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GRENVILLE CLARK INSTITUTE FOR WORLD LAW

Woodstock, Connecticut, 06281

RECD MAY 13 1967

The Grenville Clark Institute for World Law is the successor to the Dublin Conference Group, which comprised seventy-nine United States citizens who participated in the Second Dublin Conference of October, 1965 and its second meeting in New York in May, 1966. The Second Dublin Declaration, issued by the Group, reaffirmed the conclusions of the first Dublin Conference of October, 1945 that the only effective means to establish genuine peace and justice is a world federation empowered to enforce world law against international war.

May 11, 1967

Hon. Walter F. Mondale
Senate Office Building
Washington, D. C.

Dear Senator Mondale:

I enclose a copy of the Declaration of The Second Dublin Conference on the essentials of an effective world organization to prevent war. This statement was drafted at two meetings, one at Dublin, New Hampshire, in October, 1965, and the other in New York City in May, 1966. It is a document which we believe could, with effective implementation, give a new impetus to the world-wide movement to prevent war and to establish a just and enforceable peace.

This Declaration is the culmination of the last twenty years of the work of Grenville Clark, who died on January 12, 1967, and who was one of the truly great Americans. Mr. Clark was largely responsible for convening the first Dublin Conference of 1945 as well as the Second Conference of 1965, both of which supported the concept of enforceable world law.

Many leading citizens of the United States and other countries have adhered to the Declaration. Many more are being invited to do so. A partial list of present adherents is enclosed.

May I ask you to give your deepest consideration to the document and let me know if you approve of its general objectives. You may rest assured that we will indicate such interest only if you specifically authorize us to do so.

Yours most sincerely,

George C. Holt

George C. Holt
Executive Director

DECLARATION OF THE SECOND DUBLIN CONFERENCE

As adopted at Dublin, New Hampshire, U.S.A., October 5, 1965, and revised at New York City, U.S.A., May 21, 1966

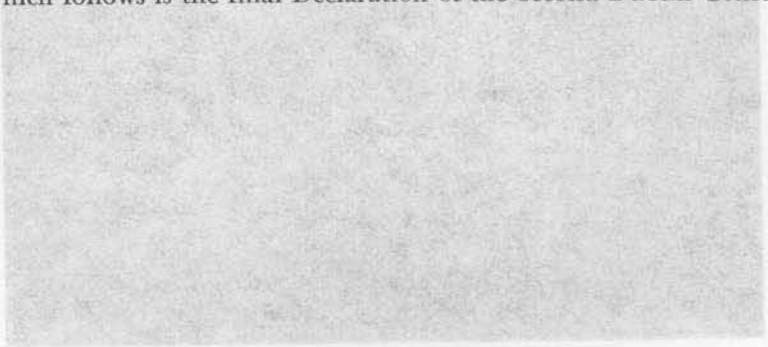
GRENVILLE CLARK INSTITUTE FOR WORLD LAW

GEORGE C. HOLT, Executive Director
Woodstock, Connecticut, 06281, U.S.A.

Historical Note

In October 1945, a group of forty-eight men and women concerned with world peace met at Dublin, New Hampshire, U.S.A. This first Dublin Conference issued a public statement setting forth the proposition that nothing less would suffice than a World Federal Government "with closely defined and limited" yet fully adequate powers to prevent war. They termed the United Nations Charter, adopted only a few months earlier, "inadequate and behind the times", and called for a much stronger world organization, either through "drastic amendments" of the Charter or "a new World Constitutional Convention".

Twenty years later, sixteen of the survivors of the 1945 Conference and thirty-nine others met to reappraise the validity of the world federalist concept and to consider what action can best be taken to advance the cause of genuine peace. The Second Dublin Conference, under the chairmanship of Kingman Brewster, Jr., President of Yale University, met for four days of intensive discussion and issued a preliminary declaration which was further discussed and amended at a meeting in New York City on May 20-21, 1966. The public statement which follows is the final Declaration of the Second Dublin Conference.



DECLARATION OF THE SECOND DUBLIN CONFERENCE

As adopted at Dublin, New Hampshire, U.S.A., October 5, 1965, and revised at New York City, U.S.A., May 21, 1966

The Second Dublin Conference on the essentials of an effective world organization to prevent war declares:

In this year 1966, the achievements of the mind and creativity of man in mastering his environment stagger the imagination. He has split the atom, begun to conquer space, charted the ocean floors, probed deep into the earth and added many years to his lifespan. And yet, with all these and countless other accomplishments, he has not even come close to the creation of a community of man which can solve the greatest threats to mankind — poverty, anarchy and war.

THE NEED FOR ENFORCEABLE WORLD LAW

Lawlessness among the nations is the common enemy of all mankind. It impedes progress, increases world tension and defeats justice. It breeds an increasing acceptance of violence and thereby cheapens human life. It leads man to waste his resources in devising ever more deadly weapons for his own destruction. It creates conditions unworthy of civilized peoples. International lawlessness has, therefore, become intolerable.

The rights of man, and his pursuit of happiness, depend upon justice and dignity for each individual in the whole human family. Without peace, order and stability, there can, however, be no justice or dignity for man. Peace means more than the absence of war — it means the presence of justice and the opportunity for improvement. In our nuclear age, the growing inability of nation states to provide security for their peoples emphasizes the need to replace world anarchy with enforceable world law; and since the highest sovereignty on earth resides with the people, they are entitled to create such a system for their own protection. Effective law can exist only through institutions to make, interpret and enforce it — in short through government.

Mankind has never devised any method to maintain stability and order within local community, province, state or nation save effective law against violence. At all levels of political society and under all varieties of regime, the basic requirements have been: A legislative authority to enact definite laws to penalize violence and to deal with the conditions which cause it; tribunals to interpret and apply these laws; and an executive branch for their enforcement, including police to deter and apprehend violators. Only through such institutions can disarmament of the population in the sense of forbidding all armed factions and bands be accomplished. It is the lesson of history, reason and common sense that a *corresponding system* of law and legal institutions *on the world level* is indispensable to world-wide justice, stability and order.

Since the Second World War, vast changes have been taking place: Nuclear weapons have been massively stockpiled by two nations, have been developed by three others, and there is a potential capacity in many more; the peril of anarchy has been compounded by the danger that space may become a jungle of rival and aggressive nationalisms; a large number of new nations have been created as a result of the break-up of colonial empires; the People's Republic of China has emerged as a world power with a possible population of 900,000,000 by 1980, and yet without full acceptance as a member of the family of nations; force has been used against other nations by most of the great powers when deemed in their own interests; and powerful movements have emerged in support of basic human rights.

In the face of these changes, world tensions have increased and the arms race continues at an annual cost of at least $140,000,000,000 (one hundred forty *billion* dollars). And yet, statesmen continue to confront these conditions with power politics and other traditional and inadequate techniques, using or ignoring the United Nations as convenience dictates.

The United Nations has served many social and humanitarian needs, has aided the cause of human rights and has helped to resolve various conflicts between nations. Nevertheless, it is unable, under its Charter drafted before Hiroshima, to fulfill its avowed principal purpose, namely, "to maintain international peace and security".

Thus there has resulted the vast waste in material resources and human energy inherent in the arms race, a waste which is an ever-increasing threat to peace because it helps to perpetuate low standards of living among at least two billion of the world's people and to widen the gap between them and the people of the industrialized nations. Complete national disarmament under effective world law would bring about massive savings which could make possible the expenditures necessary to improve the economic conditions of most of the world's people. Moreover, it is difficult or impossible, under present world conditions, to deal with the problem of the population explosion, which tends to frustrate efforts for the economic improvement of many areas.

The world must be made safe for the diversities of mankind—diversities of race, nationality, religion, forms of government, economic systems and cultural values. The positive worth of these diversities cannot be preserved without enforceable world law.

The world must also be made safe for change. Law, being subject to continual interpretation and development, is the only orderly means for social, political and economic growth and improvement.

Since a clear remedy for our present ills, and the means for our future progress are available in the shape of a world federation adequately empowered to enforce peace and to promote justice, the present world situation is inexcusable.

We, the people of this earth, face the immediate problems of hatred, hunger, ignorance, disease, overpopulation and war. If we would master them at all, we must undertake the task together.

We must begin anew to institute an international civilization. In a nuclear world, there is no independence which is not interdependence. We must learn to live together. We can save ourselves only if we save each other.

THE ESSENTIALS OF AN EFFECTIVE WORLD FEDERATION

The experience of the United Nations and the lessons of history demonstrate that the following elements are essential to an effective authority to prevent war:

(1) *Universal membership.* Membership must be open to every nation. Citizens of member nations should also be citizens of the world federation. Once the world federation has come into being, no member nation could withdraw or be expelled, for effective law cannot depend upon voluntary compliance.

(2) *A world legislative body.* A carefully constituted world legislative body is indispensable as a major organ of the world federation. It could be either unicameral or bicameral. It should have a system of representation and voting procedures whereby the peoples of all the member nations will be fairly represented. It should be given adequate powers to enact legislation for the maintenance of universal and complete national disarmament, for the enforcement of world law against international war, and for the promotion of better living standards in many parts of the world, through the world development authority hereinafter described.

(3) *An executive branch.* The executive branch should be chosen by and be responsible to the legislative body. It must be free from the veto power of any nation and must exercise only the authority constitutionally delegated to it by express words or by clear implication.

(4) *A judicial, quasi-judicial and conciliation system.* There must be a system of judicial, quasi-judicial and conciliation tribunals with jurisdiction over individuals as well as nations, and with the powers required for the peaceful settlement of *all* international disputes. The highest judicial tribunal should have jurisdiction finally to interpret the charter or constitution of the federation.

(5) *Universal and complete disarmament.* The charter or constitution of the world federation must itself contain a detailed plan and timetable for complete national disarmament, not merely for "arms control" or "limitation" of armaments. This means the *elimination* by stages of all national *military* forces and armaments by every country in the world, without prejudice to the maintenance of *police* forces for internal order only, strictly limited in number and very lightly armed. The disarmament process must be subject at all stages to an effective inspection system; and the completion of each stage must be carefully verified before the next is begun. As part of the disarmament plan, provision should be made for ownership, control or supervision by the world federation of nuclear materials and of plants producing or utilizing nuclear materials. Nuclear products should be made available for the use of individuals, corporations or nations, exclusively for peaceful purposes, and then only under the strict surveillance of the federation. The federation should also have authority to ensure against the use of outer space for any purpose other than peaceful.

(6) *A world police force.* A strong, sufficiently armed world police force must be established parallel with the disarmament process. It should be composed of individual recruits and not of national contingents, with careful safeguards against any undue proportion from any nation or group of nations. The disposition, command and circumstances under which the police force can be used must also be clearly defined.

(7) *A world development authority.* Since the conditions of poverty and lack of education under which a majority of the human family now live, generate unrest and conflict and constitute an underlying danger to world peace, there should be a well-financed world development authority as one of the principal organs of the world federation. Its purpose should be greatly to improve these conditions and help to close the gap in living standards and education between the industrialized and economically underdeveloped areas of the world. There are various factors in addition to the population explosion, including illiteracy and disease, which frustrate or hinder this objective, but in numerous areas undue population growth is a most important factor; and the world development authority should, therefore, have as one of its major tasks the wide dissemination of information as to the means for population control. The problems to be dealt with by this organ are fundamental to human dignity and welfare and will inevitably require larger funds than any other function of the world federation. It is all important to the cause of peace that the improvement of educational and living standards in all the poverty-stricken areas of the world be regarded as a principal objective of the federation.

(8) *Reliable world revenues.* There must be provision for sufficient and reliable revenues to support the world police force, the world development authority and all the other organs and agencies of the world federation. The nations of the world are spending today at least $140 billion a year on armaments alone. The annual budget of an effective world organization to prevent war and to finance a world development authority should be of the order of $80 billion at 1966 price levels. Thus the cost of the world organization would be less than the combined military budgets of the Soviet Union and the United States alone. These savings resulting from disarmament would provide the funds necessary for all the organs and agencies of the federation, while, at the same time, releasing vast funds and human resources for constructive purposes. In order to raise at least $80 billion per annum, a reliable revenue system is plainly necessary and such a system is feasible. The budget of the federation should be determined annually by the legislative body of the federation, which should also determine annually, on the principle of ability to pay, the proportions of the budget to be paid by the peoples of the respective member nations. The system should be such that collections would not depend upon grants from the governments of the member nations. There should be a maximum limit upon the taxing power of the federation in any year and a similar limit upon the amount which the people of any member nation could be required to contribute to the budget of the federation. A revenue system of this character is an indispensable element of any effective world organization to maintain peace.

(9) *Safeguards.* Important as it is that an effective world federation to prevent international war shall possess powers fully adequate to that purpose, it is equally important that such powers be carefully limited so as to ensure against abuse of power and interference in the purely domestic affairs of the member nations. To these ends, all powers not granted to the world federation by its charter or constitution

should be reserved to the member nations and their peoples; and there should be a bill of rights whereby the federation would be forbidden to infringe upon any basic right of the individual. Judicial redress against any abuse of the federation's power should be provided for.

(10) *Ratification.* In order to ensure the stability of the world federation, its charter or constitution should come into force only when ratified by a large majority of all the nations of the world, including all the major powers, whose aggregate populations comprise a large majority of the people of the world.

Strong arguments can be made that a world federation should have further constitutional powers relating to the economic welfare of all peoples, including power to regulate international commerce. Moreover, a case can be made for the inclusion of a constitutional power to prevent the infringement of certain basic individual rights by the member nations or their citizens as well as by the world federation itself.

However, the previously enumerated essentials would involve the grant to a world organization of legislative, executive and judicial powers far beyond anything as yet proposed by any government for a strengthened United Nations. We believe, therefore, that however desirable the grant of still wider constitutional powers may appear, it is the part of wisdom to refrain from seeking such additional powers at this time. If in this generation we can establish a world organization which is really capable of achieving disarmament, of settling all international disputes by peaceful means and of bringing about an important improvement in the living standards of most of the peoples of the world, we should be satisfied. We could then wisely leave to future generations the problem of the addition of such further powers as may be deemed necessary for the common good.

WAYS AND MEANS TOWARD WORLD ORDER

We believe that the United Nations, on condition that its Charter is revised to include the above-stated essentials, would be the best instrument for the achievement of the goals we seek; and we urge that a date be set without further delay for the convening of a review conference, under Article 109 of the Charter, to consider a major revision of the structure and powers of the Organization. Nothing short of such a revision can assure the future of the United Nations. The efforts of all those who regard it as the best hope for a better world should be to this end.

If, however, the necessary fundamental revision of the Charter cannot be achieved with reasonable promptness, the effort for world order should be resolutely pursued by any other fruitful means.

We further believe that all who are working to eliminate poverty, hatred, hunger, ignorance, disease and discrimination based upon race, creed or color should join the advocates of world law. For, while it is true that the denial of basic human rights increases world tensions, it is equally true that dignity and equal opportunity for every member of the human family cannot be realized in a world of lawlessness and nationalistic anarchy.

In order to encourage those who, while sympathetic, believe the task is too vast, and to bring about the revolutionary change in thinking needed to overcome the influence of vested interests and of tradition, a world-wide program of education is urgently required. Such a program not only should help to demonstrate the need for a world federation, but should also help to define its specific powers and their necessary limitations.

A world-wide educational program will require much larger financial support than hitherto available, and every effort must be made to develop such support.

Along with greatly enlarged private efforts, there should be more imaginative and vigorous governmental leadership for world order. The time has come for men in government to put meaning and substance into their general statements about the need for the rule of law in world affairs. Statesmen should now make concrete proposals to bring about world peace through enforceable world law.

It is through a *combination* of these methods that the world can be saved from the scourge of war in our time, rather than at some indefinite future date.

A CALL TO ACTION

We call upon people everywhere to recognize the imperative need for a world federation with the powers necessary to enforce world law against international violence or the threat of it, — and thus to enhance the welfare of all.

We call upon them to recognize the indispensable link between peace, justice and progress on the one hand, and the institutions of enforceable world law on the other.

We also call upon them to insist, by every means at their command, that the establishment of world peace through enforceable world law shall become the first priority of their governments, and that their governments shall go on record to that effect.

And we call upon all heads of government, not merely to talk about the rule of law in world affairs, but to *take action* by moving swiftly and persistently to create a limited world federal government fully capable of maintaining peace. To this end, we urge an early conference of the heads of government of every nation in the world.

We must *all* strive for a better world, freed from the burden of armaments and fear of destruction, and with a future of wider scope and greater promise.

This document has been drafted by a group of private citizens of the U.S.A., who are deeply concerned for the future of their own country and of all mankind. It is offered as a basis for discussion. We invite the thoughts of citizens of all nations.

DECLARATION OF THE SECOND DUBLIN CONFERENCE

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Former Governor of Minnesota

EARL ATTLEE- London, England
Former Prime Minister

IWAO AYUSAWA - Geneva, Switzerland
Former President, International Christian University, Tokyo, Japan

HARRISON BROWN - Pasadena, Calif.
Nuclear physicist, California Institute of Technology

MARY I. BUNTING - Cambridge, Mass.
President, Radcliffe College

ROBERT BURON - Paris, France
Former Cabinet Minister

GRENVILLE CLARK (deceased) - Dublin, N.H.
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JOSEPH S. CLARK - Washington, D.C.
U.S. Senator from Pennsylvania

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[202] EXECUTIVE 3-5284

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HUMAN RIGHTS TREATIES: WHY IS THE U.S. STALLING?

By WILLIAM KOREY

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HUMAN RIGHTS TREATIES: WHY IS THE U.S. STALLING?

By William Korey

TWENTY years of effort by the United Nations to give vitality and concrete form to the Universal Declaration of Human Rights will be celebrated in 1968, designated by the General Assembly as International Human Rights Year. From 1945 to 1948 the United States delegation led the movement for the enactment of the Declaration as the embodiment of basic democratic political ideas. But since then, while the United Nations has been struggling to establish global norms of conduct, the United States has been the chief laggard in translating them into international law. At the present time the U.S. Senate has yet to ratify a single human rights treaty.

By next year the United Nations and its specialized agencies will have completed about a dozen conventions on human rights, including one banning religious intolerance (scheduled for adoption in the 1967 session of the Assembly), and the twin covenants on civil and political rights and on economic, social and cultural rights. Thereafter the focus of the effort will shift to methods and machinery for effectively implementing the measures.

When it established International Human Rights Year the General Assembly singled out nine conventions which all member states were specifically "invited" to ratify "before 1968." Failure to ratify will no doubt limit a government's effectiveness in the U.N.-sponsored intergovernmental conference to be held in Tehran in the spring of 1968. There stress will be placed upon procedures for implementation, and treaty abstainers, however shielded by legalisms, can expect to be made acutely uncomfortable. One of these will be the United States unless the Administration takes vigorous steps this year to overcome the "lingering Brickeritis" that has afflicted the Senate for well over a decade.

The failure of the United States to ratify human rights treaties has seriously embarrassed the conduct of its policy at the United Nations and prevented it from effectively championing the rule of law on an international scale. On almost every occasion when we have advanced or supported proposals for the protection of

human rights, our justification for doing so has been forcefully challenged by the Soviet Union. As the Russians point out, a power that has refused to accede to any human rights treaty is scarcely in a position to advise on enforcement procedures. Our pronouncements in the field of human rights are often branded as brazen hypocrisy, and it is said that the kind of company we keep in failing to ratify a single human rights treaty—South Africa and Spain—testifies to American purposes.

The Administration is acutely aware that the developing countries of Africa and Asia measure us in terms of our commitment to the advancement of human rights both at home and abroad. President Johnson emphasized this point in his speech to African ambassadors at the White House last May:

> The foreign policy of the United States is rooted in its life at home. We will not permit human rights to be restricted in our own country. And we will not support policies abroad which are based on the rule of minorities or the discredited notion that men are unequal before the law.
>
> We will not live by a double standard—professing abroad what we do not practice at home, or venerating at home what we ignore abroad.

Concern on this score no doubt hastened the significant decision taken by the Administration on September 28, 1966, to sign the U.N. Convention on Racial Discrimination. While signing an international treaty does not, of course, assure that ratification will follow, it does suggest a solemn commitment by the Administration to exert the required effort to attain this objective. No one can be optimistic at this late date, and particularly after the effects of the "white backlash," that the Senate will quickly reverse a position that has already hardened, but at least the Administration has indicated its intention to make a determined effort to convince the Senate that a policy sponsored by John Bricker and formally enunciated by John Foster Dulles must now be revised.

II

By urging U.S. ratification of international human rights treaties, the Administration would be continuing an effort begun by American policy-makers after the war to implement the "Four Freedoms" announced by President Franklin D. Roosevelt on January 6, 1941, reiterated in the Atlantic Charter of the same year and elaborated in the Dumbarton Oaks "Proposals" of 1944. At the founding of the United Nations in San Francisco in April

1945, American delegates were instrumental in the drafting of the Charter, which made the promotion of human rights a central focus of the world organization.

Led by Mrs. Eleanor Roosevelt, the U.N. Commission on Human Rights recommended the creation of an "International Bill of Rights" to be comprised of a declaration (the "Universal Declaration of Human Rights," adopted in Paris, December 10, 1948), a legally binding covenant (or convention) and "measures of implementation." The projected covenant (split into two separate parts), together with implementation clauses, was finally adopted by the twenty-first session of the General Assembly in December 1966, thereby—as U Thant noted—"fulfilling one of the promises made at San Francisco in 1945."

Already, through the Nuremberg Tribunal, of which the United States was a major architect, the rule of law as applied to criminal violations of human rights had been given a firm foundation. Thus President Harry Truman could comment in November 1946 that the "undisputed gain" of Nuremberg is "the formal recognition that there are crimes against humanity." Recognized among the "crimes against humanity" were persecutions on political, racial or religious grounds whether or not sanctioned by domestic law. In consequence of this "revolution in international criminal law," an erosion of the earlier principle of exclusive domestic jurisdiction in the area of human rights had taken place. The General Assembly was later to endorse the new principle of the Nuremberg Tribunal.

One expression of this principle was the Genocide Convention, the first human rights treaty adopted by the United Nations (December 9, 1948). This convention branded as a crime "acts committed with an intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such." Today it is all but forgotten that the United States played a key role in its drafting, and that the text was formulated in terms of familiar Anglo-American legal theory and couched in language of traditional American common law concepts. In a speech to the General Assembly shortly before the treaty's adoption, Assistant Secretary of State Ernest A. Gross, the head of the American delegation, drew attention to the prominent part played by the United States in bringing the treaty into existence:

> It seems to the United States delegation that in a world beset by many problems and great difficulties, we should proceed with this Convention before

the memory of recent horrifying genocidal acts has faded from the minds and conscience of man. Positive action must be taken now. My Government is eager to see a Genocide Convention adopted at this session of the Assembly and signed by all member states before we quit with our labors here.

Two days after the convention was adopted by the Assembly, the United States appended its signature.

For a time it seemed that U.S. ratification would come swiftly. On June 16, 1949, President Truman transmitted the Genocide Convention to the Senate, asking for its consent. A subcommittee of the Senate Foreign Relations Committee held public hearings in January and February 1950, during which an Administration spokesman, Deputy Under Secretary of State Dean Rusk, testified that ratification was necessary to "demonstrate to the rest of the world that the United States is determined to maintain its moral leadership in international affairs and to participate in the development of international law on the basis of human justice."

In May 1950 the subcommittee reported favorably on the convention to the full committee, but to meet objections from segments of the legal profession as well as from conservative political forces, the subcommittee recommended that four "understandings" and one "declaration" be embodied in the resolution consenting to ratification. The "understandings" were designed to clarify the Senate's interpretation of certain language in the convention and to prevent its being applied against the United States in the event, for example, of a single lynching. The most important clarification was designed to meet objections that the treaty might adversely affect federal-state relations by sapping the authority of states on criminal matters. The proposed "declaration" met the constitutional issue by noting that the Senate considers ratification "to be an exercise of the Federal Government to define and punish offenses against the law of nations, expressly conferred by Article I, Section 8, Clause 10, of the United States Constitution. . . ."

Even these clarifications—which many thought unnecessary because they were self-evident—failed to elicit positive action by the full committee. A resurgent "nativism," which was gaining momentum from the McCarthy movement, gave support to those who felt that our sovereignty might be undermined by the United Nations and the legal instruments it was forging.

The Eisenhower Administration finally smothered the Genocide Convention and, indeed, all hope of ratification of other

human rights treaties then being considered by U.N. bodies. This was a response to Senator John Bricker's campaign to restrict the presidential treaty-making power, in which he argued that human rights treaties would upset the prevailing balance of federal-state powers. According to Senator Bricker's adherents, the constitutional provision that made treaties the supreme law of the land provided a loophole whereby matters constitutionally within the province of the states would come under federal jurisdiction. (In *Missouri v. Holland,* the Supreme Court had held in 1920 that the Constitution authorizes Congress, in implementation of valid treaty commitments, to pass legislation on certain matters otherwise reserved to the states.)

Partly in order to weaken the offensive against the presidential treaty-making power, John Foster Dulles, on behalf of the Administration, committed the government not to adhere to "formal [legal] undertakings" on human rights, but rather to seek the promotion of human rights everywhere by "methods of persuasion, education and example." He went on to tell a subcommittee of the Senate Judiciary Committee on April 6, 1953, that the Administration would not "become a party to any [human rights] covenant or present it as a treaty for consideration by the Senate." The Secretary of State supported his statement with an argument which, though hoary, continues to be accepted even today by some members of the American Bar Association. The treaty-making power, he insisted, cannot be used "as a way of effectuating reforms, particularly in relation to social matters." It would be a reversal of the "traditional limits" of the exercise of treaty-making, he declared, to use it for the purpose of effecting "internal social changes."

This classic viewpoint had been stated by Charles Evans Hughes in 1929 when he contended that the treaty-making power must be used only "with regard to matters of international concern." But the fact is that various human rights have been dealt with and protected by international treaties since the seventeenth century. The Treaty of Westphalia in 1648, for example, provided for equality of religious rights in Germany. The Congress of Vienna in 1815 advocated the free exercise of religion. And as part of the settlement following the First World War, a number of treaties involving states of Central and Eastern Europe carried elaborate provisions for the protection of minorities, with the League of Nations as a guarantor. During the nine-

teenth century the United States Government itself was a party to dozens of treaties regulating the slave trade.

It is now clear that the Dulles doctrine struck at the very heart of those U.S. foreign-policy goals elaborated during and after World War II which had given emphasis to the intimacy between domestic suppression and foreign aggression, and which had underscored the necessity of extending the rule of law to the world arena. Ironically, Dulles himself, as a member of the U.S. delegation to the General Assembly in 1948, had urged the drafting of a covenant that would translate human rights into law. In an effective speech then, he drew an analogy between the American Declaration of Independence and the Constitution, on the one hand, and the Universal Declaration and the International Covenant, on the other, observing that legally binding instruments followed and gave force to inspirational declarations.

III

Bricker and Dulles notwithstanding, the fifties and early sixties saw the adoption (usually by unanimous vote) of conventions on: the status of refugees (1951); the political rights of women (1953); the status of stateless persons (1954); the abolition of forms of servitude akin to slavery (1956); the abolition of forced labor (an International Labor Organization treaty in 1957); the nationality of married women (1957); discrimination in employment and occupation (by the I.L.O. in 1958); discrimination in education (a UNESCO Convention in 1960); the reduction of statelessness (1961); and the free consent to and minimum age of marriage (1962).

These efforts were capped by the General Assembly's adoption on December 21, 1965, of the Convention on the Elimination of All Forms of Racial Discrimination, the most important treaty to date in the field of human rights. Described by Ambassador Arthur Goldberg as going "to the core of so much of the turmoil and injustice that still marks the world of the Twentieth Century," it constitutes a remarkable breakthrough both in its coverage and its machinery for implementation. Credit for this achievement must go to the powerful Afro-Asian bloc which is particularly sensitive to racial issues.

This convention transcends the race issue. It forbids all forms of discrimination based upon "color, descent, or national or ethnic origin." Thus it was made clear during the U.N. debate

that the convention covers anti-Semitism and "every one of . . . [the] varied manifestations and guises [of racial discrimination] even if not specifically mentioned by name." As impressive as the scope of the convention is the machinery created for the enforcement of its provisions. No other U.N. convention provides a special and permanent organ to deal on a continuing basis with implementation (although a few allow for the submission of unresolved disputes to the International Court of Justice).

The new convention creates a permanent eighteen-member organ—the "Committee on the Elimination of Racial Discrimination"—elected for a four-year period, by and from the ratifying powers. This committee is to receive from contracting states on a regular basis reports of measures taken to fulfill the obligations spelled out in the convention. The reporting procedure constitutes a crucial element in the implementation machinery. For, given the present character of the U.N. and the supremacy of national sovereignty, the most effective means of enforcing human rights is moral suasion. To the extent that contracting states are obligated to report regularly, they are under constant pressure to fulfill treaty provisions. Moreover, the committee may, if it so desires, require a report from a contracting state at any time and, beyond this, can seek "further information."

Clearly, the committee potentially can wield considerable moral authority. In addition to receiving and seeking information, it is required to submit to the General Assembly, through the Secretary-General, an annual report on its activities. Thus it can focus the spotlight of world opinion upon developments in individual countries. Furthermore, the convention gives the committee the additional right of "making suggestions and general recommendations" to the Assembly, based upon its examination of the reports and information received. This right, if exercised, could become a potent force, perhaps resulting in the critical evaluation of reports submitted by contracting states. It is precisely the absence of machinery for critical evaluation that makes the current U.N. reporting system on human rights so inadequate (the I.L.O. excepted).

IV

In December 1962, President John F. Kennedy instructed the American delegation to the U.N. to sign the marriage convention. By 1963, he had become acutely conscious of the importance of

human rights as a factor in the world situation. His historic American University address of June 10 in that year underscored the theme that peace itself "in the last analysis" is "a matter of human rights." In a wide-ranging speech to the General Assembly in September, he once again reasserted the earlier determination of U.S. policy-makers to assume the leadership in promoting human rights everywhere and advancing the rule of law on an international scale. Convinced that the Dulles policy must finally be eliminated, President Kennedy transmitted to the Senate in July 1963 three human rights treaties—those dealing with political rights of women, slavery and forced labor. Urging the Senate's consent, he observed: "The United States cannot afford to renounce responsibility for support of the very fundamentals which distinguish our concept of government from all forms of tyranny."

The treaties selected for transmittal were deliberately chosen to avoid the constitutional issue. The Nineteenth Amendment had brought the political rights of women clearly within the federal jurisdiction; similarly the Thirteenth Amendment had made slavery and forced labor a federal concern. Had he lived, President Kennedy would no doubt have pressed for ratification of these treaties and very likely gone on to urge U.S. accession to other treaties. Until very recently, the Johnson Administration has done little to pursue the Kennedy objective.

The failure to ratify human rights treaties has made it difficult, if not impossible, for the United States to take a constructive part in the effort to implement human rights goals. In March of last year, when an American delegate strongly endorsed the establishment of a U.N. High Commissioner for Human Rights—a Costa Rican initiative—the Soviet Union's representative was able to charge that U.S. advocacy was "hypocritical" and "almost indecent," since the Americans "resolutely refuse to accept legal obligations" contained in international treaties on human rights.

The U.S.S.R. rarely misses an opportunity to note that the United States has yet to ratify the genocide treaty. A typical article from *Pravda* (April 24, 1966) reads:

> It is characteristic that several imperialist powers, in the first place the U.S.A., which has paid lip service to the campaign to halt genocide, have not ratified this convention.
>
> This is no accident. Racial and national oppression is still very widespread in the United States of America.

Of course the Soviet charges have not fallen on deaf ears. Indeed, many delegates at the U.N., including those from friendly and neutral states, find the U.S. failure to ratify human rights treaties incomprehensible and privately question the sincerity of our advocacy of proposals such as that for a High Commissioner for Human Rights. For the majority of states have not been laggard in ratifying the conventions. For example, as of November 1, 1966, 69 countries had ratified the Genocide Convention (the United Kingdom, a long-time abstainer, will soon join); 75 had ratified the Forced Labor Convention; 67 the Slavery Convention; 56 the Employment Discrimination Convention; and 50 the Political Rights of Women Convention.

Besides embarrassing the United States in the conduct of its U.N. policy, abstention precludes the possibility of our complaining effectively about the non-implementation of any convention by a ratifying power. Only those who are contracting parties to a convention are in a position to "blow the whistle" on violations of treaty obligations by an acceding state.

There are, of course, those who consider that the interests of the United States are secured not by building an effective structure of international law but by the use of power. Dean Acheson gave expression to this view when, in his lecture at the University of Virginia on May 7, 1966, he asserted that in the world today the pursuit of peace through law is "illusory." Ambassador Goldberg rebutted the Acheson approach in a lecture at Columbia University twelve days later. Noting that the United States derives its influence "not only from great physical power, but also from the fact that our basic law and our national outlook are premised on the equality and dignity of all men," he went on to say that "the way to peace is . . . to work with all our might for the establishment of a structure of law that will be reliable. . . ."

The clash of views was renewed at the end of 1966 on a related issue. Responding to the Administration's action in supporting U.N. economic sanctions against Rhodesia, Mr. Acheson charged that it transgressed "the First Commandment" of the U.N. Charter: there must be no threat or use of force against the territorial integrity of another state. Ambassador Goldberg, speaking before the Association of American Law Schools on December 29, emphasized that law must foster in the international realm "the same creative and positive values which nations, at their best, have fulfilled in their domestic life." In a crucial passage he

declared: "Law must operate to eliminate discrimination, to assure human rights. . . ."

V

An indication that the Johnson Administration may be returning to the earlier objective of advancing the rule of law by promoting human rights treaties is the decision to sign the Convention on Racial Discrimination. But will the President press for its prompt ratification, so that the United States may become a member of the all-important enforcement organ of the treaty?[1] Resistance can be expected from those in the Senate who will contend that racial discrimination is not a matter of "international concern" and therefore not an appropriate subject for a treaty. But this argument becomes less and less meaningful when apartheid in South Africa, the race problem in Rhodesia and the ethnic conflict in Cyprus rank so high on the U.N. agenda.

It will also be argued that parts of the convention clash with the American Constitution and that Article 4, which calls for a ban on "all dissemination of ideas based upon racial superiority or hatred," and all "organizations" and "propaganda activities which promote and incite racial discrimination," threatens freedom of speech and association. While the convention makes an effort to balance these restrictions by requiring "due regard" for the principles of "freedom of opinion and expression" and "freedom of peaceful assembly and association" embodied in the Universal Declaration of Human Rights, the imprecision of the language does raise a serious question.

When the convention was still in the drafting stage in 1964, the United States objected to language which obligated member states to outlaw organizations that not only "incite" but also merely "promote" racial discrimination. Prior to the final vote on the convention in the General Assembly, Ambassador Goldberg interpreted the language of Article 4 in the context of the "clear and present danger" doctrine: "a government should only act where speech is associated with, or threatens immediately to lead to, action against which the public has a right to be protected." In the absence of such a threat, he went on, the article

[1] The organ is to be elected six months after 27 governments have ratified the convention. Were the United States to be one of the ratifiers, it would undoubtedly be elected to the eighteen-member body.

"does not obligate a state to take action that would prohibit its citizens from freely and fully expressing their views on any subject no matter how obnoxious they may be, or whether they are in accord with government policy or not."

This position was reiterated in the statement which accompanied U.S. signature of the convention: "The Constitution of the United States contains provisions for the protection of individual rights such as the right of free speech, and nothing in the Convention shall be deemed to require or to authorize legislation or other action by the United States of America incompatible with the provisions of the Constitution of the United States of America." Since the convention provides for the use of reservations in so far as they are compatible with "the object and purpose" of the treaty, a reservation incorporating this view could be appended to the ratification.

The other principal U.N. human rights treaties do not pose this problem. A panel of distinguished citizens at a 1965 White House Conference on International Coöperation urged the Administration to press for "prompt" ratification of the Genocide Treaty and the three treaties transmitted to the Senate by President Kennedy. The panel went further and recommended ratification of the UNESCO treaty on nondiscrimination in education, and two I.L.O. treaties barring discrimination in employment and in pay. The question is whether President Johnson, as International Human Rights Year approaches, will heed this advice and give it a high priority. Unless leadership is forthcoming, the malaise of Brickeritis in the upper legislative chamber will continue to embarrass the United States and impede the achievement of its international goals.

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