# IMPLEMENTATION OF THE INTERNATIONAL PROTECTION OF HUMAN RIGHTS IN THE LIGHT OF THE UN CHARTER AND THE HELSINKI FINAL ACT

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## I Introductory Remarks

For a long time human rights were generally considered to be a matter of exclusively internal, mostly constitutional law and domestic policy. In presenting historical development of the protection of human rights, we usually refer to the constitutional documents of such a fundamental importance as Magna Carta Libertatum and the Bill of Rights in England, or Déclaration des Droits de l'Homme et du Citoyen in France, as well as to many other constitutional principles and provisions in other countries. It is in our century – if we take no account of some few earlier treaty provisions concerning religious minorities in South-Eastern Europe – that human rights cease to be a topic of only domestic relevance and interest in a particular country. They have become an important issue in international law and international organization. This is certainly due to the fact that we are facing a growing international interdependance resulting in the expansion of international law to many areas traditionally considered to be of only local or national interest, but perhaps much more due to the fact that, in our century, and particularly during the Second World War, we have experienced flagrant and brutal violations of most fundamental human rights to an unprecedented extent. Consequently, the need for the introducing and strengthening of international protection of human rights are generally recognized and more and more supported by public opinion.

Nevertheless, it has to be born in mind that the implementation of the international protection of human rights and the effective super-

vision of State activities in this field belong undoubtedly to most difficult tasks both international law and international organization are facing in our times. It should not be forgotten that independent, sovereign States are subjects of international law and members of international organizations, while the protection of human rights necessarily involves fundamental and delicate political problems for the States concerned as it concerns the relationship between a State and its citizens which relationship, traditionally only in few cases and not without high degree of reluctance, has been submitted to the international law provisions and to international supervision. It should be also taken into consideration that ensuring respect for human rights in armed conflicts presents particular difficulties and all attempts to extend international supervision and inspection on such situations are faced with much of suspicion and lack of confidence by the States concerned reluctant to see any outside interference, while it is well known that most numerous and most grave violations of human rights and fundamental freedoms are taking place during armed conflicts, international and non-international ones, as well as in many emergency situations.

## II Provisions of the UN Charter Related to Hunan Rights

The UN Charter –in contradistinction to the Covenant of the League of Nations as well as to the limited initiatives in this field in the framework of the League– emphasizes the role of the UN Organization in ensuring respect for human rights. The determination of the peoples of the United Nations –as has been said in the Preamble of the Charter –"to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women" –is certainly to be regarded against the historical background of the 1945 San Francisco Conference and as a response to the violations of human rights in the Second World War. In Article 1, para. 3, of the Charter, "international co-operation ... in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion" has been included among the purposes of the UN Organization. Consequently, further

provisions of the Charter, when defining the functions and powers of the UN organs, charge the General Assembly and the Economic and Social Council with tasks relating to the protection of human rights. So, according to Article 13, the General Assembly shall initiate studies and make recommendations for the purpose of "promoting international co-operation in the economic, social, cultural, educational and health fields and assisting in the realization of human rights and fundamental freedoms for all", while, in accordance with Article 62, the Economic and Social Council "may make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all" as well as prepare conventions for submission to the General Assembly and call international conferences on the subject.

However, it should not be forgotten that the all above-mentioned activities of the United Nations should be developed in conformity with the principles of the United Nations that are enumerated in Article 2 of the Charter. And the principle provided for in paragraph 7 of this Article says that: "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State or shall require the Members to submit such matters to settlement under the present Charter; but the principle shall not prejudice the application of enforcement measures under Chapter VII" (Chapter VII deals with action relating to threats to the peace, breaches of the peace and acts of aggression). Thus, the question as to what kinds of the UN activity in the field of human rights constitute or does not constitute intervention "in matters which are essentially within domestic jurisdiction" is of primary importance in the practice of the UN organs in this field.

It should be added that, at the time when the United Nations was being created, the Contracting Powers of the London Agreement of August 8, 1945, on Prosecution and Punishment of War Criminals set up the International Military Tribunal to deal, *inter alia*, with "crimes against humanity", which crimes were defined in the Charter annexed to the Agreement as "murder, extermination, enslavement, deportation and other inhuman acts committed before or during war". And the

Peace Treaties concluded in 1947 with Italy, Bulgaria, Finland, Romania and Hungary included certain provisions requiring the above-mentioned States to assure to all persons within their jurisdiction, without distinction of race, sex, language or religion, human rights and fundamental freedoms.

## III United Nations Activity in Developing Legal Norms and Standards Concerning Human Rights

There is no doubt that the United Nations has greatly contributed to the development and codification of legal norms aimed at ensuring the protection of human rights. There is a number of conventions and other standard setting international documents that have been concluded or adopted as a result of the initiatives taken by the organs of the United Nations.

It is only three years after the United Nations was founded that the General Assembly adopted the Convention on the Prosecution and Punishment of the Crime of Genocide on December 9, 1948. The Convention covers the most serious violations of human rights as it concerns not only the rights of one or few individuals but "genocide" as defined in the Convention as "acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group" (such acts as killing members of the group, causing serious bodily or mental harm, imposing measures to prevent births within the group, inflicting conditions of life calculated to bring about physical destruction of the group, forcibly transferring children to another group).

In the same year– in fact just one day later –the General Assembly also adopted the famous Universal Declaration of Human Rights. The Declaration is not a legally binding instrument as such[1], nevertheless some of its provisions either constitute generally recognized principles of law or represent basic considerations of humanity. More important is that the Declaration has a status of an authoritative guide, produced by the highest organ of the United Nations to the interpretation of the provisions of the Charter. In this capacity, the Declaration has considerable indirect legal effect, being regarded by the General Assembly

and by a number of jurists as a part of the "Law of the United Nations". It should be added that the tenth of December – the date of the adoption of the Universal Declaration – is celebrated all over the world as the Day of Human Rights.

In 1966, the General Assembly adopted two comprehensive International Covenants on Human Rights which certainly constitute a landmark in the development of the international protection of human rights. One Covenant relates to the civil and political rights while the other to economic, social and cultural rights. The Covenants contain more detailed provisions and may be, to a great extent, considered as concretization and formulation in legal terms of the principles proclaimed in the Universal Declaration. However, many provisions of the Covenants have the wording of targets for the future without indicating what means are to be used in order to achieve these targets. So, for instance, it is said in Article 12 of the Covenant I that "everyone shall be free to leave any country" without saying anything about the duty of other countries to give permission for entrance. Similarly, in the Covenant II, many high standards are established which are hardly feasible to be attained even in most advanced countries such as "right to work which includes the right to everyone to the opportunity to gain his living by work which he freely chooses or accepts" (Article 6), or "higher education shall be made accessible to all on the basis of capacity by every appropriate means, and in particular by the progressive introduction of free education" (Article 13). Ratification of the International Covenants on Human Rights is a rather slow and sluggish process: till now no more than a half of the United Nations Member States have deposited the instruments of ratification (most of them accompanied by reservations).

The United Nations has sponsored many other conventions and declarations concerning the protection of human rights. To mention some of them:

Convention relating to the Status of Refugees (1951);
Convention relating to the Status of Stateless Persons (1954);
Convention on the Political Rights of Women (1952);
Convention on the Suppression and Punishment of the Crime of

Apartheid (1973);

Convention on the Elimination of All Forms of Racial Discrimination (1966);

Convention on Non-Applicability of Statutory Limits to War Crimes (1968);

Declaration on the Rights of the Child (1959); and

Declaration on the Elimination of Discrimination against Women (1967).

The number of topics relating to human rights put on the agenda of the UN organs is very large covering, *inter alia*, apartheid, racial discrimination, racism and neonazism, punishment of war criminals, status of women, status of children, status of refugees, territorial asylum, human rights in armed conflicts, protection of minorities, and human rights and scientific and technological development.

In conformity with Article 68 of the Charter authorizing the Economic and Social Council to set up commissions for the promotion of human rights, two commissions have been created: Commission on Human Rights and Commission on the Status of Women.

A considerable progress in developing international legal norms on the protection of human rights has been made beyond the United Nations framework. In the field of humanitarian law of armed conflicts, four Geneva Conventions sponsored by the International Committee of the Red Cross were adopted in 1948. While first three conventions resulted in developing and codifying international legal norms now in force relating to amelioration of the condition of the wounded and sick in armed forces as well as of the wounded, sick and shipwrecked at sea, and to the treatment of prisoners of war, the Forth Geneva Convention relative to the protection of civilian persons in time of war constitutes a new important part of the humanitarian law. The Geneva Conventions of 1948 have been supplemented by two Additional Protocols adopted in 1977. On regional basis, relevant conventions have been signed in Western Europe (European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950) and in America (American Convention on Human Rights of 1969).

## IV The Helsinki Final Act of 1975

Long negotiations between the Eastern European countries and the Western European countries (including the USA and Canada) resulted in the signing by the heads of States or Governments of the Helsinki Final Act in 1975. This Act in its third part (so called "Third Basket") contains many provisions relating directly or indirectly to human rights and fundamental freedoms. So, in the succeeding chapters and items, the following problems and issues were dealt with: Human Contacts (contacts and regular meetings on the basis of family ties, reunification of families, marriage between citizens of different States, travel for personal or professional reasons, improvement of conditions for tourism, meetings among young people, sport, expansion of contacts); Information (improvement of circulation of, access to, and exchange of information, co-operation in the field of information, improvement of working conditions for journalists); Cooperation and Exchange in the field of culture (extension of cultural relations, mutual knowledge, exchange and dissemination, access, contacts and co-operation, fields and forms of co-operation); and Co-operation and Exchange in the Field of Education (extension of relations, access and exchange, science, foreign languages and civilizations, teaching methods). The principle of "Respect for human rights and fundamental freedoms including the freedom of thougt, conscience, religion or belief" was placed among the Ten Principles declared by the participating States in the Helsinki Final Act which should guide their mutual relations.

From the legal point of view the Helsinki Final Act is not to be considered as an international treaty. The participating States were unanimous on this point because it is said in the final clauses that the Act "is not eligible for registration under Article 102 of the Charter of the United Nations". Among international lawyers discussing the legal nature of the Helsinki Final Act, different opinions have been presented. Some of them emphasize that many provisions of the Act are legally binding as they already were formerly included in the Charter of the United Nations or in other international treaties now in force, while the other provisions of the Act are only recommendations. Some would

rather see in the Final Act only declaration of political intentions and targets. Some others are of the opinion that most of the provisions of the Act are "initiating norms", a kind of potential legal norms to be made actual legal norms in succeeding bilateral or multilateral conventions to be concluded among the participating States. Also a view has been expressed according to which the provisions of the Act are to be regarded as an "authentic interpretation" of the principles of international law contained in the UN Charter taking into consideration that the Final Act has been signed by the representatives of the participating States of highest level.

It should be emphasized that the wording of the provisions of the Final Act is lacking precision required in legal texts. This observation relates particularly to the provisions contained in the "Third Basket". So, it is said, for instance, that the participating States "will examine favourably and on the basis of humanitarian considerations requests for exit or entry permit ... ", that "they intend in particular to ease regulations concerning movement of citizens from the other participating States in their territory", and that "they will encourage ... promote ... initiate joint studies ... further develop contacts among .... "

## V "Matters Which are Essentially within the Domestic Jurisdiction" in the Practice of the United Nations

As most of the international legal provisions relating to human rights are either too general or lacking precision particularly needed in matters of such a political sensitivity as human rights, an analysis of these provisions as interpreted and applied in the practice of international organizations seems to be most useful and even necessary. In this analysis, special attention should be given to the interpretation of Article 2, para. 7, of the UN Charter, according to which the United Nations shall not intervene with the matters which are essentially within the domestic jurisdiction of any Member State except for the application of enforcement measures taken with respect to threats to peace, breaches of peace and acts of aggression.

The UN organs had many opportunities of taking positions in dealing

with the arguments that the proposed resolution or action of the United Nations related to human rights should not be adopted as it concerns the matters within the jurisdiction of the State concerned. At its first session in 1946, the General Assembly faced this problem during the discussion on Spanish question when some delegates argued that the United Nations should abstain from giving recommendations in matters within the domestic jurisdiction. However, the General Assembly did not follow this kind of argumentation and recommended to the Member States to recall their Ambassadors from Spain "if within a reasonable time is not established a Government which derives its authority from the consent of the governed, committed to respect freedom of speech, religion and assembly and to prompt holding of an election in which Spanish people free from force and intimidation may express their will".

A similar position has been taken by the General Assembly in many other questions discussed in later years. To mention a few, the question of the treatment of people of Indian origin in the Union of South Africa, the question of observance of human rights in Bulgaria, Hungary and Romania, the question of Morocco, and then after– since the VIIth session –in many cases connected with apartheid.[2] Very often, as a result of a compromise, the wording of the resolutions adopted was only a general one. For instance, "The General Assembly expresses its deep concern at the grave accusations made against the Union of South Africa regarding the suppression of human rights and fundamental freedoms ... calls to bring the policy into conformity with its obligations under the Charter to promote the observance of human rights and fundamental freedoms".

Sometimes the problem of human rights has been linked with the maintenance of international peace and security as such a linking was considered to make the United Nations' competence less doubtful taking into consideration the last part of Article 2, para. 7. So, we read in one resolution concerning Southern Africa: "although there was no actual threat to the peace ... the continuance of the particular situation was likely to endanger the maintenance of international peace and security which took the matter beyond domestic jurisdiction". In 1948,

the following question was hotly discussed in the Security Council: "whether a resolution recommending, in general or to a particular State —to suspend the execution of a death sentence imposed by its tribunal —constitutes or not intervention in matters within domestic jurisdiction?" The Security Council decided that such a resolution, if general one, might be voted upon.[3]

In the General Assembly, another question was submitted to the debate, namely "whether the establishment by the General Assembly of a commission to study the racial situation constitutes an intervention?" In the report adopted by the General Assembly, it was said that "universal right of study and recommendation is absolutely incontestable with regard to general problems of human rights, and particularly of those protecting against discrimination for reasons of race, sex, language or religion". With respect to some questions, we can observe changed positions of the UN organs recognizing more competence of the United Nations in dealing with human rights. So, in 1947, the position taken by the Economic and Social Council was that its commissions have no power to take any action in regard to any complaints concerning human rights. In recent years, positions in this respect are changing. So, in 1967, the Commission on Human Rights created an *ad hoc* working group to investigate the charges of torturing prisoners in South Africa. In 1971, it created a subcommission for the alleged violations of human rights in Southern Africa, Greece and Haiti, giving rather detailed instructions as to how to deal with the complaints (should it reject the complaints anonymous or based on reports disseminated exclusively by mass media, complaints insulting the State to which the complaints are directed and should it require the exhaustion of local remedies?).[4]

Positions taken by the UN organs, as a rule, expressed views on particular situations and facts, on the contents and scope of specific rights, and not generally valid interpretations of particular provisions of international treaties. It should be added that the political factor has played an important role in taking positions in concrete cases. Till now no one organ of the United Nations has given a general definition of the terms "within domestic jurisdiction". In the course of discussion in the

General Assembly, very often, the definition has been referred to, which has been formulated in the interwar period by the Permanent Court of International Justice in 1921 in the case "Nationality Decrees in Tunisia and Morocco". The Court explained that "the question whether a certain matter is or is not solely within the jurisdiction of the State is an essentially relative question: it depends upon development of International Relations. Thus in the present state of International Law questions of nationality are, in the opinion of the Court, within this reserved domain. Nevertheless in this case the right of a State to use its discretion is restricted by obligations that have been undertaken". However, a number of delegates to the UN General Assembly were objecting against referring to this definition for explaining the meaning of Article 2, para. 7, of the UN Charter arguing that the Covenant of the League of Nations employed a little different formulation: "solely within domestic jurisdiction" while in the UN Charter the formulation is: "essentially within the domestic jurisdiction".

The opinions expressed by the delegates of the Member States before the UN organs on the relationship between Article 2, para. 7, and the provisions concerning human rights are far from being convergent, and they present a broad variety of approaches to the problem. Some delegates argued that the Charter provisions on human rights created legal obligations which all Member States have undertaken. It is particularly Article 1, para. 3 (one of the purposes of the United Nations being to promote respect for human rights and fundamental freedoms) and Articles 55 and 56 (the duty of the Member States to co-operate with the Organization in this field) that have undoubtedly definite legal contents. They contended that the mere fact that a matter was dealt with by the Charter placed it outside of the domestic jurisdiction of States and made it a matter of international concern. Reference also was made to Article 10 of the Charter according to which the General Assembly might discuss and make recommendations "on any matters within the scope of the Charter". And even an argumentation *a contrario* has been used: if the drafters of the Charter intended to subordinate the Charter provisions to the reserved domain of States, they would

say "notwithstanding the provisions of the Charter ... " and not as they said "nothing contained in the Charter ... ." In addition, some delegates referred to customary law arguing that in accordance with customary law States are in duty to treat all persons with respect for humanity. However, the delegates presenting the above mentioned opinions disagreed on the conclusions that should be drawn from that premise. Some contended that, since human rights were governed by international obligations, human rights come under jurisdiction of the United Nations and not under domestic jurisdiction of the Member States. While others drew a distinction between accidental violations of human rights affecting individuals or small groups and systemic violations of human rights which had international repercussions and created unrest beyond the State where they occurred. The former could fall essentially within domestic jurisdiction, while the latter could not.

Another school of thinking among delegates of the Member States emphasized that the Charter did not impose international legal obligations in respect of human rights and did not remove them from the domestic jurisdiction of States where they traditionally belonged. They asserted that the provisions relating to such rights and freedoms were declarations of purposes rather than legal obligations. Moreover, the fact that human rights and fundamental freedoms were not defined in the Charter was considered as a significant indication that the Charter did not impose on States any legal obligation. Finally, records of the San Francisco Conference were referred to as evidence and indication that the Charter provisions were not intended to authorize the United Nations to intervene in the domestic jurisdiction of the Member States. In the opinion of these delegates, the formula "Nothing in the Charter ... " has an overriding effect and prohibits any intervention in a State's domestic jurisdiction, even when it was dealt with by the Charter provisions. Some of the delegates, mostly from Anglo-Saxon countries, refrained from giving a juridical conception of human rights. In their opinion, it was a principle of jurisprudence that in the absence of a clearly defined rule practice becomes law. In other words, they emphasize the importance of the UN practice which would constitute the

case law on the matter.

## VI Implementation of the International Covenants on Human Rights

The International Covenants on Human Rights, in contradistinction with the former international instruments aimed at ensuring protection of human rights, contain certain implementation clauses. In accordance with Article 28 of the Covenant on Civil and Political Rights, a Human Rights Committee shall be established, consisting of 18 members, who are nationals of the States Parties to the Covenant and persons of high moral character and recognized competence in the field of human rights. As concerns the powers of the Committee, the States have undertaken to submit reports on the measures they had adopted which would give effect to the rights recognized in the Covenant, and on the progress made in the enjoyment of these rights. Reports are to be submitted once within one year of the entry into force of the Covenant for the States concerned and thereafter whenever the Committee so requires. The Committee shall study the reports and thenafter transmit general comments as it may consider appropriate to the States and may also transmit these comments with the copies of the reports to the Economic and Social Council. The States may submit to the Committee observations on any comments that are made by the Committee (Article 40). A State may declare that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the Covenant. The Committee may offer its good offices to the States concerned with a view to a friendly solution on the basis of respect for human rights as recognized in the Covenant. The Committee may also with the prior consent of the States concerned appoint an *ad hoc* Conciliation Commission (Article 42). The States may also become Parties to the Optional Protocol adopted by the General Assembly in 1968, and may agree to recognize the competence of the Committee to receive and consider communications from individuals who claim to be victims of a violation of human rights.

According to Article 16 of the Covenant on Economic, Social and

Cultural Rights, the States are in duty to submit reports on the measures adopted and the progress made in achieving the observance of the rights recognized in the Covenant. The reports are to be submitted to the Secretary General of the United Nations who transmits the copies of the reports to the specialized agencies concerned. The Economic and Social Council may also charge the Commission on Human Rights with the study of the reports and recommendation.

Till now, there is no sufficient experience in the UN practice as concerns effectiveness of the procedures provided for in the Covenants on Human Rights taking into consideration a relatively recent date on which the Covenants entered into force and the Committee could be established.

The activity of the UN Human Rights Committee till now was concentrated on the consideration of the initial reports submitted by States Parties under Article 40 of the Covenant on Civil and Political Rights. Before beginning consideration of the reports, it has been generally agreed among the Members of the Committee that "the main purpose of the consideration of the reports should be to assist States Parties in the promotion and protection of the human rights recognized in the Covenant; the debates should be conducted in a constructive spirit taking fully into account the need to maintain and develop friendly relations among Member States of the United Nations ... as well as to achieve real progress in the enjoyment of human rights in States Parties to the Covenant ... the Committee was called upon to try to identify the relevant factors and to assess the progress accomplished as well as difficulties encountered by the States Parties in the promotion and protection of human rights".[5]

The Members of the Committee, in accordance with the procedure that has been adopted by the Committee, have not only examined the reports that have been submitted by the Governments but also have asked many questions to the representatives of the Governments concerned receiving answers and clarifications.[6] With regard to the States which did not present initial reports (of the 44 States whose reports were due in 1977 and 1978, only 30 States have submitted their reports before August 1979), the Committee decided to authorize its Chairman

that an *aide-memoire* reminding obligations of the Governments be prepared and handed over to the permanent representatives of the States concerned in New York.[7] In some cases the Committee, after having examined the reports, asked additional reporting. As concerns the report submitted by Chile, the Committee has expressed an opinion that the report is insufficient, and this opinion was officially remitted to the Government of Chile. In the letter of July 9, 1979, the Chilean Minister for Foreign Affairs stated that the opinion of the Committee "is unfounded for the Government of Chile has conscientiously fulfilled all the obligations which it assumed in ratifying the Covenant ... by declaring the report submitted by Chile to be insufficient, taking into account the reports of the *ad hoc* Working Group and the resolutions of the General Assembly of the United Nations, the Committee committed a grave error of substance, because Chile is a party only to the International Covenant on Civil and Political Rights ... in this case the Committee's competence is limited to the text of the Covenant and the report and addendum submitted by Chile. Therefore, the Committee cannot transmit or endorse complaints made or allegations by States, non-governmental organizations or individuals such as in practice constitute the reports of the former *ad hoc* Group and serve as a sole basis for the resolutions of the General Assembly .... By considering such material and finding the report submitted by a Member State insufficient on that basis alone, the Committee is instituting an *ad hoc* procedure which Chile cannot accept ... my Government has declared formally that it neither recognizes nor accepts any of the *ad hoc* procedures which have been and are being applied in its respect by certain United Nations bodies, including the procedure of appointing a so-called Special Rapporteur. Henceforth, my Government will co-operate only with such bodies as respect both their own procedures and Chile's sovereignty."[8] The Chairman of the Committee in his letter of August 17, 1979, to the Chilean Minister for Foreign Affairs explained that the Committee "had considered the two reports of the Government of Chile and the answers given by their representatives on the basis of the requirements of Article 40, paras. 1 and 2, of the Covenant, it was assisted by the

General Assembly resolutions and the reports of the *ad hoc* Working Group on the situation of Human Rights in Chile; throughout this examination the Committee never departed from its proper functions, competition and procedures: as a result of this consideration, the Committee found that the information contained in the reports and answers was incomplete ... the Committee trusts that your Government will submit the report requested in accordance with Article 40 of the Covenant".[9]

The UN Human Rights Committee has also considered a number of communications submitted under Optional Protocol to the International Covenant on Civil and Political Rights by individuals, who claimed that their rights have been violated (till August 1979, 21 of the 59 States which have acceded to or ratified the Covenant have accepted the competence of the Committee for dealing with individual complaints by ratifying the Optional Protocol). Since 1977, 53 communications submitted by individuals have been registered for consideration (29 from Uruguay, 14 from Canada, 10 from other States). After having examined the above-mentioned communications, the Committee declared 19 communications inadmissible and a number of communications pending final decision to their admissibility. As concerns 16 other communications recognized to be admissible, the Committee, in accordance with Article 4 of the Optional Protocol, has fixed six months time-limit to the States concerned for submitting to the Committee explanations or statements clarifying the matter and the remedy, if any, that may have been taken by the State.[10] With regard to the communication submitted by the Uruguayan national, Maria Hernandez Valentini de Bazzano, residing in Mexico, on behalf of her own as well as on behalf of her husband, her mother and her stepfather, detained and subjected to torture in Uruguay (communication No. 1/5), the Committee, after expiry of six-month time-limit, decided that the explanations of the Uruguayan Government consisting in a review of the rights of the accused in cases before a military criminal tribunal were not sufficient to comply with the requirements of Article 4, para. 2, since they contained no information on the merits of the case, and requested the Uruguayan Government to supple-

ment its explanations during the next six weeks. After this time-limit expired and no response had been received, the Committee on August 15, 1979, expressed a view "that these facts ... disclose violations of the International Covenant on Civil and Political Rights ... and accordingly, is of the view that the State Party is under obligation to take immediate steps to ensure strict observance of the provisions of the Covenant and to provide effective remedies to the victims".[11] In the discussions on possible techniques of implementation of the provisions of the Covenants on Human Rights opinions are often expressed that in this respect some techniques developed in other international organizations and particularly in the International Labour Organization (ILO) could be in the future usefully applied in the UN practice. Therefore, it seems to be useful to present the experience of the ILO in this field.

According to the Constitution of the ILO (Articles 22 and 23), each Member State agrees to present an annual report to the International Labour Office on the measures which it has taken to give effect to the provisions of the conventions to which it is a Party. The Director General shall lay before the next meeting of the General Conference a summary of the information and reports communicated to him. In conformity with Articles 24 through 26, in the event of a complaint being made by trade unions or industrial associations that any of the Members has failed to secure the effective observance of any convention to which it is a Party, the Governing Body of the ILO may communicate this complaint to the Government concerned and invite it to make a statement on the subject. If no statement is received within a reasonable time from the Government or if the statement, if received, is not deemed to be satisfactory, the Governing Body shall have the right to publish the complaint and the statement. Other Member States may also file complaints that other Members failed to secure the observance of any convention.

On the basis of these provisions, a complicated system of supervision techniques has been developed in the long practice of the ILO such as questionnaires, reporting, expert and conference examination. If there is no justification for failure in implementation of the conventions, the State concerned may be placed on the so called "Black List" and even

sometimes during the session of the General Conference a kind of boycott of the governmental delegates takes place.

In evaluating the experience of the ILO in the implementation of the conventions, it is emphasized that "in purely quantitative terms the results leave little doubt that the supervisory procedures have made the vast majority of States aware of the need for discharging their treaty obligations to the full: on the whole, the fact-finding function of international supervision has therefore had the desired effect; when it comes to the second function, that of promoting governmental action, the results are rather less conclusive. In some 63 per cent of the cases, systematic follow-up did lead to implementing action in the form of full or partial measures of compliance or even of denunciation. Although it leaves over one-third of the cases where no impact is noticeable, such a degree of response must be regarded as sufficient evidence that ILO supervision has proved its powers of persuasion in relation to a sizable proportion of the violations with which it has had to deal".[12] But on the other hand it has been stressed that, in assessing the relevance and the effectiveness of ILO supervision, it must always be remembered that this system "has benefited from a combination of favourable circumstances which may not easily be encountered elsewhere: a solid constitutional foundation, an extensive network of precise obligations, an organizational tradition, an experienced secretariat, the institutionalized collaboration of non-governmental groups, all these factors have exerted a positive influence on the working and the results of the ILO procedures".[13]

## VII. Follow-up of the Helsinki Final Act

In the Helsinki Final Act the participating States declared "their resolve, in the period following Conference, to pay due regard to and implement the provisions of the Final Act of the Conference:

a) unilaterally, in all cases which lend themselves to such action;

b) bilaterally, by negotiations with other participating State; and

c) multilaterally, by meetings of experts of the participating States,

and also within the framework of existing international organizations,

such as the United Nations Economic Commission for Europe and UNESCO, with regard to educational, scientific and cultural co-operation". No permanent all European organizational structures have been set up as a result of the Conference on Security and Co-operation in Europe. The participating States declared only their resolve "to continue the multilateral process initiated by the Conference: a) by proceeding to a thorough exchange of views both on the implementation of the provisions of the Final Act and of the tasks defined by the Conference ... b) by organizing to these ends meetings among their representatives".

First of the meetings indicated by the Final Act was held in Belgrade in 1977. As concerns the implementation of the provisions of the "Third Basket", many Western delegates have expressed their dissatisfaction of the progress made in this field in some of the Eastern European countries, and particularly in the USSR. In the course of discussions in Belgrade and in other official and non-official meetings, opposing opinions on the relationship between the provisions of the "Third Basket" and the provisions of the other baskets have been presented. While the West is inclined to consider the implementation of the provisions of the "Third Basket" as a precondition of implementing the Helsinki Act as a whole, the representatives of the USSR emphasized that the provisions of the "Third Basket" have no privileged position and their implementation depends on the degree of the implementation of other provisions of the Helsinki Act, particularly on the development of a positive political climate.

These divergent approaches to the interpretation of the provisions of the Helsinki Act clearly appeared in the course of discussions at the Symposium: "New Aspects of the Détente Policy: Europe after Belgrade", held in Hamburg in December 14-16, 1978. The Western point of view has been presented by Dr. G. Joetze, Official of the Foreign Office in Bonn. He emphasized the interest of his Government in "the implementation of Basket 3 and particularly the provisions governing human contact and information" as well as generally the positive development in this field after the Helsinki Conference: "whoever registers the positive aspect of human contact as a success can hardly regard its develop-

ment as negative: in practice we have also noted positive developments and we register them with gratitude" mentioning progress in the reunification of families and solution of the problem of bi-national marriages. On the other hand, he considered the present situation as being unsatisfactory in some fields (control of foreign correspondents, difficulties in sending philosophical books, high costs of exit visas in the Soviet Union). His conclusion was that "the détente process in Europe is only possible from a multilateral aspect in connection with the Final Act if no side attempts to enforce its maximal position".

The position taken by the USSR has been presented by Dr. Y. Yakhontov, Member of the Editorial Board of "Pravda". He has recalled that during the preparations for and in the course of the Conference on Security and Co-operation in Europe, the Basket 3 "was one of the most complicated aspect and a stumbling block". The provisions of the Final Act "which is not an international treaty in the strict sense of the word and does not contain any categorical and stringent stipulations, cannot be implemented in a short time ... the arrangements set out in the Final Act of Helsinki are concise, that is, all the provisions of the Final Act are an integrated whole as this is emphasized also in the document itself. If we look at the process of political development, then the decisive factor in the political relations between States is a positive political climate. But, between all the elements contained in the Final Act, whatever they may be called, there is no doubt that there does exist a reciprocal link ... I don't understand these statements by certain politicians and journalists in the West in which attempts are made to give the provisions of Basket 3 priority over the provisions of Basket 1 and Basket 2 .... Therefore, in my opinion it is inadmissible to attempt to give Basket 3 a privileged position and turn it into a kind of yardstick for conscientiousness and trust and subordinate the provisions of other baskets to it". He enumerated practical steps that were taken by the Soviet Union after Helsinki (new Act on Soviet Citizenship, no obstacles to bi-national marriages and emigration from the USSR, improving of conditions for foreign correspondents, increased number of tourists, increasing number of translations of books of Western authors).

## VIII Conclusions

In the framework of international law at the present stage of its development, possibilities of ensuring implementation of the international protection of human rights by international organs are limited and their competences are not wide enough to take effective enforcement measures in this field. Taking things as they are, States are not willing to create a sufficient basis for such an effective action by international organs. As was once observed by H. Lauterpacht: "Parties to treaties often wish their obligations to go so far and no further; they –or some of them– desire the treaty to be only partly effective, they use language which, in their view, adequately expresses their determination not to concede to the treaty a full measure of realization of all its inherent and potential purposes".

From political point of view, problems connected with international supervision of the implementation of the international protection of human rights are regarded by most States as very delicate ones as they relate to the ties linking the State with its citizens. It is particularly in the periods of political instability and in armed conflicts that States generally are reluctant to see any interference from the outside in their domestic affairs. The fact that we are living in the period of history often characterized as a "revolutionary era" lacking in economic, social and political stability, certainly makes more difficult the task of ensuring protection of human rights, on national as well as international level. During armed conflicts, whether international or non-international, most fundamental human rights on a large scale are being endangered and violated. It is perhaps useful to recall that the French Revolution, often praised as it proclaimed the Declaration of the Rights of Man and Citizen, largely used guillotines against political adversaries and many others. In recent times we see that even the countries with longest tradition of respect for human rights have difficulty in reconciling emergency situations with the observance of international treaties relating to human rights; for instance, the complaint of Ireland before the European Commission of Human Rights against the United Kingdom that the latter has tortured and mishandled prisoners in Ulster.

To make international protection more effective, much emphasis in recent times is placed on the dissemination among peoples all over the world the principles and provisions contained in the international treaties and standard setting documents relating to human rights. At the diplomatic conference on humanitarian law in armed conflicts, many delegates stressed the importance of the dissemination of the "Law of Geneva" as one of primary conditions of its efficiency, which position being reflected in two Additional Protocols adopted in 1977. And more attention is given in international organizations to the education of younger people in the spirit of peace and respect for human rights. As was declared by the President of the UN General Assembly, Professor E. Hambro, "education is essential, because human rights are not granted, they are asserted by individuals who are aware of them". The same position is reflected in many resolutions adopted in the United Nations and in UNESCO, but largely in the Declaration on the Preparation of Societies for Life in Peace, adopted by the UN General Assembly on December 15, 1978.

**Notes**

(1) D. P. O'Connell, (*International Law*, London, 1965, volume II, p. 821) says that "as a legal document the Universal Declaration is of doubtful significance ... it has legal importance as it gives possibility of using machinery of Articles 55 and 56 ... should a notorious violation of the Declaration occur, it may constitute a situation affecting international order which brings into play the peace enforcement provisions of the Charter". Thenafter, Professor O'Connell concludes that this is "procedure unpromising, though not non existent". A Japanese international lawyer, Judge K. Tanaka, in his dissenting opinion, contends that the Universal Declaration on Human Rights "is no more than declaration adopted by the General Assembly and not a treaty binding on the Member States" (International Court of Justice, "South West Africa Cases", 1966, p. 288).

(2) "Repertory of Practice of United Nations Organs, and Supplements", sub Article 2/7.

(3) *Ibidem.*

(4) *Ibidem.*

(5) "Report of the Human Rights Committee", General Assembly 32nd session, Suppl. 44/A/32/44 p. 18.
(6) UN document CCPR/C/VII CPR. 1 and SR 186 ff.
(7) UN document CCPR/C/VII CPR. 1 Add. 4.
(8) UN document CCPR/C/VII CPR. 1 Add. 19
(9) "Report of the Human Rights Committee", General Assembly 34th session, Suppl. 40/A/34/40 p. 120.
(10) UN document CCPR/C/VII/CPR. 1 Add. 14.
(11) "Report of the Human Rights Committee", General Assembly 34th session, Suppl. 40/A/34/40 p. 124.
(12) E. A. Landy, *The Effectiveness of International Supervision: Thirty Years of I. L. O. Experience,* London, 1966, p. 198.
(13) *Ibidem,* p. 209.