
Charles Lewis Nier III

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“We declare our right on this earth to be a man, to be a human being, to be respected as a human being, to be given the rights of human beings in this society, on this earth, in this day, which we intend to bring into existence by any means necessary.”

Malcolm X

I. Introduction

In 1959 the image of Malcolm X burst onto white America in a Mike Wallace television documentary entitled: The Hate That Hate Produced. The image of Malcolm X which emerged was the personification of black rage. Such a characterization, however, illustrates and perpetuates the misunderstandings that have surrounded Malcolm X in life and death. In order to gain an understanding of him, it is necessary to realize that he was a constantly evolving individual, particularly in terms of his political ideology. As Malcolm X described it: “[m]y life has always been one of changes.” Such evolution has inevitably led to a series of drastically differing interpretations of his legacy. Perhaps the most significant stage of Malcolm X’s ideological evolution occurred

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3. Id. at 404.
during the last year of his life. It was during the last year of his life that Malcolm X emerged from the racial separatism of Elijah Muhammad's Nation of Islam. He sought to develop a pedagogy designed to achieve a solution to the problems of African-Americans premised upon a Pan-African internationalism through the utilization of the United Nations and international human rights law.

This article examines Malcolm X and his vision of racial justice through application of United Nation's international human rights provisions and institutions. First, the last year of Malcolm X's life is examined to focus on the development and progression of his concept of international human rights in the context of his Pan-African internationalism. Second, this article will examine the history and status of the relevant United Nations human rights provisions and institutions in existence during Malcolm X's life including: the United Nations Charter, the United Nations Charter-Based Institutions, the Universal Declaration of Human Rights, and the Convention on the Prevention and Punishment of the Crime of Genocide. Third, this article analyzes Malcolm X's draft Genocide Petition. Finally, this article discusses the impact and results of Malcolm X's Pan-African crusade for international human rights.

II. Malcolm X and International Human Rights

A. Life and Times of Malcolm X

Malcolm Little was born on May 19, 1925, in Omaha, Nebraska. Earl Little, Malcolm's father, was a president of the Omaha chapter of Marcus Garvey's Universal Negro Improvement Association. Earl Little was killed under suspicious circumstances,

perhaps at the hands of white supremacists, when Malcolm was six years old.\textsuperscript{6} After Mr. Little’s death, Louisa Little, Malcolm’s mother, suffered a mental breakdown and was committed to a state hospital.\textsuperscript{7} Malcolm moved to Boston to live with his half-sister, Ella Collins, and later to New York City.\textsuperscript{8} He soon began his descent into criminality which culminated in February, 1946, when he was sentenced to ten years in prison for burglary.\textsuperscript{9} While in prison, Malcolm discovered Elijah Muhammad and the Nation of Islam.\textsuperscript{10} In August, 1952, Malcolm was paroled from prison and replaced the slavemaster name of Little with the Muslim’s “X”, symbolizing his true African family name that he could never know.\textsuperscript{11} Malcolm X became a minister in the Nation of Islam and adopted the political ideology of Elijah Muhammad.\textsuperscript{12} The first aspect of the Nation of Islam’s philosophy was based on the assertion that the white man was the devil.\textsuperscript{13} According to Malcolm X, the white man’s collective historical

\textsuperscript{6} PERRY, supra note 4, at 11-13. It is questionable whether Earl Little was killed accidentally or murdered. The police report, the coroner’s report, and the death certificate indicate that the death was accidental. \textit{Id.} at 13. Malcolm X asserted that his father was killed by members of a white-hate group, known as the Black Legion, because of his political beliefs and active participation in the Garvey movement. \textit{Id.} at 12-13. Malcolm X, however, may have been uncertain because during a speaking engagement at Michigan State University, in January 1963, he stated that his father’s death had been accidental. JAMES H. CONE, MARTIN & MALCOLM & AMERICA: A DREAM OR A NIGHTMARE 43 (1991).

\textsuperscript{7} CONE, supra note 6, at 44.

\textsuperscript{8} \textit{Id.} at 47-48.

\textsuperscript{9} PERRY, supra note 4, at 98-101. The eight to ten year sentence was far longer than the one typically given to burglars who were sent to Charleston State Prison. \textit{Id.} at 107. In 1945, the only year for which statistics to Charleston State Prison are available, fifty-four men were sentenced to the prison for burglary. \textit{Id.} Just over half received sentences of two to five years. \textit{Id.} The average minimum sentence was four years; the average maximum sentence was five and a half years. \textit{Id.} A possible explanation for the sentence discrepancy was that one of his companions in the crime was Beatrice Caragulian, his white girlfriend. MALCOLM X AND HALEY, supra note 2, at 151.

\textsuperscript{10} Elijah Muhammad was born Elijah Poole on October 10, 1897, in Georgia. CONE, supra note 7, at 49. He left Detroit in 1923 and became a follower of Wallace D. Fard, who founded the first Temple of Islam. \textit{Id.} Fard bestowed the title Muhammad upon Poole and when Fard disappeared in 1934, Elijah Muhammad assumed complete control over the Nation of Islam. \textit{Id.} Muhammad defined the Nation of Islam as “the natural religion for the black man” premised upon themes of anti-white and anti-Christian. \textit{Id.} at 49-51. See generally, C. ERIC LINCOLN, THE BLACK MUSLIMS IN AMERICA (1994 Third Ed.); E LIJAH MUHAMMAD, MESSAGE TO THE BLACK MAN IN AMERICA (1965).

\textsuperscript{11} MALCOLM X AND HALEY, supra note 2, at 196.

\textsuperscript{12} PERRY, supra note 4, at 153.

\textsuperscript{13} CONE, supra note 6 at 97, 103.
record revealed that the white man acted like a devil toward the non-white man.\textsuperscript{14} Upon establishing the reasons for the black man's current condition, Malcolm X addressed the solutions to these problems premised upon four elements: freedom, unity, love, and knowledge.\textsuperscript{15} He stressed the need for blacks to gain knowledge and develop a sense of pride in their cultural roots in Africa.\textsuperscript{16} This in turn led to Malcolm X's points of self-love and black unity, as a methodology to encourage the black man to stop committing self-inflicted genocide though drugs, alcohol, and crime.\textsuperscript{17} Finally, Malcolm X concluded that it was necessary for blacks to physically separate from whites.\textsuperscript{18}

Under the stewardship of Malcolm X, the Nation of Islam witnessed an unprecedented increase in its influence upon African Americans due in large measure to its growth in members and temples.\textsuperscript{19} In conjunction with the Nation of Islam's growth, Malcolm X rose rapidly through its hierarchy and in late 1963 he was given the title "National Minister."\textsuperscript{20} Underlying the unqualified success of the Nation of Islam, problems and differences arose between Malcolm X and Mr. Muhammad.\textsuperscript{21} Malcolm X had incorporated "the political concept of 'black nationalism' into the Black Muslim movement," which was "essentially religious in nature when Malcolm became a member."\textsuperscript{22} Mr. Muhammad did not perceive the Nation of Islam as a political organization and resented it being portrayed as such.\textsuperscript{23} Further, Malcolm X was informed that Mr. Muhammad was guilty of adultery with a succession of his personal secretaries, a grave offense within the

\begin{itemize}
\item \textsuperscript{14} \textit{Id.} at 97.
\item \textsuperscript{15} \textit{Id.} at 105.
\item \textsuperscript{16} \textit{Id.} at 105-106.
\item \textsuperscript{17} \textit{Id.} at 107.
\item \textsuperscript{18} \textsc{Cone, supra} note 6, at 108-110.
\item \textsuperscript{19} \textsc{William W. Sales, Jr., From Civil Rights To Black Liberation: Malcolm X and the Organization of Afro-American Unity} 68 (1994).
\item \textsuperscript{20} \textsc{Malcolm X and Haley, supra} note 2, at 293.
\item \textsuperscript{21} \textsc{Cone, supra} note 6, at 186-190.
\item \textsuperscript{22} \textit{Id.} at 186 (citing \textsc{N.Y. Times}, Nov. 8, 1964, at 48.) Muhammad consistently refused to allow Malcolm X to involve the Nation of Islam in the civil rights movement. \textit{Id.} at 186. Muhammad believed that "God's solution" was the only answer to the injustices that whites had inflicted upon African-Americans. \textit{Id.} at 187. Muhammad prophesied 1970 as the year of reckoning when Allah would bring the rule of the white race to an end and blacks would inherit the Earth. \textit{Id.}
\item \textsuperscript{23} \textsc{Cone, supra} note 6, at 186-187.
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Nation of Islam. These differences eventually culminated in
Malcolm X’s separation from the Nation of Islam. He formally
left the Nation of Islam on March 8, 1964.

B. The Origins of Malcolm’s United Nations Plan

Following his split with the Nation of Islam, Malcolm X
rejected Elijah Muhammad’s political ideology. Subsequently,
Malcolm X’s political viewpoints were dominated by two themes:
a developing Pan-African perspective centered upon his efforts to
establish a relationship between African-Americans and Africans
as a liberating pedagogy and his efforts to utilize this relationship
as a means to elevate the black liberation struggle within the
United States from the civil rights level to the international human
rights level. As a consequence, an examination of the last years of
Malcolm X is necessary to reveal the extent of his evolution from
racial separatist to international human rights advocate.

In March, 1964, Malcolm X announced his plans to establish
the Muslim Mosque, Inc., whose purpose was “to challenge the
American black man to gain his human rights, and to cure his
mental, spiritual, economic, and political sicknesses.” During a
speech at Harvard University on March 8, 1964, Malcolm X
elaborated on his ideological conception of human rights. He
explained that the so-called “Negro” needed to forget the civil
rights plea and expand the struggle to a human rights level which
would allow African-Americans to take the struggle to the United
Nations. Malcolm X explained: “the day the black man turns
from civil rights to human rights, he will take his case into the halls
of the United Nations in the same manner as the people in Angola,
whose human rights have been violated by the Portuguese in South
Africa.” In conjunction with the elevation of international
human rights, he promoted a Pan-African viewpoint that encour-

24. MALCOLM X AND HALEY, supra note 2, at 299. Malcolm X explained that
any Muslim guilty of adultery was summarily ousted in disgrace” from the Nation
of Islam. Id.
25. CONE, supra note 6, at 183.
26. Id.
27. Id.
28. MALCOLM X AND HALEY, supra note 2, at 320.
29. Id. at 143.
30. Id. at 143-144.
aged African-Americans to seek the help of "our brothers in Africa who have won their independence."\textsuperscript{31}

On April 3, 1964, Malcolm X delivered one of his most famous speeches, "The Ballot or the Bullet," in which he elaborated on his earlier statements.\textsuperscript{32} First, Malcolm X believed the struggle needed to be expanded from civil rights to human rights in order to remove the issue from the domestic jurisdiction of the United States.\textsuperscript{33} Second, he explained that the Negro problem had never been brought to the United Nations because a conspiracy existed within the United States.\textsuperscript{34} Malcolm X elaborated: "the old, tricky, blue-eyed liberal . . . keep you wrapped up in civil rights. And you spend so much time barking up the civil-rights tree, you don't even know there's a human rights-tree on the same floor."\textsuperscript{35} Third, he revealed his ideological conception of human rights as natural rights applicable on a universal basis. He stated: "[h]uman rights are something you were born with. Human rights are your God-given rights. Human rights are the rights that are recognized by all nations of this earth. And any time anyone violates your human rights, you can take them to the world court."\textsuperscript{36} Finally, Malcolm X felt that if the struggle was internationalized, Africa, Asia, and Latin America would all throw their weight behind the struggle.\textsuperscript{37} Thus, Malcolm X's liberating paradigm centered upon his intention to utilize the United Nations as a Pan-African forum to illustrate the international human rights violations perpetrated by the United States upon its citizens of color.

C. Hajji and Africa

On April 19, 1964, Malcolm X departed to Mecca to make his Hajji, Islam's required holy pilgrimage to Mecca, followed by a tour of Africa, including Egypt, Nigeria, Ghana, Morocco, and Algeria.\textsuperscript{38} During the course of his travels, Malcolm X met with several heads of state, including Ghana's Kwame Nkrumah, the ambassadors of China, Algeria, and Cuba, and representatives of

\textsuperscript{31} \textit{Id.} at 144.
\textsuperscript{32} Malcolm X, The Ballot or the Bullet (April 3, 1964), in MALCOLM X SPEAKS, SELECTED SPEECHES AND STATEMENTS 23-44 (George Breitman ed. 1965).
\textsuperscript{33} \textit{Id.} at 34.
\textsuperscript{34} \textit{Id.}
\textsuperscript{35} \textit{Id.}
\textsuperscript{36} \textit{Id.} at 35.
\textsuperscript{37} Malcolm X, The Ballot or the Bullet, \textit{supra} note 32, at 35.
\textsuperscript{38} \textit{CONE}, \textit{supra} note 6, at 204-205.
many African liberation organizations. During the course of his
discussions, Malcolm X attempted to deconstruct the African
perception of Black Americans as United States citizens, positing
an identity as peoples subjected to racial oppression and colonized
by white people. Central to this construct was the theme of Pan-
Africanism. He explained that he tried to impress "upon [the
Africans] that 22 million of our people here in America consider
ourselves inseparably linked with them, that our origin is the same
and our destiny is the same, and that we have been kept apart now
for too long."

Malcolm X elaborated on the relationship between African-
Americans and Africans when he spoke in Lagos at Ibadann
University:

I urged that Africa's independent nations needed to see the
necessity of helping to bring the Afro-Americans' case before
the United Nations. I said that just as the American Jew is in
political, economic, and cultural harmony with world Jewry, I
was convinced that it was time for all Afro-Americans to join
the world's Pan-Africanists. I said that physically we Afro-
Americans might remain in America, fighting for our Constitu-
tional rights, but that philosophically and culturally we Afro-
Americans badly needed to "return" to Africa—and to develop
a working unity in the framework of Pan-Africanism.

In conjunction with his Pan-African efforts, Malcolm X explained
the racial situation in the United States and attempted to establish
alliances with the various African nations to gain their support and
cooporation in his attempt to bring the United States before the

39. SALES, supra note 19, at 101-104. In Ghana, Malcolm received a private
audience with Prime Minister Kwame Nkrumah, where he discussed his United
Nations plan. PETER GOLDMAN, THE DEATH AND LIFE OF MALCOLM X 177
(1973). Julian Mayfield, a leader of a colony of American black expatriates in
Ghana, felt it was unlikely that any progress was made as Ghana was engulfed in
serious economic difficulties at the time. Id. Mayfield felt that while Nkrumah
may have been sympathetic, the United States was too important for Ghana to
offend. Id. Kwame Nkrumah was an African revolutionary who played a
dominant role in establishing the political independence of Ghana. KAFI BUENOR
HADJOR, NKRUMAH AND GHANA: THE LEADING DILEMMA OF POST-COLONIAL
POWER 1 (1988). See also, KWAME NKRUMAH, THE AUTOBIOGRAPHY OF
KWAME NKRUMAH (1957); HENERY BRETTON, THE RISE AND FALL OF KWAME
NKRUMAH (1966).

40. SALES, supra note 19, at 101.

41. Malcolm X, The Homecoming Rally of the OAAU (Nov. 29, 1964), supra
note 1, at 145.

42. MALCOLM X AND HALEY, supra note 2, at 356.
United Nations for violating the “human rights of 22 million African Americans.”  

D. Malcolm’s Return to the United States

Upon his return to the United States on May 21, 1964, Malcolm X held the largest press conference of his career and boldly stated:

[the American black man needed to recognize that he had a strong, airtight case to take the United States before the United Nations on a formal accusation of “denial of human rights”—and that if Angola and South Africa were precedent cases, then there would be no easy way that the U.S. could escape being censured, right on its own home ground.]

Malcolm X claimed that he had pledges of support for the case against the United States and it would be prepared for submission later in the year.

In order to facilitate his Pan-African internationalism and United Nations plan, Malcolm X established the Organization of Afro-American Unity (OAAU), patterned after the Organization of African Unity (OAU). He sought to have the OAAU accredited United Nations observer status which would allow the organization to participate in the United Nations as a legitimate representative of a national liberation movement. On June 24, 1964, Malcolm X made public a letter sent to local and national leaders of civil and human rights organizations and to representatives of African nations in the United States. The letter announced the formation of the OAAU, designed “to unite Afro-

43. SALES, supra note 19, at 101 (citing Malcolm X, We Are All Blood Brothers, LIBERATOR, July 1964, at 5).
44. MALCOLM X AND HALEY, supra note 2, at 367.
47. SALES, supra note 19, at 91 (citing Interview with Benjamin Karim, (Feb. 15-16, 1988)).
Americans and their organizations around a non-religious and non-sectarian constructive purpose for human rights." 49

Several days later during the OAAU founding rally, Malcolm X stated that one of the first steps of the OAAU was to work with all other leaders and organizations interested in a program to bring the African-American struggle to the United Nations. 50 Malcolm X reiterated that it was essential to internationalize the problem by "taking advantage of the Universal Declaration of Human Rights, the United Nations Charter on Human Rights, and on that ground bring it into the UN before a world body wherein we can indict Uncle Sam for the continued criminal injustices that our people experience in this government." 51

On July 5, 1964, at the second rally of the OAAU, Malcolm X explained that world pressure must be brought to bear upon the United States: "[y]ou and I have to make it a world problem, make the world aware that there'll be no peace on this earth as long as our human rights are being violated in America. Then the world will have to step in and try and see that our human rights are respected and recognized." 52 Thus, with his new organization and agenda established, Malcolm X departed for Africa on July 9, 1964, to continue his efforts to gain support for his United Nations plan. 53

E. Back to Africa

Malcolm X intended to pursue his United Nations plan by attending the second meeting of the Organization of African Unity in Cairo. 54 Malcolm X, although not permitted to address the

49: Id. Martin Luther King Jr., with the assistance of his legal counsel Clarence Jones, who was also a friend of Malcolm X, tried to arrange a meeting between them "as soon as possible on the idea of getting the human rights declaration" of the United Nations to expose America's treatment of its black citizens. CONE, supra note 6, at 207 (citing Malcolm X Little: FBI files 105-8999-1-25a, June 27, 1964). While Malcolm X expressed an interest and tentatively scheduled the meeting, it never took place. Id.


51. Id.

52. Malcolm X, The Second Rally of the OAAU (July 5, 1964), supra note 1, at 86.

53. CONE, supra note 6, at 208.

54. Id. "The OAU conference was held in Cairo on July 17-21, and was attended by nearly all the heads of the thirty-four member states." Malcolm X, Appeal to African Heads of State, supra note 32, at 72. President Gamal Abdel Nasser of the United Arab Republic gave the opening address and while reviewing the years events, praised the United States for the Civil Rights Act of 1964. Id.
OAU, was given the status of an accredited observer to the OAU conference. In this capacity, he submitted an eight-page document to the delegates appealing to the various heads of state for support.

Malcolm X’s document stressed the Pan-African relationship between African-Americans and Africans. He stated: “[o]ur problem is your problem. It is not a Negro problem, nor an American problem. This is a world problem; a problem for humanity. It is not a problem of civil rights but a problem of human rights.” Malcolm X requested the assistance of the independent African states to help bring the problem before the United Nations on the grounds “that the United States government is morally incapable of protecting the lives and the property of 22 million African-Americans. And on the grounds that our deteriorating plight is definitely becoming a threat to world peace.” He concluded: “[i]n the interests of world peace and security, we beseech the heads of the independent African states to recommend an immediate investigation into our problems by the United Nations Commission on Human Rights.”

Malcolm X hoped the African heads of state would publicly endorse the substance of his position in the OAU’s resolutions. Instead, for his efforts, Malcolm X was moderately rewarded with a carefully worded declaration acknowledging “with satisfaction” the United States passage of the 1964 Civil Rights Bill. The “satisfaction” was tempered with a statement that the OAU Conference “was deeply disturbed, however, by continuing manifestations of racial bigotry and racial oppression against Negro citizens of the United States of America . . . the existence of discriminatory practices is a matter of deep concern to the member states of the OAU.” In conclusion, the resolution urged the United States government to “intensify its efforts to ensure the total elimination of all forms of discrimination based on race, color, or ethnic origin.”

55. PERRY, supra note 4, at 314.
57. Id. at 75.
58. Id. at 76.
59. Id. at 77.
60. SALES, supra note 19, at 123.
61. Id.
62. Id.
63. Id. (citing Interview by Milton Henry with Malcolm X, in Cairo, Egypt). The statement was substantially similar in thought and tone to a resolution passed
Although the resolution was not an endorsement of Malcolm X’s United Nations plan, he accepted it and was generally satisfied with the outcome of his activities of the conference.\textsuperscript{64} He claimed that several African nations officially promised to support any effort to bring the problem before the United Nations Commission on Human Rights.\textsuperscript{65} In addition, Malcolm X stated that “several of them [African countries] promised officially that, come the next session of the UN, any effort on our part to bring our problem before the UN . . . will get support and help from them. They will assist us in showing us how to help bring it up legally. So I am very, very happy over the whole result of my trip here.”\textsuperscript{66}

Following the OAU meeting, Malcolm X remained in Cairo for two months, followed by a tour of Africa and Europe, including Egypt, Saudi Arabia, Kuwait, Lebanon, Khartoum, Ethiopia, Kenya, Tanzania, Nigeria, Ghana, Liberia, Guinea, Senegal, Algeria, Switzerland, France and Britain.\textsuperscript{67} While in Kenya, Malcolm X met Student Nonviolent Coordinating Committee (SNCC) chairman John Lewis.\textsuperscript{68} Lewis recalled that much of the discussion centered around Malcolm’s plan to bring the “case of the African-American before the General Assembly of the United Nations and hold the United States in violation of the Human Rights Charter.”\textsuperscript{69}

Throughout the tours of Africa, Malcolm X without Malcolm X’s lobbying at the first OAU summit the year before.

\textsuperscript{64} Malcolm X, Appeal to African Heads of State, supra note 32, at 84.
\textsuperscript{65} Id.
\textsuperscript{66} Id. Williams Attwood, the United States Ambassador to Kenya, disputed the extent of Malcolm X’s support among the African nations, explaining: “[h]e would get some vague promises from some of them—‘If So-and-so does, we might.’ But in the crunch what they cared about was staying in power. Except for a few intellectuals, they didn’t really care that much about what happened to the American Negro—they considered him American.” Goldman, supra note 45, at 217.
\textsuperscript{67} Goldman, supra note 45, at 209. While traveling, the Islamic World League made Malcolm X an official representative and the rector of Al-Azhar University certified his Islamic credentials. Perry, supra note 4, at 322.
\textsuperscript{68} Clayborne Carson, Malcolm X, The FBI File 39-40 (David Gallen ed. 1991). John Lewis and Donald Harris, in a report regarding their African activities stated that “Malcolm’s impact on Africa was just fantastic. In every country he was known and served as the main criteria for categorizing other Afro-Americans and their political views.” Malcolm X, supra note 32, at 85. John Lewis stated, later when discussing his impression of Malcolm X, that “more than any other single personality [he had been] able to articulate the aspirations, bitterness, and frustrations of the Negro people [forming] a link between Africa and the Civil Rights movement in this country.” Clayborne Carson, In Struggle: SNCC and The Black Awakening 136 (1985).
\textsuperscript{69} Carson, Malcolm X, The FBI File, supra note 68, at 40.
was treated graciously, often speaking with the heads of state and addressing the parliaments in a majority of the countries, searching for additional support for his United Nations project and seeking financial assistance for his organizations.\textsuperscript{70}

On his return to the United States from Africa, Malcolm X stopped and spoke in Paris, France, expanding his Pan-African internationalism to include a global dimension.\textsuperscript{71} He explained that it was necessary to obtain assistance from any independent state, be it an African nation, Asian nation or European nation.\textsuperscript{72} He realized he would be placing "someone on the spot," but felt it would be a "sin" if not one country aided the African-Americans in placing their problem before the United Nations.\textsuperscript{73}

\textit{F. The Last Days of Malcolm X}

After his return to the United States on November 24, 1964, Malcolm X's speeches and statements elaborated on his Pan-African internationalism.\textsuperscript{74} He stressed the general need for international unity in order to combat the evils that existed within the United States.\textsuperscript{75} He explained that if international unity was accomplished then African-Americans would be in position to condemn the United States as they would no longer be in the minority but rather would become the majority.\textsuperscript{76} In this context, Malcolm X envisioned the purpose of the OAAU as a means "to give us direct links, direct contact, direct communication and cooperation with our brothers and sisters all over the earth."\textsuperscript{77}

On November 29, 1964, Malcolm X explained that in the following weeks he would elaborate on the type of support he had received for his United Nations plan.\textsuperscript{78} He stated: "[y]ou and I must take this government before a world forum and show the world that this government has absolutely failed in its duty toward us."\textsuperscript{79} In addition, in a speech at a Harvard Law School Forum
on December 16, 1964, Malcolm X briefly mentioned that the OAAU was trying to get the problem before the United Nations and it was willing to cooperate with any civil rights organization to achieve this goal.80

Malcolm X mentioned the United Nations topic for the last time on February 16, 1965, just days before his death.81 He explained the difference between civil rights and human rights:

as long as you call it civil rights your only allies can be the people in the next community, many of whom are responsible for your grievance. But when you call it human rights it becomes international. And then you can take your troubles to the World Court. You can take them before the world. And anybody anywhere on this earth can become your ally.82

Malcolm X concluded that the OAAU must come up with a program “that would make our grievances international and make the world see that our problem was no longer a Negro problem or an American problem, but a human problem. And a problem which should be attacked by all elements of humanity.”83

On February 21, 1965, Malcolm X took the podium as he prepared to announce a basic unity plan to incorporate a reorganization of the OAAU and perhaps reveal where he was headed with the United Nations project.84 As Malcolm X began to speak, he was cut down by a hail of bullets from a group of assassins.85 Thus, Malcolm X had fulfilled the words he had uttered just days before: “[i]t’s a time for martyrs now, and if I’m to be one, it will be in the cause of brotherhood. That’s the only thing that can save this country.”86

82. Id. at 181.
83. Id.
84. GOLDMAN, supra note 45, at 244-245.
85. MALCOLM X AND HALEY, supra note 2, at 434-436.
86. Id. at 429. Thomas Hagan, Norman 5X Butler and Thomas 15X Johnson were convicted of first degree murder and sentenced to at least 20 years in prison for the assassination of Malcolm X. Nevertheless, the assassination is surrounded by a great deal of speculation and controversy. For example, the Spark, an Accra journal which declares itself to be “A Socialist Weekly of the African Revolution,” accused the American ruling class of assassinating Malcolm X, because nine African states, influenced by him, were to raise the question of American race discrimination in the United Nations. RUPERT EMERSON AND MARTIN KILSON, THE AMERICAN DILEMMA IN A CHANGING WORLD: THE RISE OF AFRICA AND
Based on Malcolm X's speeches and statements, it is evident that he had an excellent understanding of the United Nations institutions and human rights documents. Malcolm X intended to utilize the United Nations Charter, the Universal Declaration of Human Rights, and Genocide Convention as the foundation for his charges against the United States. Consequently, the history and status of the human rights institutions and instruments, in existence during Malcolm X's life, must be examined to determine the feasibility of his United Nations plan.

III. United Nations Charter

In the wake of the carnage of World War II and the Holocaust, many world leaders concluded that the war was caused by the "denial of democratic principles of the dignity, equality, and mutual respect for men, and by the propagation, in their place, through ignorance and prejudice, of the doctrine of the inequality of men and races."\(^87\) To prevent the occurrence of such a catastrophe in the future, hundreds of representatives from over fifty countries convened at the San Francisco Conference.\(^88\) The United Nations Charter, the document which emerged from the San Francisco Conference, established a new world order premised upon the principles of peace and international human rights. The Charter established the United Nations and represents the basic documentary origin of modern international human rights.\(^89\)

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\(^89\) The United States ratified the Charter and it is subsequently bound by its provisions. U.N. CHARTER. The United States courts, however, have held that the provisions of the Charter are not self-executing and require implementing legislation to constitute a rule of law. See Sei Fujii v. State, 217 P.2d 481 (Cal.
In Article 1(3), the Charter proclaims, as a goal of the United Nations, the achievement of “international co-operation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.” This basic human rights pronouncement is elaborated upon in Article 55 which states:

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

a) higher standards of living, full employment, and conditions of economic and social progress and development;
b) solutions of international economic, social, health, and related problems; and international cultural and educational co-operation; and
c) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.

Article 56 requires that “[a]ll Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55.” Thus, Article 1(3) and Article 55 contain uncompromising non-discrimination provisions intended to ensure that all member nations promote human rights “without distinction as to race, sex, language, or religion.”


90. U.N. CHARTER art. 1, para 3.
91. Id. at art. 55.
92. Id. at art. 56.
93. Id. at art. 1, para 3 and art. 55.
While the language of the United Nations Charter provided uncompromising language regarding racial equality and non-discrimination, such guarantees resulted in a conflict between international law and national law. As Paul Lauren explained: "[f]ew states were willing to sacrifice elements of their sovereignty for the sake of human rights by authorizing the international community to intervene in their own internal affairs." As a consequence, this conflict resulted in the inclusion in the Charter of Article 2, paragraph 7 which stated: "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement . . . ."

In accordance with the domestic jurisdiction clause, the United Nations Charter failed to provide a direct enforcement mechanism for its human rights provisions. Several paragraphs, however, relate to indirect methods of enforcement. Article 13(1) grants the General Assembly the power to "initiate studies and make recommendations for the purpose of . . . promoting international co-operation in the economic, social, cultural, educational, and health fields, and assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex,

94. Lauren, supra note 87, at 19.
95. Id.
96. U.N. CHARTER art. 2 para 7. United States Secretary of State, John Foster Dulles, questioned the other members of the American delegation as to whether the human rights and non-discrimination provisions might not create difficulties for "the Negro problem in the South." Lauren, supra note 87, at 19 (citing Minutes of the Fifty-First Meeting of the U.S. Delegation, May 23, 1945, in U.S. State Dept., FRUS, 1945, 1:855). Mr. Dulles was informed by other members of the delegation that any action would be precluded by the domestic jurisdiction clause. Id. "During hearings in Washington, Senator Eugene Millikan asked: Would the investigation of racial discrimination be within the jurisdiction of the body [the United Nations]?" Lauren, supra note 87, at 20 (citing Discussion of 10 July 1945, The Charter of the United Nations: Hearings Before the Senate Committee on Foreign Relations, 79th Cong. 311 (1945)). Senator Vandenberg replied that "the domestic jurisdiction clause would prohibit such an action, would prevent any compulsion or enforcement whatever, and would retain for the various states the right either to accept or reject even recommendations for a change in behavior." Id. W.E.B. DuBois stated, in his testimony before the Senate Committee on Foreign Relations, that this position was subject to criticism on the grounds that: "The proposed Charter should, therefore, make clear and unequivocal the straightforward stand of the civilized world for race equality, and the universal application of the democratic way of life, not simply as philanthropy and justice, but to save human civilization from suicide. What was true of the United States in the past is true of world civilization today—we cannot exist half slave and half free." Id.
language, or religion."97 The Charter also grants the Economic and Social Council (ECOSOC) the power to "make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all."98 In addition, Article 68 requires the ECOSOC to "set up commissions in economic and social fields and for the promotion of human rights."99

Despite the domestic jurisdiction clause and lack of direct enforcement mechanism, the United Nations Charter represented an international declaration of rights which established that a state's treatment of its nationals was no longer a matter solely for its domestic jurisdiction, but rather a matter of international concern.100 In addition, the Charter created the basis for the development of international human rights law by facilitating the growth of United Nations Charter-based institutions and the International Bill of Rights. Thus, the United Nations Charter, in terms of human rights, is a general document whose greatest contribution was the stimulus it gave to a further expansion of international human rights.

IV. United Nations Charter-Based Institutions

A. The United Nations Commission on Human Rights

Article 68 of the United Nations Charter required ECOSOC to establish a commission for the promotion of human rights.101 In 1946, in accordance with the Charter mandate, ECOSOC created the United Nations Commission on Human Rights.102 The Commission was empowered to submit proposals, recommendations, and reports to ECOSOC dealing with the international human rights instruments, protection of minorities, prevention of

98. Id. at art. 62, para 2. Article 61 of the United Nations Charter established ECOSOC consisting of fifty-four Members of the United Nations elected by the General Assembly. Id. at art. 61. Article 62 stated ECOSOC "may make or initiate studies and reports with respect to international economic, social, cultural, educational, health, and related matters and may make recommendations with respect to any such matters to the General Assembly, to the Members of the United Nations, and to the specialized agencies concerned." Id. at art. 62, para 1.
99. U.N. CHARTER art. 68.
100. Newman and Weissbrodt, supra note 89, at 599.
101. U.N. CHARTER art. 68.
discrimination, and any other matter concerning human rights.\textsuperscript{103} ECOSOC determined that the member states should name their own Commission representatives rather than individual experts.\textsuperscript{104} As a consequence, the representatives serve in a governmental capacity with limited personal discretion.\textsuperscript{105}

During the drafting of the Charter of the United Nations at the San Francisco Conference, the delegates determined that an International Bill of Rights was needed to supplement the Charter's limited human rights references.\textsuperscript{106} Due to the time constraints and the necessity of detailed consideration in drafting such a document, the United Nations promised that it would commence the drafting of the International Bill of Human Rights as one of its first items of business.\textsuperscript{107} The Commission was assigned the task and sought to create a declaration of human rights that would be followed by later documents with more precise obligations.\textsuperscript{108}

In 1947, the newly sanctioned United Nations Commission on Human Rights determined that it had "no power to take any action in regard to any complaints regarding human rights."\textsuperscript{109} Despite numerous attempts between 1947 and 1959 to challenge the "no power" rule relating to individual complaints, none achieved success.\textsuperscript{110} The "no power" rule was reaffirmed with Resolution 728F of July 30, 1959.\textsuperscript{111} Resolution 728F, however, provided a

\begin{itemize}
  \item 103. ECOSOC Res. 5(I) (1946).
  \item 104. Tolley, supra note 102, at 28-33.
  \item 105. Id.
  \item 107. Louis B. Sohn, \textit{The New International Law: Protection of the Rights of Individuals Rather than States} 32 \textsc{Am. U. L. Rev} 14-15 (1982). In his closing speech to the San Francisco Conference, President Truman stated that under the Charter "we have good reason to expect the framing of an international bill of rights, acceptable to all the nations involved. That bill of rights will be as much a part of international life as our own Bill of Rights is a part of our constitution." \textsc{United Nations Information Organizations, Documents of the United Nations Conference on International Organization} Vol. 1, p. 717 (1945).
  \item 108. Sohn, supra note 107, at 18-19.
  \item 110. \textsc{Newman and Weissbrodt, supra} note 89, at 109.
\end{itemize}
confidential list of individual complaints accusing governments of violating human rights to be privately viewed by the Commission.\textsuperscript{112}

\textsuperscript{112} \textit{Id.} In 1967, ECOSOC, in Resolution 1235, granted the Commission the necessary power to review the communications listed pursuant to 728F. \textsc{Newman and Weissbrodt, supra} note 89, at 111-113 (citing E.S.C. Res. 1235 (XLII), U.N. ESCOR, 42nd Sess., Supp. No. 1, at 17-18, U.N. Doc. E/4393 (1967)). Resolution 1235 authorized the Commission "to examine information relevant to gross violations of human rights and fundamental freedoms, as exemplified by the policy of apartheid as practiced in the Republic of South Africa ... and to racial discrimination as practiced notably in Southern Rhodesia, contained in the communications listed ... pursuant to Economic and Social Council Resolution 728F." \textit{Id.} at 112. Resolution 1235 also authorized the Commission to "make a thorough study of situations which reveal a consistent pattern of violations of human rights ... , with recommendations thereon, to the Economic and Social Council." \textit{Id.}

In 1970, Resolution 1503 was adopted by ECOSOC to provide a medium for consideration of individual complaints listed under 728F. \textsc{Newman and Weissbrodt, supra} note 89, at 113-115 (citing E.S.C. Res. 1503 (XLVIII), U.N. ESCOR, 48th Sess., Supp. No. 1A, at 8, U.N. Doc. E/4832 (1970)). The resolution established a three-tier screening process by a working group of the Sub-Commission, the whole Sub-Commission, and the Commission. \textit{Id.} at 113. The procedure begins with the Sub-Commission appointing a working group to review "all communications, including replies of Governments thereon, received by the Secretary-General under Council Resolution 728F ... with a view to bringing to the attention of the Sub-Commission those communications, together with replies of Governments, if any, which appear to reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms." \textit{Id.} at 114 (citing E.S.C. Res. 1503 (XLVIII), U.N. ESCOR, 48th Sess., Supp. No. 1A, at 8, U.N. Doc. E/4832 (1970)). If three members of the working group decide that a consistent pattern of gross violations exists, it then forwards the communication to the Sub-Commission. \textit{Id.} at 119. The Sub-Commission reviews the communications and any government replies in "[a] private meetin[g] ... with a view to determining whether to refer to the Commission on Human Rights particular situations which appear to reveal a consistent pattern of gross and reliably attested violation of human rights requiring consideration by the Commission." \textit{Id.} at 114 (citing E.S.C. Res. 1503 (XLVIII), U.N. ESCOR, 48th Sess., Supp. No. 1A, at 8, U.N. Doc. E/4832 (1970)).

After the Sub-Commission forwards the situations which merit further consideration, the Commission then forms a working group to consider the possibility of a human rights violation. Nigel Rodley, \textit{United Nations Non-Treaty Procedures for Dealing with Human Rights Violations, in} \textsc{Guide to International Human Rights Practice} 60, 64-66 (Hurst Hannum ed., 2d ed. 1992). The working group reviews the situation and makes a recommendation to the Commission in a confidential written report and communicates these proposals to the state involved. \textit{Id.} The Commission examines the potential human rights violations in a closed session to determine the proper course of action which may include: a study, an investigation by an ad hoc committee, written questions to be posed to the governments concerned, the sending of a member of the Commission to make direct contacts with the government, the sending of a United Nations staff person to the country, keeping the case under consideration, dismissal, or some other approach. \textsc{Newman and Weissbrodt, supra} note 89, at 119-120. Following the Commission's closed session, the Chairman publicly identifies the countries that were considered under the Resolution 1503 procedure. Rodley,
The Commission's decision to focus on drafting human rights instruments in conjunction with its "no power" decision effectively undermined any type of enforcement actions relating to human rights violations. As a result, the Commission's activities during the era of Malcolm X's United Nations plan were dominated by the drafting of the Universal Declaration of Human Rights (1948), International Covenant of Civil and Political Rights (1966), and the International Covenant on Economic, Social and Cultural Rights (1966) and promotional activities including: educational seminars, research fellowships, studies and country reports.

B. The United Nations Sub-Commission on Prevention of Discrimination and The Protection of Minorities

To aid the Commission in fulfilling its objectives, the Sub-Commission on Prevention of Discrimination and Protection of Minorities was created by ECOSOC in 1947. The Sub-Com-
mission's purpose is to make recommendations to the Commission "concerning the prevention of discrimination and the protection of racial, national, religious and linguistic minorities." In addition, the Sub-Commission is empowered "to perform any other functions which may be entrusted to it by the Economic and Social Council or the Commission on Human Rights." The Sub-Commission is composed of independent experts, elected by the Commission on Human Rights in consultation with the Secretary General, and subject to the consent of the expert's government. Its framers intended it to be a non-political body of individual experts serving in their individual capacities. In practice, since the governments control the elections through their representatives on the Commission on Human Rights, the members generally take positions favorable to their governments.

After ECOSOC and the Commission on Human Rights rejected several of the Sub-Commission’s efforts to fulfill its

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119. ECOSOC Res. 9(II), 1946.


122. Humphrey, supra note 120, at 871.
mandate relating to the protection of minorities, it concentrated its efforts on the second part of its mandate: the prevention of discrimination.\textsuperscript{123} In 1953, the Sub-Commission proposed a series of studies of discrimination in various fields, beginning with a study in education.\textsuperscript{124} After receiving approval from the Commission, the Sub-Commission adopted a resolution explaining that the study was to cover discrimination on a global basis on all grounds condemned by the Universal Declaration of Human Rights with special attention to be given general patterns of discrimination.\textsuperscript{125} The sources of information which the study could utilize included: the Member states, specialized agencies, the Secretariat and non-government organizations in consultative status with ECOSOC.\textsuperscript{126}

Consequently, the Sub-Commission’s main function was to prepare reports in the area of discrimination designed to form a basis for recommendations and to educate world opinion, with no authority to take independent action unless duly authorized.\textsuperscript{127}


\textsuperscript{124} Humphrey, \textit{supra} note 120, at 878-879.

\textsuperscript{125} \textit{Id.}

\textsuperscript{126} \textit{Id.} The Sub-Commission’s experience established that the only information of a de facto as opposed to a de jure nature came from non-governmental organizations, a fact which has created considerably controversy. \textit{Id.}

\textsuperscript{127} Haver, \textit{supra} note 118, at 103-104 (citing \textit{Report of the Fourth Session}, U.N. ESCOR, U.N. Commission on Human Rights, 4th Sess., No. 3, para 19,
The Sub-Commission prepared a series of studies on discrimination including: religious rights and practices; \(^{128}\) discrimination in political rights; \(^{129}\) the right of persons to leave any country, including their own, and return to their country; \(^{130}\) discrimination against persons born out of wedlock; \(^{131}\) equality in the administration of justice; \(^{132}\) and racial discrimination in political, economic, social and cultural fields. \(^{133}\) In addition, during this period, the Sub-Commission devoted resources to the drafting of declarations and conventions at the request of the General Assembly, including declarations on the elimination of all forms of racial discrimination and religious intolerance. \(^{134}\)

V. Universal Declaration of Human Rights

The Universal Declaration of Human Rights was adopted by the United Nations General Assembly in December, 1948. \(^{135}\) The
preamble to the Declaration explains that the rights it enumerates are "a common standard of achievement for all peoples and of all nations" and "every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance." 136

The Universal Declaration is premised upon themes of equality and non-discrimination. Article 1 establishes that "[a]ll human beings are born free and equal in dignity and rights." 137 Further, all persons are entitled to the enumerated rights "without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other opinion." 138 The Universal Declaration establishes a series of human rights divided into two broad categories: civil and political rights and economic, social and cultural rights. 139

AND HUMAN RIGHTS 669 (1956).

136. Universal Declaration, preamble.
137. Id. at art. 1.
138. Id. at art. 2.
139. The civil rights include the right to life, liberty and security of person (art. 3); prohibition of slavery and the slave trade (art. 4); freedom from torture or cruel, inhuman or degrading treatment or punishment (art. 5); the right to recognition as a person before the law (art. 6); equal protection of the law (art. 7); right to an effective judicial remedy (art. 8); freedom from arbitrary arrest, detention or exile (art. 9); the right to a fair and public hearing by an independent impartial tribunal (art. 10); the right to be presumed innocent until proven guilty (art. 11); freedom from arbitrary interference with one's privacy, family, home, or correspondence and from attacks on one's honor or reputation (art. 12); freedom of movement (art. 13); right to asylum (art. 14); the right to a nationality (art. 15); equal rights of men and women concerning marriage and the family (art. 16); freedom of thought, conscience, and religion (art. 18); freedom of opinion and expression (art. 19); and freedom of peaceful assembly and association (art. 20). The political rights are addressed in three clauses of Article 21: the right to take part in the government of one's country; equal access to public service; and a clause stating "the will of the people shall be the basis of the authority of government." Id. at art. 3-16, 18-20.

The economic, social, and cultural rights include the right to own property (art. 17); the right to social security (art. 22); the right to work and protection from unemployment, to equal pay for equal work, to just and favorable remuneration, and to form and join trade unions (art. 23); the right to rest and leisure (art. 24); the right to an adequate standard of living, with special care and assistance for motherhood and childhood, whether born in or out of wedlock (art. 25); the right to education (art. 26); the right freely to participate in the cultural life of the community and to the protection of scientific, literary, or artistic works (art. 27); and the right to a social and international order in which the freedoms set forth in the Universal Declaration can be fully realized (art. 28). Universal Declaration, art. 17, 22-28.
Universal Declaration concludes with Article 30, a safeguard which makes it clear that the freedoms encompass a respect for the rights of others: "[n]othing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein."

Since the Universal Declaration contained no direct enforcement mechanism, disputes arose concerning its actual legal effect. The drafting history of the Universal Declaration indicates that Governments regarded it as “a statement of general principles, spelling out in considerable detail the meaning of the phrase ‘human rights and fundamental freedoms’ in the Charter of

140. Id. at art. 30.

141. Louis Sohn, The Universal Declaration of Human Rights, 8 J. INT’L COMMISSION JURISTS 17, 19-20 (1967). The Government of the United States stated that the Declaration would serve two purposes:
1. To serve as basic standards to guide the United Nations in achieving within the meaning of the Charter, international co-operation in promoting and encouraging respect for and observance of human rights and fundamental freedoms for all;
2. To serve as a guide and inspiration to individuals and groups throughout the world in their efforts to promote respect for and observance of human rights.

Id. at 18-22.

The United States analogized the Declaration to a statement made by President Lincoln, who in explaining the human equality language in the Declaration of Independence, stated that the draftsmen of that instrument “did not mean to assert the obvious untruth that all were then actually enjoying that equality, or yet that they were about to confer it immediately upon them. In fact, they had no power to confer such a boon. They meant simply to declare the right, so that the enforcement of it might follow as fast as circumstances should permit. They meant to set up a standard maxim for free society which should be familiar to all,—constantly looked to, constantly labored for, and even, though never perfectly attained, constantly spreading and deepening its influence, and augmenting the happiness and value of life to all people, of all colours, everywhere.” Id. (citing U.N. ESCOR, Commission on Human Rights, 3d Sess., at 18-20, U.N. Doc. E/CN.4/82/Rev.1 (1948)). Further, Mrs. Roosevelt stated on behalf of the United States that the Declaration “was not a treaty or international agreement and did not impose legal obligations.” Id. at 20. She explained that the Declaration was a statement of the basic principles to serve as a common standard for all nations which might become the Magna Carta of all mankind. Id. Many United States Senators from the South opposed any type of treaty after the N.A.A.C.P.'s W.E.B. DuBois filed a 155-page petition requesting United Nations assistance for African-American victims of United States human rights violations. TOLLEY, supra note 121, at 21 (citing “A Statement on the Denial of Human Rights to Minorities in the case of Citizens of Negro Descent in the United States of America and an Appeal to the United Nations for Redress,” prepared for the NAACP, October 23, 1947, Records of the U.S. Mission, Record Group 84, U.S. Mission to the United Nations, 1945-49, National Archives.)
In this capacity, the Universal Declaration was to act as a guide for Governments in determinations relating to their national policies and legislation. Thus, while the Universal Declaration was not directly binding on United Nations Members, it served to define their obligations under the Charter.

In practice, however, the United Nations, governments, and non-governmental organizations have relied upon the Universal Declaration as the definitive source for human rights standards and obligations. As a result, the Universal Declaration has evolved into a "codification of general principles of law recognized by civilized nations, which is a source of international law as indicated by Article 38 of the Statue of the International Court of Justice." As a consequence:

The Universal Declaration has joined the Charter . . . as part of the constitutional structure of the world community. The Declaration, as an authoritative listing of human rights, has become a basic component of international customary law, binding on all states, not only members of the United Nations.

The Universal Declaration has come to be regarded as one of the foremost statements on the rights of human beings.

VI. The Convention on the Prevention and Punishment of the Crime of Genocide

The Convention on the Prevention and Punishment of the Crime of Genocide was drafted in reaction to the atrocities committed by Adolf Hitler's Nazi Germany. Raphael Lemkin proposed the word "genocide" to describe "the destruction of a nation or of an ethnic group" explaining that it is "made from the ancient Greek word genos (race, tribe) and the Latin cide (killing), thus corresponding in its formation to such words as tyrannicide, homicide, infanticide, etc." Matthew Lippman, The 1948 Convention on the Prevention and Punishment of the Crime of Genocide: Forty-Five Years Later, 8 Temple Int'l & Comp.L.J. 1, 3 (1994) (citing RAPHAEL LEMKIN, AXIS RULE IN OCCUPIED EUROPE 79 (1944)).
Convention explained that genocidal acts have "inflicted great losses on humanity" which require "international co-operations to liberate mankind from such an odious scourge."\footnote{148} The preamble confirmed that genocide is "a crime under international law, contrary to the spirit and aims of the United Nations and condemned by the civilized world."\footnote{149}

The Genocide Convention establishes in Article I that "genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish."\footnote{150} The Genocide Convention, in Article II, defined the crime of genocide as an act committed with intent to destroy, in whole or in part, a national, ethical, racial or religious group and includes any of the following:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.\footnote{151}

An analysis of Article II establishes that the crime of genocide is composed of several basic elements: motive, intent, extent of destruction, and human groups protected.\footnote{152} First, genocide requires an explicit motive to destroy a group of human beings.\footnote{153}

\footnote{148. Genocide Convention preamble. On December 11, 1946, the United Nations formally recognized genocide as an international crime in Resolution 96(I). The Resolution explained:

\[\text{[g]enocide is a denial of the right of existence of entire human groups, as homicide is the denial of the right to live of individual human beings; such a denial of the right of existence shocks the conscience of mankind, results in the great losses to humanity in the form of cultural and other contributions represented by these human groups, and is contrary to moral law and to the spirit and aims of the United Nations. G.A. Res. 96(I), U.N. GAOR, 1st Sess., 2nd pt., U.N. Doc. A/64/Add.1 (1946).}\]

\footnote{149. Genocide Convention, at art. I.}

\footnote{150. Id. at art. I.}

\footnote{151. Id. at art. II.}

\footnote{152. Lippman, supra note 147, at 22.}

\footnote{153. Id. at 22 (citing Report of the Ad Hoc Committee on Genocide to the Economic and Social Council on the Meetings of the Committee Held at Lake Success, New York, U.N.ESCOR, 7th Sess., Supp. No. 6, at 23, U.N.Doc E/794 (1948)). According to the commentary, physical genocide "involves acts intended}
Since the motive requirement is to be given a broad interpretation, the extermination of a group need not be based solely on animus or racism. Second, genocide requires a specific intent to exterminate an entire group qua group. Negligent acts which result in the destruction of a group do not satisfy the specific intent requirement. Third, while genocide requires the intention to destroy a group, the entire group does not have to be destroyed. Fourth, the protection afforded by the Convention applies only to racial, religious, national, and ethnic groups as determined by cohesiveness, homogeneity, stability, inevitability of membership, tradition, and historic animosity. Finally, subparagraphs (a)-(e) enumerate the specific acts, which in combination with the requisite mental state, constitute the international crime of genocide.

Article III of the Genocide Convention defines the scope of liability by enumerating the specific acts which are punishable: genocide; conspiracy to commit genocide; direct and public incitement to commit genocide; attempt to commit genocide; and complicity in genocide. In conjunction with Article III, the scope of individual liability is defined in Article IV, which provides that persons committing genocide shall be punishable, whether they are constitutionally responsible rulers, public officials or private individuals. While Article IV does not explicitly provide for state responsibility, the acts of genocide committed by “organs of the State” or government officials acting in their official capacity are imputed to the State.

The Genocide Convention provides that persons charged with genocide “shall be tried by a competent tribunal of the State in the territory of which the act was committed or by such international penal tribunal as may have jurisdiction with respect to those
Contracting Parties which have accepted its jurisdiction.”

Since the Genocide Convention is not a self-executing treaty, the Contracting Parties are required to undertake the necessary legislation to give effect to the provisions of the treaty and to provide effective penalties for persons guilty of genocide. Finally, Article IX of the Genocide Convention provides: “[d]isputes between the Contracting Parties relating to the interpretation, application, or fulfillment of the present Convention, including those relating to the responsibility of the state for genocide... shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.”

163. Genocide Convention, at art. VI. A number of delegates involved with drafting the Genocide Convention were disappointed at the decision to place primary reliance on domestic criminal courts to prosecute acts of genocide committed within their jurisdiction. Lippman, supra note 147, at 64.

164. Id. at art. V.

165. Id. at art. IX. See also, Lawrence J. LeBlanc, The ICI, the Genocide Convention, and the United States, 6 WIS. INT’L L. J. 43 (1987). The Genocide Convention was signed by President Truman on December 11, 1948, and was transmitted to the Senate in 1949. NEWMAN AND WEISSBRODT, supra note 100, at 402. It was not until 1986, however, that the United States Senate gave its advice and consent to ratification of the Convention. Id. The United States’ formal ratification of the Convention was further delayed by a Senate declaration requiring implementing legislation. Id. The implementing legislation was adopted in 1988 and the United States deposited its notice of ratification with the United Nations on November 25, 1988. Id. at 402-403. Despite the ratification, the United States limited its obligations under the Convention by two reservations, five understandings, and one declaration. Id. at 402.

The first reservation refers to the World Court’s jurisdiction under Article IX. 132 CONG. REC. S1377 (daily ed. Feb. 19, 1986). The reservation requires the United States to consent to resolve a matter involving the Convention before the International Court of Justice. NEWMAN AND WEISSBRODT, supra note 100, at 402. The second reservation establishes the supremacy of the Constitution over the obligations of the Convention. Id. The five understandings limit the meaning of terms by aligning them with ideas accepted in the United States. Id. The first understanding interprets the “intent to destroy” in Article II to mean that “specific intent to destroy in whole or in part a national, ethnic, racial or religious group as a whole.” Id. The second understanding interprets the “mental harm” in Article II(b) to mean “the permanent impairment of mental faculties through drugs, torture, or similar techniques.” Id. The third understanding deals with extradition under the Convention. NEWMAN AND WEISSBRODT, supra note 100, at 402. The fourth understanding explains that acts committed during armed conflicts without “the specific intent required by Article II are not sufficient to constitute genocide.” Id. Finally, the fifth understanding reserves the United States’ obligations under any international penal tribunal which may be created. Id. See generally, Kourtis and Titlebaum, Comment, International Convention of the Prevention and Punishment of the Crime of Genocide: United States Senate Grant of Advice and Consent to Ratification, 1 HARV. HUM. RTS. Y. B. 227 (1988); Jordan J. Paut, Congress and Genocide: They’re Not Going To Get Away With It 11 MICH. J. INT’L. L. 90 (1989); Leblanc, The Intent to Destroy Groups in the
cide Convention requires Contracting parties to implement legislation that authorizes their domestic national courts to enforcement its provisions.\(^{166}\) Article IX mandates that if a state fails to prosecute an offender or if the act of genocide was committed by an individual acting as a organ of the State, such persons shall be tried by an international court.\(^{167}\) This language was inserted in order to permit a determination of state culpability for genocide.\(^{168}\)

VII. Malcolm X and the Genocide Convention

A. Malcolm X’s Genocide Petition

The culmination of Malcolm X’s Pan-African internationalism was his plan to charge the United States with human rights violations. In furtherance of his plan, Malcolm X and the staff of the Organization of African-American Unity had drafted a document for submission to the United Nations entitled: Outline for Petition to the United Nations Charging Genocide Against 22 Million Black Americans.\(^{169}\) In addition, Malcolm X asked Dan Watts, who understood United Nations procedure, about the available mechanisms for placing a genocide case before the

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\(^{166}\) Genocide Convention, at art. V.

\(^{167}\) Lippman, supra note 147, at 58.

\(^{168}\) Id. at 71 (citing U.N. GAOR 6th Comm., 3d Sess., 103 mtg., at 430, U.N.Doc. E/794 (1948)).

Commission on Human Rights.\textsuperscript{170} Thus, at the time of his death, Malcolm X had begun to prepare his case for submission to the United Nations. Consequently, it is necessary to examine his draft petition because it reveals Malcolm X's understanding of the various United Nations documents and his interpretation of their application to the racial situation in the United States.

The Petition's introduction placed the African-American liberation struggle in the context of the United States' collective historical record. It stated that for three hundred years "22 million of our people" have been subject to murders, bombings, and political disenfranchisement.\textsuperscript{171} The Petition explained:

After three hundred years of slavery and caste oppression, unmitigated terror and torture, physical and otherwise—which continues today though opposed by every means possible of human conception—while all the time remaining faithful to this Government in time of war and peace, we feel the United Nations must give a hearing to the plight of 22 million black Americans.\textsuperscript{172}

The Petition also alluded to the non-violent tactics of the civil rights movement, explaining: "[w]e have appealed to the conscience of America, but her conscience slumbers. Her conscience, conceived and nourished in a soulless womb of material greed, slumbers in a darkness of hate and fear, permitting the violence to continue."\textsuperscript{173}

The Petitioners explained that since "America's conscience is not able to concede or affirm the rights of 'life, liberty and pursuit of happiness' to human beings whose skin is not white . . . we see no recourse but to put our case to you the representatives and delegates to the United Nations."\textsuperscript{174} Thus, the Petitioners concluded that the United Nations represented an "institution wherein world opinion and the conscience of mankind can be appealed to."\textsuperscript{175}

\textsuperscript{170} Goldman, \textit{supra} note 45, at 157. Watts investigated and told Malcolm that the Commission was more of a letterhead for documents and statements than an investigative organ. \textit{Id.} Further, Watts felt Malcolm's African connections were of little practical value since no nation intended to actually undertake any action. \textit{Id.} Watts relayed this information to Malcolm, but it did not seem to bother him and he simply found someone else to work on the project. \textit{Id.}

\textsuperscript{171} \textit{Outline For Petition, supra} note 169, at 343, 343-344.

\textsuperscript{172} \textit{Id.} at 344.

\textsuperscript{173} \textit{Id.} at 343.

\textsuperscript{174} \textit{Id.} at 344.

\textsuperscript{175} \textit{Id.}
The Petition viewed the United Nations as an institutional mechanism to "establish a universal climate wherein those rights set forth in the Universal Declaration of Human Rights . . . will finally and definitely be regarded as rights belonging to all men, legally, under International Law." Its initial language charged that the failure of the United States to redress the injustices perpetrated upon its African-American citizens forced the Petitioners to seek an international forum to achieve racial justice.

Next, the Petition proceeded to establish its substantive legal basis. First, it charged the Government of the United States with violations of the Universal Declaration of Human Rights in the "most gross manner." Second, the Petition alleged the Government's desecration of these declarations to be genocidal, as defined by the 1948 Draft Convention on the Prevention and Punishment of the Crime of Genocide. It assured that these charges would be substantiated by the "assertion that a vast and systematic form of oppression does exist in this country based on color and race: that it is the nub of, that is central to, and that it is the fulcrum of most all important social and political issues in this nation." The charges were based on governmental activity from the Federal to the local level.

After the Petition established its charge, it elaborated on the specific violations of the Universal Declaration and the Genocide Convention and the evidence that supported such allegations. First, the Petition charged economic genocide as illustrative of "deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part" in violation of Article II(c) of the Genocide Convention.

Second, the Petition alleged violations of Article II(b): causing "serious mental harm" to members of the group. This allegation was based upon segregation which:

imprisons American black people in most every case, from birth to death, marking their status as inferior on the basis of race, cutting them off from adequate education, hospital facilities,
medical treatment, and housing, forcing them to live in ghettos and depriving them of rights and privileges that other Americans are accorded as a matter of course.\textsuperscript{184}

This charge was supplemented by the psychological and physical terror carried out by white supremacist organizations and the extra-legal white supremacy code.\textsuperscript{185} The result of such actions was that millions of Americans of color were deterred “from voting or otherwise exercising their rights under the Constitution of the United States and the Charter of the United Nations.”\textsuperscript{186} Further, if persons of color avoided physical violence, they were subjected to “serious mental harm” including: adolescent traumas which are destructive to the family unit; laws defining and limiting the choice of marital partners; psychological tensions arising from the ghetto experience; and distortion of African and African-American history.\textsuperscript{187}

The third charge consisted of “killings by police, killings by incited gangs, killings by the Ku Klux Klan and White Citizens Councils, on the basis of ‘race’” which violate the Constitution of the United States, the United Nations Charter, Articles 3 and 22 of the Universal Declaration of Human Rights and Article 2 Section 1 of the Genocide Convention.\textsuperscript{188} Such killings were often the result of attempts to vote or otherwise exercise the legal and inalienable rights and privileges of American citizenship or any other activity which might “lead to changes aimed at destroying the inferior status of black Americans.”\textsuperscript{189}

The final aspect of the Petition dealt with the scope of liability for punishable acts under Article III, including: conspiracies, attempts, incitements and complicity to commit genocide.\textsuperscript{190} These charges were directed against the law enforcement officers and government officials acting in their official capacity.\textsuperscript{191} The Petition stated:

\begin{itemize}
  \item \textsuperscript{184}. \textit{Id.}
  \item \textsuperscript{185}. \textit{Id.}
  \item \textsuperscript{186}. \textit{Outline for Petition, supra} note 169, at 346.
  \item \textsuperscript{187}. \textit{Id.} at 347-348. The Petition included relatively short, non-statistical explanatory statements of the following: education, employment, housing, hospital facilities, medical care, disease and infant and adult life expectancy as compared with the remainder of the population, and insurance and financial and lending institutions. \textit{Id.} at 346.
  \item \textsuperscript{188}. \textit{Id.} at 347.
  \item \textsuperscript{189}. \textit{Id.}
  \item \textsuperscript{190}. \textit{Outline for Petition, supra} note 169, at 348.
  \item \textsuperscript{191}. \textit{Id.} at 348.
\end{itemize}
Public officials, particularly in the South, are frequently guilty of murder on the basis of "race," of genocide, by direct and public incitement to genocide, by participating in actual violence on the basis of "race" as in the case of sheriffs and law enforcement officers, by the use of courts to kill innocent black Americans in order to sustain white supremacy, by approving and soliciting the murder or assault of black Americans who attempt to vote, [and] by passing and enforcing laws providing for segregation.\

The Petition concluded by supporting its allegation with an outline of its legal and historical precedents.\

B. An Analysis of Malcolm X's United Nations Plan

Biographer Peter Goldman stated that Malcolm X "wanted the United Nations project as his monument—wished said of him that he had renewed the link between black America and the mother continent and so had been able to bring the plight of his people before a tribunal of the nations of the world." The ideological basis for Malcolm X's United Nations project was premised upon the United States' historical failure to guarantee civil rights to its citizens of color. In contrast to the United States' hypocritical stance on civil rights, Malcolm X regarded the United Nations Charter, the Universal Declaration of Human Rights, and the Genocide Convention as an uncompromising source for human rights. Malcolm X surmised that the black liberation struggle needed to be transformed from a civil rights level to a human rights level, premised on Pan-African internationalism.

192. Id.
193. Id. at 348-351. The Petition cited numerous historical examples in support of its charge of genocide, including the following: Lincoln's cautious policy in regard to the ex-slaves following the Civil War; the Hayes-Tilden compromise; Republican passage of re-enslaving Black Codes which divested black citizens of all privileges and immunities of the 14th Amendment, including the right to vote; murder on the basis of race by police, courts, and bands of white supremacists; incitements by judges, senators, congressmen, police chiefs that were conspiratorial in nature; and the role of the FBI and statements by J. Edgar Hoover. Id. The Petition also attempted to establish the relationship between genocide and foreign affairs by citing America's engagement in an unpopular war in Vietnam; intervention in the Congo; and the war of subversion in Cuba. Outline for Petition, supra note 169, at 348-351.
194. GOLDMAN, supra note 45, at 240.
195. SALES, supra note 19, at 90.
196. Id.
197. Id.
information and the attending publicity was to act as a potential counterweight to the domestic political power of the United States.\textsuperscript{198} Malcolm X anticipated that the United States "fear of world opinion . . . would give black people breathing room against the power of racism in the United States."\textsuperscript{199}

While Malcolm X's ideological position was clear, his reliance upon a methodological application utilizing the United Nations and Pan-African internationalism was problematic due to historical circumstances. At the time of Malcolm X's efforts, international human rights law was one of the newest developments in the field of international law. Further, while Malcolm X had an excellent grasp of the subtleties of the uncompromising provisions of the subtleties of the United Nations Charter, he "knew there was little the United Nations could do for America's blacks besides focusing international opinion on their plight."\textsuperscript{200} In addition, since the Genocide Convention was not ratified by the United States during

\footnotesize{\textsuperscript{198} Id.}
\footnotesize{\textsuperscript{199} Id. The State Department viewed Malcolm X's activities in Africa and his United Nations petition as a threat to national security. \textit{SALES, supra} note 19, at 156. Government documents indicated that the State Department requested the CIA to "take covert action against Malcolm X." Id. (citing Big RED NEWS, July 28, 1990, at 2). Further, CIA documents indicated that the State Department discussed Malcolm X's United Nations petition idea with President Lyndon Johnson, who asked J. Edgar Hoover to secure further information. Id. at 157. At the suggestion of J. Edgar Hoover, the Justice Department initiated inquiries with Alex Haley and other civil rights leaders regarding Malcolm X's foreign connections and financial resources. Id. In addition, the Justice Department considered instituting legal proceedings against Malcolm on a variety of grounds. \textit{PERRY, supra} note 4, at 325. The Justice Department considered prosecution under the Logan Act, which made it a crime for a private citizen to communicate with foreign powers for the purpose of hindering United States governmental policies. Id. at 315. The Justice Department also considered the Smith Act, which made it a crime to teach or advocate forceful overthrow of the United States government. Id. at 325. Additionally, the seditious conspiracy statute, which made it a crime for two or more persons to conspire to defy or overthrow the government by force, was considered. Id. Finally, the Justice Department considered invoking the Foreign Agents Registration Act, which would have required Malcolm to register as an agent of the entities which were providing financial assistance. Id. The Justice Department decided against instituting any criminal charges, due to insufficient evidence. \textit{PERRY, supra} note 4, at 325.

The United States was concerned that if Malcolm X could convince a single African government to bring up charges at the United Nations, the United States government would be faced with a "touchy problem." Malcolm X, \textit{MALCOLM X SPEAKS, supra} note 32, at 86. The United States did not want to be classified with South Africa, Hungary and other countries whose domestic polices were subject to debate at the United Nations. Id. Further, the United States' self-asserted claim as the leader of human rights would be directly challenged. Id.}
\footnotesize{\textsuperscript{200} \textit{PERRY, supra} note 4, at 315-316.}
this time period, the United States was not bound by the Convention's provisions. In spite of these limitations, Malcolm X's United Nations plan could have argued that the human rights provisions and the crime of genocide represented binding customary international law which created legal obligations that the United States violated with respect to its citizens of color.

During this period of Malcolm X's activities, the United Nations Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities devoted the majority of their resources to drafting international human rights instruments and preparing discrimination studies. Further, the United Nations human rights institutions were subject to the "no power decision." It was be several years until these institutions developed internal procedures to facilitate complaints alleging human rights violations. While the United Nations human rights institutions were limited in dealing with complainants of human rights violations, Malcolm X and OAAU could have gained United Nations observer status, which would have allowed the organization to participate in various United Nations activities. For instance, the OAAU could have submitted information to the Sub-Commission relating to the conditions of African-Americans for its discrimination studies.

Malcolm X's perception of Pan-African internationalism was hindered by the internal problems related to underdevelopment and colonial exploitation from which all African countries suffered. While Malcolm X was accepted throughout Africa and counted many friends among Third World diplomats and United Nations representatives, many of these new nations did not always unequivocally support liberation movements. Due to the multi-ethnic composition of many of the African states, the fear of secession often tempered African support of liberation struggles. Many of the arguments Malcolm X raised could have

201. Article 71 of the United Nations Charter authorizes the ECOSOC make suitable arrangements for consultation with non-governmental organizations (NGOs), which are concerned with matters within their competence. Newman and Weissbrodt, supra note 89, at 16. These organizations may send observers to public meetings of ECOSOC, its commissions, sub-commissions and other subsidiary bodies. Id. They can also circulate written statements as well as present their views orally to ECOSOC or to one of its subsidiary bodies. Id. In practice, United Nations organs frequently call upon NGOs to supply information, particularly on existing de facto situations. Id.

202. Sales, supra note 19, at 143.

203. Id. at 144, 157.

204. Id. at 144-145.
been utilized to support nationalist-based movements opposed to many of these African governments. Further, the Organization of African Unity was ideologically divided between the radical “Casablanca” and the conservative “Monrovia” groups. The numerically superior conservatives maintained that issues relating to African-Americans were within the domestic jurisdiction of the United States and favored incremental reforms as a remedy for the conditions of African-Americans. In private, Malcolm X acknowledged these problems, admitting that “the support wasn’t there and wasn’t likely to be as long as the Africans depended on American aid and American investments.” In spite of these obstacles, Malcolm X was convinced that “In that voice there is strength. And when you and I link our struggle up with his struggle so that his struggle backs our struggle, you’ll find that this man over here will pay a little more attention.” Thus, while Malcolm X sincerely believed his United Nations project could be successful, his conclusion that any action would be symbolic in nature was accurate, based on the factual circumstances at the time.

Malcolm X’s influence, however, is evidenced by the sharp denunciations of America’s racial policies within the United States and abroad voiced by several African delegations in the United Nations debates over the Congo in December, 1964. Malcolm X had been urging Africans to utilize “the racial situation in the United States as an instrument of attack in discussing international problems . . . such a strategy would give the African states more leverage in dealing with the United States and would give American Negroes more leverage in American society.”

Several African states adopted such a strategy in the Congo debates, accusing the “United States of being indifferent to the fate of the blacks and cited as evidence the attitude of the United States government toward the civil-rights struggle in Mississippi.”

205. Id. at 145.
206. Id. at 143.
208. Id.
209. Id.
210. Goldman, supra note 45, at 158.
211. Id. at 87.
213. Id.
Malcolm X approvingly noted that, at the United Nations, Africans were being critical of the United States. He explained:

African statesmen are beginning to connect the criminal, racist acts practiced in the Congo with similar acts in Mississippi and Alabama. The Africans are pointing out that the white American government—not all white people—has shown just as much disregard for lives wrapped in black skin in the Congo as it shows for lives wrapped in black skin in Mississippi and Alabama.

This was as close as Malcolm X would come to a formal denunciation of the United States before the United Nations.

Despite Malcolm X’s failure to accomplish his United Nations plan, his efforts established an ideological framework for African Americans to pursue human rights violations in the context of Pan-African internationalism. In the years following Malcolm X’s death, the United Nation’s drafted numerous human rights instruments and developed elaborate institutional mechanisms for redressing violations of the human rights instruments. As a consequence, based on the precedent Malcolm X established, African Americans have utilized the United Nations as a viable alternative to a domestic civil rights agenda in seeking racial justice within the United States.

214. Malcolm X, The Harvard Law School Forum of Dec. 16, 1964, supra note 28, at 167. In 1964, a revolt broke out in the Congo led by the followers of murdered Prime Minister, Patrice Lumumba, who was opposed to Moise Tshombe becoming Prime Minister. Malcolm X, Our People Identify with Africa (Dec. 27, 1964), supra note 77, at 92. Tshombe received United States support and he had been instrumental in the overthrow of Lumumba’s government in 1960. Id. In November 1964, United States planes transported Belgian troops and mercenaries to rebel occupied territory in an attempt to suppress the revolt. Id. These troops were responsible for the massacre of thousands of Congolese. Id.


216. See supra accompanying text and notes at 112, 113, 114, 115.

217. The United Nations Commission on Human Rights, under Resolution 1503, has received 70 to 80 petitions per year regarding human rights violations in the United States. Charles P. Henry and Tunua Thrash, U.S. Human Rights Petitions Before the UN, 26 THE BLACK SCHOLAR 60, 68 (1996). The majority of the petitions are concerned with prison conditions, Native American land claims, and the incarceration of political prisoners. Id. The United States State Department submits a response to each petition to the Commission. Id. None of the petitions have ever been formally acted upon by the Commission. Id. In particular, Resolution 1503 has in fact been invoked in a series of complaints alleging racial discrimination against the United States. The complaints have generally relied upon sample cases and statistical data to establish a consistent pattern of gross and reliably attested violations of human rights, as is required by
Malcolm X

United Nations as an alternative forum for racial justice will increase with the United States' ratification of additional human rights instruments, such as the International Covenant on Civil and Political Rights.218

Resolution 1503. Newman and Weissbrodt, supra note 89, at 254. For example, on December 13, 1978, the National Conference of Black Lawyers, the National Alliance Against Racist and Political Repression, and the United Church of Christ Commission for Racial Justice filed a complaint with the Commission and Sub-Commission concerning human rights violations in the United States. Id. The petition examined "case histories of racial minority prisoners allegedly targeted and convicted for political beliefs." Id. In addition, the petition was submitted "not only to obtain relief from domestic oppression for the victims discussed, but also to focus national attention on the corrosive effects of manipulated and biased legal processes which subvert national standards of decency and democracy, and encourage an increasing national tolerance of domestic indifference to brutality and injustice under color of law." Lennox Hinds, Illusions of Justice, Human Rights Violations in the United States iii (1978)(a published book adaption of a petition submitted to the Commission concerning human rights violations in the United States). In order to substantiate their allegations, the petitioners assembled a body of independent international jurists to conduct a fact-finding investigation. Id. at viii. The delegation consisted of eight jurists and lawyers from Great Britain, India, Sweden, Trinidad-Tobago, Senegal, Nigeria, Chile-in-exile, and South Africa-in-exile. Id. The delegation conducted its investigation from August 3 to 20, 1979, and visited prisons and conducted interviews with many of the prisoners named in the petition. Newman and Weissbrodt, supra note 89, at 255. The delegation proceeded to publish a report of their observations in relation to the petition which concluded that the United Nations should investigate the allegations. Id.

Other examples include a complaint that was filed on June 22, 1981, by Theophilus Reagans, President, Black American Law School Association, University of Minnesota Law School Chapter. Newman and Weissbrodt, supra note 89, at 254. The petition alleged numerous violations of economic and social rights of blacks. Id. A complaint was filed on June 10, 1982, by A. Ray McCoy, Black American Law Student Association, University of Minnesota. Id. The complaint examined "two situations of organized police brutality against blacks and alleg[ed] a pattern of police officers depriving blacks of life without minimum procedural guarantees coupled with exoneration of the officers by the criminal justice system." Id.

The majority of the Covenant's text deals with the traditional civil and political rights enumerated in the Universal Declaration. Covenant on Civil and Political Rights, supra note 114. The Covenant on Civil and Political Rights grants the following protections: grants the right to life; prohibits torture or cruel inhuman or degrading treatment or punishment; prohibits slavery, the slave trade, servitude and compulsory labor; prohibits arbitrary arrest or detention; and provides that all persons deprived of their liberty shall be treated with humanity. *Id.* at art. 6, 7, 8, 9, 10.

The Covenant provides, in considerable detail, for equality before the courts and tribunals and for guarantees in criminal and civil procedures. *Id.* at art. 14. The Covenant prohibits retroactive criminal procedures, provides for the right of everyone to recognition everywhere as a person before the law, and prohibits arbitrary or unlawful interference with privacy, family, home, or correspondence and unlawful attacks on honor and reputation. *Id.* at art. 15, 16, 17. The Covenant states further the right to freedom of thought, conscience and religion, and to freedom of expression. *Id.* at art. 18, 19. The Covenant provides that propaganda for war and any advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law. Covenant on Civil and Political Rights, supra note 114, at art. 20. The Covenant recognizes in Articles 21 and 22 the right to peaceful assembly and the right to form and join trade unions. *Id.* at art. 21, 22. It stipulates that every citizen shall have the right and the opportunity to take part in the conduct of public affairs, to vote and to be elected at genuine periodic elections by universal and equal suffrage held by secret ballot, and to have access on general terms of equality to public service in his country. *Id.* at art. 25.

Article 26 of the Covenant states that all persons are equal before the law and are entitled, without any discrimination, to equal protection of the law. *Id.* at art. 26. The law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. *Id.* Finally, Article 27 provides that in those States in which ethnic, religious, or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language. Covenant on Civil and Political Rights, supra note 114, at art. 20.

The strength of these provisions is compounded by Article 2, which establishes a State party's obligation under the Covenant. Article 2 states: "[e]ach 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 distinctions of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." *Id.* at art. 2. This provision is complemented by Article 2(1) which requires each State Party "to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant." *Id.* at art. 2(1). *See also,* B.G. Ramcharan, *Equality and Nondiscrimination in the International Bill of Human Rights: The Covenant on Civil and Political Rights* 250 (Louis Henkin ed. 1981).
VIII. Conclusion

"Sometimes, I have dared to dream . . . that one day, history may even say that my voice—which disturbed the white man's smugness, and his arrogance, and his complacency—that my voice helped to save America from a grave, possibly even a fatal catastrophe."

-Malcolm X

History has on occasion presented humanity with a person ahead of his time; Malcolm X was such a person. In the last year of his life, Malcolm X's political ideology witnessed a metamorphosis from racial separatism to Pan-African internationalism. At the center of this transformation were Malcolm X's efforts to utilize the United Nations as a liberating paradigm to achieve racial justice for African-Americans. Malcolm X understood that if the United States failed to fulfill its obligations under the human rights documents, in particular the United Nations Charter, the Universal Declaration of Human Rights, and the Convention on the Prevention of the Crime of Genocide, it could be held accountable by the United Nations for violations of international human rights law.

Malcolm X realized that the United Nations represented an alternative venue to the domestic jurisdiction of the United States. In order to exploit this venue and facilitate the implementation of the United Nations, Malcolm X attempted to develop a Pan-African internationalism between African Americans and Africans. Upon establishing such a relationship in the context of an international forum, he could expose the racial injustices perpetrated upon African Americans and bring international pressure on the United States to remedy the situation. While Malcolm X's United Nations plan failed, due to the early stage of development of human rights law and internal problems confronting many African nations, his efforts represented a viable option to the domestic approach of the civil rights movement as a liberating methodology to achieve racial justice for African Americans "by any means necessary."

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219. MALCOLM X AND HALEY, supra note 2, at 384.