

- 인권보장에 대한 일차적 책임이 각국 정부에게 있음을 다시 한번 확인하였다.
- 인권의 보편성을 확인하는 동시에 각국 혹은 각 지역의 문화적 특성을 인정하였다.
- 빈곤에 의한 인권침해를 강조하고 개발(발전)의 권리를 확인하였다.
- 여성과 아동의 권리를 우선적으로 강조하였다.
- 고등인권판무관제의 우선적 검토를 유엔 총회에 권고하였다.
- 민간단체들이 인권증진에 기여하는 중대한 의의를 더한층 강조하였다.

그러나, 절충에 실패하여 담보되거나, 최소한의 진전도 보지 못한 실패의 측면도 적지 않다.

다-3 <담보>

- 최근 중요한 문제로 떠오른 난민문제에 대하여 새로운 언급이 없다.
- 고등인권판무관제와 더불어 중요한 진전이 될 것이라고 예측되었던 국제사법재판소 신설에 관한 합의에 실패하였다.
- 기타 위 성과에 해당하는 내용에 대한 구체적인 방안이 논의되지 않았다.

다-4 <실패>

- 유엔인권센타의 예산증대와 인원보장에 대한 구체적인 합의에 실패하고 추상적 원칙만 합의하였다.
- 고등인권판무관제에 대한 구체적 합의, 이를테면 권한, 예산, 활동범위 등에 대한 합의를 이끌어내지 못하고 모든 것을 유엔총회로 이관하였다.
- 개발과 인권의 연관속에서 남북간의 빈부격차가 증대하는 현실에 대한 진단과 책임이 불충분하게 언급되었다.
- 비엔나회의는 원주민의 10년을 선포하고 그 중요성을 공언했지

만, 다른 한편 원주민들의 자치권에 반대하는 미주대륙 및 태평양지역의 국가들로 인해 비엔나선언에 원주민들의 권리를 구체적으로 인정하는 문항을 삽입하는데 실패하였다.

- 문안기초위원회에 민간단체들이 배제되면서 문안기초작업이 구체적 상황과 인권철학에 의거하기 보다는 정부간의 정치적 협상에 의존하여 진행되었다.

- 소수층(인종, 종교집단 등)의 자결권이 기존국가의 주권에 비해 과소평가되었다.

비엔나 정부간 회의(본회의)만을 종합해 볼 때 대부분의 정부들이 보여준 '국가이외의 문제에 대한 무관심'과 무능력, 준비부족 그리고 협소한 이해타산의 외교방식은 앞으로 오랜 기간동안 질타의 대상이 되어야 할 것이다. 일부 인권학자들은 현재의 국가가 세부적인 인권문제를 다루기에는 너무 비대하고 탈냉전의 갈등상태를 다루기에는 너무 왜소하다는 평가를 내린다. 또, 근대를 거쳐 냉전시기에 완고한 형태로 경직화된 대다수 국민국가(nation-state)가 문화적 종교적 정치적 다원주의를 수용하는데 근본적 한계를 갖고 있으며, 최근 서유럽의 외국인 배타주의의 확산과 세계 곳곳의 민족갈등은 그 징표라고 지적한다. 즉 현대세계의 문제를 처리하기에는 그 자체만으로는 필연적인 한계를 갖고 있다는 해석이다.

이런 논의는 앞으로의 국제질서의 담당자로서 '민족국가와 그 정부'가 갖는 정당성과 타당성에 대해 상당한 비판을 촉발할 것이다. 이는 사실상 미국의 대외정책상의 무능력과 혼란, 그리고 G7회담이 최근 받고 있는 따가운 비판과도 일맥상통한다. 냉전이후의 세계질서를 추동하는데 기존의 정부중심 협의체계로는 한계에 다다랐다는 의미일 것이다. 비엔나 인권대회는 이런 맥락에서 리우환경회의와 아울러, 지구의 환경과 인간존엄성을 지키는 일을 현존국가와 정부에만 맡길 수 없으며 그러므로 새롭고 대안적인 담당자들과 새로운 차원의 국제관계가 필요하다는 중요한 교훈을 남겼다고도 할 수 있다. 앞으로 우리 사회에서도 이와 연관되어 동북아의 새로운 평화적 국제관계를 위해

비정부분야 혹은 소위 시민사회가 해야 할 역할을 적극 검토할 필요가 있겠다.

라. 비엔나선언과 한국정부의 책임

유엔의 신입회원국으로서 이 회의에 참여했던 한국정부는 모든 정부대표들의 결론인 「비엔나선언」에 대해서 진지한 태도를 취해야 할 것이며, 그 중에서도 특히 다음과 같이 우리 인권상황과 관련된 내용에 무언가 변화된 태도를 보여야 할 것이다.

첫째로 인권문제에 대한 정부의 의식과 책임감이 문제가 된다. 즉, 인권과 기본적 자유는 모든 사람의 천부적 권리로서 대한민국 영토내의 모든 사람에 대해서 정부가 인권의 보호와 신장을 일차적으로 책임져야 한다는 것이다(「비엔나 선언」 제2부 2절의 2). 그 책임감은 과거 독재정권이 만들어 놓은 국가보안법 등 악법의 폐지로부터 증명되어야 할 것이다. 다음으로 중요한 것은 정부와 사회기관이 갖는 인권교육의 책임이다(제2부 20절, 제3부 4장). 위계질서와 연고의 문화가 뿌리깊고 특히 인간의 평등성과 기본적 자유에 대한 국민교육이 크게 모자라는 우리나라에서, 정부는 모든 차별의 종식과 인권의 중요성에 대해서 일반 국민교육기관에서뿐만 아니라 군대, 사법부, 검찰, 교육자, 경제인, 공무원들에게 분명히 교육될 수 있도록 관장해야 한다. 인권교육의 쇄신과 책임감의 반성없이 국제회의에서 '한국에는 더이상 인권문제가 없다.'고 주장하는 것도 설득력이 없다. 더구나 해외진출 한국기업의 현지노동자들에 대한 가혹행위 등과 같은 '한국식 인권의 국제적 확산'은 더이상 몇몇 개인의 문제이기 이전에 민족적 위선으로 될 것이다.

정부의 뚜렷한 책임감과 사회적 인권교육의 필요성에 대한 인식을 전제로, 인권문제에 관한 정부와 비정부기관들 즉 민간단체들간의 협력방식에서도 완전히 새로운 인식이 필요하다(제2부 7절). 정부는 민간인권단체들의 의견수렴과 협력 없이는 인권후진국의 오명을 벗어나지 못한다는 점을 인식해야 할 것이다. 또 민간인권단체들간의 국제연대가 사실상 국제적 평화정착에 매우 중요한 기여를 한다는 점을 배워

야 할 것이다. 그 외에도 한국정부는 여러가지 국제인권조약의, 비준과 유보조치의 철회를 진행시켜야 하며, 최근 문제가 부각되고 있는 일반노동조합권과 외국인노동자들의 취업권과 건강권 등 인권보장에 성의를 보여야 할 것이다. 또 비엔나선언문의 내용을 어떻게 이행하고 있는지 유엔사무총장에게 정기적으로 보고해야 한다(제3부 6장 2절). 끝으로, 정부는 우리나라 인권단체들이 유엔 회원국인 한국정부의 의무와 진실성에 대해서 과거와 다른 높은 강도의 감독과 비판을 전개할 것이며, 인권과 관련된 외교활동이 상세하게 공개될 것이라는 사실을 염두에 두어야 할 것이다.

3. 비엔나인권대회이후 한국인권운동의 대응

가. 비엔나회의의 공동평가

한국 인권단체들이 처한 현실에 비추어 볼 때⁵⁾, 이번 비엔나회의의 공동참가와 공동평가는 중요한 의의를 갖는 것이었다. 비엔나인권대회가 끝난 직후 참가단체들은 공동으로 보고자료집을 낸 후 평가회를 가졌다. 평가의 몇몇 주요내용을 소개하면 다음과 같다.⁶⁾ (단 평가회가 엄격한 요건을 갖추어 진행된 것이 아니므로 아래 내용은 잠정적 합의사항이다.)

- 조직적 공동활동의 성과

공대위(유엔세계인권대회를 위한 민간단체공동대책위원회)와 같은 활동은 한국 인권운동상에서만뿐만 아니라 비교적 국제연대활동을 앞서서 해 왔던 노조운동이나 여성운동 교회운동 평화운동에서도 발견될

5) 유엔세계인권대회를 위한 민간단체공동대책위원회, 「유엔세계인권대회 소식」, 1-3호 참조.
6) 민주사회를 위한 변호사 모임, 「인권대회 공대위 활동평가」 및 천주교인권위원회, 「비엔나 세계인권대회와 공대위 활동 평가」 참조.

수 없는 소중한 공동활동이었고, 성과가 있다면 이는 모두 공대위의 조직적 공동활동에 돌려져야 할 것이다. 이러한 모범은 앞으로의 국제 연대활동에도 중요한 귀감을 남겼고 모든 연대활동에도 좋은 참고가 될 것이다. 상당한 규모의 예산과 국제행사에 대해 좀처럼 이루어내기 힘든 내부합의를 거쳐 이 같은 국내 국외 공동활동을 해낸 인권단체들은 참으로 새로운 영역을 개척해 낸 것이다.

- 해외동포운동과의 실천적 연대 경험

국제활동에는 해외동포운동과의 결합이 필연적인데, 이번 공대위 활동은 여러가지 부족한 면이 많기는 하지만 처음으로 해외동포운동과 규모있게 그리고 공개적이고도 조직적으로 결합해 활동한 사례를 남겼다. 또 해외동포운동중에서도 운동성과 조직성이 높은 단체 및 헌신적인 개인들과 결합했기 때문에 서로 배우는 바가 컸다. 국제활동에서 해외동포운동과의 당당한 연대는 앞으로 더 넓은 민족범위로 확대되어야 할 것이며 그 과정은 우리문제를 국제화하고 국제문제를 국내화 하는데 좋은 초석이 될 것이다.

- 비중있는 국제연대활동

공대위의 조직적 공동활동으로 인해, 공대위는 빈에서 다른 민간단체들로부터 상당한 주목과 역할을 부여받았다. 공대위의 미흡한 경험에 비추어 이같은 결과는 공대위가 남한의 대부분 인권운동을 명실공히 대표한다는 점과 그 일원들의 올바른 관점, 운동적 자세 그리고 성실한 활동에서 나온 것이다. 아태지역 민간단체들의 향후 협의구조를 협의할 때 한국과 필리핀 그리고 팔레스타인의 인권단체협의체가 동시에 거론되어 역할이 부여된 것도 같은 이유이다. 이런 점에서도 전문가 중심의 구미지역 인권단체들과 우리와 같이 민주화투쟁속에서 성장한 현장인권단체들은 성격과 활동상의 질을 달리한다. 그러므로 이번에 공대위가 인정받았던 근거는 사실상 한국의 민족민주운동으로부터 나온 것이라고도 할 수 있다. 따라서 앞으로 인권운동의 공동활

이와 같이 본다면, 민중 대 민중의 직접연대, 인권운동(시민적, 정치적, 경제적, 문화적, 사회적 권리의 총칭으로서 인권)과 같은 보편운동, 국제기구의 민주적 개혁을 위한 연대활동, 분야간 비판의 교류 (정치적 비판, 경제적 비판, 종교적 비판, 문화적 비판 등의 교류와 종합)가 앞으로 매우 중요한 의의를 가질 것이다.

앞으로를 위해 최근까지 사회운동의 국제관계활동이 가졌던 부족함을 요약하자면 우선 정보자료의 분산화와 경험축적의 실패를 들어야 할 것이다. 다음으로 현재문제로서 개별 국제연대활동의 분산성을 들 수 있다. 혹은 '전략없는 실천'이라고도 표현할 수 있다. 현재 우리와도 깊이 연관된 '힘과 폭력의 국제정치', '국제기구의 편파성', '환경, 평화 혹은 인권과 같은 보편적 접근' 등의 주제에 대해서 지금까지 우리나라에서는 개별 단체나 사안을 중심으로 연대를 전개하였지만, 깊이 있게 협의하거나 목표를 세워 접근하지는 못했다. 자연히, 국제연대활동이 한국사회의 근본적 변화와 아시아 혹은 세계차원에서의 진보와 평화에 어떤 기여를 할 것인가에 대해 고민과 계획이 거의 없었다.

정보부족과 전략부재와 연관된 세번째 문제로, 한국의 진보세력이 국제화시대에 국제연대활동을 발전시킬 역량을 발굴하고 양성하는데 실패했다는 점을 들지 않을 수 없다. 앞으로 '대중운동과 결합된 국제문제 전문가'의 양성은 매우 중요한 과제가 될 것이다.

다. 과제와 최근 진행상황

공대위의 평가에서는 공동평가에서 언급된 여러가지 과제를 수행하기 위해서는 인권운동단체들간의 일정한 공조협력 체계가 필요하다는 인식이 제기되었다. 그리고 그러한 공조체계의 의의를 살리기 위해서는 ① 인권분야 자료집중/체계화; ② 인권운동 전략; 종합적 인식의 형성; ③ 공동 국제연대활동 전개; ④ 전문인권운동가 양성과정 추동 등 4가지 사업이 절실히 요청된다는데 의견이 대체로 모아졌다.

또, 이와 아울러 비엔나대회시 다른 나라 인권단체들과 합의한 내용도 규정력을 가진다. 이는 민간단체 총회에서 채택된 「비엔나 이후」의 계획에 의한 것이다. 이 계획안⁷⁾에 따르면 앞으로 인권단체들은 전세

동도 민족민주운동의 한 분야를 대표한다는 관점에서 전개되어야 할 것이다.

이러한 성과 외에 교훈으로 얻은 한계는 대표적으로 인권운동 전략의 부재 문제이다. 이번 비엔나회의는 여러가지 쟁점을 미리부터 예정하고 있었다. 인권의 보편성과 국가주권, 유엔의 민주화, 남북간 빈부 격차와 경제·사회·문화적 권리, 기존주권과 원주민의 권리, 유엔의 군사활동과 인권, 사회주의국가의 인권, 인권판무관제, 국제인권재판소 등이 그렇다. 이런 주제들은 유엔과 유엔활동에 대한 일정한 판단, 국제인권법 분야에 대한 이해, 국제정치에 대한 이해 등과 아울러 나름대로의 관점을 가져야 전략도 세울 수 있고 또 접근도 할 수 있는 문제였다. 공대위는 이에 대한 공동의 관점이나 전략은 거의 없는 상태로 비엔나회의에 임했다. 6개월의 준비기간이 부족했다고 평가할 수도 있으나, 지금까지의 우리 인권운동 나아가 사회운동이 갖는 부족함이 반영된 것으로 볼 수 있다.

나. 민간단체들의 국제연대

아직은 생소한 면이 있지만, 국제연대의 관점에서 비엔나 인권대회로부터 얻은 우리의 교훈을 나름대로 다음과 같이 요약할 수 있다.

- 앞으로 중요한 국제연대활동은 국가간의 외교를 뛰어넘는 민간 활동이어야 한다.

- 앞으로의 국제연대활동은 (민족)국가 이기주의를 뛰어넘는 보편 지향적 운동이어야 한다.

- 앞으로의 국제연대활동은 탈냉전의 질서 즉 민주적 국제질서를 추구해야 한다. 즉, 보편적 대안(전략)을 모색하는 하나의 노력으로서 새로운 국제관계를 개척해야 한다.

- 이를 위해 근대 이후의 주도문명으로서 자본주의서구문명(경제, 정치, 종교, 생활문화의 총칭으로서)에 대한 종합적인 검토가 뒷받침되어야 한다.

- 한국의 경우 아시아 특히 동북아시아의 민간사회 차원의 수평적 연대와 교류를 발전시키는 것을 최우선의 과제로 삼아야 할 것이다.

계적으로 긴밀한 연락-협조관계를 통해서 공동 인권운동강령을 기초하고 나아가 인권침해의 책임소재를 분명히 하는 활동과 국가인권기구의 설치와 그 민주화를 위해서 노력하기로 했으며, 유엔에 대해서는 유엔의 민주화와 고등인권판무관제와 인권형사재판소 설치를 위해 공동대응하기로 하였다.

이를 위해, 민간단체들간의 세계적 지역적 네트워크⁸⁾를 구성하는데 그 원칙으로서, ① 수평적/민주적, 개방적, 분산적 네트워크를 구성하며, ② 「인권, 민주화, 개발」에 관계된 모든 민간단체를 포괄하도록 노력하며, ③ 여기에 관심있는 전문가, 학자, 기타 포괄토록 노력하며, ④ 민간단체들로 하여금 광범위한 연대체, 협의체, 기타 시민사회의 구성원이 되도록 한다는 것이다.

비엔나대회 이후 한국공대위는 동북아시아의 민간단체들간의 연락 및 조정의 책임을 맡아 왔고 또 그에 따라 위의 과제를 수행하는데 일조해 왔다. 올해 2월 방콕에서 개최된 아시아태평양 인권단체회의에서는 아태지역 인권네트워크 준비과정을 점검한 후, 간단한 구조의 전체 아태지역연락체계를 조직화하기로 결의하였다. 나라별 소지역별 연락담당자들의 조직을 아태지역 「인권연락추진팀」이라고 이름하였는데 공대위도 여기에 동북아 임시연락담당으로 참여하고 있다. 또 3월 제네바에서 개최된 세계 인권단체연락회의에도 참석하여 다른 지역과 다른 인권부문조직(여성, 아동 등) 사이의 협력방안과 범세계적 인권연락체계의 구성을 협의하기도 하였다. 아태지역의 「인권연락추진팀」과 세계연락체제는 규모와 성격상 유엔 등 국제기구의 공식협의자격을 획득하는데 전혀 어려움이 없기 때문에 꾸준히 조직발전을 할 경우 새로운 국제조직으로서 발돋움하는 것도 예측해 볼 수 있다. 또, 공대위는 1월31일-3월11일간 제네바에서 개최되었던 유엔 제50차 인권위원회에도 참관하여 국가보안법 문제를 제기하는 등 다른 국제단체들과 공동활동을 전개하였으며 정부의 발언과 외교활동을 일부 모니터

7) 민간단체 총회(NGO Forum) 문서 "Beyond Vienna" 참조.

8) 현재 전세계에는 약 6만여개의 민간단체들이 활동중이다. 이들은 현대 통신기술의 발달로 인해 거의 모두가 직접 혹은 간접적으로 연결될 수 있는 상태이다.

하기도 하였다.

이외에도 비엔나대회가 가져온 조용한 변화들이 많다. 공대위는 이번 경험을 토대로 일정한 개편을 거쳐 지속적인 대유엔 활동을 벌일 가능성이 있다. 이미 유엔 인권위 등에 한국의 국가보안법, 고문과 자의적 구금 등 형사절차상의 인권침해사실이 정식으로 보고되고 있기 때문에 유엔의 인권전문가들과도 지속적인 정보교류와 협력이 이루어질 것이다. 과거청산의 인권법적 개념인 '불처벌 Impunity'를 연구하는 전문가들은 남미 다음으로 한국의 상황에 대해서 관심을 표하며 자료와 분석 등 협력을 요청하고 있다. 국가보안법은 한국만의 상황을 넘어서 '탈냉전시대 국가안보 법제와 인권의 모순관계'에 대한 공동관심으로 여러 나라, 여러 단체로 확대되고 있다. 또 공대위는 이미 구성된 국제협력체제를 통해서 인권과 연관된 모든 국내 국제문제들에 대해서 입장개진과 연대활동을 전개할 수 있는 기반을 갖게 되었다. 이 같은 인권운동의 국내 국외의 변화는 앞으로 필연적으로 발전될 민간 단체(사회)들간의 국제협력체제에 중요한 동인으로서 작용할 것이며, 그를 토대로 기존 국제기구에도 발언권을 높이고 변화를 가져오는데 기여할 것이다.

문민정부, 인권 1년의 현황과 과제

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머리말

소위 '문민'정부가 출범한 지 1년이 지났다. 일본식 조어한자로 보이는 '문민'이라는 말로 스스로를 화려하게 장식한 김영삼정부는 그 말에 대칭되는 '군사'독재정권의 상징이었던 인권탄압의 청산과 인권보장의 정착을 기본으로 삼아야 하는 것이었다. 그래서 지난 2월, 김대통령은 '정의를 강물처럼 흐르게 하기' 위하여 민주주의와 자유를 더욱더 신장시키겠다고 약속했다. 그리고 6월, 세계인권대회에서 외무부 장관은 한국에서 마침내 인권이 본 궤도에 올랐다고 선언했다. 그러나 그 몇달 사이에 인권이 완전히 보장되었다고 할 수 있을까? 장관은 대통령의 말 한마디로 인권이 완전히 보장되었다고 착각한 것은 아닐까? 대통령이 국제화라는 말을 했다고 해서 당장 국제화가 되는 것이 아니듯이 인권보장도 화려한 구호로 장식하는 말장난이 아니다. 군인이 아닌 민간인출신이 대통령이 되었다고 해서 바로 민주화가 되고 인권이 보장된다고 착각한다면 이는 참으로 유치한 꼴이 아닐 수 없다.

우리는 지난 1년간 인권이 어느 정도는 신장되었음을 솔직히 인정하나 결코 그것이 국제적 기준에 합치하는 선진적인 수준이라고는 생각하지 않는다. 올 3월 9일에 발표된 국제사면위의 보고서에서도 밝혀져 있듯이 정치범은 여전히 다수가 구속되어 있으며 지난 1년간에도 많은 수의 양심수가 구속되었고 고문과 가혹행위도 끊이지 않아 인권

됨을 알아야 한다.

그렇다면 현재는 어떠한가? 재벌에 지배받고 있는 현정부가 재벌에 대해서는 손도 대지 못하면서 사법부만을 개혁의 대상으로 해서 정리한다고 하면, 누가 동조해주겠는가? 사법부자체에 의한 자발적인 개혁이라면 몰라도, 이런 사법개혁은 명분조차 찾기도 힘들게 된다. 그래서 현정부가 사법부의 개혁을 함으로써 문민정부의 위신을 세우고자 한다면, 먼저 재벌의 민주화에 대한 기본자세부터 고쳐잡아 나가야 한다. 사법부가 군부나 재벌의 횡포에 대해서 승리한 바는 없었지만 그렇다고 해서 그들의 힘에 굴복한 바도 없었다고 본다면, 재벌의 힘에 끌려다니는 현정부가 사법개혁을 요구할 때 과연 그것이 이루어지겠는가를 상상해 보도록 하자.

인권운동과 보편적 인권규범 : 그 7대 딜레마 (1)

이 대 훈
참여민주사회시민연대

인권운동은 매우 실제적인 문제를 제기하면서도 동시에 매우 추상적이고 이론적인 문제를 제기한다. 빈 세계인권대회 등 최근에 몇몇 중요한 계기를 거치면서 약간의 이론적 도전의 계기가 있었으나, 여전히 인권운동의 발전에 필요한 많은 질문들이 답을 얻지 못하고 사라지는 것이 최근 현실이다. 한편 몇몇 국제회의의 경험과 유엔인권기구에 대한 제소 및 국가보안법 국제심포지움 등의 국제적 인권운동이 전개되면서 국제인권규약 등 '보편적 규범과 법'에 대한 관심사가 날로 달라지고 있는 것은 새로운 현실이다. 그러나 다른 한편 국내법적 효력을 가진 국제인권법을 거들며 보지도 않는 사법부와 노동조합의 법적 권리 자체를 부정하는 정부가 엄연히 존재하는 현실과, 보스니아사태에서와 같이 무력하기만 유엔의 현실 앞에서 유엔을 통해 성립되어온 국제인권규범의 효용성에 대한 의문은 깊을 수밖에 없다.

세계인권선언이 1948년 채택되었을 때, 유엔 헌장 제2조 7항에 의해 인권은 엄격히 국내적 사안으로만 인정되었고 각국의 준수여부와 전문가 또는 민간단체의 역할은 거의 논의로 취급되었다. 세계인권선언이 채택된 1948년 당시 많은 나라들이 구속력을 가진 협약의 채택에 반대했기 때문에 유엔은 1953년 유엔이 아무런 국제인권협약의 제정

에 관여할 뜻이 없다는 것을 공표해야 했다. 그러나 오늘날 상황은 다르다. 대부분의 나라가 형식적으로나마 유엔헌장과 세계인권선언의 정신을 승인하고 또 국내법적 효력화의 정당성을 인정한다. 또 6대 인권규약(국제사회권규약, 국제자유권규약, 인종차별철폐협약, 여성차별철폐협약, 아동권리협약, 고문방지협약)이 세계인권선언을 풍부히 하고 있다.

그에 따라 한국 인권단체들도 방콕아태지역인권회의(1993년)와 빈 세계인권대회(1993년)에서 발표한 입장에 나타난 바와 같이 최근 국제 인권규범에 대한 관심을 꾸준히 보여왔다. 김근태씨의 국가보안법 위반사건의 부당성에 대한 유엔 제소, 유엔 사회권위원회가 한국정부에 대해서 발표한 강력한 권고내용, 삼청교육 피해자의 유엔 제소, 아동권리협약에 따른 민간단체의 공동보고서 작성 활동 등은 그러한 관심과 노력이 점차 광범위하게 분야별로 진행되고 있음을 보여준다. 그러나 이러한 국제인권규범과 관련된 여러가지 논란과 쟁점에 대한 체계적인 파악과 검토는 매우 부족한 상태이다. 이 글은 인권옹호에 대하여 진지한 관심을 두고 있는 사람들 사이에서 집중적인 논의의 촉발을 희망하는 바탕글이다.

이론적 빈곤에 따른 인권운동의 딜레마

탈냉전이 인권운동에 부여하는 변화요인은 무엇인가? WTO와 앞으로 제기될 다양한 경제질서(이른바 새로운 '라운드'들)에 인권운동이 대응해야 할 바는 무엇인가? 신세대의 탈정치현상 속에서 인권운동이 차지하는 위치는 무엇인가? 미국과 중국의 무역마찰을 예외한 인권공방과 북한의 인권문제에 대한 정부의 새로운 공세적 정책을 어떻게 보아야 할 것인가? 사실 인권의 언어로 가치규범을 말하는 사람들에게 최근 나라 안팎의 변화가 제기하는 문제는 적지 않다고 할 수 있다. 그러나 불행히도 인권운동 내부에서 이러한 주제를 종합적으로 검토하는 기회는 별로 없다. 때문에 사실상 인권운동상 접근하지 못하거나

레마 (3) 경제와 인권의 딜레마 (4) 연대성의 딜레마 (5) 안보와 공익성의 딜레마 (6) 인권의 국제적 보호와 국가주권의 딜레마 (7) 개인적 인 권과 집단적 인권의 딜레마 (8) 남는 문제 등으로 구분해서 접근할 수 있다. 물론 이같은 정식화는 규정적이기보다는 체계적인 검토를 위한 제안의 의미를 갖는다.

(1) 보편성의 딜레마 : 인권의 보편성과 적용의 상대성

인권규범의 해석과 적용에는 그 사회의 문화적, 사회적, 철학적, 종교적 요인들이 갖는 연관성을 고려하는 것이 필수적이지만, 이러한 접근은 자칫 인권의 유보 및 보편성 부정으로 이어질 수 있다는 우려 때문에 현재 인권운동상 적극적으로 검토되지 못하고 있다("The UN's Human Rights Record: From San Francisco To Vienna and Beyond", Philip Alston, Human Rights Quarterly 16, 1994). 예를 들어, 한국사회의 인권에 대해 적용하는 국제인권규범은 쉽게 보편적 차원에서 언급되지만 북한이나 중국의 인권문제를 말할 때는 체제의 특수성이 암시되기도 한다. 이러한 비밀관성은 앞으로 더욱 빈번하게 지적되고 공식적으로 비판될 가능성이 높다. 같은 맥락에서 빈 인권선언에 나타난 애매한 합의에 대체적으로 용인하는 것은 바람직하지 않다. 빈 선언은 그 내부에 치열한 논쟁의 절충과 회피가 상당히 포함되어 있기 때문에 이에 대한 판독작업을 하지 않았다는 것은 불행한 일이다. 특히 빈 대회에 참가한 우리 인권단체들의 대표단은 대부분 중국 등 개도국정부가 제기한 인권의 특수성에 대한 강조와 인권은 궁극적으로 주권국가 내부의 문제라는 주장을 민간단체들이 공동으로 반대한 것에 거의 무비판적으로 인정하는 태도를 취해 왔는데, 이에 대해서도 깊이있게 검토되지 못했다.

인권의 보편성 문제는 실로 매우 복잡한 문제이고 또 국제정치역학 과도 밀접히 연결되어 있어서 간단히 결론내리고 접어두기에는 곤란한 문제이다. 보편성의 딜레마는 다른 딜레마의 출발점에 해당한다.

자연스럽게 경시하는 문제들이 늘어나고 있다. 냉전종식 이후 계속해서 고개를 드는 소수집단의 권리와 발전권, 환경권 등 집단적 권리의 범주는 뚜렷한 진보적 논의의 단초와 문명적 충돌이라고도 표현할 만한 쟁점을 담고 있다("Conceptual Problems in the Protection of Minorities: International Legal Developments", Human Rights Quarterly 17, 1995). 그러나 우리 인권운동상에서 이를 논의한 경험은 없다. 리우환경회의(1991), 사회개발정상회의(1995), 세계여성회의(1995), 제2차국제정주권회의(1996)에는 한국의 (광의의) 인권단체들이 참여했고 또 참여할 것이다. 그러나 이 과정에서 회의 주제별로 제기되는 상당한 양의 다양한 인권논쟁이 충분히 소개되거나 검토되지 못하고 있다. 그 뿌리는 인권운동 안팎의 어려운 현실과 이론적 빈곤에 있다. 이론적 빈곤은 입장과 원칙상의 비밀관성을 야기하며 이는 인권침해를 야기하는 자들의 자기방어를 쉽게 할 수 있다는 점에서 심각한 문제이다.

인권운동은 특정한 규범과 기준을 갖고 출발하고 또 그를 추구한다. 그리고 최근 다양한 국제인권규약과 규범이 '자연스럽게' 그러한 기준을 제공하는 것처럼 언급된다. 그러나 그러한 규범이 과연 보편적인가? 기독교 이외의 종교적 전통이나 비서구적 문화가 중시되는 사회에서도 인권은 보편적인가? 한 사회와 국가의 특수성을 강조하는데 논리적 모순은 없는가? 인권의 보편성을 판단하는 기준은 무엇인가? 보편적 합의라는 것이 존재하는가? 합의의 보편성은 누가 어떻게 판단하는가? 이른바 기본권 이외에도 보편적 합의가 존재하는가? 합의에 기초하지 않는 인권선언과 국제인권법의 내용은 무엇에 기초하고 있는가? 최근 발표된 국제적 인권선언에 과연 국제적 합의가 존재하였는가? 개인의 권리와 시민 정치적 권리에 집중된 인권철학은 서구적이고 특수한 것이 아닌가?

이론적 빈곤에 대해서는 여러 원인이 있겠지만, 무엇보다도 최근 주어진 실천적 도전의 요소들에 대한 적극적인 재검토가 없었다는 점이 가장 크기 때문에, 이를 출발의 지점으로 확인하는 것이 가장 절실하다. 이러한 취지로 관습적 인식에 대한 비판적 검토의 출발로서 현재의 인권운동이 처한 딜레마를 (1) 보편성의 딜레마 (2) 불가분성의 딜

보편적 인권규범과 관련해, 유엔에 감독기관을 둔 인권의 양대 국제인권규약을 각각 120국 이상이 비준한 사실 자체는 규범적 측면에서의 보편성 획득에 성공했다고 판단내릴 수 있다. 빈 인권선언의 39개 문항 중에서 4개의 문항(1, 5, 32, 37문단)이 보편성을 강조하는데 할애된 점에서 형식적인 합의는 존재한다고 볼 수 있다("Universality of Human Rights and Cultural Diversity", Christian M. Cerna, Human Rights Quarterly 16, 1994). 실제 적용상에서는 더 어려운 문제가 등장한다. 이슬람국가들처럼 개인적 영역에서의 생활규범이 종교적·관습적으로 강하게 규정된 사회에서 국제인권규약은 보편성은 확인하기 힘들다. 그러나 이슬람국가 또는 특정 사회에서의 보편성 상실을 일단 인정할 이후에 보편성 원칙은 더욱 더 강조하기 힘들어진다. 그렇다면 보편성은 허상인가 또는 서구적인가라는 문제가 대두된다. 보편성을 옹호하기 위하여 일부 불가침(non-derogable)의 기본 인권을 보편적일 수밖에 없다는 주장도 기본 인권의 범주를 어떻게 설정할 것인가에 대한 논의에서 딜레마에 빠진다. 그리고 이러한 접근은 상당한 인권범주를 기본 인권에서 소외시켜 결국 보편성의 부정을 허용할 위험으로 이어진다. 빈 인권선언에서도 인권의 보편성을 재확인하면서도 지역적 특성이 감안되어야 한다고 규정했다. 과연 인권은 보편적이면서도 지역적인가라고 묻는다면 이는 명백한 절충으로 보인다.

중국과 인도네시아, 베트남 등 아시아의 국가들을 중심으로 지속적으로 제기되는 문제, 즉 요약하면 '현재 국제인권규범은 서구적인 것이며 서구적인 가치규범을 확산시키려고 할 때 반드시 주권침해로 연결된다'는 주장(Proceedings of the Conference on Regional systems for the protection of human rights in Asia, in Africa, in the Americas and in Europe, Friedrich-Naumann-Stiftung, 1993, Strasburg)도 보편성문제를 국가주권과 연결시키는 것에 다름아니다. 이것은 빈 세계인권대회의 핵심 논쟁이었다. 이러한 문제제기의 또다른 기원으로 좌파의 전통적 인권론이 있다. "자유의 경제적 조건이 충족된 때에야 자유는 부르조아적 관용 이상의 진정한 자유가 된다"(영국 노동당의 해롤드 라스키, The Review, International Commission of Jurists No.50, 1993에서 재인

용). 프랑스혁명 이후 반복된 "빵과 자유" 사이의 갈등이다. '빵'은 국제규범으로 제공되지 않는다는 것이다. 그러나 좌파적 반론은 경제적·사회적 인권에 대한 형식적인 국제적 합의가 진행되면서(대표적으로는 경제사회문화적 권리에 관한 국제규약) 또 베를린장벽이 무너지면서 잠잠해졌다. 그럼에도 불구하고 '빵'의 문제는 지구 남북갈등 속에서 개발과 경제적 권리의 언어로 부활한다. 이를테면 아시아의 한 민간단체가 펴낸 진보적 인권교재에는, 서구의 자유주의적 인권패러다임이 갖는 문제로서 사회권에 대한 경시와 국가중심의 인권침해 규정을 들고 있다. 즉 경제적·사회적 인권에 대한 불인정과 그에 따른 경제적·사회적 강자에 의한 인권침해의 불인정을 우선적으로 명시하고 있다 (Initiating Human Right Education at the Grassroots, Asian Cultural Forum on Development, 1993). 즉, 인권의 보편성은 사회권에 대한 합의에 기초해 있다고 할 수 있다. 보편성 논의에는 규범상의 논의와 적용상의 논의에서 충돌이 있으며 그 충돌은 인권의 종합성과 불가분성 사이의 논란으로 이어진다.

(2) 불가분성의 딜레마 : 시민·정치적 인권범주와 경제·사회·문화적 인권범주의 동등성과 불평등성

원래 종합적이어야 할 인간의 권리가 서구사회에서는 시민·정치적 권리와 경제·사회·문화적 권리의 두가지 범주로 나뉘었다. 때문에 이 두 범주의 권리는 서로 다른 역사적 발전경로를 밟아왔다. 시민·정치적 권리가 국내법의 발전을 반영하여 발전한 것과는 달리 경제·사회·문화적 권리는 대부분의 국내법이 국제법에 못미친다. 또 사람들의 관심도 적다. 때문에 대다수의 국내외 인권운동단체들이 경제·사회·문화적 권리를 인권으로 간주하는 것은 분명하지만 시민·정치적 인권운동에 대한 관심이 약화되는 것을 우려해 사회적 인권을 동등하게 위치 지우는데 소극적일 수밖에 없는 딜레마가 현실적으로 존재한다(Philip Alston, 위 자료). 사회권의 인권적 위상을 부정하고 시민·정치적 권리

를 인권의 고유한 영역으로 강조하는 것은 전통적으로 서방의 자유주의적인 인권론자들의 역할이었지만, 우리의 인권운동 현실에서는 독재국가의 횡포 때문에 오히려 자유주의와는 반대의 각도에서 시민적·정치적 인권이 실천적으로 상위를 점한다. 그 결과로 사회적 인권을 경제적·사회적·문화적 계층의 특수한 문제로, 예를 들면 도시빈민의 주거문제, 여성의 복지문제, 노인의 연금문제, 장애인의 복지문제 등으로 접근된다.

불가분성의 딜레마는 경제적·사회적 인권에 대한 비민주적 정부의 입장을 비판할 때에도 나타난다. 코펜하겐 사회개발정상회의에서 나타난 흥미로운 기현상도 그 예가 될 수 있다. 사회적 발전을 인권보장으로 접근하려는 유럽연합의 강력한 문제제기에 대해서 미국과 77그룹은 공교롭게도 함께 반대했다. 경제·사회적 인권을 서구적인 기준으로 인정하기 힘들다는 것이다. 그러나 사회적·경제적 인권의 일종의 종합으로서 발전권(Right to development)에 대해서는 미국과 유럽은 77그룹에 반대해서 공동의 방언선언을 구축했다. 각국 정부에 대해서 설득작업을 벌이던 사회권단체들에게는 협력대상의 혼란이 생길 수밖에 없었다. 이것은 현실적으로 인권의 불가분성에 대한 파탄이다. 즉 현실에서 인권의 불가분성 원칙은 존재하지 않는다는 입증이기도 하다. 이럴 때 각 그룹 정부의 입장을 일관성있게 비판하는 관점은 무엇인가. 인권의 불가분성은 추상적 원칙일 뿐 현실적으로는 공허하지 않는가라는 문제가 제기된다.

더 가까운 현실에서도 불가분성의 딜레마가 나타난다. 3세계국가 중에서 매우 활발한 대우연활동을 펴던 필리핀의 전국인권단체협의회(PAHR)도 그 구성단체의 다양성에도 불구하고 중심활동은 시민·정치적 권리에 집중되어 있었다. 그리고 경제·사회적 권리는 지역단체와 개발단체(development NGOs)로 자연스럽게 분담되었다. 이는 우리 현실에서도 마찬가지이다. 때문에 불가분'에 대한 원칙적 인정에도 불구하고 3세계의 현실에서 인권운동은 유엔의 양대인권규약의 분리만큼 분리되어 있고 또 그만큼 개인적 인권에 집중되어 있다. 사회운동의 경제·사회적 관심사는 인권적 접근이라기보다 체제론적이고 그

러므로 집단적 권리를 주로 다룬다. 일부 비평가들은 이를 두고 시민·정치적 권리를 중심으로 형성된 서구 인권단체와 3세계 인권단체의 적극적인 지원관계가 미친 영향이라고도 평한다. 그러나 궁극적으로 인권의 불가분성 원칙을 현실화하기 위해서는 경제적·사회적 권리에 대한 깊이있는 이론과 검토가 필요하다. 경제와 직결되어 있기 때문이며 다시 한번 '빵과 자유'의 문제이기 때문이다.

(3) 경제전쟁시대의 딜레마 : 인권운동과 경제의 분리

경제적·사회적 권리가 제도상 또 인권운동상 소홀히 취급되는 가장 큰 이유는 자원조달의 문제가 깊이 개입되어 있기 때문이다. 즉 국가경제 및 지역공동체의 경제적 여건을 검토하지 않을 수 없는 영역이기 때문이다. 또 국가안보 등을 이유로 든 자원조달의 우선권 논란, 외채 또는 경기침체 등 경제적 요인, 국제금융기관 등 국가정책에 영향을 미치는 기관의 사회권에 대한 경시가 함께 작용한다. 아울러 '인권운동'이 시민정치권에 집중되어 있어서 경제문제를 직접 논의한 바가 거의 없으며, 최근까지 '권리의 연대'(특정 권리를 중심으로 형성된 시민사회단체들의 네트워크형 연대)가 등장하기 이전까지는 사회권 분야의 사회운동은 인권운동과 별개인 것으로 취급되었기 때문이다.

분명 사회권에 대한 논쟁의 핵심에는 자원의 문제가 있다. 국제사회권규약 제2조는 규약가입국의 최대한의 가용자원을 투입해야 한다고 규정되어 있으나, 이는 모순된 두 개념의 절충적 충돌일 뿐이다. "최대한"이라는 것은 이상적 목표를 의미하지만 "가용"이라는 표현은 현실을 반영한다는 뜻이기 때문이다. 그리고 현실 국가는 항상 후자를 방패로 전자를 막아낸다("Measuring State Compliance with the Obligation to Devote the 'Maximum Available Resources' to Realizing Economic, Social, and Cultural Rights", Human Rights Quarterly 16, 1994). 최대한의 가용자원을 동원했는지 여부를 판단하는 데에는 자원의 동원에 관한 지표가 필요하지만 인권법의 전문가들이나 인권단체에서 이러한 지표

를 개발한 적은 없다. 예를 들어 최근 사회권관련 단체들의 연대활동에서도 이에 대한 검토가 없었다. 지난 5월 19일 유엔 사회권위원회가 한국정부에 낸 첫 권고문에도 "한국정부가 사용가능한 자원을 염두에 둘 때 000이 부족하다"는 표현방식으로 되어 있어서 '사용가능한 자원'에 대한 추상적, 주관적 판단을 전제로 하고 있다. 그러므로 국제사회권규약상의 개념적 절충성은 사회권에 대한 엄밀한 접근을 어렵게 하고 있으며, 자원에 대한 주관적 판단의 허용은 국가가 안보 및 공익을 이유로 한 자원왜곡을 가능케 하고 있다고 할 수 있다.

사회권에 대한 적극적인 검토를 위해서는 첫째 자원이라는 무엇인가 (재원이란 단순히 국가예산만을 의미하지는 않는다), 사회권의 보호를 위해서 동원할 수 있는 자원의 형태에는 어떤 것이 있는가(예를 들면 인적 자원, 기술적 자원, 정보자원, 자연자원, 재정자원 등), 동원할 자원의 규모를 정하는데 고려되어야 할 요소는 무엇인가, 정부가 사회권보장을 위해서 자원을 동원할 의무를 준수했는지 여부를 판단하는데 필요한 요소는 무엇인가를 따져보아야 한다(이상 위 자료). 즉 사회적 인권운동에는 결핍을 느끼는 사람들이 존재한다는 것 즉 피해자들의 존재와 아울러 자원조달에 대한 대안적 정책이 수반되어야 한다.

가용한 최대의 자원과 자원왜곡에 대한 인권운동의 인식을 증진시키는 데 핵심적인 것은 인권과 경제 및 기타 연관분야에 대한 종합적인 검토의 전통을 세우는 것이다. 특히 경제가 이념을 대신할 '세계화'현상을 염두에 둘 때 인권에 연관된 경제적 분석은 필수적이라 할 것이다. 단, 자원과 관련된 경제적 검토는 이미 교육개혁, 사회복지개혁 등 사회권분야에서 이미 분산적으로 제기되고 있음을 감안해서 보다 종합적으로 즉 사회권 범주에 기반을 둔 종합성을 갖고 추진하는 것이 바람직하다. 또 이는 자원을 동원하는 경제적, 사회적 체계가 다른 사회의 인권보장에 대해 비교론적으로 접근할 수 있는 길이다. 또 그래야만 특정 정부의 정책을 지표를 갖고 합리적으로 상대할 수 있을 것이다.

다음으로 경제와 인권의 연관성에서 제기되는 문제는 이른바 개발-

인권 연계정책(conditionality)의 문제이다. 유럽의 사회적 덤핑(social dumping)규제 움직임, 이른바 블루라운드의 무역·노동권 연계정책, 경제개발지원과 인권 및 환경권의 연계정책은 그 내용상의 합리성에도 불구하고 선진국 특히 선진국 대자본의 기술적 경제적 우위와 지배를 전제로 진행되고 있음은 주지의 사실이다. 이러한 연계정책은 유엔을 중심으로 형성된 국제인권규범의 보편적 적용을 그 철학으로 하고 있기 때문에 인권의 보편성 논쟁과 선진국의 경제력에 의한 약소국의 주권침해논쟁을 다시 유발하고 있다. 인권의 경제적 연관성을 국제경제 구조에 비추어 고려할 때 '주권을 넘어선 보편적 인권'을 쉽게 주장할 수 없는 상황이 발생한다. 이밖에 선진국을 제외한 대다수의 나라가 현재의 국제경제질서 및 선진국의 경제적 압력을 중요한 이유로 해서 온전한 개발정책을 취하기 어렵고 또 그 때문에 사회권에 대한 억압을 정당화하기 쉬운 처지에 있는 현실, 시장개방, 실업 및 지적소유권 독점 등 경제구조조정에서 다른 대량의 경제적 인권 침해의 현실은 과연 국제적 경제불평등과 인권보장이 양립할 수 있는가, 그 어느 쪽이 우선인가를 재고하게 한다.

(4) 연대성의 딜레마 : 인권 네트워크운동의 확장성과 그 제한

이상의 딜레마는 과거와 현재의 불일치이기 때문에 미래의 가능성이기도 하다. 즉 인권운동의 대중화와 확산의 계기일 수 있다. 실제로 최근 인권의 지평이 확대되면서, 다양한 사회단체, 시민단체들간의 '권리의 연대'가 다양하게 결성되고 있다. 빈 세계인권대회 이후 창립된 인권단체협의회뿐만 아니라 사회개발정상회의 민간포럼, 한국정부에 대한 강력한 권고안을 이끌어낸 사회권연대모임, 사회복지분야에서의 '복지의 곧 인권'이라는 문제제기, 아동권조약에 관련된 아동권단체 연대모임, 북경세계여성대회를 준비하는 모임, 외국인노동자 인권 공동대위, 해외진출기업의 인권침해를 생각하는 모임, 주한미군 인권침해 공동대위, 환경운동의 환경권 소송운동 등 그야말로 분야별 인권을 중심

으로 하는 연대 네트워크 운동이 활성화되고 있다.

그러나 이러한 권리의 연대모임은 아직 인권운동이라는 하나의 대중적 행동양식으로 정착화되고 있지 않다. 인권네트워크운동의 현실적 확대와 범주상의 불일치는 인권운동이 취해야 할 연대성의 원칙이 불안정하기 때문에 야기된 딜레마 중의 하나이다. '인권운동은 모든 것을 포괄한다'는 희망을 가지면서도 일부 제한된 문제에 집중할 수밖에 없는 인권단체들의 엄연한 현실 앞에서, 노조와 여성단체, 환경단체도 실은 모두 인권단체라고 규정하기에는 우리의 인권운동 및 인권단체에 대한 범주설정이 애매한 면이 없지 않다.

포괄성 대신에 개방적 연대성을 축으로 범주설정에 접근하는 것도 하나의 방법이다. 이미 국제적으로는 인권·민주주의·개발이라는 3위1체의 문제의식이 일반화됨으로 인해서 인권과 다른 범주 사이의 연대성에 있어서는 그 기본적인 원칙이 서 있는 상태라고 보인다. 이를테면 사회개발정상회의나 인구회의, 정주권회의 등 거의 모든 국제모임에서 인권문제가 하나의 필수요소로 다루어지고 있다. 그러나 아직 인권단체들을 포함해서 국내 시민사회단체들의 대처방식은 독립적 비연관적 대응이 주류이다. 가장 최근의 예로서 핵확산금지협정(NPT) 기한연장회의에 참석한 평화운동단체들은 인권단체와 아무런 협의없이 활동을 전개하였다. 그러나 세계인권선언에 기초해서 작성된 시민·정치적 권리에 관한 국제규약을 살펴보면, 인간의 고유한 생명권은 심지어 국가적 공공적 위기상태에서조차 침해될 수 없다는 조항이 있는데, 이 조항은 반핵의 인권적 기초로 인용된다. 나아가 유엔인권이사회도 "핵무기의 설계, 실험, 제조, 소유와 배치는 오늘날 인류의 생명권을 위협하는 최대의 위협에 속한다"라고 선언한 것을 쉽게 알 수 있다(1984년 11월, UN Doc. A/40/40).

최근 한국의 많은 시민사회단체들이 국내외에서 전개하고 있는 사실상의 인권활동 속에서 인권적 담론을 형성하고 그 속에서 다양한 쟁점을 뽑아내지 못한 것은 이론적 빈곤을 배경으로 한 조정과 연대의 부족이라고 할 수 있다. 그러므로 앞으로 다양한 인권네트워크운동 사이에는 일정한 철학적 기반과 인내관계가 형성되지 않으면 안 될 것이

다. '권리의 연대' 방식으로 나타나는 네트워크운동의 특징을 개방성과 네트워크형 조정력(coordination)이라고 한다면 앞으로 이 두 가지 특징을 인권운동 속에 수용하는 노력과 조직체계가 필요할 것이다. 특히 조정력에는 이론적 풍요가 반드시 뒤따라야 하기 때문에, 인권의 각 분야에 대한 전문연구자들의 모임에도 앞으로 큰 역할이 부여될 것으로 보인다.

이외에도 상호 긴밀히 연관된 안보와 공익성의 딜레마, 인권의 국제적 보호와 국가주권의 딜레마, 개인적 인권과 집단적 인권의 딜레마, 남는 문제, 딜레마 해결을 위한 제안 등이 있으나 지면사정상 다음 기회로 미룬다.

제51차 유엔인권위원회 보고서

이 성 훈
한국인권단체협의회 회장

1. 유엔 인권위원회란?

올해 1월 30일부터 3월 10일까지 6주동안 제네바에 있는 유엔 센터에서 제51차 유엔인권위원회(이하 "인권위")가 열렸다. 한국을 포함한 53개 위원국이 모두 참석한 가운데 열린 위원회는 올해가 유엔 창립 50주년이고 93년 6월의 비엔나 세계인권대회 이후 임명된 조세 아얄라 라소(Jose Ayala Lasso) 유엔 인권고등판무관의 첫 연례 활동보고서를 심의하는 위원회라는 점에서 주목을 받았다.

보는 관점에 따라서는 유엔의 모든 기구를 인권관련기구라고 말할 수 있지만 일반적으로 유엔의 인권관련 기구는 헌장(Charter)에 기반한 기구와 조약(Treaty)에 기반한 기구 두 가지로 나뉜다. 헌장에 기반한 유엔 인권기구는 구체적인 개별조약의 비준여부에 관계없이 유엔에 가입한 모든 국가에 정치적 구속력을 지니는 반면 조약에 기반한 유엔 인권기구는 구체적인 조약가입을 전제로 한다. 따라서 전자는 보다 정치적이고 후자는 보다 법적인 성격을 지닌다.

전자 가운데 가장 대표적인 기구로 경제사회이사회(ECOSOC)산하

1) 유엔과 인권, 12-19 쪽, 유엔과 인권제도교육 자료집, 한국인권단체협의회, 1994.

*Is there a distinctly Asian concept of human rights?
How do international notion of human rights relate to Asian experiences?
How do we reconcile "universal human rights" with the principle of
"non-interference in the internal affairs of a country"?*

Asian Regional Exchange for New Alternatives (ARENA)
and
Center of Asian Studies, University of Hong Kong

Present a seminar on

**"THEORETICAL AND METHODOLOGICAL
ISSUES IN ASIAN HUMAN RIGHTS:
SOCIO CULTURAL AND
POLITICAL ASPECTS**

By

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Monday 18 April 1994
Centre of Asian Studies
University of Hong Kong, Tang Chi Ngong Bldg., Room G-4 (Ground Floor)

**Methodological and Conceptual Issues in Asian Human
Rights : Towards a Dialectical Synthesis
of Universality and Endogenity**

Kinhide Mushakoji

Summary of a lecture to be presented at the Centre of Asian Studies, University of Hong Kong, 18 April 1994 sponsored by the Centre and the Asian Regional Exchange for New Alternatives

1. The Asian critique of human rights : by the State parties

1.1 "Human rights" as a Western idea

Human rights are Western in terms of legal formalism and a utopia of universal liberation. Western formalism is not necessarily superior. However, its utopia has triggered off a global process of democratization greatly needed in a patriarchal Asia

1.2 "Human Rights" to be developed in stages

Development stage exist but should not be interpreted in a deterministic way. Stages are dialectical bifurcations turning heterodoxy into orthodoxies or from non-conformism and dissidence to conformity. Stages cannot become a pretext for orthodoxies to reject heterodoxies.

1.3 "Human Rights": tool for Great Power intervention

Human rights as heterodoxy are anti-systemic and confront inequities in the status quo. But in the hands of Great Powers, they turn into orthodox ideology. Thus HR are essential to the domestic process of democratization. On the other hand, non-intervention by Great Powers is essential to international democracy.

2. The background conditions of the critique:

2.1 "Human rights" as a synthesis of Western oppression and liberation

Human rights as a heterodox utopia represent a revolt against the oppressive nature of Western domination. The non-Western societies react to Western impacts combining liberation and oppression in a complex way.

2.2 "Human rights" in the Centre and in the Periphery

Human rights in the non-Western periphery are exogenous in form and do not necessarily overlap with endogenous actions for justice and liberation. Being external, the exogenous legal institutions of HR are often weak.

2.3 "Human rights" as a process or an institution

Human rights in Asia have to be implemented as a process of liberation before being institutionalized. Legal institutionalization is yet essential as part of the process of liberation.

3. The Asian critique of human rights: a deeper problematique

3.1 Universality vs. historicity

Human rights are universal in nature, but have to be established through a historical process. It is essential to surpass Western formal logic and conceive of this apparent contradiction as a dialectical process.

3.2 Individualism vs. collectivity

Human rights liberate the individual human person from the yoke of collectivism. But justice also demands that the collective rights of the exploited majority be recognised in order for them to live their communal lives in peace.

3.3 Analytical formalism vs. synthetic realism

Human rights can only be enforced through a formal system corresponding analytically to the specific manifestations of injustice. It is, however, indispensable to go beyond this formalism to cope with the concrete situations of violence and injustices.

4. Towards a dialectical synthesis : the role of anti-systemic movements

4.1 "Human rights" as a historical praxis

Human rights should not be implemented *sub specie aeternitatis*(?). They are part of a historical process where HR defenders' solidarity action with the victims should provide the ground for new processes of legal institutionalization.

4.2 The endogenisation of "human rights"

Exogenous imposition of human rights cannot lead to any sustained processes of liberation. The endogenisation of HR should become the major concern of HR promotion. HR protection should be led by the grassroots movements. Asian cultural traditions of non-conformism exist among discriminated social categories.

4.3 Towards a "New Constitutional Order" in Asia

The predominance of the state has been part of the Western institutionalization of democracy and human rights. Without rejecting the state so long as it provides a framework for democratization, it is essential to build a new constitutional order guaranteeing the symbiosis of different identity-group victimized by the states. Asian traditions must be studied to enrich the HR components of this New Constitutional Order.

Introduction

It is useful to think of human life in the contemporary world as organized at four levels. First, there are individuals, who are born, have names, live lives, have good and bad experiences, and die. Second, there are cultural communities and practical associations, to which individuals belong, in which they pursue their goals, and which give meaning to their lives. Third, there are nation-states; which are the principal organizers of communities, associations and individuals. Fourth, there is the world system, to which nation-states and transnational communities and associations belong, in which they pursue their goals, and which provides a framework for their actions.

The world system is supposed to be regulated by the United Nations, which has a similar function in relation to its member states as they have to the communities, associations and individuals within their jurisdictions, although it lacks the power which states normally command. The UN claims to represent 'the international community' as states claim to represent their nations. As a sort of world government, it has a legislative code. This code includes the doctrine of human rights. This doctrine prescribes certain relations between states and the individuals within their jurisdictions. The UN constructed this doctrine in response to the barbarous actions of Nazi-German imperialism and to the economic and social misery of the Depression. In doing so, it drew on two Western political traditions: the opposition to despotic government that had its origins in England, America and France in the seventeenth and eighteenth centuries, and the struggle of the poor through trade unions and socialist organizations for decent conditions of work and standards of living. Although the UN human rights doctrine was formulated in terms of Western traditions, it addresses universal problems (despotism and poverty) and has been supported by non-Western governments, non-governmental organizations and individuals.

During the Cold War the human rights concept was distorted by the ideological battle between capitalist West and communist East. Western governments emphasized civil and political rights in their critique of communism. The communist states defended themselves by appealing to the doctrine of state sovereignty, and counter-attacked by criticizing Western capitalist societies for their failure to realize economic and social rights, for racial discrimination and imperialism. This conflict popularized the simplistic

view that there were two types of human rights, one Western and bourgeois (civil and political), the other Eastern and socialist (economic and social). This distinction led to historical and political errors. It suppressed recognition of the traditional struggles for economic and social rights in the West and the place of civil and political rights in the socialist tradition. It blurred the conceptual and empirical relations between the political and the economic. Those who gave priority to freedom over bread assumed that starving people could be free, while those who gave priority to bread over freedom assumed that starving people did not need to be free. Both assumptions are questionable.

At the same time international relations were characterized by another division. This had several names: imperialism and anti-imperialism, colonialism and anti-colonialism, developed and developing countries, the West and the Third World, North and South. These names referred to a division between two sets of peoples, which had three significant features: it was not directly part of the Cold War; it was a direct product of European imperialism; and it was a division between rich and poor nations. Although some societies of the Third World were socialist, others capitalist, and many had mixed economies, and although the states of the Third World formed different political and military alliances with the Cold War powers, the historical experience of imperial domination by the West and the weak position of these societies in the international economy dominated by the West led them towards the Soviet view of human rights, emphasizing state sovereignty as a defence against 'neo-imperialism' and economic development as having priority over civil and political rights.

Western governments, having won their Cold War with communism, have taken their fight for human rights to the Third World. This has brought them into conflict with some Asian governments. Human rights violations in several Asian countries have been targets of Western criticism. However, the economic success of some East Asian societies has given their governments the confidence to resist this initiative on the basis of what they believe to be the proven worth of their cultures. What appears, from the Western perspective, to be a noble campaign for universal human rights, is interpreted, from an Asian perspective, as cultural imperialism.

In this confrontation two issues have been carried forward from the Cold War. The first is the conflict between the principle of universal human rights and that of non-interference in the internal affairs of sovereign nation-states. The second is the relative priority of civil and political rights, on the one hand, and economic and social rights, on the other. But there is a third, new element in the situation. The renewed assertion of non-Western cultural values has called into question the universalist interpretation of human rights. Some Asian governments accuse the West of trying to impose on them alien values derived from the Western liberal tradition.

criticize Asia for human rights violations on the ground that this is to impose alien cultural standards on Asia, then Asians should not criticize the West for its failure to conform to Asian moral standards. The Asian moral critique of the West may be justified, but it presupposes common moral ground between Asia and the West, and thereby undermines the relativist objection to Western critiques of Asia. This common ground exists because Asian élites have chosen to adopt important features of Western culture, especially those associated with the capitalist and socialist paths to economic development. In view of this, appeals to traditional culture are further weakened.

Another common Asian argument assigns priority to economic development. It assumes the validity of the human rights doctrine, but accords priority to economic, social, cultural and development rights over civil and political rights. The argument is that economic development, with its associated economic and social rights, requires stability, and the stabilization of society under conditions of economic development requires both authoritarian government and respect for traditional cultural values. The relation between human rights and economic development is, however, complex and not well understood, both because the concept of human rights is complex and because the empirical connections are complex. Although there are a few examples of successful economic development under authoritarian regimes, many such regimes have failed to achieve stability or economic development. Even where political repression and economic success have been combined, we should not assume that the former was necessary to the latter. If human rights violations are conceded to be wrong in themselves, but are justified on the ground that they are a necessary means to the good of economic development, the justification of the wrong is weakened by the failure to show that it is indeed a necessary means to the good end.

In March 1993 when Asian governments met in Bangkok to prepare for the UN World Conference on Human Rights in Vienna, they adopted a common position in the form of the Bangkok Declaration. The Bangkok Declaration recognized human rights as universal, but insisted that they be interpreted in the context of historical, cultural and regional particularities. Some universalists believe that this particularization of human rights betrays the universalist principle.⁶ Yet universalists would be wrong to insist that particular public policies can be deduced directly from universal human rights principles. The Bangkok principle of cultural diversity may be a cover for human rights violations, but it is also inconsistent with the view that human rights are alien to Asian culture.

If universalists underestimate the importance of cultural differences between the West and Asia, those who speak of Asian culture underestimate its diversity. Japan expressed some dissent over the Bangkok Declaration. Human rights are viewed differently in China and the Philippines, and in the ruling and opposition parties in Taiwan. Throughout much of Asia, governments face criticism from Asian human rights organizations. Many of these Asian organizations reject the absolute priority of economic over political rights and believe the two to be mutually dependent. The human rights culture is no longer Western. It is no longer a matter of agreement

Asia and human rights

There was no explicit concept of human rights in East Asian culture before the reception of Western political ideas at the end of the nineteenth century. Confucianism, for example, laid the foundations of ethics in certain social relations and the mutual obligations that were inherent in them.¹ The official ideologies of Tokugawa Japan and Yi dynasty Korea associated inequality with order and equality with chaos. There were no theoretical limits to the authority of the state. Yet protests occurred. In Korea, for example, the Tonghak movement emerged in the 1860s to challenge the neo-Confucian regime with an egalitarian, anti-Western ideology. We should therefore remember, when we consider Asian objections to the human rights doctrine on the ground that it entails the domination of Asia by the West, not only that violations of human rights in Asia entail the domination of some Asians by others, but also that this domination is often not culturally acceptable to those who are dominated. Political oppression in Asia can be and has been criticized by Asians on Asian cultural grounds that have some family resemblance to the human rights doctrine. Western ideas of rights were imported into Asia because there was indigenous dissatisfaction with the old order and because Western ideas of rights and democracy helped Asian protesters to articulate their goals and principles.²

Objections to the application of universal human rights standards to Asia on the ground that such standards are alien to Asian traditions rest on an oversimplified account of those traditions. Traditions are complex and change over time. The sources of change may be internal and/or external. External changes may be imposed by imperialist coercion or accepted voluntarily by peoples dissatisfied with their own traditions. The mere fact that a cultural influence is 'alien' does not mean that it is harmful nor is there anything shameful in learning from others. Asian élites have been keen to learn economic and technological skills from the West. They cannot consistently reject the human rights doctrine only because it is not part of the traditional culture. The question as to whether Asia should or should not adopt the human rights doctrine should not be settled either by looking backwards to tradition nor to the external origin of the doctrine. The test should be whether it is useful and morally acceptable now.³

Traditions can also be manipulated to serve contemporary political purposes. If the doctrine of human rights can be misused to disguise Western neo-imperialism, the doctrine of cultural relativism can be misused to conceal or to justify oppression by Asian élites. As Asians would be unimpressed by a justification of Western imperialism on the ground that imperialism was a Western tradition, so, for example, justification of discrimination against Asian women by Asian men on the ground that it is an Asian tradition is similarly unconvincing.⁴

The Asian response to Western criticisms of human rights violations in Asia sometimes takes the form of a moral critique of the West. Asians argue that the social achievements of Western societies are sufficiently questionable that the West has no right to give moral lectures to Asia.⁵ This response is, however, inconsistent with that of cultural relativism. If the West should not

among state élites. It is a global politico-cultural movement. The myth that the concept of human rights is alien to Asian culture is being challenged by Asian people.⁷

The universality of human rights

The claim that human rights are universal entails neither that all societies should have the same institutions nor that non-Western societies should abandon their cultural heritage in favour of the Western way of life. Those who believe that human rights are universal also believe that there can be diverse institutional means to implement these rights. Many cultural practices either lie outside the domain of human rights or are protected by the human rights doctrine. Article 27 of the Universal Declaration of Human Rights, for example, states that everyone has the right 'freely to participate in the cultural life of the community'.

However, the concession by universalists that the human rights doctrine is consistent with institutional and cultural diversity leaves open the question of whether the doctrine is Western and therefore not universal. Here it is useful to distinguish between the concept of human rights and conceptions of human rights.⁸ Concepts are general ideas. Conceptions are specifications of those ideas. There is therefore a strong and a weak version of the thesis that the human rights doctrine cannot be universal because it is Western. The strong version says that the concept of human rights is Western and therefore inapplicable to Asia. The weak version allows that the concept is universal but claims that different conceptions are appropriate to different cultural areas. The strong version is advanced by some Asian intellectuals. The weak version is the position of the Bangkok Declaration.

Three uncontroversial points should clarify the issues. The first is that the concept of human rights refers to a set of international legal texts. The concept has, therefore, a basis in international law. The second point is that the concept of universal human rights is inherently non-Western in the sense that it assigns equal rights to every human being just because they are human and consequently accords no privileges to Westerners.⁹ The third point is that the belief that the human rights doctrine is Western in its historical origin is itself not an exclusively non-Western idea but is the standard view of Western historians of Western political thought.¹⁰ The concept of human rights, therefore, is legally international, philosophically universal and historically Western.

What is at issue is not any of these points but the question as to whether the claim that the human rights doctrine is universal is an example of Western cultural imperialism. The claim that it is arises from the combination of resistance to Western imperialism and the Western historical origins of the human rights doctrine. The claim is commonly made by contrasting the modern Western human rights doctrine with traditional Asian culture. However, the actual role of the concept of human rights in contemporary East-West relations is better understood if both East and West are examined from a historical point of view.

We have already seen that Asian history contains challenges to political authority, which were articulated in the Western discourse of human rights at the beginning of the twentieth century. Western history, too, contains traditions of political authoritarianism and social hierarchy. As Asians then and now have turned to the concept of human rights to articulate their opposition to oppression, so have Westerners since the seventeenth century and so they do today. As the introduction of the concept seems alien to Asian culture and unwelcome to Asian élites, so it was in the West. The Eastern and Western time-frames are different, but the political process of claiming human rights is rather similar. In the West the struggle for civil and political rights arose in response to the demands made by the modernizing state, while claims for economic and social rights arose in response to the demands of industrial capitalism. These rights claims were resisted by governing élites as politically subversive, obstructive of economic development and culturally repugnant. The Western and Asian stories are more similar than they are often made out to be.¹¹

The classical statement of human rights theory is still that of John Locke.¹² This is often considered to be a paradigm of Western liberal theory and to incorporate many of its defects. The critique of Lockean liberalism and its theory of rights finds the source of its errors in its individualism, precisely the idea that is commonly said to distinguish Western from non-Western cultures. According to this critique, Locke and most liberals after him ground their moral and political theory in an 'abstract' individual, who is non-social and anti-social. The Lockean-liberal individual is said to have rights independently of and in opposition to society. It is supposed to follow that these rights-holders are self-centred beings indifferent to the good of society. This conception of individual rights is commonly contrasted with non-Western conceptions of the collective good to show not only that the Western conception of rights is culturally peculiar to the West but also that it is morally inferior in privileging individual self-interest over the common good.¹³

There is, however, a strong tradition in Western political theory that objects to the concept of individual rights precisely on the ground that it mistakenly regards the human individual as non-social and consequently grounds a political theory that is incompatible with an orderly and flourishing society.¹⁴ Thus, the distinction between liberal individualism and its critics is not the same as the distinction between Western and non-Western thought. Opposition to liberal individualism and its theory of individual rights is just as Western as is support for these ideas.

The critique of Locke's individualism is also based on a misunderstanding of his theory. Locke's was a Christian doctrine. The ground of morality for him was the existence and nature of the Christian God. Locke presented God primarily as the creator of the world and, in particular, of human beings. Morality arose from the relations among human beings established by God. This morality consisted of the obligations each individual had to respect the fundamental interests of every other individual and the rights each individual had and might seek to preserve against unjust violation by others. Locke's theory of individual rights was a moral theory of the social relations among individuals, and was based upon a theory of fundamental religious obligation.

It was not a rights-based theory and Lockean rights were not non-social. Locke's theory of social relations is, therefore, not as different from the Confucian as contrasts between Western individualism and Chinese ethics usually suggest.

What is distinctive in Locke is his explicit emphasis on the rights which are correlative with duties in social relations. Locke's conception of rights provides the standard form of rights claims in modern Western liberal philosophy: to say that an individual A has a human-right to X is to say that there is a social relation between A and some other person(s) or organization(s) B such that there is a strong moral reason for holding that B has a duty towards A with regard to X. According to liberal theory, the doctrine of human rights is not only a doctrine of human duties among individuals but one of obligation to those social institutions that protect rights. The liberal theory of human rights, by requiring respect for the fundamental rights of each individual, requires support for the social system of mutually sustaining rights and duties. In the words of Alan Gewirth, 'the emphasis on individual rights is not only compatible with, but requires a conscientious concern for, the common good.'¹⁵

The social character of Locke's theory of rights can be further explained by one of his examples. He invites us to imagine a Swiss and an Indian making an agreement in the woods of America. Such an agreement, he says, is binding because the moral obligation to keep faith belongs to men as men.¹⁶ Although this is a proposition about individual obligation, the individuals concerned are not non-social. They are Swiss and Indian, members of particular societies. Also, Locke's 'individualism', far from licensing the indulgence of unrestrained self-interest, places a stricter moral obligation on the parties than a more communitarian theory might do: neither the Swiss nor the Indian may appeal to the customs of his society to break faith with another human being. Finally, Locke's individualism, far from being 'imperialistic', entails a universal, egalitarian morality. In the woods of America the Swiss and the Indian meet as moral equals. Locke rules out the possibility that the Swiss may break faith with the Indian because he (the Swiss) is European or Christian or 'civilized'.

The Lockean-liberal theory of rights is, however, a theory of the rights of individuals, and this individualism may seem alien to non-Western cultures. I return now to my proposal that we think of the contemporary world as organized at four levels: individual, community/association, nation-state and world system. The human rights doctrine is based on an agreement among nation-states at world-system level to impose upon all nation-states obligations to respect certain rights of individuals. The objection to this doctrine on the ground that it is an example of Western cultural imperialism claims that this analysis disguises the reality that one set of nation-states (the West) is imposing upon another set of nation-states (those of the Third World) and the communities and associations that they represent an alien culture that gives priority to the individual level over both that of community/association and that of the nation-state. However, we have already seen that the Locke-Gewirth conception of individual rights does not give the individual priority over community or nation-state but sets the defence of individual rights within

a framework which requires support for the common good of associations, communities and nation-states.

Liberal individualism is more social than it is often thought to be, and non-Western collectivism more individualistic. In the Confucian ethic of social relations, for example, one crucial relation is that of husband and wife: a relation between individuals. A theory of social duties that eliminates individuals eliminates individual duties, which collectivist ethical doctrines do not normally intend. The justification for requiring an ethic for the individual level is, therefore, in part that the other levels cannot flourish if the individual level does not flourish.

What distinguishes the liberal theory of rights is not the denial that individuals have obligations to community and state, but the belief that human life is led by individuals. Individuals suffer or are happy, succeed or fail in their purposes, perform good or bad actions, do or do not fulfil their obligations to society. This form of individualism is compatible with the following 'communitarian' propositions: the identity of individuals is to a large extent constituted by their communities; individuals can normally flourish only in communities; the interests of communities should often be given priority over those of its individual members. Liberal individualism is, however, distinctive in denying that communities can be valuable independently of good individual lives.

The ground of this theory is the good human life. Good human lives are fundamental values in both 'individualist' and 'communitarian' moralities and in Western and non-Western cultures. I shall now use two ideas proposed by Joseph Raz. The first is a definition of rights discourse. To assert that an individual has a right is to claim that an aspect of his well-being is a ground for a duty on another person. The second is the logical proposition that assertions of rights are intermediate conclusions in arguments from ultimate values to duties.¹⁷ Liberalism holds the good individual life to be an ultimate value which justifies the ascription of rights to, and duties on individuals. To assert that an individual has a right is to claim that he or she has some interest related to having a good life that imposes a duty on others.

The concept of the good human life must take account of two necessary features of the human condition: the vulnerability of individuals to harm and the capacity of individuals for action. Richard Rorty has suggested that the harms to which humans are vulnerable can be divided into two types: pain and humiliation.¹⁸ Freedom from pain and humiliation are normally aspects of the good life that entail the right of every individual not to be subject to the arbitrary infliction of pain and humiliation by others and the duty of every individual not to inflict arbitrarily pain and humiliation on others. The condition of arbitrariness indicates that rights are not absolute because one right may conflict with another. It may be that the promotion of good lives requires the infliction of pain and humiliation on some individuals. This is not to endorse the utilitarian ultimate value of maximizing utility but to acknowledge that the ultimate value of good individual lives may require the infliction of harm, for example by way of reasonable punishment for wrongful acts. Such punishment is not arbitrary if it is justified by the ultimate value of promoting good lives.

The human capacity for action may be expressed in various ways: in morally worthy deeds, in intellectual creativity, in religious piety, in devotion to one's community, in the creation of wealth, etc. Good lives are those in which the capacities of individuals are developed and employed. Not all expressions of human capacities are good and should be permitted, for individuals have the capacity to harm others. But individuals have the right not to be subjected to arbitrary restriction of their capacities. Restrictions are not arbitrary if they are justified by the ultimate value of promoting good lives. Capacity rights are the other side of the coin of harm rights in that the restriction of capacities is harmful (i.e. causes pain and humiliation) to individuals. Individuals may, of course, choose to suffer pain and/or humiliation in pursuit of some good justified by an ultimate value. Such a choice does not in itself violate any right of the chooser, since the right is not to have harm arbitrarily inflicted by others.

The ultimate value of the good life and the derivative values of avoidance of arbitrary harm and the development and expression of capacities justify particular human rights. The right to a fair trial, for example, is justified in order to minimize the probability that the infliction of punishment will be arbitrary. The rights to freedom of expression, movement, association, religion and participation in the culture of one's community are justified as expressions of human capacity.

The liberal theory of human rights seeks to restrict the power of governments. Arguments that the theory is Western and alien to non-Western cultures often ignore the fact that the target of human rights concerns is much more commonly the actions of governments than the cultural practices of their peoples. Many non-Western governments proclaiming that the human rights doctrine is an example of Western imperialism and alien to the culture of their peoples are engaged in the destruction of the culture of their peoples in the name of economic development.¹⁹ Liberals believe that governments, because they control exceptionally large concentrations of power, have an exceptionally large capacity to harm the individuals, communities and associations under their power. Individual rights are not secure unless they are protected from the use of power by governments to harm them. Insecurity is bad because it is painful and/or because it inhibits the development and exercise of human capacities. In order to provide adequate security for individuals, liberals emphasize the importance of embodying fundamental rights in law and requiring that governments be subject to the rule of law.

All human individuals have rights to secure. All are vulnerable to the violation of their rights by governments. The liberal theory of human rights does not seek to protect only the Western way of life. It seeks to protect diverse ways of life from violation by governments. Whatever one's chosen way of life, one has an interest in having it protected against arbitrary interference by government. Governments may restrict rights if this is necessary to promote good lives. Those governments which violate human rights justify their actions on precisely these grounds. The moral weakness of their position is that the violation of rights is clear, whereas the necessity of the violation is uncertain. On the liberal view, neither the sovereignty of the state nor economic development as such justified the violation of human

rights, since neither necessarily minimizes arbitrary harm nor optimizes the development of individual capacities. This view is universal and not imperialistic because it subjects all governments to the same criterion of the promotion of good lives.

This theory treats rights neither as basic nor as the whole of morality. They are not morally fundamental because they are derived from ultimate values, but individuals have fundamental rights because those rights are necessary to realize ultimate values. They establish minimum standards for decent governmental practice. They are universal because every individual has a fundamental interest in having a good life. They are not, however, absolute, but may be limited only when they impose unreasonable burdens on others.²⁰

We can now evaluate the moral status of three defences commonly presented against the claims of universal human rights. The first is the doctrine of state sovereignty. States are not good unless they promote good lives for communities, associations and individuals. Thus states are legitimate only if they respect human rights. There is no moral reason to respect the sovereignty of an illegitimate state. The second is the priority of economic development. However, economic development is good only if it promotes the good communities, associations and individuals. In so far as economic development is necessary to meet the minimum standards required by human rights, there is no conflict between the two. Where there appears to be such a conflict (e.g. between political and economic rights), the theory of human rights requires careful analysis of which rights of which individuals are being violated to promote which other rights of which other individuals, and critical examination of the claim that such violations are necessary to improve the promotion of good lives. The third defence is based on the right of political and cultural self-determination. There is here a self-contradiction, for objection is made to the concept of universal human rights on the basis of a supposed universal human right. The right of self-determination is a right of peoples and may not therefore be cited to defend the violation of human rights by governments. Also, the right of self-determination, like all rights, is derived from ultimate values and may be justly exercised only with due regard to other fundamental rights.

The concept of human rights is therefore universally applicable. What should we think of the Bangkok principle that, although the concept is universal, there may be different conceptions of human rights in different political, economic, social and cultural contexts? Western governments and human rights activists have opposed this idea because they believe that it disguises the desire to perpetrate gross human rights violations. The Bangkok principle may be right in theory but wrong in practice. The principle is justified by Dworkin's argument that general concepts have to be interpreted in particular circumstances. Both the meaning of human rights principles and the balancing of conflicting rights and values must be context-dependent. Yet there is reason to believe that this valid theoretical principle is being used by some Asian governments to conceal or to justify unjustifiable human rights violations. Naïve acceptance of the Bangkok principle may entail endorsement of oppression. Dogmatic denial may entail moral imperialism. Neither extreme is justified.

other. Dialogue presupposes certain rights of the participants. If the dialogue on human rights is not to protect interests only at the nation-state level, the voices of individuals, communities and associations must be heard. The human rights question is not properly an issue between East and West at all. It is a question of how governments can be truly responsive to the people they claim to serve. What is required, then, is dialogue among governments, the institutionalization of transnational, non-governmental dialogue and the institutionalization in all societies of those fundamental human rights which guarantee to individuals, communities and associations protection from arbitrary government and empower them to contribute creatively and constructively to the good life in common.

Notes

1. Chung-sho Lo, 'Human rights in the Chinese tradition', in UNESCO (ed.), *Human Rights: Comments and Interpretations* (Westport, Conn: Greenwood Press, 1973), p. 187.
2. Ian Neary, 'The Hyongpyongsa, the Suiheisha and the struggle of human rights in East Asia' (unpublished, 1993).
3. Boo Tion Kwa, 'Righteous talk', *Far Eastern Economic Review*, 17 June 1993, p. 28.
4. Neary, op. cit., pp. 5, 11, 19.
5. Kishore Mahbubani, 'Live and let live: allow Asians to choose their own course', *Far Eastern Economic Review*, 17 June 1993, p. 26.
6. Susumu Awanohara, Michael Vatikiotis and Shada Islam, 'Vienna showdown', *Far Eastern Economic Review*, 17 June 1993, p. 17.
7. Sidney Jones, 'The organic growth: Asian NGOs have come into their own', *Far Eastern Economic Review*, 17 June 1993, p. 23.
8. For the distinction between concepts and conceptions, see Ronald Dworkin, *Taking Rights Seriously* (London: Duckworth, 1978), pp. 134-6.
9. Alan Gewirth, *Human Rights: Essays on Justification and Applications* (Chicago: University of Chicago Press, 1982), p. 1.
10. Jack Donnelly, *Universal Human Rights in Theory and Practice* (Ithaca: Cornell University Press, 1989), part II.
11. Neary, op. cit., pp. 6, 16, and Donnelly, op. cit.
12. John Locke, *The Second Treatise of Government* (Cambridge: Cambridge University Press, 1970).
13. Julia Tao, 'The Chinese moral ethos and the concept of individual rights', *Journal of Applied Philosophy*, vol. 7 (1990).
14. Jeremy Waldron (ed.), *Nonsense upon Stilts: Bentham, Burke and Marx on the Right of Man* (London: Methuen, 1987).
15. Gewirth, op. cit., pp. 13-14, 18-19.
16. Locke, op. cit., paragraph 14.
17. Joseph Raz, *The Morality of Freedom* (Oxford: Clarendon Press, 1986), pp. 180-1.
18. Richard Rorty, *Contingency, Irony, and Solidarity* (Cambridge: Cambridge University Press, 1989).
19. Donnelly, op. cit.
20. James W. Nickel, *Making Sense of Human Rights* (Berkeley: University of California Press, 1987), pp. 4, 49-50, 96-8.
21. Ann Kent, *Between Freedom and Subsistence* (Hong Kong: Oxford University Press, 1993), pp. 236-7.
22. Mahbubani, op. cit., p. 26.

The human rights doctrine, because of its Western origins and its place in Western foreign policy, has suffered from guilt by association with imperialism. As a consequence, those who wish to protect the cultures in which they take pride have viewed with suspicion a doctrine that they mistakenly perceive to be hostile to those cultures but which in fact seeks to protect them from violation by their governments. The human rights doctrine is not imperialistic, because it seeks to protect the vulnerable from the powerful, whereas imperialism constitutes the domination of the weak by the powerful. There may be conflict between the doctrine and some elements of some cultures, but only when those cultures endorse oppression of some members of society by others.

What is to be done?

Politics is driven by power, more or less constrained by justice. Power works by pretending to be just. In thinking about human rights we should distinguish between what justice requires and what those with power demand. Yet in deciding what should be done we have to take account both of the principles of justice and the realities of power. There is no doubt that many serious violations of human rights take place around the world. That this is true and morally deplorable is not only a Western view. Asians are deploring human rights violations by Asians, as Westerners are deploring human rights violations by Westerners.

There is a global debate about human rights because there is a global world system in which global economic, political and cultural networks co-exist with national and local economies, political systems and cultures. The values of political self-determination and national economic development are values of the global culture. Both the political and the economic relations of this culture are highly dynamic. This has ambiguous implications for human rights. On the one hand, those with power wish to control these developments and this may lead to the suppression of human rights. On the other hand, the processes themselves can generate forms of people power which demand respect for human rights. This is more clearly true in capitalist systems in which market freedoms can easily spill over into demands for political freedoms. But it may also be true of socialist systems committed to economic development. Technology links economic development with political freedom. Development is impossible without participation in the world technological system, but modern technologies of communication and transportation make rigid forms of political authoritarianism more difficult to maintain.²¹

Kishore Mahbubani from Singapore has called for a dialogue of equals on human rights between Asians and Westerners on the basis of mutual respect. He complains that no level playing-field has been created for such a dialogue.²² The doctrine of human rights itself endorses precisely such a dialogue of equals. It notes, however, that no level playing-field exists for dialogue between nation-states and their governments, on the one hand, and the communities, associations and individuals whom they govern, on the

THE ASIAN CHALLENGE TO UNIVERSAL HUMAN RIGHTS: A PHILOSOPHICAL APPRAISAL*

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Introduction

The Bangkok Declaration, adopted by Asian governments in April 1993, as a representative proudly claims, 'stakes out a distinctively Asian point of view' on issues of human rights.¹ The Declaration and the high-sounding claims of some Asian states have triggered off a heated and on-going debate between Asia and the West on human rights issues. Asian states seem to have gained confidence in believing that their cultures and ways of life have merits and strengths which are wanting in Western industrial countries. This confidence finds concrete expression in their attitudes toward human rights. This essay is an attempt to evaluate, from a philosophical point of view, the Asia challenge to universal human rights.

Most Asian governments do not deny the concept of human rights and its importance. Nor do they deny that human rights are universal. However, they do stress the idea of diversity as much as universality about human rights. The Bangkok Declaration holds that Asian governments

recognize that while human rights are universal in nature, they must be considered in the context of a dynamic and evolving process of international norm-setting, bearing in mind the significance of national and regional particularities and various historical, cultural and religious background.²

Singapore, the most outspoken Asian state in the debate, warns that 'universal recognition of the ideal of human rights can be harmful if universalism is used to deny or mask the reality of diversity.'³

It is not clear whether this argument merely qualifies or in effect denies the very idea of universality. In any case, if more weight is attached to particularistic considerations, the more likely is the universality of human rights to be stripped of its substantive content. Moreover, once particularist arguments are taken on board in the debate about human rights, it seems difficult to bar these considerations from reaching the very foundation of human rights. Noting the danger of this slippery slope, the Vienna Declaration states categorically that 'the universal nature of [human] rights and freedoms is beyond question'. In addressing the issue of particularities, the

Introduction

In the contemporary debates on human rights, it is generally assumed that there is one Asian view of human rights, and that it is opposed to the traditions of individual human rights that first developed in the West. It is easy to believe that there is a distinct Asian approach to human rights, because some government leaders speak as if they represent the whole continent when they make their pronouncements on human rights. This view is reinforced because they claim that their views are based on perspectives which emerge from the Asian culture or Asian realities. The gist of their position is that human rights as propounded in the West are founded on individualism and therefore have no relevance to Asia which is based on the primacy of the community. It is also sometimes argued that economic underdevelopment renders most of the political and civil rights (emphasized in the West) irrelevant in Asia. Indeed, it is sometimes alleged that such rights are dangerous in view of fragmented nationalism and fragile statehood.

It would be surprising if there were indeed one Asian perspective, since neither Asian culture nor Asian realities are homogeneous throughout the continent. All the world's major religions are represented in Asia, and are in one place or another state religions (or enjoy a comparable status: Christianity in the Philippines, Islam in Malaysia, Hinduism in Nepal, and Buddhism in Sri Lanka and Thailand). To this list we may add political ideologies like socialism, democracy or feudalism which animate peoples and governments of the region. Even apart from religious differences, there are other factors which have produced a rich diversity of cultures. A culture, moreover, is not static and many accounts given of Asian culture are probably true of an age long ago. Nor are the economic circumstances of all the Asian countries similar. Japan, Singapore and Hong Kong are among the world's most prosperous countries, while there is grinding poverty in Bangladesh, India and the Philippines.

The economic and political systems in Asia show a remarkable diversity, ranging from semi-feudal kingdoms in Kuwait and Saudi Arabia, through military dictatorships in Burma and Cambodia, effectively one-party regimes in Singapore and Indonesia, communist regimes in China and Vietnam,

the West has focused its attention on what it perceives to be the 'undemocratic' nature of Third World polities. In Africa and Latin America the concern with human rights is seen to be an instrument for the establishment or strengthening of the market, in an attempt to restrict the interventions of the state in economic relations. In Asia, however, the key economies are heavily market-oriented, and for the most part are successful. Even China is now turning to the market, which is widely credited for its economic success. So the emphasis on human rights is not necessary as a spur to the market (and indeed, as I explore later, the relationship between the market and human rights is problematic).

Some Asian governments consider that Western pressure on them for an improvement in human rights is connected with the project of Western global hegemony. This is to be achieved partly through the universalization of Western values and aspirations, and partly through the disorientation of Asian state and political systems (and the consequent negative effect on their burgeoning economies). They have fashioned their response accordingly. There is some danger in this internationalization of the Asian debate on human rights. It shifts the focus away from the practices of Asian governments and the restrictions on human rights. It enables the governments to attack as Western stooges indigenous supporters of human rights. It leads to spurious stereotypes, of 'orientalism' and 'occidentalism', with either defensive Eastern counterparts of Western universalism or aggressive retreat into an imagined past or culture. It politicizes the question of human rights in an unproductive way.

The 'official' Asian view of human rights

The 'official' stance on human rights of a number of influential Asian countries (Singapore, China, Malaysia, Indonesia) has developed primarily in response to two contingencies: the imperatives of control and confrontation with Western pretensions. They are therefore formulated somewhat defensively. It also means, because they are an engagement and a debate with the West, that they are formulated in universalistic terms, in the usual discourse of human rights. Several ingredients constitute such official views. One which flows directly from both the contingencies is the assertion of 'domestic jurisdiction' over human rights. Human rights are encapsulated within state sovereignty; the national treatment of human rights is no concern of other states or the international community. Self-determination, a concept which has been used to advance claims of human rights, is regarded as irrelevant to independent states. This position runs contrary to the contemporary view that human rights are a matter of international concern and that their gross violations entitle the international community to intervene in domestic situations to redress violations.

In its white paper *Human Rights in China* (1991), the Chinese government stated that 'Despite its international aspect, the issue of human rights falls by and large within the sovereignty of each state'.⁴ The Chinese delegation to the UN Commission on Human Rights at its meeting in February 1993 urged that

ambiguous democracies in Malaysia and Sri Lanka, to well-established democracies like India. There are similarly differences in their economic systems, ranging from tribal subsistence economies in parts of Indonesia through highly developed market economies of Singapore, Hong Kong and Taiwan and the mixed economy model of India, to the planned economies of China and Vietnam. Perceptions of human rights are undoubtedly reflective of these conditions, and suggest that they would vary from country to country.

Perceptions of human rights are also reflective of social and class positions in society. What conveys an apparent picture of a uniform Asian perspective on human rights is that it is the perspective of a particular group, that of the ruling élites, which gets international attention. What unites these élites is their notion of governance and the expediency of their rule. For the most part the political systems they represent are not open or democratic, and their publicly expressed views on human rights are an emanation of these systems, of the need to justify authoritarianism and repression. It is their views which are given wide publicity domestically and internationally.

There are other Asian voices as well. There are, admittedly somewhat muted or censored, the voices of the oppressed and the marginalized. There are the passionate voices of indigenous peoples whose cultures are destroyed by governments which claim to be the custodians of Asian cultures; they speak in a language which finds few resonances even in the West (because their language is threatening to the system of the market). There is the voice, rising in density, of the middle classes, with a stake in affluence whose new-found prosperity and economic enterprise show to them the virtues of the legal protection of property and the rule of law. There are the strident voices of ethnic minorities who seek collective autonomies which challenge governments' claims of political monopoly and state sovereignty. There are the well-modulated voices of the non-governmental organizations, which provide the most consistent and coherent alternative view of human rights to that of governments.

The unity of governments is more apparent than real. Although the Bangkok Declaration¹ was endorsed by all the Asian governments at the April 1993 Asian regional preparatory meeting for the Vienna World Conference on Human Rights, some of them have a firm commitment to human rights and their record is better than one might expect from their endorsement of the Declaration. India is one example. Along with some other states, it is committed to human rights by its constitutional instruments, has a strong and independent judiciary, and despite problems and setbacks tries hard to maintain human rights. Nor is their adherence to traditional values and rules absolute; the Indian Constitution prohibits many traditional and religious practices like the discriminatory and degrading treatment of lower castes and provides for an equal treatment of women with men.²

The reason for presenting a united front is not unconnected with a perceived North-South confrontation (as is evident from the Bangkok Governmental Declaration, which stressed the need to avoid the application of 'double standards' in the implementation of human rights and its 'politicization').³ Asian governments feel that since the end of the Cold War,

the World Conference in Vienna should 'reiterate the principle of state sovereignty contained in the UN Charter and international law which is basis for the realisation of human rights. Only when the state sovereignty is fully respected can the implementation of human rights be really ensured'.⁵ This is also pre-eminently the position of the other countries mentioned above.

Another element in the official view is the relativity of rights, determined by the economic and political circumstances of each country. The Bangkok Governmental Declaration

recognises that while human rights are universal in nature, they must be considered in the context of a dynamic and evolving process of international norm-setting, bearing in mind the significance of national and regional peculiarities and various historical, cultural and religious backgrounds.⁶

This stance reflects the position in the Chinese white paper which states:

the evolution of the situation in regard to human rights is circumscribed by the historical, social, economic and cultural conditions of various nations, and involves a process of historical development. Owing to tremendous differences in historical background, social system, cultural tradition and economic development, countries differ in their understanding and practice of human rights.⁷

The Chinese use this framework to establish the priority of social and economic rights in their country, and much of the white paper is taken with an account of the ending of pre-communist regime practices of feudalism and other forms of human exploitation and the steady progress since in nutrition, education, health, the position of women and the disabled. Other countries too have used the state of national economic development as explanations for the failure fully to guarantee the complete range of human rights ('to eat their fill and dress warmly were the fundamental demands of the Chinese people who had long suffered cold and hunger').⁸

There are two major implications of this relativist position on human rights. The first relates to conditionalities of political stability, and the other to the primacy of economic development. The implications of the first represent restrictions on civil and political rights. A forthright statement of this position is to be found in pronouncements of the Singapore government following the detention of various social workers and activists in May 1987. The Minister for Home Affairs, for example, in reply to US Congressmen who had written to complain about the detentions, compared the 'resilience and cohesiveness' and shared values of the nation of the United States (which presumably makes possible the tolerance of human rights) to the fragility and heterogeneity of Singapore. He suggests:

We are vulnerable to powerful centrifugal forces and volatile emotional tides. Like many other developing countries, Singapore's major problem of nationhood is simply to stay united as one viable nation... In our short history, Singapore has repeatedly encountered subversive threats from within and without... To combat these threats to the nation, the usual procedures of court trials, which apply in Singapore to most criminal cases, have proved totally inadequate. The very secrecy

of covert operations precludes garnering evidence to meet the standards of the criminal law for conviction. In many cases of racial agitation, the process of trial itself will provide further opportunity for inflammatory rabble rousing... Singapore cannot be ruled in any other way... Preventive detention is not a blemish marring our record; it is a necessary power underpinning our freedom.⁹

Another aspect of Singapore bypassing the formal legal system, with its guarantees of openness and fairness, not discussed in the minister's reply, is the tapped and doctored 'confessions' extracted from the detainees under some coercion, and then shown on national television as proof of guilt and calculated to destroy their credibility and dignity.

These remarks were directed at a justification of administrative powers of detention without any kind of trial, but similar arguments have been used to justify other curtailments of civil rights, like the right to associate and assemble, to peaceful marches, to speech and expression. The Chinese white paper says that the people's right to subsistence will be threatened in the event of social turmoil or other disasters, and that it is the fundamental wish and demand of the Chinese people and a long-term, urgent task of the Chinese government to maintain national stability and concentrate their efforts on developing productive forces.¹⁰

The economic backwardness of Asia has been used to establish the primacy of economic development over human rights. The argument is, in part, that civil and political rights are neither meaningful nor feasible in conditions of want or poverty. Therefore the first priority of state policy must be to promote economic development. It is implied that economic development may well require restrictions on human rights, both to provide a secure political framework in which it can be pursued and to remove obstacles in its way (e.g. through forced movement of people from lands required for 'development'). The opposition of human rights and development is assumed rather than proved by argument and illustration. It is also used to establish the priority as between different kinds of rights, in which civil and political rights occupy a lowly position (in part a response to an argument that human rights are indivisible, and all of them enjoy an equal status).

The emphasis these governments purportedly place on economic development has led them to support the right to development. This right is a matter of considerable contention internationally, with developing countries arraigned on the side supporting it, and most developed countries united in their opposition to it. It certainly does not have the quality of other kinds of rights which are intrinsic to individuals or groups and for the most part are entitlements against the state. Nevertheless the General Assembly of the United Nations adopted, in the face of abstentions by most Western states, a Declaration on the Right to Development on 4 December 1986.¹¹

The Declaration ties the realization of human rights in the developing countries to international economic aid for them and gives to 'peoples' (presumably meaning 'states') the right to 'participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realised'. In return for these, several concessions are made in emphasizing the indivisibility of rights

and the claims of individuals to full participation in development and in the fair distribution of the benefits resulting from it.

The Declaration is a blurry document, trying to be all things to all persons. So while there are sections of it which can be used to advance the (more traditional) cause of human rights, the gist of it seeks to establish reason for the failure of the realization of human rights in the international economic and political systems (including encroachments on the principle and practice of self-determination), while affirming that the primary responsibility for human rights are vested in states as part of their sovereignty. In other words, the rich countries must provide economic assistance to the poor countries, but must not question their human rights situation. (The Western riposte to the Declaration has been a massive imposition of political conditionalities on economic assistance and indeed, in the case of China, on economic relations and cooperation). The Declaration is also an attempt to provide an alternative framework for the international discourse on human rights. It shifts the focus from domestic arenas (where most violations of human rights take place) to the international, and takes attention away from specific rights, for example speech, assembly, social welfare, to an ambiguous portmanteau right of development, for which, in the nature of Third World affairs, the state must take the responsibility in defining and implementing it. Through the Declaration, Asian governments seek to promote the ideology of developmentalism, which justifies repression at home and the evasion of responsibility abroad.

Another Asian initiative in changing the framework for the discourse on human rights is even more fundamental. The approaches discussed so far have taken the Western discourse as the main framework and have advanced qualifications to it or provided justifications for derogation from its values. Some governments have put forward the argument that the cultural matrix within which relations between individuals and the state are embedded are fundamentally different in Asia from that in the West. This matrix governs the nature and salience of human rights. This approach has been taken up aggressively in Singapore and Malaysia (less so in China, where the government's residual loyalty to Marxist thought is inconsistent with the adoption of this cultural approach, especially since so much of it is based on semi-feudal thought in Asia). I take as the basis of my discussion of this point an official statement of the government of Singapore, *Shared Values* (1991).¹²

The context of the white paper on *Shared Values* is a concern of the government that the cultural values of its people are under attack from foreign ideas and values. It poses the rhetorical question, 'Can we build a nation of Singaporeans, in Southeast Asia, on the basis of values and concepts native to other peoples, living in other environments?' It goes on: 'If we are not to lose our bearings, we should preserve the cultural heritage of each of our communities, and uphold certain common values which capture the essence of being a Singaporean.'¹³ It then finds certain perceptions and values which are common to the different ethnic communities of Singapore and which also distinguish them from societies in the West.

The key section of the white paper is devoted to a discussion of the relationship between the individual and society. Disputing the proposition that values are universal and common to all mankind, it states that there is

a major difference between Asian and Western values in the balance each strikes between the individual and the community; Asian societies emphasize the interests of the community, while Western societies stress the rights of the individual. The Singapore society has always weighted group interests more heavily than individual ones. 'This balance has strengthened social cohesion, and enabled Singaporeans to pull together to surmount difficult challenges collectively, more successfully than other societies. An emphasis on the community has been a key survival value for Singapore.'¹⁴

The core values of the Asian society are identified as placing society above self, upholding the family as the building block of society, and resolving major issues through consensus instead of contention. There is a strong element of Confucianism in this elaboration, although the government denies that the values it propagates are purely Confucian. It does, however, pick up an element of Confucian teaching as particularly relevant to Singapore.

The concept of government by honourable men (*junzi*), who have a duty to do right for the people, and who have the trust and respect of the population, fits us better than the Western idea that a government should be given as limited powers as possible, and should always be treated with suspicion unless proven otherwise.¹⁵

The supremacy of political authorities is emphasized by the first of the *Shared Values*, 'Nation before Community'.

Another aspect of Asian values, implicit though not explicit in the white paper, is the importance of duty as a counterpoint to right. The cohesion of society as well as the fulfilment of the individual is secured through a chain and hierarchy of duties. (The primacy of the notion of duty is emphasized elaborately both in the Chinese and Indian constitutions).¹⁶ The individual does not disappear altogether as a bearer of rights in the Singapore white paper. However, characteristically the concern with the individual is expressed more in terms of the obligations of the community to look after its less advantaged members. (In Singapore there is a twist to this, in that the 'community' in question is the ethnic community of the individual, not the state, 'to avoid the dependent mentality and severe social problems of a welfare state as experienced in many developed states',¹⁷ laying the foundations of a kind of community corporatism in the wake of declining popularity of the ruling party, showing how much these questions are viewed in that country from the perspectives of governance and management.)

Cultural 'embeddedness' is not the only justification for this view of the relationship between the individual and the community and the interposition of the family. It is also said to be rooted in more pragmatic considerations. The white paper hints at this, but it has been developed elsewhere. In Southeast Asia at least, there is a strongly held view that an authoritarian political system is the secret of its economic success, and the frequent Singaporean mocking of the democratic efforts of the Philippines (with a rather inefficient economy) is advanced as proof of it. But there is also the belief that it is not the individual but the family (tied in to a network of clan associations and relationships) which has been at the forefront of the phenomenal economic success of the region. It appears to be the view of a

significant number of people (primarily but not only among the business community as is certainly evident in the debates in Hong Kong) that this combination of authoritarian rule and family and kinship networks lies at the root of economic success.¹⁸ This model (which reverses the normal understanding of the relationship between the market, individualism and the rule of law) is seen to be threatened by democracy and human rights. Hence democracy and human rights are not high on many people's agenda.

A critique of the official perspectives

In this section I offer a brief critique of some aspects of the official perspectives outlined above (although these views are not entirely devoid of merit). The 'communitarian' argument suffers from at least two weaknesses. First, it overstates the 'individualism' of Western societies and traditions of thought. Even within Western liberalism there are strands of analysis which assert claims of the community (e.g. Rousseau); and most Western human rights instruments allow limitations on and derogations from human rights in the public interest, or for reasons of state. Western courts regularly engage in the task of balancing the respective interests of the individual and the community.¹⁹ Furthermore, liberalism does not exhaust Western political thought or practice. There is social democracy, which emphasizes collective and economic rights, and Marxism, which elevates the community to a high moral order and is also reflective of an important school of Western thought. Even within liberal societies there are nuances in the approach to and the primacy of human rights, as becomes evident when one examines the differences among the United States, Canada, France and the United Kingdom. There is much celebration in Western political thought of 'civil society'.²⁰

Secondly, Asian governments (notwithstanding the attempt in the Singapore white paper to distinguish the 'nation' and the community) fall into the easy but wrong assumption that they or the state are the 'community'. (A similar conflation occurs in the African Charter of Human and Peoples' Rights).²¹ Nothing can be more destructive to the community than this conflation. The community and state are different institutions, and to some extent in a contrary juxtaposition. The community, for the most part, depends on popular norms developed through forms of consensus and which are enforced through mediation and persuasion. The state is an imposition on society, and unless humanized and democratized (as it has not been in most of Asia), it relies on edicts, the military, coercion and sanctions. It is the tension between them which has underpinned human rights.

In the name of the community, most Asian governments have stifled social and political initiatives of private groups. Most of them have drafted draconian legislation, like the British colonially inspired Societies Act²² which gives the government pervasive control over civil society. Similarly rights to assemble and march peacefully have been mortgaged to the government. Governments have destroyed many communities in the name of development or state stability, and the consistent refusal of most of them to recognize that there are indigenous peoples among their population (who have a right to preserve

their traditional culture, economy and beliefs) is but a demonstration of their lack of commitment to the real community. The vitality of the community comes from the exercise of the rights to organize, meet, debate and protest, dismissed as 'liberal' rights by these governments.

It is ironic that the 'community' is much more lively and significant in the supposedly individualistically orientated Western states than in Asian states which are in the custody of governments which pay lip-service to the primacy of the community (even to the extent, as in Singapore, of defining values for the community!). Nor is the tight regulation of society as in Singapore and Malaysia particularly Confucian. Confucius argued against reliance on law or coercion, and advocated a government of limited powers and functions.

Another attack on the community comes from the economic policies of the governments, and for the most part these are market policies. Although Asian capitalism appears to rely on the family and clan associations, there is little doubt that it weakens the community and its cohesion. The organizing matrix of the market is not the same as that of the community. Nor are its values or methods particularly 'communitarian'. The moving frontier of the market, seeking new resources, has been particularly disruptive of communities which have managed to preserve intact a great deal of their culture and organization during the colonial and post-colonial periods. The emphasis on the market together with individual rights of property is also at odds with communal organization and enjoyment of property (and a further irony is that Asian leaders who allege their allegiance to communal supremacy and values are among the most ardent opponents of a Marxism that espouses the moral worth and authority of the community).

Market policies have relied greatly on multinational capital and corporations, which have brought new values and tastes, and are increasingly integrating their economies and élites into a global economy and culture. Indeed it is these very considerations which prompted the Singapore white paper, but the contradictions of official policies largely escaped its authors. It totally ignored the impact, indeed the onslaught, of modern technologies on traditional communities.

A final point is the contradiction between claims of a consensus and harmonious society and the extensive arming of the status apparatus. The pervasive use of draconian legislation like administrative detentions, disestablishment of societies, press censorship, sedition, etc. belies claims to respect alternative views, promote a dialogue, and seek consensus. The contemporary state intolerance of opposition is inconsistent with traditional communal values and processes. I fear that the contemporary state processes in Asia are worse than the much-derided adversarial processes of the West, which at least ensure that all parties get a fair hearing.

Non-official voices

Non-official voices are many. For reasons of space, this section concentrates on the views of the non-government organizations (NGOs). But there are other voices that must be taken into account. The views on human rights of

the most oppressed are not articulated, or, when articulated, are not heard. They are the worst victims of the denial of human rights, and in desperation they turn to violence or other dramatic challenges to authority. An important and articulate group are intellectuals who are alienated from the state, and for the most part are not apologists for the regime. Intellectuals respond to and engage in international debates, and like the NGOs they form networks with their counterparts in other parts of the world. Like the NGOs they have a commitment to human rights and democracy (even in China there is a growing and vibrant academic community with a keen interest in human rights and constitutionalism). They are less ready to accept Western conceptions in totality, and attempt to relate questions of human rights to specific national conditions.

An authoritative statement of the position of Asian NGOs was issued on 27 March 1993 on the occasion of the Asian intergovernmental conference on human rights preceding the Vienna World Conference.²³ It endorsed its commitment to the view that human rights are universal, and are equally rooted in different cultures. While it supported cultural pluralism, it condemned those cultural practices which derogate from universally accepted human rights. Since in its view human rights are of universal concern and universal value, it does not regard the advocacy of human rights as an encroachment upon national sovereignty. Indeed it recommends international cooperation and solidarity for the promotion of human rights as a refutation of claims of national sovereignty over human rights issues. The NGOs' signatories of the statement support the principle of the indivisibility and interdependence of human rights.

If in these perspectives the views of the NGOs are at variance with those of governments, there is some common ground on other points. The NGOs attribute the poor state of human rights to the international economic order, whose reform, through structural changes as well as the adoption of a Convention on the Right to Development, they urge. Unlike the governments, they see a much closer connection with domestic oppression and international exploitation, in the collaboration of local economic and political élites with multinational corporations and aid agencies. Unlike the governments, they are critical of the consequences of the market system. They share with governments the desire to establish a broad framework for the analysis of human rights, but their framework (unlike that of governments which is informed by a statist view of development) is suffused with notions of social justice, eradication of poverty through equitable distribution of resources and the empowerment of people, especially women and other disadvantaged communities.

The NGOs also part company from governments in their assessment of the state of human rights, which they find marked by massive and terrible violations of these rights and pervasive lawlessness on the part of state authorities. They deplore the militarization of their governments and societies which is a primary cause of these violations. Their prescription for the ills of their countries is thorough-going democracy and an unambiguous recognition and enforcement of human rights.

Conclusions

It is clear that it is no longer possible for Asian governments, NGOs or scholars to ignore the international discourse of human rights. Nor have they chosen to do so. Even China has engaged vigorously in this discourse, refusing to accept a purely defensive position even in the face of criticisms about the massacre in Tiananmen Square, arbitrary detentions, extensive use of capital punishment, and prison labour. It has instead opted to establish the legitimacy of a distinctive approach to human rights. Other countries have also tried to establish a distinctive Asian approach. This is surely a correct position for the context of human rights is delineated by the social and economic conditions of the place and the time. So-called universal human rights of the West have evolved over a long period of European history, responding to the changing configurations of power and the tasks of each epoch of history. Claims of universality and indivisibility of rights are hard to sustain in the face of the West's history of the oppression of its own people and of others, with slavery which once enjoyed religious approbation, abuse of child labour, the exploitation of colonies and the other deprivations of imperialism and racism. Nor is the process complete. Social welfare rights were acknowledged only in this century, and the appalling degradation of the environment has now set the stage for a new conception of rights and responsibilities, in which the community will have to be accorded a key position as a bearer of rights as well as duties. There is no reason why contemporary concerns and fads in the West should define the parameters of international discourse in and aspirations of human rights.

If human rights have to be located in their social and economic contexts, what are the appropriate features that constitute the context for them in Asia? We should first perhaps abandon the search for a set of features that explain the whole Asian context, since there is such a marked diversity among Asian countries. There appears to be no common context between the small, urbanized, economically prosperous Singapore and the vast, impoverished, largely rural India. I have already indicated that the attempt to establish a common context through the invocation of a common and distinctive culture is spurious. I do not argue that culture is irrelevant, but that the implications drawn from it by governments are disingenuous.

If one may generalize (despite my preceding remarks), the following specifics of the Asian situation stand out. The first point is that the function of human rights (and discourse on them) in Asia is quite different from that in the West. Human rights in the West have responded to the configurations of power and economic relationships as they have evolved over a long period. They are consequently consistent with the patterns and structures of authority, and people's aspirations as well as expectations. There are no serious competing paradigms of political organization. The role of human rights is to fine-tune the administrative and judicial system and fortify rights and freedoms that are largely uncontroversial. In Asia, on the other hand, human rights have a transformative potential. They are a constant challenge to vested interests and authority in societies riven by enormous disparities of wealth and power, with traditions of authoritarianism and the helplessness of

disadvantaged communities, of militarization and the conjunction of corrupt politicians and predatory domestic and international capital. Human rights are therefore a terrain for struggle for power and the conceptions of good society. It is for this precise reason that Asian governments have engaged in the debate with the West which I outlined above; the real audience is their own people.

The second point is that there are massive violations of human rights in Asia; of women and children, of lower castes and otherwise disadvantaged communities, of ethnic minorities, of workers. Violations range over the whole conspectus of human rights; civil and political rights, as well as cultural, social and economic; there are mass killings and widespread disappearances; torture; wide displacements of communities from their traditional abode; arbitrary detentions and extensive censorship of thought and expression. The state is a major culprit, brutalizing whole populations, but massive violations also take place in and through civil society, sometimes with the connivance of the state, and frequently reflecting feudalistic and patriarchal dimensions of culture. Social conflicts, particularly those stemming from ethnic or caste differences, have politicized and militarized civil society in many states. These developments should caution us against over-romanticization of civil society (which in India, for example, is a major source of the oppression of millions of people, through murder and rape, bonded labour, and a web of discriminatory and punitive customs and practices).²⁴

The third point is that despite these violations, human rights consciousness is low. Explanations for this paradox may lie in the weight of oppression over centuries, a fatalistic acceptance of one's miseries, obstacles placed in the way of those who would seek to make explicit to the downtrodden the causes of their oppression. It certainly lies in the ethnic divisions of societies; ethnic consciousness can dull human rights consciousness, for the oppression of others is frequently viewed as their just rewards. A major challenge to human rights workers is undoubtedly this ethnic consciousness which compels a perception of outsiders as less than human. Another cause of low human rights consciousness may be widespread poverty. Poverty is a great cause of the denial of human rights. The international system refuses to accept this reality—for largely political reasons. It refuses to acknowledge that poverty destroys human dignity, and without human dignity there can be no human rights or indeed the capacity to challenge the system of oppression.

Thus, economic development is undoubtedly important. But not just any kind of economic development. Economic growth must be accompanied by a wide measure of egalitarianism, the protection of the rights of workers, particularly migrant workers, and democratic practices at work-places. Nor must economic growth be undertaken at the expense of land, customs and autonomy of long-settled communities. Unless these and other community concerns are safeguarded in the process of economic growth, development is perverse and adds to the violations of human rights and dignity.

A further point about human rights in Asia is that challenges to their violations are not individual-based but group- or class-based. This is particularly the case in multi-ethnic states. The protection of human rights is therefore pursued through the group. This fact, and that the state is a major

violation of human rights, suggests strategies that are different from the traditional Western approaches, which are legalistic and court-centred. Asian strategies cannot realistically be court-centred, however favourably the judiciaries may be disposed towards human rights (and for the most part they are not). Human rights awareness and mobilization based on connections between them and their oppression are a fundamental starting point (connections for which neither local governments nor the West is anxious should be made).

Nor must the terrain of struggle be purely domestic. Despite the resistance of governments, the realization of human rights in each country is intimately tied to wider global forces (particularly in the contemporary world-wide pursuit of marketization). Even today many governments in the Third World are surrogates for external economic and political interests, and it is necessary to take the battle to the homelands of these interests, just as it is necessary to recruit foreign interests to put pressure on domestic governments which deny their people the right to participate in decisions affecting their own destiny. Fruitful Asian perspectives on human rights must therefore transcend obfuscation of culturalism, locate human rights in the contingencies of their political economy, and urge struggle domestically as well as globally.

Notes

1. The Declaration was published in the *Law and Society Trust Fortnightly Review*, vol. 3, no. 57 1 May 1993, pp. 1-3.
2. Indian Constitution, see Articles 14 and 17, and the Directive Principles of State Policy (particularly Articles 42 and 46) which sets a wide agenda of social reform consisting largely of attack on traditional values and practices.
3. These differences dominated the World Conference on Human Rights in Vienna in June 1993. These differences could not be reconciled, although in the end they were papered over by genuflections to a series of contradictory positions. Perhaps the basic achievement of the World Conference was that it kept open the possibility of further dialogue rather than achieving any meaningful consensus on substance or procedure. For details see The Declaration, *Law and Society Trust Fortnightly Review*, op. cit., paragraph 7.
4. *Human Rights in China* (Beijing: Foreign Languages Press, Vol. 1, 1991). The white paper was published by the State Council to refute the charges of human rights violations in China. The quotation occurs on p. 2.
5. Statement by Zhang Yishan, Alternate Representative of the Chinese Delegation at the 49th Session of the Commission on Human Rights (February 1993), p. 2.
6. The Declaration, *Law and Society Trust Fortnightly Review*, op. cit., paragraph 8.
7. *Human Rights in China*, op. cit., p. 2, footnote 2.
8. *Human Rights in China*, op. cit., pp. 4-5, footnote 2.
9. Letter written by the Singapore Minister for Home Affairs, Mr Jayakumar, dated 24 June 1987, addressed to US Congressmen who had written to complain about the detentions.
10. *Human Rights in China*, op. cit., p. 8.
11. The Declaration is reprinted in the *Compilation of International Human Rights Instruments* (Geneva: The Human Rights Centre, 1991). I have criticized the Declaration in *Whose Human Right to Development?* (London: Commonwealth Secretariat, 1989).

12. *Shared Values*, Cmd. 1 (Singapore: Singapore National Printers Ltd. Government Printers, 1991).
13. Quoted in presidential address to Parliament in January 1989, p. 1.
14. Presidential address, paragraph 26, p. 5.
15. Presidential address, paragraph 41, p. 8.
16. Chapter 2 of the Chinese Constitution is entitled 'The Fundamental Rights and Duties of Citizens'. Article 42 states that Chinese citizens have the right as well as the duty to work and Article 46 says that they have the duty as well as the right to receive education. Other duties include safeguarding the 'unification of the country and the unity of all its nationalities' (Article 52); abiding by the Constitution and the law, keeping of state secrets, protection of public property, observing labour discipline and public order, and respecting social ethics (Article 53); safeguarding the security, honour and interests of the motherland and a prohibition against acts detrimental to the security, honour and interests of the motherland (Article 54); and to pay taxes (Article 56). Article 55 states 'the sacred duty of every citizen of the People's Republic of China to defend the motherland and to resist aggression' as well as 'to perform military service and join the militia in accordance with the law'.
17. The Indian Constitution requires citizens, *inter alia*, to abide by the Constitution, protect the sovereignty, unity and integrity of India, to promote harmony and the spirit of common brotherhood amongst all the people of India, and to renounce practices derogatory to the dignity of women, and to safeguard public property and abjure violence (Article 51-A).
17. Presidential address, paragraph 38, p. 7.
18. I have reviewed this literature (and examined its implications for the centrality or otherwise of the rule of law) in 'Capitalism and the rule of law: reflections on the Basic Law', in Raymond Wacks (ed.), *Legal Theory: China, Hong Kong and 1997* (Hong Kong: Hong Kong University Press, 1993).
19. See, for example, Will Kymlicka, *Liberalism, Community, and Culture* (Oxford: Clarendon Press, 1989).
20. See John Keane (ed.), *Civil Society and the State: New European Perspectives* (London: Verso, 1988).
21. The African Charter was adopted in Nairobi in June 1981. Its preamble refers to the 'values of their historical tradition and the values of African civilisation which should inspire and characterise their reflection on the concept of human rights and peoples' rights'.
22. The Societies Ordinance of Hong Kong (before its recent amendment following the Hong Kong Bill of Rights Ordinance) is fairly typical of this kind of legislation.
23. The Bangkok NGO Declaration reprinted in *Law and Society Fortnightly Review*, vol. 3, no. 57 (1 May 1993), pp. 5-21.
24. The framers of the Indian Constitution were well aware of these problems of civil society. Article 15 declared illegal discriminations on grounds, *inter alia*, of caste, in, for example, access to wells, tanks, bathing ghats, roads and other places of public resort. Article 17 abolished untouchability and its practice in any form. Article 23 prohibited traffic in human beings and forced labour, particularly the traditional form of bonded labour known as 'begar'. There are various laws at the central and state levels to implement these provisions, particularly the Civil Rights Act of 1955 (expanded and renamed as the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act in 1989). Despite these attempts, the social and economic position of these disadvantaged communities shows little improvement.

HUMAN RIGHTS QUARTERLY

Universality of Human Rights and Cultural Diversity: Implementation of Human Rights in Different Socio-Cultural Contexts

Christina M. Cerna*

THE NATURE OF THE DEBATE

Forty-five years ago, on 10 December 1948, the international community adopted, by consensus, the Universal Declaration of Human Rights,¹ still the preeminent document in the growing corpus of human rights instruments. Today, a group of nations is seeking to redefine the content of the term "human rights" against the will of the Western states. This group sees the current definition as part of the ideological patrimony of Western civilization. They argue that the principles enshrined in the Universal Declaration reflect Western values and not their own. They complain that the West is interfering in their internal affairs when it imposes its own definition of human rights upon them, and that it hampers their trade and weakens their competitiveness. Because of social and cultural differences in their countries, they say, they should not be held to the same standards. This attempt to undermine the notion of the universality of human rights is attributed to such countries as China, Colombia, Cuba, Indonesia, Iran, Iraq, Libya, Malaysia, Mexico, Myanmar, Pakistan, Singapore, Syria, Vietnam, and Yemen. These countries are all in the third world, although the strongest advocates of this position are the Asian states experiencing the most dynamic economic growth.

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1. Universal Declaration of Human Rights, adopted Dec. 10, 1948, G.A. Res. 217A, U.N. GAOR, 3rd Sess., at 71, U.N. Doc. A/810 (1948) (hereinafter Universal Declaration).

This debate was center-stage at the second UN World Conference on Human Rights, held in June 1993 in Vienna, Austria. The Western states were reportedly concerned that the universality of human rights might be eroded. Their first priority was damage control to insure "that the conference issue[d] a strong endorsement of the universality of human rights and reject[ed] the idea that such rights can be measured differently in some countries."² The US administration dismissed the argument that any definition of human rights should consider regional social and cultural differences. It countered that such a position is a screen behind which authoritarian governments can perpetuate abuses.

The Vienna Declaration and Programme of Action,³ adopted by the World Conference on Human Rights on 25 June 1993, contained thirty-nine "paragraphs" (the term chosen in lieu of "principles," which was considered unacceptable by certain delegations) and a "programme of action." The universality of human rights was affirmed repeatedly:

Paragraph 1: The World Conference on Human Rights reaffirms the solemn commitment of all States to fulfil their obligations to promote universal respect for, and observance and protection of, all human rights and fundamental freedoms for all in accordance with the Charter of the United Nations, other instruments relating to human rights, and international law. The universal nature of these rights and freedoms is beyond question.

Paragraph 5: All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.

Paragraph 32: The World Conference on Human Rights reaffirms the importance of ensuring the universality, objectivity and non-selectivity of the consideration of human rights issues.

Paragraph 37: Regional arrangements play a fundamental role in promoting and protecting human rights. They should reinforce universal human rights standards, as contained in international human rights instruments, and their protection. The World Conference on Human Rights endorses efforts under way to strengthen these arrangements and to increase their effectiveness, while at

2. Alan Riding, *A Rights Meeting: But Don't Mention the Wronged*, N.Y. TIMES, 14 June 1993, at A3.

3. The Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights 24 June 1993, U.N. Doc. A/Conf. 157/24 (Part 1), at 20-46 (13 Oct. 1993).

the same time stressing the importance of cooperation with the United Nations human rights activities.

The World Conference on Human Rights reiterates the need to consider the possibility of establishing regional and subregional arrangements for the promotion and protection of human rights where they do not already exist.⁴

Achieving a consensus on the reaffirmation of the universality of human rights, forty-five years after the adoption of the Universal Declaration, was perhaps the most significant success of the World Conference. To put the achievement in its proper perspective, however, it should be recalled that when the Universal Declaration was adopted, forty-eight states voted in favor of its adoption, none against, eight abstained (Byelorussia, Czechoslovakia, Poland, Saudi Arabia, the Ukraine, the Union of South Africa, the Soviet Union, and Yugoslavia), and two were absent (Honduras and Yemen). As we will examine further on, some of the states that abstained did so because they were unable to accept certain provisions of the Universal Declaration. In Vienna, 172 states participated in the adoption of the Vienna Declaration, having achieved a hard wrought consensus. Because of the repeatedly articulated challenge from diverse sectors, reaffirmation of the universality of human rights had to be hammered into the Vienna Declaration again and again, almost to the point of redundancy.

The preparatory work leading to Vienna did not bode well for a successful outcome on this issue. Three regional, preparatory meetings had been held prior to the World Conference: in Africa, in the Latin American and Caribbean region, and in Asia. At the end of each of these meetings, a "Final Declaration" was adopted which referred to the particular concerns of each region.⁵ The preambles to the Latin American and Asian regional declarations referred to the regions' cultures. In the preamble to the San Jose Declaration, the Latin American states:

[reaffirm[ed] that our countries represent a broad grouping of nations sharing common roots within a rich cultural heritage based on a combination of various peoples, religions and races, and that our roots unite us in the search for collective solutions to present problems through friendly dialogue, peaceful

4. *Id.*
 5. Final Declaration of the Regional Meeting for Africa of the World Conference on Human Rights, Report of the Regional Meeting for Africa of the World Conference on Human Rights (Tunis, 2-6 Nov. 1992), at 1, A/Conf.157/AFRM/14 - A/Conf. 157/PC/57 (24 Nov. 1992); Final Declaration of the Regional Meeting for Latin America and the Caribbean of the World Conference on Human Rights (San Jose, 18-22 Jan. 1993), at 3, A/Conf. 157/LACRM/15 - A/Conf.157/PC/58 (11 Feb. 1993) (hereinafter San Jose Declaration); Final Declaration of the Regional Meeting for Asia of the World Conference on Human Rights, Report of the Regional Meeting for Asia of the World Conference on Human Rights (Bangkok, 29 Mar.- 2 Apr. 1993), at 3, A/Conf.157/ASRM/8 - A/Conf.157/PC/59 (7 Apr. 1993) (hereinafter Bangkok Declaration).

"national and regional particularities and various historical, cultural and religious backgrounds"¹²—a direct reference to the language of this paragraph in the Bangkok Declaration. What does it mean, in operational terms, to consider the significance of these issues? Other preparatory meetings of the World Conference, such as the Rights and Humanity Round Table on Strengthening Commitment to the Universality of Human Rights, held at Amman in April 1993, provided little guidance on this question. The participants in the Round Table simply recommended that "the universality of human rights requires respect for the diversity of faiths and cultures."¹³

THE CHALLENGE TO UNIVERSALITY

The Vienna Declaration and the regional declarations reiterated that all human rights—civil and political, as well as economic, social, and cultural—should be implemented simultaneously, and that neither set of rights should take precedence over the other. The challenge to the concept of the universality of human rights coming primarily from Asia, had to do with "private" rights.

All states are willing to accept the universality of a certain core group of rights. These are the rights that are listed in the human rights treaties as "non-derogable" rights or are considered *jus cogens*.¹⁴

The major distinguishing feature of such rules [of *jus cogens*] is their relative indelibility. They are rules of customary law which cannot be set aside by treaty or acquiescence but only by the formation of a subsequent customary rule of contrary effect. The least controversial examples of the class are the prohibition of the use of force, the law of genocide, the principle of racial non-discrimination, crimes against humanity, and the rules prohibiting trade in slaves and piracy. . . .

12. *Id.* ¶ 8.
 13. *Rights and Humanity Round Table: Strengthening Commitment to the Universality of Human Rights*, ¶ 1(iv), World Conference on Human Rights Preparatory Committee: Report of the Secretary-General, U.N. GAOR, 4th. Sess., Agenda Item 6, at 4, U.N. Doc. A/Conf. 157/PC/42/Add. 7 (28 Apr. 1993).
 14. As regards the catalogue of non-derogable rights, see the International Covenant on Civil and Political Rights, adopted 16 Dec. 1966, art. 4, G.A. Res. 2200, U.N. GAOR, 21st Sess., Supp. No. 16, at 52, U.N. Doc. A/6316 (1966); the European Convention for the Protection of Human Rights and Fundamental Freedoms, concluded 4 Nov. 1950, art. 27(2), Europ.T.S. No. 5 [hereinafter European Convention]. See also Vienna Convention on the Law of Treaties, opened for signature 23 May 1969, art. 53, U.N. Doc. A/Conf. 39/27 (1969). A peremptory norm of general international law is defined as a "norm accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character." *Id.*

coexistence and respect for pluralism and the principles of national sovereignty, non-interference in the internal affairs of States and self-determination of peoples.⁶

Similarly, in the preamble to the Bangkok Declaration, the Asian states also referred to their rich cultural traditions and noted "the contribution that can be made to the World Conference by Asian countries with their diverse and rich cultures and traditions."⁷

Unlike the ancient African and Latin American cultures which effectively have been destroyed by the ravages of colonialism, the Asian civilizations maintained a direct link with the cultures and traditions of their ancestors.⁸ It is, without doubt, this ancient cultural heritage, the region's enormous population, and its dramatic, relatively recent economic prosperity which provided the Asian governments with the confidence to challenge international human rights as a Western ideological imposition.

The Bangkok Declaration made thinly veiled references to what the Asian states considered intervention in their internal affairs and the imposition of alien values:

Stressing the universality, objectivity and non-selectivity of all human rights and the need to avoid the application of double standards in the implementation of human rights and its politicization,

Recognizing that the promotion of human rights should be encouraged by cooperation and consensus, and not through confrontation and the imposition of incompatible values . . .

The Bangkok Declaration included a controversial statement that the Asian states "[r]ecognize that while human rights are universal in nature, they must be considered in the context of a dynamic and evolving process of international norm-setting, bearing in mind the significance of national and regional particularities and various historical, cultural and religious backgrounds."¹⁰ Perhaps in order to facilitate the consideration of human rights in an Asian historical, cultural, and religious context, the Bangkok Declaration also supported the possibility of establishing a regional arrangement for the promotion and protection of human rights in Asia.¹¹

Some Western delegations, such as the United States, dismissed the argument that any definition of human rights should take account of

6. San Jose Declaration, *supra* note 5, preamble.
 7. Bangkok Declaration, *supra* note 5, preamble.
 8. For example, the Chinese characters, in which many modern Asians write today, were invented thousands of years ago, but have been in continuous use.
 9. Bangkok Declaration, *supra* note 5, preamble.
 10. *Id.* ¶ 8.
 11. *Id.* ¶ 26.

Other rules which probably have this special status include the principle of permanent sovereignty over natural resources and the principle of self-determination.¹⁵

In further attempting to define the catalogue of rights which have achieved universal acceptance, it is useful to consult the positions of individuals who have been most critical of Western attitudes in the area of human rights. For example, Mr. Kishore Mahbubani, Deputy Secretary of the Ministry of Foreign Affairs of the Republic of Singapore, was quite critical of "the aggressive Western promotion of democracy, human rights and freedom of the press to the Third World at the end of the cold war."¹⁶ He conceded that:

both Asians and Westerners are human beings. They can agree on minimal standards of civilized behavior that both would like to live under. For example, there should be no torture, no slavery, no arbitrary killings, no disappearances in the middle of the night, no shooting down of innocent demonstrators, no imprisonment without careful review. These rights should be upheld not only for moral reasons. There are sound functional reasons. Any society which is at odds with its best and brightest and shoots them down when they demonstrate peacefully, as Myanmar did, is headed for trouble. Most Asian societies do not want to be in the position that Myanmar is in today, a nation at odds with itself.¹⁷

(It is interesting to note that, while Singapore formed part of the consensus at Vienna, it has not ratified any of the UN human rights instruments for which there are treaty bodies monitoring implementation).

Some publicists of international law argue that all the rights set forth in the Universal Declaration of Human Rights have become customary international law and, as such, have achieved universal acceptance as legally binding obligations on states.¹⁸ These civil, political, economic, and social rights have been most widely recognized in constitutions around the world.

In 1948, when the Universal Declaration was adopted, Eleanor Roosevelt, as Chair of the Commission on Human Rights, stated that the Declaration "is not and does not purport to be a statement of law or of legal obligation," but

15. Ian Brownlie, *Principles of Public International Law* 513 (1990) (footnotes omitted).
 16. Kishore Mahbubani, *An Asian Perspective on Human Rights and Freedom of the Press*, ¶ 3, Status of Preparation of Publications, Studies and Documents for the World Conference, U.N. Doc. A/Conf.157/PC/63/Add.2B (4 May 1993) (letter dated 29 Apr. 1993 from the Permanent Representative of the Republic of Singapore to the Coordinator of the World Conference on Human Rights).
 17. *Id.* ¶ 47.
 18. See, e.g., the Montreal Statement of the Assembly for Human Rights (22-27 Mar. 1968), *Montreal Statement*, reprinted in J. INT'L COMM. ON JURISTS, June 1968, at 94 (statement issued by nongovernmental meeting of experts on human rights issues).

rather that it is "to serve as a common standard of achievement for all peoples of all nations."¹⁹ In 1968, at the first World Conference on Human Rights, the international community proclaimed: "The Universal Declaration of Human Rights states a common understanding of the peoples of the world concerning the inalienable and inviolable rights of all members of the human family and constitutes an obligation for the members of the international community."²⁰

Although the rights set forth in the Universal Declaration have been incorporated into many constitutions in the world, most publicists do not consider the entire Declaration to have become custom and thereby legally binding. The entire document failed to crystallize into custom because, since 1948, certain provisions have not been universally accepted. These provisions regard private rights which relate to the private sphere or personal life of the individual. These rights have traditionally been covered by religious law; they still are in many countries.

This private sphere, which deals with issues such as religion, culture, the status of women, the right to marry and to divorce and to remarry, the protection of children, the question of choice as regards family planning, and the like, is a domain in which the most serious challenges to the universality of human rights arise.

In 1948, the first clause of Article 18 of the Universal Declaration—"Everyone has the right to freedom of thought, conscience and religion"²¹—was acceptable to all religious faiths. However, the second clause—"this right includes freedom to change his religion or belief"²²—created problems for some Muslim states. They pointed out that the Koran forbids a Muslim to change his religion and criticized the Christian missionaries who sought to convert Muslims to Christianity. Saudi Arabia abstained on the final vote on the Universal Declaration in 1948 because of this clause. (Saudi Arabia, it should be noted in this context, is another state that has not ratified any of the United Nations human rights instruments for which there are treaty bodies monitoring implementation).

The number of states parties to an international treaty provides some evidence of universality, or the acceptance of the norms in that treaty by the international community. As of 1 September 1993, the nine UN human rights instruments for which there are treaty bodies monitoring implementa-

19. *General Assembly Adopts Declaration of Human Rights* (statement by Mrs. Franklin D. Roosevelt, US Representative to the U.N. GAOR, 9 Dec. 1948), *Distr. St. Bull.*, 19 Dec. 1948, at 751.
20. *Proclamation of Teheran*, ¶ 2, International Conference on Human Rights, 22 Apr. - 13 May 1968, U.N. GAOR, 23rd Sess., U.N. Doc. A/Conf. 32/41 (1968) (emphasis added).
21. Universal Declaration, *supra* note 1, art. 18.
22. *Id.*

As of 1 September 1993, 169 member states of the United Nations (of a total membership of 184 states) and three non-member states were a party to one or more of these instruments and fifteen member states were not a party to any.

A state's ratification of an international human rights instrument is not sufficient evidence that the state, in fact, observes the provisions of that instrument. The four Geneva Conventions of 1949³² have the greatest number of states parties of any human rights/humanitarian law instrument. Yet the Geneva Conventions are honored perhaps more in the breach than in their observance. The converse is also not conclusive evidence of the contrary. For example, seventy-six states have become parties to the Convention Against Torture; yet Amnesty International charges that more than 110 states today continue to practice torture³³—it does not follow that all states which have not become parties to this Convention are engaging in the practice of torture.

Nonetheless, becoming party to an international human rights treaty is evidence of a state's intent to be legally bound by the provisions of that instrument. In that context, it is interesting to look at the reservations which states have made to the newest human rights treaty, the Convention on the Rights of the Child. A surprisingly large number of African and Asian states have made reservations to this Convention.

Kuwait, for example, reserved "on all provisions of the Convention that [were] incompatible with the laws of Islamic Shari'a and the local statutes in effect."³⁴ Similarly, Afghanistan, Egypt, Iran, Jordan, the Maldives, Pakistan, and Qatar all invoked Shari'a law as an obstacle to the full implementation of the provisions of the Convention.³⁵ Some states, such as Djibouti, undertook to adhere to the Convention to the extent that its provisions and articles were compatible with their religions and traditions.³⁶ Other states, such as Indonesia, ratified the Convention by stating that its ratification "[did] not imply the acceptance of obligations going beyond the Constitutional limits nor the acceptance of any obligation to introduce any right beyond those prescribed under the Constitution."³⁷ Several Western countries (Finland, Germany, Ireland, Norway, Portugal, and Sweden) objected to these reservations as "incompatible with the object and purpose of the Convention."³⁸ Curiously, they neither demanded the withdrawal of these

32. Geneva Conventions, *opened for signature* 12 Aug. 1949, 75 U.N.T.S. 31.
33. See generally AMNESTY INT'L, AMNESTY INT'L REPORTS 1989-1993 (1990-1994).
34. U.N., MULTILATERAL TREATIES DEPOSITED WITH THE SECRETARY-GENERAL (STATUS AS OF 31 DEC. 1992), at 192, U.N. Doc. ST/LEG/SER.E/11, U.N. Sales No. E.93.V.11 (1993).
35. *Id.* at 190-92.
36. *Id.* at 190.
37. *Id.* at 192.
38. *Id.* at 194-95.

tion have been ratified or acceded to by the following number of states (which are not necessarily member states of the United Nations):

- 1) the International Covenant on Economic, Social and Cultural Rights²³—124 states parties;
- 2) the International Covenant on Civil and Political Rights (CCPR)²⁴—122 states parties;
- 3) the Optional Protocol to the CCPR (on the right of individual petition)²⁵—seventy-four states parties;
- 4) the Second Optional Protocol to the CCPR, Aiming at the Abolition of the Death Penalty²⁶—nineteen states parties;
- 5) the International Convention on the Elimination of All Forms of Racial Discrimination²⁷—137 states parties;
- 6) the International Convention on the Suppression and Punishment of the Crime of Apartheid²⁸—ninety-seven states parties;
- 7) the Convention on the Elimination of All Forms of Discrimination against Women²⁹—125 states parties;
- 8) the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment³⁰ (Convention against Torture)—seventy-six states parties;
- 9) the Convention on the Rights of the Child³¹—146 states parties.

This list provides some information: for example, the international consensus on the abolition of the death penalty is still quite limited; on the other hand, there is an apparent consensus to protect the rights of the child.

23. International Covenant on Economic, Social and Cultural Rights, *adopted* 16 Dec. 1966, G.A. Res. 2200, U.N. GAOR, 21st Sess., Supp. No. 16, at 49, U.N. Doc. A/6316 (1966).
24. International Covenant on Civil and Political Rights, *supra* note 14.
25. Optional Protocol to the International Covenant on Civil and Political Rights, *adopted* 16 Dec. 1966, G.A. Res. 2200, U.N. GAOR, 21st Sess., Supp. No. 16, at 66, U.N. Doc. A/6316 (1966).
26. Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the Death Penalty, *adopted* 15 Dec. 1989, G.A. Res. 44/128, U.N. GAOR, 44th Sess., Supp. No. 49, at 206, U.N. Doc. A/44/824 (1989).
27. International Convention on the Elimination of All Forms of Racial Discrimination, *adopted* 7 Mar. 1966, G.A. Res. 2106A, U.N. GAOR, 20th Sess., Supp. No. 14, at 47, U.N. Doc. A/6014 (1965).
28. International Convention on the Suppression and Punishment of the Crime of Apartheid, *adopted* 30 Nov. 1973, G.A. Res. 3068, U.N. GAOR, 28th Sess., Supp. No. 30, at 75, U.N. Doc. A/9030 (1973).
29. Convention on the Elimination of All Forms of Discrimination Against Women, *adopted* 18 Dec. 1979, G.A. Res. 34/180, U.N. GAOR, 34th Sess., Supp. No. 46, at 193, U.N. Doc. A/34/46 (1979).
30. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *adopted* 10 Dec. 1984, G.A. Res. 39/46, U.N. GAOR, 39th Sess., Supp. No. 51, at 197, U.N. Doc. 39/51 (1984).
31. Convention on the Rights of the Child, *adopted* 20 Nov. 1989, G.A. Res. 44/25, U.N. GAOR, 44th Sess., U.N. Doc. A/RES/44/25 (1989).

reservations, nor did they object to the Convention entering into force for the states that formulated them.

The point here is that certain societies are unwilling to assume international human rights obligations in this private sphere—their own code of conduct, which is informed by their religious or traditional law, already covers this terrain. This tension between the universality of norms in the private sphere and the competing religious/traditional law renders all international human rights norms which have not become part of *jus cogens* suspect.

International human rights law has, in some sense, become the substitute for religion in secular societies. It aims to establish a minimum standard of decency, a common denominator of what is morally acceptable in a civilized society. For this reason, regional human rights arrangements have been more successful in securing compliance with international human rights norms; there is a shared history, geography, and, in some cases, language and religion, as well as a commonality of values. Interestingly, however, the regional supervisory human rights bodies have tended to defer to the religious or cultural particularities which generally are found within the private sphere—rather than finding the particularities incompatible with the common standard and the state's obligations under the regional instrument.

REGIONAL HUMAN RIGHTS BODIES AND UNIVERSALITY

The role of regional supervisory bodies for the protection of human rights is two-fold:

1. to provide an emergency device when something basically goes wrong in a country and to be able to inform the world as to what the problem is, and
2. to provide a common minimum human rights standard for the region, or what Professor Jochen Frowein has called (in the European context) the "constitutionalization of Europe."³⁹

The Vienna Declaration reaffirms the universality of human rights, but also states that regional particularities should be borne in mind. Can human rights norms be regional and universal at the same time? Are there regional human rights norms? Probably not, but as the hard cases in the regional systems prove, deference to regional particularities slows down the creation of a regional common standard.

39. Jochen Frowein, Presentation at the 2d Joint Conference of the American Society of International Law and the Nederlandse Vereniging voor Internationaal Recht (The Hague, July 1993).

An example of a European regional particularity presented itself in the *Johnston v. Ireland*⁴⁰ case before the European Court of Human Rights. Petitioners in the case challenged the prohibition on divorce set forth in the Irish Constitution.⁴¹ They argued that a right to divorce was inherent in the right to marry, protected by the European Convention on Human Rights;⁴² that thousands of couples were denied their right to marry because they had been unable, under Irish law, to divorce their previous spouses.

On the day of the oral arguments before the European Court, the Irish government held an overwhelmingly supported referendum on the issue. Pressured by Irish public opinion on the issue, the constitutional status of the prohibition on divorce, and the importance of Catholicism in Ireland, the court issued a judgment denying the right claimed.⁴³ The court distinguished Article 12 of the European Convention from Article 16 of the Universal Declaration of Human Rights, upon which Article 12 was based.⁴⁴ Article 16 provided "equal rights as to marriage, during marriage and at its dissolution."⁴⁵ The court concluded that, because this phrase was not incorporated into the European Convention, the Convention was not intended to guarantee a right to divorce;⁴⁶ therefore, the Irish prohibition on divorce was not incompatible with the European Convention.⁴⁷ The court effectively ignored the common, regional standard of the right to divorce, now available in most European states.

Similar deference to regional particularities has occurred in the inter-American system. A Catholic political action group, seeking to challenge the 1973 US Supreme Court case legalizing abortion,⁴⁸ brought a case before the Inter-American Commission on Human Rights.⁴⁹ The class action, on behalf of fetuses aborted in Massachusetts in 1973, based its claim on Article 4 of the American Convention on Human Rights: "Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception."⁵⁰

Because the United States had not ratified the American Convention, the Commission, according to its governing rules, applied the American

40. *Johnston v. Ireland*, App. No. 9697/82, 9 Eur. H.R. Rep. 203 (1987).

41. *Id.* Const. art. 41, § 3, cl. 2.

42. European Convention, *supra* note 14, art. 12.

43. 9 Eur. H.R. Rep. at 228.

44. *Id.* at 219.

45. Universal Declaration, *supra* note 1, art. 16.

46. 9 Eur. H.R. Rep. at 219.

47. *Id.* at 228.

48. *Roe v. Wade*, 410 U.S. 113 (1973).

49. Case 2141, Inter-Am. C.H.R. 25, OEA/Ser. L/V/II.54, doc. 9 rev. 1 (1981).

50. American Convention on Human Rights, signed 22 Nov. 1969, art. 4(1), O.A.S. Official Rec. OEA/Ser. L/V/II. 23, doc. 21, rev. 6 (English 1979).

Declaration of the Rights and Duties of Man.⁵¹ Article I of the American Declaration stated that "[e]very human being has the right to life, liberty and the security of his person."⁵² As the American Declaration did not directly address the issue of abortion, the Commission looked to the American Convention, reasoning that the two human rights instruments were, by nature, compatible. The *travaux préparatoires* to the American Convention revealed that it was not the intent of the drafters to prohibit abortion where it was legal. To accommodate the countries in which abortion was legal and to render the protection of Article 4 less absolute, the drafters added the phrase "in general."⁵³ Consequently, the Commission was able to find that the US Supreme Court decision legalizing abortion was not in violation of the American Declaration.⁵⁴

Roe v. Wade, however, had virtually made abortion available upon request during the first trimester of pregnancy; abortion in the United States was not limited to emergency cases as were the few examples of Latin American legislation allowing abortion (for example, to save the mother's life or in the case of rape). The common regional standard was to criminalize abortion, in line with the dictates of the Catholic Church, which absolutely prohibits abortion, even in the case of rape.

CONCLUSION

What conclusion can be drawn from this conflict between the purported universality of international human rights law and the limitations placed on universal acceptance of these norms by the different cultural and religious systems prevailing in the world? Can a system of international human rights norms be called truly universal as long as one state still refuses to accept them?

For example, a common argument is that Islamic law stands in stark opposition to the Universal Declaration of Human Rights.⁵⁵ The Universal Declaration guarantees the freedom to choose one's religion⁵⁶ and spouse,⁵⁷ both of which are restricted under Islamic law. Some commentators argue

51. Regulations of the Inter-American Commission on Human Rights, art. 48, Inter-Am. C.H.R., 49th Sess., 660th mtg., in HANDBOOK OF EXISTING RULES PERTAINING TO HUMAN RIGHTS IN THE INTERAMERICAN SYSTEM, at 138, OEA/Ser. L/V 11.60, doc. 28 (1983).

52. American Declaration of the Rights and Duties of Man, signed 2 May 1948, art. 1, O.A.S. Official Rec. OEA/Ser. L/V/II, 23, doc. 21, rev. 6 (English 1979).

53. Case 2141 at 39-42.

54. *Id.* at 43.

55. Martin Kramer, *Islam vs. Democracy*, COMMENTARY, Jan. 1993, at 35, 38.

56. Universal Declaration, *supra* note 1, art. 18.

57. *Id.* art. 16.

that it is not Islam that the West has to fear as its great, new ideological competitor after the fall of Communism; rather the West should fear the ideology of "soft authoritarianism" coming from Asia's most prosperous states.⁵⁸ There is also the complication of states reserving the right to implement an international human rights instrument only to the extent that it does not conflict with national constitutions and laws. Are these all attacks on the universality of human rights?

The only possible answer is that achieving universal acceptance of international human rights norms is a process, and different norms occupy different places on the continuum. Change and acceptance of these norms must ultimately come from within the region and cannot be imposed by outside forces. The creation of a regional human rights arrangement provides for its participants an accelerated acceptance in the region of a catalogue of international human rights norms. States with similar history, language, geography, religion, and culture have a greater influence checking the behavior of states which fail to respect the common regional denominator of decency. States outside the region, which cannot claim such ties, do not have the same influence.

Finally, there are no regional human rights norms; there are only regional arrangements which supervise compliance with international standards. The international supervisory bodies must realize that the international norms dealing with rights that affect the private sphere of human activity will take the longest time to achieve universal acceptance.

58. James Walsh, *Asia's Different Drum*, TIME (Int'l), 14 June 1993, at 50.

HUMAN RIGHTS QUARTERLY

DIANA: A Human Rights Database

Nicholas D. Finke
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Ronald Slye

There is a growing expectation among scholars from all disciplines that the resources of the world's research libraries be brought to the desktop. The complex universe of human rights literature invites both the electronic delivery of documentation to remote areas of the world and the imposition of order upon the burgeoning literature of this dynamic field. The information technology that has been developed over the past several years has created new potential for organization, retrieval, and dissemination of information that will facilitate the review of human rights literature.

A consortium of law librarians, university-based human rights centers, and other non-governmental human rights organizations is undertaking an ambitious project combining the evolving "information highway" and the needs of human rights advocates and researchers around the world for timely, authoritative literature in their discipline. The project is titled DIANA in honor of Diana Vincent-Daviss (1943-1993),¹ the former Librarian of Yale Law School and Deputy Director of the Orville H. Schell, Jr. Center for International Human Rights at Yale Law School. DIANA will promote the creation, organization, dissemination and preservation of primary and secondary electronic materials critical to human rights research.

A prototype of DIANA currently exists on the Internet on a World Wide Web server at the University of Cincinnati College of Law.² The prototype

1. Diana Vincent-Daviss was the first woman to head the libraries of both the New York University School of Law and Yale Law School. She was especially known for her work in the areas of preservation of library materials and international human rights. Her numerous publications in those areas include a three-part research guide on human rights law published in the N.Y.U. Journal of International Law and Politics (15 N.Y.U. Journal of International Law and Politics, 212-87 (1982)).

2. The Internet is a loose collection of thousands of computer networks available to millions of people around the world. It was born some twenty years ago as a US Department of

your own inclinations. Should you prevaricate or hesitate to face the truth you will have to account for it, for God is aware of what you do." (Qur'an, Surah 4, Al-Nisa, v. 135)

Buddhism: According to the Buddha, there are five facts which everyone should contemplate again and again:

- 1) I am subject to decay, and I cannot escape it.
- 2) I am subject to disease, and I cannot escape it.
- 3) I am subject to death, and I cannot escape it.
- 4) There will be separation from all that are dear and beloved to me.
- 5) I am owner of my deeds. Whatever deed I do, whether good or bad, I shall become heir to it.

Anthologies of stories gleaned from the folk culture are available in every country. Many of these stories are familiar to the people and, like Aesop's fables, they can be used in teachings and trainings to put across the message of harmonious and equitable social development, in which the grassroots people are given their rightful role, status and dignity.

A manual is now under preparation by ACFOD where many such references from the four major religions of West Asia are given in detail. Collections of effective stories, writings and religious quotations can be made by each worker so that a more complete account can be published in the future as a firm basis in religious faith for the place of justice, peace and human rights in human development

Fr. R.W. Timm

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Peace, Development and Human Rights: From Grassroots Perspectives in Asia

I.

Is it Enough?

Human rights activism in the U.S. and Europe today is not the same as human rights activism in Asia today. Indeed, human rights paradigms and practices evolved in the West might well prove to be inadequate to the task of redressing the **inhuman wrongs** that result from human rights violations currently taking place in Asia with such frequency and on so widespread a scale. But human misery and suffering, like human rights violations in the abstract, can tend to lose their power to generate ruth and indignation when they are so frequent as to be endemic and so pervasive as to become commonplace. The printed word documents horror story after horror story and yet the international community seems unmoved and unmoveable. Three examples of human rights problems, typical of Asia, underscore the point:

1. A few years ago an infant was used by drug carriers to smuggle narcotics from Thailand into Malaysia. The drug carriers killed the child, stuffed it with heroin, then wrapped it up and carried the "sleeping" child across the border. Though the gruesome incident has been denied by the authorities, the fact remains that, for the last decade, children have been smuggled from Thailand to Malaysia for crime, prostitution, cheap labour, and especially for illegal adoption. The reason behind this active trade is the great demand for babies in Malaysia. The gangs involved in the trade abduct the children or else buy them from prostitutes, unwed mothers,

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ing against serious and unabated ecological degradation occurring as a result of the government's developmental activities. They claim that their livelihood and their very survival are threatened. They are faced with leaving their homes and lands or else face slow death. (Source: The New York Times.)

These, and countless other "case studies" are not generally viewed by the international community as involving human rights problems and therein lies the key to the dismal record, over the last 40 years, in the realization of the rights of the disadvantaged. Crucial but disturbing questions need to be asked. Who are the disadvantaged and how did they become victims of denial of human rights? Why does such victimization take place predominantly at grassroots level? Who are the victimizers and why have they not been held accountable to human rights standards? What gaps in existing international human rights machinery and what flaws in existing international human rights conceptualization have led to a frustrating impotence, not only in realizing the human rights of the disadvantaged but also in preventing utterly inhuman wrongs?

Any effort to address these questions requires an understanding of why the Third World has rejected Western liberal paradigms of human rights and of the emerging Third World human rights empowerment approach.

II

The Baby and the Bathwater

In the decades after decolonization, several serious Third World scholars began to voice a trenchant criticism of the Western liberal human rights paradigm. They were accused of

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others desperate enough to sell their child for a pittance. In 1984, the Malaysian Marine Police rescued four babies who had been stuffed in suitcases and were being smuggled from Thailand into Malaysia. They had almost suffocated to death. In December 1987, a one-year-old baby girl was thrown into the river by her captors when police raided the house in Southern Thailand where she was being hidden. The child was in a serious condition when she was found by the police and died later. (Source: Newsletter of the Union of Civil Liberties, Thailand.)

2. In February 1988, nine deaths, all suicides by cotton farmers (including three women) were reported within a two-month period in the Prakasam district of Andhra Pradesh in India. All the victims were young, below 30 years of age. They were all small farmers cultivating cotton for the last four years. They had pledged their families' ornaments to meet the costs of raising the crop. The farmers borrowed heavily to make huge investments. But the returns were poor. Two factors were responsible. One was the "white fly" menace. The other, even more dangerous, was the sale of spurious pesticides, supplied by "vultures" out to exploit them. One such "vulture" was reportedly the son of a Minister. The heavy debt burden and consequent humiliation prompted some of the suicides. In the case of the three women, there were pressures from their in-laws. The District Collector of the area stated that arrangements were being made to provide compensation of Rs 3,000 to each victim's family under the Social Security insurance scheme. He assured that no criminal action would be taken against the victims families on humanitarian grounds. (Source: Indian Express.)

3. Residents in a northeastern province in China are fight-

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having thrown out the baby with the bathwater. But the fact remains that their critique was essential to exploding four myths that dominate Western thinking about human rights:

1. The myth of harmony would have us believe that it is truly possible to increasingly realize the rights of all without there being any losers. But this is wishful thinking. Both between countries and within countries, the rights of the have nots can only be successfully realized by restricting the rights of the haves. This was quite candidly and blatantly admitted as far back as 1948 by George Kennan (the then Head of the U.S. State Department Planning Staff) who stated:

"We have about 50% of the world's wealth, but only 6.3% of its population.... In this situation we cannot fail to be the object of envy and resentment... Our real task... is to maintain this position of disparity without positive detriment to our national security... To do so we will have to dispense with all sentimentality and day dreaming.. We should cease talk about vague and unreal objectives such as human rights, the raising of living standards and democratization. The less we are then hampered by idealistic slogans, the better." (As quoted by Noam Chomsky, *The Managua Lectures*, p. 15, Boston, 1989.)

Indeed, many of the human rights violations occurring in Asia today can be traced to the causal relationship that exists between need in the Third World and greed in the First World.

2. The myth of universality. While the values enshrined in human rights might be truly universal, it is a myth to believe that universal consensus exists about living up to such values. While human rights may be of a universal nature, their pro-

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tection strongly relies on regional systems which can better take into account regional particularities with regard to the implementation of human rights. All too often, universality has been invoked as an excuse by the West to justify cultural imperialism and certainly U.S. State Department practice has tended to use human rights to impose economic ideologies of capitalism and the free market system.

3. The myth of equality. While theoretically all persons are equal, in practice some are clearly more equal than others. In the words of a Philippine NGO, "all that there is, is all for the strong and none for the weak." Recognizing this fact of life, the Philippine national hero, Jose Rizal, urged that, "those who have less in life should have more in law." But this is all too rare in practice.

4. The myth of governmental lawfulness. Human rights in the West developed in societies where governments were essentially law abiding. Human rights then came into play to correct the occasional aberrations of the state machinery. However, in much of the Third World, we face large-scale governmental lawlessness. The chief lawmakers are also the chief lawbreakers. In such a context, human rights assume even greater significance but call for different strategies of enforcement.

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There are many reasons for Third World rejection of Western liberal paradigms of human rights. Some of these stem from some of the values embodied in the Western articulation of rights. They are individual-oriented and rely on adversarial procedures for their implementation. There is an emphasis on vindication of right rather than conciliation and consensual give and take. Their emphasis on individual property and the

individuals right of privacy are culturally alien to societies which are organized around social groupings such as the clan or the extended family. Moreover, the process for international enforcement of human rights has tended to reek of hypocrisy with powerful countries adopting holier-than-thou attitudes in declaring, "Do as I say and not as I do". Many Third World countries have tended to feel that Western concepts of human rights emphasize stability rather than social change. Hence, while they may be appropriate in countries with an egalitarian distribution of wealth, resources and power, they can be invoked as an obstacle to the process of redistributive justice in countries marked by highly-skewed patterns of distribution of resources and power. It is also felt that certain Western articulations of human rights might be appropriate in monocultural societies but fail to address the problems and needs of plural societies. Hence the inadequacies in the protection of minorities in the current international human rights system.

But, most of all, Western liberal paradigms of human rights have three major flaws:

The first of these relates to basic human needs and to economic, social, and cultural rights. Both classical and contemporary Western liberal thought from John Stuart Mills to John Rawls --has tended to ignore the problematic of basic human needs. This problematic often gets translated, both in human rights thought and in action, as a conflict between "bread" and "freedom". Freedom usually wins with the liberal conceptions of rights. Despite the awareness that, as the Indian Jurist Upendra Baxi reminds us, "without bread, freedom of speech and assembly, of association, of conscience and religion, of political participation (even through symbolic universal adult

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neither development nor human rights. The dichotomy between the two sets of rights has been greatly exaggerated and the symbiotic nature of their relationship often ignored. Failure to realize the economic, social and cultural rights of the disadvantaged has meant that their ability to effectively exercise civil and political rights has been considerably curtailed.

A second flaw in conventional and modern human rights thinking results from its being excessively state-centered, thereby neglecting the problems of human rights in the domain of civil society. The liberal discourse on rights is focused primarily on the rights of citizens against the State. Rights may not be transgressed by State power and authority. But from the point of view of a victim of human rights violations, it makes little difference whether the violator is the State; or a powerful landowner or employer; or a multinational corporation; or a bilateral or multilateral development assistance agency. The human harm and human suffering remains as acute and indeed problems of securing relief and redress may be greater in pursuing non-state actors than the State. As Upendra Baxi reminds us,

"The rights of the citizen against the State are also rights of man over man and of man over nature. Rights become manifestations of politically protected power... Thus liberty, as freedom with which the State and the law shall not interfere, is everyones human right: of the prince as well as of the pauper. At the same time, in civil society, the very exercise of liberty creates space for domination by some over others. There is no assurance at all that human rights, as rights against the State, will not be employed so as to cause lawful harm to others. Indeed, heretical though it may seem, one way to

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as violence. But violation of the rights of the impoverished to remain human is not labeled as violence. This is a perplexing issue which must be addressed. The use of violence of any person must be brought under a regime of human rights law. Otherwise, as the experience in Sri Lanka and the Punjab shows, the grossest violations of human rights can be justified in the very name of human rights. Violence spawns violence and force begets force in a vicious, ever-escalating spiral towards self-destruction. Terrorism provokes and promotes State terrorism in response. State terrorism incites and inflames terrorist responses. Internal armed conflict is a fact of life in many Asian states. If the weak and disadvantaged are to be protected, the violence of both State and non-state actors must be denounced as giving rise to human rights violations. In this respect, the growing gap between international human rights law and international humanitarian law must be closed.

Given these flaws, it hardly is surprising that those in the Third World who take human rights and human suffering seriously, have rejected Western liberal approaches to human rights and pose the rhetorical question, "Is it enough?"

III

The Participatory Human Rights - Empowerment Approach

Instead, Third World human rights activists have been working to develop an alternative approach to human rights activism. This approach places fundamental importance on the organising of victim groups. Individually, victims are powerless. But collectively, the strength of their numbers enables them to develop a countervailing power in demanding redress or in

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formulate rights to liberty will be to say that these rights consist in the conferral of capacities in men to engage in causing lawful harm to others." Basic goes on to state:

Thus, a capitalist farmer in a "green revolution" area has the right to hire migrant labour at low wages. He has the right to use any amount of chemical fertilizers, herbicides and defoliants, all affecting, sooner or later, both the quality of the soil and genetic diversity. In exercising this right he may generate microtoxicity in foods and vegetables, often with a carcinogenic effect on consumers. He may also exploit groundwater with a rapacity which eventually causes drought in the region. Since the State and law does not treat these actions as causing "harms", the farmer is at liberty to do all this. Thus, rights become the resources for powerful persons to cause lawful harms to others, with the power and legitimacy of the State standing as a sentinel of their freedom. Hence, it is essential that the reach of human rights be extended to sanction non-state actors so that rights can become a resource for the disadvantaged in their struggle for amelioration.

A third flaw in the liberal paradigm of human rights stems from its unwillingness to address issues relating to the use of violence in the claimed assertion of human rights. Violence by the State, resulting in violation of human rights, is clearly proscribed. But what about violence by non-state actors purporting to be exercising their rights? This is an issue that has been tended to be swept under the rug of inadequately defined concepts of self-defense and self-determination. It is a historical truth that violence can create rights. Certainly, both the violence of the oppressed and the violence of the oppressor play a crucial role in the creation, promotion, and protection of human rights. Violation of the elites' rights is usually labeled

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asserting other rights. Thus, enabling victims to assert effectively their rights to organise, is the first task of Third World human rights activists. Through organisation, the approach seeks to have victims groups assert human rights in an instrumental fashion as a means to secure empowerment, accountability and participation. Only then can the victims of human rights violations fight back effectively against the structural causes and processes of victimization since the key to such processes of victimization are marginalization, governmental lawlessness and exclusion. Thus human rights are a means for empowerment of victims through resisting exploitation, debt bondage, pauperization and marginalization. Human rights are also an important means of disempowerment of the violators by holding them accountable for their acts and by exposing governmental lawlessness.

There is a real sense of urgency underlying the present-day human rights activism in the Third World today. There, both social action groups and grassroots organisations of the rural poor are increasingly turning to human rights as a means to:

1. achieve empowerment through organising;
2. secure accountability of power wielders;
3. secure a more equitable distribution of the benefits and burdens resulting from development projects and a more equitable distribution of the risks attendant to such development projects.
4. participate in key decisions as to technology choice and resource allocation;
5. express and reinforce social values and ethical principles which should underlie the much needed restructuring of social orders;
6. survive and survive with the dignity that befits human kind.

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Human rights activists in the Third World are facing the challenge of fashioning alternative approaches to the development and realization of human rights -- approaches which stress:

- the values underlying humane, human-centered development;
- the liberation of historic victim peoples from conditions and practices which have long frustrated opportunities for their self-development;
- participation of victim peoples in the process of developing human rights and
- empowerment of them to enforce such rights.

If human rights are to prove meaningful to those who most need them (namely the victims of human rights deprivations), it is vital to adopt a "participatory approach" to the development of human rights and their enforcement. Thus, for example, in the development of a human right to food, it is vital that groups of the rural poor presently confronted with hunger and malnutrition (and other support and action groups working with them) articulate their concerns and needs in regard to deteriorating food situations and formulate their strategies to effectively address such situations. Such a participatory, human rights-empowerment approach stresses victim group and grassroots participation in all aspects of human rights activism from standard setting and promotion to monitoring and enforcement.

The essence of any human right is the power to command the protections promised by the right. The participatory human rights-empowerment approach is designed to help victims of human rights deprivation gain that power. The participatory human rights-empowerment approach is based on four under-

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ries in Mexico, horticultural products in Kenya, oil palm in Malaysia. More recently there is a new hunger for developing country lands as pollution havens for ultrahazardous industry and even as dump sites for toxic wastes! Ruling elites in developing countries are willing accomplices in the feeding of such international hungers bargaining away long-term pauperization of the human and natural environment for short-term profits and wealth.

2. Hunger for developing country labour. This hunger is both for cheap unskilled labour (in export processing zones or as "guest workers") and for skilled labour (creating perpetual brain drain). All this takes place in the name of a so-called international division of labour. But the link between feeding international hungers for developing country labour and the pauperization of the human environment and degradation of the physical environment in developing countries is rarely made.

3. Hunger for developing country markets stems from their use, both as a dumping ground for surplus production as well as to sustain levels of economic growth in industrialized countries. The feeding of this international hunger also takes a heavy toll on the human and natural environment of developing countries.

4. Hunger for ways (including development projects) to recycle developed country capital surpluses can result in the export of debt and inflation to the developing countries with very real costs in terms of human suffering.

5. Hunger for superpower spheres of influence has led to the unfortunate militarization of the developing world with,

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lying propositions:

1. Law is a resource which can be used both defensively and assertively by the rural poor in their struggles against conditions which produce impoverishment, deprivation and oppression.

2. Human rights are very important "legal resources", because they empower the rural poor to participate in these struggles and demand protection of their basic interests.

3. Non-Governmental Organisations (NGOs) of various kinds (from grassroots to international groups) have vital roles to play in these struggles.

4. Human rights must help bring about the structural changes needed to ensure the dignity and worth of all human persons, especially the "have nots". In the words of Theo Van Boven, the "have nots" "regard human rights as a means of change, as tools in a process towards emancipation and liberation. Human rights are arms in their struggle for liberation."

IV.

Addressing Asian Realities: Disempowering Violators

The impoverishment of a majority of the peoples of Asia has largely resulted from the feeding of several transnational/international (usually developed-country) hungers:

1. Hunger for developing country natural resources. Historically, this hunger was for the primary commodities and primary products of developing countries. Today the hunger is also for developing country lands on which transnational agribusiness plantations are producing, cheaply (for global markets), bananas and pineapples in the Philippines, strawber-

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once again, heavy costs to the human and natural environment.

These international hungers are not without their national counterparts, of course. For example, the growing incidence of bonded labour and slavery-like practices are the product of models of development which are primarily oriented to serving the needs of minorities of urban-industrial population. There is thus, a vested interest in keeping a large sector of the population unorganized and depoliticized, so that the poor can be availed of as a source of perennial, cheap and docile labour. Similarly, policies of rural development have tended to make only such inputs into the rural economy as are necessary to insure outputs needed by the urban-industrial sector. Development, for most countries, has been geared towards perpetuating a colonial-type exploitation by a small urban-industrial elite (and its client class of dependent rural elite) of the primary producers who comprise the vast majority of the population of landless labourers, small and marginal farmers, rural artisans and tribals in the forest economy.

It is important to identify the violators who are responsible for ruthlessly denying the basic human rights of the masses in order to feed such transnational hungers and perpetuate their own self-interest. These violators comprise local elites (e.g. landowners and moneylenders) and national elites (government bureaucrats and political parties) who are willing and eager accomplices in colluding with international elites comprising transnational corporations, developed country governments and international development agencies.

The task then is to fashion strategies to disempower these violators and to hold them accountable. Three such strategies are being employed:

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1. empowerment of the victims through organizing countervailing people power;
2. imposition of legal and social accountability through the generation of ruth, indignation, and shame regarding gross human rights violations;
3. articulating and living the vision and values of a new humane society founded on the most basic and fundamental of human rights, namely the right to be human.

The role of human rights education and human rights activism in the above three strategies needs to be carefully determined and addressed.

V.

Development and Human Rights in Asia

At first blush there appears to be no contradiction between the values and goals embodied in the concept of development and the concept of human rights. Indeed, development is often viewed as a vehicle for achieving economic growth and this is an important goal where the absence (or inadequacy) of growth, acts as a constraint on realizing the human rights of all. Development is also seen as a vehicle for redistribution. At the very least, it is claimed, there will be the growth-trickle-down effect. Moreover, consciously redistributive policies can be adopted allocating a differentially large proportion of the benefits of development to the poor, thus correcting historically skewed patterns of distribution of resources, wealth and power. But all too often development policies equate development with economic growth at any cost and all too often human rights are traded off in the pursuit of such economic growth.

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which displace thousands, and ruin ecology for survival, to provide energy and water for a privileged few.

Thus, development has often produced and reproduced conditions of impoverishment and powerlessness which have fostered systemic disregard for a violations of human rights of the vast majority of the poor.

More often than not in Asia, development has meant for the grassroots:

- impoverishment, exploitation, debt bondage and slavery;
- ethnocide;
- forced resettlement;
- being made into ecological refugees;
- violation of all basic human rights;
- repression of organized self-help.

All too often, development policies, programs and projects in Asia are characterized by:

1. Profligate resource exploitation and consumption which converts hitherto renewable resources, into non-renewable resources.
2. Expropriation of the survival resources of the poor and of the public commons, such as communal forests and public-grazing grounds.
3. Energy intensive, industrial and agricultural development leading to an insatiable need for large-scale, energy-generation projects (e.g. large dams and nuclear power plants) whose implementation often involves human and ecological degradation.

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Human rights in turn can help provide the value framework for development. Human rights can, and should, provide the evaluative criteria for holding developmental actors responsible. Human rights can also provide the means for ensuring that development will be "sustainable", ecologically sound, and will not create "ecological deficits". Development today should not be allowed to mortgage (or, worse still, destroy) the future of generations yet to be born. Human rights can provide a very strong basis for the concept of inter-generational justice. There is indeed a close interrelatedness between development, growth, poverty and the environment. Human rights have a crucial role to play in ensuring that development addresses all three GNPs: the gross national product; the gross nature product, and most importantly, the gross national poverty.

But the gap between the rhetoric of development and development practice appears to be ever-widening in Asia despite slogans such as "growth with distribution"; "basic needs"; "people first"; and "sustainable development". A review of development practice in Asia reveals this clearly. In most Asian countries, examples abound of government policies and projects which bring benefits to a privileged few but displacement, starvation, and exploitation to the many. Such projects include:

- a) industrialization projects which unquestioningly embrace arduous (so-called "high") technologies and sacrifice or imperil the life of workers and communities;
- b) agricultural development projects which are intended to achieve "food self-sufficiency," or export earnings but which end up financing unequal urban development while causing rural hunger, exploitation, and impoverishment;
- c) large-scale infrastructure or dam building projects

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4. Chemically intensive agriculture creating problems of soil and water destruction.
5. Over reliance on technology rather than human skills, often pitting science against man and man against nature.
6. Imposition of risks, burdens, and sometimes forced resettlement on powerless and vulnerable groups and communities.
7. Secrecy, covertness and a clandestine atmosphere surrounding developmental decision taking which fosters rampant corruption, with greed often masquerading as development.
8. Profligate environmental management creating ecological deficits which imperil the survival of future generations as yet unborn.
9. Wanton indebtedness prompting the adoption of debt and structural adjustment policies which lead to food and job riots and virtual genocide for certain sections of society, including vulnerables such as children and women.
10. Cooptation, more recently, of NGO and community self-help efforts which often represent the only real hope for development, so far as marginalized groups and communities are concerned.

The challenge for human rights activists in Asia lies in fashioning a rights-oriented strategy to address the above practices. Such a strategy would demonstrate that the inhuman wrongs resulting from the above practices also constitute violation of human rights such as the rights to life and livelihood, the right to food, the right to habitat, the right to health and also of important group rights such as rights of association and the right to cultural identity. Moreover, current international efforts to articulate and enforce a right to development as a human rights are clearly steps in a most welcome direction, especially if the victims of development are to have a major say in such efforts.

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VI Ecology and Human Rights in Asia

In many Asian countries certain environmental trends have become evident:

1. expropriation of the survival resources (e.g. fuel, fodder, ancestral lands) of grassroots communities in the rural areas is taking place at an accelerated pace;
2. patterns of resource exploitation and use are at such a scale as to bring about huge "ecological deficits", mortgaging and threatening future generations;
3. environmental refugees are being created at an ever-increasing scale.

These trends reveal a close complementarity between environmental degradation and human degradation leading to massive human rights violations at the grassroots. Accordingly, there is an urgent need for closer cooperation between environmental activists and human rights activists to fight to reverse these harmful trends. Sustainable development is often a misnomer for desperate survival struggles at the grassroots. The challenge for both human rights and environmental activists is to help achieve participatory environmental protection in which affected communities and groups have the key role in efforts aimed at:

- a) damage limitation (e.g. obtaining injunctive relief and resources for undertaking cleanup);
- b) ecology restoration (e.g. reforestation or watershed reconstruction);
- c) prevention/conservation (e.g. safeguarding community sources of fuelwood and grazing through ecologically sound practices).

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national security; and to restore human needs priorities in government expenditures and press for demilitarization.

VIII

Implementing the Human Rights-Empowerment Approach at the Grassroots Level in Asia

Grassroots problems in Asia cannot be adequately addressed through conventional human rights activism on the part of sympathetic (if paternalistic) legal and other professional elites alone. The participatory human rights-empowerment approach is essential. Grassroots participation is essential at every stage of human rights activism:

- human rights awareness raising;
- participatory identification of component rights;
- participatory judicial and extra-judicial enforcement of human rights;
- imposition of collective community sanctions.

Human rights organisations in Asia have demonstrated the feasibility of such an approach in their work with indigenous peoples. By starting first with the problems faced by indigenous peoples, namely: ethnocide, forced integration, exploitation, paternalistic development which erodes self-reliance; they have helped indigenous people to articulate and struggle for recognition and enforcement of a number of vital group rights:

1. The Right to Land: not any land but traditional and ancestral homeland. Not land just as an economic resource or a factor of production but land as territory, as habitat which has economic as well as cultural, social, and historical sig-

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VII Peace and Human Rights in Asia

There is little peace in Asia. The struggles of superpowers to maintain spheres of influence and military bases in the region has led to massive militarization through both arms aid and arms sales. The manipulation of ethnic tensions by ruling governments and neighboring countries (with tacit encouragement by super-powers) has led to savage ethnic conflict in Sri Lanka, India and Pakistan and, on a lesser scale, Bangladesh and the Philippines. Malaysia appears to be an ethnic time bomb. Internal armed conflict is everywhere and the U.S. has imported the tactics of low-intensity conflict into the region. The results, in terms of human suffering, are tragic:

1. ever-increasing military expenditures are incurred at the expense of meeting basic human needs and providing essential basic services;
2. restrictive laws are being rapidly enacted and invoked, to deal with alleged threats to national security, often against legitimate opposition to the ruling elites;
3. governments are increasingly using these weapons against their own citizens. Civilian casualties are mounting while international humanitarian law is being flouted.

The situation is especially difficult for villages and grassroots communities who are caught in the crossfire between the protagonists of internal armed conflict.

The need for human rights activism is crucial: to impose human rights standards and international humanitarian law upon both state and non-state parties to conflict; to challenge and resist abuse and overuse of restrictive laws in the alleged defense of

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nificance. Land which is the sine qua non of the groups' survival as a group.

2. The Right of Internal Self-Determination: which includes the right to customary laws and the rights to devolution, sharing of powers and resources, and the right of local self-government.
3. Rights to Institutional Structures of Separateness: social and political institutions including institutions of dispute resolution.
4. Rights of Cultural Continuity: including rights to language, education, culture, and religion.
5. Rights of Identity: including the right of indigenous peoples to determine who is and who is not an indigenous person.
6. The Right of Ethnodevelopment: which refers to the human right to development as applied to indigenous peoples.

Classical development models have failed to solve the problems of humankind such as poverty, unemployment and environment. People are taking a second look at so-called traditional cultures which provide answers regarding agricultural food production, traditional medicine, resource and environment management in rural areas, construction and irrigation techniques, social security and solidarity in times of crises. Ethnodevelopment means control over land, resources, social organisation and culture and freedom to negotiate with the state what kind of relationship the group wishes to have. In the words of Rudolfo Stavenhagen, "Ethnodevelopment means

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looking inwards and finding in the groups own culture the resources and creative force necessary to confront the challenges of the modern changing world. It does not mean autarchy or retreat into a museum of tradition" (speech delivered at the 1988 Nobel Symposium in Oslo, Norway). The basic human right of isolation (rather than integration) must be recognized as the group-right counterpart of the individual right of privacy.

The experience with indigenous peoples must be replicated in respect of all other grassroots and exploited communities. Human rights activists must work closely with and in grassroots communities, starting with grassroots problems, realities and priorities, then moving to holistic analyses which trace linkages between local, national and global actors and forces. Only then can effective mechanisms be devised for solidarity and support. There is also a crucial need to devise, working with grassroots communities, alert and early warning systems regarding a variety of transnational influences and macro forces such as:

- aid dependency and technological dependency;
- the spread of conspicuous consumerism;
- "perverse" development projects and the role of transnational corporations and international development assistance agencies therein;
- the incurring of ecological deficits;
- debt and structural adjustment leading to food and job riots and massive human deprivation and suffering;
- militarization.

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have to face and overcome formidable problems and constraints, both external and internal. From external actors (be they government or private sector) they will have to contend with efforts aimed at cooptation, control and repression. At an internal level NGOs will have to face problems of fragmentation, distrust, and lack of solidarity among fellow NGOs. But these problems can and must be overcome. After all, what mind can conceive, we can achieve! Moreover, we must achieve because, as the exiled Czech author Milan Kundera reminds us, "the struggle of man over power is the struggle of memory over forgetting". We cannot allow ourselves to forget about the desperate plight of people at the grassroots in most of Asia.

Dr. Clarence J. Dias

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IX

Towards Human Rights Education at the Grassroots

Human rights lawyers will need to rethink their basic assumptions if they are to be of any help in work aimed at human rights education at the grassroots. They will need to start with an unlearning process: discovering how irrelevant is much of what they know and realizing how little in fact they know. They will then need to undergo a relearning process: learning from the victims and realizing that education is not a process of "putting in" but rather is one of "drawing out". They will need to devise a people-based and not a law-based approach to human rights education which will:

1. start with recovery of grassroots knowledge systems;
2. proceed from grassroots identification of problems, priorities and strategies;
3. stress collective articulation of component rights;
4. emphasize not only what the law is but also what it ought to be;
5. not merely explain what is the law presently governing people but also how people can recapture law;
6. provide a realistic appraisal of the role of law in social action;
7. move from rights awareness to rights assertion and from the right to know to the power to act.

This will, of course, necessitate a search for new methodologies which are participatory and not passive; accessible and not alien; relevant and not redundant. There will need to be collective rethinking with the grassroots about the content, values, format, objectives, use and evaluation of human rights education programs. In doing this, human rights NGOs will

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- abortion is fetus consider human?

- 사형제도 [미국
 ↳ Korea

- Child abuse

- Child Labor

국가주권 vs. 인권

Is Amnesty totally neutral?

How come it deals w/ H.R. violation
in Asian & other third world countries
but don't deal w/ H.R. violation
in USA?

for example) death penalty
 ↓ political prisoners

don't
deal w/ it.

* 사대포럼은 솔직하게 자신들이 지지는 국가의 내정에 대해 인정하고 나서
 승대임을 공개해야 한다.

* European Court recognized "marginal appreciation"

다움?

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- ① 여러 가지 주제를 함께 탐구하고 공부하는 자리,
- ② 단체들의 국제연대 활동에 대한 동향과 정보를 교류하는 자리,
- ③ 국제연대에 대한 시민·사회단체의 대응을 모색하는 나눔의 자리입니다.

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