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Oscar Schachter

THE CHARTER AND THE CONSTITUTION: THE HUMAN RIGHTS PROVISIONS IN AMERICAN LAW

OSCAR SCHACHTER*

The United Nations has added new complications to the well-worn subject of treaties and the Constitution. The issues have arisen principally in the field of human rights and, inevitably, constitutional discussions have reflected the political as well as the legal complexities. One consequence has been an apparent shift in legal positions: bar association leaders, long devoted to strict construction, have been inclined recently to stress the broad and expansive character of the treaty power and the supremacy clause;[1] in contrast, U.S. Government officials normally expected to support federal power have increasingly emphasized constitutional limitations.[2] In political terms, this turnabout is not as paradoxical as it might appear: the one group draws attention to the far-reaching effects of treaties on internal law in order to discourage adherence of the United States; the other group, in response, seeks to limit somewhat the impact of the treaties on domestic law in order to gain wider support for U.S. participation. There are, in turn, repercussions on the international level. Within the United Nations, delegates of other countries are not always prepared to accept U.S. constitutional difficulties as a sufficient reason for restrictive treaty clauses.[3] There is an understandable reluctance to make exceptions which might result in inequality of obligation and questions have been raised regarding both the legal interpretation and the political motives of the U.S. delegates raising constitutional points.[4]

In the courts of the United States, the problem of the effect of treaties on domestic law has been raised in regard to the United Nations Charter

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*Deputy Director, United Nations Legal Department. The views of the author are his own and do not necessarily reflect the official opinion of the Organization with which he is associated.

1. See Holman, *Treaty Law-Making*, 36 A.B.A.J. 707 (1950); Rix, *Human Rights and International Law*, 35 A.B.A.J. 551 (1949).

2. See, for example, statements by Mrs. Roosevelt at U.N. Gen. Ass. 5th Sess., 3d Comm. (Docs. A/C.3/SR.292, 293, 308); by Benjamin V. Cohen, U.S. representative, Gen. Ass., 4th Sess., 6th Comm. (A/C.6/SR.201); and by the Solicitor-General, Mr. Perlman, before Senate Sub-Committee considering Genocide Convention. *Hearings before Senate Sub-Committee of Committee on Foreign Relations on Executive Order*, 81st Cong., 2nd Sess. 30, 31 (1990).

3. United Nations organs have been concerned with American constitutional questions principally because of two treaty provisions proposed by the U.S. delegation. One is the federal clause under which federal governments would not be obligated to carry out those treaty requirements which fall within provincial or state rather than federal jurisdiction; the other is the so-called "non-self-executing" clause which is designed to make it clear that the treaty provisions shall not be automatically operative in domestic law. These clauses have been proposed for inclusion in several U.N. conventions, including particularly the draft Covenant on Human Rights. See references in footnotes 2 and 4.

4. See, *e.g.*, statements in U.N. Gen. Ass., 5th Sess., 3d Comm., by representatives of Pakistan (A/C.3/SR.308), Mexico (*ibid.*), Poland (A/C.3/SR.203), India (*ibid.*), Uruguay (A/C.3/SR.292).

itself and in particular with respect to the question of whether the human rights provisions have become, by virtue of the supremacy clause of the constitution, part of the law of the land, directly binding on the courts. It is this problem—one that has divided the courts[5]—that is the subject of the present article. In dealing with it we shall have to consider three controversial issues: (1) when a treaty is self-operative under the constitution; (2) whether the Charter provisions on human rights impose legal obligations on member States; and, (3) whether, granting the obligatory effect of the Charter provisions, they are capable of constituting a rule of law for the courts notwithstanding the absence of the legislative implementation.

WHEN IS A TREATY SELF-EXECUTING?

The Charter is of course the supreme law of the land by virtue of the Constitution;[6] but it does not follow from this that all of its provisions are automatically operative as domestic law. It is obvious that if a treaty provision by its own terms or nature requires subsequent legislation before it can be made effective, then it cannot be "self-executing"—that is, it cannot, by itself, be a rule of law binding upon a court.

While this statement is a truism—one might even say a tautology—it is by no means always clear just when the "terms or nature" of a treaty require legislative action. Courts and commentators sometimes suggest that the test has been laid down in an oft-quoted statement of Chief Justice Marshall in the case of *Foster v. Neilson:*[7]

> "In the United States a different principle is established. Our constitution declares a treaty to be the law of the land. It is, consequently, to be regarded in courts of justice as equivalent to an act of the legislature, whenever it operates of itself without the aid of any legislative provision. But when the terms of the stipulation import a contract, when either of the parties engages to perform a particular act, the treaty addresses itself to the political, not the judicial department; and the legislature must execute the contract before it can become a rule for the Court."

5. See Fujii v. California, 217 P.2d 481 (Cal. App. 1950), 4 VAND. L. REV. 172; Oyama v. California, 332 U.S. 633, 68 Sup. Ct. 269, 92 L. Ed. 249 (1948) (especially the concurring opinions of Murphy and Douglas); Sipes v. McGhee, 316 Mich. 614, 25 N.W.2d 638 (1947), *rev'd*, 334 U.S. 1, 68 Sup. Ct. 836, 92 L. Ed. 1161 (1948); Namba v. McCourt, 185 Ore. 579, 204 P.2d 569 (1949); Kemp v. Rubin, 188 Misc. 310, 69 N.Y.S.2d 680 (Sup. Ct. 1947). The issue was also raised in briefs of counsel and of *amici curiae* in the cases of Shelley v. Kraemer, 334 U.S. 1, 68 Sup. Ct. 836, 92 L. Ed. 1161 (1948); Hurd v. Hodge, 334 U.S. 24, 68 Sup. Ct. 847, 92 L. Ed. 1187 (1948); Boyer v. Garrett, 183 F.2d 582 (4th Cir. 1950).

6. "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. CONST. Art. 6, cl. 2, § 7.

7. 2 Pet. 253, 314, 7 L. Ed. 415 (1829). This case arose out of a suit to recover a tract of land in Louisiana in which plaintiff relied upon a Spanish grant of 1804 and on Art. VIII of the Florida cession treaty of 1819, providing that grants of land should be ratified and confirmed to the persons in possession. The court held that this article of the treaty was not intended to be self-executing; but this was overruled only four years

It is, however, evident that this statement does not in itself provide a workable test to determine whether a provision in a treaty requires legislative action. In almost all treaties one of the "parties engages to perform a particular act" but in many of these treaties the particular acts can be performed by judicial or administrative officers without the aid of legislative action.[8] On occasion, a court has construed the Marshall statement to mean that a treaty is not to be considered self-operative if its language is cast in the future tense.[9] But to take "futurity of language" as the test makes little sense since the future tense is often used in treaties when they are intended to operate in the future and it in no way indicates that legislation is necessary. The Supreme Court certainly does not consider either the use of future language or the agreement of a party to perform a particular act as an indication that a treaty is not self-executing.[10]

An examination of the cases reveals that there are only two clear situations where a treaty provision requires legislative action before it can become effective: (1) where the treaty has an explicit provision to this effect[11] and (2) where the power to deal with the subject of the treaty is vested solely in the legislature, as for example a provision calling for criminal penalties or requiring a direct appropriation of money.[12] Outside of these two categories it does not seem possible to generalize regarding the kind of treaties which

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later in United States v. Percheman, 7 Pet. 51, 8 L. Ed. 604 (1833), which held that the treaty provision originally judged not to be self-executing was in fact intended to have effect *ex proprio vigore.*

8. *See, e.g.,* Bacardi Corp. v. Domenech, 311 U.S. 150, 161, 61 Sup. Ct. 219, 85 L. Ed. 98 (1940), which concerned the Inter-American Convention for Trademark and Commercial Protection of 1929. In this case the Supreme Court held self-executing a provision that "Every mark duly registered or legally protected in one of the contracting states shall be admitted to registration . . . and legally protected in the other Contracting States upon compliance with the formal provisions of the domestic law of such States." *Id.* at 159.

9. Robertson v. General Electric Co., 32 F.2d 494, 500 (4th Cir. 1929). But this case involved a patent treaty which the courts traditionally consider as requiring legislative implementation. See *infra* note 14.

10. See Clark v. Allen, 331 U.S. 503, 67 Sup. Ct. 1431, 91 L. Ed. 1633 (1947); Bacardi Corp. v. Domenech, 311 U.S. 150, 61 Sup. Ct. 219, 85 L. Ed. 98 (1940); Santovincenzo v. Egan, 284 U.S. 30, 52 Sup. Ct. 81, 76 L. Ed. 151 (1931); Asakura v. Seattle, 265 U.S. 332, 44 Sup. Ct. 515, 68 L. Ed. 1041 (1924); United States v. 43 Gallons of Whiskey, 93 U.S. 188, 23 L. Ed. 846 (1876).

11. *E.g.,* Article 5 of the Convention on the Prevention and Punishment of the Crime of Genocide. See discussion of effect of this article in *Hearings before Senate Sub-Committee of Committee on Foreign Relations on Exec. Order,* 81st Cong., 2d Sess. 13, 30 (1950); SCHROEDER, INTERNATIONAL CRIME AND THE U.S. CONSTITUTION (1950); McDougal & Arens, *The Genocide Convention and the Constitution,* 4 VAND. L. REV. 683 (1950). See also Article 8 of Treaty on Migratory Birds of 1916, 3 MALLOY, TREATIES 2648 (1923) [implemented by the Congressional Act of 1918 sustained in Missouri v. Holland, 252 U.S. 416, 40 Sup. Ct. 382, 64 L. Ed. 382 (1920)]; Article 12 of Convention for Protection of Submarine Cables of 1884, 2 MALLOY, TREATIES 1954 (1910).

12. The Over the Top, 5 F.2d 838 (D. Conn. 1925); Turner v. American Baptist Missionary Union, 24 Fed. Cas. 344, No. 14,251 (C.C.D. Mich. 1952); 2 HYDE, INTERNATIONAL LAW 1455 (2d rev. ed. 1947).

require legislative implementation;[13] each case must be examined on its own merits in order to determine whether the treaty provision may become presently effective without awaiting further legislation.[14]

In the case of the human rights provisions of the Charter[15] this involves two principal questions. First, do the Charter provisions impose upon Members a legal obligation with respect to the observance of human rights? Obviously, if the provisions of the Charter express general principles or purposes rather than legal norms, they cannot, by their own terms, be considered as part of domestic law. Second, even if the provisions impose legal obligations, are these obligations capable of execution by the courts without further action by the legislature? In particular, are they sufficiently clear and definite to constitute a rule of law which can be given practical effect by the courts in specific cases?

DO THE HUMAN RIGHTS PROVISIONS INVOLVE LEGAL OBLIGATIONS ON THE PART OF MEMBER STATES?

As we have seen, unless this question is answered in the affirmative, the human rights provisions cannot be considered as rules of law by American courts. But the question has of course wider significance than its implications for American law; for whether or not the Charter provisions on human rights prescribe legal duties is a matter of considerable importance to all of the Members of the United Nations.

This issue has been a subject of controversy since the establishment of the United Nations. In most cases the discussions bave consisted largely of conclusions supported only by fragmentary reference to legislative history. However, it is a problem which warrants the most careful analysis of the language of the Charter and of the intentions of the draftsmen as revealed in the *travaux prèparatoires.*

The principal provisions of the Charter involved are Articles 55(c) and 56:

> *"Article 55.* With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect

13. It might, however, be noted that the courts have traditionally found treaties dealing with patents as non-self-executing and as requiring legislative action. See Robertson v. General Electric Co., 32 F.2d 494 (4th Cir. 1929); also Cameron Septic Tank v. Knoxville, 227 U.S. 39, 33 Sup. Ct. 209, 57 L. Ed. 407 (1913).

14. "An examination of the decisions of the Supreme Court on this topic will show there is no practieal distinction whatever as between a statute and a treaty with regard to its becoming presently effective, without awaiting further legislation. A statute may be so framed as to make it apparent that it does not become practically effective until something further is done, either by Congress itself or by some officer or commission intrusted with certain powers with reference thereto. The same may be said with regard to a treaty. Both statutes and treaties become presently effective when their purposes are expressed as presently effective." Putman, J., in United Shoe Machinery Co. v. Duplessis Shoe Machinery Co., 155 Fed. 842, 845 (1st Cir. 1907). See Dickinson, *Are the Liquor Treaties Self-Executing?* 20 AM. J. INT'L. L. 444 (1926).

15. Particularly Articles 55 and 56 of the Charter (quoted in full later in the text).

for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

"a. higher standards of living, full employment, and conditions of economic and social progress and development;

"b. solutions of international economic, social, health and related problems; and international cultural and educational co-operation; and

"c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

"*Article 56.* All members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55."[16]

It has been maintained by some authorities that in spite of the "pledge" expressly taken in Article 56, these provisions do not impose upon Members of the United Nations the legal obligation to respect and observe human rights and fundamental freedoms. The provisions of the Charter are characterized as statements of "guiding principles"[17] or "general purposes,"[18] or indeed, as "legally meaningless and redundant."[19] In support of this conclusion, the essential argument is that the United Nations has no compulsory powers in regard to human rights; this is an argument based first on the fact that the organs concerned with human rights (*i.e.* the General Assembly and the Economic and Social Council) may only make recommendations which have no obligatory effect and secondly on Article 2(7), forbidding United Nations intervention in matters of domestic jurisdiction. Kelsen also supports this position with special reference to the language of Article 56. He points out that the pledge is "to take joint and separate action in co-operation with the Organization"; he then states that the only effective way to co-operate with the Organization is by compliance with the recommendations of the appropriate organs; but the Charter does not make such recommendations obligatory; hence (he infers) it is left solely to the Members to decide what kind of action they think appropriate to achieve the co-operation sought by the Organization. Consequently, Kelsen concludes, the pledge does not express a "true obligation."[20]

This brings us to the crux of the problem; Is the pledge to take action in co-operation with the Organization negated by the fact that the Organization admittedly cannot make mandatory decisions in regard to human rights? Or, stated in another way, if it is admitted (as it must be) that an organ may not "order" a Member to take action regarding human rights, does that mean that the Member may act as it deems appropriate, entirely free from legal limitations under Article 56? Is it possible to have legal

16. Other references to human rights in the Charter may be found in Articles 1(3), 13(1), 62(2) and 76.
17. Kunz, 43 AM. J. INT'L. L. 316-18 (1949).
18. Hudson, 44 AM. J. INT'L L. 543, 545 (1950), 43 *id.* 105, 107 (1948).
19. KELSEN, THE LAW OF THE UNITED NATIONS 100 (1950).
20. *Ibid.*

obligation to act "in co-operation" which does not require full compliance with the recommendations of the Organization?

In considering these questions it is necessary to review briefly the language and history of the human rights provisions. It may be useful to begin with the word "pledge" as used in Article 56. A pledge in its ordinary English meaning is a solemn promise or an undertaking; as used in a legal instrument, the word itself connotes a legal obligation. In the French version *"les Membres s'engagent . . . à agir"*;[21] this too is the language of legal obligation. The discussions at San Francisco show that this was not accidental;[22] it was stated that "pledge" has been used as a term at least as "strong" as the word "undertake" and that the Technical Committee which drafted the provision attached particular importance to this point.[23] It is therefore difficult to avoid at least a *prima facie* conclusion that the pledge in Article 56 was intended to constitute a legal commitment on the part of Members.

Now, it is also true that in the course of formulating Article 56 many of the delegations insisted that this provision would not mean that the Organization would have the right to interfere with the internal affairs of Members.[24] It was the understanding that Article 2(7), the "domestic jurisdiction" clause applied to Articles 55 and 56 and consequently that "intervention" (or enforcement) of human rights by the United Nations was prohibited. But whatever may be the precise meaning of this clause it in no way implies that the pledge in Article 56 is without legal force.[25] It is after all a commonplace in international law that States assume duties of a legal character which are not enforceable by international organs.[26] The Charter itself has many other articles imposing obligations with no provision for enforcement or implementation. Of course, some jurists consider that these are not true legal obligations since they do not involve sanctions for

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21. The full French text of Art. 56 reads as follows: *"Les Membres s'engagent, en vue d'atteindre les buts énoncés à l'article* 55, *à agir, tant conjointement que séparément, en coopération avec l' Organisation."*

22. See particularly the discussion at the 15th meeting of Comm. II/3 U.N.C.I.O., Doc. 699, II/3/40. See also statements quoted in notes 37 and 51 *infra.*

23. 7th meeting of Co-ordinating Committee at San Francisco, U.N.C.I.O. Doc. W.D.300, CO/121.

24. Report of the Rapporteur of Committee 3 of Commission II included the following statement: "The members of Committee 3 of Commission II are in full agreement that nothing contained in Chapter IX can be construed as giving authority to the Organization to intervene in the domestic affairs of member states." U.N.C.I.O. Doc. 861, II/3/55. This is substantially the language of Article 2(7), the "domestic jurisdiction" clause.

25. "Even if the U.N. had no power at all to enforce it, directly or indirectly, the legal duty itself would remain in full vigour." LAUTERPACHT, INTERNATIONAL LAW AND HUMAN RIGHTS 166 (1950). This recent study by a distinguished scholar contains a characteristically incisive analysis of the domestic jurisdiction clause as applied to human rights. See particularly pp. 166-220. See also FINCHHAM, DOMESTIC JURISDICTION (1948) for a valuable general survey.

26. JESSUP, A MODERN LAW OF NATIONS 4 *et seq.* (1948); LAUTERPACHT, *op. cit. supra* note 25, at 34.

contrary conduct;[27] but this is a specific use of the term obligation which is not generally accepted in international law or in the interpretation of the Charter.[28] Throughout the Charter it is evident that obligations are imposed upon Members, even though in most cases these obligations do not have sanctions.[29] Indeed, it may even be persuasively argued that the concern of the draftsmen in connection with Article 56 with the prohibition against intervention was based on their understanding and intention that this Article should constitute a legal undertaking, for if it were only a statement of purposes, there would have been little reason to stress noninterference by the Organization.[30]

It is also of considerable significance that in the actual application of the Charter, the Members of the United Nations have found no incompatibility between the principle of nonintervention in Article 2(7) and the position that Members have a definite legal responsibility with respect to human rights by virtue of Article 56. In more than one resolution adopted by the General Assembly, it is clearly stated that Members have made a legal commitment to respect and observe human rights;[31] and in the course of U.N. discussions, numerous representatives including several of legal eminence, have consistently maintained the position that the Charter imposes obligations of a legal character on Member States in regard to the observance of human rights.[32]

This brings us to a further point of controversy: even if it is conceded that there is a legal commitment in Article 56, is it not merely a general duty to co-operate which can be construed by each State as it sees fit, and does this not in effect nullify the notion of a legal obligation? Here again, the *travaux préparatoires* afford some illumination. It appears from the San Francisco records that, at one stage, the pledge in Article 56 was threefold: it called for joint action, for separate action, and for co-operation with the

27. This is, for example, the position in KELSEN, THE LAW OF THE UNITED NATIONS 88, 96 (1950). In general on Kelsen's approach see Schachter, Book Review, 60 YALE L.J. 189 (1951).

28. 1 OPPENHEIM, INTERNATIONAL LAW 15 *et seq.* (7th ed., Lauterpacht, 1948); BRIERLY, THE LAW OF NATIONS 39, 45 (2d ed. 1934); opinion of Story, J., in United States v. The Schooner La Jeune Eugénie, 26 Fed. Cas. 832, No. 15,551 (C.C.D. Mass. 1822).

29. See, *e.g.*, Articles 2, 24, 25, 43, 45, 48, 49, 73, 84, 88, 94, 100.

30. See discussions of Comm. II/3 referred to *supra* note 22.

31. In particular Resolution 44(I) relating to the treatment of people of Indian origin in the Union of South Africa; Resolution 285 (III) regarding violation by the U.S.S.R. of fundamental human rights (Russian wives). See also Resolution 103(1) on persecution and discrimination.

32. For example, Prof. Spiropoulos of Greece in 6th Comm. of Gen. Ass., 3d Sess. (A/C.6/SR.138, p. 8); Prof. Scelle of France at 1st Sess., International Law Comm. (A/CN.4/SR.20, p. 14); B.V. Cohen, U.S. representative, Gen. Ass., 3d Sess., *Ad-Hoc* Polit. Comm., 35th meeting (A/AC.24/SR.35); Mr. Justice Chagla of India, Gen. Ass., 1st Sess., Joint 1st and 6th Comm. (Off. Rec. p. 10); Gen. Romulo of the Philippines (*id.* at 29).

Organization.[33] The U.S. delegation then expressed doubt concerning the pledge to take separate action; it preferred simply a pledge to co-operate.[34] But the Australian delegation, the original sponsor of this provision, continued to urge inclusion of a pledge to take separate action as distinguished from co-operation; this position was supported by the Belgian and British delegations.[35] The final text represented a compromise: the pledge to take separate action was qualified by the phrase "in co-operation with the organization." This compromise text does not seem to have received further clarification in the San Francisco discussions; and no opinions were expressed specifically on what was meant by "co-operation with the Organization." It appears that the U.S. delegation favoured this qualification in order to eliminate the possibility of an interpretation under which the obligation would extend to "internal economic matters . . . and therefore the Organization would be permitted to intervene in them."[36]

The foregoing history seems to bring out several points of significance in connection with this problem. First, it reveals that the draftsmen in San Francisco rejected a text which provided merely for a pledge to co-operate with the Organization and that they attached importance to the words "separate action," although such action was to be "in co-operation with the Organization."[37] Secondly, it indicates that this latter expression was mainly intended to avoid the implication that "separate action" would open the door to intervention by the United Nations in domestic affairs.[38] Thirdly, there is no indication that the phrase "co-operation" was intended to confer unlimited discretion on the Member States, a result which would be almost the direct opposite of the normal meaning of co-operation and of the Committee's intentions.[39] Admittedly, the record also indicates that the obligation is far

33. See text proposed by Sub-Committee at 12th meeting of Comm. II/3, U.N.C.I.O. Doc. 599, II/3/31.

34. This position was inserted in a later version of the text, see Doc. 684, II/3/38, p. 4.

35. 15th meeting of Comm. II/3, cited *supra*, note 22.

36. Mr. Stassen, U.S. representative, at Comm. II/3, 15th meeting. Doc. 699, II/3/40. The same point is also made in substance in the Report to the President by the Chairman of the U.S. Delegation. DEP'T OF STATE PUB. No. 2349, p. 116 (June 26, 1945).

37. When the final draft of Article 56 was being considered by the Committee, the Australian representative, Dr. Evatt, moved its adoption with the following statement: "Taking this document as it stands it is a pledge, it is a pledge to take joint action, and is a pledge to take separate action. The Russian colleague said in his language there is no difference between the word 'several' and the word 'separate'. Well, we preferred the word 'separate' and the United States agreed with that. But it is a pledge to take action and take it in co-operation with the Organization, and it is on that point that United States put their view very strongly." U.N.C.I.O. Doc. 747, II/3/46.

38. See particularly statement of U.S. representative (Mr. Stassen) at 15th meeting of Comm. II/3. Doc. 699.

39. The legislative history thus offers no support to Kelsen's point *(supra)* that since "co-operation" could not mean obligatory compliance with the recommendations of the General Assembly, it would have to mean that the states were entirely free to decide what was meant by co-operation. But in fact the Committee inserted the phrase in order to indicate that the separate action being pledged should be in keeping with the basic policies of the Organization. Thus, the Committee actually sought a middle position

from precise and leaves considerable latitude to each Member State to carry it out in its own way.[40] But does this mean that it cannot be considered a legal obligation? In view of both the history and the language of this Article, this would certainly be an extreme conclusion; it would, in effect, make a mockery of the efforts of the draftsmen at San Francisco to formulate a pledge which would have legal significance and effectiveness. There is certainly no overriding reason to arrive at this result.

It must be borne in mind, in this respect, that the degree of precision required in a treaty is not the same as that demanded of a criminal statute. Treaty obligations are often expressed in general terms and leave broad discretion to the States which are Parties.[41] But the fact that a State is free to carry out those obligations by its own methods and its own way does not destroy the legal character of this obligation.[42] In the case of Article 56 there is no compelling reason to define *a priori* and in detail all the implications of the obligation; it is evident that there are large areas where the purposes under Article 55 are as yet so undefined that it is impossible to say what kind of action would be required if a State is to co-operate with the Organization.

However, it is equally evident that in other respects the broad language of Article 55 has specific meaning and effect; this is particularly true of clause (c) relating to human rights and fundamental freedoms. The clause itself contains the significant prohibition against discrimination because of race, sex, language or religion, a theme which is recurrent throughout the Charter[43] and which in itself furnishes considerable content to the notion of human rights.[44] Moreover, it must not be forgotten that the concept of human rights is not an abstract notion introduced for the first time in the Charter; it has had (under various names) a long and rich history in constitutional law, in the practice of states and in the development of the law of nations.[45] Nor is it irrelevant in this connection to consider the wide

between the two extremes posed by Kelsen as the only alternatives. *Cf.* J. ROBINSON, HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN THE CHARTER OF THE UNITED NATIONS 72, 73 (1946).

40. Report to the President, *supra* note 36 at 116.

41. "Few terms of art may be said to exist in international law, and as the terms employed in international instruments seldom have an exact meaning, they can be interpreted only by giving content to them." HUDSON, THE PERMANENT COURT OF INTERNATIONAL JUSTICE 1920-1942, 641 (1943).

42. See 2 HYDE, INTERNATIONAL LAW 1455, 1463 (2d rev. ed. 1947).

43. *E.g.*, Articles 1(3), 13(1), 76(c).

44. This point was made by some delegates in the debate on the Treatment of Indians in South Africa; see Gen. Ass. 1st Sess., Joint 1st and 6th Comm. Off. Rec. pp. 4-33.

45. The constitutions of the following countries (in addition to the U.S.) recognize and list fundamental rights: Belgium, France, Denmark, Norway, Sweden, Switzerland, U.S.S.R., China, Thailand, Turkey, Japan, Italy, Indonesia, Afghanistan and virtually all the Latin-American countries. For U.S. definition of essential rights see REPORT OF PRESIDENT'S COMMITTEE ON CIVIL RIGHTS 6-10 (1947); also U.S. Supreme Court cases cited *infra* note 64.

International instruments which recognize and specify particular basic rights include the five Peace Treaties of 1947 and various U.N. Trusteeship Agreements. See also Nuremberg Charter, Art. 6(c), on crimes against humanity and the Convention on the

measure of agreement regarding most specific rights and freedoms which was revealed during the preparation of the Declaration on Human Rights and by the specific resolutions adopted by the General Assembly and other principal organs.[46] Though the outer boundaries of "human rights" remain undefined (perhaps undefinable) it can hardly be denied that the concept has a special core of meaning which is widely recognized and accepted. Certainly an American lawyer familiar with the due process and equal protection clauses and the other broad phrases of the U.S. Constitution is not likely to take the position that a concept such as human rights must be denied legal effect because of its breadth and generality.[47]

There is therefore no sufficient reason to characterize Article 56 as a mere statement of purpose, devoid of legal effect. To do so as we have seen, would be contrary to both the language and the ascertainable intentions of the framers of the Charter. And even if it be granted that there is some obscurity in the text or the intent of the drafters, the choice between alternative interpretations should legitimately be resolved in favour of that construction which best effectuates the major purposes of the provision.[48] In this case, obviously the major purpose is the promotion of human rights;[49] if a "pledge" to take action to achieve that purpose is interpreted as having no obligatory effect, the whole point of the pledge is lost and it becomes entirely superfluous. A construction which renders an article virtually mean-

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Prevention and Punishment of Genocide. In general see LAUTERPACHT, INTERNATIONAL LAW AND HUMAN RIGHTS (1950); also Stettinius, *Human Rights in the U.N. Charter*, 243 ANNALS 1 (1946).

46. On history of Universal Declaration, see N. ROBINSON, THE UNIVERSAL DECLARATION OF HUMAN RIGHTS (1950). See Gen. Ass. Res. 44(I), 103(I), 128(II), 272(III), 285 (III), 294(IV), 314(IV), 323(IV), 324(IV); Economic and Social Council Res. 52(IV) and 239(IX) on trade union rights. It is not, of course, suggested that Universal Declaration or the various resolutions have obligatory effect, but rather that they demonstrate since they were almost all adopted by unanimous or near-unanimous votes that there is a large area of international agreement on the specific content of human rights.

47. The well-known statement of Mr. John Foster Dulles made at San Francisco in regard to the domestic jurisdiction clause would also appear pertinent in regard to the broad and general language on human rights: "What is needed is a principle that is sufficiently basic to guide the organization through the many years to come, and to permit of evolution according to what may, during those years, be the developing ideas and changing conditions of the world community. . . .

"We in the United States have repeatedly given thanks that the framers of our Constitution did not attempt to be legalistic and to set up rigid lines of demarcation. We here will equally serve the cause of posterity if we adopt for the world organization a principle of simple language, which is clear in its intent and flexible in its application." Statement before Comm. I/1, verbatim in N.Y. Times, June 16, 1945, p. 9, col. 3.

48. The rule of "effectiveness" in the construction of treaties—which in the United States is usually referred to as the liberal interpretation of treaties—has frequently been recognized by the U.S. Supreme Court. See Stone, J. in Barcardi Corp. v. Domenech, 311 U.S. 150, 61 Sup. Ct. 219, 85 L. Ed. 98 (1940); Geofroy v. Riggs, 133 U.S. 258, 10 Sup. Ct. 295, 33 L. Ed. 642 (1890); 2 HYDE, INTERNATIONAL LAW 1479-80 (2d rev. ed. 1947). For international law authorities see Harvard Draft Convention on the Law of Treaties, comment to Art. 19, AM. J. INT'L. L. 948 *et seq.* (Supp. 1935); SOHN, CASES AND MATERIALS ON WORLD LAW 15 *et seq.* (1950).

49. It is expressly stated as a purpose in Article 1(3) and recurs as a fundamental theme throughout the Charter. See Preamble and Articles 13, 55, 76. For pertinent discussion at San Francisco see J. ROBINSON, *op. cit. supra* note 39 at 36-39.

ingless is certainly contrary to the principle of effectiveness in the interpretation of treaties.[50] Undoubtedly, there are occasions when the rule of effectiveness may run counter to the manifest intention of the parties; in this case, however, effectiveness—at least to the extent of a legal commitment —is precisely what most of the drafters desired.[51]

Thus, both major rules of interpretation—that based on intent and that on effectiveness—reinforce each other and, taken together, practically make inescapable the conclusion that the pledge in Article 56 constitutes a legal commitment on the part of Members to take action in co-operation with the Organization to achieve "respect for and observance of human rights and fundamental freedoms for all."[52]

Is the Legal Obligation Regarding Human Rights a Rule for the Courts?

Having ascertained that Article 56 imposes a legal duty on Member States in regard to human rights, we must consider whether that obligation may under the Constitution be a direct source of law for the courts, notwithstanding the absence of legislative implementation. In Chief Justice Marshall's language the question would be whether the pledge in Article 56 addressed itself solely to the "political, not to the judicial department" and whether "the legislature must execute the contract before it can become a rule for the court."[53]

This question is primarily one of domestic law, since in the absence of any contrary provision in the treaty it is left to the parties to carry out their obligations in accordance with their own constitutional processes.[54] From the standpoint of international law all parties are equally bound by the treaties although their constitutional systems may in some cases provide for self-operative effect of the obligations, in other cases for legislative or executive action.[55] In the United States, the question of whether legislative enactment

50. The rule of effectiveness may well be deemed to have paramount importance in construing a general international agreement of a constitutional charter, such as the Charter. See the International Court of Justice's advisory opinion, "Reparation for Injuries Suffered in the Service of the United Nations," I.C.J. Rep. 1949, p. 174.

51. See for example, Dr. Evatt's statement at Comm. II/3, in connection with the final draft of Article 56: "I don't think any member of the Committee feels we have been fighting merely for words. I think that this pledge means in substance that we not only stamp the objectives stated already with the stamp of an international agreement, but we determine to do our best in co-operation with the Organization not only to preach but to practice what we preach in our own countries in co-operation with the Organization, and I am very pleased to have been associated with the settlement." 17th Meeting, Comm. II/3, *supra* note 37.

52. It is perhaps useful to repeat again that this conclusion that Members are under a legal duty is entirely independent of the question of "intervention" by the Organization. See *supra* pp. 647-50

53. Foster v. Neilson, 2 Pet. 253, 314, 7 L. Ed. 415 (1829).

54. 2 Hyde, International Law 1455 (2d rev. ed. 1947).

55. It is widely but erroneously thought that the United States and France are the only countries which provide that treaties are the law of the land. In fact, there are a

is necessary in order to make a treaty provision effective in domestic law is in the final analysis left to the courts to determine.[56] As Hyde has stated "whether a domestic court whose aid is invoked for the purpose of invoking a treaty should conclude that in the circumstances it must await the enactment of a law purporting to render judicially operative what has been agreed upon, is a matter that calls for a judicial conclusion touching both the design and fundamental laws of its own sovereign."[57]

The foregoing observations also suggest why it is not possible to find in the history of the preparation of the Charter evidence regarding the "intent" of the parties in regard to the self-operative effect of Article 56. For it was clear to the representatives at San Francisco that the methods and procedures for carrying out the Charter obligations in municipal law had to be left to the varying constitutional systems of Member States. There is therefore no point in seeking or attempting to postulate a specific legislative intent on the question of whether Article 56 was or was not to be automatically operative in municipal law.[58]

Similarly, no inferences regarding this question can reasonably be drawn from the circumstances that some governments at San Francisco contemplated implementation of the human rights provisions through an international bill of rights which would constitute a new multilateral convention.[59] The fact that it was considered desirable by delegations to have a more detailed and precise statement of human rights in the future possibly with enforcement provisions, surely does not indicate any intention to detract from the present legal effect of the carefully worded obligation in Article 56. One might note in this connection that Articles 104 and 105 of the Charter have been held to have self-executing effect in American law,[60] even though it was contemplated by the draftsmen of the Charter (and, indeed, by Article 105 itself) that there would be a separate convention setting out in greater detail the provisions on privileges and immunities.[61]

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number of other states which have a similar constitutional practice. Briggs mentions Switzerland, Belgium, Holland, Spain, Austria, Egypt, Argentina, many South American States. BRIGGS, THE LAW OF NATIONS 432, 433 (1938).

56. "The Department of State has taken the position that 'Under the system of government in the United States a final decision of questions involving interpretation of laws and treaties from the standpoint of municipal law rests with the courts.'" 5 HACKWORTH, DIGEST OF INTERNATIONAL LAW 267 (1943).

57. 2 HYDE, INTERNATIONAL LAW 1463 (2d rev. ed. 1947).

58. For the reason stated it would be improbable that evidence of intent on this point could be found with respect to any multilateral convention. In the case of bilateral treaties, however, there might well be an expression of intent on the question of the self-executing effect of the provisions.

59. See Report of U.S. Delegation to the President, *supra* note 36. But compare British Commentary on the Charter which states that the methods for carrying out the human rights programme were left to the Organization itself to work out. See CMD. No. 6666 at 17.

60. Curran v. City of New York, 191 Misc. 229, 77 N.Y.S.2d 206, 212 (Sup. Ct. 1947).

61. Report of Rapporteur of Comm. IV/2.U.N.C.I.O. Doc. 933, IV/2/42(2).

As there is no explicit provision in the Charter itself, or any evdence of legislative intent, which would deprive Article 56 of self-operative effect, we are left with the question of whether the obligation is by its "nature" capable of execution by the courts. For it has been asserted that the pledge to take action to promote respect for and observation of human rights is too vague and indefinite to enable a court to give it practical effect in a concrete situation; and, hence, that legislative measures are required in order that the obligation might have the degree of precision and clarity necessary for judicial action.

This point requires careful consideration. It is, of course, true that the supremacy clause of the Constitution does not compel a court to enforce a treaty provision which is so incomplete or indefinite that it cannot be applied in a particular case.[62] It must also be granted that the meaning of human rights and fundamental freedoms is in many respects a subject of controversy and that even where a particular right has been generally agreed upon, it is by no means clear just how far a court may go to promote its observance.

These are certainly important considerations in determining the extent to which the Charter obligation may be deemed self-operative; but it does not follow from them that there are no cases at all in which the courts may give effect to this obligation. There is, in the first place, no ground for assuming that because "human rights and fundamental freedoms" are broad and elastic concepts, American courts are for that reason unable to apply them in the absence of legislative definition. These concepts, as we have shown above, do have specific content based on the Charter itself and on precedent and practice; the important and recognized rights and freedoms are no vaguer than any number of well-known constitutional and statutory expressions which have been left to the courts to apply.[63] Probably even more pertinent is the fact that the concepts of human rights and fundamental freedoms are closely akin to the basic rights and freedoms which American courts have traditionally been required to define, in varying circumstances, for the purpose of determining the scope of constitutional protection.[64]

62. Thus, in Foster v. Neilson, 2 Pet. 253, 7 L. Ed. 415 (1829), the court considered that the provision regarding ratification and confirmation of grants of land required a legislative act for full effect. But it is interesting that this construction was later overruled in United States v. Percheman, 7 Pet. 51, 8 L. Ed. 604 (1833), in which it was held that the treaty itself ratified and confirmed the grants by its own force. See also Cameron Septic Co. v. Knoxville, 227 U.S. 39, 33 Sup. Ct. 209, 54 L. Ed. 407 (1913), which held the provisions of a treaty on patent rights to lack the specific terms necessary for judicial enforcement in a case involving individual rights.

63. It cannot be said that a greater degree of precision is required in a treaty provision than in an act of Congress.

64. The Supreme Court has often been required to decide which fundamental rights are entitled to constitutional protection. For example, see Missouri *ex rel.* Gaines v. Canada, 305 U.S. 337, 59 Sup. Ct. 232, 83 L. Ed. 208 (1938); Meyer v. Nebraska, 262 U.S. 390, 399, 43 Sup. Ct. 625, 67 L. Ed. 1042 (1923); Buchanan v. Warley, 245 U.S. 60, 38 Sup. Ct. 16, 62 L. Ed. 149 (1917); Truax v. Raich, 239 U.S. 33, 36 Sup. Ct. 7, 60 L. Ed. 131 (1915); Yick Wo v. Hopkins, 118 U.S. 356, 6 Sup. Ct. 1064, 30 L. Ed.

Moreover, it should be borne in mind that the supremacy clause of the constitution does not require an "all or nothing" position in regard to the self-executory effect of a treaty provision. It may well be that the obligation regarding human rights must, for the most part, be acted on by the legislature before it can become a rule for the courts, but this surely does not mean that the courts cannot act in those cases which involve a specific and clearly recognized right or freedom. Similarly, the supremacy clause is not rendered nugatory because the treaty provision does not specify the type of action which the courts may take in carrying out the obligation. Admittedly, the courts do not have *carte blanche* in regard to enforcement or judicial remedies, but again, this does not mean that a court would be entitled to ignore completely the duty to act so as to promote respect for and observance of human rights. One illustration of practical judicial action can be found in the cases involving the Alien Land Law of California.[65] In these cases the statute denying persons the right to own land because of race was held to be inconsistent with the pledge undertaken in the Charter; it obviously followed that, under the supremacy clause, the statute would have to yield to the treaty and hence be deelared invalid.[66] Another compelling example would be presented where a court is requested to enforce a private agreement which it clearly considers contrary to recognized rights and freedoms; in that case, the Charter provision would reasonably include the duty to withhold the judicial action requested.[67] (It need hardly be argued at this late date—although the error persists in some state court decisions[68]—that a treaty, like a law, is binding on individual citizens and determinative of contractual rights.)[69] Finally, it should be observed that even where there may be doubts or difficulties regarding the precise manner of judicial implementation in a particular case, the courts would be bound at least to consider the human rights commitment as an ingredient in the public policy of the United States in

220 (1885). In addition, the specific rights and freedoms enumerated in the first ten amendments and in the Fourteenth Amendment, such as freedom of speech, of press, of religious worship, freedom from self-incrimination, equal protection of law, etc., have been mainly the subject of judicial rather than legislative application.

65. Fujii v. California, 217 P.2d 481 (Cal. App. 1950); Oyama v. California, 332 U.S. 633, 647, 650, 68 Sup. Ct. 269, 92 L. Ed. 249 (1948) (concurring opinions).

66. This is, of course, in accordance with well established law that treaties override inconsistent state statutes or common law. United States v. Pink, 315 U.S. 203, 62 Sup. Ct. 552, 86 L. Ed. 796 (1942); United States v. Belmont, 301 U.S. 324, 57 Sup. Ct. 758, 81 L. Ed. 1134 (1937); Santovincenzo v. Egan, 284 U.S. 30, 52 Sup. Ct. 81, 76 L. Ed. 151 (1931); Hauenstein v. Lynham, 100 U.S. 483, 25 L. Ed. 628 (1880); Ware v. Hylton, 3 Dall. 199, 1 L. Ed. 568 (1796).

67. This would be applying to the Charter provision the principle followed by the U.S. Supreme Court denying enforcement of restrictive covenants based on racial discrimination and therefore contrary to constitutional guarantees. Shelley v. Kraemer, 334 U.S. 1, 68 Sup. Ct. 836, 92 L. Ed. 1161 (1948).

68. *E.g.*, Sipes v. McGhee, 316 Mich. 614, 25 N.W.2d 638 (1947), *rev'd*, 334 U.S. 1, 68 Sup. Ct. 836, 92 L. Ed. 1161 (1948); Kemp v. Rubin, 188 Misc. 310, 69 N.Y.S.2d 680 (Sup. Ct. 1947).

69. Kennett v. Chambers, 55 U.S. 38, 14 L. Ed. 316 (1852); Gandolfo v. Hartman, 49 Fed. 181 (C.C.S.D. Cal. 1892).

the same way as the laws and applicable legal precedents, and to the extent appropriate, give such policy judicial effect.[70]

For these various reasons, all well supported by judicial precedent, it would be most difficult to conclude that the Charter provisions on human rights cannot legitimately be given effect by the courts in appropriate cases. Indeed, it would be contrary to the letter and the spirit of the supremacy clause of the Constitution if the courts did not attempt to carry out a treaty provision to the fullest extent possible.[71] Nor would it be in consonance with the established principles of interpretation in the United States for a court to rely on the ambiguity of a treaty provision in order to restrict its application. "If a treaty fairly admits of two constructions, one restricting rights which may be claimed under it, and the other enlarging it, a more liberal construction is to be preferred."[72] This rule, it has been observed, is but another form of the general principle long recognized by American courts that treaties are to be construed so as to be more effective rather than less effective.[73]

The constitutional principles and precedents relating to treaties—which have been set forth above—have a special relevance to the human rights provision in the light of the position taken by the United States delegation at San Francisco and before the United States Congress. For, at that time it was made clear that in the view of the United States the pledge on human rights is to be carried out by the Member States "according to their own best ability, in their own way, and in accordance with their own political and economic institutions and processes."[74] In the case of the United States "its own way" has been defined, as it must be, by the Constitution itself

70. In this sense, judicial effect has been given the Charter provision on human rights in the case of *In re* Drummond and Wren, [1945] O.R. 778, in which the High Court of Ontario declared void a restrictive covenant based on religious and ethnic discrimination for the reason that it was offensive to the public policy of the jurisdiction, stating in this connection that "First and of profound significance is the recent San Francisco Charter" and particularly the provisions of human rights. See also the concurring opinion of Carter, J., of the California Supreme Court, in Perez v. Lippold, 32 Cal.2d 711, 198 P.2d 17, 29 (1948), 2 VAND. L. REV. 307 (1949), citing the Charter provision as an additional reason for invalidating a state miscegenation law.

71. "Plainly, the external powers of the United States are to be exercised without regard to state laws or policies. The supremacy of a treaty in this respect has been recognized from the beginning. . . . Within the field of its powers, whatever the United States rightfully undertakes, it necessarily has warrant to consummate. And when judicial authority is invoked in aid of such consummation, state constitutions, state laws, and state policies are irrelevant to the inquiry and decision. . . ." United States v. Belmont, 301 U.S. 324, 331, 332, 57 Sup. Ct. 758, 81 L. Ed. 1134 (1937).

72. Factor v. Laubenheimer, 290 U.S. 276, 293, 54 Sup. Ct. 191, 78 L. Ed. 315 (1933). See also Tucker v. Alexandroff, 183 U.S. 424, 437, 22 Sup. Ct. 195, 46 L. Ed. 264 (1902), where the court quoted with approval Chancellor Kent's statement, "Treaties of every kind . . . are to receive a fair and liberal interpretation, according to the intention of the contracting parties, and to be kept with the most scrupulous good faith." 1 KENT, COMMENTARIES *174. For a list of cases in American courts, demonstrating the principle of liberal interpretation of treaties, see 5 HACKWORTH, DIGEST OF INTERNATIONAL LAW 256 (1943).

73. Lauterpacht in 26 BRIT. Y.B. INT'L L. 67 (1949).

74. Report to the President, *supra* note 36 at 115.

and the interpretations of the Supreme Court; and these, as we have seen, indicate that the obligations of the Charter regarding human rights should properly be carried out in certain respects by the courts in the same way as any other treaty which is the supreme law of the land.

Would the practical consequences of such judicial action be "revolutionary" or even "far-reaching" in their impact on domestic law?[75] There appears to be little basis for so extreme a prediction. American courts are not likely to conclude that the Charter concepts of human rights and fundamental freedoms in their generally accepted meaning differ substantially from the basic rights and freedoms embodied in the United States constitution;[76] nor are the courts likely to be unmindful of the necessity of judicial restraint in applying the broad concepts of the Charter. The cases which have thus far arisen would seem to bear this out.[77]

But while such judicial action may not be "far-reaching" in its effect on domestic law, it must not, on the other hand, be considered as without significance. It would be unrealistic to ignore the influence—already evidenced in several cases—of the Charter as a factor in resolving constitutional issues which have hitherto been in doubt. Only rarely in our view will a court's decision be based on the Charter alone, as in the *Fujii* case;[78] more often it might be expected that the Charter provision will be cited as an added reason for extending constitutional liberties;[79] in other constitutional cases there may be only a general reference to treaties as a source of public policy though in fact it would be likely that the Charter provision is the important new element in the situation.[80] Nor will the influence of such decisions be limited to the judicial field alone. By affirming the legal effectiveness of the Charter provision, the courts focus attention on the authoritative character of the obligation undertaken by the United States and on the necessity for its fulfilment;

75. Rix, *Human Rights and International Law,* 35 A.B.A.J. 551 (1949); Holman, *Treaty Law-Making,* 36 A.B.A.J. 707 (1950).

76. This would be justifiable since as we have indicated previously the meaning of human rights in the Charter is derived mainly from the generally recognized principles of law in constitutional systems. It is also evident that the human rights set forth in international instruments (*supra* note 45) are closely akin even in their formulation to basic rights in the U.S. Constitution.

77. See cases cited *supra* note 5.

78. Fujii v. California, 217 P.2d 481 (Cal. App. 1950), *rehearing denied,* 218 P.2d 595 (Cal. App. 1950), 4 VAND. L. REV. 172. In that case, the California Appellate Court considered the constitutional issue as foreclosed by a long line of U.S. Supreme Court decisions upholding the validity of the Alien Land Law and similar state statutes. However, in the light of the *Oyama* case and other recent cases it is by no means certain that this constitutional question will not be reconsidered by a higher court.

79. *E.g.,* concurring opinions in the *Oyama* case. 332 U.S. 633, 647, 650, 68 Sup. Ct. 269, 92 L. Ed. 249 (1948).

80. "The power of the federal courts to enforce the terms of private agreement is at all times exercised subject to the restrictions and limitations of the public policy of the United States as manifested in the Constitution, treaties, federal statutes, and applicable legal precedents." Vinson, C.J., in Hurd v. Hodge, 334 U.S. 24, 34-35, 68 Sup. Ct. 847, 92 L. Ed. 1187 (1948).

in this sense, they contribute not only to better understanding but also to efforts for implementation which extend beyond the scope of the judiciary.

There are other implications of judicial action, less tangible perhaps, but which it would be myopic to overlook. Much has been said—with obvious justification—regarding the practical importance in present-day international relations of our observance of human rights;[81] at least equally evident has been the importance to ourselves of narrowing the gap between democratic ideals and actual practice.[82] In both respects, the courts can play a significant role; when they act to carry out the human rights provisions of the Charter they necessarily do so in specific cases which have a direct impact on individuals; for that very reason they demonstrate more forcefully than any verbal generality or law-on-the-books ever can that practical effect is being given to the principles we have proclaimed. Moreover, there is an added degree of cogency in the fact that the Charter and not the Constitution alone, is being applied; for that shows that the United States is effectively carrying out its external obligations and particularly that obligation which more than any other involves a limitation of traditional rights of sovereignty.

For these reasons, the decisions which recognize the Charter provisions on human rights as self-executing—though probably modest in their actual effect on American law—have more than slight significance in regard to the crucial problems of our time.

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81. See letter of Acting Secretary of State, dated May 8, 1946, quoted in CLARK AND PERLMAN, PREJUDICE AND PROPERTY (1948), the brief for the United States as *amicus curiae* in Shelley v. Kraemer, 334 U.S. 1, 68 Sup. Ct. 836, 92 L. Ed. 1161 (1948).

82. "The pervasive gap between our aims and what we actually do is creating a kind of moral dry rot which eats away at the emotional and rational bases of democratic beliefs." TO SECURE THESE RIGHTS 139 (1947) (Report of President's Committee on Civil Rights). For an excellent summary of the values involved in the human rights programme, see McDougal & Leighton, *The Rights of Man in the World Community*, 14 LAW & CONTEMP. PROB. 490 (1949), also in 59 YALE L.J. 60 (1949).