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WORLD HABEAS CORPUS: 
THE LEGAL ULTIMATE FOR THE UNITY OF MANKIND*

Luis Kutner**

"World Habeas Corpus... the difference between civilization and tyranny."

Sir Winston Spencer Churchill†

"We in this country, in this generation are—by destiny rather than choice—the watchmen on the walls of world freedom."

John F. Kennedy††

I. Introduction

It is fitting that, in this 750th anniversary year of the Magna Charta, the cardinal principles of justice, based on impartial judicial administration, should now be on the threshold of internationalization. Long prior to 1215, and with sickening repetition subsequent thereto, justice was delayed and denied. Individual grievances have been lost in the quicksand of sovereign indifference. The concept that the individual is no longer an object of international law, but the subject thereof, has yet to be concretely implemented before an authoritative and competent international tribunal.

Within a short time, there will be published a World Law Code sponsored by the World Peace Through Law Center. Publication will coincide with the Washington World Conference. The Code will contain the text of all treaties of general application, the expansions of the flesh of the United Nations Charter, and probably the treaties which have been ratified by at least 25 nations. The vanguard of legal thinking will structuralize the lengthening shadow of legal concepts concerned with the collective responsibility of guaranteeing and preserving the integrity and dignity of man. It will forecast that principles are giving way to enforceable laws.

II. World Public Order

It should be a matter of great pride for the lawyers of the world concerned with international law that they are exercising virile leadership in overcoming diplomatic reluctance and ambiguity. The delicate veil of international affairs is being pierced in the progress towards a world realistically engaged in waging the peace, where human beings may grow to their full stature without hurtful interference by their native state or international aggressor. International, hem-

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** Member, Illinois Bar; President, Commission for International Due Process of Law; Author of World Habeas Corpus, Due Process of Economy, Due Process of Outer Space Law, Habeas Proprietatem, and other proposals; former lecturer and Associate Professor of Law, Yale University; lecturer, University of Chicago Law School and others; former Consul for Ecuador; former Consul General for Guatemala.
† Meeting at Claridge's, London, 1950.
†† From President John F. Kennedy's last undelivered address, Dallas, Texas, November 22, 1963.
ispheric and regional bar associations are mutually concerned with the exercise of judicial power in the enforcement of law in the world community. The limited activity of the International Court of Justice, notwithstanding its availability for the juridical settlement of controversies arising between sovereign states, is giving way to the idea that the settlement of international disputes must build a library of precedent law.

The annihilation of approximately one hundred million human beings since 1917, and the nationalization and expropriation of foreign investments by emerging new nations, beg the question as to need for international judicial machinery to provide available remedies against personal detention and seizure of property without due process of law.

International organizations, international arbitral machinery and the international character of the International Court of Justice and the European Court of Human Rights offer the world-states the grand opportunity of freeing themselves from national embarrassment in resisting the implementation of legal remedies for wrongs committed against person and property. International due process of law, bottomed on competent judicial machinery, can ultimately command respect and confidence among diverse and competitive political and legal systems.

World public order requires accessible world legal machinery. Jurisdictional acceptance must precede the knowledge of how to correct and prevent wrongs. Offenses against international law must be codified by ratified treaties so that aroused national feelings can be overcome or minimized in the event that a nation or its leaders are summoned before an impartial international tribunal. In due course, the conscience and intelligence of mankind will attain the stature of accepting international jurisdiction as a matter of course. By this method nations can reach the dignity of being recognized as civilized. Groundless fears of those who are still laboring under the delusion of invasions of sovereignty will be abdicated in favor of affirmative, simple and fair legal procedures furnished by international statute-treaties.

III. A Legal Beachhead

The concept of World Habeas Corpus was first proposed in 1931. The catalyst was Hitler's Mein Kampf and the exposure of the author to the oral and written speeches of Joseph Goebbels, Hermann Goering, Ernst Roehm and Adolph Hitler. The author was frustrated in attempting to sound the alarm to the Nazi blueprint for human decimation, and in attempting to create a Rule of Law, a personal legal beachhead for mankind. The inevitability of the rising tidal wave of National Socialism was clear to few men in its expiation of German guilt in World War I, repudiation of the Treaty of Versailles and determination to create a blood bath in order to cleanse the guilt.1 The mon-

1 The United States Senate refused to ratify the Treaty on March 19, 1919, and in March, 1920, displayed remarkable international naivete. The peace was political and prophetically cast a shadow over the figure of the League of Nations. It dramatized the human tragedy of Woodrow Wilson whose enthusiastic optimism for world control of war was dissented to by the United States. The Peace Conference at Versailles was a gathering very ill-adapted to do more than carry out the vengeance and bitterness of the war to their logical conclusions. The Germans, Austrians, Turks and Bulgarians were permitted no share
strosity of the Nazi mentality was not comprehended. The Jews were to be removed from Germany. *Mein Kampf* spelled out the blueprint for all the world to see. Arbitrary detention and murder was to be the order of the day. The love of law was to be flouted. But the conscience of the world remained sound asleep.

At the International Bar Association Conference in Mexico City, during the summer of 1964, the author presented an exhaustive paper on World Habeas Corpus and International Extradition. The consensus of the Mexico conference was, as the author urged, that there should be broader remedies for the protection of individual human rights than those which the extradition process affords. The following resolution was passed:

This first Plenary Session of the Tenth Biennial Conference of the International Bar Association recommends to the Council of the IBA that they should request all the Association's affiliated bodies to proceed with studies of the laws of extradition and habeas corpus (and similar procedures in relation thereto), in their own countries with a view to formulating proposals which in particular may effect improvements in:

(a) Making available recourse to judicial controls where executive use is made of immigration and deportation powers in cases where the appropriate procedure would be the extradition process.

(b) The possibility of making available as an ultimate remedy in appropriate cases to a person unjustly affected by the extradition process, access to some extra national tribunal; bearing in mind that this session considers that habeas corpus and similar procedures in relation to extradition are merely a facet of the wider and universal problem of the effective protection of human rights.

**IV. A Realistic Concept**

The concept of World Habeas Corpus is based on the premise that man is the subject and ultimate beneficiary of domestic and international law, and should have the liberty, integrity and freedom of his person guarded and guaranteed by regional accessible international courts created by the constitutionally ratified World Treaty-Statute without impairment of the sovereignty of each signatory state. There is little need for argument to establish the fact that there has been a systematic and deliberate denial of human rights which has a direct relationship to the preservation of world peace. Peace and security cannot be assured in a world where people who are denied their individual rights are pressed to measures of violence against their oppressors.

In sponsoring the concept of World Habeas Corpus, Dean Roscoe Pound in its deliberations; they were only allowed to accept the decisions it dictated to them. It was a conference of conquerors. From the point of view of human welfare, the place of meeting was particularly unfortunate. It was at Versailles in 1871 that, with every circumstance of triumphant vulgarity, the new German Empire had been proclaimed. The suggestion of the melodramatic reversal of that scene in the same Hall of Mirrors was overpowering.

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2 Mr. Kutner's paper represented the American Bar Association.

stated that "all states need not be merged in a great world state, in which their personality is lost, in order that their conduct may be inquired into and ordered by authority of a world legal order." In support of the same concept, Honorable William J. Brennan, Jr., has stated:

The all-important — indeed the most important — end of a world rule of law, the securing of individual liberty, can be obtained without the creation of a world state.

All that seems necessary is that the United Nations signatories ordain by a simple treaty statute a structure and scheme for securing international due process of the nature of national due process familiar to every American: a prompt and speedy trial; legal assistance, including assistance for the indigent; prohibition of any kind of undue coercion or influence; freedom to conduct one's defense; the right to a public trial and written proceedings; the presumption of innocence and the burden upon the State to prove guilt beyond a reasonable doubt; security against cruel and unusual punishments. These standards of due process, and thus of effective justice, only words now in the Universal Declaration of Human Rights, have their counterparts in our own U.S. Constitution. The vital difference, however, is that our nation has vitalized them for our people through a national forum and a national procedure for their enforcement . . .

Why should we not internationalize the writ of habeas corpus along these lines to enforce the guarantees of the Universal Declaration of Human Rights? The research . . . has demonstrated that it can be done. Professor Kutner has performed an invaluable service for the world in blueprinting a plan for world habeas corpus including a judicial structure and a procedure. He proposes doing this within the present United Nations structure through a treaty-statute. It is 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 enforcible in an international court of habeas corpus which would function through appropriately accessible regional courts. Regional world attorneys general would either prosecute or resist application for the writ. Of perhaps equal or greater importance, in the reflection of what happens in our States under the regime of Federal habeas corpus, the sovereign nations would commit themselves to enforce the guarantees of the Declaration in their own tribunals, authorizing review of their decisions by the international court of habeas corpus. Thus individuals would have relief in the international tribunal only upon a proper showing either that relief was wrongly denied under available remedies in the courts of the member state, or that that state provided no such remedies.5

V. The Mexico Conference

It was the consensus at the Mexico Conference of the International Bar


Association that individual security, vis-à-vis national security, is meaningless except in terms of international security. To carry the syllogism further, the securing of human liberty becomes a problem international in scope. Safeguarding individuals, whether they are citizens or aliens, against arbitrary actions of a host state has been subject to repeated frustration. One need not belabor the more than 40,000,000 human beings extinguished by the Soviets since 1917, the 26,000,000 by the Red Chinese, the 6,000,000 Jews and 2,000,000 Catholics by the Nazis, and the millions of others unrecorded by various unilateral tyrannies, to emphasize the urgency of international implementation of human rights which heretofore has been looked upon as a matter essentially within the jurisdiction of the sovereign state. Uncontrolled naked force is out of place in an era which seeks to create protective cloaks of international charters and agreements, or in a world which gives more than lip service to the concept of respect for human dignity. Past efforts of various conventions to protect human rights have proven abortive because of the multiple and competing systems of public order which prevail. The Communist order in eastern Europe and Asia and in the Caribbean must be considered in addition to the basic legal systems of the National Chinese, Hindu, Japanic, Germanic, Slavic, Mohammedan, Romanesque and Anglican nations.6 The contemporary world, ever growing with continued explorations of outer space, angrily suggests that any hesitancy in creating a world rule of law is fraught with the peril of human extinction. Military and economic coercion has become unrealistic and intolerant. The global community must not delay in the subjugation of coercion to authoritative and sanctionable human rights.

The time scale of humanity, catapulting 340,000 years of man’s development and 50,000 years of man’s recorded history, surviving and absorbing extinguished ancient civilizations, evolving 2,000 years of Christianity and more than 5,000 years of Judaism, has achieved the intensity of the moment of decision. Iron Curtains cannot check the invasion of ideas of liberty. As Thomas Paine wrote,

An army of principles will penetrate where an army of soldiers cannot. It will succeed where diplomatic management would fail; neither the Rhine, the Channel, nor the ocean can avert its progress; it will march on the horizon of the world, and it will conquer.7

VI. The Roots Are Deep

World Habeas Corpus is a tangible recognition of the need to codify the principle that man is born with certain inalienable rights. The roots are deep. The parliament of man is obligated to the great events leading up to the decalogue of Moses, the Talmudic recordings, the events leading up to the Magna Charta, the rational propaganda of Jean Jacques Rousseau, John Locke, Jacques Maritain, Thomas Jefferson, Benjamin Franklin, Samuel Adams, the English


7 As quoted in Kutner, WORLD HABEAS CORPUS 133 (1963), and Kutner, supra note 3, at 243.
Bill of Rights, the first Habeas Corpus Act of 1679, the Bills of Rights in the colonial American state constitutions, the French Declaration of Rights of Man and Citizens (1789), the first ten amendments to the Constitution of the United States (the so-called Bill of Rights, 1791), the Declaration of Independence, the Atlantic Charter, the conferences at Moscow, Cairo, Teheran and Dunbarton Oaks, the drafting conferences of the United Nations Charter at San Francisco (April-June, 1945), the Universal Declaration of Human Rights, the Genocide Convention, the European Convention for the Protection of Human Rights and Fundamental Freedoms (November 28, 1950), the European Court of Human Rights, the European Commission of Human Rights, and the United Nations Philippine meeting on Human Rights (February 17-28, 1958), to name but a few.

The concept that individuals should have an equal capacity to act on the international level with that of international organizations is today a fait accompli. Sovereignty arguments are overcome in the thousands of mixed arbitral tribunal decisions, International Court of Justice judgments and orders, in the organizational capacity to sue and be sued, to make contracts, to hold property, and in organizational liability to or immunity from judicial process.

VII. The Universal Postal Union

One of the great international organizations of all time is the Universal Postal Union.

H. G. Wells once said, [it] “is surely something that should be made part of the compulsory education of every statesman and publicist.” When it was established in the 1870s, there was little experience to serve as a guide. Free from the influence of political considerations — largely because of its subject matter — and unbound by previous models, the organization sought matter-of-factly to create an appropriate pattern of operation.

It has been said that the history of international postal service is the real story of civilization — of discovery, exploration and conquest, of international trade and of settlement in new lands. Since the dawn of civilization, communication in one form or another is known to have existed. From the relays of horsemen used by King Darius of Persia in 500 B.C. to those used by the pony express in 1859, postal service has been a vital cog in the machinery of civilization. The international union and uniformity of rates between countries reached its grand congress at the Paris Conference in May, 1863, where an international agreement was set out along the lines of the Austro Postal Union

8 Many other self-executing provisions are demonstrated in the international personalities of Euratom, the European Coal and Steel Community, the International Geophysical Year, the International Committee on Space Research, the International Refugee Organization, the International Labor Organization, the International Monetary Fund, the World Bank, the International Financial Corporation, the International Chamber of Commerce, the International Industrial Development Conference for Asia, the International Law Conference sponsored by the American Society of International Law (February, 1956), the International Bar Association Conference, and the Conference for Protection of Investments Abroad in Time of Peace (Cologne, 1958). YEARBOOK, INTERNATIONAL ORGANIZATIONS (1964 ed.).


10 See generally Menon, Gurus Publicus, INT'L CONC. 3 (No. 552, March, 1965).
in 1842. Toward the end of 1868, the Universal Postal Union, composed of the entire civilized world, commenced to be structuralized. A General Postal Union was finally concluded at that time between the European Middle East countries and the United States. The Universal Postal Congress, administered by an executive council, consultative committees, and an international bureau, and working in harmony with the United Nations and other international organizations, has been more than effective in emphasizing the fact that the international organization for standardization has become the ultimate in blending national autonomy with aspects of supranationality. The question of the surrender of sovereignty is not raised, and any dispute is submitted to the International Bureau for final arbitration.

The reasons underlying the peaceful existence of the Universal Postal Union imply greater reasons for human dignity and liberty via World Habeas Corpus. It is not an exaggeration to say that this organization has become the indispensable element in the business, social and political life of contemporary civilization. Its international mechanisms have stimulated many innovations of international relations, and it has become a durable supranational governmental institution, rendering obsolete the arguments against surrendering sovereignty.

VIII. The Evolution of the Law

The law, as an ancient and venerable institution, has now evolved to the concrete stage at which human beings can have adequate and genuine representation in the international community. The reasons are no longer obscure, nor are they tenuous, even in this day of precarious world relationships and competing political systems. Civilizations can endure only if they produce the institutions of justice and rules of law in creating binding and responsible international capacities. The common ground on which all civilizations meet is that they are composed of human beings. International personalities may be in flux, but the "subjects of international law are — like the subjects of national law — individual human beings."

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11 The other organizations include the World Health Organization, the International Atomic Agency, the International Labor Organization, the International Civil Aviation Organization and the International Air Transport Association. These do not include more than one hundred governmental organizations other than the United Nations family or the nearly one thousand non-governmental organizations. Fewer than two hundred of the latter account for some 700,000,000 persons. Id. at 49-59.

12 Id. at 60-64.

The experience of states in protecting individuals against arbitrary deprivation of liberty has been exhaustively presented in previous writings of the author. 14 Article 9 of the Universal Declaration of Human Rights reads, *inter alia*, “No one shall be subject to arbitrary arrest, detention or exile.”15 The legal tradition of procedural remedies similar to habeas corpus forms part of the law in less than one-third of the signatory members of the United Nations.16 The actual efficacy of the principles of World Habeas Corpus is in the process of building citational precedent in the recently emerged states admitted to the United Nations.17 The code of criminal procedure of the U.S.S.R. contains several provisions with respect to the integrity of the person. Optimism is increasing that the promise may be fulfilled in fact (article 6, article 138, article 158). A most illuminating note is found in the Soviet Penal Code, article 115:

The illegal arrest of any person, or illegally compelling a person to appear before judicial or investigatory authorities [is punished with] deprivation of liberty for a term not exceeding one year. Compelling a person under interrogation to give evidence by use of illegal methods on the part of the person conducting the interrogation; holding a person in custody, as a preventive measure, for personal reasons or from motives of self-interest [is punished with] deprivation of liberty for a term not exceeding five years.18

In Tokyo, Japan, in 1960, the Seminar on the Role of Substantive Criminal Law in the Protection of Human Rights and the Purposes and Legitimate Limits of Penal Sanctions was organized by the United Nations in cooperation with the government of Japan.19 The consensus of the seminar was that remedies should be available to individuals whose human rights had been infringed upon, and that substantive criminal law could insure the protection of human rights as set forth in the Charter of the United Nations, in the Universal Declaration of Human Rights, and in national constitutions. The semi-

14 Kutner, *op. cit. supra* note 7; Kutner, *World Habeas Corpus and International Extradi-


16 Including Argentine Rep. Const. art. 29; Bolivian St. Const. art. 8; Brazil Const. art. 141 §§ 22, 23; Burma Const. art. 25(2); Chile Const. art. 16; Rep. China Const. art. 8; Costa Rica Const. art. 48; Cuba Const. art. 29 (now suspended); Dominican Rep. Const. art. 6 § 12; Ecuador Const. art. 164; Basic Laws Fed. Rep. Germany art. 19(4); Political Stat. Guat. art. 16; Honduras Const. art. 32; India Const. art. 32(2); Ireland Const. art. 40 (4)(2); Japan Const. art. 34; Nicaragua Const. art. 41; Paraguay Const. art. 24; Philippines Const. art. III § 1(14); Habeas Corpus Act, 1679, 31 Car. 2, c. 2 (Australia, New Zealand, Pakistan, United Kingdom); British North America Act, 1952 (Canada). Texts of the above cited and others can be found in 1 *Peaslee, Constitutions of Nations* (2d ed. 1956).

17 These nations include Cameroun, Central African Republic, Chad, Congo (Brazzaville), Congo (Leopoldville), Cyprus, Dahomey, Gabon, Ivory Coast, Malagasy Republic, Mali, Niger, Nigeria, Senegal, Somalia, Togo, Upper Volta, Mauretania and Tanzania.


19 1960 Seminar, Tokyo, Japan, May 10-24, 1960. The participants at the seminar were Australia, Cambodia, Ceylon, China, Federation of Malaya, Hong Kong, India, Indonesia, Iran, Japan, Nepal, New Zealand, Pakistan, Philippines, Republic of Korea, Republic of Viet Nam, Sarawak, Singapore, Thailand, and Afghanistan. Of the non-governmental organizations in consultative status with the Economic and Social Council, the World Federa-
inan, together with the Seminar on the Protection of Human Rights under Criminal Law and Procedure in Santiago, Chile, in 1958, spelled out the collective responsibility of all nations for establishing a competent legal implementation of the rights which protect the individual from wrongful accusation and illegal or arbitrary arrest and detention.

IX. World Peace Through Law

The Athens World Conference on World Peace Through the Rule of Law demonstrated beyond a peradventure of doubt that lawyers the world over could play the dominant role in substituting the rule of law for the rule of force in international relations. The agreements reached and the program adopted emphasized that law must replace force and that the world must find concrete means to obtain this objective. The program adopted strengthens optimism that international legal institutions, through the expansion of international law, can maintain the peace.

The plenary and working sessions amply buttressed the multi-faceted approach of world peace through law, with topics ranging from *Pacem in Terris* to increasing the use and usefulness of the International Court of Justice, the creation and jurisdiction of stabilized courts, law rules to encourage international investment, law to facilitate economical areas of trade, increasing the scope and effectiveness of arbitration and consultation and other means of resolving any disputes, developing law rules and legal institutions for disarmament programs, creating law for outer space and space communications, the United Nations and political regional organizations as the source of law rules and legal institutions, international cooperation and legal education and research, encouraging international unification of private law, organizing lawyers internationally for effective cooperative action, stating the general principles of international law, and structuralizing a world legal order based on law and laws in relation to world law. The Athens World Conference is a fulfilment of the prophecy of Roscoe Pound that "we cannot expect the development of human nature to stop where we now find it."

It becomes almost trite to assert that law is the only discipline which can and actually does dominate all other disciplines in dealing with man, property or nations. Today there are afoot the manifest forces making for universality in law. As Roscoe Pound suggested:

> Shall we say that today there is quest of a universal regime of justice? May we conceive of law as transcending and putting limits to organized force? Does our quest of a universal justice involve a quest of universal law? Is a law of the world possible?

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20 Mr. Charles S. Rhyne was chairman of the conference.
Since the Hebrew prophets men have dreamed of a general and perpetual peace. In the modern world this has taken the form of a planned legal order; a world wide regime of adjusting relations and ordering conduct under the control of some agency of organized society. But force is wasteful, and there are ethical and economic objections to even an ideal universal regime of force. All experience shows that the regime of forcible maintenance of peace and order is likely to get out of hand and work mischief. But we are thinking of an ideal regime for an actual world and must take for granted something from which the ideal regime may derive efficacy for its purpose.

Must the effectuating agency of necessity take the form of a politically organized society? This is generally assumed. Since the sixteenth century there has been a rooted belief that organized force of a politically organized society was a necessary prerequisite of a regime of justice. Hence plans for a universal regime of justice have taken the form of plans for a world wide political organization—a universal super-state.

Plans for universal peace since the “grand design” of King Henry IV of France in 1603 have been many. They have been religious or political or consensual.

In the nineteenth century these were succeeded by a system of particular arbitrations and later by general plans of arbitration of particular disputes. These presupposed a doubtfully existent international law, or where there were special treaties for arbitration, often formulated certain rules for the case in hand. In the present century we have seen what may be called embryo super-states projected, partly political and partly judicial.

Behind these plans toward a universal peace we may see two conflicting ideas: the Germanic cult of the local, self-governing community—what Beseler called Kleinstaatismus, or, as I translate it “Mainstreetism”—and what came to be the Roman belief in a universal empire.

Have we not since the seventeenth century, which was obsessed by the Roman autocratic universal state, expected a universal political organization to bring about a universal justice according to law, whereas perhaps the law must come before the regime of adjudication, not so much however, in the form of rules as in the form of universally recognized principles.

What seems most significant is the general giving up of the extreme localism of the Anglo-American lawyer of the last century. There was and there long had been a cult of the local law. Every one seemed to hold as a matter of course that the law of the time and place had a sufficient basis in the local political sovereignty and was to be thought of in terms of that sovereignty. Its basis in an independent political sovereignty justified it and all its details.²²

In a recent article Henry Luce quoted Lord Hailsham’s expectations for the future:

“I see a world where freedom under law is the rule and not the exception for mankind. In that world the sums now spent on arms are devoted to education and research, to the elimination of

²² Ibid.
disease, to the rescue of deserts from the sand . . . and to the enjoyment of the good things of life by the suffering millions of mankind.\textsuperscript{[22]}

Philip C. Jessup admirably referred to Baron von Asbeck's vision of the purpose of the study of international law:

"To explore how the present law has come to be what it is, how it is involved in a process of reform and extension and intensification, in order that we may be able to assist in the building, stone upon stone, in storm and rain, of a transnational legal order for states and peoples and men."\textsuperscript{[24]}

Justice Jessup continued:

It is indeed true that "No one is asking for a complete rejection of what we know as international law. No one is asking that the books be burned and that we start afresh in rejection of the lessons history has given as to the rules which minimize friction." In his distinguished contribution to the series of lectures in honor of Dag Hammarskjöld, Secretary General U Thant made a plea for a world "made safe for diversity," and the same plea was echoed by the President of the United States in his State of the Union message. In a world so oriented, none need despair that there will be general international realization of the common interest or that the timeless tide will flow toward uniformity in the law of nations.\textsuperscript{[25]}

X. \textit{Amparo}

Another procedural remedy designed to secure personal liberty is \textit{amparo}, which first attained its juridical maturity in Mexico.\textsuperscript{[26]} \textit{Amparo} (deriving from the Spanish word \textit{amparar} which means to aid or help) is a summary legal procedure used not only to prevent a violation of personal liberty, but also to prevent any infringement of individual constitutional rights by any law or authority whatever. For example, it is the proper recourse against slavery, arbitrary detention or any restrictions upon freedom of thought, speech, press, assembly, education or choice of occupation.\textsuperscript{[27]} The function of \textit{amparo} is to restore the injured party to the full enjoyment of his liberties "by means of reconstituting the situation to its former state if the act complained of were a positive one, or if the act were negative, by obligating the authority to respect the guarantee and to comply with that which such guarantee demands."\textsuperscript{[28]} \textit{Amparo} is of a much broader nature than the writ of habeas corpus and combines many features of such Anglo-Saxon writs as habeas corpus, mandamus, and certiorari.\textsuperscript{[29]}

\begin{footnotes}
\footnote{\textsuperscript{23} Luce, \textit{The Way of the Law: The Road to the Mountains of Vision}, 45 A.B.A.J. 482 (1959) (quoting Lord Hailsham).}
\footnote{\textsuperscript{25} Id. at 358. (Footnotes omitted.)}
\footnote{\textsuperscript{26} There is some debate as to the origin of this institution. Some authorities have claimed it is an outgrowth of the old Spanish system of \textit{fueros} (rights). \textit{Vallarta, El Juicio de Amparo} 3 (1881). Another writer contended that it is a Mexican adaptation and modification of the United States writ of habeas corpus. Aguilar Arriaga, \textit{El Amparo de Mexico y sus Antecedentes Nacionales y Extranjeros}, 52 Mexican Thesis 1 (1942).}
\footnote{\textsuperscript{27} Vallarta, \textit{op. cit. supra} note 26, at 39.}
\footnote{\textsuperscript{28} Id. at 82.}
\footnote{\textsuperscript{29} Tucker, \textit{The Mexican Government of Today} 118 (1957).}
\end{footnotes}
Mexico and Chile have not adopted the institution of habeas corpus but use *amparo* to secure individual personal liberty. Although Costa Rica, Guatemala and Panama provide for the writ of habeas corpus, they also have *amparo* to cover those cases where habeas corpus does not lie.

A. *Who may file an application for amparo?*

These states give the right to petition for *amparo* to everyone;\(^30\) such petition may also be filed by any person acting on behalf of another.\(^31\)

B. *With respect to whom may the writ be brought?*

Chile offers relief through *amparo* only to those who have been illegally arrested, indicted or imprisoned.\(^32\) In Costa Rica,\(^33\) Guatemala,\(^34\) Panama\(^35\) and Mexico,\(^36\) *amparo* is available whenever anyone's constitutional rights are threatened by an official act.

C. *For what type of acts in violation of what standards?*

Under Mexican law, *amparo* may be granted in civil and labor cases, as well as in criminal matters, if any basic constitutional guarantee has been violated.\(^37\) It is proper recourse against any application of the penalties prohibited by article 22 of the Mexican Constitution (prohibitions against cruel and unusual punishment, excessive bail, etc.). It also lies on behalf of anyone who is threatened with deportation, exile, or loss of life or personal freedom by an official act other than a judicial proceeding.\(^38\) *Amparo* can be used only against official acts or laws; it does not lie for actions of private individuals.\(^39\) However, it is the correct remedy against administrative decisions which cause damage that cannot be repaired by means of an appeal or a legal defense.\(^40\)

The scope of protection afforded by *amparo* is essentially the same in Costa Rica, Guatemala and Panama as it is in Mexico.\(^41\) In Chile, however, the writ of *amparo* is primarily directed toward securing certain specified rights.

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\(^{30}\) *Chile Const.* art. 16; *Costa Rica Const.* art. 48; *Political Stat. Guat.* art. 80; *Pan. Const.* art. 51; *The Protection of Rights Act*, art. 17, *Mex. Memo.*

\(^{31}\) In Mexico, if the injured party is unable to submit the application, any other person, "including even a minor or a married woman," may do so in his behalf. In that case, the court must take all measures necessary to bring the person before the court and request him to endorse the application for the remedy. If the party concerned endorses the application, the court must proceed with the matter; but if the party does not endorse the application, the petition is considered void. *The Protection of Rights Act*, art. 17, *Mex. Memo.*

\(^{32}\) *Chile Const.* art. 16.

\(^{33}\) *Costa Rica Const.* art. 48.

\(^{34}\) *Political Stat. Guat.* art. 80.

\(^{35}\) *Pan. Const.* art. 51.

\(^{36}\) Protection of Rights Act, art. 17, *Mex. Memo.*

\(^{37}\) *Mex. Const.* art. 107 § III(a).

\(^{38}\) Protection of Rights Act, art. 17, *Mex. Memo.* *Amparo* is also the procedural device used in Mexico whenever a local or state authority has invaded the sphere of federal jurisdiction. *Vallarta*, *op. cit. supra* note 26, at 19-21.

\(^{39}\) *Vallarta*, *op. cit. supra* note 26, at 49.

\(^{40}\) *Mex. Const.* art. 107, § IV.

\(^{41}\) *Costa Rica Const.* art. 48. In Panama, *amparo* may be granted on behalf of any person "against, when a mandatory or restraining order, violating the rights and guarantees held sacred by this Constitution is issued." *Pan. Const.* art. 51. The Guatemalan Constitution makes this remedy available to maintain or restore the constitutional rights of an individual; to obtain a ruling in a specific case that an order or act of any authority is not
to detained persons;\(^2\) thus Chilean *amparo* seems to resemble habeas corpus more closely than does Mexico's *amparo*.

D. **By what procedures?**

*Amparo* may be sought in Mexico only when no other judicial recourse is available and when the petitioner is threatened with an irreparable injury.\(^3\) The laws regarding the use of *amparo* in penal matters are rather similar to the rules concerning criminal appeals under United States law.\(^4\) To prevent the possibility that a person may simply be detained in prison without ever being given the chance to present his case to a judge, the Mexican Constitution requires that upon the expiration of a maximum of ninety-nine hours after the initial arrest, every detained person must be released unless the jailer has received a formal judicial order for commitment of the prisoner. Any official who fails to comply with this provision is subject to penal sanctions.\(^5\)

42 For example, § 306 of the Chilean Code of Criminal Procedure provides that *amparo* will be granted in any of the following cases: where a warrant of arrest or order of imprisonment is issued by an authority not empowered to make an arrest; where such warrant is issued in cases other than those provided by law, or if the formalities prescribed by law have not been complied with in issuing the warrant; where the warrant has been issued without good cause, or where all the requisite legal conditions have been fulfilled but it is not established by the proceedings that it is necessary to detain the person concerned; or where the person detained in custody has not been interrogated within the statutory period of twenty-four hours. Chile Memo.

43 The Mexican Constitution states that *amparo* may be granted in judicial matters, whether civil, penal or labor, only in the following cases. Mex. Const. art. 107 § III(a). This remedy lies against final judgments or awards if no other ordinary recourse is available by which these judgments may be modified or amended, provided that the violation of the law resulted in judgment or award. If the violation occurs during the course of the trial, it must have affected the defense of the petitioner to the extent of affecting the verdict, and the objection must have been duly noted and protest entered against the denial or reparation. In addition, if the error is committed in the first instance, it must have been invoked in the second instance as a violation of the law. The remedy also lies "against acts committed during the suit whose execution is impossible of reparation, acts exercised outside the suit or after the termination thereof when all recourse has been exhausted." Mex. Const. art. 107 § III(b). *Amparo* is also available against acts which affect persons who were not parties to the suit.

44 If *amparo* is sought because of a violation of the guarantees of article 16 of the Constitution (i.e., the right of a criminal defendant to be brought before a magistrate without delay, etc.), the petitioner must seek recourse through the appellate court of the court which committed the error or through the respective district courts. The attorney general is a party to all *amparo* suits unless he decides to abstain from the case on the ground that it lacks public interest. Mex. Const. art. 107 §§ XII, XV. Judgments of *amparo* are reviewed by the Supreme Court either when the constitutionality of a law is challenged (i.e., in case of controversies arising out of laws or acts of the federal authorities which limit or encroach on the sovereignty of the states, and all controversies arising out of the laws or acts of the state authorities which invade the sphere of the federal authorities) or when, in criminal cases, the only claim is a violation of article 22 of the Constitution (prohibiting cruel or unusual punishment, excessive fines, and capital punishment except for certain specified grave offenses). Mex. Const. art. 107 § VIII. In all other cases, there is no right to appeal the decision of a circuit court in an *amparo* matter. Final sentences in penal suits must be stayed as soon as the judge is notified that an application for *amparo* has been filed. Mex. Const. art. 107 § X.

45 Article 107, § XVIII, of the Mexican Constitution provides that all detained persons must be brought before a magistrate within twenty-four hours for a preliminary examination. If the Jailer does not thereafter receive an order of committal from the judge within seventy-two hours after placing the prisoner at the court's disposal, this fact must immediately be
An *amparo* proceeding is initiated in Guatemala by filing a petition for such relief;\(^{46}\) where desirable, the judge may hold the hearing in the place of detention.\(^{47}\) In Chile, an application for *amparo* must be given priority over all other cases and the court must decide the matter within twenty-four hours.\(^{48}\) In addition, the Chilean Code of Criminal Procedure requires that five days after the initial arrest, a detained person must either be released or formally charged with an offense.\(^{49}\)

**E. Orders the court may make.**

Mexican law obligates the court in an *amparo* case to make such orders as are necessary to restore the petitioner to the full enjoyment of his individual constitutional rights. However, the court may declare a law unconstitutional only insofar as its application to the particular case is concerned; such a decision cannot affect the general constitutionality of the statute.\(^{50}\)

A decision to grant *amparo* in Guatemala has the effect of immediately suspending the illegal order or official act and discontinuing the effect of such measure,\(^{51}\) but such decision is not res judicata.\(^{52}\) Chilean judges in *amparo* cases have several alternatives. They may correct any legal defects themselves or may report such defects to the authority who should correct them. In addition, the judge may either order the *detenu* immediately released or place him at the disposal of the proper court.\(^{53}\)

**F. Enforcement of amparo decisions.**

Aside from the general provisions enabling courts to enforce any of their orders, the constitution of Guatemala specifically provides that any act which impedes, restricts or in any way obstructs the exercise of the right of *amparo* is punishable.\(^{54}\) Legal responsibility is imposed upon any court that fails to entertain a petition for *amparo*.\(^{55}\) The laws of the Federal District of Mexico expressly forbid the police to arrest anyone who has been released under *amparo*.\(^{56}\)

This analysis shows that personal liberty may be protected by *amparo* as adequately as by habeas corpus. At least on the level of formal authority, the above survey indicates that habeas corpus or its functional equivalent is presently

\(^{46}\) Political Stat. Guat. art. 80 § C.

\(^{47}\) Political Stat. Guat. art. 81.

\(^{48}\) An extension of six days is allowed if it is necessary to conduct an investigation in a place other than that where the court is sitting. An *amparo* decision may be appealed to the appropriate court of appeal and from that court directly to the Chilean Supreme Court. Chile Const. art. 16; Code Crim. Proc. § 306, Chile Memo.

\(^{49}\) This time limit is extended to ten days in case of arson. Code Crim. Proc. § 251, Chile Memo.

\(^{50}\) Vallarta, op. cit. supra note 26, at 49.

\(^{51}\) Political Stat. Guat. art. 80 § C. The Constitution demands that the judicial interpretation be liberal in *amparo* cases and the judges in these proceedings may dispense with evidence they deem unnecessary. Political Stat. Guat. art. 84.

\(^{52}\) Political Stat. Guat. art. 85.

\(^{53}\) Chile Const. art. 16.

\(^{54}\) Political Stat. Guat. art. 83.

\(^{55}\) Political Stat. Guat. art. 85.

\(^{56}\) Reglamento de la Policía Preventiva, Federal District, art. 70, Mex. Memo.
operative in thirty-eight countries. The mere fact that these remedies are working more or less effectively in numerous states of such diverse traditions and backgrounds casts doubt upon Mr. Delignieres' contention that habeas corpus is meaningless outside a system of common law.

XI. Structure of the Proposed International Court of Habeas Corpus

In order to root such international protection in the diverse patterns of law, the world should be divided into nine circuits (or arenas). Aside from the practical consideration of geographical proximity, the delineation of these circuits ought to correspond approximately to the main diversities in legal traditions, culture, religion and history. A Circuit Court of Habeas Corpus would be located in each one of these regions and hear cases arising within its own area. The following circuits would be established:

1. The Communist-Orient Circuit — Communist China, North Viet-Nam, Outer Mongolia and North Korea;
2. The U.S.S.R.-Eastern Europe Circuit — the Soviet Union and the Communist states of eastern Europe, including Yugoslavia;
3. The Western Europe Circuit — the non-Communist states of western Europe, Great Britain, Greenland, Iceland, Ireland, Cyprus, Crete and Israel;
4. The Islamic Circuit — the Arabic states of the Middle East, Pakistan, the predominantly Moslem states of North Africa and Algeria;
5. The Southern Africa Circuit — the African states outside the Islamic circuit;
6. The Non-Communist Orient Circuit — India, Japan, Burma, Ceylon, Nationalist China, South Korea, Thailand, Nepal, Non-Communist Viet-Nam, excluding Indonesia and the Philippines;
7. The Austral-Oceanic Circuit — Australia, the Philippines, New Zealand, the South Sea Islands, Indonesia, etc.;
8. The Latin American Circuit — all Latin states within the Western hemisphere, including Cuba, Haiti, the Dominican Republic, etc.; and
9. The Anglo-American Circuit — Canada, the United States, Puerto Rico, and British and North American possessions in the West Indies.

In prior articles the author suggested that there be seven circuit courts. The increase to nine circuits is to accommodate all the rapidly emerging new and distinct patterns of law in the world community.

Since the completion of this article, more than thirty new nations have emerged and have been admitted to the United Nations. The bulk of these nations would probably be included within the jurisdiction of the South Africa Circuit (i.e., Mali Federation, Upper Volta, Ivory Coast, Togo, Dahomey, Cameroon, the Central African Republic, Gabon, Congo Republic, Niger, Chad, Republic of the Congo, and Malagasy Republic). Malaya would most likely choose to join the Non-Communist Orient Circuit, while as indicated above, Cyprus would probably become part of the Western Europe Circuit. As pointed out, in case of disagreement, any of these states would be free to make the final decision themselves.

See F.S.C. Northrup's conclusion that there are seven major cultural-legal units in the contemporary world: (1) the Asian solidarity of India, Ceylon, Burma, Thailand, Indo-China, South Korea, and Japan, rooted in the basic philosophical and cultural similarity of non-Aryan Hinduism, Buddhism, Taoism, and Confucianism; (2) the Islamic world, rooted in the religious and philosophical faith and reconstruction of a resurgent Islam; (3) the non-Islamic, non-European African world, rooted in its lesser known culture; (4) the continental European Union, grounded in a predominantly Roman Catholic culture with a secular leadership that has passed through the liberalizing influence of modern philosophical thought; (5) the British Commonwealth, with its predominantly Protestant British empirical
This proposed division sacrifices the unity of the British Commonwealth legal system for the sake of regional contiguity; still, it may be noted that the Commonwealth members have been placed in circuits in which the other states have been considerably influenced by Anglo-American jurisprudence, as in the case of Australia and the Philippines or India and Japan. In case of a dispute regarding the arena to which a nation should belong, the state involved should have the right to make the final decision. Likewise, as power alignments in the world community change, a state should be free to shift to the circuit of its choice.

Presiding over the entire world would be a Supreme International Court of Habeas Corpus to hear appeals from the Circuit Courts.

XII. Composition of the Tribunals

A. The Circuit Courts.

Each circuit court should be composed of seven judges, of whom at least four must be nationals of a state located within the arena over which the particular circuit court has jurisdiction. Of course, it may be objected that this proposal already “packs the court” in favor of the decisions of the national governments within any one arena, but such a compromise seems essential if there is to be a possibility of states agreeing to participate in this type of international tribunal. In addition, this scheme will insure that the decisions of the courts develop in accord with the realities of the conditions existing within the individual arenas.

To reflect accurately the relative basis of power (people, resources and territory) within the arena, at least one national from each of the world’s predominant states should sit as a judge in the circuit court having jurisdiction over that state. Thus, on the U.S.S.R.-Eastern Europe Circuit Court, one judge must be a citizen of the Soviet Union; in the Communist-Orient Circuit, one judge would be from mainland China; in the Western Europe Circuit, one judge should be French and one judge British; in the Anglo-American Circuit, one judge from the United States; in the Non-Communist Orient Circuit, one judge must be Indian and one judge Japanese; and on the Austral-Oceania Circuit Court, one judge from the Philippines and one from Australia.

The remaining judges on each circuit court must be chosen from states outside the territory of the arena in question. To avoid undesirable duplication in philosophies, the other three judges on the U.S.S.R.-Eastern Europe Circuit would have to be nationals of states outside both that circuit and outside the Communist-Orient Circuit. Likewise, the additional three judges on the Communist-Orient Circuit should be from nations outside both this circuit and the U.S.S.R.-Eastern Europe Circuit. In exchange for this concession, it should philosophical traditions combined with the bond of unity derived through classical education, English law, the Church of England, and its royal family; (6) Pan America, rooted in the liberal constitutionalism of the common law of the United States on the one hand, and the modern equivalent of Cicero's liberal Stoic Roman legal universalism on the other hand, as expressed in governments and even education, under secular leadership; and (7) the Soviet Communist world, comprising the U.S.S.R., her Eastern European Satellites, mainland China and North Korea. NORTHUP, THE TAMING OF NATIONS 286-87 (1954).
be agreed that at least one judge on the Anglo-American Circuit Court will be a citizen of a Communist state.

To obtain a list of candidates for these judicial positions, each nation which is a member of the court system should submit three names of outstanding jurists of their country. From these lists, the member nations within an individual circuit-arena should select four judges who are nationals of states within the arena (local judges) and three from outside the arena (non-local judges) to constitute the circuit court for their region. If the states within a particular circuit cannot reach an agreement as to who the judges shall be, then they should be chosen by lot from the respective lists of “local” nominees and “non-local” nominees.

From the remaining candidates not appointed to any of the circuit courts, the judges of each circuit court shall select seven nominees from outside their arena (non-local judges) to sit within that circuit as screening judges, i.e., to determine whether a petition discloses a prima facie case.

B. The Supreme Court.

The Supreme Court should be composed of nine justices — one justice for each circuit-arena. The justice must be a national of a state within the circuit he represents, and he should be chosen by a simple majority vote of the judges composing the circuit tribunal for that region.

XIII. Procedure of the Tribunals

A. Invoking the Authority of the Circuit Court.

Any detained person anywhere or any other person on his behalf may invoke the jurisdiction of the circuit court, as soon as one has been established for the region where he is confined. It would not be necessary that the state detaining him be a member of the International Court of Habeas Corpus nor that the state involved even agree to submit to the jurisdiction of the court. It would be irrelevant whether the detaining government is considered a “state” under the technical rules of international law. However, the authorities of the detaining government, of course, would have the right to intervene before the tribunal to defend their action in detaining the petitioner, even though that nation is not a member of the court. In order for any state to interpose a defense, it must bring the detenu before the court. The refusal of a state to intervene or to permit the detenu to appear before the court in person will not prevent the tribunal from proceeding with the case and deciding on the basis of the available evidence. If the court decides the petitioner should be released, it may depend upon its own prestige and other enforcement measures to pressure the detaining authorities into compliance with its order.

B. Exhaustion of Local Remedies.

In accord with traditional international prescription, the petitioner would have to show that he had previously exhausted all local remedies, except where
such action would be obviously futile. The application of this rule is necessary to bring the work of these tribunals within manageable proportions and to show some respect for state sovereignty by allowing each nation the first opportunity to provide relief. Naturally, this requirement should not be applied if the municipal laws of the state permit the prisoner to be detained without any right whatever to have his case reviewed by an impartial decision-maker.

C. Orders the Tribunal May Make.

The circuit courts should have the power to make one of three alternative decisions: (1) to continue the detention; (2) to order the petitioner released at once; or (3) if the detention is illegal due to a procedural defect, the court may, in its discretion, order the case remanded to the national courts for correction or retrial. Moreover, the circuit courts would have the power to determine only the legality of the detention of the individual petitioner; their decisions would not affect the constitutionality or validity of any municipal or state law, except insofar as the individual petitioner may be concerned. This regulation would eliminate the heart of the objection that such international courts could drastically modify the effect of domestic legislation.

D. Voting Requirements for a Decision.

On the circuit court level, a simple majority would be sufficient to render a decision. In practice this would mean, for example, that the four “local judges” on the Communist-Orient Circuit Court would be sufficient to order a detention continued. On the other hand, the three “non-local” judges would have to swing only one of the “local judges” to their side in order to obtain the controlling vote.

E. Appeals to the Supreme International Court of Habeas Corpus.

A decision by a circuit court to release the petitioner should be final and not subject to appeal. But a holding that the detention is legal and may be continued should be appealable by right to the Supreme International Court of Habeas Corpus, if three of the circuit court judges dissented from the decision of the lower court. Under this system, the three “non-local” judges could use their combined power against any bloc voting of the “local judges” by making such blanket decisions automatically open to review by the upper court. Where only two of the circuit court judges have dissented, the Supreme Court should have the power to review the case at its discretion in a manner comparable to certiorari in the United States. The upper court should also have the option to review determinations by the circuit court to remand the case to the state courts for correction.

60 In order to contend successfully that international proceedings are inappropriate, the defendant state must prove the existence, in its system of internal law, of remedies which have not been used. The views expressed by writers and in judicial precedents coincide in that the existence of remedies which are obviously ineffective is not held to be sufficient to justify the application of the rule. “Remedies which could not rectify the situation cannot be relied upon by the defendant State as precluding an international action . . . [I]t is hardly possible to limit the scope of the rule of prior exhaustion of local remedies to recourse to local courts.” Ambatielos (Greece v. United Kingdom), in 50 Am. J. Int’l L. 674 (1956).
For the Supreme International Court of Habeas Corpus to overturn the decision of the lower courts, at least six of the justices would have to vote for reversal. There should also be a presumption in favor of the reasonableness and validity of the circuit court's decision. This requirement of six votes to reverse the circuit court's judgment would again weigh the decision-making process in favor of the particular system of public order under which the petitioner is detained. Russia, for example, could have her internal decisions upheld by merely securing the vote of the justices from the U.S.S.R.-Eastern Europe Circuit, the Communist-Orient Circuit, and two other justices, e.g., from the Islamic Circuit, the Latin American Circuit or the Non-Communist Orient Circuit. On the other hand, if six or seven justices from the other circuit regions all vote to release the petitioner, it should constitute rather clear proof as to how world public opinion stands on the case. In spite of the obvious defects in this distribution of voting power, it seems the only realistic method of devising an acceptable plan for such an international tribunal.

XIV. Standards Against Which the Validity of the Detention Should Be Tested

A. On the Circuit Court Level.

In view of the profound diversities existing among the major systems of public order, it would be futile to seek an absolute and all-inclusive definition of "arbitrary" or "illegal" detention. Instead, the Circuit Courts of Habeas Corpus should determine if, under all the factual conditions and circumstances existing within the particular arena, the continued detention of the petitioner is reasonable. What is "reasonable" will naturally vary from one arena or region to another. Implicit in this basic test of reasonableness is a balancing process which would weigh the relative importance of the values sought to be protected against the risks involved. The attention of the decision-makers must be focused on all the relevant factors in context which should rationally affect the decision. As McDougal and Feliciano stated:

The realistic function of . . . rules, considered as a whole, is, accordingly, not mechanically to dictate specific decision but to guide the attention of decision-makers to significant variable factors in typical recurring contexts of decision, to serve as summary indices to relevant crystallized community expectations and, hence, to permit creative and adaptive, instead of arbitrary and irrational, decisions.\(^6^1\)

Under the category of values for which protection is claimed, the following questions should be considered:

(1) What is the nature of the substantive rights for which the petitioner is asking protection (right to counsel, right to a fair trial, right to free speech, etc.)?

(2) What is the relative importance of the claimed right to individual human dignity (e.g., the right to a fair trial seems more basic to humanity than freedom of assembly)?

(3) What values are the detaining government claiming to safeguard (public order, internal security, etc.)?

\(^6^1\) McDougal & Feliciano, supra note 6, at 815.
(4) How essential is the detention of this petitioner to secure the value demanded by the government in question (perspectives, identifications and expectations of the peoples living within that arena)?

(5) Is the purpose of the conflicting claims to expand and obtain new values or to conserve and protect existing ones?

(6) Do the claimants seek to expand, preserve, or narrow the substantive rights or values already guaranteed by formal authority? At this point the courts should examine (a) the existing international prescription and standards, such as "denials of justice," "general principles of law recognized by civilized nations," etc., as well as (b) the municipal laws of the detaining state and the relevant norms of other nations within the same system of public order.

Under the category of risks involved, the decision-makers should consider: the possible threat to the security of the state; the probabilities of increasing the tensions of the cold war; the risk of precipitating or expanding violence; the relative willingness of the detaining government to accept intervention by the world community and to comply with its decision, etc. In addition, the judges should consider all possible alternatives, e.g., whether the detaining state might consent to releasing the petitioner on condition that he be exiled, and the possibilities that the state would be willing to free him into the custody of another state in exchange for a prisoner held by the latter state.

Essential to this balancing process is a profound understanding of the jurisprudential system under which the particular arena operates. In the U.S.S.R.-Eastern Europe arena, the decision-makers should aim toward the greater realization of human dignity within the framework of the Marxian conception of an ideal society, whereas the judges in the Arabic region should strive toward the ideal within the structure of the Islamic religious conceptions, and the judges in the North American arena should attempt to perfect the Anglo-American conceptions of "equality under law," democratic constitutionalism, etc. At the present time, it would be absurd for an international habeas corpus court to try to secure the right of free speech to an anti-Communist in the Soviet Union. On the other hand, since the formal authority of the U.S.S.R. already guarantees various rights of procedural due process, she may be willing to submit to some international enforcement and gradual expansion of these procedural rights. The supervisory powers of the international court could assure that the formal guarantees in Soviet law are respected in practice, e.g., insuring that the petitioner really was accorded the right to counsel upon notification "of the termination of the investigation." Likewise, the tribunal could be the checking force to see that the Soviet state prosecutors actually make, within the pre-

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62 Guides for measuring the obligations of states may be found in precedents of mixed arbitral boards, international custom and transnational tribunals, as well as in the principles to which states have given at least lip service in international declarations. As Hans Kelsen has pointed out, "the present day international law [developed] out of customs and agreements, and in this legal system custom was for the most part formed by the practice of the courts themselves." Kelsen, Compulsory Adjudication of International Disputes, 37 Am. J. Int'l L. 392, 400 (1944). Another recognition of such traditional sources of international law is article 38 of the Statute of the International Court of Justice authorizing the court to apply "international conventions," "international custom," "the general principles of law recognized by civilized nations," "judicial decisions and teachings of the most highly qualified publicists of the various nations," and principles of "equity."
scribed time limit, the required decision as to whether this particular prisoner ought to be further confined. In this way the possibility could be avoided that a certain prosecutor might in advance merely hand over to the police authorities a detention order signed in blank, rather than making a careful determination in each individual case. It may thus be possible to obtain within the Soviet orbit both "due process of law" and some degree of freedom to Communists who deviate only slightly from the official policy.

In contrast, a rather high level of protection should be secured in the Latin American arena, since the formal authority (constitutions) of all these states guarantees a multitude of individual rights and liberties, and the practice of most of these states is more or less in accord with such formal authority. The recent downfall of six leading dictators in Latin America, together with the vigorous agitation against the remaining despots, shows clearly that these people are politically maturing and demanding recognition of all basic human rights. Hence, the level of development in this arena is probably sufficient to permit an international court of habeas corpus to force a recalcitrant Latin American government to grant the fundamental freedoms to its subjects. In this arena the Circuit Court of Habeas Corpus should protect even such substantive rights as the freedom of expression of thought.

Where the legal suspension of certain rights is involved (as in the Preventive Detention Act or state of siege cases), the circuit courts should make the following inquiries: Was it necessary for the security of the state to suspend this particular right in reference to this particular individual? What are the allowable limits of executive discretion in this matter? Have those limits been overstepped? Mr. Vallarta suggests that even during times of emergency the following guarantees should not be suspended: the right to a full defense, the injunction against imposing punishment without a trial, the prohibition against ex post facto laws and the proscriptions against cruel and unusual punishment.63 Other basic privileges which should be added to this list are: the right to be confronted with adverse witnesses, the right to have confessions obtained by force or by inquisitional methods thrown out of court and the right to remain silent.64 In addition, the circuit court should decide whether the emergency which gave rise to the suspension has in fact ceased to exist, so that the individual guarantees should be considered effective again.

B. Standard on Appeal to the Supreme International Court of Habeas Corpus.

The test for the legality of the detention which the Supreme Court should apply is not what the individual justice feels is right or fair; rather, the only question on appeal should be: under all the conditions, factors, and variables existing in the arena of the individual circuit court, was the decision of the lower court so unreasonable as to require its reversal? As stated above, there should be a presumption in favor of the lower court's decision.

If the legality of the detention is determined on the basis of the variable

63 Vallarta, op. cit. supra note 26.
factual contexts existing within the particular systems of public order, the application of this test would result in different standards of protection for each arena. Probably in certain circuit-arenas the scope of human rights accorded international protection would be quite minimal at first. However, as internal conditions stabilized and economic, social and political institutions progressed within such regions, the decision-makers of the individual circuit courts could foster and encourage the evolution and expansion of the range of personal freedoms to be protected within their region.

XV. Enforcement of the Decisions of the International Court of Habeas Corpus

While this proposed court system will not immediately achieve any revolutionary reforms in the area of human rights, it will serve two crucial functions: (1) provide review of individual detentions by a judicial decision-maker, and (2) offer a method by which the case may be brought to the attention of the world community. The enforcement of decisions would rest primarily upon the voluntary compliance of the state involved. Since a decision would be rooted in the norms of the legal system of a particular arena, the probable incidence of willing obedience by national officials should be quite high. Past experience has shown that states generally do comply with international judicial decisions, even though no specific enforcement procedures exist. In addition, the courts would be the beneficiaries of the entire force of world public opinion. Both the Poznan trials and the Oatis matter demonstrated its powerful effect when properly mobilized against a specific injustice.

In the event a state refuses to obey the court’s orders, resort should first be had to the appropriate regional organization, if one has been established in that area. For instance, in the Western hemisphere, the circuit tribunals could invoke the authority of the Organization of American States, and in Western Europe that of the European Community or NATO, so that these bodies might make recommendations regarding sanctions to be taken against the offending nation. This arrangement again places the emphasis upon the
regional development of the International Court of Habeas Corpus in accordance with the diverse patterns of law existing in the world.

If this procedure proves ineffective, recourse could then be had to the Security Council under Article 34 of the United Nations Charter, which permits that organ to "investigate any dispute, or any situation which might lead to international friction or give rise to a dispute." Where necessary, the Security Council could impose either economic or military sanctions against the recalcitrant state. In case the Security Council is unable to act because of the veto, the General Assembly should take jurisdiction over the matter by virtue of the Uniting for Peace Resolution.

On the question of what kinds of enforcement actions these respective international organizations (regional organizations, Security Council or General Assembly) will employ, the standard should be one of "reasonableness" in the light of all the circumstances. Under the category of risks to be considered would be the expectations of expanding violence, the degree of force necessary to accomplish the ends or goals sought and the probable success of the action. If the decision-makers determine that armed force may be met with extreme violence, then probably only the ideological, diplomatic and economic instruments of strategy should be used. Examples of diplomatic sanctions would be expulsion of the offending nation from the United Nations, severing of diplomatic relations by other member-states, withdrawal of privileges other states had previously granted on the basis of reciprocity to the violator-state, etc. Among the ideological measures which could be directed against a state which refused to comply with the tribunal's decision would be formal

69 Article 41 authorizes the Security Council to call upon the members of the United Nations to apply such measures as are necessary to give effect to its decisions. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraph, radio and other means of communications, and the severance of diplomatic relations. Where these kinds of measures are inadequate, article 42 of the United Nations Charter permits the Security Council to take such action "by air, sea or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea or land forces of Members of the United Nations."

70 Articles 10 and 13 of the United Nations Charter give the General Assembly the right to make recommendations for the purpose of "assisting in the realization of human rights and fundamental freedom for all. . . ."

71 Article 1 provides:

if the Security Council, because of lack of unanimity of the permanent Members, fails to exercise its primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to peace, breach of the peace or act of aggression, the General Assembly shall consider the matter immediately with a view to making appropriate recommendations to Members for collective measures, including in the case of a breach of the peace or act of aggression, the use of armed force when necessary to maintain or restore international peace and security. . . .


72 For example, the General Assembly Resolution of May 18, 1951, recommended that every state apply an embargo on shipments to areas under the control of Chinese Communists and North Korean authorities, of "arms, ammunition and implements of war, atomic energy materials, petroleum, transportation materials of strategic value, and items useful in the production of arms, ammunition and implements of war." U.N. Gen Ass. Off. Rec. 5th Sess., No. 20A, at 1 (A/1775/Add. 1) (1950).

73 Article 6 of the Charter allows expulsion of a member "which has persistently violated the Principles contained in the present Charter."
censure by international organizations, hostile propaganda against the target state and severing of telegraphic and telephonic communications with that state. A wide variety of economic strategies might be used, including embargoes, breaking off of all trade relations with the guilty state, revocation of tariff concessions, freezing of assets located outside the territory of that state, etc.

If international organizations fail to act in a particular case, then the decision as to the application of sanctions reverts to the officials within the individual nation-states. In such event, the power-elites of each state should be guided by the same standards established above for directing the decision of the world community.

It is fashionable, when discussing international adjudication, to stress its deficiencies — the lack of sanctions, the so-called primitive state of international law, and the lack of willingness to entrust political disputes to judicial settlement, to name but a few. But these alleged deficiencies have not hindered the development of international adjudication as much as is often assumed. International courts and arbitral tribunals have managed to resolve a number of contentious disputes between nations.

These disputes have not resolved the great struggles of our day. However, these struggles are probably not well suited for the processes of judicial settlement in any event. Those who seek a world in which all disputes between nations are entrusted to courts for settlement seek more than we can reasonably hope to attain in today's world. There are disputes, however — important, thorny, incapable of settlement by the states concerned — which the International Court of Justice has resolved. In earlier times these disputes might not have been resolved peacefully. The lack of sanctions has not prevented compliance with the Court's rulings. The border dispute between Honduras and Nicaragua is one example. More recently, the Court disposed of a long-festering dispute between Cambodia and Thailand.

But nevertheless, it is widely agreed, and rightly so, that the number of legal disputes submitted to international adjudication is too small. There are no doubt many reasons for this. The United States would like to see more nations submit to the compulsory jurisdiction of the Court. In this connection, I should add that the present Administration, like its predecessors, would like also to see the Connally Amendment repealed. Finally, we regret the reluctance of U.N. Members to accord the International Court of Justice compulsory jurisdiction to settle disputes arising from treaties concluded under the auspices of the United Nations.

There is one area in which international adjudication has proved especially valuable and effective. I refer to the role of the International Court of Justice in rendering advisory opinions. There has developed, though not fully enough, a tradition of referring constitutional issues arising under the charters of international organizations to the Court for adjudication. More important, there has arisen also a tradition of accepting the Court's opinions as law and acting upon them.

The Court has rendered 12 advisory opinions — ten requested by the General Assembly, one by the UNESCO Executive Board, and one by the Assembly of IMCO. These opinions have been accepted by the organs which sought them and they have been given
effect. They have had a marked impact on the constitutional development of international institutions, particularly on the most important institution, the United Nations.

The advisory opinion in the Reparations case, for example, confirmed the Organization's capacity to maintain an international claim against both Member and non-Member States for injuries suffered by its agent. The case stands for the proposition that the founding fathers conferred upon the United Nations a legal status in the world community, and this simple proposition has been important.

The Court has performed a similar service in adjusting relationships between the component parts of the Organization itself. The advisory opinion concerning the awards made by the U.N. Administrative Tribunal is a case in point. Others are the advisory opinions regarding the admission of new members.

It should not be surprising that the Court's power to issue advisory opinions has been so important—more important, perhaps, than its power to decide contentious disputes. A primary fact of post-war international life has been the growth and development of international machinery and institutions for coping with the issues of the day. When it renders advisory opinions, the Court is functioning as an integral part of this machinery. Particularly when its advisory opinions concern the United Nations—the Organization's relation to the world community and its Members, and the allocation of power between its component parts—is the Court participating in the on-going institutional processes which characterize international life today. In this role, the Court has a clearly defined job and is uniquely suited to perform it. The issues tend to be framed more cogently, and the standards for solving them developed more fully, than when the issues are settled without benefit of the Court's participation.

I would hope that the effectiveness of the Court would encourage increasing resort to its procedures and that in this manner the role of law in international life would be enhanced...74

XVI. Conditions for the Establishment of the International Court of Habeas Corpus

The United Nations should exercise vigorous leadership to persuade member nations to accept a treaty establishing an International Court of Habeas Corpus. Once a sufficient number of states have adopted the treaty so as to institute the circuit courts in three arenas, the International Court of Habeas Corpus system should become effective, and the established circuit courts may begin to function.

A circuit court should come into existence when the treaty has been signed by at least four nations within a circuit-arena, including the state or states which are entitled by right to have one of their nationals seated as a judge on the local circuit court (e.g., the Soviet Union in the U.S.S.R.-Eastern Europe Circuit,

India and Japan in the Non-Communist Orient Circuit, etc.). However, in the Anglo-American Circuit, the circuit court would be created upon the signature of only two nations, Canada and the United States. Moreover, the requirement that a judge from a Communist state be seated on the Anglo-American Circuit Court will not take effect until a circuit tribunal is established in either the Communist-Orient arena or in the U.S.S.R.-Eastern Europe arena.

Upon the establishment of the circuit courts in a minimum of seven arenas or regions, these lower tribunals shall select the justices for the Supreme International Court of Habeas Corpus, which shall start operating at once.

This plan would set the court system in motion almost immediately. Ratification of the treaty by merely ten or twelve states (e.g., the United States and Canada, four Latin American countries, England, France and two other western European nations) would be sufficient for three circuit courts to "open for business." The increased respect accruing to those states which will have already submitted to this international justice should be a considerable inducement to the remaining nations to join the Court with all due speed.  

This proposal for an International Court of Habeas Corpus does not purport to offer ideal protection of human rights immediately. But since the entire proposal is predicated upon the cultural and political myths prevailing within each diverse system of public order, its structure would permit the different peoples of the world, each in its own fashion, to work toward the maximization of values and ultimate goals of all humanity.

XVII. Pacem in Terris

In February, 1965, world leaders gathered to examine the requirements for peace in the context of the Encyclical of Pope John XXIII, *Pacem in Terris*. Almost without exception, all of the participants, including those who had

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75 Other administrative details could be worked out through negotiation by the prospective members of the court system. For example, in reference to the matter of the expense of maintaining the court, the following formula might be used: One half the cost of maintaining each circuit tribunal shall be equally divided between those states which are entitled to have a national judge on the local circuit, e.g., one-fourth of the cost of the Non-Communist Orient Circuit would be borne by India and one-fourth by Japan; one-fourth of the cost of the Western Europe Circuit by Great Britain and one-fourth by France; one-fourth of the Austral-Oceania Circuit cost by the Philippines and one-fourth by Australia. The United States, the U.S.S.R. and Communist China should each pay one-half the expenses for their respective circuit courts. The remaining expenses of the individual circuit tribunals should be equally divided between all other member states within that arena. The cost of maintaining the Supreme International Court of Habeas Corpus could be shared equally by those states which have become members of the court system and are entitled by right to have a national sitting on their local circuit court.

76 Among those who participated in the three-day conference were: Vice President Hubert H. Humphrey; U Thant, United Nations Secretary General; Mohammed Zafrula Kahn, Judge of the International Court of Justice and former President of the United Nations General Assembly; Barbara Ward, economist and author; Senator J. William Fulbright; Ambassador Adlai Stevenson; Arnold Toynbee, historian; United States Supreme Court Chief Justice Earl Warren; Justice Philip Jessup of the World Court; Paul Henri Spaak, Foreign Minister of Belgium; Robert Hutchins, who acted as Chairman; Protestant theologian Paul Tillich; Japan's pacifist Kenzo Takayanagi; S. O. Adebo, Nigerian Chieftain Ambassador to the United Nations; Pietro Ninno, Vice Premier of Italy; Luis Quintanilla of Mexico; Adam Schaft of Poland; Linus Pauling, double Nobel prize winner; Semyon Tsarapkin of Russia; Soviet delegate Zhukov, Xavier Derian of France; and high government officials from the Soviet Union, Poland, Yugoslavia, Great Britain and Japan, as well as African and Latin American nations.
prepared special papers, were in agreement with the premise of Pope John XXIII that there was "the need to safeguard and ennoble human destiny." While the business of peace had become the most important business in the world, the strongest ties still concerned man with the integrity of human destiny. This outstretched hand of the Christian Spirit manifested supreme confidence in the power of man to eliminate the combustibles of world conflict and to develop comprehensive rules of conduct which could be of immediate value in safeguarding individual liberty. It was agreed that, if individual liberties were protected from danger, then the sanctity of conscience, the right to dissent, would create a political climate which would guarantee religious liberty. Trespasses against the person had to be met with immediate remedies. The worldwide spread of tolerance, together with modern techniques of instant communication and interchange of knowledge, could potentially make the world a unitary community.

Since the spirit of science is the spirit of progress, since it seeks no static Utopia, it opens a clear path towards new horizons and higher peaks for man to climb in living non-hurtfully with his fellow man. That "we are our brother's keeper" can achieve full meaning, in that the hate and beast in man may be negated by the sublime realization that man is the "cosmic individual" and, as such, is to be afforded absolute sovereignty of his person. Anything less is a corruption of justice and a repudiation of the natural law of God, the supreme force and strength in the universe. Kotaro Tanaka, retired Chief Justice of the Supreme Court of Japan and now sitting on the International Court of Justice stated:

Since World Habeas Corpus is the guide for the light of world intelligence, I believe the rule of law (World Habeas Corpus) should cover all the world and, in particular, there must be no vacuum in the protection of fundamental human rights. I think it is the primary requirement in the national and international societies and, from the viewpoint of such belief, I quite agree with the International Court of World Habeas Corpus.7

The International Courts of Habeas Corpus, the procedural structure for the concept of World Habeas Corpus, offers a vehicle for dialogue between a citizen or alien and the state wherein he resides. Pacem in Terris recognized that Catholics themselves were to a great extent out of contact with the rest of the world, enclosed in their own spiritual and religious ghetto. One of the chief contributions of Pope John's brief pontificate is that he opened the ghetto and told Catholics to get out and talk to other people, to Protestants, Jews, to Hindus and even to Communists. He realized that without this climate of openness, the communication essential to prepare for a climate of mutual trust was out of the question. As Thomas Merton convincingly stated:

[W]here there is a deep simple all embracing love of man, of the created world, of living and inanimate things, then there will be respect for life, for freedom, for truth, for justice. There will be humble love of good. But where there is no love of man, no love of life, then make all the laws you want, all the edicts and treaties, issue all the anathemas, set up all the safeguards and inspections,

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fill the air with spying satellites and hang cameras on the moon. As long as you see your fellow man essentially to be feared, mistrusted, hated and destroyed, there cannot be peace on earth. And who knows if fear alone will suffice to prevent a war of total destruction? Pope John was not among those who believed that fear is enough.\textsuperscript{78}

The conference on \textit{Pacem in Terris} manifested monumental support for Articles 55 and 56 of the United Nations Charter. Article 55 provides “the United Nations shall promote: \ldots (c) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.” Pursuant to Article 56, “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.”

The eloquent statement of Vice President Hubert H. Humphrey demonstrated statesmanship and leadership:

The Pope did not write a Utopian blueprint for world peace presupposing a sudden change in the nature of man. Rather, it represents a call to action to leaders of nations presupposing a gradual change for human institutions \ldots to build a world community.\textsuperscript{79}

Grenville Clark, who co-authored with Louis Sohn \textit{World Peace through World Law}, suggested that “nations must grant powers to a separate international body sufficient to curb the destructive impulse of any one nation, and such powers can only be honestly described as those of government, \textit{i.e.}, world government.”\textsuperscript{80} Herman Kahn, the Rand Corporation’s nuclear strategist, felt that “a rather bad world government might be better than no world government.”\textsuperscript{81} Luis Quintinilla of Mexico gave great weight to the need for emphasis on the rule of law. Israel’s Aba Aban urged mankind to rise above national boundaries. Russia’s Yevdni Jekov, leading Soviet historian, and other members of the Soviet orbit of influence thought war could no longer settle ideological conflict between great nations. Senator Fulbright’s forthright summation pierced the ambiguity of some arguments by proposing a plan for mutual tolerance and urging “the cultivation of a spirit in which nations are more interested in solving problems than in proving theories.”\textsuperscript{82} The consensus of the participants was that the “human nation” of the world was in need of workable ground rules and not diplomatic vacuums.

\textbf{XVIII. \textit{Pacta Sunt Servanda}}

In due course, the Connally reservation will give way to the fact that durable international rules of law can arise only from the explicit consent of states. Since every treaty is a limitation of, but not an impairment of sovereignty, this is a standardized rule of international law that must exist in a working international community. A world convention to adopt the World Treaty-

\begin{footnotes}
\item\textsuperscript{79} Address by Vice President Humphrey, Conference on \textit{Pacem in Terris}, Feb., 1965.
\item\textsuperscript{80} Address by Grenville Clark, Conference on \textit{Pacem in Terris}, Feb., 1965.
\item\textsuperscript{81} Address by Herman Kahn, Conference on \textit{Pacem in Terris}, Feb., 1965.
\item\textsuperscript{82} Address by Senator Fulbright, Conference on \textit{Pacem in Terris}, Feb., 1965.
\end{footnotes}
Statute of the World Habeas Corpus is of immediate necessity. It can demonstrate that the sanctity of the contractual nature of the Treaty-Statute will be respected. There is ample precedent that other international tribunals are successful without an extrinsic system of enforcement.

International arbitral boards and special international guards have proven successful without formal enforcement procedure. Hans Morgenthau has found that in the thousands of such decisions rendered in the last century and a half, voluntary execution was refused by the losing party in no fewer than ten cases.83 “Seldom has a State refused to execute the decision of a court which it has recognized in a treaty. The idea of law, in spite of everything, still seems stronger than the ideology of power.”84

World Habeas Corpus provides the concrete structure and procedural process suggested by Dag Hammarskjold in his dedication to the principle that a sovereign state must regard and protect the fundamental rights of individuals. In urging the cooperation of the International Law Association with the United Nations, Mr. Hammarskjold declared:

“To turn aside from the United Nations now because it cannot be transformed into a world authority enforcing the law upon the nations would be to erase all the steady, though slow and painful, advances that have been made and to close the door to hopes for the future of world society, toward which present efforts and experiences should be at least a modest stepping stone.”85

A great parallel for World Habeas Corpus as a step towards a world parliament was suggested by Winston Churchill in addressing the Strasbourg meeting with respect to a council of Europe.

I have always thought that the process of building up a European parliament must be gradual and that it should roll forward on a tide of facts, events and impulses, rather than by elaborate constitution making. Either we shall prove our worth, weight and value to Europe, or we shall fail. We are not making a machine, we are growing a living plant.86

World Habeas Corpus is conscious of the salient premise that mankind is the sum of human beings and is always moving forward from within. The

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83 Morgenthau, Politics Among Nations 296 (3d ed. 1953). As Briggs has pointed out, “treaties are more regularly and more honestly observed than violated and the use or threat of force ordinarily has nothing to do with it.” Briggs, The Law of Nations 20-21 (2d ed. 1952). Mixed arbitral boards and special international courts have for centuries resolved all kinds of problems without formal enforcement machinery. Goodrich and Hambro have indicated that “in no case did the parties refuse to carry out a judgment of the Permanent Court of International Justice.” Goodrich & Hambro, Charter of the United Nations, Commentary and Documents 485 (rev. ed. 1949). Mr. S. Rosenne has written: “the general presumption that a State will observe its conventional obligations and more particularly will comply with the decision of the Court is equally valid in relation to the execution of the decisions of the Court [i.e., the International Court of Justice].” Rosenne, The International Court of Justice 84 (1957). He further claimed that although England was not successful in her efforts to secure satisfaction of the judgment against Albania in the Corfu Channel case, much of the difficulty was due to conflicting claims to property sought to be attached. See discussion of the Monetary Gold case, Rosenne, op. cit. supra at 97. See McNair, The Law of Treaties 351 (1st ed. 1938); See notes 66 & 67 supra and extensive citations in Kutner, World Habeas Corpus: A Legal Absolute for Survival, 39 U. Det. L.J. 279, 295 n.48 (1962).
84 Kelsen, supra note 62, at 400.
unification of mankind under a rule of law is the inexorable goal of inevitable change. Progress toward cloaking mankind with a rule of law against arbitrary detention may be checked but never ultimately denied. As a conscious part of the human race, man must conclude that he is not born individually, he is born of society, lives and grows in society. Man is obliged to society and causes society to evolve. Man's progress is not circumscribed by race, language, creed or country. Mankind embraces all of man from the first to the last man on earth.

XIX. Conclusion

World Habeas Corpus does not pretend to be the panacea for all the ills of mankind. It is merely a remedy to correct and prevent arbitrary or wrongful detentions of human beings. Based upon a Treaty-Statute, duly ratified, it will have an extra-territorial basis, and will develop regional human communities into legal communities. As such, each of these will be able to coordinate other legal communities having common elements, growing into the larger and superior legal community. This will ultimately achieve the status of a competent legal community when it becomes self governing and is the highest legal power in relation to its individual members recognized by its collective signatory members. Sovereignty will be retained and not be impaired even though, under the rule of law, a signatory member becomes a limited subordinate community. The duty and obligations created by this superior legal order are imposed on a subordinate community merely as a collective unit being responsible for the correction of arbitrary detention of an individual.

World Habeas Corpus can become a new definition of the term international due process of law. There is sufficient legal tradition and precedent to demonstrate that the world has a collective obligation as a self-governing community to maintain the integrity and dignity of citizens in its subordinate communities. The world has long sought a solution to the most vexatious of all problems, namely, the wanton destruction, annihilation and imprisonment of human beings. High sounding principles and lamentations have failed to concretize a legal structure. It is this that World Habeas Corpus attempts to do in a very practical and concrete way.

The time for acceptance of World Habeas Corpus has now arrived. It cannot be delayed. It can carry mankind further toward unity than any material and technical contributions or financial assistance. It is a force of conscious progress stimulating mankind to individual freedom. World Habeas Corpus responds to the present age that is ever wakening, ever transforming. The lowest individual in the world is entitled to liberty, equality and fraternity as guaranteed to him by the very nature of his being, a human being.

Senator Everett McKinley Dirksen has said, "There is nothing as strong as an idea whose time has come." It can become the canopy for the enlarged, compassionate "great society" envisioned by President Lyndon Baines Johnson.
APPENDIX

TREATY-STATUTE OF THE INTERNATIONAL COURT OF HABEAS CORPUS

Preamble

WHEREAS, The people of the world concerned with the security of the human person are deeply sensible of their duty and proceed with confidence in their declaration to coordinate, clarify and integrate all public order systems concerned with human liberty by establishing a world community and all component regions under the rule of law, in order to guarantee human liberty, rights and fundamental freedom for all without distinction (or discrimination) as to race, sex, language, religion, or nationality; and

WHEREAS, The world concern for the security of the human individual is greater than principles of jurisdiction derived from territorial sovereignty, nationality, and other technical concepts; and

WHEREAS, It is the overriding aim to aid in the implementation of the universal order of human dignity by recognizing that the several social processes of the globe are imbedded in the larger context of singular world systems of order; and

WHEREAS, Adherence to human individual security refers to maximum demands for the maintenance of a public order which affords full opportunity to preserve and increase all values by legal procedures free from acts or threats of coercion and oppression;

Resolved, That we, the people of the member nations of the International Court of Habeas Corpus, in order to more fully establish the sanctity of human liberty, provide for the security of the individual and guarantee human rights, do adopt the principle of international due process of law, and definitive legal method of the International Court of Habeas Corpus with power to issue the international writ of habeas corpus, and establish this treaty-statute for the International Court of Habeas Corpus and accessible regional courts.

Article I

The International Court of Habeas Corpus is hereby established and empowered by the signatory member nations of this treaty-statute with jurisdiction to process petitions for the international writ of habeas corpus by and on behalf of individuals when their individual security is violated without due process of law as defined herein.

Chapter I. Organization of the Court

Article II

The Court shall be composed of a body of distinguished jurists of international stature and high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are jurisconsults of recognized competence in international law.

Article III

1. The Court shall consist of two distinguished jurists from each of the signatory member countries to this treaty-statute.
2. There shall be nine permanent justices on each of the nine international tribunals of equal competence and jurisdiction, with their boundaries and jurisdiction in the following nine international circuits:
   (1) The Communist-Orient Circuit — Communist China, North Viet Nam, Outer Mongolia and North Korea;
   (2) The U.S.S.R.-Eastern Europe Circuit — the Soviet Union and the Communist states of eastern Europe, including Yugoslavia;
   (3) The Western Europe Circuit — the non-Communist states of western Europe, Great Britain, Greenland, Iceland, Ireland, Cyprus, Crete and Israel;
   (4) The Islamic Circuit — the Arabic states of the Middle East, Pakistan, the predominantly Moslem states of North Africa and Algeria;
   (5) The Southern Africa Circuit — the African states outside the Islamic circuit;
   (6) The Non-Communist Orient Circuit — India, Japan, Burma, Ceylon, Nationalist China, South Korea, Thailand, Nepal, Non-Communist Viet Nam, excluding Indonesia and the Philippines;
   (7) The Austral-Oceania Circuit — consisting of Australia, the Philippines, New Zealand, the South Sea Islands, Indonesia, etc.;
   (8) The Latin American Circuit — all Latin states within the Western hemisphere, including Cuba, Haiti, the Dominican Republic, etc.; and
   (9) The Anglo-American Circuit — Canada, the United States, Puerto Rico, and British and North American possessions in the West Indies.

* Proposed before the American Bar Association, August 25, 1959, and amended since the emergence of twenty-nine new states.
3. The signatory member nations shall define the boundaries of each of the international circuits.
4. In addition to the nine circuit courts there shall be nine chief justices to sit in review, one from each circuit.
5. The remaining jurists shall be distributed to each of the circuit courts for functions of or acting as associate justices for the purpose of examining each petition for the international writ of habeas corpus for its legal sufficiency.
6. A person who for purposes of membership in the Court could be regarded as a national of more than one state shall be deemed to be a national of the one in which he ordinarily exercises civil and political rights.

Article IV

1. Each signatory member nation to this treaty-statute shall designate two nationals of its own state to become upon such designation members of the International Court of Habeas Corpus.
2. Within two months after the twenty-eighth nation of the world accepts this treaty-statute there shall be a convention of the designated members of the International Court of Habeas Corpus.
3. The convention shall select or designate from its membership seven justices for each of the regional courts and in addition thereto it shall select or designate nine chief justices who shall sit in review.
4. The remaining members shall be distributed by the permanent membership of the Court to each of the tribunals for functions of or acting as associate justices.

Article V

Before making these designations to the International Court of Habeas Corpus, each nation is recommended to consult its highest court of justice, its legal faculties and schools of law, and its national academies and sections of international academies devoted to the study of law.

Article VI

1. The members of the Court who are designated by the convention to be permanent members of the circuit tribunals and the designated chief justices shall hold office for nine years, provided, however, that of the judges designated at the first convention, the terms of two of the justices on each of the regional tribunals shall expire at the end of three years, and the terms of three justices shall expire at the end of six years; and provided, further, however, that of the chief justices designated by the convention the terms of three justices shall expire at the end of three years and the terms of three more justices shall expire at the end of six years.
2. The justices whose terms are to expire at the end of the above-mentioned periods of three years and six years shall be chosen by lot to be drawn by the convention immediately after the first designations have been completed.
3. The members of the Court shall continue to discharge their duties until their places have been filled. Though replaced, they shall finish any cases which they may have begun.
4. In the case of resignation of a member of the Court, the resignation shall be addressed to the President Chief Justice. This notification makes the place vacant.

Article VII

Vacancies shall be filled by the associate justices, according to the rules established by the Court.

Article VIII

A member of the Court designated to replace a member whose term of office has not expired shall hold office for the remainder of his predecessor's term.

Article IX

1. No member of the Court may exercise any political or administrative function, or engage in any other occupation of a professional nature.
2. Any doubt on this point shall be settled by the decision of the court.

Article X

1. No member of the Court may act as agent counsel or advocate in any case.
2. No member may participate in the decision of any case in which he has previously taken part as agent, counsel, or advocate for one of the parties, or as a member of a national or international court, or in any other capacity.
3. Any doubt on this point shall be settled by the decision of the Court.

Article XI

1. No member of the Court can be dismissed unless, in the unanimous opinion of the other members, he has ceased to fulfill the required conditions.
2. Formal notification thereof shall be made to the President Chief Justice.
3. This notification makes the place vacant.

Article XII

The members of the Court, when engaged in the business of the Court, shall enjoy diplomatic privileges and immunities throughout the world.

Article XIII

Every member of the Court shall, before taking up his duties, make a solemn declaration in open court that he will exercise his powers impartially and conscientiously.

Article XIV

1. The chief justice (sic) shall elect from among themselves the President Chief Justice, and each circuit tribunal shall elect a presiding justice from among its permanent justices, to hold office for three years; they may be re-elected.
2. The court shall appoint its registrar and may provide for the appointment of such other officers as may be necessary.
3. Each circuit tribunal shall appoint any amicus curiae, and there shall be an amicus curiae general to assist the chief justices.

Article XV

The President Chief Justice and the presiding justices shall be the presiding officers of their tribunals.

Article XVI

1. The seat of the Court of Review shall be established by the convention. This, however, shall not prevent the Court from sitting and exercising its functions elsewhere whenever the Court considers it desirable.
2. The seat of each of the circuit tribunals shall be established by the convention. This, however, shall not prevent the circuit tribunal from sitting and exercising its function elsewhere whenever the Court considers it desirable.

Article XVII

1. The Court shall remain permanently in session except during the judicial vacations, the dates and duration of which shall be fixed by the convention; provided, however, that the vacations of the circuit tribunals shall not be concurrent, and that a petitioner may petition for the international writ of habeas corpus to one of the other judicial circuit tribunals if he is prevented from so doing before the circuit tribunal having permanent jurisdiction over the disposition of the petition because that circuit is exercising its judicial vacation.
2. Members of the Court are entitled to periodic leave, the dates and duration of which shall be fixed at each court, having in mind the distance between the seat of the Court and the home of each justice.
3. Members of the Court shall be bound, unless they are on leave or prevented from attending by illness or other serious reasons duly explained to the presiding officer, to hold themselves permanently at the disposal of the court.

Article XVIII

1. If, for some special reason a member of the court considers that he should not take part in the decision of a particular case, he shall so inform the presiding officer.
2. If the presiding officer considers that for some special reason one of the members of the Court should not sit in a particular case, he shall give him notice accordingly.
3. If in any such case the member of the Court and the presiding officer disagree, the matter shall be settled by the decision of the Court.

Article XIX

The full Court shall sit except when it is expressly provided otherwise by the rules of the Court.

Article XX

A judgment given by any of the circuit tribunals shall be considered as rendered by the Court, and shall be subject to review only by the chief justices.

Article XXI

The Court shall frame rules for carrying out its functions. In particular, it shall lay down all rules of procedure.

Article XXII

1. Each member of the court shall receive an annual salary.
2. The president Chief Justice shall receive a special annual allowance.
3. The presiding justices shall receive a special allowance, but in no event shall it exceed the amount allowed to the President Chief Justice.

4. The registrar and all other aides of the Court shall receive annual salary.

5. These salaries, allowances, and compensations shall be determined by the signatory member nations to this treaty-statutory member nations to this treaty-statute sitting in executive session. They may not be decreased during the term of office.

6. Regulations made by the conventions shall fit the conditions under which retirement pensions may be given to members of the Court and to the registrar, and the conditions under which members of the Court and the registrar shall have traveling expenses refunded.

7. The above salaries, allowances, and compensations shall be free of all taxation.

Article XXIII

The expenses of the Court shall be borne by the signatory members to this treaty-statute as herein set forth, half of the total expenses shall be borne by the Big Five Powers of France, Great Britain, India, Union of Soviet Socialist Republics, and the United States; half of the total expenses shall be borne equally by the remainder of the signatory members.

Chapter II. Competence of the Court

Article XXIV

1. Only individuals or groups of individuals may be parties in cases before the Court.

2. The United Nations shall be ipso facto an ad hoc committee to fact find; and upon the recommendation of the Court, or the United Nations, the Department of State of any member nation shall be enlisted to make investigations to aid the Court in its investigations, subject to and in conformity with the rules of the Court.

Article XXV

1. Any person who is detained or restrained without due process of law within the boundaries of one of the member nations to this treaty-statute shall find original jurisdiction in the judicial circuit tribunal having jurisdiction over the place whereat he is restrained.

2. The Court shall be open to individuals detained or restrained within the boundaries of a non-member nation when such nation agrees to submit the cause to the Court for disposition.

3. When a non-member nation submits the cause to the Court for disposition, it shall irrevocably bind itself to abide by the proceedings and decision of the court.

4. When a non-member nation to this treaty-statute is a party to a case, the Court shall fix the amount which that party is to contribute toward the expenses of the Court.

Article XXVI

1. The jurisdiction of the Court comprises all cases where an individual (or group of individuals) is imprisoned, detained, or otherwise restrained for his (or their) liberty without due process of law.

2. International due process of law shall guarantee:
   a) public trial of any person accused of a violation of law;
   b) the right of any person accused to be informed in advance of trial of the specific charge made against him;
   c) the right to be confronted with the witness against him;
   d) the right of compulsory process to obtain witnesses in his favor;
   e) the right to counsel of his own choice;
   f) the right not to be compelled to give testimony against himself;
   g) the right to have an interpreter;
   h) the right to communicate with his own government and to have a representative of that government present at his trial;
   i) the right not to be held twice in jeopardy for the same offense;
   j) the right to be free from prosecution by virtue of any ex post facto law;
   k) the right to be free from excessive bail;
   l) the right to be free from any cruel or unusual punishment;
   m) the right to be free from any unreasonable searches and seizures;
   n) the right to freedom of conscience and religion; freedom of thought, speech, press and expression in any other form; freedom of association and assembly; and freedom of petition.

Article XXVII

The types of confinement for which the writ shall apply will include:
   a) any violation of the standards particularized in the Universal Declaration of Human Rights;
   b) military and political crimes;
   c) charges of treason;
   d) acts charged as hostile to the respondent state by an alien visitor or resident;
   e) any crime punishable by death; or
   f) any crime established by international extradition treaty.
Article XXVIII
The orders of the International Court of Habeas Corpus shall be made effective by the sanctions and deprivations exacted in the Charter of the United Nations.

Chapter III. Special Competence of the Chief Justices

Article XXIX
The Chief Justices of the International Court of Habeas Corpus shall permit appeals from decisions of the circuit tribunals when it appears to at least one-third of the judges of this appeal court:

a) that a decision of a circuit tribunal may be inconsistent with a prior decision of the same issue of law by the Court of Review of the International Court of Habeas Corpus or by one of the circuit tribunals;

b) that a circuit tribunal may have wrongfully decided a question of law;

c) that a regional court may have exceeded its jurisdiction;

d) that a circuit tribunal may have deprived a person of a right or privilege guaranteed by International Due Process of Law;

e) that a regional court may have made a fundamental error resulting in a denial of justice.

Chapter IV. Procedure and Disposition of Petition

Article XXX
Each petition for the international writ of habeas corpus shall be made to the circuit tribunal of the International Court of Habeas Corpus having jurisdiction over the place where the person unlawfully detained is located.

Article XXXI
The petition shall be signed by the person for whose relief it is intended, or by some person in his behalf, and verified by affidavit.

Article XXXII
The petition shall state in substance:

1. That the person in whose behalf the writ is applied for is imprisoned, detained or restrained of his liberty, and the place where, naming all the parties if they are known, or describing them if they are not known.

2. The cause or pretense of the restraint, according to the best knowledge and belief of the petitioner.

3. That there had been an exhaustion of all available sovereign remedies, or that there are no available remedies, or that the case is an extraordinary one which empowers the Court to take original jurisdiction.

Article XXXIII
Unless it appears from the petition itself, or from the documents thereto annexed, that the party can neither be discharged, admitted to bail nor otherwise relieved, at least a majority of three associate justices may find that a petition is legally sufficient, and upon so finding, they shall be empowered to issue a show cause order upon the respondent nation, ordering it to file its motion as to why the international writ of habeas corpus should not issue.

Article XXXIV
The show cause order shall be issued under the seal of the Court and shall require the respondent to answer within ten days; provided, however, that the Court may extend the period, if, in the opinion of the Court, more time is required by the respondent nation.

Article XXXV
The respondent nation upon whom such order is served shall state in substance:

1. Whether the subject party is at the time of issue of the order, or was, at what time prior or subsequent to the date of the order, under the control, restraint, or in custody of the respondent.

2. The cause of such imprisonment or restraint.

3. By virtue of what authority the subject party is held, and if by some written warrant or writ of any kind, the original shall be produced and exhibited upon the return of the order.

4. If the person upon whom the order is served has had the party in his custody or control or under his restraint, at any time prior or subsequent to the date of the order, but has transferred such custody or restraint to another, the return shall state particularly to whom, at what time, for what cause and by virtue of what authority such transfer took place.

Article XXXVI
If the respondent nation moves to dismiss the petition for insufficiency, the petitioner shall be allowed to file an answer.
Article XXXVII

If the respondent nation fails to show cause within the time so ordered, or if the Court finds that the cause shown is not a legally sufficient one, the Court shall be empowered to issue the international writ of habeas corpus.

Article XXXVIII

1. The Court shall also issue a subpoena to summon witnesses to appear before the Court at the time and place where such habeas corpus is returnable, unless the Court shall deem it unnecessary, and it shall be the duty of the officer to whom the subpoena is issued, to serve the same, if it be possible, in time to enable such witnesses to attend.

2. The writ may be served by any person appointed for that purpose by the Court by whom it is allowed.

Article XXXIX

Service shall be made by leaving a copy of the original writ with the chief executive officer of the respondent nation, or with any of his under officers who have authority to act directly on his behalf, or who are directly answerable to the chief executive in the normal course of their official duties.

Article XL

The respondent nation shall, at the time of making the return, bring the body of the party, if in his custody or power or under his restraint, according to the command of the writ, unless prevented by the sickness or infirmity of the party.

Article XLI

When, from the sickness or infirmity of the party, he cannot, without danger, be brought to the place appointed for the return of the writ, that fact shall be stated in the return, and if it be proved to the satisfaction of the Court, the Court may so proceed or make such other order in the case as law and justice require.

Article XLII

Whenever it shall appear by the petition that anyone is illegally held in custody and restraint, and that there is good reason to believe that such person will be taken out of the jurisdiction of the circuit court to which petition was made, or will suffer some irreparable injury before compliance with the writ can be enforced, the Court may cause the executive officer of the respondent nation to take the party into his direct supervisory custody.

Article XLIII

Upon the return of the international writ of habeas corpus, the Court shall, without delay, proceed to examine the cause of the imprisonment or restraint, but the examination may be adjourned from time to time as circumstances require.

Article XLIV

The party imprisoned or restrained may deny any of the material facts set forth in the return and may allege any other facts that may be material in the case, which denial or allegation shall be on oath; and the Court shall proceed to its established rules of procedure.

Article XLV

The hearing shall be under the control of the presiding officer or, if he is unable to preside, of the senior judge present.

Article XLVI

The hearing in Court shall be public.

Article XLVII

1. Minutes shall be made at each hearing and signed by the registrar or by one of his assistants appointed for the circuit tribunals. They shall be kept on record.

2. These minutes shall be authentic.

Article XLVIII

The Court shall make orders for the conduct of the case, shall decide the form and time in which each party must conclude its arguments and make all arrangements connected with the taking of evidence.