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**Human Rights: the birth and evolution of the
concept of protection.**

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Academic Year 2000/2001

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Introduction

Today's definitions of human rights come from a process which involves demands made by many people, for freedom from tyranny from powerful authorities and for protection of what they value most in life.

Some 24 centuries ago, the Chinese philosopher known as Mencius was arguing that no one should be subjected to rulers' tyranny. Evidence of human rights demands appears in the Hammurabi codes of ancient Babylon and in the scriptures of the Jewish and Christian traditions. Islamic jurists trace human rights safeguards in their traditions back almost 14 centuries ago.

Turning human rights demands into practical rules requires agreements, or at least understanding, among people who affect each other's lives. "Some agreements have been reached over the ages through negotiations, some through the use of force" (Keenan, 1950, p. 6).

In the beginning, struggles for basic rights and freedoms involved individual people using any power they had. Territorial rulers and, eventually, national governments became partners in human rights agreements when public demands grew so compelling or so strong that they could not be ignored.

The British Magna Carta, of 1215, the French Rights of Man and of the Citizen, of 1789, and the American Bill of Rights, of 1791, were landmarks in defining relations between governing authorities and the people governed.

In the 19th and early 20th century, popular demands for human rights expanded in many parts of the world. Popular operations for governments to stop the mistreatment of national or religious minority groups sometimes resulted in international action.

This type of response reflected a growing recognition that human rights violations could be an “international concern” (Ramcharan, 1999, p.112).

The human rights catastrophe accompanying World War II brought demands for safeguards to new levels.

Human rights play a part in all aspects of a person’ s life. In fact, everyone has the same basic rights, regardless of race, color, gender, language, national or social origin, economic or other status, and political or religious beliefs.

The world's nations proclaimed the following human rights in the Universal Declaration of Human Rights, that is the foundation for today's understanding of human rights. The spirit of this Declaration is well exemplified in the principles enunciated in the preamble.

The keynote of the statement presents the recognition of the inalienable rights, with the foundation of the three major values: freedom, justice and peace in the world; these three major values are interdependent and, as the rights are inalienable, they are preexistent. In this situation, it is only logical that "the development of friendly relations between nations are essential" (Van Vloten, 1999, p.131).

The determination to achieve higher economic standards is recognized as legitimate, and a requisite for larger freedom: "the peoples of the United Nations have... determined to promote social progress and better standards of life in larger freedom" (Van Vloten, 1999, p.145).

Within this framework, the Declaration formulates a wide range of separate, positive rights and freedoms, always stressing their interdependence, and also specifically declaring that "everyone has duties to the community" (Ramcharan, 1979, p.12).

It should be noted that many human rights do not fit clearly into particular categories. Human rights are relevant to civil, economic, political, social and other

aspects of life, but just as these aspects overlap in everyone's life, so do the rights associated with them. In these circumstances, the 30 articles of the Declaration are not organized under particular categories because they are too interrelated for such divisions.

Arguments on which rights are the most important raged during the drafting of the Declaration, and controversy continued even within the past decade. For example, western governments tended to maintain during the Cold War that civil and political rights took precedence over economic and social rights. Until its collapse, the Soviet Union and its allies took the opposite position.

By 1990, international understanding that basic rights are interdependent and universal has expanded worldwide. States throughout the world had agreed that neither individuals nor governments could be permitted to ignore rights which they may consider inconvenient at particular times or under particular circumstances. And no authorities could justify failure to protect certain rights with higher priority.

The idea that there are first-priority rights and second-priority rights has been considered intolerable by people suffering human rights violations.

In a situation such as this, from the observations of local communities and reports of the media, government authorities can continue to implement economically and socially destructive policies.

In this paper I will explain what Human Rights consist of and in particular their kind of protection and monitoring by the United Nations, with the analysis of the UN operation in Cambodia that is one of the first field operations conducted by the UN; it has contributed to the development of the protection of such important rights that are often viewed as an “obstacle to political negotiation and conflict settlement”(Gallagher, 1999, p.4).

1. The contribution of the Universal Declaration

1.1 History

The reason for the drafting of the Universal Declaration of Human Rights, in 1945, and most of the international law was the gross violations of these human rights that were committed in and by certain countries during and immediately after the Second World War.

Kofi Annan, Secretary-General of the United Nations, said in 1997 that "human rights are African rights. They are also Asian rights; they are European rights; they are American rights. They belong to no government. They are limited to no continent, for they are fundamental to humankind itself".

The San Francisco Conference, of 1945, was built to promote the respect for human rights and fundamental freedom "for all without distinction as to race, sex, language or religion", as Article I of the Chapter specifies. There are seven specific references in the Charter to human rights and freedoms, but nowhere they are catalogued or defined.

Largely as a result of energetic lobbying conducted by certain American non governmental organizations, however, the Conference included in the Charter article 68 by which the Economic and Social Council was set up a commission for the promotion of human rights, through a mandate to draft an international bill of rights.

The most important business of the Commission under Mrs. Roosevelt's chairmanship in 1947 was to make arrangements for the drafting of this bill. Although the Australian and Indian delegations strongly advocated a convention, the great majority of the governments represented at this first session of the Commission supported a declaration, the so-called Secretariat Outline.

It was only at its second session that the Commission decided to draft a bill in three parts: a declaration, a multilateral convention, soon known as the Covenant, and measures of implementation.

The Commission didn't make any attempt to draft the declaration; it appointed a committee to prepare a first draft, based on a number of drafts prepared by a number of individuals and organizations, with forty eight short articles in which civil and political and economic and social rights were catalogued and defined.

After a short period, the number of articles was reduced and it was only on December 6, 1948 that the Third Committee finished its task and forwarded its report to the plenary session of the Assembly, that adopted on December 10, 1948 the Universal Declaration of Human Rights; eight nations abstained from the vote, but none dissented.

In the document “ there are however some important omissions in the failure of including articles on the protection of minorities and of recognizing any right of petition even at the national level”(Humprey, 1984, p.463).

The Declaration gives pride of place to traditional civil and political rights which are catalogued and defined in its first twenty-one articles. There then follows a list and definitions of economic, social and cultural rights which, in 1948, were still controversial between developed and developing countries.

Actually, the principles of the Declaration are increasingly evident in governments' foreign policy decisions, including on aid directed abroad. Violating human rights can prove costly to governments.

Today, 52 years after it was proclaimed, the Universal Declaration has more political and moral importance than ever before. Every year the principles presented in the Declaration lead to additional international agreements on ways to protect human rights. At the same time, as more people throughout the world learn about the

Declaration and demand their basic human rights, international mechanisms for monitoring and halting rights violations grow.

2. Impact and juridical character of the Bill of Right

2.1. Reflections on the articles of the Universal Declaration

Nothing could be clearer than the fact that the Declaration was never meant to be binding as part of international law nor could it be simply adopted as a resolution of the General Assembly, the decisions of which have the force of recommendations only, except of course resolutions relating to internal matters. Nowadays the Declaration is part of the customary law of nations.

In this situation the declaration is to be "faithfully and stricly" observed(Martin, 1998, p. 115), that is to be "fully and faithfully" observed(Declaration on the Granting of Independence to Colonial Countries and People, 1960), that states will "act in conformity" with it(Helsinki Agreement, 1966), and that it therefore "constitutes an obligation for the members of the international community"(Williams, 1981, p. 41).

With the development of a new customary rule, the Declaration of Human Rights has become an authentic interpretation of the Charter; this would mean that if, for example, a country were expelled from the Organization, that country would nevertheless continue to be bound by the Declaration. Moreover, in countries in which the customary law of nations is part of the law of the land, the Declaration could be invoked before and applied by national courts.

The preamble of the Universal Declaration and the thirty articles which follow it demonstrate the ability and the will of nations to agree to uphold and respect the human dignity of humankind. It speaks of the fundamental worth of the human family based on

freedom, justice and peace throughout the world, and recognizes that a world free from want and need can only be obtained if its people are free to exercise their economic and social rights.

The first, the second and the third articles speak of the dignity and inestimable worth of all human beings and underscores the duty and responsibility which all persons have with regard to one another; equally rights are considered as the cornerstone for the practice of freedom.

While traditional forms of slavery have diminished in most countries, we must be vigilant to ensure that their existence in any form is not tolerated (articles 4 and 5).

Article 6 guarantees everyone the right to be recognized as a person in law. This means that human beings possess, by their existence, a legal personality; the essence of article 7 forms the foundation of the rule of law which governs our legislative and judicial actions.

Moreover, it is necessary in domestic or international law to declare that certain rights and freedoms are inviolable with providing appropriate remedies or sanctions (article 8) and not subjecting anyone to arbitrary arrest, detention or exile (articles 9 and 10). Any person charged with an offence has the right to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal (article 11).

Article 12 is perhaps more relevant now than when it was enacted, due to the fact that the protection of privacy has become more and more important as we move into the age of computers. In this situation, the rights to move freely within one's country are rights of such fundamental importance that they are introduced in the articles 13, 14 (for the respect of the right to refuge) and 15 (the right of having a nationality).

From article 16 to article 27, we can find the definition of some rights which belong to the individual: right to welfare of families, life, liberty, education, security of the person, enjoyment of property, freedom of thought, conscience and religion, expression and opinion, peaceful assembly and association, participation to the cultural life of the community.

The Declaration also includes the right of persons to contribute to the running of public affairs; ensuring the right to work is an important factor in allowing all people the potential to achieve and enjoy the full benefits and advantages conferred by their citizenship in their country.

Article 28 considers the international order as a great opportunity for the co-existence of all peoples, while article 29 reminds us that rights carry responsibilities and duties to the community.

Finally article 30 serves the same function as the Constitution of a State which makes explicit the principle that one part of the same Constitution cannot be used to invalidate or repeal another. In fact, this article precludes the possibility of using the provisions of one article to trump the intended function and provisions of another.

2.2. The role of the United Nations

Shortly after World War II, representatives from forty six nations met in San Francisco to negotiate the terms of a legally binding Charter upon which the United Nations was based.

The United Nations Charter underlines the fact that the international organization which world's countries designed has four purposes, one of which is "promoting and encouraging respect for human rights and for fundamental freedoms for all". Since its inception in 1945, the United Nations has worked to protect and to promote human rights throughout the world through international cooperation and

collective security. But the Universal Declaration goes further, linking respect for human rights as necessary to the maintenance of international peace.

UN Members are sovereign countries. In fact, the United Nations is not a world government, and doesn't make laws; however it provides the means to help resolve international conflict and formulate policies on matters affecting all of us.

The United Nations is central to global efforts to solve problems which challenge humanity. This organization promotes respect for human rights, protects the environment, fights diseases, fosters development and reduces poverty.

The UN Commission on Human Rights, an intergovernmental body, holds public meetings to review the human rights performance of States. It also appoints independent experts ("special rapporteurs"), to report on specific human rights abuses or to examine human rights in specific countries.

UN Human rights bodies are involved in early warning and conflict prevention as well as in efforts to address causes of conflict. In fact, with the complete standards-setting work, the UN is shifting the emphasis of its human rights work to the implementation of human rights laws.

The High commissioner for Human Rights, who coordinates all UN activities, works with governments to improve their observance of human rights and seeks to prevent violations and investigates abuses. The General Assembly listed the High Commissioner's specific responsibilities that also include: "to play an active role in removing the obstacles to the full realization of human rights and in preventing the continuation of human rights violations throughout the world; to engage in a dialogue with governments in order to secure respect for human rights; to rationalize, adapt, strengthen and streamline the United Nations machinery in the field of human rights in order to improve its efficiency and effectiveness"(Resolution n.48/141 of the General Assembly).

Besides, recognizing that serious violations of humanitarian law were committed in many parts of the world, the Security Council created the *International Criminal Tribunal*. The purpose of this measure is to contribute to the process of national reconciliation and to the maintenance of peace.

3. United Nations Human Rights Field Operations

3.1. The United Nations Human Rights Monitoring

The launching of a United Nations field operation to monitor and report on a country's human rights situation "would have been almost unthinkable a decade ago"(Gallagher,1999, p.2).

The United Nations' role as human rights watchdog had been restricted to the collection and analysis of second or third-hand information for reports to be considered by committees and commissions which themselves never moved outside the United Nations New York or Geneva headquarters.

These methods began to change in the 1980s with the establishment of the first investigatory mechanisms charged with monitoring and reporting on human rights abuses.

These mechanisms have now become a central part of the wider human rights system, serving, only in theory I think, to increase governmental accountability by documenting and exposing violations. Most of them have been created by the Commission of Human Rights and all are either country specific or thematic.

In 1998, 16 countries were subject to investigation and 20 thematic procedures were in operation.

All thematic and country mechanisms are authorized to receive information relevant to their mandate from a variety of sources, and to make recommendations regarding the prevention or amelioration of violations.

Some mechanisms are empowered to respond to allegations of violations by, for example, establishing a dialogue with complainants and governments, or even engaging in actual investigation of allegations.

The United Nations development of alternative and more direct means of documenting and analysing human rights violations provided a precedent for the establishment of longer term human rights field presences.

In 1993, the Special Rapporteur for the Former Yugoslavia was provided with field staff to support him in his investigatory work.

The following year, the first human rights field operation to be run under the authority of the Office of the UN High Commissioner for Human Rights (OHCHR) was launched in Rwanda, again linked to a Special Rapporteur.

By 1998, the OHCHR was maintaining field presences in almost 20 countries and in addition to monitoring the human rights situation most of these operations are mandated to provide technical assistance aimed at developing and strengthening internal capacities to protect and defend human rights.

Parallel to this development has been a change in the United Nations approach to mediating conflict and overseeing peace agreements.

“Human rights considerations have traditionally played a marginal role in the United Nations peace and security work”(Gallagher, 1999, p.5).

This situation is, however, changing. Peace settlements are now routinely constructed within a human rights framework and human rights provisions are regularly included in the mandate of peace-keeping operations established to monitor the implementation of such agreements.

As a result, UN peace-keepers and civilian observers have themselves, on occasion, become human rights monitors.

3.2. The operation in Cambodia

In March 1992, the United Nations began its largest ever operation to restore peace and democracy in a single country.

Cambodia was very much in ruins. Massive human rights violations had wiped out large sectors of its population and the country lacked a functioning government or anything which could have been described as a civil society.

The Peace Agreements brokered by the United Nations gave the UN Transitional Authority in Cambodia (UNTAC) almost total control over Cambodia for the period leading up to elections.

Despite on-going battles between the various factions during the entire period of UNTAC's tenure and a failure to ensure demobilization and disarmament, the elections went ahead, as scheduled, in May 1993.

UNTAC's mandate formally came to an end three months later.

The Cambodia Peace Agreements provided UNTAC with a mandate which has been described as "wide and intrusive" (Gallagher, 1999, p.231), covering all key areas of typically governmental activity.

In relation to human rights, the mandate had two objectives: to prevent any possible recurrence of gross violations, and to contribute to the establishment of a "neutral political environment" (Gallagher, 1999, p.233) necessary for free and fair elections.

These objectives were to be pursued through the implementation of a human rights education program and general monitoring of the human rights situation, taking "corrective actions where appropriate, in relation to specific complaints of violations" (Gallagher, 1999, p.236).

The civilian police component of UNTAC was given specific human rights tasks including monitoring of police conduct and detention conditions.

The rights component, consisting of about 50 professionals, focused a greater part of its energies on the monitoring side of its mandate, investigating prison conditions and acts of politically or ethnically motivated violence as well as overseeing, as far as possible, judicial and police processes from a human rights perspective.

Attention was also paid to education, information and human rights training.

The purpose of these activities was to increase the general understanding, acceptance and observance of human rights, and to promote respect for human rights “amongst those in positions of authority and influence, including police” (Gallagher, 1999, p. 239).

The human rights component of UNTAC also worked to support and encourage the nascent civil society with a particular focus on organizations and groups involved in human rights protection and promotion.

The human rights component did not terminate with the end of UNTAC’s mandate.

Under the Peace Agreements, the UN Commission on Human Rights was given an on-going responsibility to continue supervising the human rights situation in Cambodia.

In 1993 the Commission on Human Rights passed a resolution establishing a UN Human Rights Office and setting out a mandate for a Special Representative of the Secretary-General on Human Rights in Cambodia.

The Government of Cambodia and the United Nations have subsequently entered into a series of agreements concerning the office and its functions.

This is the first of a series of initiatives that “have little in common, whether in relation to mandate, composition, authorizing body, structure or functioning” (Gallagher, 1999, pag. 12), so it is difficult a sistematic analisys or evaluation: nevertheless is possible to draw out some tentative conclusions.

Conclusion

I have demonstrated the evolution of protection of such important rights, that changed in the 1980s with the introduction of the field operations concerning the monitoring and the reporting on human rights abuses.

Human Rights work in the field has been described as “ the frontier of effective human rights protection and promotion today”(Martin, 1998, p. 138).

The United Nations, in my opinion, has an especially important role to play in giving human rights field work the credibility and political leverage which is necessary to effect real and lasting change.

For these same reasons, the United Nations must do everything possible to ensure that its field work sets the highest standards of efficiency and integrity.

Action is required in a number of different areas, and only one has been touched upon in this tesina.

In the final analysis I can say that all reform efforts must be directed towards preserving the credibility and usefulness of the United Nations human rights work.

In relation to its field operations, the highly political and arbitrary nature of current decision-making processes cannot be maintained without serious damage in both areas.

Effective reform will therefore require the development of detailed, objective and transparent criteria to guide the organization in the process of deciding when and how a human rights field presence is to be established.

The United Nations must also be prepared to stand up against “the use of field presences as a convenient ‘cover’ for political unwillingness to take concerned action against violative governments” (Martin, 1998, pag.93).

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