POLITICAL RIGHTS OF WOMEN: A STUDY OF THE INTERNATIONAL PROTECTION OF HUMAN RIGHTS

In the decades preceding the second world war it was gradually recognised that the protection of human rights was in some circumstances a matter for international cooperation and even for international regulation; with the conclusion of the United Nations Charter the universal recognition of human rights without discrimination has become a distinct aim of the international community.

Women's rights played a role in the evolution of the doctrine of human rights and since 1945 have been the area of its greatest advancement. It is also claimed that they have been the most successful in their effect on state action.[1] It is therefore of general interest to human rights to give an account of a major topic, the political rights of women; to describe its development as an international and a regional question, to examine the legal obligations imposed and where possible to assess their practical effects. The work of the Organisation of American States, of the United Nations and of the Council of Europe will be covered.

The recognition of the political rights of women, a significant social issue in Europe and North America early in this century, soon acquired the dimension of an international movement with the formation of women's international non-governmental organisations which espoused political equality among their causes. These bodies hailed the League of Nations as a forum in which to bring pressure on individual governments. However the League Covenant drafting Committee rejected the bulk of their demands,[2] fearful perhaps lest the Organisation should become the arena of yet another bout in the feminist struggle. They however acceded to the request *inter alia* for an article in the Covenant guaranteeing women equal access to positions within the League[3]. This article was subsequently used to advantage by women's organisations who managed to secure for members of their sex a few influential positions.[4] These women in turn had some success

1. Humphrey, J., *Journal of the International Commission of Jurists* (1968), Vol. IX, p. 5.
2. These included the demand that nations entering the League should be required to grant women's suffrage. See Miller, D.H., *My Diary at the Peace* Conference, Vol. VIII, pp. 173-177; *The Common Cause* (a feminist weekly) 1919, Vol. XI p. 63.
3. Article 7(3): All positions under or in connexion with the League, including the Secretariat, shall be open equally to men and women.
4. See *Women in a Changing World,* History of the International Council of Women since 1888, (1964) pp. 55-57; *Women's International League for Peace and Freedom* 1915-1965 (1966), pp. 74-75.

in inducing action on several feminist issues[5] but it was not until the last years of the League that political rights was raised in the Assembly. The possibility of concluding an international treaty on women's rights was discussed but the Assembly decided to postpone a final decision until a full factual survey had been undertaken.[6] A special committee was set up for this purpose. The demise of the League prevented further discussion of the topic but the Status of Women Commission inherited the study and the idea of an international convention. It was thus in the League of Nations that the subject of women's rights was first established as a matter of international concern.

I. THE ORGANISATION OF AMERICAN STATES.

The Inter-American Convention on the Political Rights of Women

American suffragists were however more successful in obtaining recognition for their cause in the Organisation of American States than were their European colleagues in the League of Nations.[7] In 1933 the organisation adopted its first resolution in favour of sexual equality in political rights.[8] This was endorsed at the 1938 Conference in the Lima Declaration of the Rights of Women.[9]

It was not until 1948, when the Inter-American Commission of Women decided to abandon the original "Equal Rights" treaty for two narrower and more specific texts on political and civil equality, that its aim of inducing States to accept legal obligations came within hope of realisation.

The Conference adopted a treaty on political rights which provides in its only substantive article:

> "The High Contracting Parties agree that the right to vote and to be elected to national office shall not be denied or abridged by reason of sex."[10]

The treaty which was modelled on the 19th Amendment to the U.S. Constitution,[11] carefully avoids imposing an obligation on a State to hold elections and is limited to regulating any which it might in fact hold. However the same Conference adopted the Declaration on the Rights of Man in which the individual's right to participate in govern-

5. In particular Traffic in Women and Prostitution on which two international conventions were concluded. Both were well ratified.
6. See generally *L.N.O.J.,* Spec. Supp. No. 120, p. 28 *et seq.;* Spec. Supp. No. 125, p. 42 *et seq.*
7. See *Historical Review on the Recognition of the Political Rights of American Women* (1965), PAU publication.
8. *Final Act,* 7th International Conference of American States (Montsvideo) 1933.
9. *Historical Review on the Recognition of the Political Rights of American Women, Op. cit.,* p. 7, Note 4.
10. *Final Act,* Ninth Int. Conf. of A.S. (Bogota) 1948.
11. "The rights of the citizens of the U.S. to vote shall not be denied or abridged by the U.S. or by any State on account of sex." The reason for the negative wording of this text was that the Federal Government was constitutionally incapable of granting women the direct right to vote. cf. 71 A.L.R. 1322.

ment through periodic elections is recognised.[12] The latter of course is not legally binding but does provide a regional standard on which to ground the treaty obligation.[13] In other words the holding of elections is no longer a matter of purely domestic concern.

The treaty prohibits a "denial" or "abridgement" of franchise rights by reason of sex. Does this mean that privileges to either sex are outside the prohibitions so long as the basic right to vote is granted to the other, or must these privileges be justified on grounds of a reasonable sex difference between the sexes? The latter interpretation has been adopted under the U.S. Constitution. "The effect of the amendment is to erase from the Constitution and the laws of each state every provision restricting the right of women to vote" and to make women legal voters to the fullest extent to which the suffrage has been conferred on men.[14]

Since the first consideration of political rights, and more important the formation of the Inter-American Commission of Women at the 1928 Conference of American States, 12 Latin American States had introduced some political rights for women. Progress after 1948 was just as rapid and by 1961 the internal law of all member States was in compliance with the provisions. Of the ten States who had recognised national suffrage since 1949, eight were signatories of the treaty and all of these closely followed their new legislation by ratification.[15] Fourteen members of the Organisation of American States are currently parties to the Convention.[16]

In 1953 the Secretary General of the Organisation claimed that "Latin American women who, with rare exceptions, have never had to fight for their freedom have had it presented to them, even before they asked for it".[17] He was overlooking perhaps the role of the Inter American Commission of Women who had made political equality its first objective and had been working ceaselessly since 1928 for its achievement — since 1948 by urging States to ratify the treaty.[18] It is indisputable that the Bogota treaty on the political rights of women, together with resolutions and declarations of the OAS on

12. *Final Act, op. cit.,* p. 29.

13. On the legal significance of resolutions and declarations of the O.A.S. see *Comite Juridico Inter Americano, Recommendaciones y Informes* 1949-1955 p. 157. Agreements in the form of resolutions and declarations were no more than a voluntary affirmation of principles which might later form the subject of an international obligation." See also Resolution III, 1945 Conference, Int. Conference 1942-1954, p. 66. Resolutions on the Political Rights of Women, see *Final Act,* 7th International Conference of American States (1933); Lima Declaration on the Rights of Women, *Final Act,* 8th Int. Conf. of A.S. (1938).

14. *People ex rel. Murray* v. *Holmes* 71 A.L.R. 1327 at 1329.

15. In order of granting political rights: Costa Rica, Haiti, Bolivia, Mexico, Honduras, Nicaragua, Peru, Colombia, Paraguay. Bolivia and Mexico were not signatories.

16. See *Relacion de tres Convenciones Interamericanas.* DCAA/Doc. 19. P.A.U. p. 4.

17. "Twenty-five years of work 1928-53" speech by Dr. Camargo, *News Bulletin,* No. 1 July 1953.

18. For an account of their activities see UN Docs.: E/CN. 6/269 p. 11. E/CN. 6/349 p. 2 *et. seq.* See also in relation to Colombia, Mexico, Honduras, E/CN. 6/224 pp. 8, 11; Haiti E/CN. 6/269 p. 7.

the same subject, hastened the achievement of suffrage rights for the women of the American continent.[19]

II. THE UNITED NATIONS

(i) *Political Equality and Human Rights*

At the first session of the General Assembly Denmark proposed a resolution which after noting that all members had not yet granted equal political rights to women called on them to "adopt measures necessary to fulfil the purposes and aims of the Charter" in this respect.[20] Among the "purposes" in article I of the United Nations Charter is that of "promoting respect for human rights for all without distinction of sex"; under article 56 States pledge themselves to co-operate with the United Nations to promote their observance. This resolution, unanimously adopted, was the first to link the purposes of the organisation with the duty on individual members to seek their attainment[21] and the first to give content to the principle of human rights. As a resolution of the General Assembly is not legally binding there is no legal duty on the Members of the United Nations to whom this resolution is directed, to grant women political rights. However, according to Judge Lauterpacht, Members must give some "good reason" presumably which is acceptable to the international community if they choose to reject it.[22] If, as is widely agreed by prominent writers,[23] promotion of human rights "without distinction of sex" is a duty on Member States under the Charter, to assert that women are intrinsically unsuited to the exercise of political responsibility as some governments no doubt felt, would not be "acceptable" in this sense.

In 1948 the Universal Declaration elaborated on the concept of political equality of the 1946 Resolution. It provided:

> "Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

19. Compare the situation within Europe. Most States granted women political rights before the formation of the United Nations and the Council of Europe — i.e., before the organisation of an international and regional human rights movement. See *post,* p. 333 with respect to Switzerland.

20. Latin American delegates attempted to widen the scope of the resolution to cover at least civil and political rights, cf. UN Doc. A/C 3/SR 4 p. 131 (Argentina) p. 135 (Panama). Hereafter all documentary references are UN Docs, unless otherwise stated.

21. The second section of the resolution, inspired by Afganistan's application for membership currently before the First Committee stated that the position of women should be taken into account in considering membership to the UN. This statement presupposes that members have a legal obligation to promote human rights since in article 4 of the Charter "willingness and ability" to fulfil the obligations of the Charter are made criteria of admissibility. While the section was withdrawn for procedural reasons no delegate dissented from the principle behind it. See A/C 3/SR. 24 *passim.*

22. *Voting Procedure Case, I.C.J. Reports* (1955), pp. 118-122 per Lauterpacht.

23. Among the extensive literature on this subject see Lauterpacht, *International Law and Human Rights* (1961), pp. 145-160; Guggenheim, *Traite de Droit International Public* (1954), p. 301-302; Wright in *A.J.I.L.* (1951), vol. 45, p. 703; Brierly, *The Law of Nations* (1963), p. 293.

> (2) Everyone has the right of equal access to public service in his country.
>
> (3) The will of the people shall be the basis of the authority of government, this will shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Wider in scope than the Inter-American Convention on Political Rights of Women of the same year, it included public office and established the individual's right to a democratic form of government. Thus the political rights for which women had been campaigning acquired a point of reference in an internationally accepted standard and gave a new justification for adopting a convention on the topic.

It was intended in 1948 to follow the Declaration with a "covenant", that is a treaty, on human rights. This object was finally achieved in 1966 with the adoption of the Human Rights Covenants which reproduce most of the articles of the Declaration in more precise language suitable for legally binding instruments. So article 25 of the Civil and Political Rights Covenant guarantees all individuals without distinction on grounds *inter alia* of sex the right to vote and to be elected to national office and the right of access "on general terms of equality" to the public service.

The status of these instruments in customary international law is relevant to this study since a number of States are not parties to the Covenants nor to the treaties on political rights.

It has often been alleged that the Universal Declaration of Human Rights has become "clothed with the character of international law"[24] and is hence binding on the international community. There are cogent objections to this view. The Declaration sets forth moral rights of the individual without indicating the nature or extent of the State's obligation in relation to them. The type of language and the broad and unqualified scope of some of the articles makes them incapable of enforcement as legal obligations. Furthermore some rights have not been endorsed in state practice and are omitted from the Covenants, some appear in far more restricted terms. These factors alone are strong evidence to suggest that by 1966, States did not regard themselves as already under a legal obligation to implement the Declaration.

The Covenants on the other hand have been adopted very recently and it is submitted that the necessary elements for the formation of customary law, including consistency of practice over a certain period of time, are not yet established. The character of the international community of States has been transformed with the admission of large areas of the world to statehood. It is too early to know whether the new States — or even a majority of them — are willing at their present stage of development to accept these rights as binding. Those who allege that the Covenants are part of customary international law will need to show more than verbal adherence by these States.

24. See for instance Waldock, H., 'The European Convention on Human Rights' *I.C.L.Q.* (1965), Supplementary Publication No. II, p. 15 and Sohn L., in *Journal of the International Commission of Jurists* (1967) Vol. VII, No. 2, p. 17.

Clearly the Covenants are codifications of human rights and provide an authoritative interpretation of the Charter. Once they are ratified by a majority of States it may be difficult to avoid the conclusion that they form part of customary law. At present they are not even in force.

The existence of a duty under customary law to grant political rights to women cannot be established solely on the basis of the inclusion of article 25 in the Civil and Political Rights Covenant. The only specific source of obligation in international law is the Convention on the Political Rights of Women. Before proceeding to an analysis of this convention it is proposed to examine one area of the Organisation's activity in which general human rights provisions have been the legal foundation for the advancement of female suffrage.

(ii) *Political Equality through the Trusteeship Council*

The advancement of political rights in trust territories has been an important function of the Trusteeship system. Article 76(b) of the United Nations Charter provides that the basic objectives of the Trusteeship Council shall be, *inter alia,*

> "to promote the political... advancement of the inhabitants of the trust territories" and "to encourage respect for human rights and fundamental freedoms for all without distinction as to... sex".

The interaction between the Council, Administering Authority and Visiting Missions has been the means of the rapid achievement of female suffrage in territories in which the level of education and political awareness of the indigenous women has been too low for popular emancipist movements to develop.[25]

In Italian Somaliland the first elections were held on a basis of universal male suffrage. To India's criticism of the exclusion of women the administering authority[26] replied that the women were inadequately prepared for the responsibility, but the Council nevertheless recommended the "early grant" of female suffrage.[27] Having reiterated this view in resolutions in the next three sessions the Council finally addressed themselves to the Somali leaders. Their recommendation, reinforced by those of two Visiting Missions in 1957 and 1958 took early effect when the local legislature introduced suffrage rights for women before the 1958 elections.[28]

In Tanganyika an attempt to broaden the electorate by linking it with payment of personal tax was vetoed by the Secretary of State for the colonies on the ground that women would thereby be excluded.

25. In Nauru, the Pacific Islands and the French territories the political rights accorded to women were achieved without the influence of the Trusteeship Council. See E/CN. 6/138, E/CN. 6/168.

26. A/295 p. 110.

27. *United Nations Year Book* (1954), p. 338.

28. A/3595 Ch. III para 59; *United Nations Year Book* (1959), p. 357.

The decision to retain the existing grounds but to reduce the minimum qualifications was taken with women voters in mind.[29]

The first elections in Ruanda-Urundi were restricted to male suffrage and in a rejoinder to the Council's admonition the Administering Authority, Belgium, regretted that "hostile local opinion" prevented universal suffrage.[30] In 1959 the Council expressed confidence that "the population would deem that the time had come to grant women equal rights with men."[31] Belgium agreed but regretted that as the dates were already fixed there was now insufficient time in which to reorganise the electorate. The Visiting Mission in 1960 repeated the recommendation for immediate universal suffrage.[32] In 1961 the Council applauded the introduction of universal suffrage prior to the territories independence.

In the British Cameroons the suffrage in both the Northern and Southern regions was initially based on taxpayment and thus, as the Administering Authority conceded, restricted to males. To the repeated demands of the Council for greater representation of women evidence of strong opposition by local government authorities was cited.[33] This was overcome — partly by pressure from the administering authorities and partly by the local inhabitants in the Southern Cameroons[34] and universal suffrage was instituted; but in the largely Moslem Northern region local hostility remained too great.[35] The Fourth Committee considered the question in the context of the United Nations plebiscite to be held in 1959.[36] A minority condemned the United Kingdom for its preference for a gradual evolution of political rights for women, but the majority sympathised with the British position and voted for a plebiscite on the basis of male suffrage.[37] At its 14th session however when it reviewed the success of the first plebiscite the Committee agreed on universal suffrage for the next plebiscite in the Northern Cameroons.[38]

Neither Council nor Visiting Mission can make recommendations legally binding on either the Administering Authority or the local authorities[39] but the persistent pursuit of political rights by the Council and

29. E/CN. 6/138 p. 6.
30. A/3595 Ch. II
31. E/CN. 6/352 pp. 6 and 8; *United Nations Year Book* (1959), p. 352.
32. T/1551 paras. 449, 454.
33. A/2680 p. 130; Resolution A/2933, p. 146.
34. E/CN 6/358.
35. Continued TC Resolutions A/3822 Vol. II Ch. III p. 41.
36. 13th Sess. A/C 4/SR. 792, 851, 874. *et al.;* 14th Sess. A/C 4/SR. 988-992.
37. *Ibid.,* SR. 874.
38. A/C 4/SR. 992 see especially para. 23.
39. Toussaint C.E., *The Trusteeship System of the United Nations* (1956), pp. 174-176.

Mission has nevertheless been an important factor in the early achievement of a political system in these countries.[40] In other cases the Administering Authority has acted alone in furthering female suffrage in the territories under their charge.

Equal Suffrage Rights in Non-Self governing Territories.

Outside the Trusteeship system, notably in the General Assembly, where Afro-Asian representation has been proportionately higher than in the subordinate organs the more spectacular developments of the right to "self-determination" has furthered universal suffrage.

The Declaration on the Granting of Independence to Colonial Territories and Peoples in 1960 enshrined the right of self-determination and urged its speedy recognition through the will of the people expressed "without distinction of race, creed or colour". It is possible that the ground of "sex" was omitted because of the problems encountered in the Northern Cameroons. Whatever the reason, the omission has not been taken as tacit consent of the General Assembly that women's suffrage should be limited and the Declaration has in fact been the basis for repeated assertions of the right of universal suffrage.[41]

Universal suffrage was granted throughout the territories of the French Union in 1956 while in 8 British territories it preceded independence; in 10 others due partly to the speed with which independence was accomplished political rights were first recognised in the constitutions of the new state on its independence. Characteristic of all these electoral laws was the absence of a preliminary period in which women's suffrage was limited. In all cases suffrage on a universal basis was instituted immediately[42]

(iii) *The Convention on the Political Rights of Women.*

The wish to discourage the duplication of human rights obligations through treaties dealing with individual human rights waned after the first few years of the Organisation when it became apparent that the projected Covenant which was intended as a comprehensive statement on Human Rights might never be completed. Thus the Status of Women Commission, who had initially agitated only for inclusion in the Covenant of a guarantee of political equality for women, began to devote themselves to drafting the first international treaty on women's rights.[43] Their action was opposed by the Economic and Social Council

40. Goodspeed, *The Nature and Function of International Organisation* (1967), pp. 537-544.

41. See for instance in 1961. A/4526 *passim;* General Assembly Res. 1541 (XV) approving, with notification, the twelve principles. See E/CN. 4/Sub 2/213 pp. 101-102.

42. A/8807 Table IV.

43. E/CN. 6/SR. 66 pp. 13-14; *ibid.,* SR. 67 pp. 1-7; *ibid.,* SR. 71 pp. 1-9; Report by the Secretary General on the Possibility of a Convention E/CN. 6/413, in the Commission E/1316 para. 18 (1); E/1712 para. 25. On the treaty approach to human rights see Moskowitz, *op. cit.,* Chap. VII, especially pp. 81-82, 85-87.

however who maintained that propaganda, educational measures and annual studies would be a more effective means of furthering human rights. A Convention would be signed only by those States which had already granted political rights.[44] The fact that non-parties might also be induced to take action even though they were not in a position to ratify, was an insufficient reason for adopting a convention, as presumably a recommendation would have the same effect.

The Commission nevertheless proceeded to draft a convention at their next session.[45] The delegates from States in which women were still denied political rights persisted in their belief that a convention would aid their cause and they enlisted the support of the representatives from the other States.[46] Faced with this display of feminine conviction and aware that continued resistance might amount to an obstruction of the powers of another organ the Council abandoned its opposition at its next session.[47]

This is an instance in which the unique position of the Status of Women Commission — a body composed of members of the group whose rights the United Nations was constitutionally required to foster[48] — placed them in an advantageous position. As their wishes were deferred to, a discussion of the legal implications[49] and practical effects[50] of the use of treaties to further human rights was thereby forestalled.

The final text, drafted by the Commission then amended by by ECOSOC and the Third Committee, was adopted by the General Assembly at its 409th Plenary Meeting on 20th December 1952.

The Scope of the Convention

The American delegate in the Commission not unnaturally proposed that the Inter-American Convention on Political Rights, a virtual reproduction of the 19th amendment to the U.S. Constitution, should be adopted as the text of the new Convention; to include as well the requirement of equal access to public office would be to limit the likely number of ratifications as its fulfilment would require widespread changes in many States.[51] Most members of the Commission however considered that a universal Convention should be comprehensive, that is, it should cover all aspects of political rights and cater for the needs of the women of all States including those states in which women were

44. E/AC/7 SR. 132 *passim.*
45. E/CN. 6/SR. 83, 84, 97; E/1997 paras. 23-32. The vote was 11 in favour of a Convention, none against and 3 abstentions.
46. E/CN. 6/SR. 71 p. 9 (U.S.A.); *ibid.* SR. 84 p. 12; p. 10 (India), p. 11 (Haiti).
47. *ECOSOC* O.R., 522nd Mtg. pp. 391-392. *ECOSOC* Res. 385 B(XIII).
48. Although membership of the Commission was officially open to members of both sexes at no time has the ratio of men to women exceeded 1 : 15.
49. In particular the effect on the status of the individual in international law.
50. For a cynical assessment see Pollock, *The Individual's Rights in International Organisations* (1968), pp. 27-28.
51. E/CN. 6/SR. 103 p. 5 (U.S.A.), p. 16 (Chile), p. 17 (Netherlands). Also E/CN. 6/184: Ecuador, China. Haiti, Iceland, Indonesia, Philippines.

already enfranchised but lacked an equal access to public office.[52] Members probably doubted whether the latter question would ever be considered sufficiently important in the future to warrant another convention or the inconvenience of amending the existing one. They also considered the O.A.S. Convention inappropriate as it failed to set the franchise in the context of the international human rights development and to express the articles in terms of the rights of the individual.

However the final text of the Convention does not establish the individual's right to vote "without distinction of sex" — the obvious way of amending the Bogota Charter to bring it in line with the doctrine of human rights; instead it grants women the right to political equality with men. Based on the fact that women are the underprivileged group, it is designed to produce a situation of equality. But as it does not protect men against discrimination, it fails to guarantee sexual equality. Whereas the Inter-American Convention arguably[53] prevents privileges for either sex the United Nations convention only prevents them for males.

It is clear from the context, from the preparatory material, and from the definition of discrimination which had recently been formulated in the Sub Commission on Discrimination[54] that the words "without discrimination" which appear in each of the articles were intended to prevent unfavourable distinctions and therefore that provisions in women's favour which would indirectly discriminate against men are not covered.[55]

Detailed Commentary of the Articles of the Convention

The Convention consists of 3 substantive articles.

Article 1

> Women shall be entitled to vote in all elections on equal terms with men without any discrimination.

Article 2

> Women shall be eligible for election to all publicly elected bodies established by national law on equal terms with men without any discrimination.

Article 3

> Women shall be entitled to hold public office and to exercise all public functions established by national law on equal terms with men without discrimination.

Articles 1 & 2

Although the right to vote and to stand for election are corollaries and logically should be co-extensive article 1 is not confined to elections

52. Cp. A/C 3/SR. 490 para. 2 (Egypt); *ibid.,* SR. 479 para. 102 (Honduras).

53. *Ante,* p. 310.

54. E/CN. 4/Sub 2. 40/Rev. 1 pp. 4, 8-9.

55. See however A/C 3/SR. 408 paras. 132-4 per Ecuador, the only delegation to express the contrary view.

for "publicly elected bodies established by national law" as is article 2. An amendment[56] to add these words to article 1 and hence to ensure that the scope of the two articles coincided was rejected on the ground that the right to vote for elective posts would thereby be excluded. The right to be a candidate for posts was covered by the right of "equal access" to public office in article 2. Thus it was presumably recognised that article 1 covered elections to all publicly elected posts and bodies, and was wider in ambit than article '.

However the independent relevance of the words "under national law" was overlooked. U.S.A., who had insisted on the inclusion of these words in article 2[57] to take account of its incapacity to legislate for state elections, had no reason to urge the same qualification in article 1 because the 19th amendment which prohibited discrimination in the right to vote bound both state and federal governments. Although the other federal States had no such constitutional provision the right to vote in state elections had already been achieved and the further possibility of discrimination at the municipal level within some of the component states was probably ignored. The question may be of practical significance to some new States who have joined the Organisation since 1952.

As the right to vote does not strictly depend on the other rights in articles 2 and 3 for its fulfilment there is no logical necessity for its ambit to coincide with them. In short there is no substantial reason for departing from the "ordinary meaning"[58] of the words of the article in order to interpret it to cover elections under state as well as under national law.

Attempts to qualify "publicly elected bodies" with the words "State and public" and "both central and local"[59] were rejected[60] as redundant. The words "under national law" were intended to be widely interpreted so as to cover all bodies established directly by statute or indirectly through delegated legislation.[61]

Universal Suffrage and the Convention

The second paragraph of the preamble commences with the words "Recognising that everyone has the right to take part in the government of his country directly or through freely chosen representatives." Despite this strong affirmation of universal suffrage as a part of human rights the operative articles do not explicitly make this legally binding. Nevertheless there are indications in the debates of the assumption that

56. A/C 3/L. 329; A/C 3/SR. 474 para. 44; *ibid.,* SR. 476 para. 46.

57. E/CN. 6/SR. 97 p. 6.

58. See Article 31, Vienna Convention on the Law of Treaties.

59. A/C 3/L 327 Rev. 1 para. 2.

60. A/C 334 para. 16.

61. For interpretation of "all" elections under the U.S. Constitution — see 18 Am. Jur. p. 180 para. 4.

parties would be under a duty to grant universal suffrage at least for national elections.[26]

This duty could not be derived from the treaty itself as it is not mentioned in the substantive articles and as the preamble, although legally binding, is not an independent and direct source of legal obligation. There is a general principle of treaty interpretation that specific obligations cannot be inferred from general wording but must be explicitly imposed.[63] In the present case "women" cannot be interpreted as "all" women as that interpretation would involve additional burdens on the parties.

The duty could only be derived from customary international law. In 1951 the doctrine of human rights had only recently evolved and the non-binding Declaration on Human Rights in which universal suffrage was made a goal to be progressively realised was only three years old. It is most improbable that the principle had at that time become part of customary international law.

It is worthwhile noting here that under a system of universal suffrage the stipulation for equal terms is not otiose. "Terms" which regulate voting procedure and impose basic qualifications on the voter as for instance age, sanity and even literacy are essential to every electoral system. Provisions which subject women to a higher age qualification[64] or literacy requirement not imposed on men have at some stage been in force in some states. They clearly violate the Convention. There is then no obligation under the Convention to grant voting rights to all women.

However a wide interpretation of the phrase "without discrimination" in article I will result in the prohibition of those ways in which women's voting rights have been curtailed more than those of men and will thereby guarantee a sexually balanced electorate.

It is not possible to do more than to summarise the present writer's view on the concept of discrimination as it has been interpreted in the United Nations and specialised agencies. There was no full understanding of the concept at the time of the adoption of the Political Rights Convention although some discussions had already taken place.[65] There is a general principle of treaty interpretation that words should be read as having the meaning which they bore at the time the treaty came into existence. This does not preclude recourse to subsequent United Nations practice to elucidate that meaning. Nor is the fact that the draftsmen were unclear about its present scope a reason against adopting a definition which has crystallised since that time

62. In the Third Committee for instance the view that "women" in article 1 would necessarily include *all* women was advanced without subsequent protest. A/C 3/SR. 480 p. 389.

63. *South West Africa Case, I.C.J. Reports* (1950), p. 140 per Judge Lauterpacht.

64. E/CN. 6/360, e.g. Greece, Peru, Syria.

65. See for instance the Secretary General's Report of Discrimination. E/CN. 4/Sub 240 and the discussion in the Subcommission on the Prevention of Discrimination and the Protection of Minorities.

so long as that definition is consistent with their general purpose.[66] It is therefore justified to take into account *inter alia* the *travaux preparatoires* of the Covenants. The Economic, Social and Cultural Rights Covenant prohibits any "discrimination" in the rights granted, the Political and Civil Rights Covenant, like the Universal Declaration, any "distinction". Thus to distinguish on any of the prohibited grounds in the grant of the rights in the latter Covenant is *ipso facto* discriminatory unless of course the article itself entitles the State to do so.[67] The *travaux preparatoires* support such a view.[68]

The human rights development has established the obvious point that distinctions of sex cannot be relevant to the right to vote and that therefore a denial of the vote on the basis of sex is a differentiation unjustified on objective grounds and therefore discriminatory. This disposes of those electoral provisions which distinguish ostensibly between the sexes but not those on other grounds such as property, tax payment, educational level. The latter were called "intrinsically discriminatory" in 1961 by the Rapporteur on Political Rights.[69] He claimed that as they relate directly to social status they will result in an electorate which lacks an equal representation of all racial and religious groups and of both sexes unless these groups enjoy a position of social equality in the community in question.

The practice of the United Nations and specialised agencies establishes that a general measure may be discriminatory, but does not make clear whether it is sufficient that the *result* of the measure is to deprive one group of the equal right to participate or whether an *intention* to do so must also be established. While there is some support for the view that the measure must be aimed against the group in question it seems more widely accepted that, given an unequal result, intention is irrelevant. A court may however take the less radical approach but until it is called upon to interpret "discrimination" the consequences of both approaches must be dealt with.

On the Rapporteur's reasoning any terms which result in a sizeable disparity between the total numbers of each sex entitled to vote would be discriminatory. The restriction of the vote to property owners, taxpayers or holders of an educational certificate in a State with no legal barriers on women holding property, being taxpayers or where access to education is theoretically equal, will none the less produce a male dominated electorate unless the real status of women in the society is in fact equal. These terms are therefore "intrinsically discriminatory."[70]

In short the treatment of each sex must be equal. The result of holding these criteria a denial of equality is not to impose an obligation

66. *Certain Expenses of the United Nations, I.C.J. Reports* (1962), per Judge Spender; *South West Africa Case, I.C.J. Reports* (1966), pp. 293-294 per Judge Tanaka, pp. 437-438 per Judge Jessup.
67. See for instance articles 6, 22, 26 and those rights from which derogation is permitted, e.g., article 12.
68. In the Third Committee especially, A/C 3/SR. 1182, 1185, 1203-1205 *passim.*
69. *Study of Discrimination in Political Rights,* E/CN. 4/Sub 2/213 Rev. 1 p. 216.
70. Support for this view is found in the Commission where the words "equal terms" were substituted for the original "same conditions as men" in recognition that the same terms may not necessarily produce an equal result. E/1997 para. 63.

of universal suffrage but merely to require a State to choose other grounds to ensure that the sexes may be equally situated in respect to the right to vote.

This has been recognised by the Administering Authorities under the Trusteeship system. For instance the French in Togo enfranchised heads of families and the mothers of two children,[71] in New Guinea the electorate comprised all taxpayers and all women who showed sufficient interest to enroll on the electoral register.[72] The approximate equality seemed preferable to the immediate introduction of universal suffrage. Other special measures to produce an equal right to vote have been advocated in the Trusteeship Council.[73] It is important to emphasise the basis on which the difference in treatment, which results from perfectly rational types of distinction, is deemed unequal. It is because the right to vote is a human right, that is, in some sense permanent and attaching to the individual, that existing social differences between the sexes which are fluctuating and which attach to a group rather than to an individual are irrelevant. On the basis that sex as a purely biological factor is also irrelevant to the right to vote all distinctions in treatment are precluded. If it were not for the principle of human rights it would indeed be possible to say merely that the treatment of the sexes was equal because the electoral qualification was applied equally to them both, or more important it could even be said that the result of a sexually unbalanced electorate was justified as it reflected concrete differences between the sexes in current society.

The words "without discrimination" were included in the Convention as a "compromise"[74] when the U.S.S.R.'s proposal[75] "without any discrimination on the grounds of race, colour, nationality, birth, and property status, language or religion" was rejected. As two totally conflicting grounds were given it is impossible to ascribe a common intention to the so called compromise. The first ground was that discrimination on grounds other than sex was unnecessary and inappropriate in a convention dealing with equality between the sexes and that to extend its scope in this way would in fact be a discrimination against men who were not similarly protected[76]; the second was that the list was incomplete but if included could be construed as if it had been indended to be comprehensive.[77] According to the former view the final text could only be regarded as a reinforcement of the prohibition of sexual discrimina-

71. E/CN. 6/235 p. 8.

72. E/CN. 6/210 p. 6.

73. It recommended in 1964 that in order to produce a higher percentage of women voters in the non-compulsory electoral system in Nauru and New Guinea the qualifying age for women should be reduced from 21 to 18 years. This was not implemented because of the Administering Authority's opposition. A/5804 paras. 264, 52-56.

74. A/C 3/SR. 479 para. 15.

75. A/C 3/L. 327 para. 1.

76. E/CN. 6/SR. 105; Third Committee A/C 3/SR. 480 p. 378 (Dominican Republic) *G.A.O.R.,* Plenary session, 408th Mtg. p. 439 (U.S.A.) p. 445 (Lebanon).

77. A/C 3/SR 476 p. 355 (Guatemala); *ibid.,* SR. 477 p. 358 (Czechoslovakia); *ibid.,* SR. 479 p. 376 (Sweden, Indonesia), p. 379 (Philippines).

78. See Czechoslovakian delegate *G.A.O.R.,* 8th Sess. 408th Mtg. p. 443.

tion[78]; the latter however considered that the wording would justify a court in taking account of any other type of discrimination on if it was a woman who had been the victim.

As it stands the phrase is unspecific and must be interpreted by reference to the object and purpose of the Convention which is to "equalise the status of men and women in the exercise and enjoyment of political rights."[79] Only an explicit provision could widen the ambit of the phrase in the way suggested.

Although originally inserted in article 2 the phrase was later added to the other articles for the sake of uniformity. It is submitted that "equal terms" and "without discrimination" may have a different operation. If the former is narrowly construed and limited to establishing the right of women as a group to equal terms with men the latter might be used to protect the individual from discrimination in the exercise of these terms[80]. To establish a violation of the Convention it would not be necessary to prove that the terms were not being applied in an equal manner although they purported not to distinguish between the sexes. In other words it would be sufficient to prove merely one isolated example of discrimination and not a general policy of excluding women. This question is distinct from that of deciding whether the Convention confers direct rights on individuals as it concerns the substance of rights, not the procedural capacity[81] to enforce them.

In article 2 candidacy is also guaranteed on "equal terms" and "without any discrimination". The Rapporteur on Political Rights did not suggest that in this context educational prerequisites were discriminatory and the Sub-Commission approved his principle that "reasonable qualifications" were necessary.[82] Although women's eligibility might be restricted by such qualifications they were justified by the need to. impose some standards on the holders of public office.

The converse situation, the reservation of seats in the legislature for women, is more difficult to reconcile with equality. Like the special provision for women voters it is designed to compensate for their political backwardness by ensuring their equal participation in political bodies. Such provisions exist in India, and Pakistan.[83]

The Rapporteur on Political Rights stated:

> "The difficulty which arises in connexion with all special protective measures is that they tend to become discriminatory with the passage of time. They may be said to be justified only as long as the political, economic and social and cultural condition of the people concerned prevent them from enjoying the benefits of the general law of their country but their effect is discriminatory if they are continued beyond the time when they are necessary or used in such a way as to create or prolong an undue preference."[84]

79. The Preamble.
80. *G.A.O.R.,* 8th Sess. 408th Mtg. p. 439 (Indonesia); A/C 3/SR. 480 p. 399. See also A/6807 p. 35 (Ecuador).
81. Lauterpacht, *op. cit.*. pp. 27-29.
82. E/CN. 4/Sub 2/SR. 346.
83. E/CN. 6/470. pp. 8-9; see also Ghana, *Human Rights Year Book* (1967), p. 136.
84. E/CN. 4/Sub. 2/313 p. 23.

The question of reconciling a provision guaranteeing women seats in the legislature with a prohibition of discrimination on the ground of sex has been considered in the Indian courts. Article 15 of the Indian Constitution prohibits discrimination on the grounds *inter alia* of sex but subsection 3 states "Nothing in this article shall prevent special provisions for women and children". It has been held[85] that this proviso must be literally construed as a complete exception to the guarantee of equality in the first clause. Thus the reservation of seats for women was justified. A commentator has criticised the decision because the use of women in juxtaposition with "children" suggests that the special provisions must be related to peculiar disabilities of either group. As political backwardness is not a condition peculiar to women but affects large sections of the male population such discrimination in her favour is unjustified under the proviso.[86] His point applies *a fortiori* in interpreting a guarantee of sexual equality which has no such proviso.

Article 3

Article 3 is the widest in ambit as it provides for "public office" and "public function" and thus includes not only the legislative bodies contained within articles 1 and 2 but also posts in the civil service, the foreign service and the judiciary as well as to posts which are primarily political in nature.[87] In its application to the legislature it covers elective posts and overcomes the hiatus left by article 2.[88] It also completes both articles by embracing all appointive positions.

According to the Vienna Convention on the Law of Treaties the terms of a treaty shall be interpreted in accordance with "their ordinary meaning" in their context and in the light of the object and purpose of the treaty.[89] To ascertain the "ordinary meaning" of "public" office is no easy task. Is the word "public" descriptive of the function of the body or of its position within the State?

To define "public" by any *a priori* assumption as to the traditional or essential functions of government would involve a choice between political ideologies and be unacceptable on the international level for that reason. It is therefore preferable to confine one's attention to considering its position in the State and to include those offices which

85. *Dattatraya* v. *State of Bombay* [1953] Bom. 311, cp. *Nain Sukh* v. *State of* U.P. [1953] S.C.R. 1184.

86. Basu, *Commentary on the Constitution of India* (1965), p. 78.

87. A/C 3/SR. 474 para. 15 per U.S.A.

88. *Ibid.,* SR. 479 para. 8.

89. Article 31. In the debates on the Convention Sweden noted that "it is inevitable that the expression public office would be given a somewhat different interpretation in different countries." A/C 3/SR. 479 para. 8. Although in the unlikelihood of any international ruling on the definition of "public" its interpretation will in fact fall to each individual Party to the Convention their unqualified right to do so cannot be presumed in the absence of proof of a contrary intention of the parties.

are in fact under government control.[90] Admittedly this will necessitate an examination of the internal structure of the government of the party and a difficult decision on such matters as the degree of government control necessary for a body to be characterised as "public".[91]

In its relation to the judiciary the term would include not only the hierarchy of courts exercising a strictly judicial function but also administrative tribunals often established under legislation to review actions and decisions within a limited field.

There is not as much variety among States in the function and structure of these traditional legislative and judicial bodies and hence in the nature of the public office involved as there is in the administrative and executive branch of government the size of which may be as small as that in the nineteenth century *laissez-faire* model or as vast as the public sector of socialist States. In some States for instance teachers in public educational institutions and members of the church hierarchy would be included, in others they would not.

The application of the Convention will therefore be more far reaching in the socialist than in the non-socialist state. It is submitted that such a broad interpretation of "public office" is within the "object and purpose" of the Convention. It would be incompatible with the general purpose of a human rights treaty to give the terms a narrow or technical interpretation which would restrict the scope of its protection to individuals. It would seem reasonable in the present case to assume that governments have accepted responsibility with respect to all individuals whom it is in fact within their power to protect, whose offices are in other words under government control.

In referring to "public office" and "public functions" the article departs from the text of the Universal Declaration in which the words "public service" appear. This phrase in the Declaration has been interpreted to coyer "public offices, the career service and the performance of public functions".[92] In the debates on the Convention Mrs. Roosevelt

90. Cf. Article 16 Indian Constitution which gives equality of opportunity... in matters relating to employment or appointment to any office under the State. "Office" has been defined as entailing performance of "some duty" or "certain functions of government". *Heartley* v. *Bucks* 5 C.B. n.s. 40 at p. 63, *Monterio* v. *State of Ajmer* [1957] S.C.R. 209. In U.S. jurisprudence "The term "public office" undoubtedly implies a definite assignment of public activity fixed by appointment, tenure, and duties". *Helvering* v. *Powers* (1934) 293 U.S. 214.

English definition: cp. s. 163(1) of the Representation of the People Act 1949 with the common law definition:

> "To make the office a public office the pay must come out of the national and not out of local funds and the office must be public in the strict sense of that term. It is not enough that due discharge of the duties of the office should be for the public benefit in a secondary and remote sense" *re Mirams* [1891] 1 Q.B. at p. 596. The latter definition alone includes both aspects.

91. See for instance the long list of statutory bodies receiving public funds and within the scope of "public office" under the Representation of the People Act, 1949. s. 163(7).

92. A/3532, p. 27. The corresponding article of the Civil and Political Rights Covenant also covers the "public service". Article 25(c).

carefully referred to *official posts* in the civil service thereby by implication excluding the class of general civil servants,[93] but the distinction was ignored by many members who regarded article 3 as a rephrasing of the terms of the Declaration. In reporting on their implementation of the Convention in subsequent years many Parties have included information on all levels of their public service.[94] Furthermore some reservations are only explicable on the basis that public service is included. For instance Belgium made a general reservation on employment in the public service, Pakistan on "recruitment to and conditions of services charged with the maintenance of public order or unsuited to women because of the hazards involved", the United Kingdom on the employment of married women in the civil service.

As "subsequent practice" [95] of the parties includes their statements as well as their actions both these facts may be used as evidence that the civil service is included.

The dividing line between "public office" and "public functions" is of some importance since article 3 requires the participation of women in "all" public functions but not necessarily in all kinds of public office.[96] The inference may be drawn that exclusion of women from the latter may in some circumstances not be discriminatory. In other words the article does not give a general mandate to exclude women from public office. It will still be necessary to justify such exclusion on the grounds of sexual difference. The Iranian delegate for instance considered the fact that women were not yet "in a position" to fill some posts a justification for denying them the right of access to these posts.[97] However since the right and the power to exercise it are logically separate, social factors which hinder the latter are no reason for denying the former.

One difficult case is that of the priesthood. Norway for instance explained that "for reasons of principle" women could be denied the right to become ministers in the State church if the local ecclesiastical authorities so wished[98] but they entered a reservation on this point and therefore obviously did not consider that their "justification" was compatible with equality; Sweden on the other hand called this exclusion an "exception" from[99] their general recognition of sexual equality but did not make a reservation to cover it.

A more difficult case is that of the military services. Certainly posts within the regular services would be examples of "public office"

93. See State definitions Note 90, *ante,* p. 324.

94. E.g. E/CN. 6/360 + adds 1-3. E/CN. 6/430 esp. Greece, Cameroons, Turkey, U.S.S.R., U.K.

95. Cf. Article 31, Vienna Convention on the Law of Treaties.

96. See Article 3, ante, p. 317.

97. A/C 3/SR. 479 para. 56.

98. *Ibid.,* SR. 476 para. 5.

99. *Ibid.,* 479 para. 8.

as defined above but it would be open to parties to exclude women from such offices if their general unsuitability could be established.[100]

Modern methods of warfare have reduced the importance of physical strength in the individual participants and the successful recruitment of women into the active service of a number of States has invalidated any general assertion of feminine unsuitability for the entire range of duties which the defence of the country entails.[1] Thus additional reasons would have to be adduced in order to establish that the complete exclusion of women from the voluntary military services was not "discriminatory."

It was probably in recognition that their exclusionary policy might not satisfy the rigorous test of the feminists that some delegates of the Third Committee sought to exclude military service from the article by an informal agreement of participants in the debates. However in order to be authoritative such an agreement would need to include at least a majority of the parties to the Convention[2] and there is no evidence that an understanding of this nature was reached.

To safeguard its position it would be wise for a party which excludes women from the military to enter a reservation on this point.[3]

There was considerable confusion in the Third Committee as to the relative meaning of "public office" and "public functions". Many thought that they were coterminous. Yet the latter would seem to comprise all those ways in which a citizen may participate in the conduct of government outside the realm of employment. Common functions are for instance the liability for jury service, the right to vote in referenda and plebiscites, the right to institute any legal proceedings of a public nature.[4]

It will be recalled that the exclusion of women from any public function is discriminatory under article 3. Discrimination is thus more

100. In Austria exclusion of women from the military service has been justified as a "legitimate protection" and therefore compatible with the guarantee of equality in the Constitution. See E/CN. 6/430 p. 1. See a more specific justification alleged by Pakistan *ante,* p. 92. Notice however that this is a *reservation.* The government was not therefore certain that such exclusion was compatible with equality. In the debate Denmark put the view that only exclusion of women from combat service was non-discriminatory. See A/C 3/SR. 474 para. 5. See also Israel *ibid.*, SR. 477 para. 27. See also the discussion on the convention in the Sub-Committee on Foreign Relations in the American Congress — 90th Congress, Hearings Before the Sub-Committee on Foreign Relations, U.S. Senate, Washington, 1967, per Ambassador Goldberg p. 28 *et seq.*

1. See the position of Women in Military and Labour Services E/CN. 6/158, Chapter II.

2. Article 31(2) Vienna Convention on the Law of Treaties includes as part of the "context" of a treaty "any agreement relating to the treaty which was made by all the parties in connection with the conclusion of the treaty." It also provides in article 31(4) that "a term shall be given a special meaning if it is established that the parties so intended". The difference between these provisions is that *semble* the agreement of all parties is only necessary under the former.

3. Denmark, India, Pakistan.

4. Cp. A/C. 3/SR. 474 para. 45 (U.S.A.), para. 18 (Netherlands), *ibid.,* SR. 478 para. 51 (Turkey).

strictly construed than it has been for instance in the American courts where it was held as recently as 1961, that the prohibition of discrimination on the ground of sex in the 14th amendment was not violated by the exclusion of women from the jury service.

"The role of women was still the center of the home and family and it might be consonant with the general welfare to exclude her and a state was free to decide that it was desirable." [5]

A similar case might also arise in the Malaysian courts since the Malaysian Constitution also contains a guarantee of equal protection of the laws. By the Code of Criminal Procedure Act women are denied the right of jury service.[6]

Since defence of the realm is a public matter the duty to undertake national service would seem clearly to constitute a public function. To exclude women is therefore contrary to article 3. It is understandable therefore that delegates tried to establish in the debates an understanding that military service should not be considered a public function. A number stated that this was their construction of the term.[7] Assuming that this case falls within the rule of interpretation in article 31(4) and not 31(2) of the Vienna Convention[8] and if further evidence of a general intention were adduced, the international Court may indeed conclude that "it is established that the parties intended" a "special meaning" to be given to the terms. Considering the unlikelihood that the Court will be called upon to decide the issue it would seem advisable for parties to make a reservation on this point.

"On equal terms" with men was explained by the American delegate to the Third Committee as covering recruitment, exemptions, salary, old age and retirement benefits, opportunities for promotion, employment of married women.[9] Despite this the Australian delegation alleged that it was only voting for the Convention on the ground that article 3 did not imply any obligation with regard to "financial conditions of employment in public functions."[10]

Although the fulfilment of the requirements of equal pay, exemptions, and employment benefits is readily ascertainable, recruitment and opportunities for promotion involve policy matters rather than legislation in many cases and their fulfilment may be almost impossible to ascertain. It was admitted by one government in replying to the United Nations questionnaires that "although there are no legal barriers it remains the policy of the government not to admit women." [11] Such policies are as much an infringement of the Convention as if the policy were embodied in legislation. *De facto* discrimination is more likely to occur under this article than under articles 1 or 2.

5. *Hoyt* v. *Florida* 368 U.S. 57.
6. Malaysian Constitution, 8(1); Laws of the Federated Malay States, 1935, Chap. 6 Section 236.
7. A/C 3/SR. 474-478 *per* Brazil, France, Greece, India, Mexico, Philippines, Sweden, Turkey, U.S.A.
8. *Ante,* p. 326 Note 2.
9. A/C 3/SR. 474 para 22; cp. Article 25(c) Civil and Political Rights Covenant which requires "general terms of equality." This is a less exacting obligation.
10. *Ibid.,* SR. 479 para. 58.
11. E/CN. 6/360 add. 3 *per* Canada.

An article permitting reservations was included in the Convention despite the objection that this implicity condoned a denial of human rights.[12] Its opponents failed to appreciate that a State which made a reservation to particular article was not necessarily repudiating the moral right on which it was based but might have other reasons of convenience for wishing to avoid legal obligations on a particular point.

The other formal clauses of the Convention were hotly debated in both the Third Commi ttee and the Plenary meeting of the General Assembly. In the former U.S.S.R.[13] proposed an article by which States undertook to "adopt all necessary measures, including legislation, to ensure genuine possibility of exercising the rights provided." In rejecting this as already implied by the duty of good faith of the Parties to the Convention the majority[14] tacitly acknowledged that their obligation extended beyond legislation and amounted to a guarantee of effective realisation of the rights concerned.

Ultimately the degree of implementation depends on the importance that States attribute to the question not to the presence or absence of such a clause as the U.S.S.R. urged.

The failure of attempts at including a territorial application clause left it uncertain whether the automatic application to non-self-governing territories was thereby prevented or ensured. The United Kingdom, the only colonial power to ratify the Convention at present, has made reservations on behalf of a number of its territories and thus indicated it acceptance of the latter alternative.

Under article 9 submission to the International Court of Justice may be made on the request of one of the parties. Seventeen Members of the United Nations were original signatories to the Convention which entered into force in 1954.

A General Assessment of the Convention and its Effects

The failure of the drafters to define "discrimination", "equal terms", "public office" and "public functions" prevents a clear understanding of the application of the Convention. The place of military service and the church, of local elections are unsettled.

During the debates in the Third Committee more time was devoted to extolling the general merits of the political rights for women than to analysing the terms of the Convention. The importance of political rights to the advancement of women in related spheres and to the progress of society as a whole was a common theme of the speeches; and the utility of the Convention as a propaganda weapon in achieving that aim was widely recognised.[15] Both the Status of Women Commission and women's rights organisations within individual States could

12. Cp. A/C 3/SR. 475 p. 345 (Yugoslavia); *ibid.,* SR 476 p. 350 (India); *ibid.,* SR. 476 p. 351 (China).
13. A/C 3/L 327 Rev. 1 para. 4.
14. A/2334 para. 12.
15. A/C 3/SR. 474 El Salvador, p. 342. I*bid.*, SR. 475 p. 345 (Yugoslavia); p. 346 (Brazil); *ibid.*, S.R. 477 p. 362 (Iraq); *ibid.*, SR. 479 p. 376 (Sweden).

use the Convention to influence those governments who were very sensitive about their international image. As there was little chance that the Convention would be the subject of international proceedings its exact language was less important than its general promotional effect.

Nevertheless even if the Convention only manages to produce universal implementation of equality in those fields which it does clearly cover it will have achieved its main purpose. Unlike the British delegate who considered that the Convention could not induce States to take action and would only be ratified by those States for whom political equality was already accepted,[16] many representatives were confident that it would have a positive effect. The accuracy of their predictions is shown in the large number of States who have taken action since 1952.[17] The revisal of the United Kingdom's position is borne out by its decision in 1967 to ratify the Convention.

There are at present 65 parties to the Political Rights Convention which is thus one of the most highly ratified human rights Conventions.[18] The number of parties is higher from Europe than from any other region[19] and lower among African than Asian States. Three of the 14 parties to the Inter-American Convention have not yet ratified.[20]

During 1963 the British government invited its territories to examine the Convention with a view to removing any obstacles to ratification. As a result of the subsequent action it found in 1967 13 territories in which the Convention was fully applied, 15 in which women's political rights were still restricted in some way. Because the territories in question have full competence over their internal affairs the removal of these restrictions is outside the control of the British government who therefore chose to ratify with reservations on these points.[21]

As most States have equal franchise rights article 3 seems to have been the chief obstacle to ratification. The article has also prompted the largest number of reservations.[22]

Some long-established States have explained their failure to ratify by reference to an aspect of their policy which conflicts with article 3 but which they are not prepared to modify. Exclusion of married women from the diplomatic service and of all women from military service are

16. E/CN. 6/SR. 71 p. 8.

17. *Post,* p. 334 *et. seq.*

18. See ST/LEG/SER D/3 (31 Dec. 1969).

19. Twenty two.

20. Colombia, Honduras, Panama.

21. E/CN. 6/470 add. 4.

22. See A/6807 Table VI. The ratification of the U.K. on behalf of itself and its dependent territories was qualified by a list of 9 reservations to article 3. Question of succession to the Crown, offices "primarily of a ceremonial nature" access to and voting in the House of Lords, service in the armed forces, employment of married women in the diplomatic service, all related to its own territory while a number of others concerned jury service, remuneration and employment in the civil service, and certain special offices in various dependent territories.

the commonest examples. However the reservations clause was specifically included out of respect for the State's discretion in these matters and the possibility of ratification is not thereby precluded.

In general the exclusion of women from public office and functions is less often considered policy than the lag of legal reform behind social evolution. Many of these long-established States retain isolated discriminatory rules or practices long after the concept of women's social role which inspired them has been discredited. There may be considerable inertia against the change of practices which, unlike the franchise, involve a minority of the female population or which, like jury service, are more burdensome than beneficial to them. The unwillingness of States to ratify with reservations on these points which, unlike military service, they are unable to defend is understandable. The value of the Convention then is to confront the State with these anachronisms, and with the assistance of pressure within the United Nations to challenge it to eradicate them.

The low ratification figures from developing States may also be the result of a misunderstanding of the nature of the obligation which the article imposes.[23] In many of the new African States for instance the few legal barriers which were in existence during the colonial period were discarded soon after independence or abrogated by a general provision for equality in the Constitution.

Official policy in these States, faced with an acute shortage of suitably trained citizens, could hardly afford the luxury of excluding women. Nevertheless so long as the traditional ideas on women's role and capabilities subsist and until feminine education becomes more advanced their actual role in public life will be insignificant.

The hiatus between official policy and social reality postpones the practical realisation of the aims of the Convention and may have also disfavoured ratification. It has already been emphasised however that the Convention does not impose an obligation of positive measures to equalise the participation of men and women in political life. The State is not responsible for the failure of its female population to take advantage of the opportunities which the Convention grants.

The Supervision of the Convention

The Status of Women Commission has not been concerned with the Convention as a source of legal obligation for a limited number of states but as a general standard, adherence to which is incumbent on all members of the United Nations.[24] As its parent body the Economic and Social Council is not granted the right under the Charter to supervise the implementation of Conventions which it is empowered under article 62 to draft, it has to rely on its general power under article 64 to seek reports on its own recommendations and on those of the General Assembly. The Convention itself makes no provision for supervision.

23. E.g., E/CN. 6/430 Cameroons pp. 16-17; Somalia pp. 38-9; Sudan p. 39.
24. Since 1962 it has requested non-parties as well as parties to report on the the Convention. See E/CN. 6/470 and Adds 1-4. The duty to report is no higher on parties than on non-parties.

According to the Committee on the Implementation of ECOSOC Recommendations the general purpose of these reports is not to force States into action but merely to obtain a general picture of the degree of acceptance of the "recommendation", in this case one embodying the Convention, problems encountered in its implementation and any other information which might be a guide to future action by both the Economic and Social Council and by member States.[25] However most of the reports sent by parties have been uninformative, and inadequate even to achieve these purposes.[26]

The inability of the Commission to oblige parties to report on their application of the Convention, its inability to make detailed comments to individual States and to give an authoritative interpretation of the terms for whose drafting it was largely responsible has prevented it from exercising any close control over the effect of the Convention.[27]

Admittedly once the law provides the right to vote and to stand for office there is little to be done except at election time and hence little on which to report but a serious attempt to implement article 3 would involve a comprehensive survey of women's employment in the government service and a frequent review of the situation could be the basis of a report to the United Nations.

It has been pointed out above that discrimination under article 3 may be either *de jure* or *de facto.* Therefore to ascertain the extent of compliance with the article the Commission would not only need information on a wide range of legislative and administrative provisions, but also statistical details of the numbers of women employed in government service. It is doubtful whether an analysis of such complex factual material could be satisfactorily undertaken at an international level even if special machinery was constituted for the purpose.[28] In addition of course the large number of States involved would make the task enormous.

In conclusion, experience has shown that a system of voluntary state reports is ineffective as a means of controlling the obligations imposed under the Convention. Even if parties had been required to submit regular reports[29] such a procedure would have been of limited value. To ensure the full protection of individual rights embodied in the Convention regional supervision would be necessary.

25. Report of Ad Hoc Committee on Implementation of Recommendations on Economic and Social Matters E/AC /31/L. 12.

26. E/CN. 6/360 and Adds 1-4. E/CN. 6/430 cp. for instance Afghanistan with detailed report of Finland, Greece, Turkey, U.S.A., U.S.S.R.

27. See the similar view of Moskowitz, *Human Rights and World Order* (1958), pp. 161-64.

28. Such machinery is used in the ILO. For the difficulties experienced in supervising Human Rights Conventions see 47th Conf. Committee of Experts Reports on Ratified Conventions p. 191 *et seq;* for the machinery created under the Human Rights Covenants see Part IV of each Covenant.

29. Parties to the Civil and Political Rights Covenant are required to submit reports, see article 40. By this procedure the most flagrant breaches of article 25 may be detected but any more detailed supervision is most unlikely.

III. *The Council of Europe*

The cause of equal suffrage rights for both sexes was almost complete throughout Western Europe when the Convention on Human Rights was sighed by 16 States in November 1950. Greece was the only member of the Council of Europe who had not fully enfranchised women. An article guaranteeing the right to vote was suggested for the Convention but was finally omitted.[30] But when the First Protocol was concluded in 1952, Greece had granted women complete franchise rights. Article 3 of the Protocol provides:

> "The High Contracting Parties undertake to hold free elections at reasonable intervals under conditions which will ensure the free expression of the people in the choice of the legislature."

The article only applies to the legislature and therefore excludes referenda. The scope of the word "legislature" however is unsettled. Despite suggestions in the Council of Europe secretariat that it was only intended to cover the lower house of a bicameral legislature [31] commentators have considered that it is impermissible to introduce such a qualification in the absence of express words to that effect.[32] By analogy they regard state legislatures in a Federal State as included.[33] The latter affects only Germany and Switzerland.

It has been held by the Commission that, unlike most articles, article 3 does not confer a right on individuals but merely imposes on the State the duty to hold elections under conditions which will ensure the "free expression of the people in the choice of the legislature." [34] A complainant then must claim not merely that he was deprived of the vote but that it was denied to a class of which he was a member and that the denial limited the "free expression of the people in the choice of the legislature."

Article 14 of the European Convention requires the enjoyment of the rights in the Convention to be secured without discrimination on the grounds *inter alia* of sex. The operation of this article in conjunction with article 3 has been the subject of much speculation but there are no cases on the point. The need to establish that women as a group have been denied the vote and not merely that an individual woman has been discriminated against is clear. It is controversial, however, whether this would amount to a violation of article 14 or whether the suppression of the free expression of people in the choice of the legislature would also need to be established.[35]

30. Cf. Robertson, A.H., *Human Rights in Europe,* Ch. 1.
31. *Yearbook of the European Convention* (1963), p. 70.
32. "Rapport du Conseil Federal a 1'Assemblee Federate sur la Convention de sauvegarde des droits de 1'homme et des libertes fondamentales" 9 December 1968, p. 70. Antonopoulos, *La Jurisprudence de la Convention europeenne des droits de L'homme* (1967), p. 210.
33. Schorn, *Die Europaische Konvention zum Sehutze der Menschen rechte und Erund Freiheiten* (1965), p. 436.
34. Decisions of the Commission 1065/61 p. 269; 1028/61 p. 339. But for a criticism of this view see Antonopoulos, *op. cit.,* p. 212.
35. "Rapport du Conseil Federal" *op. cit.,* p. 71; Schorn, *op. cit.,* p. 437; Aubert, *Traite de Droit Constitutionel Suisse* (1967), pp. 640-1; Favre, in *Annuaire Suisse de Droit International,* Vol. XXIII, p. 35.

As the European Court has ruled that the infringement of article 14 is not contingent upon infringement of the main article in question there is direct authority for the former interpretation.[36]

However, on the assumption that the "people" necessarily includes women it is submitted that article 3 would be violated by a denial of rights to women in general. If on the other hand they were merely placed under a restriction not imposed on men it would be more difficult to establish that the free expression of the people had been denied. Then article 14 would be relevant.[37]

The duty of non-discrimination in the right to vote has been an embarrassment to the Swiss government who feels morally, if not legally, obliged as a member of the Council of Europe to ratify the European Convention but who has not yet enfranchised women in federal elections.[38]

Under article 3 of the statute of the Council of Europe every Member must accept the principles of "... the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms and *collaborate* sincerely and effectively in the realisation of the *aims* of the Council as specified in Chapter I".[38a] Among the "aims" in chapter 1 is the "maintenance of human rights", and one of the means of collaborating, is by the safeguard and development of human rights. The Convention gives precise content to these general duties.

In short, article 3 of the constituent statute of the Council of Europe requires "acceptance of" human rights and colloboration with the Council in their maintenance. It could be alleged that Switzerland is infringing the first duty by withholding the franchise from women, the second by failing to ratify the convention. It cannot be claimed at the present stage in the development of the doctrine of human rights that "the acceptance of the principles of human rights" must be interpreted to require the complete fulfilment of each right. Thus the former contention is untenable. The latter has more cogency and has at least induced the Swiss Parliament to give serious consideration to the problem. Now that other members of the Council of Europe, with one exception[39] are parties to the Convention Switzerland is treating its ratification as a matter of some urgency.

It has been proposed[40] either to accede with reservations or to postpone ratification pending the introduction of female suffrage in federal elections and in the majority of cantonal elections.

36. *The Belgian Linguistics Case, Judgment of the European Court of Human Rights* (1968), p. 35.
37. All the arguments are found in discussions in the Swiss Federal Parliament — see B.O.A.F. Furgler *et. al.* (11 December 1962); Eggenberger (22 June 1966). The latter reproduced in C. of E. Doc: H/6615 4 October 1966. 'Rapport du Conseil Federal' op. *cit.,* pp. 70-73, 82-85.
38. Switzerland was not a member of the Council of Europe at the time of the Protocol's conclusion.
38a. Italics added.
39. France.
40. 'Rapport du Conseil Federal' *op. cit.,* pp. 14-15.

The Swiss federal government is constitutionally incapable of granting women political rights since the right to vote is bestowed upon males under the Constitution and constitutional amendment requires a referendum of the present electorate, that is of all adult males.[41]

The constitution has placed the government in the unusual predicament of being required to obtain the permission of the privileged group before discrimination against the under privileged can be abolished. Since constitutional difficulty is no excuse for failure to fulfil an obligation under international law it is not possible for the Swiss to ratify the European Convention of Human Rights or the United Nations Covenant without a reservation. The alternative which is most likely to be acceptable to the Council of Europe, to ratify with a reservation on female suffrage, has been the recommendation of the latest Rapporteur.

However there is an obstacle to this course since article 64 of the Convention prohibits reservations of a general nature. A reservation which covers a denial of the human right in question to half the population would seem the very kind of sweeping exception against which article 64 is aimed.[42] However in practice the other members of the Council of Europe are unlikely to object to such a reservation since it is only intended to be temporary, and since there are genuine obstacles to its removal.[43]

In ratifying with a reservation the Swiss would be in effect committing themselves to a propaganda campaign among the male population as they are acutely conscious of the suspect nature of such a reservation and must also be aware that the natural evolution of male opinion will be slow. Female suffrage is perhaps likely to be achieved more quickly than if ratification were delayed.

It is self evident that in a small community of States political pressure to comply with a common purpose can be far greater than in a general international organisation. In this case the obligation to ratify the Human Rights Convention has led the Swiss government to seek a solution to the problem of women's political rights. The Council of Europe has machinery through which pressure could be put on the Switzerland and members might conceivably utilise these methods if Swiss women were clamouring for their rights.

Finally it is noteworthy that this Convention which provides elaborate procedures for the enforcement of the articles by individuals and States contains no guarantee of equal access to public office.

IV. *The Extension of Political Rights since 1945*

Since signing the United Nations Charter 84 States have taken action to grant or to extend the franchise to women. In only 4 States[44] is the right to vote subject to limitations not imposed on men, in only 7 [45] are women still denied political rights. To attribute this remarkable

41. See generally Aubert, *op. cit.,* Vol. 1, pp. 71-72, Vol. 2, pp. 405-408, 1076-1086.
42. *Ibid.,* p. 87 n. 2 cf. also Vasak pp. 68-70.
43. C. of E. Doc: 2265 13 Sept. 1967, pp. 22-23.
44. Congo, Portugal, San Marino, Syria.
45. Jordan, Kuwait, Liechtenstein, Nigeria, Saudi Arabia, Switzerland, Yemen.

pattern of activity solely, even mainly, to the influence of the United Nations would however seem unwarranted. The following subdivision of the 84 may enable its importance to be assessed.

I. Colonies attaining independence

(a) 4 — Equal Suffrage Rights granted before 1945 and affirmed in the Constitution on independence after 1945.[46]

(b) 15 — (French) — limited suffrage to all French citizens 1946, universal suffrage to all French citizens 1956.[47]

(c) 11 — (British) — equal suffrage rights granted after 1945 and before independence.[48]

(d) 10 — Equal suffrage rights granted in the Constitution on independence.[49]

(e) 4 — Equal suffrage rights granted in the United Nations plebiscite and subsequently affirmed on independence.[50]

(f) 1 — Equal suffrage rights granted some years after independence.[51]

II. Other States

15 Latin American States

5 Socialist States.[52]

22 Miscellaneous States of which

7 granted equal suffrage rights before 1950.

15 granted equal suffrage rights after 1950.[53]

The considerable influence of the United Nations in the introduction of universal suffrage in the trust territories has already been examined. The majority of the colonies attaining independence were not subject to direct international interference although of course the colonial administrators, Britain and France, by whom the new Constitutions were in most cases drafted were members of the Trusteeship Council in which the principle of universal suffrage has been repeatedly claimed.

The most significant group within section 2 comprises those 15 States in which the grant of political rights has occurred since 1950. These exclude the Latin American and Eastern European States in which loyalty to respectively, a common regional organisation, and a common ideology, were undoubtedly more important factors than the

46. Burma, Ceylon, Jamaica, Philippines.
47. Cammeroons, C.A.F. Chad, Congo Dahomey, Gabon, Guinea, Ivory Coast, Madagascar, Mali, Mauritania, Niger, Senegal, Togo, Upper Volta.
48. Barbados, Botswana, Cyprus, Gambia, Ghana, Indonesia, Malta, Nigeria, Somalia, Trinidad and Tobago, Tanzania.
49. India, Pakistan, Guyana, Kenya, Laos, Malawi, Malaysia, Uganda, Vietnam, Zambia.
50. Burundi, Rwanda, Western Samoa, Nigeria.
51. Congo.
52. China, Albania, Bulgaria, Romania, Yugoslavia.
53. Afghanistan, Algeria, Ethiopia, Greece, Iran, Iraq, Lebanon, Libya, Mexico, Monaco, Morocco, Nepal, San Marino, Sudan, Tunisia, U.A.R.

pressure of world opinion. Of these 15 States Afghanistan, Ethiopia, Greece, Lebanon, Nepal and Tunisia have all become parties to the Convention but even the non-parties have probably been influenced by it.[54]

A commentator has also pointed out that membership of the Commission has stimulated government action. Of the States which had been members before the attainment of women's suffrage within their territory only one failed to grant women some political rights before their term of office on the Commission expired.[55]

Thus the fact that 84 States have taken action since 1945 and that there are only 7 States of a total 117 where women's suffrage is not recognised is a triumph for the cause of suffragism and to a much lesser extent a triumph for the Commission.

The degree of compliance with article 3 is impossible to assess since some States' reports have been incomplete. However exclusion of women from the judiciary, the legislature and high executive positions is undoubtedly rare[56] — an improvement on the position of 1938.[57] In the diplomatic service it remains more widespread.[58]

The international doctrine of human rights has played a role in what might be termed the second stage of the long struggle for female suffrage. Broadly speaking European and North American women, the progenitors of the international movement won the vote before its emergence, Latin American women were aided by regional rather than by international human rights activity. It is the women of some other areas of Asia and Africa who have benefited by the Convention, and the other United Nations activity.

The work of the United Nations has helped to establish franchise rights and probably to improve women's rights to public office. So long as the Status of Women Commission, the General Assembly and municipal women's organisations exert pressure on States to ratify the Convention on the Political Rights of Women the instrument will continue to have a promotional function. The United Nations is however powerless to ensure full protection of the rights once they have been achieved and must rely on the good faith of those States who are parties to the Convention. At this subsequent stage, the protection of human rights, regional organisations could be more efficacious particularly if the individual is granted the right of petition before them.

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54. Feminist activity has also been slight except in Lebanon, Greece, Tunisia, cf. *Report of the 18th Triennial Meeting of the International Council of Women,* pp. 28, 33, 49.

55. *U.S. Dept. of State Bulletin,* Vol. 31, p. 24.

56. E/CN 4/Sub. 2/284 p. 391.

57. Report in 1961, E/CN 6/430 — Adds 1-4. See 14 States where barriers removed since 1953. See also L. of N. Doc: Status of Women, 1938 (V).

58. See E/CN 6/360 — 18 States acknowledged discrimination.

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