

A UNITED NATIONS
HIGH COMMISSIONER FOR
HUMAN RIGHTS

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by

ROGER STENSON CLARK



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I have endeavoured to incorporate all relevant material available to me on 4 January 1972.

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FOREWORD BY RICHARD N. GARDNER

There are three main approaches to the international implementation of human rights standards.

The first approach is on the government-to-government level. This may be through bilateral diplomacy or resort by a government to multilateral machinery. The difficulty with this approach is that governments are often reluctant to complicate diplomatic relations by bringing human rights complaints against another government.

The second approach is to give individuals direct access to an international commission or tribunal. Such a right of individual petition exists in the European Commission and the European Court of Human Rights and in the Optional Protocol of the Convention on Racial Discrimination. This approach is feasible between countries which share a substantial degree of consensus on human rights standards. For the foreseeable future, however, it is not likely to be a practical possibility on the global level. Within the broad membership of the United Nations, the differences are simply too great. The majority of UN members are clearly not prepared to permit their citizens to appeal over their heads to international human rights bodies. Moreover, a worldwide system of private petition would almost certainly work unequally against free as compared with totalitarian societies. An international body would be besieged with petitions from citizens of open societies having no fear of the consequences, while citizens of totalitarian regimes would generally hesitate to bring their complaints for fear of government reprisal.

The third approach to the international implementation of human rights standards is through an international executive who can influence government action through fact-finding, publicity and persuasion. This is the approach of the proposed United Nations High Commissioner for Human Rights.

This book by Roger Stenson Clark explores the history and the future

prospects of the High Commissioner proposal with careful scholarship and shrewd judgment. Mr. Clark wrote the first draft of this book under my supervision for the degree of Doctor of the Science of Law at Columbia Law School before returning to take up his career as a law teacher in his native New Zealand. I am delighted that his work, in this improved and updated version, is now being published. It fills a real need, since it is the first book on this important subject.

On this occasion it might be appropriate to add a few comments on the history of the High Commissioner proposal. As Mr. Clark indicates, I had something to do with its “revival” in the United States Government during the closing months of the Kennedy Administration. A few details as to how this “revival” took place may perhaps be useful to students of international relations and international organization.

The decision to revive the High Commissioner idea was triggered by two events in the spring of 1963. In April of that year Marietta Tree, then serving as U.S. Delegate to the Human Rights Commission, sent me an article from the *Manchester Guardian* describing the work of New Zealand’s new Ombudsman together with a note asking: “Can this *ever* be suggested for the UN? I recognize political problems here. But couldn’t we talk to Senators informally to get their views?” This imaginative suggestion – one of many which the State Department received in those days from this charming and intelligent lady – started mental wheels turning.

The second event, which also occurred in April, was an invitation to participate in a seminar on the International Protection of Human Rights at the end of May in New York under the auspices of the American Jewish Committee. The agenda for that meeting, prepared by the Committee’s gifted UN Representative, Mr. Sidney Liskofsky, contained a provocative item entitled “High Commissioner (Attorney-General, or ‘Ombudsman’) for Human Rights.” The mental wheels were now spinning enthusiastically.

Until this moment such attention as I had been able to give to human rights questions had been devoted entirely to getting the Kennedy Administration to reverse the Eisenhower Administration’s policy of total opposition to U.S. adherence to human rights conventions. This effort was well on the way toward fruition – the “Kennedy package” consisting of the three Conventions on Slavery, Forced Labor and the Political Rights of Women was sent by the President to the Senate for advice and consent to ratification in July. Now, with the stimulus from Mrs. Tree and the necessity to speak to the agenda prepared by the American Jewish Committee, I began to focus on the High Commissioner idea. Staff work began. We examined the original proposal for a High Commissioner (or Attorney-General)

launched a decade earlier in the UN by Uruguay and the Consultative Council of Jewish Organizations. We considered possible variations of the Uruguayan proposal. My speech to the Human Rights Seminar on May 27 touched the subject only lightly, but in July a number of meetings were held in the State Department on the High Commissioner idea with a view to including it in President Kennedy's speech to the General Assembly in September.

As I expected, the High Commissioner was opposed by almost every regional and functional bureau in the Department of State – for all the obvious reasons. It was argued that a High Commissioner might embarrass our government or some of the totalitarian regimes with which we were allied. It was also argued that the Soviet Union and other governments would oppose it bitterly and that our advocacy of it would get in the way of the *détente* that was beginning to emerge with the Russians after the conclusion of the Test Ban Treaty. Despite this opposition, those of us who favored the idea would probably have succeeded in getting it into the President's speech but for one development we had not foreseen – the opposition of Robert Kennedy and his associates in the Department of Justice. They argued – and from their point of view this was quite understandable – that we should not surface the High Commissioner proposal until the Civil Rights Act, then stalled in Congress, had been enacted. They feared that the creation of such an office at that juncture by the United Nations might add additional fuel to Southern opposition.

We were obliged, therefore, with great disappointment, to put the High Commissioner idea “on ice” for a while. But we did succeed in inserting into the President's speech to the Assembly on September 20 a strong condemnation of human rights violations in the United States, in Eastern Europe, and in South Vietnam. Most important, the President's speech contained the following two sentences:

“Our concern is the right of all men to equal protection under the law – and since human rights are indivisible, this body cannot stand aside when those rights are abused and neglected by any member state.”

“New efforts are needed if this Assembly's Declaration of Human Rights, now 15 years old, is to have full meaning.”

Just what these “new efforts” might be the President did not say, but on September 26 Mrs. Tree and I were authorized to discuss the High Commissioner with John Humphrey, the able Director of the UN's Human Rights Division. As a result, Humphrey began an examination of the idea within the UN Secretariat.

Then, suddenly, the proposal began to take on momentum of its own.

Non-governmental organizations began asking just what President Kennedy had in mind. In "off-the-record" briefings we told them the High Commissioner idea was "under consideration" but that no decision in the U.S. Government had yet been taken. Some NGOs then decided to move ahead on their own. A meeting to discuss the idea was held at New York University. Jacob Blaustein proposed it in his lecture at Columbia. The World Veterans Federation and other groups prepared a draft resolution. Ambassador Volio of Costa Rica became enthusiastic about the plan. He sought and received the authority of his government to sponsor it in the UN.

As late as the winter of 1964-65, the United States government, despite the passage of the Civil Rights Act, was still unwilling to take any initiative in the matter. But we did manage to get authority for Morris Abram to support a study of the High Commissioner proposal at the Human Rights Commission meeting in March 1965. Then, in September of that year, in his first speech to the General Assembly, ambassador Arthur Goldberg expressed "enthusiastic support" for the Commissioner. At long last, at the meeting of the Human Rights Commission in March 1966, the U.S. Government joined other governments as an active supporter. In 1967, both the Human Rights Commission and the Economic and Social Council voted in favor of the Commissioner. Alas, as of this writing, the General Assembly has yet to act.

This little bit of history suggests at least two interesting things. The first is that the revival of the High Commissioner was encouraged by the growing interest around the world in the Ombudsman. The successful experiment with this office on the national level naturally stimulated interest in its international potentialities.

The second element that emerges from this episode is the significant role played by non-governmental organizations. When the U.S. government, largely for reasons of domestic politics, was unable to translate the High Commissioner idea into political action, the non-governmental organizations took the initiative. After they had developed the proposal on their own and secured the endorsement of Costa Rica and other UN members, the position of those within the United States government who supported the proposal was entirely transformed. It was no longer a matter of asking the United States to take the initiative, but only to support an initiative which others had taken. To the unpersuaded in the bureaucratic establishment one could now say: "The proposal for a High Commissioner is now on the table. Do you really want us to oppose it?" Such are the strange ways of multilateral politics in our time.

Mr. Clark quite rightly sees the High Commissioner as a part of the international political process, as a catalyst for the creation of international customary law, as a promoter of human rights standards – not as a judge or enforcer. Like most proposals for practical next steps toward world order, the idea of the High Commissioner for Human Rights may be attacked as too modest by some and too ambitious by others. Strong opposition from a minority of members has so far prevented affirmative action by the General Assembly. These members may well succeed in blocking action for another few years. But I think they will lose in the end. The High Commissioner for Human Rights is an idea whose time has come. I commend this excellent book to all who would understand its history and, even more important, assess its future potential for international organization and human dignity.

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