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International Human Rights Norms and Soviet Abuse of Psychiatry

by Amy Young-Anawaty*

The author's purpose in writing the present work [is] to call attention to the dangerous tendency of using psychiatry for political purposes, the exploitation of medicine in an alien role as a means of intimidation and punishment—a new and illegal way of isolating people for their views and convictions.¹

On 31 August 1977, the world Psychiatric Association, by a slim majority of ninety-eight to ninety, voted to condemn the abuse of psychiatric practice in the treatment of Soviet political prisoners.² The significance of this vote should not be diminished by the less-than-thundering majority expressing disapproval. For the international legal community, the significance lies in the fact that an apolitical group of professionals representing many factions of the international community openly acknowledged the overwhelming evidence of psychiatric abuse of political dissidents and condemned as unethical the practice of many Soviet psychiatrists.³

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³ This victory took six years to accomplish. In 1971 efforts to raise the issue of psychiatric confinement of the sane were defeated by the Soviet delegates. At that time, they protested that the issue was "cold war agitation" and the matter was never
In recent years, documentation of specific cases of unwarranted psychiatric confinement in the Soviet Union has provoked concern and outrage among leaders of professional associations,\(^4\) government of-

\(^4\) For example, the Executive Board of the World Federation for Mental Health on November 25, 1971, passed a resolution protesting the abuse of psychiatry, the Trustees of the American Psychiatric Association passed a resolution "opposing the misuse of psychiatric facilities for the detention of persons solely on the basis of their political dissent, no matter where it occurs," and the following letter signed by members of various medical professions appeared in the London Times, Sept. 4, 1973, at 15, col. 5:

SOVIET PSYCHIATRIC ABUSE, from Professor G.M. Carstairs and others

Sir, In your forthright leader (sic) of August 13 you castigated the authorities in Leningrad for their "vindictive behaviour" towards Dr. Marina Voikhanskaya, a psychiatrist now living in Britain, and her 10-year-old son Misha, who has been held for over a year in the USSR and prevented from joining her. You rightly described as "despicable" the official revenge against Dr. Voikhanskaya for having given first-hand testimony concerning Soviet psychiatric abuse.

Since then, the threatened court action to deprive Dr. Voikhanskaya of her parental rights has not taken place, but there are ominous signs that wiser and more humane counsels may not prevail and that it may occur soon.

Should this action occur, and should it deprive Dr. Voikhanskaya of her parental rights, not only would the spirit of the Helsinki agreements have been violated in a travesty of justice. We would also be further convinced that the Soviet authorities have no intention to investigate and root out politically motivated psychiatric abuse, but wish only to conceal it from view. The desirability of conducting a review of all relations between the medical professions in this country and the USSR would then become more urgent.

We write in our personal capacities and remain, Yours faithfully,

G.M. CARSTAIRS, Vice Chancellor, University of York,
Cyril A. Clarke, President of the Royal College of Physicians,
Henry V. Dicks, Past President, Royal Medico-Psychological Association,
Hans Krebs, Department of Clinical Medicine, University of Oxford,
Platt, Past President of the Royal College of Physicians,
W. Linford Rees, President of the Royal College of Psychiatrists,
Martin Roth, Past President of the Royal College of Psychiatrists, Working Group on the Internment of Dissenters in Mental Hospitals.
ABUSE OF PSYCHIATRY and nongovernmental human rights organizations. There is evidence that this inhuman campaign to destroy the will or sanity of dissidents, which has a long, bleak history in Soviet policy, has gained momentum in recent years despite President Carter's human rights initiative. The Soviets counter these charges with two main tactics. They discredit the accounts of unwarranted confinement by characterizing the dissidents as mentally ill criminals and trouble-makers and they dismiss criticism from the West as anti-Soviet propaganda. In-


8 For example, this statement was made about three leaders of the dissident movement:

All these falsehoods [about psychiatric punishment of the sane] could be easily exposed by the publication of case histories of all those whom Western propaganda so persistently presents as “sane dissidents,” ranging from the mentally ill criminals V. Fainberg and V. Bukovsky to L. Plyushch....

Id. at 3. For a portrayal of Andrei Amalrik, a respected Soviet dissident and scholar, as an irresponsible university dropout, see CURRENT DIG. SOVIET PRESS, Aug. 10, 1977, at 15.

9 The following excerpt was taken from an interview with Professor E.A. Babayan, a member of the leadership of the Soviet delegation to the Congress of the World Psychiatric Association in 1977.

On behalf of the All-Union Society of Neurothologists and Psychiatrists of the Soviet Union, I addressed the assembly, insistently demanding that the delegates be shown forensic-psychiatric documents signed by well-known foreign psychiatrists, or at least their written conclusions, on the mentally ill persons whom the Western press has declared to be “mentally ill for political reasons.” In the presence of press representatives and congress delegates. Mr. Weinberg, President of the American Psychiatric Association, and his confederates were forced to state that they had no such materials. This again confirmed the complete groundlessness of their absurd accusations, which were intended mainly for a propaganda effect.
carcerating dissidents along with persons who are dangerous to society by virtue of insanity, however, is a problem philosophically more complex than cold war politics.

In a society where every individual is to be ideologically motivated by concern for the collective good, and what is good for society is determined by those persons in power, individual acts which contravene predetermined societal interests are by definition deviations from the norm. As Valery Chalidze, a noted writer and dissident, has observed:

The chief tragedy lies in the fact that society has been conditioned to accept the thesis that a manifestation of dissent may, in and of itself, be a symptom of psychic illness. The reason for that is the belief in a uniquely correct official doctrine and a distinct notion that a manifestation of disagreement with official doctrine is unthinkable and useless and hence not characteristic of a normal person.

Socialist ideology indeed may contribute to the complexity of determining norms for individual behavior; sensitivity to the ideological influence which views dissent as aberrant, however, need not discount the possibilities for abuse inherent in that ideological framework. Fur-

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CURRENT DIG. SOVIET PRESS, Oct. 19, 1977, at 4. See also 'Anti-Soviet-Chorus' at Psychiatric Meeting, id. at 1.

10 From infancy through adulthood, the Soviet educational process is devoted to political indoctrination. See Azrael, Education and Political Development in the Soviet Union, and Barghoorn, Soviet Adult Political Indoctrination, in MAN, STATE, AND SOCIETY IN THE SOVIET UNION 317, 344 (J. Nogee ed. 1972).


13 Paul Chodoff, a member of the American Psychiatric Association's Ad Hoc Committee on the Use of Psychiatric Institutions for the Commitment of Political Dissenters, counters the argument that ideology is the chief element in psychiatric diagnosis of dissenters' behavior with three factors: Soviet psychiatrists, while holding a different world view, cannot be unaware that their careers often depend on the totalitarian state; psychiatric treatment of political dissidents is often inhumane rather than therapeutic; and professional judgment of numerous dissident cases reveals
thermore, even the loftiest ideological motives cannot excuse debasing human nature to that extent. On balance, the incidence in the Soviet Union of psychiatric confinement and treatment of political dissenters must provoke concern if not outrage from the international community.

Abuse of psychiatry to quell dissent is not only a problem of professional ethics. The resolution of the World Psychiatric Association raises serious questions for the international legal community concerning the abrogation of the Soviet Union's human rights obligations. Before considering specific violations of international human rights norms, this article will review briefly the history of psychiatric suppression in the Soviet Union and the domestic legal system which perpetuates this insidious practice.

I. INTERNAL PROCESSES GOVERNING PSYCHIATRIC CONFINEMENT

A. Prologue

A brief history of the abuse of psychiatric diagnosis and confinement in the U.S.S.R. provides a vivid backdrop for today's psychiatric campaign against political dissidents.\[^{14}\] Between 1936 and 1938, procedures for confining dissenters in mental hospitals were established by Andrei Vyshinsky under the direction of Nikolai Ezhov, the head of the secret police.\[^{15}\] Use of psychiatric prison hospitals to suppress dissent was particularly favored during Stalin's reign of terror.\[^{16}\]

After Stalin's death in 1956, in an effusion of relative democratization and legality, a state commission was established to investigate rumored accounts of the sane being interned in mental hospitals.\[^{17}\] The Commission unanimously found that reorganization in the field of psychiatric diagnosis and treatment was needed. Prison hospitals were

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\[^{14}\] For a comprehensive study of the history of psychiatric repression in the Soviet Union, see S. BLOCH & P. REDDAWAY, supra note 11, at 48-78; 1975 AMNESTY INTERNATIONAL REPORT, supra note 6, at 105-08.

\[^{15}\] See the account of prison hospitals before 1970 in UNCENSORED RUSSIA 232-33 (P. Reddaway ed. 1972).

\[^{16}\] R. MEDVEDEV, ON SOCIALIST DEMOCRACY 156 (1972). See also the adaptation of the Address by Vladimir Bukovsky, the American Psychiatric Association (May 3, 1977), in N.Y. Times, May 3, 1977, at 41, col. 2.

\[^{17}\] See P. REDDAWAY, supra note 15, at 232; R. MEDVEDEV, supra note 16, at 156.
removed immediately from the control of administrative investigation organs and placed under supervision of the U.S.S.R. Ministry of Health. For a time it seemed this practice was in disrepute among party leaders.

B. Legislation

Procedures for psychiatric commitment in the Soviet Union are found in civil laws promulgated by the Ministries concerned or in the Russian Soviet Federated Socialist Republic (RSFSR) Codes of Criminal Law and Criminal Procedure. In 1961, certain newly drafted provisions and modifications in both civil and criminal law signalled the intentions of the authorities to revert to this practice of interning political dissenters in psychiatric hospitals. Before 1961, psychiatrists were liable to criminal prosecution for unethical and wanton practice of medicine. The newly drafted Criminal Code omitted the protective articles and no alternative means of deterring unethical behavior were adopted. This gap in legislative protection cleared the way for collusion between state agencies and cooperating psychiatrists.

The Ministry of Health in 1961 issued a Directive fashioned to facilitate rather than to terminate the practice of using psychiatry to suppress dissention. So vague as to encompass the acts of every normal person at one time or another, and so arbitrary as to invite abuse, the "Directive on the Immediate Hospitalization of Mentally-Ill Persons

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18 P. REDDAWAY, supra note 15, at 232.
19 R. MEDVEDEV, supra note 16, at 156.
21 Vladimir Bukovsky points to the impetus given to revitalize this movement recalling Krushchev's statement: "Krushchev said then that there are no opponents to the Soviet regime in the Soviet Union and there is no opposition, and all of those who are dissatisfied with this regime are simply insane." ABUSE OF PSYCHIATRY: 1972 HEARING, supra note 5, at 26.
22 This step was seen as a significant foreshadowing. Medvedev reports that the only way left to lodge complaints about the unethical behavior of psychiatrists is "through administrative channels via the district health department and eventually up to the Ministry of Health of the RSFSR and the U.S.S.R. Needless to say such an arrangement makes it very much harder to prevent or rectify cases of malpractice." Id. at 157.
23 Bloch and Reddaway discuss fully the ambiguity of mental states which justify commitment under the Directive. PSYCHIATRIC TERROR, supra note 11, at 152-54.
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Who Are a Social Danger” (Directive) authorized an individual psychiatrist, relying solely on his professional discretion, to commit forcibly a person for extended periods. The Directive stated:

If there is a clear danger from a mentally-ill person to those around him or to himself, the health organs have the right (by way of immediate psychiatric assistance) to place him in a psychiatric hospital without the consent of the person who is ill or his relatives or guardians.44

A patient could be detained indefinitely for obligatory treatment until a panel of three psychiatrists, compelled to examine him once a month, determined whether the patient still presented a danger to society.

In 1969, a special decree was promulgated entitled, “Measures for Preventing Dangerous Behavior on the Part of Mentally Ill Persons.”25 The decree noted that police and psychiatrists had made insufficient use of the 1961 Directive and urged application even if there existed only a possibility of incorrect behavior.26

Before the World Psychiatric Association convened in 1971, the 1961 Directive was revised to omit the most criticized provisions.27 The currently operative Directive of 1971 on civil commitment, approved by the Office of the Procurator and various Ministries, however, specifies similarly vague conditions for immediate compulsory confinement found in the 1961 Instruction:

2. The grounds for emergency hospitalization consist in the patient’s being a public danger, and the criteria are the following symptoms of abnormal behavior:

a) Psychomotor excitation with a tendency towards aggressive action; abnormal behavior accompanied by a psychological disorder


27 Substantive revisions are outlined in S. BLOCH & P. REDDAWAY, supra note 11, at 155-56.
(hallucinations, delusions, a syndrome of psychological automatism, a syndrome of disordered consciousness, pathological impulsiveness) if accompanied by acute affective tension and a striving towards its active expression;

b) A systematic syndrome of delusions with chronic deterioration, if it results in behavior dangerous to the public;

c) A hypochondriac delusional condition, causing an abnormal aggressive attitude in the patient toward individuals, organizations or institutions;

d) A depressed state if it is accompanied by suicidal tendencies;

e) A maniacal and hypomaniacal condition causing a deterioration in social order or aggressive manifestations in relationship to the people around the person;

f) An acute psychotic condition of a psychopathological nature; oligophrenics and patients with residual occurrences of organic injury of the cerebrum, accompanied by excitement, aggression or any activity dangerous to the person himself or to those around him.

A catch-all provision allows virtually any normal person to be confined if health authorities believe he may commit an act considered to endanger the public. This provision states:

The conditions of illness enumerated above which can undoubtedly constitute a danger to the patient and to the public, may be accompanied by externally correct behavior and dissimulation. Particular

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Among the symptoms indicating compulsory committal are the following: "(c) a systematic syndrome of delusions with chronic deterioration if this results in behavior dangerous to the public; (d) a hypochondriac delusional condition causing an irregular and aggressive attitude in the patient toward individuals, organizations, or institutions." One does not have to be a psychiatrist to understand the inadmissibility of such imprecise language. What exactly is a "hypochondriac delusional condition?" Who can possibly establish what constitutes an "irregular and aggressive attitude toward individuals, organizations, or institutions?"

R. Medvedev, supra note 16, at 158.
caution must be exercised when assessing the psychological condition of such persons, so as not to exaggerate the evidence indicating emergency hospitalization; it is also important to ensure by means of timely committal the prevention of dangerous acts by mentally ill persons. The grounds for compulsory hospitalization enumerated above are not exhaustive, but only a list of the most frequently encountered morbid states which present a public danger.\textsuperscript{29}

Political and religious dissidents are particularly vulnerable to forcible civil commitment on grounds described in 2(c), aggression toward organizations and institutions.\textsuperscript{30}

Dissidents are subject as well to psychiatric confinement through procedures established in the RSFSR Codes of Criminal Law and Criminal Procedure.\textsuperscript{31} Briefly, when a person commits an antisocial act\textsuperscript{32} which the KGB considers a crime, he will be arrested and inter-

\textsuperscript{29} 2 REPORTS OF THE HELSINKI-ACCORD MONITORS IN THE SOVIET UNION, \textit{supra} note 28, at 60 (emphasis added).

\textsuperscript{30} See accounts of civil commitment of dissenters in S. BLOCH & P. REDDAWAY, \textit{supra} note 11, at 158-85.

\textsuperscript{31} The RSFSR Codes of Criminal Law and Criminal Procedure are translated and reprinted in H. BERMAN, \textit{SOVIET CRIMINAL LAW AND PROCEDURE} (1972).

\textsuperscript{32} The RSFSR Criminal Code admits of no political crimes \textit{per se}. Articles of the RSFSR Criminal Code cited most frequently in cases brought against Soviet dissidents are:

\textit{Article 70. Anti-Soviet Agitation and Propaganda.} Agitation or propaganda carried on for the purpose of subverting or weakening the Soviet regime or of committing particular, especially dangerous crimes against the state, or the circulation, for the same purpose of slanderous fabrications which defame the Soviet state and social system, or the circulation or preparation or keeping, for the same purpose, of literature of such content, shall be punished by deprivation of freedom for a term of six months to seven years, with or without additional exile for a term of two to five years, or by exile for a term of two to five years. The same actions committed by a person previously convicted of especially dangerous crimes against the state or committed in wartime shall be punished by deprivation of freedom for a term of three to ten years, with or without additional exile for a term of two to five years.

\textit{Article 190-1. Circulation of Fabrications Known to Be False Which Defame Soviet State and Social System.} The 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 shall be punished by deprivation of freedom for a term not exceeding three years, or by correctional tasks for a term not exceeding one year, or by a fine not exceeding 100 rubles.

\textit{Article 190-3. Organization of, or Active Participation in, Group Actions}
rogated. If the KGB determines that the crime may have been committed in a state of non-accountability, they will send the accused for psychiatric diagnosis. The psychiatrist will consult with the investigators and pronounce the diagnosis. Then a court will endorse the recommendation for indefinite compulsory confinement and treatment. The defendant, who has no right to appear on his own behalf, has no recourse or opportunity to appeal provided by law after this judgment is pronounced. 33

Article 11 of the Criminal Code specifically exempt from the criminal process, and thus from legal proceedings, any person who, by

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Which Violate Public Order. The organization of, and, likewise, the active participation in, group actions which violate public order in a coarse manner or which are attended by clear disobedience of the legal demands of representatives of authority or which entail the violation of the work of transport or of state and social institutions or enterprises shall be punished by deprivation of freedom for a term not exceeding three years, or by correctional tasks for a term not exceeding one year, or by a fine not exceeding 100 rubles.

Article 206. Hooliganism. Hooliganism, that is, intentional actions violating public order in a coarse manner and expressing a clear disrespect toward society, and, likewise, petty hooliganism committed by a person to whom a measure of administrative pressure for petty hooliganism has been applied within a year, shall be punished by deprivation of freedom for a term of six months to one year, or by correctional tasks for the same term, or by a fine of 30 to 50 rubles.

Malicious hooliganism, that is, the same actions distinguished in their content by exceptional cynicism or special impudence, or connected with resisting a representative of authority or representative of the public fulfilling duties for protection of public order or other citizens who are restraining hooliganistic actions and, likewise, actions which are committed by a person previously convicted of hooliganism, shall be punished by deprivation of freedom for a term of one to five years.

Actions provided for by paragraphs one or two of the present article, if committed with the use or attempted use of a firearm, a knife, brass knuckles, other sidearms, or any other objects especially adapted to the infliction of bodily injuries, shall be punished by deprivation of freedom for a term of three to seven years.

H. Berman, supra note 31.

See Feldbrugge, Law and Political Dissent in the Soviet Union, in CONTEMPORARY SOVIET LAW: ESSAYS IN HONOR OF JOHN D. HAZARD 55-68 (D. Barry et al. eds. 1974) [hereinafter cited as CONTEMPORARY SOVIET LAW].

33 To be exact, the procedural rights of persons suspected of being mentally ill are simplified, and in such a way as to leave them with almost no rights other than the passive right to an honest examination and an honest hearing. 1975 Amnesty International Report, supra note 6, at 108.
reason of insanity, could not realize the significance of his acts. Article 11 states:

A person shall not be subject to criminal responsibility who at the time of committing a socially dangerous act is in a state of nonimputability, that is, cannot realize the significance of his actions or control them because of a chronic mental illness, temporary mental derangement, mental deficiency, or other condition of illness. Compulsory measures of a medical character may be applied to such a person by order of the court. 34

Thus, to circumvent criminal proceedings which draw attention to Soviet suppression by granting dissidents a public forum, the authorities must initiate psychiatric proceedings provided in the RSFSR Code of Criminal Procedure. Under Article 184, the preliminary investigator 35 initiates an examination for mental competency of the accused. 36 In the decree ordering the examination, the investigator indicates the grounds for the psychiatric examination. The choice of examining psychiatrist, the psychiatric institute, the questions to be asked and the materials available to the expert all reside within the investigator’s discretion. Furthermore, the investigator has the right to be present at the examination 37 and may question the psychiatrist for clarifications or additions to his expert opinion. 38 If the accused is confined for observation during the examination, the procurator as well as the preliminary investigator must sanction the order. 39 It is obvious that at every stage there is ample opportunity for the government to influence the psychiatrist’s examination. 40

When the psychiatrist determines that the accused was mentally ill at the time he committed the crime, the court must decide whether to

34 RSFSR 1960 Ugol. Kod. (Criminal Code) art. 11.
36 RSFSR 1960 Kod. Ugol. Pro. (Code Criminal Procedure) art. 184. See also V. Chalidze, supra note 11, at 251.
38 Id. art. 192.
39 Id. art. 188. For background on the role of the procurator, see H. Berman, Justice in the USSR: An Interpretation of Soviet Law 238-47 (1963).
40 Amnesty International was able to document programmatic violations of the Code of Criminal Procedure which perpetuate the system:

[T]he conduct of expert psychiatric diagnoses is open to influence originating not only in the Ministries of Public Health but in the state security and police organs. It is the investigation officials who decide in the first instance to submit an accused person for psychiatric examination, and who decide which ex-
order the accused confined for "compulsory measure[s] of a medical character" or to terminate the case depending on the nature of the antisocial act.\textsuperscript{41} A finding by the court of mental incompetence while committing a socially dangerous act releases the accused—now "patient"—from criminal responsibility in accordance with Article 11, but automatically divests him of the legislative safeguards of a criminal trial.\textsuperscript{42}

Under Articles 184 and 185 of the Criminal Procedure Code, the accused has the right to challenge during the investigation the findings of an expert forensic commission and to offer his own expert witness.\textsuperscript{43} In particular, Article 188 extends this right to those undergoing psychiatric examinations.\textsuperscript{44} Article 184, however, renders moot the right to challenge psychiatric findings by arbitrarily allowing completion of a psychiatric examination without the accused's knowledge "if the accused in his mental state makes this impossible."\textsuperscript{45} The accused hardly would be in a position to defend himself if he had been excluded from participation in his own investigation.\textsuperscript{46} While the law does provide mandatory participation of a defense counsel in court hearings of these cases, counsel is not required to meet with the accused.\textsuperscript{47} It is difficult to imagine in such cases how counsel could defendcompetently the accused's mental state.

pert institution shall conduct the examination. It is the same investigation officials who decide the question placed before the expert and the materials made available to the expert. In ordinary criminal cases the investigation officials may be officers of the procuracy, the institution which also conducts the prosecution of the case. In cases with political aspects, the KGB or the MVD [Ministry of Internal Affairs], or both assist in the investigation and call upon particular psychiatrists to contribute to their investigation.

1975 \textsc{Amnesty International Report, supra note 6}, at 110-11.

\textsuperscript{41} RSFSR 1960 \textsc{Kod. Ugol. Pro.} (Code of Criminal Procedure) art. 410.

\textsuperscript{42} For a criticism of the legal proceedings of Soviet political trials, see Weiner, Socialist Legality on Trial, in \textit{In Quest for Justice} 39 (A. Brumberg ed. 1970).

\textsuperscript{43} RSFSR 1960 \textsc{Kod. Ugol. Pro.} (Code of Criminal Procedure) arts. 184-85.

\textsuperscript{44} \textit{Id.} art. 188.

\textsuperscript{45} \textit{Id.} art. 184.

\textsuperscript{46} According to article 407 of the RSFSR Code of Criminal Procedure, it is within the discretion of the court to determine that the character of the accused's illness prevents him from being present.

\textsuperscript{47} RSFSR 1960 \textsc{Kod. Ugol. Pro.} (Code of Criminal Procedure) art. 405. (Amnesty International cites this example: "Valeria Novodvorskaya, a 10 year old student who was diagnosed 'mentally ill' after being arrested in late 1969 for distributing leaflets critical of the Communist Party, never met her advocate Dobuzhsky." 1975 \textsc{Amnesty International Report, supra note 6}, at 109-10.
This brief analysis reveals the potential for government abuse where existing legislative protection is inadequate. Legislative safeguards, however meager and insufficient, afford some protection if obeyed and enforced. Recent documentation of cases, however, reveals that actions taken by the KGB and Soviet psychiatrists often are in violation of domestic laws and regulations. Specifically, the Working Committee to Investigate the Abuse of Psychiatry for Political Purposes, formed by the Public Group to Promote Observance of the Helsinki Accords to the U.S.S.R., has provided the following information with regard to violations of civil law:

Even the USSR Ministry of Health's regulation No. 06-14043 of August 24, 1971 is being violated. Although it does not guarantee the rights of persons being detained or those of their relatives or guardians, the regulation does establish as the minimum requirement for forcible confinement to a psychiatric hospital, that there must be an

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48 Roy Medvedev, noted author and dissident, has observed that:
Taking advantage of people's ignorance, certain of other authorities often flout even those laws and instructions that do exist. Numerous infringements of the law have been committed in the course of the political trials of the recent years. In cases involving the use of psychiatry as an instrument of political persecution, there have been frequent violations of the existing directives on compulsory commitment and the procedure for psychiatric examination.

R. MEDVEDEV, supra note 16, at 78. Often directives and regulations are withheld from the public. See Abuse of Psychiatry: 1972 Hearing, supra note 5, at 23.

49 In January 1977, the Public Group to Promote the Observance of the Helsinki-Accord in the U.S.S.R. drafted the following proposal:
Considering these actions of enforcement agencies and psychiatrists to be inhuman acts, rudely violating the international obligations voluntarily assumed by the Soviet Union, the Public Group to Promote the Observation of the Helsinki Accords in the USSR considers it necessary to establish within its framework a Working Committee, whose objectives are as follows:
1. To identify cases of forced confinement for free thought in psychiatric hospitals; conduct public investigations of these cases (the first case to be investigated is the forced confinement of Valadimir Borisov).
2. To prepare materials to be addressed to the heads of states which signed the Helsinki Accords and to the Soviet Government, in order to initiate criminal proceedings against the actual perpetrators of the criminal use of psychiatry.
3. To inform the Soviet and world public of the results of the Committee's work.

2 REPORTS OF THE HELSINKI-ACCORD MONITORS IN THE SOVIET-UNION, supra note 28, at 54.
obvious danger from a psychically ill person to those around him or to himself. So says the regulation.

However, the following are the reasons given for the forced confinement of Soviet citizens to a psychiatric "hospital":

1. Petr Starchik (Moscow)—for performing at home before his friends, songs by various poets and himself;
2. Aleksandr Argentov (Moscow)—for exercising exaggerated religiosity;
3. Eduard Fedotov (Moscow)—for exercising exaggerated religiosity;
4. Iosif Terelya (Vinnitsa)—discharged from work without explanation, however, instructions for his confinement mention "socially dangerous, believes in God";
5. Mikhail Kukovaka (Bobruysk)—for providing workers (his comrades at work) with a copy of the "Universal Declaration of Human Rights";
6. Kopysov—taken into custody in the waiting of the Supreme Soviet of the USSR while presenting a petition;
7. Vladimir Borisov (Leningrad)—taken into custody without any reason being given. He was walking along the street when several policemen suddenly jumped him; his arms were pinned behind him; he was shoved into a car, brought to a police station, then taken to city psychiatric hospital No. 3. Neither Borisov's wife nor his mother have yet been informed on whose orders and for what reason he was hospitalized.  

Not only psychiatrists who participate in this practice, but at times the courts as well, ignore provisions of the RSFSR Criminal Code and Code of Criminal Procedure. The following examples are illustrative. Article 82 of the Criminal Procedure Code obliges the psychiatrist to render an objective and expert opinion on the facts of the case under investigation. Similarly, by Criminal Code Article 181, the expert

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50 Id. at 53. Much of the information which filters through Soviet human rights groups to the West is collected and compiled in SAMIZDAT (unauthorized) documents, particularly a publication entitled A Chronicle of Current Events. A thorough discussion of this phenomenon is found in Loeber, Samizdat Under Soviet Law, in CONTEMPORARY SOVIET LAW, supra note 32, at 84.

51 RSFSR 1960 KOD. UGOL. PRO. (Code of Criminal Procedure) art. 82.
must not give an opinion known to be false.\textsuperscript{52} While the psychiatric diagnosis of all accused persons thus is required by law to be truthful and objective, the findings in cases of political prisoners as documented in this excerpt is often the product of partiality and government influence.\textsuperscript{53}

Once the decision has been made to confine the prisoner based on tendentious findings of the psychiatrist, the court must decide whether the accused should be sent to an ordinary or special psychiatric hospital.\textsuperscript{54} This decision also is made without regard for the law. Articles 59 and 60 of the Criminal Code prescribe ordinary psychiatric hospitals for persons not considered socially dangerous; special psychiatric hospitals are for those who "represent(s) a special danger for society."\textsuperscript{55} An example of behavior warranting confinement in an ordinary hospital appeared in a 1966 official criminal law textbook:

\textsuperscript{52} RSFSR 1960 UGOL. KOD (Criminal Code) art. 181. See note 22 \textit{supra} and accompanying text. Roy Medvedev has been a leading activist urging reinstatement of criminal liability for professional misconduct. See \textit{R. MEDVEDEV, supra} note 16, at 63.

\textsuperscript{53} Valery Chalidze has observed that:

Judging from statements by the Western psychiatrists, these expert reports were incorrect from the medical point of view. Analysis shows that they are also incorrect from the juridical point of view, since the experts sometimes exceeded the authority provided by law, or were not impartial.

\textit{V. CHALIDZE, supra} note 11, at 144-45 (footnotes omitted).

The following passage is from an essay written by former Major General P.G. Grigorenko, who was confined in special psychiatric hospital more than five years after openly stating his dissent:

This institute nominally comes under the Soviet Ministry of Health, but I myself, on more than one occasion, have seen Professor Lunts, the head of the department diagnosing me, arrive at work in the uniform of a K.G.B. colonel. True, he always came into the department in his white coat. I have also seen other doctors of this institute in K.G.B. uniform. But the exact relation between the K.G.B. men and the Ministry of Health I have not managed to ascertain. People say that only one department is under K.G.B. control—one which diagnoses political cases. I am inclined to think that the influence of the K.G.B.—and it is a decisive influence—extends over the whole of the institute's work. But even if what people say is true, the question arises: can the psychiatric diagnosis of political cases be objective if both the K.G.B. investigators and the medical experts are subordinate to one and the same person, and, what is more, are bound by military-style discipline?

\textit{P. REDDAWAY, supra} note 15, at 228.

\textsuperscript{54} RSFSR 1960 UGOL. KOD. (Criminal Code) arts. 59 & 60. Bloch and Reddaway compare the regimes in the ordinary psychiatric hospital (OPH) and the special psychiatric hospital (SPH) in \textit{PSYCHIATRIC TERROR, supra} note 11, at 186-219.

\textsuperscript{55} RSFSR 1960 UGOL. KOD. (Criminal Code) art. 59.
[A Leningrad woman] who during an argument with her neighbour slashed her in the face with a large table knife and, after dislodging several teeth, inflicted less serious wounds to her body.\textsuperscript{56}

Amnesty International has observed rightly:

The political dissidents on whom documentation is available have no records of violence nor have the psychiatric commissions examining them even attempted to show that they represent a violent threat to others. Yet in deciding such cases, Soviet courts have almost invariably ordered the most severe forms of compulsory detention: confinement to special psychiatric hospitals for an indefinite period.\textsuperscript{57}

Once committed to a special psychiatric hospital, the political prisoner is subjected to treatment that is clearly illegal, and from which he can obtain no legal recourse.\textsuperscript{58} Stories of brutal beatings, degrading and inhuman treatment by staff members, and psychiatrists' use of damaging drugs for nonmedical purposes have been well documented.\textsuperscript{59} Letters to Soviet authorities complaining of these practices, however rarely are transmitted and are often considered as evidence of the patient's psychotic state.

C. The New Constitution

The Soviet Constitution of 1977\textsuperscript{60} reflects the progress and development of the socialist state and the present status of the evolving relationship between the state and the individual.\textsuperscript{61} Since all rights granted

\textsuperscript{56} 1975 AMNESTY INTERNATIONAL REPORT, \textit{supra} note 6, at 121.

\textsuperscript{57} \textit{Id.} What then is the public order which the Soviet Union represents? It certainly is not one of human dignity. The most important features of the system of expression control are based upon a legal framework. There are areas of governmental repression techniques which seem to be abuses of power even in terms of Soviet legal principles. One instance in particular is the practice of confining non-conformists in lunatic asylums.

K. GRZYBOWSKI, FREEDOMS OF EXPRESSION AND DISSENT IN SOVIET UNION 40 (1972).

\textsuperscript{58} See note 22 \textit{supra} and accompanying text.

\textsuperscript{59} Abuse of Psychiatry: 1972 Hearing, \textit{supra} note 5, at 128-30. See, \textit{e.g.}, the account given by Vladimir Bukovsky, who was recently released from a psychiatric hospital. 1 REPORTS OF THE HELSINKI-ACCORD MONITORS IN THE SOVIET UNION, \textit{supra} note 28, at 26-27.

\textsuperscript{60} SOVIET CONST., of October 6, 1977. A translation of the Constitution can be found in CURRENT DIG. SOVIET PRESS, Nov. 9, 1977, at 1.

\textsuperscript{61} This is evident from the following excerpt:

I.—First Question: Why has it become necessary to write a new Constitution?

Because, comrades, profound changes have taken place in our country and in our entire society over the last four decades.
through the constitution to the individual derive from the State, as the
State prospers, more and specific rights have been accorded to the in-
dividual, rights which must be exercised consistent with the goal of
continued State and societal development. Psychiatric confinement of
political dissenters abrogates several rights guaranteed under the new
Constitution.

The Constitution of 1977 grants more educational, social and
cultural rights and freedoms for the individual than its predecessor,

When the 1936 Constitution was adopted, we had essentially just com-
pleted creating the foundations of socialism. The collective farm system was
quite young and not firmly established. The technical level of the national
economy was still far below the level of the most developed industrial coun-
tries. The legacy of prerevolutionary (sic) times continued to have an effect
in various areas of life.

Now a developed, mature socialist society has been built in the Soviet
Union. Major, fundamental changes have affected all aspects of social life.

Brezhnev's Speech on the Draft Constitution, CURRENT DIG. SOVIET PRESS, July 6,
1977, at 6 [hereinafter cited as Brezhnev's Speech on Draft Constitution]. See generally
Law for Society and the State, 13 SOVIET L. & Gov. 3 (1967).

Article 4 states: "The Soviet state and all its agencies operate on the basis of
socialist legality and ensure the protection of law and order, the interests of society and
the rights and liberties of citizens."

In all, 37 new items appear to differentiate the Constitution of 1977 from its
predecessor. The more significant among these include full health coverage,
guaranteed secondary level education, guaranteed housing, the right of access to
cultural achievements, and freedoms of artistic expression and scientific inquiry. See
Brezhnev's Speech on Draft Constitution, supra note 61, at 7. But see Soviet Adopts a

Significantly, the means provided to ensure civil rights under Article 125 in the Con-
stitution of 1936 have been modified. Compare article 125 with article 50 of the Con-
stitution of 1977:

Article 125. In conformity with the interests of the working people, and
in order to strengthen the socialist system, the citizens of the USSR are
guaranteed by law:

a) freedom of speech;
b) freedom of the press;
c) freedom of assembly, including the holding of mass
meetings;
d) freedom of street processions and demonstrations.

These civil rights are ensured by placing at the disposal of the working
people and their organizations printing presses, stocks of paper, public
buildings, the streets, communications, facilities and other material requisites
for the exercise of these rights.
the Constitution of 1936. In a speech before the CPSU Central Com-
mittee, Leonid Brezhnev stated,

[the draft [constitution] gives significantly fuller formulation to the political rights and liberties of USSR citizens.

The right of citizens to submit proposals to state and public agencies, to criticize shortcomings in work and to protest the actions of officials to court, as well as the right to legal protection against attempts on one's life, health, property, personal freedom, honor and dignity, are a significant addition to the constitutional guarantees of the rights of the individual.\

Guarantees of individual rights, counterbalanced with corresponding duties, always has been defined by their compatibility with the social good:

Needless to say, comrades, the draft Constitution proceeds from the premise that the rights and liberties of citizens cannot and must not be used against our social system or to the detriment of the Soviet people's interests. Therefore, the draft clearly states, for example, that the exercise by citizens of their rights and liberties must not injure the interests of society and the state or the rights of other citizens and that political liberties are granted in accordance with the working people's interests and for the purpose of strengthening the socialist system.

Article 50. In accordance with the peoples' interests and for the purpose of strengthening and developing the socialist system, USSR citizens are guaranteed freedom of speech, of the press, of assembly, of mass meetings and of street processions and demonstrations.

The exercise of these political freedoms is ensured by putting public buildings, streets and squares at the disposal of the working people and their organizations, by the broad dissemination of information, and by the opportunity to use the press, television and radio.

Brezhnev's Speech on Draft Constitution, supra note 61, at 7. (emphasis omitted).

Article 59 states:

The exercise of rights and liberties is inseparable from the performance by citizens of their duties.

USSR citizens are obliged to observe the USSR Constitution and Soviet laws, to respect the rules of the socialist community, and to bear with dignity the lofty title of USSR citizen.

See also Article 50 cited in note 63 supra.

Brezhnev's Speech on Draft Constitution, CURRENT DIG. SOVIET PRESS, July 6,
Qualification on the exercise of individual rights, then, usually is stipulated within the constitutional provisions themselves. If psychiatric confinement does not abrogate civil and political rights granted in the Constitution, this practice surely disregards two Articles of the Constitution which guarantee unequivocally fundamental rights consonant with international human rights norms:

Art. 54. USSR citizens are guaranteed inviolability of the person. No one can be arrested except on the basis of a court decision or with the sanction of a prosecutor.

Art. 57. Respect for the individual and the protection of the rights and liberties of citizens are the obligation of all state agencies, public organizations and officials.

USSR citizens have the right to legal protection against attempts on their honor and dignity, their lives and health, their personal freedom and property. These rights are granted by the State merely on the basis of citizenship. Significantly, these provisions align the Soviet Union's domestic obligation with its international commitment to promote and respect human rights. Under Article 73, however, absolute legislative powers to implement binding law is granted to the Supreme Soviet.

1977, at 8. Before the Constitution was adopted, Brezhnev made the following comments at the Session of the USSR Supreme Soviet on October 4, 1977:

[T]he critics of the Soviet Constitution have found themselves in an unenviable position. They cannot escape the fact that our draft Constitution records the social, economic and political rights and liberties of citizens and concrete guarantees of the exercise of these rights more broadly, more clearly and more fully than has been done ever before or anywhere else.

In general, it seems that from the standpoint of our class adversaries USSR citizens should be granted one sole right to fight against the Soviet state and against the socialist system to the joy of imperialism. But we must disappoint such “critics” of our Constitution: The Soviet people will never comply with their wishes! (Prolonged applause.)


67 Article 54 closely parallels article 127 of the Constitution of 1936. Article 57 is a new elaboration on individual freedom.

68 Compare the wording of articles 54 & 57 with articles 9 & 2, respectively, in the International Covenant on Civil and Political Rights cited infra note 75 and accompanying text.

69 See H. Berman, supra note 31, at 12.
Since no mechanism is provided for judicial review of the constitutionality of any laws promulgated by the Supreme Soviet, these constitutionally guaranteed rights afford only relative protection.

II. VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS NORMS

One of the basic tenets of Soviet law is the binding effect of international agreements to which consent has been given. With the signing in 1975 of the Helsinki Final Act at the close of the Conference on Security and Cooperation in Europe (CSCE), the Soviet Union has committed itself to observing and protecting fundamental human rights under at least three international agreements. Under the U.N.

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70 Many of the criminal laws cited above contravene rights guaranteed by the Constitution. See, e.g., R. Medvedev, supra note 16, at 155.

71 The socialist view of international law must be considered in determining Soviet obligations under international agreements. Briefly, the Soviets maintain that international law is a means for building communism by fostering peaceful coexistence and socialist internationalism.

According to the Soviet view, the basis of all international legal norms is the agreement of states. Thus, treaties are considered as a primary source of international law and are favored over the secondary source, customary international law, which has a more ambiguous character. In place of the Western concept of natural law, the higher law undergirding all man-made law in the Soviet Union is the Marxist-Leninist law of social development.

International and domestic law have equal and distinct juridical significance linked by an international obligation to conform domestic legislation to international norms and principles to which Soviet consent has been given. Significantly, the manner in which international norms are implemented in the domestic legal system must conform primarily to the particular social and political system of the socialist state. See B. Ramundo, Peaceful Coexistence 5-44 passim (1967). See also Erickson, Soviet Theory of the Legal Nature of Customary International Law, 7 CASE W. RES. J. INT'L L. 148, 150-52 (1975); Blishchenko, International Treaties and Their Application on the Territory of the USSR, 69 AM. J. INT'L L. 819, 820 (1975).

72 Conference on Security and Cooperation in Europe, Aug. 1, 1975, 73 DEPT STATE BULL. 323 (1975) [hereinafter cited as Helsinki Final Act].

73 Besides the Helsinki Final Act, supra note 72, the U.N. Charter and the International Covenant on Civil and Political Rights, see notes 74 and 75 infra respectively and accompanying text, the argument can be made that the Soviet Union is bound to observe the Universal Declaration on Human Rights (UDHR), G.A. Res. 217A, U.N. Doc. A/810, at 71 (1948). Although the Soviet Union abstained from voting for the UDHR in 1948, this resolution has now been accepted widely as having the force of customary international law. See Montreal Statement of the Assembly for Human Rights, 9 J. OF THE INT'L COMM'N JURISTS 94 (1968). The Soviet Union, which accepts customary international law as a secondary source of international law, must observe the provisions protecting the freedom of the person, and hence the individual's mental integrity. In particular, article 22 of the UDHR states:
Charter, the first major international agreement to recognize the principle of fundamental human rights, the U.S.S.R. pledged to take action in cooperation with the U.N. to achieve "universal respect for, and observance of, human rights and fundamental freedoms for all. . . ." In 1978, the Soviet Union ratified the U.N. International Covenant on Civil and Political Rights (Covenant). Numerous articles in this document relate specifically to conditions of arrest, confinement, punishment, and privacy and security of the person. Finally, there is the Helsinki Final Act, by which the Soviet Union again declared its "respect [for] human rights and fundamental freedoms" and its intention to "promote . . . rights and freedoms . . . which derive from the inherent dignity of the human person and are essential to his free and full development."

The suggestion has been advanced that a new human right, the right to mental privacy, should be adopted. It seems quite evident that this right is implicit in all the references to protecting the dignity and freedom of the person found in human rights agreements. The inviolability of the human mind is inextricably bound to the concept of the integrity of the person. The freedom and dignity of an individual, then, is contingent upon the protection and freedom from involuntary intrusions upon one's mental faculties. Freedom from in-

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international cooperation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

"U.N. Charter" art. 55. Article 55 read with article 56 imposes an obligation on all signatories to promote human rights. Significantly, the Soviets regard the U.N. Charter as a treaty. It is described by Soviet scholars as "the charter of contemporary international law, its most important source," B. Ramundo, supra note 71, at 51.


Helsinki Final Act, supra note 72. Declaration on Principles Guiding Relations between Participating States, Principle VII.

"Id.

See Comment, Mental Privacy: An International Safeguard to Governmental Intrusions into the Mental Processes, 6 Cal. W. Int'l L.J. 110 (1975) [hereinafter cited as Mental Privacy].

See generally id.
terference with one's mental processes must be incorporated, therefore, as a fundamental human right.

The Soviet practice of deliberately abusing psychiatric treatment thus violates in several ways the obligation to protect human rights assumed under international agreements. It is a program designed to tamper with the mental processes and, hence, to disturb the integrity of the person of political dissenters. Secondly, the conditions of confinement and treatment\(^{80}\) amount to torture in many instances, a non-derogatable provision in the Covenant.\(^{81}\) It has been stated that psychiatric abuse is attributable in part to lack of appropriate legislative measures.\(^{82}\) The Covenant imposes on the Soviet Union an obligation to enact necessary legislation to safeguard the enumerated rights recognized in the Covenant.\(^{83}\) Adherence to the U.N. Charter as well implies that the necessary means exist within the domestic legal system to "promote . . . respect . . . and observance of, human right."\(^{84}\)

Closer examination of these agreements will illuminate the degree and specificity of Soviet violations. The Covenant enumerates individual rights which devolve from Member States' human rights

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\(^{80}\) Bloch and Reddaway cite examples of the use of sulphasazin, and various tranquilizers and amphetamines to intimidate and penalize political patients. See PSYCHIATRIC TERROR, supra note 11, at 202-09. See also 1975 AMNESTY INTERNATIONAL REPORT, supra note 6, at 129-34.

\(^{81}\) Certain rights enumerated in the Covenant are guaranteed notwithstanding any possible intervening domestic situation.

**Article 4**

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion, or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.

\(^{82}\) A study of the legal provisions which relate to compulsory confinement on psychiatric grounds makes plain the opportunity for abuse of psychiatry either out of negligence or by design. Public pronouncements by leading representatives of Soviet psychiatry reveal the dominance in their work of criteria for mental illness which are so loosely formulated as to bring into the province of psychiatry any manifestation of dissent on public issues.

1975 AMNESTY INTERNATIONAL REPORT, supra note 6, at 103.

\(^{83}\) Covenant, supra note 75, art. 2.

\(^{84}\) U.N. CHARTER art. 55, para. (c).
obligations found in U.N. Charter Articles 55 and 56. Specifically, Article 9(1) of the Covenant guarantees:

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure[s] as are established by law.

Although arrest, diagnosis, and confinement of political dissidents appear to accord with legally established procedures, the grounds on which psychiatric determinations are made are arbitrary and tendentious. A person in the Soviet Union who seeks to exercise his rights under Articles 18 and 19 of the Covenant cannot be assured of the "liberty and security of his person" guaranteed by Article 17.

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86 [This] phenomenon can be observed in the case of Ivan Yakhimovich. In June 1969, a psychiatric commission in Riga examined Mr. Yakhimovich, a communist who had earned high official praise as a collective farm chairman until in 1968 "he began spreading slanderous and defamatory statements blaming the Soviet government and social system." The psychiatrists could discover nothing abnormal in Mr. Yakhimovich's record of behaviour apart from his political activity. The Commission's official diagnosis included the following:

Patient is completely oriented . . . The patient has an excellent knowledge of literature, of classics of Marxism and Leninism, and also has an excellent knowledge of works of many philosophers and political figures . . . During the interview with the psychiatrists, patient was polite, gentle, and showed no evidence of delusions and hallucinations, and displayed adequate memory.

The commission's conclusion and recommendations were something of a non sequitur:

On the basis of the above findings, the committee reaches the conclusion that Yakhimovich shows development of a paranoid system in a psychopathic personality . . . The patient is in need of compulsory treatment in the hospital of special regime.

1975 AMNESTY INTERNATIONAL REPORT, supra note 6, at 118.

87 Articles 18 & 19 of the Covenant guarantee:

Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
Conditions of psychiatric confinement for political dissidents also must be characterized as cruel and inhuman. In many instances dissidents undergo pharmacological "therapy" which is intended to inflict pain. Insofar as the real goal of confinement and treatment is punishment for espousing views contrary to the State, such confinement violates both Covenant Articles 7 and 10(1) which state:

2. No one shall be subject to coercion which would impair his freedom to have or to adopt religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 19

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
   (a) for respect of the rights or reputation of others;
   (b) for the protection of national security or of public order . . .
   or of public health or morals.

See, e.g., The Hospital and the Treatment, in S. BLOCH & P. REDDAWAY, supra note 11, at 186-219.

See note 80 supra

The following example is typical. On 7 March 1974 the following conversation allegedly occurred during the examination of Evgeny Nikolayev, a scientist, by Dr. V.D. Dmitrievsky in Moscow's Kashchenko ordinary psychiatric hospital:

Dmitrievsky: I am interested in your own opinions. In the clinic which sent you to this hospital they made a point about your incorrect opinions about our society.

Nikolayev: Whatever my views may be they have nothing to do with psychiatry.

Dmitrievsky: If that were so you wouldn't be here. If your social views were not socially dangerous they would not have put you in a psychiatric hospital. The last three times you were in a psychiatric hospital was it for long periods?

Nikolayev: Yes, long.

Dmitrievsky: So you know our state machine. We are all subor-
Art. 7. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Art. 10. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

These rights guaranteed by the Covenant, furthermore, must be safeguarded by appropriate legislative protection under Article 2:

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

It is perhaps this aspect of the problem of psychiatric abuse—lack of adequate legislative protection—that best illustrates the opportunistic complexion of the procedure.91

The Helsinki Final Act is the most recent international agreement incorporating human rights norms to which the Soviet Union has consented. The main thrust of the Helsinki Final Act is the imposition of moral and political commitments.92 Significantly, it was the Soviets...
who sought the Conference and who were willing to subscribe to Western human rights proposals in return for the West's recognition of post-World War II boundaries. The Soviet Union, therefore, should not be allowed to hedge on reciprocal implementation of provisions in the Final Act.

The provisions in the Helsinki Final Act deserve considerable attention as they are the most unequivocal commitment to human rights made by the Soviet Union. In the introduction in the Declaration on Principles Guiding Relations between Participating States (Basket I), all states:

Declare their determination to respect and put into practice,
each of them in its relations with all other participating States irrespective of their political economic, or social systems. . . , the following principles. . .

This statement clearly was intended to waive qualifying limitations on the interpretations of provisions of the Act.

In Principle VII of Basket I of the Helsinki Final Act, all states declared that:

The participating States will respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief, for all without distinction as to race, sex, language or religion. They 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.

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93 Russell, supra note 92, at 244.
94 The follow-up conference to the Helsinki CSCE was held in Belgrade from October 4, 1977 to March 8, 1978. Although the United States and its Western allies endeavored to include in the summary document a reference to implementation of human rights provisions, the Soviet Union's resistance preempted the necessary consensus. See N.Y. Times, March 9, 1978, at 7, col. 1. With no record reviewing implementation of human rights provisions, it will be even more difficult to determine if the Soviet Union has adhered to its obligations by the second follow-up conference scheduled for 1980 in Madrid.
95 Helsinki Final Act, supra note 72, at 324 (emphasis added).
96 See Russell supra note 92, at 242-43.
97 Principle VII of the Declaration on Principles Guiding Relations between Participating States is entitled "Respect for human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief."
98 Helsinki Final Act, supra note 72, at 325. Basket III, entitled "Co-operation in Humanitarian and Other Fields," enumerates specific freedoms regarding human contacts and exchange of information, particularly in the fields of culture and education. Id. at 339.
To define and substantiate these declarations further, Principle VII reaffirms commitment to preceding international agreements regarding human rights which may bind individual signatories.

In 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 Covenants on Human Rights, by which they may be bound.99

This renewed commitment to human rights has given Soviet dissident groups another basis for citing the systematic abuse of psychiatry. In May 1976, nine months after the Helsinki Final Act had been signed, a group of Soviet citizens voluntarily assumed responsibility for monitoring implementation of human rights provisions of the Final Act.100 The first Public Group to Promote Observance of the Helsinki Agreements in the U.S.S.R. and subsequently formed groups have been relaying information to the United States Commission on Security and Cooperation in Europe (CSCE Commission).101 Much of the information received by the CSCE Commission from these groups confirms previous documentation of cases of psychiatric abuse.102 These accounts leave no doubt that the Soviets continue to violate provisions of the Helsinki Final Act, the U.N. Charter and the Covenant.

III. CONCLUSION

In the wake of overwhelming evidence that the Soviet Union continues to use psychiatry to deprive dissidents of fundamental human rights in violation of international agreements, several courses of action have been considered.103 Sidney Block and Peter Reddaway have pro-

99 Id.
100 See 1 REPORT OF HELSINKI-ACCORD MONITORS IN THE SOVIET UNION, supra note 28, at i.
101 The Commission on Security and Cooperation in Europe, an independent advisory agency, was created by Pub. L. No. 94-304 signed on June 3, 1976.
102 See generally 1-4 CSCE Hearings, supra note 11.
103 In May 1969 the Soviet Action Group for the Defense of Human Rights submitted appeals to the U.N. Commission on Human Rights for an inquiry into this “inhuman form of persecution.” The U.N. Commission ignored their letters. Subsequently, four of the fifteen members were sent to psychiatric hospitals. See S. BLOCH & P. REDDAWAY, supra note 11, at 75-76.
proposed formulating a Universal Code of Ethics for Psychiatrists to address serious ethical considerations particular to psychiatry; they also recommend a corollary Universal Code of the Rights of the Mentally Ill.104 Both codes would involve consultation between professional groups, independent of any governments, and international organizations such as the U.N. Commission on Human Rights and the International Red Cross. A resolution already has been passed by the World Psychiatric Association in August 1977 to establish an international commission of psychiatric experts to investigate complaints of psychiatric misuse anywhere in the world.105

Modifications of the Soviet domestic legal system have been urged by international organizations, professional and nongovernmental. Amnesty International106 and the Moscow Human Rights Committee107 have proposed changes in Soviet law and procedure that are feasible within the socialist system and that would safeguard the rights of dissenters. Such legislative modifications would allow the Soviet Union to comply with Article 2(1) and (2) of the Covenant and the implied thrust of the human rights provisions of the U.N. Charter and the Helsinki Final Act, while not yielding its position in the international arena.108 In many instances the proposed changes expand existing legislative procedures to protect accused persons whose sanity is being questioned.109 Other recommended changes involve instructions for

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104 Id. at 403. There are some encouraging signs that the medical professions are becoming increasingly committed to codifying proscribed behavior. See Doctors in Dilemma Over Torture, The Times (London), Mar. 10, 1978, at 11, col. 1. For a discussion of the rights of the mentally ill in the Soviet Union see V. CHALIDZE, supra note 11, at 247.

105 See note 2 supra. Vladimir Bukovsky also recommended such an investigative professional group. CSCE Hearings, supra note 11, at 28.

106 See 1975 AMNESTY INTERNATIONAL REPORT, supra note 6, at 141-44.

107 See V. CHALIDZE, supra note 11, at 247-90.

108 The Soviet position is that protection of the rights of its citizens is within the exclusive province of the state’s jurisdiction. See Kartashkin, Respect for Human Rights and Non-interference in the Domestic Jurisdiction of the States, 6 SOVETSKOE GOSUDARSTVO I PRAVO 159 (1974) (English summary).

109 For example, Amnesty International proposed the following revisions:

1. Amnesty International RECOMMENDS that Soviet legislation be so revised as to include the following:

a. The following rights, guaranteed for accused persons in Article 46 of the RSFSR Code of Criminal Procedure, should also be preserved for accused persons whose mental health is called into question:

The accused shall have the right to know what he is accused of and to given explanations concerning the accusation presented to him;
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conditions and operating procedures in psychiatric hospitals and the rights of mental patients. General legislative changes obviously would benefit all mental patients, not only dissidents.

Bilateral means as well, have been proposed to pressure the Soviet Union to cease psychiatric suppression of dissidents. In February 1977, Vladimir Bukovsky, testifying before the CSCE Commission on his own experiences in Soviet psychiatric institutions, recommended that "[e]very time . . . trade is carried on, conditions must be set to make the Soviet Union observe its international obligations and covenants." A second bilateral initiative is a persistent campaign of

to present evidence; to submit petitions; to become acquainted with all the materials of the case upon completion of the preliminary investigation or inquiry; to have defense counsel from the moment provided for by Article 47 of the present code; to participate in the judicial examination in the court of first instance; to submit challenges; and to appeal from the actions and decisions of the person conducting the inquiry, the investigator, procurator, and court.

b. The accused person whose mental health is called into question should be informed of the official (legal or medical) decisions affecting his case at every step of the process. All rights of accused persons established by Articles 184 and 185 of the RSFSR Code of Criminal Procedure (relating to the procedure of conducting expert examinations) should be extended to accused persons subjected to forensic psychiatric examination. Specifically, article 184 should be amended to exclude its paragraph 4:

The decree to assign a forensic psychiatric expert examination and the opinion of the experts shall not be announced to the accused if his mental state makes this impossible.

1975 AMNESTY INTERNATIONAL REPORT, supra note 6, at 141.

110 See id. at 143-44.

111 Vladimir Bukovsky has spent eleven years in Soviet prisons and mental hospitals. He was deported from the Soviet Union in December 1976 in exchange for the Chilean Communist leader, Luis Corvalan Lepe.

112 CSCE Hearings, supra note 11, at 34. Although the United States experience with this policy as exemplified by the Jackson-Vanik Amendment leaves mixed reactions as to its effectiveness, Mr. Bukovsky's testimony raised two significant points for consideration. Whether or not the Jackson-Vanik Amendment actually aids the emigration of Jewish dissenters, the United States moral convictions were publicly expressed by this legislative stance. Secondly, Mr. Bukovsky intimated that the Soviet Union was confident that business pressures within the United States would eventually curtail the Jackson-Vanik reign. Thus, all the Soviet Union had to do was wait until capitalist opposition defeated the moral stand against suppression of human rights. If the United States could maintain a consistent policy of linking trade with human rights, the argument runs, the Soviet Union eventually would realize the economic loss of ignoring our moral convictions. Mr. Bukovsky offered new encouragement for an old policy of linkage: "If the Soviet government were certain that this type of policy..."
publicity directed toward stopping suppression of dissidents by psychiatric abuse. Publicity, whether generated by the acts and statements of government officials, professional organizations or nongovernmental groups, has deterred at times Soviet mistreatment of political prisoners. The majority of dissidents who have visited the West vouch of the relative immunity from persecution which such attention and concern from the West provides.

Reports of increasing incidence of unwarranted psychiatric confinement has caused criticism of United States outspokenness as harmful or counterproductive. A more correct observation, however, is that the dissident movement has gained momentum from increased notoriety in

would be consistent, they would have no other choice than to recognize this political reality, and the need to respect international agreements." Id. at 32. For a realistic assessment of the Jackson-Vanik Amendment, see Note, An Interim Analysis of the Effects of the Jackson-Vanik Amendment on Trade and Human Rights: The Romanian Example, 8 LAW & POL. INT'L BUS. 195 (1976).

For example, in 1962 Soviet writer Valery Tarsis was arrested and confined in a psychiatric hospital for writing a piece which criticized life in Russia. The West was shocked at this outrageous penalty. Pressure and publicity were key in effecting Tarsis’ release a year later. See 1975 AMNESTY INTERNATIONAL REPORT, supra note 6, at 101.

Mr. Bukovsky offered this testimony:

But those of us who have lived and struggled in the Soviet Union know perhaps more than anyone else in the West, the psychology, the way of thinking of the Soviet leadership. And if the Soviet leaders become convinced that protests about the persecutions in the Soviet Union are not merely a temporary expedient of the West, but will lead to a consistent and steadfast policy on the part of the West, they will have no choice but to recognize this and they will have no choice but to take this into account in their relations with the United States.

To a certain extent I am here merely as an illustration of just how sensitive the Soviets are to this type of pressure. I do not think that anyone doubts that were it not for the widespread campaign in my defense, I still would be in prison.

CSCE Hearings, supra note 11, at 29.

See, e.g., The Long Haul, ECONOMIST, Feb. 11, 1978, at 12, where it was written:

A leading Czechoslovak dissident has joined the voices urging President Carter to tone down his support for human rights in the communist world. Mr. Jiri Hajek, foreign minister in Mr. Dubcek’s short-lived liberal government of 1968 and now a spokesman for the Charter 77 group, says that western backing for dissidents in the Soviet Union and eastern Europe has made life no easier for them, and could even be leading to a new period of Stalinism. . . .
the West. Since most individual political dissenters have not captured international attention, their confinement in psychiatric hospitals is accomplished easily and quietly in large numbers. An unwavering campaign to decry publicly the misuse of psychiatric treatment, then, should bring pressure on the Soviets to refrain from this practice entirely.

The international legal community in particular has at its disposal an arsenal of Soviet commitments to human rights norms with which to attack publicly this practice. At the least, international human rights agreements discussed above impose minimum standards for protection of fundamental human rights. Despite ideological differences, what has been agreed to as fundamental rights—freedom from torture, cruel and degrading punishment and other non-derogatable provisions of the Covenant—should transcend political, cultural, and social definitions. It is incumbent upon the legal community to safeguard basic norms espoused in the U.N. Charter, the Helsinki Final Act and the Covenant by raising the issue of whether particular instances of psychiatry confinement in the U.S.S.R. violate its international obligations. Further study should be devoted to the sensitive and complex issues involved, including, as proposed above, feasibility studies on means to effect Soviet adherence to international human rights norms.

Protection of fundamental human rights is espoused in the U.N. Charter and the Helsinki Final Act, agreements to which the United States is a party. Protection of civil and political rights and other specifically enumerated rights are provided by the Covenant, a docu-

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116 There is evidence of dissent mounting in many walks of Soviet life. Recently, a Soviet nuclear physicist called a news conference of Western journalists to protect the government's denial of a year's study abroad. See Soviet Physicist, Not a Dissident, Publicly Criticizes Curbs on Travel, N.Y. Times, No. 18, 1977, at 8, col. 3. Soviet workers as well have banded together to protest denial of rights left unprotected by the government, revealing their plight to American correspondents. See Soviet Workers Tell of Hazards of Complaining, N.Y. Times, Dec. 2, 1977, at 1, col. 1.

117 Since 1973, the Soviet authorities have enforced a new policy. Only relatively unknown dissenters are now recommended for psychiatric confinement; well-known dissenters are no longer to be recommended for psychiatric interning. See S. BLOCH & P. REDDAWAY, supra note 11, at 287.

118 The United Nations General Assembly has recently adopted a resolution specifically addressing the protection of the human rights of certain categories of prisoners, among them persons "detained in respect of offences which they committed, or are suspected of having committed, by reason of their political opinions or convictions," adding another international document to the arsenal. G.A. Res. 32/121, U.N. Doc. A/Res/32/121 (1978).
ment which the United States has not yet ratified.\textsuperscript{119} Not being a state party, the United States cannot utilize Article 41 by which Members may cite other state parties for violation of obligations under the Covenant. The legal community should mobilize support for American ratification of the Covenant, thereby enabling the United States to cite the Soviet Union for violating provisions of the Covenant.

Collaboration with the medical profession in drafting codes for both ethics in the practice of psychiatry and the rights of the mentally ill is a practical way in which attorneys might approach this area.\textsuperscript{120} Internationally adopted codes would protect the rights of many patients whether or not they are, in fact, mentally ill and prevent the imposition of unwarranted treatment.

No nation's psychiatric institutions or medical professions are without failings, by design or through human frailty. One way to bolster a campaign to end psychiatric abuse abroad it to protect vigilantly the rights of psychiatric prisoners and patients in United States hospitals. Investigating procedures of commitment and treatment would underscore not only the free exercise of rights to criticize and dissent in the United States, but would emphasize the legal community's continued concern for fundamental freedoms for all.

\textsuperscript{119} President Carter has now sent the Covenant along with three other human rights treaties to the Senate for its advice and consent. Exec. Doc. 75-C.D.E, and F. 95th Cong., 2d Sess., (Feb. 23, 1977).

\textsuperscript{120} Amnesty International has already begun work establishing codes of ethics for jurists, doctors, police, military personnel and others who may become involved in the process of torture.