THE EARTH ALLIANCE CONSTITUTION:
INTERNATIONAL HUMAN RIGHTS LAW AND BABYLON 5

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I. INTRODUCTION

The legacy of our human civilization is one of great wonders, awe, and mysteries. History shows us that over the ages, humanity has shown a noble trait to pursue knowledge. This knowledge can be used to promote human rights. International human rights law is part of that legacy. Understanding its importance and its formative history allows us to assess the present and look toward a better future. The story of Babylon 5 analyzes this future possibility while considering humanity in all its glory and flaws. Our present international human rights law system is embodied in the Babylon 5 series legal system. This article studies very difficult ethical dilemmas directly related with the promotion and protection of civil and political rights. The Babylon 5 series represents the intersection of popular culture and international law while it considers the duties of nations-states to observe civil and political rights during states of emergencies.

II. BACKGROUND

“[F]reedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order.”

– Justice Robert H. Jackson†

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In the fall of 2000 I had the honor to meet Professor Paul R. Joseph\(^2\) while working at the Shepard Broad Law Center of Nova Southeastern University. I wanted to meet him because he had written, what I considered, one of the best law review articles ever conceived. Joseph, I later discovered, understood the power behind popular culture as an avenue for legal education. The analysis he began in 1992 continued to develop over the years and expanded into other areas of the law. Joseph’s examination represented a serious message first conceptualized in his groundbreaking article \textit{The Law of the Federation: Images of Law, Lawyers, and the Legal System in Star Trek: The Next Generation}.\(^3\) The article, which Joseph cowrote with Professor Sharon Carton, took a closer look at the legal issues presented in Star Trek: The Next Generation. As they explained, “[w]e certainly never thought we would write about it. Yet, over time, we independently began to notice how often legal issues or ideas cropped up and how often they were worth a second look.”\(^4\) Professor Joseph recognized television as a powerful medium for education.\(^5\) Some television shows become memorable not just because of their popularity, but because their popularity is based on positive messages applicable to our present realities. Joseph said it best when he stated: “what is presented is not only what 20th century people do, but a vision of what we should do and who we should strive to become.”\(^6\) Indeed, what I discovered with Babylon 5 is exactly what Joseph and Carton realized with Star Trek: The Next Generation, namely that the show was “a very interesting prism through which to view 20th-century institutions, and it becomes reasonable to ask whether the Star Trek future has anything to teach us about our present


\(^4\) Id. at 47.

\(^5\) Id. (noting that the setting of \textit{Star Wars: The Next Generation} “has something to say about what our law and legal system is or should be.”).

\(^6\) Id.
reality and the directions which our society should or should not take.”7 A legal system, they reasoned, “is not wholly separate from the general culture. It grows and changes in response to growth and change within the society which creates and uses it.”8

Two years later, Joseph and Carton’s work spread to the domain of international law through Michael Scharf and Lawrence Roberts in The Interstellar Relations of the Federation: International Law and Star Trek: The Next Generation.9 Their article recognized that a show “can be used as a pedagogical aid to international law teaching, just as the original Star Trek series has been used to teach ethics at the undergraduate level.”10 Scharf and Roberts reported that ethics courses based on Star Trek had been offered at some of the nation’s most prestigious colleges.11

In 2001, the idea of correlating Star Trek to the law was extended into the realm of naval law by Thomas C. Wingfield in Lillich on Interstellar Law: U.S. Naval Regulations, Star Trek, and the Use of Force in Space.12 There is no doubt that the stories presented in Star Trek and Babylon 5 trace a course that parallels our present times and forms a vision into the future. “However, as the future unfolds, it will serve as the foundation for legal reasoning in situations now contemplated only by science fiction authors.”13 This type of legal learning is now utilized by the Georgetown University Law Center in one of its

7 Id.
8 Id.
10 Id. at 578.
11 Id. at 578, n.10 (citing Jeffrey H. Mills, Star Trek in the Classroom, in THE BEST OF THE BEST OF TREK 324 (Walter Irwin & G.B. Love eds., 1990) (describing a course entitled “The Cultural Relevance of Star Trek” taught at Oberlin’s Experimental College in Ohio)).
13 Wingfield, supra note 12, at 72.
courses for the National Security Law Certificate Program.\textsuperscript{14} Adjunct Professor Walter G. Sharp utilizes scenes from the television program 24 to discuss the scenarios presented in the show and analyze its legal issues.\textsuperscript{15}

Today, international human rights law is considered a necessary area of international law study designed for the development of humanity.\textsuperscript{16} This area of the law will continue to serve our civilization in the protection of human dignity for years to come.\textsuperscript{17} Writers, scholars, and professors all concur in their desire to bring forward a message of change and hope. This message can be taught through popular culture in legal education.

“Science fiction presents an inconceivable situation, or it takes a modern-day problem and stretches it to allegorical dimensions, free of the limitations of nonliterary reality.”\textsuperscript{18} International law in the twenty-third century is well-suited for this type of analysis. Thus, this article is a serious examination of the writings of J. Michael Straczynski, which inspired the television program Babylon 5. He explores and describes numerous legal issues, such as freedom of thought, freedom of expression, and the right to a fair trial. The show’s message undoubtedly exposes the student of international law to the tenets of the International Bill of Human Rights.\textsuperscript{19}

\begin{itemize}
\item \textsuperscript{17} See id.
\item \textsuperscript{18} Wingfield, supra note 12, at 72.
\item \textsuperscript{19} “The International Bill of Human Rights consists of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and its two Optional Protocols.” Office of the High Comm’r for Human Rights, Fact Sheet No. 2 (Rev. 1),
\end{itemize}
Babylon 5 is a celebrated television series created by Straczynski and distributed by Warner Bros. Television Distribution. Babylon 5 tells the story of a space station built in neutral territory for the cause of peace. In a time set around the year 2258, we find a message that addresses the protection of human rights and explores the potential danger to a society once those rights have been blurred. The Babylon 5 story brings to the forefront the analysis of human existence in times of conflict and addresses considerations that loudly echo our times.

III. CONSTRUCTING OPPORTUNITIES: THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

“He preferred the hard truth to his dearest illusions.”

– Carl Sagan, 1980

This article considers the duties of nations to observe civil and political rights within various states of emergency. Further, this work considers the importance of human rights in a civilized society. The International Covenant on Civil and Political Rights (ICCPR) emphasizes the inherent dignity and inalienable rights of all members of the human family. The ICCPR is a progressive and comprehensive treaty, providing the best criteria against which to measure a legal system’s


21 See Dust to Dust, supra note 20 (noting that Babylon 5 was the last best chance for peace).

22 See, e.g., Babylon 5: Midnight on the Firing Line (PTEN television broadcast Jan. 26, 1994) (“The year is 2258, the name of the place is Babylon 5.”).

23 During the Thirty Years War the grave of Johannes Kepler was obliterated. The author explained that “[i]f a marker were to be erected today, it might read, in homage to his scientific courage: ‘He preferred the hard truth to his dearest illusions.’” CARL SAGAN, COSMOS 67 (Random House, Inc. 1980) (emphasis added).

human rights protections.\textsuperscript{25} Though the ICCPR allows nations to derogate from certain human rights guarantees in times of emergency, such restrictions are permissible only to the extent required by the exigencies of the situation.\textsuperscript{26} Even during states of emergency, member nations are still bound by the rules of the ICCPR.\textsuperscript{27} Civil and political rights should always be protected, especially during times of strife.\textsuperscript{28} In Babylon 5, Captain Sheridan confronted extremely difficult legal dilemmas during such times of emergency.

In Babylon 5, the Earth Alliance is a proud and democratically elected government.\textsuperscript{29} The center of the Earth Alliance government is located in Earthdome, Geneva.\textsuperscript{30} Its military branch is known as Earthforce.\textsuperscript{31} The government’s hierarchy is set on a Senate, topped by a President with powers delineated by the Earth Alliance Constitution and supervised by the Senate.\textsuperscript{32} On January 8, 2259, Captain Sheridan was given new orders: command of the Babylon 5 station.\textsuperscript{33} Yet, it is not his ability as a military officer that made Captain Sheridan unforgettable. His abilities as a diplomat, military governor, and later President made him a true champion of human rights.

During Captain Sheridan’s tenure as military governor of Babylon 5, his duties included enforcement of trade regulations, fighting raiders (pirates), supporting scientific expeditions, engaging in diplomatic exchanges, and protecting the guarantees of the Earth Alliance


\textsuperscript{26} International Covenant on Civil and Political Rights, supra note 24, art. 4.

\textsuperscript{27} See id. (specifying the rights from which State Parties may not derogate, even in times of emergency).

\textsuperscript{28} See id. (detailing specific protections for certain civil and political rights in times of emergency).

\textsuperscript{29} Babylon 5.

\textsuperscript{30} BRUCE GRAW, BABYLON 5: THE EARTH ALLIANCE FACT BOOK 5-6 (Matthew Sprange & August Hahns eds., 2003).

\textsuperscript{31} Id. at 5.

\textsuperscript{32} GRAW, supra note 30, at 5-6.

\textsuperscript{33} See Babylon 5: Points of Departure (PTEN television broadcast Nov. 2, 1994).
Constitution. As Wingfield explained, “[w]hat may seem like an amusing intellectual frolic today may very well evolve into the framework for extending the best of our society beyond the Earth, and, if need be, for dealing with the worst of other societies we may encounter.”

The Babylon 5 universe showed us a tumultuous time of conflict for Earth. During this time, the law of the Earth Alliance Constitution found fruitful roots while facing conflict with Earth’s sovereignty. The present concept of sovereignty can be traced back to the idea that nations must control their own affairs of state. The history of state sovereignty highlights the importance of nation-states as major players. It is nation-states, in the historical sense, who initially defined the parameters of international law.

In the beginning, European nations were engaged in war until 1648, when a diplomatic solution was reached by a series of treaties known as the Peace of Westphalia. The war between Catholics and Protestants was fueled by the desire to accumulate land and power. Prior to the Peace of Westphalia, Europe was characterized by conflicts involving kings and queens, their territories, the power of Holy Roman Emperor, and the pope. The Thirty Years War was catastrophic, bringing total misery “along with disease, famine, and migration caused by marauding armies and the resulting devastation of economies, [which] had reduced the population of central Europe by about a third.”

34 See, e.g., Babylon 5: The Fall of Night (PTEN television broadcast Nov. 2, 1995) (showing Captain Sheridan at work in his many capacities).
35 Wingfield, supra note 12, at 73.
36 See, e.g., Babylon 5: No Surrender, No Retreat (PTEN television broadcast May 29, 1997); see also Babylon 5: Endgame (PTEN television broadcast Oct. 16, 1997).
40 See Walker, supra note 38, at 139-45.
It was during these difficult times that science and the traditional religious beliefs came into conflict. Although the Greek astronomer and mathematician Aristarchus of Samos was the first known scientist to propose a heliocentric model of the solar system,—placing the sun, not the Earth, at the center of the known universe—this information was deemed subversive. The observations of Nicholas Copernicus reveal that it was not until 1543 that humanity would rediscover the correct position of the Earth in relation to the universe. The resistance to discover and learn new scientific ideas was enhanced by the Thirty Years War. Shortly before that war, Johannes Kepler discovered the science behind the movements of the planets around the sun. Yet, his views caused him to be excommunicated by his church, and he found himself without a home or means of support. Against all odds, he left a legacy to humanity that reconnected our history with its past and propelled it into the future.

The Peace of Westphalia brought the precursor to the modern principles of international law. Nevertheless, two great wars would follow before human rights would be examined and considered closely. After World War I, and particularly World War II, international human rights law was catapulted to center stage. In this respect, treaties represent international law’s strongest tool, although they are not the exclusive source of obligations for governments.

\[42\] Archives of the Universe 18-19, 18 (Marcia Bartusiak ed. 2004).
\[44\] See Sagan, supra note 23, at 53 (explaining that Nicholas Copernicus’s book proposing heliocentrism was placed by the Catholic Church on a list of forbidden books). In astronomy, heliocentrism is the theory that the Sun is at the center of the Universe and/or the Solar System. See id.
\[45\] Id. Nicholas Copernicus proposed once again the heliocentric hypothesis during the Middle Ages.
\[46\] See id. at 64-65 (explaining that astronomer Johannes Kepler was punished for his scientific work and many people, especially elderly women, were chosen as scapegoats and punished for witchcraft).
\[47\] Id.
\[48\] Id. at 64-65.
customary law, as evidence of a general practice accepted as law, may be another powerful source of obligations.

As Babylon 5 showed, the question of enforcing all rights applicable within human rights standards becomes a crucial and necessary exercise for a peaceful existence.\(^{50}\) Our fragile existence becomes disrupted when particular nations in the world engage in actions that contravene the most basic human rights. Should a nation limit its applicability of human rights during times of civil strife? There are definitely limits to this potential practice. As we shall see, the members of the Earth Alliance quickly deteriorated into civil war after the supposedly accidental death of President Santiago aboard Earthforce One.\(^{51}\) Yet, the Babylon 5 story is one of hope.\(^{52}\) It is a story that transcends legal and political considerations and delves into the values inherent to international human rights law. How to be and become better human beings is at the center of the story. To be a better human being is to recognize the importance of human dignity. In Babylon 5, this idea is centered in the Earth Alliance Constitution. At present, this ideal is centered in the ICCPR.\(^{53}\)

The ICCPR was drafted to provide standards of conduct for all nation members to the treaty in order to safeguard the rights of citizens.\(^{54}\) Among these rights are self-determination,\(^{55}\) life,\(^{56}\) liberty,\(^{57}\) avoidance of arbitrary arrests,\(^{58}\) provision of fair trials,\(^{59}\) privacy,\(^{60}\) free-

\(^{50}\) See Endgame, supra note 36; see also Babylon 5: Voices of Authority (PTEN television broadcast Feb. 1, 1996) (dealing with the issue of civilian injuries in a time of war).

\(^{51}\) See Endgame, supra note 36.

\(^{52}\) See Babylon 5: GROPOS (PTEN television broadcast Feb. 9, 1995); see also Babylon 5: Dust to Dust (PTEN television broadcast Feb. 8, 1996) (noting that Babylon 5 began as the last hope for peace and now represents the last hope for victory).

\(^{53}\) See International Covenant on Civil and Political Rights, supra note 26, pmbl. (noting that a goal of the ICCPR is “recognition of the inherent dignity . . . of all members of the human family . . . ”).

\(^{54}\) See id. (recognizing the importance of civil and political freedoms, as well as the freedom from want).

\(^{55}\) Id. art. 1.

\(^{56}\) Id. art. 6.

\(^{57}\) Id. art. 9.

\(^{58}\) Id.
dom of thought,\textsuperscript{61} conscience,\textsuperscript{62} religion,\textsuperscript{63} peaceful assembly,\textsuperscript{64} prohibition of torture (“cruel, inhuman or degrading treatment or punishment”),\textsuperscript{65} and slavery.\textsuperscript{66} The Babylon 5 story touches on all of these.\textsuperscript{67} The ICCPR belongs to an elite group of documents that deserves to be considered seriously. This group of documents is collectively known as the International Bill of Human Rights.\textsuperscript{68}

One of the most important documents ever drafted for the protection and furtherance of human rights and freedoms was the 1948 Universal Declaration of Human Rights (Universal Declaration).\textsuperscript{69} The United Nations Economic and Social Council (ECOSOC) established the official Commission on Human Rights (Commission) in February 1946.\textsuperscript{70} The Council of eighteen members included United States of America Delegate Eleanor Roosevelt as chairperson.\textsuperscript{71} The Commission worked extremely hard for several years to produce a document that would reflect the spirit of cooperation centered in human dignity.\textsuperscript{72} The ICCPR, along with the International Covenant on Economic, Social and Cultural Rights (ICESCR), were later drafted to give legal force to

\footnotesize{\textsuperscript{59} Id. art. 14.  
\textsuperscript{60} Id. art. 17.  
\textsuperscript{61} Id. arts. 18, 19.  
\textsuperscript{62} Id. art. 18.  
\textsuperscript{63} Id.  
\textsuperscript{64} Id. art. 21.  
\textsuperscript{65} Id. art. 7.  
\textsuperscript{66} Id. art. 8.  
\textsuperscript{67} See, e.g., Babylon 5: Intersections in Real Time (PTEN television broadcast Jun 19, 1997) (Captain Sheridan was subject to torture without access to the judicial system).  
\textsuperscript{68} Fact Sheet No. 2, supra note 19, background.  
\textsuperscript{71} Franklin and Eleanor Roosevelt Institute, Basis of Human Rights, Drafting and Adoption, http://www.udhr.org/history/default.htm (last visited Aug. 30, 2008).  
\textsuperscript{72} See id. (stating that the U.N. Commission on Human Rights “strove to forge a declaration that might successfully encompass the hopes, beliefs and aspirations of people throughout the world.”).}
the ideas contained in the Universal Declaration.\footnote{See International Covenant on Civil and Political Rights, \textit{supra} note 24, pmbl. (recognizing that the ICCPR was drafted in accordance with the Universal Declaration); see also International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI), pmbl., U.N. Doc. A/6316 (Dec. 16, 1966), \textit{available at} http://www.unhchr.ch/html/menu3/b/a_cescr.htm (stating that the ICESCR was drafted in accordance with the Universal Declaration).} The ICCPR is probably one the most comprehensive and authoritative documents in existence that enshrines the protection of civil and political rights. The preamble indicates that the rights outlined in the ICCPR focus on human dignity.\footnote{International Covenant on Civil and Political Rights, \textit{supra} note 24, pmbl.}

Human dignity should never be placed in jeopardy, and the rights supported should never be suspended in any circumstance. Although the ICCPR allows nations to derogate from certain human rights guarantees, under specific circumstances, this is done under special conditions and guided by clearly defined guidelines.\footnote{See \textit{id.} art. 4.} In declaring a state of emergency, the ICCPR continues to bind a government.\footnote{See \textit{id.} art. 40(1)(b) and 41.} What happens when a government ignores the limits laid down by the ICCPR? Some of the worst violations of human rights occurred during a state of emergency.\footnote{See \textit{Amnesty International, One Year On: Human Rights in Bangladesh Under the State of Emergency, http://www.amnesty.org/en/for-media/press-releases/one-year-human-rights-bangladesh-under-state-emergency-20080110} (last visited Aug. 30, 2008).}

In the Babylon 5 story, the Vice President of the Earth Alliance assumed power, while the former President’s death left many open questions.\footnote{See \textit{Babylon 5: Voices of Authority} (PTEN television broadcast Feb. 1, 1996).} Some members in the government and military, including Captain Sheridan, began to investigate this shift in power.\footnote{See \textit{id.}} The President, as leader of Earthforce, had power over the military.\footnote{Graw, \textit{supra} note 30, at x.} This power was offset by the legislative control vested in the Senate.\footnote{\textit{Id.}} Eventually, evidence surfaced that Vice President Clark had been involved in the
assassination of President Santiago. The Earth Alliance seems to be a government that respects human rights and humanitarian law. Although not perfect, its citizens and military personnel live by a code of conduct. This standard of behavior was respected and enforced for centuries.

Babylon 5 depicts a system of government reminiscent of the United States, while demonstrating the importance of international law as viewers discover Earthgov and its relations with other civilizations. The Earth Alliance Constitution provides as inference what the Vienna Convention loudly states as a fact. Under international law, a nation-state cannot rely on its internal laws in order to rationalize its unwillingness to perform legal obligations. Once a nation ratifies the ICCPR, the nation agrees to perform the obligations contained in the ICCPR in the spirit of *pacta sunt servanda* or good faith. The ICCPR sets forth a desired set of treaty-based standards to be followed. Even if a nation has not signed the treaty, an argument could be made in some circumstances that it could be bound by customary law. Thus, after international legal standards have been drafted and affirmed by international consensus, individual nations no longer have the option to declare customary law nonbinding.

A principle or rule of customary law may be embodied in a bipartite or multipartite agreement so as to have, within the stated limits, conventional force for the States parties to the agreement so long as the agreement is in force; yet it would continue to be binding as a principle or rule of customary law for other States.

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82 See *Voices of Authority*, supra note 78.
83 See, e.g., id. (throughout the entire show, Captain Sheridan advocates for the good faith adherence to the Earth Alliance Treaty).
85 See id. art. 26.
86 See *International Covenant on Civil and Political Rights*, supra note 24, art. 1–53.
For example, a state of emergency during times of conflict always provides dangerous legal grounds. The line between security and the infringement of civil rights can be distorted, even if declared with well-meaning intentions.

In Babylon 5, when a policy of control by propaganda, misinformation, and denial of truth began to spread throughout the Alliance territories, Earthgov utilized a perceived threat to planetary security to create fear and tighten the grip of control over its citizens. Captain Sheridan, along with a group of supporters and allies, began to take action. Shortly afterwards, President Clark declared martial law throughout the Earth Alliance, and then he dissolved the Senate, which forced its members to go flee as fugitives.

The conflict within the Earth Alliance provides a clear example of the mishaps that surround a declaration of a state of emergency. At first, the signs of upcoming violence were almost unnoticeable. In his desire to stretch and extend his power, President Clark utilized a new government branch called the Ministry of Peace. The Ministry, operating through a group of individuals called the Nightwatch, created an environment of paranoia where all citizens were subject to surveillance and the slightest perceived sign of dissatisfaction was severely suppressed. The Nightwatch created a deceitful propaganda campaign loaded with misinformation, which worked to spread the thought that any form of criticism against the government should and would be considered an act of sedition. Using fear to refrain freedom of speech, the Nightwatch created confusion and oppression among Earth’s citizens.

89 See Babylon 5: Dust to Dust (PTEN television broadcast Feb. 8, 1996) (In this episode an enforcement officer threatens a civilian for having a poster advocating that President Clark be put in jail because of his involvement in the death of former President Santiago, noting that this kind of opinion is mutiny.).
90 See, e.g., Babylon 5: Messages from Earth (PTEN television broadcast Feb. 22, 1996) (President Clark alleged that a new alien presented a threat to planetary security and extreme measures may be needed to protect the Earth.).
91 See id.
92 See Babylon 5: Point of No Return (PTEN television broadcast Feb. 29, 1996).
93 See id.
94 See id.
95 See id.
96 See id.
These activities spread toward the colonies of the Alliance. Earthgov ultimately surrendered to nationalism, authoritarianism, militarism, totalitarianism, xenophobia, and opposition to political tolerance. As a consequence, a group of Earthforce officers rebelled, thus marking the beginning of the civil war.

Looking to the Travaux Préparatoires for the ICCPR, we see that there was debate as to the drafting of article 4. The ICCPR, in article 4, allows for derogation of some of the rights protected only in times of national emergency. A national emergency is defined in article 4 as a set of circumstances that threatens the existence of a nation. This means, derogation is only permitted under exceptional circumstances. It is likely that the ongoing crisis supposedly perceived by President Clark of the Earth Alliance would not have met this high threshold. Moreover, article 4’s legislative history reveals that at some point, the derogation provisions were considered unnecessary. The drafters considered that governments would have to face difficult situations in times of war and “instances of extraordinary peril or crisis . . . .” Above all, the legislative history shows that State parties should not feel free to “decide for themselves when and how they would

97 See id.
98 See id.; see also, e.g., Voices of Authority, supra note 78 (These problems were evidenced by the involvement of Vice President Clark in the death of President Santiago). The members of the Nightwatch at the Babylon 5 station faced a formidable opponent in Captain Sheridan, who conspired to round them up and, with great difficulty, managed to disarm and expel them from the station. See Babylon 5: Point of No Return, supra note 92.
99 See Endgame, supra note 36.
100 See generally MARC J. BOSSUYT, GUIDE TO THE “TRAVAUX PRÉPARATOIRES” OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS 81-102 (1987). (detailing the legislative history of article 4).
101 International Covenant on Civil and Political Rights, supra note 24, art. 4 ¶ 1 (emphasis added).
102 Id.
104 BOSSUYT, supra note 100, at 83.
105 Id. at 83.
exercise emergency powers because it was necessary to guard against States abusing their obligations under the covenant. President Clark had such freedoms and he chose to exercise his emergency powers in an abusive manner. These actions precipitated the unexpected secession of several colonies from the Earth Alliance, including Babylon 5, and further fueled the civil war within the Alliance.

Was the declaration of martial law by Clark necessary? Earthgov and the Earth Alliance Constitution seemed to lack constitutional safeguards (treaty safeguards) to protect human rights and civil rights. Governmental actions may be necessary to avoid irreparable damage in times of war, unrest, or natural catastrophes. However, history shows that derogation has often been misused for illegitimate purposes under the guise of national security. Looking carefully at the Babylon 5 story, and comparing it to our own global history, we find that the Earth Alliance seemed to misuse its equivalent to article 4 of the ICCPR through its declaration of martial law. Earthgov was now subject to the dictates of the martial law declaration and the Earth Alliance Constitution was twisted into a rationalization for abuse of human rights.

The ICCPR, article 4, paragraph 2 prohibits derogations of the right to life, freedom from torture and slavery, imprisonment for acts not previously legislated as a crime and freedom of thought, conscience, and religion. President Clark disregarded (or discarded) similar standards. The government must make a formal declaration of emergency and communicate it to the other State Parties to the Covenant.

106 Id.
107 See Babylon 5: Severed Dreams (PTEN television broadcast April 4, 1996) (noting that President Clark required that anyone speaking against him be arrested and charged with treason).
108 See id. (Specifically, the colonies were angered by the bombing of civilian targets on Mars.).
109 See infra, notes 218-224 and accompanying text (detailing the case of the Greek government).
110 See, e.g., Messages from Earth, supra note 90 (depicting arrests made arbitrarily and based solely on anonymous tips).
111 See International Covenant on Civil and Political Rights, supra note 24, art. 4, ¶ 2.
112 See Dust to Dust, supra note 20 (allowing punishment for civilian opinions contrary to the interests of President Clark).
through the Secretary-General of the United Nations. This action would be later reviewed, and if necessary, criticized by the United Nations Human Rights Committee.

Governments must make periodic reports to the Human Rights Committee regarding their compliance with the ICCPR. The Human Rights Committee has the authority to independently assess whether the emergency is legitimate and if the government needs to take exceptional measures pursuant to an emergency declaration. In the Babylon 5 story, Captain Sheridan’s actions served as the equivalent to the scrutiny of the Human Rights Committee. The Human Rights Committee’s monitoring role is one of authority over actions of derogations. Under article 40, the Human Rights Committee directs the burden of proof toward governments. Above all, the ICCPR makes clear that not all perceived disturbances qualify as a public emergency which may threaten the life of the nation. The Human Rights Committee made clear that when derogating from the provisions of the ICCPR, a government’s actions must be of an “exceptional and temporary nature.” Furthermore, the government has to include in its report, submitted under article 40, “sufficient and precise information” so the Human Rights Committee is allowed the opportunity to assess the situation.

Interestingly, the legislative history of this article explains that “[i]t was further agreed that since the use of emergency powers had often been abused in the past, a mere notification would not be

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113 International Covenant on Civil and Political Rights, supra note 24, art. 4, ¶ 3.
114 See id. art. 40 (detailing the requirements of State reports).
115 Id.
116 See id.
117 See No Surrender, No Retreat, supra note 117; see also Endgame, supra note 36 (Captain Sheridan scrutinizes President Clark’s violations of human rights).
118 International Covenant on Civil and Political Rights, supra note 24 (The Human Rights Committee receives and reviews reports of State parties).
119 See id. (noting that State parties “to the Covenant should include in their reports submitted under article 40 sufficient and precise information about their law and practice in the field of emergency powers.”).
120 Id. ¶ 3.
121 Id. ¶ 2.
122 Id.
enough.”123 Along the way, Earthgov lost its sense of direction and the consequences were catastrophic in the ambit of human rights protection. Thus, the derogating government is expected to furnish the reason by which its derogation was actuated.124 Captain Sheridan, even during the heat of battle, was always concerned with being humanitarian.125 The Human Rights Committee follows this reasoning, explaining that in times of “armed conflict, whether international or non-international, rules of international humanitarian law become applicable . . .”126

These considerations are supplemented by the notion, also explained by the Human Rights Committee, that there are non-derogable rights “not listed in article 4, paragraph 2,” that fall within a norm of general international law not subject to derogation, and thus, “cannot be made subject to lawful derogation under article 4.”127 It is worth recognizing that today, a new kind of international law is emerging, giving prominence and power to non-state actors such as individuals and multinational organizations.128 The law of human rights presents a radical change where a primary judicial assumption shows that individuals enjoy rights directly from international law.129 In fact, international human rights law reminds us that, as a remedy for the enjoyment of rights, individuals find human dignity is not negotiable.130

IV. LAMENTATIONS OF DEROGATION

“All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”

-Universal Declaration of Human Rights131

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123 Bossuyt, supra note 100, at 97.
124 Id.
125 See No Surrender, No Retreat, supra note 117 (Captain Sheridan indicates a genuine concern for the lives of soldiers and civilians, even in a time of emergency); see also Endgame, supra note 36.
126 International Covenant on Civil and Political Rights, supra note 24, ¶ 3.
127 Id. ¶ 13.
129 Id. at 314-15.
130 See id. (noting the importance of individual rights in international law).
131 Universal Declaration of Human Rights, supra note 69, art. 1.
Fear and misinformation are extremely powerful tools. In the hands of an oppressor, they can cause devastating results. The ICCPR directly opposes the sources of fear. This is where Earthgov failed. Human rights reflect the international law concept that there are particular rights that never should be suspended while responding to public emergencies. Once Clark assumed the presidency, he endorsed a campaign of deceitful propaganda and misinformation that spread through the Alliance. Any voice of discontent was severely silenced using fear or force disappearance to refrain the freedom of speech. As mentioned earlier, members of Earthforce were divided and fighting one another in a bloody civil war. While this was happening, Mars decided not to implement martial law as directed by Earthgov. In response, President Clark ordered his forces to bomb civilian targets on Mars. In turn, the colonies of Proxima 3 and Orion 7 seceded from the Earth Alliance. Captain Sheridan joined them and declared Babylon 5 an independent state. President Clark decided to attack the station, and the battle was fought with great loss of life.

The Human Rights Committee, in its *General Comment Number 30: Reporting Obligations of States Parties under article 40 of the[International] Covenant,[on Civil and Political Rights]* explained that governments undertake obligations under the treaty “to submit reports in accordance with article 40 of the Covenant within one year of its entry into force, and thereafter, whenever the Committee so requests.” Article 40 of the ICCPR no doubt encompasses the efforts

132 See *Messages from Earth*, supra note 90 (President Clark announced through the media that there was a new alien race that presented a threat to planetary security and extreme measures may be needed for Earth’s protection.).

133 See, e.g., *Severed Dreams* (PTEN television broadcast April 4, 1996) (Ambassador Delenn noted “[e]ven the humans are fighting each other.”).

134 See *id*.

135 See *id*.

136 See *id*. (Captain Sheridan announced that Babylon 5 would “remain an independent state until President Clark [was] removed from office.”).

137 See *id*.

138 See *id*. The arrival of four Minbari Cruisers led by Ambassador Delenn brought an end to the battle and added protection to Babylon 5. See, e.g., *Messages from Earth, supra* note 90 (Ambassador Delenn and other Minbari assist Captain Sheridan and Babylon 5.).

139 U.N. Human Rights Comm. [CCPR], *General Comment 30: Reporting Obligations of State Parties under article 40 of the Covenant,* ¶ 1, U.N. Doc. HRI/
of the Human Rights Committee to be watchful of the progress made by
governments to protect and promote human rights.\textsuperscript{140} The main objec-
tive of the ICCPR is to see the return of the government to normalcy as
soon as possible, once an emergency is declared.\textsuperscript{141}

Earthgov, under President Clark, was created as a government
inclined to avoid any access to the truth. From the point of view of the
ICCPR and the Human Rights Committee, in evaluating the Babylon 5
situation, citizens reported no information, or alternatively, asked no
questions or made no comments regarding article 4 (or something simi-
lar) human rights violations by Earthgov.\textsuperscript{142} Educational standards and
access to information help create an informed society, thus, a society
that respects and helps protect the security and integrity of a nation-
state. One central consideration for an informed society is whether or
not it encourages the free flow of information. The continuing impact
of science and technology on society, in a historical context, can only be
equated to the present need for more access to information. People
need to know now, more than ever, that they enjoy the protection of
civil and political rights. The same ideals can be identified in the World
Summit on the Information Society (WSIS).

The WSIS, as a concept, is based on information access and
openness.\textsuperscript{143} It is a direct reflection of the United Nations goals borne
out of the United Nations Millennium Summit, held in New York from

\textsuperscript{140} See id. art. 40.

\textsuperscript{141} See id. art. 4 (allowing derogation of rights only “to the extent strictly required by
the exigencies of the situation . . . .”).

\textsuperscript{142} See, e.g., Severed Dreams, supra note 107. The Optional Protocol to the CCPR
today complements the actions reviewed under the reporting process for those member
governments. See Optional Protocol to the International Covenant on Civil and
was set up to “further achieve the purposes of the [CCPR] . . . to receive and consider
. . . communications from individuals claiming to be victims of violations of any rights
set for in the [CCPR].”).

\textsuperscript{143} See World Summit on the Information Society, Geneva, Switz., Dec. 10-12, 2003,
Declaration of Principles, U.N. Doc. WSIS-03/GENEVA/DOC/4-E (Dec. 12, 2003),
available at http://www.itu.int/dms_pub/itu-s/md/03/wsis/doc/S03-WSIS-DOC-0004
September 6th to 8th in 2000. The goals evolved further during the WSIS and its product, the creation of the Internet Governance Forum (IGF). The eradication of illiteracy around the world rises to primary concern within the Internet governance discussion. An illiterate populace is prone to poverty, disease, famine, war, and without a doubt, ignorance as to the benefits of new technologies. Technology can be a catalyst to human rights development, and international human rights law is the fuel.

It has been recognized that human rights are the spinal column of the United Nations era. “We judge the legitimacy of a government by whether it lives up to the international standards of human rights.” Indeed, Myres S. McDougal commented that while the ICCPR was being drafted for presentation to the ECOSOC, it was “conceived as a treaty committing signatories to specific obligations.” Yet, he noted it was regrettably that, in terms of content, the draft of the ICCPR fell

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144 See id. ¶ 2 (declaring that the challenge of the WSIS is to promote development of the goals of the Millennium Declaration). See generally United Nations Millennium Summit, 6-8 September 2000, http://www.un.org/millennium/backgrounder.htm.


147 See World Summit on the Information Society, Tunis, Tunisia, Nov. 16-18, 2005, Tunis Commitment, ¶ 2, available at http://www.itu.int/wsis/docs2/tunis/off/7.pdf (“[A]ccess to information and sharing and creation of knowledge contributes significantly to strengthening economic, social and cultural development . . . ”).


149 Id.

far short of the promise of the Universal Declaration.151 “It neither guarantees participation in government, the *sine qua non* of freedom, nor stipulates any aspirations about that economic well-being upon which today depends the fulfillment in fact of any human rights.”152 These are challenges that the international community continues to tackle fifty-nine years later.

Earthforce ships in orbit around Proxima 3 formed a blockade and later destroyed five refugee ships carrying civilians.153 This forced Captain Sheridan to begin a campaign to depose President Clark.154 He began by liberating all colonies, starting with Proxima 3.155 This caused him to become a target. He eventually fell into a trap and was captured by President Clark’s agents.156 Although eventually rescued, during Captain Sheridan’s interment he was subjected to torture.157 Derogation can have serious implications, and it is precisely at times of internal conflict and emergency that citizens are likely to be arrested and detained.158 These detentions present a delicate proposition in balancing international human rights law and sovereignty.

The Human Rights Committee hinted that the requirements of particular clauses of article 14 for fair trials under the ICCPR are non-derogable, stating that governments may not reserve the right to arbitrarily arrest or detain persons, or presume a person guilty.159

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151 Id. at 72.
152 Id.
153 See No Surrender, No Retreat, supra note 117
154 See id.
155 See id.
156 See Babylon 5: *The Face of the Enemy* (PTEN television broadcast June 12, 1997).
157 Babylon 5: *Between the Darkness and the Light* (PTEN television broadcast Oct. 9, 1997).
158 See General Comment No. 29, supra note 103 (noting that it is essential that the State party officially declare a state of emergency in order to invoke article 4 in order to preserve “the principles of legality and rule of law at times when they are most needed.”).
159 U.N. Human Rights Comm. [CCPR], General Comment No. 24: Issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant, ¶ 8, U.N. Doc. HRI/GEN/1/Rev.7, available at http://www.unhchr.ch/tbs/doc.nsf/0/ca12c3a4ea8d6c53c1256d500056e56f/SFILE/G0441302.pdf.
less, while on Mars, Captain Sheridan was subject to physical abuse as well as intensive drug and psychological torture.\textsuperscript{160} The ICCPR prohibits these actions in article 7,\textsuperscript{161} as does the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention Against Torture).\textsuperscript{162} Article 2 of the Convention Against Torture expressly prohibits torture during times of emergency, essentially making this practice illegal at all times.\textsuperscript{163} Presumably, a reservation by Earthgov to such derogation provisions in human rights treaties would fail as contrary to their object and purpose.\textsuperscript{164}

The Human Rights Committee considered the issue in \textit{General Comment Number twenty-four}, stating that “[w]hile there is no hierarchy of importance of rights under the [ICCPR] . . . some provisions are non-derogable exactly because without them there would be no rule of law.”\textsuperscript{165} The Human Rights Committee further emphasized that making reservations to the ICCPR requires closer legal scrutiny.\textsuperscript{166} The Human Rights Committee recognized that “Article 20, paragraph 4, of the Vienna Convention on the Law of Treaties 1969 contains provisions . . . on acceptance of and objection to reservations. This provides for the possibility of a State to object to a reservation made by another State.”\textsuperscript{167} The Human Rights Committee also noted in paragraph 17 that “the Vienna Convention on the Law of Treaties that provides the definition of reservations and also the application of the \textit{object and purpose test} in the absence of other specific provisions.”\textsuperscript{168} But the Human Rights Committee explained that the Vienna Convention on the Law of

\begin{footnotes}
\item[160] See \textit{Intersections in Real Time}, supra note 67.
\item[161] See \textit{International Covenant on Civil and Political Rights}, supra note 24, art. 7 (“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”).
\item[163] See id. art. 2.
\item[164] See \textit{General Comment No. 24}, supra note 159, ¶ 18 (explaining that the Human Rights Committee must “determine whether a specific reservation is compatible with the object and purpose of the [CCPR].”).
\item[165] See id. ¶ 10 (“[A] State has a heavy onus to justify . . .” a reservation contrary to the object and purpose of the CCPR.).
\item[166] Id.
\item[167] Id. ¶ 16.
\item[168] Id. ¶ 17 (emphasis added).
\end{footnotes}
Treaties (Vienna Convention) provisions “on the role of State objections in relation to reservations are inappropriate to address the problem of reservations to human rights treaties. Such treaties, and the Covenant specifically, are not a web of inter-State exchanges of mutual obligations. They concern the endowment of individuals with rights.”

What’s more, the Human Rights Committee declined to assume that a non-objecting government finds a particular reservation acceptable.

This analysis is reinforced by the findings of the International Court of Justice (ICJ) in the Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide. In that case, the ICJ explained that the objects of such a Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention) were “for a purely humanitarian and civilizing purpose.”

The ICJ reasoned that with this type of treaty “the contracting [governments] do not have any interests of their own[, but rather,] they . . . have . . . a common interest, [in] the accomplishment of those high purposes which are the raison d’etre of the convention.”

Consequently . . . one cannot speak of . . . the maintenance of a perfect contractual balance between rights and duties.” The ICJ, most importantly, emphasized the incompatibility of a reservation with the object and purpose of the Genocide Convention, stating that it “must furnish the criterion for the attitude of a State in making the reservation on accession as well as for the appraisal by a State in objecting to the reservation.”

However, the ICJ explained that even though it has been argued “that any State entitled to become a party to the Genocide Convention may do so while making any reservation it chooses by virtue of its sovereignty,” the ICJ itself did not share this view.

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169 Id.

170 Id.

171 See Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, 1951 I.C.J. 15, 24 (May 28) (“[I]t is the compatibility of a reservation with the object and purpose of the Convention that must furnish the criterion for . . . making the reservation . . . as well as . . . in objecting to the reservation.”).

172 Id. at 23.

173 Id.

174 Id.

175 Id. at 24.

176 Id.
So, it is starting to become clear that a government’s intention to exclude articles from human rights treaties may be overturned by international human rights law standards, customary law, the treaty in question, and human rights regional agreements.177 Additionally, relevant to our discussion is paragraph eighteen of General Comment Number twenty-four, which concluded that the Human Rights Committee is the entity charged with the mission to determine if a reservation is compatible with the object and purpose of the ICCPR.178 Applying the “object and purpose” standard, the Human Rights Committee decided that in order to determine “the scope of its duty to examine a State’s compliance under article 40 . . . the Committee [would have to take into consideration] the compatibility of a reservation with the object and purpose of the Covenant and with general international law.”179 The Human Rights Committee mentioned a key component that helps answer whether, hypothetically, Earthgov would be bound by international human rights principles.

While watching Babylon 5, one will infer that the Earth Alliance Constitution is similar to the United States Constitution. Yet, an inference could be made that all treaties signed by the United States could be considered as incorporated in the Earth Alliance Constitution. General Comment Number twenty-four explains that “[t]he number of reservations, their content and their scope” could undermine the effectiveness of the ICCPR by weakening the enforcement of obligations by governments.180 The Human Rights Committee noted it is desirable that States accept the full range of obligations within the ICCPR, being that “human rights norms are the legal expression of the essential rights that every person is entitled to as a human being.”181 In conclusion, the Human Rights Committee made clear its feelings about reservations when it explained that the ICCPR is an instrument that articulates many civil and political rights, which secure the objectives of the ICCPR.182

177 See id. (allowing the Human Rights Committee to disapprove a State’s derogation that is contrary to the object and purpose of the CCPR).
178 General Comment No. 24, supra note 159, ¶ 18.
179 Id.
180 Id. ¶ 1.
181 Id. ¶ 4.
182 See id. ¶ 7 (noting that the articles of the CCPR that articulate civil and political rights “secure[ ] the objectives of the Covenant.”).
A number of nations declared emergencies over the years. The government of Paraguay took such action for almost thirty-five years.\textsuperscript{183} Lengthy periods of emergency are questionable at best and abusive at worst. Human Rights Committee members reviewed the Chilean government’s activities about a state of emergency that continued for an extended duration.\textsuperscript{184} Captain Sheridan’s efforts proved fruitful when his forces, after being rescued, went on to the final engagements in the battle for Earth.\textsuperscript{185} The final analysis follows: Babylon 5 is a great learning tool and stands as a reminder that abuses will not be accepted as legitimate during periods of conflict.

V. Crimes Against the Human Person

“The care of human life and happiness, and not their destruction, is the first and only object of good government.”

-Thomas Jefferson\textsuperscript{186}

The world is a global community of many voices. Through this community, we can learn to live better or suffer greatly. Together we can achieve greatness, and this greatness can be seen all over the world. The African (Banjul) Charter on Human and Peoples’ Rights contains no derogation clause from the rights it enshrines, and the only emer-
gency clause addresses human rights violations.\textsuperscript{187} In the Americas, the American Declaration of the Rights and Duties of Man (American Declaration) echoes the values presented in the International Bill of Rights.\textsuperscript{188} The American Convention on Human Rights (American Convention)\textsuperscript{189} permits its contracting parties to suspend guarantees, with limitations.\textsuperscript{190} It is important to keep in mind that the Inter-American Court of Human Rights (Inter-American Court) and the Inter-American Commission on Human Rights (Inter-American Commission) stated that “although originally adopted as a declaration and not as a legally binding treaty, the American Declaration [of the Rights and Duties of Man] is today a source of international obligations for the OAS member States.”\textsuperscript{191} Therefore, except in limited situations, human rights may not be suspended because the Inter-American Court defined them as guarantees.

The Inter-American Court explained that lack of effective means of fighting “violations of the rights recognized by the Convention is


\textsuperscript{188} See American Declaration of the Rights and Duties of Man, O.A.S. Res. XXX, adopted by the Ninth International Conference of American States (1948), \textit{reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System}, OEA/Ser.L.V/II.82 doc.6 rev.1 at 17 (1992) (recognizing the importance of “the dignity of the individual . . . .”) [hereinafter American Declaration].


\textsuperscript{190} See id. art. 27, ¶ 2) (Article 27(2) limits the derogation by not authorizing any suspension of the following articles: “Article 3 (Right to Juridical Personality), Article 4 (Right to Life), Article 5 (Right to Humane Treatment), Article 6 (Freedom from Slavery), Article 9 (Freedom from Ex Post Facto Laws), Article 12 (Freedom of Conscience and Religion), Article 17 (Rights of the Family), Article 18 (Right to a Name), Article 19 (Rights of the Child), Article 20 (Right to Nationality), and Article 23 (Right to Participate in Government), or of the judicial guarantees essential for the protection of such rights.”).

its a violation of the Convention . . . .”\textsuperscript{192} The Inter-American Court further makes the point of observing circumstances where the written law is not enforced by governments. “A remedy which proves illusory because of the general conditions prevailing in the country, or even in the particular circumstances of a given case, cannot be considered effective.”\textsuperscript{193} It is also ineffective in situations that immobilize the judiciary, or permit unjustified delays in the decision-making process, or deny victims access to judicial remedies.\textsuperscript{194} Captain Sheridan encountered this problem while he was subjected to torture in Mars.\textsuperscript{195}

The Inter-American Court stated that unlawful detentions may place detainees in jeopardy by putting them at risk of torture. In an Advisory Opinion regarding \textit{Habeas Corpus in Emergency Situations}, the Inter-American Court noted that “under certain circumstances the suspension of guarantees may be the only way to deal with emergency situations . . . however . . . abuses may result from the application of emergency measures . . . .”\textsuperscript{196} Furthermore, “[t]he suspension of guarantees lacks all legitimacy whenever it is resorted to for the purpose of undermining [democracy].”\textsuperscript{197} A suspension of guarantees is not a carte blanche provided to governments. Rather, it is a limited and temporary suspension of the rule of law that does not authorize a government to disregard human rights standards by which they are always bound.\textsuperscript{198} In the Babylon 5 story, Earth’s citizens experienced wider periods of arrest and detention.\textsuperscript{199}

\textsuperscript{193} Id.
\textsuperscript{194} Id.
\textsuperscript{195} See \textit{Babylon 5: Intersections in Real Time} (PTEN television broadcast June 19, 1997) (Captain Sheridan was tortured with no access to counsel.).
\textsuperscript{197} Id.
\textsuperscript{198} See \textit{id.} ¶ 24 (noting that a government cannot be deemed “to have acquired absolute powers that go beyond the circumstances . . . .” justifying the suspension of guarantees).
\textsuperscript{199} See, e.g., \textit{Messages from Earth}, supra note 90 (Nightwatch states that many will be arrested based on anonymous tips).
Against this background, what considerations do we face when analyzing governmental actions in times of civil strife? The American Declaration and the ICCPR specify what rights need to be protected and whether any of those rights may be temporarily limited. The key word is emergency. Nevertheless, although there are acceptable measures within the spirit of the American Declaration which are not in direct conflict with the American Convention, leaders continue to go beyond the permissible boundaries. A good example to study would be the situation in Peru in the 1990s. Governments cannot assume “to have acquired absolute powers that go beyond the circumstances justifying the grant of such exceptional legal measures.”

Arbitrary arrests, disappearances, and torture occurred in many American countries. “In order for habeas corpus to achieve its purpose . . . it is necessary that the detained person be brought before a competent judge or tribunal with jurisdiction over him . . . .” Further, “habeas corpus performs a vital role in ensuring that a person’s life and physical integrity are respected, in preventing his disappearance or the keeping of his whereabouts secret and in protecting him against torture . . . .” Abuses around the world are not new; yet, their existence in this day and age is troubling.

No other case presents the terrible reality of the denial of human rights more than the Loayza Tamayo Case from Peru. Captain Sheridan’s torture and drug induced interrogations made viewers particularly uncomfortable; a normal reaction to abuse of a human being. Some of

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200 See generally American Declaration, supra note 188, ch. 1 (specifying the rights protected by the American Declaration). See also International Covenant on Civil and Political Rights, supra note 24, chs. 2, 4 (specifying the rights protected and the rights which may be derogated during times of emergency).

201 American Convention, supra note 189, art. 41 (allowing suspension of guarantees only “[i]n times of war, public danger, or other emergency . . . .”) (emphasis added).


203 Id.

204 Id. ¶ 35.

205 Id.

the facts of the Loayza Tamayo Case are reproduced below to completely illustrate the problem. The Inter-American Commission presented to the Inter-American Court the following tragedy:

a. On February 6, 1993, María Elena Loayza-Tamayo, a Peruvian citizen and a professor at the Universidad San Martín de Porres, was arrested . . . by officers of the National Anti-Terrorism Bureau (DINCOTE) of the Peruvian National Police . . . . The police officers did not produce an arrest warrant issued by a court or any order from a competent authority. The arrest was based on a charge made to the police authorities by Angélica Torres García, alias “Mirtha,” that María Elena Loayza-Tamayo was a collaborator of the subversive group Shining Path [Sendero Luminoso].

b. María Elena Loayza-Tamayo was detained by the DINCOTE from February 6 to 26, 1993. During that period she was held incommunicado for ten days and subjected to torture, inhuman and degrading treatment and unlawful pressure. All this was done for the purpose of forcing her to incriminate herself and confess that she was a member of the Peruvian Communist Party-Shining Path (PCP-SL). Despite this, the victim . . . declared her innocence, denying membership of the PCP-SL . . . .

c. During those ten days she was allowed no contact with her family or her attorney, nor were they informed of her arrest. María Elena Loayza-Tamayo’s family learned of her arrest through an anonymous telephone call . . . .

This is precisely what the American Convention tried to avoid by safeguarding important human rights such as the right to life (article 4), the right to humane treatment (article 5), the right to personal liberty (article 7), the right to a fair trial (article 8), the right to judicial protection (article 25), and finally, the issue of suspension of guarantees (arti-

207 Id. ¶ 14.
The Loayza-Tamayo Case is by no means an isolated incident; rather, it is part of an unfortunate pattern of behavior that affected and continues to affect nations around the world.

The Inter-American Court provided great information on the issue at hand with an advisory opinion originally requested by the government of Uruguay in the Judicial Guarantees in States of Emergency Advisory Opinion. In the opinion, we find the Inter-American Court’s analysis after the government of Uruguay requested an interpretation of the scope of the American Convention’s prohibition of the suspension of the judicial guarantees and its connection to the protection of rights. The Inter-American Court took into consideration a government’s duty “in time of war, public danger, or other emergency that threatens the independence or security of a State Party.” The Inter-American Court explained that “Article 25(1) incorporates the principle recognized in the international law of human rights of the effectiveness of the procedural instruments or means designed to guarantee such rights.”

Indeed, looking back at the Loayza-Tamayo Case, we find that the situation deteriorated further when Miss Tamayo was “transferred to the Penitentiary’s maximum-danger pavilion, . . .” while being “held in continuous solitary confinement, . . .” a fact that the Inter-American Court declared “an arbitrary and unlawful deterioration in detention conditions, thereby violating, among other instruments, the American Convention on Human Rights and the Standard Minimum Rules for the Treatment of Prisoners.”

208 See American Convention, supra note 189.
209 See Judicial Guarantees in States of Emergency, supra note 192.
210 Id. ¶¶ 1-2.
211 Id. ¶ 2 (internal quotation marks omitted).
212 Id. ¶ 24.
illusory because of the general conditions prevailing in the country is not an effective remedy, and thus, cannot be used by a government as a defense to detract from terrible human rights violations. Any situation that accepts the denial of justice should be eradicated.

While the American system provides hope for the future with regard to protecting human rights, the European system provides the world with an even greater potential for hope in the form of the European Court of Human Rights. At the heart of its jurisprudence is the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention), signed by members of the Council of Europe.215 “In time of war or other public emergency threatening the life of the nation,” article 15 of the European Convention allows signatories to “take measures derogating from its obligations under [the] Convention . . . .”216 Analogous to the ICCPR, article 15 enumerates rights that may not be derogated.217

The Greek Case, provides an example of a government that derogated from its obligations under the European Convention. In April 1967, Greece’s new military government declared martial law, imprisoned citizens for their political views, dissolved political parties, and instituted widespread censorship, while suspending civil rights protected under the Greek Constitution.218 The Greek government went on to declare a state of siege, which was a derogation from its obligations under the European Convention.219 “The coup in the early morning” of April 21, 1967, sent shockwaves across the planet.220 Soon after the coup, the Greek Parliament was closed, the political parties dissolved,

216 Id. art. 15(1).
217 See id. art. 15(2).
219 Greek Case, supra note 218, at 19.
and the media came under strict censorship. Approximately six thousand “politicians, journalists, and others were taken prisoner,” many of whom were subjected to torture. Fortunately, “[a] coup of this kind could of course not happen in today’s Greece and probably not in any other Council of Europe member state.”

In 1967 the European Commission of Human Rights (European Commission) confronted the issue of whether the Greek government faced a public emergency, thereby permitting derogation from the obligations under the European Convention. Applying a four prong test, the European Commission considered whether the situation was “actual or imminent,” whether it “involved the whole nation,” whether the organized life of the community was threatened, and whether the crisis or danger was exceptional. In conducting a tremendous case analysis, the European Commission examined facts, interviewed witnesses, and considered various articles of the European Convention. The European Commission, in presenting its findings, explained that it could not find, based on the evidence at hand “a scale threatening the organized life of the community.” In the final analysis the European Commission concluded that the Greek government in power was not permitted to derogate from the European Convention because there was no evidence of a public emergency threatening the life of the Greece.

The same analysis used by the European Commission can be extrapolated to facts surrounding Earthgov’s declaration of martial law. Under political pressure from the newly appointed, acting President Luchenko, Captain Sheridan resigned his Earthforce commission.

The new President offered amnesty for all officers who followed Captain Sheridan, and he was allowed to retire with full honors. He was

221 Id.
222 Id.
223 Id.
224 Greek Case, supra note 218, at 24.
225 Id. at 72.
226 Id. at 44-103.
227 Id. at 104.
228 See Babylon 5: Rising Star (PTEN television broadcast Oct. 23, 1997).
229 See id.
elected shortly after as President of the newly formed Interstellar Alliance.230

VI. CONCLUSION
It was an early Earth president, Abraham Lincoln, who best described our situation: The dogmas of the quiet past are inadequate to the stormy present. The occasion is piled high with difficulty, and we must rise to the occasion. We cannot escape history. We will be remembered in spite of ourselves. The fiery trial through which we pass will light us down in honor or dishonor, to the last generation. We shall nobly save, or meanly lose, our last best hope of Earth.231

The preceding assessment of international human rights law issues seen in Babylon 5 teaches us that declaring a state of emergency, and the problems that such action brings, provides striking similarities to present day situations. The *sine qua non* of any society is the protection of the human person. Babylon 5 illustrates how a lack of respect for international human rights law, particularly civil and political rights, impacted Earthgov’s domestic policies.232 Earthdome pretended to observe a *rights system*, but it refused to permit this system to improve the rights of Earth’s citizens.233 Human rights law in all its forms represents a call that we all must answer. While the logic behind the repressive actions of a government may motivate the *legality* to suspend protection of civil and political rights, international human rights law steps in to compensate. There will always be those willing to sacrifice life and liberty in order to promote dangerous, indeed, deadly agendas.

230 See id.
231 See Babylon 5: Points of Departure, supra note 33 (Captain Sheridan made his first speech to his new crew on Babylon 5.) (quoting Abraham Lincoln’s Annual Message to Congress on December 1, 1862, in ABRAHAM LINCOLN, COLLECTED WORKS OF ABRAHAM LINCOLN VOLUME 5 (University of Michigan Digital Library Production Services) (2001), available at http://name.umdl.umich.edu/lincoln5) (internal quotation marks omitted).
232 See, e.g., Babylon 5: The Fall of Night, supra note 34 (requiring members of Nightwatch to report civilians for criticizing Earthgov’s policies).
233 See, e.g., id. (allowing Earthgov’s policies to severely limit the freedom of its citizens, particularly in restricting freedom of speech).
The messages of Babylon 5 call for the protection of humanity. Some television shows become memorable not just because of their popularity, but because their popularity is based on positive messages that have a great utility for our present legal education. Joseph demonstrated that a show like Babylon 5 could make us consider our own existence, while asking about a future and a direction for our society.234 Due to the great popularity of the series, and because of its clear presentation of legal issues, Babylon 5 can be an effective tool for teaching international human rights law. What Straczynski envisioned, and what Joseph understood in 1992, is now an avenue that can help us realize all nations draw inspiration from the cultural development of humanity. The Babylon 5 story encompasses the best of cultural development. It is a story that endures!

234 See Joseph, supra note 3 (discussing the relevance of Star Trek in legal education).