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UNITED NATIONS SEMINAR ON THE ESTABLISHMENT OF REGIONAL COMMISSIONS ON HUMAN RIGHTS WITH SPECIAL REFERENCE TO AFRICA

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Background paper
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Note: The opinions expressed in this paper are those of the author.

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For the last two decades we have been living through a period characterized by an exceptional development of standards and proliferation of statements concerning human rights. Yet at the same time, human rights, whether civil and political or economic, social and cultural, are often being claimed and denied with extreme violence.

Mindless terrorism is being met by oppression and repression, with the result that intolerance and hatred are taking root in all areas.

This situation obliges the peoples of the United Nations - determined, according to the words of the Charter, "to practise tolerance and live together in peace with one another as good neighbours" - and the international community, one of whose purposes is "to achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms ...", to seek a balance, which is for ever being disturbed between the ideals advocated and the reality which contradicts them.

The United Nations is supported by specialists of all kinds - students of politics, jurists, economists, etc. - in its efforts to find solutions suited to the specific problems of each region of the world. No one person can be blamed. No country, no continent, can today claim to have satisfied the demands of this ideal held by all mankind, which men of goodwill expressed on 10 December 1948 in what became the Universal Declaration of Human Rights.

Africa, unfortunately, is no exception, and the failure of all the attempts made since exactly 19 years ago to establish a body for the promotion and protection of human rights in Africa certainly bears eloquent witness to this fact. But perhaps also the methods employed so far have not been the most suitable ones for establishing, in keeping with the African conception of law and human rights, an instrument capable of forging effective weapons for the fight against human rights violations.

We shall begin by dealing with the problem of human rights in Africa, before going on to discuss the concepts of promotion and protection in the case of Africa and to outline the historical and institutional background to an African commission on human rights.

I. HUMAN RIGHTS IN AFRICA

1. Traditional Africa and human rights

A pagan land, pre-colonial Africa was peopled by gods, spirits and deceased ancestors who continually took part in the life of the group through the intermediary of medicine-men, omens and ordeals. In that Africa, the notion of law as a set of rules designed to uphold and impose claims was held only in exceptional cases. There, law was inseparable from the idea of protection and the idea of duty. It was surrounded by morality and religiosity.

The comment made by Joün des Longrais about Asia "Confucianist Asia prefers an ideal of filial relationships made up of attentive protection and respectful subordination, to equality" could be applied to pre-colonial black Africa. In Senegal, it is a matter of human pride and a sign of wisdom to keep away from the courts and never to have to go to law either as a plaintiff or as a defendant. Thus, primitive African law is conciliatory and non-contentious. It partakes of a desire for consensus and understanding within the community.

African law in general is a law of the group, not only because it applies to micro-societies (lineage, tribe, ethnic group, clan, family), but also because the role of the individual in it is insignificant. For that reason, human rights in traditional Africa have their own distinctive cause, aim and function.

According to the European concept, human rights are a set of principles and rules made available to the individual with the essential aim of enabling him to defend himself against the group or entity which represents him. This concept is not found in traditional Africa. There, the individual is subjugated by the archetype of the totem, of the common ancestor or protecting spirit.

Professor Collomb aptly states: "Living in Africa means giving up an individualistic, competitive, egotistical, aggressive and dominant way of life so as to live alongside other men in peace and harmony with the living and the dead, with the natural environment and the spirits which people it or endow it with life". Thus, rights take the form of ritual which must be complied with because it is a categorical imperative, in the Kantian sense of the term.

Traditional Africa does possess a coherent system of human rights, but the philosophy underlying that system differs from that which inspired the Declaration of the Rights of Man and of the Citizen. It would be easy to select a few examples providing a very clear illustration of the almost religious respect for each man's fundamental rights. Being socialistic and humanistic, African society could not fail to have a special regard for man, as is shown by this traditional Wolof saying, frequently quoted by Léopold Sédar Senghor: "Nit nooddi garabu nit", 'Man is man's remedy".

(a) The right to life. In traditional Africa this right stems from the scrupulous respect which Africans have for their traditional religious beliefs. It includes not only the life of man, but even that of animals. A man kills only from necessity, in self-defence, to provide food, to perform a sacrifice (expiatory, conciliatory or other), or to protect another's life or a possession. But respect for life is governed not only by negative rules, such as not to kill, but also by responsibilities. The right to life implies an obligation to provide those who do not possess the means for subsistence with what is necessary to ensure their survival.

(b) Freedom of religion was effectively protected in traditional Africa. Religion envelops the whole of the society: clan, tribe or ethnic group. While the handing on of beliefs from father to son and the reverential respect due to old people and to the dead give the impression that little choice was left to the members of a particular ethnic group, the variety of totems and tutelary spirits demonstrates clearly the existence of religious freedom.

(c) Freedom of association was shown by the various groupings which Africans formed and still do form. The various types of association were freely created and prospered in the form of cultural societies, associations for occult practices, entertainment and games and age groups.

(d) Freedom of expression was recognized in traditional Africa. It simply took into account the stratification of African society and this functional equality of individuals.

In Senegal, the "Diarafs", the "Farbas", the "Diambours" and also the "Ba dolo" and even the "ñeeño" all had the right to participate in the discussion and in the taking of a decision by consensus.

Other rights and freedoms existed too: in particular, freedom of movement, the right to work, the right to education, etc. However, these rights and freedoms were rarely stated in terms of conflict. Rather, they consisted of the provision of services by members of the community individually or as a group. Thus, the upbringing of children was the responsibility not only of the parents but also of the other members of the "extended family", and even of friends and any other adult person.

2. Subjugated Africa and human rights

This section deals with colonial Africa and that part of present-day Africa which is still under foreign domination. This subjugated Africa is characterized by the failure to recognize Africans' freedoms and fundamental rights. To meet the needs of exploitation stemming from colonization, the Europeans breached the principle of the universality of human rights on more than one occasion.

The fact that they were willing to do so was clearly revealed during the negotiations for the adoption of the European Convention on Human Rights of 4 November 1950, despite the existence of overseas territories. The general tendency was to draw up a convention on the rights of "European man".

We must be realistic and recognize that the various declarations on human rights were drawn up for the societies to which their promoters belonged. Thus, African countries in particular have always been excluded from the unrestricted benefit of human rights rules. The distinction made between citizens and natives was based on a failure to recognize the principle of equality which forms the very basis of human rights.

Colonization itself is a violation of a fundamental right: the right to self-determination.

The meeting of African jurists on the promotion of law, held at Lagos in January 1961, emphasized that the right of peoples to self-determination was the first right to claim because on it depended the correct application of all other rights. Colonization, the domination of one people by another, can only be justified by the prior acceptance by the colonizer of inequality in principle between races. As Jeanne Hersh has written, that was because "the primary aim of colonialism was to continue to exploit its victims and it justified that exploitation by racial prejudice: namely, the intellectual inferiority of the exploited".

The other rights and freedoms, too, were denied colonized peoples. Colonized man played only an insignificant part in running the public affairs of his country. The distinction between citizens and non-citizens thus made it possible to deprive the latter of all the essential elements of human rights: the right to vote, the right of access to public service, the right to be elected, etc.

Tragically famous examples could easily show that colonized man was denied basic human rights: the right to freedom, the right to free choice of employment, the right to leave and return to his country, freedom of association and even freedom of religion.

It must therefore be recognized that it is only quite recently, in the course of formulating human rights standards, that any thought was given to the peoples of Africa. The Washington declaration of 1 January 1942, following President Roosevelt's "four freedoms" and the Atlantic Charter, concerned the peoples at war against nazism. Its signatories were above all anxious for an honourable outcome to the war and about its consequences in their respective countries. Nevertheless, discriminatory practices did not cease after the war. One consequence of Hitlerism was that henceforth men

were afraid of formulating racist doctrines, since Hitlerism, by classifying one group as subhuman, had brought two groups of white men into confrontation. And Jeanne Hersh was correct to say that "when the UNESCO constituent instrument of 1945 states that the World War was made possible by the denial of the principle of equality, it was not colonial racism which was being referred to, but Hitlerian racism".

Remnants of colonialism and racism still exist in Africa today: in South Africa, Namibia and Rhodesia.

South Africa adopts the system of apartheid which denies equality between men. It occupies Namibia in spite of the clearly expressed will of the international community. The racist minority in Zimbabwe indulges in subterfuge after subterfuge so as to continue to impose the will of the whites on the country.

For more than 12 years, the Ad Hoc Working Group of Experts of the Commission of Human Rights, responsible for inquiring into violations of human rights in southern Africa, has been exposing, complete with details and quoting specific cases, every aspect of this violation of the human rights of the African in South Africa, Namibia and Zimbabwe, including the array of racist laws, the large-scale use of capital punishment, mass arrests, massacres, torture, the inhuman treatment of prisoners and captured freedom-fighters, "bantustanization" (disregard of the right to self-determination), genocide, the status of migrant workers, the situation of blacks in "black spots" and the various repugnant forms of massive and flagrant violations of human rights.

The combined efforts of the United Nations and of OAU come up against the more or less overt collusion of certain countries, which results in the perpetuation of a situation which could hardly have been maintained if a "crusade" such as the one against Hitlerism had been judged necessary to fight against apartheid.

Thus, colonization everywhere disturbed the harmony of traditional society in Africa. It deformed the social relationships which formerly existed between groups and superimposed on public or private institutions new organizational rules whose essential aim was to facilitate the exploitation of the indigenous masses.

3. Independent Africa and human rights

The normal reaction which one might legitimately have expected from Africans on their emergence into international society after a long period of being prevented from the enjoyment of rights and freedoms would have been the assumption of the role of staunch defenders of human rights.

It is true that, immediately upon gaining international sovereignty, African countries expressed unreserved acceptance of the Charter of the United Nations and the Universal Declaration of Human Rights. They drew up constitutions which expatiated at length on the principles and rules governing human rights. Moreover, in the majority of African constitutions, provisions concerning human rights are included not in the preamble but, rather, in the body of the text, in the form of articles which can be invoked in trial proceedings as forming part of positive law.

At the Lagos Conference of January 1961, Sir Tafawa Balewa stated that in each country fundamental rights, and in particular the right to individual freedom, must be defined by a text and enshrined in the Constitution. But behind this imposing façade of constitutions, laws and regulations which have been carefully polished over and over again, the grim realities are quite different.

At Lagos in 1961, the jurists expressed the view that independence was a sine qua non of respect for human rights. They were right, but were wrong in thinking that that pre-condition was sufficient in itself. Faced by the need to construct their States, the African leaders gave priority to security and development.

In the name of security, it often happens that freedom of the press and freedom of association are denied and a dictatorship established so as to maintain governmental stability.

Economic and social development provides a ready pretext for very serious violations of rights and freedoms. Thus the aim of development itself is frustrated, for development includes human rights; in other words, there can be no development without respect for human rights. At the seminar on development and human rights, held at Dakar in September 1978, it was even explicitly stated that there was such a thing as a right to development and that Governments had a responsibility to satisfy that right. The participants in the seminar concluded that fulfilment of that obligation was even a condition of the legitimacy of the Government concerned.

Careful study of the OAU Charter and inquiry into the practice of pan-African bodies reveals that the importance accorded human rights is both slight and theoretical. Human rights were obviously not the main concern of those who drew up the Addis Ababa Charter. At the very beginning of the African conference which was to give birth to that Charter, Emperor Haile Selassie, in his introductory statement, identified and spelled out quite unequivocally the true concerns of the African States: unity, non-interference and decolonization. Unity, non-interference and decolonization, together with non-discrimination and co-operation, were accorded a pre-eminent position in the Charter.

Among the commissions provided for by the Charter, in particular under article XX, is an Economic and Social Commission. However, the Charter makes scant mention of human rights, as Birame Ndiaye euphemistically indicates when he states: "The OAU Charter does not seem to have given privileged treatment to human rights". The preamble to the Charter and articles II and III do speak of human rights but, as Birame Ndiaye says, this is a purely formal reference since, with the exception of the Decolonization Committee, nothing is done at either the continental or the regional level to ensure the promotion or protection of human rights. One might thus contrast the attitude of the plenipotentiaries at Addis Ababa with that of the delegates to the San Francisco Conference who produced the Charter of the United Nations, in which human rights occupy a prominent position.

The 1964 Conference of OAU Heads of State felt the need to establish commissions. A Commission of Jurists and a Commission of Transport and Communications were established under article XX. The Commission of Jurists was intended to be more a centre for legal research than a body for promoting or protecting human rights. It never, in fact, saw the light of day and was disbanded in 1966 without ever having functioned.

It must therefore be recognized that human rights in Africa are today a subject of some concern.

Between 1961 and 1978, the jurists themselves have devoted more of their expertise to the promotion of security and development than to human rights.

There was almost complete unanimity at the first conference of African jurists, held at Lagos in 1961. On the morrow of independence, it was thought that accession to international sovereignty was sufficient to ensure that human rights were respected and the primacy of law established. The Lagos declaration proclaims that the primacy of law is a dynamic principle which must be implemented to express the will of the people, to consolidate the political rights of the individual and to establish economic, social and cultural conditions in conformity with the aspirations and conducive to the full development of the human person in all countries, whether independent or not.

A few years after Lagos, reality, in the form of political and economic difficulties, confronted African Governments with obstacles which they felt unable to surmount without, at the same time, overturning the principles and rules concerning human rights. It was then that the universality of the principles at the very basis of human rights began to be questioned. African leaders conceived the idea of giving those principles a content which would take into account the security and development needs of countries in the process of creation.

In Jean-Paul Masseron's view, "African leaders tend to sacrifice individual freedoms in order to safeguard national independence", while Lavroff and Peiser state, "development there takes precedence over freedom".

At the Dakar conference in January 1967, the jurists reconsidered the primacy of law and reached something of the same conclusion as President Sékou Touré, when he said: "In our Republic, individual freedom is situated within the framework of its practical use to society".

In the 1967 Dakar declaration, the jurists noted that there were violations of rights and freedoms in several fields but that there were justifications of varying degrees of acceptability for those violations. Slavery, the primacy of law itself, freedom to work, freedom of association, the right to strike, the right to a fair trial, the right to freedom of movement and freedom of the press were all reviewed.

This "dynamic" view of the primacy of law presented obvious dangers. As a result, at the Dakar conference of September 1978 organized by the International Commission of Jurists and the Senegalese Association for Legal Study and Research, African jurists started out on a new tack. They no longer considered it acceptable to justify systematic violations of human rights by the need for economic and social development but expressed the view that the road to economic growth and progress should not bypass human rights. On the contrary, at the beginning and at the end of all development, as Senghor said, "there is man". There is man, with his needs, his fundamental rights and his freedoms, whether it is a question of civil and political or social, economic and cultural rights.

II. PROMOTION AND PROTECTION OF HUMAN RIGHTS IN AFRICA

Europe and the Americas have devised ways and means of ensuring the promotion and protection of human rights. They preceded Africa in this field, but will their models be suited to the African continent? What shall the latter choose?

1. Existing models

Neither politicians nor even jurists have a unanimous longing for an African commission on human rights: the reasons of the politicians can easily be divined, while those of the jurists are based on realism. But is it not dangerous for specialists in law to give in to pessimism? Africa must have its commission on human rights.

This commission could take its inspiration from the European Commission of Human Rights, the American Convention on Human Rights or the machinery of the Arab League without, however, being merely an African version of any one of them.

(a) The European Commission of Human Rights

To ensure the protection of human rights, an appropriate body was established within the Council of Europe, aimed at ensuring both the promotion and the protection of rights in that part of the world. The Convention signed at Rome on 4 November 1950 and later supplemented is a model of coherence and is perfectly adapted to European needs.

Some consider the European Convention on Human Rights to be an improvement on the Universal Declaration of 10 December 1948 perhaps because, in spite of omissions, it appears more uniform. That should not be surprising, since the Convention applies to countries which have a common past and a shared civilization.

After defining the rights which it guarantees, with a few slight adjustments to the expressions used, the Convention establishes the European Commission of Human Rights and the European Court of Human Rights, outlines their competence and functions and defines the role of the Committee of Ministers.

As regards scope, the protection mechanism is extended to all countries parties to the Convention.

As regards the matters which may be referred to these bodies, subject to the options which States may exercise, States or individuals have the possibility of bringing a case before the Commission or before the Court.

As regards procedure, the European Commission of Human Rights is an investigatory and conciliatory body, while the Committee of Ministers plays an essentially political role. The jurisdiction of the European Court of Human Rights, which is the result of a compromise, extends only to those States which recognize it. The optional character of the Court's competence ultimately determines its effectiveness. Execution of its judgements is "supervised" by the Committee of Ministers. This regrettably vague formula does not make for great effectiveness in practice.

(b) The Inter-American Commission

Progress towards a system for the protection of human rights in the American States was extremely cautious. Several provisions concerning human rights are contained in the Charter of the Organization of American States (Bogotá, 1948). As Gros Espiell stresses, the Charter was based on "an over-all approach admitting of no form of discrimination and recognizing economic, social and cultural rights as well as the traditional civil and political rights ...".

The Inter-American Commission on Human Rights was established by resolution VIII of the Fifth Meeting of Consultation of Ministers of Foreign Affairs, held in May 195[illegible]. The Council of the Organization approved the Statute of the Commission. For the rights to be protected, reference must be made to the American Declaration of the Rights and Duties of Man.

In 1965, the responsibilities of the Commission were extended. As Gros Espiell said, it was "not merely a question of promoting human rights in the strict sense but in addition of giving the Commission competence in matters of supervision and control by also entrusting it with the examination and investigation of communications or complaints ...".

The Commission having become an organ of the OAS, it was established that its function would be "to promote the observance and protection of human rights and to serve as a consultative organ of the Organization in these matters", and that a convention was later to determine its structure, competence and procedure. The enlargement of the Commission's functions has now been accomplished. Its report has to contain a summary of the progress made, an indication of the fields in which measures are necessary to render respect for human rights effective and comments on communications which have been addressed to it.

The Commission can approach States to obtain information concerning the communications which it receives.

The American States were concerned to make the Inter-American Commission as similar as possible to the European Commission. As a body concerned with the promotion of human rights, the Commission has become, in Mr. Gros Espiell's words, "a technical and consultative organ of the American system in the field of human rights".

In fulfilment of the first role, it has succeeded in establishing a system of periodic reports on human rights as a whole, submitted by Governments and circulated by the Commission. It also prepares studies, circulates texts, organizes conferences and promotes the establishment of national human rights commissions, the holding of seminars and competitions, the granting of fellowships, etc....

In the exercise of its second role, it provides the Inter-American Conference with technical information for use in the preparation of various projects.

The American Convention on Human Rights of 22 November 1969 benefited from the experience of the declarations and conventions drawn up over the years since 1948. The Convention deals both with civil and political rights and with economic, social and cultural rights. The Contracting Parties are obliged to respect the rights and freedoms recognized in the Convention. Chapter II lists the rights which are protected. However, in certain cases it recommends that domestic law should intervene, either by stating a prohibition or by setting a special standard.

On reading the American Convention, an African can ot fail to note what may be considered a glaring omission; the absence of any reference to the right to self-determination. Nor are the rights of minorities affirmed.

Although economic, social and cultural rights have their place in the Convention, their protection is not assured. States have merely to adopt internal measures and to establish international cooperation aimed at the progressive realization of these rights, taking into account available resources. The only control provided for is a system of six-monthly reports to be submitted to the Inter-American Economic and Social Council. However, the Inter-American Commission of Human Rights is also empowered to ask Governments for information.

The right of an individual to refer a matter to the Commission is recognized by the Convention. Communications containing denunciations of violations of human rights committed by a State party may be submitted to the Commission. On this particular point, the American Convention is superior to the Rome Convention in whose case the common right to submit petitions is exercised through States and the right of an individual to refer a matter to the Commission is made contingent on a declaration recognizing the latter's competence (article 25). A question may also be referred to the Commission by another State Party to the Convention.

As an organ of conciliation, the Commission, if it fails to obtain a settlement of any matter must draw up a report to be transmitted to the States concerned. In cases where a matter is neither settled nor referred to the Court, the Commission sets forth an opinion and makes recommendations to the State concerned. It decides at a later stage, in the light of the results obtained, whether or not to publish its report.

The functioning of the Inter-American Court of Human Rights, as provided for by the Convention, is based largely on that of the European Court of Human Rights. The States Parties must themselves recognize the competence of the Court for it to deal with contentious matters. Its consultative competence is provided for de plano.

The Court may rule that the right or freedom which has been violated should be respected and, if appropriate, that the consequences of that violation should be remedied.

In addition, the American model includes specialized organizations such as the Inter-American Commission of Women and the Inter-American Child Institute. These two bodies are responsible for promoting the rights of women and of children.

(c) The League of Arab States and human rights

The Council of Arab States decided in 1968 to establish a Permanent Arab Commission on Human Rights within the framework of the League of Arab States.

On the occasion of the International Year for Human Rights the Arab League took certain measures concerning human rights, by adopting several resolutions, for example. The regional Arab Commission on Human Rights will be included among the permanent organs of the Arab League. It will be comprised of delegates from the States and a delegate for Palestine, represented by PLO. At the meetings which it has held to date, the Commission has been chiefly concerned with problems of human rights in the occupied Arab territories. However, on the basis of the principle of de lege ferenda, the Commission may take action at the national level, at the Arab regional level, and at the world level.

At the national level, the Commission invites States to establish national human rights commissions; at the regional level, it undertakes to co-ordinate the activities of national commissions. The importance of the latter activity was revealed when the League was visited by the Special Committee established by the United Nations General Assembly to investigate the human rights situation in the Arab territories occupied by Israel. At the world level, the Commission is to arouse the interest of States and groupings in the Arab cause.

Thus, at its meetings it has always stressed the problem of the application of the 1949 Geneva Convention to Arab fighters captured by Israel. The Commission has in addition had a legislative role. It has devoted itself to preparing an Arab charter of human rights. The draft declaration concerning that charter has not yet been adopted, but even if it were, it would seem to be inadequate. In any event, the system currently in force in the Arab countries is more political than juridical and is directed more towards the outside world, to drawing attention to the problems of the Arab peoples and, in particular, of the Palestinian people, than towards the interior of States with the aim of protecting human rights.

A seminar on human rights in the Arab countries was recently held at Baghdad (May 1979). The results of this seminar would seem to be encouraging, in that real problems were discussed and appropriate solutions outlined.

2. Promotion or Protection of human rights in Africa

Naturally, when establishing a commission or drawing up a convention, it will be advisable to give some thought to the problems of choice as between the promotion and the protection of human rights.

Promotion would seem to be more adapted to what might be called "the sociology of human rights in Africa". When the Africans first met to form a group, their concerns were very different from those of the participants in the United Nations Conference on International Organizations at the end of the Second World War, in 1945. The pressing issue was no longer the problem of security, as it had been at Dumbarton Oaks, but rather, as Jean-Bernard Marie said, "the establishment of peace and economic and social co-operation".

The atmosphere at that time was conducive to an advance in human rights. The Africans, for their part, were obsessed by their economic backwardness, the fragile nature of their independence, the need to find unity and the persistence of colonialism in their continent. This was reflected in a multiplicity of commissions of an economic character and in an insistence on the principle of non-interference in the domestic affairs of States.

It is, therefore, probable that African States would more readily accept an institution for the promotion of human rights and, more particularly, of economic, social and cultural rights. But are their fears not now out of date? The Commission on Human Rights, which had been somewhat reluctant to deal with violations of human rights in African States outside South Africa, Namibia and Zimbabwe, finally responded to certain alarming situations by taking up cases which had been condemned by States, non-governmental organizations and the mass media.

The procedure provided for by Economic and Social Council resolution 1503 (XLVIII) has been applied since 1974 and from the statements which the Chairman of the Commission on Human Rights now makes on the confidential decisions taken by the Commission, it would appear that for three or four years now actions along the lines indicated by resolution 1503 (XLVIII) have been taken against several African States. Those actions were decided on by the Commission, but there had already been public discussion drawing attention to and condemning what were claimed to be massive violations of human rights in one country or another.

Moreover, we have had the recent case of the Central African Empire which, as a result of allegations of massive violations of human rights, agreed to receive a commission of African judges to inquire into the truth of the facts alleged.

Thus it appears that, contrary to what one might expect, African countries do not recoil from action to protect human rights. That consideration should lead us to avoid having to choose between promotion and protection. A coherent African system for safeguarding human rights and freedoms should be a system providing information, the collection and circulation of documents, training, education, refresher courses, studies, consultation and advice, but also one of prevention, conciliation, mediation and redress, thus joining promotion to protection by widening the scope of both.

III. AFRICAN COMMISSION ON HUMAN RIGHTS

1. Historical background to the commission

Although inter-African organs are numerous, they do not include an institution concerning human rights. The idea of establishing an African commission on human rights was born at Lagos, in January 1961, on the occasion of the first meeting of African jurists. That idea was taken up again several times, more particularly at the United Nations seminars on human rights held at Dakar in 1966, at Cairo in 1969 and at Dar es Salaam in 1973. So far, calls for action (and even recently those of the Commission on Human Rights), have fallen on deaf ears. Thus the historical background to the African commission on human rights is as yet scanty. One can only mention the untiring efforts of the United Nations, the latest of which is the convening of the present seminar as a result of a General Assembly resolution.

However, it seems worth drawing attention to a recent private initiative. In September 1978, the International Commission of Jurists, in co-operation with the Senegalese Association for Legal Study and Research, organized a seminar at Dakar on development and human rights. The work of that seminar went beyond the doctrinal framework of an analysis of the concept of development in the light of human rights and vice versa, and the participants submitted the situation of human rights in Africa to a thorough examination.

On reading the conclusions and recommendations of this seminar, one can clearly see that their authors were not seeking to cover up or to justify the violations of human rights committed in various places, as had been done in 1966 and in 1967. On the contrary, they expressed the opinion that economic and social development is a human rights. While not making any malicious accusations, they recognized the fundamental and urgent nature of the problem and, among other solutions, they advocated the establishment of an African commission on human rights.

Paragraph 16 of the conclusions and recommendations of the seminar states:

"The Seminar requested the Organization of African Unity and all African States to do their utmost to establish a system for the safeguard and supervision of human rights in Africa. It recommended:

(a) The conclusion, at the pan-African level, of a convention on human rights;

(b) The establishment of subregional institutes on human rights to provide information and alert public opinion;

(c) The establishment of one or more inter-African commissions on human rights, composed of independent judges and entrusted with dealing with all petitions concerning violations of human rights;

(d) The establishment, in African States, of mass organizations for the effective protection of human rights."

For its part, the United Nations has for several years been making discreet, yet clear calls for the establishment of an African commission on human rights. The Commission on Human Rights, in resolution 24 (XXXIV), requested the Secretary-General to take appropriate steps to give the Organization of African Unity, if it so requests, such assistance as it may require in facilitating the establishment of a regional commission on human rights for Africa.

For the moment, however, this appeal has met with no response other than the private initiatives we have mentioned.

The present situation regarding institutions for the protection of human rights in Africa is, thus, easily described, since no specific measures have been taken and the framework itself has barely been outlined. The main concern of the new States of Africa is not human rights, but political and economic independence. The Charter of the Organization of African Unity stipulates in its second preambular paragraph that "it is the inalienable right of all people to control their own destiny".

The Heads of State and Government, meeting in Addis Ababa in May 1963, declared their determination (paragraph 7) to combat neo-colonialism in all its forms. As a result, article II, paragraph 1(d) of the Charter cites the eradication of all forms of colonialism from Africa as being one of the purposes of the Organization.

Further, article III lists among the principles which Member States declare essential in pursuit of the purposes of the Organization: "absolute dedication to the total emancipation of the African territories which are still dependent". The right of peoples to self-determination had not been included in the Universal Declaration of Human Rights, but as a result of the untiring efforts of the new African States, it has won a special place within the United Nations.

Thus, resolutions 1514 (XV) and 2625 (XXV) (the first on decolonization and the second on friendly relations among States) have resulted, as Salmon says, in the right of peoples to self-determination being today unquestionably recognized as a right and as forming part of international law. It is expressly mentioned in the 1966 Covenants.

It seems, then, that the African countries have succeeded in giving the right to self-determination an importance within the United Nations equal to that accorded to it in OAU. In its fight against colonialism, OAU has established an organ which could be included among the institutions for the protection of human rights, namely, the Co-ordinating Committee for the Liberation of Africa. The Administrative Secretary-General of OAU wrote in 1972 that at their very first historic meeting at Addis Ababa in 1963, one of the first acts of the Heads of State and Government was to give practical expression to their concern to bring about the total liberation of the continent by establishing the Co-ordinating Committee for the Liberation of Africa to co-ordinate and harmonize the struggle of national liberation movements, to channel and co-ordinate assistance to freedom fighters so as to enable them to regain the independence and sovereignty of which they had been deprived.

2. Profile of the Commission

The Dakar seminar recommends both the conclusion of a convention on human rights and the establishment of one or more inter-African commissions on human rights. This recommendation immediately raises a number of problems. Is it necessary to have both a convention and one or more commissions? If so, are separate instruments necessary? Thirdly, should the commission or commissions be established within OAU or by an appropriate instrument?

(a) But above all, an answer must be found to the question raised by Dean Ibrahima Fall at the Dakar seminar on development and human rights: "Which human rights?"

Hocine Aït-Ahmed begins his thesis on "human rights in the Charter and practice of the OAU" by the following quotation from René Dumont: "The Declaration of Human Rights was not written for blacks". This idea is reflected in the opinions of several African political leaders. In practice, it amounts to a call for an "African Declaration of Human Rights".

One could expatiate on the dangers of a proliferation of declarations of human rights, which might result in world-wide contradictions and even in weakening the universal character of the Declaration of 10 December 1948.

Nevertheless, human rights always have a dimension measurable by the history, civilization and aspirations of the people concerned. That was what Karel Vasak meant when he wrote: "The supranational elements in the European Convention on Human Rights could not be maintained for long in an organic framework which was purely intergovernmental or did not postulate that it would itself be superseded as a result of the process of legal and even constitutional integration".

In other words, an institution for the protection of human rights cannot be isolated from the ideological context on which it is based. Europe and the Americas have had their declarations of human rights: Africa must have its own, which should take due account of its concerns and aspirations. In other words, development, decolonization, the elimination of racial discrimination and the duties of the individual vis-à-vis the community will have to have an important place in such a declaration and it will be essential not to omit those concepts from the list of the rights to be protected.

Above all, however, it will be necessary to go beyond the conflict between State and individual, human rights and power, and to find a new concept of fundamental human rights and freedoms adapted to African society.

In a book devoted to Japanese legal thought, Noda noted that "the East conceives law as a collection of measures for the protection both of the individual and of the community", whereas the West still sees law in terms of conflict and human rights as a conflict between the individual and the State.

It should also be noted that there is all too often a tendency to stress civil and political rights to the detriment of economic, social and cultural rights.

We must go beyond the conflict between human rights and public authorities and include both within a common objective. The object of the State is, after all, to ensure that everyone can have acceptable and continually improving conditions of life. That, ultimately, is what the various civil and political, economic, social and cultural rights amount to; the final aim is development.

(b) The experience of the American States shows that it is perhaps easier to establish a commission before taking on the task of preparing an African convention on human rights. The rulings of a commission could be of considerable help to those called on to draft an African convention on human rights. However, there is nothing to prevent negotiations being started immediately for the signature of such a convention. The Secretary-General of OAU could be invited to prepare a preliminary draft which, on the invitation of one State, could form the basis of discussion among the other States. In any case, the establishment of a commission on human rights is certainly the most urgent need. This commission could be included among the other OAU commissions and be based on a decision taken by the Conference of Heads of State. In any event, the OAU secretariat should be associated with the preparation of the draft.

(c) Having thus suggested answers to the first two questions which we raised, we will now consider whether the commission should have a dual role: promotion and protection. It will have to collect, put together, file and analyse information and, in so far as the information does not contain any accusation concerning violations of human rights, circulate it among the OAU States, specialized agencies, regional and governmental organizations.

The Commission will have to undertake systematic research; it will have to have its own publications; it must play an effective role in education and training and it will have to organize training courses, conferences, seminars and symposiums and foster the establishment of national institutions.

The Commission will have to act as advisory body to OAU on the African convention on human rights and also on human rights problems in general in the region and throughout the world. States must be able to refer human rights violations to the commission.

(d) Ibrahima Fall proposes that the existing African subregional structures should be used to create subregional commissions. He doubts whether a single commission would readily fit into the African framework, with its doctrinal conflicts and political divisions.

We believe that the difficulty is a real one. On the other hand, however, we consider that, despite their ideological differences, the African countries whether "moderate" or "progressive" all have the same feelings of mistrust of the European system in its existing form and a determination to create something adapted to African concepts and needs.

We must therefore not be discouraged by ideological differences. We must have an African commission on human rights with continent-wide jurisdiction.

IV. CONCLUSION

Traditional Africa respected human rights. Colonial Africa learned to its cost that discrimination and arbitrariness were common methods of government. The Africa of today, while avoiding any distortion of its true character imposed on it by foreigners, must not take refuge in passivity by trying systematically to ignore the problem of human rights. That problem exists and must, therefore, be solved. But the form its solution takes must be compatible with the African concept of law and aim at providing a positive answer to the legitimate aspirations of the African peoples.

Traditional Africa only knew the group and the personage. However, the individual has entered present-day African society and we cannot but protect him.

These two essential elements, tradition and community, modernism and the individual, must be combined into a whole, so as to reinvent a coherent system for the promotion and protection of human rights which the peoples of Africa and the world are impatiently awaiting.