

Comment

SOVIET ABUSE OF PSYCHIATRIC COMMITMENT: AN INTERNATIONAL HUMAN RIGHTS ISSUE

The Soviet government has been known to engage in repression of individuals who oppose established governmental policies.¹ While techniques of quieting opposition have varied, one method has been increasingly utilized by the Soviets in recent years: forced psychiatric hospitalization² — often characterized by harsh treatment, primitive conditions, indefinite confinement, and extensive use of compulsory medication.³

Although misuse of psychiatry has occurred in other countries,⁴ Soviet abuse⁵ is unique in two important respects. First, the number of political dissidents incarcerated through the use of psy-

1. *Psychiatric Abuse of Political Prisoners in the Soviet Union: Hearing Before the Subcomm. on Int'l Organizations of the House Comm. on Int'l Relations*, 94th Cong., 2d Sess. 29-81, app. (1976) [hereinafter cited as *1976 Hearings*].

2. S. BLOCH & P. REDDAWAY, *PSYCHIATRIC TERROR* 31 (1977) [hereinafter cited as BLOCH].

3. *Abuse of Psychiatry for Political Repression in the Soviet Union, Vol. II: Hearing submitted to the Subcomm. to Investigate the Administration of the Internal Security Act and Other Internal Security Laws of the Senate Comm. on the Judiciary*, 92d Cong., 2d Sess. 2 (1975) [hereinafter cited as *1975 Hearings*].

4. Robinson, *World Congress Condemns Abuse*, *Psychiatric News*, Oct. 7, 1977, at 1, col. 2. Misuse of psychiatry has recently been reported in Argentina, Chile, Peru, and South Africa. *Board Affirms Actions on Psychiatry Abuses*, *Psychiatric News*, Oct. 1, 1976, at 1, col. 1. Opinions about psychiatric abuse in the United States differ. Dr. John Speigal stated that there are no exact parallels between abuse of psychiatry in the Soviet Union and in the United States, with the possible exceptions of Ezra Pound and General Walker, because the issue is not only misuse, but misuse through incarceration. Dr. Speigal further stated that role conflict could exist concerning prison psychiatrists or those working for the CIA and that poor or ethnic peoples could be more frequently diagnosed as mentally ill, but that *hospitalization is not associated with political dissent. A further difference is that in the West there is public exposure through the press.* Address by John Speigal, M.D., former President of the American Psychiatric Association and Professor of Social Psychology at Brandeis University, 130th Annual Meeting of the American Psychiatric Association at Toronto (May 2-6, 1977) (emphasis added). For a discussion of possible cases in the United States, see T. SZASZ, *LAW, LIBERTY AND PSYCHIATRY* (1968).

5. For the purposes of this comment, the terms "abuse" and "abuse of psychiatry" mean the involuntary confinement in mental hospitals, and "treatment" means treatment by drugs and other means of persons whose behavior would, in most societies, clearly be

chiatry has increased rapidly in the past fifteen years.⁶ It is estimated that 2,000 to 10,000 political dissidents in the Soviet Union are presently diagnosed as having some form of mental illness.⁷ Second, such incarceration is the product of a systematic national policy.⁸

This comment will explore the vulnerability of Soviet psychiatry to abuse and will examine the characteristics of forced Soviet psychiatric treatment. Further, the Soviet contention that treatment of its political dissidents is a matter of internal concern will be appraised in light of the fundamental human right to be free from arbitrary and forced medical treatment.⁹ Finally, a commission will be proposed as a possible solution to the problem of Soviet psychiatric abuse.

I. SOVIET PSYCHIATRIC THEORY

A. *Inherent Vulnerability of Psychiatry to Abuse*

To appreciate the use of psychiatry as a means of suppressing dissent, it is necessary to examine the unique vulnerability of psychiatry to abuse and then to demonstrate the connecting links between psychiatry and the Soviet State. Due to a persistent lack of agreement among psychiatrists on criteria for defining mental illness,¹⁰ psychiatry in any nation has an extraordinary potential for

deemed as arising from a sound mind and to have political or ethical — not psychiatric — roots.

6. BLOCH, *supra* note 2, at 47. Dr. Norman Hirt, Associate Professor of Psychiatry at the University of British Columbia in Vancouver, stated that conditions in the Soviet Union had worsened since he testified in 1972 and that 7,000 to 8,000 Soviet dissidents were now confined in psychiatric hospitals. Scott, *Drug Lobotomies by Russ Charged*, Los Angeles Times, Mar. 2, 1975, § 1, at 5, col. 1.

7. A. SAKHAROV, MY COUNTRY AND THE WORLD 31 (1975). See also AMNESTY INTERNATIONAL, PRISONERS OF CONSCIENCE IN THE USSR: THEIR TREATMENT AND CONDITIONS (1975).

8. Address by Paul Chodoff, M.D., 130th Annual Meeting of the American Psychiatric Association at Toronto (May 2-6, 1977) [hereinafter cited as Chodoff].

9. The Preamble of the United Nations Charter refers generally to the belief in the existence of fundamental human rights and in the dignity and worth of the individual. The Universal Declaration of Human Rights also reaffirms faith in fundamental human rights, and articles 3 and 5 relate directly to forced medical treatment. See G.A. Res. 217A (III), U.N. Doc. A/810 (1948).

10. See BLOCH, *supra* note 2, at 24-25.

manipulation.¹¹ Unlike other branches of medicine, there are no reliable objective tests to determine the presence of most mental diseases.¹² The result is that psychiatric diagnoses are based more upon clinical observation than upon objective pathological changes.¹³

Disagreement also exists within the profession regarding the proper role of the psychiatrist.¹⁴ Some authorities believe that psychiatry should be limited to reducing the pain and discomfort of the patient and to help increase his capacity to adjust.¹⁵ Other psychiatrists feel that the profession should become involved in advancing the social health of the nation as well as the mental health of the individual and should assume a leading role in advancing social goals.¹⁶ The lack of strict objective medical criteria and the disagreement within the profession regarding the proper role of psychiatry in society have afforded psychiatrists a great deal of flexibility in diagnosing mental illness.

B. *Soviet Psychiatric Theory and Diagnosis*

1. *Evolution of Soviet Psychiatric Theory.* Conflict about the proper role of the psychiatrist, as observed in the West, does not exist in the Soviet Union, since Soviet psychiatrists are expected to accept the psychiatric theory established by the state.¹⁷ Since the 1930's, Soviet psychiatry consistently has officially rejected basic psychoanalytic theory.¹⁸ Conventional Russian psychiatric theory

11. Chodoff, *supra* note 8.

12. BLOCH, *supra* note 2, at 25.

13. *Id.* at 24-25.

14. *Id.* at 23-24.

15. Busse, *APA's Role in Influencing the Evolution of a Health Care Delivery System*, 126 AM. J. OF PSYCH. 739 (1969).

16. Waggoner, *The Presidential Address: Cultural Dissonance and Psychiatry*, 127 AM. J. OF PSYCH. 1 (1970).

17. BLOCH, *supra* note 2, at 37.

18. A. Kiev, *Introduction*, in PSYCHIATRY IN THE COMMUNIST WORLD 12-13 (A. Kiev ed. 1968). It appears that psychoanalytic theory has been rejected, because it focuses on understanding the *meaning* of symptoms thus emphasizing the significance of unconscious motivating forces of which symptoms are the result. In other words, psychoanalysis focuses on unconscious thoughts as motivating forces over which man has little control. Psychoanalytic theory is therefore incompatible with social systems that set great store in rational planning for society and the individual. *But see* note 19 *infra*. When basic psychoanalytic theory was rejected, Freud's works became generally inaccessible in the Soviet Union; translation of them into Russian also ceased. BLOCH, *supra* note 2, at 40.

is based on a Pavlovian model¹⁹ combined with a Marxist view.²⁰ The resulting school of thought is that man's behavior is a consequence of social and economic conditions prevailing in society.²¹ This theory was officially adopted at a joint session of the Soviet Academy of Sciences meeting in 1950, and the Academy resolved, under party pressure, to further develop and apply Pavlovian theory.²² The resultant Soviet psychiatric treatment is characteristically educative and directive.²³

2. *Interdependence of Psychiatry and the Soviet State.* The directive quality of official Soviet psychiatric theory is reinforced by the state's control of clinical psychiatric practice.²⁴ When the federal structure of the Soviet Union was proclaimed in 1922, all branches of the health service came, and have since remained, under the control of the central government.²⁵ The Minister of Health of each Soviet Republic is responsible to the federal ministry, which itself is answerable to the Supreme Soviet²⁶ of the Soviet Union. Any change in theory requires approval of the federal min-

19. Pavlovian theory supports the view that people can be conditioned by specific stimuli — that is, an approximately controlled environment — to achieve social adaption. Thus, symptoms of mental illness are viewed as conditioned reflexes developed through environmental influences. Therefore, if noxious environmental factors are eliminated, the theory is that undesirable phenomena will be extinguished.

Pavlovian theory thus supports the Soviet emphasis on the role of social factors; this theory has received official support from the Soviet government, strengthening its central role in Soviet psychiatry. Kiev, *supra* note 18, at 11-12. For a brief explanation of the Pavlovian model, see Urban & Ford, *Behavior Therapy*, in COMPREHENSIVE TEXTBOOK OF PSYCHIATRY 1218-24 (A. Freedman & H. Kaplan eds. 1967).

20. Marxist social theory emphasizes the exalted position of work in man's activities and stresses that man's behavior and actions are determined by the economic conditions in which he finds himself. For a brief discussion of the Marxist political view as it relates to psychiatric theory, see Kiev, *supra* note 18, at 11-14.

21. BLOCH, *supra* note 2, at 40.

22. M. FIELD, *SOVIET SOCIALIZED MEDICINE: AN INTRODUCTION* 73 (1967).

23. Ziferstein, *The Soviet Psychiatrist: His Relationship to His Patients and to His Society*, 123 AM. J. OF PSYCH. 442 (1966). In educative and directive psychotherapy, the psychiatrist takes a very active role. In addition to providing a supportive relationship, the psychiatrist offers direct guidance on how problems should be solved and uses techniques of education, advice, and exhortation. For a thorough examination of these characteristics as they relate to the psychiatric treatment process, see Segal, *The Theoretical Bases of Soviet Psychotherapy*, 29 AM. J. PSYCHOTHERAPY 503-23 (1975).

24. BLOCH, *supra* note 2, at 37.

25. *Id.*

26. The Supreme Soviet is the bicameral national legislature of the Soviet Union. As the highest organ of state power, it has constitutional authority to make laws and adopt constitutional amendments. The Supreme Soviet meets for brief sessions every six to eight months and therefore cannot be considered a deliberative body in the Western sense. The Supreme Soviet elects its own Presidium where policy decisions can be made. The Chairman of the Presidium of the Supreme Soviet is the head of state. While the image of parliamen-

istry.²⁷ Since all psychiatrists²⁸ are employed by the Ministry of Health and are responsible to superiors, there is deliberate uniformity in psychiatric practice without options for alternative treatment. As a part of the Soviet Academy of Medical Sciences, the Institute of Psychiatry²⁹ is particularly instrumental in planning psychiatric training and research programs and serves in an advisory capacity to the Ministry of Health. This strategic position of the Institute has further aided the development of a uniform psychiatric policy.³⁰

Interdependence of psychiatry and the state is further linked by a major emphasis on Marxist political ideology in psychiatric training programs.³¹ As a part of the professional oath, the Soviet physician swears that in all professional actions he will be "[g]uided by the principles of communist morality, ever to bear in mind the . . . responsibility to the people and the Soviet State."³²

3. *Recent Developments and Comparisons in Soviet Diagnoses of Mental Illness.* In addition to a directive application of one basic psychiatric theory, Soviet psychiatric diagnoses have undergone a radical change in the past fifteen years.³³ With the rise in influence of the Moscow School of Psychiatry,³⁴ the formerly narrow diagnostic classification system has been replaced by a diagnostic approach that includes many mild symptoms and common personality types within its newly expanded clinical boundaries.³⁵ Under

tary democracy is thus created, no open opposition is permitted. In reality, the significance of the Supreme Soviet is that it is a law-validating rather than a lawmaking body; decisions made by the leadership are always formally adopted. Election to the Supreme Soviet is often based upon services rendered to the Communist Party. J. PLANO & R. OLTON, *THE INTERNATIONAL RELATIONS DICTIONARY* 208 (1969).

27. BLOCH, *supra* note 2, at 37.

28. Those psychiatrists working in prisons and in the military are not under the direct control of the Ministry of Health. *Id.*

29. The Institute of Psychiatry, located in Moscow, is the most prestigious and influential psychiatric training and research facility in the Soviet Union. *Soviet Diagnostic Theories Aid Dissident Suppression*, *Psychiatric News*, June 17, 1977, at 45, col. 1 [hereinafter cited as *Soviet Diagnostic Theories*].

30. BLOCH, *supra* note 2, at 37.

31. FIELD, *supra* note 22, at 33. Field notes that an average of 25%-35% of medical training is devoted to political ideology.

32. *The Physician's Oath of the Soviet Union*, 81 *SURVEY* 114 (1971) (translation of Physician's Oath originally published in *Meditsinskaya Gazeta*, Apr. 20, 1971).

33. Address by Walter Reich, M.D., Lecturer in Psychiatry, Yale University, 130th Annual Meeting of the American Psychiatric Association at Toronto (May 2-6, 1977) [hereinafter cited as Reich].

34. *See* note 29 *supra*.

35. *Soviet Diagnostic Theories*, *supra* note 29. The dominant Soviet classification sys-

the new diagnostic classification system presently used by the Moscow School of Psychiatry, Soviet diagnoses have included the following statements as examples of schizophrenia: "A persistent mania for truthseeking Meticulousness of thought and insufficient insight with regard to the existing situation Considers the entry of Soviet troops into Czechoslovakia an act of aggression³⁶ Rationalizing or excessive fondness for rationalizing."³⁷

One psychiatrist from the Moscow School stated that "[a] mild schizophrenia does not presume a personality change apparent to one's associates," and another declared that "[i]t is no secret that schizophrenia sometimes occurs without any symptoms."³⁸

While there is not unanimity in diagnostic criteria for serious mental illness, the World Health Organization has recommended the following symptoms as a guideline for determining serious mental illness: "A pronounced disturbance in psychic activity, sufficiently specific in character that it can always be recognized and

tem of schizophrenia identifies three basic types, divides each of those basic types into subtypes, and then lists characteristics of each subtype.

The type of psychiatric illness attributed to many dissidents is the "sluggish" or "mild" subtype of the "continuous" form of schizophrenia, characterized by steady deterioration. The symptoms describing this alleged psychiatric illness include: self-consciousness; intropectiveness; conflicts with parental and other authorities; and reformerism. *Id.*

Under this new classification system, some characteristic behaviors that are now said to be consistent with schizophrenia, even in the absence of any psychotic symptoms, include: novelty in behavior, such as wearing a beard; and the tendency to speak in ideological terms, which can be seen as "suggestive of grandiose ideas or overestimation of self." Both are "noted by Moscow School theoreticians as being typical of early paranoid tendencies." Fear and suspiciousness are cited as characteristics, even though dissidents are known to be followed, bugged, or harassed by the KGB. Fear of psychiatrists is included in this category. *Id.*

If a dissident is diagnosed as schizophrenic and subsequently commits another dissident act — even years after that diagnosis — he can be said to have committed that act as a result of his chronic, genetically determined illness, and can thus be psychiatrically hospitalized with the same diagnosis. *Id.*

The broadened diagnostic classification system is the standard by which all psychiatric patients, not only dissidents, are diagnosed. In Moscow, where the broadened classification system is used more extensively, six times as many cases of schizophrenia are now being diagnosed as in Leningrad where the expanded system is not yet used as extensively. Kiev, *supra* note 18, at 11. However, the incidence of schizophrenia does not vary greatly from one geographical area to another. *Id.* at 14.

36. *Abuse of Psychiatry for Political Repression in the Soviet Union: Hearings Before the Subcomm. to Investigate the Administration of the Internal Security Act of the Senate Comm. on the Judiciary*, 92d Cong., 2d Sess. 26 (1972) [hereinafter cited as 1972 Hearings].

37. *Id.* at 8.

38. *Id.* at 26.

identified with a typical set of symptoms, and sufficiently serious to produce a loss in the ability to work . . . as to require . . . [a] specific legal or other social action."³⁹ To promote a uniform system of diagnosis for the particular form of mental illness classified as schizophrenia,⁴⁰ the First International Diagnostic Seminar in London recommended that the following six psychopathologic⁴¹ symptoms be used for criteria:

- (1) Undeniable personality changes.
- (2) Autism (*i.e.* withdrawal, shutting oneself off from the outside world, regression into a world of internal emotional experiences).
- (3) Disturbances in thinking processes.
- (4) Emotional disturbances sufficiently serious to cause difficulties in relations with other people.
- (5) Disturbances in perception.
- (6) Disturbances in behavior.⁴²

When comparing Soviet diagnoses with the criteria recommended by the International Diagnostic Seminar, it becomes apparent that the Soviet diagnoses for schizophrenia extend to patients who exhibit none of the above recommended symptoms. Further, Western psychiatrists who have examined released dissidents have noted the absence of mental illness and have generally found the dissidents mentally sound.⁴³

It can thus be seen that by these mechanisms, Soviet psychiatry is under state control and political theory is an integral part of the medical training. Further, the expanded psychiatric diagnostic classification system has received state approval, and there is an officially prescribed method of psychiatric treatment. This

39. *Id.* at 25.

40. Schizophrenia is a particular form of psychotic mental disorder with many perplexing symptoms. Presently there are no objective criteria for its diagnosis, though three general primary symptoms can be distinguished: a disturbance of associations, affect, and activity. Also stressed is the detachment from reality. Schizophrenia is classified as a prototype of psychosis. For a basic explanation of symptoms and disease patterns, see H. Lehmann, *Schizophrenia IV: Clinical Features*, in *COMPREHENSIVE TEXTBOOK OF PSYCHIATRY*, 621-49 (A. Freedman & H. Kaplan eds. 1967).

41. Symptoms of diseases and abnormalities of the mind. See WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1833 (unabr. ed. 1971).

42. 1972 *Hearings*, *supra* note 36, at 26.

43. *Political Abuse of Psychiatry Condemned by WPA Assembly*, *Clinical Psychiatry News*, Oct. 1977, at 46, col. 2. The Royal College of Psychiatrists (United Kingdom) examined a number of released dissidents and found no evidence of psychiatric illness. Further, psychiatrists from the United States and Canada also examined many released dissidents and found an absence of mental disease. See generally BLOCH, *supra* note 2.

interdependence of state and psychiatry supports the hypothesis that psychiatry can be used to further the ideology of the state.

II. CHARACTERISTICS OF SOVIET ABUSE OF PSYCHIATRY

A. *The Existence of the Soviet Political Prisoner*

In view of the assertion that political dissidents are subject to psychiatric imprisonment, it becomes necessary to define "political prisoner." Two definitions have been generally accepted. The first identifies political prisoners as those individuals persecuted rather than prosecuted because of their political beliefs.⁴⁴ The second defines political prisoners as persons imprisoned because they constitute a threat to the security of the government.⁴⁵ The latter definition seems to apply to most political dissidents incarcerated in Soviet psychiatric hospitals.⁴⁶ Like other nations, the Soviet Union officially claims to hold no political prisoners,⁴⁷ but consistent evidence received in the West indicates the existence of a Soviet policy of organized incarceration of individuals who express political views differing from state-approved policy.⁴⁸ The evidence further indicates that large numbers are confined to psychiatric facilities primarily because of their political views rather than the presence or severity of a psychiatric condition.⁴⁹

B. *Internment of the Soviet Political Dissident*

Psychiatric confinement of persons who hold unacceptable political views is not a new phenomenon in the Soviet Union.⁵⁰ There is evidence that a systematic method of psychiatric internment of

44. Forsythe, *Political Prisoners: The Law and Politics of Protection*, 9 VAND. J. TRANS-NAT'L L. 295, 297 (1976).

45. *Id.* at 300.

46. Brown, *Silent Fall*, N.Y. Times, Oct. 23, 1977, § 6 (Magazine), at 65.

47. REPORT OF THE STUDY MISSION TO EUROPE TO THE COMM'N ON SECURITY AND COOPERATION IN EUROPE, 95TH CONG., 1ST SESS., REPORT TO COMM. ON INT'L RELATIONS 35 (Comm. Print 1977) [hereinafter cited as Comm. Print 1977]. The Soviets have declared that they hold no political prisoners, only criminals. In 1959 Khrushchev said that there were *no longer* any political prisoners. Address by Vladimir Bukovsky, released Soviet dissident, 130th Annual Meeting of the American Psychiatric Association at Toronto (May 2-6, 1977).

48. BLOCH, *supra* note 2, at 31. See 1975 Hearings, *supra* note 3, at 56-58 for documentation of misuse of Soviet psychiatric facilities to systematically incarcerate political dissidents. For nongovernmental documentation of the abuse, see AMNESTY INTERNATIONAL, COMPULSORY CONFINEMENT IN PSYCHIATRIC HOSPITALS FOR POLITICAL REASONS IN THE USSR: A DOSSIER OF CASES (1976).

49. 1972 Hearings, *supra* note 36, at 7.

50. BLOCH, *supra* note 2, at 51.

political dissenters began during the Stalin regime.⁵¹ However, it was not until 1966⁵² that such abuse of psychiatry in the Soviet Union came to international awareness.⁵³ Since that time, reliable documentation and an increasing number of reports have further stimulated international concern.⁵⁴

1. *Civil Commitment.* Reports of psychiatric abuse in the Soviet Union indicate that civil commitment has been increasingly utilized as a means to facilitate psychiatric confinement. While the procedure for civil commitment in the Soviet Union has been quite clear,⁵⁵ the upsurge in its utilization appears to be related to two

51. *Id.*

52. Western publication of WARD 7, a thinly disguised biography of the author V.Y. Tarsis, is the story of a writer forcibly interned in a mental hospital for writing and distributing anti-Soviet literature.

53. *Id.*

54. It was noted at the Executive Committee meeting of the American Psychiatric Association (APA) that evidence of abuse had become more substantial since 1971. The APA further stated that the Soviets had used their status in the World Psychiatric Association to defend Soviet policies, and that the World Psychiatric Association's response to allegations had been timid and inadequate. *Board Affirms Actions on Psychiatry Abuses, supra* note 4, at 6, col. 4.

The Sixth Congress of Psychiatry in Honolulu in August 1977, passed a resolution condemning the abuse of psychiatry for political purposes. Robinson, *World Congress Condemns Abuse*, *Psychiatric News*, Oct. 7, 1977, at 1, col. 2. In those discussions, previous to passing the above mentioned resolution, the Soviet Union was specifically cited. *Political Abuse of Psychiatry Condemned by WPA Assembly*, *Clinical Psychiatry News*, Oct. 1977, at 1, col. 4. Jack Weinberg, M.D., President of the American Psychiatric Association, stated:

I support the resolution condemning the abuse of psychiatry with a heavy heart. I know that the vast number of Soviet psychiatrists are worthy colleagues and practice ethically. We must all, nonetheless, be willing continually to search out and condemn improper actions of even a few.

Robinson, *World Congress Condemns Abuse*, *Psychiatric News*, Oct. 7, 1977, at 8, col. 4.

The first reported action taken by the legal community appears to have taken place at the Annual Meeting of The Association of American Law Schools in Atlanta in December 1977, where the deans of 72 United States law schools and more than 100 law professors accused the Soviet government of denying legal rights to dissident Anatoly Shcharansky. In a resolution sent to Soviet President Leonid I. Brezhnev, they asked that the imprisoned dissident be allowed his legal rights and an open trial. *Shcharansky Trial Near, Soviet Dissidents Believe*, *N.Y. Times*, Jan. 8, 1978, at 2, col. 2. The other action in which lawyers are involved is the current formation of a committee of lawyers from the United States and abroad to lobby on behalf of all political prisoners in the Soviet Union. This committee was announced by Natalya Solzhenitsyn when commenting on the case of Aleksandr Ginzburg, a presently imprisoned Soviet dissident. Gamarekjan, *Soviet Dissidents' Wives Share a Crusade in U.S.*, *N.Y. Times*, Feb. 5, 1978, § E, at 7, col. 5.

55. Civil commitment can be effected by one psychiatrist or by a general doctor when a psychiatrist is unavailable. The doctor must provide details of the medical and social reasons for his judgment. He may be assisted by police when relatives or the ill person resists hospitalization.

administrative directives. The first is Directive No. 04-14-(32) (Incorrect Behavior Directive) which adds "incorrect behavior"⁵⁶ as a criterion that can effect civil commitment. This directive further states that *some* psychiatric illnesses may be accompanied by outwardly correct behavior, and that a provided list of symptoms supporting immediate hospitalization is not — in itself — exhaustive, but represents only the more commonly occurring socially dangerous states.⁵⁷

In 1969, a second special decree was issued entitled "Measures for Preventing Dangerous Behavior (Acts) on the Part of Mentally Ill Persons."⁵⁸ This decree grants the police, certain state officials, and psychiatrists the discretion to interpret what is meant by "socially dangerous behavior" and "mental illness."⁵⁹ The signatory ministers urged that this decree be applied "[t]o prevent dangerous behavior on the part of mentally ill persons."⁶⁰ The decree thus introduced the new concept of *socially dangerous tendencies* — a term lacking definition or explanation in the directive.

The expanded criteria presently utilized by the Soviets to effect compulsory civil commitment may be compared with the more restrictive Western criteria. While Western standards for civil commitment are not uniform, certain guidelines have been generally accepted by many Western countries⁶¹ and provide that a person can be forcibly confined:

Within 24 hours of commitment, the person must be examined by a panel of three psychiatrists which decides the appropriateness of commitment and the need for further treatment. A commission is then obligated to examine the patient monthly to determine the need for continuing treatment. When the mental condition has improved, the commission arranges for the patient's release. Should errors in commitment be made, there is no remedy, since Soviet law fails to provide for such a procedure. The patient is not allowed counsel and has no right of judicial appeal at any point in his commitment. NATIONAL INSTITUTE OF MENTAL HEALTH, SPECIAL REPORT: THE FIRST U.S. MISSION ON MENTAL HEALTH TO THE USSR (1969).

The Soviets have contended "[t]hat judicial review is unnecessary because psychiatrists have no motive to commit or detain a patient unjustifiably." 1975 Hearings, *supra* note 3, at 77.

56. BLOCH, *supra* note 2, at 153. In cases of compulsory hospitalization, the health institutions involved have refused to show the directive to the person committed, to the institution, or to his or her relatives. 1972 Hearings, *supra* note 36, at 24.

57. 1972 Hearings, *supra* note 36, at 24.

58. *Id.* at 25 (emphasis added).

59. *Id.* at 25 (emphasis added).

60. *Id.* (emphasis added). This directive further states that if resistance is anticipated, police may aid confinement.

61. *Id.* at 19.

At the request of relatives on the basis of objective diagnosis and in conformity with existing laws.

By court orders based on findings of a court appointed panel of psychiatrists and then only if the person has committed a grave and violent criminal offense or, by his behavior, presents a threat to the life and property of others or himself.⁶²

In recent years there has been a Western movement to further restrict compulsory institutionalization of the mentally ill.⁶³ In the United States, for example, a recent Supreme Court ruling limited involuntary confinement to those mentally ill persons who present an immediate danger to themselves or others or who are so incapacitated that they can survive only in a mental hospital.⁶⁴ Thus, the expanded criteria of the Soviet Union which includes *incorrect behavior* contrast sharply with *immediate danger* and *survivability*, which are the criteria for compulsory civil commitment of the mentally ill in the United States.

2. *Criminal Commitment.* In addition to psychiatric confinement by civil means, the Soviets have arrested and charged many political dissidents under the Soviet Criminal Code.⁶⁵ Sections of this code most frequently applied to political dissidents have been articles 70 and 190-1.⁶⁶ Article 190-1 provides that a criminal act is “[d]issemination of deliberate falsehoods discrediting the Soviet political and social system,”⁶⁷ and under article 70 the scope of conduct deemed criminal includes “[a]gitation or propaganda carried on for the purpose of subverting or weakening the Soviet State.”⁶⁸

62. *Id.*

63. *Mental Attitude: Revised Rules Reduce Involuntary Confining of Psychiatric Patients*, Wall St. J., Jan. 24, 1978, at 1, col. 1 [hereinafter cited as *Revised Rules*].

64. In the landmark case of *O'Connor v. Donaldson*, 422 U.S. 563 (1975), the Supreme Court found “dangerousness” and “survivability” to be the basic criteria to detain forcibly a mentally ill person. *Id.*

65. BLOCH, *supra* note 2, at 102.

66. *Id.*

67. T. TAYLOR, *COURTS OF TERROR* 75 (1976). Article 190-0 further provides up to three years imprisonment for “systematic circulation in an oral form of fabrications known to be false which defame the Soviet State and social system, and likewise, the preparation or circulation in written, printed, or any other form of works of such content.” *Id.*

68. *Id.* at 72. Article 70 defines as criminal, the circulation “of slanderous fabrications which defame the Soviet State and social system, or the circulation or preparation or keeping . . . of literature of such content.” *Id.* For such activities, article 70 provides for up to seven years imprisonment and up to five years of internal exile. *Id.* Further, no one charged under article 70 has been adjudged innocent. COMMISSION ON SECURITY AND COOPERATION IN

After arrest under articles 190-1 or 70 of the Soviet Criminal Code, the court of justice has the sole authority to determine whether the detainee's actions were due to "insanity."⁶⁹ Once a person is adjudged insane, he is deemed unaccountable for his actions; a determination of guilt or innocence is avoided.⁷⁰

The unique effect created by the expanded psychiatric diagnostic system, the civil administrative directives, and certain articles of the criminal code has been to place Soviet citizens under forced psychiatric treatment on the basis of activities that would not justify such a result in Western nations. Publicist activities,⁷¹ participation in civil rights activities,⁷² and the writing of allegedly subversive songs⁷³ have led to psychiatric commitment of individuals. Others

EUROPE, 95TH CONG., 1ST SESS., REPORT TO HOUSE COMM. ON INT'L RELATIONS ON IMPLEMENTATION OF THE FINAL ACT OF THE CONF. ON SECURITY AND COOPERATION: FINDINGS AND RECOMMENDATIONS TWO YEARS AFTER HELSINKI 20 (Comm. Print 1977) [hereinafter cited as 1977 REPORT].

69. 1972 Hearings, *supra* note 36, at 7.

70. *Id.* at 8.

71. Zaurès Medvedev, a geneticist, writer, and civil rights activist was forcibly removed to a psychiatric hospital, diagnosed as a "sluggish schizophrenic," and reported that he was told, "If you continue your publicist activities, then you will inevitably end up back here with us." Z. MEDVEDEV & R. MEDVEDEV, A QUESTION OF MADNESS 20 (1971).

Vladimir Bukovsky, a biology student and civil rights activist who spent 11 of his 34 years in prisons and camps in the Soviet Union, was diagnosed in 1972 as having a simple form of schizophrenia and sentenced to seven years confinement in a mental institution after he publicized in an American television interview the abuse of mental institutions for the purpose of political repression. Bukovsky had told correspondents of the Associated Press and of the Columbia Broadcasting System what he had seen in prisons, camps, and psychiatric hospitals. *Implementation of the Helsinki Accords, Vol. 1: Hearings Before the Comm'n. on Security and Cooperation in Europe*, 95th Cong., 1st Sess. 22 (1977) [hereinafter cited as 1977 Hearings].

The French Communist Party pressured the Soviets to reconsider the 12-year sentence given to Bukovsky. In reply, the Deputy Justice Minister gave a newspaper interview stressing that Bukovsky was guilty of seeking to overthrow the Soviet regime by sending an account of conditions of political prisoners in Soviet mental hospitals to the West for publication. Comm. Print 1977, *supra* note 47, at 34-35. Bukovsky was released before his sentence expired and permitted to leave the Soviet Union. President Carter has since received Bukovsky at the White House. Brown, *Silent Fall*, N. Y. Times, Oct. 23, 1977, § 6 (Magazine), at 63. For a detailed discussion of Bukovsky's internment, release, and subsequent examination by Western psychiatrists, see E. F. Torrey, *The Serbsky Treatment*, PSYCHOLOGY TODAY, June 1977, at 38.

72. Natalya Gorbanevskaya, a civil rights activist, was arrested for demonstrating against the Soviet invasion of Czechoslovakia. She spent one year in psychiatric detention after being diagnosed as having a form of schizophrenia "having no symptoms." 1976 Hearings, *supra* note 1, at 28.

73. Composer Peter Starchik spent two months in an insane asylum outside Moscow apparently because he wrote and sang subversive songs for groups of friends. He was diagnosed as "socially dangerous." 1976 Hearings, *supra* note 1, at 29.

have been committed, because they applied for a visa to attend a scientific conference,⁷⁴ applied to emigrate,⁷⁵ or went to Communist Party Central Committee officials with a complaint.⁷⁶ During the psychiatric detention of one dissident, the mother was told that “[h]e is held here not because he is ill, but because of his behavior.”⁷⁷

In close temporal relationship with the establishment of these civil and criminal psychiatric commitment procedures, a sharp increase in the number of Soviet psychiatric facilities has been noted. In the late 1950's there were three special psychiatric hospitals in the Soviet Union; there are now fifteen.⁷⁸ The number of beds for patients with mental and nervous diseases has increased between 1962 and 1974 from 222,600 to 390,000⁷⁹ — an increase of seventy-five percent. Conversely, during this same period, Western nations have developed newer psychiatric techniques and have placed emphasis on the deinstitutionalization of the mentally ill. As a result there has been a marked decrease in the number of psychiatric in-patients.⁸⁰

Psychiatric commitment has been facilitated in several unique ways. Some high officials in Moscow have an ambulance on permanent duty or are in direct contact with such a service and are thus prepared to respond immediately to mentally ill persons who

74. Dr. Yesenin-Volpin, a Soviet mathematician, was detained in a Soviet mental hospital after he applied to the American Embassy for a visa to visit the United States after having been invited to attend a scientific conference at the University of Buffalo. He was diagnosed as having a simple form of schizophrenia. *1972 Hearings, supra* note 36, at 12. Dr. Volpin's last confinement resulted in a petition to free him, signed by 95 Soviet scientists and numerous protests from abroad. He has stated that this action by colleagues on his behalf was partially responsible for his release. Many scientists who signed the petition were subsequently subjected to various forms of administrative sanctions. Some were dismissed, others demoted, and all were denied the right to travel abroad. *Id.* at 11.

75. The doctor told one man that “[n]ormal people don't apply to emigrate.” *1976 Hearings, supra* note 1, at 30.

76. When Nadezhda Gaidar went to Moscow from her home in Kiev to make the complaint, she was forcibly hospitalized under the care of a psychiatrist who was told that “[s]he is suffering from nervous exhaustion due to her search for justice.” COMMISSION ON SECURITY AND COOPERATION IN EUROPE, REPORTS OF HELSINKI ACCORD-MONITORS IN THE SOVIET UNION: DOCUMENTS OF THE PUBLIC GROUPS TO PROMOTE OBSERVANCE OF THE HELSINKI AGREEMENTS IN THE USSR, 95th Cong. 1st Sess. 28-29 (1977) [hereinafter cited as HELSINKI MONITORS].

77. *1976 Hearings, supra* note 1, at 30.

78. *1977 Hearings, supra* note 71, at 26. *See also* note 89 *infra*. The special psychiatric hospitals are for the criminally insane and not the generally mentally ill.

79. BLOCH, *supra* note 2, at 47.

80. *Revised Rules, supra* note 63.

come to their reception rooms.⁸¹ An accused can be sentenced to a psychiatric hospital in an *ex parte* proceeding.⁸² The Soviet Secret Police (KGB)⁸³ developed their own psychiatric service which has led to diagnoses based on the *content* of a person's writings even when the writings show no conventional sign of delusional material.⁸⁴ This is contrary to generally accepted medical practice.⁸⁵

Psychiatric commitment has been further simplified, since a new centralized system of psychiatric record keeping has been implemented.⁸⁶ Under the new system, copies of dissidents' psychiatric records are kept locally and can quickly be made available to officials.⁸⁷ Having viewed the means by which individuals are diagnosed and committed, it is appropriate to consider some aspects of treatment the patient is compelled to undergo.

3. *Treatment.* Once diagnosed insane, the patient is sent to a psychiatric hospital. Involuntary treatment takes place in either regular psychiatric hospitals, or special psychiatric hospitals.⁸⁸ The latter are under police supervision, staffed by police guards, and are used only for compulsorily committed patients.⁸⁹ While psychotics and the criminally insane are committed there, so are men and women whose "abnormalities" stem more from unorthodox views and criticism of authorities than from aberrant behavior caused by psychic dysfunction.⁹⁰

In the special psychiatric hospitals particularly, treatment of the political dissident may include deprivations and maltreatment.⁹¹ Visits from closest family members are frequently denied

81. BLOCH, *supra* note 2, at 271.

82. *Id.* at 103.

83. The initials KGB stand for Komitet Gossudarstvennoi Bezopastnosti (Committee of State Security or Soviet Secret Police). R. DESOLA, ABBREVIATIONS DICTIONARY 151 (1967).

84. 1975 Hearings, *supra* note 3, at 27.

85. *Id.* at 26-27.

86. Kiselev, *Centralized System for Collection and Analysis of Data on Patients in the U.S.S.R.*, 128 AM. J. PSYCH. 1019 (1972).

87. *Id.* Copies are also kept in all Union Health Agencies and in the bureaus of the Ministry of Internal Affairs (the police agency).

88. B. Segal, *Involuntary Hospitalization in the U.S.S.R.*, in PSYCHIATRY AND PSYCHOLOGY IN THE U.S.S.R. 270 (S. Corson ed. 1976).

89. *Id.*

90. 1972 Hearings, *supra* note 36, at 7.

91. Dr. Jules Masserman, 130th Annual Meeting of the American Psychiatric Association at Toronto, (May 2-6, 1977). See also 1972 Hearings, *supra* note 36, at 9.

or made difficult.⁹² Permitted visits are usually monitored by a guard and no written matter may be transmitted by the patient.⁹³ Communication is restricted to the Russian language.⁹⁴ Political prisoners have been kept in isolation to prevent interaction with each other and with nurses.⁹⁵ Many male nurses who staff these hospitals are criminals serving out their sentences.⁹⁶ Beatings of patients are not uncommon,⁹⁷ and there have been increasing reports of torture by hunger.⁹⁸

Another controversial aspect of the Soviet psychiatric program is the application of certain medications in treatment.⁹⁹ Some drugs used by the Soviets are not administered in the West because of their harmful effects.¹⁰⁰ One such preparation is aminazine,¹⁰¹ which is said to dull memory and blunt emotions. Reports of decreased motivation when under the effect of this drug have also been received.¹⁰² As punishment, sulfazine¹⁰³ is sometimes administered to patients who have refused to see the doctor or submit to treatment.¹⁰⁴ The effects of this drug include fever, joint inflammation, and excruciating pain when one attempts to move.¹⁰⁵

Further, during the course of hospitalization, a psychiatric commission is to examine the patient periodically¹⁰⁶ for progress.

92. BLOCH, *supra* note 2, at 198.

93. 1972 Hearings, *supra* note 36, at 7.

94. *Id.*

95. HELSINKI MONITORS, *supra* note 76, at 17.

96. 1976 Hearings, *supra* note 1, at 5.

97. Segal, *supra* note 88, at 271.

98. 1977 REPORT, *supra* note 68, at 24. Also, since November 1972, the right to send food parcels to prisoners has ended. *Id.*

99. For a brief discussion of drug use, see 1975 Hearings, *supra* note 3, at 27-29.

100. *Id.* at 29.

101. *Id.* at 27. This medication and others to be mentioned are members of a group of anti-psychotic, calming medications — formerly called major tranquilizers — related to, but perhaps more toxic than, similar medications used frequently in the West. These drugs reverse some psychotic symptoms such as hyperactivity, hostility, tension, poor self-care, hallucinations, and delusions. Unlike sedatives such as Demerol and the barbiturates which slow the higher, more specialized areas of the brain thereby causing drowsiness, these anti-psychotic agents affect the more basic, primitive parts of the brain. Emotions, feelings, and social concerns may be dulled, while thinking and awareness of these states remain intact. Those who have experienced these medications generally find them highly unpleasant. See generally R. BALDESSARINI, CHEMOTHERAPY IN PSYCHIATRY 13-56 (1977).

102. 1975 Hearings, *supra* note 3, at 27.

103. BALDESSARINI, *supra* note 101.

104. Segal, *supra* note 88, at 271.

105. 1977 Hearings, *supra* note 71, at 27.

106. 1972 Hearings, *supra* note 36, at 7.

However, progress is often interpreted to mean that the patient is prepared to recant on his political views, is willing to recognize the correctness of his confinement, and is ready to conform.¹⁰⁷ If the patient refuses to make such statements for moral reasons, he may be confined indefinitely.¹⁰⁸

While the Soviet government has consistently denied Western allegations that psychiatry is misused in the Soviet Union, many reports of abuse have been received and authenticated in the West.¹⁰⁹ Further, Western reports of Soviet psychiatric abuse have not been challenged by Soviet psychiatric authorities.¹¹⁰

Amnesty International, which in November 1975 had reported a decline of political abuse of psychiatry in the Soviet Union, revised its view in April 1977, finding that the practice "[i]s continuing at a disturbing rate."¹¹¹ The United States Commission to monitor compliance with the Helsinki Accord stated that they lacked evidence of whether the practice of psychiatric internment had risen or declined, but felt that such judgment was unnecessary, because the record clearly showed that psychiatric detention and forced treatment have been a continuing form of reprisal.¹¹² The

107. *Id.*

108. *Id.* The Commission on Security and Cooperation in Europe is a Congressional Commission created and authorized to monitor the compliance of the signatories with the articles of the Final Act of the Helsinki Accord — particularly the provisions relating to cooperation in the humanitarian fields. It found that political offenses are punished more harshly in the Soviet Union than are other criminal actions. This harshness was effected not necessarily by longer prison terms, but by more restrictive conditions in and after confinement. 1977 REPORT, *supra* note 68, at 24. It has been found that after release there can be a continuing restriction on civil rights. Residence in major cities can be barred to such persons even if the cities were their former homes. Terms of probation require frequent appearances at militia stations, curfews are imposed, and former prisoners can be barred from such public places as restaurants and cafés. *Id.* at 25.

109. See authorities cited at note 48 *supra*. See also BLOCH, *supra* note 2. For nongovernmental reporting, see AMNESTY INTERNATIONAL, PRISONERS OF CONSCIENCE IN THE U.S.S.R.: THEIR TREATMENT AND CONDITIONS (1975).

110. BLOCH, *supra* note 2, at 80.

111. AMNESTY INTERNATIONAL, COMPULSORY CONFINEMENT IN PSYCHIATRIC HOSPITALS FOR POLITICAL REASONS IN THE U.S.S.R.: A DOSSIER OF CASES 1 (1977).

112. *Id.* An example cited was the organized punitive campaign of 1976 and 1977 against Soviet citizens who sought to promote respect for the Helsinki Accord. The Soviet government declared that the citizen group which organized itself to monitor the Accord was an anti-constitutional organization engaged in provocation, and monitoring was declared a crime. Official reaction to the group was oppressive and included surveillance, mail and telephone interception, interrogations, searches, physical threats, and arrests. 1977 REPORT, *supra* note 68, at 23.

The Soviets have thus far imprisoned 11 members of the original citizen's group founded to monitor Soviet compliance with the Helsinki Accord. Eleven United States Sen-

officially sanctioned forced psychiatric imprisonment of Soviet political dissidents will now be examined in light of presently recognized international standards.

III. SOVEREIGN IMMUNITY AND COMPLIANCE WITH INTERNATIONAL STANDARDS

A. *Intervention Doctrine*

The Soviets claim that psychiatric treatment of their nationals is a purely domestic matter; they further contend that any attempted intervention¹¹³ would violate Soviet sovereignty.¹¹⁴ Whether human rights is an issue solely of domestic concern has been left unsettled by international law.¹¹⁵ While the doctrine of humanitarian intervention¹¹⁶ has never received unanimous support, it did gain solid acceptance beginning in the Nineteenth Century.¹¹⁷ The theory of humanitarian intervention states that when a

ators have joined Norwegian and Danish representatives in nominating the group for the 1978 Nobel Peace Prize. *Soviet Dissidents' Wives Share a Crusade in the U.S.*, N. Y. Times, *supra* note 54, at 48, col. 5.

113. For the purpose of this comment, *intervention* is defined as "dictatorial interference by a state (or group of states) in the affairs of another state for the purpose of maintaining or altering the actual conditions of things." I L. OPPENHEIM, INTERNATIONAL LAW 305 (8th ed. H. Lauterpacht 1955). For purposes of this comment, dictatorial interference does not include the threat of armed force.

114. Soviet science of international law states unequivocally that the legal position of individuals is determined by national rather than international law. N. LEECH, C. OLIVER & J. SWEENEY, THE INTERNATIONAL LEGAL SYSTEM: CASES AND MATERIALS 617 (1973), *citing* MOVCHAN, THE HUMAN RIGHTS PROBLEM IN PRESENTDAY INTERNATIONAL LAW, 1969 CONTEMP. INT'L L. 233, 239 (Moscow).

115. OPPENHEIM, *supra* note 113, at 305. Intervention, being a violation of another state's independence, was recognized as a principle contrary to international law. J. BRIERLY, THE LAW OF NATIONS 402 (6th ed. H. Waldock 1963). *Accord*, Winfield, *The History of Intervention in International Law*, 3 BRIT. Y.B. INT'L L. 130, 139 (1922-1923) (non-intervention is the rule, intervention is the exception). Some jurists have found that intervention to prevent a state from committing atrocities against its subjects is recognized by international law. BRIERLY, *supra* at 403. And while the principle of equal sovereignty and the duty of nonintervention have been cornerstones of international relations, abuse of a generally recognized right can lead to removal of a state's immunity. I. C. HYDE, INTERNATIONAL LAW 118 (1922).

116. *See* note 115 *supra*.

117. Lillich, *Forcible Self-Help by States to Protect Human Rights*, 53 IOWA L. REV. 325, 332 (1967). Oppenheim states that there is a

[s]ubstantial body of opinion and practice in support of the view that there are limits to (the) discretion (of states in the treatment of their own nationals) and that when a state renders itself guilty of cruelties against and persecutions of its nationals in such a way as to deny their fundamental human rights and to shock the conscience of mankind, intervention in the interest of humanity is legally permissible.

nation uses its sovereignty to deprive its nationals of fundamental human rights, it is presumed to act in direct conflict with generally recognized principles of humanity.¹¹⁸ Such abuse can lead to removal of that state's sovereign immunity in order to protect the individual citizens so deprived.¹¹⁹ Thus, international law has accepted the theory that a state's abuse of its nationals gives other states the right to intervene.

As applied to the Soviet Union, the theory of humanitarian intervention was strengthened when the Soviets signed the Conference on Security and Cooperation in Europe¹²⁰ (Helsinki Accord or Accord). The Soviets initially proposed the Helsinki Accord as a means of securing Western recognition of Soviet territories acquired as a result of World War II. However, the Accord also includes important human rights provisions.

While the Helsinki Accord is morally compelling,¹²¹ legal significance can be determined by examining specific human rights

OPPENHEIM, *supra* note 113, at 312.

Abuse can lead to removal of a state's immunity in order to protect the individual. As E. Borchard states:

[When] a state under exceptional circumstances disregards certain rights of its own citizens, over whom presumably it has absolute sovereignty, the other states of the family of nations are authorized by international law to intervene on grounds of humanity.

E. BORCHARD, *THE DIPLOMATIC PROTECTION OF CITIZENS ABROAD* 14 (1916). And Sir H. Shawcross, at the Nuremberg trials: "The right of humanitarian intervention in the name of the rights of man trampled upon by the state in a manner offensive to the feeling of humanity, has been recognized long ago as an integral part of the Law of Nations." H. Shawcross, *Exposé Introductif au Procès de Nuremberg*, cited in Aroneanu, *L'Intervention d'Humanité et la Déclaration Universelle des Droits de l'Homme*, 33 *REVUE DE DROIT INTERNATIONAL, DE SCIENCE DIPLOMATIQUE ET POLITIQUE* 127 (1955). And finally: "It is now so clearly established that only [the] limits [of international intervention] and not its existence is subject to debate." INTERNATIONAL LAW ASSOCIATION, *THE INTERNATIONAL PROTECTION OF HUMAN RIGHTS BY GENERAL INTERNATIONAL LAW, INTERIM REPORT OF THE SUB-COMMITTEE, INTERNATIONAL COMMITTEE ON HUMAN RIGHTS* 11 (The Hague 1970).

118. DeSchutter, *Humanitarian Intervention: A United Nations Task*, 2 *CALIF. W. INT'L L.J.* 27 (1972).

119. See note 117 *supra*.

120. See U.S. DEP'T OF STATE, FOREIGN POLICY SERIES No. 8826, FINAL ACT, CONFERENCE ON SECURITY AND COOPERATION IN EUROPE, HELSINKI (1975) [hereinafter cited as the HELSINKI ACCORD].

121. The Helsinki Accord itself does not have the force of a treaty imposing obligations upon the signatories. It was clear from the beginning that the Helsinki Accord would be morally compelling but not legally binding. This was established by the concluding clause and the letter which authorized its transmission to the United Nations. The first expressed the "high political significance" the signatories attach to the Helsinki Accord. The second noted that the Helsinki Accord was not eligible for registration with the United Nations as it would be was it a treaty. 73 DEP'T STATE BULL. 349 (1975).

provisions. The basic goals of the human rights provisions are to hold signatories responsible for respecting the beliefs of the individual and to promote an internal standard of conduct toward citizens that reflects international good faith.¹²² This goal is set forth in article VII, paragraph 2, which states:

[The signatories] will promote and encourage the effective exercise of civil, political, economic, social, cultural and other rights and freedoms all of which derive from the inherent dignity of the human person and are essential for his free and full development.¹²³

This goal is further developed in paragraph 8, which provides that:

[I]n the field of human rights and fundamental freedoms, the participating States will act in conformity with the purposes and principles of the Charter of the United Nations and with the Universal Declaration of Human Rights. They will also fulfill their obligations as set forth in the international declarations and agreements in this field, including *inter alia* the International Covenant on Human Rights by which they may be bound.¹²⁴

Reference in the Helsinki Accord¹²⁵ to the United Nations Charter (Charter), the Universal Declaration of Human Rights¹²⁶ (Universal Declaration), and the International Covenant on Civil and Political Rights¹²⁷ (International Covenant) strengthens the binding effect of the human rights provisions of the Accord, since the Charter, the Universal Declaration, and the International Covenant have all acquired the force of international law.¹²⁸

Notwithstanding the broad language of the Charter, Lauterpacht states that by satisfying the tests of time and uniform practice, it has become a part of customary international law.¹²⁹ Having met the same tests, the transition into international law also

122. Comm. Print 1977, *supra* note 47, at 32.

123. HELSINKI ACCORD, *supra* note 120, at 80.

124. *Id.* at 81 (emphasis added).

125. HELSINKI ACCORD, *supra* note 120.

126. G.A. Res. 217 (III), U.N. Doc. A/810 (1948). The Soviet Union ratified the Universal Declaration when it voted in favor of the 1963 Declaration on the Elimination of all Forms of Racial Discrimination, G.A. Res. 2904 (XVIII), U.N. Doc. A/5515 (1963), which declared that each state would "fully and faithfully observe the provisions of the Universal Declaration of Human Rights." *Id.* art. 11.

127. G.A. Res. 2200A, 21 U.N. GAOR, Supp. (No. 16) 52, U.N. Doc. A/6316 (1966). This was adopted on December 16, 1966 and ratified by the Soviet Union on October 16, 1973. It entered into force March 23, 1976 after the thirty-fifth state ratified it.

128. See also notes 130-132 *infra*.

129. H. LAUTERPACHT, INTERNATIONAL PROTECTION OF HUMAN RIGHTS 153 (1950).

applies to the Universal Declaration.¹³⁰ The International Covenant became part of international law in 1966 when it was ratified by the thirty-fifth state.¹³¹ The proposition that the Soviets are bound by these documents is strengthened further, because the Soviet Union ratified the Universal Declaration¹³² and is a signatory to the International Covenant.¹³³

In the Helsinki Accord, the Soviets attempted to mitigate the binding effect of the Universal Declaration by including reference to the International Covenant, the language of which *can* be construed to limit human rights by recognizing that they may conflict with domestic law “[n]ecessary to protect public safety, order, health or morals.”¹³⁴ In the Helsinki Accord, however, reference to the International Covenant is placed in a secondary position to the Declaration. Thus, the broad language of the Universal Declaration takes legal precedence over the more restrictive terms of the Covenant.¹³⁵

Therefore, it may be concluded that the Charter and the Universal Declaration initially make the subject of civil liberties a matter of international concern.¹³⁶ Furthermore, by including human rights provisions and by making specific reference to certain international agreements which have attained the force of international law, the Helsinki Accord established each state’s right to be concerned with the manner in which other states demonstrate their respect for human rights.¹³⁷

Thus, human rights are now a legitimate agenda item in East-West relations.¹³⁸ The fact that the fundamental human rights contained in the Accord are not to be construed as “[p]rivileges extended by a government when it suits its national policy”¹³⁹ was forcefully reiterated at the 1977 Conference in Belgrade called to review progress in implementation of the Helsinki Accord. In

130. L. SOHN & T. BUERGENTHAHL, INTERNATIONAL PROTECTION OF HUMAN RIGHTS 519 (1973) [hereinafter cited as SOHN].

131. E. HAAS, HUMAN RIGHTS & INTERNATIONAL ACTION 127 (1970).

132. See note 126 *supra*.

133. See note 127 *supra*.

134. Comm. Print 1977, *supra* note 47, at 33-34.

135. Russell, *The Helsinki Declaration: Brobdingnag or Lilliput?*, 70 AM. J. INT’L L. 268 (1976).

136. SOHN, *supra* note 130, at 519.

137. Russell, *supra* note 135, at 270.

138. *Id.*

139. *Id.*

pressing for Soviet compliance with the human rights provisions of the Accord, the non-Soviet bloc delegates unequivocally asserted that the issue was international in scope. This was succinctly stated by the Swedish delegate: "We cannot possibly regard this an interference in the affairs of other nations. The Final Act of Helsinki gives us good grounds for holding this view."¹⁴⁰ The French delegate continued: "The principle of nonintervention must certainly not serve as a pretext for avoiding carrying out the commitments in the Helsinki Final Act."¹⁴¹

Thus, it has been demonstrated that by ratifying the Universal Declaration, the Soviet Union assumed an obligation to ensure its citizens their fundamental human rights. When the Soviets signed the Helsinki Accord, which included both human rights provisions and a reiteration of a state's responsibilities under existing international legal documents, they firmly established human rights in the Soviet Union as an issue of legitimate international concern. Thus, international intervention is legally permissible.

The problem of protecting citizens from psychiatric abuse which exceeds limits within which the sovereign is presumed to act with reason and justice cannot be redressed by resort to local remedies, since such abuses are, by their very nature, a part of the established order.¹⁴² A successful resolution of the problem of psychiatric abuse requires that protection be institutionalized and codified. The following proposed council is intended as a step toward the ultimate goal of codifying the right to be free from psychiatric and medical abuse.

IV. PROPOSAL

A council to investigate allegations of psychiatric abuse (Council) could be organized as a division of an existing United Nations organization — the Commission on Human Rights. As part of an existing body, the Council could be established under articles 7 and 22 of the United Nations Charter¹⁴³ and would have the duty of reporting directly to the General Assembly.

140. *Rights Can Be Discussed with Russ*, L.A. Times, Oct. 8, 1977, § 1, at 14, col. 1.

141. *Id.*

142. M. MOSKOWITZ, INTERNATIONAL CONCERN WITH HUMAN RIGHTS 124 (1974).

143. Article 7, paragraph 2 states: "Such subsidiary organs as may be found necessary may be established in accordance with the present Charter."

Article 22 states: "The General Assembly may establish such subsidiary organs as it deems necessary for the performance of its functions."

The Council's first task would be to draw up its rules of procedure. Once adopted, these guidelines would be transmitted to member states of the United Nations, thus serving the purposes of publicizing the Council and facilitating its utilization. The second procedural task would be for the Council to draft a Fundamental Code of Rights for the Mentally Ill (Code). The Code would enumerate fundamental rights which would be applicable to all countries.

The function of the Council would be: (1) *To receive complaints of psychiatric and medical abuse.* The Council would receive complaints from member states of the United Nations, other nations, or nongovernmental organizations whose function is the promotion of civil and political rights as recognized by the United Nations.¹⁴⁴ (2) *To investigate complaints.* In its investigation procedure,¹⁴⁵ the Council would gather, collate, and evaluate evidence.¹⁴⁶ Sources of evidence available to the Council would include requests for governmental reports.¹⁴⁷ This method of obtaining information has often proven reliable.¹⁴⁸ However, because some governments advocate policies of secrecy or promote self-interest, relying exclusively on this method to obtain information has proven insufficient.¹⁴⁹ Therefore, the Council might also request reports from nongovernmental human rights organizations. This method of securing evidence has proven so successful that it has become an officially sanctioned means of reporting in the United Nations.¹⁵⁰ Another source of evidence would be reports from al-

144. A list of nongovernmental organizations in a consultative status appears in [1966] U.N.Y.B. 510-15.

145. Investigation as a means of the United Nations to protect individuals from government oppression came into prominent use in the United Nations in 1967 when the Human Rights Commission established an *Ad Hoc* Group of Experts to investigate conditions of prisoners and detainees in South Africa. See 42 U.N. ESCOR, Supp. (No. 6) 77, U.N. Doc. E/4322-E/CN.4/940 (1967).

146. Gathering, collating, and evaluating evidence were all mentioned in a 1967 United Nations resolution as being useful in combating large-scale violations of human rights. See U.N. Doc. E/CN.4/930-E/CN.4/Sub. 2/274 (1967).

147. Certain human rights agreements, one of which is the International Covenant, call for government reporting, *supra* note 127.

148. See Carey, *Procedures for International Protection of Human Rights*, 53 IOWA L. REV. 291, 311 (1967).

149. This is best illustrated by South Africa's incomplete responses to questionnaires. See U.N. Doc. E/4340-E/CN.4/942 & Corr. 1 & Add.1 (1967); U.N. Doc. E/CN.4/AC.22/5 (1967).

150. See note 144 *supra*.

leged victims or persons close to them.¹⁵¹ Such evidence is obtained either by written reports¹⁵² or by hearings.¹⁵³ On the basis of all evidence received and evaluated, the Council would determine the validity of the complaint. (3) *To make a determination.* If, at the conclusion of the investigation, the Council finds that a violation of human rights has occurred through the abuse of psychiatry, a formal complaint would be filed with the offending state. The Council would then establish a time period during which the offending state would be asked to correct the alleged abuse. At any time during the period allotted for correction of the abuse, if the Council or the offending state feel that continued dialogue would aid resolution of the problem, either could request that an ongoing communications program be established. Such a program would be instituted at the discretion of the Council. The program would be noncompulsory and function generally through private talks, reserving the use of publicity.¹⁵⁴ (4) *Enforcement.* If the offending state does not correct the alleged abuse within the specified time, the Council would organize and wage a highly visible, sustained publicity campaign.¹⁵⁵ By publicizing facts and findings and challenging the offending state, the Council would inform other governments and the public of the abuse. The power of publicity to aid the oppressed is a practice that has been fervently urged in past United Nations proceedings.¹⁵⁶ The Secretary-General stated that “[a] purposeful and universal program of public information is, in fact, a program of implementation — an essential counterpart of the substantive activities of the Organization.”¹⁵⁷ There is strong

151. In 1965, the United Nations took a historic step by writing a provision into the International Convention on the Elimination of All Forms of Racial Discrimination allowing individuals' complaints against their own governments to be considered. See 660 U.N.T.S. 212 (1966), art. XIV [hereinafter cited as 1966 Convention on Discrimination].

152. While written reports from individuals have been utilized by the United Nations, such has been the case only erratically. Carey, *The United Nations' Double Standard on Human Rights Complaints*, 60 AM. J. INT'L L. 792 (1966).

153. For a background of United Nations utilization of hearings, see U.N. Doc. E/CN.4/419 (1950).

154. Private talks or negotiations were specifically provided for in the 1966 Convention on Discrimination, *supra* note 153, and were also called for on the part of the Human Rights Committee provided for in the 1966 International Covenant Rights, *supra* note 127.

155. The Human Rights Commission called on member states of the United Nations to give wide publicity to the testimony of political prisoners and victims of South Africa, and there was testimony that publicity could alleviate such conditions. See 42 U.N. ESCOR, Supp. (No. 6) 77, U.N. Doc. E/4322-E/CN.4/940 (1967).

156. J. CAREY, U.N. PROTECTION OF CIVIL AND POLITICAL RIGHTS 154 (1970).

157. 21 U.N. GAOR, Supp. (No. 1A) 2, U.N. Doc. A/6301/Add.1 (1966).

authority in support of the view that *only* unified public opinion can confront specific cases of human rights violations and provide a general moral condemnation that will force governments to make the necessary change.¹⁵⁸

In sum, such a Council could be presently established by the United Nations. Through gathering, collating, and evaluating evidence, the Council could make an informed determination on the existence of alleged psychiatric abuse. If psychiatric abuse were determined, the Council would provide a specified time for correction. A government's refusal to restore the right would result in the Council's publication of the abuse thereby informing the public. The rationale is that international exposure, informed public opinion, and public solidarity can alleviate such conditions.¹⁵⁹ International solidarity *can* be a powerful force in compelling compliance and unified public opinion is a cornerstone of customary international law. The present goal is to inform and unite so that the restraining influence of publicity with no criminal overtones can emerge as a significant method of protecting individuals from psychiatric abuse. The ultimate aim of codification into positive international law can then be realized.

V. CONCLUSION

Reviewing charges that political dissidents are imprisoned in the Soviet Union through the abuse of psychiatry compels acknowledgment that such psychiatric commitment frequently occurs because of political beliefs and expression and not because of mental aberration or illness. The foregoing analysis of international law examined the Soviet contention that such treatment is an internal matter. The subsequent finding is that while such treatment is an internal practice, it becomes a legitimate issue of international concern in two instances: when a sovereign treats its nationals in such a way that exceeds reason and justice; and when the sovereign violates international commitments that ensure protection of fundamental human rights. To protect ultimately the citizen from psychiatric abuse, international intervention must be codified. However, until international solidarity merges with national interests so that codification can be institutionalized, this comment proposes the formation of a Council that can be inte-

158. Carey, *supra* note 148, at 318.

159. *See* note 156 *supra*.

grated into the existing international legal structure. Such a Council would receive and evaluate allegations of psychiatric abuse. Provided the Council finds evidence of psychiatric abuse, and provided that an offending state refuses to restore the right, the Council would implement a policy of publication — the theory being that informed public opinion can emerge as a significant method of protecting individuals from psychiatric abuse. A Council that would provide a sound framework for skillful implementation of such a program would hasten realization of the ultimate goal, codifying into international law the fundamental right of freedom from psychiatric abuse.

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