HUMAN RIGHTS AND INTERNATIONAL LAW

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Human rights is a part of the common heritage of mankind. There have been debates over its origins ever since the idea of protecting human rights began flooding the enclosures of domestic jurisdiction and entered the stage of international politics. Some of these discussions searched for a "geographical homeland", emphasizing in the process a political and cultural exclusivity. Others were related to disputes over various conceptions of human rights. Fundamental human rights, nevertheless, have been implemented via intra-national measures, and international cooperation in this sphere has been established to a great extent.

Sometimes, discussions assumed forms in which certain admixtures of cultural exclusivity were searched. It was initially claimed that civil and political rights owed their emergence to the middle class revolutions in the late 18th century and that social and economic rights emerged from efforts exerted during the next two centuries. According to this standpoint, human rights were formulated in societies with Judeo-Christian tradition and cultural achievements during the Renaissance. This stance disputes the possibility of the non-European cultures to conceive human rights. It assumes that the non-Western societies do not have the capacity to rise above the level of enlightened authoritarianism.

Partly as a reaction to this first standpoint, however, the non-European and non-Christian peoples emphasize that the conception of human rights developed in their own environment as well, although it may be different. Some of its assumptions are based on Divine revelation and quest for objectivity in scientific research. For instance, in Islam justice is considered as one of the attributes of God. Likewise, the same stance criticizes the application of knowledge in some Western societies as a vehicle to promote racialism.

The debate was further joined by a socialist conception of human rights, which argued that the highest degree of rights and freedoms might only be based on the liquidation of exploitation of man by man. Although

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there were differences between various doctrines of socialism, on the one hand, and different régimes claiming to build socialist models, the discussions were inescapably affected by the reflections of the Cold War between the "East" and the "West".

Partly due to its own internal conduct and partly on account of international pressure, Eastern European states considered the dignity of the individual as synonimous with a socialist society. Its theoreticians even justified violations of human rights as requirements of real socialism. This picture was further confused by dictators such as Idi Amin in Uganda or Macias Nguema in Equatorial Guinea, who for foreign policy or other reasons attached left-wing names to their personal tyrannies.

Conversely, the term "West" was also misleading. Politically, it seemed to mean all countries allied with the United States. Culturally, it connoted membership in the Judeo-Christian civilisation. But some of its members were non-aligned and some non-Christian. Was Japan a "Western" country? Was not the West uneasy with the racist Republic of South Africa in its ranks? Was a Latin American distatorship a part of the West?

The foregoing paragraphs aim to underline that an applicable definition of human rights cannot be achieved in terms of political division, into "West" and "East" or "North" and "South". Nevertheless, the international community has been able to develop, step by step, favorable conditions for the advancement of human rights and freedoms.

Inequality between men has played a great role in history. Freedom of some and the subjection of others were determined in accordance with the social group each belonged. Societies were horizontally divisible into different economic and political structures as well as forms of social consciousness. They were also vertically divided into various sequences which underwent transformations. However, human nature throughout strove to satisfy man's needs for survival, development and self-realization.

Not only freedom has been part of man's needs, but the concept of need is expressed in terms of progress from the low to the high. The first multilateral instrument in the history of international relations encouraging respect for human rights and freedoms was the United Nations Charter.

It is true that there have been other instruments before that defined rights. For instance, the French Declaration of 1789 advanced the idea of dual rights - human rights in an abstract sense **(droits de l'homme)** and

the rights of the citizen under a given state (**droits du citoyen**). Moreover, several treaties, concluded within the framework of the League of Nations, prohibited some of the most serious encroachments on human rights. They include treaties with provisions discouraging slavery, defending national minorities and protecting human rights in armed conflicts. But the League of Nations Covenant or the other international agreements of that time did not oblige the states to cooperate internationally with the aim to promote respect for human rights.

The founding of the United Nations marked the beginning of a new stage in this field. The U.N. Charter (Article 55/C) obliges all states to develop international cooperation aimed at promoting "universal respect for, and observance of, human rights and fundamental freedoms, for all without distinction as to race, sex, language, or religion". This statement is not a mere reference to the encouragement of the concept in question; it legally binds all to observe it. The experience of World War II had shown the link between the preservation of peace and respect for human rights. The U.N. Charter, however, mentions only the general nature of such an obligation.

The U.N. Charter refers the protection of human rights to the domestic jurisdiction of states. It regulates the same issue differently, however, with reference to trust territories and non-self-governing territories. Article 73 states that the obligation to promote utmost the well-being of the inhabitants of such territories is "a sacred trust". The colonial powers are obligated "to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex language or religion" (Article 76/C). Colonial powers are obligated to provide the U.N. with information on such territories, and the Trusteeship Council is authorized to accept petitions and examine them (Article 87).

Article 2/7 of the U.N. Charter upholds the principle of non-intervention in matters which are essentially within the domestic jurisdiction of any state but this principle does not prejudice the application of enforcement measures (under Chapter VII). For instance, the U.N. General Assembly repeatedly categorized the policy of **apartheid** pursued by the Republic of South Africa as a crime against humanity creating a threat to international peace and security and recommended that sanctions be applied against that country. In other words, an act qualified by international crime, ceases to be the internal affair of that state.

The Conference in San Francisco believed it advisable to discuss an enumeration of rights at a later stage at the General Assembly of the U.N. The first document in history which gives a list of human rights is

the Universal Declaration of Human Rights (December 10, 1948). Although this proclamation recorded a list of rights, it was only a recommendation and therefore not binding.

Rules concerning human rights have taken shape with the adoption of several binding conventions. As distinct from a declaration, their observance is obligatory. These international agreements include the following: the Convention on the Prevention and Punishment of the Crime of Genocide (1948); the International Convention on the Elimination of All Forms of Racial Discrimination (1966); the International Covenants on human rights (1966); the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity (1968); the International Convention on the Suppression and Punishment of the Crime of **Apartheid** (1973); the Conventions Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984); the ILO and UNESCO Conventions and others.

There are now in the international arena a certain system of global bodies that deal with human rights issues. Their activities are often characterized by a clash of opinions and heated debate. Human rights issues principally fall within the internal jurisdiction of states. But these questions are also subject to international legal regulations, and the states are expected to put them into practice by adopting internal measures.

The United Nations Organization occupies the central position within the system of international protection of human rights. Its competence in this sphere includes recommendations, decisions, studies, draft conventions and conferences. The main responsibility within the U.N. system lies with the General Assembly.

Article 13 of the U.N. Charter notes that the General Assembly initiates studies and makes recommendations to assist in the realization of human rights for all. Consequently, most of the issues within this sphere are initially examined by the Third Committee of the General Assembly and then referred to its plenary meetings. Although the resolutions of the latter are mere recommendations and therefore not legally binding, they have moral strength since they reflect the tendency of the international community.

In addition to the General Assembly, the U.N. Economic and Social Council (ECOSOC) shares in the responsibility of discharging functions related to human rights (U.N. Charter, Article 60). The ECOSOC makes recommendations, prepares draft conventions, enters into agreements with specialized agreements and conducts consultations with non-governmental organizations concerned with human rights issues.

As early as 1946, the ECOSOC formed two commissions related to this field — the Commission on Human Rights and the Commission on the Status of Women. The former is composed of state representatives elected by the ECOSOC every three years. It holds annual sessions lasting up to six weeks. The sessions discuss violations of human rights, whether as a result of colonialism, **apartheid** or some other form of discrimination. It directly participates in the preparation of international treaties. It is empowered to establish **ad hoc** working groups of experts, the first one of which was created in 1967 to investigate the maltreatment of prisoners in the Republic of South Africa.

The Commission on Human Rights established in 1947 an auxiliary body called the Subcommission on the Prevention of Discrimination and Protection of Minorities. The latter was composed of experts elected by the Commission in their personal capacity as professionals and not as representatives of states. The Subcommission meets once a year to discuss issues pertaining to various aspect of human rights. It appoints special rapporteurs from among its members, who submit reports on diverse forms of discrimination.

The Commission on the Status of Women, made up of state representatives, was created in 1946 to prepare recommendations and reports to the ECOSOC on the issues of promotion of women's rights. This Commission initiated important international conventions and resolutions. The Convention on the Political Rights of Women, the Convention on Nationality of Married Women, the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriage, the Declaration on the Elimination of Discrimination Against Women and the Convention on the Elimination of All Forms of Discrimination Against Women were international instruments with which the Commission was directly concerned.

The U.N. General Assembly, the ECOSOC and auxiliary bodies deal with human right issues regularly and continuously. There are other U.N. organs which take them up at random. For instance, the Security Council, interested in the systematic violation of human rights, discussed the activities of the fascist régime in Spain and the policy of **apartheid** in South Africa. Massive violations may lead to situations in which the Security Council may be compelled to become involved on the basis of Chapters VI and VII of the U.N. Charter.

In conformity with the provisions of international conventions, certain bodies are created with the mission to work closely with the United Nations. The Human Rights Committee, composed of independent experts, was established in accordance with Article 28 of the Covenant on Civil

and Political Rights. This Committee, which examines reports by the states parties to the Covenant on measures taken by them, transmits general comments only and is not empowered to assess the internal situation in any country.

Apart from the reports of states, the Committee on Human Rights and the Committee on the Elimination of Racial Discrimination may also examine the complaints of one state against another in respect to failures of fulfilling obligations. They may also review the charges of individuals. The latter is possible, however, if the state has recognized the competence of these supervisory bodies.

The Committee on the Elimination of Racial Discrimination, created after the International Convention serve the same purpose, also assists the states parties to the Convention in carrying out their obligations. Once every two years, the states submit reports to the Committee on measures adopted to fulfill their obligations under the Convention. The Committee makes suggestions based on the examination of reports. It classifies them into "satisfactory" and "unsatisfactory" or "incomplete". In the past, the Committee was critical of Britain for failing to take appropriate measures to eliminate the racist régime in the former Southern Rhodesia (now Zimbabwe) and expressed concern over the Israeli policies of discrimination in the occupied Arab territories.

Some specialized agencies of the U.N. system also investigates human rights issues. Within this framework, the International Labour Organization (ILO) and the United Nations Educational, Scientific and Cultural Organization (UNESCO) have played a special role.

The purpose of the ILO, established in 1919 as an autonomous organization of the League of Nations and later (1946) the first specialized agency of the U.N., is the international regulation of labour. It adopted more than 150 conventions on various aspects of social and economic rights. A whole series of these conventions prohibit discrimination in labour. A significant number of them concern the freedom of associations. The latter regulate issues concerning workers' organizations and protecting their rights from interferences.

UNESCO, created in 1946 to promote international cooperation in education, science and culture, is also expected to further universal respect for human rights. It has adopted a series of conventions and declarations to this end. For instance, the Convention on the Fight Against Discrimination in Education (1960) makes it the duty of states to offer all forms of education to all. The Declaration on the Principles of International

Cultural Cooperation (1966) considers cultural cooperation as the right of all peoples and countries.

States also cooperate regionally in the sphere of human rights. For instance, the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) contains some of the rights and freedoms laid down in the Universal Declaration and the Covenants on human rights. It does not contain socio-economic and cultural rights. The value of the Convention lies in its mechanism.

Two organs, i.e. the European Commission of Human Rights and the European Court of Human Rights, have been formed on the basis of the European Convention. They have the authority of examining petitions coming from the states and the individuals. Petitions are examined only if the state against which the complaint has been made recognizes the competence of the Commission. It does not examine petitions which request recognition of rights not embodied in the Convention or not acknowledged by states-parties. It also has to ascertain that all domestic remedies have been exhausted. The criteria determining the rejection of petitions, however, are vaguely formulated, and consequently any petition can be turned down. Nevertheless, less than one percent submitted by groups or individuals have so far been declared as inadmissible.

If accepted, the Commission proceeds to examine a petition, and if found relevant, offers its good offices. If no solution is achieved, it submits a report to the EEC Committee of Ministers, which decides whether there has been a violation of the Convention. In case the violation is established, the Committee of Ministers obligates the state in question to take measures within a certain time. If the state does not comply, the Committee decides on other steps. This Committee examines petitions provided that they are not submitted to the European Court of Human Rights.

The European Court, created in 1959, accepts cases only through the European Commission on Human Rights or through states-parties to the Convention. The Court decisions are binding, and the Committee of Ministers, which has no actual power, is expected to see to it that the decisions are carried out. Most of the court decisions found no violations of the Convention.

The American Convention on Human Rights, initially signed by twelve Latin American countries, was adopted in 1969 but went into force eleven years later. The United States did not sign this document. The list of rights mentioned in it is limited to some traditional civil and

political rights. It does not include the right of nations to self-determination, minority rights and fundamental socio-economic rights.

The authority to supervise the fulfillment of obligations rests with the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights. The last two organs have delivered very few advisory opinions and decisions. The American Convention is very much divorced from the realities of life taking place in Latin America.

The African Charter on Human and People's Rights, adopted by African states in 1981, dwells mainly on issues related to self-determination, colonialism, foreign domination, socio-economic and cultural development and sovereign rights of peoples over their natural wealth and resources. The Charter also creates an African Commission on Human and People's Rights. As opposed to the European and American Conventions on Human Rights, the African Commission has the authority to examine individual reports on violations of human and people's rights. Within this framework, African jurists mainly deal with issues of colonialism and **apartheid.**

There is no regional body for the protection of human rights in Asia. Given the absence in that continent of socio-economic and cultural homogeneity between states, there is apparently not enough basis for establishing a mechanism in the sphere of human rights. There exists, nevertheless, a Permanent Arab Commission on Human Rights, which pays primary attention to violations of human rights in the Israeli-occupied territories.

International and regional efforts summarized above have created a complex of principles and rules concerning human rights. The principle of self-determination of peoples and nations is one of the most important premises of international law, without which there can be no free peoples and nations and therefore no free individuals making them up. The two Covenants on human rights dwell extensively on this cardinal principle. Colonial and other forms of dependence are illegitimate.

Another principle is the conviction of equal rights for all people and the prohibition of discrimination. The U.N. Charter lays out race, sex, language and religion as the main four points in which discrimination is not allowed. The Covenants on human rights is more extensive, prohibiting discrimination as to "race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". The International Convention on the Elimination of All Forms of Racial Discrimination states that "any distinction, exclusion, restriction or preference" violates equality between people. Any form of discrimination negates equal rights, and the absence of equality presupposes discrimination.

Equality between men and women stems from the same general principle of equal rights for all. The broad form in Articles 1/3 and 55/C of the U.N. Charter was later widened in various international agreements. For instance, the Convention on the Political Rights of Women (1952) aims to equalize the positions of men and women in relation to the enjoyment and exercise of political rights. The status of women has undergone a drastic transformation. The Republic of Turkey was perhaps the first country in Asia to abolish legal inequalities — in any case, earlier than some European countries.

As noted above, the equality of men and women was established in various spheres in international instruments initiated by the U.N. Commission on the Status of Women. The Covenants on human rights obligate states to ensure the equal rights of both sexes. This conviction is today a constitutional principle in many countries.

There is also a group of international conventions on the protection of human rights in armed conflicts. The main instruments in this realm are the Hague Conventions on Methods of Warfare (1899 and 1907) and the four Geneva Conventions for the Protection of War Victims (1949) as well as the Additional Protocols. With respect to non-combattants, the Geneva Conventions specifically prohibit violence to life and person, taking of hostages, outrages upon personal dignity and the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court.

Several international instruments prohibit violations of human rights both in times of peace and in armed conflicts. They include the Charter of the Nürnberg Tribunal and the verdicts of the Nürnberg and Tokyo tribunals, the Convention on the Prevention and Punishment of the Crime of Genocide, the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity and the Convention on the Suppression and Punishment of the Crime of **Apartheid.** The rules set forth in them obligate all states to observe human rights without any discrimination both in times of peace and in armed conflicts.

Contemporary international law regulates a number of questions pertaining to general **Weltanschauung.** For instance, it prohibits the propagandizing of war, fascist and neo-fascist ideologies and the propagandizing of racial or national superiority. The U.N. General Assembly condemned the propagandizing of war in all forms (1947). The Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations makes it the duty of states to refrain from propaganda for wars

of aggression (1970). The International Covenant on Civil and Political Rights also states that any propaganda for war shall be prohibited by law.

The United Nations have repeatedly adopted resolutions that condemned militarist propaganda. The General Assembly Declaration on the Condemnation of Nuclear War denounced it as the most monstrous violation against the inalienable right of man — the right to life (1983). The same body proposed several times (1982, 1983) that all U.N. members declare punishable by law any dissemination of ideas based on racial superiority or hatred and of war propaganda, including Nazi, fascist and neo-fascist ideologies.

Contemporary international law also forbids the dissemination of ideas based on the supremacy of a race or a group of people. The International Convention on the Elimination of All Forms of Racial Discrimination declares an offence punishable by law all dissemination of ideas emanating from racial superiority or hatred. The International Covenant on Civil and Political Rights obligates states to prohibit any law that advocates hatred constituting incitement to discrimination, hostility or violence. The Conventions on genocide and **apartheid** declare punishable any instigation toward the perpetration of these two crimes.

Contemporary international law regards "international crimes" as the most serious violations of fundamental human rights and freedoms presenting a specific danger. «International crimes» include «crimes against humanity» and «crimes against international law". The Charter of the International Military Tribunal cites (Article 6) three types of crimes against humanity. They are "crimes against peace", including planning or waging of a war of aggression; "war crimes", including violations of the laws or customs of war; and crimes such as murder, extermination, enslavement and similar acts against civilian population. Genocide and **apartheid** are such crimes. A specific feature of international crimes is that they are committed both by officials and by persons who carry out official instructions.

Colonialism is incompatible with the observance of human rights. The Declaration on the Granting of Independence to Colonial Countries and Peoples stresses that the subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights. Problems concerning trust and non-self-governing territories have international significance and do not fall within the domestic jurisdiction of colonial powers. The total elimination of all colonies is part of the struggle for a global respect of human rights.

The Conventions on genocide and **apartheid** consider both of these acts as crimes against humanity. They both contain the principle of individual criminal responsibility. The Convention on genocide has been adopted (1948) in response to the atrocities perpetrated by Hitler's Germany. The most important feature of the Convention on **apartheid** (1973) is the description of the acts that constitute this crime, which is basically the denial to a member of a racial group the right to life and liberty of person. The Special Group of the U.N. Commission on Human Rights was created on the basis of this Convention to examine reports presented by states on measures to implement its provisions. These reports often refer to cases of the inhumane treatment of the opponents of **apartheid.**

Contemporary international law qualifies policies of racial segregation and discrimination as international crimes. The International Convention on the Elimination of All Forms of Racial Discrimination (1965) gives a comprehensive definition of the term "racial discrimination" as meaning any exclusion based on race, colour, descent or national/ethnic origin with the purpose or effect of nullifying or impairing the recognition and exercise, on equal footing, of human rights in all fields of public life. As the UNESCO Statement on Race and Racial Prejudice notes (1967), it is not enough to adopt international agreements to eliminate racism; one needs to change the social conditions which give rise to it.

Slavery is not only an inhuman practice of the distant past. Some of its manifestations exist even today. Contemporary international law prohibits slavery and practices similar to it. The International Convention on the Abolition of Slavery (1929) describes this negation of human right as the condition of a person over whom the right of ownership is exercised. The Supplementary Convention (1956) gives a detailed description of practices such as debtor's bondage to slavery. The Working Group on Slavery, set up (1974) by the U.N. Sub-Commission on the Prevention of Discrimination and Protection of Minorities, gives the following examples as types of slavery: the sale of children, debt bondage; child labour and prostitution.

The international community is convinced that it is not possible to ensure human right without eliminating aggressive wars, colonialism, genocide, **apartheid,** racism, racial discrimination and slavery.

The rules of international law pertaining to human rights are created by state treaties. It is the national legislations of states that develop principles of human rights. There is a close connection between the laws at these two different levels. The United Nations and its specialized agencies played an important role in establishing principles in this field.