrilla Groups," The Heritage Foundation Background No. 177 (April 8, 1982).

³ Country Reports on Human Rights Practices for 1981, Department of State, February 1982, pages 20, 182, 710, and 1044 respectively.

Reasons for this dismal record are structural as well as institutional. Only radical change in both areas will endow the U.N.'s human rights mechanism with the balance and fairness it needs for credibility and continued U.S. support.

THE U.N. HUMAN RIGHTS MACHINERY

The basic authority for U.N. human rights activities may be found in the Charter: the preamble ranks respect for human rights second only to the urgency of saving succeeding generations from the scourge of war. In December 1948, the Universal Declaration of Human Rights was adopted without, however, an effective enforcement mechanism.

The main U.N. human rights activities are: setting standards through the adoption of declarations and treaties; supervising the application of standards by means of reports, procedures for the consideration of complaints, and investigations; and sponsoring informational, educational, and assistance programs.

To date, the U.N. has passed twenty-one instruments related to the issue of human rights -- almost all without effect. In fact, a major problem exists in the adoption of standards that are not adhered to. The ensuing disappointment and the charge of hypocrisy continually undermine U.N. credibility. It is not a little ironic, for example, that the Soviet Union's ratification of the Covenant on Social and Political Rights coincided with the resumption of attacks on human rights activist Andrei Sakharov in September 1973.

STRUCTURAL FAILURES

U.N. commitment to human rights was flawed philosophically from the outset. There never has been a consensus on what such "rights" really were.⁴ For example, the Soviet Union wanted "the right to work" included in the Universal Declaration of Human Rights and opposed the American wish to include "the right to free enterprise"; as a result, observed Edgar Snow, "the search was quickly abandoned for the sake of expediency"⁵ and the concept of human rights was left undefined.

The Soviet Union made it abundantly clear that it had no intention of being bound by definitions of human rights that would conflict with its political interests. On December 10, 1948, Soviet delegate Andrei Vishinsky explained that "the rights

⁴ Leland M. Goodrich and Edvard Hambro, Charter of the United Nations: Commentary and Documents (Boston: World Peace Foundation, 1949), p. 97.

⁵ Edgar Snow, Stalin Must Have Peace (New York: Random House, 1947), p. 41.

of human beings cannot be considered outside the prerogatives of governments, and the very understanding of human rights is a governmental concept."⁶ This view is shared by other communist regimes, which explains why members of the Soviet bloc belonging to the U.N. in 1948 voted against the Declaration.

The Soviet Union did support the adoption by the General Assembly of an International Convention on the Prevention and Punishment of the Crime of Genocide, but only after the original text was modified radically. As Dr. Alfred J. Scheppe on behalf of the American Bar Association testified before the Senate on March 10, 1971:

As originally drafted, the Convention included "political" as well as "national, ethnical, racial and religious groups." The Soviets announced that they wouldn't play unless "political groups" were expunged from the draft. They insisted on preserving the right to assassinate and exterminate the political opposition as essential to the safety of the state....Result: the United States yielded, and "political groups" were eliminated from the draft.

American delegates also wanted to include the phrase "with the complicity of government" in the concept of genocide, but the Soviet Union again objected, and the U.S. yielded. As a result, some of the worst and most common forms of genocide are now exempt from the Convention.

Because of such omissions, the U.S. has not ratified the Genocide Convention. On the basis of article II(c) of the Convention, moreover, the U.S. has been accused of genocide against segments of its own population. Senator Strom Thurmond (R-SC) declared on January 23, 1982, that the treaty could ultimately lead to "suicide for [U.S.] national sovereignty."⁷

More problems emerged as the Soviet Union succeeded -- with the backing of repressive Third World regimes -- in diverting the sense of "human rights" away from the classic Western concern for civil and political liberties toward so-called economic rights. By December 16, 1977, the U.N. even codified a resolution, 32/130,

⁶ Quoted in John Foster Dulles, War or Peace (New York: The Macmillan Company, 1950), p. 203.

⁷ Senator Strom Thurmond, "Congress Should Heed Perils of Genocide Convention," Human Events, January 23, 1982, p. 19:

Perhaps the most dangerous aspect of the pact is that individual U.S. citizens could be extradited from the U.S., tried in the country where the act of "genocide" was committed and punished under the laws of that country.

establishing a "right to development."⁸ By then it had become clear that the Western definition of human rights, like the Western position on most matters, "was not merely on the defensive, but had been effectively routed in the U.N."⁹

Even U.N. efforts on behalf of the rights of women have been tainted by strong political bias. The Preamble to the Convention on the Elimination of All Forms of Discrimination Against Women, which met from July 14 to 31, 1980, links discrimination against women to "exploitation of all people." What was to have been a statement on women's rights was transformed into a proclamation supporting the so-called New International Economic Order, a scheme designed to redistribute the wealth of industrial nations to the poor developing countries.¹⁰

In retrospect, these structural deficiencies are not particularly surprising: the U.N. reflects world realities. Thus an effective U.N. system, says Law Professor J. S. Watson, "can only be set up in the context of a preexisting political stability and it is only within such a hierarchic system that one can talk of actually 'enforcing' human rights." And "until the world reaches the requisite political stability, the supranational approach must be rejected as an attractive but unrealistic idea."¹¹

The U.N. should not be faulted for failing to meet high standards of idealism. The problem, however, is that its human rights failures are molded too neatly into a rigid double standard. The roll of those condemned and those exempted never changes. The principal fault may well lie with the U.N.'s one-country, one-vote procedure. Observed Professor Louis Henkin in 1965: "The prospect of political discussion of an issue will not deter and may even encourage violation by those who are confident of approval or condonation by majorities...."¹²

⁸ See Moses Moskowitz, "Implementing Human Rights: Present and Future Prospects," in B. G. Ramcharan, ed., Human Rights: Thirty Years After the Universal Declaration (The Hague: Martinus Nijhoff, 1979), pp. 109-130.

⁹ Jack Donnelly, "Recent Trends in U.N. Human Rights Activity: Description and Polemic," International Organization 35, Autumn 1981, p. 639.

¹⁰ Catherine Tinker, "Human Rights for Women: The U.N. Convention on the Elimination of All Forms of Discrimination Against Women," Human Rights Quarterly, Vol. 3, No. 2., Spring 1981, p. 34. See U.N. Third Committee of the G.A., Report of the 34th Session (A/C.3/34/SR.72) December 6, 1979, pp. 2, 8-10. Similar ideas are contained in the Copenhagen Programme of Action for the Second Half of the Decade for Women, Paragraph 11 of the Introduction et al., summarized in Press Release WOM/C/11, July 31, 1980.

¹¹ J. S. Watson, "The Limited Utility of International Law in the Protection of Human Rights," paper presented on April 17, 1980, at a panel on "Perspectives on Enforcement of Human Rights."

¹² Louis Henkin, "The United Nations and Human Rights," in The United Nations in the Balance: Accomplishments and Prospects, edited by Norman Padelford and Leland Goodrich (New York: Praeger, 1965), p. 152.

INSTITUTIONAL PROBLEMS

The U.N. machinery set up to deal with human rights violations after the mid-sixties is seriously defective on a number of counts. Among the most important:

- the confidentiality rules governing "communications" from victims are at best paralyzing, and sometimes even harmful;
- political barriers limit considerably the value of those communications;
- improper and even illegal application of U.N. procedural rules further sabotage whatever limited value the existing machinery may have.

Defects of the Confidentiality Rule

After nearly twenty years of virtual dormancy on human rights, the U.N., on March 8, 1967, adopted resolution 1235 to admit complaints regarding human rights when "consistent patterns of violations became evident."¹³ This was not intended to be an impartial procedure; the majority had in mind specifically the policy of apartheid, and pressure from the Third World to thus limit the resolution's scope was almost overwhelming;¹⁴ in 1968, Third World delegates offered amendments to the effect that resolution 1235 should be applied only to racial discrimination and apartheid. Eventually, the proposals were withdrawn, the majority decision being to keep the reference to these policies as simply paradigmatic examples. Subsequent application of the resolution, however, was faithful to the majority's original intention.

An accompanying resolution, 1503, adopted on May 27, 1980, permitted communications regarding human rights violations to be made not only by the victims themselves but also by other persons and groups who had direct and reliable knowledge of violations. But resolution 1503 has accomplished little. Former Chairman of the CHR, Theo C. van Boven, admitted that

the procedure appeared to be very promising but due to many procedural technicalities, its time-consuming character and above all the inability or unwillingness of the Commission on Human Rights to act effectively, high expectations made way for strong disappointment.¹⁵

¹³ E.S.C. Res. 1235, 42 U.N. ESCOR, Supp. (No. 1) 17, U.N. Doc. E/4393 (1967).

¹⁴ See M. E. Tardu, "United Nations Response to Gross Violations of Human Rights: The 1503 Procedure," in Santa Clara Law Review, vol. 20, no. 3, Summer 1980, p. 582.

¹⁵ Theo C. van Boven, "United Nations and Human Rights: A Critical Appraisal," in Antonio Cassese, ed., U.N. Law/Fundamental Human Rights: Two Topics in International Law (Alphen aan den Rijn: Sijthoff & Noordhoff, 1979), p. 128.

One reason was the Soviet Union's attitude: the U.S.S.R. let it be known from the outset that it would never accept resolution 1503 and would do everything in its power to ensure that the procedure did not work.¹⁶

In the first place, many possible plaintiffs are barred from communicating to the U.N. because of political pressure, censorship of mail, illiteracy, or ignorance of the international complaint procedures and will never be heard. Victims of repression in North Korea, for example, have little opportunity to speak about their lack of freedom. Officials at the U.S. Mission to the U.N. privately complain about this crucial defect.

Second, the plaintiff has no right to be informed personally of relevant U.N. action. The accused nation, and not the plaintiff, is kept informed of decisions taken at various stages. Governments are allowed a disproportionate voice, relative to victims, in responding to complaints. In 1978, for example, the CHR requested the Secretary General to transmit to the government of Democratic Kampuchea the documents and summary records of charges of violations from the 34th Session of the CHR and to invite the government to send its comments. The response was perfunctory: all allegations were denied. Governments, of course, are not required to respond to the CHR investigations undertaken under resolution 1503. The result is that human rights violations go unchallenged, even those on an enormous scale.

Third, communications are to be submitted within "a reasonable time after the exhaustion of domestic remedies." But "reasonable time" is not defined. Moreover, the CHR often decides not to act even as people are being massacred. The situation in Kampuchea again provides a good example. In 1979, the CHR voted to postpone an analysis of the situation in that country, in spite of well-documented violations of human rights on a massive scale, much to the dismay of the U.S. Representative to the CHR, Edward H. Mezvinsky. Another instance of inaction caused by the slow procedures involved the murders of Jehovah's Witnesses in Malawi, reported in 1979. The CHR decided not to act since the events had occurred between 1972-75 and there were no recent allegations.

¹⁶ Theresa D. Gonzales, "The Political Sources of Procedural Debates in the United Nations: Structural Impediments to Implementation of Human Rights," New York Universal Journal of International Law and Politics, vol. 13, no. 3, Winter 1981, p. 430: "The Socialist bloc's opposition to resolutions 1235 and 1503 is recognized by those who have followed the development of these procedures. [Felix] Ermacora, 'Procedure to Deal with Violations: A Hopeful Start in the U.N.?', 7 Revue des droits de l'homme 670, 674-76 (1974)."

As "domestic remedies," unfortunately, a country may use such techniques as silencing and intimidating victims or communicators. Newsweek correspondent Arnaud de Borchegrave revealed on May 7, 1979, that the names of the Soviet dissidents who registered a complaint with the CHR were reported to Moscow authorities by senior human rights officer, Yuri Reshetov;¹⁷ the Soviet crackdown on such dissidents is, of course, well known. In a related matter, Under Secretary of the U.N. for General Assembly and Political Affairs, William Buffum, pointed out at a March 8, 1982, meeting in Washington that the U.N. had reached an understanding with Vietnam that an "orderly" government supervised evacuation program will be undertaken. Does this not mean that the identities of those seeking to flee Vietnam will be submitted to the very regime from which they seek to escape? Will this not lead to further harassment of prospective refugees?

The effect of resolution 1503, according to Harris O. Schoenberg, Director of the U.N. Affairs of B'nai B'rith, is almost null "with regard to dictatorial regimes, which are the most likely to violate human rights." States Schoenberg:

Aggrieved individuals are unlikely to offer an imprudent challenge to such state authority. Despite assurances that individual identities are to be treated confidentially, the fact that a petitioner must exhaust national remedies before communicating with the Committee makes real secrecy impossible.¹⁸

And finally, under confidentiality rules, a complaint is inadmissible if "it has manifestly political motivations." According to most communist constitutions, a complaint against the state is ipso facto politically motivated. In his 1980 pamphlet Human Rights: Continuing the Discussion, published in the U.S.S.R., Samuel Zivs claims "Marxism-Leninism, the official ideology of Soviet society, is the expression of the fundamental interests of the Soviet people."¹⁹ The interests of the people, he then points out, are defined not by the individual but by the Communist Party.

Political Barriers to Impartial Solutions of Human Rights Violations

The political element in the human rights implementation mechanism is unavoidable, given the structure of the U.N. Even as enthusiastic a U.N. apologist as van Boven wrote that "the

¹⁷ Arnaud de Borchegrave, "Geneva's Soviet Agents," Newsweek, May 7, 1979, p. 61.

¹⁸ Harris O. Schoenberg, "The Implementation of Human Rights by the United Nations," in Israel Yearbook on Human Rights, Vol. 7, 1977, p. 35.

¹⁹ Samuel Zivs, Human Rights: Continuing the Discussion (Moscow: Progress Publishers, 1980), p. 25.

political factor operates more often than not as a defender of oppressive powers and neglects the fate of the oppressed people and persons."²⁰ As an example, he cited the General Assembly's establishment of a Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Occupied Territories. The Special Committee's reports have made it all too clear that its approach is determined by the political fact of the occupation.²¹

Politics prevailed in 1967 as well, when the General Assembly set up an ad hoc working group to investigate apartheid in South Africa. Full power to appoint the working group's members was given to the President of the CHR, at the time a Soviet delegate. No list of experts was compiled, and no contact was made with the South African government.²² As former CHR Chairman Felix Ermacora has pointed out

in the present [U.N.] system there is no objective search for or choice of persons having the personal qualities to work in an investigation commission. The plan to draw up a panel of persons eligible for fact-finding tasks was not put into effect. There is in the U.N. no generally accepted norm determining the applicability of rules of procedure to investigation bodies.... The question who has to bear the costs of an investigation is also not provided for: the practice has therefore varied widely between different expert groups.²³

There is still no appropriate rule on the publicity for meetings, or on the legal consequences of the permanent or occasional absence of one or more members of an investigation group. Says Ermacora, this is a way "to support the preconceived assumptions of the organisation as regards the facts."²⁴

The CHR remains a political body. Its forty-three members are representatives of their governments and obtain instructions

²⁰ van Boven, op. cit., p. 128.

²¹ Writes van Boven: "A quotation from its recommendations in [the Committee's first] report [U.N. Doc. A/8099, para. 146] will clarify its basic attitude which reflects the approach of the United Nations at large: 'The Special Committee considers that in this case the fundamental violation of human rights lies in the very fact of occupation. The Committee therefore finds it impossible to separate the specific policies and practices applied to particular individuals, groups or areas from the broad context of the occupation itself.'" pp. 127-29.

²² See Richard B. Lillich and Frank C. Newman, International Human Rights: Problems of Law and Policy (Boston and Toronto: Little, Brown and Company, 1979), p. 273.

²³ Ibid., p. 277.

²⁴ Ibid.

from their capitals on almost every issue.²⁵ Yet only sixteen of these members represent countries that Freedom House can classify as "free." The "deals" made behind the scenes to vote on resolutions that condemn some countries at the expense of others should surprise no one. Richard Schifter, U.S. Representative to the CHR, gave an example to the House Committee on Foreign Affairs on November 16, 1981:

There was a delegate [in 1981] who tried to round up votes on a resolution opposed by the Soviet Union and who complained to me about the difficulty of getting a commitment from countries which were intimidated by Cuban and East German detachments stationed in neighboring states.

Coalitions often are formed on exchange of votes among countries that are deeply opposed on other issues. Notable is the political alliance, especially since 1968, between the Soviet Union and the Arab states. In the words of Carl Gershman, Senior Advisor to Ambassador Kirkpatrick, the U.N. has become "a Third World forum." Another famous coalition involves Moslem countries and the black African states: the former support the latter on votes condemning apartheid, while the latter invariably vote with the former to oppose Israel. More recently, Latin American countries have been standing together: when one country is attacked the others support it, expecting similar treatment in return. As a result, says Gershman, the U.S. stands practically alone in resisting the U.N.'s double standard.

In some cases, countries that receive foreign aid from the U.S. vote against the U.S. on human rights issues because they do not believe the U.S. is truly concerned about U.N. votes in this area. Sometimes this perception is correct: the U.S. usually prefers to use leverage in military or strategic areas. Yet, according to Elliott Abrams, Assistant Secretary for Human Rights and Humanitarian Affairs, the human rights issue is not minor: "Increasingly," he notes, "foreign policy is being discussed in terms of human rights."

Even before reaching the CHR, the selection procedure of human rights complaints is politicized, starting with the initial screening by the Subcommittee on Prevention of Discrimination and Protection of Minorities (which meets during August and September in Geneva). Writes Harvard Political Scientist Theresa D. Gonzales: "The Sub-Commission forms the lower rung of a hierarchy that becomes increasingly politicized at its uppermost reaches." The bias of the Subcommittee became especially evident once resolution 1503 was passed in 1970. After setting

²⁵ Gerson Smoger, "Whither the Commission on Human Rights: A Report After the 35th Session," Vanderbilt Journal of Transnational Law, vol. 12, no. 4, Fall 1979, p. 957.

up a working group in 1971, the Subcommittee is reported to have referred to the Commission eight cases of human rights violations in 1973. The complaints involved genocide in Burundi, political prisoners in Brazil, Indonesia, and Iran, forced marriages in Tanzania, racial discrimination in Guyana, Portuguese colonialism, and torture by Great Britain in Northern Ireland. The Commission postponed decisions, while the governments cited were invited to reply to charges. Not one complaint from Eastern Europe or the U.S.S.R. -- indeed, nothing involving any Communist country -- appeared on the agenda, notwithstanding the enormous roster of human rights violations in these countries.

In 1974, the working group of the Subcommittee, which included experts from Ghana, Pakistan, the Soviet Union, the U.S., and Uruguay, voted to bring to the attention of the CHR accusations regarding South Vietnam. Genocide charges against the Burundi government were dropped within a year, and the Tanzanian case was dropped because "too few" violations were reported. A charge against Israel, however, resulted in a CHR resolution condemning Israel's ill treatment of religious groups, even though no independent evidence for such a charge was available.

The Subcommittee and its working group have often been attacked for their double standard. Schoenberg, for example, has protested against the

reluctance of the Subcommittee's working group to single out major powers, and the unwillingness of governments on the Commission (most of which are themselves charged with human rights violations) to proceed from closed debates to public investigations, all [of which] help[s] to protect the worst violators from the glare of publicity.²⁶

Secrecy rules make it impossible to determine the full extent of politicization at the CHR. In 1978, however, an exception to strict confidentiality was made when the Chairman of the CHR announced its decisions not to consider publicly human rights complaints involving Bolivia, Equatorial Guinea, Ethiopia, Indonesia, Malawi, Paraguay, the Republic of Korea, Uganda, and Uruguay. This at least indicated which countries had been under consideration. To this day, the only major practical application of resolution 1503 was the case of Equatorial Guinea where a special rapporteur was appointed by the CHR in 1979. That case, however, was undertaken only after the perpetration of major atrocities, and there is reason to doubt that U.N. actions will have any impact on the human rights situation in that country.²⁷

²⁶ Schoenberg, *op. cit.*, pp. 33-34.

²⁷ Randall Fegley, "The U.N. Human Rights Commission: The Equatorial Guinea Case," Human Rights Quarterly, vol. 3, no. 1, February 1981, p. 34.

Despite the confidential nature of the 1503 procedure, the CHR remains selective regarding which countries it cites for violations. Professor Gerson Smoger of the University of Pennsylvania summarized the situation succinctly:

It appears that three categories of nations have been established: (1) those which may be discussed publicly; (2) those which may be discussed privately; and (3) those which may not come under serious discussion at all. Among the third category are Eastern bloc and Arab nations, none of which have been cited despite some reports of massive violations. The second category includes particularly egregious African and non-Arab Asian violators whose human rights policies are so repulsive that other Asian and African nations are not willing to unite in their defense. Vacillating between groups one and two are the Latin American nations whose caucus is not sufficiently cohesive to shield its members from censure.²⁸

One of the most blatant examples of the U.N.'s inability to deal with egregious human rights violations was the case of Uganda. In 1977, the U.S. Representative to the Third Committee of the General Assembly, Brady Tyson, charged that the CHR had been unable to agree to discuss in open session some serious human rights problems in that country. A resolution against Uganda was presented in the Third Committee on December 6, 1977, but it never came to a vote because of opposition from other African states. But an Amnesty International report on June 15, 1978, documented the murders of up to 300,000 people, including judges, religious leaders, teachers, students, and many other innocents.

Politicization resulting in a double standard is manifest as well in some of the U.N.'s human rights studies. A 1979 Report of the Subcommission on Prevention of Discrimination and Protection of Minorities, prepared by a Special Rapporteur, referred to "the existence of relatively full documentation dealing with the massacres of Armenians [in the U.S.S.R.], which have been described as the first case of genocide in the twentieth century." This statement was omitted from the final version of the Report; the reason, though never stated, obviously had little to do with its validity.²⁹

In many cases, the U.N. is simply unable to determine the nature of human rights violations in a particular region. A scandalous instance of U.N. impotence occurred at the end of 1981 when a U.N. group, empowered by the General Assembly to investigate

²⁸ Smoger, *op. cit.*, p. 957.

²⁹ United States Participation in the U.N., Report by the President to the Congress for the Year 1979, p. 178.

charges of Soviet use of chemical weapons against civilians in Laos and its environs, was not allowed to enter the critical area. Even in Thailand where the U.N. group was admitted, their work was such that Secretary Abrams labeled the investigation "a farce."

Illegalities and Improprieties in Implementing Human Rights

Examples abound of improper, sometimes even illegal, applications of rules governing U.N. procedures relating to human rights.

In 1967, for example, when the ad hoc group to investigate South Africa was established by the CHR, several Western powers argued that the Commission lacked the authority to establish such a group.³⁰ Since 1974, the General Assembly has denied South Africa the opportunity of answering allegations against itself. In 1979, a resolution was adopted which specifically called for a study "of the South African government's legitimacy in view of its policy of apartheid...and then to draw from that study all appropriate conclusions of law and fact." As President Carter observed in his 1979 Report on the U.N., however, it hardly seems lawful or appropriate for the U.N. to study the legitimacy of any member state's government unless it came to power through foreign imposition.³¹ Rather, the U.N. has gone so far as to recognize two Marxist guerrilla groups as the sole representatives of South Africa.³²

Another member to have drawn a disproportionate amount of fire at the United Nations is the post-Allende government of Chile. On November 6, 1974, the General Assembly abandoned its own restrictive precedents³³ by adopting a resolution to investigate the human rights situation in Chile. On February 27, 1975, a resolution condemning the Chilean government's abuse of human rights ignored that government's attempts to improve the situation. And again in August 1976, in the Third Committee of the General Assembly, the Eastern European states attacked Chile's human rights record at the same time that eight Latin American states proposed a resolution to cite efforts by Chile to improve that record. While the draft of the compromise resolution was being considered, the Chilean government announced on November 16, 1976, the release of virtually all prisoners held under its state-of-seige regulations. Yet the final draft contained no direct reference to that development.

The third member of the most often criticized "unholy trinity" is Israel. When the General Assembly condemned Zionism as a form

³⁰ Lillich and Newman, op. cit., p. 272.

³¹ Report, op. cit., p. 169.

³² Gulick, op. cit., p. 3.

³³ Lillich and Newman, op. cit., p. 296. Res. 3219, 29 U.N. GAOR, Supp. (No. 31), 83, U.N. Doc. A/9631 (1974).

of racism on November 11, 1975, U.S. lawmakers were outraged. Yet Israel had been ostracized in many ways long before; since 1968, it has not been named to any body of the U.N. that requires election. In contrast, the U.N. actually finances the activities of several terrorist groups, including the PLO. Since 1975 at least \$116 million has been spent or budgeted for what the U.N. calls "national liberation movements." A fourth of this money came from U.S. taxpayers. The PLO's voice at the CHR is well illustrated by the experience Representative Schifter shared with members of Congress on November 16, 1981:

The Commission had just completed work on its first substantive items of business by passing a series of resolutions denouncing the State of Israel. After the votes had been cast and the results announced, the PLO delegate was recognized for yet another speech on the matter on which work had just been concluded. At that point I turned to a delegate of another Western delegation to point out that as we were now on the next agenda item, the speech was out of order. The man to whom I had spoken looked at me with astonishment and said: "Don't you realize that the U.N. is an anti-Israel organization? The PLO will not be ruled out of order." So much for the absence of politics from the [Commission].

Nothing captures U.N. hypocrisy vis-a-vis human rights so vividly as the presentation of the first U.N. human rights award on the twentieth anniversary of the adoption of the Universal Declaration of Human Rights: the recipient was the Soviet delegate Pyotr E. Nedbailo, best known for his defense in 1968 of a anti-Semitic tract published in his native Ukraine. Anti-Semitism, in fact, is government policy in the U.S.S.R. As Max M. Kampelman, Chairman of the U.S. Delegation to the European Conference on Security and Cooperation in Madrid, stated on December 1, 1981, "the Soviet Union is clearly identified with a pattern of anti-Semitic behavior that could not function without government support and acquiescence."³⁴ Yet it is the state of Israel, and not the Soviet Union, that is routinely chastised at the U.N.

THE DOUBLE STANDARD AT WORK IN THE UNITED NATIONS

Officials at the U.N. Division of Human Rights refuse to acknowledge the existence of a double standard. Yet the U.N. has spent an enormously disproportionate amount of effort on a very few nations. At least the first two weeks of the CHR's annual six-week meeting are devoted to three issues: apartheid, the territories occupied by Israel, and alleged atrocities in Chile. Professor Smoger is not alone in observing that "their repeated selection of topics for discussion is clearly as much the result

³⁴ Max M. Kampelman, Anti-Semitism in the Soviet Union, 1977-1981 (New York: The American Jewish Committee, 1981), pp. 4-5.

of their isolated political position and their intimate, sometimes infamous relationship to the West as it is the intrinsic nature of the violations occurring within their borders."³⁵ And when other countries are considered, the motivation is more political interest than a desire for genuine improvement.

In 1978, for example, a CHR resolution recommended that the General Assembly establish a voluntary fund for Chilean victims of human rights violations. U.S. Representative Mezvinsky noted that it would have been more appropriate to establish a general U.N. fund to support such victims throughout the world.

Another glaring example of politically motivated "selective outrage" was a resolution presented by the Cuban delegation which reaffirmed the inalienable right of the peoples of Namibia, Zimbabwe, South Africa, and Palestine and of all peoples under "alien and colonial domination" to self-determination and national independence. Nothing was said about Afghanistan, or about any of the Eastern European countries.

In 1980, Special Rapporteur Ahmed Khalifa presented to the General Assembly a list of banks, transnational corporations, and other organizations that assisted the racist and colonial regimes of southern Africa. The resultant CHR resolution accepting the report called for the governments of countries where the listed organizations were based to stop their activities. In a glaring example of the double standard, however, the Soviet Union's extensive dealings with the South African diamond industry were never mentioned.

Although the U.N.'s human rights machinery is complex, its rhetoric and activities follow a rather uniform pattern. The flavor of one U.N. human rights organ, a Seminar on the Relations That Exist between Human Rights, Peace, and Development, was captured recently by American Enterprise Institute Resident Scholar Walter Berns, who concluded:

I suspect this Seminar was typical of U.N. meetings, especially of meetings on human rights, and it was surely not convened with the view that we might learn something from each other.³⁶

An important U.N. human rights body is the Committee on the Elimination of Racial Discrimination. The U.S. is no longer a member because of that Committee's support for the 1975 Zionism resolution. The hypocrisy of its deliberations is evident from its 1981 Committee report on Cuba, in which

³⁵ Smoger, *op. cit.*, p. 954.

³⁶ Walter Berns, "The Gaudy Game of Human Rights," *The American Spectator*, vol. 14, no. 11, November 1981, p. 12.

members of the Committee expressed their satisfaction at the presentation of the report [from Cuba] and at the manner in which the Government of Cuba was implementing the provisions of the Convention at the international level....Several members commended Cuba for its educational system guaranteeing equal opportunities for future generations and for its social security system and the labour legislation.³⁷

They also noted that as an "active and dynamic" member of the Conference of Non-Aligned Countries since 1961, Cuba has been involved in the struggle against colonialism. Only one member ventured to ask whether Cuba provided financial or any other assistance to the national liberation movements. No answer was recorded in the Committee's Proceedings.

The U.N., in fact, has never seen fit to condemn Cuba's human rights record despite the country's well-documented terrorist activities throughout the world, to say nothing of its internal repression which in 1980 drove thousands of Cubans to seek asylum at the Peruvian embassy in Havana. In all, about one million Cubans have already fled the regime of Fidel Castro.

That most of the countries the U.N. has cited as human rights violators are not the worst offenders was protested by former U.S. Permanent Representative to the U.N. Daniel Patrick Moynihan in November of 1975: "More and more the U.N. seems only to know of violations of human rights in countries where it is still possible to protest such violations."

Incredibly, Japan came under CHR criticism in March 1981. The reason was insufficient protection for the rights of Korean aliens -- who did not, for example, have the same benefits as to low rental public housing, public employment, and job promotion as Japanese citizens. The U.N. has yet to say anything about the communist countries where voting is a mockery and where employment is a matter left almost entirely to the discretion of the state.

The International Labor Organization (ILO) is often singled out as having the most effective program of international human rights implementation of all the U.N. agencies.³⁸ Nonetheless, when the ILO adopted a Convention on the Abolition of Forced Labor in 1957, no measures were taken to remedy the situation in the Gulag Archipelago. But in 1961, charges of forced labor were

³⁷ Report of the Committee on the Elimination of Racial Discrimination, GA, 36th Sess., Supp. 18 (A/36/18), p. 110.

³⁸ Human Rights in the International Community and in U.S. Foreign Policy, 1945-76, July 24, 1977, Prepared for the Subcommittee on International Organizations of the Committee on International Relations, House of Representatives, by the Foreign Affairs and National Defense Division, Congressional Research Service, Library of Congress.

leveled at Portugal (regarding Angola, Guinea, and Mozambique) and Liberia,³⁹ governments whose records of violations do not come close to that of the Soviet Union.

A Russian dissident recently smuggled out an extraordinary movie, currently in the Library of The Heritage Foundation, which captures the enormity of the human rights tragedy in the U.S.S.R. The movie depicts a memorial service held in Moscow and attended by the leaders of the principal human rights groups in the Soviet Union: the participants lit sixty-seven candles, one for each million of their compatriots whom they claim perished at the hands of the Soviet authorities. Most of those leaders are now behind bars.

In fact, mass murders by repressive governments have been virtually ignored at the U.N. The People's Republic of China has probably exterminated millions of its own citizens, with hardly a murmur from the U.N. beyond resolutions calling for the cessation of practices that deprived the Tibetan people of their human rights in 1959, 1961, and 1965. As William Korey, Director of International Policy Research for B'nai B'rith, pointed out, there are many other "blood baths which involved millions of people, yet because they occurred in Third World countries, the genocidal episodes were considered as not the proper subject for discussion within an international forum [such as the U.N.]."⁴⁰ And he continued, "all too often, Western delegates have abstained on vital issues rather than marshalling a vigorous opposition to subversive inroads into the basic system of fundamental human rights."

An excellent example is Thailand where, according to knowledgeable insiders, non-governmental organizations as well as members of the U.S. embassy have been putting pressure on U.N. officials to stop Thai atrocities against refugees from Cambodia and Vietnam. So far, unfortunately, the U.N. has not only been ineffective but, on occasion, has even exacerbated the situation.

THE RARE SUCCESS OF U.N. PROCEDURES FOR HUMAN RIGHTS

Though the U.N. record for dealing with human rights violations has been generally ineffectual, some successes have been scored. The Soviet invasion of Afghanistan was protested, at least implicitly, in three resolutions -- January and November of 1980 and November of 1981 -- when the General Assembly called for "the withdrawal of foreign forces." The General Assembly did not

³⁹ Ernest A. Landy, "The Implementation Procedures of the International Labor Organization," Santa Clara Law Review, vol. 20, no. 3, Summer 1980, p. 649.

⁴⁰ William Korey, "U.N. Human Rights: Illusion and Reality," Freedom at Issue, September-October 1977, no. 42, p. 29.

dare condemn the U.S.S.R. by name for its invasion of Afghanistan, though it has had no such scruples in the case of Israel, Chile, or other friends of the U.S.

The CHR also condemned the repeated violations of human rights in Kampuchea in 1980, 1981, and 1982. But the discussion, unfortunately, is usually cast in terms of supporting either the Vietnamese military occupation on the one hand or the Pol Pot regime on the other. The U.S., therefore, is in an unenviable position: for by voting against the former's efforts to be seated in the U.N., the U.S. might be seen as supporting the latter as the legitimate representative of the Cambodian people -- a bizarre consequence of U.N. politics, hardly a victory at all.

The Working Group on Disappearances might in some sense be counted a U.N. success. Established in 1979, the Group has managed largely to avoid politicization. As U.S. Representative to the CHR, Michael Novak, said on February 25, 1982, the Group has investigated all cases reported to it in the spirit of the highest U.N. ideals. Yet the very name of the group reveals its limits: the disappeared must be known to have existed. Moreover, it is difficult to verify a government's response. One of the most notoriously disputed cases is Raoul Wallenberg, the Swede who saved thousands of Jews from the Nazi holocaust: the Soviet Union claims that he died in 1947 in a Soviet prison. Millions of others throughout the totalitarian world have disappeared without a trace, with nothing but a candle by way of identity.

A victory at the formal level was won by the West on November 9, 1981, when the General Assembly passed the Declaration on All Forms of Intolerance and Discrimination Based on Religion and Belief. An overly enthusiastic assessment might be tempered, however, by the realization that the U.S.S.R. had in the past used such idealistic documents in unexpected ways. The New York Times reported on September 29, 1973, for example, that the previous day the Soviet Union had announced

that the two international human rights covenants that it has just ratified gave it specific authority to limit the right of emigration, the free flow of ideas and other individual liberties. Two major articles in Communist party publications used the covenants today to justify existing restrictions rather than to offer any hope that Moscow was preparing to relax its rules.

Less well-known for its human rights activities is the "good offices" of the Secretariat, which undertook during 1980-81, for example, some 120 emigration requests from communist countries on a humanitarian basis. But Secretariat officials admit that it is not known how many of these people were allowed to leave. Former Secretary General U Thant attempted to refute allegations of U.N. indifference to the plight of Soviet Jews by citing 400 cases on whose behalf he had personally intervened through his "good

offices."⁴¹ The effort was commendable, though hardly overwhelming, given the magnitude of the problem.

A genuine success was achieved at the meeting of the CHR that ended in mid-March 1982, where the U.S. Representatives, Richard Schifter and Michael Novak, were instrumental in passing a resolution to condemn the Soviet invasion of Poland and, even more important, to establish a monitoring system of the Polish situation over the course of the following year. In addition to behind-the-scenes bargaining, the two U.S. Representatives exposed in their speeches the human rights record of countries not usually under fire, notably the members of the Communist bloc.

CONCLUSION

Dealing with human rights is among the most significant but also most complex aspects of the U.N. mandate. Some U.N. officials, such as Mrs. Pilar Santunder-Downing, Chief of the Human Rights Division, New York Office, believe that passing idealistic resolutions is a step forward. Others are skeptical, convinced not only that actions speak louder than words but that words whose meanings become twisted can lead to further confusion and increased danger. The resolution condemning Zionism as a form of racism is one such case. Some high U.S. officials, for example Secretary Abrams, favor U.S. ratification of such instruments as the Genocide Convention. According to Abrams, however, ratification of any treaty should come only after a very careful definition of all the terms involved, and only if there is no conflict with the U.S. Constitution. Another -- ultimately more persuasive -- position is that the U.S. should refrain from becoming a party to any international agreements that have no prospect of impartial implementation.

Perhaps the most important task before the U.N. is the development of an adequate diplomatic language designed to resist the Orwellian developments of the last two decades. As Ambassador Jose Sorzano of the U.S. Mission to the U.N. explains, "we are now working to develop a more successful language; it is a process of trial and error." He and others at the Mission are optimistic about the results.

Diplomacy does not rule out continuing to speak up, as Carl Gershman did in the Third Committee of the General Assembly in October 1981; as did the two U.S. Representatives in the CHR; and Ambassador Kirkpatrick before the members of Congress and private groups. But speeches are only one aspect -- much remains to be done. For example:

⁴¹ U Thant, View from the U.N. (Garden City: Doubleday & Company, 1978), pp. 351-2.

- U.S. representatives to the U.N. should improve working relations with other, especially Western, delegates. U.S. officials at the U.N. mission claim some success in this regard.
- The U.S. should use financial leverage to modify the voting behavior on human rights issues of recipients of U.S. aid, such as Algeria, India, Mexico, Panama, and Peru -- all members of the CHR.
- The U.S. should expose the hypocrisy of U.N. activities, such as the Mid-Decade Women's Conference held in Copenhagen in July 1980, where U.N. funds were used for crass anti-Western propaganda.
- U.S. officials, as well as non-governmental organizations, should strongly urge U.N. officials to action in any case of human rights violation against people anywhere in the world.
- The U.S. should bring to the attention of the Security Council, in cooperation with other countries or alone, all significant acts which violate the provision of Article 2 (4) of the U.N. Charter prohibiting "the threat or use of force against the territorial integrity or political independence of any state."⁴²

Among the most effective ways of monitoring and perhaps improving the U.N.'s performance in the area of human rights is through congressional hearings. The House Subcommittee on Human Rights and International Organizations, for example, should investigate and publicize politicization throughout the U.N.'s human rights machinery, especially the CHR. There should also be investigations of such abuses of the confidentiality rules as why serious human rights complaints do not reach the Commission. Based on the congressional findings, the U.S. might reconsider whether it wishes to continue funding one-quarter of the U.N. budget.

On balance, it would seem better at least to have a place where human rights victims can send their complaints rather than be reduced to despair; a forum where governments can be chastised for invading other nations or for terrorizing their own citizens seems better than nothing. As officials of the Secretary General's "good offices" point out, saving even a few people is better than

⁴² This would focus public opinion on a significant context for human rights violations. The Iraqi invasion of Iran, the Somali invasion of Ethiopia, and Libya's foray into Chad are only some of the latest, lesser-known such incidents. See report by Ad Hoc Group on United States Policy Toward the United Nations, "The United States and the United Nations...A Policy for Today," October 1981, p. 4.

nothing. Yet a few successes may well be greatly overshadowed by the disadvantage of hypocrisy.

In truth, perhaps the most tragic consequence of the U.N.'s flawed human rights mechanism lies in misleading the victims. For if they are under the impression that their cries will be answered compassionately and fairly at the U.N., they are less likely to appeal elsewhere. To let victims hope when there is little prospect of their receiving help is the deadliest hoax of all.

Perhaps the U.N. is simply incapable of dealing with this particular issue. Another forum might be better suited. Private channels, such as the various refugee relief groups, might assume some responsibility. Or a completely new organization might be developed on a regional basis to deal specifically with human rights violations, handling problems more locally, vigorously, and evenhandedly. Such an organization should comprise exclusively governments that respect the basic prerequisites of freedom -- the right to emigrate and the right of free speech. Another alternative might be "The Geneva Group." Established in 1964 to provide the governments of developed democracies a means of coordinating their positions on financing U.N. activities, this mechanism might extend its work into the area of human rights. The members of the Geneva Group are Australia, Belgium, Canada, France, the Federal Republic of Germany, Italy, Japan, the Netherlands, Spain, United Kingdom, and the U.S.; observers are Sweden and Switzerland.

Human rights violations cannot be addressed seriously unless the same standards are applied to all nations. The dignity of man should not depend on political and ideological considerations. Paying lip service to human rights, as the U.N. so often does, is the worst of insults, a very travesty of benevolence.

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