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Human Rights and the Future International Community

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## Human Rights and the Future International Community

**V**IRTUALLY EVERY STATE IN THE WORLD accepts the concept of human rights, and most grant that human rights are an appropriate area of international concern. A substantial number of states have accepted the UN Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights, all members of the Council for Europe have ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms, and seventeen states in the Western Hemisphere adhere to the American Convention on Human Rights. In addition, numerous other international human rights instruments are in place.<sup>1</sup> What do all these developments signify?

To the human rights activist, they mark both the end of a long legislative struggle—which produced results far from perfect but which are perhaps the best that can be expected in this imperfect world—and the beginning of a new struggle: having gotten the signatures of all these King Johns on these various Magna Cartas, what can be done to make them stick? How can greater and more automatic compliance be assured, especially in those areas of the world where it is most needed and at the same time most difficult to assure?

To the theorist of international relations, the growing number of international human rights instruments also poses an intellectual puzzle: What, if anything, does it indicate about the changing quality of international life? To be sure, expressions of what we now call human rights are not unknown in the history of international relations. From the very beginning of the modern state system, there

were treaty obligations to tolerate heterodox religious worship. Granting justice to aliens has been standard fare, as have been attempts to limit the impact of warfare on civilian populations and to guarantee certain rights to prisoners of war. Various atrocities such as the pogroms in Russia seized the international community in the nineteenth century, and some prompted so-called humanitarian interventions. Under the mandate system of the League of Nations, the rights of native populations formed nothing less than “a sacred trust of civilization,” and the International Labour Office took equally seriously the rights of workers. However, as Louis Henkin has pointed out, in most such instances, specific state interests could be clearly discerned, whether to make possible the very existence of a system of secular states, as in the first example, or, as in the last, to provide capitalism with an international response to the siren song of socialism—while making sure that one’s trading partners gained no competitive advantage by squeezing labor harder than did anyone else. What, then, is new and different about current international human rights law? It is distinguished principally, according to Henkin, in that it “serves no patent, particular national interest. It is essentially ideological, idealistic, humanitarian; its true and deep purpose is to improve the lot of individual men and women everywhere . . . a unique and revolutionary purpose for international law.”<sup>2</sup> If this assessment were proved to be correct, then contemporary international expressions of human rights would signify a qualitative shift in the international community—a shift, borrowing Stanley Hoffmann’s apt metaphor, away from the Hobbesian floor, in the general direction of the Kantian ceiling.<sup>3</sup> I admit to being a theorist, so this possibility will be my concern.

A focus on the general features of the international community, as opposed to, say, the practice of specific states or the plight of specific individuals or groups, can be justified by two considerations, one philosophical and the other practical. First, moral claims and judgments inevitably are enclosed within moral orders wherein their validity can be established. These in turn are linked to social/institutional orders, within which moral arguments are recognized and can be vindicated.<sup>4</sup> The international community—since the seventeenth century, a society of states—constitutes one such moral and institutional ensemble. Any change in this ensemble, therefore, could alter the validity of past moral claims and judgments, not least, those con-

cerning such issues as human rights, which so deeply affect the role of the state itself. Second, and on a more practical level, the international community embodies a matrix of constraints and opportunities for state action. Presumably, this matrix would shift if the moral and institutional ensemble comprising the international community were to change. Those who would pursue an ethical foreign policy must therefore keep an eye on changes in the international community, changes that may make possible what had once seemed immensely difficult, or put out of reach what had seemed so close at hand.

The possibility that contemporary international expressions of human rights reflect a qualitative shift in the international community can be explored along at least three dimensions of change. The first is *normative*: Does the inclusion of human rights concepts into the language of international relations signal a change in prevailing principles of legitimacy, in generally recognized expectations about what is right and just in the international community? The second is *institutional*: Are arrangements on rights such as the two UN Covenants, and others, a sign that the international community is now able to exercise greater authority in an area that was once deemed to be strictly domestic? The third is *social*: Would the progressive realization of international human rights provisions reflect a transformation in the relationship between states and the broader international community, making it less of an anarchical society than it has historically been? In the following sections I briefly take up each in turn, drawing evidence and illustrations for my argument from the human rights instruments associated with the United Nations, as well as the West European and Inter-American regional arrangements.

#### PRINCIPLES OF LEGITIMACY

“The concept of human rights is a concept of world order. It is a proposal for structuring the world so that every individual’s human worth is realized, every individual’s human dignity is protected”<sup>5</sup>—such is the assessment of a former U.S. Assistant Secretary of State for Human Rights and Humanitarian Affairs. Elsewhere in this volume, Dieter Henrich examines the philosophical basis of the claim that human rights are valid and universal. My concern here is with the basis and scope of their political legitimacy in the international community.

When we speak of political legitimacy, we do so in regard to orders of political relations, as, for example, that between the state and the individual. When such an order enjoys legitimacy, it is widely recognized as being right and just, and there exists a shared understanding of why it should be so regarded.<sup>6</sup> Legitimacy does not guarantee that all behavior will conform to principle, but it introduces a systematic bias into the political community, shifting the burden of effort onto those who would contest the legitimacy claim. Likewise, when an order of relations loses legitimacy, the burden of effort is shifted onto those who would seek to maintain it. A good illustration of this process is the erosion of the legitimacy of colonialism in international relations and the growing recognition of the validity of decolonization throughout the twentieth century. The notion of human rights expresses a particular order of relations between state and individual. I shall address first the basis and then the scope of its international legitimacy, to see if either signals any fundamental transformation in the international normative order.

The conventional wisdom in the American study of international relations holds that normative factors are essentially epiphenomenal, mere rationalizations of structures of power. On this point, realists and neo-Marxists, who are often in disagreement, echo one another's arguments in form if not in substance. The paradigmatic realist view runs as follows:

Like some earlier great powers, we [the United States] can identify the presumed duty of the rich and powerful to help others with our own beliefs about what a better world would look like. England claimed to bear the white man's burden; France spoke of her *mission civilisatrice*. In like spirit, we say that we act to make and maintain world order. . . . For countries at the top, this is predictable behavior.<sup>7</sup>

And here is the neo-Marxist counterpart: "World hegemony . . . is expressed in universal norms and institutions which lay down general rules of behaviour for states and for those forces of civil society that act across national boundaries"—rules that "will not appear as those of a particular class," but which nevertheless "support the dominant mode of production."<sup>8</sup>

In some respects, the postwar history of internationalizing human rights illustrates this argument. Human rights provisions were im-

posed on the defeated powers via peace treaties, and constitutional safeguards for human rights demanded of both the occupied and newly independent states. Moreover, by any measure, the Universal Declaration of Human Rights, adopted by the UN General Assembly in December 1948, expressed the American liberal tradition more faithfully than any other. And the process of translating the Declaration into treaty form—the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights—at least in the beginning exhibited the predominance of the West in the UN General Assembly.<sup>9</sup>

But there is also counterevidence. The United States abandoned its leadership role in the field of human rights when the Eisenhower Administration announced in 1953 that it would sign neither Covenant; and it was a somewhat battered and diminished hegemon that, during the presidency of Jimmy Carter, signed the Covenants but failed to secure their ratification. And as the membership of the United Nations changed in the interval with the inclusion of the newly independent countries of the developing world, so too did its human rights emphasis: it moved away from civil and political rights toward economic and social rights, and toward collective rights, along with individual rights, in both areas.<sup>10</sup> The two Covenants, which came into force in 1976, clearly reflect compromises—between East and West, North and South. The “sacrilized individual,” as one African observer put it scornfully,<sup>11</sup> is still there, but gone is the right to own private property, whereas the principle of permanent sovereignty is firmly entrenched.

The field of human rights has provided particularly fertile soil for an intellectual position that differs radically from “the hegemony of hegemony”—as Richard Ashley has appropriately characterized the conventional wisdom<sup>12</sup>—a position that may be termed the neo-naturalist view. “Human rights is the idea of our time,” Henkin has declared. “It asserts that every human being, in every society, is entitled to have basic autonomy and freedoms respected and basic needs satisfied.” What is more, not only do human rights serve no particularistic national interest, but they “reflect no single, comprehensive theory of the relation of the individual to society (other than what is implied in the very concept of rights).<sup>13</sup> Or, as Myres McDougal puts it, human rights transcend “all differences in the subjectivities and practices of people.”<sup>14</sup> On what grounds, then, do the neo-naturalists

claim these rights rest? On empirical as well as philosophical grounds: empirically, “it is human rights that are positive national and international law, not the antihuman laws of Hitler or some other jurisprudence of terror”;<sup>15</sup> philosophically, “human rights correspond to the nature of man and of his society, to his psychology and its sociology”—that is to say, human rights reflect the emergence of a “new” or “neo” natural rights philosophy.<sup>16</sup>

In some respects, postwar history is illustrative of this argument as well: every state has accepted at least one international human rights instrument; none “dares to dissent from the ideology of human rights today” by offering either philosophical or political objections to the idea of individual rights;<sup>17</sup> and while particularistic state interests surely are served by the selective denunciation of human rights violations, no such interests would appear to be served by the enunciation of the rights in the first place.

Yet, here too there is counterevidence. Only in the West European system does the relationship between state and individual, as embodied in the notion of human rights, firmly enjoy international legitimacy.<sup>18</sup> But the significance of this fact is limited, in practical terms because the West European states are not prone to engage in the systematic violation of these rights in the first place, and in theoretical terms because the political framework of the region has become so thoroughly internationalized and supranationalized that community concern with the rights and welfare of the individual is simply one more element of a broader process of political transformation. The case of the Americas presents somewhat of an incongruity, combining, as it does, the following elements: a liberal inheritance; gross violations of human rights by several current regimes as instruments of government policy; an Inter-American Commission on Human Rights determined to expose violations of the rights to life, the physical liberty and the physical security of the person in particular; and a supportive (hegemonic?) United States.<sup>19</sup> And at the global level, there is a shared vocabulary endorsing human rights in general, but a cacophony of meanings and preferences concerning the vindication of any particular right.<sup>20</sup>

Thus, the record does not fully confirm either the conventional wisdom of the “hegemony of hegemony” school nor the position of the neo-naturalists. Human rights *are* more than a mere rationalization of structures of power. Yet their international normative status

remains closely dependent upon the projection of power, the defense of interests, and the nature of political community existing among states.

Turning now to the scope of those human rights that enjoy international legitimacy, it is clear that the concept itself has won a universal rhetorical victory and promises to become all-encompassing. This fact, however, obscures rather than signifies any meaningful international normative change. More to the point is the actual pattern of expectations revealed by states: By means of which arguments, and with how much energy and conviction, do they condemn or defend what kinds of action and inaction?

Viewed from this vantage point, the broad notion of human rights can be broken down into at least three distinct subsets. The first involves civil liberties and political rights as they are understood in the West, rights that, as Peter Berger accurately observes, "are plausible only to those who (whether by inheritance or adoption) stand within a specifically Western view of the world."<sup>21</sup> The verbal practice of states suggests that the denunciation of violations of these rights is dominated by tactical considerations, and the defense of their violation or nonexistence is largely perfunctory. In addition, there are few, if any, signs that states truly expect this situation to be otherwise.<sup>22</sup> The second subset consists of economic, social, and cultural rights. At the global level via the ILO, and regionally within the European Community, specific economic rights have been internationalized, and most states agree that the ends expressed by these economic rights are desirable. Beyond the European Community, however, ideological posturing along East-West and North-South lines dominates concerns regarding how best to achieve these rights.<sup>23</sup> As for social and cultural rights, nowhere are they seen to justify extensive international concern.<sup>24</sup>

The third subset relates to the physical security of the person, including freedom from torture and other forms of inhumane treatment or punishment. The normative status of these rights is both complex and anomalous. First, despite some disagreement about their precise content and more about whether any circumstances justify their violation, the minimal standards here are in fact more clearly understood and widely acknowledged than those for any other cluster of rights. Second, patterns of gross and systematic violations of these rights have occurred in recent years even as they were being

codified, especially in parts of the developing world. Third, certain governments accused of such violations have gone to considerable lengths to deny or to excuse their behavior, thereby implicitly accepting the legitimacy of the very rights they have been abusing,<sup>25</sup> but others have largely ignored external criticism and condemnation. Fourth, although the international community has in some cases accepted the use of foreign assistance and even direct foreign intervention in the overthrow of governments that violate these rights grossly and systematically,<sup>26</sup> it has largely ignored other and similarly egregious violations. Different clusters of rights obviously enjoy differential normative status in the international community. None, however, seems to enjoy universal political legitimacy at this time.

What, then, can we conclude? International expressions of human rights represent a substantive expansion of the international normative order. This in itself alters the day-to-day conduct of international relations, if only because a particular factor now demands attention that in the past demanded neither as much nor the same kind. But *how* this order is established, how, that is to say, human rights have achieved international political legitimacy, and *which* human rights are legitimate for what range of states, does not show signs of a more fundamental transformation.

#### INSTITUTIONAL MECHANISMS

In international politics, no one has the authority to command; no one, in turn, has any generalized obligation to obey—this is the most consequential feature of the international community. Situational imperatives, however, can—and often do—moderate the behavior of states vis-à-vis each other, as in the case of classical power-balancing or contemporary nuclear deterrence. Beyond this minimal level of institutionalization, which reflects purely short-term, self-interest calculations, there is a broad range of state behavior that is subject to specific institutional arrangements, which have been termed international regimes. Regimes institutionalize both the normative and procedural expectations that states hold concerning collective behavior in a given issue area. Examples include the nineteenth century gold standard and the post-World War II Bretton Woods regime in the monetary field, or the nineteenth century Concert of Europe and the current nuclear nonproliferation regime in the security area.<sup>27</sup> Do the

various international instruments in the area of human rights comprise international regimes? If so, what is their character? And do they show signs of institutional change that can be attributed to the concept of human rights?

From an institutional viewpoint, the most interesting international human rights instruments are in the area of civil and political rights. A brief summary follows of the salient features of the UN-based system and the European and Inter-American systems.

Although a Court of Human Rights exists under the European Convention, the vast majority of cases are dealt with through other means. The American Convention also provides for such a court, but as of 1982, only four states had accepted its jurisdiction. No such mechanism exists at the global level, nor is one provided for. Thus, with the partial exception of the European system, these instruments make possible the pursuit of human rights objectives primarily through political means. Although the three systems differ in several important respects, they also share important features, making it possible for us to discern consistent sets of state expectations.

### *The UN System*

In its early drafts, the UN Covenant on Civil and Political Rights provided that the principal measure of implementation would be through interstate complaints. A Human Rights Committee, created under the Covenant and consisting of individuals elected by states, but serving in their personal capacities, were to receive these complaints. As a subsidiary measure, the draft provided for a procedure of state-reporting, with the Human Rights Committee reviewing the reports. In the final text, this order was reversed: state-reporting and Human Rights Committee review became the principal means of implementation, with adherence to the interstate complaint procedure coming through the additional accession to one of the Covenant's specific Articles, rather than following automatically upon its ratification. Furthermore, the right of individual petitioning, which had figured in the draft, was made subject to a separate protocol altogether. Ideological lines played a relatively minor role in producing this outcome; a more general assertion of state control prevailed.<sup>28</sup>

As of the end of 1981, five years after it came into force, only fourteen states had acceded to the interstate complaints procedure; all but two, Senegal and Sri Lanka, were Western; and the procedure

had yet to be invoked. Twenty-seven states had acceded to the optional protocol allowing for individual petitionings, including several Latin American and African states, and the procedure was invoked thirty-three times between 1979 and 1982, twenty-one of which involved Uruguay, six for Canada, and six for Colombia.<sup>29</sup>

All states that have ratified the Covenant—thus far, fewer than half the member states of the UN—are required to submit reports to the Human Rights Committee detailing compliance with the Covenant's aims.<sup>30</sup> The first report is due within a year of entry into force, and subsequent reports are due at the request of the Committee, which reviews them and, in the process, questions state representatives. The Committee is entitled to ask for additional information and can, as in the case of Chile, reject the information submitted to it as being inadequate. The Committee then submits its own report to the UN Economic and Social Council, in which it may make "such general comments" as it considers appropriate about the issues it has reviewed. Until recently, no more universal instrument functioned effectively within the UN. Beginning in the 1970s, however, a statutory intergovernmental body, the Human Rights Commission of the Economic and Social Council, evolved means to investigate "particular situations which appear to reveal consistent patterns of gross and reliably attested violations of human rights requiring consideration by the Commission."<sup>31</sup> The procedures employed are cumbersome, the cases of specific individuals are not taken up, and very little information, other than the list of countries being investigated, is made public. The process, however, can be triggered by individual communications and by submissions from nongovernmental organizations. Human rights violations in a broad spectrum of countries have come under collective scrutiny by means of this procedure, and the scope of the Commission's concerns has increased progressively.<sup>32</sup>

### *The Regional Systems*

Under the European Convention, an interstate complaints procedure is instituted automatically upon ratification. The right of individual petitioning and the jurisdiction of the Court require acceptance of optional clauses, but are now also in force among all members of the Council of Europe. The interstate procedure is used sparingly, however, and although individual petitions number in the thousands, only 2 percent are declared admissible for consideration

by the Human Rights Commission. The remainder are ineligible because they have failed to exhaust domestic remedies, are not germane to the Convention, or have not made a *prima facie* case. The Commission is primarily a conciliation body, but where efforts toward friendly settlement fail, it can refer its opinions to a Council of Ministers, which has executive authority, or bring the case to the Court. Very few cases that the Commission has dealt with have advanced to either, but of those contentious cases that have, the Council, by a small margin, has considered more than the Court.<sup>33</sup>

The American Convention, unlike its European counterpart, has a mandatory provision for the right of individual petitioning, not only *by* individuals, but also on their behalf. Here it is the interstate complaints procedure that is optional, and it has been accepted by only three states. The Inter-American Commission on Human Rights was created by the Organization of American States in 1959, ten years before the Convention came into effect. Declared a principal organ of the OAS in 1965, the Commission has statutory authority beyond both the Convention and the states that have ratified it.<sup>34</sup> The Permanent Council of the OAS selects individuals for the Commission, and these Commission members serve in their personal capacities. The Commission receives and investigates complaints, questions governments, makes on-site visits, where permitted, to scenes of alleged violations, and issues a variety of reports, which, by the standards of international organizations, are unusually detailed and pointed.<sup>35</sup> Since the mid-1970s, with critical support from the United States, Commission activities have grown in magnitude and its reports have gained increasing attention in OAS General Assembly debates.

### *An Analytical Reprise*

I began this section by asking whether these three international human rights instruments constitute international regimes, what their character might be if they do, and whether they differ from other regimes in ways that can be specifically attributed to the concept of human rights. My answer to the first question is that there certainly appear to exist consistent sets of normative and procedural expectations on the part of states by virtue of which these arrangements may be termed regimes, though they are not terribly strong ones. In each case, primary responsibility for implementation rests at the national level, interstate complaints are avoided whether they are

automatic or optional, and with the partial exception of the West European system, collective investigation, review, and publicity are the major international mechanisms employed. Thus, these regimes appear to be designed to produce transparency in the intentions, attitudes, and behavior of states. Their purpose is both to embarrass perpetrators and to make it more difficult for others not to act in the face of at least some violations. Transparency rules out ignorance as an excuse for inaction all around. And where international self-help measures are available, transparency may make it necessary for other governments at a minimum to account for their inaction.<sup>36</sup>

This much the regimes have in common. They are also different, and the differences reflect the political frameworks of each. The West European regime attempts to resolve specific grievances by specific individuals, and has the greatest degree of autonomy. The global regime takes up gross and consistent patterns of violations, and is by far the most hesitant and constrained. The American regime falls between the two on both counts, and has advanced to its present state in no small measure due to the influence of the United States.

In sum, what is unusual about these regimes is that they exist in an area where none existed in the past. Their institutional design, however, reflects familiar terrain. For example, the global human rights regime is not unlike the global nuclear nonproliferation regime in design. In both, the locus of concern is domestic: violating human rights in the one case, and diverting nuclear material from peaceful to weapons purposes in the other. Both regimes are designed to produce transparency in state intentions, attitudes, and behavior; both do so by generating and disseminating information; and neither has any enforcement power. One major difference is that the nonproliferation regime has an independent and extensive monitoring capacity, whereas the human rights regime does not. This difference *is* attributable to differences in the two issue areas, but not of a sort that signals institutional change: the nonproliferation regime has the “advantages” that states view it as dealing with a more direct threat to international peace and security, that the possibility of reciprocal parallel measures by others acts as a more effective deterrent to would-be violators, and that it was established by superpower condominium to begin with. Lacking these traditional instruments of securing compliance, human rights regime cannot help but be weaker.

SOCIAL FRAMEWORKS

Theorists of the international legal order have used the term “revolutionary” when describing international human rights law, in the sense that it is said to differ radically from traditional interstate law.

The new law buried the old dogma that the individual is not a “subject” of international politics and law and that a government’s behavior toward its own nationals is a matter of domestic, not international concern. It penetrated the veil of sovereignty. It removed the exclusive identification of an individual with his government. It gave the individual a part in international politics and rights in international law, independently of his government. It also gave the individual protectors other than his government, indeed protectors and remedies against his government.<sup>37</sup>

To some, these developments amount to nothing less than the emergence of a *jus gentium*, transcending the *jus inter gentes* characteristic of the past three centuries.<sup>38</sup> This neo-medievalist vision is reinforced by the resurgence of naturalism, though admittedly a “new” naturalism, as a basis for solidarist claims in the international community. My concern is to what extent a corresponding tendency may be transforming the international polity, away from a society of states, toward a broader social framework for ordering the relations among the world’s people, a framework that some have called “world society.”<sup>39</sup>

The international polity *is* changing, and global political processes now exist that can no longer be accounted for strictly in terms of interstate politics. The agenda of international politics has broadened well beyond its traditional scope, the world economy increasingly functions as an integrated whole, national policy spaces are interpenetrated in numerous sectors, and a great variety of actors, governmental as well as nongovernmental, operate across national frontiers. The internationalization of human rights concerns is part of this broader process. Great care must be taken, however, not to exaggerate the extent to which “world” politics, as opposed to interstate politics, represents either a decline in the significance of states or the emergence of an integrated world society.

The human rights area illustrates well the need for caution. As Henkin himself points out,<sup>40</sup> human rights represent the claims of individuals *on their own society*, not on some other, least of all, we might add, on a cosmopolitan society. Moreover, international hu-

man rights instruments are designed not to provide human rights or to enforce human rights provisions, but to nudge states into permitting their vindication. To do this may well require that many states become stronger, because only an economically strong state can generate the resources and provide the opportunities to fulfill stipulated economic rights, and only a politically strong state can permit institutionalized opposition, social protest, and individual freedoms.

Lastly, it is as difficult to discern the political ontology of the new naturalism as it was the old, notwithstanding sociobiological theories to the contrary.<sup>41</sup> The natural species is not a political agency, and patterns of ecological and economic interdependency are not themselves constitutive of international political order. In sum, while further transformation of the society of states surely can be assumed from its appearance in international politics in the first place, to date the notion of a world society constitutes not a framework within which moral claims can be met but a vocabulary within which they may be articulated.<sup>42</sup>

\* \* \*

The individual in international relations, in the form of the prince, first helped to shape consciousness of the emergence of territorially distinct and mutually exclusive states, comprising, rather than being subordinated to, a broader community. The reemergence of the individual in international relations, in the form of human rights, signifies how much has changed in this community. Our brief survey has suggested, however, that there also remains a good deal of continuity.

The international normative order has expanded to incorporate human rights, but the factors that determine which human rights enjoy international legitimacy and how they come to achieve this status are little changed. Likewise, human rights regimes now exist, whereas none existed in the past, yet their design is consistent with that of regimes in analogous domains. And while the process of internationalizing human rights both reflects and contributes to greater complexity in the social framework of international politics, it leads neither to a lesser role for the state nor to a more integrated world society.

We are therefore led to two conclusions, which will please neither the theoretician impressed by the revolutionary potential of human rights law nor the practitioner dedicated to its vindication. In theoretical terms, the human rights field exhibits a combination of discontinuity and continuity that might be called rule-governed change. This mode of change has been identified in other nontraditional international issue areas as well.<sup>43</sup> It means simply this: that a new area of international activity exists and concerns international actors differentiates the present from the past, and to some extent alters day-to-day international politics. At the same time, how international actors respond to this new issue area and the underlying calculus of decision that their responses reflect continues to be shaped by factors and forces familiar to the student of international politics. The final outcome will reflect as-yet unforeseen second and third order consequences of present acts and therefore cannot be easily predicted. For the moment, however, it remains closer to a system reproducing itself within a new domain rather than one being transformed by it. If this is so, there follows a practical implication as well. The human rights struggle cannot count on benefiting from an international political transformation that it is itself helping to create. Where such a transformation is already under way, as in Western Europe, the cause of human rights is well served by it. Elsewhere, the human rights struggle is condemned to work within a system that remains fundamentally inhospitable to the kinds of claims and challenges it represents.

## ENDNOTES

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<sup>1</sup>These include the various conventions and regulations issued by the International Labour Organization, as well as the UN treaty instruments relating to genocide, war crimes and crimes against humanity, apartheid, racial discrimination, slavery, women, children, refugees, and stateless persons.

<sup>2</sup>Louis Henkin, "Introduction," in *The International Bill of Rights*, edited by Henkin (New York: Columbia University Press, 1981), p. 7. See also his more extensive historical survey in *The Rights of Man Today* (Boulder, Colorado: Westview Press, 1978).

<sup>3</sup>Stanley Hoffmann, *Duties Beyond Borders* (Syracuse: Syracuse University Press, 1981).

- <sup>4</sup>For an excellent discussion of these issues in the context of international relations, see R.J. Vincent, "Western Conceptions of a Universal Moral Order," *British Journal of International Studies* 4 (April 1978).
- <sup>5</sup>Patricia M. Derian, "Human Rights and International Law," *Department of State Bulletin* 81 (January 1981): 23.
- <sup>6</sup>This definition is drawn from Jürgen Habermas, the chapter "Legitimation Problems in the Modern State," in *Communication and the Evolution of Society* (Boston: Beacon Press, 1979).
- <sup>7</sup>Kenneth N. Waltz, *Theory of International Politics* (Reading, Mass.: Addison-Wesley, 1979), p. 200.
- <sup>8</sup>Robert W. Cox, "Gramsci, Hegemony, and International Relations: An Essay in Method," *Millenium: Journal of International Studies* (forthcoming).
- <sup>9</sup>James Frederick Green, "Changing Approaches to Human Rights: The United Nations, 1954 and 1974," *Texas International Law Journal* 12 (Spring/Summer 1977).
- <sup>10</sup>Ibid. The right to self-determination, for example, heads both UN covenants.
- <sup>11</sup>Asmarom Legesse, "Human Rights in African Political Culture," in *The Moral Imperatives of Human Rights*, edited by Kenneth W. Thompson (Washington, D.C.: University Press of America, 1980), p. 124.
- <sup>12</sup>Richard K. Ashley, "The Hegemony of Hegemony: Realism, Political Autonomy, and the Epistemology of System Change in the International Political Economy," draft manuscript, January 1982.
- <sup>13</sup>Henkin, "Introduction," p. 12.
- <sup>14</sup>Myres S. McDougal, Harold Lasswell, and Lung-chu Chen, *Human Rights and World Public Order* (New Haven: Yale University Press, 1980), p. xvii.
- <sup>15</sup>Henkin, "Introduction," p. 2.
- <sup>16</sup>Ibid., p. 12; cf. Vincent, "Western Conceptions."
- <sup>17</sup>Henkin, *The Rights of Man Today*, p. 28.
- <sup>18</sup>A. Glenn Mower, Jr., in "Human Rights in Western Europe: Progress and Problems," *International Affairs* 52 (April 1976), points out that governments in Western Europe have become increasingly cooperative in helping to process complaints against them.
- <sup>19</sup>For good overviews, see Bryce Wood, "Human Rights and the Inter-American System," in *The Future of the Inter-American System*, edited by Tom J. Farer (New York: Praeger, 1979), and Wood, "Human Rights Issues in Latin America," in Jorge Dominguez et al. *Enhancing Global Human Rights* (New York: McGraw-Hill, 1979).
- <sup>20</sup>The basic North-South and East-West differences, as exhibited by verbal behavior in the UN General Assembly, are outlined by Green, "Changing Approaches to Human Rights," and Hoffmann, *Duties Beyond Borders*, chapter 3.
- <sup>21</sup>Peter L. Berger, "Are Human Rights Universal?" *Commentary* 64 (September 1977): 62.
- <sup>22</sup>The pervasive hypocrisy and cynicism governing these practices are effectively documented by Hoffmann in *Duties Beyond Borders*, chapter 3. A recent review, including the practices of the Reagan Administration, may be found in Alan Tonelson, "Human Rights: The Bias We Need," *Foreign Policy* 49 (Winter 1982-83).
- <sup>23</sup>Long-standing Soviet criticisms of unemployment in the West as a denial of the right to work, and Western countercharges of forced labor in the Soviet Union, are a fairly typical illustration of the former. And the current debate between industrialized and developing countries, of whether the right to development is a

right the North owes to the South or one Southern governments owe to individuals within their countries, illustrates the latter.

- <sup>24</sup>This is true even of the West European region, where the European Social Charter, signed in 1961 and in force since 1964, shows little sign of life.
- <sup>25</sup>As a rule, Latin American governments tend to exhibit this posture.
- <sup>26</sup>The list of recent cases would include the Central African Empire, Nicaragua, Uganda, and perhaps Equatorial Guinea.
- <sup>27</sup>For theoretical and empirical explorations of the concept of international regimes, see *International Regimes*, edited by Stephen D. Krasner (Ithaca: Cornell University Press, 1983), first published as a special issue of *International Organization* 36 (Spring 1982).
- <sup>28</sup>Green, in "Changing Approaches to Human Rights," briefly describes how these changes came about. For descriptions of the current provision, see A.H. Robertson, "The Implementation System: International Measures," in *The International Bill of Rights*; and John Humphrey, "The Implementation of International Human Rights Law," *New York Law School Review* 24 (1) (1978).
- <sup>29</sup>United Nations, General Assembly, *Report of the Human Rights Commission*, Official Records: 34th through 37th Sessions, Supplement 40 (A/34-37/40).
- <sup>30</sup>The provisions of the Covenant on Civil and Political Rights call for the vindication of (1) life, physical liberty, and integrity of the person; (2) freedom of movement and residence; (3) privacy, family, and personal dignity; (4) freedom of conscience, thought, expression, and assembly; and (5) equality and nondiscrimination. The text is reprinted in Henkin, *The International Bill of Rights*.
- <sup>31</sup>This wording is contained in the enabling resolution of the Economic and Social Council, Resolution 1503 (1970). For its origins and background, see Frederic L. Kirgis, Jr., *International Organizations in their Legal Setting* (St. Paul: West Publishing Co., 1977), chapter 6, section 2.D.
- <sup>32</sup>For a comprehensive description of the evolving practice under ECOSOC Resolution 1503, consult T.J.M. Zuidwijk, *Petitioning the UN: A Study in Human Rights* (New York: St. Martin's Press, 1982). Among the countries whose practices have been considered by means of this procedure are Argentina, Bolivia, Burma, Chile, Equatorial Guinea, Ethiopia, Greece, Indonesia, Israel, Malawi, Nicaragua, Paraguay, South Korea, South Africa, Uganda, Uruguay, and the USSR.
- <sup>33</sup>Mower, "Human Rights in Western Europe," and Kirgis, *International Organizations*, chapter 6, section 4.
- <sup>34</sup>Wood, "Human Rights and the Inter-American System," and Kirgis, *ibid.*, chapter 6, section 3. At one point, there was some question of whether the status of the IACHR under the Convention would supercede its OAS statutory basis, but it has not. Had it done so, the Commission of course would have had no authority to investigate violations in nonratifying countries.
- <sup>35</sup>"They name individuals, detail methods of torture, quote from tape-recorded interviews with political prisoners, and finally, they make certain types of judgments about the performance of governments." Wood, "Human Rights Issues in Latin America," p. 175.
- <sup>36</sup>For example, provisions written into US foreign security assistance legislation call for the president to certify that the recipient country either meets certain human rights standards or is making good progress toward their fulfillment.
- <sup>37</sup>Henkin, "Introduction" (fn. 2), p. 6.

- <sup>38</sup>Humphrey, "The Implementation of International Human Rights Law." Cf. Rosalyn Higgins, "Conceptual Thinking about the Individual in International Law," *New York Law School Review* 24 (1) (1978). Higgins goes on to say that "Power, to be sure, rests still to a substantial degree with sovereign states: it is within their power, for the moment, to block the access of the individual to certain international tribunals and to continue to assert the old rule of nationality of claims. But the very notion of international law is not predicated upon this assumption, and the international legal system survives conceptually even were this to change" (p. 15).
- <sup>39</sup>Hedley Bull in *The Anarchical Society* (New York: Columbia University Press, 1978) examines this hypothesis extensively and critically.
- <sup>40</sup>Henkin, "Introduction" (fn. 6), p. 7.
- <sup>41</sup>The various bases of the new naturalism are mentioned in passing by Vincent in "Western Conceptions of a Universal Moral Order." Ernst Haas in "Words Can Hurt You; or Who Said What to Whom about Regimes," *International Regimes*, explores how helpful the physical and biological variants of this view are as guides to international regime change, and finds them wanting in efficacy. For a highly sophisticated, though no less flawed, economic variant, which bases claims for international distributive justice on the extent of economic interdependence, see Charles R. Beitz, *Political Theory and International Relations* (Princeton: Princeton University Press, 1979).
- <sup>42</sup>This paraphrases the conclusion reached by Vincent in "Western Conceptions."
- <sup>43</sup>For example, global responses to ecological problems exhibit similar characteristics, as I have sought to show in my paper "On the Problem of 'The Global Problematique,'" *Alternatives* 5 (January 1980).