

REVIEWS

Ombudsmen and Human Rights: The New U.N. Treaty Proposals

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*It is this problem of the right of the individual to invoke the Covenants in his own right and in his own behalf which I respectfully commend to you as claiming the most earnest attention on the part of the scholar and statesman, of the man of thought and the man of action.*¹

On December 16, 1966, the General Assembly of the United Nations approved three remarkable documents: (1) the International Covenant on Economic, Social and Cultural Rights, (2) the International Covenant on Civil and Political Rights, and (3) the Optional Protocol to the International Covenant on Civil and Political Rights.²

Drafts of the documents, forwarded after eight years of study by the United Nations Commission on Human Rights, had been on the Assembly's agenda for twelve years. Some observers had concluded that certain clauses never would be accepted by influential governments.³

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¹ Moskowitz, *The Covenants on Human Rights: Basic Issues of Substance*, 53 PROCEEDINGS OF THE AMERICAN SOCIETY OF INTERNATIONAL LAW 230, 234 (1959). Cf. Hoffman, *Implementation of International Instruments of Human Rights*, *id.* at 235: "At no point of the history of the modern state system would the establishment of a mechanism which would allow individuals to bring up complaints against their governments have failed to provoke violent objections from state representatives."

² U.N. Doc. No. A/RES/2200 (XXI) (1967). For a guide to the legislative history (not analyzed in this article), see U.N. Doc. No. A/6546, at 4-8, 52-55 (1966). For U Thant's comments see U.N. Monthly Chron., Feb. 1967, p. 40.

³ See EZEJIOFOR, PROTECTION OF HUMAN RIGHTS UNDER THE LAW 137 (1964) ("concrete results in this field can only be expected from groups of states who share the same conceptions of democracy and of the relationship between the state and the individual"); Buergenthal, *The United Nations and the Development of Rules Relating to Human Rights*, 59 PROCEEDINGS OF THE AMERICAN SOCIETY OF INTERNATIONAL LAW 132, 136 (1965) ("for a long time to come probably only regional international organizations will be able to establish an effective machinery for the protection of truly individual human rights"); Hoffman, *Panel Discussion*, *id.* at 252 ("we cannot influence the way states treat their citizens; we can only explain why"); Waelbroeck, *Le colloque de Vienne sur la Convention Européenne des droits de l'homme*, 1 REV. TRIM. DE DROIT EUROPÉEN 553, 564 (1965) ("Il n'existerait pas de droit de recours individuel . . . analogue à celui qui est prévu par l'article 25 de la Convention Européenne: cette carence, quoique grave, paraît inévitable dans l'état actuel

But objections apparently were met; the two Covenants were adopted unanimously; and in its resolution-to-adopt, the Assembly expressed hope "that the Covenants and the Optional Protocol will be signed and ratified . . . without delay and come into force at an early date."⁴

Each covenant will come into force when thirty-five nations have ratified. For the Protocol, ten nations are enough once the Civil and Political Rights Covenant has become operative. To promote ratification the Assembly asked all governments and nongovernmental organizations "to publicize the text of these instruments as widely as possible, using every means at their disposal, including all the appropriate media of information."⁵

Thus, during the very week that enthusiasts in the United States were celebrating the 175th anniversary of our own Bill of Rights, the states of the world were challenged to enact a United Nations Bill of Rights—idealized by revered statesmen for more than two decades.⁶ Predictably, the politics of ratification—in America, for example—will be complex and even perverse.⁷ Yet the endorsement of related treaties

des relations internationales."); Hula, *Book Review*, 60 AM. J. INT'L L. 885 (1966) ("the Draft Covenant on Civil and Political Rights . . . [is] still today a mere draft with very little chance of ever becoming law proper"); cf. McDougal & Bebr, *Human Rights in the United Nations*, 58 AM. J. INT'L L. 603, 640 (1964).

⁴ U.N. Doc. No. A/RES/2200 (XXI), at 2 (1967). The unanimous votes are recorded in U.N. Doc. No. A/PV.1496, at 27-29 (1966) (General Assembly), and in U.N. Doc. No. A/6546, at 152 (1966) (Third Committee). In the Assembly the vote favoring the *Protocol* was 66 to 2 with 38 abstentions; in the Third Committee, 59 to 2 with 32 abstentions, Togo and Niger casting the negative votes. The amendment to separate the Protocol from the Civil and Political Rights Covenant passed by vote of 41 to 39 with 16 abstentions. See *id.* at 123. "Mr. Nasimovsky (Union of Soviet Socialist Republics) . . . was . . . glad that the Protocol—which was unacceptable and, moreover, of secondary importance—was not contained in the body of the Covenant." U.N. Doc. No. A/C.3/SR 1455, at 11 (1966).

⁵ *Id.* at 44. The effective-date clauses are at 14, 33, 37, and 41.

⁶ See HUMAN RIGHTS: A SYMPOSIUM PREPARED BY UNESCO (1949); Blaustein, *Human Rights—A Challenge to the United Nations and to Our Generation*, Dag Hammarskjold Memorial Lecture, Columbia Univ., Dec. 4, 1963. Cf. IV Doc. HIST. OF CONSR. 411, 412 (1905) (Jefferson's letter to Madison, Dec. 20, 1787) ("A bill of rights is what the people are entitled to against every government on earth, general or particular, & what no just government should refuse, or rest on inference."); Schwelb, *The United Nations and Human Rights*, 11 How. L.J. 356 (1965).

⁷ All three treaties "extend to all parts of federal States without any limitations or exceptions." U.N. Doc. No. A/RES/2200, *supra* note 4, at 14, 37, 41; see McDougal & Bebr, *supra* note 3, at 628 n.97; Schwelb, *The International Convention on the Elimination of All Forms of Racial Discrimination*, 15 INT'L & COMP. L.Q. 996, 1054 n.67 (1966) ("The United States, changing the position it had taken in the early years of the United Nations work in the field of human rights—and also in other contexts—voted for the deletion of the Federal States clause . . ."); Simsarian, *Progress in Drafting Two Covenants on Human Rights in the United Nations*, 46 AM. J. INT'L L. 710, 716 (1952); 52 A.B.A.J. 400 (1966). Cf. STEIN & JACOBSON, *DIPLOMATS, SCIENTISTS AND POLITICIANS* (1966); Oakland Tribune, June 19, 1966, p. 18 ("'The United Nations will be dictatorial and destructive of human rights according to the prophecies in the *Book of Revelation*,' states the Rev. John Myers, an Oakland author."). See generally note 31 *infra*.

by many nations suggests that these documents will become operative.⁸ It is necessary, therefore, to examine their texts and consider their likely impact on individuals and governments.

The aim of this paper is to outline the "ombudsmen clauses" of the documents, and also of the International Convention on the Elimination of All Forms of Racial Discrimination, which the General Assembly adopted unanimously on December 21, 1965.⁹ The ombudsmen that these clauses create are called the Human Rights Committee and the Committee on the Elimination of Racial Discrimination. The ombudsmen idea, the idea that *ex officio* experts can investigate and criticize what the governors do that the governed do not like, has been expounded in America notably by Walter Gellhorn of Columbia and Stanley Anderson of California. It enjoys great popularity vis-a-vis national, state, and local affairs.¹⁰ Its acceptance for worldwide concerns is a radical innovation,¹¹ and comments on the prospects internationally

⁸ See Schwelb, *International Conventions on Human Rights*, 9 INT'L & COMP. L.Q. 654 (1960); Marsh, Book Review, 15 INT'L & COMP. L.Q. 311 (1966); cf. *Status of Multilateral Treaties in the Field of Human Rights Concluded Under the Auspices of the United Nations*, U.N. Doc. No. E/CN.4/907/Rev. 1 (1967).

⁹ U.N. Doc. No. A/RES/2106 (XX) (1966), reprinted in 60 AM. J. INT'L L. 650 (1966). See Dr. Schwelb's excellent analysis, *The International Convention on the Elimination of All Forms of Racial Discrimination*, 15 INT'L & COMP. L.Q. 996 (1966). Cf. U.N. Doc. No. E/CN.4/L.919/Add. 1, at 9 (1967) (draft *re* religious intolerance); Commission on Human Rights, *Report on the 22d Session*, U.N. Doc. No. E/4184, at 83 (1966) [hereinafter cited as *22d Session Report*] (measures for the speedy implementation of the Declaration on the Elimination of All Forms of Racial Discrimination); Ferguson, *The United Nations Convention on Racial Discrimination: Civil Rights by Treaty*, 1 LAW IN TRANSITION Q. 61 (1964); Whitehead, *The Elimination of Racial Discrimination: The United Nations' Proposed Solution*, 11 HOW. L.J. 583 (1965).

¹⁰ GELLHORN, OMBUDSMEN AND OTHERS (1966); GELLHORN, WHEN AMERICANS COMPLAIN (1966); Anderson, *Ombudsmen Proposals*, 7 BULL. INST. GOV'TL STUDIES, U.C. BERKELEY, NO. 6 (1966); King, *What This Country Needs Is a Good Ombudsman*, *Kiwanis Magazine*, April 1967, at 23; Time, Jan. 20, 1967, p. 21; Unruh, *The Need for an Ombudsman in California*, 53 CALIF. L. REV. 1212 (1965); *Symposium—The Ombudsman*, 19 ADMIN. L. REV. 6-106 (1966); Newman, Book Review, 67 COLUM. L. REV. 784 (1967).

¹¹ "[T]he Committee on the Elimination of Racial Discrimination . . . is the first organ of its kind established on a world-wide plane." Schwelb, *supra* note 9, at 1058. "[I]n the ten-year period from 1947 to 1957 . . . more than 63,000 communications charged specific violations of human rights." Buergenthal, *supra* note 3, at 135 n.7. See Carey, *The United Nations' Double Standard on Human Rights Complaints*, 60 AM. J. INT'L L. 792, 793 (1966) ("Most . . . communications . . . are given scant attention"); cf. *id.* at 799 (nations' comments on the Racial Discrimination Covenant); GARDNER, IN PURSUIT OF WORLD ORDER 256 (1964) ("the right of individual petition to world-wide international bodies in human-rights cases is not a practical possibility at this time").

Most commentators have treated the concept of ombudsman as exportable nationally but not internationally. See *22d Session Report* 75 ("Some representatives, while expressing their admiration for this institution [of ombudsman], felt that its application on an international scale was, at best, a remote objective."); INTERNATIONAL COMMISSION OF JURISTS, *THE RULE OF LAW AND HUMAN RIGHTS* 16 (1966) ("Control through the institution of an ombudsman"); *id.* at 69-71; cf. Blix, *A Pattern of Effective Protection: The Ombudsman*,

may illumine some variations on the theme. My hope is that readers will be persuaded that the new United Nations committees could contribute significantly to human rights progress.

I. THE RIGHT TO PETITION

The United Nations have never endorsed adequately, as a human right, the right to petition one's own government.¹² The new Protocol, however, states that individuals who believe that their rights enumerated in the Civil and Political Rights Covenant have been violated "may submit a written communication to the [Human Rights] Committee for consideration." The Committee then (1) "shall bring any [such] communications . . . to the attention of the State . . . alleged to be violating," (2) "shall consider [such] communications in the light of all written information made available to it by the individual and by the State," (3) "shall forward its views to the State . . . and to the individual," and (4) "shall include in its annual report . . . a summary of its activities"

We note immediately that this procedure applies only to the Civil and Political Rights Covenant. Individuals who suffer because of violations of the Economic, Social and Cultural Rights Covenant are given no such remedy; and the Committee is powerless respecting the right of everyone "to an adequate standard of living," "to education," "to the enjoyment of the highest attainable standard of physical and mental health," "to take part in cultural life," and similar rights. But the Civil and Political Rights Covenant has immense scope. Its enumerations include basic criminal justice, equal protection of the law, first amendment liberties such as free speech, free press, freedom of religion, and many "new" rights;¹³ for example: "Everyone shall have

in *Symposium on The International Law of Human Rights*, 11 *How. L.J.* 257, 386 (1965); Smyth, *The European Commission of Human Rights*, in *THE OMBUDSMAN* 162 (Rowat ed. 1965); see also notes 26 & 27 *infra*.

¹² See DROST, *HUMAN RIGHTS AS LEGAL RIGHTS* 65 (1951); cf. Gen. Ass. Res. 217 B(III), Dec. 10, 1948 ("the right of petition is an essential human right"); LAUTERPACHT, *INTERNATIONAL LAW AND HUMAN RIGHTS* 337 (1950) ("no Bill of Rights can disregard it"); Edmund G. Brown, *The Right to Petition: Political or Legal Freedom?* 8 *U.C.L.A.L. REV.* 729 (1961).

¹³ See articles 1-27 of the Covenant. For insights on non-Western implications see Berman, *Human Rights in the Soviet Union*, 11 *How. L.J.* 333 (1965); Carey, *Implementing Human Rights Conventions—The Soviet View*, 53 *Ky. L.J.* 115 (1964); Jakovljevic, *The Problem of the Protection of Human Rights and International Law*, 1962-1963 *YEARBOOK OF HAGUE AC.*; Korowicz, *Protection and Implementation of Human Rights Within the Soviet Legal System*, 53 *PROCEEDINGS OF THE AMERICAN SOCIETY OF INTERNATIONAL LAW* 248 (1959); *Panel—Problems of Self-Determination and Political Rights in the Developing Countries*, 60 *PROCEEDINGS OF THE AMERICAN SOCIETY OF INTERNATIONAL LAW* 129-150 (1966); Peselj, *Recent Codification of Human Rights in Socialist Constitutions*, 11 *How. L.J.* 342

. . . the right to form and join trade unions for the protection of his interests." (art. 22, § 1) "Every child shall have . . . the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State." (art. 24, § 1) "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language." (art. 27) Thus, the Committee's cognizance is broad indeed.

II. RESTRICTIONS AND PROCEDURE

There are, however, certain restrictions. First, individuals may petition only (1) when they claim to be victims of a violation of a right set forth in the Covenant, (2) when they are subject to the jurisdiction of the government that they allege has violated that right, and (3) when that government has ratified both the Protocol and the Covenant.

Second, the communication to the Committee must be written, must not be anonymous, and must be neither "an abuse of the right of submission of such communications" nor "incompatible with the provisions of the Covenant."¹⁴

Third, the Committee may not consider an individual's communication until it has ascertained (1) that he has exhausted all available domestic remedies, and (2) that the same matter is not being examined under another procedure of international investigation or settlement. But this rule does not apply "where the application of the remedies is unreasonably prolonged."

The Committee establishes its own rules of procedure.¹⁵ Twelve of

(1965); Zhogin, *Vyshinsky's Distortions in Soviet Legal Theory and Practice*, 4 SOVIET L. & Gov't 48 (1965).

"[I]t is a shock to be told by the Vice President of the Soviet Supreme Court that our system is not fair to the defendant. However, . . . to serve on a defendant a little paper merely saying, 'You did such a thing at such a place and time, and you are guilty of this or that crime,' and then to save the evidence to produce at the trial, may not be the fairest method of conducting a trial to ascertain the guilt of the accused." JACKSON, *THE NUREMBERG TRIAL* 321 (1947).

¹⁴ See WEIL, *THE EUROPEAN CONVENTION ON HUMAN RIGHTS* 126 (1963). Cf. art. 5, § 1: "Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant." May we infer that those words do not preclude activities aimed at restricting the Covenant by amendment, pursuant to its Article 51? Cf. Schwelb, *On the Operation of the European Convention on Human Rights*, 18 INT. ORG. 558, 567 (1964); Smith, *The European Convention on Human Rights and the Right of Derogation: A Solution to the Problem of Domestic Jurisdiction*, 11 HOW. L.J. 594, 601 (1965).

¹⁵ See also articles 37 & 39 of the Covenant.

its eighteen members constitute a quorum; its decisions are by majority vote of the members present; and it "shall hold closed meetings when examining communications under the . . . Protocol." It must bring each of these communications to the attention of the allegedly violating government. "Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State." Then, after considering each communication in the light of written information made available by the individual and by the State, the Committee forwards its views to both.

III. MEMBERSHIP OF THE COMMITTEE¹⁶

The Committee is composed of eighteen nationals of countries that have ratified the Covenant—"persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience." Each party to the Covenant may nominate two of its nationals. The eighteen are elected by secret ballot at a parties' meeting that the Secretary-General convenes. The elections are for four-year terms, except that half of those first chosen serve only a two-year term.

In the election "consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems." Though two may be nominated, only one national of a State may be elected. Committeemen are elected and serve "in their personal capacity," and each receives "emoluments from United Nations resources on such terms and conditions as the General Assembly may decide, having regard to the importance of the Committee's responsibilities." The Secretary-General is to provide staff and facilities for the "effective performance" of the Committee's functions.

IV. FUNCTIONS OTHER THAN CONSIDERING PETITIONS

My subject is ombudsmen. I will merely refer to important Committee functions that do not involve "communications from individuals." Briefly listed, they are (1) to request and receive from parties to the Civil and Political Rights Covenant "reports on the measures they have adopted which give effect to the rights recognized . . . and on the progress made in the enjoyment of those rights"; (2) to transmit reports and "such general comments as it may consider appropriate" to the parties, and also to the United Nations Economic and Social Council;

¹⁶ See articles 28-36, 38 & 43.

(3) "to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant," then to "make available its good offices . . . with a view to a friendly solution of the matter"; and (4) when the matter cannot thus be resolved to those parties' satisfaction, with their consent to appoint an ad hoc conciliation commission.

That is a quick summary which justifies only this comment: for further details, articles 40-42 of the Covenant must be studied with care. We can observe that item 3 in the list above might result in action relating to an individual's grievance. To illustrate, consider these words of article 13:

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

If an alien lawfully in the United States were denied any of those rights, and if the United States had ratified the Covenant and also had recognized the Committee's cognizance, under article 41, of complaints by other countries, and if the alien could persuade another country (*e.g.*, his own) to plead for him, then, if that country too had declared its desire to participate in article 41 proceedings, the Committee could serve as ombudsman. Those are a lot of if's.¹⁷

V. THE COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

The committee organized under the Convention on the Elimination of All Forms of Racial Discrimination is to have functions comparable to those of the Human Rights Committee. The Convention, like the Civil and Political Rights documents, provides that once it is operative ten parties may empower the Committee to receive petitions. Twenty-seven nations must ratify the Convention as a whole; and the draftsmen assumed, of course, that not all governments who ratify will choose to subject themselves to the Committee's jurisdiction.¹⁸

Differences between the Civil-Political and the Racial Discrimina-

¹⁷ Cf. Schwelb, *supra* note 9, at 1037. On individual petitions introduced via "comments" from non-governmental organizations, see Carey, *supra* note 13, at 130; cf. *22d Session Report*, 106-17.

¹⁸ Cf. Buergethal, Book Review, 13 AM. J. COMP. L. 301, 305-06 (1964). The effective-date clauses appear in 60 AM. J. INT'L L. at 659-60 (1966).

tion procedures seem to be of limited significance. Thus, governments charged with racial violations are allowed only three months instead of six to submit exceptions; the racial committee's deliberations seem not to be restricted to written information; and a secrecy requirement is imposed.¹⁹ The Convention does include this unique paragraph (art. 14, § 2):

Any State Party which makes a declaration [recognizing the competence of the Racial Discrimination Committee to receive and consider communications from individuals] . . . may establish or indicate a body within its national legal order which shall be competent to receive and consider petitions from individuals and groups of individuals within its jurisdiction who claim to be victims of a violation of any of the rights set forth in this Convention and who have exhausted other available local remedies.

The gain to a government that does set up such a petition-considering body is that its accusers may then resort to the United Nations Committee only "in the event of failure to obtain satisfaction from the body." (Art. 14, § 5) The gain to individuals is that they get another body to watch over their government; and a national ombudsman, though potentially subservient in some countries, will often be less remote and more effective than the international committee. In our country, for instance, the United States Commission on Civil Rights might well be structured to help racial discrimination victims "obtain satisfaction." In most cases (though not necessarily all), its services would be superior to those of the Committee.²⁰

Thus, with respect to racial discrimination the creation of national ombudsmen was pronounced worthwhile. As to human rights in general, the Assembly was less ambitious, but it did approve the following invitation and request:

¹⁹ Cf. Schwelb, *supra* note 9, at 1043: "The principle of a fair hearing (Art. 10 of the Universal Declaration of Human Rights) requires . . . that the petitioner should have an opportunity to comment on the 'information' presented by the State and *vice versa*." That idea would also apply to the Civil and Political Rights Protocol and would indeed be a liberal extension of what we call "due process" and the British call "natural justice." Compare requirements in Art. 11, § 5 of the Racial Discrimination Convention, with Art. 41, § 1(g) of the Civil and Political Rights Covenant; and see Carey, *supra* note 11, at 803, n.49.

²⁰ See Bernhard, *Role of the United States Commission on Civil Rights*, 23 *LAW IN TRANSITION* 107 (1963); cf. U.N. Doc. No. E/CN.4/932/Add. 2, at 2 (1967) ("This Commission offers a good example of . . . a National Commission in the field of human rights."); Taper, *A Lover of Cities—II*, *New Yorker*, Feb. 11, 1967, pp. 45, 104-10; Witherpoon, *Civil Rights Policy in the Federal System: Proposals for a Better Use of Administrative Process*, 74 *YALE L.J.* 1171 (1965).

Considering the advisability of the proposals for the establishment of national commissions on human rights or the designation of other appropriate institutions to perform certain functions pertaining to the observance of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, [the General Assembly]

1. *Invites* the Economic and Social Council to request the Commission on Human Rights to examine the question in all its aspects and to report, through the Council, to the General Assembly;
2. *Requests* the Secretary-General to invite Member States to submit their comments on the question, in order that the Commission on Human Rights may take these comments into account when considering the proposals.²¹

VI. CONCLUDING COMMENTS

In three treaty proposals—the Civil and Political Rights Covenant, its accompanying Protocol, and the Convention on Racial Discrimination—the United Nations have constructed two committees that could serve powerfully as ombudsmen for worldwide human rights. Some critics will continue to urge that the United Nations create a court and appoint an attorney general or high commissioner for human rights, and such officials may in fact be required for some needs.²² In response to the need for external criticism, however, a fine structure has been designed. The new committees can meet the tests of the formula set out by Walter Gellhorn: “readily accessible, professionally qualified, wholly detached critics to inquire objectively into asserted administrative shortcomings . . . advisors, not commanders . . . [who] rely on recommendation, not on compulsion.”²³ Are eighteen committeemen

²¹ *Supra* note 4, at 44. Should commissions on economic, social, and cultural rights exercise ombudsman-like functions? The Third Committee's vote to seek a report and comments on that question was 74 to 0; but the United States, the United Kingdom, Portugal, and Japan abstained. U.N. Doc. No. A/6546, at 158 (1966); cf. Papadatos, *The European Social Charter*, 7 I.C.J.J. 214 (1966).

²² See *Report of the Working Group to Study the Proposal to Create the Institution of a United Nations High Commissioner for Human Rights*, U.N. Doc. No. E/CN.4/934 (1967); U.N. Doc. No. E/CN.4/L.974 (1967); Etra, *International Protection of Human Rights: The Proposal for a U.N. High Commissioner*, 5 COL. J. TRANSNAT'L L. 150 (1966); Goldberg, *The Need for a World Court of Human Rights*, 11 HOW. L.J. 621 (1965); cf. Brennan, *International Due Process and the Law*, 48 VA. L. REV. 1258 (1962); Carey, *supra* note 11, at 794, 802; Simsarian, *Human Rights Among Diverse World Orders*, 53 PROCEEDINGS OF THE AMERICAN SOCIETY OF INTERNATIONAL LAW 245, 247 (1959); Yntema, Book Review, 12 AM. J. COMP. L. 135 (1963).

²³ GELLHORN, OMBUDSMEN AND OTHERS 422, 436 (1966). Query whether international slowness and stiffness inevitably will impede efforts to achieve the quick, informal,

too many? I think not. "Capability and objectivity . . . are qualities that can be attributed to a collectivity as well as to a man," Gellhorn reminds us, and "nothing in the concept of external criticism precludes a collegial organization instead of a one-man band."²⁴

That is not to say that revisions never will be necessary. All the treaties we are discussing set forth a process of amendment, and the ombudsmen clauses, like several other clauses, obviously could be strengthened.²⁵ Also, by no means will it be easy for the committeemen to "serve in their personal capacity," to insulate themselves from compulsions of global politics. Their work can be potent only if it is bold and resourceful, only if it displays dedication and integrity and courage, in addition to the qualities that inhere in Gellhorn's prescription.

The critical fact, though, is that the right to petition an ombudsman—long sought as a basic reform in international affairs²⁶—is now recognized. The nurturing of that right is to begin as soon as enough nations have ratified the Civil-Political Covenant and Protocol and the Racial Discrimination Convention. Like many United Nations agencies, the human rights ombudsmen will develop strengths, and they will enhance the pioneer work of the European Commission of Human Rights and other transnational bodies.²⁷ That jurisprudence

negotiatory strength that can characterize the work of national ombudsmen. Would a commissioner contribute? See note 22 *supra*.

²⁴ GELLHORN, *WHEN AMERICANS COMPLAIN* 226 (1966).

²⁵ Cf. Note, *The Legal Programme of the Council of Europe*, 14 INT'L & COMP. L.Q. 646-47 (1965): "Three protocols to the European Convention on Human Rights were signed in 1963. They extend the protection offered by the Convention. Experts are still working on other proposals to extend the Convention, and the Legal Committee of the Council of Europe's Consultative Assembly . . . is studying ways of ensuring a fuller application . . ." See also New Protocol on Status of Refugees, U.N. Press Release WS/279, at 7 (Feb. 3, 1967).

²⁶ See Bruegel, *The Right to Petition an International Authority*, 2 INT'L & COMP. L.Q. 542 (1953); see also LAUTERPACHT, *INTERNATIONAL LAW AND HUMAN RIGHTS* 291 (1950) ("we are not at liberty to permit the fundamental right of petition to founder").

²⁷ Article 7 of the Protocol mentions the petition rights of colonial peoples. Cf. Schwelb, *supra* note 9, at 1045-48. "The acceptance by United Nations bodies of petitions as well as the hearing of petitioners on various subjects, including the denial of human rights, has expanded from the trust territories contemplated by Article 87(b) [of the Charter] to non-self-governing territories and even to one independent state, South Africa." Carey, *supra* note 11, at 792; cf. U.N. Doc. No. E/CN.4/L.944/Add. 4, at 28 (1967) ("receive communications and hear witnesses and use such modalities of procedure as . . . appropriate [re South African prisoners]").

See also Simmonds, *The United Kingdom and the European Convention on Human Rights*, 15 INT'L & COMP. L.Q. 539 (1966); Thirlway, *A New Jurisdiction: The European Convention on Human Rights*, 110 SOL. J. 299 (1966); McNulty, *The Practice of the European Commission of Human Rights*, 11 HOW. L.J. 430 (1965); cf. Gormley, *The Emerging Protection of Human Rights by the International Labour Organization*, 30 ALBANY L. REV. 13, 21 (1966); Thomas & Thomas, *The Inter-American Commission on Human Rights*, 20 SW. L.J. 282, 293 (1966).

could be instructive on some important issues is quite apparent; for example, when is the application of domestic remedies "unreasonably prolonged"?²⁸

The Great Question of course is ratification. These proposed treaties, like other human rights treaties now in effect,²⁹ demonstrate dramatically the world's repudiation of this dismal dictum of John Foster Dulles:

[W]hile we shall not withhold our counsel from those who seek to draft a treaty or covenant on human rights, we do not ourselves look upon a treaty as the means which we would now select as the proper and most effective way to spread throughout the world the goals of human liberty to which this Nation has been dedicated since its inception [Specifically, the Eisenhower] administration does not intend to sign the Convention on Political Rights of Women . . . because we do not believe that this goal can be achieved by treaty coercion or that it constitutes a proper field for exercise of the treaty-making power.³⁰

Those words have not yet had a decent burial. We have witnessed mere preliminary rituals.³¹ How humiliating it is that the United States has ratified not a single United Nations convention on human rights. How belittling that, notwithstanding the Dulles comment regarding "treaty coercion" and what is not "a proper field for exercise of the treaty-making power," the Convention on Political Rights of Women has now been ratified by more than fifty nations.³² How presumptuous

²⁸ See GELLHORN, *OMBUDSMEN AND OTHERS* 428 (1966) ("Exhaustion of Remedies"); WEIL, *THE EUROPEAN CONVENTION ON HUMAN RIGHTS* 104 (1963); cf. Mummery, *The Content of the Duty to Exhaust Local Judicial Remedies*, 58 AM. J. INT'L L. 389 (1964); *Panel—Using a Country's Own Legal System to Cause It to Respect International Rights*, 58 PROCEEDINGS OF THE AMERICAN SOCIETY OF INTERNATIONAL LAW 100-122 (1964).

²⁹ See note 8 *supra*.

³⁰ U.S. PARTICIPATION IN THE U.N.: REPORT BY THE PRESIDENT TO THE CONGRESS FOR THE YEAR 1953, at 155; cf. GANJI, *INTERNATIONAL PROTECTION OF HUMAN RIGHTS* 221 (1962).

³¹ See Gardner, *Human Rights—Some Next Steps*, 49 DEP'T STATE BULL. 320 (1963); cf. Gardner, *The International Promotion of Human Rights: Problems and Opportunities*, State Dep't Press Release No. 4333 (Dec. 6, 1963); Cleveland, *Switch On the Lights*, State Dep't Press Release No. 199 (April 30, 1964); Goldberg, State Dep't Press Release No. 4887 (July 6, 1966) at 13: "And the importance of international progress here cannot be overstated. For just as it is in the interest of the developed nations to encourage the use of multilateral institutions and machinery to advance the economic growth of the less developed nations, so it is in the interest of all nations to do so in the realm of human rights."

³² In 1963 President Kennedy did submit to the Senate the Convention on the Political Rights of Women, along with the slavery and forced labor conventions. Cf. note 8 *supra*; see Carey, *supra* note 13, at 115 n.2; Gardner, *ICY Plus One: An Inventory*, Saturday Review of Literature, Nov. 5, 1966, pp. 24, 73; *Hearings on Human Rights Conventions*

that we baldly urge the United Nations to "encourage all eligible States to become Parties as soon as possible to all Conventions which aim to protect human rights and fundamental freedoms" ³³ How awkward that our delegates still must resort to this hollow, tiresome, "Any-way we're better than you" dialogue:

It was significant [certain delegates observed] that some delegations most strongly supporting the establishment of a High Commission for Human Rights represented Governments which had a very poor record in the matter of ratifying such instruments. In reply, one representative said that, without belittling the importance of ratifying such instruments which were given very careful consideration in his own country, a more important test was the degree in which the principles of such instruments were observed. ³⁴

It is true that in the United States such instruments are given "very careful consideration"? I fear not. With due consideration of the new treaties, the most crucial treaties on human rights yet adopted, our nation could mend its ways. For freedom, once again, America might assume a leader's role—a role that history, past and present, surely commands.

Before a Subcommittee of the Senate Foreign Relations Committee, 90th Cong., 1st Sess. 1 (1967).

³³ *22d Session Report*, 39; cf. U.N. Doc. No. E/SR.1412, at 69 (1966).

³⁴ *22d Session Report*, 73.

"[T]he Russians . . . brought in their hardest-hitting spokesman [A]s I sat and listened to him, I felt indeed like the 'embarrassed American,' described in an article in the *Saturday Review* [Oct. 31, 1964, p. 24], which pointed out the harmful effects on the credibility of our role in the international human rights field of our record of non-ratification We participate in drafting human rights treaties, in criticizing them, in proposing this addition and that deletion—and then we fail to ratify any of them.

"Of course, we . . . retorted that America does not need to ratify a genocide treaty in order to prevent genocide; . . . and we do not need a convention on the right to leave one's country and to return . . . and so forth.

"This was all fine as polemic, but it could not hide the fact that we have failed to ratify any human rights conventions, which are the principal U.N. means of international standard-setting and cooperation in the human rights field." Abram, *The Quest for Human Dignity*, Vista, Sept.-Oct., 1966, p. 35. See also Goldberg, State Dep't Press Release No. 4855, at 6 (May 12, 1966): "Our delay in ratifying these conventions has confused our friends and provided ammunition against us for our foes." Cf. EZEJIOFOR, PROTECTION OF HUMAN RIGHTS UNDER THE LAW 145 n.20 (1964) ("It is difficult to see what chances the [Inter-American] Convention has of early adoption unless the U.S.A. relaxes its opposition."); Korey, *Human Rights Treaties: Why Is the U.S. Stalling?*, 45 FOREIGN AFFAIRS 414 (1967); and see THOMAS & THOMAS, THE ORGANIZATION OF AMERICAN STATES 233 (1963).