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WORLD HABEAS CORPUS AND HUMANITARIAN INTERVENTION

LUIS KUTNER*

The situation of our time
Surrounds us like a baffling crime. . .
And all re suspects and involved
Until the mystery is solved
And under lock and key the cause
That makes a nonsense of our laws . . .
Yet our equipment all the time
Extends the area of the crime
Until the guilt is everywhere,
And more and more we are aware,
However miserable may be
Our parish of immediacy,
How small it is, how far beyond,
Ubiquitous within the bond
Of one improverishing sky,
Vast spiritual disorders lie.

. . . . . .

From W.H. Auden, "New Year Letter",
January 1, 1940.

Human intervention and World Habeas Corpus while seemingly antithetical, may be dialectically synthesized. World Habeas Corpus, a legal ligament of international order, envisions the establishment of an institution for the protection of the freedom of the individual:

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a system of international tribunals, reflecting the world's legal systems to which any individual who has been arbitrarily detained by any municipal authority and has exhausted all domestic remedies, may by right turn to, for a writ of World Habeas Corpus to order his release or to require the detaining authority to justify his detention. In contrast, humanitarian intervention, as a doctrine, in practice reflects the prevalence of a lawless world wherein sovereign states will, in certain circumstances, intervene in what would otherwise be the domestic affairs of other states to protect fundamental human rights in circumstances which have shocked the conscience of humanity.

Absent other effective means for the individual enforcement of international principles of human rights, humanitarian intervention is the means by which states, as subjects of international law, may act where the conscience of humanity is shocked. World Habeas Corpus, conversely, conceives of the individual as a subject of international law, able by international right to protect his freedom.

On the other hand, the doctrine of humanitarian intervention was the original precedent for making human rights a matter of international law and concern in the era of sovereign states and, in this sense, is the forebearer of World Habeas. Moreover, in the absence of effective means for the implementation of human rights, the doctrine of humanitarian intervention can be invoked to complement World Habeas or to enforce quasi World Habeas Corpus decrees by international tribunals, e.g. the Human Rights Commission or the International Court. This would provide a means by which states may have standing in matters affecting human rights. Based on the foregoing principles and propositions this paper endeavors to critically analyze the doctrine of humanitarian intervention in relation to the proposal for World Habeas Corpus and to suggest an institutionalized means for the protection and the implementation of fundamental human rights.

According to the accepted definition of humanitarian intervention, a state may interfere in the internal affairs of another state if that state conducts itself inhumanely towards its subjects in breach of the fundamental principles of civilized government and shocks the conscience of mankind. The general prohibition against domestic intervention in the domestic affairs of a state does not prevail where flagrant injustices or despicable atrocities have been committed within its jurisdiction.[1] Assistance by a state to protect the rights of its own

1. Feinberg, *International Protection of Human Rights and The Jewish Question (An Historical Survey)*, 3 Is. L. Rev. 487 (1968).

nationals in another state cannot be classified as humanitarian protection, but, involves rather, the protection of nationals abroad.[2] This view is not universally held, however.

Not all legal scholars accept the doctrine of humanitarian intervention.[3] The basic obligation of international law is to refrain from intervention in the internal or external affairs of any state;[4] a basic tenet of diplomatic and consular practice.[5] Intervention has been defined as the dictatorial interference by one state in the affairs of another for the purpose of maintaining or changing the existing order of things.[6] One writer, Van Glahn, contends that the only exceptions are (a) intervention by right for the protection of a state's territory; (b) if the foreign relations of one state endangers the external affairs of another; (c) if a state violates the rules of international law, e.g, the belligerent violation of the rights of a neutral state; (d) (more debatable)—if the citizens of one state are mistreated in another, e.g., the United States intervention in Nicaragua in 1909; (e) where there is lawful intervention by the collective action of an international organization; (f) and at the invitation of another state. He does not regard humanitation intervention as lawful, questioning whether the ends justify the means and whether such interventions were motivated by selfless aims.[7]

Waldock, however, contends that intervention, being a violation of another state's independence, was recognized to be, in principle, contrary to international law so that any act of intervention had to be justified as a legitimate case of reprisal, protection of nationals abroad, self defense, or alternatively, pursuant to a treaty with the state concerned.[8] Aside from special treaty rights, intervention was not so much a right as a sanction against a wrong or threatened wrong.

> WALDOCK: In strict theory, the legality of an intervention by many states acting together had to be judged by the same tests as that of an intervention by a single state, but politically and morally the distinction might sometimes be vital. On many occasions in the nineteenth century, the

2. *Id.*
3. *See,* Feinberg, *supra* note 1; WINFIELD, BRIT. YR. BKL OF INTL. LAW 161 (1924).
4. G. VON GLAHN, LAW AMONG NATIONS 159 (1965).
5. *See, e.g.,* STUART, AMERICAN DIPLOMATIC AND CONSULAR PRACTICE 196-97 (1952).
6. Van Glahn, *supra* note 4.
7. *Id.*
8. H. WALDOCK, LAW OF NATIONS 402-03 (Brierly 6th ed. 1963).

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> Great Powers intervened, by action which technically and legally involved a usurpation of power, in order to impose the settlement of a question which threatened the peace of Europe. In the absence of an effective international procedure for altering international conditions, such extra-legal action was sometimes the only practical alternative to war; but, lacking any constitutional authority, its basis was sheer power rather than law. Some support was, however, found among jurists for the view that humanitarian intervention by a number of Powers to prevent a state from committing atrocities against its own subjects or suppressing religious liberties, such as several times happened in the nineteenth century, was recognized by international law. Whether this really was so is doubtful in view of the strength in that period of the principle that a state's treatment of its own subjects was a matter exclusively within its own domestic jurisdiction.[9]

One writer has characterized humanitarian intervention as "an extraordinary remedy, an exception to the postulates of state sovereignty and territorial inviolability which are fundamental to the traditional theory if not actual practice of international law."[10] These writers (scholar jurists) regard the doctrine of humanitarian intervention as based not on the "nation-state oriented theories of international law" but upon "an antinomic but equally vigorous principle, deriving from a long tradition of natural law and secular values: the kinship and minimum reciprocal responsibilities of all humanity, the inability of geographical boundaries to stem categorical moral imperatives, and ultimately, the confirmation of sanctity of human life, without reference to place or transient circumstances."[11]

Legal scholars supporting the doctrine of humanitarian intervention, whether from a natural law or analytical jurisprudential perspective, regard humanitarian intervention as the ultimate sanction of international law to protect a minimum standard of human rights.[12] The sovereignty or jurisdictional exclusivity of the nation state was conditional upon a respect of these minimum human rights which Professor

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9. *Id.* at 403.

10. REISMAN, MEMORANDUM UPON HUMANITARIAN INTERVENTION TO PROTECT THE IBOS (1968). *See also* Reisman, *Making International Law Effective: The Case for Civic Enforcement* in THE UNITED NATIONS, A REASSESSMENT (J. Paxman & Cr. Boggs, eds. 1973) and HUMANITARIAN INTERVENTION AND THE UNITED NATIONS, (R. Lillich, ed. 1973).

11. Reisman, *supra* note 10.

12. *Id.*

Bourgier characterized as *le droit humain*,[13] a doctrine asserted consistently by others such as Grotius[14] and Vattel.[15] Borchard in conceptualizing this doctrine asserted that:

> . . .where a state under exceptional circumstances disregards certain rights of its own citizens over whom presumably it has absolute sovereignty, the other states of the family of nations are authorized by international law to intervene on grounds of humanity. When these 'human' rights are habitually violated, one or more states may intervene in the name of the society of nations and may take such measures as to substitute at least temporarily, if not permanently, its own sovereignty for that of the state thus controlled. Whatever the origin therefore, of the rights of the individual, it deems assured that these essential rights rest upon the ultimate sanction of international law, and will be protected, in the last resort, by the most appropriate organ of the international community.[16]

Oppenheim, in 1905, summarized international law practice with regard to humanitarian intervention:

> . . .should a state venture to treat its own subjects or a part thereof with such cruelty as would stagger humanity, public opinion of the rest of the world would call upon the Powers to exercise intervention for the purpose of compelling such states to establish a legal order of things within its boundaries sufficient to guarantee to its citizens more adequate to the ideas of modern civilization.[17]

Sir Herch (later Judge) Lauterpacht, in editing a recent edition of Oppenheimer's text in international law, observed:

> There is general agreement that, by virtue of its personal and territorial supremacy, a state can treat its own nationals according to discretion. But there is a substantial body of opinion and of practice in support of the view that there are limits to that discretion and that when a state renders itself guilty of cruelties against and persecution of its na-

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13. Rougier, *La Theorie de l'intervention d'humanite*, in REVUE GENERALE DE DROIT INTERNATIONAL PUBLIC 516 (1910).
14. H. GROTIUS, THE RIGHTS OF WAR AND PEACE 285-84 (1901).
15. E. de Vattel, *Le Droit des Gens*, PRINCIPES DE LE LOI NATURALIS.
16. BORCHARD, THE DIPLOMATIC PROTECTION OF CITIZENS ABROAD 14 (1922).
17. OPPENHEIM, INTERNATIONAL LAW 347 (1905).

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> tionals in such a way as to deny their fundamental human rights and to shock the conscience of mankind, intervention in the interest of humanity is legally permissible.[18]

Lauterpacht has, however, written elsewhere that "the doctrine of humanitarian intervention has never become a fully acknowledged part of international law,"[19] a view not universally held.[20]

In the sixteenth and seventeenth centuries, the doctrine of humanitarian intervention was based on religious grounds. Vittoria (1480-1546), the Spanish Dominican, contended that the heathen princes were legitimate, but argued that resistance by them to the Christian missionaries and measures to force converted Indians to return to paganism would entitle the Pope to depose the Indian princes to be replaced by Christians and justified war.[21] Religion was, until the Peace of Westphalia, the ideological basis for intervention. Subsequently, religion no longer remained as a basis in Western Europe but did remain so in Eastern Europe. Catherine, for example, justified intervention in Poland and Turkey on religious grounds. In the 19th century, western powers intervened on behalf of the Ottoman Empire with whom they shared a common faith. Secularization of religious belief led to basing such intervention on behalf of the dignity of man.[22]

Humanitarian intervention, as practiced in the 18th and 19th centuries was concerned primarily with the rights of Jews and Christians and other minorities in Eastern Europe and the Ottoman Empire. It was generally exercised through diplomatic channels and played a part in international congresses and conferences. Though there were instances of military intervention, in most instances humanitarian intervention was confined to diplomatic protest and took the form of diplomatic intercession. In many instances, particularly with regard to the interventions in the Ottoman Empire, intervention may well have been motivated not entirely be selfless goals. The intercessions on behalf of the Jews were generally prompted by idealistic considerations.

The principle of international protection of the Jews was stated by Edmund Burke in a speech in Parliament in 1781.

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18. OPPENHEIM, INTERNATIONAL LAW 279 (H. Lauterpacht, 7th ed. 1948).

19. Lauterpacht, *The Grotian Tradition in International Law*, 23 BRIT. YR. BK. OF INT'L LAW 46 (1946).

20. C. de VISSCHER, THEORIES ET REALITIES EN DROIT INTERNATIONAL PUBLIC 219-21 (1950).

21. J. SCOTT, 1 SPANISH ORIGINS OF INTERNATIONAL LAW (1934).

22. Green, *General Principles of Law and Human Rights*, 8 CURRENT LEGAL PROBLEMS 162 (1955-56).

> Having no fixed settlement in any part of the world, no kingdom nor country in which they have a government, a community nor a system of laws, they are thrown upon the benevolence of nations . . . If Dutchmen are injured and attacked, the Dutch have a nation, a government and armies to redress or revenge their cause. If Britains are injured, Britains have armies and laws, the law of nations . . . to fly for protection and justice. But the Jews have no such power and no such friend to depend on. Humanity, then, must be their protection and ally.[23]

In 1867, the British representative in a dispatch to the Rumanian Government stated: "The peculiar position of the Jews place them under the protection of the civilized world."[24]

These principles were reflected in treaties adopted during the 18th century which protected the Jews and other minorities. This tradition for the protection of minorities in European peace treaties has prevailed for over 300 years. Almost without exception, major peace treaties involving changes of sovereignty contained clauses safeguarding the rights and properties of populations transferred to new sovereignties.[25] For example, the Berlin Treaty of 1878 bound Bulgaria, Montenegro, Serbia and Rumania to respect the principle that "differences of religion, creeds and confessions shall not be alleged against any person as a ground for exclusion or incapacity in matters relating to the enjoyment of civil and political rights."[26] A similar provision had previously been incorporated in the treaties resulting from the Congress of Vienna. The doctrine of humanitarian intervention that was involved within the context of these treaty provisions and which also encompassed protection of the Jews, became a part of diplomatic practice.

Occasionally this intervention took the form of counselor protection as when the British and other Counsels during the 19th century protected the rights of Jews and Christians in Jerusalem; though this action was also prompted by political considerations.[27] For instance,

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23. BURKE, 13 PARLIAMENTARY HISTORY OF ENGLAND FROM THE EARLIEST PERIOD TO THE YEAR 1803 (1814); Feinberg, *supra* note 1.

24. Feinberg, *supra* note 1.

25. *Id.*

26. Robinson, *From Protection of Minorities to Protection of Human Rights*, 1 JEWISH YR. BK. OF HUMAN RIGHTS 115 (1948).

27. Rabinowitz, *The British Connection*, Aug. 13, 1973 (Special Anglo-Israel Supplement); *Chapiro*, THE COUNCIL OF JEWISH MESSENGERS OF THE JEWS OF AMERICA, 4-3 (76-77) Gesher 128, 148, Dec. 1973 (In Hebrew).

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in 1870 President Grant appointed Benjamin Peixatto, a Jew and leader of the Bnai Brith Order as Counsel in Rumania for the purpose of protecting the Jewish population. In a letter of introduction for Prince Charles, ruler of Rumania, the President stated that Peixatto "has undertaken the duties of his present office more as a missionary work for the people he represents than for any benefit to occur to himself."[28] His duties relating to human intervention is not an exclusive examplar of such acts.

Another innovative example of United States intervention on behalf of Rumanian Jews occurred in 1902 when Secretary of State John Hay sent a note to the American Counsel in Athens, who was then negotiating a naturalization treaty with Rumania, which was in effect an indictment of that Government's policy towards its Jewish population. Though the United States was not a party to the treaty of Berlin of 1873, copies of the note were sent to the states which were a party to the treaty—Great Britain, France, Russia, Germany, Austro-Hungary, Italy and Turkey—to induce them to take whatever steps might be necessary to pressure Rumania to fulfill the obligations which it had undertaken under the Treaty of Berlin, though the United States itself was not a party to the treaty.[29]

Because humanitarian intervention was not accepted universally at the time and because the United States felt it proper to base its protest not only on humanitarian grounds but also on the contention that:

> "the unbearable situation of the Rumanian Jews was driving them to abandon their native country, with the result that multitudes of paupers and outcasts were reaching the shores of America and, since they left their homes not of their own

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28. Feinberg, *supra* note 1. In 1840, During the Van Buren administration, Secretary Forsyth reported to Jewish community leaders that he had directed the American counsel in Alexandria to intervene on behalf of Jews who were being persecuted in Damascus as a result of a ritual blood libel. J. Ezekiel, *Prosecution of the Jews in 1840*, 3 THE JEWISH EXPERIENCE IN AMERICA 267-69 (1969). In 1869 Secretary of State Hamilton Fish was hesitant to interfere with regard to a threatened deportation of Jews from Bessarbia by Czarist authorities. Greenberg, *An 1869 Petition on Behalf of Russian Jews*, 3 THE JEWISH EXPERIENCE IN AMERICA 167-69 (1969). In 1869 Secretary of State Hamilton Fish was hesitant to interfere with regard to a threatened deportation of Jews from Bessarabia by Czarist authorities. Greenberg, *An 1869 Petition on Behalf of Russian Jews*, 3 THE JEWISH EXPERIENCE IN AMERICA 353-70 (1969); *see also* Shapiro, *supra* note 27.

29. Feinberg, *supra* note 1; Fartner, *Counsel Peixotto in Bucharest*, AM. JEWISH HISTORICAL QUARTERLY 25-117 (Sept. 1968).

> free will but because of the oppression suffered by them there, their migration lacks the essential conditions which make alien immigration either acceptable or beneficial."[30]

The article stated further that "the United States offers asylum to the oppressed of all lands. But its sympathy with them in no wise impairs its just liberty and right to weigh the acts of the oppressor in the light of their effects upon this country . . . " and stressed that

> "this Government cannot be a tacit party to such an international wrong. It is constrained to protest against the treatment to which the Jews in Rumania are subjected, not alone because it has unimpeachable ground to remonstrate against the resultant injury to itself, but in the name of humanity. The United States may not authoritatively appeal to the stimulations of the treaty of Berlin, . . . but it does earnestly appeal to the principles consigned therein, because they are the principles of international law and eternal justice . . . "[31]

The United States had previously stated as to Rumanian Jews that:

> "the wrong in question is so flagrant and of such a universal and cosmopolitan character that all governments and faiths have an interest in demanding that it be recessed."[32]

In the 20th century, the American State Department protested against the persecution of the Jews in Czarist Russia. During the administration of Theodore Roosevelt, a petition of Jews and other Americans was forwarded by the State Department to the Czarist regime expressing opposition to persecution. Though the Czarist Government refused to accept the petition, the act in itself was a significant gesture.[33]

In 1913, the Congress of the United States revoked the Russian-American Treaty of Commerce of 1832 in reaction to the Kishinev pogroms, and over the Czarist exclusion of American Jews, a precedent for the contemporary Jackson amendment. However, the failure to intervene or intercede on behalf of the Jews of Germany in the 1930's and the Jews of Europe in the 1940's in the face of the Nazi genocide remains a blot on the conscience of mankind.

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30. Feinberg, *supra* note 1.
31. *Id.*
32. *Id.*
33. *Id.*; L. WOLF, THE LEGAL SUFFERINGS OF THE JEWS IN RUSSIA (1912).

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Humanitarian intervention was, similarly, invoked with regard to mistreatment of Christians and Jews in the Ottoman Empire, though power politics was also involved. Great Britain, France and Russia, for example, intervened militarily in Greece, resulting in the independence of the country in 1830, with the action justified on the grounds of humanity.[34] Turkish massacres of Christians in Syria provided a basis for the French to intervene militarily on the basis of a protocol issued at the conference of Paris, attended by Austria, France, Great Britain, Prussia, Russia and Turkey.[35] The intervention resulted in the writing of a constitution for Lebanon, providing for a Christian governor, responsible to the Portes.[36]

Similarly, when Crete revolted in 1866, alleging Turkish misrule and persecution of Christians; Austria, France, Italy, Prussia and Russia called for the establishment of an International Commission of Inquiry to conduct a fact finding exploration into the allegations. Turkey refused, claiming that the matter was one of domestic jurisdiction. To avoid military intervention, Britain interposed as a neutral mediator, proffering friendly advice to Turkey. The Turkish government responded by promulgating a constitution deemed acceptable to the Christian population and made commitments for the protection of human rights.[37]

Alleged mistreatment of the Christian populations in Bosnia, Herzigovina, and Bulgaria resulted in intervention by Austria-Hungary, France, Germany, Great Britain, Italy and Russia who insisted on a conference with Turkey. The powers demanded that an international commission operate in the areas to observe and protect the Christians.[38] When Turkey rejected the proposal, the powers convened, without the Porte, in London, and agreed on a protocol reserving to themselves a right of action if Turkey failed to maintain certain minimum conditions. Turkey rejected the protocol, and Russia waged war. By the treaty of San Stefano and the Congress of Berlin of 1878, a system of Christian autonomy was established for Bulgaria and Montenegro, Serbia and Rumania were made independent, and Bosnia and Herzegovina were occupied and annexed by the Dual Monarchy of Austria-Hungary.

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34. Reisman, *supra* note 10, at 19; GANJI, INTERNATIONAL PROTECTION OF HUMAN RIGHTS (1962).

35. 51 BRITISH AND FOREIGN STATE PAPERS 292.

36. *Id.* at 268-92.

37. Ganji, *supra* note 34, at 26-27.

38. 68 BRITISH AND FOREIGN STATE PAPERS 823, 1114; 69 BRITISH AND FOREIGN STATE PAPERS 749.

Though the Treaty of Berlin provided for protection of the rights of minorities, the annexations increased international tension in the Balkans and was one of the factors which led to World War I. Riesman regards the humanitarian intervention in this instance as having been defective in that there was a "lack of inclusive supervision of its terms, facilitating abuse (with partial but not maximum alleviation of the subject peoples in question) by one of the intervening powers."[39] However, he contends that the case does not undercut the authority of humanitarian intervention, but does "suggest that structural and functional checks upon an intervention can anticipate and prevent the possibility of abuse."[40]

Another instance of intervention in the Ottoman Empire occurred in 1903 when, in the course of a rebellion in Macedonia, Turkish troops attacked the civilian population and destroyed many villages. Acting on behalf of the European powers, Austria-Hungary and Russia demanded that the Sultan provide for the Future protection of the population in accordance with certain procedures and that a year's taxes be remitted as reparation.[41] Turkey accepted the demands, but the subsequent revolution within Turkey led to the perpetration of new atrocities and was in part a factor leading to a declaration of war by Greece, Bulgaria and Serbia.[42] The doctrine of human intervention has had further implications than those previewed.

The United States' policy on humanitarian intervention was influenced by the British. In 1877, the Department of State stated that it could not render a protest on humanitarian grounds without the permission of the government in question.[43] A year later, however, upon a request to protest mistreatment of Jews in Barbary, the Department of State stated in a directive to its counsel that ". . . there might be cases in which humanity would dictate a disregard of technicalities, if your personal influence would shield Hebrews from oppression."[44] Shortly thereafter the consul of Tangiers was instructed that he was at liberty to act in such cases ". . . so far as many be consistent with his international obligations, and the efficiency of his official relations with the Schariffian Government."[45]

The United States intervention in the Cuban rebellion against

39. Reisman, *supra* note 10, at 23-24.
40. *Id.*
41. Ganji, *supra* note 34, at 36-37.
42. *Id.*
43. 6 MOORE, DIGEST OF INTERNATIONAL LAW 349 (1903).
44. *Id.*
45. *Id.*

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the Spanish Monarchy was based in part on the doctrine of humanitarian intervention. The sanguinary insurrections in Cuba during the latter part and end of the nineteenth century vexed the United States.[46] The insurrection of 1868-78 concerned the United States because of suppressive measures taken against American naturalized citizens with Cuban names and insurrectionary habits, and because of the problem of policing American territorial waters to prevent the departure of hostile expeditions against a friendly power. In 1869, President Grant, through Secretary of State Hamilton Fish, offered the good offices of the United States to Spain for settling the conflict on the basis of abolition of slavery and Cuban independence in exchange for an indemnity to Spain, the payment of which was to be guaranteed by the United States. Spain refused to consider peace unless the insurgents surrendered. However, it did feel constrained to recognize the right of the naturalized American citizens to their status and to full protection from arbitrary military tribunals—unless captured with arms in their hands—in accordance with the Pickney Treaty of 1795 and a protocol thereto of January 12, 1877. An agreement was reached to adjudicate claims of American citizens before a mixed claims tribunal.[47] The United States refrained from recognizing Cuba's belligerency, despite pressures from Congress. This position strengthened the United States' legal position when a fillibustering ship, the *Virginius*, fraudulently—as later proved—flying an American flag, was seized by Spanish authorities who summarily, after a nominal court-martial, executed 53 of its passengers and crew. After the United States issued an ultimatum, Spain restored the ship and paid an indemnity of $80,000 to be distributed to the families of the persons executed. Promises to punish the Spanish officers involved in the seizure and executions were not fulfilled. Spain also paid an indemnity to Great Britain for nineteen British subjects who were also executed. Though incidents of embargo and confiscation continued, the United States refrained from intervening.

Fish sought the help of the European powers in resolving the conflict. He sought British cooperation and dispatched a note to Minister Caleb Cushing to be presented to the Spanish Minister of Foreign Affairs, expressing the determination of the President that means be found to restore peace to Cuba on the basis of emancipation and self government. Other European powers were also asked to intercede with the Spanish Government. Fish was criticized for

46. S. BEMIS, A DIPLOMATIC HISTORY OF THE UNITED STATES 432-50 (6th ed. 1965).

47. *Id.*

jeopardizing the Monroe Doctrine by inviting European cooperation to solve an American question. This approach had been unprecedented and was never again undertaken. The European powers, concerned with their own problems at the time, only interceded and did not undertake any active intervention. The conflict ended after Spain finally was able to supress the rebellion.

The revolt flared anew in 1895. The Cuban revolutionists sought to break the Spanish rule by methodically destroying the sugar plantations and cattle ranches via funds and support received from *juntas* of compatriots organized in the United States and other countries who themselves attempted hostile actions from United States territorial waters, violating the neutrality laws. Spain, under the guidance of General Weyler, reconcentrated the civilian population, treating all outside the concentration camps as rebels. With no sanitation, the civilian reconcentrados of the camps suffered deprivations and many died. The property and persons of American citizens domiciled in Cuba were arbitrarily interfered with by the Rebels. President Cleveland and Secretary of State Olney asserted the protection of the rights of American citizens in accordance with treaty rights while interceding with Spain to accept American mediation to end the conflict. Cleveland, however, resisted Congressional pressure to intervene to free Cuba. He proposed to cooperate with Spain to bring peace to Cuba on the basis of home rule which he coupled with an assurance against any design on Spanish sovereignty. The Spanish Cabinet declined the offer, distrusting American intentions. Prior to leaving office in 1896, Cleveland warned that a situation could arise "in which our obligations to the sovereignty of Spain will be superseded by higher obligations, which we can hardly hesitate to recognize and discharge."[48]

McKinley, like Grant and Cleveland, offered his good offices which were declined by Spain. Spain, meanwhile, introduced reform measures and removed General Weyler. The home rule measures were opposed by the Spaniards living in Cuba and by the revolutionists. McKinley, however, declared that he would allow time to test Spanish sincerity. But there was the persistent spectacle of human suffering close to American shores which were made vivid by the journalism of the time which whipped up public passions. Political leaders were stressing America's "Manifest Destiny". Public sentiment was aroused by the blowing up of the American battle ship, the *Maine*, in Havana harbor. Spain offered to arbitrate matters arising from the incident and agreed to proclaim an armistice. The European governments

48. *Id* at 440.

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sought to mediate. The foreign minister of Austria-Hungary secured the approval of Great Britain, Germany, France, Italy, Austria-Hungary and Russia to a joint note which was presented to President McKinley stating that they hoped for humanity's sake the Cuban question could be solved peaceably. McKinley stated that he agreed, but that if the United States did intervene, it would be for humanity's sake. The Congress forced the President to intervene by passing a joint resolution authorizing military action but also disclaimed any intention to exercise sovereignty, jurisdiction or control over Cuba except for its pacification and to then leave the government and control to the Cubans.[49] McKinley signed the joint resolution in 1898 and conveyed an ultimatum to Spain, as expressed in the resolution that Cuba be independent, that Spain withdraw from the island, and that the President was empowered to take military measures to put the resolution into effect. Spain refused to accept the ultimatum and chose war. Congress declared that a state of war had been in existence and the President proclaimed a blockade of the north coast of Cuba and the Port of Santiago.

After the Spanish forces were defeated, a constitutional convention was convened and within two years the Cuban Republic was created. However, the United States continued to intervene in the domestic affairs of Cuba. In 1901 Congress enacted the Platt Amendment which gave the United States the right to intervene "for the preservation of Cuban independence, the maintenance of a government adequate for the protection of life, property and individual liberty" and for discharging the obligations by the Treaty of Paris.[50] The effect of the Amendment was to make Cuba a protectorate of the Untied States. The Cubans were required to accept it as a condition for United States evacuation following the end of the Spanish-American War. The terms were embodied both in a treaty with the United States and in the Cuban Constitution. The Amendment and the protectorate status was later abolished during the administration of Franklin D. Roosevelt by treaty in 1934.[51]

The principles of humanitarian intervention, as manifested in international practice were institutionalized following World War I in the treaties protesting the rights of minorities. These treaties represented a continuation of a more than 300 year old tradition of protecting religious and national minorities.[52] Jewish groups at the

49. *Id.* at 449.

50. *Id.* at 504-05.

51. *Id.* at 505-06.

52. Robinson, *supra* note 26; 1 OPPENHEIM's INTERNATIONAL LAW 650-56 (Lauterpacht, 7th ed 1948).

Paris Peace Conference played a significant role in the adoption of these treaties.[53] The treaties applied to the emerging states of eastern Europe, the defeated powers of Austria, Hungary, Bulgaria and Turkey, and also to victorious states, Poland, Yugoslavia, Greece and Czechoslovakia and to Lithuainia, Latvia, Estonia and Albania. But the treaties did not apply to the major powers. Adherence to the principle of protecting rights of minorities was a condition for sovereignty and state-hood. The minorities treaties provided for the protection of life and liberty and free expression of religion for all inhabitants, and for certain inhabitants automatic, or at least facilities for acquisition of citizenship. For national groups, it provided equality before the law as to political and civil rights and as to the use of any language which the Permanent Court of International Justice interpreted to be in fact, as well as in law; freedom of organization for religious and national purposes and state provision for the elementary instruction of their children through the medium of their own language.[54]

Enforcement by the contracting states was undertaken by treaty stipulations which recognized the principle clauses as fundamental law and an undertaking that no law, regulation or official act shall conflict or interfere with the treaty principles. The treaty clauses constituted "obligations of international concern" and were placed under the guarantee of the League of Nations and could be modified only with the consent of a majority of the League Council. Any member could present a complaint as to an infraction before the Council to be regarded as a dispute of an international character. Disputes relating to treaty interpretation were referrable to the Permanent Court of International Justice. A procedure was established by which complaints by individuals and groups could be submitted with the League Secretariat establishing a minorities section. The minorities system broke down in the 1930's with the general break down of the League and international order. However, the minorities system represented a precedent in extending the fundamental rights of the individual under international law. It represented a significant advance from the doctrine of humanitarian intervention.

As Lauterpacht observed, the basing of human rights on humanitarian intervention was a "precarious doctrine."[55] It was honored more in theory than in practice. Governments saw a conflict between the defense of human rights through external intervention and considerations of international peace created by such intervention. There is

53. Robinson, *supra* note 26.
54. Robinson, *supra* note 26; Lauterpacht, *supra* note 52.
55. LAUTERPACHT, INTERNATIONAL LAW ON HUMAN RIGHTS 31-32 (1958).

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also the view that such intervention, far from protecting victims produces contrary vices, contrary to expectations. However, the fury of persecution receives an impetus not only from foreign acquiescence but also from the hesitation and reserve of foreign intervention coupled with the courteous advice that there is no right of intercession. The infrequency and sporadic use of humanitarian intervention makes it hardly a rule of international law. Britain, for example, failed to protect British Jews in Czarist Russia, claiming they had no legal claim to be treated differently.[56] The attitude of the United States was different.[57]

In the 1920's and 30's, there was a backsliding of international concern for human rights as nations refrained from intervening. Most shocking was the failure to intercede or take any action on behalf of the Jews murdered by the Nazis. The role of the Roosevelt administration and the United States Department of State in refusing to aid refugees and in inhibiting public recognition of the holocaust were well documented.[58] The allies in World War II refused to recognize the Jews as a distinctive victim. The United States refused to recognize the victims of the extermination camps as prisoners of war, a step which would have saved many thousands. The State Department refused efforts for recertification or to allow immigration. This reluctance was based on several factors.

Among the reasons for failure to intervene was the failure of American Jews to form an effective constituency of support. One group, the American Jewish Committee, stressed the well mannered approach of the dignified letter to government leaders followed by interviews. Though the Committee had been effective during the Taft and Wilson administrations in instigating American support for Jewish rights in Eastern Europe, it failed to understand the difference between the Nazis and previous persecutions at the time when German Jews appealed to it when Hitler first came to power. They were cautious, fearing imprudent action would strengthen pro-Nazi sentiment inside Germany. Another group, the American Jewish Congress, had a more militant style which included boycotts. Both groups, believing in the melting pot, relied on a normative appeal to American tradition, ideals and defense of human rights. Each looked on Roosevelt as their benevolent patron. However, the Jewish voters' solid support for the President was never used as a resource for bargaining.

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56. MCNAIR, LAW OF TREATIES 250-51 (1938).

57. Lauterpacht, *supra* note 55.

58. Morse, While Six Million Died (1968): Feingold, The Politics of Rescue; THE ROOSEVELT ADMINISTRATION AND THE HOLOCAUST (1980).

He was seen as the enemy of their enemies, who in turn berated him for supposedly identifying with the Jews.[59]

Antisemites, representing the elite and the mass, castigated FDR publicly and privately by labelling his administration a "Jew Deal" and pejorative epithets against Franklin and Eleanor were circulated among the White Anglo Saxon Protestant (WASP) social elite from which Roosevelt originated. The State Department was believed to be largely staffed by this elite. Roosevelt's sensitivity to rejection by the WASP elite reinforced his political calculation that agreeing to Jewish appeals which aroused Congressional and State Department opposition was not prudent. Opposed to the advocates of rescue during the pre-World War II years were numerous native fascist, patriotic veterans, and anti-immigration groups of diverse interest.

> The President was thus confronted with a readily resolvable role conflict: on one side a miniscule, but strategically situated, ally who escalated exhortation, but never would emply any sanctions; on the other, a consensus of elite, ideological and interest groups, and political managers speaking (accurately) in the name of the majority, all of whom wanted to check any measures to open up the gates to more refugees. Roosevelt yielded without demurer to the party which threatened sanctions for non-performance without incurring any costs from failing to satisfy the Jews; he had discovered that they were readily placated by symbolic reassurances. Since both parties could claim they represented legitimate values, one might justify either policy; while Jewish leaders spoke in the name of humanity, State Department officials spoke in the name of the law-itself reinforced by public consenses against immigration-and security.[60]

The case indicates that "No group has any basis to expect intervention from another nation-state if the nation harboring it wars against its right to exist unless there is a constituency on the victim's behalf mobilized in a more powerful nation."[61] Where such a constituency does not exist or does not effectively exert its influence, as with regard to the slaughter of ethnic groups in Pakistan, Cambodia, Nigeria and Burundi, or the mass political suppression in Indonesia and Chile or the suppressions in Northern Ireland, indifference

59. Fein, *Toleration of Genocide*, 7 PATTERNS OF PREJUDICE 22 (Sept.-Oct. 1973).
60. *Id.* at 27.
61. *Id.* at 28.

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or mere token hypocritical rhetoric of disapproval has been elicited by the United States and other powers. However, the United States has intervened to secure the right of immigration for the Jews from the Soviet Union because of the concerted drive of American Jewish groups on their behalf with support elicited from both political parties. Had the Jews been more assertive of their particular rights in the 1930's, as were the Negroes who threatened a march on Washington to demand job equality, they probably would have been more successful. The assumption of submerging particularistic to universal claims under the "melting pot theory" was rejected in the 1960's as set by the precedent of the black movement for collective self assertion. As a result, recrudescence of ethnic consciousness has emerged in the United States and elsewhere.

Though allied declarations during World War II refrained from condemning the Nazi genocide against the Jews, the Four Freedoms Declaration by Franklin D. Roosevelt in January, 1941, the Atlantic Charter Declaration by Roosevelt and Churchill of August, 1941, and the Declaration of the United Nations of January 1942, established the protection of human rights as an objective of the war in response to the trampling of human dignity by the Axis powers. These pronouncements were first implemented by the Nuremberg Charter of 1945 which set up the International Military Tribunal at Nuremberg. In 1946, the General Assembly of the United Nations unanimously affirmed "the principles of international law recognized by the Charter of the Nuremberg Tribunal and the judgment of the Tribunal."[62] The significance of the Nuremberg trials was (a) in fixing individual responsibility for acts against humanity which thereby constituted a deterrent in that the argument of Act of State may no longer be asserted as a defense; (b) it revealed the nation of criminality toward mankind; (c) it influenced municipal legislation; (d) influenced the drafting of the United Nations Charter and led to the adoption by the General Assembly of the Declaration of Human Rights.[63] Due to these efforts, all civilized states now have a very real interest in the punishment of war crimes.[64] An effect of the Nuremberg trials was the adoption by the General Assembly in 1946 of the Genocide Convention. The International Court of Justice interpreted the punishment of Genocide

62. 1 U.N. GAOR 1144 (1946); Finch, *The Nuremberg Trial*, 41 AM. J. INTL. L. 20 (1947).

63. Baisky, *Twenty-Five Years After the Nuremberg War Tribunal Trials*, 23 HAPRAKLIT 69 (1971).

64. Cowles, *Jurisdiction Over War Crimes*, 33 CAL. L. REV. 217 (1945). Kutner, *Due Process of War: An Ad Hoc Crimes Tribunal: A Proposal*, 43 NOTRE DAME LAW 481 (1968).

under the Convention as a matter of international concern and that the Convention was intended to be universal in scope.[65]

The United Nations Charter, the Universal Declaration on Human Rights and other United Nations Covenants and Declarations have established a framework for the protection of fundamental human rights. Machinery was established by way of the Human Rights Commission as part of the Economic and Social Council and through discussion in the General Assembly which has assumed the role previously undertaken by the practice of humanitarian intervention. The preamble of the Charter asserts the task of the United Nations as reaffirmation of faith "in fundamental human rights in dignity and worth of the human person, in the equal rights of men and women, and of nations large and small" while article 1, paragraph 3 declares that one of the purposes of the United Nations is to achieve ". . . international cooperation in solving international problems of an economic, social, cultural, or humanitarian character and in promoting and encouraging respect for and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion." When this is coupled with Article 56 which states that "all members pledge themselves to take joint and separate action in cooperation with the organization for the achievement of the purposes set forth in Article 55 (a)," some text writers have contended that member states are obliged to protect the fundamental rights of their subjects.[66]

Article 2, paragraph 7 of the Charter which precludes the United Nations from interfering in matters which are "essentially within the domestic jurisdiction of any state" may not be interposed because the member states have obliged themselves to promote fundamental human rights.[67] Moreover, intervention does not include studies and resolution.[68] The argument may also be made that in a situation where there is a denial of human rights, a threat to world peace arises, as with regard to *apartheid* practices in South Africa so that the matter

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65. International Court of Justice Report, "Reservation of the Convention of the Prevention and Punishment of the Crime of Genocide," Advisory Opinion. Baisky, *Twenty-Five Years After the Nuremberg War Tribunal Trials*, 22 HAPRAKLIT 491 (1970).

66. Lauterpacht, Human Rights, The Charter of the United Nations and the International Bill of Rights of Man, Ch. 11, U.N. Doc. E/CN 4/89 (1948); Ganji, *supra* note 34, Chap. IV; CHAKRAVARTI, HUMAN RIGHTS AND THE UNITED NATIONS 47-51 (1958); Metzger, *The Nature and Extent of Legal Limitations Upon A Nation's Freedom of Action*, 1961 WIS. LAW REV. 277 (1961).

67. CASSIN, INTERNATIONAL INSTITUTIONS, IN WORLD VETERANS FEDERATION INSTITUTIONS FOR THE PROTECTION OF HUMAN RIGHTS 19 (1964).

68. *Id.*

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is no longer essentially within domestic jurisdiction. Today it is virtually impossible to delineate matters of solely 'domestic' or solely 'international' concern. The political organ of the United Nations hardly refrains from discussing any human rights issue which any member puts on the agenda.[69]

The meaning of "fundamental rights and human freedom" is defined by the Universal Declaration of Human Rights which expresses a common standard of action for their promotion. Though the Declaration may not originally have been intended to have binding effect, its adoption by the unanimous vote of all the delegations, though with Russian abstention, its invocation in subsequent General Assembly resolutions and its incorporation in the constitutions of many states, have made it a part of *customary* international law. The Universal Declaration has become the yardstick for measuring the progress of governments and peoples in their struggles for freedom and dignity. It helped stimulate the 1950 European Convention for the Protection of Human Rights and the Draft Inter-American Convention on human rights, and influenced the Bill of Rights formulations of post World War II Constitutions. It has become a basic norm in the development of human rights law and the working outline for international conventions.[70] Oppressed groups invoke the Declaration in seeking international intercession in their behalf.

In addition to the Genocide Convention, a series of international conventions dealing with human rights has been adopted since World War II, including the rights of refugees, stateless persons, the political rights of women, the nationality of married women and slavery. Also in force are ILO Conventions on forced labor and discrimination in employment and a UNESCO Convention on discrimination in education. The United Nations has adopted the Convention on the Prevention of Racial Discrimination and Covenants for the Protection of Political and Civil Rights. Single purpose Conventions have been adopted dealing with slavery, forced labor consent to marriage, minimum ages of marriage, reduction to statelessness, and the international right to transmit news.[71] The convention has also had local effect.

Regionally, the European Convention on Human Rights provides for the protection of human rights in Western Europe. The Convention establishes the European Convention on Human Rights and a

69. Henkin, *The United Nations and Human Rights*, 19 INTL. ORG. 504 (1965).
70. GARDNER, IN PURSUIT OF WORLD ORDER 241-42 (1964).
71. *Id.* at 242.

European Court of Human Rights. Individuals and states may petition the Commission.[72] Most significant is its theoretical extension of the rights of individual petition. An individual who had been denied his rights may, after the exhaustion of all domestic remedies, apply to the Commission which will examine the matter and seek to resolve the issue by conciliation. It may issue a report and then refer the matter to the Court which may also hear matters referred to it by a contracting party who had filed a complaint with the Commission, or by a contracting party against whom an application had been filed. Under the Convention, an individual may make application to the Commission by presenting the case in person or by inducing a government to act in his behalf. Though an individual may not present his case before the court, he is permitted to communicate his views. However, the Commission and the Court have been reluctant to act on individual petitions, as demonstrated by the petition on behalf of the detainees in Northern Ireland. The procrastination and interposed technicalities of the Commission condemns the Commission and Court as blind alleys in the human rights labyrinth.

The European Convention may be regarded as an institutionalization of humanitarian intervention by purporting to provide for a machinery for the initiation of complaints by contracting states. However, it also represents an extension in allowing for individual petition. When a contracting state files a complaint under the human rights procedure, it in effect is acting to intervene humanitarily in a case involving the violation of fundamental human rights, particularly if its own national interest is not directly effected by the particular incident. An example of such intervention was that by the Scandinavian countries in filing a petition pertaining to the suppression of human rights by the Greek military regime.[73] Greece withdrew before being formally condemned as being a mongrel state in the family of civilized nations. Other instances exist where human intervention has abounded in suppressing particular interests.

The right to self-determination has become a basis for humanitarian intervention in relation to remnants of colonialism as expressed in United Nations declarations and in activities by the United Nations and African states against *apartheid* in South Africa and the white rule in Rhodesia. With the Declaration on Granting

72. Mashaw, *Federal Issues In and About the Jurisdiction of the Court of Justice of the European Communities*, 40 TUL. L. REV. 21 (1965): McNair, The Expansion of International Law, Hebrew University, Lionel Cohn Lecture (1961).

73. Buergenthal, *Proceedings Against Greece Under the European Convention of Human Rights*, 62 AM. J. INTL. L. 441 (1968).

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of Independence to Colonial Peoples,[74] the international proposition has emerged that colonialism is an international wrong justifying the right of intervention. Theories justifying intervention, other than the doctrine of humanitarianism, have been advanced, e.g., the contention that colonialism is a form of aggression threatening national self defense as in the case of India's invasion of Goa[75] and the right of intervention on behalf of 'kith and kin', a concept adapted from the right to intervene to protect nationals—as invoked by Egypt to justify its intervention in Palestine in 1948 by claiming it was entering to protect the Arab inhabitants with whom it claimed to have special ties.[76]

The doctrine of 'kith and kin' has been invoked along with the doctrine of humanitarian intervention as a trend has developed to recognize the right to protect racial, religious or cultural 'kith and kin', India has protested the maltreatment of people of Indian origin in South Africa even though they were citizens of that state. A moral obligation was also asserted. Similarly, in the Cyprus conflict, Greece and Turkey claimed the right to protect those inhabitants related to them by religious and cultural ties.

Another example was the Eichmann trial in which a nexus was claimed between the Jewish people and the State of Israel. However, it is doubtful if a right to intervene on the basis of 'kith and kin' can be said to be encompassed by Article 51 of the United Nations Charter and there is little support among writers for this concept. The contention has been made that such intervention, like humanitarian intervention, may be regarded as a means for the protection of human rights and the right to self-determination. It may be regarded as an extension of the right to protection of a state's nationals.[77] The intervention must be solely for the purpose of protection and once this is achieved, the intervening state is obliged to withdraw.

Another form of intervention, which may have humanitarian

74. G.A. RES 1514 (XV).

75. Dugard, *The Organization of African Unity and Colonialism: An Enquiry into the Plea of Self Defense as a Justification for the Use of Force in the Eradication of Colonialism*, 16 INTL. AND COMPL. L. Q. 157 (1967).

76. *Id.* Muslim jurists have maintained that a state could intervene in another state in self defense and that a Muslim state could intervene in another Muslim state to prevent an evil which would constitute something worse than the act of intervening such as the setting aside of some significant command of Islamic religious doctrine. MUHAMMAD HAMIDULLAH, MUSLIN CONDUCT OF STATE 85-86 (1953). Despite U.N. norms, Egypt asserted the right to intervene in Yemen, another Arab state. Ossad, *Legal Aspects of the Egyptian Intervention in Yemen*, 5 IS. L. REV. 216 (1970).

77. Dugard, *supra* note 75.

aspects, entails the granting and withholding of recognition.[78] The term "recognition" has been applied both to the recognition of governments and of states. According to the constitutive doctrine, a state becomes an international person only through recognition, i.e., when recognized by other states. In contrast, the declaratory doctrine holds that international law is an objective system which dictates the conditions under which a state becomes a member of the international community so that the rights and duties of a state remain independent of formal recognition. A state may exist without being recognized, if it exists in fact regardless of whether it has been formally recognized by other states, and it has a right to be treated by them as a state. Under this theory, the function of recognition is to acknowledge as a fact something which was uncertain, the independence of the body claiming to be a state, and to accept the usual courtesies of international intercourse. The recognition of a state implies the acceptance by one state of another into the legal framework of international law. The recognition of a government, however, is the acceptance of the lawful agent of that state with the establishment of diplomatic relations and the creation of formal means of communication between the governments of two states. The entry into diplomatic relations may imply approval of a new government in the other, and this is only at the governmental and not the state level. The granting of recognition by a state involves the making of factual determinations tempered with considerations of policy.[79]

On occasion, adherence to civilized standards or standards of humanity has been asserted as a condition for recognition and admission to the international community as occurred following World War I in requiring adherence by the new states of eastern Europe to the minorities treaties.

Some writers contend that a state or government must adhere to minimum standards of human rights to merit recognition. Accordingly, one scholar has proposed that American nations might express collective disapproval of anti-democratic revolutions within the Western Hemisphere by withholding or restricting diplomatic representation.[80] However, this approach has proven ineffective without embargos, and the practical effect of withholding recognition is dubious.

78. Morrison, *Recognition in International Law: A Functional Reappraisal*, 34 U. CHI. L. REV. 857 (1967).

79. Alexandrowicz-Alexander, *The Quasi-Judicial Function in Recognition of States and Governments*, 46 AM. J. INTL. L. 631 (1952).

80. *See, e.g.*, Fenwick, *The Recognition of De Facto Governments: Is There a Basis for InterAmerican Collective Action?*, 58 AM. J. INT'L 109 (1964).

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Another writer has contended that, in the light of the withholding of recognition of Rhodesia and the assertion of the principle of self-determination, the requirement of good government has been added to the traditional requirements of statehood. This requirement is lacking where there is a systematic denial of rights to a substantial minority, and still more to a majority of the people, of a place and say in the government as well.[81] However, this cannot be regarded as a principle of international law. Rhodesia may still be regarded as a state though not recognized and the principle is not adhered to by South Africa.[82] Sir Alec Douglas Home has stated:

> If nations feel entitled to use, to invoke, mandatory sanctions because the constitution falls short of the standards of democracy that we require, we should be at war with half the world today . . . [83]

Humanitarian intervention when undertaken militarily is limited by the Charter of the United Nations. Intervention without legal invitation may constitute aggression. Article 2, Paragraph 5 of the Charter requires signatories to refrain from the threat or use of armed force against the territorial integrity or political independence of any state. However, armed force may be justified in exercising the inherent right of individual or collective self defense under Article 51 or under the authority of the United Nations or another competent international body. The Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States with the Charter of the United Nations, which was adopted by the General Assembly in 1970 asserts:

> (T)he strict observance by States of the obligation not to intervene in affairs of any other State is an essential condition to assure that nations live together in peace with one another, since the practice of any form of intervention not only violates the spirit and letter of the Charter but also leads to the creation of situations which threaten international peace and security . . . No State or group of States has the right to intervene directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. Consequently, armed intervention and all other forms of interference or attempted threats against

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81. J. FAWCETT, LAW OF NATIONS 38-39 (1968). *Cf.* Devine, *The Requirements of Statehood Re-Examined*, 34 MOD. LAW REV. 410 (1971).

82. Devine, *supra* note 81.

83. Quoted in Devine, *supra* note 81.

> the personality of the State or against its political, economic and cultural elements are in violation of international law . . . No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it subordination of the exercise of its sovereign rights and to secure from it advantages of any kind. Also, no State shall organize, assist, foment, finance, incite or tolerate subversive activities directed towards the violent over-throw of the regime of another State, or interfere in civil strife in another State.[84]

The United Nations has assumed the role previously undertaken by humanitarian intervention.[85] It has made representations in human rights matters and has undertaken direct or delegated use of military intervention to maintain public order within a state and transnationally. In many of these instances, the breakdown of order threatened the protection of human rights. Accordingly, United Nations actions in the Arab-Israel conflict, the Congo, and Cyprus contained aspects of humanitarian intervention, though the motivation was also based on the impression that the situations constituted a threat to peace. A significant trend in the institutionalization of humanitarian intervention is embodied in the activities of the Commission on Human Rights of the Economic and Social Council.

The contention exists that even under the Charter, military intervention on humanitarian grounds may be regarded as legal.[86] As a precedent, Reisman cites an incident in 1964 when rebels in the Congo seized thousands of non-belligerents and held them as hostages for concessions from the central government and then killed 45 of the civilians and threatened to massacre the remainder. A Belgian

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84. G.A. RES 2625 (XXV) (1970). The Declaration on Inadmissability of Intervention, adopted by the General Assembly in 1965, RES. 2131 (XX) GAOR, XX Syoo 14 LA (6014) provides that no state has the right to intervene for any reason in the affairs of any other state and condemns any armed intervention or any direct or indirect interference in another's affairs. Compare however the rationale of the Brezhnev Doctrine justifying intervention in Czechoslavakia. Romaniecki, *Sources of the Brezhnev Doctrine of Limited Sovereignty and Intervention*, 5 IS. L. REV. 527 (1970).

85. *See generally* J. CAREY, UNITED NATIONS PRACTICE OF CIVIL AND POLITICAL RIGHTS (1970).

86. Reisman, *supra* note 10, at 7. He contends that the Preamble to the Charter confirm the key element of the customary law of humanitarian intervention, the international character of human rights and the potential recognition of common interest in a use of force to vindicate human rights. The Genocide Convention explicitly characterizes actions which under historic international law would have justified intervention.

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paratroop battalion, transported in American planes, through British facilities were moved to the Ascension Islands. When further negotiations with the rebels for the release of the hostages proved unavailing, the troops entered the area and removed two thousand persons in four days. Permission for the operation was obtained from the central Congo Government and the troops were withdrawn with the completion of the rescue operation. The Department of state announced that the purpose of the military operation was humanitarian and was not intended to engage the rebel forces in combat.[87] Although the operation was attacked in the Security Council by several African States and the Soviet Union, significantly, the question of the undertaking being carried out by non-UN forces was not seriously raised. The action was not condemned by the Security Council and most legal scholars have considered it to have been lawful.

REISMAN further observes that, regarding intervention in the Dominican Republic during the Johnson Administration by the United States, most critics of the operation confirmed the lawfulness of humanitarian intervention in international law by arguing that, if indeed the operation had been genuinely humanitarian, it would have been permissible.[88] President Johnson had stated that " . . . (A)s we had to go into the Congo to preserve the lives of American citizens and haul them out when they were being shot at, we went into the Dominican Republic to preserve the lives of American citizens and citizens of a good many other nations,—46 to be exact,—46 nations."[89] However, the United States troops remained in the Dominican Republic after the foreign nationals were removed. Accordingly, REISMAN contends that, regardless of the lawfulness of the particular operation, the incident confirmed the lawfulness of humanitarian intervention. However, it is here contended that the operation, if justifiable, involved an intervention for the protection of nations abroad. Even on this ground, the operation should have first received approval by the Organization of American States and perhaps the Security Council.[90] This is consistent with the view that a military intervention based on the doctrine of Humanitarian Intervention may be lawful under the Charter, even though undertaken unilaterally if (1) for a specific limited purpose; (2) the time period of the operation is limited only to the undertaking of the specific objective; (3) the

87. Riesman, *supra* note 10, at 28-29. 52 Dept. of State Bull. 18 (1964).

88. Reisman, *supra* note 10, at 29-31.

89. 53 DEPT. OF STATE BULL. 20 (1965).

90. Comment, *The Dominican Republic: Intervention or Collective Self Defense*, 60 AM. J. INTL. L. 64 (1966).

use of coercive measures is limited; (4) and there is the lack of any other alternative recourse.[91]

The various organs of the United Nations is authorized and may engage in humanitarian intervention. Where deprivation of human rights constitutes a threat to the peace, the Security Council is authorized to take action under Chapter VIII of the Charter. An example of such action was in regard to Rhodesia. Article VIII of the Genocide Convention authorizes the parties thereto to call upon competent organs of the United Nations " . . . to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide . . . " Accordingly, the Genocide Convention may be construed as extending the authority of the Security Council and other United Nations agencies to cope with genocide.[92]

Pursuant to the Uniting for Peace Resolution,[87] the General Assembly may take action where a breach of the peace has arisen and the Security Council is unwilling or incapable of acting. Thus, the Assembly could undertake humanitarian intervention. Article 13 of the Charter empowers the Assembly to "initiate studies and make recommendations for the purpose of . . . assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion." By its authority to recommend and assist in human rights matters, it could recommend nations and groups to intervene in a case of deprivation of human rights. As authority for this the Assembly may assert the broad human rights jurisdiction of the United Nations as set out in the Preamble, Article 1, and Articles 55 and 56 of the Charter.

Secondly, the Secretary-General has authority to intervene in matters involving a deprivation of human rights. Article 99 authorizes him to bring to the attention of the Security Council any matter which, in his opinion, may threaten the maintenance of international peace and security. This authority may extend to convoking either the Security Council or the General Assembly in emergency session.

Thirdly, Regional organizations, as provided by Chapter VIII, may also act when consistent with the purposes and principles of the United Nations. Article 52 both encourages member states to achieve pacific settlements of disputes and directs the Security Council to encourage such regional developments and to supervise settlement either on the

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91. Nanda, *The United States Action in the Dominican Crisis: Impact on World Order*, 43 DENVER LAW JOURNAL 439 (1966).

92. GAOR 377A (V).

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initiative of the regional state members or by delegation to the Council. Humanitarian intervention on a regional level may be preferable in that big power confrontation would thereby be averted and the intervention may be more effective and have more legitimizing effect where undertaken by states with compatible cultural values. However, the existence of these entities and their authority does not guarantee results.

The human rights record of the United Nations is not encouraging. With the General Assembly dominated by the nations of Asia and Africa, the approach has not been one of objectively condemning all incidents of violations of human rights. Though United Nations organs are ready to condemn *apartheid* in South Africa and the white regime in Rhodesia, it is not prepared to condemn deprivations of human rights perpetrated by African states, such as by Burundi, Sudan, Chad, Uganda or Nigeria nor was there any protest to the mass killings and imprisonments in Indonesia. There is indifference to the deprivation of human rights in Greece, Brazil, Chile, Paraguay, Uraguay, Bangladesh, Goa, and behind the Iron Curtain. It is practically inconceivable that a United Nations organ will protest the mistreatment of Jews in Syria and, indeed, the General Assembly proved incapable of registering a protest against the use of poison gas and the commission of other atrocities by Egypt in its intervention in Yemen.[93]

The record of the European Commission on Human Rights is hardly more encouraging. Despite the large scale degrading and barbaric detentions by Britain in Northern Ireland, the Commission, invoking technicalities, has refused to investigate the complaints and to take appropriate action. Statesmen hypocritically proclaim the importance of protection of human rights but refuse to act when the need arises. Such hypocrisy has led to a crisis in world order. This has been made apparent by the inability of European and other states to cope with international terrorism as characterized by a policy of craven surrender to terrorists' threats, a failure to punish terrorists and to intervene against countries knowingly harboring terrorists or acting as accessories after the fact.

The rise of a "crazy state" may well become a ground for intervention, regardless of present international norms.[94] When a state comes under the control of fanatics, such as was the case with Nazi

93. Ossad, *supra* note 76.

94. Y. DROR, CRAZY STATES: A COUNTERCONVENTIONAL STRATEGIC PROBLEM (1971); Dror, *A Global Peril*, JERUSALEM POST-MAGAZINE, June 10, 1972, at 9.

Germany, and refuses to adhere to international norms, it may well threaten human civilization. Modern technology has greatly increased the dangers posed by militant fanaticism which facilitates mass killing and mass terror. The havoc which fanatic groups can cause has been aptly illustrated in Northern Ireland and by the Weathermen in the United States and the so called Palestinian terrorists in Europe and elsewhere. Emerging technology will allow small countries which have money and are able to obtain some scientific and engineering man power to produce crude nuclear devices capable of killing millions. Chemical, biological and radioactive weapons which can be used for mass terror are available. Even groups and movements which do not command governmental authority or support may now be capable of perpetrating unprecedented human destruction. A Nazi like government with a few nuclear bombs, or even a militant group with water solvent, tasteless, highly active toxins may become a world security threat. Fanaticism must be countered by early recognition which may be difficult because of the inability to understand fanaticism which is completely different in its fundamental characteristics from the values, mores and patterns of thinking prevalent in nearly all societies. A counter strategy must be developed entailing innovative approaches to identify fanaticism and to stop fanatics before they develop sufficient strength to cause damage. The doctrine of humanitarian intervention must be extended to intervene where a state shelters, trains and equips fanatics. An international regime and monitoring system must be established.

Today, after the Viet Nam War, there is a reluctance by the United States to intervene. However, the contention has been made, in reaction to the oil boycott, that a big power cannot renounce the option of intervention.[95] Through common sense, Professor Kristol contends, nations exercise restraint. Criticizing the idealistic and moralistic mode of American foreign policy, he argues that intervention is not immoral and that for a great power non-intervention in a civil war elsewhere is as much an active policy as intervention, as was demonstrated by the Spanish Civil War.

> In truth, the days of 'gunboat diplomacy' are never over. (The Russians understand this, which is why they are building so many of them). Gunboats are as necessary for international order as police cars are for domestic order. Smaller nations are not really worried about American atom bombs any more than the Mafia is. And smaller nations are

95. Dristol, *Gunboat Diplomacy is No Anachronism*, JERUSALEM POST, Dec. 26, 1973.

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> not going to behave reasonably—with a decent respect for the interests of others, including the great powers—unless it is costly to them to behave unreasonably.[96]

However, in the area of human rights, the problem is also one of seeking the compliance of great powers. Perhaps this is best illustrated by the application of humanitarian intervention with regard to the deprivation of human rights within the Soviet Union. The force of world public opinion and representations by governments induced the Soviet authorities to ease restrictions as to Jews seeking to leave the Soviet Union. Representations dramatically resulted in the commuting of the death sentence of Jewish activists in the Leningrad trial. However, little has been done to focus public attention and invoke principles of humanitarian intervention to obtain their release from Siberian prison camps where they are being detained contrary to Soviet law.[97]

To deal with this situation, the proposed Jackson Amendment conditions the granting of favored nation status for trade benefits and the granting of credits upon Soviet allowance of free immigration. However, this demand conflicts with the need for *detente* which is partly based on the according of trade benefits. This issue is part of the wider issue of whether a policy of *detente* may properly be pursued with a government which suppresses fundamental human rights. The issue has been symbolized by Soviet treatment of the Russian physicist dissenter, Sakharov, who had been subjected to public attack in the Western press and evoked protest by Government leaders. Due to these attacks the Soviets were compelled to moderate their attack.[98]

The problem came to a dramatic climax with the publication of Solzhenitsyn's *Gulag Archipelago* outside the Soviet Union, a work which is a seething indictment of the Stalin terror and the Soviet system, accusing many officials still alive of complicity.[99] The reaction

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96. *Id.*

97. Garber, *Leningrad Trial Victims Are Still Imprisoned*, JERUSALEM POST, Dec. 12, 1973. On the background of this trial, see Feller, *The Leningrad Trial in the Light of Soviet Law*, 23 HAPRAKLIT 47 (1971). *The Anti Zionist Trials*, JEWS IN EASTERN EUROPE No. 7, Nov. 1971, at 4, indicating that the accused were convicted and sentenced in contravention to Soviet law.

98. *In Defense of Sakharov*, TIME, Sept. 24, 1973, at 2. Following an appeal by Sakharov, Chancellor Willy Brandt exercised a form of humanitarian intervention by expressing support for persecuted intellectuals, JERUSALEM POST, Sept. 5, 1973, Sept. 9, 1973, Sept. 13, 1973.

99. *Smothering Dissent*, TIME, Feb. 11, 1974, at 8; *A Fortress of Newsprint*, TIME, Feb 18, 1974, at 10.

of the Soviet regime in arbitrarily expelling the Nobel prize winning author and in stripping him of his Soviet citizenship emerges as a stark reminder of the totalitarian nature of the Soviet Union. The fact that Solzhenitzen was not executed may well reflect some sensitivity by the Soviet authorities to world reaction. But the act also relieves the Soviets of a bothersome source of internal protest which had amassed transnational support. Moreover, Western diplomats, bent on their policy of *detente*, may well have been relieved over the elimination of a bothersome nuisance.

The relationship of *detente* to human rights was illustrated by the Helsinki Conference for European security which involved the participation of both NATO and Warsaw pact countries. The NATO states demanded, as one of the conditions for the easing of tension, that the Soviets agree to the free exchange of ideas and contacts between peoples. The Soviets and their internal affairs. However, to the Western Europeans this was regarded as an essential precondition to *detente*. But for the Soviets to accept this demand would mean the giving up of their totalitarian regime. Apparently a meaningless compromise was arrived at providing for exchange of ideas but permitting the Soviet rules to prevent the penetration of what they regard as hostile.[100]

The issue is whether *detente* is achievable with a regime which defies standards of human civilization and tramples on fundamental human rights by denying freedom of movement and migration, threatens genocide, places dissidents in mental hospitals, arbitrarily arrests and imprisons individuals, and still maintains one thousand slave labor camps containing well over one million prisoners.[101] Andrei Sakharov has insisted that *detente* must be conditioned upon democratic reform and has urged that the Western states not refrain from intervening in what appears to be to many the internal affairs of the Soviet Union.[102]

The *detente* benefits the Soviet regime by facilitating the receiving of technical assistance for national development. However, the

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100. Comay, *The European Security Conference* 4-3 (76-7) GESHER 59 Dec. 1973 (In Hebrew).

101. Lansner, *Dissidents and Detente*, NEWSWEEK, Sept. 24, 1973, at 19; *Brandt's Dente: Even if Stalin Led the USSR*, JERUSALEM POST, Sept. 23, 1973. *Is Detente Morally Blind?*, NEWSWEEK, Sept. 24, 1973, at 18; Shamir, *Between Two Worlds*, MAARIV, Feb. 23, 1974. SAKHAROV, PROGRESS, COEXISTENCE AND INTELLECTUAL FREEDOM (1969).

102. *1.7 Million Prisoners in Soviet Labor Camps*, JERUSALEM POST Mar. 5, 1974. For oppression in Russia, see generally A. ROTHERBERG, THE HEIRS OF STALIN (1973); E. REDDAWAY, UNCENSORED RUSSIA (1973): Friedgut, *Stalin Still Hasn't Given Up*, JERUSALEM POST, Nov. 30, 1973, supp. at 13.

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alternative to *detente* is continued thermo-nuclear confrontation. Clearly, an approach is needed which will not forsake the oppressed behind the Iron Curtain while at the same time allowing for mutual super power accommodation where possible.

The problem of relations with the Soviet Union is an illustration of the limitations of humanitarian intervention. States will intervene humanitarily if there is a constituency demanding such intervention and will not act automatically. Security and political considerations must be taken into account. Public pressure has caused diplomats to make representations on behalf of the rights of Jews to emigrate from the Soviet Union and on other occasions. But such action is limited. Accordingly, the institutional means must be established to permit individuals and groups to become objects of international law and to intervene on their own behalf. Where a deprivation of human rights occurs and domestic remedies are exhausted, the individual must have an institution to which he may turn as of right wherein his rights will be objectively adjudged and will act automatically. Such an institution is embodied in the proposal for the establishment of international tribunals for World Habeas Corpus which will provide recourse to individuals who are arbitrarily detained.

Derived from the Common Law writ which enabled a court to order a person who has been detained to appear before it and to inquire into his detention, World Habeas Corpus is a proposed legal remedy suggesting that the security of the individual against arbitrary detention or imprisonment is a paramount concern in a world public order embodying the optimum and maximum for human dignity. The concept of World Habeas Corpus, which proposes to limit but not abolish national sovereignty, accommodates diverse and competitive political systems, implementing the human rights articles of the United Nations Charter, the Universal Declaration of Human Rights, the Convention on the Prevention and Punishment of the Crime of Genocide, the Convention Against Racial Discrimination, and the Draft Covenant on Political Civil Rights. Conceiving the individual as the *subject* and not the *object* of international law, it affords the individual the right of petition to regional international courts of World Habeas Corpus.

World Habeas Corpus conceives of a cultural and regional approach to the protection of individual freedom by providing for nine regional circuits which correspond to diversities in legal traditions, culture, religion and history: (1) the Communist-Orient Circuit; (2) the U.S.S.R. Eastern European Circuit; (3) the Western European Circuit; (4) the Islamic Circuit; (5) the Southern African Circuit; (6) the Non-Communist Orient Circuit; (7) the Austral-Oceanic Circuit; (8) the Latin

American Circuit; and (9) the Anglo-American Circuit. Each of the circuit courts would be comprised of seven judges of whom at least four must be nationals of a state located within the area over which the particular circuit has jurisdiction, an approach which would facilitate states to agree to participate in this type of tribunal. To accurately reflect the relative basis of power within the area, at least one national from each of the world's predominant states would sit as a judge in the circuit court having jurisdiction over that state. The remaining judges on each circuit court must be chosen from states outside the territory in question. The judges would be selected from lists of nominees submitted by the member states. In addition, the proposal conceives the establishment of a Supreme Court composed of nine justices; one justice for each circuit who is to be a national of a state within the circuit he represents and chosen by majority vote of the judges comprising the circuit tribunal of each region.

The proposal would allow any detained person anywhere or any other person on his behalf to invoke the jurisdiction of the circuit court as soon as one has been established for the region where he is confined. The detaining authority would have the right to intervene in the proceedings but also should be required to bring the *detinue* before the court. The petitioner would be required to exhaust realistically available municipal remedies. The circuit courts, after reviewing the detention, may continue the detention, order the petitioner released forthwith, or order the case remanded for retrial. The decision would not affect the validity of municipal law. A simple majority of the judges would be required for a decision. A decision to release the petitioner would be final, but a holding that the detention is legal and the petitioner's detention may be continued would be subject to appeal to the Supreme Court. For a circuit court decision to be reversed, a two thirds majority would be required. On appeal, the Supreme Court would apply universal principles in determining whether the decision was so unreasonable as to require reversal.

The proposed system for World Habeas Corpus need not emerge full blown but may come into effect with the establishment of only one or two circuits. A precedent for such a supranational court lay in the Court of Appeal for East Africa, which originated from His Britainic Majesty's Court of Appeal for Eastern Africa and set up in 1902 to exercise appellate jurisdiction.[103] The Court was

103. Kanyeihamba & Katenda, *The Supranational Adjudicatory Bodies and The Municipal Governments, Legislatures and Courts*, 1972 PUBLIC LAW 107 (1972); Kato, *The Court of Appeals for East Africa: From a Colonial Court To an International Court*, 7 EAST AFRICAN L.J. 1 (1971).

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reconstituted by the Treaty for East African Cooperation in 1967 and hears appeals from Tanganyika, Uganda and Kenya. It has issued writs of habeas corpus.

Even without the adoption of a proposed international treaty statute, petitions for writs of World Habeas Corpus may be presented to the Human Rights Commission of the United Nations and other international bodies calling for the establishment of ad hoc tribunals calling for inquiries into specific cases of arbitrary detention. Such a petition which was drafted by the author of the concept of World Habeas Corpus and received the support of the Dominican Republic as a party-movant was filed before the Human Rights Commission in the case of William N. Oatis in 1952 who was detained without trial in Czechoslovakia. A resolution calling for the implementation of World Habeas Corpus as a summary remedy was to be presented to the General Assembly. Oatis, however, was freed before further proceedings could be taken.[104] A similar petition for World Habeas Corpus was filed in 1967 with the U.N. Commission on Human Rights in behalf of Madame Ruth Tshombe, acting for her husband, Moise Tshombe, former prime minister of the Congo, who was being detained by Algeria after being kidnapped. Copies of the petition were served on all U.N. missions and Washington embassies and legations directing Algeria as the principal respondent to answer for his detention. Tshombe was being detained and ordered for extradition to the Congo where he had been tried in absentia, found guilty of treason, and sentenced to death.[105] In 1969, a similar petition was drawn and directed at Syria as the Respondent who had detained two Israelis who had been passengers on a TWA airliner hijacked by terrorists. This petition was served on the Syrian ambassador in New York and the detainees were released.

Quincy Wright has written that:

> It is clearly within the competence of the General Assembly to make recommendations concerning violations of human rights, among which detention of persons without trial is recognized as one of the most important. The more effective achievement of World Habeas Corpus by the general acceptance of legal obligations as provided in the Covenant of Civil and Political Rights and of a world court with

104. KUTNER, WORLD HABEAS CORPUS, 102-09 (1962); Katin, *The Advocate as Lawmaker: Luis Kutner and the Struggle for Due Process*, 23 U. MIAMI L. REV. 397, 409-13 (1969).

105. Katin, *supra* note 104, at 414-18.

> jurisdiction to issue a writ of habeas corpus . . . is undoubtedly desirable, but must be considered a long range problem. It requires as prerequisites relaxation of international tensions, a world atmosphere of peace and mutual confidence among states, a considerable convergence of cultural and legal concepts throughout the world, the establishment of conditions of stability and civil order in most countries, and experience in the application of the principle nationally, regionally, and by ad hoc recommendations of the United Nations . . .[106]

A world Habeas Corpus approach was linked with the doctrine of humanitarian intervention in regard to the case of Leonid Rigerman, a Jew whose parents were American but was denied exit from the Soviet Union. In a letter to the State Department's Legal Adviser, the author of World Habeas Corpus called for United States intervention and the initiation of ex parte proceedings before the International Court on the basis of the doctrine of humanitarian intervention even though the matter was regarded as of domestic and local consideration. A similar letter was sent to the Soliciter General.[107] A petition for exit visas for Rigerman, the Drabkin family and all others similarly situated was filed in the Presidium in Moscow naming President Podgorney as the individual respondent. This opened the door for Jewish emigration to Israel by increased numbers. American intervention by the author of this paper took another form and Rigerman, the Drabkins and many others were subsequently given an exist visa.

Another dramatic application of World Habeas Corpus is in regard to detainees in Northern Ireland. In September, 1971, a petition for habeas corpus was filed in the High Court of Belfast, Northern Ireland and was served on Queen Elizabeth, the Prime Minister Heath, the Home Secretary Maudling and the Prime Minister of Northern Ireland Brian Faulkner and members of the Government of Northern Ireland on behalf of Patrick Brendan McDonnell who had been arbitrarily detained by British authorities in Northern Ireland and other detainees as a class action. The petition requested that the detainees, arrested under the Special Powers Act of 1922 be charged with a crime and tried or be released. When the Court rejected this petition, a second petition was filed requesting the Queen to direct both

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106. Wright, *Steps in the Realization of World Habeas Corpus*, in KUTNER, THE HUMAN RIGHT TO INDIVIDUAL FREEDOM, A SYMPOSIUM ON WORLD HABEAS CORPUS 159, 168-69 (1970) [hereinafter cited as Symposium].

107. Letter by Kutner to John Stevenson, Legal Adviser, United States Department of State February 12, 1971.

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houses of the Parliament to declare the Special Powers Act null and void. On the rejection of this Petition and the exhaustion of local "remedies", a Petition was filed with the European Commission on Human Rights which, on the technicality of questioning the Petitioner's power of attorney, refused to hear the case.[108] This was remedied and hundreds of detainees have been released prior to formal hearings. The case again illustrated the need for a transnational constituency. The large number of Irish in the United States has prompted members of Congress to become concerned and congressional hearings have been held. But the Irish Americans are generally apathetic and shockingly insensitive.

The idea of World Habeas Corpus has received world wide support by lawyers, jurists, scholars and statesmen. The Honorable Arthur Goldberg contends that the idea of World Habeas Corpus "can only be applauded."[109] Associate Supreme Court Justice William J. Brennan regards World Habeas Corpus as a "concrete program whereby the now only morally binding Universal Declaration of Human Rights would be made, by the voluntary consent of the nations of the world, a legally binding commitment enforceable in an international court of habeas corpus which would function through appropriately accessible regional courts."[110] Professor Myres S. McDougal has written that "for the larger community of mankind genuinely aspiring toward improved implementation of human rights, the proposal for internationalizing habeas corpus would appear to offer plausible hope for remedying the greatest defect in its present armory of institutional practices."[111]

The catalyst for the idea of World Habeas Corpus, as it first evolved in 1931, was the rise of Nazi Germany. The initial reaction was one of apathy but received the support of such scholars as Dean Roscoe Pound, Professor John Dewey, Professor Hersh Lauterpacht, and others. In 1937, the late Senator Arthur Vanderberg supported the proposal and subsequently obtained the support of Eleanor Roosevelt. Vanderberg sought to have reference made to World Habeas Corpus in the United Nations Charter and at San Francisco Conference, the term was on the threshold of being inserted in the Human Rights articles. The concept has been endorsed by the American Bar Association and at international legal conferences.[112]

108. Cong. Record, Sept. 18, 1973, Insertion by Rep. Biaggi.
109. Symposium, *supra* note 106, at 7.
110. *Id.* at 87.
111. *Id* at 91.
112. *Id.* at 21-22.

CONCLUSION

The realization of World Habeas Corpus may well overcome the international malaise now prevailing. International relations and adherence to international law have been buttressed by a standard of civilization and humanitarian intervention which was invoked when this standard was violated. A group may be regarded as civilized where it has acquired a mature approach of thought and action and is characterized by the extensive use of rational behavior patters.[113] This standard was embodied in international law as in concern for protection of foreign nations. It was based on a recognition of equals. Following World War I, this adherence to a standard of civilization began to disintegrate. What Oswald Spengler had called the "Decline of the West" seemed to materialize as was characterized by the toleration of the Hitler and Stalinist terror and by the appeasement at Munich.[114] Though during and following World War II statesmen have paid lip service to principles of civilization as expressed in the protection of fundamental human rights, the decline of civilized standards in fact continued as manifested by the development of mass weapons of destruction, the War in Viet Nam, and police state regimes and genocide in Uganda, Chad, Burundi, Northern Ireland, Indonesia, the Philippines, Greece, Brazil, Chile and the Soviet Union. The nadir to world civilization, particularly in Western Europe has been shown by the ready surrender to and negotiation with terrorists who readily commit murder and scoff at the rule of law and all standards of humanity. Instead of undertaking firm action against states which harbor and aid and abet terrorism, the Europeans welcome and honor these heads of states. The ready bowing to the apparent threat of an oil boycott is another example of this malaise. This disintegration can well lead either to the ultimate triumph of tyranny or to universal destruction.

The implementation of World Habeas Corpus, even on a partial or ad hoc basis could well make a dramatic turning point. Today, more than ever before, Sir Winston Churchill's words that "World Habeas Corpus is the difference between civilization and tyranny" is of pressing relevance. As Tran Tam of Viet Nam stated, "contemporary civilization is the civilization of human rights."[115] World Habeas Corpus envisions a vertical relationship between states with no state subduing another. It is a relationship of reciprocity. Accordingly, intervention

113. Schwarzenberger, *Civilization and International Law*, 8 CURRENT LEGAL REPORTS 212 (1955).

114. Binari, *Decline of the European Countries*, 3-4 (76-7) GESHER 48 (Dec. 1973).

115. Symposium, *supra* note 106, at 22.

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is conceived to be undertaken in accordance with law as part of a structure for peace.

Humanitarian intervention, expressed by diplomatic representations and only rarely—if at all—by military means, would be a means for seeking the implementation of World Habeas Corpus tribunal determinations. World Habeas Corpus is an institutionalized means of humanitarian intervention. It may well avert international conflict. For example, Prime Minister Indira Gandhi of India admitted that if an international means had existed to obtain the release of Sheik Majibur Rahmon, India's intervention in Bangladesh and the resulting military conflict might have been averted.[116]

World habeas Corpus is an essential part of a system for international peace which would also include an international war crimes tribunal and the development of international penal law. Humanitarian intervention must be conceived as a institutional means for implementation of international adjudication.

Human rights pertinent to individual freedom, including the right to travel and the right to be let alone, has historically encountered narrow-mindedness which is an unfortunate special characteristic when new worlds of ideas are beginning. In the light of fantastic realities in the advances of technology it would be expected that nations, statesmen and international scholars would be eager to revise domestic and international laws and knowledge which are considered sacrosanct for centuries but are nevertheless called in question by new humane knowledge and world concern. The advance of implementing concretely individual freedom by the competent remedy of World Habeas Corpus has made progress in overcoming the reactionary army of the dark-age ignorance that is trying to dam up the expanding intellectual flood of human dignity and decency.

World Habeas Corpus asserts that a new world must be conquered in the teeth of all the unteachable in the name of humane truth and human reality. World Habeas Corpus fulfills mankind's aspirations for individual liberty. It forecasts an open society where individual freedom will respond to the test of substance overcoming the futile legalities of dictatorship or tyrannies.

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116. *Jerusalem Post*, Dec. 17, 1971.

"Human rights are civil liberties, private rights, court procedures and the whole gamut of municipal law. On the international scale they are a minimum standard to which laws conserving the freedom of the individual should comply. If this minimum standard is not maintained then neither pseudo religious ceremonies nor the high flown phrases of politicians or academics will make any difference." Beddard, Book Review, 34 MOD. L. REV. 704, 707 (1971).

World Habeas Corpus fulfills the humane concept that the right to personal security emanates in a persons' legal and uninterrupted enjoyment of his life, his limbs, his body, his health and his reputation. It includes the right to exist and the right to enjoyment of life while existing and it is invaded not only by a deprivation of life but also by a deprivation of those things that are necessary to the enjoyment of life according to the nature, temperament and lawful desires of the individual. Life, liberty and security need no explanation. They are the fundamental precepts of any system of human rights. Immanuel Kant described liberty as "the one sole original inborn right belonging to every man by virtue of his humanity." This includes the right of freedom of movement which consists of the power of locomotion without restraint except by due process. Further, the security of one's privacy against invasion by police is basic to a free society. The right of assembly and the right of association are intimately linked. A fundamental principle of a civilized society is political freedom of the individual. Freedom of expression is also a positive element in the progress of a civilized society. The right to a free trial is the essence of judicial protection. All of these rights can be implemented by the imperative remedy of World Habeas Corpus for a surviving system of world public order.

The effectiveness of this system of world order must hinge on the development of a transnational constituency to champion the cause of those whose rights are denied and to protest crime against humanity. Accordingly, World Habeas Corpus conceives of the establishment of World Freedom Centers to function as advocates of mankind and world ombudsmen. Thereby the activistic flood can be made to recede.

The irresistible drive toward achieving liberty and the struggle for a just legal order are in constant confrontation with the problems of liberty. The idealism of liberty reflects the concrete-historical condition of the life of a world society fragmented by competitive, diverse political systems and religious fanataticisms. Since the premise of law underpins the existence of liberty, man does not enjoy untrammeled license, but is limited by the bounds and necessities of his actions with the existing reality of governmental reconciliations which are always in flux.

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