

# INTERNATIONAL HUMAN RIGHTS: A NEW POLITICAL PHILOSOPHY IN FOREIGN POLICY

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## INTRODUCTION

Since the Second World War human rights have become a new political philosophy, replacing both the liberal democracy that has prospered in the developed world but failed to serve the Third World and the Marxism that has succeeded in neither world. Governmental organizations at the international and regional levels, such as the United Nations and the Inter-American Commission on Human Rights, and nongovernmental bodies, such as Amnesty International, attempt to maintain and protect human rights through collective international action. Individual nations have also made human rights an object of their foreign policy.

Many nations invoke human rights as a standard of recognition or acceptability of foreign regimes, as a ground for political or economic intervention, or as a justification for the support of active dissidents engaged in armed conflict with a particular regime. Human rights are used tactically as a means of making a policy presentable and thus mask objectives which have little to do with the protection of human rights. A state may use human rights, for example, to create fear among the citizenry of the expansion of an oppressive regime, in order to maintain or increase military expenditures or to justify a budgetary reduction of foreign aid. Major collective international actions provide the framework upon which individual policies are built.

## BACKGROUND: DEVELOPMENT OF INTERNATIONAL LEGAL PRINCIPLES OF HUMAN RIGHTS

The rights of the citizen have developed over two centuries to include both the protection of life, liberty, and property from interference by others and by the state, and freedom of expression, and assembly to all, securing full participation in the life of the community. Developed countries took for granted the social and economic structures on which these admirable liberties rested. In 1943 the United States Supreme Court described the classical framework of liberty as certain rights

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withdrawn from "the vicissitudes of political controversy" and not dependent upon the outcome of any election.<sup>1</sup>

The United States and the United Kingdom began to recognize the need for a new approach to these basic rights. In the Atlantic Charter<sup>2</sup> they declared that they would endeavor to further all states' access to the trade and raw materials of the world.<sup>3</sup> The Atlantic Charter further expressed the desire for full economic collaboration among all nations as a means of securing "improved labor standards, economic advancement, and social security."<sup>4</sup>

The United Nations expanded these principles in the Universal Declaration of Human Rights.<sup>5</sup> Articles 22-25 affirm the right to employment at an adequate standard of living and the right to financial support in case of unemployment or other exigent circumstances.<sup>6</sup> It was argued that for poor developing countries civil and political rights and liberties are, at best, insufficient and, at worst, a facade for an adequate standard of living. Indeed, certain of these rights may be incompatible with rapid economic growth.<sup>7</sup>

In the decade following the Universal Declaration, the United Nations became a forum for social claims to higher standards of life and development, to a fairer distribution of resources, and to the end of colonial rule in many parts of the world. The Declaration recognized that for many countries satisfaction of the economic and social needs of their people was a more difficult and tedious process than the adoption of minimum standards of civil and political rights.

Progressive assertion of the principle of self-determination culminated in the Declaration on the Granting of Independence to Colonial Countries and Peoples (1962).<sup>8</sup> The first paragraph of this Declaration was later repeated in both the International Covenant on Civil and Political Rights<sup>9</sup> and the International Covenant on Economic, Social, and Cultural Rights.<sup>10</sup> The marked tendency in the United Na-

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1. *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 638 (1943).
  2. Atlantic Charter, Aug. 14, 1941, United States-United Kingdom, 55 Stat. 1603, T.I.A.S. No. 686.
  3. *Id.* fourth principle.
  4. *Id.* fifth principle.
  5. Universal Declaration of Human Rights, adopted by G.A. Res. 217A, 3(1) U.N. GAOR, U.N. Doc. A/810 (1948) [hereinafter cited as Universal Declaration].
  6. *Id.* art. 22-25.
  7. See G. TUNKIN, *THEORY OF INTERNATIONAL LAW* 82 (W. Butler trans. 1974). Economic development is not politically neutral. See generally AGENCY FOR INTERNATIONAL DEVELOPMENT, U.S. DEP'T OF STATE, REPORT: HUMAN RIGHTS AND ECONOMIC DEVELOPMENT 16 (1976).
  8. Declaration on the Granting of Independence to Colonial Countries and Peoples, adopted by G.A. Res. 1514, 15 U.N. GAOR, Supp. (No. 16) 66, U.N. Doc. A/4684 (1960) [hereinafter cited as Declaration on the Granting of Independence].
  9. International Covenant on Civil and Political Rights, adopted by G.A. Res. 2200, 21 U.N. GAOR, Supp. (No. 16) 49, U.N. Doc. A/6316 (1966) [hereinafter cited as Civil and Political Rights Covenant]. Article 1, paragraph 1, of that covenant states: "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."
  10. International Covenant on Economic, Social, and Cultural Rights, adopted by G.A. Res.

tions has been to treat self-determination as an escape from colonial rule and alien regimes that results in independence.<sup>11</sup> Although India has not been eager to see the United Nations encourage self-determination in Kashmir or Hyderabad, Sikkim, or Assam, the Indian government condemns racist regimes. Yet, who are the "peoples" protected by this declaration? Are the populations of Nigeria or Iraq or Mauritius protected? Are the Biafrans, the Kurds, the Palestinians, the Basques, and the Welsh also protected?

In the elaboration of the principles of the Universal Declaration in the United Nation Covenants, a working distinction was made between "legal rights" and "programme rights."<sup>12</sup> Legal rights require a state to take the "necessary steps, in accordance with its constitutional processes and with the provisions of the Civil and Political Rights Covenant, to adopt such legislative or other measures as may be necessary to give effect to those rights."<sup>13</sup> Programme rights progressively pursue, through economic and technical assistance and cooperation, the full realization of these rights.<sup>14</sup>

It is essential to consider the obstacles and constraints upon countries that limit active relations with foreign regimes in response to violations of human rights. Further, it is important to examine means of foreign policy available to influence or coerce an oppressive regime to change its practices.

Intervention by way of economic coercion or other political measures is not inconsistent with contemporary international law, provided that it is aimed at the protection of human rights and not disproportionate to that aim. States, by selecting, collectively or individually, some target countries and not others for such intervention, often cast doubt on the purposes of their foreign policy. Nevertheless, it would be a mistake to accuse states of discrimination and hypocrisy, for it is a step forward for the world that human rights have become a matter of genuine international concern at all. It is arguable, then, that pressure to protect individuals or groups or to secure a general observance of human rights under a foreign regime is best exerted by government diplomacy at the first stage. Government diplomatic exchanges may receive little publicity, making concessions by the target country that much easier. Both the United States Department of State and the United Kingdom Foreign Office have experienced their successes here.

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2200, 21 U.N. GAOR, Supp. (No. 16) 49, U.N. Doc. A/6316 (1966) [hereinafter cited as Economic, Social, and Cultural Rights Covenant].

11. The preamble of the Declaration on the Granting of Independence, *supra* note 8, speaks of the ardent desire for "the end of colonialism in all its manifestations," but the enabling clauses do not mention colonialism and speak instead of the right to self-determination and independence.
12. Legal rights are the subject of the Civil and Political Rights Covenant, *supra* note 9. Programme rights are the subject of the Economic, Social and Cultural Rights Covenant, *supra* note 10.
13. Civil and Political Rights Covenant, *supra* note 9, at art. 2, para. 2.
14. Economic, Social, and Cultural Rights Covenant, *supra* note 10, at art. 2, para. 1.

### INTERNATIONAL INSTRUMENTS AS GUARANTEES OF HUMAN RIGHTS

Clearly, the adoption of conventions, declarations, or bills of rights does not ensure their observance or make them an effective safeguard. They do serve, however, as a political standard of achievement. The Universal Declaration of Human Rights,<sup>15</sup> elaborated in the two United Nations Covenants<sup>16</sup> and the substantive provisions in many national constitutions, provides at least a first line of defense for human rights.

Since the adoption of the United Nations Covenants in 1966, sixty-three countries, less than one-half the membership of the United Nations, have become parties to the Covenants. Absentees include the United States, Israel, Egypt, Nigeria, China, and Indonesia. The parties to the Covenants include the Soviet Union and all of Eastern Europe, Chile, Libya, and Iran. Of the sixty-three countries that are parties to the Covenants only about a third could be described, by political structure and by level of economic development, as broadly democratic. More than a third of these nations subsist at levels of income and productivity less than half that of the poorest industrialized countries, and many have an average life expectancy of less than fifty years.<sup>17</sup>

The standards for the recognition and protection of human rights, therefore, will vary. Foreign policy must take account of the rights and freedoms demanded, the ability of the country concerned to meet the standards, and the scale of non-observance. Rights and freedoms are often described, though seldom defined, as fundamental. It is difficult to describe them as inalienable when reserved rights and freedoms are declared subject to qualifications or restrictions under the Covenants and Conventions.<sup>18</sup>

International instruments generally agree on a limited number of prohibitions that cannot be transgressed in any circumstances. Instruments uniformly prohibit torture, inhuman, or degrading treatment or punishment; slavery or servitude; retroactive offenses or penalties; and the nonrecognition of anyone as a person before the law.<sup>19</sup> The

15. Universal Declaration, *supra* note 5.

16. Civil and Political Rights Covenant, *supra* note 9; Economic, Social, and Cultural Rights Covenant, *supra* note 10.

17. W. BRANDT & INDEPENDENT COMM'N ON INTERNATIONAL DEVELOPMENT ISSUES, NORTH-SOUTH: A PROGRAMME FOR SURVIVAL 32 (1980).

18. Civil and Political Rights Covenant, *supra* note 9; Economic, Social, and Cultural Rights Covenant, *supra* note 10; European Convention for the Protection of Human Rights and Fundamental Freedoms, [1955-1957] Y.B. EUR. CONV. ON HUMAN RIGHTS 4 [hereinafter cited as European Convention on Human Rights]; American Convention on Human Rights, Nov. 22, 1969, O.A.S. O.A.S. Official Records, OEA/Ser. A/16, Eng. T.S. No. 36, at 1-21.

19. Article 4 of the Universal Declaration states, "No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms." Universal Declaration, *supra* note 5. The Declaration also proclaims that "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment" and that "[e]veryone has the right to recognition everywhere as a person before the law." *Id.* art. 4, 6.

The European Convention on Human Rights declares that "[n]o one shall be subjected to

International Covenant on Civil and Political Rights,<sup>20</sup> the European Convention,<sup>21</sup> and the Inter-American Convention<sup>22</sup> enumerate other rights and freedoms which a party may not infringe even in war or other public emergency.

The four prohibitions are described in Economic and Social Council (ECOSOC) Resolution 1503-XLVIII<sup>23</sup> which authorizes the Subcommittee on Human Rights<sup>24</sup> to investigate and report on apparently persistent patterns of gross violations of human rights. If simply an isolated incident, the United Nations will not take action. Violations must not only be "gross" but repeated, systematic, and administrative in nature.<sup>25</sup> The descriptive term, "gross," refers to both the degree or severity of the abuse and the nature of the rights involved.

Despite numerous complaints made to the Subcommittee on Human Rights of clear violations in the last decade, the record of action is poor. Only those violations arising in Chile and in Middle Eastern areas under occupation have gained the Subcommittee's full attention.<sup>26</sup> It is unclear what constraints have acted to limit international action on these alleged violations.

## APPLICABILITY OF THE PRINCIPLE OF NON-INTERVENTION

### Human Rights as a Matter of International Concern

Article 2(7) of the United Nations Charter<sup>27</sup> raises the issue of non-intervention in the internal affairs of a country. Although the Charter

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torture or to inhuman or degrading treatment or punishment." European Convention on Human Rights, art. 3, Y.B. EUR. CONV. ON HUMAN RIGHTS 6. It forbids "slavery or servitude" and "forced or compulsory labour." *Id.* art. 5 (1) & (2). It also provides that "[e]veryone's right to life shall be protected by law. No one shall be deprived of his life intentionally, save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law." *Id.* art. 2(1).

20. Civil and Political Rights Covenant, *supra* note 9.

21. European Convention on Human Rights, Y.B. EUR. CONV. ON HUMAN RIGHTS 4.

22. American Convention on Human Rights, Nov. 22, 1969, (O.A.S. Official Records, OEA/Ser. A/16, Eng. . . . O.A.S. T.S. No. 36, at 1-21).

23. Procedure for Dealing with Communications Relating to Violations of Human Rights and Fundamental Freedoms, adopted by E.S.C. / Res. 1503, 48 U.N. ESCOR, Supp. (No. 14) 8, U.N. Doc. E/4832/Add. 1 (1970).

24. The Subcommittee was originally established as the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

25. E.S.C. Res. 1503, 48 U.N. ESCOR, Supp. (No. 14) 8, U.N. Doc. E/4832/Add. 1, at para. 1, requires that before any communication receives consideration by the Sub-Committee that it "appear to reveal a consistent pattern of gross and reliably attested violations."

26. See Final Act of the International Conference on Human Rights, U.N. Publication No. E.68.XIV.2, at 5 (1968); G.A. Res. 2443(XIII), *reprinted in* XII D. DJONOVICH, UNITED NATIONS RESOLUTIONS: GENERAL ASSEMBLY, Ser. 1, at 124 (1975).

27. U.N. CHARTER, art. 2, para. 7, states:

Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

Chapter VII of the U.N. Charter deals with "Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression." U.N. CHARTER art. 39-51.

limits intervention by the United Nations as a body,<sup>28</sup> it has never been treated as excluding either United Nations investigation of reported denials of human rights or recommendations regarding them. General Assembly Resolution 2625(XXIX) states uncompromisingly that "no state may use or encourage the use of economic, political or any other type of measure to coerce another state in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind."<sup>29</sup> The Helsinki Final Act<sup>30</sup> and the Organization of American States Charter<sup>31</sup> repeat these provisions in substance.

The critical question is whether the observance of human rights is a matter within the internal affairs of states. State practice, not least in the adoption of the United Nations Charter and other international conventions, evinces that the recognition and protection of human rights have become matters of international concern and obligation. Although the undertakings set forth in international human rights instruments are primarily implemented through domestic law and practice as obligations essentially towards individuals, a state's adoption of these instruments and of the United Nations Charter creates obligations *erga omnes*.<sup>32</sup>

If we understand human rights to be specific and needs to be common to all human beings independent of the society to which the human being belongs, then the various international human rights instruments state political axioms that underlie democracy. Authoritarian rule, with its philosophical negation of these common rights, reaches beyond national borders and so may constitute a threat to democracy. There is a widely held belief that such oppression can spread and that systematic denial of human rights in one country may threaten the security and stability of others. Indeed, it is possible that we are witnessing a half-articulated identification of aggression as a repudiation of human rights. Whether the principle of non-intervention is an obstacle to states' active policies towards foreign regimes which do not observe or protect human rights remains to be seen.

#### Use of Force and Coercion to Secure Observance of Human Rights

Because human rights are matters of common, international con-

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28. The U.N. CHARTER gives only the power of recommendation to the General Assembly. See *id.* art. 10-14. Intervention can come only through the Security Council. See *id.* art. 34, 36, 39-42.
  29. Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations, adopted by G.A. Res. 2625, 25 U.N. GAOR, Supp. (No. 28), U.N. Doc. A/8028 (1970) [hereinafter cited as Declaration Concerning Co-operation Among States].
  30. Conference on Security and Co-operation in Europe: Final Act, Aug. 1, 1975, reprinted in 14 INT'L LEGAL MATERIALS 1292 (1975).
  31. Charter of the Organization of American States, April 30, 1948, art. 16, 17, 2 U.S.T. 2394, 2420, T.I.A.S. No. 2361.
  32. This term is defined as "affecting everybody." See U.N. CHARTER preamble.

cern, they exist outside the jurisdiction of any one country. Every state, therefore, has an interest in their observance and perhaps a duty to secure that observance by varying degrees of intervention.

The reasoning of the International Court of Justice (ICJ) in the *South West Africa Cases*<sup>33</sup> is illustrative. In 1962 a narrow majority held that the Members of the League of Nations possessed a legal right or interest in the observance by the Mandatory of its obligations both toward the inhabitants of the Mandated Territory, and toward the League of Nations and its Members. The international conventions on human rights, then, are analogous by establishing obligations for States toward individuals within their jurisdiction and toward the international community.<sup>34</sup>

Although in 1966 the new majority of the ICJ interpreted "legal interest" in a narrower way, it nevertheless did not reject the possibility of state action to secure performance by another state.<sup>35</sup> The court observed that "states may be entitled to uphold some general principle even though the particular contravention of it alleged has not affected their own material interests."<sup>36</sup> Without specifying when such action is permissible, the court confined itself to the scope of "legal interest" in the case before it.

However, Article 2(4) of the United Nations Charter restricts states "from the threat or use of force against the territorial integrity or political independence of any State."<sup>37</sup> A curious feature of this provision is that it is the only place in the Charter where the "use of force" is not qualified by the word, "armed." Although force used against the territorial integrity of a state could hardly be anything other than armed force, a state's political independence could be impaired by the use, or even threat, of force in the form of economic coercion.<sup>38</sup> General Assembly Resolution 2625(XXV) distinguishes between "armed intervention and other forms of interference," including interference against "economic elements" and suggests that the purpose and effect of Article 2(4) limit the use of armed force.<sup>39</sup> Resolution 2625(XXV) further suggests that the omission of "armed" in Article 2(4) was an oversight in

33. Preliminary Objections in the South-West Africa Cases (Ethiopia v. South Africa; Liberia v. South Africa), [1962] I.C.J. 319. This material is digested in Stevenson, *Judicial Decisions*, 57 AM. J. INT'L L. 640-59 (1963).

34. See Case Concerning Barcelona Traction, Light & Power Co. (Belg. v. Spain), Second Phase, [1970] I.C.J. 3. The case is digested and excerpted in Evan, *Judicial Decisions*, 64 AM. J. INT'L L. 653 (1970).

35. South-West Cases (Ethiopia v. South Africa; Liberia v. South Africa), Second Phase, [1966] I.C.J. 6. These cases are digested and excerpted in Stevenson, *Judicial Decisions*, 61 AM. J. INT'L L. 116 (1967).

36. South-West Cases, Second Phase, [1966] I.C.J. at 32.

37. U.N. CHARTER art. 2, para. 4.

38. For example, the Preamble of the Charter makes it an objective of the United Nations "to ensure . . . that armed force shall not be used, save in the common interest." Articles 41 and 46 of the CHARTER envisage the use of "armed force" by the Security Council, and in Article 44 where the Security Council has "decided to use force," it is plain that armed force is meant.

39. Declaration Concerning Co-operation Among States, *supra* note 29.

drafting.<sup>40</sup>

Economic coercion is constrained by the principal declarations. General Assembly Resolution 2625(XXIX)<sup>41</sup> condemns the use of economic measures as a means of coercion against another state if those measures are to secure any kind of advantage from that state. Human rights policy secures no special advantage to the implementing state; thus, Resolution 2625 (XXIX) would allow economic coercion to secure the observance of human rights. Finally, the anti-colonial spirit, which has often shaped General Assembly attitudes and declarations, has created a special position for oppressed peoples in the uses of force.

Contemporary international law, as expressed in the United Nations Charter<sup>42</sup> and in state practice, does not prohibit economic coercion or other political measures designed to influence and change the practice of foreign regimes concerning the protection of human rights. Indeed, the principle of non-intervention, traditionally derived from the legal fictions of the equality and independence of sovereign states,<sup>43</sup> has lost its absolute character as a result of the growing interdependence among nations.

#### FOREIGN POLICY AS A TOOL TO PROTECT HUMAN RIGHTS

The means of foreign policy available to influence or coerce changes in the practices of an oppressive regime have not been clearly established. The principle of non-intervention remains a constraint on economic coercion or other political measures that are disproportionate in scope or ambiguous in purpose and thus extend beyond the permitted objective of protecting human rights. In other words, it would be an abuse of rights to invoke the non-observance of human rights as a ground for a trade embargo against a foreign regime or to adopt expanded defense measures if the real object is commercial or strategic advantage.

The means of foreign policy designed to protect human rights are manifold. In the diplomatic realm, private representation may be made in defense of particular victims or against a pervasive, inhuman practice. These representations may be strengthened by making protection of human rights an issue in intergovernmental negotiations of trade or aid agreements or even a condition of their enactment. Diplomatic relations may be broken off. Governments may resort to public

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40. For a discussion of the various opinions on the meaning of Article 2(4) of the U.N. CHARTER, see Note, "Force" Under Article 2(4) of the United Nations Charter: *The Question of Economic and Political Coercion*, 12 VAND. J. TRANSNAT'L L. 101 (1979).

41. Declaration Concerning Co-operation Among States, *supra* note 29.

42. See, e.g., U.N. CHARTER art. 2(4).

43. The enabling clause of the Declaration on the Granting of Independence states, "All armed action or repressive measures of all kinds directed against dependent peoples shall cease in order to enable them to exercise peacefully and freely their right to complete independence, and the integrity of their national territory shall be respected." Declaration on the Granting of Independence, *supra* note 8.



declarations in the nation's representative body and news media. Stronger measures may be taken, for example, in the reduction of financial aid, in the reduction or cancellation of arms sales, or in the termination of transfers of technology.<sup>44</sup>

The United States Foreign Assistance Act<sup>45</sup> is an example of a broad declaration of human rights policy, the type of measures necessary for its implementation and the conditions for their use. Section 502B states that "a principal goal of the foreign policy of the United States shall be to promote the increased observance of internationally recognized human rights by all countries."<sup>46</sup> Consequently, "no security assistance may be provided to any country [whose] government . . . engages in a consistent pattern of gross violations of internationally recognized human rights."<sup>47</sup> In addition, international "security assistance" programmes must avoid identifying the United States with such governments.<sup>48</sup>

Three elements of Section 502B should be noted. First, "security assistance" consists essentially of military assistance, including military training, sales, and licensing of defense articles and services, and extensions of credits under the Arms Export Control Act.<sup>49</sup> Second, to justify withdrawal of security assistance from the foreign regime the denial of human rights must constitute a "consistent pattern of gross violations."<sup>50</sup> Finally, the President, notwithstanding these provisions,

44. The United States Department of State under the Carter Administration used four "tools" for coercing respect for human rights by other nations:

(1) A device of first resort was "steady, quiet diplomacy" (distinguished from silent diplomacy), which is quiet "in the sense that it does not reach the public," and in fact seemed quite noisy to the governments involved.

(2) Where quiet diplomacy proved insufficient, the Department of State used "carefully selected public statements to bring the focus of world opinion to bear on the violating country."

(3) Another tool was to "encourage other democratic countries which [enjoyed] better standing with a particular government, to join in the efforts to foster greater respect for human rights." Notable was the United Kingdom's work in the Zimbabwe-Rhodesia situation.

(4) Finally, decisions were made on the level and type of economic and military assistance, for example, § 502B of the Foreign Assistance Act of 1961. Derian, *Human Rights in American Foreign Policy*, 55 NOTRE DAME LAW. 264, 271-72 (1979). See also Vance, *Human Rights and American Foreign Policy*, 7 GA. J. INT'L & COMP. L. 223 (1977).

45. Foreign Assistance Act of 1961, 22 U.S.C. §§ 2151-2429b (1976 & Supp. III 1979).

46. *Id.* § 2304(a)(1).

47. *Id.* § 2304(a)(2).

48. See generally *Agency for International Development, Legal Interpretations—§ 116 of the Foreign Assistance Act of 1961: Hearings Before the Subcomm. on International Organizations of the House Comm. on International Relations*, 94th Cong., 2d Sess. 106 (1976).

49. 22 U.S.C. § 2341 (1976 & Supp. III 1979).

50. See Resolution 8 of the United Nations' Economic and Social Council, adopted in 1967, regarding the Commission on Human Rights and the Subcommittee on Prevention of Discrimination and Protection of Minorities, 42 U.N. ESCOR, Supp. (No. 6), U.N. Doc. E/CN.4/490, at 131 (1967).

The legislative history of section 502B and section 116 suggests little as to how the phrase "consistent pattern" should be construed. At a minimum, this language seems to suggest that a single incident will not establish governmental responsibility within the meaning of either provision. Ermacora, *Procedure to Deal with Human Rights Violations: A Hopeful Start in the UN*, 7 HUMAN RIGHTS J. 678 (1976). Instead, the violations MUST recur often enough to be identified as a distinct cause of action. Ermacora suggests that ECOSOC use of this language

may certify to Congress that "extraordinary circumstances" justify provisions of assistance in the form of military education and training to a regime in violation of the act.<sup>51</sup>

Despite the declaration of a human rights policy in the United States, the stringent requirements for "intervention" and the exceptions to that requirement nonetheless, cast doubt as to the actual role that human rights play in United States foreign policy.

### CONCLUSION

As the issue of individual human rights has developed into a tool of international politics, protection of these rights has become a matter subject to international, rather than purely national, jurisdiction. Although the record of international action on behalf of human rights is still scant, international covenants set forth minimum standards, and non-intervention is no longer an absolute in international relations. Nations may use international fora and foreign policy as tools to promote observance of human rights. By implementing measures that encourage adherence to guidelines regarding protection of human rights, individual nations can further the development of international guarantees of human rights.

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indicated a time element inherent in the operative language. In other words, the violation must be one with a certain continuity whose end cannot be foreseen.

51. 22 U.S.C. § 2304 (Supp. III 1979).