Individual Freedoms in Today's World; Laws and Reality

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THE HUMANITARIAN LAW to which the Red Cross especially dedicates itself, and human rights in general are closely interrelated. Four years ago, my colleague Professor Partsch, in addressing this gathering, referred to the somewhat precarious relationship between these two fields of the law. It now seems appropriate to inquire into the present international status of individual freedoms. The answer will also allow certain conclusions regarding further developments in international humanitarian law. The special legal and political significance of this topic is obvious at present, not least because of the Belgrade Conference. Within the limited framework of a lecture discussing world-wide legal standards and practices concerning individual freedoms, some aspects must inevitably be disregarded and occasional generalizations made.

I. THE TERM "INDIVIDUAL FREEDOMS"

The term "human rights" seems readily understood. Even upon hearing it for the first time, one easily seems to grasp its meaning. However, closer inspection proves this impression to be deceptive. It makes a great difference whether one speaks about those human rights...
derived from the laws of nature, i.e., those with fundamental and permanent validity; or rather about those human rights dependent on time and place. Communism views human rights in bourgeois democracy predominantly as class rights; it views the private ownership of the means of production as the freedom to exploit fellow citizens. It also makes a difference whether one starts from the individual in terms of the Western European and North American social and legal concept; or rather thinks in terms of many African and Asian cultures where the individual is considered predominantly as a member of a family, a group, a tribe or a people; or lastly, in the Communist sense, considers the individual primarily as a member of a political collective, in which individual rights, by virtue of comprehensive reservations in favor of the community, are at the same time fundamental duties. It makes a further difference whether one emphasizes the freedom of the individual from the state or instead stresses individual claims on the state. The material necessities of life and even some constitutional expectations of the people are somewhat different, for instance, in the United States or the Netherlands from those in Bangladesh, Somalia, or Paraguay. These examples of differing points of departure and at the same time differing interpretations of "human rights," can be enlarged upon even further. An examination into economic, social, and cultural rights, especially constitutionally guaranteed claims against the state, is not possible within this framework, even though these rights are included both in several state constitutions and in such important international treaties as the European Social Charter of 1961 and the U.N. Covenant of 1966 on Economic, Social, and Cultural Rights, and even though an intimate relationship exists or can exist between these rights and individual freedoms.


Even when one excludes discussion of economic, social, and cultural rights, and, as here, restricts the inquiry only to the protection of individual freedoms in the world, it is necessary to define these individual freedoms as objectively as possible. Hence, we shall concentrate here especially on the concept of individual freedoms as it derives from those international declarations and treaties, which, notwithstanding various possible points of departure, serve, according to common understanding, as mainstays of individual freedom. Of particular relevance here are the Universal Declaration of Human Rights of 1948, the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, and the United Nations Convention on Civil and Political Rights of 1966.\(^5\)

Within this meaning of individual freedom, the right to life and various enumerated freedoms of the individual are especially pertinent. The international instruments provide for restrictions on the death penalty, protection from slavery, forced labor, torture, other inhuman treatment, and from arbitrary deprival of freedom. Furthermore, they accord the right to judicial review within reasonable time of any deprivations of personal liberty; they guarantee legal protection of other rights in fair trial; they forbid ex post facto punishment; they grant the right of domicile and freedom of movement in one's native country and also for foreign travel; they partially protect private property; they guarantee freedom to marry, freedom of private and family life, and freedom of the home and correspondence; and furthermore, freedom of religion, conscience, opinion and information; also the freedoms of assembly and association, as well as the right to political participation in one's own country. In addition, the international instruments mentioned prohibit discrimination in its various aspects, especially bias due to sex, religion, race, language, or political conviction. Obviously, when all these rights are put into the form of a treaty or a constitution, divergencies will occur, especially in regard to legitimate limitations.\(^6\) They cannot be described in a lecture. Here it is only possible to indicate the typical scope of protection afforded individual freedoms.

One might miss in this rather sketchy description of individual freedoms the right of self-determination, which heads both United Na-

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tions Covenants, on Civil and Political Rights as well as on Economic, Social, and Cultural Rights. The meaning of this right of self-determination is very controversial. It is, however, unquestionable that this right is not a package of rights of individuals, unlike, for example, the freedom of assembly and association. The right of self-determination does not rest primarily with the individual as its actual possessor. Rather it is to be understood a priori as a right accruing to a great number of people with an intrinsic value of its own. The same applies to the protection of minorities. Hence, the right of self-determination and the protection of minorities must be excluded here.7

II. THE PROTECTION OF INDIVIDUAL FREEDOMS ON THE NATIONAL LEVEL, ESPECIALLY UNDER CONSTITUTIONAL LAW

Obviously, the regard of states for individual freedoms must be expressed on the statutory and substatutory level. Practically speaking, the most important criterion for the effectiveness that constitutional standards of human rights have is their embodiment in various subconstitutional categories of the law and their application in daily life. There are, however, scarcely any investigations of how all constitutionally enacted individual freedoms have been realized in even one state's subconstitutional law. It is also impossible, of course, to describe the world-wide multiplicity of the pertinent laws in a lecture. It is only possible to take a bird's eye view in order to see whether the constitutions of the states contain fundamental decisions pertaining to the protection of human freedom, decisions which are intended as permanent and which are endowed with special validity due to the difficulty of revision. The following discussion will focus on three questions: First, we shall consider how many states have constitutions containing a catalogue of individual freedoms; further, we will inquire into the existence of judicial protection of these individual freedoms; third, we shall see how many constitutions offer indirect guarantees for individual freedoms, especially in the form of a free pluralistic democracy with opposition parties and some form of separation of powers. For this purpose, we shall draw only on the written texts of the constitutions. Finally, a provisional evaluation of the practical effectiveness of the written constitutions considered here will be attempted.

As a reference, the third edition of Peaslee's *Constitutions of Nations* will be used. The volumes differ in that each refers to a different part of the world at a different moment: Africa (1964), Asia, Australia and Oceania (1965), Europe (1966), and the Americas (1968). Peaslee's compilation covers 126 states. It is partly outdated, not only due to changes in the constitutions of many states, but also because there are now about 160 states, most of which have a written constitution. Due to the great difficulties in obtaining the most recent texts of all constitutions, one must make allowances here. One need not, however, assume that the use of all up-to-date constitutions would substantially alter the following picture.

A. Express Guarantees of Individual Freedoms

Of the twenty-one written constitutions in non-communist Europe considered here, nineteen contain a catalogue of civil and political rights; in short, individual freedoms as defined above. In the pertinent Spanish constitutional laws from the Franco period one can find a few indications of such rights. The Preamble of the French Constitution of 1958 refers to the Declaration of Human Rights of 1789 and its extension in the Preamble to the Constitution of 1946. The constitutions of the nine communist states in Europe, including the Soviet Union, all contain a catalogue of individual freedoms. Of twenty-six constitutions in the Americas, twenty-four have a catalogue of individual freedoms. In contrast, only twenty-six of the thirty-six African constitutions used here embody such a catalogue. However, the preambles of six former French colonies incorporate references to human rights patterned after the French Constitution of 1958. In Asia, Australia, and Oceania, twenty-four of thirty-four constitutions have a catalogue of individual freedoms. Of course, these catalogues of fundamental rights differ in number and scope of rights. Thus, the boundary line between the rights of all persons, such as the right to life or judicial protection, and the rights restricted to citizens, such as the right to vote, is drawn differently in different constitutions. The divergencies in the limitations of fundamental laws are particularly pronounced. Nevertheless, if among 126 constitutions more than a hundred boast a catalogue of basic rights, on first glance the status of individual freedoms really does not look so bad.

B. Court Protection of Individual Freedoms

The strength and effectiveness of individual freedoms do not, however, depend solely on their guarantees in the catalogues of constitutions.

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Their realization requires more than that. Important is the problem of judicial enforceability. Here, any generalizations are especially problematic, because the type and scope of judicial protection of individual freedoms are not always clearly discernible from the mere text of the constitutions. With this reservation, one can perhaps risk the following statement: Of the twenty-one non-communist states in Europe, sixteen have, according to the texts of their constitutions, an effective system of judicial protection for individual freedoms. Among the nine communist states in Europe, at best only the text of Yugoslavia's constitution permits a positive statement in this regard. Of twenty-six constitutions in the Americas, twenty-three appear to guarantee an effective system of judicial protection. In Africa, eleven of thirty-six states have these judicial safeguards, while in eight others, the constitutions can probably be interpreted in this sense. Only in eight out of thirty-four state constitutions in Asia, Australia, and Oceania can one speak of adequate standards of judicial protection. Therefore, according to the text of the constitutions, judicial protection of individual freedoms appears to be adequate in approximately half of the constitutions used here. 

C. Safeguards through Constitutional Provisions Governing the Structure of the State

Constitutionally guaranteed judicial protection of individual freedoms may only be a paper guarantee however. This is especially true if the judges are appointed by a dictator, if they owe their office to a firmly established single ruling party, or if, for similar reasons, they are in fact not independent. Without the freedom to form political parties, without opportunities for an effective opposition and for changes in government through regular free elections, and without a certain separation of powers, even a judiciary which has jurisdiction to protect individual freedoms, and is independent according to the letter of the constitution, can become a mere tool of those currently in power.

With the exception of Franco's Spain, all twenty-one of the constitutions in non-communist Europe used here contain certain organizational provisions towards the indirect protection of individual freedoms. Among the nine constitutions of communist Europe the same may be said at best only for Yugoslavia. In contrast, twenty-five of twenty-six American

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constitutions offer a better picture; even the text of Cuba's constitution shows some indications in this direction. From the texts of thirty-six African constitutions, about thirty-one give the impression that the governmental organization is structured towards the preservation of fundamental rights in the way mentioned above. Of thirty-four constitutions in Asia, Australia, and Oceania only sixteen justify such a positive assessment; barely a half-dozen constitutions are on the borderline.

Thus the text of the constitutions appear to give more structural safeguards to individual freedoms than they do by means of judicial protection.

D. The National Protection of Individual Freedoms and Political Reality

The regular newspaper reader will be surprised at this picture of predominantly free constitutions in the present-day world. Actually political reality is often totally different. This is partly due to the fact that, while we consider the texts of only 126 constitutions here, the actual number of states today is about 160. Furthermore, in a number of states, the constitutions referred to here have been altered. One must however realize that in many states the protection of many or even most of the individual freedoms is worth only the paper on which they are printed. This may be due to the fact that the relevant constitutional provisions have been suspended because of actual or pretended emergency situations. In many states, however, constitutional freedoms are simply ignored. This is most easily possible in states without judicial protection of individual freedoms and without sufficient structural provisions safeguarding them, as for example, in Iraq, Syria, Ethiopia, and most of the communist countries. A catalogue of individual freedoms can, however, also be ineffective in states where the constitutional texts provide judicial protection and where other structural norms in the organizational parts of the constitution contribute towards the guarantee of fundamental rights. Examples include Brazil, Chile, Uruguay, Malawi, Uganda, and the Philippines.

It is of course difficult to make exact statements about the effectiveness of individual freedoms in almost 160 states. This applies not only to the actual situation in a state but also to the standards applicable for judging these situations. Yet an attempt at such statements will be made here despite the danger of possible misrepresentations in individual cases. The 1976 Annual Report of Freedom House and the 1975-76 Annual Report of Amnesty International have served as basic source material for the following study. 10 The number of states covered in both of

these reports is larger than the number of the constitutions used above, due to a recent emergence of new states.

Freedom House is a private American association with headquarters in New York. The organization was founded thirty-seven years ago to mobilize American public opinion in support of Great Britain and her allies against National Socialism and Fascism. Freedom House's current task is the support of democratic institutions around the world. In its periodical "Freedom at Issue" there have been annual reports since 1973 on freedom in the world. They have occasionally been used at official levels, for instance in connection with a United States proposal of a world-wide amnesty for political prisoners introduced in the 3rd Commission of the United Nations' General Assembly.11

Amnesty International, with headquarters in London, is a private organization. It has over 97,000 members in thirty-three national sections and 1,655 groups that adopt victims of severe violations of human rights. The organization is engaged all over the world on behalf of the observance of the Universal Declaration of Human Rights of 1948.12 Amnesty International concentrates its efforts especially towards those persons, who, in disregard of basic freedom rights, are arrested, jailed, or otherwise subjected to physical coercion or restraints on their personal liberties. It is a prerequisite that these persons have neither applied nor propagated the use of force, and that the discrimination against them results from their political, religious, or similar convictions, or is due to their ethnic origin, color or language. Amnesty International focuses its energies against: the incarceration of political prisoners without trial within a reasonable period of time, unfair trials, the death penalty, torture, and other cruel, inhuman or humiliating punishments and treatments. Amnesty’s chief means are the application of political pressure on states and support of the persecuted. The organization has advisory status with the Economic and Social Council of the United Nations and cooperates regularly with other international organizations.13

The two organizations’ standards for evaluation do not entirely coincide. Freedom House groups the states into seven categories according to their practices, first, in regard to political rights, second, in regard to civil rights. In regard to political rights the decisive factor is the existence of a majority government based on free elections with more than one party

11. 34 FREEDOM AT ISSUE 4 (1976); 73 DEP’T STATE BULL. 867 (1975).
12. See supra note 5.
and with a real opposition. The highest rating in civil rights is accorded, if, in practice, no political censorship exists, but instead a free and public discussion of political and constitutional questions; and if a rule of law exists which makes court judgments even against the government possible. Essential indicators include: economic independence of the mass media from the persons presently in power, freedom of movement, and freedom of the individual to decide upon his education, his vocation, and his membership in organizations. Out of this total perspective of political and civil rights, which, of course, are closely related in practice, each state is judged as being free, partially free, or unfree.  

In the 1976 survey, nineteen states in noncommunist Europe appear as free, five as partially free, and none as unfree. In communist Europe, all nine states are classified as unfree. In the Americas, ten states are designated as being free, twelve as partially free, and seven as unfree. Of the African states, two are deemed free, fifteen partially free, and thirty-two unfree. For Asia, Australia, and Oceania, the corresponding numbers are eleven, seventeen, and twenty. In sum, forty-two states appear as free, forty-nine as partially free, and sixty-eight unfree. According to the 1976 statistics, here rounded off, 20% of the world’s population was free, 36% was partially free, and 44% unfree. In comparison, the figures from the corresponding report in 1972 are 32%, 21% and 47%. This means that the part of the world’s population with a free system of government, as well as the part with an unfree system of government, both dropped by around 12% and 3%, respectively. On the other hand, the part of the world’s population with a partially free system rose by around 15%. Thus, on the whole, freedom lost ground.

The Annual Reports of Amnesty International use somewhat different criteria from those of Freedom House. Amnesty International emphasizes cases of torture and other forms of inhuman treatment as well as extreme violations of elementary rules of fair trial. Violations of freedom of opinion or freedom of the press and of specific democratic rights play only an occasional role, since Amnesty International intercedes solely on behalf of a minimum of elementary human rights and not for specific political forms of government. The Annual Report 1975-76 may be summarized as follows: In non-communist Europe, Spain under the dictatorship of Franco negatively distinguished herself by the imprisonment of many people without sufficient judicial protection, by systematic tortures and mistreatments, as well as by a Draconian system of punish-

ment on the basis of the statute prohibiting unpermitted assembly. Great Britain was censured for imprisonments without judicial protection on the basis of the earlier emergency laws for Northern Ireland; for restrictions of judicial protection against seizures and freedom of movement under the Anti-Terrorism-Law; as well as for making the law which punishes inducing soldiers to desert applicable to pacifists. The Federal Republic of Germany was reproached for its eighteen months imprisonment of four Turkish "guest workers" pending charges of formation of a criminal association. In other Western European states, the Report mentions repeated sentencing of Jehovah's Witnesses for refusing the draft and, occasionally, poor prison conditions. Except for Franco's Spain and the state of emergency in Northern Ireland the cases referred to are isolated instances. From the nine communist states in Europe, extensive restrictions of the freedom of opinion, all serving the ruling ideology, are reported. The number of political prisoners is particularly large in the Soviet Union, Bulgaria, Albania, and apparently also in the German Democratic Republic. Almost all communist states restrict the freedom of religion; the Soviet Union and Albania are probably the worst offenders. The Report emphasizes the insufficient judicial protection of rights for political and religious dissidents in the Soviet Union. According to the Report, forced placement in psychiatric clinics without medical necessity, very poor conditions in penitentiaries, prison camps, and special psychiatric clinics often lead to mistreatment and sometimes to torture.\(^{17}\)

The Report's explicit statements concerning the Americas list only three countries in which individual freedoms appear as a rule sufficiently protected, namely, the USA, Canada, and Venezuela. In sixteen other states, most of the individual freedoms are grossly violated or constantly endangered. The Report lists at least ten countries\(^{18}\) in which there have been instances of torture, or mistreatment of political prisoners; or, in any case, of deficient judicial protection. In several Latin American states\(^{19}\) political murders have increased through the use of paralegal "death squads," and there is evidence that their existence is officially tolerated. Their victims are, along with "common" criminals, members of the opposition. But even tenant farmers who seek to improve their almost feudal living conditions via cooperative unions may be victims. In at least fourteen Latin American countries; political parties are either prohibited or their activities are reduced to a bare minimum.

\(^{17}\) See also Amnesty International Politische Gefangene in der UdSSR (1975); supra note 16.

\(^{18}\) For instance, Argentina, Brazil, Chile and Cuba.

\(^{19}\) Especially, Argentina, Chile and Nicaragua.
In Africa, individual freedoms suffer from the widespread political instability. Sufficient factual material is lacking for many of these countries. As far as the available information goes, there are numerous political prisoners, often without adequate judicial protection, in about fifteen countries. Eight states\textsuperscript{20} have been accused of gross violations of human rights, such as the assassination of political opponents, torture, grave mistreatment; further violations are continuing deprivation of personal liberties without proper trial, or by summary sentences through military courts or revolutionary tribunals. The freedom of political opinion is either non-existent or at least severely limited in these as well as in many other countries. In Nigeria, an unsuccessful military putsch led to mass executions of the rebels. The ruling white minorities in South Africa and Rhodesia uphold racial policies repugnant to human rights through rigorous laws and police state measures. The \textit{Bannbefehle}\textsuperscript{21} in South Africa are grave offences against human rights. All told there are, at most, ten states in Africa which do not commit grave violations against individual freedom.

In more than a dozen countries in Asia and Oceania there were mass imprisonments of long duration for political reasons and without any judicial protection. Due to lack of sufficient information, the six communist countries are not even included here. In five other countries there were strong indications that the personal freedoms of political opponents are being violated. Especially serious are the long-lasting deprivations of personal liberties of approximately 55,000 to 100,000 political prisoners in Indonesia, and of thousands in Iran. There have been reports of systematic tortures and grave mistreatments of political opponents in at least ten Asiatic countries. Even without considering the communist countries, there are at least ten states which place far-reaching restrictions on the freedom of political opinion and systematically suppress of the political opposition. The conditions in the six communist countries and in three others appear to be similar. In Asia and Oceania, according to the Report, only Australia, Japan, and New Zealand can be said to guarantee the individual freedoms satisfactorily.

It is impossible to corroborate the factual material collected by Amnesty International and Freedom House from around the world. There-us, some details and, depending on the observer's point of departure, the standards used may occasionally be disputed. It is clear that the standards of evaluation used by the two organizations are somewhat different. While the annual reports of Amnesty International cite con-
crete factual material, the comprehensive surveys of Freedom House do not. Amnesty International explains that some states cannot be evaluated due to insufficient material, while Freedom House always undertakes a classification.

In spite of the problems of the evaluation standards in general, and in spite of differing viewpoints in the assessment of individual cases, the reports of Freedom House and Amnesty International on which this study is solely based frequently arrive at the same conclusions. Examples of countries which both organizations accuse of especially flagrant violations of human rights are Iraq, Iran, Syria, Argentina, Chile, Cuba, Paraguay, Uruguay, Ethiopia, Libya, Sudan, and Uganda. There is also concurrence in their very negative appraisals of the situation in Europe's communist countries — as West Germans we often think of the "death machines" at the border of the German Democratic Republic and of the Berlin Wall — and in the predominantly positive evaluation of Europe's non-communist states.

In view of the discrepancy between constitutional law and political practice in so many countries, the question of international protection of the individual freedoms is especially important.

III. THE PROTECTION OF INDIVIDUAL FREEDOMS ON THE INTERNATIONAL LEVEL

Different categories of international law are of differing importance in this context.

A. Customary International Law

Customary international law has little significance in the relationship of a state to its own citizens, but applies mainly to the relationship of a state to foreigners. General customary international law guarantees a minimum standard of conduct towards foreigners. This, in essence, encompasses the duty of the host nation to protect the life and bodily inviolability of the foreigner, his honor and freedom, his home and property. Under the minimum standard of justice, foreigners are, in principle, not entitled to any political rights in the host nation. In exceptional cases their legal position can be stronger than that of citizens, as for example in the protection of private property. As regards police and court protection, foreigners have basically the same rights as citizens. All in all, general customary international law is not nearly sufficient to guarantee foreigners all essential individual freedoms. Moreover, as a rule, only the
foreigner's home state is allowed to intercede on his behalf in order to safeguard these rights on the international level.22

B. Treaties

For the protection of individual freedoms, treaties have a considerably greater significance than customary international law. For our purpose we shall distinguish bilateral and regional treaties and those intended for world-wide application. Bilateral treaties play a very limited role here. They serve mainly to contour and expand the limited protection offered individual freedoms through general customary international law; the parties to the treaty, for instance, accord their respective citizens the right of domicile, or better protection of property, or equality with their own citizens in other respects. Usually, though, bilateral treaties confer particular rights and confine these to the citizens of the state parties to the treaty. Thus, regional treaties and treaties intended for world-wide application are much more important, as they establish whole catalogues of basic rights for all persons without regard for nationality. The regional treaties for the protection of the individual freedoms which are almost all-inclusive are the Convention for the Protection of Human Rights and Fundamental Free of 1950 — the Rome Convention,23 with its additional protocols; and the American Human Rights Convention of 1969.24 The Rome Convention contains a classic catalogue of basic rights. It is supplemented by a provision for a certain protection of private property, as well as for the guarantee of the right of temporary stay and the right of exit in two additional protocols. Thus, in spite of very broadly formulated limitations on its basic freedoms, the treaty is suited to protect the essential scope of human freedom without consideration of nationality.25 The range of protection afforded by the American Human Rights


23. Supra note 5.


Convention goes, in some respects, even farther than the Rome Convention.26

As to treaties intended for world-wide application, one must distinguish between those covering a single subject matter, and others with comprehensive catalogues of basic rights similar to that of the Rome Convention. Treaties such as those of the International Labour Organization on the Freedom of Assembly of 1948, or on the Abolition of Forced Labour of 1957,27 belong in the first category. Further examples are the Convention on the Political Rights of Women of 1953,28 the Convention for the Elimination of All Forms of Racial Discrimination of 1965,29 or the Convention on the Suppression and Punishment of the Crime of Apartheid of 1973;30 all of these treaties were prepared under the auspices of the United Nations. In contrast, the United Nations Covenant on Civil and Political Rights of 196631 provides a comprehensive catalogue of individual freedoms on a world-wide basis, the origins of which go back to the General Assembly’s Universal Declaration of Human Rights of 1948.32 If the Covenant’s catalogue of individual freedoms is correctly and fairly interpreted, the Covenant is essentially adequate for the protection of individual freedoms. This is true even though the protection of private property is neglected and — as in the Rome Convention — the Covenant contains wide openings for restricting the freedoms granted.33

The three most comprehensive treaties for the protection of individual freedom, the Rome Convention of 1950,34 the American Human Rights Convention of 1969,35 and the U.N. Covenant of 1966,36 have one

27. An overview of the conventions of the International Labour Organization (as of July 1, 1970) may be found in G. JOHNSTON, THE INTERNATIONAL LABOUR ORGANIZATION 310 (1970). Selected texts may be found in BASIC DOCUMENTS ON HUMAN RIGHTS, supra note 4, at 262.
31. Supra note 5.
32. Supra note 5.
34. Supra note 5.
35. Supra note 24.
36. Supra note 5.
important weakness in common: due to the wide openings for restrictions, the effectiveness of the individual freedoms granted depends largely on the basic attitude of the state parties towards individual freedom.

C. Other International Instruments

Still other instruments besides customary international law and international treaties play a role on the international level although they are less binding or non-binding legally. Of chief interest here are resolutions passed by organs of international organizations and declarations agreed upon by state representatives at international conferences.

1. Resolutions of International Organizations

According to their charters, some important international organizations have among their aims the preservation and advancement of individual freedoms. Prominent among these organizations are the United Nations and the European Council; more marginal are the Organization of American States, the Organization for African Unity and NATO. Authorized by their charters, several international organizations have issued important statements concerning individual freedoms. The Human Rights Declaration of the General Assembly of the United Nations of December 10, 194837 was a milestone in international human rights. Examples of other important statements on human rights by the General Assembly include the Declaration of the Rights of the Child,38 the Declaration on Territorial Asylum,39 and the Declaration against Torture.40 Other international organizations such as the European Council and the Organization of American States also issued resolutions for the protection and advancement of human rights.41 The most important

37. Universal Declaration of Human Rights, supra note 5.
recent examples in Europe include a resolution of the European Parliament on May 11, 1977 on the Protection of Human Rights in the World, which — barring the abstention of the communists — was unanimously accepted; and a common Declaration of the Assembly ("European Parliament"), Council of Ministers and Commission of the European Community on April 5, 1977, on Basic Rights in the European Community. These three organs of the European Community emphasize that the law of the Community, as the European Court of Justice had already acknowledged, also encompasses the fundamental rights and principles which form the constitutional foundations of the member states. The Declaration brings to mind that all members of the European Community are also parties to the European Human Rights Convention. The three organs of the Community underline the predominant rank which they attribute to fundamental rights, especially to those derived from the constitutions of member states and from the European Human Rights Convention. The three organs of the Community declare that in the exercise of their authority and in the pursuit of the Community's goals, they already observe these rights and will do so in the future. This joint declaration should also have practical significance. It may contribute to the removal of certain misgivings such as those expressed in the controversial decision of the German Federal Constitutional Court on May 25, 1974. Here the majority of the Court considered the protection of basic rights in the European Community not yet adequate.

2. Declarations of International Conferences

States do not concern themselves with human rights on the international level solely in the framework of international organizations. An example is the Final Act of the Human Rights Conference in Teheran on May 13, 1968, which was affirmed by a resolution of the United Nations General Assembly on December 19, 1968. The most important recent example of an international conference not under the auspices of an

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42. Amtsblatt der Europäischen Gemeinschaften 20 Jahrgang Nr. C. 133 (June 6, 1977)
international organization is the Conference on Security and Cooperation in Europe at Helsinki with its Final Act of August 1, 1975 — the Helsinki Conference.\textsuperscript{46} Thirty-two European states, the United States, Canada, and the Vatican participated in this conference. The Final Act of approximately forty-three pages was solemnly signed by the representatives of the participating states. It contains a part on “Cooperation in Humanitarian and Other Fields.” Common usage designates this part as “Basket 3.” Basket 3 contains in particular principles of human contact, information, cooperation, and exchange in the fields of culture and education. Basket 3 is supposed to facilitate contacts across boundaries on the basis of reunification of families, and marriages between citizens of different states. Furthermore, Basket 3 is to ease travel for personal, professional, or touristic reasons, youth contacts, dissemination of oral, printed, filmed, and broadcasted information. Cooperation in the realm of information and working conditions for journalists should be improved. In the fields of culture, science, and education mutual knowledge and relations are to be deepened. Exchange and dissemination of, as well as access to cultural values; also human contacts, and cooperation should be promoted. Thus, these principles also serve to expand individual freedom in such areas of life. It is true that the Final Act in Helsinki contains no catalogue of basic freedoms and quite consciously does not regulate these areas of life with legally binding force. Nevertheless, as will be shown, Basket 3 of the Helsinki Conference is of considerable significance for the development of human rights within some of the participating states.

D. The International Protection of Individual Freedoms and Political Reality

The incomplete and imperfect nature of the minimum standard of justice in general customary international law has already been indicated. Precisely because of this weakness, treaty law has the greatest significance for the protection of human rights.

1. The Limited Effects of Treaties

Bilateral international treaties are only small strands in the fabric of international protection of individual freedoms, since they only concen-

trate on narrow subject matter, such as the right to temporary stay or legal protection, and usually apply only to the citizens of the two state parties. Regional treaties and those international treaties intended for world-wide application also bind only the parties to the treaty. Their numbers vary widely from treaty to treaty. In addition, some of these treaties restrict themselves to limited problems, as do, for instance, the Conventions of the International Labour Organization or the U.N. Convention on Racial Discrimination.\textsuperscript{47} In contrast, the treaties with the most important content, namely the European and American Human Rights Conventions as well as the United Nations Covenant on Civil and Political Rights, are, with their catalogues of individual freedoms, well-nigh comprehensive in scope.\textsuperscript{48} The regional treaties and those meant for world-wide application usually distinguish themselves from merely bilateral ones in still one other aspect: they are not based on reciprocity, but on the principle of \textit{do ut des}. They guarantee at least most of the individual freedoms, not only to the citizens of the state parties, but also to all other persons under the jurisdiction of the state parties, even if the treaties may reserve the right to political activity for their own citizens. Especially, in view of the comprehensive catalogues of individual freedoms in the European Human Rights Convention of 1950, the American Human Rights Convention of 1969, and the U.N. Covenant of 1966 just mentioned,\textsuperscript{49} the protection of human rights by international law would, in the main, be adequately safeguarded, if this system of legal protection had not been saddled with three weaknesses. These weaknesses, however, are different in the three treaties. First, there is the limited number of state parties. Second, there are broad limitations of the freedoms granted, limitations which are open to diverging interpretations. Last, there is no effective system of enforcement on the international level.

The Rome Convention of 1950\textsuperscript{50} offers the most effective protection of freedoms: it has been valid in almost all member states of the European Council since the accession of France in 1973. The accession of Spain, which has just acceded to the U.N. Covenant on Civil and Political Rights, and of Portugal, is to be expected. In Europe, only the communist countries and — for other reasons — Finland have not yet become parties to the Rome Convention. It is true that this convention contains far-reaching limitations which are open to varying interpretations. This weakness, which can not be avoided entirely even in the relatively homogenous circle of the European Council States, has been partially

\textsuperscript{47} Supra notes 27, 29.
\textsuperscript{48} Supra notes 5, 24.
\textsuperscript{49} Id.
\textsuperscript{50} Supra note 5.
compensated for, however. For one thing, the internal law of the state parties to the Convention, especially their constitutional law, is oriented towards individual freedom; and their political practice, as a rule, follows that law. For another thing, at present, thirteen of eighteen state parties to the Convention have recognized the jurisdiction of the independent European Human Rights Commission for dealing with individual complaints; also the activity of the European Human Rights Court has increased in scope and significance.  

The situation in regard to the American Human Rights Convention of 1969 is totally different. Only twelve states have signed it. At the end of 1976 only two states had ratified it. It looks unlikely that the minimum of eleven ratifications necessary to bring the treaty into force will be achieved within the foreseeable future. Thus, the system of legal protection provided for through an Inter-American Commission on Human Rights and an Inter-American Court of Justice need not be described here.

The United Nations Covenant on Civil and Political Rights of 1966 offers a still different picture. It came into force only in 1976, when the requisite thirty-five ratifications materialized. By April of 1977, there were forty-two ratifications, not counting the Byelorussian and Ukrainian Soviet Socialist Republics. Their membership may be just as surprising as that of the Soviet Union, Bulgaria, the German Democratic Republic, Rumania, Czechoslovakia, Hungary, and Mongolia; that is, of states, which have been considered enemies of freedom in the reports of Amnesty International, as well as in the evaluations of Freedom House. It may also be surprising that Chile, Uruguay, Iran, Iraq, and Syria are parties to the Covenant, since their violations of human rights have been notorious. After studying the reports of Amnesty International and Freedom House, or even after reading the daily newspaper, it also seems


52. Supra note 24.

53. Organization of American States, Treaty Series No. 9, General Secretariat, at 89 (1976); L. Leblanc, supra note 41, at 22.

54. A. Robertson, supra note 5, at 126; Gros Espiell, supra note 26, at 43; Kutzner, supra note 26, at 287. But see note 41, supra.

55. Supra note 5.

strange to find Jordan, Libya, the Republic of Malagasy, Malawi, Ruanda, Tunisia, and Zaire among the participants. In contrast, it comes as no surprise that states like Denmark, Finland, Norway, Sweden, Great Britain, and the Federal Republic of Germany are members to this U.N. Human Rights Covenant.

There are several explanations for the fact that a fair number of states are parties to a comprehensive treaty for the protection of individual freedoms, although they appear, at least according to the standards of the Western World, as obvious enemies of freedom. In the communist countries, freedom of the individual is not an end in itself. From the outset, freedom exists only within the framework of the state’s goals, set up by the ruling party with its basically anti-freedom attitude.57 The U.N. Human Rights Covenant of 1966 on Civil and Political Rights58 leaves loopholes for practicing this “understanding” of human rights. In some of the Covenant’s articles the possible limitations of freedoms are formulated as broadly as the freedoms themselves. This applies not only to emergency situation clauses, but also to normal times. Privacy, family, home, or correspondence must not be interfered with arbitrarily or unlawfully. The freedom of religion and belief are “subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals, or the fundamental rights and freedoms of others.”59 The freedom of expression is subject to restrictions provided by law if these “are necessary for respect of the rights or reputations of others; for the protection of national security or of public order (ordre public), or of public health or morals.”60 These broad general clauses can be interpreted literally but against the principle of good faith in order to achieve the opposite effect intended. Thus they leave openings for a monolithic single ruling party, as well as for Latin American or African dictators with absolute power to evade the treaty obligations. As an example, Article 12 of the U.N. Covenant61 grants each person the right to leave any country including his own. The German Democratic Republic tries to take advantage of the wording which permits statutory restric-

58. Supra note 5.
59. International Covenant on Civil and Political Rights, Art. 18, supra note 5.
60. Id.
61. Id.
tions necessary to protect national security and public order. However, it naturally contradicts the purpose of the treaty, if a mere exception which allows restrictions on freedoms almost totally pushes aside the rule safeguarding the guarantee of freedom. Therefore, one can scarcely imagine that an inmate of a psychiatric institution in the Soviet Union or a political prisoner in Chile, Syria, Uruguay, or Zaire could in a national court successfully invoke the U.N. Human Rights Covenant, although his country is a party to this treaty.

The broad limitations of the U.N. Covenant on Civil and Political Rights are all the more dangerous in states disregarding freedom, because the provisions for the international enforcement of the individual freedoms are much weaker than those of the Rome Convention of 1950. In any human rights treaty it is rare for one state party to demand human rights observance by another state party. According to Article 40 of the U.N. Covenant of 1966, the state parties undertake to submit reports on the measures they have adopted to implement the Covenant's rights and on the progress made in the enjoyment of those rights. The reports are to be examined by a Human Rights Committee of eighteen citizens of different state parties serving in a personal capacity. The committee is, however, merely empowered to make general comments to the state parties and to the Economic and Social Council of the United Nations. These general comments do not necessarily have any further legal conse-
quences. Under Article 41 of the Covenant a state party may recognize the competence of the Human Rights Committee to consider claims of one state party against another. But the requisite minimum of ten declarations has not yet been achieved. An optional protocol provides for the Human Rights Committee to receive and consider individual communications on possible violations of the Covenant. In April 1977, sixteen states had accepted this protocol. The jurisdiction of the Human Rights Committee in regard to such individual communications consists, however, only in examining the situation and, at most, forwarding its views to the state party concerned and to the affected individual. Unlike the Rome Convention, there is no provision giving access to an international court of justice or to a political authority authorized to give remedy.

Since, in cases of such individual communications, the Human Rights Committee meets in camera, and since publication of its views in these individual cases is not required, world public opinion can not be mobilized to any extent. Under these circumstances, the examination of the above-mentioned reports on each state party under Article 40 of the Covenant is particularly noteworthy. It is, of course, too early to make a final judgment on the effectiveness of the whole system. However, it is to be feared that the procedures outlined above will not have much practical effect.

If one accepts an unavoidable simplification, one may summarize the protection of individual freedoms through treaties as follows: The optimum has been achieved in those member states of the European Council which have accepted the Rome Convention's entire system of legal protection. To be sure, these states are the ones with the strongest national system of protecting these freedoms; in other words, the states in which an additional international reinforcement is certainly useful, but less necessary than elsewhere. Some parties to the Rome Convention are at the same time parties to the U.N. Covenant on Civil and Political Rights of 1966. However, over two-thirds of the almost 160 states in the world belong to neither treaty. Not surprisingly, in many of these non-participants the legal protection of individual freedom is extremely poor. But even membership in the U.N. Covenant on Civil and Political Rights

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65. Bartsch, supra note 64, at 476.
of 1966 does not prevent some member states from continuously violating basic freedoms. One may suspect that some states have become parties to the Covenant merely to curry favor in public opinion.

2. The Limited Effects of Resolutions of International Organizations and of International Conferences

The resolutions relevant here which are made by international organizations usually originate from an organ in which all member states are represented; for example, the General Assembly in the United Nations, or the International Labour Conference in the International Labour Organization. According to their charters, these organs are empowered to pass certain resolutions legally binding on all member states. However, the subject matter open for binding resolutions is limited mostly to such internal matters as rules of procedure, rules about personnel, or the organization's budget. The recommendations of international organizations that their members ratify relevant international treaties or otherwise engage in the cause of individual freedoms, are usually not legally binding. Whether these resolutions can be made binding through additional acts or practices is disputed. The effect which human rights declarations have in the political sphere depends on different circumstances. Thus, it is of consequence how inconvenient the recommendation is for the particular state and how broad the consensus is in passing it; whether important neighbours, economic partners or political allies have joined in the recommendation; whether there will be moral-political sanctions for disregarding the resolutions, etc. Under all these circumstances, most of the human rights resolutions of the United Nations, and of other international organizations, have, in practice, usually had only a limited legal effect. Even in the European Council it took twenty-three years until France yielded to external and internal pressures and, in 1973, ratified the Rome Convention of 1950.

A special problem is in the one-sidedness of many international organizations, which is due to the majority constellation. Thus, in the Organization for African Unity, whose charter provides for consideration

of human rights, it is always possible for a single member state to push through a fiery condemnation against the racist regimes in Rhodesia and South Africa. By contrast, it has proven impossible to reach any condemnation against those African states which so obviously violate human rights at present like Ethiopia and Uganda. This one-sidedness is, perhaps, understandable in an organization whose main goal is battling colonialism. The situation in the United Nations is, however, not much different. This one-sidedness is, along with other factors, to blame for the thoroughly unsatisfactory results of the efforts in the United Nations to promote effective measures against skyjackers and terrorists. Many states have a permissive attitude towards terrorist methods if these are used for goals which they approve of. Unfortunately, it is probably unrealistic to expect substantial changes within a foreseeable period. Nevertheless, there have been some positive beginnings. 67

In international conferences as well, everything depends on the political constellation. Although the Final Act of the Helsinki Conference is not an internationally binding treaty, but rather a declaration of intent, which binds merely politically and morally, some of the declarations in Basket 3 have had no mean effect. Attempts of individuals and small groups to achieve a modest degree of freedom of opinion in Czechoslovakia or in the Soviet Union, have received considerable impetus from the Helsinki Declaration. Speakers for Group 77 in Czechoslovakia or for the civil rights movement in the Soviet Union constantly refer to the Final Act at Helsinki. 68


68. See the reports on the struggle for human rights in Eastern Europe, 32 EUROPA-ARCHIV D-353 (1977); H. Schwarz, ZWISCHENBILANZ DER KSZE 46 (1977); MENSCHENRECHTE. EIN
To the lawyer, it is astonishing that a legally non-binding instrument has virtually become so much more important than the U.N. Covenant on Civil and Political Rights, which is legally binding on these two states as well as on other Eastern European bloc countries. At least two observations are relevant in explaining this: even in those countries where the U.N. Covenant is internally binding, its effectiveness can largely be eliminated in practice due to the reasons sketched above. In addition, the Covenant appears to be hardly known in the U.S.S.R., whereas the Helsinki results received wide official publicity. In publicizing these results, the Eastern bloc probably had completely other aims than facilitating invocation of Basket 3 for dissidents. The Helsinki Declaration can have even its limited moral-political effect only in the signatory states. In some countries, the minimum living and civilization standards, which are a prerequisite for effectively fighting tyranny with moral and intellectual weapons, are lacking. 69

The German author Fritz Reuter has one of his characters, Inspector Brasig say "Die grosse Armut in der Stadt kommt von der grossen Powerteh her." 70 The unsatisfactory situation in the international protection of individual freedoms is lastly due to the fact that the majority of states reject effective safeguards for basic freedoms even on the national level. One can hardly expect that the many Asiatic, African, and Latin American dictatorships, and the states with a monolithic, single ruling party, whose theories are often meant to supply a substitute for religion, will seriously undertake international commitments to uphold the very freedoms that they so purposely suppress.

IV. THE FUTURE

The above considerations should be the point of departure for any preview of the future of individual freedoms. In so doing, one must, however, think in longer periods of time. In order to gain a larger perspective on individual freedoms in the world, one should compare the new states in Africa and Asia, and also some of the Latin American States, not with the free Europe and North America of today, but rather with the Europe of two hundred years ago. At that time, a large majority of the

69. Illiteracy, for example, is often a handicap.

70. "The reason for the great poverty in the city is that people are so poor". Fritz Reuter, SÄMMTLICHE WERKE, 5 Auflage, Bd. 7, at 308 (1890).
human population was not free. Not until the North American and Latin American wars of independence, as well as the French Revolution, did human rights slowly emerge. Since then, much has been accomplished, at least in Europe, North America, Australia, and Japan.

The world map of individual freedoms changes from year to year. In 1976, an officer’s coup d’état interrupted the beginnings of a liberal democracy in Thailand; in Pakistan, in the summer of 1977, a regime which permitted a modest amount of freedom was overthrown by a military regime which intends to reintroduce such punishments as floggings and, for thievery, amputation. If the above study indicates a certain worldwide trend towards tyranny for today, it does not indicate an inevitable course for the future. The recent shifts in government in Greece, Portugal, Spain, India, and Sri Lanka justify cautious hopes. One should also not overlook the modest beginnings of a narrowly limited freedom of opinion developing in some of Europe’s communist countries. International law and international politics can make a contribution towards the development of individual freedom. But for the reasons outlined above, this contribution will remain limited for quite some time.

The world’s reaction to Solzhenitsyn’s *Gulag Archipelago*; the great interest in the Belgrade Conference; the growing activities of Amnesty International, Freedom House, the International Commission of Jurists, and many other private as well as church organizations, the efforts of America’s President Carter on behalf of individual rights, as well as the resolutions of a Code of Conduct for Common Market firms to loosen the grip of racial discrimination in South Africa, all emphasize that the worldwide struggle for individual freedom is going on.

The work of the Red Cross for humanity and humanitarian law is also important in this connection. Thus, it is an encouraging sign that in the

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72. See, e.g., Boyd, *Contemporary Practice of the United States Relating to International Law*, 71 Am. J. Int’l L. 514 (1977); *Interpretation der amerikanischen Menschenrechtspolitik*, 32 *Europa-Archiv* D-378 (1977). Some relevant endeavors of the United States Congress, for instance human rights clauses in certain international agreements, are controversial. Equally controversial were resolutions drafted under the auspices of the European Community concerning, for example, the consideration of human rights questions during preparations for a second Lomé Convention. The resolution for a code of conduct for firms from the European Community nations for dealing with racial discrimination in South Africa is also quite controversial. 10 *Bulletin der Europäischen Gemeinschaften* 51 (1977).
four Red Cross Geneva Conventions of 1949,\textsuperscript{73} important protective regulations for large groups of people in international conflicts — and to a very limited measure also in national conflicts — were not only provided for, but recognized as binding treaty law by the overwhelming majority of the world’s states. Excepting the United Nations Charter, scarcely any international agreement can boast over 140 state parties, as was the case at the Red Cross Convention of 1949.\textsuperscript{74}

Despite all efforts on the international level, the future struggle for human rights must be continued intensively on the national level. The Germans in the Federal Republic of Germany have justifiable cause to be satisfied with the fact that the states of free, democratic Europe, not least the Federal Republic itself, have developed the protection of individual freedoms to a very high degree. Yet especially we Germans may not take freedom for granted. The memories of National Socialism, for instance the outrageous crimes committed in concentration camps like Auschwitz, Buchenwald, and Maydanek as well as the mass killings at Oradour, forbid any thought of smug self-righteousness. These memories must never be erased from German consciousness. The protection of freedoms demands continued efforts to overcome weaknesses still at hand. However, the German experience with dictatorship also teaches us that the gift of freedom must not only constantly be won anew, but must also be defended staunchly against dangerous enemies.\textsuperscript{75}

\textsuperscript{73} 75 U.N.T.S. 31, 85, 135 and 287 (1950).
\textsuperscript{74} Cf. (on further development) Baxter, 16 HARV. INT’L L. J. 1 (1975).
\textsuperscript{75} Here one should mention the defiance of a state dedicated to freedom and justice by terrorists. Up to September 8, 1977, in the Federal Republic of Germany, 22 people had been assassinated, usually for political reasons; 102 people had been victims of attempted assassinations; 90 people had been injured through bombs or shootings; 14 people had been taken hostage. Statement by the Federal Minister of Justice. 55 DEUTSCHEZÄHRUNG 344 (1977). The legal and political situation in the Federal Republic is grossly misrepresented by Weiss, N.Y.U. J. INT’L L. & POL. 61 (1976).