

THIRD GENERATION HUMAN RIGHTS AND THE GOOD GOVERNANCE

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Abstract: Human rights are understood as rights which belong to any individual as a consequence of being human, independently of acts of law. Human rights alone do not ensure effective enjoyment of human rights. They must be included in a network of institutions which are guided by the same philosophy. Human rights of the third generation are highly complex composite rights like the right to development, the right to peace, and the right to a clean environment. None of these rights has solid legal foundations in a legal instrument of worldwide applicability. It is certainly say that, there will be many attempts in the future to use unorthodox strategies with a view to enforcing rights which are not capable of being enforced in the country of origin. It is, of course, much easier to guarantee human rights if the basic societal framework corresponds fully to the requirements of democracy and the rule of law.

Keywords: African commission, Extra legal jurisdiction, Human rights, Peace.

I. INTRODUCTION

In the most general sense human rights are understood as rights which belong to any individual as a consequence of being human, independently of acts of law.¹ It has become routine to speak of different 'generations' of human rights.² According to the current terminology, human rights of the first generation are 'negative' human rights, or

civil liberties, which enjoin states to abstain from interfering with personal freedom. Freedom and security of person or freedom of speech are paradigmatic examples of this class of rights. When referring to human rights of the second generation or 'positive' rights, the speaker has in mind economic or social rights such as the right to work or the rights to social security, which entitle individuals or collectives to the provision of certain goods or social services. Lastly, human rights of the third generation are highly complex composite rights like the right to development, the right to peace, and the right to a clean environment. Third generation human rights are sometimes called 'solidarity rights'. The most prominent examples of such alleged rights are the right to peace, the right to development, and the right to a clean (healthful) environment. None of these rights has solid legal foundations in a legal instrument of worldwide applicability. At the regional level, however, the African Charter on Human and Peoples' Rights (AfCHPR) has proclaimed the right to development³ and the right to peace and security⁴ as well as the right to a 'general satisfactory environment'.⁵

II. THE THREE RIGHTS

Right to Development

The right to development, the intellectual authorship of which is attributed to the Senegalese Lawyer Keba Mbaye,⁶ was first affirmed in a number of resolutions

¹ Marek Piechowiak, 'The Concept of Human Rights and their Extra-legal Jurisdiction' in Rajja Hanski and Markku Suksi (eds.), *An Introduction to the International Protection of Human Rights: A Textbook*, (Institute for Human Rights, Abo, Finland, 1997), 3

² Following French lawyer K Vasak, 'A 30-Year Struggle', *The UNESCO Courier* (November 1977) 29

³ *African Charter of Human and Peoples Rights (AfCHPR)*, Article 22

⁴ *African Charter of Human and Peoples Rights (AfCHPR)*, Article 23

⁵ *African Charter of Human and Peoples Rights (AfCHPR)*, Article 24

⁶ 'Le droit au développement comme un droit de l'homme' (1972), 503; African authors have contributed a great deal to clarifying the meaning and

of the Commission on Human Rights (HRCion). In Resolution 5 (XXXV) of 2 March 1979 the Commission 'reiterated' that the right to development was a human right. A more stringent note was struck by the General Assembly (GA) of the United Nations (UN), which, by Resolution 36/133 of 14 December 1981, characterized the right to development as an 'inalienable' human right. Eventually, the GA adopted a Declaration on the Right to Development by Resolution 41/128 of 4 December 1986. Article 1 of that Declaration provides, "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". Clearly, this text mirrors the earlier text of Article 28 of the Universal Declaration of Human Rights, 1948 (UDHR).

As it is defined in GA Resolution 41/128, the right to development appears as an aggregate right which draws its substance from other instruments which set forth human rights and fundamental freedoms with binding effect.⁷ Because of its extremely wide scope, it met with a large amount of scepticism on the part of Western states in particular. At the Vienna World Conference on Human Rights in 1993, the United States (US) for the first time accepted the concept of a right to development. Thereafter, for many years working groups established by the HRCion have attempted to clarify in more detail its legal connotations. To date, all these efforts have proved of no avail. The latest resolution of the GA on the issue, adopted on 19 December 2006, again extends the mandate of a working group (Res 61/169).⁸ It reflects almost all of the world's economic and social problems. Probably the time-honoured French adage applies here as well: *Qui trop embrace, mal eternity*,

scope of the right to development; see in particular: G Abi-Saab, 'The Legal Formulation of a Right to Development' in RJ Dupuy (ed), *The Right to Development at the International Level*, (Alphen aan den Rijn, Sijthoff & Noordhoff, 1980), 159; M Bedjaoui, 'The Right to Development' in *id* (ed), *International Law Achievements and Prospects*, (Paris and Dordrecht et al, UNESCO and Martinus Nijhoff, 1991) 1177

⁷ For a recent appraisal see, BA Andreassen and SP Marks (eds), *Development as a Human Right* (Harvard, Harvard University Press, 2006); U Baxi, 'The Development of the Right to Development' in J Symonides (ed), *Human Rights: New Dimensions and Challenges* (Aldershot et al and Paris, Ashgate and UNESCO, 1998), 99

⁸ See also Human Rights Committee (HRC) Res 4/4, 30 March 2007

which is tantamount to saying that whoever pursues too ambitious goals, will eventually end up with empty hands.⁹ In recent years, emphasis has shifted to the fight against poverty. Ambitious goals were defined by the UN Millennium Declaration¹⁰ and confirmed by the 2005 World Summit Outcome.¹¹ However, political declarations alone do not generate economic resources. The objective of the Millennium Declaration to halve poverty by 2015 can hardly be reached.

Right to Peace

The right to peace is the second component for a human right of the third generation. It also grew up within the HRCion, where it was first proclaimed in 1976. A next stage was reached when the GA in 1978 adopted the Declaration on the Preparation of Societies for Life in Peace,¹² which affirmed that 'every nation and every human being ... has the inherent right to life in peace'. The process of standard-setting came to its culmination in 1984 with the adoption of the Declaration on the Right of Peoples' to Peace.¹³ In the vote, not fewer than 34 states abstained even though the resolution solemnly proclaims 'that the peoples of our planet have a sacred right to peace'. After the demise of the communist regimes in central and Eastern Europe, interest for this 'right' faded away.¹⁴ In recent years, however, resolutions of the GA have again referred to the sacred right to peace' of the peoples of our planet.¹⁵ The observer, nonetheless, fails to perceive nay elements of operational particularization.

Right to a Clean Environment

The right to a clean or healthful environment, by contrast, has lost nothing of its original attractiveness.¹⁶ It was mentioned for the first time in the concluding Declaration adopted by the UN Conference on the Human Environment, held in June 1972 in Stockholm. Principle 1 of that Declaration

⁹ NJ Udombana, 'The Third World and the Right to Development' Agenda for the Next Millennium' (2000) 22 HRQ 753

¹⁰ GA Res 55/2, 8 September 2000 para 19

¹¹ GA Res 60/1, 16 September 2005 para 19; see also HRC Res 2/2, 27 November 2006

¹² GA Res 33/73, 15 December 1978

¹³ GA Res 39/11, 12 November 1984

¹⁴ In praise of this right see A Nastase, 'The Right to Peace' in Bedjaoui (supra note 4) 1219-31

¹⁵ GA Res 57/216, 18 December 2002 (adopted with 116 votes in favour to 53 against, with 14 abstentions)

¹⁶ P Sands, *Principles of International Environmental Law* (2nd ed, Cambridge, Cambridge University Press, 2003) 293-97

starts out in a politically incorrect fashion-with the words: “Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being”.¹⁷

The only truly legal text which has embraced this proposition in broad terms is the AfCHPR, which in Article 24 sets forth a right to a ‘general satisfactory environment’. Mostly, however, a somewhat more cautious attitude has prevailed. Governments are quite aware of the necessity to reconcile environmental concerns with other concerns of public policy. Thus, the Rio Declaration on Environment and Development of 14 June 1992¹⁸ qualifies the relationship between humankind and its environment by stating that “human beings ... are entitled to a healthy and productive life in harmony with nature”. The Declaration refrains from speaking of a ‘right’ to a clean environment; rather, the duties of states to protect the natural environment are stressed. A total departure from an anthropocentric approach can be found in the World Charter for Nature, adopted by the GA on 28 October 1982 (GA Res 37/7), which asserts that nature-and with it humankind as a part of nature-‘shall be respected’. In recent years, the language has generally become even more guarded. It has been recognized that protection of the environment constitutes a challenge to humankind as a whole. Nobody can expect that others assume the burden which everyone has to struggle with. The Johannesburg Declaration of the World Summit on Sustainable Development reaffirmed ‘our commitment to sustainable development’ (para 1).¹⁹ Thus, a realistic assessment has rightly replaced the euphoric rhetoric of the early years. In its Ogoniland decision of 27 October 2001,²⁰ the African Commission on Human and Peoples’ Rights (AfHPRCion) was able to make a forceful application of Article 24 of the AfCHPR. In that case, the Right showed its usefulness for extreme instances, where the mishandling of environmental issues is obvious and permits of no justification.

¹⁷ See also GA Res 45/94, 14 December 1990

¹⁸ (1992) 31 ILM 876

¹⁹ Adopted on 4 September 2002,

http://www.un.org/esa/sustdev.documents/WSSD_POI_PD/English/POI_PD.htm accessed December 2007

²⁰ *The Social and Economic Rights Centre and the Centre for Economic and Social Rights vs. Nigeria*, 155/96, 27 October 2001

III. UNCERTAINTIES OF THE THIRD GENERATION RIGHTS

All human rights of the third generation are surrounded by grave uncertainties regarding their holders, the duty- bearers, and their substance.²¹

Holders of the Rights

According to the Declaration on the Right to Development, for instance, the right is vested in human beings and peoples alike, whereas the African Charter assigns it to peoples alone. As far as the right to peace is concerned, a glaring divergence is obvious. Whereas the Declaration on the Preparation of Societies for a Life in Peace mentions nations and human beings side by side, the Declaration on the Right of Peoples to Peace confines itself to acknowledge a right of peoples to peace. As already pointed out, the right to a satisfactory environment is mentioned as a right of peoples only by the African Charter. Thus, the relevant instruments do not maintain a consistent line. Generally, no great care is taken to specify to whom the benefits connected with the rights are bestowed upon individuals or collective entities, amply demonstrates that the actual effects expected of them are not connected with their specific characteristics as rights under positive international law.

Duty Bearers

According to the ordinary understanding of the essence of a right, a duty must exist as its corollary. Rights embody claims which another persons is legally required to fulfil. Right and duty are just two sides of one and the same coin. In this regard, third generation rights have great weaknesses. Pursuant to the Declaration on the Right to Development, it is in particular states that have to strive for development by taking the steps necessary for that purpose. Translated into concrete terms this means that peoples are pitted against states, a dichotomy the legal implications of which are difficult to grasp. On the one hand, the relevant propositions could mean that peoples have rights against their own governments, which is in fact the tendency pursued by the Declaration of Algiers, a legal text drawn up by a private group of legal scholars in 1978²²; or they could be interpreted to express the idea that poorer states have entitlements vis-à-vis other states, *i.e.*, the international community. All this, however, does not fit easily into the traditional concept of international

²¹ See C Tomuschat, ‘Human Rights in a World-Wide Framework’ (1985) 45 HJIL 547 at 568-72

²² See A Cassese (ed), *Pour un droit des peuples. Essais sur la declaration d’Alger* (Paris, Berger-Levrault, 1978)

law where the international community as such has yet to find its proper place.

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It is even more difficult to gain a clear picture of the content of third generation rights. Generally, all of the rights under discussion are extremely wide in scope. They do not set out specific measures and steps to be taken by states or governments, but enunciate comprehensive goals. As indicated by the Declaration on the Right to Development, development means a state of affairs permitting everyone to enjoy to their full extent 'all' rights and freedoms. Thus, development has a variety of components and constitutes an ideal situation that rests on a multitude of factual and legal elements many of which are not under the control of governments alone. Similar considerations apply to peace. Peace in the world depends on a wide array of factors, and it can be said that the entire system of the United Nations was established to ensure, in the first place, international peace and security. The effectiveness of the international mechanisms geared to ensure peaceful settlement of international disputes and to prevent wars from occurring is not enhanced by the creation or the recognition of a right of individuals or peoples to peace. The right to a clean and healthful environment, too, belongs to the same category of broadly framed rights, the content of which encompasses almost anything that has some bearing on the state of the environment. Agenda 21, the Plan of Action adopted by the Rio Conference in June 1992, constitutes in its printed version a book of no fewer than 400 pages.²³ It is in this Plan of Action that the requirements of a healthy environment are spelled out in detail. However, it appears that no one has a legal right to demand that the many steps described therein be taken, since there exist no corresponding legal obligations, Agenda 21 having been conceived of as a political commitment only.²⁴

It is highly significant that not a single one of the rights of the third generation has to date received a clear profile. The fact that neither the holders of these rights, nor the corresponding duty bearers, nor the substance of the rights, have been unequivocally identified cannot simply be explained as accidental shortcomings which could without any difficulty be remedied by investing more lawyers' skills and intelligence. The inference that must be drawn is obvious. It would be more correct to define third generation rights not as true rights, but rather as

agreed objectives which the international community has pledged to pursue. Even so, they do not lose their juridical significance. They remain important signposts which mark the paths the international community should embark upon in conceiving and carrying out policies for the welfare of humankind as a whole. Indeed, individual human rights need a general framework of favourable conditions within which they can prosper. Any war threatens to lead to a total denial of individual rights by death and destruction. Although a state of affairs where everyone enjoys all the rights guaranteed by the UDHR and the two Covenants of 1966²⁵ certainly guarantees peace, and in most instances also development, it has emerged that these macro conditions cannot be ensured from the micro perspective of individual human rights. There is a clear necessity to work on both levels, establishing mechanisms for the vindication of individual rights, but attempting at the same time to ensure peace, development, and a clean and healthful environment on a global level where the issues related to these fields of action are tackled directly in all their complexity. It is the recognition that human rights need a friendly and favourable environment which may also explain other initiatives which have sprung up in recent years. They are not placed under a heading of human rights, but they are all designed to build up that framework of security which is essential for individual rights to take their full effect.

IV. DEMOCRACY AND GOOD GOVERNANCE

Democracy

Democracy may not be a panacea to cure all ills, but it has its origins in the political rights of the individual as they are laid down in all conventional instruments, and on its part it also contributes to stabilizing and strengthening human rights. Article 21 of the UDHR contains everything that is conceivable in terms of political rights of the citizen in a democratic polity.

However, the word 'democracy' itself was carefully avoided. Concerning Article 25 of the ICCPR, which reflects almost textually the earlier provision, the same observation can be made. Although the rights of democratic participation are fully covered, one looks in vain for the word 'democracy'. In some other places, though, in a somewhat hidden fashion, democratic standards are referred to. In the limitation clauses complementing the rights set forth in Articles 14(1), 21, and 22 of the ICCPR, the requirements of a democratic society are mentioned as the criteria for

²³ UN doc A/CONF 151/26/Rev 1, vol I, 14 June 1992

²⁴ Christian Tomuschat, *Human Rights between Idealism and Realism* (Oxford: Oxford University Press, 2008), 59

²⁵ International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR)

the degree to which governmental interference may affect the substance of the rights concerned. Strangely enough, this yardstick makes no appearance in Article 19 of the ICCPR, the guarantee of freedom of speech, which constitutes the paradigm of a democratic right. On this point, Article 10(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) is more consistent. Whatever the reasons for the apparent lack of logic in the ICCPR may be, it is clear that in 1966 the United Nations had not yet evolved a coherent concept of democratic governance.²⁶

In recent years, this state of affairs has changed dramatically. Democracy is now explicitly acknowledged as the only legitimate form of governance. The origins of this development go back once again to the HRCion. At its spring session in 1999 the Commission adopted a resolution which affirmed in a fairly succinct way the basic principles of a democratic polity,²⁷ stressing in particular the interconnection between the democratic form of government and human rights by stating that 'democracy fosters the full realization of all human rights, and vice versa' (op para 1). One year later, the HRCion expanded the text considerably and included almost all the rights which are granted to citizens in a liberal state.²⁸ It is remarkable that the journey of this text did not end in the HRCion, which in spite of its expertise was a subordinate body within the world organization, but found its way to the GA where it was reviewed and eventually approved with only minor modifications.²⁹ A large majority supported this historic decision. A considerable number of states, however, abstained. The list of these abstentions is highly revealing. It includes the following countries: Bahrain, Bhutan, Brunei Darussalam, China, Cuba, Democratic Republic of the Congo, Honduras, Laos, Libya, Maldives, Myanmar, Oman, Qatar, Saudi Arabia, Swaziland, and Vietnam. Traditional monarchies march hand-in-hand with communist dictatorships and one or the

other country whose ambassador may have received wrong instructions from its capital.³⁰

Given the weight of these 16 countries, it would be difficult to contend that democracy has become a binding standard under international customary law. China, in particulate, cannot be brushed aside in the same way as an isolative vote of the Maldives would be ignored. Nonetheless, the posture taken by a large and almost overwhelming group of nations is a clear indication of the importance the international community attaches to the necessary environment of human rights. Human rights are part of a system of mutually supportive elements. To rely on them alone does not suffice to protect the human being from encroachments on his/her rights. A proper constitutional structure must provide the foundations of a polity where a life in dignity and self-fulfilment becomes an actual opportunity for everyone.³¹ The World Summit Outcome³² opted for a compromise formulation in characterizing democracy as a universal 'value' (para 135),³³ which leaves the issue of its legal classification widely open. Indeed, requests for democratic structures may become embroiled in fundamental controversies. Thus, the demands for a 'democratic and equitable international order', articulated in GA Resolution 61/160 (19 December 2006), were rejected by the Western group of states and some Latin American states, whereas the majority of Third World Countries supported the motion. At the international level, claims for the introduction of 'democracy' more often than not boil down to a power struggle aiming at depriving Western countries of their structural majorities in world financial institutions. Yet the national model of 'one man, one vote' is not

²⁶ T Franck, 'The Emerging Right to Democratic Governance' (1992) 86 AJIL 46; see further GH Fox and BR Roth (eds), *Democratic Governance and International Law* (Cambridge, Cambridge University Press, 2000); S Wheatley, 'De Meeester and C Ryngaert, 'Democracy and International Law' (2003) 34 Netherlands Yearbook of International Law 139

²⁷ Res 1999/57, 27 April 1999, Promoting and Consolidating Democracy

²⁸ Res 2000/47, 25 April 2000, Promoting and Consolidating Democracy

²⁹ GA Res 55/96, 4 December 2000, Promoting and Consolidating Democracy

³⁰ For comments on this progressive development see LA Sicilianos, 'Les Nations Unies et la démocratisation de l'Etat—nouvelles tendances' in R Mehdi (ed) *La contribution des Nations Unies a la démocratisation de l'Etat* (Paris, Pedone, 2002), 13

³¹ See J Donnelly, 'Human Rights, Democracy, and Development' (1999) 21 HRQ 608, at 619-22

³² GA Res 60/1, 16 September 2005

³³ 'We reaffirm that democracy is a universal value based on the freely expressed will of people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives. We also reaffirm that while democracies share common features, there is no single model of democracy, that it does not belong to any country or region, and reaffirm the necessity of due respect for sovereignty and the right of self-determination. We stress that democracy, development and respect for all human rights and fundamental freedoms are interdependent and mutually reinforcing.

suitable for world-wide institutions. Subtle architectural gifts are needed to build such institutions in consonance with democratic tenets.³⁴

At the European level, too, it was recognized that the complex mechanisms of the ECHR needed to be complemented by political monitoring efforts and expert advisory services in order to ensure the general framework within which human rights are located. For this purpose, the Venice European Commission for Democracy was founded in 1990. It has assisted, in particular, the new member states of the Council of Europe in building institutions that are permeated by a new spirit of democratic openness. Within the narrower context of the European Union, democracy figures prominently in the clause providing for structural homogeneity.³⁵

Good Governance

The considerations set out above are also the background to two more recent developments which seek to build up a framework for securing full enjoyment of human rights. It has been realized that a 'good life' depends not only on the basic principles upon which a system of government is predicated, but that the conduct of governmental elites and bureaucrats is a decisive factor in bringing the prevailing societal climate in a given state up to the level of the expectations raised by those principles.³⁶ In this regard, international organizations and, in particular, the financial agencies of the international community have rightly started playing a role as defenders of the public interest. Since 1989, the World Bank has evolved a doctrine of 'good governance', which it has described in the following terms:

Good governance is epitomized by predictable, open, and enlightened policy-making (that is, transparent processes); a bureaucracy imbued with a professional ethos; an executive arm of government accountable for its actions; and a strong civil society participating in public affairs; and all behaving under the rule of law.³⁷

Other institutions have followed suit. For the International Monetary Fund, it was an almost natural move to adopt similar strategies. It uses negotiations for orderly exchange arrangements according to

³⁴ See E de Wet, 'The International Constitutional Order' (2006) 55 ICLQ 51, at 63, 71

³⁵ *Treaty on European Union (TEU)*, Article 6(1)

³⁶ MK Sinha, 'Human Rights and Good Governance' (2006) 46 IJIL 539, at 554, rightly affirms that the 'protection and promotion of human rights need a conducive and enabling environment'.

³⁷ World Bank, *Governance: The World Bank's Experience* (Washington, 1994) vii

Article IV of its Statute to prevail upon member states to adjust their policies to the requirements of good governance. The African Development Bank also adopted a 'Policy on Good Governance' which lists exactly the same headings, namely accountability, transparency, combating corruption, political participation of citizens, as well as legal and judicial reforms. This was done in response to the Grand Bay Declaration, adopted on 16 April 1999 by a summit meeting of the Organisation of African Unity (OAU),³⁸ which affirms the interdependence of the principles of good governance, the rule of law, democracy, and development (para 3). Likewise, the European Community included a clause to that effect in its latest agreement with the Africa, the Caribbean and the Pacific (ACP) region states.³⁹ Recently, the doctrine of good governance received its definitive benediction by its inclusion in the UN Millennium Declaration⁴⁰ as well as in the World Summit Outcome.⁴¹ It is clear that a framework of good governance, if actually established, leads to a significantly increased effectiveness of human rights.

V. HUMAN SECURITY

Almost at the same time that the World Bank evolved the concept of good governance, the United Nations Development Programme (UNDP) framed the doctrine of 'human security'.⁴² For many decades, the concept of security was understood exclusively in a military sense. It made its first appearance in the report of the Independent Commission on Disarmament and Security Issues (Palme Commission), issued in 1982.⁴³ After more than a decade, the UNDP took up the ideas contained therein. In its 1993 Report it stressed that 'the individual must be placed at the centre of international affairs'.⁴⁴ Expanding the new concept, it attempted to give it a more fully substantiated content in its 1994 Report, where, criticizing again the exclusive military use of the term in the past, it

³⁸ <http://ncb.intnet.mu/mfa/oau/decpl.htm> accessed December 2007

³⁹ *Cotonou Agreement*, Article 9(3), 23 June 2000, OJ 2000 L 31/3, 15 December 2000

⁴⁰ GA Res 55/2, 8 September 2000, para 13

⁴¹ GA Res 60/1, 16 September 2005, paras 11, 21, 39

⁴² FO Hampson and CK Penny, 'Human Security' in TG Weiss and S Daws (eds), *The Oxford Handbook on the United Nations* (Oxford, Oxford University Press, 2006) 539; M Zambelli, 'Putting People at the Centre of the International Agenda: The Human Security Approach' (2002) 77 *Die Friedens-Warte* 173

⁴³ *Common Security: A Blueprint for Survival* (New York, 1982)

⁴⁴ *Human Development Report* (1993) 2

mentions seven aspects of what it understands by human security. Starting out with economic security (freedom from poverty), it refers additionally to food security (access to food), health security (access to healthcare and protection from diseases), environmental security (protection from pollution), personal security (physical protection against torture, war, and criminal attacks), community security (survival of traditional cultures), and political security (freedom from political oppression).⁴⁵

It would appear that this new approach is largely the result of overzealous bureaucracy, which has lost sight of the existing achievements in the field of human rights. Almost all of the security items mentioned in these reports are nothing other than a reflection of the rights enunciated in the two International Covenants of 1966. Obviously, what human rights seek to achieve is freedom from want and from fear—the classical formulation laid down in the Atlantic Charter of 1941. There is no real need to coin new concepts. Instead, what seems to be necessary is to relate the activities undertaken by international organization like UNDP to the foundations as they were laid down many decades earlier in the treaties which, still today, constitute the groundwork of the entire of international action in the field of human rights.

Nonetheless, the broad concept of human security should not be totally rejected. It highlights the function which institutions of the international community can discharge for the promotion and defence of human rights. Whoever speaks of human rights has in mind primarily the bilateral relationship between the state and its inhabitants, in particular its citizens. It is not clear, at first sight, which else can make a contribution with a view to making these rights a living reality. The jargon of 'human security' changes the perspective in a constructive way, what is referred to be not a situation of rights, which seems to be a priori a positive achievement, but a public interest task. Security is never an existing state of affairs: it is an objective which requires continuous efforts for its attainment. In this sense also, a number of states, among them most prominently Canada and Norway,⁴⁶ have integrated the doctrine of human security as a primary aim in their foreign policy, *albeit* partly in a narrower sense as protection against

violent threats.⁴⁷ Although the new motto does not usher in new contents, it makes clear that full enjoyment of human rights can only be achieved by structured efforts which view the looming challenge as a complex whole and not as a sequence of separate steps that can be taken independently from one another. The High level Panel on Threats, Challenges and Change, entrusted with laying the intellectual groundwork for a fundamental overhaul of the UN, indeed took human security as *its leitmotiv* for the integrated approach to international security which it adopted.⁴⁸ In response to its findings, the 2005 World Summit Outcome⁴⁹ has on the one hand approved the concept but has at the same time made clear that its exact meaning needs clarification (para 143): We stress the right of people to live in freedom and dignity, free from poverty and despair. We recognize that all individuals in particular vulnerable people, are entitled to freedom from fear and freedom from want, with an equal opportunity to enjoy all their rights and fully develop their human potential. To this end, we commit ourselves to discussing and defining the notion of human security in the General Assembly.

The term 'human security' highlights at the same time the factual conditions upon which real enjoyment of human rights is contingent. To establish a human rights-friendly environment is much easier in a wealthy than in a poor nation. Rightly, therefore,

⁴⁷ The following definition of human security was adopted by that meeting (see <http://www.humansecuritynetwork.org/principles-e.php>, accessed December 2007):

'A commitment to human rights and humanitarian law is the foundation for building human security. Human security is advanced in every country by protecting and promoting human rights, the rule of law, democratic governance and democratic structures, a culture of peace and the peaceful resolution of conflicts.

The international organizations created by states to build a just and peaceful worked order, above all the United Nations, in its role to maintain international peace and security as stated in the Charter, must serve the security needs of people.

Promoting sustainable human development, through the alleviation of absolute poverty, providing basic social services for all, and pursuing the goals of people-centre development, is necessary for building human security. Innovative international approaches will be needed to address the sources of insecurity, remedy the symptoms and prevent the recurrence of threats which affect the daily lives of millions of people.'

⁴⁸ UN doc 59/565, 2 December 2004

⁴⁹ See GA Res 60/1, 16 September 2005, para 13

⁴⁵ *Human Development Report* (1994) 22, 'New Dimensions of Human Security'; *Human Development Report* (1999) 36

⁴⁶ The first ministerial meeting of the Human Security network- a group of 14 countries—took place in May 1999 in Norway

the fight against poverty has in recent years become one of the central themes of discourse on human rights.⁵⁰ While there is broad agreement as to the aim to be achieved, opinions differ as to the most suitable avenue that should be followed. Under the influence of—perfectly legitimate—ideas about social justice, great emphasis has been placed on the action to be taken by governments. There is no denying of the fact that public authorities must provide an essential contribution in the development process of any nation. But it should also be recognized that under conditions of freedom societies themselves can do a lot to improve their living conditions.⁵¹ Paternalism should not overshadow or eclipse private initiatives. It is a matter of political determination to find the appropriate balance between these two driving forces.

VI. GLOBALIZATION

No excessive importance, therefore, should be attached to discussions about globalization and its negative impact on human rights.⁵² It is undeniable that humankind has entered into a new phase of its existence. National boundaries have lost the overriding significance they possessed at the time when the iron curtain divided Europe, with paradigmatic visibility in Berlin, although it should not be overlooked that a two-class society has emerged of which one part enjoys wide freedom of travel, while the other one remains stuck in its home countries. But it is inaccurate to see globalization as a project mainly driven by neo-liberals intent on abolishing the welfare state as it arose from the ashes of World War II and on re-colonializing the Third World.⁵³ To preserve the achievements of social justice is a duty of all responsible governments and

opposite demands has to be balanced constantly. In a true democratic state, the yield of such balancing tests cannot ignore the needs of the large majority on the population. On the other hand, notwithstanding many criticisms which may be directed at world economic and financial institutions, these institutions do not deserve blame as riding roughshod over the human rights of the populace in developing countries.

Contrary to the many critics of globalization, any impartial observer must note that the processes of change which it has brought about have yielded a broad range of positive results. No system of civilization remains unaffected by influences which it receives from outside. It is precisely the emergence of human rights at the centre of modern international law which should be welcomed as a victory over traditional state-centered conceptions of the world. One should not overlook, in particular, the impact which the UDHR has had on national constitutional systems. It is true that words must not be taken for hard facts. On the other hand, however, normative propositions which in official and high-ranking documents are repeated time and again will progressively shape the ways in which human beings think and argue. They may fail to be implemented for some time, they may be openly violated, but in the long run they will shape the ideological environment within which state power has to legitimate itself.

VII. THE SHADOW OF TERRORISM

Just as war undermines and destroys human rights, so do terrorist attacks which indiscriminately target the civilian population. Peace, law and order pertain to the groundwork needed for human rights to prosper. Rightly, therefore, the international community has decided to join its forts to combat terrorist activities by preventive as well as repressive measures. The 2005 World Summit Outcome unequivocally condemned terrorism 'in all its forms and manifestations'.⁵⁴ There are no grounds that could justify resorting to terrorist activities.

At the same time, the international community has witnessed with growing concern that the fight against terrorism has taken a momentum that threatens well-established individual rights. To keep persons suspected of terrorist links imprisoned for long periods without trial,⁵⁵ to establish secret prisons

⁵⁰ See GA 55/2, 8 September 2000, para 19

⁵¹ Rightly stated in the Millennium Declaration, where in the list of fundamental values freedom occupies the first place (para 6).

⁵² See the rather polemical report for the UN Sub-Commission on the Promotion and Protection of Human Rights by J Oloka-Onyango and Deepika Udagama, 'Globalization and its impact on the full enjoyment of human rights' (UN doc E/CM 4/Sub 2/2000/13, 15 June 2000). For a critical view see also PO'Connell, 'On Reconciling Irreconcilables: Neo-liberal Globalization and Human Rights' (2007) 7 HRLR 483. All the relevant resolutions first by the HRCion (2001/32, 23 April 2001; 2003/23, 22 April 2003; 2005/17, 14 April 2005) and later by the HRC (4/5, 30 March 2007) were adopted against the opposition of the Western group of states.

⁵³ Idowu William, 'African Legal Values and the Challenges of Globalization' (2005) 45 IJIL 354, at 368 contends that globalization is 'the new name for colonialism by other means'.

⁵⁴ GA Res 60/1, 16 September 2005, para 81

⁵⁵ A low point of judicial opportunism was reached with the decision of the US Court of Appeals for the District of Columbia of 2 December 2002 in *Al Odah vs. US*, 42 ILM (2003) 409 (pointing out that Guantanamo was under Cuban sovereignty). By contrast, in *A and Others vs. Secretary of State for the Home Department*, 16 December 2004, 44 ILM

where such persons are kept *incommunicado*, to apply methods of interrogation which the government concerned would never dare to apply to its own nationals,⁵⁶ to proceed to killings based on vague evidentiary clues—all this reflects a mindset for which the life and personal integrity of a presumed enemy of their own national community counts for little, if anything at all.⁵⁷ The provisions on emergency situations contained in the universal and regional human rights instruments do not warrant such practices.⁵⁸ Accordingly, the Western world risks losing the moral authority, which it gained after World War II by proclaiming the dignity of the human being as a sacred trust. If so-called ‘national security’ is elevated to the top of the hierarchy of values, the international human rights system falls apart.⁵⁹

VIII. CONCLUSION

The human rights idea has lost nothing of its original impetus. Nobody wishes humankind to return to a situation where the individual would have to endure impotently the decisions of his/her government, unable to invoke any legal title to found his/her legitimate claims. But there is a growing awareness that human rights must be seen within the context of appropriate institutions. Human rights alone do not ensure effective enjoyment of human rights. They must be included in a network of institutions which

(2005) 654, at 682, Lord Nicholls of Birkenhead declared: ‘Indefinite imprisonment without charge or trial is anathema in any country which observes the rule of law’.

⁵⁶ See, for instance, the aberrational advice given in a Memorandum from Assistant Attorney General Jay S Bybee to White House Counsel Alberto R Gonzales Regarding Standards of Conduct for Interrogation, 1 August 2002 (2004) 98 AJIL 825. See in particular the opinion by the UN Special Reporter on Torture, M Nowak, ‘what Practices Constitute Torture?: US and UN Standards’ (2006) 28 HRQ 809

⁵⁷ In its Opinion No 363/2005, International Legal Obligations of council of Europe Member States in Respect of Secret Detention Facilities and Inter-State Transport of Prisoners, 18 March 2006 (2006) 27 HRLJ 122, the European Commission for Democracy through Law (Venice Commission) has reminded governments of their duty to respect the rule of law in the fight against terrorism. See also the Berlin Declaration of the International Commission of Jurists, 28 August 2004 (2005) 27 HRQ 350

⁵⁸ A Siehr, ‘Derogation Measures under Article 4 ICCPR’ (2004) 47 GYIL 544, at 568

⁵⁹ P Hoffmann, ‘Human Rights and Terrorism’ (2004) 26 HRQ 932; R Khan, ‘The War on Terrorism’ (2005) 45 IJIL 1, at 16

are guided by the same philosophy. In that regard, the human rights movement returns to its sources. Jean Bodin and Thomas Hobbes placed their trust primarily in a government of unlimited authority.

It is certainly say that, there will be many attempts in the future to use unorthodox strategies with a view to enforcing rights which are not capable of being enforced in the country of origin. It is, of course, much easier to guarantee human rights if the basic societal framework corresponds fully to the requirements of democracy and the rule of law. Today, the very idea of human rights contradicts such extremist solutions. But it is clear again that human rights cannot be seen in isolation.

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