

## UN Protection of Civil and Political Rights (John Carey)

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If it is true, then, that *Points of Rebellion* is aimed more at the stomach than at the brain, one question remains: whose stomach? One clue may be found in the almost total lack of citation of authority. In an earlier work, Douglas said: "Since I have written for laymen, no footnotes or citations have been included."<sup>20</sup> If laymen are also the target of *Points of Rebellion*, what is the likelihood that the book will hit the mark? Certainly those who are already unhappy with various aspects of present life in America will take comfort in the knowledge that an associate justice of the United States Supreme Court apparently shares many of their views. The reader may conclude, however, that the author has a broader goal; after all, the dire prediction of possibly violent revolution indicates a desire to change the minds of many persons so that violence will become unnecessary. And yet it is difficult to believe that this book will change many minds. When Justice Douglas says that "the powers-that-be faintly echo Adolf Hitler, who said in 1932: . . . 'We need law and order,'"<sup>21</sup> he forces the uncommitted or indifferent to choose between the "powers-that-be" ("Establishment"?) and himself. If it is unfair to liken the "powers-that-be," whoever they are, to Adolf Hitler, or if it appears to the uncommitted to be unfair, are not the uncommitted likely to side with the "powers-that-be"?

Anyone can emote. Most people expect more of an associate justice of the United States Supreme Court.

Robert P. Davidow\*

UN PROTECTION OF CIVIL AND POLITICAL RIGHTS. By John Carey. Syracuse, N.Y.: Syracuse University Press. 1970. Pp. xii, 205. 2 App. \$7.50.

In April-May 1968 the United Nations sponsored an International Conference on Human Rights in Teheran. U Thant, the United Nations Secretary-General, directed the attention of the Conference to the need for "an examination of the degree of effectiveness of the methods used by the United Nations" and its various subsidiary organizations for the protection of human rights. In his book *UN Protection of Civil and Political Rights*, John Carey points out that the Conference failed to make a systematic evaluation of many of the methods and techniques

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until it was declared invalid by the United States Supreme Court in *Harper v. Virginia Bd. of Elections*, 383 U.S. 663 (1966), in which Mr. Justice Douglas, himself, wrote the majority opinion.

<sup>20</sup> W. O. DOUGLAS, *supra* note 7, at vii.

<sup>21</sup> DOUGLAS 58.

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available to and employed by the United Nations for use in safeguarding human rights; he then takes upon himself the task of enumerating and evaluating these methods and techniques, a task which he ably fulfills.

Mr. Carey lists eight identifiable techniques for the protection of human rights: (1) legislation (in the Hudson sense); (2) investigation; (3) help for victims; (4) adjudication; (5) negotiation; (6) publicity; (7) education; and (8) force and coercion. He then devotes at least one chapter to a study in depth of each of these techniques. Unfortunately, these analyses reveal the existence of a number of major shortcomings in the methods presently employed by the United Nations and its specialized and other agencies.<sup>1</sup>

It will be recalled that the preamble of the Universal Declaration of Human Rights calls for "teaching and education to promote respect for these rights and freedoms." The statement has been made that "no more effective procedure for implementation of human rights could be conceived."<sup>2</sup> Mr. Carey very obviously has reservations as to the validity of that statement and, particularly, as to the effectiveness of the methods actually employed by the United Nations — seminars and fellowships. As he points out, the overall reach of these programs is to an exceedingly small number of persons, perhaps only in the hundreds worldwide. He feels that a program designed to reach a far greater number of persons, one that would really be meaningful, could result from the widespread implementation of the 1968 United Nations General Assembly Resolution which requests States to introduce and encourage the study in their schools of the principles of human rights. However, it must be realized that the States where such instruction is most needed are precisely those where the Resolution will be disregarded.<sup>3</sup>

Of particular interest is Chapter IV, entitled "Coercing Governments to Respect Basic Human Rights." The author therein treats of the Security Council's economic sanctions against Rhodesia, which he finds of dubious legal validity, terming it a "boot-strap" operation; of

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<sup>1</sup> Mr. Carey is well known as a strong supporter not only of human rights, but also of the United Nations. If this reviewer has any fault to find with the book, it is that, being anxious to see the United Nations attain its full potentiality, he is reluctant to castigate it even when castigation it deserves!

<sup>2</sup> Statement by former Cabinet Minister Brohi of Pakistan, 1968 Teheran International Conference, at 17.

<sup>3</sup> In another context the author quotes a witness before the Ad Hoc Group of Experts as saying, with respect to the Universal Declaration, that "[w]e have learnt through it, as have all men, those rights which are ours to demand, as men or as women, in our own country." J. CAREY, UN PROTECTION OF CIVIL AND POLITICAL RIGHTS 15 (1970). It is not difficult to name a great number of States which would, to say the least, be reluctant to educate their youth as to the civil and political rights "which are [theirs] to demand!"

the efforts to oust South Africa from various specialized agencies of the United Nations, which, to this reviewer, appear to be of even more dubious legal validity; and of the efforts of the same nature undertaken by regional organizations, the Greek problem in the Council of Europe being the specific example used.<sup>4</sup> It is easy to draw the conclusion that the author does not find that this technique has been particularly successful as a method for enforcing respect for basic human rights. And, unfortunately, the same conclusion must be reached with respect to the discussion of the techniques of noncriminal, Chapters V and VI, and criminal, Chapter VII, adjudication.

Mr. Carey believes, with good cause, that international negotiation offers considerable potentiality as a method of assisting human rights victims. He discusses the various instances wherein UN officials have sought by negotiation to protect human rights, instances which, while not as numerous as might have been hoped, are still not isolated. One big step forward in this area, he feels, would be affirmative action by the General Assembly on the recommendation for the creation of a United Nations High Commissioner for Human Rights, paralleling the long-established and highly respected United Nations High Commissioner for Refugees. In this regard he says:

One of the present High Commissioner's functions is negotiation with the refugee's former government respecting repatriation under conditions feasible for the refugee. Only the circumstances of the refugee's having left his country differentiates his case from that of the oppressed person still in his own country, on whose behalf the new High Commissioner for Human Rights might negotiate.<sup>5</sup>

However, as the author points out, the creation of such an office is vigorously opposed by the socialist countries, especially the USSR, once again with the old shibboleth of "national sovereignty." As a result, no action has been taken by the General Assembly on the proposal to create such an office, a proposal which reached the General Assembly several years ago.

When the Ad Hoc Group of Experts, created by the United Nations Commission on Human Rights early in 1967, completed its first "investigation" of prison conditions in South Africa, Mr. Carey wrote

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<sup>4</sup> The author, writing with a closing date of July 1, 1969, was somewhat pessimistic of the results to be expected with regard to action against Greece. Since then, of course, after the adverse report resulting from the investigation conducted by the European Commission on Human Rights, Greece has withdrawn from the Council of Europe, rather than risk the expulsion which was inevitable. N. Y. Times, Dec. 13, 1969, at 1, col. 7.

<sup>5</sup> J. CAREY, *supra* note 3, at 72.

an article describing the procedures followed by the Group.<sup>6</sup> That article constitutes the first half of Chapter X, entitled "The UN's South African Investigations." The reader will be disheartened to learn of the completely nonjudicial manner, and the complete absence of an acceptable procedure, in which the investigation was ordered and conducted. Thus, the resolution of the United Nations Commission on Human Rights, which created the Ad Hoc Group of Experts, condemned as existing the very thing the existence of which the Group was to determine by investigation. The Commission Chairman, in reporting the Ad Hoc Group's creation to the Secretary-General, stated that at the Commission's meetings, held prior to the creation of the Ad Hoc Group, the subject to be investigated had already been "established"; and the Ad Hoc Group's ad hoc *modus operandi* has delayed for years the development by the United Nations and its organs of an effective and proper system of conducting investigations. The deficiencies of the Ad Hoc Group's initial investigation are summarized by the author as follows:

The effectiveness of the process described by the witnesses depends largely on the investigative group's being invulnerable. The Government of South Africa is not likely to be embarrassed by the findings of a group with whose composition it can easily find fault. The exclusion of prison experts and non-governmental persons from the Group, in view of the requirement of the applicable ECOSOC resolution and the Commission's own stipulation, gave the Government an easy and unnecessary basis for complaint. South Africa was given another ground on which to criticize the Group when the latter summarily dismissed the testimony of a body with the history and reputation of the International Committee of the Red Cross.

To be effective in giving pause to an oppressive regime like that of South Africa, a UN investigative body would need to conduct its inquiries with the utmost circumspection. Justice would not only *need* to be done, but also be *seen* to be done. The body or persons whose accusations gave rise to the investigation should be strictly separated from the tribunal finding the facts. Conclusions should not be announced in advance. Testimony should be probed, if the respondent government does not do so, through intensive questioning by a *advocatus diaboli* using the techniques of either the European *juge d'instruction* or the Common Law cross-examiner. Without such simple reforms, an opportunity for great fulfillment of the UN's human rights responsibility may be lost.<sup>7</sup>

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<sup>6</sup> Carey, *United Nations Scrutiny of South African Prisons*, 1 HUMAN RIGHTS J. 531 (1968).

<sup>7</sup> J. CAREY, *supra* note 3, at 109-10. This is one of the areas wherein this reviewer believes the author to have been too mild in his criticism. He merely says: "The *Ad Hoc*

The balance of this chapter, dealing with subsequent investigations conducted by the same Ad Hoc Group, makes it clear that there have been no improvements in either its membership or its procedures. Mr. Carey appears reluctant to state in so many words, but certainly can be construed as implying, that it is indeed unfortunate that the Human Rights Commission has continued to assign investigatory tasks to a group so ill-chosen and so ill-fitted for those tasks. The United Nations has an opportunity in this area which it may well lose by permitting the continued existence and functioning of such a prejudiced, incompetent agent.<sup>8</sup>

Chapter XI, "Sources of Information on Violations," discusses the various means by which UN bodies obtain information concerning violations of human rights: governmental reports; reports of non-governmental organizations; petitions of individuals; and hearing and observation. The importance of, and the limitations and restrictions placed upon, individual petitions or complaints, is demonstrated by the fact that the author devotes an additional full chapter, Chapter XII, to this subject under the rubric "The UN's Double Standard on Treatment of Complaints." Thus, Mr. Carey points out that persons filing complaints against a Trust Administrator, a colonial government, or South Africa, have their complaints reproduced and circulated to all UN Members and depositories; while complaints against independent governments are given "the veil of UN secrecy." That this double standard has long been a source of irritation to the author is evidenced by the fact that in 1966, while he was serving as a member of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, he was quoted as having

[c]ontrasted the frequent publication by United Nations bodies of human rights complaints regarding dependent areas and South Africa with the private treatment of complaints regarding other areas.<sup>9</sup>

Mr. Carey has produced a clearly-presented, easily-read and easily-understood book on a subject close to his heart, a subject which is of

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Group was established to serve a quasi-judicial function requiring impartial search for the truth, a goal not fully achieved in the South African prisons inquiry." *Id.* at 108.

<sup>8</sup> The text leaves no doubt that the author holds no brief for South Africa. Quite the contrary! But as a lawyer he is rightly concerned that a good case is being dissipated by investigations which are inept and misguided.

<sup>9</sup> J. CAREY, *supra* note 3, at 144-45 n.5. The practice to which the author objects has recently been exacerbated by the instructions of the Secretary-General to all United Nations Information Centers, issued at the insistence of the USSR, prohibiting those Centers from even accepting and forwarding such petitions, a reversal of a 20-year policy. *N. Y. Times*, Oct. 4, 1969, at 1, col. 5.

transcendental importance in this topsy-turvy era of human life. For any student of human rights, amateur or professional, private or governmental, national or international, John Carey's *UN Protection of Civil and Political Rights* is a must.

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