

## Foreword

It was at the World Conference on Human Rights (1993) that the international community has declared, by general agreement, the universality and indivisibility of human rights. But this Vienna Declaration triggered, especially in Asia, a fresh discussion on „cultural relativism“, not only among political leaders who, for the obvious reason of cementing and justifying their power, counter the universality of human rights by reference to „Asian values“, but also among academic scholars, who are disenchanted with the eurocentrism and the individualistic „liberty-centrism“ of human rights and with many contradictions of the Western human rights policies.

This INEF-Report includes a contribution by Yasuaki Onuma, Professor for International Law at Tokyo University, who in a sophisticated manner calls for a „liberation from liberty-centrism“ and – in accordance with the indivisibility imperative – proposes an up-grading of the economic, social, and cultural human rights. Suggestive – though provocative in Western eyes – is his “intercivilizational approach to human rights”, which indicates how human rights can be cleared of the suspicion of being a product of the West. It is hard to deny, as he claims, that human rights often look like nothing more than another beautiful slogan by which great powers rationalize their interventionist policies.

To Professor Onuma, the attempt to clear human rights of “liberty-centrism, a persistent form of Westcentrism” is a chance to persuade the leaders of developing countries to accept the judgement on human rights conditions in their countries, because this judgement is based on the

standard which the overwhelming majority of the global community have committed themselves to. His “intercivilizational approach” has the double function of liberating the discourse on human rights from “predominant Westcentrism, and spreading human rights on a global scale”.

This intellectual voice from Japan, which by all means can be considered representative of the East Asian discourse on the universality of human rights, inevitably provokes controversy. But this intercultural dialogue is a necessary contribution to an intercivilizational approach to human rights.

This INEF-Report enters into this discourse with a critical discussion of the Right to Development, which in East and Southeast Asia occasionally is – in accordance with the “development first” postulate – considered a higher-ranking right and instrumentalized to call “liberty-centrism” into question. On account of this Franz Nuscheler changed from advocate to critic of the Right to Development – and therefore one could read into his argumentation a contradiction to the arguments of Professor Onuma. However, they certainly share the view that watering the Right to Development down to a “right to everything” would not help promote the universal recognition of the “third generation” of human rights.

This INEF-Report also includes a critical reply by an official of the Federal Ministry of Economic Cooperation and Development to Nuscheler’s critique of the Right to Development. Joachim Schmitt accuses Nuscheler of arguing in a purely legalistic manner and of failing to honour the political and developmental relevance of the Right to Development. Apart from the fact that every “right” has to pass the test of legal validity, this political defence

of the Right to Development is certainly remarkable, because as late as in 1986 the German Government did not agree to the Declaration on the Right to Development adopted by the UN General Assembly. It remains unclear why in 1993 the West agreed to the pledge to the Right to Development incorporated in the Vienna Declaration. There is little doubt that this was due to political rather than legal reasons.

And Nuscheler's position is by no means only based on legal reservations but also on the suspicion that the Western countries by their reluctant acceptance of the Right to Development got something that was important to them (i.e. recognition of the principle of universality), and they conceded something (i.e. the legally non-binding Right to Development), which imposed little obligation on them. It was a political deal in which substantial elements of law were at stake.

For reasons of balance this INEF-Report also includes a defence of the Right to Development by the Office of the UN High Commissioner for Human Rights. If the rhetoric around the Right to Development could in fact be translated into a global strategy and serve as a "benchmark" in the

shaping of the North-South relations Nuscheler – as he concedes at the end of his contribution – would rethink his legal and political reservations.

Since the documents essential for the discourse on the Right to Development are scattered and often hard to find this INEF-Report, in addition to the Declaration on the Right to Development of 1986, also includes excerpts from other important declarations, resolutions, and reports. The resolution on the Right to Development adopted by the UN Commission on Human Rights at its 54<sup>th</sup> session in April 1998 is documented in full.

INEF-Reports are discussion papers meant to encourage international discourse. This is one of the reasons why Professor Onuma's contribution, which is to be published in the *Asian Journal of International Law* (1998, vol. 7), is made available to German readers and why the controversy on the Right to Development is documented in this report.

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## DOCUMENTS

I.	UN Charter, Art. 55 + Art. 56
II.	Universal Declaration of Human Rights, Art. 28
III.	International Covenant on Economic, Social and Cultural Rights, Art. 2
IV.	African (Banjul) Charter on Human and Peoples' Rights, Art. 22
V.	Declaration on the Right to Development (1986)
VI.	Global Consultation on the Right to Development as a Human Right
VII.	Vienna Declaration and Programme of Action on World Conference on Human Rights (1993), Art. 10 + Art. 11
VIII.	Bangkok Declaration on World Conference on Human Rights (1993)
IX.	UN Commission on Human Rights: Resolution on the Right to Development (1998)

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## An Intercivilizational Approach to Human Rights

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### Introduction\*

As we approach the end of the twentieth century, the problem of human rights has emerged as an object of fierce international controversy. Are human rights universal, or relative to some culture? Should developing nations first pursue economic development, and then the realization of human rights? Or should they pursue the latter from the beginning even at the alleged cost of economic development and political stability? This problematization of human rights reflects fundamental problems which will continue into the next century.

These problems are

1. conflicts between the transnationalization of economic and informational activities and the sovereign states system;
2. conflicts between the global quest for human dignity, and grudges of developing nations against the past imperial policies by today's developed nations as well as huge economic gaps between the former and latter; and
3. conflicts between East Asian (1) nations as economic powers, and the Westcentric (2) structures of international information and culture.

These fundamental problems require us to deal with the question of human rights not merely as today's visible issues (3). What is needed is a comprehensive framework within which one can understand issues of

human rights as expressions of these fundamental problems. This article seeks to present, albeit in an abstract and incomplete manner, such a comprehensive framework.

### I Conflicts destabilizing the contemporary international order and a need for an intercivilizational approach

#### 1. *The conflict between the transnationalization of economics and information, and the sovereign states system*

Post-war economic activities have been generated and supported by incessant technological innovations, the internationally predominant capitalist economy and peace between developed countries, lasting half a century. Together with these economic activities, informational activities have also expanded their spheres on a global scale. Media institutions of developed countries constantly send global news to their citizens in a sensational manner. These news, especially that sent to living rooms of ordinary citizens in developed societies through TVs, is often shocking to them, reflecting huge differences in economic situations, political regimes, religions, and social customs between developed countries and developing countries. To those whose per capita national income is over US\$ 20,000 and whose life expectancy is nearly eighty years, the "price of life" of those whose per capita income is less than US\$ 500 and whose life expectancy is approximately fifty years looks extremely cheap. Political persecutions, the inhumane treatment of prisoners and apparent discriminatory practices are all vividly depicted on TV screens. This invites anger

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\* This is a preliminary version of an article which will be published in *The Asian Yearbook of International Law*, vol. 7 (1998). Nothing from this paper must be quoted.

against the offenders and sympathies with the victim.

However, today's international society is based on the sovereign nation states system, whose fundamental principle is equality and independence of states. Although this system is becoming obsolete from the perspective of the global economy and information, it will most likely survive for the foreseeable future. In the case of many developing countries, which comprise various linguistic, religious, or ethnic groups struggling with each other, the issue will be more than mere survival of the system. For them, the coming decades are nothing other than the era of nation-building, overcoming domestic conflicts and consolidating the state mechanism.

Thus, the twenty-first century will witness mutually conflicting developments. On the one hand, the sovereign states system will be gradually eroded by the constantly expanding and penetrating global economy and information. Although this global economy and information is managed mainly by developed countries, or, more precisely, their capitals, it will penetrate developing countries as well. On the other hand, the sovereign states system will be more consolidated on the part of many developing countries (4). This conflict will pose a serious problem to human beings in the next century. It may become even more serious by being combined with the second conflict.

## *2. The conflict between the global quest for human dignity and the sense of victimization on the part of developing countries*

In developed societies, where people generally enjoy a high standard of living, a

quest for economic well-being no longer occupies such a high priority as it used to. Instead, a quest for "human rights" (as understood mainly as civil and political rights) or "environment" is attracting more and more people. Accordingly, the voice becomes stronger of those who claim that they should not tolerate serious human rights violations even if committed in foreign countries. This voice demands their government to intervene in the delinquent state and stop such human rights violations. This phenomenon, seen typically in the US today, can be witnessed in other developed societies as well. It will continue to spread.

However, most nations with serious violations of human rights and targeted for criticism were once under colonial rule, suffered from military intervention, or were economically exploited by developed countries. Because of this humiliating past, they tend to respond to the criticism by the developed countries in an excessively sensitive manner. For those who have experienced colonial rule and interventions under the beautiful slogans such as "humanity" or "civilization" (5), the term "human rights" often looks like nothing more than another beautiful slogan by which great powers rationalize their interventionist policies (6).

To say that such a claim is a convenient excuse of the leaders of authoritarian regimes to evade criticism of their oppressive policies is certainly true, at least in part. No nation is monolithic. Even in countries which do not respect the freedom of expression, one can hear dissenting voices criticizing the formal view of the ruling party or the government. It is necessary to encourage such voices. However, can we say that in these countries it is the voice of such dissenting activists, not the

view of the government, that represents the people as a whole? Not necessarily. Here lies a difficult problem.

It is true that the Chinese Communist Party, the Vietnamese Communist Party, the government of Singapore, and some other Asian regimes suppress the voice of certain citizens who demand respect for freedom. It is not likely that these regimes can be maintained in their present form. Desires of many people seeking more freedom will bring about a regime which respects more freedoms than today. However, these facts and expectations do not necessarily mean that the present regimes have not represented the will of the people. It is even less true to say that in these countries human rights activists represent the will of the people as a whole.

Unlike socialist regimes in Eastern Europe, these regimes were not forced by an outside power, the USSR. Most of them grew spontaneously from struggles against colonial rule, interventions by imperial powers, poverty, and privileged ruling classes of the past. Despite many shortcomings such as authoritarian rule, corruption, and violations of human rights, these regimes were chosen by their own people to struggle against such violence and misery of the past. As such, they have a certain legitimacy (7). Moreover, for these nations, the overcoming of various domestic conflicts in nation-building is a vital task. While most of today's developed countries already carried out this task in a violent manner up to the early twentieth century, for most developing countries it is the task of today and tomorrow (8).

Given these facts, it is too simplistic to assert that the claims of the present regime in these countries are merely rationalizing human rights violations. It is rather self-complacent to say that the voice of the

human rights activists represents the true will of their people. Resistance to the criticism by developed countries, whether by their governments or NGOs, is not limited to the ruling elites. Grudges and animosities against colonial rule, intervention, economic exploitation, racial discrimination, and religious prejudice by the once imperial, now developed, nations are widely shared by the popular masses in many developing countries (9). In such situations, "human rights diplomacy" or criticism by NGOs in developed countries are likely to be perceived as arrogant interventions or pressures. Thus, even a legitimate criticism could not fulfil its proper task to improve human rights conditions.

### *3. Emerging discrepancies between economic power and intellectual and informational hegemony in international society*

The problems described above are closely related to the third problem, i.e., emerging discrepancies between the economic power of East Asian nations and the intellectual or informational hegemony of Western nations, especially the US. In the early 1990s, the controversy over the universality vs. the relativity of human rights was fiercely contested between the Western nations, particularly the US, and some East Asian nations such as China, Singapore and Malaysia. This can be seen as a symptom of the huge discrepancies which are to appear in the next century.

In the twentieth century, the US has had a tremendous influence upon the ways of thinking and behavior of the people around the world. It has spread its ideas and images on humans, societies and the universe by various means: English as the "common language" of the world; influential media

institutions represented by the CNN, the AP, the New York Times etc.; powerful popular cultures represented by Hollywood movies and popular music; and many other informational, educational and cultural institutions (10). In the early twenty-first century, when the “democratization” and “marketization” make progress in developing countries, the Americanization of the society will also prevail. The US “soft” power resources (11) to define, orientate and influence the way of thinking of people will become even stronger on a global scale.

On the other hand, many East Asian nations have achieved economic development and social stability in the latter half of the twentieth century. Japan is already on a par with the US and Western European countries in terms of human development indices. Taiwan, Singapore and South Korea are catching up with them. These nations have generally achieved a more equitable distribution of wealth, and enjoy a better situation in terms of crime or narcotics than the US and many Western European countries (12). Although still underdeveloped in many respects, China is taking a path to becoming the largest economic power. These increases in power, economic prosperity and social stability of the East Asian nations are in many ways based on the introduction of Western ideas and institutions. However, they also owe to their own cultural heritage and social underpinnings. It is natural for these nations to become more confident upon their own ways, and more critical of the self-righteous and assertive ways of Western, particularly US, diplomacy and the activities of NGOs.

However, as far as the East Asian nations to be more critical of Western or American self-righteousness. Few would

deny the importance of the prohibition of torture. Few would tolerate people dying from starvation. Differences in culture or religion, and the principle of non-intervention under international law are no license to the violation of human rights (13). Nonetheless, if those critical of such violations looking from the outside are ignorant of religions, cultures and social customs in local communities, and lack self-criticism of their own behavior, their criticism may be regarded as an arrogant intervention by external powers. Even when the criticism has legitimate grounds, it may invite antagonism from the local people. Since nations often targeted as violators of human rights today, such as China and Indonesia, are steadily increasing their economic power, even a legitimate criticism may be counteracted by this economic power. This would be a serious setback for the course of human rights.

#### *4. The need for an intercivilizational approach to human rights*

The foregoing analyses indicate that we should not regard increased interests in human rights merely as an intellectual fashion arising out of some visible changes, e.g., the end of the cold war. Nor should we confine this interest within the controversy over the universality vs. Relativity of human rights. We need a more comprehensive and longer perspective of human rights.

On the one hand, the mechanism of human rights has brought about tremendous profits to many people by protecting their vital interests in the modern era of sovereign states and capitalism. It will bring about the same profit to an even larger number of people in the process of modernization in developing countries. On the



other hand, many of them have legitimate reasons for resisting the imposition of human rights from the outside. Conflicts between the spread of human rights and local cultures which are alien to the individualistic and legalistic culture will pose another problem. Furthermore, the mechanism of human rights is a historical product of a specific time and place, and as such, has its own historical qualifications. One of the major counter-arguments held by some East Asians against Western human rights advocates is that contemporary developed societies, especially the US, are suffering from various social diseases such as crimes, drugs, and the degradation of family and community ethics. They argue that these diseases may well be a consequence of excessive legalism (14) and individual-centrism (15), which are major components of the idea of human rights.

The mechanism of human rights has developed hand in hand with the development of individualism and the establishment of legal mechanisms stressing the importance of rights (16). Until recently, a modernist framework which sees only positive aspects of this development in modernity has been predominant. The more individualistic a person becomes, the more liberated he or she is from various constraints such as the institution of the family, feudalistic ties, rural communities and religious authorities. The more firmly a legal mechanism is established to protect citizens from the power of states, the more secure their values and interests will become. Although such a naive modernist perception is no longer held by many experts in developed societies, it is still strong among the masses, and even among intellectuals in non-Western societies,

because of a persistent image of the “developed, right-oriented and individualistic West vs. underdeveloped, non-legalistic, and collectivistic non-West”.

Legalization stressing the importance of rights and individualization are certainly important and useful in societies where modernization has started only recently. Many developing countries belong to this category. However, no idea or institution is omnipotent. Particularly in societies where the modernization has reached a certain stage, the negative aspects are also becoming evident. For the last few decades we have witnessed the emergence of communitarians and the virtue-oriented philosophy as opposed to the individual-centered and right-oriented philosophy in the US where legalism and individual-centrism have been predominant. This phenomenon indicates that such reappraisal is needed and has actually begun. We must therefore have a perspective which enables us to evaluate human rights in the long history of humanity, to judge its proper range, and to compare it with other mechanisms pursuing spiritual and material well-being (17). We may call this perspective an intercivilizational approach to human rights. This approach requires us to see human rights not solely within the Westcentric modern civilization where it was born and raised, but from other civilizational perspectives as well (18).

As is well known, the term “civilization” is an ambiguous notion with hundreds of definitions (19). There is also a danger of abusing and overevaluating the notion of civilization in dealing with international or global affairs (20). Thus, it may be better to avoid the term, and instead to adopt the term “culture” as a

comprehensive analytical concept, defined as a prevailing way of thinking and behavior in a society. There have actually been remarkable studies utilizing the notion of “cross-cultural perspectives” in recent years (21). These studies share perspectives with the intercivilizational approach in many respects.

However, there are problems in using the term “culture” as a comprehensive analytical concept. First, in the field of human rights, the “culture” has not been used as a comprehensive notion designating a prevailing way of thinking and behavior in general. Rather, it is used as a narrower concept except for economic, social, civil and political fields. All international instruments on human rights follow this narrower terminology. Thus, it is difficult to avoid confusions if one uses “culture” as a comprehensive concept. It would be better to use “civilization” as a comprehensive concept. Second, there are factors which influence ways of thinking and behavior of certain people whose existence transcends national boundaries, but does not cover the entire globe. We may be able to call such a sphere of people a “region”. However, this sphere of people has not only a geographical dimension, but also a historical duration. It may last long with substantial changes in its characteristic features. It may disappear as a distinctive sphere of people, although component people themselves continue to live as a biological entity.

Such a sphere of people can be most appropriately termed as a civilization. This terminology has been most common, although there have been diverse terminologies in the terms “civilization”, “civilisation”, and “Zivilisation”. Religions, languages, ethics and customs which influence the thoughts and behaviors

of people transcend national boundaries, and are shared within the framework of a civilization. Although the term “international” will continue to be the most important concept to understand various phenomena interrelating or transcending nations, the term “intercivilizational” will be both necessary and useful, at least as a supplementing perspective of human rights and other global issues (22).

## **II Problems relating to the “Universality vs. Relativity” of human rights**

### *1. The range of the “universality” of human rights*

Human rights have been defined as the rights which a human simply has because he or she is a human (23). The “human” in this definition has been required to meet certain qualifications (24). As suggested by some European languages designating a human (a man, un homme), this term was in Europe for a long time identified with a man, implicitly excluding a woman (25). It was only after 1945 that the very term “human rights” became predominant instead of “rights of man”. In the French language, “droits de l’homme” rather than “droits humains” is still used today. The propertyless classes and blacks were also excluded from enjoying human rights, especially political rights (26).

The century and a half following the American Declaration of Independence and the French Declaration of the Rights of Man and Citizens, two of the most famous human rights declarations, witnessed the peak of colonization by Western powers. People under colonial rule were generally denied the enjoyment of the rights proclaimed in these declarations. It was

only after the adoption of the Universal Declaration of Human Rights, successful developments in civil rights of the “people of color” in the US, the world-wide decolonization, as well as the rise of feminist movements, that “humans”, alleged bearers of human rights, gradually came to lessen the barriers of sex, property, race, religion, and other qualifications in a substantial manner (27).

Despite these qualifications, or rather, because of these implicit qualifications, human rights were alleged to be based on an abstract humanity. “Humans” thus implicitly qualified were homogeneous - white men of the propertied classes, mostly Christians - and could be regarded as equal within this homogeneity. Although in a pseudo and self-deceptive manner, “universality” was thus warranted. Few dared to question the exclusion of women and “people of color” from the term “humans”. Even if some raised the issue, their claim was either ignored or effectively defeated by dominant forces such as men or the “whites” (28).

However, since human rights are simply defined as rights based on humanity, it is inevitable that those implicitly excluded from the rights will claim: “We too should be entitled to these rights”. It is difficult to deny the legitimacy of this claim precisely because the rights are defined as “human” rights. It is true that the male-dominated French National Assembly of 1792 denied the Declaration of the Rights of Women, and that the Westcentric Versailles Conference of 1919 rejected the Japanese proposal for including a racial equality clause in the Covenant of the League of Nations (29). However, these denials were finally rectified. The Universal Declaration of Human Rights of 1948 and the two International Covenants on Human Rights

of 1966 accepted the equality of sex and race (30). Contemporary international society is making various efforts to substantiate the provisions of these instruments.

In this way, the history of human rights indicates that the idea of human rights, despite its ideological nature of protecting the interests of the limited bearers, constantly sought to overcome, and did gradually overcome, at least to a certain extent, its limitations. Like other ideas which are characterized as universal, the strength of the idea of human rights lies in this *universalizing* power. Controversies over universality vs. relativity in the 1990s are a consequence, as well as a part, of this historical dynamism (31). Seen from this longer perspective, we should note certain contradictions in those controversies.

## 2. *Contradictions in the “Universality vs. Relativity” controversies in the 1990s*

### a) Reversals in the position of Western and non-Western nations

The universality of human rights, as suggested by the history described above, was claimed by “the people of color”, who had been alienated from enjoying human rights. Western powers, in contrast, were inclined to deny the universal nature of human rights by resorting to differences in religion, culture, or social customs. Today, the anti-universalist arguments based on cultural or religious differences are made by many leaders of Asia and Africa (32). In contrast, it is now the Western powers that assert the universality of human rights. One can see a radical reversal in the position on both sides.

Similar changes can be seen in the attitude of states toward the international mechanism for the protection of human rights. For three decades since the establishment of the UN, the US was reluctant to strengthen it. Although thousands of petitions were sent to the UN Human Rights Commission to deal with concrete violations of human rights, it rejected to take up these petitions until as late as the late 1960s. A major reason for this negative attitude was the reluctance of major powers, especially the US (33). The US was also extremely reluctant to ratify the ICESCR and the ICCPR of 1966. It was as late as 1992 when the US ratified the ICCPR, with reservations, understandings and declarations substantially nullifying its effect. The US still today has not ratified the ICESCR.

The International Convention on the Elimination of all Forms of Racial Discrimination of 1965 established for the first time a monitoring body, namely the Committee on Racial Discrimination. The Committee began to deal with concrete cases of human rights violations in terms of racial discrimination. The ECOSOC adopted the resolutions 1235 in 1967 and 1503 in 1970, thereby enabling the UN Human Rights Commission to deal with specific cases of human rights violations. It was developing countries and socialist countries, rather than Western nations, that brought about these changes (34). However, it was mainly for attacking "Apartheid" South Africa, Palestine-occupying Israel, and Pinochet's Chile, that the developing countries and socialist countries sought to strengthen the human rights mechanism. They became less enthusiastic with, or even hostile to it, when it took up human rights violations of their own (35).

These examples reveal a highly ideological nature of human rights. Like the notions of humanity, equality, freedom or democracy, "human rights" is a beautiful term which few can deny. Therefore, states or politicians have abused it in order to attack their opponents by labeling them as violators of human rights or characterizing themselves as standard-bearers thereof. However, because it is defined as "human" rights, not "bourgeois", "white", "male", or "Christian" rights, the notion of human rights can recoil on those who abuse it for political purposes. Therefore, the foregoing examples do not necessarily lead us to cynicism of human rights. Rather, they can be, and should be, a basis for their further universalization. One can demand of states which have once asserted human rights for whatever reason that they should themselves abide by them, precisely because they have resorted to human rights, whose essential nature is its universal applicability.

#### b) Problematics of the Theory of the Universal Origin of Human Rights

It has been frequently asked whether human rights were solely of European origin, or existed in other regions as well. Some intellectuals in developing countries, while criticizing the universalist discourse of human rights by the West, yet claim that their own civilization, religion or culture had human rights from the ancient time ("the theory of universal origin") (36). This view is often shared by those in developed countries as well. Why has this question been repeatedly asked and answered in the affirmative?

First, there is a naive interest among Western intellectuals whether human rights

existed in non-Western societies. Many of them are rather ignorant of the history of non-Western societies, and may ask whether a market economy existed in premodern China. How about colleagues in Tokugawa-period Japan? Or democracy in ancient India? Many non-Western intellectuals share these questions, because they too are generally ignorant of non-Western societies other than their own. It is no wonder those who are interested in human rights would ask: Did human rights exist in the teaching of Islam, Confucianism, Buddhism and so on?

Second, one should consider various unfavorable factors surrounding intellectuals or human rights advocates in many non-Western societies. The term "human rights" invites certain suspicions and antipathies from the government, the military, religious leaders or influential persons in local communities. It is still alien to a majority of the population. Under these circumstances, it is understandable for intellectuals or human rights advocates in those societies to argue: "Look, human rights are not alien. They are already in the teaching of *our* religion (culture, customs etc.)". In order to propagate the idea of human rights in non-Western societies, it is generally both useful and effective to resort to the theory of universal origin.

Third, not a few non-Western intellectuals are critical of Westcentrism which has spread an image that anything good in human history originates in the West. The notion of human rights is one of these historical products to be characterized as good, and therefore, must originate in the West. Some non-Western intellectuals have tried to challenge such a false way of thinking. If such a good thing like human rights existed in Europe, they argue, it should also have existed in their

culture or religion (37). There is a psychological background to this argument. The pride of intellectuals in many developing countries is hurt by today's realities surrounding them, such as poverty, dictatorship and corruption. Under such circumstances, it is understandable that some make rather self-contradictory arguments, severely criticizing Western universalist discourse of human rights, and yet claiming that human rights - something good - existed, if not fully existing today, in their own cultures and civilizations.

Fourth, there is an element of guilt consciousness on the part of certain intellectuals in developed countries. It is true that they are generally critical of human rights violations in developing countries.

However, at least some of them feel guilty of, or at least concerned with, whether consciously or unconsciously, wide gaps between the affluent North and the poor South, their nations' past colonial rule, and their resource-consuming life styles. They are also sensitive to the criticism of Eurocentrism. For them, it is somewhat difficult to assert that human rights (a good guy!) existed exclusively in Europe. Nodding to the assertion that human rights existed in Islam, Hinduism, Confucianism, etc. is much easier than refuting it.

In this way, both developed countries and developing countries have substantive and psychological factors which give rise to the theory of universal origin. Therefore this theory will not disappear. However, it is difficult to theoretically support it (38). Even in Europe the idea of human rights did not exist in premodern days. What existed were specific rights or privileges of persons belonging to specific groups or classes. For example, rights guaranteed in

the Magna Carta were not rights of human persons per se. They were the special rights or privileges of specific persons such as peers, feudal lords, and the clergy. Rights characterized as those of individuals abstracted from specific belongings were born only after *corps intermediares* were dissolved in the formation of sovereign states (39).

With regard to other civilizations, one can see that every civilization had its own mechanisms to pursue spiritual and material well-being of people. However, they were not characterized as human rights. These mechanisms protected the interests of people in various ways, although in a very limited manner if seen from today's perspective. With the spread of the sovereign states system and the capitalist economy, however, these mechanisms have disappeared, at least on the surface. Instead, we have today the mechanism of human rights not only in Europe but in other regions as well.

Human rights have proved to be the most effective to protect vital interests of humans in the modern period. However, as a man-made product, it is not immune from flaws. It must be replaced or supplemented by some other useful mechanisms, when it does not work well, or its flaws become apparent. Thus it is useful to search "*the existential functional equivalent of human rights*" (40) in various civilizations so that we may adopt their merits. But this does not mean asking whether human rights per se existed in non-Western civilizations. Such a question is theoretically futile. Far more constructive and meaningful is to seek common standards and frameworks of human rights which are based on today's political, economic and social realities, as well as diverse civilizational heritages.

These standards and frameworks must be accepted as legitimate by as many people as possible, transcending national boundaries and civilizational backgrounds. The intercivilizational approach seeks such standards and frameworks (41).

### III. Critical analysis of the existing standards of human rights

#### 1. *Analyses of the international assessment of human rights by major human rights NGOs*

When national governments, international organizations and NGOs are engaged in improving human rights conditions, they must avoid arbitrarily selecting target states. This is important for the following reasons. First, international society has limited resources with which they can improve human rights conditions. However, international actors have thus far tended to select target states either for political or for haphazard reasons, and have often ignored more serious cases. It is necessary to decide the priorities from the viewpoint of common human rights policies as to which human rights conditions they should focus on. Second, "human rights" should not be an excuse for great powers to pressurize on smaller nations. There must be objective and intercivilizational standards for assessing human rights conditions valid to all nations. Third, such objective standards are needed for overcoming the resistance by the targeted states, which often resort to a criticism of double standards or arbitrariness of human rights diplomacy.

Thus far, many experts, some Western governments, international organizations,

and human rights NGOs have published the information and assessment of human rights conditions in various countries (42). Influential media institutions have played similar functions. In particular, major human rights NGOs have played an important role by regularly providing vivid information on human rights violations. Through these publications people can learn of human rights violations on a global scale. Some of them are not reported by the ordinary media, and can only be known by the public through these publications. They have also contributed to giving pressures to oppressive regimes. One could further compare and rate human rights conditions on a country by country basis through certain publications (43). However, these reports are not necessarily satisfactory from the perspectives described above. Since they are generally regarded more reliable than publications by governments because of their independent status and their devotion to the cause of human rights, their objectivity and reliability must be scrutinized.

Let us first take *Amnesty International Report* (44), probably the most well-known annual report. It starts with an introduction and a few essays dealing with issues such as campaign, human rights education, and work with international organizations. It then reports human rights conditions country by country spending a half to four pages for each country. The method is purely descriptive. The report almost exclusively deals with civil and political rights, and pays little attention to economic, social and cultural rights, although it explicitly recognizes that human rights are indivisible and interdependent (45). With regard to the method through which it selects countries, allocates pages, and describes each

country's human rights conditions, as well as bases of judgements included in the descriptions, it provides few explanations. It is difficult for readers to judge its standards and procedures in these critical areas.

*Human Rights Watch World Report* (46) has similar characteristics. It starts with an introduction, and surveys human rights conditions in some 65 countries and areas from country to country within regional groupings, with brief overviews of each region. It ends with brief descriptions of specific projects such as the arms projects and the women's rights project. Again, the method is descriptive, with sporadic value judgements in the description of the human rights conditions it takes up. Like *Amnesty Report*, it deals with almost exclusively civil and political rights, showing little concern with economic, social and cultural rights. Nor does it satisfy the requirements for accountability and transparency in its descriptions and judgement.

*Freedom in the World* by Freedom House is different from the former two reports in the following respects. First, it evaluates political and civil rights in 191 nations and 57 related territories by grading 1 (most free) to 7 (least free), and classifies countries as "free", "partly free", and "not free". Second, it provides information on economic system, purchasing power parities, life expectancy and the population percentage of ethnic groups of the most countries it covers. Third, it contains economic comparisons composed of real GDP per capita and life expectancy (47).

However, it shares with the former two the characteristic feature of a strong emphasis on civil and political rights, and far less concern with economic, social and cultural rights. References to socio-

economic factors are limited to a few and crude statistical data of respective nations as a whole (48). They are not expressed in terms of socio-economic rights of individuals. It also shares a problematic feature of the lack of accountability in its observations and judgements. In this respect, its problem is even more serious, because, unlike *Amnesty Report* and *Human Rights Watch Report*, *Freedom in the World* not only observes human rights conditions in countries, but dares to rate countries according to its own standard.

In order to rate countries by human rights standards one must have sophisticated methods which are endorsed from a number of perspectives. They must reflect major international human rights instruments including the Universal Declaration of 1948, the ICESCR and the ICCPR in a comprehensive and well-balanced manner. They must also reflect intercivilizational legitimacy. They must satisfy basic requirements from a perspective of statistical methodology (49). They must make explicit the substantive bases and procedures used to reach a rating such as: substantive standards of selection and judgement of data; actual data and materials they use; who *operationalizes* them, and in what capacity; the procedure they actually adopted to minimize their biases and preconceptions; and other requirements for accountability.

The survey methodology in *Freedom in the World* is far from satisfactory in these essential requirements. Although it shows checklists of civil and political rights, it does not elaborate by what specific standards and procedures it classifies countries from the most free to least free. It claims that "Freedom House does not have a culture-bound view of democracy", but with no demonstration (50). In 1986,

Goldstein criticized Freedom House, saying "the basis of scores seems to be entirely impressionistic; furthermore, the scales are obscure, confusing, and inconsistent and change from year to year" (51). Eight years later, one can hear basically the same criticism. Referring to *Freedom in the World*, Gupta et al. pointed out that "[n]o specific attempt is made to evaluate the respective weight of one freedom vis-à-vis the other. Rather, apparently intuitive overall judgement is made" (52).

Even in the case of factual observations without ratings, the requirements of objectivity, international legal foundations and intercivilizational legitimacy must be satisfied. One can hardly escape from one's own subjective judgements in collecting facts, selection perspectives from which one observes them, weighing them, and in many other ways. The problem becomes even more serious if one rates countries by judging the degree of freedom in various countries. However, none of the reports provides the method, procedures and evidences in their observation and judgement of human rights conditions in an explicit and elaborate manner. What they provide are sources of information and very general policies of the authors. It is almost impossible to judge the objectivity, precision, reliability, validity, legal foundations and intercivilizational legitimacy of the description and assessment of these reports (53).

These major NGOs started their activities for the protection of civil rights, and have gradually expanded their activities. In this process, they have played an indispensable role in mitigating cruelties of human rights violations around the world for years. It should also be



admitted that some source of information must be kept secret because of protecting the informant from repressive governments or non-government human rights violators. Thus, one may say my criticism is too harsh on them. However, given their enormous influence, their activities must be constantly scrutinized, their flaws must be rectified, and their intercivilizational legitimacy must be strengthened. Transparency and accountability are not only required of governments, but also influential non-government actors. Only by satisfying these requirements, can they respond to the criticism of “cultural imperialism” or biased self-righteousness of the West, often made by Third World countries.

## *2. The World Human Rights Guide and its problems*

Charles Humana’s World Human Rights Guide is far less influential than the reports by major human rights organizations. However, from a theoretical perspective, it is much more interesting because it elaborates the method of assessment in an explicit manner. It basically covers states with a population exceeding one million, and assesses conditions of 40 rights in these countries. Its main sources of information are major Western human rights NGOs and Western mass media. It classifies the *gender* of protection of rights into 4 categories:

1. unqualified respect for the rights,
2. qualified satisfactory answers due to occasional breaches thereof,
3. frequent violations thereof, and
4. a constant pattern of violations thereof.

In the assessment, it weighs 7 sorts of violations of freedom involving physical

suffering. In this way, it assesses human rights conditions in respective countries with a rating from 100% to 0% (54). Humana’s assessment was adopted by the UNDP as an index of political freedom in the *Human Development Report 1991* (55). However, this decision was severely criticized by developing countries, and abandoned in the subsequent versions (56).

Although human development indices should have human rights perspectives, the decision to use the human indices was wrong. They have a fundamental problem common to the major human rights reports described above: failure to embrace human rights in a comprehensive manner. The existing international human rights instruments formulate the respect for and ensurance of human rights in a comprehensive and interdependable manner. However, Humana fails to reflect this formulation. He excessively focuses on civil and political rights, underestimating the significance of economic, social and cultural rights.

Humana claims that he adopted “human rights which can be clearly assessed” as its criteria (57). However, he includes few economic, social and cultural rights. Only 3 out of the 40 rights come from the ICESCR. He justifies this selection by arguing that “the articles [of the ICESCR] usually refer to vague guarantees such as ‘recognizing the right of’ or ‘taking steps towards’ respecting a particular human right” (58). By citing article 12 (2) of the ICESCR, he says that “since promises and aspirations cannot be measured, the questionnaire could make only limited use of the articles of the ICESCR” (59). However, this argument cannot be maintained.

Article 12 (2) provides for the right to the enjoyment of the highest attainable

standard of health. To achieve the full realization of this right, it provides for such steps as

- a) the reduction of the stillbirth-rate and of infant mortality;
- b) the improvement of environmental and industrial hygiene;
- c) the prevention, treatment and control of epidemic and other diseases; and
- d) the creation of conditions assuring medical service and medical attention in the event of sickness.

One can show the degree of the realization of “promises” of the states parties to take these steps by objective indices such as the rate of stillbirth, of infant mortality, of epidemic mortality, the number of medical doctors, nurses and hospitals per unit population, and other similar data. These figures can be used either as indices indicating the improvement or degradation of the human rights condition in a certain country, or as indices of international comparison in a certain period.

This is true for other economic, social and cultural rights as well. For example, Humana does not address protection of and assistance to the family (art. 10 of the ICESCR), the right to an adequate standard of living (art. 11), and the right to education (art. 13). However, the enjoyment of these rights can be assessed more objectively than the rights which he examines. For example, a question of whether and how adequately a state accords to mothers paid leave or leave with adequate social security benefits can be at least indirectly assessed by inquiring into the existence of such institutions, the amount and period of the payments or security benefits and other objective features. The same can be said of data of daily caloric intake per person, the literacy

rate and the like. Although in an aggregated manner, these figures can be used to assess the right to an adequate standard of living and the right to education, respectively.

It is true that there is room to argue whether and to what extent these figures can adequately be used to show the degree of enjoyment of the rights of individuals. Especially, if one requires sophisticated methods and results, it would be difficult to use the economic, social and cultural indices for the assessment of human rights. Most of the existing data are collected and provided by experts and institutions of economics as well as development studies, without reference to human rights experts or institutions. They are expressed in aggregated forms, and therefore cannot directly be used as a standard in assessing the enjoyment of human rights by individuals. In utilizing these data, one must avoid “quantitative fetishism”, which is often seen in experts of economic or development theories and practices (60).

However, the problem of how one can objectively assess human rights, is not limited to economic, social and cultural rights. It is even worse in the case of civil and political rights (61). Yet, the existing literatures have engaged in assessing the conditions of civil and political rights. For example, Humana’s method is seriously flawed from this perspective. He assesses human rights conditions by 4 grades, from unqualified respect to constant violation, with triple weight given to seven items, the violation of which involves physical suffering. However, he fails to give specific criteria in judging human rights conditions according to these scales. Without such concrete criteria, arbitrary judgement is unavoidable (62). This flaw is common to the annual reports of major

human rights NGOs. None of them has provided sophisticated methods in the assessment of human rights conditions, which should be tested in an empirical and objective manner (63).

Further, Humana's selection of rights with extra weight lacks international and intercivilizational grounds. Prioritization of human rights is an enormously difficult task, which a number of experts have discussed and yet are far from agreeing with each other. We could, however, point out at least some perspectives that we must take into consideration when dealing with this problem. First, we must look into the existing international instruments on human rights, and identify the juridical significance of a right in question from the following perspectives: how large a number of states are parties to the instruments which provide for the right in question; whether states parties to the conventions are allowed to derogate from the protection of the right; whether the right is construed to be a peremptory norm; whether the violation of the right is characterized as an international crime (64). Second, we must consider intercivilizational perspectives: whether a right in question is prescribed in, endorsed by, or at least construed to be compatible with, the precepts of major religions; whether we can find an equivalent norm among major legal systems or social ethics transcending civilizational boundaries.

Humana does not bother himself with these subtleties. He simply relies on what he "regards as a straightforward exercise of common sense" (65) in selecting prioritized rights. There might be a global agreement on giving extra weight to the rights whose violation involves physical suffering. However, it is highly doubtful whether the entire international community

would agree to the seven items which Humana actually lists. This is particularly the case with the "freedom from capital punishment". State parties to the Second Optional Protocol to the ICCPR, aiming at the Abolition of the Death Penalty, are only 29 out of some 190 states in international society (as of December 1996). The prohibition of the death penalty does not constitute a contemporary norm of general international law. Furthermore, from an intercivilizational perspective, how one judges the death penalty is a fundamental question involving one's worldview, religious, philosophical and ontological beliefs, on which debates will continue for years to come. Whatever Humana's view may be, the "freedom from capital punishment" cannot be an objective, even less a weighted, criterion to assess contemporary human rights conditions all over the world.

In this way, problematic features of Humana's Guide are now evident. Although it claims to assess "human rights", it almost exclusively deals with civil and political rights. Its assessment is based on the subjective view of Humana himself, and Western NGOs and media institutions. The Westcentric narrowness is evident in the very definition of human rights. Humana asks "[h]uman rights - what are they?" and answers: "[h]uman rights are the laws, customs, and practices that have evolved over the centuries to protect ordinary people, minorities, groups, and races *from oppressive rulers and governments* (italics by Onuma)" (66).

It is true that human rights were born and have evolved to protect humans mainly from oppressive rulers and governments. Still today, they are major violators of human rights. Yet, the human rights now globally recognized, are not

limited to rights characterized as protection from rulers and governments. They are the totality of economic, social, cultural, civil and political rights, which should be characterized as vital means of realizing human dignity. Humana lacks this contemporary international and intercivilizational perspective. This flaw is not limited to Humana. Although not so apparent as Humana, lack of objective, international and intercivilizational standards is common to all existing assessment by major human rights NGOs as described above (67).

#### **IV. Conditions of intercivilizational standards and frameworks of human rights**

##### *1. Liberation from Westcentrism*

The foregoing analyses reveal the prominence of a Westcentric way of thinking in the contemporary discourse and standards of human rights. Human rights have been claimed, argued, studied and realized in Western societies for the last two centuries. Compared with this long Western history, non-Western societies have been very late in dealing with human rights. Moreover, not only human rights but most contemporary issues are framed, defined and influenced by Western intellectuals and media institutions. It is natural that the discourse on human rights has been influenced by Westcentric approaches or perspectives.

Non-Western intellectuals and leaders are also responsible for the prominence of Westcentric discourse. Although many of them have criticized Western human rights

discourse or diplomacy, their purpose is often to rebut external criticism of human rights conditions in their own countries. Their constant resort to the principle of non-intervention or domestic jurisdiction, although understandable to a certain extent from the perspective of their humiliated past as the target of imperialistic interventions, reveals this motivation. Such politically motivated criticism reinforces, rather than diminishes, the strength of the Western claims. Moreover, despite their criticism of the West's preoccupations and biases, they themselves unconsciously share Westcentric ways of thinking because of their educational backgrounds, their tacit longing for the West and their Westernized way of life.

When one discusses human rights within the framework of universality vs. relativity or particularity, one almost always takes up an "Asian way", "Islam", "social customs of Hinduism", the "ethics of Confucianism", and the like as specific examples of such particularity. One seldom refers to the "European way" or "Christianity" as an example of particularity. It is almost always assumed that what is universal is something Western, while particularity refers to something non-Western. This is strange, given the simple fact that an overwhelming majority of the world's population is non-Western. However, this assumption is not limited to Westerners. When non-Western intellectuals or leaders criticize the human rights diplomacy as Western universalism, defending their cultures under the name of relativity or particularity, their argument shares, and even reinforces, this assumption, albeit tacitly and unconsciously. As long as one relies on this assumption, there is little room left to think that something non-Western, whether

it is Asian, African, Islamic or Confucian, can be universally valid.

Arguments made by Lee Kwan Yu and others share these problematic features. They are often politically motivated, and themselves unconsciously share the Westcentric dichotomy of “universality vs. particularity”. Yet, the emergence of East Asia as the probable center of the global economy in the next century, and accompanying controversies over “Asian ways” or “Asian human rights” have brought about some positive change. They have made many people realize that far more intercivilizational dialogues are needed, if ever human rights are to be actually globalized. The awareness of the fundamental conflicts underlying controversies over human rights, as described earlier (68), underlines this need.

Today, a large number of ideas and institutions originating in Europe, is shared or used by people all over the world: the Christian calendar, the meridian, the metric system, the English language, the sovereign states system and others. However, this does not mean that they are inherently universal. Rather they became globally shared as a result of the worldwide colonial rule and hegemony by European powers up to the middle of the twentieth century, and the economic, military, cultural and informational hegemony of the US during the post-war period (69). Human rights are one of those Western ideas and institutions.

However, when ideas or institutions expand from their place of origin to other regions, they inevitably transform their original nature or characteristic features in order to be accepted by the inhabitants of the regions to which they spread. Christianity changed its characteristics in the process of its universalization (70). So

did Islam, Buddhism, Confucianism and Marxism. Human rights are no exception. They were born in Europe for protecting individuals from the abuse of the power of states. However, they have transformed themselves and have become more comprehensive, including economic, social and cultural rights, as well as collective rights. They have come to protect humans not only from the power of states, but from non-state actors as well. Assuming that what is universal is always Western, would deny the inevitable transformation which takes place in any idea or institution in the process of its universalization.

From a perspective of purists or rigorists, this transformation is often regarded as a regrettable degradation or apostasy. Thus, it is understandable that certain theorists of human rights cannot tolerate the introduction of economic, social and cultural rights or the right of national self-determination to human rights. In fact, there are certainly problems relating to the inflation and the “quality” of human rights (71). However, the very fact that such a large number of people as those in the Third World with diverse cultural or religious backgrounds has sought to formulate its claims or desires in terms of human rights, demonstrates *how attractive the formulation of human rights is*. The introduction of various human rights other than original civil and political rights in the process of universalization should be viewed as a victory rather than a degradation of human rights.

On the other hand, today’s world, while enjoying various fruits of modern civilization, seriously suffers from its diseases. Look at today’s ethic which cannot control the “progress” of modern weaponry: the hegemonic US that suffers from numerous murder, rape, narcotic

offence and the breakdown of the family; the prosperous Japan that cannot cure diseases of social alienation, symbolized by the “ijime” (school bullying); “humanitarian” Western European nations with serious attacks and discrimination against foreign laborers or Muslims; and the energy consuming life style of “developed” nations, which - if maintained and followed by developing nations - would bring the ruin of the human species through the deterioration of the global environment.

In this way, the merits and demerits of modern civilization, born in Europe and having spread all over the world, are being seriously questioned. Human rights, a product of this civilization, cannot be an exception. Their achievements as well as flaws, especially the merits and demerits of the individualistic and legalistic approach, must be scrutinized. The mechanism of human rights is an essential tool for realizing the well-being of humanity under the modern system of sovereign states and capitalist economy. It must be adopted by all the nations striving in this system, irrespective of their civilizational backgrounds. Precisely because of this global significance, their Westcentric biases must be overcome, and their *raison d’être* must be grounded in intercivilizational perspective.

## 2. *Liberation from liberty-centrism*

One of the most serious flaws in the human rights discourse is the equation of civil and political rights with human rights in general. This is not limited to a view that “real” or “authentic” human rights are civil and political rights (72). An overwhelming majority of human rights discourse has been founded on this implicit equation

(73). Economic, social and cultural rights have been referred to only in passing or as a supplement. This way of thinking can be referred to as liberty-centrism. This tendency is especially strong in the US, which has been reluctant to accept economic, social and cultural rights as human rights (74).

In Western societies, the spread and introduction of human rights to positive laws went hand in hand with the secularization and liberalization of society (75). In this process, freedom from the arbitrary power of the state was regarded most important. Violations of human rights by non-state actors were at first not considered within the ordinary discourse of human rights. Even when they were considered as an issue of human rights, they were regarded at most as secondary problems. They were characterized merely as a question of indirect or third party applicability (*Drittwirkung*) of the constitutional guarantee of human rights. This distrust in the central government and optimism in private sectors has been particularly strong in the US.

At the same time, even after the adoption of the major declarations on human rights in 1776 and 1789, Western powers did not treat human rights as an important political issues as they do today. From the eighteenth through the early twentieth century, the period in which they stipulated human rights provisions in their constitutions, they exploited wealth domestically from villages and the working classes, and internationally from people in their colonies or “uncivilized” nations. Neither Western governments nor people in those days regarded the question of human rights as a top priority issue. Only after the 1960s when they became rich enough, did they begin to regard human

rights as important issue and gradually made them political slogan. When blacks were lynched in the Southern US and the British labor classes were suffering from desperate working conditions as described by Engels, there was neither Amnesty International nor Human Rights Watch to criticize these human rights violations.

According to the classical theory formulated against these historical backgrounds, human rights were classified into two groups: civil and political rights, which are freedom “from” the state and economic, social and cultural rights, which are rights “to” the state. Whereas the first requires states merely to restrain from the arbitrary use of power, the latter requires them to take positive measures. Thus, while one can call the former legal rights, it is difficult to characterize the latter as rights *sensu stricto*. Rather, they are political programs. These views have been predominant both in domestic and international discourse on human rights. An overwhelming number of publications on human rights, whether explicitly or implicitly, has shared these views. The dichotomy is still strong among many experts and a larger number of non-experts.

However, the emergence of ex-colonies in international society and post-war developments in the theory and practice of human rights mainly in Western (particularly Northern) European countries brought about, and are bringing about, certain changes both domestically and internationally. First, the primacy of civil and political rights has been challenged by many developing countries, as well as an increasing number of experts both in developed and developing countries. Until the first half of the twentieth century, most non-Western nations were either under

colonial rule or suffering from unequal treaties concluded with - actually imposed by - Western powers and Japan. When they became independent, or liberated themselves from unequal treaties, the first thing they should have done was to liberate their nations from poverty - the same as the Western powers and Japan had done in the early stage of their modernization. Again as was the case with the Western powers and Japan, at this stage of development, it is difficult for both the government and the people to regard civil and political rights as a matter of first priority. If they are interested in human rights, it is economic rights, especially the right to subsistence (76), which have a direct bearing on the day-to-day life of people. Although most experts and human rights advocates are critical of a “development first” thesis, an increasing number of experts are coming to understand the significance of economic rights for the poor, and becoming critical of excessive emphasis on civil and political rights (77).

Second, recent studies by experts and practices by monitoring bodies of human rights conventions have demonstrated the relative differences between and interdependence of civil and political rights, and economic, social and cultural rights in various ways (78). According to these studies and practices, many countries, especially developing countries, lack sufficient infrastructures in terms of organizations, financial resources, ethos of public devotion, as well as education and training of human resources, for the realization of human rights. It is only after these infrastructures are established that one can reasonably expect the protection of civil and political rights by mere restraint of state powers.

For example, the realization of freedom from arbitrary arrest, torture and inhuman treatment requires states to take positive policies such as giving human rights education and training to policemen, jailors, military officers and soldiers, as well as cultivating competent lawyers. Merely restraining from the arbitrary use of power on the part of the state is not enough (79). The Human Rights Committee has requested the states parties to the ICCPR not only to refrain from the abuse of state power, but also to take positive measures, including affirmative action, for fulfilling the obligation to ensure all individuals within its territory and under its jurisdiction the rights recognized in the Covenant (80). Similar development can be seen in other monitoring bodies of various human rights conventions (81).

Third, recent constitutional practices and theories in many developed countries are making the categorical classification of economic, social and cultural rights, and civil and political rights more and more obsolete. It is true that economic, social and cultural rights were once characterized as merely political programs or abstract rights, lacking in judicial enforceability. The classic views of Craston, Bossuyt and Viedag, all elaborated up to the 1970s, reflected this state of the law.

However, in order to respond to the criticism that civil and political rights are merely on paper for those without sufficient means of living, most developed countries have taken positive measures such as land reforms, social policies, protection of labor unions and progressive income taxes, thereby realizing economic and social rights. With the development of social welfare programs during the post-war period, constitutional theories and

practices have gradually accorded a certain degree of judicial enforceability to certain economic and social rights. For example, the right to an adequate standard of living requires, before guaranteeing the right “to” the state, the freedom “from” the state not to violate the subsistence of individuals. At least to this extent the right can be judicially enforceable (82). Similar arguments have been made in many other economic, social and cultural rights (83).

This development can be seen at an international level as well. Monitoring bodies of the ICESCR, the European Social Charter, the American Convention on Human Rights and other human rights conventions, as well as the ILO have demonstrated that most economic, social and cultural rights have these two aspects (84). Today, one can no longer say: whereas civil and political rights are judicially enforceable, economic, social and cultural rights are not. Such categorical classification is too simplistic to describe the present status of enforceability of human rights.

Finally, it is now widely recognized that violations by non-state actors such as terrorist groups, anti-governmental military groups and private companies are no less serious than those by state organs (85). Another serious problem which is now characterized as an important issue of human rights is the collective or structural deprivation of human dignity by means of the patron-clientele relationship in rural communities, discriminatory social customs and other similar social institutions and practices. Seen from these perspectives, whether human rights are violated by state organs or by non-state actors does not matter. What is important is the obligation of states to ensure that all



human persons under their jurisdiction can enjoy subsistence with human dignity.

Furthermore, the judicial enforcement is not the only effective way to realize human rights. In some cases the judicial enforcement can be most effective, but in other cases a government social policy, or human rights education and publicity, combined with supervisions by domestic as well as international media and monitoring bodies, may be more effective (86). One should see a variety of human rights not solely from a perspective of whether they are judicially enforceable, but from a perspective of the most effective way to realize them (87).

These views are becoming widely shared by experts. The practice by monitoring bodies of, and states parties to, the existing international instruments on human rights, although not without difficulties, has sought to realize these ideas in respective fields. Theoretically, classification which should replace the traditional dichotomy between civil and political rights the one hand, and economic, social and cultural rights on the other, have been proposed by a number of experts. To classify obligations of states to four groups, i.e.

1. the obligation to respect,
2. the obligation to protect,
3. the obligation to ensure, and
4. the obligation to promote

is a leading example (88). This classification enables more elaborate analyses of human rights with regard to the relations between their objectives and realization. Accordingly it has been adhered to by an increasing number of experts (89).

In this way, the relative, rather than absolute, difference between civil and political rights on the one hand, and

economic and social rights on the other, has gradually become recognized in recent years. Interdependence and indivisibility of human rights have been again and again reaffirmed in international human rights instruments (90). The classification which categorically distinguishes the two groups of human rights is a historical one, corresponding to the early stage of development in Western nations. It is not a universal and suprahistorical classification applicable everywhere and every time. This view is steadily spreading among experts of human rights (91). Today's important task is to disseminate this comprehensive and interdependent notion of human rights, as well as to strengthen the various means of effective realization of human rights in respective fields.

### *3. Liberation from individual-centrism*

In the theory and practice of human rights, the term "human" has been assumed, imaged and understood according to the modern Western notion of a human. Other notions and images of human have been excluded, whether consciously or unconsciously. As described earlier, this notion of a human has been understood implicitly on the image of a white, male and bourgeois Christian (92). Together with this qualification, the notion of a human has been equated with that of an individual.

However, this equation is a novelty even in Western civilization. In premodern Europe, a human was for a long time a member of a family, of a village, of a church, of a guild or of other groups. It was difficult for premodern Europeans to think of an "autonomous individual" independent from these social institutions.

A human came to be characterized as an individual only when the sovereign state and market economy dissolved various *corps intermédiaires*. Humans, both constrained and protected by these groups, now came to be dissociated from them, and confronted the newly born Leviathan (the sovereign state) and market economy as naked individuals. The process which produced these individuals involved various violences. Absolutist states fought against intermediate powers. Capitalist economy destroyed the traditional autonomous village economy. Religious powers fought against each other, as well as against secular powers (93).

The modernity based upon the “autonomous individuals”, established after such sacrifices, brought four various benefits to a large number of people:

1. liberation from religious powers,
2. institutions based on social standings,
3. feudalistic rules of villages or guilds, and
4. liberation of women from stringent social institutions and family constraints.

Human rights were both a consequence and a means of bringing about such liberation. To this extent, one should see a legitimate reason for equating humans with individuals. One should also be cautious of an argument which emphasizes the importance of collective rights in non-Western societies, because this argument has often been made to rationalize violations of rights of individuals by authoritarian governments.

However, the difference between an “individualist” and a “collectivist” approach does not necessarily reflect a difference in culture between the West and the East. It is true that one may be able to say that Westerners are generally more

individualistic-oriented than Easterners, if one sees today’s world. Even historically speaking, this observation might be valid to a certain extent, although with a number of qualifications. However, emphasis on collectivities by non-Western leaders are sometimes no more than excessive repercussions against excessive emphasis on individuality by Western and Westcentric non-Western intellectuals who have equated individuals with humans in general. Furthermore, those who assume this equation have not sufficiently responded to the legitimate doubt that excessive individual-centrism in contemporary Western societies is a major cause of the social diseases described earlier. Given the fact that this doubt is widely shared even in Western societies, it is only natural that the argument solely stressing the importance of individuals cannot be persuasive.

There are various problems due to the simplistic equation of humans with individuals, but here I limit myself to pointing out a couple of examples. First, this equation has worked against dealing with the suppression and cruel treatment of various types of people within the framework of human rights. People under colonial rule, various kinds of minorities and the collective or structural deprivation from human dignity of women, the poor, the peasants and other discriminated people have been neglected for a long time (94). It is true that there are other factors responsible for this failure. The memory of the abuse of the international protection of minorities by Nazi Germany is one of the reasons. Also responsible is the attitude of developing countries which asserted the importance of collective rights without providing theoretically solid arguments. However, the obsession with the equation

of humans with individuals was, and still is, a major reason why such important issues have been barred from the mainstream treatment of human rights.

Another problem of this equation is the tendency to regard individuals independent from families, local communities, various social institutions and other collectivities as always progressive and desirable. One of the serious consequences of this excessive individual-centrism is an isolation and alienation of humans now evident in many developed societies. A call for reconstruction of families and communities, as well as a resurgence of various kinds of religions raise a serious question as to whether humans are strong enough to be so independent as individual-centrists claim them to be (95).

So long as humans are considered solely in terms of individuals in the theory of human rights, it is difficult to deal with these questions. Moreover, movements which have achieved some success in the history of human rights are those which unite people by some particular ties: ethnicity, gender, religion, language or class. In other words, humans can effectively formulate and express their aspirations for spiritual and material well-being when they have a strong sense of belonging to some collectivity. Even in the realization of human rights, which has been understood in individual terms, their actual aspirations and movements have taken a collective or group form. This fact must be appreciated and fully developed in the theory of human rights.

## V. A search for intercivilizational human rights

### 1. *Universalization of human rights as seen from historical perspectives*

Intercivilizational criticism of the Westcentric view of human rights does not mean endorsing the argument made by some political leaders in developing countries. Most developing countries are now in the midst of modernization. Once they had various mechanisms which could, albeit insufficiently from today's perspective, check the arbitrary use of power of rulers, such as institutionalized community member meetings and authoritative advice from elderly wise men. However, modernization has destroyed these mechanisms, in the same way as it dissolved intermediate powers, which had to a certain extent checked the power of the rulers in premodern Europe.

Today, political leaders in the developing countries monopolize the means of violence and can exercise it without being restrained either by premodern mechanisms, which have been destroyed, or by modern ones, which have not yet been sufficiently established. Opposition leaders of diverse ethnic groups, clans and linguistic or religious groups are struggling for this almost unrestrained power. What follows are civil wars, terrorist activities and other forms of violence, with thousands of civilian casualties. This is what we have witnessed and are still witnessing in many developing countries.

The mechanism of human rights is a counterpart of the institution of modern sovereign states. It has proven to be the most effective means to protect the vital values of humans within the modern system of sovereign nation states and the capitalist economy (96). To accept sovereign states, a product of modernity, and to reject human rights, a counter-

product, is an arbitrary and convenient selection of modernity, merely pleasing power elites. If developing countries adopt the institution of sovereign states, they must also accept the mechanism of human rights.

Nor can they reject human rights simply because their cultures, religions, traditions, ethics and social customs are different from those of the West. Cultures of a nation change over time. Many cultures in non-Western societies have already changed in the process of adopting modern Western ideas and institutions, such as the institutions of sovereign statehood, a market economy, and an "American way of life". Some changes are desirable, others not, many of which are nonetheless unavoidable.

Furthermore, human rights which are stipulated in major international instruments are no longer a pure Western product. They have been produced through an elaborate process whereby voices from various nations with diverse civilizational backgrounds have been introduced, criticized, modified and amalgamated. In particular, it is the developing countries that have worked hard to introduce economic, social and cultural rights in international human rights instruments.

Developing countries do emphasize the importance of human rights, particularly economic rights, on many occasions. However, these claims are often ideologies which conceal the negligence and violations of civil and political rights. Although developing countries are eager for economic development, many of them are reluctant to realize it in the form of the realization of economic and social rights (97). In fact, particularly in the area of work-related rights, they have various kinds of serious problems: compulsory

labor in hard-labor camps, as well as in the form of debt bondage, child labor, abuses of rights of organizations and collective bargaining, dishonest hiring practices and in many other forms (98).

It is therefore necessary to strengthen the existing mechanism for the implementation of economic, social and cultural rights such as the Committee on Economic, Social and Cultural Rights, and ILO. It is also necessary to establish comprehensive intercivilizational standards of the evaluation of human rights including economic, social and cultural rights. By these measures, it would become possible to judge whether a certain country's claim emphasizing the importance of economic and social rights is merely an ideology concealing the violations of civil and political rights, or is accompanied with sincere efforts to realize economic and social rights.

The argument of changeability is valid in the universalist or liberty-centrist view as well. If national character changes over time, then the notion of human rights also changes. It is self-contradictory for a universalist to criticize a relativist's argument based on national character, by arguing that cultures change and yet stick to a narrow, liberty-centric notion of human rights. Such a notion may have been valid in the past, but it is evident that the notion of human rights does change. One would fool oneself if one were to assert that only the notion of human rights is unchangeable.

In this way, the intercivilizational approach to human rights seeks to analyze, understand and characterize human rights in historical perspectives, where ideas and institutions are born, developed, spread, are criticized, improved, modified and substituted. It sees in the contemporary

world the co-existence of the modernization on the part of developing nations, and a quest for a postmodernity on the part of developed nations (99). Based on this understanding, the intercivilizational approach to human rights shares with the universalist approach an end: human rights should be enjoyed by people all over the world. However, it differs from the universalist approach on the ways and conditions to achieve this end.

Whereas the universalists assume some commonality of values to be achieved, as well as a belief in a legalistic mechanism through which such values are to be realized, the intercivilizational approach does not. Rather, it assumes the plural existence of value systems and views of humans, and seeks to integrate these differences in a dialectical manner. In a word, it is a constant quest for commonness. The intercivilizational approach characterizes human rights as a means - an extremely important means - of realizing the spiritual and material well-being of humanity. It does not regard them as the end. Accordingly, it is critical of the absolutism or fetishism of human rights, sometimes seen in human rights activists, and even in academics.

Finally, since the intercivilizational approach sees human rights from historical and instrumentalist perspectives, it fully admits and appreciates the historical achievement of the mechanism of human rights under the modern system of sovereign nation states and capitalist economy. It therefore urges existing governments, especially those in the developing countries, to make every effort to promote and protect human rights. It is critical of the plea of domestic jurisdiction (100) and the defence of sovereign

discretion of human rights based on the particularity of culture, because both the domain of domestic jurisdiction and national culture change. However, the historical perspective of intercivilizational approach also sets an important condition to the universalization of human rights. It is so long as the merits of human rights outweigh its demerits that it should be appreciated. Since it is a tool, not an end, its usefulness and flaws must be constantly scrutinized, and its role must be complemented and substituted whenever it is necessary (101).

## *2. Intercivilizational perspectives of human rights*

A major reason why non-Western nations, especially East Asian nations, have criticized the Westcentric universalism of human rights is political or even emotional, opposition to the self-righteous human rights diplomacy and advocacy of the West. As such, the politicized controversies over the universality vs. relativity of human rights have been rather futile from a theoretical perspective. Yet, they have played a significant role. They have provided an opportunity to a larger number of people both in the East and in the West to realize that sincere intercivilizational dialogues are needed, if ever human rights are to be globalized. Furthermore, there has been an increasing amount of research dealing with diverse religions, cultures, social customs in relation to human rights: cross-cultural perspectives of human rights, non-Western cultural, religious or ethical bases or components of human rights, and other similar perspectives (102). Intercivilizational frameworks of human rights may well be established in the

process of such endeavors. In order to make these endeavors theoretically more solid, it is submitted that we take into consideration the following points.

First, previous studies dealing with tensions between religions or cultures on one hand, and human rights on the other have tended to focus on non-Western religions or cultures, or "enlightened interpretations" (103) of non-Western religions, so that they can be construed as compatible with the existing standards of human rights. Given the fact that predominant religions and cultures in many developing countries have been used to rationalize human rights violations including cruel punishments, inhuman treatments and discriminatory practices, this is understandable. However, from the intercivilizational perspective, such attitude has a problem: it assumes that only non-Western cultures or religions must be reinterpreted to ground human rights. In other words, it is implicitly assumed that Western cultures or religions have no problem in grounding human rights (104).

However, if one sees the prevalent understanding of human rights in some Western nations, one will notice that this assumption must be reconsidered. For example, the US has been reluctant to embrace economic, social and cultural rights within the domain of human rights. Not only the Republican administration in the 1980s was hostile to treating the economic, social and cultural rights as human rights. Even NGOs and the academic community were not, and still are not, so interested in these rights. Not a few people in the US have regarded them either as a socialist ideology or incompatible with civil and political rights (105). This peculiar understanding is not shared by the overwhelming majority of

nations, including developed countries. While most developed countries as well as many developing countries have ratified the ICESCR, the US has not.

Reluctance to accepting international standards of human rights is not limited to the field of economic, social and cultural rights. The US was extremely late in ratifying the ICCPR. When it finally ratified it as late as 1992 (the last except for Switzerland among major developed countries), it almost nullified it as a legal instrument by attaching a package of reservations, understandings and declarations. Among some 190 countries in international society, the US is one of the two countries (the other is Somalia) which have not ratified the *Convention on the Rights of Child*. Furthermore, the US does not control the possession of guns by ordinary citizens, which has resulted in a huge number of homicide as well as killing of many criminal suspects by policemen. From the perspective of the obligation of states parties under the ICCPR to ensure the right to life to all individuals subject to their jurisdiction, this would raise a serious problem. As described earlier (106), the obligation to ensure rights includes not only the negative obligation to refrain state powers from violating the rights of individuals. It also includes the positive obligation to take necessary measures to protect the individuals from any possible violators including private persons. Even if the US is technically immune from the reproach of violating the obligation under the ICCPR by means of reservations and declarations, the very attitude of attaching such substantially nullifying reservations and declarations must be criticized severely (107).

Some of these problems may be explained in terms of opposing political

ideologies or in the vested interests of powerful interest groups. However, cultural or religious factors are also responsible. For example, "American individualism" has often been resorted to as a reason to be against the idea of economic, social and cultural rights (108). Also it would be difficult to understand why the US is so reluctant to control the possession of guns without taking into consideration US people's deeply-rooted belief in autonomous, independent, self-reliant and self-protective individuals. Thus, it is evident that we need to scrutinize these problems from a perspective of compatibility of local dominant cultures with human rights, and an enlightened interpretation of the former (109). Such scrutiny of the tension between predominant local cultures, religions or ethics and human rights is needed in other developed countries as well.

Second, when one seeks to ground human rights in local cultures or religions, one should not explore merely traditional cultures or religions, or original teachings of the religions. Cultures and religions change over time. Particularly because of transnational economic and informational activities, no nation today preserves its religion or culture in its traditional or original form. Although Confucian cultures are still important factors in explaining ways of thinking and behavior of the Chinese, Koreans and Japanese, they are different from each other, and from the original teaching of Confucius. One must explore cultures or religions which are actually "living" in respective people's ordinary lives.

On the other hand, one could find some ideas or expressions similar to those of human rights in almost all religious teachings or traditional cultures. Merely

pointing out particular religious teachings or particular forms of culture as "compatible with", "similar to" or even "an origin of" particular human rights makes little sense (110). Such sporadic references do not base human rights as a whole. We must explore the specific status and functions of such "similar" norms in the comprehensive normative and societal settings. As Panikkar put it (111), a perspective of homeomorphic or functional existential, equivalent to the concept of human rights is important.

We must also seek to identify sources and methods in exploring local cultures, religions and ethics to ground human rights. In the contemporary world, there are thousands of cultures and religions, ranging from world religions to cults shared by a small number of believers. What criteria must we have to choose "important" or "relevant" cultures, religions or ethics? By what procedures? Is the notion of unforced consensus (112) a useful tool for this purpose? Can we induce some substantive criteria such as the principle of retribution tied to proportionality (113), from those numerous cultures, religions or ethics? Is the notion of civilization shared by plural nations within a region for a certain period of time a useful tool to limit the number of those to be selected? These questions must be explored and be answered.

Third, as far as the source is concerned, we must rely on international instruments of human rights as a major source of intercivilizational human rights, but with certain reservations. A clue as to identifying intercivilizational human rights can be found in the provisions of the major international instruments on human rights to which the overwhelming majority of nations have committed themselves. The

most important among a number of such instruments are the so-called International Bill of Human Rights, i.e. the Universal Declaration of 1948, the ICESCR and the ICCPR. The Vienna Declaration of 1993 is also an important instrument for the expression of an interstate consensus on human rights at the end of the twentieth century.

From the viewpoint of international law, the multilateral human rights conventions are more important than the declarations or resolutions, because while the former formally bind the contracting parties the latter generally has only recommendatory forces (114). However, an increasing number of international lawyers hold that at least some provisions of the Universal Declaration embody norms of general international law on human rights (115). The Vienna Declaration is a product of heated negotiations tackling not only differences in foreign policies, but also conflicts involving diverse religious, cultural and ethical views held by almost all nations comprising the international society. Unlike the Universal Declaration, which was adopted in the pre-decolonization period, when many Afro-Asian nations were excluded from its promulgation, its intercivilizational legitimacy is strengthened.

Thus, these major instruments on human rights can be characterized as no longer a Western product. They are the products of long discussions, controversies and negotiations of various nations with different civilizational backgrounds. Or, in the case of the Universal Declaration, it has been explicitly accepted or implicitly acquiesced by an overwhelming majority of nations since its inception. By examining these international instruments, one can see behind them certain forms of

expressions of contemporary intercivilizational human rights. Whatever political motivations governments have had in voting for, ratifying, or acquiescing them, these instruments represent common normative standards based on the widest attainable consensus among nations with diverse perspectives of civilizations.

However, it would be too naive to ignore the political aspects of these instruments. They are products of political and diplomatic struggles and compromises between states rather than intercivilizational dialogues. For example, among the four major instruments, it cannot be denied that the Universal Declaration is relatively Westcentric, reflecting the international power structures existing in 1948, when many Afro-Asian nations were still under colonial rule. Since the attainment of independence, these Afro-Asian nations have emphasized the importance of collective rights and duties under the name of their traditions and cultures. Consequently, there have been references to this effect in many international human rights instruments (116). However, the very dichotomy of "individual vs. collective" itself is a modern construct. Premodern people were not so concerned with this dichotomous way of thinking as we are today. It is also doubtful that premodern people in the East thought so highly of the idea of duty as it is claimed by Afro-Asian leaders today. At least, the idea of legal obligation as an opposite idea of rights did not occupy such a central place in East Asia as it is often claimed today (117).

The intercivilizational approach is based on the idea that international perspectives are not enough to understand transnational and global issues. A person with rich



international perspectives does not necessarily grasp these issues because his/her "international" perspectives may be limited within a certain civilization. For example, even if one understands English, French, German and Spanish cultures or languages, one may lack even an elementary knowledge of Islam, East Asian, or South Asian civilization. The intercivilizational approach seeks to overcome such narrowness (118).

At the same time, it seeks to overcome the interstate or intergovernmental nature which "international" undertakings often have, whether they are treaties, declarations or even controversies. From this perspective, existing international instruments on human rights are no more than a first clue to identifying intercivilizational human rights. Scrutiny of these instruments from critical perspectives, as well as the search for other clues to intercivilizational human rights, are needed. Views of experts and NGOs on human rights can provide naturally some of these clues, although one must be cautious of idealizing human rights NGOs (119).

Fourth, more comprehensive and globally legitimate standards of the assessment of human rights must be established. This requires liberation from our unconscious liberty-centrism in human rights. As suggested in my criticism of the existing assessment of human rights (120), many data related to socio-economic rights are already available in objective figures: life expectancy, daily calorie supply, infant mortality rate, maternal mortality rate; female-male gaps in life expectancy, parliament seats and managerial staffs; GDP per capita, income share of lowest 20% and highest 20% of households; literacy, mean years of schooling, primary

and secondary school enrolment, and the like. They can basically be used in the assessment of how successfully nations realize economic, social and cultural rights (121).

Why then, have these figures not been used thus far as relevant data in assessing human rights? One reason is theoretical or methodological difficulties to establish reliable methods for assessing the realization of socio-economic rights through these data (122). Although such task needs a combination of expertise both in human rights, and in development studies, economics and statistics, these areas have been studied and practiced separately from each other. It is also necessary to avoid an overevaluation of quantitative methods. We need a conceptual clarity of concrete economic, social and cultural rights, and disaggregate socio-economic data for each right. One must further distinguish factors which can be overcome by efforts of the government and those which are basically beyond the reach of human endeavors. There are other theoretical and technical problems to overcome (123).

However, a more critical reason seems to be our deep-rooted liberty-centrism in our thinking of human rights. We have not yet developed sophisticated methods in assessing the respect for and ensurance of civil and political rights. Yet, we have been accustomed to assessing them either qualitatively, as we implicitly do in overwhelming cases of human rights discourse, or quantitatively, as in the case of *Freedom in the World* by Freedom House or *World Human Rights Guide* by Humana. It is true that a number of experts have criticized the arbitrary nature of the existing assessment including these two, and have warned against the illusion of

objectivity of quantitative methods (124). As those critiques argue, we must be extremely careful in using socio-economic data as indices for measuring human rights.

On the other hand, we must avoid the trap of perfectionism. As mentioned earlier (125), there is a definite need for assessing globally human rights conditions in the most possible objective and intercivilizational manner. What is important is to assess human rights conditions in a comprehensive and well-balanced manner with an awareness of their limitations. From this perspective, the previous discourse on this problem shares the problem of liberty-centrism. Even though people have discussed civil and political rights conditions by unsophisticated methods, they have not dared to discuss economic, social and cultural rights conditions by similar standards. In contrast, when experts have discussed the question of measuring the realization of economic, social and cultural rights, they have tended to point out theoretical difficulties in assessing the realization of economic, social and cultural rights, and to take negative attitudes in the use of socio-economic data for assessment (126). One of the serious consequences is the *continuation of many arbitrary assessments of civil and political rights under the name of assessing human rights in general*. If we wait until we find some flawless method for assessing economic, social and cultural rights, we can hardly overcome the prominence of arbitrary “assessment” of civil and political rights under the name of human rights in general.

The failure to characterize socio-economic figures as important data in assessing human rights has been evident in many instances. For example, when the UNDP tried to use data in its World

Human Rights Guide as indices of political freedom, many regarded them as human rights indices, and argued that they had not been considered in previous Human Development Reports (127). It is true that the previous Reports did not include the political freedom indexes. However, this does not mean that they failed to include human rights indices. They had already included them. They had merely failed to characterize them as indices indicating – however indirectly – the realization of economic, social and cultural rights, which constitute an integral part of human rights. This failure is shared by an overwhelming majority of publications dealing with, measuring and evaluating human rights conditions. They have concentrated their concern on civil and political rights, and ignored the available data relevant to economic, social and cultural rights (128).

As described earlier (129), the existing international instruments on human rights represented by the ICESCR, the ICCPR, the Universal Declaration of Human Rights and the Vienna Declaration are no more than a first clue to identifying intercivilizational human rights. They are essentially political products, generally taking the form of normative consensus. Still, we have no other way but to accept them as today’s most authoritative expression of the global community on human rights. No other instruments, whether they be US or Chinese government’s statements, claims of leading human rights NGOs or views of leading scholars can claim that they represent the global consensus more legitimately. Although we need to refine our methods in dealing with those instruments, we still have to start with them.

If this is the case, we must *operationalize these instruments in*

*assessing human rights conditions* as today's global standards. If these instruments provide a comprehensive notion of human rights, comprising economic, social, cultural, civil and political rights, then the standard of assessment must reflect it. This will liberate us from liberty-centrism, a persistent form of Westcentrism. At the same time, this will help persuade developing countries to accept the judgement on human rights conditions in their countries, because the judgement is based on the standard which the overwhelming majority of the global community have committed themselves to. This double function of liberating the human rights discourse from predominant Westcentrism, and spreading human rights on a global scale, is what the intercivilizational approach searches for. By accumulating similar efforts, it can contribute to grounding human rights in more diverse societies, as well as qualifying the human rights discourse in its proper range. This is why we need the intercivilizational approach in this diverse and changing world of modernity and postmodernity.

### Notes

- (1) In this article, "East Asia" is used in the broader sense of the term, i.e., including North East and South East Asia.
- (2) "Eurocentrism" is generally used to designate a tendency to approach natural and social phenomena from a perspective which assumes the Western way of thinking as the standard framework. However, it is not only the European, but also (or rather) the US way, that is decisively influential in today's world. This is why I use the term "Westcentrism" rather than "Eurocentrism".
- (3) Today's interest in human rights could be characterized, at least in part, as an intellectual fashion stemming from the visible changes in international society from the end of the 1980s to the 1990s. Since the 1970s, not only the "human rights diplomacy" was fiercely debated, but also serious problems of race, women, religion, drugs and crime have been discussed in relation to human rights. Today, not only lawyers, traditionally the main authors dealing with human rights, but philosophers, political scientists, anthropologists, religious and political leaders, as well as journalists tackle issues of human rights on a larger scale. Since the US have a tremendous influence in setting the contemporary agenda in international society, human rights have become one of the major global issues. Second, the West regarded the end of the cold war as the triumph of the market economy and liberal democracy. Thus, in the 1990s, "human rights", a leading idea legitimizing the Western societies together with that of "market economy" and "democracy", came to be strongly asserted by Western powers. Third, East Asian nations have emerged as a center of the world economy. With this achievement, they have become more confident in themselves, and some of them have responded harshly to the assertive "human rights diplomacy" by the West.
- (4) Y. Onuma, "Wakoku to kyokuto no aida" ("Between the Country of 'Wa' and the 'Far East'", Tokyo, 1988), pp. 192-203

- (5) The idea of “mission civilisatrice” was utilized to rationalize imperialistic policies by the Western powers. The idea of “humanitarian intervention” was resorted to frequently by Western powers when they militarily intervened in Turkey and other Afro-Asian nations. See J. Kunz, “Zum Begriff der ‘nation civilisée’ im modernen Völkerrecht”, *Zeitschrift für öffentliches Recht*, VII (1928), pp. 89-95; G. Schwarzenberger, “The Standard of Civilisation in International Law”, *Current Legal Problems* 1955, pp. 220-22; T. Tanaka, “Jindo kansen no shoso” (“Various Aspects of the Concept of Humanity”), H. Terasawa et al., eds., “*Kokusai hō gaku no sai kochiku*” (Tokyo, 1977), pp. 96-105; G. Gong, “The Standard of ‘Civilization’ in International Society” (Oxford, 1984), pp. 45-53, 76-81 et passim.
- (6) See, e.g., Y. Ding, “Opposing Interference in Other Countries’ Internal Affairs Through Human Rights”, *Beijing Review*, XLI (Oct. 1989), pp. 10-12; Y. Lang, “Shehuizhuyi shehui de renquan shijian yu guoji” (“Implementation of Human Rights in Socialist Countries and International Struggles for Human Rights”), *Qiusi* 1992-1 (1992), pp. 10-15.
- (7) For a similar view, see A. Watanabe, “*Kokusai josei hendoki ni oderu nihon no gaiko seisaku no kettei katei*” (“Decision-Making Process in Japan’s Diplomacy in the Era of Changes”), *1990 nen dai ni okeru nihon no senryakuteki kadai* (Tokyo, 1993), pp. 5-6.
- (8) Y. Onuma, *supra* n. 4, pp. 198-99.
- (9) When the Chinese government is criticized of its human rights violations, it often tries to offset the criticism by referring to imperialistic policies by the Western powers and Japan since the Opium War. It is true that they are “diplomatic cards” against the Western nations and Japan. However, it is because there do exist historical facts of Western imperialism and Japanese aggressions, as well as deeply rooted rancors among Chinese people, that the Chinese leaders can use those diplomatic cards. Such rancors are more or less shared by many developing nations.
- (10) As to this huge influence, see, e.g. E. Said, “*Orientalism*” (New York, 1979); M. Featherstone, “*Global Culture*” (London etc., 1990); J. Nye, “*Bound to Lead*” (New York, 1990), pp. 188-201; J. Tomlinson, “*Cultural Imperialism*” (London, 1991).
- (11) J. Nye, *supra* n. 10, p. 188.
- (12) In terms of income share, the ratio of highest 20% is 4.3 in Japan, 5.7 in South Korea, 5.8 in Germany, 7.5 in France, 8.9 in the US, and 9.6 in Singapore and the UK (1981-93 for Korea, and Singapore, and 1981-91 for the rest). See UNDP, *Human Development Report 1996* (Oxford, 1996), pp. 170, 198. Homicide cases per 100,000 from 1991 to 1993 are 1.0 in Japan, 4.6 – 4.9 in France, and 9.3 – 9.8 in the US. Other indices in criminal cases indicate basically similar tendencies. See “*Homu sogo kenkyujo, Hanzai hakusho*” (“*Criminal White Papers*”, Tokyo 1995), pp. 28-29.
- (13) As to human rights and the plea of domestic jurisdiction, see L. Henkin, “*Human Rights and Domestic Jurisdiction*”, T. Buergenthal, ed.,

- “Human Rights, International Law, and the Helsinki Accord” (Washington, 1977), pp. 21-40; A. Cassese, “The General Assembly: Historical Perspective 1945-1989”, P. Alston, ed., “The United Nations and Human Rights” (Oxford, 1992), pp. 28-29, 32-34, 43-44, 50; Y. Onuma, “Jinken wa shuken wo koeruka?” (“Do Human Rights Overrule Sovereignty?”), T. Yamamoto et al., eds., “Kokusaika to jinken” (Tokyo, 1994), pp. 20-27.
- (14) Here legalism means a way of thinking in which society members think highly of law and legal enforcement mechanisms of societal values, and their behavior is highly influenced by such ideas as “law”, “rights”, “justice”, and “juridical enforced realization of values”. See also J. Shklar, “Legalism” (Cambridge, Mass., 1964).
- (15) Here, individual-centrism means a way of thinking in which society members regard highly individuals who are independent from their societies and natures surrounding them, and tend to deny the dependence of individuals upon other people, collectivities, and nature. Modernization, especially the development of sovereign states and capitalist economy, has liberated humans from various premodern collectivities, social institutions and superstitions. On the other hand, it has urged individuals to be independent and autonomous although they are not so strong, and created various problems of alienation in societies. Although “individualism” sometimes carries connotations described above, it has equivocal meanings. This is why I use the term “individual-centrism”, which stresses these aspects.
- (16) As to the importance of “rights”, see C. Taylor, “Human Rights, UNESCO, Philosophical Foundations of Human Rights” (Paris, 1986), pp. 49 et seq.
- (17) As to my view of human rights as a specific formulation of a universal pursuit for the spiritual as well as material well-being, see Y. Onuma, “In Quest of Intercivilizational Human Rights”, The Asian Foundation’s Center for Asian Pacific Affairs, Occasional Paper, no. 2 (1996), esp., pp. 8-9, 14n.4, 15ns.54, 55.
- (18) The intercivilizational approach is needed not only for human rights, but for other problems related to three major conflicts described in the text. Especially, it is most likely that China will become a superpower in the next century. Except for the last hundred years, China has always regarded itself as the center of the world, with substantial powers to support this egocentric worldview. It will be difficult for such a China with resurgent Sinocentrism to swallow the Westcentric view of the world that we share today. However, the US, another superpower, is accustomed to regarding itself as the center of the world. For the last fifty years, it has been powerful and prosperous enough to believe that propagating the American way on a global scale is both possible and desirable. It would be difficult for such a nation to give up its egocentric universalist worldview within a short period of time. Thus, there is a danger of direct confrontation in worldviews between China and the US. To avoid this confrontation, a more pluralistic

- and long-range perspective is needed. Sharing an intercivilizational view could mitigate these egocentric universalist perspectives.
- (19) See L. Febvre et al., "Civilisation: le mot et l'idée" (Paris, 1930); A. Kroeber and C. Kluckhohn, "Culture: A Critical Review of Concepts and Definitions" (Cambridge, Mass., 1952); R. Keesing, "Theories of Culture, Annual Review of Anthropology, III" (1974), pp. 73-97. As an example of the equivocal nature of the term "civilization", see S. Huntington, *infra* n. 20.
- (20) Samuel Huntington, in his alarming article on "The Clash of Civilizations?" (Foreign Affairs, Aug. 1993, pp. 22-49) apparently made the mistake of overevaluating the role of civilizations in international relations. His recent book, "The Clash of Civilizations and the Remaking of World Order" (New York, 1996) basically retains the characteristic features of the article.
- (21) See A. An-Na'im, ed. "Human Rights in Africa: Cross-Cultural Perspectives" (Washington, D.C., 1990); *id.*, "Human Rights in Cross-Cultural Perspectives: A Quest for Consensus" (Philadelphia, 1992).
- (22) See my remarks in "Promoting Training and Awareness - The Task of Education in International Law, Proceedings of the 75<sup>th</sup> Anniversary Convocation of the American Society of International Law", April 23-25, 1981 (1983), pp. 163-67; Y. Onuma, *supra* n. 4, pp. 2-49.
- (23) As is seen in J. Donnelly, "Universal Human Rights in Theory and Practice" (Ithaca/London, 1989), pp. 12, 49, 66, and N. Ashibe, *Kempo gaku*, II ("A Theory of Constitution", Tokyo, 1994), p. 4, this definition is adopted by many experts of human rights, especially those in liberal democratic countries. However, there have been diverse definitions according to national constitutions, ideologies and other factors. See, e.g., A. Pollis, "Liberal, Socialist, and Third World Perspectives of Human Rights", P. Schwab and A. Pollis, eds., "Toward a Human Rights Framework" (New York, 1982), pp. 1-26.
- (24) H. von Senger, "From the Limited to the Universal Concept of Human Rights", W. Schmale, ed., "Human Rights and Cultural Diversity" (Keip Publishing, Golbach, 1993), pp. 47-100.
- (25) *Ibid.*, pp. 52-55.
- (26) *Ibid.*, pp. 55-66
- (27) The Universal Declaration of Human Rights sought to overcome the white-centrism and male-centrism, which had been hidden in the previous human rights declarations, and were preserved in the Covenant of the League of Nations. However, even after the adoption of the Universal Declaration, discrimination against "people of color" and women persisted not only as social customs but also in the form of law. A series of anti-discrimination movements described in the text were needed to give a serious blow to such discriminatory institutions.
- (28) H. von Senger, *supra* n.24, pp. 53-79.
- (29) *Ibid.*, pp. 54-55, 66-79; Y. Onuma, "Harukanaru jinshu byodo no riso" ("The Unreachable Ideal of Racial Equality"), *Id.*, ed., "Kokusai ho, kokusai rengo to nihon" (Tokyo, 1987), pp. 447-56.

- (30) Article 2 of the Universal Declaration, as well as articles 2 and 3 of the International Covenant on Economic, Social, and Cultural Rights (ICESCR), and the International Covenant on Civil and Political Rights (ICCPR) explicitly provide for the prohibition of discrimination based on race and sex, as well as equality of men and women.
- (31) Marxists criticized the notion of human rights as nothing more than an ideology masking the domination of the bourgeois class over the proletarian class. Freedom of expression, for example, was merely on paper for those without effective means of propagating their opinions. Today, this criticism is less effective in developed countries, many of which distribute a certain portion of economic prosperity to the working class. But it is still valid in most developing countries, where huge gaps between the rich and the poor prevent not only the realization of economic and social rights, but also the effective guarantee of civil and political rights. For the mechanism of human rights to respond to this criticism, it must overcome the absolute poverty, and huge gaps between the rich and the poor in the latter.
- (32) See, e.g., the argument made by Lee Kuan Yew, one of the most eloquent critiques of the universal notion of human rights (F. Zakaria, "Culture is Destiny - A Conversation with Lee Kuan Yew", *Foreign Affairs*, LXXIII (1994), pp. 109-26. See also A. Pollis and P. Schwab, "Human Rights: A Western Construct with Limited Applicability", *id.*, eds., "Human Rights: A Non-Western Viewpoint", *Archiv für Rechts- und Sozialphilosophie*, LXVII (1981), pp. 76-91; B. Kausikan, "Asia's Different Standard", *Foreign Policy*, XCII (1993), pp. 24-41.
- (33) Today, the US government loudly voices the high cause of human rights. However, the US Congress and government were reluctant to establishing an effective mechanism for human rights in the UN at its inception. The Congress was extraordinarily cautious of the "intervention" by international organizations in the US domestic matters. The US government was also concerned that race problems in the US might be taken up in the UN. American NGOs, in contrast, were generally eager to strengthen the mechanism. Together with Latin American nations such as Panama and Cuba, they contributed to the improvement of the Dumbarton Oaks Proposals, which contained only a poor provision on human rights. Other major powers such as the USSR and the UK were also reluctant to the inclusion of provisions which might interfere with issues of human rights, which they believed to be matters of domestic jurisdiction. See J. Burgers, "The Road to San Francisco", *Human Rights Quarterly*, XIV (1992), pp. 475-77; F. Nishizaki, "Sekai jinken sengen to Amerika gaiko" ("The Universal Declaration on Human Rights and the US Diplomacy"), T. Aruga, ed., "Amerika gaiko to jinken" ("Human Rights and U.S. Foreign Policy") (Tokyo, 1992), pp. 37-65, esp. 41-42, 47-48, 54.
- (34) P. Alston, "The Commission on Human Rights", *id.*, supra n.13, pp. 141-144.

- (35) A major factor which brought forth the 1235 and 1503 procedures was a desire of the Third World nations to condemn racism and colonialism. During the 1970s the target states were actually limited, but from the end of the 1970s, the Human Rights Commission began to take up gross violations of human rights regardless of countries perpetrating them. See *ibid.*, pp. 145-81.
- (36) See, e.g., M. Nawaz, "The Concept of Human Rights in Islamic Law", *Howard Law Journal*, XI (1965), pp. 325-32; Y. Tyagi, "Third World Response to Human Rights", *Indian Journal of International Law*, XXI (1981), pp. 119-40; Y. Khushalani, "Human Rights in Asia and Africa", F. Snyder and S. Sathirathai, eds., "Third World Attitude Toward International Law" (Dordrecht etc., 1987), pp. 321-34.
- (37) Professor Tyagi claims that it has been asserted that the history of human rights began with the Magna Carta; that the human rights movement was initiated by Western scholars or statesmen; that the civilized nations of the Western world fought two world wars for the reinstatement and protection of human rights; and the like. He argues that "all these assertions reflect a typical Western 'monopoly of wisdom'" (Y. Tyagi, *supra* n.36, p. 119). Similar arguments are made by many Third World intellectuals.
- (38) Y. Onuma, *supra* n.17, pp. 7-8, 16n. 52.
- (39) During this process, an Aristotelian idea of a human person as a *zoon politikon* was replaced by the idea of an abstract individual. Absorption of decentralized powers of *corps intermédiaires* by an absolutist state, destruction of rural communities by the progress of capitalist economy, decline of the authority of Christianity, and the social contract theory were needed to give birth to the idea of human rights (see the arguments and references in Y. Onuma, *supra* n.17, pp. 8-9, 16ns. 50, 54). Although one could talk of forerunners or similar ideas of human rights, one cannot see human rights *per se* in medieval Europe or antiquity.
- (40) R. Panikkar, "Is the Notion of Human Rights a Western Concept?" *Diogenes*, CXX (1982), pp. 77-8. This article is one of the most important in considering the question relating to the universal or particular origin of the notion of human rights.
- (41) An intercivilizational approach is needed for dealing with not only human rights but other global issues. However, when dealing with other problems, their specific analyses are naturally somewhat different from that of human rights, reflecting the different nature of respective problems. Thus, the intercivilizational approach must further be tested and elaborated in such areas of international security, global environment, economic regimes, and the like. The following analysis is a tentative one, whose coverage is limited to the question of human rights.
- (42) The UN Human Rights Commission, its Subcommittee, as well as committees and courts under human rights conventions have also engaged in assessment when they have taken up cases of human rights violations within their mandate or jurisdiction. They also have problems in their assessment, but different in nature. The assessment of



- national governments has been criticized in various ways (see, e.g., the critical review of the US Department of State's Country Reports on Human Rights Practices by the Lawyers Committee for Human Rights). However, here I limit myself to analyzing publications by major human rights NGOs and C. Humana, *World Human Rights Guide* (3 ed., New York/Oxford, 1992).
- (43) I take up Freedom House Survey Team, *Freedom in the World: The Annual Survey of Political Rights & Civil Liberties 1995-1996* (Freedom House, 1996), and C. Humana, *supra* n.42.
- (44) Amnesty International Report 1996 (Amnesty International Publications, London, 1996).
- (45) *Ibid.*, p.ii.
- (46) Human Rights Watch, *Human Rights Watch World Report 1996* (New York etc., 1996).
- (47) Freedom House Survey Team, *supra* n.43 n.43, pp. 530-38, and the first page of respective country reviewed.
- (48) *Ibid.*, pp. 539-40.
- (49) See R. Barsh, "Measuring Human Rights", "Human Rights Quarterly", XV (1993), pp. 87-121.
- (50) Freedom House Survey Team, *supra* n.43, pp. 531-35.
- (51) R. Goldstein, "The Limitations of Using Quantitative Data in Studying Human Rights", T. Jabine & P. Claude, eds., "Human Rights and Statistics" (Philadelphia, 1986), p. 48.
- (52) G. Gupta et al., "Creating a Composite Index for Assessing Country Performance in the Field of Human Rights", "Human Rights Quarterly", XVI (1994), p. 137.
- (53) As to requirements and critical analysis of the existing measurements of human rights (in fact, almost exclusively civil and political rights) from a perspective of statistical methodology, see R. Barsh, *supra* n.49, pp. 90-114.
- (54) C. Humana, *supra* n. 42, pp. 3-6.
- (55) UNDP, *Human Development Report 1991* (New York/Oxford, 1991), pp. 19-21.
- (56) UNDP, *Human Development Report 1993* (New York/Oxford, 1991), p. 105. See also R. Barsh, *supra* n.49, pp. 87-90; M. ul Haq, "Reflections on Human Development" (New York/Oxford, 1995), pp. 67-72.
- (57) C. Humana, *supra* n.42, p.3.
- (58) *Ibid.*, pp. 7-8.
- (59) *Ibid.*, p. 8. In making this argument, Humana ignored earlier studies such as Goldstein's, which had demonstrated that the area of economic and social rights has far more reliable and operationalizable data than the area of civil and political rights (R. Goldstein, *supra* n.51, pp. 40 et passim).
- (60) As to problems and difficulties to use socio-economic data for measuring human rights, see R. Goldstein, *supra* n.51, pp. 38-54; the Report of the Seminar on appropriate indicators to measure achievements in the progressive realization of economic, social and cultural rights (Geneva, 25-29, January 1993), A/CONF. 157/PC/73, 20 April 1993, pp. 9 et passim, esp. 12, 17, 28-30; R. Barsh, *supra* n.49, passim; A. Chapman, "A 'Violations Approach' for Monitoring the International Covenant on Economic, Social, and Cultural Rights", "Human Rights Quarterly", XVIII (1996), pp. 29-36, esp. 33-36.

- (61) R. Goldstein, *supra* n.51, pp. 40, 41, 43, 44.
- (62) For criticism of Humana's arbitrariness, see also R. Barsh, *supra* n.49, pp. 104-5; D. Gupta et al., *supra* n.51, pp. 138-40, esp. 140.
- (63) Humana lists major human rights NGOs and mass media institutions as sources of information, which, in itself, should be appreciated from a perspective of transparency and accountability of the assessment. However, these institutions are almost exclusively US, British, and French (C. Humana, *supra* n.42, p.xx). Although some of them may claim an international character, no one can deny that they are lead, supported and financed by Western activists, capital and supporters. Not only NGOs and media institutions in developing countries, whose population accounts for more than 80% of the world's total, but even those in developed countries other than the US, the UK and France are ignored. Lack of international and intercivilizational legitimacy is evident. Although to a varying degree, this flaw is more or less common to other publications.
- (64) As to the question of priority among human rights, see T. Meron, "On a Hierarchy of International Human Rights", *American Journal of International Law*, LXXX (1986), pp. 1-23. See also S. Marks, "Les principes et normes des droits de l'homme applicables en période d'exception", K. Vasak, ed., "Les dimensions internationales des droits de l'homme" (Paris, 1978), p. 318; A. Calogeropoulos-Straits, "Droit humanitaire et droit de l'homme" (1980), pp. 130- ; F. Sudre, "Droit international et européen des droits de l'homme" (1989), p. 118; P. Meyer-Bisch, "Le corps des droits de l'homme" (Fribourg, 1992), pp. 263-91.
- (65) C. Humana, *supra* n.42, p.6.
- (66) C. Humana, *supra* n.42, p.4.
- (67) After pointing out the difficulties in using socio-economic statistical data for measuring economic, social, and cultural rights, Chapman proposes a "violation approach" as a more feasible method to be adopted by the UN Committee on Economic, Social, and Cultural Rights (A. Chapman, *supra* n.60, pp. 36-66). Although his efforts must be appreciated, further efforts must be made to search out royal roads to use statistical data for assessing progressive realization of socio-economic rights in a positive, rather than a negative manner. We should start with a modest assessment based on the combination of qualitative and quantitative methods, avoiding quantitative fetishism, and continuously make efforts to improve the method. The most important thing at present is to have a more well-balanced, attainably most comprehensive picture of the assessment of human rights, which reflects the existing international political rights, and to require highly sophisticated methods in assessing economic, social, and cultural rights. Rectifying the existing assessment based on even less sophisticated methods, yet ignoring abundant useful socio-economic data, should be a priority. In this attempt, if the Committee takes a "violation approach", this may well invite a confrontational culture even in the field

of economic, social, and cultural rights, where one could reasonably expect a “warm sun rather than the north wind” way of assessment. One should always remember the purpose of assessment is not the assessment *per se*, but to encourage states parties to achieve more in the realization of economic, social, and cultural rights.

(68) [See pp. 2-5 of original manuscript]

(69) Needless to say, not all European ideas or institutions were forced on non-Europeans. Many of them, such as modern science, technology, medicine, and industry, as well as ideas of democracy and separation of power were highly regarded by many non-Europeans and were voluntarily adopted by them. The globalization of modern European ideas and institutions took place as a result of the mixture of voluntary adoption and enforcement by external powers. See an interesting discussion between Eisenstadt and Coomaraswamy in S. Eisenstadt, “Human Rights in Comparative Civilizational Perspective”, A. Eide & B. Hagtvet, eds., “Human Rights in Perspective” (Oxford, 1992), pp. 93-112.

(70) One may recall differences in ceremonies, interpretations, and other features between the Roman Catholic and Orthodox Church. Various differences between Christianity in Europe and Christianity as adopted by Latin Americans, Asians, and Africans, as well as differences within such regions are another example. Furthermore, when Christianity spread from its original area of Palestine to Europe, it greatly transformed its features in order to be adopted by then pagan Europeans who had held various

unchristian or non-christian cultures, social, customs, ceremonies, and other features. People tend to assume vaguely - due to the deeply rooted Eurocentrism - that Christianity in Europe, whether Catholic or Protestant, constitutes the standard of Christianity. However, this assumption becomes problematic if we take into account the great transformation which took place in the original form of Christianity in the process of its Europeanization, i.e., a part of its universalization.

(71) See concern with “the haphazard, almost anarchic manner in which the expansion of human rights is being achieved” in P. Alston, “Conjuring up New Human Rights”, *American Journal of International Law*, LXXVIII (1984), p. 607.

(72) M. Craston, “What are Human Rights” (New York, 1964); M. Bossuyt, “La distinction juridique entre les droits civils et politiques et les droits économiques, sociaux et culturels”, *Revue des droits de l’homme*, VIII (1975), pp. 783-820; E. Vierdag, “The Legal Nature of the Rights Granted by the International Covenant on Economic, Social, and Cultural Rights”, *Netherlands Yearbook of International Law*, IX (1978), pp. 69-105. See also R. Norzick, “Anarchy, the State, and Utopia” (New York, 1974), pp. 167-74.

(73) In fact, because of the prominence of the “liberal paradigm” in human rights discourse, human rights have often been mainly equated with civil rights, rather than civil and political rights. The often adopted terminology “human rights and democracy” demonstrates this tendency. In this expression, “human rights” represent

- civil rights, while political rights are expressed by “democracy” rather than human rights. See an interesting observation by J. Habermas, “Human Rights and Popular Sovereignty”, *Ratio Juris*, VII (1994), pp. 1-13.
- (74) For a critical analysis, see P. Alston, “U.S. Ratification of the Covenant on Economic, Social, and Cultural Rights”, *American Journal of International Law*, LXXXIV (1990), pp. 365-93. Some US experts as well as many non-US experts on human rights share this critical perspective.
- (75) It is true that many developed societies are witnessing the resurgence of religion. However, this is mainly due to the fact that many people in modernized societies cannot play an expected role according to the image of “autonomous individuals” independent from families, communities or other collectivities. They want something they can be dependent upon. Thus, the resurgence of religions in the developed societies reveals problematic features of modern individual-centrism, which will be discussed later.
- (76) See, e.g., the claim by the Chinese government in “Human Rights in China”, *Beijing Review*, XXXIV (November 4-10, 1991), p. 9.
- (77) H. Shue, “Basic Rights” (Princeton, N.J., 1980) is an epoch-making study. See also R. Vincent, “Human Rights and International Relations” (Cambridge, 1986); U. Baxi, ed., “The Right to Be Human” (New Delhi, 1987); J. Donnelly, *supra* n.23; P. Meyer-Bisch, *supra* n.64; C. Muzaffar, “Human Rights and the New World Order” (Penag, 1993), and studies dealing with economic, social, and cultural rights, most of which are critical of liberty-centrism.
- (78) G. van Hoof, “The Legal Nature of Economic, Social, and Cultural Rights”, P. Alston and K. Tomasevski, “The Right to Food” (1984), pp. 97-110; M. Craven, “The International Covenant on Economic, Social, and Cultural Rights” (Oxford, 1995), pp. 9-16; H. Shin “Jinken joutaku jo no kokka no gimu” (“Obligations of States under Human Rights Conventions” - Ph.D. Dissertation, Univ. of Tokyo, 1995), pp. 11-69 et passim; M. Scheinin, “Economic and Social Rights as Legal Rights”, A. Eide et al., eds., “Economic, Social, and Cultural Rights” (Dordrecht etc., 1995), pp. 41-62.
- (79) For a detailed study, see H. Shin, *supra* n.78, pp. 29-30, 173-81, 182-83.
- (80) See, e.g., General Comment No. 7 (16), para. 1, CCPR/C/21/Rev. 1, p. 6; General Comment No. 20 (44), para. 1, UN Doc. A/47/40, Annex VI, p. 193. See also H. Shin, *supra* n.78, pp. 71-80, 161-200, 204-8, 237-65.
- (81) H. Shin, *supra* n. 78, pp. 80-83, 105-18, 123-36, 142-54, 266-342.
- (82) Eide, “Economic, Social, and Cultural Rights as Human Rights”, A. Eide et al., eds., *supra* n.78, p. 37; *id.*, “The Right to an Adequate Standard of Living Including the Right to Food”, *ibid.*, pp. 101-2. This view is becoming widely shared by an increasing number of international and constitutional lawyers in many countries. Practices in domestic courts as well as international monitoring bodies of human rights show the similar tendency.
- (83) H. Shin, *supra* n.78, pp. 38-45.
- (84) *Ibid.*, pp. 343-98; M. Scheinin, *supra* n.78, pp. 53-62.

- (85) Major human rights NGOs once dealt with only violations of human rights by state powers, and were reluctant to tackle those perpetrated by non-state actors. However, they have later admitted that the latter is as serious as the former. Today, their activities cover human rights violations by non-state actors as well.
- (86) This view has been stressed by human rights experts and advocates in the Third World, but is also shared by those in developed countries. See references in ns. 77,78.
- (87) Eide rightly argues that the theoretical legalist debate on whether economic and social rights are justifiable is largely off the point because what is significant is the effective protection of the rights in question, be it through courts or through other mechanisms (A. Eide, "Future Protection of Economic and Social Rights in Europe", A. Bloed et al., eds., "Monitoring Human Rights in Europe" (1993), p. 214). See also P. Myer-Bisch, supra n.64, pp. 165-6, 170; H. Shin, supra n. 78, pp. 10-15, and J. Nickel, "Making Sense of Human Rights", supra n.78, pp. 106-108. See also A. Eide, "Study on the Right to Adequate Food as a Human Right", UN Doc. E/CN.4/Sub.2/1983/25.
- (88) missing in MS
- (89) H. Shin, supra n.78, pp. 32-36. A classification cross-cutting economic, social, cultural, civil, and political rights has been proposed from another perspective as well. See, e.g., R. Barsh, supra n.49, pp. 116-17.
- (90) From a theoretical point of view, although many human rights are certainly interdependent, it is not so certain whether they are indivisible. Given the limited resources on earth and inevitable conflicts between human rights themselves, we cannot escape from prioritizing rights.
- (91) J. Donnelly, "Post-Cold War Reflections on the Study of International Human Rights", "Journal of Ethics and International Affairs", VIII (1994), pp. 104-10; H. Shin, supra n.78, pp. 3 et passim; N. Ashibe, supra n.23, pp. 83-4.
- (92) [pp. 9-10 of original manuscript]
- (93) Y. Onuma, supra n.17, p. 9. For a detailed study, see S. Takayanagi, "Kindai kokka ni okeru kihonteki jinken" ("Human Rights in Modern States"), Tokyo Daigaku Shakai Kagaku Kenkyujo, ed., "Kihonteki jinken no kenkyu", I (Tokyo, 1968), pp. 13-76; Y. Onuma, "War", id., ed., A Normative Approach to War (Oxford, 1993), pp. 98-121; id., "Conclusion", ibid., pp. 334-38, and literatures cited therein.
- (94) One of the reasons why developing countries have emphasized the importance of collective rights including the right to self-determination is their sense of alienation in the discourse on human rights. Had the notion of human rights not taken up the issue of collective deprivation of human rights of those under colonial rule, it would have been of little value to them. Although one cannot deny certain cultural differences between the "individualist" West and the "collectivist" East, it would be wrong to explain the emphasis on collective rights by Afro-Asian intellectuals solely from cultural perspectives.

- (95) Criticism of the notion of the unencumbered self-made by “communitarians” such as C. Taylor, A. MacIntyre and M. Sandel in North America is well-known. In France, another nation which has long cherished the notion of independent and autonomous individuals, the identification of humans with individuals or the emphasis upon the notion of Cartesian self has been criticized from various perspectives. See, e.g., B. Barret-Kriegel, “Les droits de l’homme et le droit naturel” (Paris, 1989); M. Rouland, “Fondements anthropologiques des droits de l’homme”, Institut International des Droits de l’Homme, Vingt-Quatrième Session d’Enseignement, Strasbourg, 2 Juillet - 30 Juillet 1993, Recueil des cours (Strasbourg, 1993).
- (96) Y. Onuma, *supra* n.17, p. 9. See also J. Donnelly, *supra* n.23, pp. 62-65.
- (97) For example, although “Human Rights in China”, *supra* n.76, repeatedly claims that China regards the right to subsistence and other economic and social rights highly significant, it mainly reiterates overall economic development, and fails to demonstrate that individuals enjoy such development as of right.
- (98) See, e.g., the Report of the Committee of Experts on the Application of Conventions and Recommendations (Report III, Part 4A), International Labor Conference, 81<sup>st</sup> Sess., 1994, pp. 92-98, 100-101, 103-43, 146-48.
- (99) Y. Onuma, *supra* n.4, pp. 192-204.
- (100) Because of the limit of space, arguments on domestic jurisdiction and non-intervention have been deleted. See generally literatures cited in n.13.
- (101) Y. Onuma, *supra* n.17, pp. 9-13. My simple answer to the question why human rights should be adopted universally is: because we have *not yet* found a better alternative (*ibid.*, p. 9).
- (102) See, e.g., literatures cited in ns. 21, 24, and cited in Y. Onuma, *supra* n.17, p. 14, ns.9, 10. See also S. Kothari & H. Sethi, “Rethinking Human Rights” (Delhi, 1989); M. Davis, ed., “Human Rights and Chinese Values” (Hong Kong etc., 1995).
- (103) See, e.g., A. An-Na’im, “Toward a Cross-Cultural Approach to Defining International Standards of Human Rights”, and articles by W. Alford on China, J. Zion on North American Indians, A. McChesney on Canadian aborigines, H. Frühling on Latin America, M. Carnerio da Cunha on Brazilian Indians, etc., in A. An-Na’im, ed., “Human Rights in Cross-Cultural Perspectives”, *supra* n.21.
- (104) Leary rightly interprets An-Na’im’s view that internal discourse within particular cultural traditions should include the one in Western cultures (V. Leary, “Postliberal Strands in Western Human Rights Theory”, A. An-Na’im, “Human Rights in Cross-Cultural Perspectives”, *supra* n.21, p.107). However, both in An-Na’im’s book and in other studies, overall emphasis is on finding out the cultural or religious basis of human rights in the non-Western world.
- (105) See critical analysis by P. Alston, *supra* n.74, pp. 368-84.
- (106) [pp. 24-26 of original manuscript]
- (107) For a critical analysis by an eminent US lawyer, see L. Henkin, “US Ratification of Human Rights Conventions”, “American Journal of

- International Law”, LXXXIX (1995), pp. 341-50.
- (108) See hostile opinions based on individualism and liberty-centrism cited in P. Alston, *supra* n.74, pp. 373-74, 378, 381-84.
- (109) I highly regard the efforts of US human rights advocates and experts to criticize and try to improve human rights conditions in their own country (see, e.g., American Civil Liberties Union & Human Rights Watch, “Human Rights Violations in the United States” (New York/Washington, D.C., 1993). On the other hand, it seems that some of such criticism is not immune from the myth of US universalism.
- (110) See my critical analysis of the theory of universal origin at [pp. 11-13 of original manuscript].
- (111) R. Panikkar, *supra* n.40, pp. 77-78.
- (112) See C. Taylor, “Conditions of Unforced Consensus on Human Rights”, D. Bell and J. Bauer, eds., “East Asian Challenges”.
- (113) Renteln, “International Human Rights” (Newbury Park etc., 1990), pp. 14, 88-137.
- (114) See Y. Onuma, *supra* n.17, p. 15n.44.
- (115) For example, although Prof. Schachter is critical of hasty characterization of provisions of the Universal Declaration as norms of customary international law, he argues that some basic rights such as freedom from slavery, torture, mass murders, prolonged arbitrary imprisonment, and systematic racial discrimination constitute part of customary international law (O. Schachter, “International Law in Theory and Practice” (Dordrecht etc., 1985), pp. 335-36). Today, the general tendency is even more favorable to such, or even more positive characterization.
- (116) The right of self-determination of people in the common article 1 of the ICESCR and the ICCPR, as well as repeated references to people’s rights and duties in the African Charter on Human and People’s Rights of 1981 are notable examples.
- (117) For example, within a relatively less legalistic framework of Japanese culture (Y. Onuma, *supra* n.17, pp. 3, 4, 14n.13 and literatures cited therein), the very way of thinking in terms of legal rights and obligations has not been predominant. It would be a fallacy to characterize a “traditional Japanese culture” based on the concept of duties.
- (118) Y. Onuma, *supra* n.4, pp. 37-41.
- (119) The Bangkok NGO Declaration on Human Rights of 27 March, 1993 (UN Doc. A/CONF.157/ASRM/8) is a notable example how we could hear different opinions voiced by NGOs. This declaration expresses a considerably different view from the Final Declaration of the Regional Meeting for Asia of the World Conference on Human Rights of 2 March, 1993 (UN Doc. A/CONF./157/PC/59). At the same time, however, we must be cautious of often self-righteous and Westcentric tendencies among major human rights NGOs even in the non-Western world.
- (120) [pp. 15-20 of original manuscript]
- (121) R. Robertson, “Measuring State Compliance with the Obligation to Devote the ‘Maximum Available Resources’ to Realizing Economic, Social, and Cultural Rights”, “Human Rights Quarterly”, XVI (1994), pp. 703-14; D. Gupta et al., *supra* n.52,

esp. pp. 135, 141, 154-58. Even those critical of the existing measurement of human rights and cautious of using socio-economic data for assessing human rights do not deny that these data can basically be used for measurement with certain qualifications (R. Goldstein, supra n.51, pp. 54-56; “Report of the Seminar”, supra n.60, pp. 35, 38; R. Barsh, supra n.49, p. 118).

(122) There are many studies demonstrating these difficulties. See, e.g., R. Goldstein, supra n.51; “Report of the Seminar”, supra n.60; R. Barsh, supra n.49.

(123) See references in n.122.

(124) See, e.g., criticism by Goldstein of the arbitrariness of the assessment conducted by Freedom House, Humana and even by experts (R. Goldstein, supra n.51), and Barsh (R. Barsh, supra n.49). They are especially critical of the illusion this assessment has created that one can rate civil and political rights conditions without any solid basis.

(125) [p. 15 of original manuscript]

(126) See, e.g., “Report of the Seminar”, supra n.60

(127) The Human Development Report 1993 cited the criticism of the human development index in that “[a]s a measure of *human* development, it is quite incomplete [italics original]; *it is oblivious of what is commonplace to call human rights* [italics by Onuma]”, and said that “the 1991 Report made an effort to remedy *this omission* by constructing a human freedom index (HFI) based on the work of Charles Humana (1986) [italics by Onuma]” (Human Development Report 1993 (New York/Oxford, 1993), p. 105). It is

evident that both the critique and the UNDP considered human rights solely within the framework of civil and political rights.

(128) Thus far, controversies over the objectivity of human rights measurement have been most actively conducted in the US, where the issue has been closely linked with US human rights diplomacy. This is one of the reasons why the previous discourse has a tendency to focus on civil and political rights, because the US has been most reluctant to recognize economic, social and cultural rights as human rights.

(129) [pp. 33-34 of original manuscript]



## The Right to Development: From Rhetoric to a Global Strategy

Patrick van Weerelt

For over two decades, the international community has attached importance to the universal realization of the right to development. Based on the idea that a relationship exists between human rights and economic and social development, the Commission on Human Rights requested the Secretary-General, as early as 1977, to undertake a study on the international dimensions of the right to development. Since then, three Working Groups on the Right to Development have been engaged in discussions on, *inter alia*, the content, implementation of the right to development, and obstacles thereto. Moreover, the Declaration on the Right to Development was drafted and subsequently adopted by the General Assembly in 1986; the right itself has been affirmed and reaffirmed, notably by the World Conference on Human Rights in 1993, as a universal and inalienable human right and an integral part of fundamental freedoms; the High Commissioner for Human Rights has received a specific mandate in respect of the right to development; numerous General Assembly and Commission on Human Rights resolutions on the subject have also been passed. Notwithstanding these commendable steps, polarization of arguments, but also unfamiliarity with and deliberate misconstruction of the subject matter often prevail in discussions and have blurred obvious possibilities for a

comprehensive and integrated approach to human rights.

## The Declaration on the Right to Development

In 1986, the Declaration on the Right to Development was adopted by the General Assembly in its resolution 41/128 of 4 December. In adopting the Declaration, the General Assembly recognized that development is a comprehensive cultural, political, economic and social process which aims at constant improvement in the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom. Moreover, the General Assembly considered that all human rights and fundamental freedoms are indivisible and interdependent and that, in order to promote development, equal attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights and that, accordingly, the promotion of, respect for and enjoyment of certain human rights and fundamental freedoms, cannot justify the denial of other human rights and fundamental freedoms.

The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development in which all human rights and fundamental freedoms can be fully realized (article 1.1). The human person is the central subject of development and should be the active participant and beneficiary of the right to development (article 2.1).

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This article has been published by the Office of the UN High Commissioner for Human Rights in "Human Rights", No. 2/1998.

In this respect states should undertake, at the national level, all necessary measures for the realization of the right to development and shall ensure, *inter alia*, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income. They should encourage popular participation in all spheres as an important factor in development and in the full realization of all human rights (article 8). At the international level there exists a duty to take steps, individually and collectively, to formulate international development policies with a view to facilitating the full realization of the right to development. To complement the efforts of developing countries, effective international cooperation is essential in providing these countries with appropriate means and facilities to foster their comprehensive development (article 4).

### **The Evolution of the Right to Development since the World Conference on Human Rights**

With the adoption of the Vienna Declaration and Programme of Action (VDPA), new impetus was given to the right to development after the adoption of the Declaration in 1986. The consensus of Vienna sets out, *inter alia*, that: democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing; the human person is the central subject of development; and that organs and specialized agencies relating to human rights should further enhance coordination of their activities based on the consistent and objective application of international human rights instruments. Moreover, the World Conference on

Human Rights reaffirmed the right to development as a universal and inalienable right and integral part of fundamental human rights.

Following the Vienna Declaration and Programme of Action, the General Assembly, by resolution 48/141 of 20 December 1993 adopted at its 48th session, established the post of High Commissioner for Human Rights. *Inter alia*, the General Assembly decided in this resolution that the High Commissioner should recognize the importance of promoting a balanced and sustainable development for all people and of ensuring the realization of the right to development, as established in the Declaration on the Right to Development. Moreover, the High Commissioner should promote and protect the realization of the right to development and enhance support from relevant bodies of the UN system for this purpose.

Turning to this mandate, as well as to the above-mentioned references from the Declaration on the Right to Development, it becomes clear that the right to development is a programmatic right with a multidimensional character. Acknowledgment of this can be found in several resolutions adopted, and reports endorsed, in recent years. Commission on Human Rights resolution 1997/72, for example, recognized that the Declaration on the Right to Development constitutes an integral link between the Universal Declaration of Human Rights and the VDPA through its elaboration of a holistic vision integrating economic, social and cultural rights with civil and political rights.

During an informal meeting with the Second Committee of the General Assembly in November 1997, the High Commissioner for Human Rights

emphasized that the concept of development as defined in the 1986 Declaration is an economic, social, cultural and political process aiming at constant improvement in the well-being of the population as a whole and of each individual. The individual's active, free and meaningful participation in development and in the fair distribution of the benefits of development is the basis for such a process. She noted that central to this approach is the realization that all human rights are interdependent and that durable economic and social progress require civil and political freedoms and vice versa. She proposed that the Second and Third Committees work jointly to implement that right focusing on the elimination of poverty.

Secretary-General Kofi Annan has also stressed the importance of the right to development. In his statement to the 53rd session of the Commission on Human Rights he stressed that "truly sustainable development is possible only when the political, economic and social rights of all people are fully respected. They help to create the social equilibrium which is vital if a society is to evolve in peace. The right to development is the measure of the respect of all other human rights. That should be our aim: a situation in which all individuals are enabled to maximize their potential, and to contribute to the evolution of society as a whole."

In other words, the human right to development is related to all human rights but cannot be identified merely as the sum total of civil, cultural, economic, political and social rights. It allows for the recognition of ties between various human rights and enables the integration of the full range of human rights from the perspective of the human person's

participation in and contribution to sound economic, social, cultural and political development. For example, economic growth can be a requirement for the realization of economic, social and cultural rights. However, it is firmly established that development is not restricted to economic growth. Not all forms of growth would even be compatible with development. As Asbjorn Eide, member of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities, described, as early as 1987, the distinguishing criteria should be whether the processes of growth are such that they do not negatively affect civil and political rights, and give better protection in terms of economic, social and cultural rights to the most vulnerable and impoverished. In this context, the right to development encompasses the place of individuals in civil society, their personal security and their capacity to determine and realize their potential.

The implementation of the Right to Development requires first and foremost, as in the case of all other human rights, a translation to the domestic level. Former Secretary-General Boutros Boutros-Ghali pointed out in his *Agenda for Development* that each State continues to bear primary responsibility for its own development. The World Summit for Social Development held in 1995 underlined this responsibility in the Copenhagen Declaration. The World Conference on Human Rights facilitates the enjoyment of all human rights, the lack of development may not be invoked to justify the abridgement of internationally recognized human rights. Whether expressed in the language of State responsibility or that of international human rights, development requires sound governance, translated into

coherent national policies which are supported by strong popular commitment. It is a means of ensuring democracy at national and international level, as well as improvement in incomes, health and social services and, generally, in living conditions of all people. International cooperation is needed to facilitate activities to that end.

At present, the translation of the implementation of the right to development into national and international programmes of action is, however, not yet taking place. In this respect, the wisdom of the Indian Government is apparent in their reply to Commission on Human Rights resolution 1997/72 on the Right to Development, in stating that: "the failure to progress beyond rhetoric on the right to development represents the biggest shortcoming on the part of the international community in the five years since the adoption of the Vienna Declaration and Programme of Action." As the international community commemorates the 50th Anniversary of the Universal Declaration of Human Rights, the time has come to draw up a comprehensive action-orientated programme of action for the promotion, protection and implementation of the right to development.

### **Strategy for the Promotion, Protection and Implementation of the Right to Development**

More than ten years after the adoption of the Declaration on the Right to Development it seems that the core elements of that right are undisputed. As such, nothing obstructs initiatives aimed at adopting a practical approach and the elaboration of a comprehensive plan of action for implementing the right to development. The Intergovernmental Group of Experts on the Right to

Development has already formulated certain initiatives requiring further action. These, as well as some additional ideas, should be taken into account by the international community in setting their priorities for the new millennium.

The most critical change that has to take place, in terms of policies and strategies, is the adjustment of "basic needs strategies" to a "rights-based approach". Human rights and fundamental freedoms are the birthright of all human beings and should be treated accordingly. A basic needs strategy incorporates a certain element of charity, whereas a human rights-based approach not only defines beneficiaries and the nature of their needs, but recognizes beneficiaries as active subjects and claim-holders and establishes duties or obligations for those against whom a claim can be brought to ensure that needs are met. The concept of claim-holders and duty-bearers introduces an important element of accountability. Increased accountability holds the key to improved effectiveness and transparency of action and as such offers the potential for "added value" flowing from the application of a rights-based approach.

In support of such an approach, steps could be taken to assign human rights officers to field offices as was foreseen in the VDPA. Their mandate, in addition to what is contained in the VDPA, should focus primarily on providing technical assistance in the field of human rights law. An analogy in this respect can be drawn with the so-called "Labour Law and Standards Specialists" of the International Labour Organization (ILO). The human rights officer should convey advice to Governments on all matters relating to the carrying out of their obligations under ratified human rights treaties; assist in

clarifying the nature and scope of the various reporting obligations; provide information as regards matters arising under the special complaints procedure in cases of alleged violations of human rights; and approach Governments which delay in transmitting the information or observations requested from them. In the case of Governments which have not ratified particular conventions and treaties, the human rights officer, bearing in mind the call for universal ratification of human rights treaties by the World Conference on Human Rights, should approach the Government concerned with a view to identifying and removing obstacles to ratification of these treaties. Governments could furthermore be encouraged to consider legislative and constitutional changes designed to guarantee that treaty law takes precedence over internal law and that treaty provisions are directly applicable in the internal legal order.

Another initiative that should be undertaken and which derives from acknowledgment of the indivisibility, interdependence and interrelatedness of human rights is the upgrading of economic, social and cultural rights. Although the right to development does not prioritize one particular set of rights as a component, it should be clear that specific steps have to be taken in respect of economic, social and cultural rights. Whereas clear standards have been set as to the contents of civil and political rights, the precise meaning of economic, social and cultural rights remains vague in many instances. If all human rights are to be accorded equal status, more attention needs to be paid to clarifying the universal minimum core contents of economic, social and cultural rights. Initiatives that were recently undertaken in respect of the right to

adequate food as well as the right to health should therefore be fostered and supported. An improved implementation process relating to economic, social and cultural rights as an essential element for the implementation of the right to development could, *inter alia*, be strongly encouraged by adopting the 20/20 compact as discussed at the World Summit for Social Development and the Fourth World Conference on Women. The 20/20 compact encourages countries to spend 20 % of Official Development Aid (ODA) and 20 % of the budget of the recipient country on basic social programmes. Although the 20/20 compact does not cover all economic, social and cultural rights it could serve as a useful tool in monitoring the serious intention of Governments to implement a number of economic, social and cultural rights.

The Office of the High Commissioner for Human Rights (OHCHR), for its part, should place strong emphasis on mainstreaming human rights throughout the United Nations family. As such, its technical assistance programme should link up with ongoing inter-agency initiatives and programmes. A strong involvement on the part of the human rights programme in ongoing field level initiatives such as the Country Strategy Note (CSN), the Common Country Assessment (CCA) and the United Nations Development Assistance Framework (UNDAF) is of the utmost importance. It is through these initiatives that the application of human rights norms and standards can really make a sound and sustainable difference in the development processes of countries concerned. Perhaps an internal OHCHR working group on inter-agency matters would be advisable in this respect. Such a working group could

also envisage human rights training courses for United Nations civil servants.

The time has also come for non-governmental organizations to become more involved in the promotion, protection and implementation of the right to development. Human rights law has evolved over the years and so should the non-governmental community. With the acknowledgment of the universality, indivisibility, interdependence and interrelatedness of all human rights firmly established, NGOs should no longer hide behind the limited scope of their mandates. At the same time, bridges have to be built between the so-called "traditional" human rights organizations and those organizations involved in "traditional" development issues.

A suggestion directed at all participants in the larger development process concerns the use of human rights impact assessments in development planning and implementation. Fifty years after the adoption of the Universal Declaration of Human Rights one should no longer consider these assessments controversial. The right to development makes it abundantly clear that human rights are a part of the larger development process. The drawing up and implementation of human rights impact assessments, based on the objective application of human rights treaties, before projects are implemented and resources are allocated, would support a sustainable human development process. It would ensure that the human person is the central subject of development and that he is the active participant and beneficiary as foreseen in the 1986 Declaration on the Right to Development.

## Concluding Remarks

A brief overview of what constitutes the right to development serves to shed some light on the numerous opportunities to draw up, endorse and implement a comprehensive action plan at national and international level. Although one should acknowledge that many elements of the right to development remain under discussion, this may not put the human rights implementation framework on hold. Indeed, the time has come to progress beyond rhetoric when dealing with the right to development as a human right.

## The “Right to Development“: Advance or Greek Gift in the Development of Human Rights?<sup>1</sup>

Franz Nuscheler

### I. Introduction: Why a change from defence to criticism?

Aside from the enhancement of Women's rights, it was above all in two paragraphs of the *Vienna Declaration*, adopted by all 171 participating states by general consensus, that human-rights and development organizations throughout the world discovered the progress made by the 1993 *Vienna World Conference on Human Rights*. § 5 of this declaration postulated:

*"All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms."*

§ 10, para. 1 states:

*"The World Conference on Human Rights reaffirms the Right to Development, as established in the Declaration on the Right to Development, as a universal and inalienable right and an integral part of fundamental human rights."*

These declarations and avowals adopted in Vienna give rise to a number of questions: Why did countries that had abstained in the UN General Assembly on the 1986 "*Declaration on the Right to Development*" or- like the USA - voted no now vote for the declaration? How are we to understand the link between the declaration of the universality and indivisibility of human rights in § 5 and the "Right to Development" now accepted or tolerated in § 10? Why did the *World Conference on Human Rights* find it necessary, in § 5, clause 3, not only to make a concession to cultural relativism but, in § 10, para 3, to add to its avowal on the "Right to Development" the admonition that underdevelopment must not be misused to justify restrictions of internationally recognized human rights?

Many critics - like Samuel Huntington (1996: 196ff.) - accused the West of making too many concessions to the South in Vienna for reasons of political opportunism, and of accepting - despite the emphasis placed on the principle of universality - the "cultural relativization" of the core inventory of rights and freedoms. Others - and they include the author of this publication - criticize that the rhetorical acknowledgement of the "Right to Development" as a human rights has not entailed any progress in the development of human rights. The main reason for this skepticism is that this "right," upgraded to a "third-generation" human right, has been inflated into a "right to everything" that contains no legally binding obligations and therefore falls back behind the inventory of norms already codified in the two Human Rights Covenants of 1966.

What as it that moved the author of this publication to convert from a proponent to a critic of the "Right to Development"? It

<sup>1</sup> The German version of this paper has been published by the United Nations Association of Germany/Bonn.

was, first, this inflation of it into a legally hazy "right to everything" that is accessible to just about any interpretation and, second, the misuse it has experienced in East and Southeast Asia as a higher-ranking right that can be subverted to justify human rights violations. The author would be prepared to reconvert if it were possible to give to the concrete form of such a "universal and inalienable human right", or of the obligation to engage in cooperation and solidarity that is already anchored in the regime of international law and was reaffirmed in § 10, para. 4 of the *Vienna Declaration*, the binding shape of a legal claim to humane living conditions.

This introductory and, to begin with, hypothetical criticism, which is not intended to lay claim to any value neutrality, is in need of justification. Here it will be necessary to reconstruct the historical process that led in 1986 to the adoption of the –at that time controversial – *Declaration on the Right to Development* (see Document Appendix) and, finally, to the general acceptance of the "Right to Development" by the community of states assembled in Vienna. The early history of its development was investigated by Sabine Bennigsen (1989), its further development to the mid-1990s by Holger Scharpenack in his doctoral dissertation (1996). Their bibliographies document the fact that there is a broad international discussion underway on the "Right to Development", and their theses show that this discussion has taken a very controversial course.

## II. Historical outline of the "Right to Development"

The Right to Development (without quotation marks) first appeared in an official UN document in 1977 in a

resolution of the UN Human Rights Commission, calling on the General-Secretary to prepare a study on "the international dimensions of the Right to Development as a human right in relation with other human rights based on international co-operation, including the right to peace, taking into account the requirements of the New International Economic Order and the fundamental human needs" (see Bennigsen 1989: 22ff.).

This mandate was preceded by a discussion on a "third generation" of collective human rights that was initiated by the Senegalese jurist Kéba M'Baye (1972) and advanced by the then director of UNESCO's Human Rights Department, Karel Vasak (1974). On June 27, 1981, the African states adopted the *African Charter on Human and Peoples' Rights*, the so-called *Banjul Charter*. In the preamble these countries vowed: "it is henceforth essential to pay a particular attention to the Right to Development." Article 22, para 2 of the Charter proclaimed:

*"States shall have the duty, individually or collectively, to ensure the exercise of the Right to Development."*

The *Banjul Charter* was the first document under international law in which the "Right to Development" was postivized. Critics objected not only to the undifferentiated formulation but above all to the localization of the "Right to Development" at the collective level of people (see Scharpenack 1996: 40f.). This "collectivism" remained a central point of controversy in the discussion on the "Right to Development" at the UN level and long served the OECD countries as a reason for rejection, or as a legally grounded pretext, which veiled antagonistic interests in the North-South conflict.



The discussion on the “third generation“ of human rights got underway while disputes were still raging over the legal quality of the “second generation“ anchored in the “*Social Pact*,” which the West was, so to speak, forced to swallow to get through the “*Civil Pact*,” which was equally hard to swallow for the East and South. While Western critics detected in the collectivism of solidarity rights a fundamental contradiction to the individualist foundation of the “classical“ freedoms and civil rights (see above all Kühnhard 1987) and accused the generation theory of seeking to use a new category of human rights to depreciate the political and social human rights that had already been acknowledged and codified in Human Rights Covenants, the advocates of such collective rights cited Article 28 of the 1948 *Universal Declaration of Human Rights*, which postulated:

*“Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realised.”*

Western interpreters likewise inferred from this article the indispensable need for a “Right to Development“ to realize political and social human rights (see Rich 1983; Brock 1985). The African states emphasized in the preamble to the *Banjul Charter* that “the satisfaction of economic, social, and cultural rights is a guarantee for the enjoyment of civil and political rights“. The doctrine of the indivisibility of human rights provided them with support in their line of argumentation. Any playing off of the “generations“ of human rights against one another is inconsistent with the principles of the universality and indivisibility of human rights. They “are universal, indivisible and interdependent

and interrelated“, as the *Vienna Declaration* (§ 5) underlined.

It was not this dispute between jurists in the West and South - the latter receiving support in their arguments from the East - that put the “Right to Development“ on the agenda of the UN conferences, it was the North-South conflict, which intensified in the 1970s. It turned the “Right to Development“ into a matter of contention and ensured that a dispute over legal principles would be perverted into an ideologically motivated exchange of blows. The developing countries, most of which were organized in the non-aligned movement and the “Group of 77“, sought to use their majority of votes in the UN bodies to push through an “international right to development“ (see Bennigsen 1989: 36ff.).

What reinforced the political reservations expressed in the West toward the “third generation“ of human rights, clothed as they were in legal arguments, was the fact that the demands of the developing countries, more and more massively presented at the stormy North-South conferences of the 1970s, were, first, backed by the bloc of the socialist COMECON countries, second, bound up with demands for larger financial transfers (development assistance), and, third, - and above all - linked to the call for a New International Economic Order. In the mid-1970s it was not only the world economic order but also the bipolar world order that appeared to have arrived at a parting of the ways (see Engels/Khan/Matthies 1975).

In 1977 the developing countries, seconded by the COMECON bloc, pushed through the UN General Assembly a resolution (UN Res. 32/130) which noted that “*the continued existence of an unjust international economic order ... [is] a*

*great obstacle to the realization of economic, social, and cultural rights*“ in the developing countries and that, conversely, *“the realization of the New International Economic Order ... [constitutes] an essential element for the effective promotion of human rights and basic freedoms“*.

As the above-mentioned working mandate of the UN Human Rights Commission to the Secretary-General made plain, the call for a “Right to Development“, in linking development-related demands with human rights, was caught between the front lines defined by the controversies over a New International Economic Order. The latter were concerned with the sum and substance of international economic relations, with vested power- and possession-related interests in the world economy, dominated as it was by the OECD countries. Because the developing countries sought to use resolutions to alter these power relations, ignoring simple negotiation rules in doing so, they at the same time also maneuvered UNCTAD into the irrelevance trap (see Nuscheler 1990).

The debate in the UN system was thus from the very beginning overshadowed by grave conflicts of interests that shrouded all of the legal arguments. The OECD countries and their legal advisers initially suspected the “Right to Development“ – not entirely without reason –of being an abbreviated formula which the developing countries intended to use to force through the New International Economic Order, or a Trojan horse that was to be used to attempt to penetrate the bastion of the “hard“ human rights of the “first generation“. It was in particular in Philip Alston (1982) that such suspicions were suggested, and they provided the OECD

countries with the ammunition of legal arguments for their voting behavior in the UN bodies, although what was actually at issue was more politics and manifest struggles for redistribution than international law.

### **III. From dissent to compromise in terms**

The “Group of 77“ was not to be diverted from its goal of anchoring the “Right to Development“ in the canon of human rights by any such reservations of the part of the OECD countries, which failed to form a closed rejection front. On November 23, 1979, the UN General Assembly backed by a draft report presented it by the UN Human Rights Commission, declared it, in terse words, to be a human right, thus opening an intense academic debate on this legal proposition which was advanced by a majority of states but whose legal sources have remained in dispute until today.

On December 14, 1981, the UN General Assembly, in a “formulation bordering on Roman conciseness“, as Christian Tomuschat (1982: 85) remarked, went so far as to upgrade the “Right to Development“ to an “inalienable human right“. 135 countries voted in favor, 13 (including the Federal Republic of Germany) abstained, only the USA voted against the measure. Even then Tomuschat predicted that it was only a question of time until the opponents and sceptics would fall into line –not on account of any new legal insights and assessments, which a working group consisting of government-level experts was at pains to elaborate, but for political reasons. True, the OECD countries had their way in international development policy, but the coalition of

the South and the East compelled them to make tactical compromises.

The working group agreed on the following substantive definition of the “Right to Development“:

*“The core of a Right to Development consists, it noted, of the following rights: the right to life, the right to a sufficient minimum of food, clothing, housing, and medical care, the right to a minimum of guaranteed safety and inviolability of the individual, the right to freedom of thought, conscience, and religion, and the right to participation, which is essential to exercising the other rights specified. The members of the groups concur, it went on, with those who regard the Right to Development as a combination of the human rights defined previously, linked with the idea of progress and the development of societies and their individual members” (cited after Riedel 1989: 60).*

The working group thus embraced a legal position influential but by no means uncontroversial in the discussion on international law, one that sought to lend to the “Right to Development“, as a “conglomerate of formally positive human rights“ and as a “categorical umbrella at a higher level of abstraction which crowns and concludes the existing human rights standards“ (thus Riedel 1989: 64), the grandeur of an “inalienable human right“. Of all attempts at justification, it was this synthesis theory that has found the greatest assent, even in the German discourse on the “Right to Development“ (see Riedel 1989; Barthel 1986/1991), although even here it has not gone unchallenged (see Scharpenack 1996: 150ff.).

Christian Tomuschat’s prognosis was approaching its fulfilment when the UN General Assembly, on December 4, 1986,

with 146 yeas, now only 8 abstentions and 1 nay (USA), adopted the *Declaration on the Right to Development*. Article 1 of this Declaration notes:

*“The Right to Development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.”*

These high, and unattainable, goals were formulated and given the shape of a legal claim at a point where the debt crisis had plunged most developing countries into a serious economic, social, and political crisis and many regions, in particular sub-Saharan Africa, were experiencing more retrogression than development.

It would also be possible to interpret the Declaration of 1986 as an act of political defiance and a last-ditch stand against conditions that were approaching a picture of “global apartheid“ and stood in contradiction to all of the norms of the two human rights pacts to which the Declaration – in the sense of a synthesis theory – made explicit reference. Article 9 para. 2 of the Declaration softened the West’s rejection front, because the article contained a general proviso according to which “nothing in the present Declaration shall be construed as being contrary to the purposes and principles of the United Nations, or as implying that any State, group or person has a right to engage in an activity or to perform any act aimed at the violations of the rights et forth in the Universal Declaration of Human Rights and in the International Covenants on Human Rights“.

§ 10, para. 3 of the *Vienna Declaration* was less guarded in formulating this proviso:

*“While development facilitates the enjoyment of all human rights, the lack of development may not be invoked to justify the abridgement of internationally recognized human rights.”*

In the *Bangkok Declaration* which the Asian states adopted in advance of the *Vienna World Conference on Human Rights*, and which emphatically demanded the “Right to Development”, this proviso was made in a more or less hidden addendum. The signatories underlined in para. 7 that they “stress the universality, objectivity and non-selectivity of all human rights and the need to avoid the application of double standards in the implementation of human rights and its politicization, and that no violation of human rights can be justified”.

The East Asian “miracle economies” also held that “the main obstacle to the realization of the Right to Development lie at the international macroeconomic level, as reflected in the widening gap between the North and the South, the rich and the poor” and that “poverty is one of the major obstacles hindering the full enjoyment of human rights”. In thus recurring to the North-South conflict pattern, they reactivated the reservations espoused in the West.

### **III.1 Legal, political, and ideological reservations in the West**

Why is it that several Western countries have were nevertheless unable to overcome their reservations toward the declared “Right to Development”? The hitch was to be found, in the first place, in a passage of the preamble which demanded that “efforts at the international level to promote and

protect human rights should be accompanied by efforts to establish a New International Economic Order”, and, in the second place, in the marked emphasis on the principle of solidarity, which imposed on the industrialized countries the obligation to do more for the realization of the “Right to Development”, i.e. to provide more development assistance. Article 4, para. 1, for instance, demanded:

*“States have the duty to take steps, individually and collectively, to formulate international development policies with a view to facilitating the full realization of the right to development.”*

Although the preamble placed the main responsibility for development-oriented framework conditions on the shoulders of individual countries, and Article 8, para. 1 called on the developing countries to “undertake, at the national level, all necessary measures for the realization of the Right to Development”, the principle of international solidarity, “a basic axiom of today’s regime of international law that is entirely worthy of acknowledgment” (Tomuschat 1982: 105), did not tally with the neoliberal credo that every state and every individual is first of all obliged to provide for itself. Basic axioms of neoliberalism are incompatible with this basic axiom of the existing regime of international law, though they do carry more weight than any principles of international law.

Any formulation from which an obligation to provide more development assistance, or indeed to pay compensation for disadvantages suffered in connection with colonialism or postcolonialism, might be derived ran up against reservations. The attempt made by GDR international law specialist Bernhard Graefrath (1982) to derive the “Right to Development” from a

claim for indemnification for colonial exploitation was likewise bound to reinforce these reservations. The West German representative on the UN Human Rights Commission stressed emphatically that the “Right to Development“ should not be allowed to become “a foundation on which economic claims of the day are based“ (cited in Scharpenack 1996: 44).

The interpretation dilemma becomes evident when the “perhaps most important substantive element“ of a “Right to Development“ is seen in its concrete articulation as a legal claim which can be used by the rightful claimants to derive an obligatory right toward the parties liable“ (thus Scharpenack 1996: 108). But what is the point of a legal claim when the parties liable refuse to recognize any obligation? The neoliberal credo of free trade was from the start wholly incompatible with demand for a regulated New International Economic Order, which, in the 1980s, under pressure from the OECD countries, vanished from the agenda of the North-South dialogue.

It was all the more astonishing that, first in the *Rio Declaration*, adopted by consensus by the *UN Conference on Environment and Development* (UNCED) in Rio de Janeiro (1992), and then, in point 10 of the final document of the *Vienna World Conference on Human Rights*, all participating countries – now including the USA – acknowledged the “Right to Development“ “universal and inalienable right and an integral part of fundamental human rights“. The *Vienna Declaration* explicitly acknowledged “the Right to Development, as established in the Declaration on the Right to Development“. Tomuschat's prediction had now finally come true, even though the legal

reservations he had expressed had not been dispelled in the time intervening.

### III.2 The "Right to Development" as a hollow compromise?

How are we to explain the change of mind on the part of the countries that in 1986 either abstained or voted against the Declaration? First, the “Right to Development“ was no longer used as a means in the ideological exchange of blows following the world-political turn of events of 1989/90. Second, the Western states discovered in the 1986 Declaration some elements touching upon individual rights that relativized their fundamental reservations against “third generation“ collective rights. Article 2, para. 1 of this Declaration had noted:

*“The human person is the central subject of development and should be the active participant and beneficiary of the right to development“.*

Third – and above all – the reluctant acknowledgement of a “Right to Development“ was a tactical concession aimed at obtaining in return the recognition of the universality of human rights by a number of influential Asian countries (China, ASEAN group), which furthermore were compelled to sign the proviso set out in § 10, para. 3. The Western countries got something that was important to them (i.e. recognition of the principle of universality), and they conceded something (i.e. an acknowledgement of the - legally nonbinding – “Right to Development“), which imposed no obligations on them. This looked like a hollow compromise, one that cannot, as Samuel Huntington supposed, be interpreted as a victory of the South over the North.

It is of course entirely possible to speak in this connection of a political deal in which substantial objects of law were at stake. But the tactical agreement of all of the OECD countries did not supply any indication of what conclusions they were prepared to derive from their agreement when the “Right to Development” was put forward as a legal claim to higher development assistance, debt relief, or trade concessions. Their agreement in Rio and Vienna did not prevent them from cutting their development budgets. The “Right to Development” failed to unfold any regulative impact at all in budget debates or in the negotiations on the Uruguay Round, which were also concerned with the social and ecological shape that world trade was to assume. An “inalienable human right” turned out to be ineffectual in national and international politics.

The “Asian bloc” imposed on the “Right to Development” that had been accepted, or tolerated, by consensus an interpretation entirely different from what had been set down in the 1986 Declaration: they saw it not as a synthesis of human rights that had already been codified but as a right ranking higher than the political freedoms, one that supplied them with a justification for the primacy of development (“first development, then freedom”) – although Article 9, para. 2 of the 1986 Declaration and § 10, para. 3 of the *Vienna Declaration* explicitly ruled out any such reinterpretation.

What was decided in Vienna was therefore not progress in the development of human rights but a compromise in terms which turned out to be a disservice not only for the “Right to Development” (see Nuscheler 1995). It is certainly no coincidence that the 1986 Declaration to

which the final *Vienna Declaration* referred was not included in the text collections on the protection of international human rights provided by the German Foreign Ministry. Thus far the “Right to Development” exists only on the paper of a legally nonbinding declaration, and the attempt to upgrade it as a synthesis of acknowledged human rights has been unable to invest it with much political persuasiveness, to say nothing of legal force.

#### IV. “Right to Development”: Right to what?

While the 1986 Declaration did formulate some general postulates, it nonetheless failed to specify what development means. What, then, could a right to something indeterminate mean? Only Article 8 of the Declaration contains a list of objectives: “inter alia, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income”.

This list was largely identical with the targets of the so-called “basic needs strategy” propagated in the 1970s by the World Bank, and in its train by the industrialized countries, as a response to the growth of “absolute poverty.” This development strategy at that time ran up against considerable resistance among the state elites of the South, because the latter saw in it a diversion from their demand for a New International Economic Order and their ambitious goal of a development geared to “making up leeway.” (see Nuscheler 1982).

Once it had become clear that the 1986 Declaration was having no impact whatever either on the behavior of the countries that had issued it or on

international development policy, and a working group set up by the UN Human Rights Commission and consisting of government-level experts proved unable to agree on any concrete proposals for realizing a “Right to Development“, the UN Secretary-General, in 1990, on request of the UN Human Rights Commission, appointed a round of experts consisting of scientists and representatives of governments, UN organizations, and nongovernmental human rights organizations to a “*Global Consultation on the Right to Development as a Human Right*.“ The factor crucial to the course and results of this *Global Consultation* was that two thirds of the participants were from the South (see Barsh 1991). It is for this reason not surprising that the results of the consultation read like a summary of the report just submitted by the *South Commission* (1991), which was chaired by Julius Nyerere.

The round of experts prepared a comprehensive report the conclusions of which have been included in the Document Appendix of this publication chiefly for two reasons: first, the report largely failed to reach even the human rights lobby and the public interested in development issues; second, it documents, in an orgy of wishful thinking, the inflation of the “Right to Development“ into a “right to everything.“

#### **IV.1 Attempts to reach an understanding by means of a Global Consultation**

§ 143 of the report summarizes the core points of the 1986 Declaration as follows: “*The Right to Development is the right of individuals, groups and peoples to participate in, contribute to, and enjoy continuous economic, social and political*

*development, in which all human rights and fundamental freedoms can be fully realized. This includes the right to effective participation in all aspects of development and at all stages of the decision-making process; the right to equal opportunity and access to resources; the right to fair distribution of the benefits of development; the right to respect for civil, political, economic, social and cultural rights, and the right to an international environment in which all these rights can be fully realized.*“

This enumeration of all the benefits that can be imagined recalls Tomuschat’s (1982: 104) hardly refutable objection that a “comprehensive, unspecified right to the provision of all the benefits conducive to the development of man [is] not conceivable.“ There is no human right to all that is good and beautiful and to a development removed beyond the bounds of the possible. The concern is instead to secure humane living conditions – i.e. to realize the social human rights already anchored in the “Social Pact.“ The claim to human dignity is the fundamental human right.

The round of experts placed participation (“both as a means to an end and as an end in itself“) and democracy (“essential to true development“) at all levels of decision-making processes in the center of all efforts aimed at realizing the “Right to Development“ (§ 147/148). It at the same time set democracy the goal of creating a “just social order“ and providing for a “fair distribution of economic and political power among all sectors of national society, and among all States and people“ (§ 148). When in history and where in the world has democracy fulfilled such high expectations? Here a utopia, which even lacks the character of a

concrete utopia, is cast in the role of the normative guideline of a human right declared to be universal and inalienable.

The postulate of participation was neither original, in that the “Civil Pact” already contained all of the elements required for the formation of the democratic will, nor – as Tomuschat (1982: 104) also objected – “suited to justify any kind of originality of the Right to Development”. Participation was of course also part and parcel of the poetry of the basic needs strategy, and it constitutes a key category in the concept of human development propagated by UNDP. But denying a concept’s claim to originality does not necessarily imply that it is superfluous. Originality is not relevant to the manner in which a right is grounded. What is more important is substantive unequivocalness and the possibility of consensus in concrete matters of fact (see Falterbaum 1994: 26). The concept of participation fails to meet both conditions.

The report contains a number of assertions and demands which, while they are part of the standard repertory of the critique of the state of North-South relations advanced by the South as well as by NGOs from the South and the North that are engaged in the field of development, are nevertheless noteworthy in that, as far as we know, representatives of Western governments brought forth no decisive dissent that caused three rounds of government-level talks to come to nothing. An observer of the *Global Consultation* explained their restraint with reference to the consultation’s lack of any formal negotiating mandate and their expectation that the round of talks would fail to give rise to any concrete results (see Barsh 1991: 323). The consensus thus rested on the assumption of its political and legal

irrelevance – and in this way forfeits much of its cogency.

It is fair to assume that the government representatives from the OECD countries would not concur with the following assertions from the report: § 153 criticizes development strategies that are geared purely to the goal of economic growth and ignore social human rights. § 167 blames the structural adjustment terms imposed by IMF, World Bank, and commercial banks as well as the undemocratic decision-making processes in the international financial and trade organizations for thwarting any full realization of the “Right to Development.”

The criticism claiming that the structural adjustment terms imposed by the Bretton Woods twins are being pushed through at the expense of groups of the poor and violate legal claims to the satisfaction of basic needs (food, housing, education, and health care) was not original. What would be needed to improve these social human rights is not a “Right to Development” but enhanced protection of already acknowledged human rights.

#### **IV.2 The pivotal question: What does development mean?**

A central passage of the report (§ 155) concealed the impossibility of coming up with a generally acceptable definition of development behind the – in principle welcome – plea for the right to various paths to development, which was also, for reasons not difficult to understand, especially emphasized by the *Banjul Charter* (Art. 22, para. 1):

*“What constitutes ‘development’ is largely subjective, and in this respect development strategies must be determined by the people themselves and adapted to their particular conditions and needs. No one*



*model of development is universally applicable to all cultures and peoples. All development models, however, must conform to international human rights standards.*“

The next question must be: How can a “universal and inalienable Right to Development“ be grounded when the substance of development itself is declared to be open to “subjective“ interpretations, i.e. can, within the boundaries defined by international human rights standards, be interpreted at will? Not only between developing worlds and cultural complexes but also within the “OECD world“, there are disagreements over theoretical views of society and the state. If, as Otmar Höll (1994: 45) notes, an understanding on a universal, generally accepted, and ecologically meaningful concept of development is, in the foreseeable future, more unlikely than not“, then it is also unlikely that any understanding on a generally accepted interpretation of the “Right to Development“ will emerge, either.

In the course of four decades of development, in innumerable reports and resolutions of UN bodies, world conferences, and development agencies, most recently in the *Agenda for Development* presented by UN Secretary-General Boutros Boutros-Ghali, the concept of development has experienced an “extension into a dimension beyond the scope of any positive legal order“, as Tomuschat (1982: 87f.) noted already at the beginning of the 1980s. Since then the conceptual confusion has shown more signs of augmentation than remission.

The *Vienna Declaration*, too, shunned the effort of further specifying the concept, instead all too facily dodging the need for justification by pointing to the 1986

Declaration. This why there is no denying the criticism that the “Human Right to Development“ proclaimed by the United Nations continues to differ from the other human rights “not only in terms of its relative novelty but also as regards its persistently vague formulation“ (Scharpenack 1996: 52).

## **V. The twofold imperative of a development both socially and environmentally compatible**

In § 11 the *Vienna Declaration* also established a link between the “Right to Development“ and the concept of *sustainable development* elaborated by the Rio Conference – thus subjecting it to an additional severe trial:

*“The Right to Development should be fulfilled so as to meet equitably the developmental and environmental needs of present and future generations.“*

In their *Bangkok Declaration* the Asian countries also reaffirmed “*the need to develop the right of humankind regarding a clean, safe, and healthy environment,*“ although they at the same time rejected as “eco-imperialism“ calls for heightened environmental responsibility, e.g. for protection of the rainforests. One of the distinguishing marks of their growth mania is an ecological recklessness which is justified with reference to the “Right to Development“ and shored up by repression of environmental groups invoking their right to participation.

This overburdening of the “Right to Development“ with a multitude of demands served less to upgrade it than to inflate it into a diffuse “right to everything“ that has lost its legally tangible contours. This substantively diffuse terminological shell was then joined by the new catchword of “sustainable

development," which, in terms of its meaning, is itself just as controversial and diffuse as is the substantive content of development (see Schmitz 1996). It was in this way that the "third generation" human rights was at the same time enriched and debased.

The group of Asian states, which were particularly vociferous in calling for the "Right to Development," at the same time articulated vehement resistance to the use of development assistance to protect human rights and promote democracy as well as to any incorporation of social and environmental clauses in the World Trade Organization's (WTO) trade regime that might ensure the minimum social and ecological standards called for in the *Vienna Declaration*. This group of countries has, however, gained more and more influence in the international human rights discussion –to the advantage neither of a "Right to Development" construed as a synthesis of the two human rights pacts nor of the imperative of sustainability. Under pressure from this group, UNDP also relativized the link between freedom and development and, in its *Human Development Report* for 1996, attested that China displayed a high level of "human development," or –in other words –had come some way toward achieving the "Right to Development".

The report of the round of experts was a contributory factor in the willingness of the Western countries to overcome their reservations toward the "Right to Development" and vote in favor of the *Vienna Declaration*. The USA detected "positive elements" in the report of the *Global Consultation*, the German representative saw in it "a step in the right direction" (see Barsh 1991: 336). This cautious praise referred above all to the

incorporation in it of components of individual rights, although the latter were, as noted above, already to be found in Article 1, para. 1 of the 1986 Declaration.

Still, it is noteworthy that the German government, represented by the Foreign Ministry and advised by international law experts close to it, has since the beginning of the 1990s (when Germany announced its claim to a permanent seat on the UN Security Council) moved from its position of heel-dragger in the EU convoy and abstainer on votes on the "Right to Development" to a position of approval, playing a constructive role in the consultation process on the substantive shape to be given to the "Right to Development." One another reason why this change of position is so remarkable is that while the world-political framework had changed, not all of the legal provisos had suddenly become groundless. Here again we see that positions on the "Right to Development" are determined less by legal arguments than by political interests and, in particular, by the way in which North-South relations are perceived.

At its 52<sup>nd</sup> session (1996) the UN Human Rights Commission once again considered the "Right to Development" and adopted, on the initiative of the non-aligned states and a few Western countries (including Germany), a resolution reaffirming the core demands of the *Global Consultation* and appointing a new group of experts to work out an implementation strategy. At the same time the resolution called on the UN regional commissions and special agencies to examine how they might incorporate the "Right to Development" in their work. Would an acknowledged human right not have called for more than such a mandate to subject the matter to further scrutiny?

Again – as so often – a commission was appointed. It would be an illusion to expect it to come up with findings and recommendations more concrete than those already to be found in the report of the *Global Consultation* and the action programs adopted by consensus at the World Conferences held since 1990 (see Messner/Nuscheler 1996). There is no longer any lack of findings on what is needed to realize human rights, what is lacking is the political will to do what is needed; the issue is not further development of human rights standards but the realization of the standards already acknowledged. The concern is to develop effective enforcement procedures.

Meanwhile, a working group to study and enforce the “Right to Development” has been set up in the office of the UN High Commissioner for Human Rights. Not least at the insistence of the “Asian bloc,” whose notions of the “Right to Development” differ from those held by the West, the issue has gained in political weight in UN bodies. The doubts as to whether it can be placed on a firm legal footing have, however, yet to be overcome.

In the meantime, however, the unisonous claims cartel of the South has started to crumble because some of the governments have come to realize that the implementation of the “Right to Development” also requires efforts on their part. On the other hand, the West, at the 54<sup>th</sup> session of the UN Human Rights Commission in March/April 1998, renewed its pledge to the “Right to Development”. One cannot help suspecting that this change of mind may also have been a result of tactical considerations with a view to justifying in an elegant manner the “double standards” in the human rights policies over against “developmental

dictatorship” like China. On the other hand, the higher value attributed to the “second generation” of economic, social and cultural rights – and thus the acknowledgement of the indivisibility of human rights – is definitely a step forward in the intercultural dialogue.

The UN Commission on Human Rights adopted at its 54<sup>th</sup> session a resolution – documented in the Appendix – providing for a follow-up mechanism to promote the implementation of the “Right to Development”. It may be concluded from that resolution that a large number of questions are yet to be clarified, it is true, but that the “Right to Development” will remain on the agenda of the international human rights discourse.

## **VI. The problem of legally grounding the "Right to Development" as a human right**

Since 1979, when the UN General Assembly first declared to “Right to Development” to be a human right, a good number of reports and studies have appeared that deal above all with the legal quality of this postulate upgraded to the status of a “universal and inalienable human right.” Advocates of the “Right to Development” have sifted through a substantial number of legal sources, attempting to infer from them its quality as a human right:

- Article 1, para. 3, and Articles 55 and 56 of the UN Charter, which ground the obligation to engage in international cooperation;
- Article 28 of the *Universal Declaration of the Human Rights*, which calls for an international social order, lays the groundwork for and promotes the realization of political and social human rights;

- The two internationally binding Human Rights Covenants, in particular Article 2, para. 1 of the “Social Pact,” in whose obligation to exercise international solidarity many authors see the normative basis for a “Right to Development“:
- “Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means.“
- Customary international law, which, according to Article 38 of the Statute on the International Court of Justice, is an “expression of a universal exercise acknowledged as law“ and is seen above all by the United Nations as a legal source for the “Right to Development;“
- The *Declaration on the Right to Development* adopted by the UN General Assembly in 1986, and the final declarations of the World Conferences held at Rio (1992 and Vienna (1993), in which the states participating recognized by consensus the “Right to Development“ as an “inalienable human right.“

Furthermore – and complementary to the obligation to practice international cooperation and solidarity – universal theorems of justice and equity were derived from legal and social philosophy in order to ground a “Right to Development“ (see Bennigsen 1989: 141ff.). Here we are confronted not only with the problem that there are highly divergent notions of justice that can be generalized by means of

ethical categorical imperatives but also with the problem of distinguishing between justifications based on moral philosophy and universally acknowledged legal claims. Even if the academic discourse could agree on the meaning of justice – which is highly unlikely – this agreement would meet its match in power-based structures of injustice and “structural violence“ (after Galtung 1972). Right is expected to restrain power, but power also creates right. The world economic order and the regime of international law are power- and interest-based systems of order that derive their motive power from changes to power and interest structures.

The “Right to Development“ has in the meantime been assigned to a “fourth generation“ of human rights that is said to aim at enhancing the principle of formal equality constituent of international law by adding to it the element of material equality (see Zieck 1992). However, this multiplication of the generations of human rights will remain meaningless as long as the “third generation“ continues to be regarded at controversial; instead of upgrading the “Right to Development,“ this contributes more to depreciating it. Artful formulations are no substitute for a lack of substance.

Why was Christian Tomuschat (1982: 105) able to note at the beginning of the academic debate that the quality of the “Right to Development“ is as good as impossible “to ground as an individual – and indeed inalienable! – human right“? And why was Holger Scharpenack (1996: 277), a good decade later, in summing up the legal discourse, still able to note: “The ‘Right to Development’ is not a right in the normative sense.... On the basis of the results presented, any classification of the ‘Right to Development’ as an

internationally acknowledged human right, and thus as an element of international law, must be rejected.“ Jack Donnelly (1985) even found it wholly superfluous to deal with something that does not, and can not, exist.

How do the critics justify this harsh criticism?

- First, they are of the opinion that there is in international law no contractual basis for the “Right to Development.“ Neither Articles 55/56 of the UN Charter nor the two Human Rights Covenants can be cited as contractual stopgaps, since these treaties were unfamiliar with any “Right to Development.“ The *Banjul Charter*, which is thus far the only treaty to have positivized the “Right to Development,“ has only a regional legal effect and furthermore stands, in one important point, namely in its neglect of components concerning individual rights, in contradiction to the UN Declaration of 1986.
- Second, the Declarations of Rio and Vienna, even though they were adopted by consensus, do not permit the conclusion that the “Right to Development“ has in the meantime assumed a foundation in the form of customary international law, because the legal conviction that would be required to establish customary international law can by no means be presumed on the part of the addressees of the obligation anchored in the “Right to Development.“
- Third, it is not possible to ascribe any legally binding function to the resolutions and declarations adopted by a majority of the states in the UN General Assembly.

- Fourth, though the obligation to practice international cooperation and solidarity can no longer be denied, it is nevertheless not possible to derive from these axioms of international law a human Right to Development that would make assistance transfers a legal obligation of the rich and a legal entitlement of the poor throughout the world.

If at all, the one thing that might possibly be grounded is the synthesis theory which attempts to lend the “Right to Development“ the quality of a human right as a “conglomerate of positivized human rights,“ that is to say, by deriving legal norms anchored in treaties. The 1986 Declaration undertook this attempt to ground the “Right to Development.“ The objection that such a synthesis adds nothing new to the two Human Rights Covenants and serves no new purpose (see Alston 1987; Scharpenack 1996: 151) is not convincing, since what is at issue here is not so much something new; the concern is instead a synthesis of human rights which are on principle indivisible, although they were divided by the two Human Rights covenants.

Tomuschat wanted reduce the –in his view – legally ungroundable “Right to Development“ to the binding principle of international solidarity, Scharpenack (1996: 280) to the function of a guideline to be “observed in future acts relevant in terms of international law.“ Tomuschat (1982: 108) also ascribed to the “Right to Development“ merely, or at least, the function of a “benchmark“: “when it is not possible to find a compromise of interests via the market alone, a compromise must be organized and institutionalized under the guiding principle of social justice and solidarity.“ Be it guideline or benchmark,

principle or concept: a human right is something qualitatively different – or it cannot be grounded as a human right. At best, the “Right to Development” may assume a significance comparable to the public goals anchored in many constitutions – such as the right to work or the right to a sound environment.

### VII. **Contra the inflation of the “Right to Development” into a “right to everything”**

First proclaimed by the UN General Assembly in 1979, the “Right to Development,” suffered at the hands of the *Global Consultation* and the World Conferences at Rio and Vienna the worst thing that could possibly happen to it: its involution to a “right to everything,” which, in international politics, is tantamount to a “right to nothing.” The agreement of the OECD countries, accompanied as it was by massive cuts in their development budgets, did not imply an upgrading in that these states assumed no obligations. It almost seemed as though they were attempting to use their concession, which cost them nothing, to ease the pressure stemming from demands from the South – and now from the East as well.

The majority of jurists from the West who have expressed themselves on the “Right to Development” see in it at most “soft law” or at best “threshold law, i.e. law constituting the “threshold” between the already codified obligations concerning international cooperation and solidarity and a new legal principle in the process of evolving. “Soft law” or “*pré-droit*” can formulate guiding principles from which “hard” legal norms may develop (see Becker 1982: 257). But there is no indication whatever that the “Right to

Development” might be incorporated into the body of customary international law as the “expression of a universal exercise acknowledged as law.” As long as it is only demanded by the “demander community” of the South and, at most, reluctantly tolerated by the “donor community” of the North, the “Right to Development” has not crossed the threshold of universal acceptance.

So has the “Right to Development,” having received declamatory recognition as a human right, already become a nuisance in the areas of development and law? A “right to everything” that has been unable to prevent development policy from degenerating into a unwanted political stepchild is such a nuisance. How might it be possible to prevent the gap between wishful thinking of the sort documented in the report of the *Global Consultation* and the realities of international development policy from growing ever wider and amplifying the nuisance?

A good part of the battle would be won if the states involved could bring themselves to prepare a facultative protocol to the “Social Pact,” which they failed to do at both the *Vienna World Human Rights Conference* and the *Copenhagen World Social Summit* (1994). If the indivisibility of human rights were not merely proclaimed, and if the equal standing of political and social human rights were secured, there would be no need for a synthetic right in the form of a “Right to Development.” The admonition of Rüdiger Wolfrum (1993: 689) remains peremptory:

*“It is not the normative development of new human rights or the further development of internationally acknowledged human rights, it is the creation of a genuinely international*

*enforcement procedure that will allow a breakthrough to an effective international protection of human rights.*“

A Facultative Protocol to the “Social Pact“ could lend more emphasis to the list of demands contained in the 1986 *Declaration on the Right to Development* and further expanded by the report of the *Global Consultation* and the resolution adopted by the UN Commission on Human Rights at its 54<sup>th</sup> session than would the present practice of overburdening a “Right to Development“ with all conceivable development- and environment-related demands, which are tantamount to a list of wishes from a world still intact. If, as was noted at a conference of the *Friedrich-Ebert Foundation* prior to the *Copenhagen World Social Summit*, even many German members of parliament do not know what the “Social Pact“ codifies in the form of binding international law, thus raising to the level of national law, then a “Right to Development“ that cannot even claim legal force for itself will hardly be able to bring about much change (see FES 1995). As long as the economic, social, and cultural human rights remain “forgotten rights“ (see Windfuhr 1996), the “International Right to Development“ will be unable to emancipate itself from the grey zone of programmatic nonbindingness. This is why efforts aimed at creating a facultative protocol to the “social pact“ should be stepped up (see Alston 1995).

Actually, the German *Ministry for Economic Cooperation and Development* (BMZ) should become active here, because the policy area for which it is responsible could, by promoting a more legally binding character for it, recover for international social policy some of the weight which it has lost, and lost in an existence-threatening manner, since the world-

political turn of events of 1989/90. A binding Right to Development (in this case without quotation marks) could provide it with an additional *raison d'être*, particularly since the substantive priorities of the right largely coincide with its programmatic priorities.

A “right to everything“ that no group of states and no individual excluded from development can enforce at law is not worth much and should not be adorned with the high title of an “inalienable human right.“ This right is being alienated by the “absolute poverty“ of 1.3 billion persons. A “Right to Development“ that can be misused by individual countries to justify the priority of development over the observance of individual political rights does not constitute any advance in the evolution of human rights, because it can then no longer be grounded as a synthetic right. At present the legal figure still has more the counterproductive function of replacing obligations with a free-and-easy commitment that costs nothing or of justifying the nonobservance of individual political rights and freedoms. A “human right“ misused and misapplied in this way does not deserve to be defended.

The “Right to Development,“ here deliberately set in quotation marks, would be worthy of defense only if it were used, at least and in fact, as a “benchmark“ or “guideline“ to give concrete shape to North-South relations and to formulate a new international social order of the type called for in Article 28 of the *Universal Declaration of Human Rights*; if the states that have raised it to a human right would understand it and deal with it not as a surrogate for but as a guide to action. Nowhere, however, has the “Right to Development“ assumed this action-orienting force.

Klaus-Jürgen Hedrich, the Parliamentary Secretary in the German *Ministry of Economic Cooperation and Development*, has assessed the Declarations of the UN conferences as “reference documents” that mark a stage behind which governments would henceforth be unable to fall back. If this were the case, international environmental, development, and human-rights policies should have changed their features following the series of world conferences that adopted such declarations, each of them by consensus (see Messner/Nuscheler 1996). If the *Declaration on the Right to Development* served as a “reference document,” the German government - and all governments - would have much to do.

By signing the *Vienna Declaration*, all states have at least assumed a moral obligation to draw practical consequences out of what they have signed. They also obliged themselves in Vienna to devise “effective development policies at the national level “ and to create “equitable economic relations and a favourable economic environment at the international level.” Experience shows that they will do nothing of the kind if they are not constantly and emphatically reminded by civil society of the commitments they have assumed. The development and human-rights lobby is therefore called upon to demand the “Right to Development,” at least as a “benchmark” for development-oriented action. Otherwise it would turn out to be a Greek gift.



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## A Response from the Development Policy Perspective

### Joachim Schmitt<sup>2</sup>

Franz Nuscheler provides a detailed and comprehensible account of the genesis of the right to development up to the end of 1996. His conclusion is that, ultimately, this right constitutes a "right to everything," which is actually no more than a "right to nothing." The right to development, he says, lacks action-oriented effectiveness and thus does not merit advocacy.

While Nuscheler's criticism may, at first, appear plausible and understandable, it takes too one-sidedly an approach based on (formal) legal considerations, fails to recognize that the establishment of international standards is a gradual process and fails itself to provide any action-oriented recommendations.

Nuscheler concentrates on the question of how the right to development has thus far contributed to the further development of human rights. To back up his arguments, he generally cites specialists in international law, and his line of attack is, accordingly, characterized by legal dogma. What is largely ignored is the broader - and, ultimately, more decisive - question what potential long-term benefit this right can have for those people whose present living situation makes a mockery of any right to development.

An answer to this question can only be found if one takes development policy aspects into account. The grave deficiencies in formal law that Nuscheler points out are only of minor significance

from a development policy perspective. Rather, from that perspective the formal compromise that was achieved in Vienna offers an opportunity for continuous dialogue on the question *what* obligations the right to development implies, and for *whom*.<sup>3</sup> If the international community succeeds in arriving at a consensus on these substantive issues as well, the international development debate might gain a new quality, *binding under international law*, thus contributing to an improvement in the general conditions for millions of people worldwide, who are today denied self-determined development.

Undoubtedly, there is still a long way to go before such a compromise can be reached. Many standpoints are still too controversial, and the interests of hard-liners on all sides are too contradictory. However, the past few years have also shown that it is not impossible to arrive at an understanding. For instance, moderate forces have gained the upper hand at the sessions of the UN Commission on Human Rights since 1996, succeeding in having the resolutions on the right to development adopted by consensus ever since. An important achievement in 1998 was that agreement was reached on a concrete follow-up mechanism, comprising an independent expert of outstanding qualifications and (as of 1999) an open-ended working group of government representatives. The negotiations for defining the substance of the right to development in more precise terms, which must precede any (formal) legal provisions

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<sup>2</sup> The article reflects the author's personal opinion.

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<sup>3</sup> This is why the German government, in an official statement in January 1998, called the right to development a "political concept" and declared that it is willing to participate actively in further defining this concept in more precise terms.

for safeguarding that right, are thus continuing both at the expert and the political levels.

These consensual resolutions meant a loss of ground for those countries that either felt that obligations for implementing the right to development rested *exclusively* with the industrialized countries, or wanted to give all responsibility *solely* to the developing countries.<sup>4</sup> Each side has had to realize that it can no longer use the discussion for its own agenda, and that the discussion could soon turn against it - because a compromise will certainly place demands on both sides that they may find hard to accept. Nor have the negotiations been moving along the traditional North-South divide. Rather, they have resulted in various coalitions between developing countries, NICs and industrialized countries. The German delegation, headed by former Interior Minister Gerhard Baum, has been recognized as one of the "bridge builders," attaching great importance to the topic and engaging actively in mediation between the different positions. The Federal Ministry for Economic Cooperation and Development (BMZ) has for years now given support to the Geneva negotiations in terms of substance, and in 1997 and 1998 also by providing staff in Geneva.

As things now stand, it thus appears perfectly conceivable that the negotiations

on the substance and implications of the right to development will, *in the long term*, facilitate a more precise division of tasks between individual countries and the international community. The nations might even express such an outcome in internationally binding legal terms. The action-oriented leverage that Nuscheler feels to be lacking *may* thus still be achieved. However, it is far too early at this point to give anything but a preliminary assessment.

Whatever one may think the chances of success are, there is now no stopping the discussion that has been started on the right to development. *Not* to participate in it would mean depriving oneself of the opportunity to exert any influence. In the worst case, the hard-liners would once more gain the upper hand and contribute to the polarization of the international debate, which does nobody any good and would probably even have a negative impact on other forums of debate. Just how long it takes for international standards to emerge can be seen particularly clearly in the field of human rights - after all, it was seventeen years after the proclamation of the Universal Declaration of Human Rights that the Covenants on Civil and Political and on Economic, Social and Cultural Rights were signed. It took another ten years before they entered into force once a sufficient number of countries had ratified them. If one applies this kind of scale, the period that has elapsed since international agreement on the right to development was first reached in 1993 is only short, and the success achieved in the negotiations is impressive.

Unfortunately, Nuscheler does not derive any concrete, path-breaking recommendations from his criticism himself. What are the minimal standards

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<sup>4</sup> The position of the German government is based on the Vienna Declaration and says that the right to development makes human beings the central subject of the development process, shows the connection between development and the realization of *all* human rights and stresses the responsibility of states for overcoming both internal and external impediments to development. (Position paper of January 1998)

to be met by a compromise on the substance of the right to development? Who should move closer to whose positions on what issues? What benefit could potentially be drawn from the fact that the UN Commission on Human Rights does not deal with development per se, but with the *right* to development? It would be pleasing if Nuscheler (and others) could take these issues into account in future analyses.

The international negotiations on the right to development have only just begun. They may peter out some day without

anything having been achieved. But it also seems possible that they lead to an outcome that will, *in the long term*, have a positive impact on the situation of people, particularly in the developing countries. We should make use of this opportunity and participate constructively in what will undoubtedly be a lengthy process, rather than trying to claim that a development we cannot stop has already failed.

## DOCUMENTS

- I. UN Charter, Art. 55 + Art. 56
- II. Universal Declaration of Human Rights, Art. 28
- III. International Covenant on Economic, Social and Cultural Rights, Art. 2
- IV. African (Banjul) Charter on Human and Peoples' Rights, Art. 22
- V. Declaration on the Right to Development (1986)
- VI. Global Consultation on the Right to Development as a Human Right
- VII. Vienna Declaration and Programme of Action on World Conference on Human Rights (1993), Art. 10 + Art. 11
- VIII. Bangkok Declaration on World Conference on Human Rights (1993)
- IX. UN Commission on Human Rights: Resolution on the Right to Development (1998)

### **I. Charter of the United Nations: Chapter IX**

#### **Art. 55:**

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.

#### **Art. 56:**

All 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.

### **II. Universal Declaration of Human Rights**

#### **Art. 28:**

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

### **III. International Covenant on Economic, Social and Cultural Rights**

#### **Art. 2, Abs. 1:**

Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

#### **IV. African (Banjul) Charter on Human and Peoples' Rights**

##### **Preamble**

Convinced that it is henceforth essential to pay a particular attention to the right to development and that civil and political rights cannot be dissociated from economic, social and cultural rights in their conception as well as universality and that the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights.

##### **Article 22**

(1) All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.

(2) States shall have the duty, individually or collectively, to ensure the exercise of the right to development.

#### **V. Declaration on the Right to Development**

The General Assembly,

Bearing in mind the purposes and principles of the Charter of the United Nations relating to the achievement of international co-operation in solving international problems of an economic, social, cultural or humanitarian nature, and in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion,

Recognizing that development is a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom, Considering that under the provisions of the Universal Declaration of Human Rights everyone is entitled to a social and international order in which the rights and freedoms set forth in that Declaration can be fully realized,

Recalling the provisions of the International Covenant on Economic, Social and Cultural Rights and of the International Covenant on Civil and Political Rights,

Recalling further the relevant agreements, conventions, resolutions, recommendations and other instruments of the United Nations and its specialized agencies concerning the integral development of the human being, economic and social progress and development of all peoples, including those instruments concerning decolonization, the prevention of discrimination, respect for and observance of, human rights and fundamental freedoms, the maintenance of international peace and security and the further promotion of friendly relations and co-operation among States in accordance with the Charter,

Recalling the right of peoples to self-determination, by virtue of which they have the right freely to determine their political status and to pursue their economic, social and cultural development,

Recalling also the right of peoples to exercise, subject to the relevant provisions of both International Covenants on Human Rights, full and complete sovereignty over all their natural wealth and resources,

Mindful of the obligation of States under the Charter to promote universal respect for and observance of human rights and fundamental freedoms for all without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Considering that the elimination of the massive and flagrant violations of the human rights of the peoples and individuals affected by situations such as those resulting from colonialism, neo-colonialism, apartheid, all forms of racism and racial discrimination, foreign domination and occupation, aggression and threats against national sovereignty, national unity and territorial integrity and threats of war would contribute to the establishment of circumstances propitious to the development of a great part of mankind,

Concerned at the existence of serious obstacles to development, as well as to the complete fulfilment of human beings and of peoples, constituted, inter alia, by the denial of civil, political, economic, social and cultural rights, and considering that all human rights and fundamental freedoms are indivisible and interdependent and that, in order to promote development, equal attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights and that, accordingly, the promotion of, respect for and enjoyment of certain human rights and fundamental freedoms cannot justify the denial of other human rights and fundamental freedoms,

Considering that international peace and security are essential elements for the realization of the right to development,

Reaffirming that there is a close relationship between disarmament and development and that progress in the field of disarmament would considerably promote progress in the field of development and that resources released through disarmament measures should be devoted to the economic and social development and well-being of all peoples and, in particular, those of the developing countries,

Recognizing that the human person is the central subject of the development process and that development policy should therefore make the human being the main participant and beneficiary of development,

Recognizing that the creation of conditions favourable to the development of peoples and individuals is the primary responsibility of their States,

Aware that efforts at the international level to promote and protect human rights should be accompanied by efforts to establish a new international economic order,

Confirming that the right to development is an inalienable human right and that equality of opportunity for development is a prerogative both of nations and of individuals who make up nations,

Proclaims the following Declaration on the Right to Development:

### **Article 1**

(1) The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy



economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.

(2) The human right to development also implies the full realization of the right of peoples to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources.

### **Article 2**

(1) The human person is the central subject of development and should be the active participant and beneficiary of the right to development.

(2) All human beings have a responsibility for development, individually and collectively, taking into account the need for full respect for their human rights and fundamental freedoms as well as their duties to the community, which alone can ensure the free and complete fulfilment of the human being, and they should therefore promote and protect an appropriate political, social and economic order for development.

(3) States have the right and the duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom.

### **Article 3**

(1) States have the primary responsibility for the creation of national and international conditions favourable to the realization of the right to development.

(2) The realization of the right to development requires full respect for the principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations.

(3) States have the duty to co-operate with each other in ensuring development and eliminating obstacles to development. States should realize their rights and fulfil their duties in such a manner as to promote a new international economic order based on sovereign equality, interdependence, mutual interest and co-operation among all States, as well as to encourage the observance and realization of human rights.

### **Article 4**

(1) States have the duty to take steps, individually and collectively, to formulate international development policies with a view to facilitating the full realization of the right to development.

(2) Sustained action is required to promote more rapid development of developing countries. As a complement to the efforts of developing countries, effective international co-operation is essential in providing these countries with appropriate means and facilities to foster their comprehensive development.

### **Article 5**

States shall take resolute steps to eliminate the massive and flagrant violations of the human rights of peoples and human beings affected by situations such as those resulting from apartheid, all forms of racism and racial discrimination, colonialism, foreign domination and occupation, aggression, foreign interference and threats against national sovereignty, national unity and territorial integrity, threats of war and refusal to recognize the fundamental right of peoples to self-determination.

#### **Article 6**

(1) All States should co-operate with a view to promoting, encouraging and strengthening universal respect for and observance of all human rights and fundamental freedoms for all without any distinction as to race, sex, language or religion.

(2) All human rights and fundamental freedoms are indivisible and interdependent; equal attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights.

(3) States should take steps to eliminate obstacles to development resulting from failure to observe civil and political rights, as well as economic social and cultural rights.

#### **Article 7**

All States should promote the establishment, maintenance and strengthening of international peace and security and, to that end, should do their utmost to achieve general and complete disarmament under effective international control, as well as to ensure that the resources released by effective disarmament measures are used for comprehensive development, in particular that of the developing countries.

#### **Article 8**

(1) States should undertake, at the national level, all necessary measures for the realization of the right to development and shall ensure, inter alia, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income. Effective measures should be undertaken to ensure that women have an active role in the development process. Appropriate economic and social reforms should be carried out with a view to eradicating all social injustices.

(2) States should encourage popular participation in all spheres as an important factor in development and in the full realization of all human rights.

#### **Article 9**

(1) All the aspects of the right to development set forth in the present Declaration are indivisible and interdependent and each of them should be considered in the context of the whole.

(2) Nothing in the present Declaration shall be construed as being contrary to the purposes and principles of the United Nations, or as implying that any State, group or person has a right to engage in any activity or to perform any act aimed at the violation of the rights set forth in the Universal Declaration of Human Rights and in the International Covenants on Human Rights.

**Article 10**

Steps should be taken to ensure the full exercise and progressive enhancement of the right to development, including the formulation, adoption and implementation of policy, legislative and other measures at the national and international levels.

**VI. Global Consultation on the Right to Development as a Human Right (Report prepared by the Secretary-General pursuant to Commission on Human Rights resolution 1989/45)****A. Conclusions****1. The content of the right to development as a human right**

143. The right to development is the right of individuals, groups and peoples to participate in, contribute to, and enjoy continuous economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized. This includes the right to effective participation in all aspects of development and at all stages of the decision-making process; the right to equal opportunity and access to resources; the right to fair distribution of the benefits of development; the right to respect for civil, political, economic, social and cultural rights, and the right to an international environment in which all these rights can be fully realized. All of the elements of the Declaration on the Right to Development, including human rights, are complementary and interdependent, and they apply to all human beings, regardless of their citizenship.

144. Development is not only a fundamental right but a basic human need, which fulfils the aspirations of all people to achieve the greatest possible freedom and dignity, both as individuals and as members of the societies in which they live.

145. The human person is the central subject rather than a mere object of the right to development. The enjoyment of all civil, political, economic, social and cultural rights is both the necessary condition and aim of the right to development. Thus, States must not only take concrete steps to improve economic, social and cultural conditions and to facilitate the efforts of individuals and groups for that objective, but must do so in a manner that is democratic in its formulation and in its results. A development strategy that disregards or interferes with human rights is the very negation of development.

146. Recognition of the right to development and human rights in the national legal system is not sufficient in itself. States must also ensure the means for the exercise and enjoyment of these rights on a basis of equal opportunity.

147. Democracy at all levels (local, national and international) and in all spheres is essential to true development. Structural inequalities in international relations, as within individual countries, are obstacles to the achievement of genuine democracy and a barrier to development as defined by the Declaration. Fundamental to democratic participation is the right of individuals, groups, and peoples to take decisions collectively and to choose their own representative organizations, and to have freedom of democratic action, free from interference.

148. A major goal of democracy is to achieve a just social order. To be fully effective, democracy itself depends upon the existence of a just and democratic social order,

including a fair distribution of economic and political power among all sectors of national society, and among all States and peoples and on the employment of such rights as freedom of expression, freedom of association and of free elections.

149. The concept of participation is of central importance in the realization of the right to development. It should be viewed both as a means to an end and as an end in itself. Measures formulated to promote the right to development must focus on the democratic transformation of existing political, economic and social policies and structures which are conducive to the full and effective participation of all persons, groups and people in decision-making processes. Special measures are required to protect the rights and ensure the full participation of particularly vulnerable sectors of society, such as children, rural people, and the extremely poor, as well as those which have traditionally experienced exclusion or discrimination, such as women, minorities and indigenous people.

150. Participation, if it is to be effective in mobilizing human and natural resources and combating inequalities, discrimination, poverty and exclusion, must involve genuine ownership or control of productive resources such as land, financial capital and technology. Participation is also the principal means by which individuals and peoples collectively determine their needs and priorities, and ensure the protection and advancement of their rights and interests.

151. The right to development is related to the right to self-determination, which has many aspects, both individual and collective. It involves both the establishment of States and the operation of States once they have been established. The mere formation of a State does not in itself fully realize the right to self-determination, unless its citizens and constituent peoples continue to enjoy the right to their own cultural identity and to determine their own economic, social and political system through democratic institutions and actions, and the State genuinely enjoys continuing freedom of choice, within the bounds of international law. Universal respect for the principle of the non-use of force, is a fundamental condition for the full realization of the right to development.

## **2. Human rights and development strategy**

152. The struggle for human rights and development is a global one that continues in all countries, "developed" and "developing", and must involve all peoples, including indigenous peoples, national, ethnic, linguistic and religious minorities, as well as all individuals and groups. International implementation and monitoring mechanisms must be of universal applicability.

153. Development strategies which have been oriented merely towards economic growth and financial considerations have failed to a large extent to achieve social justice; human rights have been infringed, directly and through the depersonalization of social relations, the breakdown of families and communities, and of social and economic life.

154. Development strategies which have relied too heavily on a centrally planned command economy, have excluded participation and have not provided opportunities for individuals and groups to take an active part in the economic life of the country have also often failed to achieve the realization of the right to development.

155. What constitutes "development" is largely subjective, and in this respect development strategies must be determined by the people themselves and adapted to their particular conditions and needs. No one model of development is universally applicable to all cultures and peoples. All development models, however, must conform to international human rights standards.

156. The world's future can only be ensured if the global environment is adequately protected and restored. In addition, all cultures and peoples form part of the common heritage of humankind and have a dignity and value that must be respected. Both environmental and cultural considerations should therefore be an integral part of national, regional and international development strategies.

157. Indigenous peoples have been throughout history the victims of activities carried out in the name of national development. Their direct participation and consent in decisions regarding their own territories are thus essential to protect their right to development. In this regard, attention was drawn to the conclusions and recommendations of the "Seminar on the effects of racism and racial discrimination on social and economic relations between indigenous peoples and States", held at Geneva on 16-20 January 1989 (HR/PUB/89/5).

158. In order to reverse the situation of growing inequalities in the world, affirmative action in favour of the disadvantaged groups and increased assistance to disadvantaged countries will be required. The removal of barriers to economic activities, such as trade liberalization, is not sufficient.

159. Peace, development, and human rights are interdependent. Respect for and realization of human rights through the process of development is essential to national stability and the promotion of international peace and security. Development policies that disregard human rights, or which foster regional or international disparities, contribute to social, political and other conflicts and endanger international peace. The United Nations, based on the Charter's mandate to ensure international peace and security, thus has a major stake in the promotion of a development which respects human rights.

160. The United Nations should take the lead in implementation of the Declaration on the Right to Development. This means setting up mechanisms for ensuring the compatibility of all United Nations activities and programmes with the Declaration, according to its letter and intent. Development must be equitable from the viewpoint of the peoples, groups, and individuals affected.

### **3. Obstacles to the implementation of the right to development as a human right**

161. Failure to respect the right of peoples to self-determination, and their right to permanent sovereignty over natural resources is a serious obstacle to the realization of the right to development as a human right.

162. Massive and flagrant violations of human rights, and such phenomena as racial discrimination, apartheid and foreign occupation are also serious barriers preventing the realization of the right to development as a human right.

163. Disregard for human rights and fundamental freedoms and in particular the right to development can lead to conflict and instability, which in turn may undermine the economic conditions needed for development through phenomena such as the diversion of resources to military or police forces, capital flight, the demobilization of

human resources, increased national dependence, indebtedness, involuntary emigration and environmental destruction.

164. Democracy is an essential element in the realization of the right to development and the failure to implement and respect the principles of democratic government has been shown to present a serious obstacle to the realization of the right of development.

165. The adoption of inappropriate or destructive development strategies, sometimes on the pretext that human rights must be sacrificed in order to achieve economic development, has been a further obstacle to the realization of the right to development. Prevailing models of development have been dominated by financial rather than human considerations. These models largely ignore the social, cultural and political aspects of human rights and human development, limiting the human dimension to questions of productivity. They foster greater inequalities of power and control of resources among groups and lead to social tensions and conflicts. These tensions and conflicts are often the pretext used by States to justify placing restrictions on human rights, freedom of association, action, and participation, and this in turn intensifies conflicts and perpetuates the denial of the right to development. Corruption is also an obstacle to the realization of the right to development.

166. Transfer of control of resources located in developing countries to interests in developed countries which intensified in the 1980s is another obstacle to development. Similarly, the growing burden of indebtedness and structural adjustment falls heaviest on the poorest and weakest sectors of society and has clear human rights implications.

167. Failure to take into account the principles of the right to development in agreements between States and the World Bank, the International Monetary Fund, and commercial banks with regard to external debt repayment and structural adjustment, frustrates the full realization of the right to development and of all human rights. The prevailing terms of trade, monetary policy, and certain conditions tied to bilateral and multilateral aid, which are all perpetuated by the non-democratic decision-making processes of international economic, financial and trade institutions, also frustrate the full realization of the right to development as a human right.

168. Other obstacles to development can be found in the concentration of economic and political power in the most industrialized countries, the international division of labour and the functioning of the Bretton Woods institutions, the "brain drain" due to growing disparities in wages and income levels among countries, the restrictions on transfers of technology, certain forms of protectionism, and the adverse effects of the consumption patterns of the more industrialized countries. The implementation of the declaration on the right to development should seek to overcome these obstacles.

169. Lack of communication between specialists in human rights, social development and economics, within the United Nations Secretariat, United Nations missions and national Governments, the academic community and non-governmental organizations, has impeded a full understanding of the Declaration of the Right to Development and its implementation.

#### **4. Criteria which might be used to measure progress**

170. The Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Declaration on Social Progress and Development, the Declaration

on the Right to Development and other international human rights instruments constitute the basic framework for formulating the criteria for determining progress in the implementation of the right to development as a human right.

171. The formulation of criteria for measuring progress in the realization of the right to development will be essential for the success of future efforts to implement that right. Such criteria must address the process of development as well as its results; quality as well as quantity; the individual as well as social dimension of human needs; and material as well as intellectual and cultural needs. Both objective and subjective measurements must be included in any analysis.

172. These criteria for the right to development may be grouped under the following headings: conditions of life; conditions of work; equality of access to resources; and participation.

173. Conditions of life include basic material needs such as food, health, shelter, education, leisure and a safe and healthy environment as well as personal freedom and security. Care should be taken to account for quality as well as quantity. Food may be available abundantly, but may be nutritionally poor or culturally inappropriate. Schools may be numerous and free but respond only to material and economic objectives, and fail to provide an education which promotes the knowledge, the critical awareness, the analytical capability and the creativity necessary to enable human beings to shape their own environment.

174. Conditions of work include employment, extent of sharing in the benefits of work, income and its equitable distribution, and degree of participation in management. These factors relate not only to the amount of work and its remuneration, but also to the quality of work, worker control, and subjective elements of satisfaction and empowerment.

175. The degree of equality of opportunity of access to basic resources, as well as the fair distribution of the results of development are essential criteria for measuring progress in the implementation of the right to development. Relevant indicators therefore must include the relative prices, accessibility, and distribution of factors of productive resources such as land, water, financial, capital, training and technology.

176. Significant inequalities in the enjoyment of these conditions and resources of development, whether they exist among different States, are incompatible with the right to development, in particular if they increase over time. Special attention therefore must be paid to the desegregation of national statistics by relevant categories such as sex, ethnicity, socio-economic sectors and geographic regions.

177. Since participation is the right through which all other rights in the Declaration on the Right to Development are exercised and protected, the forms, quality, democratic nature, and effectiveness of participatory processes, mechanisms and institutions is the central and essential indicator of progress in realizing the right to development. At the international level, this applies to the equality and democratic character of intergovernmental bodies, including financial and trade institutions.

178. Relevant factors in assessing participatory processes include the representativity and accountability of decision-making bodies, the decentralization of decision-making, public access to information, and responsiveness of decision-makers to public opinion. The effectiveness of participation must also be assessed from a subjective perspective, based on the opinions and attitudes of the people affected - in other words, their

confidence in leaders, feeling of empowerment, and belief that they are affecting decisions.

179. Participation is also the primary mechanism for identifying appropriate goals and criteria for the realization of the right to development, and assuring the compatibility of development activities with basic human and cultural values. This must be an on-going process at the local, regional, national and international levels, since the goals of development must be established for each level of development activity.

180. Publication of the criteria for measuring progress in implementing the right to development and the results of the evaluation of their usefulness is important to stimulating effective participation in the development process.

## **B. Recommendations for Action**

### **1. Action by States**

181. All States engage in activities affecting the development process, both internally and in their relations with other States and peoples. The creation of national and international conditions in which the right to development can be realized fully is a responsibility of States, the international community, and of all peoples, other groups, and individuals.

182. All States should take immediate and concrete measures to implement the Declaration on the Right to Development. In particular, national policy and development plans should contain explicit provisions on the right to development and the realization of all human rights, especially the strengthening of democracy, together with specific criteria for evaluation. They should also identify the needs of groups which have experienced the greatest difficulties in access to basic resources and set specific goals for meeting their needs; establish mechanisms for ensuring participation in periodically assessing local needs and opportunities; and identify obstacles requiring international assistance or co-operation.

183. All States should take the necessary steps to strengthen their juridical systems including ensuring access by all on a non-discriminatory basis to legal remedies; particular attention should be paid to ensuring access to justice of the extremely poor and other vulnerable or disadvantaged groups.

184. All States should ensure that corporations and other entities under their jurisdiction conduct themselves nationally and internationally in a way that does not violate the right to development.

185. All States which have not yet done so should ratify the principal instruments in the field of human rights, in particular the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Discrimination in Education, as well as the relevant conventions of the International Labour Organisation, including Convention No. 87 (Freedom of Association), Convention No. 98 (Right to Organize), Convention No. 141 (Rural Workers) and Convention No. 169 (Indigenous and Tribal Peoples).

186. All States should renew their commitment to the implementation of the United Nations declarations which have been adopted in the field of social development, in



particular the 1969 Declaration on Social Progress and Development, the Nairobi Forward-Looking Strategies on Women, Guiding Principles for Developmental Social Welfare Policies and Programmes in the Near Future, the Vienna International Plan of Action on Aging, the Work Programme of Action Concerning Disabled Persons, Guidelines for Further Planning and Suitable Follow-up in the Field of youth, decisions and recommendations of the United Nations Congresses on the Prevention of Crime and Treatment of Offenders.

187. All States should co-operate in creating an international economic and political environment conducive to the realization of the right to development, in particular through the democratization of decision-making in intergovernmental bodies and institutions that deal with trade, monetary policy, and development assistance, and by means of greater international partnership in the fields of research, technical assistance, finance and investment.

188. There is also a need for greater transparency in negotiations and agreements between States and international financial and aid institutions. This must include the publication and widest possible dissemination of proposed and final agreements concerning financial aid, credit, debt, repayment, and monetary policy.

189. The international community must renew its efforts to combat massive and flagrant violation of rights, racism and apartheid, and all remaining forms of colonization, and foreign occupation. Existing United Nations machinery for the promotion and protection of human rights must be further strengthened and additional resources provided to the Centre for Human Rights.

190. All United Nations activities (policy, operations, and research) related to the development process should have explicit guidelines, appraisal criteria, and priorities based upon the realization of human rights, including human rights impact assessments. Impact assessments should address the possible adverse effects of the proposed activity, temporary and long-term, on the full enjoyment of human rights by any sector of the national society; the contribution of the proposed activity to the full enjoyment of human rights by the population affected; and the establishment of participatory mechanisms for monitoring and evaluation.

191. Implementation of the Declaration on the Right to Development should be co-ordinated by the Centre for Human Rights, with at least one full-time specialist devoted to this task. Effective co-ordination should also include a full-time liaison officer on the staff of the Director-General for Development and International Economic Co-operation in New York, regular discussions within United Nations Conference on Trade and Development, in the Administrative Committee for Co-ordination and the Committee for Development Planning, and the establishment of focal points for the right to development and human rights in each development-related United Nations programme and agency.

192. United Nations bodies and specialized agencies should be requested to review their mandates and identify those areas of their activity and responsibility which are related to the right to development and other human rights. In addition, United Nations bodies and agencies, including related financial and trade institutions, should respect the International Covenants on Human Rights and other basic conventions in the field of human rights as if they themselves were parties.

193. United Nations supervisory bodies in the field of human rights, such as the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Racial Discrimination, the Committee on the Elimination of Discrimination Against Women, and the Committee on the Rights of the Child, should include special comments and recommendations regarding the right to development in their review of the periodic reports of States parties.

194. The Secretary-General should appoint a high level committee of independent experts from Europe, Latin America and the Caribbean, Africa, Western Asia, South and South East Asia, and the Asia-Pacific regions, with relevant direct experience in human rights and development, and serving in their personal capacities, to report annually to the General Assembly through the Commission on Human Rights and the Economic and Social Council, on progress made in the implementation of the Declaration at the national as well as international levels, based on information requested from Governments, intergovernmental bodies, and non-governmental organizations, as well as information received from all other sources. The Committee in carrying out its activities should ensure the effective participation of non-governmental organizations and groups active in development and human rights, including indigenous peoples, workers' organizations, women's groups, and other organizations.

195. The high level committee of experts should give priority to the formulation of criteria for the assessment of progress in the realization of the right to development; recommendations for a global strategy to achieve further progress in the enjoyment of this right; examination of reports and information regarding internal and external obstacles to its enjoyment, including as appropriate the role of transnational corporations; the identification of activities which may be incompatible with the right to development; and promoting wider knowledge and understanding of the right to development as a human right.

196. The design of appropriate indicators of progress should also be undertaken by the regional economic commissions, on the basis of national experience and in co-operation with the Commission on Social Development, United Nations Research Institute for Social Development, International Labour Organisation, other United Nations bodies and specialized agencies with relevant expertise and national universities. This process should also include the effective participation of representative organizations of disadvantaged and vulnerable peoples and groups, as well as workers' organizations and other organizations engaged directly in development programmes in the field.

197. All United Nations system assistance and co-operation should be provided through an overall programme of assistance which would facilitate monitoring, co-ordination and implementation of the right to development. This programme should include specific requirements regarding all aspects of the right to development in an appropriate environmental and cultural framework and should be drawn up with each country.

198. Successful implementation of the Declaration through United Nations system programmes and activities depends critically on the direct participation of representatives of the people and groups directly or indirectly affected through their own representative organizations, at all levels of decision-making. The United Nations

overall assistance programme with individual countries should contain specific requirements regarding the establishment of mechanisms for assuring effective participation in their implementation and review.

199. The high level committee should initiate a programme of development education with particular emphasis on reaching grass-roots organizations working in the field of development at the community and local levels. This should include regional meetings on practical problems of implementation such as mechanisms for ensuring and evaluating participation, methods for the assessment of progress in the enjoyment of the right to development, and ensuring sensitivity to issues of gender and culture, to facilitate dialogue among development agencies, international financial institutions, Governments, and the peoples and communities concerned. The Centre for Human Rights, International Labour Organisation, the Centre for Social Development and Humanitarian Affairs, United Nations Research Institute for Social Development, the regional economic commissions and other specialized agencies should take part in this programme.

200. Further research and studies should be undertaken within the United Nations system on strategies for the realization of the right to development, and criteria for assessing progress. This could include consultations at the regional level with independent experts and with representative organizations such as workers' organizations, including trade unions, and peasant organizations.

201. The report and recommendations of the Global Consultation should be taken into account in the International Development Strategy for the Fourth United Nations Development Decade, and should be placed on the agendas for the 1990 Special Session of the General Assembly devoted to International Economic Co-operation for Development, the 1990 United Nations Conference on the Least Developed Countries, and the 1992 United Nations Conference on Environment and Development.

202. This report, its recommendations, and conference papers should be published and given the widest possible distribution as a contribution to the debate on this complex subject. This should be done as part of the World Information Campaign for Human Rights, and in co-operation with the United Nations Educational, Scientific and Cultural Organization (UNESCO), the United Nations University, and national universities. Particular efforts should be undertaken to disseminate this report to workers' organizations, including trade unions, in co-operation with the International Labour Organisation, and to grassroots organizations in the fields of development and human rights. Effective use should be made of electronic as well as print media.

203. The Declaration on the Right to Development should be given the widest possible distribution in as many local languages as possible and should be published together with an explanation and commentary accessible to the general public.

204. The General Assembly should organize periodically a plenary debate on international co-operation for the full realization of the right to development, beginning if possible at its forty-fifth session.

205. The question of the implementation of the right to development as a human right should be placed on the agenda of the First and Second Committees of the Economic and Social Council and of the Second and Third Committees of the General Assembly on an annual basis.

206. Non-governmental organizations in the fields of human rights and development should make efforts to exchange information and co-ordinate, both within the United Nations system and in the field, and in particular with regard to the elaboration, implementation and assessment of national development plans.

207. Non-governmental organizations should play a leading role in the dissemination of information about human rights, including the right to development, and in stimulating national-level awareness and discussion in "developed" and "developing" alike.

## **VII. Vienna Declaration and Programme of Action on World Conference on Human Rights, Vienna 14-25 June 1993**

**10.** The World Conference on Human Rights reaffirms the right to development, as established in the Declaration on the Right to Development, as a universal and inalienable right and an integral part of fundamental human rights.

As stated in the Declaration on the Right to Development, the human person is the central subject of development.

While development facilitates the enjoyment of all human rights, the lack of development may not be invoked to justify the abridgement of internationally recognized human rights.

States should co-operate with each other in ensuring development and eliminating obstacles to development. The international community should promote an effective international co-operation for the realization of the right to development and the elimination of obstacles to development.

Lasting progress towards the implementation of the right to development requires effective development policies at the national level, as well as equitable economic relations and a favourable economic environment at the international level.

**11.** The right to development should be fulfilled so as to meet equitably the developmental and environmental needs of present and future generations. The World Conference on Human Rights recognizes that illicit dumping of toxic and dangerous substances and waste potentially constitutes a serious threat to the human rights to life and health of everyone.

## **VIII. Bangkok Declaration on World Conference on Human Rights, Bangkok, 29 March - 2 April 1993**

The Ministers and representatives of Asian States, meeting at Bangkok from 29 March to 2 April 1993, pursuant to General Assembly resolution 46/116 of 17 December 1991 in the context of preparations for the World Conference on Human rights,

17. Reaffirm the right to development, as established in the Declaration on the Right to Development, as a universal and inalienable right and an integral part of fundamental human rights, which must be realized through international co-operation, respect for fundamental human rights, the establishment of a monitoring mechanism and the creation of essential international conditions for the realization of such right;

18. Recognize that the main obstacles to the realization of the right to development lie at the international macroeconomic level, as reflected in the widening gap between the North and the South, the rich and the poor;

19. Affirm that poverty is one of the major obstacles hindering the full enjoyment of human rights;

20. Affirm also the need to develop the right of humankind regarding a clean, safe and healthy environment.

## IX. UN Commission on Human Rights 54th Session, April 1998, Agenda Item 6

### The Right to Development

The Commission on Human Rights,

Guided by the Charter of the United Nations, expressing in particular the determination to promote social progress and better standards of life in larger freedom as well as to employ international mechanisms for the promotion of the economic and social advancement of all peoples,

Recalling that the Declaration on the Right to Development adopted by the General Assembly in its resolution 41/128 of 4 December 1986 confirmed that the Right to Development is an inalienable human right and that equality of opportunity for development is a prerogative both of nations and of individuals, who make up nations,

Noting that the World Conference on Human Rights reaffirmed the right to development as a universal and inalienable right and an integral part of all fundamental human rights,

Recognizing that the Declaration on the Right to Development constitutes an integral link between the Universal Declaration of Human Rights and the Vienna Declaration and Programme of Action (A/CONF. 157/23) through its elaboration of a holistic vision integrating economic, social and cultural rights with civil and political rights,

Expressing its concern, on the occasion of the fiftieth anniversary of the Universal Declaration of Human Rights, that the unacceptable situation of absolute poverty, hunger, and disease, lack of adequate shelter, illiteracy and hopelessness remains the lot of over one billion people,

Emphasizing that the promotion, protection and realization of the right to development is an integral part of the promotion and protection of all human rights,

Noting that the human person is the central subject of development and that development policy should therefore make the human being the main participant and beneficiary of development,

Stressing the importance of creating an economic, political, social, cultural and legal environment that will enable people to achieve social development,

Affirming the need to apply a gender perspective in the implementation of the right to development, *inter alia* by ensuring that women play an active role in the development process,

Emphasizing that the empowerment of women and their full participation on a basis of equality in all spheres of society is fundamental for development,

Underlining the fact that realization of the right to development requires effective development policies at the national level, as well as equitable economic relations and a favourable economic environment at the international level,

Welcoming in this regard the adoption by the General Assembly of the Agenda for Development which declares that development is one of the main priorities of the United Nations and aims at invigorating a renewed and strengthened partnership for development, based on the imperatives of mutual benefits and genuine interdependence,

Noting with concern that the Declaration on the Right to Development is insufficiently disseminated and should be taken into account, as appropriate, in bilateral and

multilateral co-operation programmes and national development strategies and policies and activities of international organizations,

Recalling the need for coordination and co-operation throughout the United Nations system for a more effective promotion and realization of the right to development,

Underlining the important role of the United Nations High Commissioner for Human Rights in the promotion and protection of the right to development, as mandated in paragraph 4 (c) of General Assembly resolution 48/141 of 20 December 1993,

Recalling its resolution 1977/72 of 16 April 1997 and noting General Assembly resolution 52/136 of 12 December 1997,

Taking note with interest of the report (E/CN.4/1998/29) submitted by the Intergovernmental Group of Experts, including the proposed strategy contained therein, and welcomes in particular the recommendation that a follow-up mechanism should be established to ensure promotion and implementation of the Declaration on the Right to Development,

1. Reaffirms the importance of the right to development for every human person and all peoples in all countries, in particular the developing countries, as an integral part of their fundamental human rights as well as the potential contribution its realization could make to the full enjoyment of human rights and fundamental freedoms;

2. Recognizes that the fiftieth anniversary of the Universal Declaration of Human Rights provides an important opportunity to place all human rights at the top of the global agenda and, in this context, the right to development in particular;

3. Reiterates that:

(a) The essence of the right to development is the principle that the human person is the central subject of development and that the right to life includes within it existence in human dignity with the minimum necessities of life;

(b) The existence of widespread absolute poverty inhibits the full and effective enjoyment of human rights and renders democracy and popular participation fragile;

(c) For peace and stability to endure, national action and international action and co-operation are required to promote a better life for all in larger freedom, a critical element of which is the eradication of poverty;

4. Reaffirms that democracy, development and respect for human rights and fundamental freedoms, including the right to development, are interdependent and mutually reinforcing, and in this context affirms that:

(a) Development experiences of countries reflect differences with both progress and setbacks, and that the development spectrum has a wide range, not only between countries but also within countries;

(b) A number of developing countries have experienced rapid economic growth in the recent past and have become dynamic partners in the international economy;

(c) At the same time the gap between developed and developing countries remains unacceptably wide and developing countries continue to face difficulties participating in the globalization process, and many risk being marginalized and effectively excluded from its benefits;

(d) Democracy, which is spreading everywhere, has raised development expectations everywhere; that their non-fulfilment risks the rekindling of non-democratic forces and that structural reforms that do not take social realities into account could destabilize democratization processes;

- (e) Effective popular participation is an essential component of successful and lasting development;
- (f) Democracy, respect for all human rights and fundamental freedoms, including the right to development, transparent and accountable governance and administration in all sectors of society, as well as effective participation by civil society, are an essential part of the necessary foundations for the realization of social- and people-centered sustainable development;
- (g) The participation of developing countries in the international economic decision-making process needs to be broadened and strengthened;
5. Urges all States to eliminate all obstacles to development at all levels, by pursuing the promotion and protection of economic, social, cultural, civil and political rights and by implementing comprehensive development programmes at the national level, integrating these rights into development activities, and by promoting effective international co-operation;
6. Reaffirms that all human rights are universal, indivisible, interdependent and interrelated and that the universality, objectivity, impartiality and non-selectivity of the consideration of human rights issues must be ensured;
7. Affirms that international co-operation is acknowledged more than ever as a necessity deriving from recognized mutual interest, and therefore that such co-operation should be strengthened in order to support the efforts of developing countries to solve their social and economic problems and to fulfil their obligations to promote and protect all human rights;
8. Welcomes the intention of the Secretary-General to give high priority to the right to development and urges all States to further promote the right to development as a vital element in a balanced human rights programme;
9. Also welcomes the high priority devoted by the High Commissioner for Human Rights to activities relating to the right to development, and urges the Office of the High Commissioner for Human Rights to continue implementing Commission resolution 1997/72, in particular with regard to:
- (a) Examining ways and means to provide the Declaration on the Right to Development with a profile commensurate with its importance;
- (b) Continuing to accord priority to the right to development and providing commensurate support in terms of staff, services and resources for its programmatic follow-up;
- (c) Ensuring widespread dissemination and promotion of the Declaration on the Right to Development, in close co-operation with States and intergovernmental organizations, national institutions, academia and interested non-governmental organizations worldwide, *inter alia* through workshops and seminars;
- (d) Projecting the role and importance of the right to development in activities being organized as part of the celebration of the fiftieth anniversary of the Universal Declaration of Human Rights;
- (e) Consulting regularly on a formal and informal basis with all States on the follow-up to the Declaration on the Right to Development;
- (f) The welcome initiative to organize regional seminars which should focus on all aspects of the realization of the right to development;



(g) Undertaking with the World Bank a dialogue with regard to the right to development, including initiatives, policies, programmes and activities that can promote the right to development, and informing Member States on a regular basis of the progress in such a dialogue;

10. Decides, in view of the urgent need to make further progress towards the realization of the right to development as elaborated in the Declaration on the Right to Development, to recommend to the Economic and Social Council the establishment of a follow-up mechanism, initially for a period of three years, consisting of:

(a) The establishment of an open-ended working group to meet for a period of five working days each year, after the fifty-fifth and fifty-sixth sessions of the Commission on Human Rights, with a mandate to:

(i) Monitor and review progress made in the promotion and implementation of the right to development, as elaborated in the Declaration on the Right to Development, at the national and international levels, providing recommendations thereon, and further analysing obstacles to its full enjoyment, focusing each year on specific commitments in the Declaration on the Right to Development;

(ii) Review reports and any other information submitted by States, United Nations agencies, other relevant international organizations and non-governmental organizations on the relationship between their activities and the right to development;

(iii) Present for the consideration of the Commission on Human Rights a sessional report on its deliberations, including, *inter alia*, advice to the Office of the High Commissioner for Human Rights with regard to the implementation of the right to development, and suggesting possible programmes of technical assistance at the request of interested countries with the aim of promoting the implementation of the right to development;

(b) The appointment by the Chairman of the Commission on Human Rights of an independent expert with high competence in the field of the right to development, with a mandate to present to the Working Group at each of its sessions a study on the current state of progress in the implementation of the right to development as a basis for a focused discussion, taking into account, *inter alia*, the deliberations and suggestions of the Working Group;

11. Invites the High Commissioner for Human Rights to present a report to the Commission each year for the duration of the mechanism, to provide interim reports to the Working Group and to make these reports available to the independent expert, in each case covering:

(a) The activities of her Office relating to the implementation of the right to development as contains in her mandate;

(b) The implementation of resolutions of the Commission and the General Assembly with regard to the right to development;

(c) Inter-agency coordination within the United Nations system for the implementation of relevant resolutions of the Commission in that regard;

12. Calls upon the Secretary-General to ensure that the Working Group and the independent expert receive all necessary assistance, in particular the staff and resources required to fulfil their mandates;

13. Requests the Secretary-General to submit to the General Assembly at its fifty-third session and to the Commission on Human Rights at its fifty-fifth session a

comprehensive report on the implementation of the various provisions of the present resolution;

14. Recommends the following draft decision to the Economic and Social Council for adoption:

"The Economic and Social Council, taking note of Commission on Human Rights resolution 1998/... of ... April 1998, endorses the Commission's decision, in view of the urgent need to make further progress towards the realization of the right to development as elaborated in the Declaration on the Right to Development, to establish a follow-up mechanism, initially for a period of three years, consisting of:

(a) The establishment of an open-ended working group to meet for a period of five working days each year, inter-sessionally after the fifty-fifth and fifty-sixth sessions of the Commission on Human Rights, with a mandate to:

(i) Monitor and review progress made in the promotion and implementation of the right to development, as elaborated in the Declaration on the Right to Development, at the national and international levels, providing recommendations thereon, and further analysing obstacles to its full enjoyment, focusing each year on specific commitments in the Declaration on the Right to Development;

(ii) Review reports and any other information submitted by States, United Nations agencies, other relevant international organization and non-governmental organizations on the relationship between their activities and the right to development;

(iii) Present for the consideration of the Commission on Human Rights a sessional report on its deliberations, including, *inter alia*, advice to the Office of the High Commissioner for human Rights with regard to the implementation of the right to development, and suggesting possible programmes of technical assistance at the request of interested countries with the aim of promoting the implementation of the right to development;

(b) The appointment by the Chairman of the Commission on Human Rights of an independent expert with high competence in the field of the right to development, with a mandate to present to the Working Group at each of its meetings a study of the current state of progress in the implementation of the right to development as a basis for a focused discussion, taking into account, *inter alia*, the deliberations and suggestions of the Working Group.