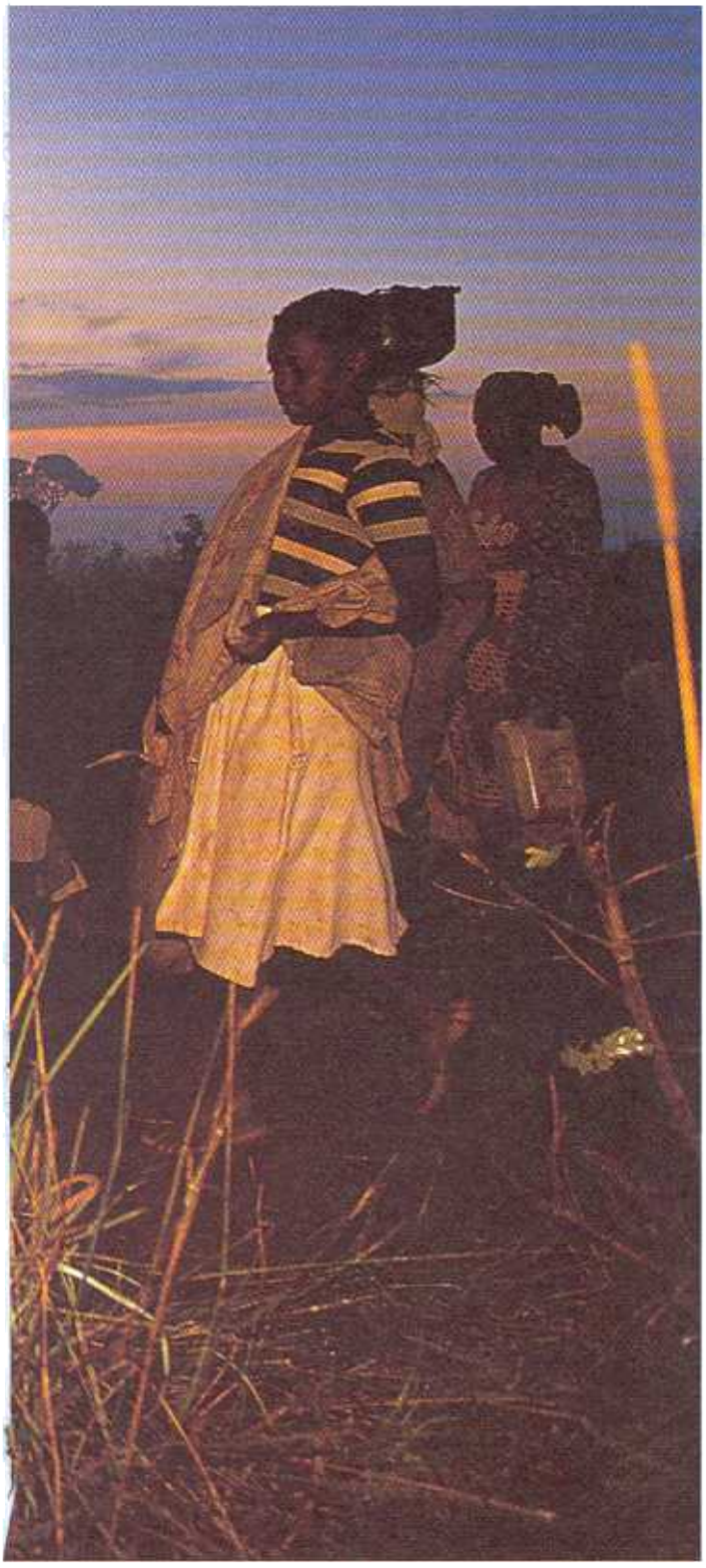
International Law,

Over 23 million refugees, fleeing conflict and environmental degradation, are scattered in camps and settlements around the world. *Rwandan refugees fetch water at dawn.*

Universal Rights ~ the global dilemma



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- Responsibility of government
- The bill of rights
- Investigations and remedies
- The world court

To the dispassionate observer, the development of international law in the second half of the 20th century is one of the outstanding achievements of the United Nations. But the dispassionate observers are few and the critics are many.

Ironically, debate centres around a contradiction that no one disputes: virtually the entire body of international law has been created and enforced by those who stand most to gain from breaking it.

By definition, international law seeks to regulate the behaviour of governments. It is governments that must draft and vote for each piece of international legislation. It is also governments that must monitor their own compliance with international law and the extent to which it is respected by other states. Yet the very nature of politics makes it inevitable that it will be those same governments that seek to circumvent these obligations and in many cases openly flout them.

In the eyes of the most virulent critics, therefore, suspicion inevitably surrounds the rhetoric, resolutions and reports that follow in the wake of governments' statements about respect for international law.

But in the eyes of those who look upon international law as the only long-term underpinning for civilized behaviour among nations, the very fact that governments have begun progressively to commit themselves to common standards of decent behaviour is a remarkable and ultimately hopeful accomplishment.

Regulations and compliance

What is beyond question is that the body of international law is now immense. Almost all of it is the result of a mere half century of work, chiefly conducted through the UN. There is now a substantial body of treaties, declarations and other standards to which states have committed themselves. These range over a vast body of issues from the law of the sea, global, economic and social development, world trade, the political rights of women and, abolition of torture, right down to specific restrictions on the use of certain types of restraining implements in prisons.

That body of legislation is only part of the growing weight of international law. In addition, there is the ever-expanding number of findings and judgements that emanate from the many bodies whose responsibility it is to oversee and, in some instances, regulate the compliance of states with their international commitments. The International Court of Justice comes immediately to mind as the foremost of these bodies, but it is by no means the only one.

Today, however, the whole edifice of international law faces a crisis of confidence. It must survive this crisis if the global community is to rise to the challenge of managing the world in which we live.

Put simply, the crisis is this. For half a century some of the best and brightest legal and political minds around the world have devoted their energy to designing and constructing a splendid and unprecedented structure of international law. Now there is very little further drafting that needs to be done. The architectural work is largely complete; most of the essential construction is finished. The palace of justice is in place.

The question now is: who is it for?

Do the weighty treaties and declarations, so finely hedged with possibilities for exemptions and derogations, serve to keep governments effectively immune from the threat of serious and binding legal action by citizens and others seeking redress of grievances?

Is the entire framework purposefully skewed so as to bolster the economic, political and cultural interests of the North against the demands for justice and equity by the nations of the South?

Does the complex structure serve the interests of international experts in the maze of legal nuances?

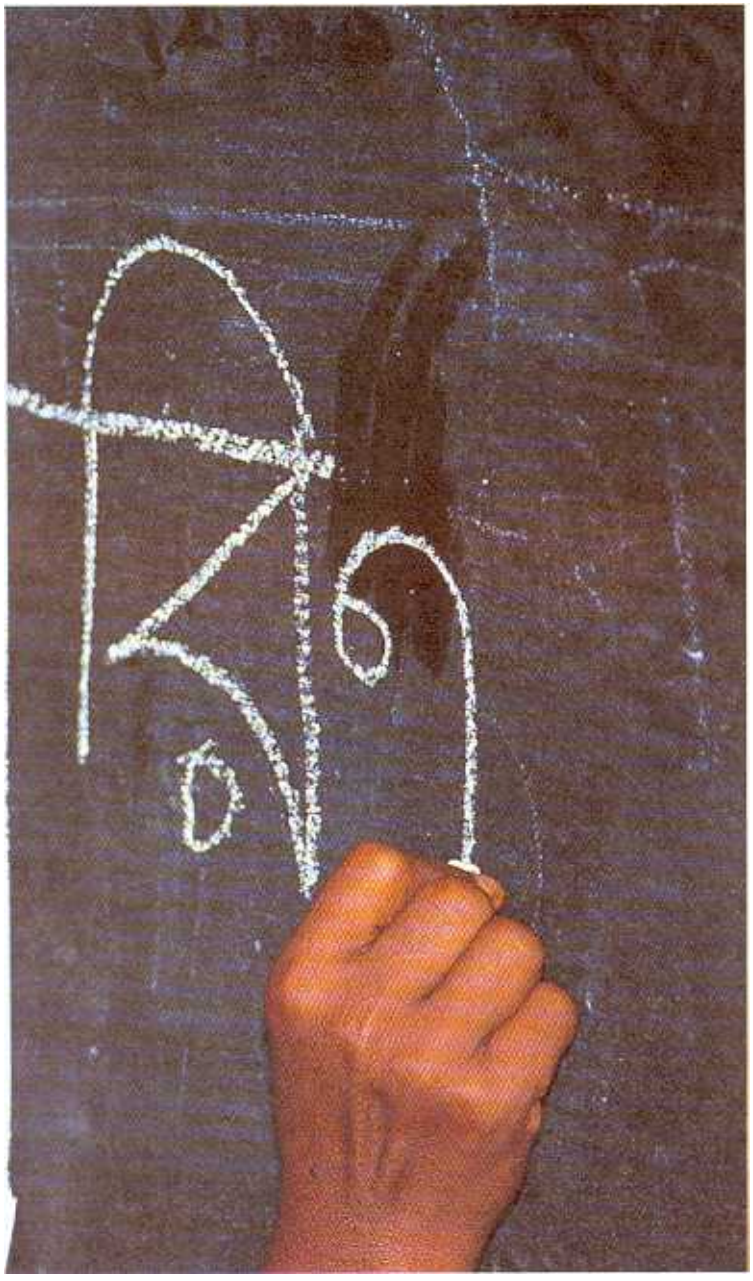
In other words, does international law serve the interests of 'the peoples of the United Nations' in whose name the UN Charter was proclaimed in 1945? Or does it serve the interests of a dominant group of governments and an attendant élite of legal experts?

Education is the bedrock of human rights.

Universal human rights

Nowhere has this crisis in international law been more apparent than in the efforts to define and protect universal human rights.

When the fledgling UN rose from the ashes of the Second World War, one of the three main areas of its future work was to be the promotion and protection of international human rights. It was clear that any overall strategy for the creation of a peaceful world had to include a determined effort to ensure that fundamental human rights were secure for future generations. In October 1945, therefore, the UN Preparatory Commission recommended that the Economic and Social Council (ECOSOC) establish immediately a Commission on Human Rights. This was the body to be charged with drafting an international Bill of Rights.



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Almost immediately the question arose as to whether the members of the Commission on Human Rights should serve in their individual capacity or be the representatives of governments? With hindsight the outcome of the debate was inevitable. The 18-member commission was to comprise governments and its members were to participate as representatives of government.

Over the years that fact has remained unchanged. It is only the size of the club that has grown. In 1962 the membership was increased to 21, in 1966 to 32, and in 1980 to 43. Its current membership is 53.

Work on the international Bill of Rights began in 1947. The Bill was to begin with a Declaration. That was to be drafted by a committee of eight: Australia, Chile, China, France, Lebanon, the United Kingdom, the United States and the USSR. The work was fraught with argument. The draft Declaration went through 81 ECOSOC meetings. Many observers at the time gave credit to the devoted work of the Chair of the Drafting Committee, Eleanor Roosevelt, for the fact that the Declaration survived the withering and often divisive deliberations.

Eventually, on 10 December 1948, the Universal Declaration of Human Rights was adopted by the UN General Assembly, with 48 votes in favour, none against and eight abstentions.

the palace of justice is in place

An extraordinary impact

Much has since been made of those eight abstentions, and it has been argued that, since the Soviet bloc, Saudi Arabia and South Africa abstained in the vote, the Declaration itself is somehow flawed or not fully legitimate. But the reality is that, were the vote to be taken today, it is unlikely that there would be anything other than consensus. The Declaration's provisions are enshrined in the constitutions and laws of numerous nations and it has been the constant reference point for the underlying principles of national, regional and international human rights standards ever since it was proclaimed.

Speaking before the UN General Assembly, Eleanor Roosevelt observed that the Declaration was 'first and foremost a Declaration of the basic principles to serve as a common standard for all nations. It might well become the Magna Carta of all mankind'.

The breadth of vision of the Declaration is unquestionable, even inspiring. Its preamble warns that 'disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind'. It describes 'freedom from fear and want' as 'the highest aspiration of the common people'.

It establishes that 'recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace'.

The Declaration covers two broad sets of rights. One set is known as Civil and Political Rights. The other set of rights is known as Economic, Social and Cultural Rights.

Under the heading of Civil and Political Rights, the Declaration requires all governments to protect the life, liberty and security of their citizens. They should guarantee that no one is enslaved and that no one is subjected to arbitrary arrest and detention or to torture. Everyone is entitled to a fair trial. The right to freedom of thought, conscience, religion and expression is to be protected.

Under the heading of Economic, Social and Cultural Rights, all governments are expected to try progressively to improve the living conditions of their citizens. For example, they should try to guarantee the right to food, clothing, housing and medical care, the protection of the family, and the right to social security, education and employment. They are to promote these rights without discrimination of any kind.

To give binding force to the Declaration, work began on two covenants which would take the form of treaties. Governments would become parties to these treaties and special committees would be established to monitor states' compliance with their treaty commitments. Once the notion of governments having to accept limitations on the exercise of state power began to bite, the pace of events changed. Negotiations on the draft treaties took a further 18 years.

The initial result of the debates that took place within the UN between 1948 and 1952 was that an even clearer distinction was made between one set of rights, Civil and Political Rights, and the other set, Economic, Social and Cultural Rights. The first set comprised those rights that were seen as guaranteeing freedom from fear; the second set dealt with freedom from want. The ultimate result was two covenants to complete the international Bill of Rights: the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

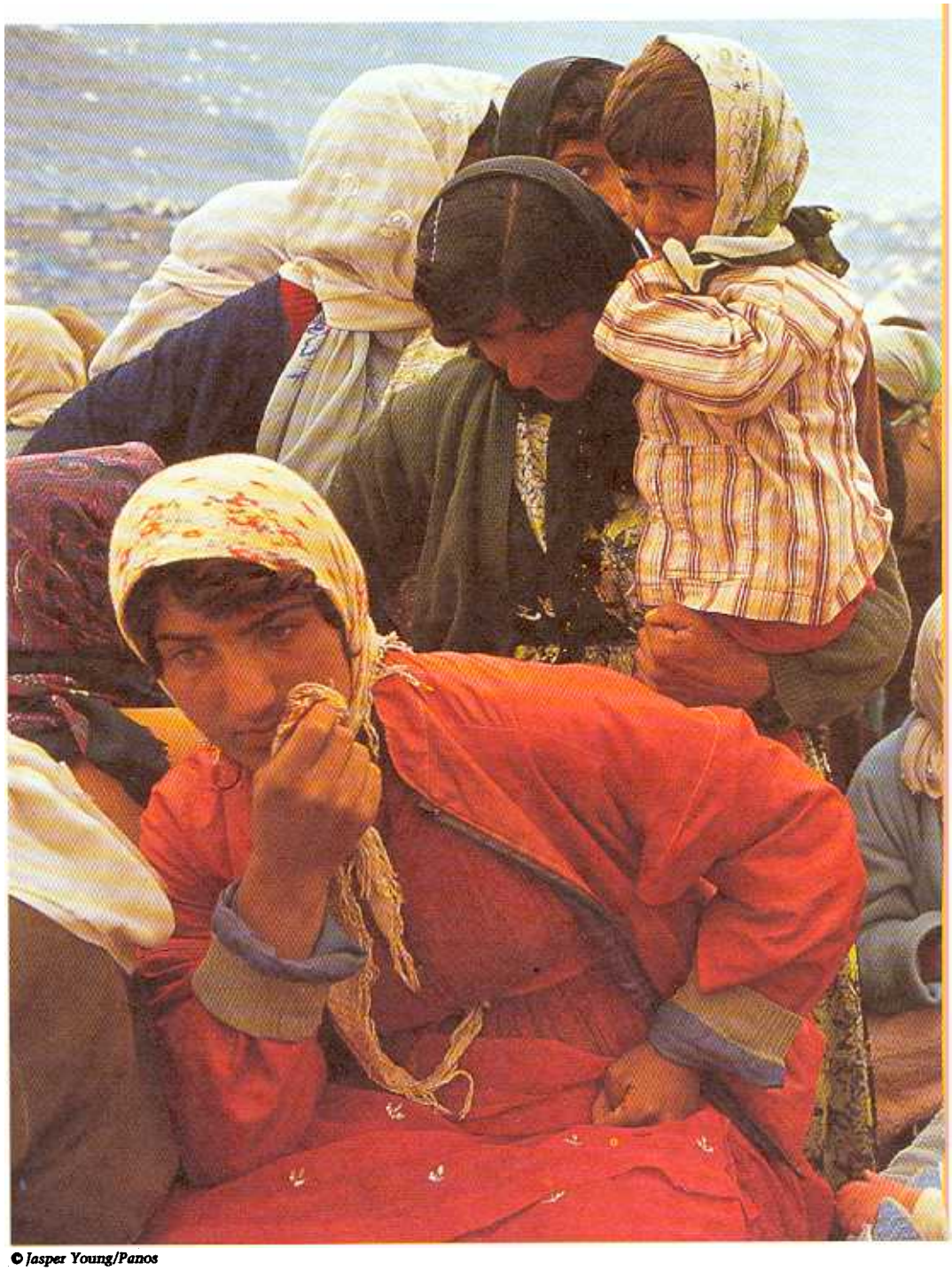
Both sets of rights were held to be interrelated. ICCPR, for example, states 'the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights'. However, argument about which of these two sets of rights had priority and whether one could be achieved at the expense of the other was to take up vast stretches of the highly politicized landscape across which the battle for universal human rights was to be waged for most of the rest of the century.

The second divisive issue that emerged once work began on drafting the two covenants concerned the doctrine of 'internal affairs of states'.

"freedom from fear and want"

Many governments, but most notably the Soviet Union at the time, were concerned about any arrangements that would violate Article 2.7 of the UN Charter. This says that the UN is not to 'intervene in matters which are essentially within the domestic jurisdiction of any state'. How, then, was the UN to deal with the question of human rights violations in specific countries?

The dispute surfaced over the means of dealing with human rights violations reported under the two international covenants. The Commission on Human Rights finally decided, by a vote of seven to six with one abstention, that a permanent Human Rights Committee should be established to receive complaints of human rights violations. But these could be submitted only by other states. Significantly, there was a far larger majority against considering complaints by non-governmental organizations (NGOs) or grievances brought by individual citizens. Eventually agreement was reached on an Optional Protocol to ICCPR, whereby states could unilaterally decide that the Human Rights Committee could hear complaints brought to it by that state's citizens. Equally, a state would remain free to decide unilaterally not to open that possibility to its citizens. To this day, the majority have not ratified this Optional Protocol.



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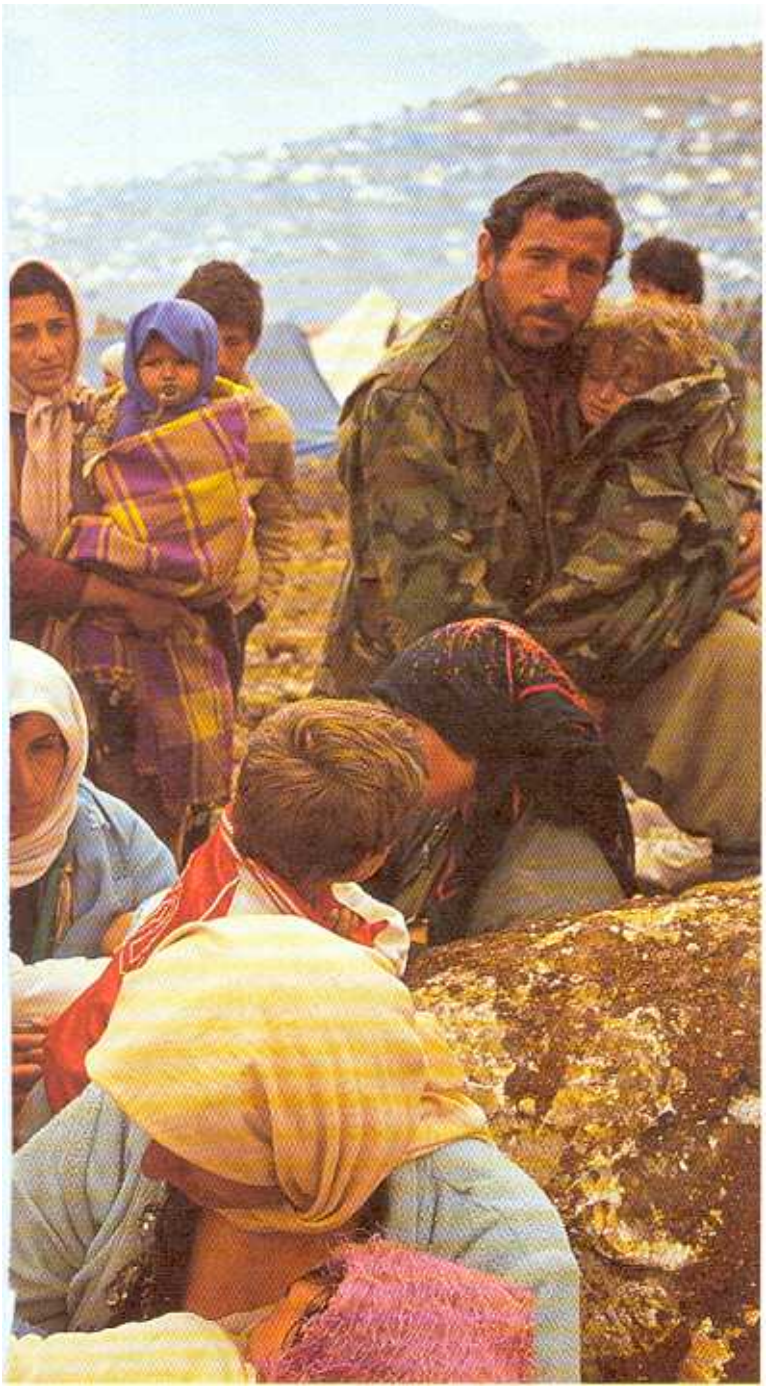
Entry into force

The two covenants and the Optional Protocol were finally adopted by the UN General Assembly in 1966. Before they could become effective by 'entering into force' they had to be ratified by a minimum of 35 states. It took a full 10 years before 'critical mass' was achieved. ICESCR entered into force on 3 January 1976. ICCPR entered into force on 23 March of the same year.



Kurdish refugees flee after the 1991 failed uprising. *The UN set up a 'safe-zone' to protect the Kurds in Northern Iraq.*

The debates of those first three decades established the fundamental political and legal framework within which the UN as an inter-governmental body was to address the deeply disturbing issue of human rights protection. All the elements for which it was later to be criticized were present.

The UN as a whole simply could not manage to elevate human rights above the divisions of the Cold War. Exactly the opposite. One side got locked into arguing for the supremacy of civil and political rights; the other insisted on the primacy of economic, social and cultural rights. Both approaches to human rights became propaganda weaponry in Cold War exchanges inside and outside the UN. Later both blocs used human rights as a bargaining chip.

Even without this poisoned atmosphere, it was clear that the ambitions of the drafters of the Universal Declaration were being watered down in practice. Governments were not at all keen to have their own practices scrutinized – and certainly not to be laid open to complaints brought forward by their own people.

This led to legalistic and diplomatic preoccupation with procedures. In the eyes of many governments – and also in the view of officials and others who were trying to push governments forward – this was necessary to enable sensitive discussions to take place in confidential sessions and to restrict indiscriminate access by individuals to even the limited complaints mechanisms. Without these restrictions, ran the argument, governments could not be expected even to embark on the deeply embarrassing and explosive process of discussing how they ought to be treating their citizens.

'human rights as a bargaining chip'

Global reform

It was difficult to counsel patience to the starving and to the relatives of those held in prison camps, police barracks and tiger cages. But the vast undertaking was only beginning, nothing less than the global reform of the behaviour of nation states.

The advances were slow, but cumulative. Once the international Bill of Rights had entered into force, a range of other more detailed laws could be elaborated. The pace of negotiation increased markedly. By the beginning of the 1990s a total of 67 international human rights instruments existed.

The scope of the subject matter, by any standards, is impressive:
■ The Right of Self-Determination ■ Prevention of Discrimination ■ War Crimes and Crimes Against Humanity, including Genocide ■ Slavery, Servitude and Forced Labour ■ Torture, Detention and Imprisonment ■ Nationality, Statelessness, Asylum and Refugees ■ Freedom of Information ■ Freedom of Association ■ Employment Policy ■ Political Rights of Women ■ Rights of the Family, Children and Youth ■ Social Welfare, Progress and Development.

At the centre of the UN's human rights work, almost from the very inception of the organization, has been the Commission on Human Rights. It is to the Commission that the UN Secretary-General refers the thousands of communications that arrive annually from individuals and organizations all over the world alleging human rights violations.

Once it had been determined, that the Commission should consist solely of representatives of governments, decisions appeared to emerge as a result of what many observers saw as a deep-seated conflict of interest. For many years, despite the key role assigned to it, the Commission considered that it had 'no power to take any action in regard to any complaints concerning human rights'. Efforts to change this view throughout the first two decades of its existence were successfully countered by those who invoked 'intervention in the domestic affairs of states'.

The UN's battery of international law has given it the status of international mediator.
UN peacekeepers remove ballot boxes from polling stations during Cambodia's UN-supervised elections in 1993. © Jon Spaull/Panos

Consistent patterns

In 1965, once the Commission was enlarged in response to the increasing growth of the membership of the UN itself, new trends were discernible. Newly independent countries were keen to bring issues to do with colonialism and self-determination, racism and apartheid, and underdevelopment into the Commission's deliberations. This eventually led to the adoption of what is now known as the '1503 Procedure', a reference to Resolution 1503 of ECOSOC in 1970 authorizing the Commission on Human Rights to investigate 'communications, together with the replies of governments, if any, which appear to reveal a consistent pattern of gross violations of human rights'.

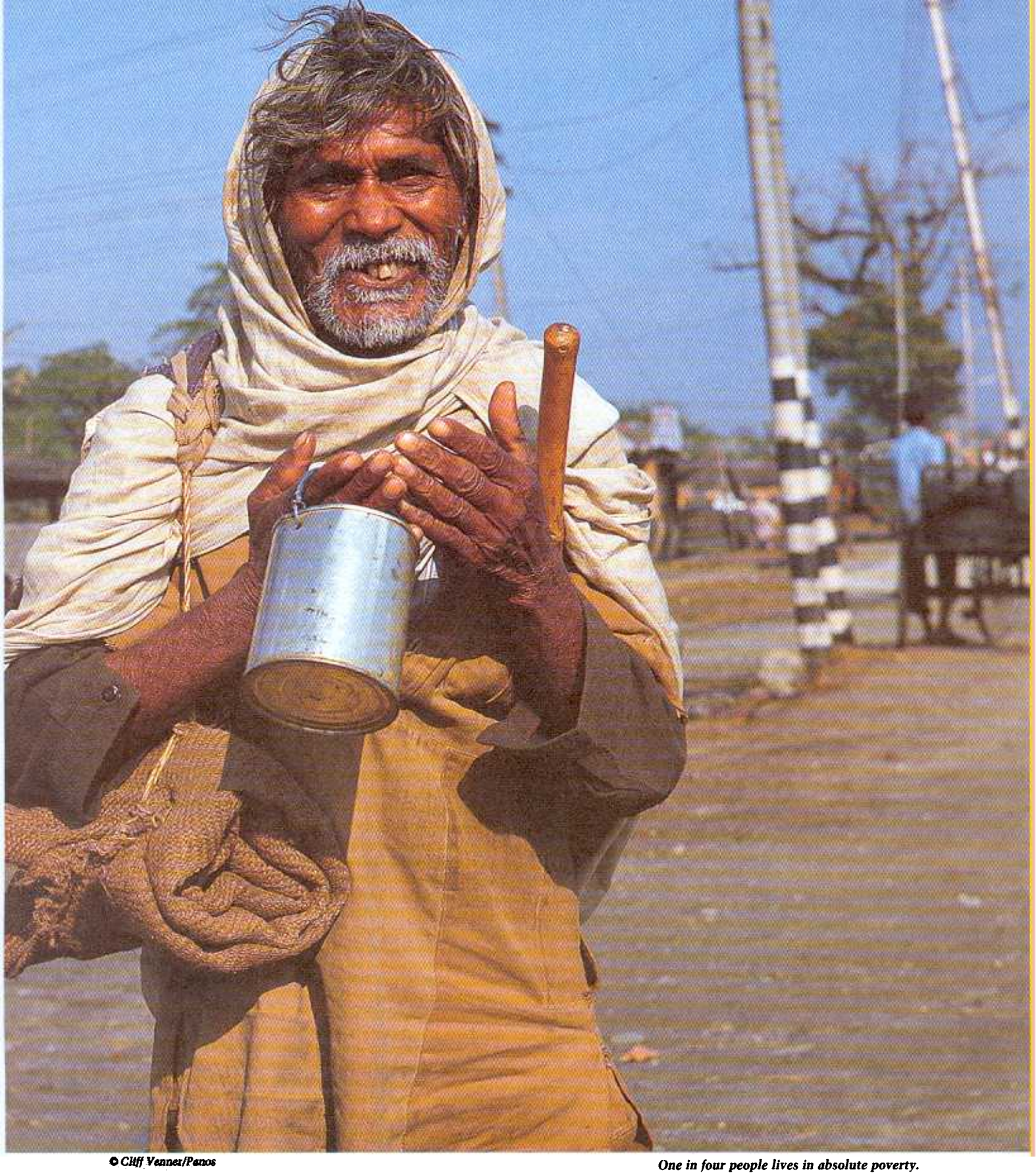
> 'the fear of publicity'

To process the flood of petitions, letters, affidavits and reports, the Commission set up a sorting system run by a Sub-Commission on the Prevention of Discrimination and the Protection of Minorities. 'Appropriate' communications would be passed on to the Commission and the Commission in turn could refer its findings to ECOSOC. The screws were ever so slowly starting to tighten.

Significantly, the great fear seems to have been of publicity. Essential to the working of the 1503 Procedure was strict confidentiality. Even the names of the countries discussed by the Commission were to remain a secret. Everyone's lips remained sealed for a further 8 years. It was not until 1978 that the chair of the Commission began the practice of naming the countries that had been considered. Remarkably, this, in itself, was deemed to constitute such an embarrassment for the governments named that the diplomatic efforts within the UN system to prevent a country even getting on the list for consideration became noticeably more intense.

The year after the 1503 Procedure was introduced, ECOSOC adopted Resolution 1235 which gave birth to the practice of setting up special investigations by rapporteurs and working groups focusing on individual countries.

In 1980 the Commission established the Working Group on Enforced and Involuntary Disappearances. This was to be the first of what are now known as the 'theme mechanisms'. Others deal with torture and with summary and arbitrary executions as well as other widespread problems. Individuals or groups working under these theme mechanisms are invited to act independent of governments, but under the aegis of the UN, to examine an issue, receive information from governmental and non-governmental sources, and report to the Commission. These reports have the great advantage of being publicly available and are often regarded as some of the most authoritative and comprehensive material available on the abuse under investigation.



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One in four people lives in absolute poverty.

Intense lobbying

But, ask many people, what use are these investigations? Abuses are documented, but are they stopped? Although much of the decisive deliberation of the Commission and Sub-Commission takes place behind closed doors, it is well known that intense lobbying takes place. Countries strive to stay off the agenda, doling out assurances that they are putting their own houses in order. Others, failing to stay off the agenda, work into the small hours negotiating a change of wording so that abuses in the country are 'noted' rather than 'deplored'. But the price they pay for the semantic changes may well be a pledge to ensure that the issues are satisfactorily addressed at home. The pressure is discreet, but it is real.

On the other hand, it is not governments alone who are the actors on the UN human rights stage. From the very beginning, a significant role has been played by NGOs. The very first draft of the UN Charter included only a passing reference to human rights and it was thanks in part to the representatives of the NGOs that the 1945 UN Conference on International Organization in San Francisco was effectively lobbied to secure much more positive and extensive references to human rights in the Charter.

Over the years, it has been the burgeoning community of NGOs that has created a sustained context of high expectations and trenchant criticism which the UN human rights bodies could not ignore. This has been an essential, and often highly astute, counterbalance to the political horse-trading that has at times threatened to wreck the credibility of the inter-governmental discussions in UN meetings.

These actors came together for two weeks in June 1993 at the UN World Conference on Human Rights. Held in Vienna, it was the largest gathering on this issue ever assembled. Convened in the optimistic aftermath of the end of the Cold War and the emergence of democratic governments in a number of countries in Eastern Europe and elsewhere, it was attended by 171 governments and well over 1,000 NGOs.

The result, on the official level, was the Vienna Declaration and Programme of Action: 93 separate clauses painstakingly negotiated into the small hours of the last day of the conference.

In the end, the delegates reached agreement on formulae that could be adopted by consensus – making the Declaration the most thoroughly endorsed governmental statement on human rights ever made. Some positions restated the original objectives of the 1948 Universal Declaration. Others extended the human rights vision further.

"governments are not the only actors on the UN human rights stage"

"he defence of civil and political rights is essential to protect voices raised on behalf of the world's poor

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Universal and indivisible

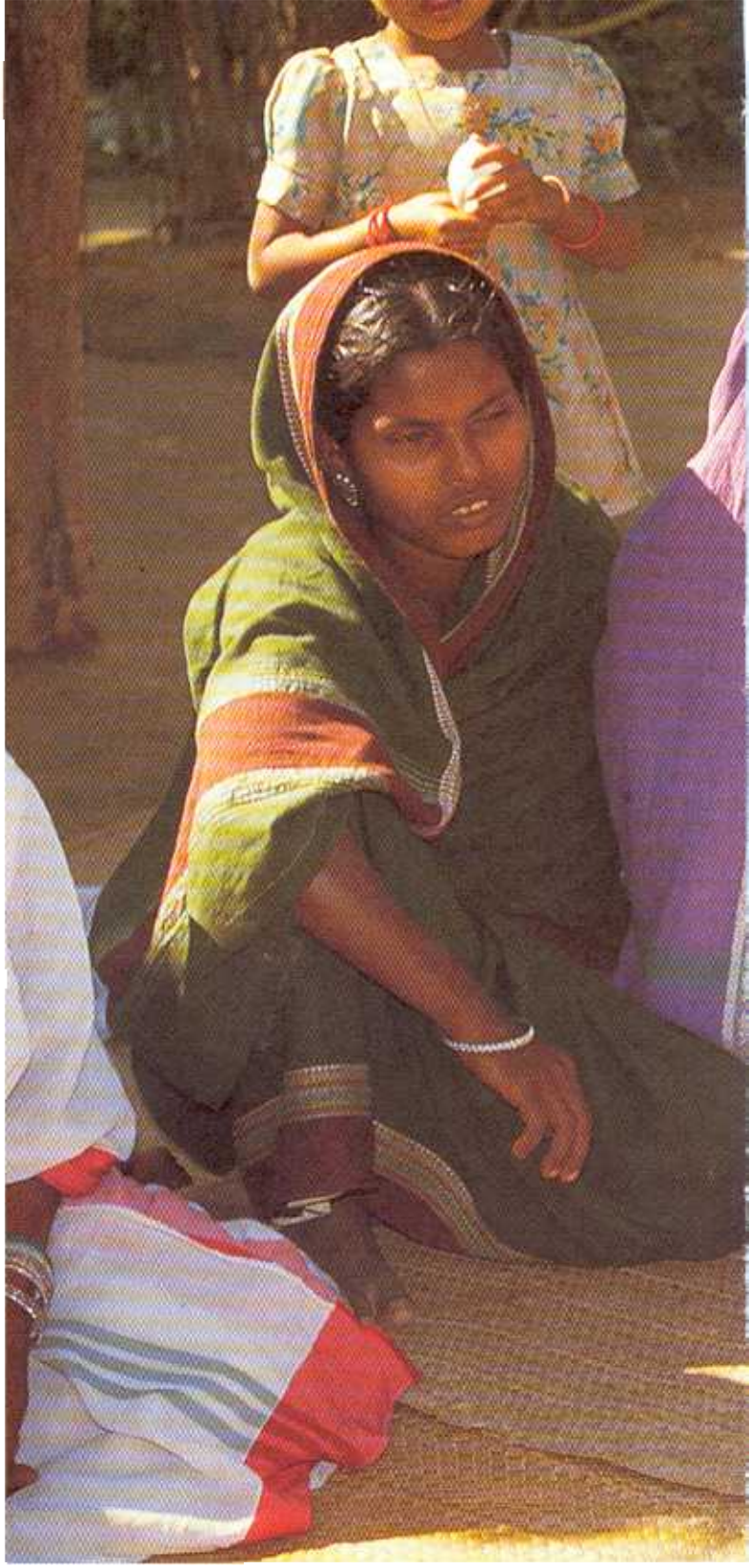
Fears that the Vienna Conference would 'turn the clock back on human rights' did not materialize. The universality of human rights was reaffirmed. The final Declaration states that 'the universal nature of these rights is beyond question. All human rights are universal, indivisible, interdependent and interrelated.' The entire spectrum of human rights was therefore endorsed without division. Human rights were reaffirmed as including civil and political rights and the broader range of economic, social and cultural rights, together with the Right to Development. This full conception recognized, in the words of the final Declaration, that 'the human person is the central subject of development'.

The UN General Assembly took immediate decisions on aspects of the Vienna Declaration. Of long-term significance was its decision in December 1993 to request the Commission on Human Rights to consider proposals and draw up a plan for a UN Decade for Human Rights Education.

That same month, the General Assembly decided to create the long-delayed senior post of UN High Commissioner for Human Rights.

A major question still hangs over the outcome of the Vienna Declaration, one that will affect the future credibility of the UN as it becomes increasingly energetic in human rights protection. It is the question of resources.

The UN Centre for Human Rights, which operates from the Palais des Nations in Geneva, has always been hampered by lack of resources. Understaffed and utterly overworked, its ability to store and retrieve human rights information has, at times, been far inferior to that of some of the human rights NGOs. The Commission's Special Rapporteurs, responsible for the high-profile, key investigations in sensitive situations, are recruited to work voluntarily – usually with minimal support services. All in all, a relatively tiny centre is now required to service a total of more than 60 UN bodies or officers. Following the Vienna Conference, both NGOs and governments adopted decisions calling for increased resources to be devoted to its vital work. The extent to which this is done will be one measure by which to gauge governments' commitment to the rhetoric of human rights.



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Beyond government

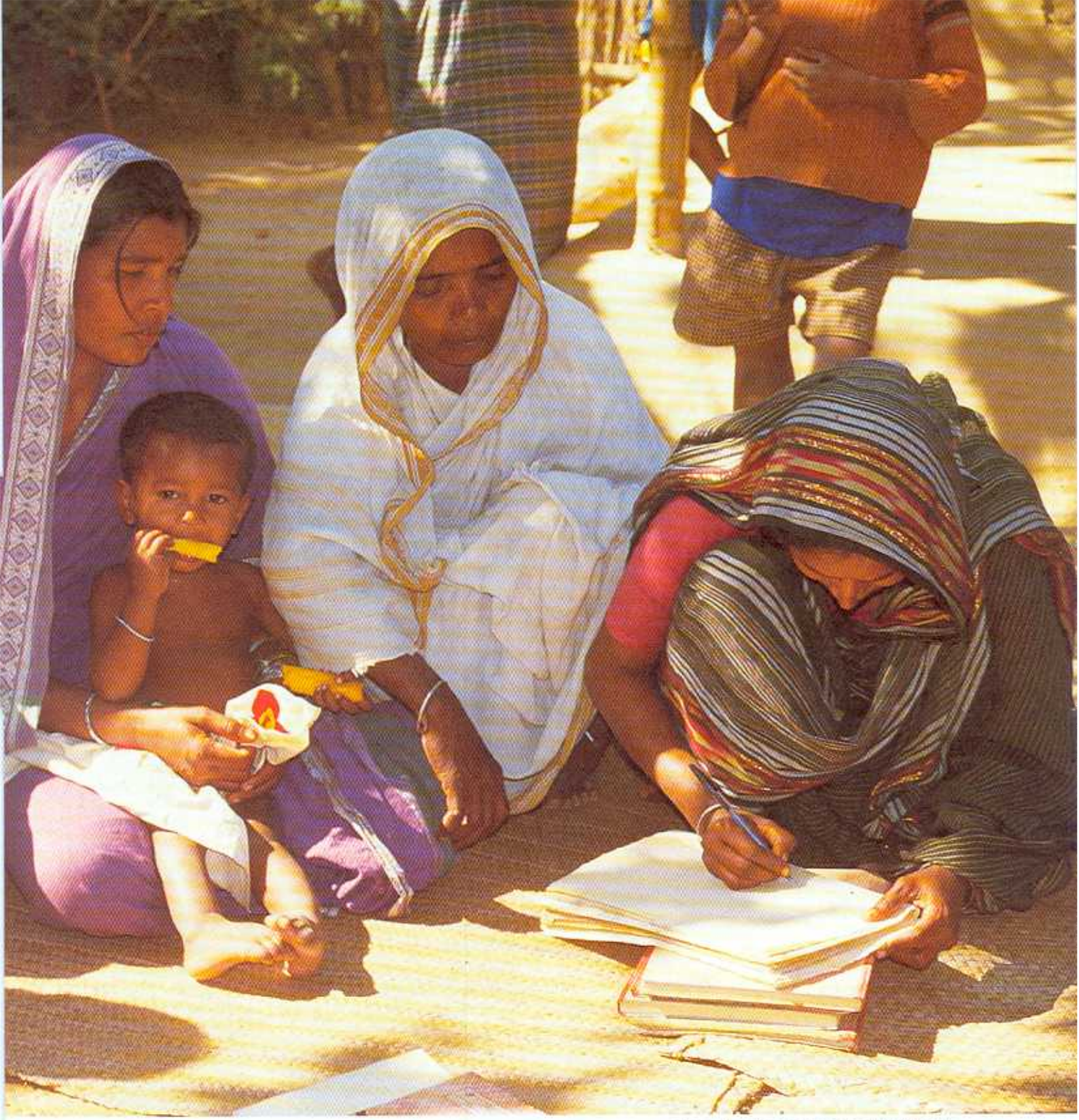
There is one international institution whose powers transcend those of governments and whose decision-making is determined not by government representatives but by individuals. That is, of course, the International Court of Justice.

The Court is provided for in Chapter 14 of the UN Charter. This specifies that every member of the UN undertakes to comply with the decisions of the Court that affect it and that a failure on the part of any state to comply may be referred to the UN Security Council to 'decide upon measures to be taken to give effect to the judgement'. All members of the UN are automatically parties to the Statute of the International Court of Justice and other states are free to become a party to the Statute as well.

By the beginning of the 1990s there were 400 international treaties in force in which the International Court of Justice was specified as the jurisdictional body. In the period from its founding in 1946 until the end of 1992, the Court had delivered judgements in 41 disputes brought to it by states. It had delivered a further 21 advisory opinions.

Although the number of cases and opinions is relatively small, the influence of the Court is far greater since the effect of a judgement can set vital precedents or shape future interpretation of principles and treaties in the whole field of international law. So great is the implicit power of the Court that the decision by one nation to refer a case to it can greatly exercise the mind of any other government that would be affected by the decision. The vision of a world in which territorial conflict is resolved through reasoned argument, rather than by the sacrifice of civilians and combatants through war, lies at the heart of the case law of the Court. Many of its cases have concerned territorial and fishing rights at sea. However in the case of the border dispute between Burkina Faso and Mali in 1986, the Court was drawn into resolution of a conflict that had led to open hostilities on land. The Court directed continuance of a cease-fire, the withdrawal of troops from the affected area and 'the avoidance of actions tending to aggravate the dispute or prejudice its eventual resolution'. There were no further hostilities: the Court gave its ruling and the presidents of both countries indicated that they would comply with the judgement.

Anyone who longs for world federalism, or insists on the need for supra-national governance, would do well to examine the impressive record of the Court in bringing reason and peace to issues which, in times gone by, would have led to strident nationalistic posturing and loss of thousands upon thousands



Women's rights are a keystone of development.
A women's income-generating project in India.

of lives as armadas were launched and armies raised for battle.

Drawing on the quiet, but inspiring, example of the International Court of Justice, many victims of human rights violations have asked why their cases cannot be dealt with similarly and why human rights cases are almost always fated to be handled by essentially political bodies in which national interests so often conflict with the pursuit of justice.

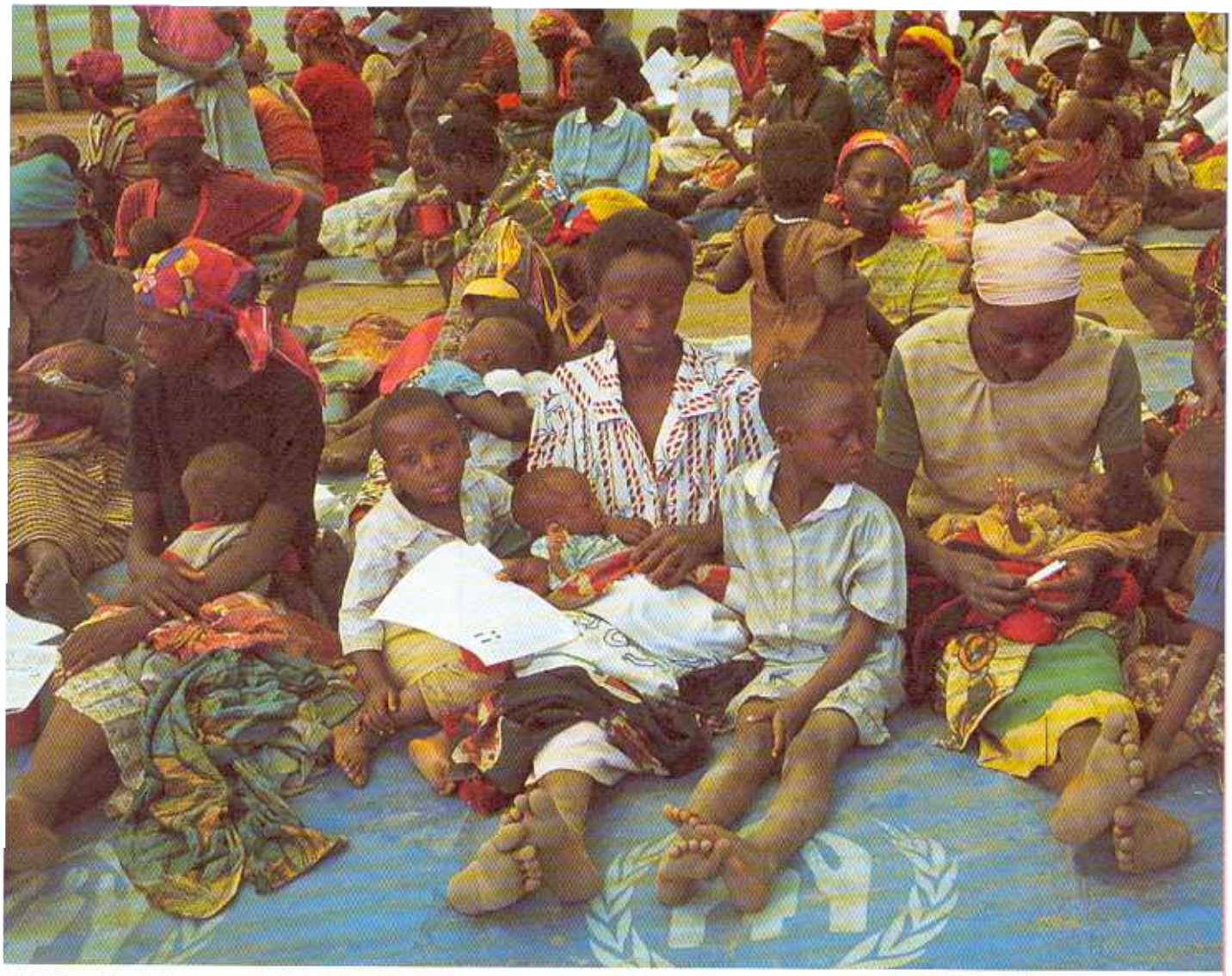
Pressing questions

The demand for effective and impartial international human rights protection is clearly not going to go away. Human rights lie at the heart of some of the most pressing questions confronting humanity today. Systematic political repression in many countries has not only blocked the development of public debate, democratic reforms and civil rights, but has claimed an appalling toll of victims.

In country after country, the threat of political arrest, detention without trial, torture, 'disappearance', the death penalty and other gross violations of human rights, such as extrajudicial executions, still hangs over dissenters and others across the political spectrum.

Those who stand up for human rights have been especially targeted. Human rights associations, individual activists, social and political campaigners, and members of the professions involved with human rights are all at risk from vicious attacks. They have been blown up in bombings, assassinated by death squads, abducted by security forces, and tortured and killed in police custody.

These violations can no longer be allowed to rage unchecked. Increasingly the UN is being drawn into anarchic situations marked by appalling human rights abuse. In many cases the anarchy itself is partly the product of those atrocities.



The UN provides food, water and medicine for millions of refugees around the world. Rwanda refugees wait for food supplies.

Indigenous peoples often have little redress against human rights abuses.

Human rights protection is rapidly becoming part of the UN strategy for peacekeeping and peace enforcement. The organization therefore needs to take account of the human rights dimension of the role that is being thrust upon it. In isolated cases individual soldiers operating under the UN flag have themselves violated international standards – and have been disciplined. As more and more governments commit forces to UN operations, it is essential that to guarantee the peace they be thoroughly trained in and adept at respecting human rights in the process. Similarly, close coordination between all UN bodies involved in human rights work must be present in peacekeeping and peace enforcement operations. The leading figure in ensuring this integration must be the new UN High Commissioner for Human Rights.

In the wake of the appalling carnage in Bosnia, the UN Security Council initiated proceedings that would lead to the prosecution of named individuals accused of war crimes and crimes against humanity in the conflict in former Yugoslavia.

The *ad hoc* tribunal which was set up was the first international body to try war criminals since the Nüremburg and Tokyo trials at the end of the Second World War. The legal technicalities involved are considerable, but if these can be overcome and proceedings successfully concluded, there are many who would regard this as an essential first step on the way to the creation of a permanent international court dealing with human rights.

In the face of the particularly hideous massacres in Rwanda in 1994, it was decided to extend the Yugoslav tribunal's remit to encompass Rwanda as well – grim proof of the need that many say exists for a permanent court. Creation of such a body would require a separate inter-governmental treaty. If, like the International Court of Justice, it had the power to impose binding judgements on countries and those acting in the service of the state, the bite of international human rights and humanitarian law would be immeasurably strengthened.

Meanwhile, the world remains awash with millions upon millions of refugees and internally displaced people. Most are fleeing the most basic violations of human rights – desperate to escape death at the hands of the state and its agents. For years, the Office of the United Nations High Commissioner for Refugees (UNHCR) has courageously and with great persistence worked to alleviate the plight of these teeming populations, scattered in camps and settlements around the world. But the solution is not to feed and house refugees – it is to turn off the tap of terror that drives these people from their lands.

> ‘fifty years ago such an idea was only a dream’

Finally, there remains the question of selectivity. From the very first steps taken in the 1960s to investigate situations in individual countries, the UN has suffered from the fact that its members decide what the organization will do on the basis of their own interests and foreign policy objectives. It was easy to reach agreement on the need to condemn white ruled South Africa. It has never been possible in the same way to tackle human rights violations committed by members of the Security Council. As the use of military force has been authorized by the UN in some countries with gross human rights records, but not in other comparable situations, the charge has been made, again and again, that the UN is selective in its approach to human rights. The truth is that the UN can only reflect the political morality of its members.

Ultimately, therefore, the future credibility of international law and of the UN human rights protection programmes will depend upon the commitment and values of national governments. Progress towards a world culture of human rights is slow, painfully slow. Fifty years ago such an idea was only a dream. Now it is an imperative.