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HUMAN RIGHTS IN TRANSITION — FREEDOM FROM FEAR

Dorothea Beane*

I. INTRODUCTION

The 1990s represent a decade of dramatic changes on the human rights landscape. A number of issues emerged to gain national and international attention. Many of the human rights issues today raise the same theme, freedom from fear. This essay highlights a few of the issues which deal in their own way with freedom from fear: Police Brutality, Women's Rights, and the Proliferation of Tribunals, including the movement toward establishing an International Criminal Court. Additionally, it analyzes their importance to the future of human relations locally, nationally, and internationally.

In 1999, we marked the 50th Anniversary of the Universal Declaration of Human Rights.¹ The Universal Declaration is part of the International Bill of Human Rights.² The Preamble to the Universal Declaration of Human Rights sets the stage for many of the most compelling issues presenting challenges to the International Community in its following assertion,

Whereas 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 in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people, . . .

Now, therefore,

The General Assembly Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations,

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1. See *Universal Declaration of Human Rights* (visited Feb. 28, 2000) <<http://www.un.org/Overview/rights.html>> (stating that "[o]n December 10, 1948 the General Assembly of the United Nations adopted and proclaimed the Universal Declaration of Human Rights . . .").

2. See *Human Rights Today: A United Nations Priority* (visited Feb. 28, 2000) <<http://www.un.org/rights/HRToday/declar.htm>> (stating that two International Covenants, Universal Declaration, and Optional Protocols comprise International Bill of Human Rights).

to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.³

It will take the resolve of a united international community to end atrocities launched against helpless civilians victimized by heinous acts of genocide, torture, sexual assaults, and other unspeakable acts of violence. Public awareness and pressure to act has spawned commissions which produced reports and Special Rapporteurs appointed to study and make recommendations.⁴ The reports of experts led to the establishment of Ad Hoc Tribunals for Yugoslavia and Rwanda.⁵ These tribunals have inspired the movement toward the creation of an International Criminal Court to render justice where national courts were unable or unwilling to respond to the call for justice.⁶ This essay discusses the call for action during the last decade to expand the application of universal human rights principles to include our interaction with government actors and non-governmental actors who threaten us in various ways.

The promotion and protection of human rights has been a major focus of the United Nations since 1945.⁷ The United Nations has created many intergovernmental bodies dealing with human rights.⁸ The General Assembly⁹ has declared, "respect for human rights and human dignity is the foundation of freedom justice and peace in the world."¹⁰ The United Nations High Commission on Human Rights is the main policy-making body dealing with human rights issues.¹¹ Composed of 53 member Governments, "it prepares studies, makes recommendations and drafts international human rights

3. Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 (1948).

4. See Lilly R. Sucharipa-Behrmann & Thomas M. Franck, *Preventive Measures*, 30 N.Y.U. J. INT'L L. & POL. 485, 490 (1998) (noting international awareness of human rights violations).

5. See *id.* at 491 (noting truth commissions promoted ad hoc tribunals).

6. Zou Keyuan, *Enforcing the Law of Piracy in the South China Sea*, 31 J. MAR. L. & COM. 107, 114 (2000) (recognizing impact of tribunals on International Criminal Court formation).

7. See *Human Rights Today*, *supra* note 2 (stating that human rights "were embedded formally at the United Nations as a great international priority 50 years ago").

8. See generally *Human Rights Today* (visited Feb. 28, 2000) <<http://www.un.org/rights/HRToday/declar.htm>>.

9. The General Assembly is the main deliberative body of the United Nations. Made up of 183 Member States, it reviews and takes action on human rights matters referred to it by the Economic and Social Council. *The United Nations and Human Rights* (visited Feb 9, 2000) <<http://www.un.org/rights/dpi1774e.htm>>.

10. *Id.*

11. See *Human Rights Today*, *supra* note 2 (indicating that High Commission on Human Rights is premier human rights intergovernmental body within United Nations).

conventions and declarations. It also investigates allegations of Human Rights violations and handles communications relating to them."¹² The Commission on Crime Prevention and Criminal Justice is composed of 40 members, and is the main United Nations policy-making body on criminal justice.¹³ It develops and monitors the United Nations program on crime prevention.¹⁴ The Secretary-General of the United Nations may use his "good offices" confidentially to raise human rights concerns with Member States.¹⁵ The results of such communications are reported to the Security Council.¹⁶ The post of High Commissioner for Human Rights was established by the General Assembly in 1993.¹⁷ The High Commissioner is the United Nations official with principal responsibility for human rights activities as delegated by the Secretary-General.¹⁸ He or she is responsible for promoting and protecting human rights for all and maintains a continuing dialogue with Member States.¹⁹ The Centre for Human Rights in Geneva is part of the United Nations Secretariat.²⁰

To enhance respect for fundamental human rights and to further progress toward their realization, the United Nations adopted a three-pronged approach: (a) establishment of international standards, (b) protection of human rights, and (c) United Nations technical assistance.²¹

International Human Rights standards were developed to protect people's human rights against violations by individuals, groups or nations.²² The Universal Declaration of Human Rights is a declaration adopted by the international community, but which is not legally binding.²³ This declaration is one component of the International Bill of Rights.²⁴ Although not legally binding, many countries have incorporated its provisions into their laws and constitutions.²⁵ International covenants and conventions, on the other hand,

12. *Id.*

13. *See id.* (discussing Commission on Crime Prevention and Criminal Justice).

14. *See id.*

15. *See The United Nations and Human Rights* (visited Feb. 28, 2000) <<http://www.un.org/rights/dpi1774e.htm>> (detailing use of office).

16. *See id.*

17. *See Office of the United Nations High Commissioner for Human Rights* (visited Feb. 28, 2000) <<http://www.unhchr.ch/html/hchr.htm>> (noting that office created on December 20, 1993 by "Articles 1, 13 and 55 of the Charter of the United Nations, the Vienna Declaration and Programme of Action and Assembly resolution 48/14").

18. *See id.* (noting duties of High Commissioner).

19. *See id.* (noting duties of High Commissioner).

20. *See id.* (indicating consolidation of Centre for Human Rights with Office of United Nations High Commissioner for Human Rights).

21. *Id.*

22. *See The United Nations and Human Rights*, *supra* note 15 (detailing reasons for standards).

23. *See Human Rights Today*, *supra* note 2 (recognizing status of declaration).

24. *See id.* (noting declaration as component of International Bill of Rights).

25. *See The United Nations and Human Rights*, *supra* note 15 (noting incorporation by nations).

have the force of law for the States that ratify them.²⁶ Generally the *International Covenant on Economic, Social and Cultural Rights*, and the *International Covenant on Civil and Political Rights* were adopted to give meaning to the rights of citizens and the obligations of government to protect its people.²⁷ Conventions established which relate to abuse of police power include: the *Convention on the Prevention and Punishment of the Crime of Genocide*, the *Convention on the Elimination of All Forms of Racial Discrimination*, the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.²⁸

In order to protect against human rights abuses, conventional mechanisms (treaty bodies), and extra-conventional mechanisms (United Nations special rapporteurs, representatives, experts and working groups) have been set up to monitor compliance with the various international instruments and to investigate alleged abuses.²⁹ Under the conventional mechanisms, the following treaty bodies, composed of experts serving in their personal capacity, were established to monitor compliance with United Nations human rights instruments: the Committee on the Elimination of Racial Discrimination (CERD), the Committee Against Torture (CAT), the Human Rights Committee (Covenant on Civil and Political Rights), and the Committee on Economic, Social and Cultural Rights (Covenant on Economic, Social and Cultural Rights).³⁰ To monitor the implementation of treaty obligations at the national level, the treaty bodies examine the reports of states' parties.³¹ Each year they engage in dialogue with 100 national governments and issue concluding observations, commenting on the situations of the countries and offering suggestions and recommendations for improvement.³² In addition, the Committees are entitled to hear and consider certain individual communications.³³ There also exists a procedure, established by the Economic and Social Council in 1970 (the so-called 1503 Procedure) for dealing with communications relating to gross and attested

26. *See id.* (recognizing legally binding covenants).

27. *See id.* (noting purpose of covenants).

28. *See id.* (noting conventions).

29. *See Human Rights Today* (visited Feb. 29, 2000) <<http://www.un.org/rights/HRToday/hrrm.htm>> (noting mechanisms for monitoring).

30. These Committees were established under the respective instruments, with members elected by the States' Parties, with the exception of the Committee on Economic, Social and Cultural Rights whose membership is elected by the ECOSOC. *United Nations Documentation: Research Guide* (visited Feb. 29, 2000) <<http://www.un.org/Depts/dni/resguide/spechr.htm>>.

31. *See Human Rights Today* (visited Feb. 29, 2000) <<http://www.un.org/rights/HRToday/hrrm.htm>> (indicating monitoring procedures).

32. *See The United Nations and Human Rights*, *supra* note 15 (noting dialogue with nations).

33. *See Human Rights Today* (visited Feb. 29, 2000) <<http://www.un.org/rights/HRToday/action.htm>> (indicating scope of committee).

violations of human rights.³⁴ If considered admissible, communications are received by a Working Group of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, which decides whether to transfer the communication to the Working Group of the Commission on Human Rights.³⁵ Communications received remain confidential until such time as the commission may decide to make recommendations to the Economic and Social Council.³⁶

The United Nations created its advisory services program in 1955, providing institution-building assistance and other services to Member States at their request.³⁷ In 1987, the Secretary-General established the Voluntary Fund for Advisory Services and Technical Assistance in the field of Human Rights.³⁸ Over the last few years, the United Nations Centre for Human Rights and Electoral Assistance Division have received increasing numbers of requests for technical assistance.³⁹

One example of conduct recently the focus of public examination by human rights proponents, lawyers and jurists involves Excessive Use of Force by Police Officers in the United States. Human Rights Watch, Amnesty International, the American Civil Liberties Union and a myriad of other human rights' advocacy groups, as well as, federal, state and local governments have studied incidents of excessive use of force by police officers including unjustified shootings, severe beatings, fatal choking and rough treatment.⁴⁰ Some of these acts have resulted in death of those victimized.⁴¹ Some have resulted in serious and permanent injuries to the victims, their families, and their communities.⁴² Unfortunately, although procedures exist for reporting these incidents, some police and public officials

34. See *id.* (noting mechanism for communication of gross human rights violations).

35. See *id.* (indicating procedure for communications of abuses).

36. See *id.* (indicating confidentiality).

37. See *The United Nations and Human Rights*, *supra* note 15 (recognizing advisory services program).

38. See *id.* (noting establishment of fund).

39. See *The United Nations and Human Rights*, *supra* note 15. One of the areas of technical assistance offered includes training criminal justice personnel-judges, lawyers, prosecutors, and police. Training in the field of human rights includes seminars, courses, workshops, fellowships, scholarships, the provision of information and documentation.

40. See generally Human Rights Watch, *Shielded from Justice: Police Brutality and Accountability in the United States* (visited Feb. 29, 2000) <<http://www.hrw.org/hrw/reports98/police/index.htm>>; Amnesty International, *United States of America: Race, Rights, and Police Brutality* (visited Feb. 29, 2000) <<http://www.amnestyusa/rightsforall/police/brutality/index.html>>; American Civil Liberties Union, *Police Practices* (visited Feb. 29, 2000) <<http://www.aclu.org/issues/policepractices/arpolice/html>>; 42 U.S.C. § 14141 (1994).

41. See Amnesty International, *Amnesty International's Continuing Concerns* (visited Feb. 29, 2000) <<http://www.amnestyusa.org/rightsforall/police/brutality/brutality-4.html#Police>> (detailing shooting deaths of Stanton Crew, Mario Paz, Aquan Salmon, La Tanya Haggerty, Danta Dawson, and Pedro Oregon).

42. See *id.* (noting injury of Dante Johnson).

are more than happy to meet such accusations with denials and excuses or to explain that the abusive conduct was some kind of aberrant behavior. The systematic denial of the problem does little to instill confidence in Law Enforcement and may create one of the greatest threats to human interaction — anarchy. The riots which occurred in Los Angeles over the last four decades in response to alleged police use of excessive force are illustrations of the principle “No justice, no peace,” which pervades communities feeling continually victimized by abhorrent police behavior. Whether the perception of unbridled police power is real or imagined, holding law enforcement officers accountable for acts of excessive force rather than making excuses for unjustified police violence against citizens is simply justice which should not be denied.

A parallel concern within the Human Rights community is the alarming global dimension of female-targeted violence. In 1993, the United Nations General Assembly adopted the Declaration on the Elimination of Violence Against Women.⁴³ Until that point, most governments tended to regard violence against women as a private matter between individuals and not a pervasive human rights problem requiring State intervention. In view of the alarming growth in the number of cases of violence against women throughout the world, the Commission on Human Rights adopted resolution 1994/45 appointing the Special Rapporteur on violence against women.⁴⁴ The Special Rapporteur has a special mandate to collect and analyze comprehensive data and to recommend measures aimed at eliminating violence at the international, national and regional level.⁴⁵ The violence which women experience from early childhood throughout their lives is part of a vicious cycle. Women are the victims of incest, rape and domestic violence often leading to trauma, physical handicap or death. During the 90s, the world was shocked by the reality that rape is still being used as a weapon of war, a strategy used to subjugate and terrify entire communities.

A preliminary report in 1994 by the Special Rapporteur, focused on three areas of concern where women are particularly vulnerable: in the family (including domestic violence, traditional practices, infanticide); in the community (including rape, sexual assault, commercialized violence against women such as trafficking in women, labor exploitation); and by the State (including violence against women in detention) and condoned by the State (including violence against women in situations of armed conflict and against

43. See *UN Action for Women* (visited Feb. 29, 2000) <<http://www.un.org/ecosocdev/geninfo/women/dpi1796e.htm>> (indicating adoption of declaration).

44. See *id.* (noting appointment of special rapporteur).

45. See *id.* (indicating duties).

refugee women).⁴⁶ The campaign supporting women's rights as human rights must recognize the urgency of the problem in contemporary society and formulate mechanisms to protect those victimized to free them from the fear they experience on a daily basis globally.

II. THE UNITED NATIONS' HUMAN RIGHTS ADVOCACY AND ITS RESPONSE TO EXCESSIVE FORCE USED BY LAW ENFORCEMENT OFFICERS

Human rights proponents throughout the United States are concerned that excessive use of force by law enforcement officers violates international human rights standards and treaties,⁴⁷ and the last decade their focus on the problem of brutality has increased discussion on unlawful police behavior. There are express international prohibitions on imposition of torture or other cruel, inhumane, or degrading treatment on suspects and arrested persons.⁴⁸ Such treatment is prohibited under Article 5 of the Universal Declaration of

46. *Women and Violence* (visited Feb. 6, 2000) <<http://www.org/rights/dpi1772e.htm>>.

47. The American Civil Liberties Union studied allegations of police abuse around the country and concluded that six years after the Rodney King beating, police abuse was still very much an American problem even though the behavior violated conventional international norms against cruel, inhuman or degrading treatment. In another study, *Fighting Police Abuse: A Community Action Manual*, they provide examples which illustrate how the problem exists in all regions of the country.

- In December 1996, two men in two weeks died in handcuffs at the hands of the Palm Beach County sheriffs deputies in Florida. Lyndon Stark, 48, died of asphyxia in a cloud of pepper spray while handcuffed behind his back in a prone position. Several days earlier, Kevin Pruikmsa, 27, died after being restrained by a sheriff's deputy.
- In January 1997, Kurt DeSilva, 34, was shot and killed by a Pawtucket, Rhode Island police officer after a low speed car-chase. DeSilva, who was unarmed, was suspected of driving a stolen car.
- In February 1997, James Wilson, 37, an unarmed motorist, was kicked and punched by three Hartford, Connecticut police officers after a brief chase which ended in front of a Bloomfield, Connecticut police station. The beating was so severe that a group of Bloomfield police intervened to stop it. 'They saw activity that appeared inappropriate,' the Bloomfield Police Chief stated. 'He didn't resist officers . . . he was struck.'

The ACLU's manual was prepared to inform the public about the situation of police brutality and encourage community groups to bring about real and lasting reform. See American Civil Liberties Union, *Fighting Police Abuse*, (visited Feb. 24, 2000) <<http://www.aclu.org/library/fightingpoliceabuse.html>>.

Amnesty International issued a lengthy report in 1996 on police brutality and excessive force in the New York City Police Department. Their report included statistics on police shootings, including racial disparities and deaths in custody. The report discussed police guidelines on excessive use of force and disciplinary actions for improper use of force. See Amnesty International Report, *Police Brutality and Excessive Force in the New York City Police Department* (visited Feb. 29, 2000) <<http://www.amnesty.org/ailib/aipub/1999/AMR/25103696.htm>>.

Human Rights Watch studied the problem of excessive force and recommended:

Due to the common reluctance of local district or county attorneys to prosecute police officers accused of human right violations, each state should create a special prosecutor to handle criminal prosecution of officers accused of criminal acts, including cases of brutality and corruption.

See Human Right Watch, *Shielded from Justice*, Summary and Recommendations (visited Feb. 29, 2000) <<http://www.hrw.org/hrw/reports98/police/uspol11.htm>>.

48. See *infra* notes 22-28.

Human Rights,⁴⁹ Article 7 of the International Covenant on Civil and Political Rights (ICCPR),⁵⁰ and the United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment.⁵¹ Both the Covenant on Civil and Political Rights and Convention Against Torture were ratified by the United States.⁵²

In 1979, the Seventh United Nations Congress on the Prevention of Crime and Treatment of Offenders adopted the Code of Conduct for Law Enforcement Officials.⁵³ The Commentary to Article 1 of the Code defines "law enforcement officials," to include "all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention."⁵⁴ The Seventh Congress emphasized "use of force by law enforcement officials should be commensurate with due respect for human rights."⁵⁵ Subsequently, the Eighth Congress adopted the *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*.⁵⁶ The principles were formulated to give guidance to the "Member States" in their task of ensuring and promoting the proper role of law enforcement officials.⁵⁷ They provide that force should be used only as a last resort when non-violent measures have failed or would be clearly inappropriate.⁵⁸ Further, the amount of force used must be proportionate to the threat encountered and designed to minimize damage and injury.⁵⁹

49. *Universal Declaration of Human Rights*, G.A. Res. 217A(III), U.N. Doc. A/810, at 71 (1948) ("No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.")

50. *International Covenant on Civil and Political Rights*, G.A. 2200, U.N. GAOR, 21st Sess., art. 7, U.N. DOC. A/6316 (1967), reprinted in 6 I.L.M. 368 (1967) ("No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.")

51. *United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment*, G.A. Res. 39/46, U.N. GAOR, 39th Sess., Supp. No. 51 at 197, U.N. Doc. A/39/51 (1984), reprinted in 23 I.L.M. 1027 (1984).

52. According to the Understanding filed by the United States upon its ratification of the Covenant on Civil and Political Rights:

The United States understands that this Covenant shall be implemented by the Federal Government to the extent that it exercises legislative and judicial jurisdiction over the matters covered therein and otherwise by the state and local governments; to the extent that state and local governments exercise jurisdiction over such a matter, the Federal Government shall take measures appropriate to the Federal system to end that the competent authorities of the state or local governments may take appropriate measures for the fulfillment of this Covenant. (As submitted by the United States Senate on April 2, 1992.)

53. See G.A. Res 169, U.N. GAOR, 34th Sess., Supp. No. 46 (1980), available at <<http://www.uncjin.org/Standards/Conduct/compendium.pdf>>.

54. See *id.* at art. 1(a) (defining law enforcement officials).

55. See *Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders: Report Prepared by the Secretariat* at 11, U.N. Doc. A/CONF.144/28/Rev. 1 (1991).

56. See *id.*

57. See *id.*

58. See *id.*

59. See *id.*

A. *The National Experience — Brutality and the Culture of Fear in Law Enforcement*

Hubert Williams, President of the Police Foundation, provides some explanation for the current national focus of attention on excessive force by law enforcement. During the course of the 20th century, increasing public attention has been paid to the use of force by police, often concentrating on those occasions when it was used, or alleged to be used, unnecessarily, or to excess. A series of official inquiries probed this issue. In 1931, the Wickersham Commission devoted one of its reports, *Lawlessness in Law Enforcement*, to the problem of brutality. More recently, Williams states:

[T]he United States Supreme Court has provided guidance concerning the legal constraints involved in the use of force, particularly when making arrests or apprehending fleeing felons. In addition, the courts have generally imposed responsibility upon municipalities for the torts of their police officers, causing those financially stretched governments to pay more attention than ever to the use of force by those officers. State legislatures have enacted laws delimiting the appropriate use of force by police officers. Law enforcement agencies have instituted more restrictive policies and procedures to limit the use of force by their personnel.⁶⁰

Williams suggests, “[d]espite attempts to control it, the perception of the use of excessive force by police contributed to the Harlem disturbance of 1935, the Watts riot in 1965, the wide range of 1967 disorders studied by the Kerner Commission, the Miami riot of 1980 and several other disturbances.”⁶¹ He states, “The Police Foundation was created in 1970 largely as a result of the need, made undeniably clear by the riots of the 1960s, to understand and improve the functioning of America’s police, including the controlled application of the use of force.”⁶²

In 1981, the United States Civil Rights Commission found patterns of law enforcement abuse in the excessive use of force.⁶³ The commission recommended police departments “establish early warning systems to identify

60. THE POLICE FOUNDATION, *POLICE USE OF FORCE: OFFICIAL REPORTS, CITIZEN COMPLAINTS, AND LEGAL CONSEQUENCES* 7 (1993).

61. *See id.*

62. *See id.*

63. *See American Civil Liberties Union, Fighting Police Abuse* (visited Feb.24, 2000) <<http://www.aclu.org/library/fightingpoliceabuse.html>> (commenting on findings of 1981 United States Civil Rights Commission).

officers with high rates of citizen complaints.”⁶⁴ “Patterns in the use of physical force ‘indeed’ reveal a lot about the culture of the particular police department.”⁶⁵ One horrendous example of police misconduct involving excessive use of force was documented in a commission established in response to the Los Angeles riots erupting after the “Rodney King Incident.”

B. The Report of the Independent Commission on the Los Angeles Police Department — “The Christopher Report”

On March 3, 1991, Rodney G. King, a 25-year-old African-American man, was beaten by uniformed police officers of the Los Angeles Police Department (LAPD). A sergeant and a large group of LAPD, California Highway Patrol and Los Angeles Unified School District officers stood by without aiding King.⁶⁶ The beating incident was videotaped⁶⁷ and later shown on television to millions of Americans, causing a public outcry and leading to a comprehensive investigation of the use of excessive force by the Los Angeles Police Department.⁶⁸ In early April 1991, a commission was formed

64. *See id.*

65. *See id.*

66. INDEPENDENT COMMISSION ON THE LOS ANGELES POLICE DEP’T, REPORT OF THE INDEPENDENT COMMISSION ON THE LOS ANGELES POLICE DEP’T 3 (1991) (hereinafter *Christopher Report*). The *Christopher Report* consists of a 228 page document, which inquired into the use of excessive force by a police department. It includes findings resulting from interviews with fifty expert witnesses, public hearings where more than 150 representatives of community organizations and private citizens participated. Additionally, more than 500 current or retired Los Angeles police officers were interviewed. *See id.*

67. An amateur photographer, George Holliday, videotaped the beating of Rodney King in the early morning on March 3, 1991. *See Christopher Report, supra* note 66, at 3. Were it not for this videotape, the events of the beating may never have received public attention and instigated the formation of the Christopher Commission’s report.

68. *Christopher Report, supra* note 66, at 7. The following account is an excerpt from the Report of the Commission, detailing the events recorded by videotape:

As George Holliday’s videotape begins, King is on the ground. He rose and moved toward Powell. Solano termed it a “lunge,” and said it was in the direction of Koon. It is not possible to tell if King’s movement is intended as an attack or simply an effort to get away. Taser wires can be seen coming from King’s body.

As King moved forward, Powell struck King with his baton. The blow hit King’s head and he went down immediately. Powell hit King several times with his baton. The videotape shows Briseno moving in to try to stop Powell from swinging, and Powell then backing up. Koon reportedly yelled, “that’s enough.” King then rose to his knees; Powell and Wind continued to hit King with their batons while he was on the ground. King was struck again and again. Koon acknowledged that he ordered the baton blows, directing Powell and Wind to hit King with “power strokes . . .”

Notwithstanding the repeated “power strokes with the batons, the tape shows that King continued to get up.” Koon ordered the officers to “hit his joints, hit his wrists, hit his elbows, hit his knees, hit his ankles.”

Finally, after 56 baton blows and six kicks, five or six officers swarmed in and placed King in both handcuffs and cordcuffs restraining his arms and legs. King was dragged on his stomach to the side of the road to wait the arrival of a rescue ambulance.

Id. at 6-7.

“to examine every aspect of law enforcement operations and structure that might cause or contribute to the problem.”⁶⁹ Warren Christopher, former Deputy Attorney General of the United States and Deputy Secretary of State, chaired the newly created commission.⁷⁰ Its mandate was to document findings concerning police brutality and make recommendations to the Mayor of Los Angeles, the City Counsel and Police Chief Daryl F. Gates.⁷¹

The Christopher Report alleged twenty-three LAPD officers responded to the scene of the Rodney King incident.⁷² The ages of the responding officers ranged from 23 to 48 years.⁷³ Their experience varied from 10 days to 29 years.⁷⁴ The officers were diverse. “In the group were one African-American male, one African-American-female, four Latino males, two white females and 15 white males.”⁷⁵ The Report chronicles the computer and radio messages transmitted among the officers involved in the incident immediately after the beating.⁷⁶ The report candidly admits these message transmittals raised concerns that “the King beating was part of a larger pattern of police abuse.”⁷⁷ The recorded conversation between the LAPD dispatcher and the Los Angeles Fire Department requesting ambulance assistance reveals the callous and routine discussion of the beating of this unarmed traffic violation suspect.

[Police Dispatcher] P.D.: Foothill & Osborne, he pissed us off, so I guess he needs an ambulance now.

[Fire Department] F.D.: Oh, Osborne. Little attitude adjustment?

P.D.: Yeah, we had to chase him.

F.D.: OH!

69. Letter of Transmittal from the Independent Commission on the Los Angeles Police Department to the Mayor Thomas Bradley, City Counsel President John Ferraro, Members of the City Counsel of Los Angeles and Los Angeles Police Chief Daryl Gates, (July 9, 1991) (included in *Christopher Report*, *supra* note 66).

70. See *Christopher Report*, *supra* note 66. The members of the Independent Commission on the Los Angeles Police Department were Warren Christopher (Chair), John A. Arguillas (Vice-Chair), Roy A. Anderson (Chairman Emeritus), Willie R. Barnes, Leo F. Estrada, Mickey Kantor, Richard M. Mosk, Andrea Sheridan Ordin, John Brooks Slaughter, Robert E. Tranquada. *Id.*

71. See *id.* at 4 (stating purpose of commission).

72. See *id.* at 11.

73. See *id.*

74. See *id.*

75. See *id.*

76. See *id.* at 14.

77. See *id.*

P.D.: CHP and us, I think that kind of irritated us a little.

F. D.: Why would you want to do that for?

P. D.: (laughter) should know better than run, they are going to pay a price when they do that.

F.D.: What type of incident would you say this is.

P.D. It's a . . . it's a . . . battery, he got beat up.⁷⁸

The on scene police officers transmitted the word "oops" at 1:12 to foot patrol officers who were not at the scene of the beating.⁷⁹ The following exchange then occurred within minutes:

"Oops, what?"

[From Powell/Wind]: "I haven't beaten anyone this bad in a long time."

"Oh not again . . . why did you do that . . . I thought you agreed to chill out for a while. What did he do?"

[From Powell/Wind]: "I think he was dusted . . . many broken bones later after the pursuit."⁸⁰

The Christopher Report was unusually candid.⁸¹ It concluded the videotape and subsequent recorded communications between the involved officers and supervisors on scene "provoked concern that the beating was an example of widespread, racially motivated 'street justice' administered by some in the LAPD."⁸² The commission's investigation raised questions that though initially confined to the particular situation in Los Angeles, clearly also have universal application. The report raised the following fundamental issues:

78. See *Christopher Report*, *supra* note 66, at 14-15.

79. See *id.*

80. See *id.* at 15.

81. See *id.* at iii. The report found that there were "a significant number of officers in the LAPD who repetitively used excessive force against the public and persistently ignored the written guidelines of the Department regarding force." *Id.*

82. See *id.* at 16. The report served to reinforce the belief held by some members of the Los Angeles minority communities, "that excessive use of force by the LAPD is common." *Id.*

- Concerns about the “LAPD’s ‘culture’ and officers attitudes toward racial and other minorities;
- The apparent failure to control or discipline officers with repeated complaints of excessive force;
- The accuracy with which arrest and use of force reports are completed;
- The inability to screen out applicants to the LAPD with psychological profiles indicating a propensity to violence;
- The possibility that “street justice” is regularly meted out by LAPD officers after a pursuit or chase;
- The disparity between the training received at the Police Academy and the way the LAPD operates in the field;
- The difficulties the public encounters in attempting to make complaints against the LAPD officers;
- The role of the LAPD leadership and civilian oversight authorities in addressing or contributing to these problems.⁸³

Evidence of the “culture” of this metropolitan police department revealed that although race was one of the primary factors in cases involving excessive force, it was not the only factor.⁸⁴ One must question how this “culture of violence” had become so pervasive. The Christopher Report concludes Command officers were not held accountable for the acts of excessive force

83. *See id.* at 17.

84. Some evidence of the improper and excessive violence comes from recordings of routine police communications.

- “Capture him, beat him and treat him like dirt . . . sounds like a job for the dynamic duo . . . after I beat him what do I book him for and do I have to use a force [report].”
- “Did you arrest the 85 yr old lady or just beat her up.”
“We just slapped her around a bit . . . she’s getting medical treatment right now.”
- “We prond [sic] him straight out of his jaguar . . .”
“He’s crying like a baby.”
- “I hope there is enough units to set up a pow-wow around the susp[ect] so he can get a good spanking and nobody c it . . .”
- “The last load of went to a family of illegals living in the brush along side of pas freeway . . . I thought the woman was going to cry . . . so I hit her with my baton.”

See Christopher Report, supra note 66, at 49-51.

of their subordinates.⁸⁵ The widespread view within the Los Angeles Police Department and many other metropolitan law enforcement agencies is that penalties imposed in excessive force cases are more lenient than other types of police misconduct.⁸⁶ The Christopher Report concluded, “[T]he problem of excessive use of force is fundamentally a problem of supervision, management and leadership.”⁸⁷

C. *New Focus on Accountability and Vindication of Rights*

There is a world of difference between the Constitutional rights as they appear on paper and the daily interaction with repeat offenders of abusive police tactics. Old problems deserve new strategies. The United States has reported to the Committee on Human Rights that the “right to life” is protected by the federal and state constitutions and law.⁸⁸ The Fifth Amendment to the United States Constitution provides that “no person shall . . . be deprived for life, liberty or property, without due process of law.”⁸⁹ The Fourteenth Amendment to the Constitution provides that “no State shall . . . deprive any person of life, liberty or property without due process of law.”⁹⁰ The provisions incorporate the doctrine that this right shall be protected by law. The value of human life is further protected by the criminal codes of the United States government, the 50 states and the several United States Territories, and other constituent jurisdictions, which all criminalize the arbitrary and unjustified deprivation of life. The protection of the right to life is also implicated in statutes regulating the official use of force. Prison guards, sheriffs, police and other state officials who abuse their power through excessive use of force may be punished under 18 U.S.C. §§ 241 and 242.⁹¹ Where law enforcement officials use excessive force, individually or in

85. *See id.* at 62 (“Accountability means that command officers will be evaluated on the basis of how officers under their supervision adhere to the Department’s policies regarding use of force.”).

86. *See id.* at 167.

From the beginning of 1984 to the end of 1990, the department’s own records reflect at least 36 cases of sustained complaints involving allegations of excessive force against handcuffed suspects. Of these cases only two (both involving officers with egregious records of force-related complaints including prior suspensions) led to removal. In every case, the discipline was a 22- day suspension. . . . Our review also revealed lax punishment for officers who blatantly lied about the event in question.

Id.

87. *See id.* at 32.

88. Dep’t of State, Office of Legal Advisors, *Initial Report of the United States to the United Nations Committee on Human Rights under the International Covenant on Civil and Political Rights* 62 (Sept. 1994).

89. U.S. CONST. amend. V.

90. U.S. CONST. amend. XIV, § 1.

91. 18 U.S.C. § 241, 242 (1999).

conspiracy, victims are protected with respect to the rights secured by the Fourth, Eighth, and Fourteenth Amendment to the Constitution of the United States. The Fourth Amendment is asserted in cases where the victim's status is that of arrestee, and a convicted prisoner may assert the Eighth Amendments where he or she is victimized by excessive force.⁹²

In practice, Federal law enforcement officials are armed with a new weapon which may help with the problem of excessive use of force by local law enforcement personnel. This new weapon is the Violent Crime Control and Law Enforcement Act of 1994. The Act requires the Attorney General to collect data on excessive force by police and to publish an annual report from the data.⁹³ Perhaps equally important, it provides a civil cause of action against law enforcement officers, or officials of any government agency responsible for or who engage in a "pattern or practice" which deprives persons of rights, privileges or immunities secured or protected by the Constitution or laws of the United States.⁹⁴ The United States may seek equitable and declaratory relief to eliminate patterns of practices of misconduct pursuant to 42 U.S.C. § 14141. Recently, the Department of Justice has filed civil lawsuits under this "pattern or practice" Act against law enforcement agencies in Steubenville, Ohio, Pittsburgh, Pennsylvania; and in New Jersey.⁹⁵ These civil suits are having a positive effect. In *United States v. New Jersey*, the parties entered a consent degree on December 30, 1999, a

92. See *Graham v. Connor*, 490 U.S. 386, 394-8 (1989) (explaining constitutional foundation for protection against excessive force by government).

93. 42 U.S.C. § 14142 (1999). Section 14142 provides:

- (a) The Attorney General shall, through appropriate means, acquire data about the use of excessive force by law enforcement officers.
- (b) Data acquired under this section shall be used only for research or statistical purposes and may not contain any information that may reveal the identity of the victim or any law enforcement officer.
- (c) The Attorney General shall publish an annual summary of the data acquired under this section.

Id.

94. 42 U.S.C. 14141 (1999). Section 14141 provides:

- (a) It shall be unlawful for any governmental authority, to engage in a pattern or practice of conduct by law enforcement officers or by officials or employees of any governmental agency with responsibility for the administration of juvenile justice or the incarceration of juveniles that deprives persons of rights, privileges, or immunities secured or protected by the Constitution of the United States.
- (b) Whenever the Attorney General has reasonable cause to believe that a violation of paragraph (1) has occurred, the Attorney General, for or in the name of the United States, may in a civil action obtain appropriate equitable and declaratory relief to eliminate the pattern or practice.

Id.

95. See *United States Department of Justice, Documents and Publications* (visited Feb. 16, 2000) <<http://www.usdoj.gov/crt/split/findsettle.htm>>. The civil actions were commenced against Steubenville, Ohio (Aug. 28, 1997); Pittsburgh, Pennsylvania (Feb. 26, 1999) and New Jersey (December 22, 1999). *Id.*

mere eight days after the initial complaint was filed.⁹⁶ The cities of Steubenville, Ohio and Pittsburgh, Pennsylvania executed consent decrees after civil suits were filed as well.⁹⁷

Recently a civil suit was filed against the City of Columbus, Ohio,⁹⁸ after breakdown of negotiations between the parties over a Proposed Consent Decree,⁹⁹ offered by Acting Assistant Attorney General of the Civil Rights Division Bill Lann Lee. The lawsuit alleged the Department of Justice conducted a lengthy investigation of the Columbus Department of Police. The Department of Justice reviewed internal files relating to over 300 citizen complaints of misconduct filed with the department.¹⁰⁰ Documents were gathered from recent civil lawsuits against the City and the police department.¹⁰¹ These documents and a variety of other data, including the June 30, 1997 Mayoral Investigative Report of the Columbus Division of Police, the April 14, 1998 report of the police chief to the mayor led to the suit.¹⁰² A Department of Justice attorney commenting about the lawsuit suggested “[t]he department filed the lawsuit to give the city a tool to win

96. See *United States v. New Jersey, Consent Decree* (visited March 2, 2000) <<http://www.usdoj.gov/crt/split/documents/jerseya.htm>>.

97. See *United States v. Steubenville, Consent Decree*, (visited March 2, 2000) <<http://www.usdoj.gov/crt/split/documents/steubensa.htm>>; *United States v. Pittsburgh, Consent Decree* (visited March 2, 2000) <<http://www.usdoj.gov/crt/split/documents/pittssa.htm>>.

98. *United States v. City of Columbus*, No. C2-99-1097 (S.D. Ohio) (pending before United States District Judge Holschuh).

99. See *Department of Justice Proposed Agreement* (visited February 16, 2000) <<http://www.police.ci.columbus.oh.us/GeneralInformation/decree.htm>> [hereinafter Proposed Consent Decree]. The Proposed Consent Decree offered to the City of Columbus included a provision which called for the selection of an Independent Monitor to review and evaluate the quality and timeliness of: all firearms investigations; appropriate samples of misconduct investigations; disciplinary action and positive corrective action taken after misconduct investigations and firearms discharge investigations; and appropriate samples of “use of force” reports. The decree further required the City of Columbus re-open for further investigation any misconduct investigation the Monitor determines to be incomplete. Under the Proposed Decree, the Monitor is to provide instructions for completing the investigation. *Id.*

100. See Bill Lann Lee, *Columbus Findings Letter* (visited Feb. 16, 2000) <<http://www.usdoj.gov/crt/split/documents/columbus.htm>>.

101. See *id.*

102. In his transmittal letter of the Proposed Consent Decree, Acting Assistant Attorney General Bill Lann Lee, identifies part of the problem revealed through his investigation:

. . . Misconduct often is triggered by the officer's perception that the victim in some way disrespected the officer, although the victim's conduct in fact is completely innocuous. On other occasions, the misconduct stems from some emotional turmoil experienced by the officer resulting from some unrelated, prior occurrence, or involves other misconduct. . . . Victims frequently are African-American, or are young, female, or lower income whites. The officers involved in misconduct many times have a history of complaints against them, and fail to report accurately to their superiors what transpired in the incident (changing the facts to portray the victim as responsible for the arrest, use of force, and/or search).

Our investigation further indicates that the pattern or practice of misconduct is tolerated by the failure of the CDP to adopt and implement proper management practices and procedures. Bill Lann Lee, *Columbus Findings Letter* (visited Feb. 16, 2000) <<http://www.usdoj.gov/crt/split/documents/columbus.htm>>.

union approval of the settlement.”¹⁰³ The official said: “filing this lawsuit is not intended as an indictment against all the officers in the Columbus Police Department. We know there are many fine officers doing their jobs properly, but there are officers that are problematic.”¹⁰⁴

Where police unions tighten their ranks and oppose Proposed Consent decrees as illustrated in the *City of Columbus* case, municipalities find themselves between the proverbial “rock and a hard place.” Presumably, some Fraternal Order of Police Unions oppose proposed Consent Decrees similar to one rejected by the City of Columbus because they strongly oppose outside oversight of their police functions.¹⁰⁵ However, this oversight by the Department of Justice simply effectuates existing requirements under International Conventions, Understandings, Principles and Standards which require the United States to adopt laws, procedures and regulations and enforce existing Federal and State constitutions provisions for the protection of citizens against cruel, inhuman, and unusual punishments.

III. A TRULY NEW AGENDA ITEM — WOMEN’S RIGHT TO BE FREE FROM FEAR

A. *The Adoption of the New Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women — New Enforcement Mechanism for an Old Crime Against Women*

Equality and social justice for women are recently very important topics in the realm of universal human rights. But attention is not the same as the cure for what has become an unbearable gender gap. The United Nations has increased its role in the development of Women’s Rights through the work of the Commission on the Status of Women,¹⁰⁶ the Committee on the Elimination

103. Deb Martin, *Justice Sues Columbus: Alleged Pattern of Police Violations* (visited Feb. 16, 2000) <http://move.abcnews.go.com/sections/us/daileynews/coulmbus_991021.html>.

104. *See id.*

105. *See Proposed Consent Decree, supra* note 99. The Proposed Consent Decree rejected by the City of Columbus required: “the City adopt procedures to expand or elaborate on Decree requirements . . . [and where] the standards, practices or procedures proposed by the City either conflict with the collective bargaining agreement between the City and the Fraternal Order of Police (FOP) . . . the City and the FOP will meet, pursuant to the terms of the collective bargaining agreement, and attempt to agree upon modifications to the collective bargaining agreement or resolution to conflicts that may arise in the implementation of [the] Decree.”

Id. The Proposed decree further stated that where no agreement could be reached that matter shall be presented to the Independent Monitor for decision. The Independent Monitor might require additional information and the United States could fully participate in the decision making process. “The Monitor shall require implementation by the City of the standards, practices or procedures that best fulfill the objectives of the Decree. The decision of the monitor shall be final and not subject to arbitration, except any party may seek de novo review by the Court . . .” *Id.*

106. *See The United Nations and Human Rights, supra* note 15. The Commission of the Status of Women is composed of 32 members. It “prepares recommendations and reports to the Economic and Social

of All Forms of Discrimination against Women,¹⁰⁷ and actualization of proposals of the Fourth World Conference on Women in Beijing.¹⁰⁸ Similar to efforts to end racial discrimination, the goal of ending discrimination against women has been hampered by long held prejudices which make illusive full realization. Recognition of gender discrimination, violence, sexual abuse and poverty on massive scales is the beginning but enforcement of international standards is a long way from being achieved where women are concerned. New expression of the international community's resolve to advance the goals of equality, development and peace for women is encouraging but only recently have mechanisms for individual complaints against promoters of discrimination and abuse brought women's rights to the level of attention enjoyed other international crimes such as apartheid, genocide and torture.

On December 18, 1979, the General Assembly adopted the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).¹⁰⁹ Secretary-General Kofi Annan described the convention on the eve of its 20th anniversary as reflecting "the principle of universal and indivisible rights shared by all nations, foreign to no culture and common to both genders."¹¹⁰

Council on the promotion of women's rights in political, economic, social and educational fields. It makes recommendations to the Council on problems requiring attention to the field of women's rights." *Id.*

107. *See id.* This is a treaty body composed of experts established to monitor compliance with the Convention on the Elimination of All Forms of Discrimination against Women.

108. *See Report of the Fourth World Conference on Women*, U.N. Department for Policy Coordination and Sustainable Development, Beijing Declaration, Annex 1, ¶ 3-5, U.N. Doc. A/Conf. 177/20 (1995). The governments participating in the Fourth World Conference on Women, in Beijing in September 1995, were "determined to advance goals of equality, development, and peace for all women everywhere for the interest of all humanity," recognizing "that the status of women has advanced in some important respects in the past decade but that progress has been uneven." *Id.* These inequalities between men and women have persisted through the years and major obstacles remain, with grave consequences for the well being of all people. The government recognized that poverty between women and children has exasperated the level of inequality in both the national and international domain. *Id.* at ¶ 6.

Consequently, the Platform for Action was an agenda for women's empowerment. It aimed at "accelerating the implementation of the Nairobi Forward-looking Strategies for the Advancement of Women and at removing all the obstacles to women's active participation in all spheres of public and private life through a full and equal share in economic, social, cultural, and political decision-making." U.N. Department for Policy Coordination and Sustainable Development, Platform for Action, Annex 2, ¶ 1, U.N. Doc. A/Conf. 177/20 (1995). Unfortunately, "most of the goals of the Nairobi Forward-looking Strategies for the Advancement of Women have not been achieved. Barriers to women's empowerment remain despite the efforts of governments, as well as non-governmental organizations and women and men everywhere." *Id.* at ¶ 42. Hence, a principle of shared power and responsibility should be established between women and men at home, in the work place, and in the wider national and international communities. Equality between women and men is a matter of human rights and condition for social justice and is also a necessary and fundamental prerequisite for equality, development and peace. Therefore, the governments adopted and committed themselves to implement Platform for Action, ensuring that a gender perspective is reflective in all policies and programs. *Id.*

109. The Convention has been ratified by 165 States. *See Secretary-General Says It is Duty of All to be 'Vigilant and Articulate Custodians' of Women's Anti-Discrimination Convention*, U.N. Press Release SG/SM/7258. Wom/1152 (Dec. 10, 1999).

110. *See id.*

On December 10, 1999, the Optional Protocol to the Convention on the Elimination for Discrimination Against Women was opened for signatures by the States party to the Convention.¹¹¹ After two decades of pressure, finally calls for new procedures to strengthen implementation of women's human rights were addressed. The history of the adoption of the Optional Protocol shows slow momentum beginning in the mid-1990s.

In June 1993, the World Conference on Human Rights in Vienna acknowledged the right to petition violations of women's rights to be free from discrimination must be actualized.¹¹² The Conference encouraged introduction of the right to petition (preparation of written complaints which trigger investigation and extrajudicial remedies) through preparation of an Optional Protocol to the Convention on Elimination of All Forms of Discrimination against Women.¹¹³ The following year in October 1994, an independent group of experts met at the Maastricht Centre for Human Rights in the Netherlands and adopted a draft Optional Protocol.¹¹⁴ Participants came from all regions and included members of CEDAW, the Human Rights Committee, the Committee on the Elimination of Racial Discrimination and other experts in the field of international human rights and "women's human rights."¹¹⁵ In March 1995, governments, intergovernmental organizations and non-governmental organizations (NGOs), were requested by the Commission on the Status of Women and invited by the Secretary-General to submit their views on an Optional Protocol for CEDAW.¹¹⁶ The Fourth World Conference on Women in Beijing, China called on the member states of the United Nations to support "the elaboration of the Optional Protocol" in September 1995.¹¹⁷

By March 1996, the Commission on the Status of Women established an open-ended working group on the Optional Protocol.¹¹⁸ A comparative survey of other international procedures and report on the view of Governments, intergovernmental organizations and NGOs on the idea of an Optional Protocol was requested from the Secretary-General of the United Nations.¹¹⁹ The Working Group discussed a draft of the Optional Protocol submitted by the group's Chairperson, Ms. Aloisia Worgetter of Austria, during its 41st

111. *See id.*

112. *See History of an Optional Protocol* (visited Feb.13, 2000) <<http://www.un.org/womenwatch/daw/cedaw/protocol/history.htm>>.

113. *See id.*

114. *See id.*

115. *See id.*

116. *See id.*

117. *See id.*

118. *See id.*

119. *See id.*

through 43rd Sessions from March 1997-1999.¹²⁰ Arguments for and against provisions were made over those next two years.¹²¹ Finally in its 43rd Session, the Working Group adopted the optional protocol together with the Commission on the Status of Women.¹²² They submitted the draft protocol together with a draft resolution for the Economic and Social Council.¹²³ The Economic and Social Council adopted the draft resolution of the Commission on the Status of Women in its resolution 1999/13.¹²⁴ On October 6, 1999, during its 44th Session, the General Assembly adopted the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women.¹²⁵

The Preamble of the Optional Protocol reaffirmed the Vienna Declaration and Program of Action, the Beijing Declaration and Platform for Action.¹²⁶ It acknowledged intent of the Universal Declaration of Human Rights "that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex."¹²⁷ The Preamble invokes the International Covenant on Human Rights other human rights instruments which prohibit discrimination based on sex in its recitation of the agreement of States party to the Optional Protocol.¹²⁸

The Protocol binds the States Party to recognize the competence of the Committee on the Elimination of Discrimination against Women ("the Committee") to receive and consider "communications submitted."¹²⁹ The communications may be submitted on behalf of individuals or groups of individuals under the jurisdiction of a State Party, who claim to be the victim

120. *See id.*

121. *See id.* At the March 1998 meeting, a member of the Human Rights Commission was present to provide information on the practice of the Human Rights Committee under its first Optional Protocol, a representative of the Office of the High Commissioner for Human Rights provided information on technical aspects of the work and practice of other human rights treaty bodies with similar procedures to those contained in the draft optional protocol, and a representative of the Office of Program Planning, Budget and Accounts (United Nations Secretariat) provided information relating to financial matters and the Protocol. *Id.* Modifications to final language of many provisions continued until the Working Group finally adopted the draft optional protocol. *Id.*

122. *See id.*

123. *See The United Nations and Human Rights, supra* note 15. The Economic and Social Council is composed of 54 member governments. It makes recommendations to the General Assembly on human rights matters, and reviews reports and resolutions of the Commission on Human Rights and transmits them with amendments to the General Assembly. *Id.* To assist it in its work, it established the Commission on the Status of Women. *Id.*

124. *History of an Optional Protocol, supra* note 112.

125. *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women*, G.A. RES 54/4, U.N. GAOR, 44th Sess., U.N. Doc. A/54/4 (1999).

126. *See id.*

127. *See id.* at Annex.

128. *See id.*

129. *See id.* at art.1.

of a violation of any of the rights set forth in the Convention.¹³⁰ Individuals submitting communications must first exhaust all available domestic remedies “unless the application of such remedies is unreasonably prolonged or unlikely to bring effective relief.”¹³¹ There are provisions for the emergency interim measures which may be necessary to avoid possible irreparable damage to the victim or victims of an alleged violation.¹³² With the consent of the claimant the Committee is required to bring any communication submitted to it confidentially to the attention of the State Party concerned.¹³³ The receiving State Party is instructed to submit written explanations or statements clarifying the matter and the remedy, if any, that may have been provided by the State Party.¹³⁴ The Committee must transmit its views on the communication, together with its recommendations, if any, to the parties.¹³⁵ After transmission of the views of the Committee, the State Party is permitted to submit a written response, including information on any action taken in light of the views and recommendations of the Committee.¹³⁶

One of the more controversial provisions of the Optional Protocol states in Article 8, “if the Committee receives reliable information indicating grave or systematic violations by a State Party . . . the Committee may designate one or more of its members to conduct an inquiry and report urgently to the Committee.”¹³⁷ This inquiry may include a visit to the territory of the State Party where warranted with the consent of the State Party.¹³⁸ Article 11 provides appropriate steps must be taken to ensure the individuals under its jurisdiction are not subjected to “ill-treatment or intimidation as a consequence of communicating with the Committee.”¹³⁹

B. New Jurisprudence of Gender Related Crimes Arising From the ICTY and ICTR — Crimes Against Women — Violations of International Criminal Law and Humanitarian Law

Violence against women including rape and other sexual assault against

130. *See id.* at art. 2.

131. *See id.* at art. 4.

132. *See id.* at art. 5, ¶ 1. The imposition of emergency interim measures does not imply a determination on admissibility or on the merits of the communication. *Id.* at art. 5, ¶ 2

133. *See id.* at art. 6, ¶ 1.

134. *See id.* at art. 6, ¶ 2.

135. *See id.* at art. 7, ¶ 3. The Committee holds closed meetings when examining communications under the Protocol. *Id.* at art. 7, ¶ 2.

136. *See id.* at art. 7, ¶ 4.

137. *See id.* at art. 8, ¶ 1. After visiting and findings are made of such inquiry the Committee transmits the finding together with any comments and recommendations confidentially. *Id.* at art. 8, ¶ 3.

138. *See id.* at art. 8, ¶ 2.

139. *See id.* at art. 11.

civilians in internal and armed conflicts is now a part of international criminal law and humanitarian law.¹⁴⁰ The jurisprudence evolved during the last decade by both the Yugoslavian and Rwandan Tribunal represents a real turning point for Women's Rights. The International Criminal Tribunal for the former Yugoslavia prosecuted its first cases and sexual crimes against women and men were treated with sensitivity and a view of its historical significance.¹⁴¹ The Prosecutor charged the first defendant, Dusko Tadic, a Serb, with torture, beatings, rapes and killing of Bosnian Muslims and Croats within and outside of the Omarska camp.¹⁴² The Trial Chamber noted in its May 7, 1997 decision that during confinement in camps, "both male and female prisoners were subjected to severe mistreatment, which included beatings, sexual assaults, torture and executions."¹⁴³ The camp housed approximately forty women prisoners who were subjected to sexual violence on a regular basis.¹⁴⁴ The women held in the prison camp were "routinely called out of their rooms at night and raped."¹⁴⁵ The testimony before the Court concerning rape was compelling even though aspects were related through hearsay testimony of medical workers.¹⁴⁶ The Court cited testimony of sexual assaults and rapes endured by women and girls in its opinion and judgment in the *Tadic* case.¹⁴⁷

Most significant is the fact the Tadic was held responsible for a general campaign of terror "manifesting in murder, rape, torture and other forms of violence."¹⁴⁸ The Trial Chamber found international law imposes "direct individual and criminal responsibility for assisting, aiding and abetting, or participating in [a covered criminal act] in contrast to the direct commission of, a criminal endeavor or act."¹⁴⁹ Tadic, concluded the Trial Chamber, was an "inactive participant" in the brutality suffered by and women and men of the Omarska camp, yet held responsible for the acts of others.¹⁵⁰ Patricia Viseur-Sellers, one of the Gender Crimes strategists for the Yugoslav and Rwanda Tribunals explains:

140. See Theodor Meron, *Rape as a Crime Under International Humanitarian Law*, 87 AM. J. OF INT'L L. 424, 427 (1993).

141. See generally Dorothea Beane and Liz Heffernan, *The International Tribunal for the Former Yugoslavia: A Progress Report: Part II*, 14 IRISH L. TIMES 250 (1996).

142. See *id.* at 250.

143. See Prosecutor v. Tadic, Judgement, No. IT-94-1-T, ¶ 154 (May 17, 1997).

144. See *Tadic*, Judgement, at ¶ 155.

145. Kelly D. Askin, *Sexual Violence in Decisions and Indictments of the Yugoslav and Rwandan Tribunals: Current Status*, 93 A.J. OF INT'L L. 97, 101-102 (1999) (citing *Tadic*, Judgement, at ¶ 165).

146. See *id.* at 103.

147. See *Tadic*, Judgement, at ¶ 175.

148. Askin, *supra* note 145, at 104.

149. See *id.* (citing *Tadic*, Judgement, at ¶ 666).

150. See *id.*

The ruling's effect is to recognize that non-physical perpetrators can be liable for sexual violence, under international criminal law, on a theory of aiding and abetting. Tadic's liability is not based on imputations of a subordinate's liability for sexual abuse, rather, it is direct, even though he is not the physical perpetrator nor is he in a position of superior authority. Mere presence does not suffice, yet a knowing presence, inferred even circumstantially, is actionable.¹⁵¹

The Prosecutor of the International Criminal Tribunal for Rwanda, charged Jean-Paul Akayesu with "knowing that the acts of sexual violence and other crimes were being committed and of being present at times during their commission, of 'having facilitated the commission of sexual violence, . . .' and of having encouraged these acts by failing to prevent them."¹⁵² The Trial Chamber gave new emphasis to gender-based crimes in international criminal law recognizing "sexual violence as an integral part of the genocide in Rwanda," and holding "the accused guilty of genocide for crimes that included sexual violence."¹⁵³

The precedent established before these international tribunals will surely be carried in the next millennium as work is completed on the formation of an International Criminal Court. The proliferation of tribunals has had its critics and supporters. Among women's rights advocates some victories may be claimed by the rulings in the trials occurring in the last decade but the work is far from over.

CONCLUSION

The importance of Human Rights for women was emphasized over the last decade through several initiatives sponsored by the United Nations drawing attention to the extent and severity of problems faced by women. In September 1992, the United Nations Commission on the Status of Women established a special Working Group and gave it a mandate to draw up a declaration on violence against women. The following year, the United Nations Commission for Human Rights, in Resolution 1993/46, condemned all forms of violence and violations of human rights against women. The

151. Askin, *supra* note 145, at 104 n.38 (citing Patricia Viseur-Sellers, *Emerging Jurisprudence of Sexual Violence Under International Law*, in CONTEMPORARY INTERNATIONAL LAW ISSUES: NEW FORMS, NEW APPLICATIONS 140, 148 (Proceedings of the Fourth Hague Conference, 1998)).

152. *See id.* (noting that Trial Chamber enunciated broad, progressive international definition of both rape and sexual violence).

153. *See id.* at 106-07 (noting testimony of Tusi woman who discussed collective rapes and forced nudity of women and young girls in close proximity to Akayesu to humiliate women).

World Conference on Human Rights held in Vienna in 1993 was an important beginning focusing on global responses to the plight of women victimized by human rights violations of all kinds. In the Vienna Declaration and Program of Action, Governments declared that the United Nations system and States should work toward the elimination of all forms of violence and discrimination by the harmful effects of customary practices, cultural prejudices, and religious extremism. The Declaration affirms: "violations of the human rights of women in situations of armed conflicts are violations of the fundamental principles of international human rights and humanitarian law," and that murder, systematic rape, sexual slavery and forced pregnancy require "a particularly effective response."¹⁵⁴

Since the United Nations Conference on Women in Beijing in 1995, hundreds of advocacy groups have joined to develop strategies to elevate the problems faced by women. Some important steps have been taken, such as, the adoption of the Optional Protocol to the Convention on the Elimination of all forms of Discrimination against Women and the development of jurisprudence supporting crimes of violence against civilian women which is widespread and systemic. This burgeoning jurisprudence is included in the definition of crimes (torture, rape, forced impregnation, and other forms cruel and inhumane treatment) subject to prosecution by the proposed International Criminal Court. The elevation of the importance of crimes against women by the Tribunals in the former Yugoslavia and Rwanda represent an awakening which will be critical to the enforcement of human rights by the proposed International Criminal Court.

International and national standards on Excessive Use of Force by Law Enforcement Officers bring some hope that police abuse will be treated as a malignancy which must be excised in order to bring back respect for law enforcement institutions. Victims of police abuse have new federal remedies and the Department of Justice is suing law enforcement agencies which exhibit patterns of widespread abusive practices. The code of silence regarding police abuse threatens all respect for law enforcement. Law enforcement is vital to ensure public safety. The majority of law enforcement officers are committed to use of force as a last resort when all other non violent measures are futile. A minority within the law enforcement community repeatedly exceed guidelines on excessive force. Their actions should not dictate the public's response to lawful authority but the videotape of the Rodney King beating and recent trials of law enforcement officers accused of abusive tactics have changed our views. Our fears are justified, we

154. See *Women and Violence*, *supra* note 46.

have seen terrible truths revealed. Freedom from fear may be the most important goal for the new millennium.

