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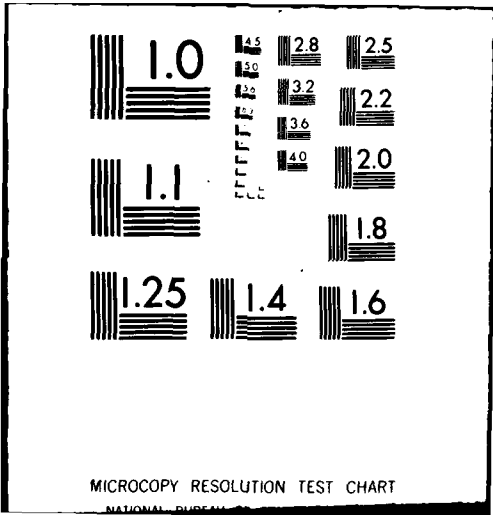
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U. S. Foreign Policy and the Pursuit of International Human Rights.

CHAPTER VIII

THE UNITED STATES, INTERNATIONAL WAR, AND THE PRESERVATION OF HUMAN RIGHTS: THE CONTROL OF ARMS

by

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DEC 17 1980

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One of a collection of essays prepared for a workshop held at the University of South Carolina. Partial support for the workshop was provided by a grant from the Department of State as part of its external research program. It is expected that the entire collection will be published in book form under the title U.S. Foreign Policy and the Pursuit of International Human Rights. September 1978.

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DEPARTMENT OF STATE

Washington, D.C. 20520

February 6, 1980

Mr. Harry Schrecengost  
Defense Technical Information  
Center  
Cameron Station  
Alexandria, Va. 22314

Dear Mr. Schrecengost:

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Sincerely,

Edward N. Lundstrom  
Research Documentation Officer  
Office of External Research  
Bureau of Intelligence and Research

See letter  
J.S.

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We begin this paper from the premise that practical concern with human rights is the life instinct of civilization. Without a shared consciousness and means for the application of human rights standards there is little chance that humanity and civilization will be able to survive the next fifty years without horrifying and devastating tragedies. It goes without saying that any progress which human civilization might make is utterly tied to the meaning that human rights is given in the daily practice of nations and peoples.

→ This volume examines the development of human rights standards with their interrelated parts -- national and international economic arrangements, the problem of meeting basic human needs of people around the world, the protection of human dignity and security and the enhancement of civil and political rights. We will here argue that the arms race is a critical element of this process, and that a combined conscious and unconscious spirit in arms negotiations is moving toward the protection of victims' fundamental human rights. The post-World War II Nuremberg and Asian war crimes trials confirmed the principle of official responsibility in war and that precedent is now being linked to nuclear weapons policies and the intended use of such armaments on captive populations. We will examine the development of this relationship and the role of the United States in

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defining and implementing an end to the arms race which is critical to any framework for the fulfillment of basic human rights. ←

There is no way for any of us to escape the political ground of the twentieth century sagging with a humanity that cries out for something other than concentration camps, nuclear wars and arming for them, torture, ecological disaster caused by the drive for profit, domination, or hubris. And people cry out silently or in their dreams to find ways that they can confront and overcome institutions and states which seek to stop the mass of humanity from realizing themselves as subjects with their own collective hopes and personal histories.

Some will say that there is nothing "new" in the collective horror of the century where reason is detached from personal feeling and subjective understanding. But they would be wrong. Our sophisticated, calculative intelligence is translated into military technologies of violence in being, like missiles, thermonuclear weapons, smart bombs, prisons, torture chambers. Others will say that there is nothing new in huge bureaucratic structures where people are reduced to roles of processor and processed, joined together in a Kafkaesque embrace waiting for each to exchange roles. But there is a difference between this and other times. By virtue of what technology allows there does not have to be limits to behavior. And that is what has happened. No limits are known either in peace or war, no quarter is given, fascism reigns supreme often flying under false banners of socialism or democracy. The half-awakened consciousness of the mass of humanity is caught in the vise of impersonal violence, hidden by bureaucratic shields of secrecy. Fascism in the sense of the worship of personal and now more frightening impersonal bureaucratic violence defines the very nature of our daily

lives. Ideological hopes fall in the face of systemic cruelty, power drives of officials.

There is another side. Silently people cry out "enough," in a world gone morally and legally mad, where few either speak for humankind or with a human face. Is it too much to say that a half-awakened consciousness of people is slowly becoming aware of a membrane which holds civilization together?

This membrane is human rights and it is our task to bring intellectual and political sustenance to those rights. This is not easy because the very nature and definition of human rights is ambiguous. In our time the concept of "human rights" emerged from the second world war where cruelty and abomination had reached stunning proportions. It emerged from a period in which human beings had been the "objects" of Great Powers with virtually no standing in international law and where the individual person's life was open to intrusion and destruction by states or the games which Statesmen play with each other. The League of Nations took no notice of the internal affairs of States, no matter how brutal the result. And leaders were not thought to be responsible for their actions under international law. As one of the lawyers for the German defendants at Nuremberg put it, there is no individual responsibility for war "as long as the sovereignty of states is the organizational basic principle of interstate order."<sup>1</sup> Some scholars in international law like Hans Kelsen argued that the U.N. Charter itself, which partially grew out of the experience of the League of Nations and the hopes left behind by the second world war did not recognize human rights or the rights given individuals in international law as formal obligations.<sup>2</sup>

Yet other scholars, and with them we would agree, stated that it took the second world war to recognize that "there is a link between respect for freedom within the State and the maintenance of peace between states."<sup>3</sup>

The Development of International Standards

It is important to remember the historical, moral, legal and even psychological relationship between the Charter of Nuremberg, which attempted to develop a definition of personal responsibility, the United Nations Charter and later the Universal Declaration of Human Rights. Even though narrowly interpreted by judges, the Charter of Nuremberg had sweeping and high purposes. The articles themselves either overlap or deal with those questions which in practice are human rights questions: questions which determine whether a state is something other than the means to organize people into submission or violence. The Tribunal sought individual responsibility in the following areas:

(a) Crimes Against Peace: namely, planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements, or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing.

(b) War Crimes: namely, violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labor or for any other purpose of civilian population of prisoners of war or persons on the seas, killing of hostages, plunder of public property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity.

(c) Crimes Against Humanity: namely, murder, extermination, enslavement, deportation, and other inhuman acts committed against any civilian population, before or during the war, or persecutions on political, racial



or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.<sup>4</sup>

As Wasserstrom pointed out, the principle of vicarious liability was also introduced, holding members of a conspiracy responsible whether or not they had committed a particular act. Thousands of people were brought to justice under this Charter and a similar one in Japan. Nuremberg is a stubborn fact of international affairs. It is a precedent that will not go away. Indeed, as will be suggested, it is critical to our present understanding of international politics and human rights.

Simultaneous with the emergence of the cold war and the break-up of old empires, the need has remained to forge some other, more positive, direction which would limit the destruction of man's institutions upon people themselves. The Nuremberg Charter and the UN Charter were such imperfect instruments. The objective of the United Nations as laid out in the Charter did not consist of a list of formal human rights obligations which were a condition precedent to membership in the United Nations. Nevertheless even without an explicit provision dealing with formal obligations it would be absurd to think that the members of the United Nations did not formally accept the principles of respect for human rights. As Lauterpacht has said,

it would be contrary both to these requirements (of treaty interpretation) and to the principle of effectiveness if the repeated and solemn provisions of the Charter in the matter of human rights and fundamental freedoms, conflict with the clear obligations to promote respect for them by joint and separate action, were interpreted as devoid of the obligation to respect them.<sup>5</sup>

Respect is, of course, not the same as legal commitment.

The question of how to promote human rights in practice foundered on

the rock of political sovereignty, legal imprecision and bureaucratic fear, and the cold war. With the passage of the Universal Declaration of Human Rights in 1948, the world's people learned how limited--if any existed at all--were the obligations of the States to either apply or sign and implement by treaty the Declaration's provisions. Mrs. Roosevelt, chairperson of the Commission on Human Rights, states prior to its passage that the Declaration was not a treaty or agreement: "it is a Declaration of basic principles to serve as a common standard of achievement for all peoples and all nations" (emphasis added).<sup>6</sup> Yet the Declaration carried moral weight with the mass of people; it made clear that human rights were more than a "luxury." The miracle of that document was that people with opposed ideologies had agreed on a basic list of rights although they could not state why they favored those rights as basic, or how the definition of those rights would operate in practice or a common philosophical understanding of the world.

The rights of the Declaration as they came to be spelled out in the Covenants embody a range of rights discussed in earlier chapters.

Serious question can be raised about some of these as "fundamental rights." For example, do scientists have an "unlimited" right to use the resources of the community to make weapons of mass destruction, or undertake experiments which may point to a change in the species of man? We doubt that they have such an unlimited right. It should be noted, however, that Article 29 of the Declaration also sets forth obligations of the person to the "community," which suggests the linked nature of these rights, and therefore, of the person to the group.

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.

2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

Disagreement about first principles made it very difficult to forge a series of practices which would cause the enforcement of the Universal Declaration. While the document was predicated on many American notions, such as those laid out in the American Declaration of the Rights and Duties of Man (Bogota Conference of American States, 1948) and the thoughts of President Roosevelt's New Deal, and while diligent efforts caused the Declaration to be quickly adopted, the United States did not accede to the document as a legally binding one, claiming that it had no such force. The document was seen by nations as an exercise in moral oughtness.

The United States faced a hornet's nest early on with the effect of the Declaration on the thinking of national leaders around the world. In its 1952 constitution, Puerto Rico "forwarded to the United States Congress for approval, detailed provisions concerning economic and social rights." Congress strongly objected to such provisions, but nevertheless passed the Puerto Rican Constitution in 1952. Likewise, members of the Senate criticized the Japanese Peace Treaty because "its preamble stated the intention of Japan to realize objectives of the Universal Declaration of Human Rights."<sup>7</sup> By the time Eisenhower and Dulles came to power in 1953, the stage was set for the United States to withdraw any sort of support for effective human rights treaties. Dulles made clear in the spring of 1953 that the United States did not "intend to become a party to any such covenant or present it as a treaty for consideration by the Senate."<sup>8</sup>

The reason the United States took this position during the time of Eisenhower is a complex one. In part, it reflected the fears of conservatives in Congress and the Republican Party that the "socialistic" ideas of the United Nations and other countries as well, would upset the internal social system of the United States. U.S. courts were taking notice of the U.N. Charter in various of their decisions.<sup>9</sup> There was also a more complicated foreign policy reason. Dulles had enunciated the doctrine of liberation for East Europe in the 1950-54 period. Except for covert operations, this reflected cold war rhetoric more than the actualities of military intervention. Dulles feared that those to his political right as well as liberal interventionists would use the human rights covenants and declarations to insist that the U.S. use these treaties as legal justification for military action in East Europe. In fact, Dulles did not intend to implement such a policy, as shown during the 1956 Hungarian Revolution.

But a generation is a long time in the history of international affairs. Friends become enemies, disputes which are thought of as settled flare up, ideas and goals thought of as too difficult to achieve become important questions to discuss and negotiate. The Helsinki Conference on Security and Cooperation in Europe set the diplomatic terms of reference for future U.S. diplomatic policy regarding East Europe and human rights in Europe. Politically this agreement is seen as a fine line between disengagement and liberation and means to reintegrate Europe. On the western side, what could not be done by the spice of "rollback" was to be accomplished by the sugar of detente. For our purposes, however, the human rights aspects of the Helsinki Accords are critical. The same Secretary of State who objected to the American Ambassador giving "political science lessons" to the Chilean

junta when he complained about Chilean torture, accepted the human rights sections of the Helsinki Accords. The language of this agreement is similar in purpose and intent to the Universal Declaration. "In the field of human rights and fundamental freedoms the participating States will act in conformity with the purposes and principles of the Charter of the United Nations and with the Universal Declaration of Human Rights. They will also fulfill their obligations as set forth in the international declarations and agreements in this field, including inter alia the International Covenants on Human Rights, by which they may be bound."

The participating States, according to principle seven of the accords, are meant to "respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief for all, without distinction as to race, sex, language or religion. They will promote and encourage the effective exercise of civil, political, economic, social, cultural and other rights and freedoms, all of which derive from the inherent dignity of the human person and are essential for his free and full development."<sup>10</sup> The Helsinki Accords do nothing to point up the criminal nature of the arms race, calling instead for "confidence-building measures" such as "prior notification of major military maneuvers, exchange of observers" which "by their nature constitute steps towards the ultimate achievement of general and complete disarmament under strict and effective international control, and which should result in strengthening peace and security throughout the world."

What can we conclude from this litany of new good intentions? Moral pretension plays an important role in the statements, if not in the actions of states, and while such a view may be cynical, it is also true that governmental energy is often spent explaining how the action of the particular

state is in the path of moral righteousness and decency. This is understandable since most statesmen recognize, consciously or unconsciously, that both a state and the law which it uses and lives under, require a moral basis if either the particular law or the state is to have any lasting significance--especially during a period of great transformation and turbulence. Without a moral basis which can be recognized as such by those who are not part of that particular system of beliefs one may be sure that such laws or that state will become casualties of social transformation and world opinion. We see this phenomenon operating in southern Africa and we saw it as well in the thirty-five year struggle against outside domination waged by the Vietnamese people.

Certain rights have stood the test of time and the test of modern revolution as the basis upon which the people's freedom, and their own hopes, are to be staked. These freedoms can be added to and deepened in meaning as people discover more clearly the needs necessary to help them in their active subject role in history. The human rights of any particular period are rights necessary for people to exist and thrive in that particular historical period. But rights also are cumulative. Free speech or assembly is no less important because economic security is guaranteed in a society. Nor is it the case that the rights of economic security cease to exist because there is free speech and assembly. Rights in this sense are additive, not contradictory. In this regard Article 3, "everyone has the right to life, liberty and security of person," Article 4, "no one shall be subjected to torture, or to cruel, inhuman, or degrading treatment or punishments," are statements of rights won in another century, but which are critical conditions precedent to any sort of life in a body politic.

Preparing for Genocide

These rights, critical as they are, and central to our present dilemma, are merely the beginning of understanding the problem of human rights as we should now come to consider it. In this sense we are confronted with an irony. The Declaration which should have been translated from "oughtness" to legally binding treaties a generation ago is not adequate to face the present turbulent world because of the generally limited or ambiguous definition of human rights which is seen as applying to individuals, but not to individuals as part of a collective or class that can seek relief prior to an action of States. Thus, it would seem that genocide has to be completed before there is acknowledgment that genocide has occurred.

The U.S. is in an even more troubling situation conceptually and morally. The Genocide Treaty has yet to be ratified by the United States Senate. Nor is the arms race and arms preparation recognized as part of the way that human rights are violated, or a crime nationally or internationally committed. Instead, nations see arming only as "defense." As one commentator has noted, "The very condemnation of aggression as illegitimate has, in effect, increased the dignity and legitimacy of self-defense, with the concomitant danger that nations may abuse the concepts of individual and collective self-defense. The preparations for ever more destructive and catastrophic wars have actually never been as relentless as in this era of war prohibition."<sup>11</sup>

In fact, the military policies and trappings of this country do not constitute a defense policy at all. We define defense to mean ensuring the independence and security of the American people as they seek to reconstruct the social, political and economic fabric of the nation. Instead, the U.S. maintains a stance of imperial offense and U.S. foreign policy continues to

revolve around armaments and especially nuclear weapons. Weapons are seen as the primary means of asserting the will of the state in the international arena. Policymakers do not take seriously, except in an abstract way, the criminal aspects of aggressive war and nuclear bomb use. It is not only nuclear war which has lost its forbidden quality: flexible brushfire war concepts tested in Vietnam add a variant to conventional war fighting capabilities, making the latter all the more conceivable. Indeed, such capabilities are seen as necessary so that nuclear weapons do not have to be used.

While lip service is given to the dangers of the arms race, arms control negotiations act as a spur to arming. The problem of current leadership is the classic twentieth century question of brinkmanship--how to threaten with nuclear weapons, or armaments generally, sanctioning the buildup in them, while codifying a system of war and negotiations which will guarantee that weaponry will be used in a controlled and "rational" way.

The question of human rights must be linked to issues concerning the arms race and war. As one commentator has pointed out, the direct nexus between the idea of human rights and the existing law of war was not envisaged until the second world war was over. In Article 1 of the U.N. Charter the framers contend that the unleashing of aggressive war occurred at the hands of those States in which the denial of the value and dignity of the individual human being, of whatever race, color, or creed, was most evident. The nexus that the Charter framers saw between the criminality of State aggression by armed forces and the denial of human worth within the frontiers of such States--which was repeated and increased in areas occupied through military adventures--rammed home in a way that mankind was not likely to forget the connection between aggressive war, the way it is waged, and the total disregard of the



individual.<sup>12</sup> In the modern technological context this formulation gives rise to the question of genocide, defined as "the structural and systematic destruction of innocent people by a state bureaucratic apparatus."<sup>13</sup>

Cataclysmic social and political events serve as a catalyst to ideas which are "in the air" but have not crystallized because the events have not forced the reconsideration of basic conceptual frameworks which set the terms of debate. It is only now that we begin to see the direct relationship between the work of the Nuremberg judgments and a new understanding of human rights. The Nuremberg trials and judgments grew out of principles of accountability and responsibility from the laws of agency, democratic and socialist theory. However, this conception of personal accountability and individual human rights has consistently avoided the relationship of the powers of national leaders to make war either on their own people or on people of other lands. Consequently, international law has been silent on the importance of human rights as a line of defense by the individual person, the family or the community against the State's activities as they relate to war preparations, or the more specific question of participation in war-like acts.<sup>14</sup>

In this sense human rights should be seen as a condition precedent to the penumbra of policies which States follow that shade into war, cold war, arming and covert war. It is a conceptual and moral error to assert that humanitarian rules should be found in the context of armed conflict. Instead the "human rights" rules should be seen as governing actions of governments precedent to any particular policies which they intend to pursue. They are required to ask the question, what is the effect that the government's foreign and defense policies have on innocent populations? This question goes to the very nature of the arms acquisition and arms race process, a more

euphemistic phrase for the preparation of mass murder and genocide.

The legal formulations and judgments to emerge from Nuremberg and the Asian war crimes trials, as well as the moral suasion of the Universal Declaration, the Charter and later resolutions of the General Assembly on war and disarmament, are in direct conflict with the types of weapons (nuclear, thermonuclear, chemical and biological, plus missiles) which States acquire or make. Besides being a horrifying tragedy, their use sets the stage for considering those who prepare, acquire, and use such weapons as criminals. After all, there is nothing in the laws of war which would justify the types of armaments used or contemplated for use at this time by the Great Powers. In this sense, if the killing cannot be legitimated by the laws of war, then surely the actions of leaderships fall more within the context of domestic and international criminal concern than high policy. The international community has before renounced the use of war in the conduct of national policy, through declarations and treaties such as the Kellogg-Briand Pact of 1928. Moreover, Article 22 of the Hague Regulations (1907) makes clear that, "Belligerents have not got an unlimited right as to the choice of injuring the enemy." The illegality of reprisals is undisputed in international law, as seen in the Geneva Conventions of 1949 and the U.N. Charter. Municipal law becomes the means of bringing leaderships to justice for denying the security of the person through the choice of weapons used to defend the nation. Indeed, under Justice Jackson's stricture, such is the major way to hold leaderships accountable to their citizenry.<sup>15</sup>

Obviously, the question of bringing such actions against governments falls in the psychological area of political will coupled with the existence of appropriate legislation. Will is usually exercised where there is an

aroused and organized citizenry which sees a means to bring such pressure to bear against its government by championing already existent principles. Thus, during the Indo-China war many young people refused to be drafted on the grounds that they would be in violation of the U.N. Charter and the Nuremberg judgment, just as other people within the Soviet Union staged civil disobedience on the ground that they could do no other because of the Universal Declaration of Human Rights.

Such a stance, which uses an emerging consensus of international legal doctrine against the excesses of States needs to find a double constituency. One is among diplomats and international civil servants. The other is among groups in other countries who see that their own liberties are directly tied to those people who are prepared to challenge State law that has no basis in universally accepted principles, while their challenge is legitimated and codified in the U.N. Charter, covenants, provisions, resolutions, and international law generally. In some cases municipal legislation may not exist, and policy makers may think that because there is no law which abjures their action, they are not covered by the domestic criminal law.

In this regard, the Kastenmeier bill (H.R. 8688, U.S. House of Representatives) is a significant piece of legislation which would commence the tedious but necessary process of holding Government officials in the foreign and national security policy areas personally accountable for their plans and practices.<sup>16</sup> Kastenmeier's bill uses as a standard the norms laid on Germany and Japan at the end of the second world war and states that such legislation should be internalized in U.S. law. It also calls for internalizing the Charter as well as other international legal strictures against war crimes. Kastenmeier and his group in Congress held that the person's security is

robbed in the case of war, and fundamental human rights are therefore violated in the process. In an earlier model draft version there were provisions for the citizen to legally refrain from tax payment or from being drafted where the courts determined that all or a part of the Government had acted to make or prepare an aggressive war, or use weapons or mass destruction in derogation of Charter obligations and judgments made at the Nuremberg trials.

The nature of war preparation should now come under direct scrutiny. There is little doubt that a person's security and, therefore, human rights are directly violated by the nature of weaponry adopted. In modern States, huge organizations enter into a series of activities on a daily basis which may not appear to be crimes or violations of anyone's rights. But once we are able to remove the conceptual blinders from our eyes, the reality is that those actions are crimes in situ, crimes in being. The armaments race, given the nature of the arms made and the war plans fashioned, is criminal when compared to laws of war or peace, the criminal laws of individual nations, and the Nuremberg and Asian trial standards.

The arms strategists' plans of "taking out" millions of people either in first strike or second strike reprisal are surely not contemplated by any internationally lawful system of defense. That we see nations and their leaders thoughtlessly reducing their actions to criminal activity hardly means that laws do not exist which directly contradict such behaviour. As the judges at Nuremberg said, ". . . after the policy to initiate and wage aggressive wars was formulated, a defendant came into possession of knowledge that the invasions and war to be waged were aggressive and unlawful (against international law and treaty), then he will be criminally responsible if he, being on the policy level, could have influenced such policy and failed to do so."<sup>17</sup> Thus,

since such actions once contemplated are war crimes in situ, because of their genocidal or illegal nature, we are seized of a complicated conceptual problem. The final "frame" or act in a process which leads to a culminating event, in this case the "go" signal for nuclear war or aggressive war, does not have to be completed for us to realize that the event is already underway. One needs only to look at arms budgets and strategic doctrine to comprehend the criminal nature of the arms enterprise. Government officials descend to the level of bureaucratic gangsterism as their political lives and practices fly directly in the face of Article One of the Charter and the Declaration.

Once we begin our understanding that we are living in an event of genocide which has not, thankfully, played out the final notes of civilization's Gottedammerung, we are able to evaluate an entire spectrum of negotiations and talks on arms control and disarmament from a somewhat different perspective than we usually use. The participants in the SALT talks, favoring great secrecy, eschew necessary moral, legal, and criminal questions when discussing armaments. There is a necrophilic quality to the type of technical expertise which calculates one missile against another, as diplomats become brokers in charred bodies. When these talks are divorced from the fundamentally criminal nature of the weaponry or strategies under discussion, arms control talks are reduced to a narrow exercise between State representatives on the character and size of genocidal forces. Unfortunately, the SALT talks give the appearance of legitimacy to the entire field of weapons of mass destruction because they create the mind-set among elites in the media and the universities, as well as the people as a whole, that such weapons are "needed" and that they should be considered in the card catalogues of libraries and treasury accounts under the heading of Policy and Diplomacy rather than Crime and

Criminal Behaviour. To repeat the point, there can be no successful discussion which is meant to comprehend the character and gravity of the weapons, and to limit and eliminate them, without the discussion beginning from accepted international legal principles about genocide, population safety, and the Nuremberg judgment of personal accountability of public officials to either municipal or international tribunals.

Arms strategists, scientists, governments, civil servants, defense ministries, and diplomats should be acutely aware of the legally and morally exposed situation in which they now find themselves. They have caused to be developed the type of weaponry and military technology which breaches every law and fundamental human right. We are required to change our theories of arms control and disarmament discussions from the type of epicycle reasoning which has gripped those interested in these questions and political leaderships to a far more basic and clear-headed understanding of what is going on. We cannot accept the sort of analysis of a leading "epicyclist," Henry Kissinger, who says that the SALT II agreement means "that a cap has been put on the arms race for a period of ten years."<sup>18</sup>

#### Beginning the Disarmament Process

It is clear that the global conventional arms race and nuclear buildup, masked by an arms control discussion, can be reversed only by a commitment to a comprehensive disarmament plan. This includes unilateral and multilateral moves, completed within a definite time frame. Such plans have in the past been ignored or abandoned for various reasons. The McCloy-Zorin Eight Points and the general and complete disarmament proposals of 1959-1961 were bound by the principle of interlocking stages "for reducing or eliminating weapons and

armed forces, and with precise stipulated timing to assure that the process of disarming would not leave any nation's security weakened." These principles were never translated into actual policy, but were eclipsed by U.S. efforts to counter national liberation forces in Indo-China and around the world, as well as by Soviet attempts to achieve parity with the U.S.

Present disarmament discussions are fragmented. MBFR, SALT and test ban discussions are conducted as separate activities and do not contain an interlinked time boundary. Each is not meant to be a challenge to the overall direction of the arms race and to the overall defense purposes or strategic posture of the United States. Indeed, policies formulated during the Kissinger-Schlesinger period at the national security wheel, encouraged preparation of counterforce-like strategies without surrendering countervalue strategies. Meanwhile, more sophisticated missiles were developed along with new conventional war options. There is nothing to suggest that the Carter administration has changed the counterforce/countervalue imperative.

Any disarmament proposal judged as an alternative must, therefore, be an interlinked and comprehensive national security system for the United States and, indeed, for other nations to judge in their own terms for themselves. In this regard our political task is to encourage other nations and their representatives, including action groups, to adopt strategies or proposals which are in the same frame of reference as the one we propose.

Any serious comprehensive agreement must be time bound. The document should state what has to be accomplished within a limited period of time, what can wait or be deferred, and what needs to be strengthened. It must bring into play not only state or governmental factors but societal pressures within one's own state, as well as those non-governmental contacts which enhance the success

of the agreement. The document should also use fairly mechanical ways of judging whether certain nations are carrying out their pledges. The use of quantitative measurements, however, or arguments about them should not be a cover for continuing the arms race. The purpose of comprehensive disarmament negotiations is not to justify the arms acquisition or sales system of nations, nor is it to set up a control system which merely legitimates that process.

A second consideration is the length of time it would take to reach general and complete disarmament. The road is no doubt a long one, but it has to be built, for its purpose is to change the direction and value system of nations and peoples. Important questions of intervention, responsibility, defense and use of armed forces and technology must be confronted. But by saying that the road is long we should make clear that within this framework there are goals to be achieved which can be qualitatively or quantitatively measured through technical inspection systems controlled by an international disarmament organization of the United Nations. In terms of length of time, we would urge that a coordinated and comprehensive strategy include goals of disarmament which are to be unilaterally and multilaterally achieved within ten years. It should begin in the following way:

(1) Announcement of a ten-year disarmament plan. The nature of the plan should be discussed for one year in the Security Council with the leaders of the various Great Powers, and a similar debate should continue in the General Assembly, weighing and studying the sort of proposals presented by the Great Powers. These proposals would set out definite reduction requirements; i.e., eliminating weapons systems from particular categories, accompanied by cuts in defense budgets. The plan would be lobbied through the U.S. government and discussed publicly at local and national levels.



(2) Present structures and processes for disarmament discussion in the General Assembly and its First Committee should be strengthened. We should also propose that the military committee of the U.N. reconvene to work on the world disarmament plan from the perspective of military security.

(3) Non-proliferation agreements of a vertical and horizontal nature and pledges of no-first-use are essential first steps for the General and Complete Disarmament Plan.

(4) Each nation would examine its domestic economy as well as international economic arrangements in terms of replacing arms manufacturing processes with productive work designed to meet basic human needs.

Any meaningful disarmament plan must also recognize the relationship between political interests as represented by the stationing of troops and the alliance system, and arms control and surveillance methods. The process of balanced reductions is a subjective one, in which individual nations decide whether a political activity is equal to a change in weapons posture. Thus, for example, the U.S. may feel that it cannot give up hegemony of South Korea, and therefore it needs certain armaments to assure itself of hegemony. On the other hand, if it sees no interest in hegemony or believes that there is another way to maintain U.S. interest in a so-called independent Korea, it may be prepared to give up certain sorts of armaments. Thus, political plans are required for each area of the world; these would start from the assumption that essentially the same distribution of power in terms of the world's pyramid will continue during the disarmament plan. This is not as terrifying or silly as it appears just because there is a greater tendency to polycentrism across the world and the costs of the arms race are so great.

World-wide meetings horizontally between city, neighborhood, and nongovernmental representatives of different nations should be arranged to consider the

substantive meaning of human rights in the context of the problems which humanity now faces. The purpose of such a reconsideration is not to undo the painstaking work already accomplished. The intent is exactly the opposite: it is to make clear that human rights are the inescapable ground upon which international relations exist, not in the sense that human rights become a cloak for busybody intervention and imperialism. Instead, they are to be the ground upon which nations, diplomats, statesmen, and people come to understand the essential need of rights in practice in questions concerning the international economic order, the arms race, the relations of their States to other States, and the internal rights of their own citizenry. We would propose an international, non-governmental monitoring agency which permanently reported on the question of human rights violations, as defined according to the Covenants and the Universal Declaration, the Nuremberg Charter, and the U.S. Charter.<sup>19</sup> It would seek and receive information from governments, non-governmental organizations, and individuals. It would also fashion economic standards and comment on major technological and military systems, their effect on human rights, individual and group security. It would aid groups in various countries. Human rights in this framework would assert that international economic actions must be in furtherance of aspirations which are stated in treaties and General Assembly Resolutions that seek to set out a framework in such matters as disarmament and apartheid.

We should note that the United States signs human rights declarations and other multilateral statements of principle in terms of their being goals. They are not meant as rules of behaviour. In the case of disarmament, we are not talking about goals but new rules of behaviour and institutions which internally support an alternative national and international security strategy.

It is therefore critical to pass legislation which creates a mechanism for holding officials responsible for their actions. Major treaties in other areas of international affairs as well, should affirm personal standards and accountability for Government officials as well as a standard of behaviour to which they and their States repair. The language of an international document should reiterate how the intent of the Charter is carried out in the document and the foreign policy pursued by the State.

There is an overriding need to develop transnational institutions which support each other and are used as transnational links for shared purposes. In this regard it is time to form a transnational grouping of parliamentarians, representatives of organizations, scholars and publicists, leaders of labor and consumer groups that would forge a series of legislative proposals to be presented for consideration in the world's parliaments. Such model legislation would aim at standards of personal responsibility of Government officials in the areas of economics, the environment and defense. Professional, military, labor and consumer organizations would be called upon to fashion Hippocratic oaths for Government officials, diplomats, natural and social scientists, and others so that an ethical and moral base could be asserted in government and civil society. Scholarship and public action would be expected to parallel the fundamental aspirations of the Charter and Declaration. Perhaps we will then be able to escape the tawdry sight of a leading economist receiving a Nobel prize while giving advice to a terror state which seeks to implement the "economic doctor's" policies.

Protecting the Rights of Civilian Populations

An important impetus to the disarmament effort and the broader human rights movement will be found in the recently-negotiated Protocols Additional to the 1949 Geneva Conventions on War and relating to the protection of victims of international armed conflict.<sup>20</sup> Negotiators, meeting under the sponsorship of the International Red Cross, have excluded weapons of mass destruction from their talks on the ground that such questions are being dealt with in another forum. The critical question remains whether all weapons will be subjected to the standards laid down in this treaty. It appears that the U.S. will take reservation on the question of nuclear weapons of mass destruction, but this is a serious mistake. It is ludicrous to develop laws of war which neither touch the nature of arms acquisition nor the existence of major weapons arsenals which are criminal by nature and harmful to any basic human rights.

We argue that the United States should take no reservation to the protocols, but rather should accept the full significance of this instrument. The over 115 nations that have signed or initialled the treaty should "bite the bullet," and consider that language as binding as their own conduct in national defense and arms policy. It should also be binding on negotiations for SALT or any comprehensive disarmament arrangement—whether negotiated in the U.N. Special Session on Disarmament or other forums. The articles of the protocol define conduct in such areas as care of sick and wounded civilians and military personnel, use of medical transportation, civil defense arrangements, and "methods and means of warfare combatant and prisoner-of-war status." We draw particular attention to those articles defining the terms of protection of civilian populations; these are of great significance in judging the

accumulation of weapons and the preparation for their use as a human rights problem.

These articles define civilians and civilian populations and prohibit indiscriminate attacks on them. According to Article 51, "Indiscriminate attacks are:

- (a) those which are not directed at a specific military objective;
- (b) those which employ a method or means of combat which cannot be directed at a specific military objective; or
- (c) those which employ a method or means of combat the effects of which cannot be limited as required by this Protocol;

and consequently, in each such case, are of a nature to strike military objectives and civilians or civilian objects without distinction."

Paragraph 5 continues, stating that an indiscriminate attack is one which treats as one military objective distinctly separate cities or towns; it is also

an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.

The terms of the treaty also protect civilians and civilian populations from attacks of reprisal and from being used as shields for military objectives. Other articles protect cultural objects and places of worship and "objects indispensable to the survival of the civilian population" -- i.e., foodstuffs, agricultural areas, crops, drinking water, etc. Article 55 prohibits the use of methods and means of warfare which cause "widespread, long-term and severe damage" to the environment.

"Works and installations" (dams, electrical generating stations, etc.) are protected--even if they are military objectives--if attacks on them would

endanger civilian lives (Article 56). Subsequent articles require those planning military operations to take precautions ensuring that civilian populations will not be attacked in the course of the operation. Furthermore, precautions must be taken against harmful effects on civilian populations during attacks (Articles 57 and 58).

This protocol can be conceptually linked with the various United Nations resolutions on comprehensive disarmament and with the terms of the Nuremberg and Tokyo war crimes proceedings. Together, the instruments create a strong framework for denouncing the accumulation of nuclear weapons of mass destruction which are held like a threatening sword over innocent populations. Such a framework must inform and be the basis of any international disarmament discussions because we are in mortal danger of turning defense policy into elements of crime.

#### Conclusion

Humankind will not begin to confront the massive and complex problem of promoting human rights without a will to do so on the part of governments and peoples. The legal instruments outlined in this discussion are mechanisms for beginning this process. Since Nuremberg the question of accountability of officials has been on the political agenda. For Americans, passage of an Official Accountability Act became more urgent as the result of three events: the Cuban Missile Crisis, in which millions of lives were risked; the Vietnam War, which was a criminal war; and Watergate, in which official power was abused. The United Nations Covenants on Human Rights, while being a "laundry list" of economic, social, political and civil rights standards, help to shape conceptions of rights in the thinking of citizens and leaders. Through such

instruments we may begin to codify the principles embodied in the Universal Declaration of Human Rights, the Nuremberg Charter, and similar statements.

Citizens must continually seek to sustain and enhance the moral basis of their society. We have argued that human rights are precedent to state power. But the people of a nation must define the substance and meaning of those rights, which when implemented will protect them against abuses of that power. The creation of legally binding instruments such as those outlined above is an important step in forming the structure of respect for human rights.

Indeed, the language of such instruments must not be seen as the language of foolish idealism. Rather the language should reflect an operational belief. Negotiations for the Protocol to the 1949 Geneva Conventions, disarmament and SALT negotiations must be conducted on this basis. National and transnational public interest groups can reinforce this process as they hold leaders responsible for the development and acquisition of both nuclear and conventional weapons systems. In this way people will assert their collective rights against their own and other governments, thus ensuring that they may live their lives in genuine security.

Human rights are an increasingly important element in the currents of world politics. Millions around the world are denied basic nutritional and medical needs and heavy-handed regimes, many of them supported by U.S. corporate power, crush the spirits and lives of countless more. We have argued that the threat to destroy civilization through the use of nuclear weapons overshadows the existence of all of us. That reality must now be seen as a human rights problem. Only through concerted action within and between groups of citizens can we hope to stop the last toll of the bell for humankind.

NOTES

<sup>1</sup>Quoted in "The Relevance of Nuremberg," Richard Wasserstrom, in War and Moral Responsibility, Edited by Thomas Nagel (Princeton: Princeton University Press, 1974), p. 139.

<sup>2</sup>Hans Kelsen, The Law of Nations (London: 1950), p. 29.

<sup>3</sup>Quoted in Heribert Golsong, Receuil des Cours (Academie de Droit International, 1963).

<sup>4</sup>Wasserstrom, p. 136.

<sup>5</sup>Sir Hersch Lauterpacht, International Law and Human Rights (Oxford: Oxford University Press, 1963).

<sup>6</sup>U.S. Department of State Bulletin, Vol. 14 (December 19, 1948), p. 751. Cited by James Frederick Green, The United Nations and Human Rights (Washington: The Brookings Institution, 1958).

<sup>7</sup>Ibid., pp. 700-770.

<sup>8</sup>Ibid., p. 703.

<sup>9</sup>Namba v. McCourt: PAC (2d) 569.

<sup>10</sup>Principle 7, Helsinki Accords, 1975.

<sup>11</sup>John Fried, "War-Exclusive or War Inclusive Style in International Conduct," Texas International Law Journal, Vol. 2, p. 11.

<sup>12</sup>G.I.A.D. Draper, "Human Rights and Armed Conflicts," Israel Yearbook on Human Rights, 1971, p. 103.

<sup>13</sup>Irving Louis Horowitz, Genocide (Transaction Press: 1976), p. 18.



<sup>14</sup> Compare Article 15 of the European Convention on Human Rights:

(1) In time of war or other public emergency threatening the life of the nation, any High Contracting Party may take measures derogating from its obligations under the Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law. (2) No derogation from Article 2 (right to life) except in respect of deaths resulting from lawful acts of war, or from Article 3 (No torture or inhuman punishments), 4 paragraph 1 (No slavery or servitude), and Article 7 (No crime without a law, international or municipal, existing at the time of commission) shall be made under this provision.

<sup>15</sup> Note also Re. Yamashita 327, U.S. 1 (1946).

<sup>16</sup> The same bill was introduced into the House of Representatives by various co-sponsors, in the following forms: HR 8388 on July 8, 1975; HR 9761 on September 22, 1975; and HR 10800 on November 18, 1975.

<sup>17</sup> Trials of War Criminals Before the Nuremberg Military Tribunals Under Control Council Law 11 (Washington: Government Printing Office, 1950), p. 488-489. Quoted by Sanford Levinson in "Responsibility for Crimes of War," in War and Moral Responsibility, ed. Thomas Nagel. This is the lesson that we can draw from the trials of over 10,000 Germans found guilty of war crimes. Where policies are undertaken which by their nature were breaches of laws of wars or international law, and the official was in a position to stop or veto such policies but failed to do so, that person could be held criminally responsible.

<sup>18</sup> SIPRI has commented on Kissinger's point in the following way: "But just what is it that is being 'capped'? Only, it seems, the number of strategic delivery vehicles and MIRVed missiles. Under such an agreement, the actual number of nuclear warheads carried by the bombers, missiles and submarines (and it is, after all, this number that really counts) could without any effective limitation, increase to the maximum carrying capacity of these vehicles--an increase which is very considerable indeed. The Soviet Union is only now beginning to put MIRVs on its missiles. But once begun, the MIRVing programme is likely to continue rapidly.

Most serious of all--and this is the crux of the matter--the qualitative arms race is not 'capped' in any way at all. . . . We can therefore look forward, even with SALT 2, to strategic nuclear arsenals containing tens of thousands of thermonuclear weapons.

Even the most enthusiastic Soviet or US military planner must find it difficult to discover targets for so many warheads." (World Armaments and Disarmament Yearbook, 1975, p. 12).

<sup>19</sup> This idea has been suggested by Peter Weiss in his essay Human Rights and Vital Needs (Washington: Transnational Institute, 1977).

<sup>20</sup>Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocols I and II), Geneva, July 1977. Draft protocols available from the Office of the Legal Adviser, U.S. Department of State, Washington, D.C.