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Franz Nuscheler (Ed.)

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Foreword

All governments assembled at the UN-Conference on Human Rights in Vienna (1993) unanimously accepted the principles of universality and indivisibility of human rights. However, authoritarian regimes in East and Southeast Asia more and more openly call the principle of universality into question and refer to "Asian values" allegedly specific to their own cultural traditions and values. Mahathir bin Mohamad, the Prime Minister of Malaysia, recently went as far as calling for a total revision of the Universal Declaration of Human Rights and its adjustment to new world affairs in which the West no longer has a cultural hegemony. There is also an academic debate on the "cultural relativism" in the appropriate interpretation and implementation of human rights.

What is the reaction of human rights groups and academic scholars from Asia, who cannot be suspected of engaging in Western "cultural imperialism", to the challenge of "Asian values"? This INEF-Report includes the following papers:

- two papers presented by Sri Lankan scholars to an international conference in Colombo organized by the Goethe-Institute and the Sri Lanka Foundation;
- a paper by a political scientist from the Philippines read at the University of Duisburg in summer 1997;
- a paper on the conditionality of foreign aid presented by the editor of this INEF-Report to the above-mentioned international conference in Colombo, which was a fine example of an intercultural dialogue.

If the universality of human rights is generally accepted, then the use of foreign aid for the protection of human rights cannot be considered political blackmail. But this thesis is also a matter of controversy between the North and the South and within the South.

With this documentation of discussion papers the INEF, being fully aware of the fact that Global Governance will not be possible without common ethical principles as already laid down in human rights covenants, wants to make a contribution to an intercultural dialogue by offering a platform to voices of the South.

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Contributors

Kottegoda, Sepali, Dr.: Lecturer in Women´s Studies, University of Colombo. Coordinator of Sri Lanka Women´s NGO Forum; Joint Coordinator of Women and Media Collective, Sri Lanka; International Faculty Board Member of Institute of Women´s Studies, Lahore/Pakistan

Nuscheler, Franz, Prof. Dr.: Professor for International and Comparative Politics, Gerhard-Mercator-University, Duisburg; Director of the Institute for Development and Peace (INEF)

Ty, Reynaldo R.: Assistant Professor of Political Science, University of the Philippines/Quezon City; Fellow at Institute for Strategic and Development Studies (ISDS)

Uyangoda, Jayadeva, Dr.: Senior Lecturer in Political Science, University of Colombo/Sri Lanka; Director of the Centre for Policy Research and Analysis/University of Colombo; Member of Human Rights Taskforce of Sri Lanka; Founder and Editor of Pravada (a monthly journal)

The Human Rights Debate in the Southeast Asian Region: Universality vs. Cultural Relativism

Reynaldo R. Ty

Introduction

The only thing in the world that is permanent is change. From the 1960s to the 1980s, countries of Southeast Asia could be classified as shifting from communism, authoritarian dictatorship, semi-democracy to democracy,[1] what with the demise of the erstwhile Soviet Union. Coup attempts, bureaucratic politics, and military regimes seem to be on the wane, while the institutionalization of democracy seems to be on the rise.

Furthermore, there is a changing relationship between society and development that has great political consequences. We are in the midst of turbulent changes in the post-communist period. The **Association of Southeast Asian Nations** (ASEAN) does not remain untouched.[2]

Analysts argue as to whether industrial modernization (market) has some correlation with political modernization (which includes democratization and human rights). For the purpose of this paper, democratization and human rights will be treated as closely related concepts, if not used loosely as synonymous.

Given the rapid industrialization that is taking place in the region, the "market" is winning the day.[3] Discussions about economic modernization is oftentimes coupled with discussions about political development as well.[4] In this context, human rights play an important part in contemporary political discourse.

With vigorous economies, many Southeast Asian leaders have been quite bold in challenging the very core and notion of human rights. Others are in periods of transition (Cambodia), while others still strategically decide to remain mysteriously dead silent on the matter (**Sultan Bolkiah**). With economic wealth comes political voice.

Nevertheless, the contagious "Third Wave of Democratization"[5] in the late twentieth century which is characterized by the voluntary or forcible dismantling of the vestiges of dictatorship as well as non-violence, compromise, elections is infecting the ASEAN region.

For the purpose of this paper, by human rights is meant the whole set of 1) concerns for development, environment, and peace, 2) economic, social and cultural rights involving food, clothing, shelter, and social services, and 3) civil and political rights such as freedom from arbitrary state intervention on individuals, all of which being recognized under the corpus of international law of human rights as recognized by the United Nations, of which ASEAN countries are members.

Drafted under the chairpersonship of **Eleanor Roosevelt**, the **Universal Declaration of Human Rights** is a document which was adopted unanimously by the General Assembly of the United Nations in 1948. Hence, this paper shall adopt the universally accepted notion of human rights based on international customary law as

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[1] cf. Neher 1991; Neher/Marlay 1995.

[2] cf. Hewison/Robison/Rodan 1993; Ramage 1995; Schwarz 1994; Vatikiotis 1991.

[3] cf. Przeworski 1991.

[4] cf. Fukuyama 1995a.

[5] cf. Huntington 1993.

recognized under the auspices of the United Nations.

1 Universality of Human Rights

Most of the literature about human rights from the west sings praises only to the universality of human rights. **U.S.** concern for human rights, for example, springs from its concern for the creation and maintenance of world peace and the spread of democracy.

Former President **Jimmy Carter** synthesized U.S. national security interests with human rights, asserting that the U.S. has responsibilities toward peace and human rights.[6] **Ronald Reagan**, on his part, considered "humanitarian inter-vention" as a temporary expedient to ensure a minimum standard of universally accepted human rights to those living in especially difficult situations.

George Bush said that "the 200-year old Bill of Rights has remained a shining symbol of liberty and a standard with which to measure the legitimacy of American laws and constitutions. It has become the foundation of such documents as 1948's **Universal Declaration of Human Rights** and 1975's Helsinki Final Act of the **Conference on Security and Cooperation in Europe**."[7]

Ramsey Clark, the former U.S. Attorney General, was more critical, saying: "We preached democracy at home and supported a despot abroad ... we spoke of freedom and sat in silence while thousands were tortured and brutalized."[8]

Clinton's foreign policy towards the Asia-Pacific region has a four-part strategy: 1) the U.S. maintains its core alliance with Australia, Japan, Korea, the Philippines, and Thailand; 2) it shall pursue a policy of engagement with other leading countries of the region, not excluding former Cold War enemies; 3) it supports a regional mechanism for sustained economic growth, integration, and long-term stability; and, 4) it supports democracy and human rights.[9]

The Clinton Administration has to wrestle with U.S. business in balancing between "national interests" and human rights. On the one hand, the U.S. under **Clinton** in the idealist tradition condemns human rights violations in Burma, China, and Indonesia. On the other hand, the U.S. in the realist tradition continues to have trade relations with the same countries which it condemns for infringements of human rights. The USAID democratic pluralism initiative links U.S. foreign aid with democracy and human rights in the same way that Western Europe and Canada uses aid to support democracy and sustainable development.

In 1995, **Doug Bereuter**, Chairperson of the Subcommittee on Asia and the Pacific of the Committee on International Relations of the House of Representatives said that the U.S. seeks "to advance the fundamental principles of democracy, pluralism, and human rights in Asia through creative and effective use of bilateral, regional, and multilateral approaches ... [By] human rights and democratization ... we mean the building of democratic institutions in Asia and the Pacific. Experiences has shown that not only do democracies embrace human rights, but they are also

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[6] Department of State/Bureau of Public Affairs: Speech before the World Jewish Congress, Washington, D.C. 1977.

[7] Commemoration of Human Rights (Proclamation, 1992 December 8).

[8] Newsweek, 1980 June 30.

[9] Christopher Warren: A Peaceful and a Prosperous Asia-Pacific, in: Vital Speeches of the Day, Vol. 61 (August 15, 1995): 642 ff.

traditionally the most stable and reliable trading partners and friends. Almost invariably, democracies do not make war on other democracies, do not practice terrorism, or generate refugees."[10]

John Shattuck, Assistant Secretary of State for Democracy, Human Rights and Labor, claims that "there are Asian democracies that equal those elsewhere, such as Japan ... And there are authoritarian regimes whose only concession to democracy and human rights lies in their names or their paper constitutions," adding that "promoting human rights and democracy is in the interest of the United States. Our shared economic and security interests in Asia are best served in the long run by a political and social order that respects the rule of law, where freedom of speech is a safety valve, and where government is accountable to its citizens ... Bilateral diplomacy is the foundation of our human rights policy."[11]

Based on the foregoing, the U.S. in particular and the west in general appear to be indecisive as they send mixed signals. Western injunctions about human rights and exigencies for economic growth and development may either converge or clash.

The governments of Southeast Asian countries consider these acts as the "human rights blackmail". The human rights record of political regimes have a bearing on the pronounced if not actual foreign aid allocations under different U.S. administrations.

With the downfall of Soviet-style socialism, some U.S. writers insist that market capitalism and liberal democracy are the features of the neo-Hegelian "End of History".[12] As the reality is much more complex than expected, many ASEAN leaders think otherwise, though. "Endism" is seen as a Western fashion and ideology which defend the status quo under Western hegemony, rather than an empirical explanation of the world as it is. Post-communism for many ASEAN governments is not equal to the acceptance of the imposition of Western values, including human rights values.

2   "Asian Values" as a Response to Western Monocultural Chauvinism

Eric C. Bjornlund, the Director of **Asia Programs of the National Democratic Institute for International Affairs,** notes that some Southeast Asian leaders put forward the argument according to which democracy is foreign to Asia and is antithetical to Asian economic development.[13] Furthermore, **Bjornlund** adds that authoritarian leaders have argued that human rights are relative, contingent on such factors as culture and religion, that Western-style democracy does not apply to Asia, and that political rights clash with economic growth. Oftentimes, it is the politically self-protective Asian elites who reject the notion of rights by claiming that there is a necessary tradeoff between collective economic, social, cultural rights on the one hand and individual civil and political rights.[14]

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[10]   House of Representatives/Committee on International Relations: Hearings before the Subcommittees on International Economic Policy and Trade and on International Operations and Human Rights, Febrr. 2, 9; March 16; June 27. 104th Session 1995, pp. 78-79.

[11]   ibidem p. 89.

[12]   Fukuyama 1992.

[13]   cf. Footnote No. 10, p. 115.

[14]   cf. Scoble/Wiseberg 1985.

In contradiction to the claims that human rights are universal, opponents advance the "cultural relativism" argument and assert that civilizational conflict arises out of Western non-respect for the different cultures of the world. As a result, there is now a rich literature on the theory of "Clash of Civilizations" both defending it and attacking it.[15] **Johan Galtung** observed that "Western civilization understands itself as the universal civilization and universalizes its history as Development = Modernization = Growth = Economic growth = GNP growth."[16]

When former U.S. Secretary of State, **James A. Baker III,** went to the July 24, 1991 meeting of ASEAN in Kuala Lumpur, he cited the American belief that democratic pluralism helps make societies resilient, dynamic, and responsive to popular aspirations and supported the trend in Southeast Asia toward political freedom which he linked to the region's economic growth.[17]

Advocates of the "Asian Value" school of thought claim that Asian and Western concepts of freedom, justice, and human rights are different. Western ideals are alien to Asians. They further add that Westerners are arrogant and racist for imposing their own ideals of individualism, democracy, and human rights on Asia. Westerners are criticized for sensationalism and for concentrating on the worst abuses in Asia when they talk about human rights.

Many ASEAN leaders contend that thanks to their indigenous Asian traditions (and not thanks to Western values), their societies have achieved their national goals of economic growth, political stability, and social harmony. **Johan Galtung** notes that "there are two major economic growth regions in the world, the **Judeo-Christian** (JC) and the **Buddhist-Confucian** (BC) Southeast."[18]

Today, the governments of Southeast Asian countries are implementing economic liberalization policies and attract foreign investments with varying degrees of success. In the name of economic development as well as peace and order, communist leaders in mainland Southeast Asia as well as **Lee Kuan Yew** and **Mathathir** have been outspoken defenders of "Asian values" against the imposition of "alien Western values", which results in global cultural homogenization. Campaigning against "Western social evils", they even attempt to censor the free flow of information in the internet. Western liberalism is lambasted for its focus on the individual. In 1991, **Mahathir** spoke at the United Nations: "If democracy means to carry guns; to flaunt homosexuality; to disregard the institution of marriage; to disrupt and damage the well-being of the community in the name of individual rights; to destroy a particular faith; to have privileged institutions such as the press which are sacrosanct even if they indulge in lies which undermine society - if these are democracy's details, cannot the new converts reject them?"[19] Exhausted by its own deluge of individualism, moral bankruptcy, democracy and lack of discipline, Western civilization is considered weak and overstretched, claim the proponents of "Asian values". Hence, the

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[15] cf. Huntington 1993.

[16] cf. Galtung, Johan 1991: Twenty-Five Theses on Development Theory and Practice, in: Institut für Entwicklungsforschung/Bochum (Lecture on November 29).

[17] Department of State Dispatch, Vol. 2 (1991, August 5): 563.

[18] cf. Footnote No. 16.

[19] Quoted in James Fallows: Rotten Royals, in: Atlantic, June 1993: 46.

East has the mission of leading the world culturally and spiritually. Said **Mahathir**:

"Europeans are living beyond their means and are paid too much for too little work. This lifestyle is the principal reason behind Europe's recent turn toward protectionism, even as the more efficient countries of East Asia develop prosperous economies through free trade alone. Providing market access to East Asia's lower-wage economies is seen as a threat to Western living standards. Western ideals such as democracy, meanwhile, are exported by Europe and America under the assumption that all free market economies must take place in free societies. The example of the former Soviet Union shows that this scenario is not always the case, however. The free market should come first; with its success, democratic reform will follow. Europe and America may form a protectionist trade bloc, but this action will not stop the East Asian countries from realizing their own right to develop themselves."[20]

Western governments and NGOs have been charged by ASEAN governments as dangerously capable masters in the art of imposing monocultural Western Eurocentric meta-narratives to the rest of the world as "universals".

According to **Carolina Hernandez**, areas where ASEAN and Western perspectives diverge are the following: 1) universalism vs. cultural relativism; 2) human rights as part of national sovereignty vs. global governance; 3) individualism vs. communitarianism; 4) timing and sequencing of human rights imple-mentation; 5) aid tied to human rights; and, 6) human rights

as part of the social clause in multilateral trade agreements.[21]

3   Synthesis

A.   Limits of the Argument: "Asian Values" as a Pretext to Justify Human Rights Violations

The economic openness experienced in the ASEAN region does not automatically translate to greater political openness. There are numerous structural, institutional, operational and situational impediments to the promotion and protection of human rights in the ASEAN states.

It is one thing to admit that Asia is a culturally plural continent; yet, it is quite another to use the logic of cultural pluralism as a political rhetoric as a justification for authoritarianism. Instead of advancing the cause of human rights from a multicultural perspective by their rejection of a monocultural conception of human rights, they sow hatred from which intercultural dialogue becomes impossible. Some Asian governments misuse the concept of "Asian values" which have nothing to do with cultural relativism. More often than not, the terms "Asian values" and "Asian democracy" are used to mean authoritarian forms of government. They have to be exposed for this uncanny practice of confusing "Asian values" with "authoritarianism".

Governments of ASEAN are not unknown for the human rights violations committed by the security forces.[22] On many occasions, human rights have been violated in the name of national development. To conceal the truth about human

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[20] Mahathir bin Mohamad 1993: Asia's Crescent of Prosperity, in: New Perspectives Quarterly, Vol. 10, 30-33.

[21] cf. Hernandez 1995.

[22] cf. Amnesty International/Asia Watch: Annual Reports.

rights violations, many Southeast Asian governments blur the issue by attacking and countering Western claims of universalistic human rights with equally ethnocentric and xenophobic arguments about the greatness of "Asian values" and the bankruptcy of "Western values". Asian values have likewise been deliberately misrepresented by some ASEAN leaders to serve specific political purposes.

Succinctly put, the so-called "Asian Way" holds the contention according to which communitarianism provides the proper atmosphere for economic development and consequently the Western notion of democracy undermines economic growth. The **Confucian Ethic Hypothesis** (CEH) is advanced to explain the rise of newly industrialized economies in Asia. The **Confucian Ethic Hypothesis** emphasizes education, diligent work ethic, order and harmony, as well as group orientation.[23] In Southeast Asia, only two states - Vietnam and the city-state of Singapore - out of ten countries can be properly classified as a Confucian society. **Lee Kuan Yew** asserts that his version of Asian Democracy which focuses on discipline, communitarianism, welfare, and job creation is popular since the government is able to provide for all the needs of the people. Critics, however, argue that it is rather the "hoary communist bogey" that is responsible for the victory of the **People's Action Party** during elections since 1959 and it has nothing to do with the Asian Democracy of **Lee Kuan Yew**.[24] According to **Clark Neher**, "Asian Style Democracy" is characterized by (1) patron-client communitarianism; (2) personalism;

(3) authority and hierarchy; (4) dominant political party; and (5) strong state.[25]

*"After nearly a decade of economic reform and political liberalization, several countries in Southeast Asia are regressing. The behavior of Indonesia's President **Suharto** is indicative of the trend. **Suharto**, who was hailed as a dynamic advocate of free trade and modernization in 1994, has since become obsessed with tightening his family's hold on the nation's wealth as his health declines. Moreover, as host of a series of meetings of the **Association of South East Asian Nations** (ASEAN) in late July [1996], he sounded like a common dictator. Although the ASEAN countries are making strides on some fronts - they are slashing tariffs and have an enviable 8 percent average growth rate - their penchant for money politics could hamper efforts to embrace more sophisticated export industries. Furthermore, critics believe that the failure to rein in corruption and coddled cartels is beginning to take its toll."*[26]

Many of the countries in Southeast Asia showed an increasing trend of militarization. Indonesia, Malaysia, the Philippines, Singapore and Thailand show the military taking charge in decision making in the economy, civil repression, and a significant role of the military in the government.[27]

B.   Filling the Gaps: Prospects for Nurturing Asian Democracy

Based on the foregoing sections, there are clearly divergent views on human rights. Supporters of universalism and devotees of cultural relativism enter into "pissing

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[23]   cf. Sonoda 1991.

[24]   cf. Seow 1990.

[25]   cf. Neher 1994.

[26]   cf. Business Week, 1996 August 5: 51.

[27]   cf. Tanter 1982.

matches" and each side has as many devotees as cynics. Western and ASEAN governments differ in their interpretations in the same way that ASEAN governments differ from one another in their understanding thereof. Oftentimes, interlocutors have been talking pass each other. Worse, both sides are acrimonious and practise bad faith. The notion of Asian Values is used as a smokescreen for dictatorship and the notion of universalism is used to impose Western cultural imperialism. In the face of multi-cultural assertions of identity, the assumption of universality cannot sustain the very core notion of human rights in the world anymore. Hence, there is now a great need to reexamine the concept of rights.

When **Lee Kuan Yew** delivered his now classic sermon to **Fidel Ramos**, he said that the Philippines has too much democracy and that what is needed is discipline, to which **Ramos** retorted by saying that that choice is a false one as the people need both food and freedom. **Lee Kuan Yew** said: "Contrary to what American political commentators say, I do not believe that democracy necessarily leads to development. I believe that what a country needs to develop is discipline more than democracy. The exuberance of democracy leads to undisciplined and disorderly conditions."[28]

However, for a while, democratization in the Philippines had little regional impact because the country's economic performance did not make it an attractive political model for its neighbors in the ASEAN.[29] Thailand's democratization is due to a domestic crisis of authoritarianism rather than a demonstration effect from the Philippines. There is so much talk about democracy and human rights in the

Philippines but the Philippines is characterized by "a traditional landed elite dominating key social institutions; a patronage-oriented civil service and political parties; industrialists protected from domestic and foreign competition; massive unemployment. The result is an economy that ... cannot distribute income fairly and cannot pay its debts. Under such circumstances, prospects for democracy are bleak."[30]

But the situation is changing. "Pour la troisième année consécutive, l'économie a connu une croissance positive (4,8%), confirmant ainsi son redressement. Preuve de ce renouveau, la balance des paiements a été excédentaire grâce aux transfers financiers effectués par les 3 millions d'expatriés (6 millards de dollars), la croissance des exportations (+ 26% au 1er trimestre 1996) et l'afflux des capitaux étrangers. Dans ce contexte, dix ans après la chute du dictateur Ferdinand Marcos, les Philippines ont entrepris d'exporter pour 50 milliards de dollars de biens d'ici à l'an 2000."[31]

"Leaders of ASEAN's pseudo- and semidemocracies argued that they had established democratic forms suitable to domestic conditions while making sure their citizens had no chance to compare them with actual democracy. While ethnic integration proved compatible with democracy in the Philippines and Thailand, the other major ASEAN states claimed that national unity required tight political control. International pressure for political liberalization was countered by attacks on Western arrogance that helped shore up support at home. It was easier to blunt the ideological challenge of democracy in ASEAN than elsewhere in the developing world because of the region's impressive

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[28] cf. Manila Chronicle, 1992 November: 10.

[29] cf. Thompson 1993.

[30] cf. Robinson 1991: 320 ff.

[31] cf. Lechervy 1997: 473.

economic growth. But a fast growing economy alone was not enough to head off democratization, as Thailand's military rulers discovered. Greater state intervention and more elaborate ideological justification allowed nondemocratic regimes in Indonesia, Malaysia and Singapore to link prosperity and stability to their continued rule."[32]

At the risk of oversimplification and at the expense of precision, it can be simplistically stated that Western governments and NGOs focus on civil and political rights, while ASEAN governments and NGOs emphasize economic, social, and cultural rights. Civil society, to which ASEAN NGOs belong, nevertheless, are at odds with state interests and interpretations of human rights. Student uprising, citizen participation, and multi-party politics have changed the course ASEAN politics.

More than ever, activist NGOs in Asia today play a key role in pressuring governments to formulate and implement policies as they relate to human rights and democracy.[33] Theories of global politics do not only focus on international and regional organizations, the state, and domestic non-state actors but also transnational NGOs as playing important roles in social transformation.[34] "The unexpected influence of this relatively powerless social movement is traced to a symbolic logic of collective action - which used legitimacy and information as political resources to transform the public political agenda, appeal to an international 'human rights regime', challenge emerging democratic institutions and reconstruct citizenship. [NGO] strategies

enabled the human rights movement to survice authoritarian rule and catalyze sweeping reforms ..."[35]

Many ASEAN governments have contended that the question of human rights is an internal matter. However, NGOs assert that "as human rights are of universal concern and are universal in value, the advocacy of human rights cannot be considered to be an encroachment upon national sovereignty".[36]

Imposing Western values of human rights as "universals" to non-Western societies is unstable and unsustainable as it is unnatural. The Philippines photocopied the U.S. model of democracy and ended up having the best aspects of it in writing and the worst aspects of it in reality. The same goes for the semi-democracy of Indonesia, Malaysia, Singapore, and Thailand.[37]

On the other hand, **Kim Dae Jung** asserts that the claim of Asia's values as anti-democratic is a myth.[38] Risking their own lives, people who participated in spontaneous people's uprising and social movements in Burma, the Philippines, Thailand and elsewhere expressed their opposition to the government. Societies change in the same way that human rights values are not made once and for all. Instead of seeking to accept or reject one school of thought over the other (East vs. West), the challenge is to assimilate different social, historical, cultural emphases on human rights into a diachronic and multicultural understanding of human rights. Hence, ASEAN governments - without having to abandon "Asianness" - must face

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[32]   cf. Thompson 1993.

[33]   cf. Susan Berfield: Activist Power Hits Asia, in: Asiaweek, 1996 December 6: 20.

[34]   cf. Wright 1989.

[35]   cf. Brysk 1991.

[36]   cf. Bangkok NGO Declaration on Human Rights (1993).

[37]   cf. Neher/Marlay 1995.

[38]   cf. Footnote No. 10: 115.

the challenge of expanding political options along with economic liberalizations.

International relations seen exclusively from the perspective of governmental actors do not explain fully the dynamics of politics. Given the multivocality and polysemy of discourses on human rights, contrary to the claims of some outspoken public officials in the region, the different governments (e.g. **Lee Kuan Yew vs. Ramos**) of the ASEAN region do not speak with one voice. Added to the already complex debate is a thick layer of ASEAN NGO positions on the subject. The center of gravity shifts to members of social movements who in spite of the risks with which they are faced speak out and make known their commitment to democracy and human rights pressure regimes for change.[39] "Native-born" Southeast Asian NGOs compete with governments in voicing the "Southeast Asian" conceptions of human rights. Social movements that are engaged in collective action, while recognizing the cultural diversity of the region, appeal to an international human rights regime.[40]

While ASEAN governments are busy pitting the East versus the West, ASEAN NGOs are busy working at the grassroots level. Compared to governmental priorities, NGOs have very different concerns. Their notions of human rights go beyond the traditional civil liberties to include issues related to life, survival, self-determination, the environment, women, children, indigenous peoples, land reform, and labor unions.[41]

A tension exists between the universal claim for human rights and the cultural relativist views about them. There is a need to develop a new understanding of the foundations of ASEAN societies which are deeply influenced by the cultural ethos common to some countries of the region. When talking about human rights, Westerners tend to focus on the civil and political aspects of rights, while ASEAN leaders tend to focus on the economic aspects of rights. ASEAN NGOs appear to be as sophisticated as ASEAN governments in their response to questions of universality and cultural relativism of human rights.

Surely there are differences between the societies of Southeast Asia. Surely, too, democracy is not an original Asian tradition, nor was it an immutable reality in the Western world as well. However, cultures are not isolated or independent units; rather, they are dynamic and interrelated entities that rely on inter-subjective and inter-penetrating criteria of inclusion or exclusion. Nevertheless, the lack of a neutral framework does not hinder the existence and development of a cross-cultural conception of human rights. Today, as the winds of change are blowing across the region, democracy is evolving in Southeast Asia. There are, however, obstacles during this period of transition.

Dwight King asserts that at least in Indonesia, groups rights and individual rights can be achieved simultaneously. "The fulfilment of the individuals within the group and [the Indonesians] value harmonious social appearances ... Certainly Indonesians talk about an organic unity and say that fulfilment consists of being part of the societal body, but there is simultaneously a concept of individual fulfilment."[42]

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[39] ibidem: 90.

[40] cf. Bangkok NGO Declaration on Human Rights (1993).

[41] cf. Scoble/Wiseberg 1985.

[42] in: Lum 1988: 67.

Seven months prior to the World Conference on Human Rights of 1993, **Yusuf Wanandi** of the **Center for Strategic and International Studies** (CSIS) of Indonesia wrote that "the issues of human rights, environment and democracy in the ASEAN countries ... should be placed at the top of ASEAN's agenda because relations among nations are undergoing a fundamental change."[43] The ASEAN-ISIS proposed several guiding principles for the formulation of policy approaches on and policy responses to human rights and democracy. These are the principles of (1) interdependence, (2) comprehensiveness, (3) situational uniqueness, (4) cooperation, not conflict, (5) uniform criteria for conditionalization, (6) sanctions as a last resort, (7) non-discrimination, and (8) addressing the international and domestic dimension.[44]

The U.N. World Conference in Vienna in 1993 argued for the interdependence of development, democracy, and human rights. The Vienna Declaration and Programme of Action is an official document of the U.N., of which ASEAN states are member states. Clearly, the world is witnessing the greater convergence of interest in favor of human rights (in both the economic and political aspects) globally by all governments, ASEAN states not excluded. Finally, Asia and the West see eye to eye under the auspices of the U.N. in the human rights conference in Vienna.

The focus of attention must be on the convergence, not divergence, in the understanding and implementation of human rights. Then, that would be another step forward in ASEAN internal politics and international relations.

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[43] Wanandi 1992: 1.

[44] ibidem.

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Universality vs. Cultural Relativism in Human Rights: The Debate and a Response

Jayadeva Uyangoda

Introduction

The recently re-emerged debate on the universality vs. cultural particularism in human rights perhaps represents a third phase in the world-wide debate in human rights in general. In the first phase, the focus of the debate was defining universally acceptable norms, definitions and standards of civil and political rights. The second phase was characterized by the expansion of the ambit of rights to include economic, social and cultural rights as well as to extend the conceptual scope of human rights to specific human communities such as the indigenous peoples, women and children. In the third phase, however, the debate has moved to a different plain-- to re-examine the philosophical, theoretical and civilizational foundations of the hitherto accepted human rights discourse itself.

Until recently, except in the arguments of socialist jurisprudence and political theory, the Human Rights philosophy was based on the assumption that the rights as enunciated in the UN charter and other documents of the international community had a universal relevance, validity and application irrespective of social, cultural, economic, political or historical contexts of the states in the world. When preparatory regional meetings were held before the UN Conference on Human Rights in Vienna in 1993, a whole new debate erupted challenging that philosophical principle. Some governments as well as civil society activ-

ists of the non-Western World constituted themselves a kind of vanguard to forcefully argue that the universality principle was an essential component of the Western discourse of dominance over the non-Western world.[45] They further argued that the non-Western societies should develop their own philosophy, principles and standards of Human Rights, quite independent of, and as against, what they viewed as the discourse of the "dominant West".[46] This debate quite interestingly took a political character, invoking such polemical categories as West vs. the East, North vs. the South, dominant vs. the dominated, and developed vs. the developing.

In the preparatory debate mentioned above, the Asian and African countries that pressed for re-thinking and review of the universality principle saw themselves as a specific group of nations in the world community, endowed with characteristics different from the Western nations. For example, the preamble to the San Jose declaration of the Latin American states reaffirmed that

"[O]ur 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 coexistence and respect for pluralism and the principles of national sovereignty, non-interference in the inter-

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[45] Governments that reject the universality of human rights include China, Cuba, Colombia, India, Indonesia, Iran, Iraq, Libya, Malaysia, Mexico, Myanmar, Pakistan, Singapore, Syria, Vietnam and Yemen.

[46] I borrow this term from Chandra Muzaffar of Malaysia who is an influential thinker of the 'cultural relativist' school of thought and whose arguments I will examine later in this paper.

nal affairs of states and self-determination of peoples."[47]

The **Bangkok Declaration of Asian States**, meanwhile, stressing the universality argued for "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." It also urged (the actual term used in the Declaration is recognizing) that "the promotion of human rights should be encouraged by cooperation and consensus, and not through confrontation and the imposition of incompatible values"[48]

Peter Van Ness (1995:3) summarizes the main issues involved in this global debate:

i. The question of universality versus cultural or developmental universalism: whether human rights should be understood as universal principles applying to all humanity, or as values shaped essentially by the particularities of each nation.

ii. The so-called right to intervene versus the state-sovereignty against inter-national intervention to resist human rights abuse.

iii. Competing priorities among different categories of human rights, especially: (a) civil and political rights versus economic, social, and cultural rights, and (b) individual rights versus collective or group rights.

iv. Concepts of individual rights versus citizen duties.

v. Issues having to do with the rights of indigenous peoples.

vi. Whether human rights conditions should be attached to economic and technological assistance programs.

Global Context

The global context in which this debate has recently re-emerged has a number of constitutive components. The seeming triumph of Western capitalism as a generalized global economic order and its political, ideological and cultural consequences led to a resurgence of intellectual nationalism in the non-Western world. The collapse of the Soviet Union and the Eastern European socialist bloc in a way placed the Western world in a position of unassailability, germinating a definite sense of renewed resistance to the West among new nationalists.[49] When the ideologues of the Western triumphalism -- notably **Samuel Huntington** and **Francis Fukuyama** -- came out with visions of impending cultural conflict on a global scale and of the end of ideology as totalizing grand narratives of new globalism around the core of Western industrial civilizations, it infuriated some sections of the radical and nationalist intelligentsia so much that they developed arguments for new alliances with the states of the non- Western world to combat the new 'global evil.' The Gulf War, once described by James Petras as the actual Third World War, in a way crystallized sentiments towards intellectual and political resistance against the Western project.

Economic globalization that has created much intellectual resistance, provides a backdrop for the debate on human rights too. As cleverly argued by some postmodernist theorists, globalization erases

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[47]   Final Declaration of the Regional Meeting for Latin America and the Caribbean of the World Conference on Human Rights, San Jose, January 1993; quoted in Cerna (1994): 742.

[48]   Quoted in Cerna (1994): 743.

[49]   I used the term `nationalist´ here not necessarily in its ethnic sense, but in its ethnocentric and cultural relativist sense.

local or regional specificities, arbitrarily imposes homogenization on diversity and practices violence against local resistance. Resistance to globalization -- political, cultural, epistemological and informational -- is thus viewed as the morally right and just counter-hegemonic political project. The nostalgia for, and the commitment to preserve, things local and non-Western has thus become a fairly strong current in today's radical thinking.

Arguments for Cultural Relativism

In this section I will summarize the cultural relativist approach to human rights. My strategy is to initially summon one of its most articulate spokespersons, **Chandra Muzaffar**, who is also the leading "Asianist" in the debate, and then examine the implications of the general approach developed in this school of thought. At the **International Conference on Rethinking Human Rights**, held in Kuala Lumpur/ Malaysia in December 1994, **Muzaffar** presented a paper entitled "From Human Rights to Human Dignity", an abridged version of which was later published in the **Bulletin of Concerned Asian Scholars** in 1995. I will use that paper to illustrate his approach and arguments, although his position has been developed in a number of previous essays and public lectures.[50]

Chandra Muzaffar's (hereafter CM) starting point is that the universality of HR argument is deeply embedded in the Western project for global domination. Therefore, the West has no moral right to be concerned with human rights in the non-West, because it has historically violated

Human rights and dignity of the non-white people, has failed to uphold some fundamental rights of its own people, and continues to support dictatorships that suppress genuine human rights and democracy movements in its quest to perpetuate global domination.

As we know, the universality notion is foregrounded on the liberal philosophical principle of the sovereignty of the individual in the public sphere. Cultural relativists question this fundamental principle of the mainstream HR discourse on the argument that not all cultures, particularly the Asian ones, privilege the individual in the same way the Western tradition does. The argument then is for a cultural specific locus of the rights. CM critiques the Western notion of individualism asking the following questions (I will quote CM fully on the question of individualism to capture the rhetorical essence of his intervention):

i. "Is the glorified but often destructive individualism of an earlier phase in Western history now more clearly a gross, vulgar individualism that today threatens the very fabric of Western democracy? Isn't individualism of this sort a negation of the community?"

ii. "Has the glorification and adulation of individual freedom as an end in itself reached a point where individual freedom has become the be-all and end-all of human existence? Isn't freedom in the ultimate analysis a means towards a greater good rather than an end in itself?"

The critique of the individual-centered rights discourse stems from a communitarian perspective which posits the non-Western conception of the self as fundamentally grounded on the group, the community or the collectivity independent of

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[50] **Human Rights and the New World Order** (1993), published by the Just World Trust, Penang Malaysia, contains most of Muzaffar's essays on the subject.

which the individual existence is perceived to have little or no meaning.

Hence CM´s query: "Isn't this [individual] notion of freedom linked in the West to an idea of rights that is often divorced from responsibilities? Can rights be separated from responsibilities in real life?"

This critique is linked to another point, namely the `overemphasis´ by the Western and West-inspired HR community on civil and political rights, at the expense of economic, social and cultural rights. CM elsewhere states in a critique of **Amnesty International**´s agenda:

"... Amnesty, like most Western governments, emphasizes human rights practices and human rights violations which come within the ambit of political and civil liberties... [E]conomic and social rights have received much less emphasis than they deserve. The human right to food, to clothing, to shelter, to education, to health, to employment is fundamental to the very survival of the human being ... Of what use is the human rights struggle to the poverty-stricken billions of the South if it does not liberate them from hunger, from homelessness, from ignorance, from disease? Human rights interpreted mainly in terms of political and civil rights will not satisfy the quest of the poor for human dignity and social security."[51]

The argument presented here is plain, simple and very clear. One can only do is to attach a label to it -- the empty-belly, or human dignity perspective. But, to be fair by Muzaffar, it needs to be pointed out that he calls for "a more holistic, integrated vision of human rights" in which "life and liberty, food and freedom should go hand in hand." This proposal for a holistic vision is

not without problems and we shall examine them later. Before that a brief comment on the empty-belly perspective of human rights is necessary. Simply put, this perspective says that there is no point at all in telling a starving person that she must assert her civil and political rights.[52] For the hungry, the homeless, the sick and the unemployed, the argument goes, human rights are mere abstract concepts. Much of the experience in many Asian, African and Latin American societies, however, presents a totally contrasting picture of the relationship between belly and the rights: almost as a rule, it is often the empty-bellied who become the first targets of rights violations by the state. When it comes to the denial of the rights of the empty-bellied, all state agencies tend to act with impunity.

Taking the Relativism Argument Seriously

Even if one may not totally agree with the cultural relativism perspective of Human Rights, one has to grant that it is a politically evocative one which can quite easily ruffle the Western intellectuals.[53] However, one may still recognize that it raises some disturbing issues to be confronted by universalists in the developing world. Let me cite one such issue, political conditionality in development aid adopted by Western governments and multi-lateral lending institutions who dominate the global economy. The annual aid group meetings in

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[51] Muzaffar (1993): 12-13.

[52] An Indian official attending the Colombo SAARC Summit in 1991 put across this point of view graphically when he said: If you don´t have enough food in your stomach, talking of human rights is a little abstract (cited in **Pravada**, Vol. 1, No. 2, January 1992, p. 36).

[53] For such a knee-jerk response, highly enjoyable though, to the cultural relativist argument, see Johan Galtung 1992: 152 -176.

Paris, which decide the development aid policy towards individual aid recipient countries, is an instance where the global economic agenda of industrialized countries - which by the way are located in both West and the East! - has to some extent co-opted the international human rights community. The cultural relativists see this as an unholy alliance designed to bully and coerce the weaker nations in the developing world and the nationalist resistance to it can sometimes legitimize in the public eye even the very practices that the international HR community would abhor. The other side of the story, of course, is that the political conditionality of development aid has not always been a level- playing field when even absolutely repressive regimes are allied with more powerful nations in the West. Smarter regimes of weak nations - perhaps Sri Lanka has been a good case in point - learn quickly how to overcome the concerns of the international community on the requirements of political conditionality of aid.

My own response to this issue is concerned with the political-strategic utility of international mobilization in the struggle for democratization in our societies. And it is largely linked to the behavior of the Sri Lankan state during the past few years. One of the most disquieting aspects of the authoritarian political practices of many states of the developing world has been the total disregard for domestic political pressure on even very grave human rights violations. With occasional exceptions, regimes often behave with a conviction of impunity and the domestic human rights communities are their prime targets whenever the civil society begins to assert itself against repressive regime behavior. In situations where democratic institutional mechanisms are either weak or non-

existent, ensuring of the state/regime accountability becomes extremely difficult. And indeed, regimes often behave on the assumption that accountability to domestic constituencies is totally irrelevant, unacceptable and inimical to national - one may even say 'community' - interests. However, the Sri Lankan experience since the late eighties clearly indicates that in a context of global economic and political relations with which the state is so intimately linked, the international community - states, multi-lateral lending institutions and HR groups - is the only constituency that a regime may view itself accountable for.[54] At times when domestic mechanisms of checks-and-balances of state behavior are weakened by the regime itself, the international community is perhaps the sole effective agency for checking arbitrary practices of the state, however much it may infuriate state fetishists.

In this backdrop, we in Asia need not at all feel ashamed of being members of a new global community, the international civil society. If there is any historically meaningful internationalism today, it is the

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[54] A clear illustration of my argument is the immediate response that the Premadasa administration had to make when Amnesty International made, in September 1991, thirty two recommendations to the Sri Lankan government on the improvement of the human rights situation in the country. This was the time when the domestic HR groups and oppositionist communities were under siege, after two to three years of very grave human rights violations by the state. The government in December 1991 accepted most of the 32 recommendations. The context of this acceptance was characterized by the forthcoming Sri Lanka Aid Group meeting in Paris and the UN Commission on Human Rights in Geneva, scheduled for February, 1992. Among the matters scheduled to be discussed in Geneva was the Report of the UN Working Group on Disappearances that visited Sri Lanka in October, 1991.

democratic internationalism to which the human rights community is committed. At least in Sri Lanka, it is the international civil society which has been functioning, with limitations of course, as a democratic safeguard against the arbitrary state practices, when the nationalists, neo-stalinists, nativists and cultural purists had legitimized the authoritarian state in more than one way.

Cultural Relativism as Civilizational Determinism

There is an interesting set of quasi- philosophical issues, too, involved in the cultural relativist critique. What is the relationship between the individual and the state in the non-Western world? Is it fundamentally different from that of the West? Is in the non-West the individual in fact secondary to the community and is the community - nation, ethnic group, caste group, religious group etc - the fundamental unit of human existence? Is the non- West devoid of any concept of the self anchored on notions of sovereignty of the individual?

The cultural relativist responses to these questions are anchored in a world view which may be called `civilizational determinism.´ It understands the world in terms of distinct civilizations - ironically reminding us of the Huntingtonian understanding of the world as an ensemble of antagonistic civilizations. Such formulations as Asian values or African values of human rights are derived from a discourse of civilizational specificity, posited in opposition to the West. Thus, the Bangkok Declaration´s preamble recognized 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"[55].

An extreme manifestation of this argument is that Human Rights, as conceptualized in the West, are irrelevant to Asian and African societies, since the communitarian self-understanding of people in these societies does not carry the notion of individual self. **Rhoda Howard** (1990) cites some African advocates of this position. **Fasil Nahuman**, for instance, argues that Africa has its own specific concept of humanism which "does not alienate the individual by seeing him as an entity all by himself, having an existence more or less independent of society." Another spokesperson, **Asmarom Legessee**, makes the claim that "no aspect of Western civilization makes an African more uncomfortable than the concept of the sacrilized individuals whose private wars against society are celebrated." Another writer quoted by **Howard** completes the argumentative logic of this assertion: "The Africans assume harmony, not divergence of interests ... and are more inclined to think of their obligations to other members of society rather than their claims against them."[56]

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[55] Quoted in Cerna (1994): 743.

[56] All cited in Howard (1990): 162. An Asian version of the Africanist argument is articulated by Muzaffar as follows: "Unlike Western governments which see human rights as rights revolving around the individual, there is in Asia and Africa in particular a strong notion of the rights of the collectivity, the community, the nation. This has a lot to do with the colonial experience of Asian and African states. Subjected to alien, colonial rule for centuries, fighting for freedom for whole generations of Asians and Africans came to mean fighting for the freedom of their people. There is, therefore, a concept of collective freedom and the rights that go with that freedom in the historical baggage of the Asian and African. This explains why freedom for most post-colonial societies has been more than a litany of personal liberties. It is a

The centrality of the communal component of the African persons' self-making needs not be disputed even for the sake of the argument. Anthropological studies on African societies have repeatedly confirmed this. Even in the United States where modern individualistic spirit runs supreme, community principle is not totally absent even among urban communities. All individual construction of the self, whether in Asia, Africa or in the West has a communal or group dimension at varying degrees. In Africa, commmunal dimensions of the self may perhaps be stronger. Yet, there is a definitely uncomfortable ring around this claim for African absence of the individuality. Only a few decades ago, rulers like Nkrumah in Ghana and Nyerere in Tanzania used the same argument to buttress the ideology of a highly repressive and authoritarian system of governance. Nkrumah's ideology of African Socialism or Nyerere's concept of Ujama socialism celebrated the community principle in political projects only to bring disaster to entire communities. This illustrates a demonstrably definite danger in the communitarian argument: it, unlike the citizen's rights argument, can be easily appropriated and deployed by repressive states as well as

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collective ideal inextricably intertwined with the quest of whole communities, of entire nations for human dignity and social justice (Muzaffar 1993: 13-14). This paragraph is illustrative of the general tendency among cultural relativists to treat communities, ethnic groups and nations as undifferentiated, organic entities where power, domination, inequality and oppression within the so-called collectivities is totally obviated and unaccounted for. The way it fetishizes 'freedom struggles' of the Asians and the Africans is nicely de-constructed by the post-colonial history of many of these states which have perpetrated violence against ethnic, religious and caste minorities of their own 'collectivities.'

right-wing communities -- like the religious right in the U.S. -- to deny both individual and collective rights of people. To reiterate the last point, the principle of individual-based civil and political rights can hardly be appropriated by a repressive state against its own citizenry.

In the Asian context, the same danger of the communitarian argument of rights exists, along with another paradox. Unlike the African continent in general, the Asian region represents a historically more advanced stage of capitalist development. Although Western liberal democratic institutions have not taken roots in many Asian societies, their economies are based on a complex web of market relations where the individual enters into transactions on a primarily capitalistic matrix. Asian capitalism cannot be seen as having re-shaped the Western capitalism in Asian societies in any communitarian fashion, except in giving rise to a repressively paternalistic regime of capital - labour relations. It thrives precisely on the individualistic market relations. The paradox of Asia then is the robust expansion of modern capitalism around industry and the market in a sizeable area of the region along an essentially Western pattern while political institutions have not. Any communitarian explanation should be utilized not to justify this paradox, but to unravel it. The query then should be: what is wrong with individual political rights when a mode of production of market economies, competitive individualism, and individual economic decision-making has become dominant, hegemonic and obviously unstoppable. It is precisely because the fast expanding capitalist production and exchange relations are tearing asunder traditional patron-client relations between the social group and the state that individual citizen-based civil and

political rights become all the more relevant for Asia.

There is yet another side of this problem: in the developing world, it is not the capitalist market which atomizes the society through individuation of human relations. The state, through all its repressive, interventionist, controlling and disciplinary procedures atomizes the society as much as the market does. The ultimate essence of all repressive practices of the state is to treat society on the basis of individuals. The unit of human society that suffers arbitrary arrest, torture, rape, extrajudicial execution etc., is ultimately the individual. The denial of human dignity by the state is characteristically and primarily practiced at the level of the individual.

The communitarian argument is fraught with another danger: its hidden assumption that non-Western societies are organic communities where the individual is cared for, looked after and given protective refuge by the collectivity. Except in the fertile imagination of the agrarian or tribal romanticist, this assumption can rarely be substantiated in actual societies where internal differentiation, hierarchies and divisions negate principles of equality, justice and fairness. Community egalitarianism in Asian and African societies has been a perennial myth among some moderns and anti\-post-moderns, orientalists and occidentalists alike. It is also a legacy of nationalist narrativization of local histories. But communities are sharply differentiated along class, caste and hierarchical lines and the advent of the modern state with its pervasive presence in society has sharpened the antagonisms within communities, the state agencies often being partisan towards the upper class, upper caste and privileged strata of communities.

This is exactly where a fundamental weakness of the cultural relativism argument of human rights reveals itself. The argument either ignores the question of the state or when it treats the state as an issue, it is often unproblematized in a manner that can be described as state fetishism. It is an argumentative fallacy to treat individual rights as disrupting communitarian principles, even if we accept the point that in Asia and Africa the community has supremacy over the individual. What the discourse and practice of civil and political rights does is the protection of the individual as well as the community against the arbitrary will of the state, not against the community in its pluralistic sense. If a state claims to represent one specific community -- ethnic or tribal group in the name of the nation -- as against the others, as it often happens in the contemporary world, can the dispossessed, marginalized and victimized communities seek justice by invoking community rights?

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Women´s Rights as Human Rights

Sepali Kottegoda

"Women suffer from violations of their human dignity and human rights in many different ways...A denial of the right to adequate housing or food may affect all the poor of a society, but if, for example, the division of labour within that society assigns primary responsibility to women for such tasks as collecting firewood, water, and food, then women's experience of the denial of those rights will be different in importance from that of men."[57]

Debate and discussion on women's human rights entered the mainstream thinking on human rights in general with the recognition and inclusion of the human rights of women on to the agenda of the **United Nations World Conference on Human Rights** held in Vienna in 1993. This major achievement in advancing the rights of women was the result of many years of campaigning, organising and sharing of women's experiences of violations of their rights across the world spearheaded by the **Global Campaign for Women's Human Rights**, a broadbased international movement against violence against women. This paper presents an overview of some of the main themes in the current debates in the field of women's human rights and attempts to look at these and examine briefly their relevance and impact within the Sri Lankan women's rights concerns.

Gender and Human Rights

In recent history, the mobilisation of political forces towards the recognition of women's rights, particularly in the West, began with the suffragette movement in the early part of this century demanding the right for women to vote in democratic societies. Within a few decades, the needs thus articulated evolved as full fledged women's movements in both the West and the East, which addressed and continue to address a much wider range of issues from the right to income, education, health, housing, freedom from harassment, to sexual rights and reproductive rights.

Much of the rights debate stems from the Liberal Democratic perspective that individuals are free independent beings who, provided that the environment is sympathetic to their social positions and needs in society, are able to exercise their rights through rational agency[58]. The recognition of women's rights as an issue separate from the overall discussion on human rights is premised on the fact that women face discrimination and violence across the public and private spheres in forms which are distinct and different from those faced by men. Underlying this situation is the fact that women's rights are violated as a result of their gendered identities as women.

The application of the Rights codified in the two human rights covenants of the United Nations, namely, the **International Covenant on Civil and Political Rights** and the **International Covenant on Economic, Social and Cultural Rights** in terms of state accountability exemplifies the ideological biases governing their conceptualisation. Whereas the **Convenant on Civil and Political Rights** gives an indi-

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[57]   Byrnes (1994)

[58]   cf. Coomaraswamy (1994)

vidual the right to seek redress from the state, for example in situations of violations of civil or political rights the economic, social and cultural rights in the second covenant are perceived and formulated in terms of the state's duty to provide protection: here the shift in emphasis also leaves open space for a state to refrain from taking action based on this Covenant on grounds, for example, of culture[59].

With growing awareness and recognition of the extent and nature of women's rights violations across countries, societies and cultures, in particular in the case of violence against women, many women's rights activists are sharply critical of this formulation of 'rights' which, they argue, implies an artificial separation of the public and the private spheres of society[60]. Critics argue that such an arbitrary separation reflects an ideological bias which fails to acknowledge the pervasive gender imbalances in power distribution and hierarchical structures in social and political institutions which it is contended, the state (public sphere) cannot/should not intervene in what takes place in social units such as households or families (the so-called private sphere).

The drawing of firm links between the public and private spheres and the initiating discussion and recognition of women's rights has been one of the major themes of Feminism which has emerged as a strong political movement across the globe as the 20th century draws to a close. Common to the many strands of feminism is an underlying acknowledgement of the need to evolve new strategies which continue to exert pressure on the state to ensure the

betterment of the lives of women and the empowerment of women within their social, economic and cultural contexts.

International efforts

At the international level, the efforts to win recognition for women´s rights has seen the establishment of new legal frameworks and institutional mechanisms dealing with women's rights which have expanded on the existing traditional liberal conceptualisation of political rights and freedoms as enshrined in the **Universal Declaration of Human Rights** and the two Covenants cited above. The **Convention on the Elimination of All Forms of Discrimination Against Women** (CEDAW), the appointment of the Special Rapporteur on Violence Against Women, the **International Convention on the Protection of the Rights of Migrant Workers and their Families**, the sexual and reproductive rights discourse, and the Tribunal on Violence Against Women during the Vienna Human Rights Conference add new dimensions to the existing human rights conceptual framework.

A number of the new instruments directly address the political needs of women while others more specifically address the economic and social needs of women. These new instruments also indicate the recognition of the cross cultural nature of women's concerns and an urgency in addressing issues of women's rights across international boundaries. It is worth noting that a majority of countries in the world, 131 in number, have ratified CEDAW, although in the South Asian context, Sri Lanka stands as an exception in that it has ratified the Convention without any reservations. India, Pakistan and Bangladesh have reservations on Article 16 of CEDAW.

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[59] cf. An-Na´im (1994); see also Abeysekera (1995)

[60] Ibidem

The Sri Lankan Context

One of the few acts at the state level in Sri Lanka since it became a signatory to CEDAW in 1979 has been the drawing up, 14 years later, of the **Sri Lanka Women´s Charter**, which was approved by Parliament in 1993. Although the Charter remains at the level of a document with no legal power, there have followed a number of legal reforms, or attempts at legal reforms designed to contribute to the strengthening of women´s rights. The recoginition of sexual harassment in the workplace as a legal issue can be regarded as a positive step in enhancing women´s rights along with an increasing number of gender sensitisation programmes being carried out by NGOs targeting both the public and private sectors, including State legal practitioners. In the post Beijing era, the Sri Lankan government, through the **National Committee on Women**, has exerted a considerable effort to draw up a **National Plan of Action for Women (Draft) (1996)** in consultation with women's NGOs. The **National Plan of Action for Women** is still to be presented to Parliament.

Many of the issues addressed in both the **Women's Charter** as well as the **National Plan of Action on Women** (Draft) reflect the issues set out in CEDAW and the Beijing Platform for Action. There is a growing trend to incorporate a special focus on women's needs in policy relating to food security, housing, employment. health etc.

Development and Women´s Rights: An Overview

I attempt here to look briefly at the impact of some of the principal human rights issues of women in relation to the economic and social dimensions of Sri Lanka's development paradigm. The Constitution of Sri Lanka (1978), which sets out the broad political framework of the country, is a useful starting point in looking at the conceptualisation of rights and non-discrimination. **Coomaraswamy** (1994) notes that while the principles of non-discrimination are clearly set out, in so far as women are concerned, the Constitution after a general nondiscrimination clause presents the 'problem' in the following manner:

"Nothing in this Article shall prevent special provision being made by law, subordinate legislation or executive action for the advancement of women, children and disabled persons."

Coomaraswamy (1994) argues that this juxtaposition of women with children and the disabled shows up the 'duality' present in Sri Lankan law relating to women. As she observes: "On the one hand, there is non-discrimination and an assertion of women's equality with men. On the other hand, there is the belief that woman is vulnerable and needs protection." Set, as it is, within the discourse on women's human rights, and the international and national mechanisms designed to set out and safeguard their rights, this is perhaps an ominous prelude in the process by which women´s issues and concerns are incorporated into the national framework.

The **Women's Charter** and the Sri Lanka **National Plan of Action for Women** (Draft) are two key documents which are useful indications of the state's recognition, at the policy level, of the importance of directing attention to women's concerns. The concept of gender has been gaining a degree of acceptability within the women's rights discourse in the country. But much of the development plans adopted by the state continue to be formu-

lated along the lines of the **Women in Development** approach where, in line with liberal concepts of equality for women and men, stress is laid on women and men having equal opportunities such as, for example, in education and income. Underlying this approach is the assumption that access to education and literacy would enable women to be equally qualified as men, while access to income would improve the economic productivity of women and enable the state to utilise the potential of women for economic development.

When one applies the women´s rights framework in an overview of the current state efforts in the three areas of education, income and poverty alleviation, it becomes apparent that the mere provision of equal access to women and men does not guarantee that women reap the same benefits from these opportunities as men do. This is the crucial point. What is becoming clear is that, unless there are complementary enhancements of women's abilities and rights in other spheres parallel to that of education, income and poverty alleviation, the benefits will not be fully reaped. The need for complementary developments is particularly urgent in the political sphere at all levels ranging from the power relations in the family/household, to community-based institutions, and to the political institutions at national level. Without an adequate (equal) representation of women´s need and interests in the political sphere, gender equitable processes in parallel spheres cannot be fully effective.

Sri Lanka is often cited as a country where a high rate of utilisation of health services by women at child birth is seen to be closely linked to the mother's level of schooling.[61] It is also often observed that the relatively low population growth rate in the country, as compared with those of other South Asian countries, is associated with a high level of female literacy. The assumption here is that a woman's access to education per se leads here to having a fewer number of children. This does not address the question whether the woman has a choice as to the number of children she desires to have, i.e. whether her family should be 'large' or 'small' or, whether the size of her family has already been decided by agents other than herself.

It is important to understand that the decision on family size is often not based on a woman's level of literacy. Gender ideology, cultural practices and household economics exert considerable influence on family size overriding the individual woman's ability to exercise her right in the decision-making process[62]. It should also be noted that the reportedly high incidence of (illegal) septic abortions in the country is another indication that more measures need to be taken to ensure that women (whether married or single) have the environment to exercise their rights as individuals to control their bodies[63].

The right of women to engage in economic activities for financial benefit on par with that of men is an important recognition of women's economic capabilities and their role as social actors within the community. Both the **Women's Charter** and the **National Plan of Action for Women**

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[61]   Department of Census and Statistics (1994); National Household Survey (1993): Indicators on Selected World Summit Goals for Children and Women (Colombo)

[62]   The Education and Training component of the National Plan of Action for Women (Draft) is perhaps one of the most comprehensive attempts at breaking gender stereotyping within that area.

[63]   National Plan of Action for Women (Draft) (1996)

(Draft) stress women's right to training, to appropriate technology and remuneration on par with men. There is a general assumption here that women's right to income would lead to an enhancement of her status and role as a decision-maker within the household/family/community.

The situation/status of women in the plantation sector presents an interesting example where there has been an 'equalising' of wages for men and women after more than 100 years of discriminatory wage rates. However, the continuing practice of men collecting women's wages in the plantation community (despite agitation by various women's groups) clearly shows that without accompanying change in the social practices at the household and community level accompanied by a more gender representative structure at the decision-making levels of trade unions active in the plantation sector women may find it hard to realise their rights as income earners. At present, given the non-representation of women within these decision-making structures and the pervasive ideology of women's secondary role, women do not have access to or control over their income. Hence, at the level of the household community the concept of women's rights remains alien.

At the macro-economic level, the Sri Lankan State is one of the first in South Asia to undertake a Structural Adjustment Programme with a view to balancing national expenditure and embarking on rapid economic development. One of the key elements of SAP is the cutting down of state expenditure on (and therefore accountability for) social welfare programmes, which are then expected to be taken on by the private sphere including the household unit in which women are ex-

pected to shoulder these responsibilities.[64] As in other Third World countries, the Sri Lankan State has also introduced poverty alleviation programmes to counter the adverse impact of these policies on households in poverty.[65]

Both the *Janasaviya* **Poverty Alleviation** programme, which was implemented from the early 1980s to the early 1990s, as well as the *Samurdhi* **Poverty Alleviation** programme currently being implemented, take the household as the basic social unit. An underlying assumption here, which can be linked to the Liberal political vision of non-discrimination within domestic units/families (as per universal human rights) is that household members have equal access to resources whether in terms of food, housing, clothing or distribution of income. In accordance with this assumption, it is deemed that the investment opportunities and financial assistance for enhancing household consumption levels provided by these poverty alleviation programmes, will be used by the inmates of households for the betterment of the household. This view overlooks the dynamics of gender power relations within the household and the circumstances which particularly obstruct women in exercising their rights within the domestic unit. Such imbalances in gender power relations result in differential access for women and men to both the resources and skills training which such programmes are committed to provide. There is increasing evidence from surveys and studies that the gender biased politics of the household and the community more often than not, failed to mitigate the unequal distribution of resources within the

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64 Cornia/Jolly/Steward (1987)

65 See Kuenyehia (1994)

domestic unit.[66] When such gender politics are laid out alongside the impact of overall structural adjustment policies on women, it is clear that issues of women's rights need to be incorporated and articulated at a much broader level along with a critical evaluation as to the real constraints such economic development policies place on the women's ability to exercise their rights.

CONCLUDING OBSERVATIONS

I have attempted here to look at some of the arguments for the representation and incorporation of women's rights and concerns at the household, community and state level in the Sri Lankan context. What we have seen is a growing acknowledgement at the international and national levels of the existence of women and an increasing mobilisation of efforts to bring to focus that these are women's human rights. What we also see are numerous examples where violations of women's rights are commonplace with little or no redress from the political institutions in countries that are signatories to International Human Rights Declarations, Human Rights Covenants or Conventions designed to protect the rights of women. **Coomaraswamy's** account of four cases of violations of women's rights in South Asia very concisely points to the importance of taking into account the political and cultural factors in the realisation of women's rights as human rights.[67]

Although the Sri Lankan State is a signatory to CEDAW and has taken significant steps to draw up a **Women's Charter** setting out basic rights and conditions for the advancement of women, there has been little accompanying change within the existing legal framework to enact the provisions set out in these documents. There is little knowledge about the state's commitment to the principles of women's rights in either the public or private spheres. The delay in the development of the Women's Charter into a legally binding act can be attributed to the fact that the very concepts and rights which are highlighted are being regarded as posing serious challenges to existing gender discriminatory but well entrenched laws and social customs in the country.

It is also pertinent to point out that women's economic and social rights supported in the state policy papers must be accompanied by systematic complementary representation of women`s interests and concerns in the political sphere at all levels of society from the household up to the national level. The recent failures of the state's attempts to reform the existing laws relating to divorce and to rape are clear examples of the lack of coherent understanding of, and commitment to, the issue of women's human rights.

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[66]   Kottegoda (1991); (1995)

[67]   Coomaraswamy (1994)

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Political Conditionality of Aid: Blackmail or Imperative of Universal Human Rights?

Franz Nuscheler

The subject of this article[68] - the linking of foreign aid and human rights - is a very controversial one. The reasons for the controversy are as different as are the interests, positions and perceptions of various political actors in national politics and international relations. For illustration a few examples:

1. Whereas Aung San Suu Kyi's democracy movement in Myanmar calls on the West to exert economic and political pressure on the military government by denying aid, the governments of the ASEAN states are strictly against such political interference on behalf of human rights. Whereas the West awarded her the Nobel Prize for Peace, the ruling elites of the region condemn her as a political trouble-maker and as a risk to stability. They confront the universality of human rights with the particularity of "Asian values". Like China, the ASEAN-group has more and more influence in world politics and in the international debate on human rights.

2. Everywhere in the world, human rights groups are at odds with governments that either violate human rights or tolerate that violation for economic or diplomatic reasons. The German Chancellor Helmut Kohl has been much criticised at home and by Indonesian

human rights groups for backing President Suharto's view that there are different human rights concepts as a result of different cultural values. The reason for this concession to cultural relativism was, of course, the fear that political conditionality might jeopardise German business interests in an economically attractive region.

3. But the controversy about the justification of political conditionality of aid does not only divide donor and recipient countries, but also the intelligentsia. For instance, Wole Soyinka, the Nigerian winner of the Nobel Prize for literature, untiringly calls on the West to put pressure on the dictators in his own and other countries. The African intelligentsia, however, is divided: part of them support Soyinka's view, for others political conditionality is just another word for political blackmail and imperialism.

4. There are also considerable differences between donor countries, not so much in principle, but rather in the application of principles. Japan's ODA-Charter of 1992 contains everything, which declarations of the DAC (*Development Assistance Committee*) of the OECD and of the EU contain: ODA should aim at promoting democracy and human rights standards. And yet Japan applies conditionality much more cautiously than the West and claims to follow Art. II.7 of the UN Charter as a higher-ranking principle.

5. An unconditional backing of political conditionality is only to be found with human rights groups - such as Amnesty International. They do not go for compromise; they are not impressed by economic or diplomatic interests nor by so-called "Asian values" or "Islamic

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values", which are often referred to in order to give substance to the concept of cultural relativism. They accuse the West of entertaining "double standards" in human rights matters - and they rightly do so.[69]

I shall concentrate my reflections on political conditionality on the following questions:

1. What is the meaning and what is the political background of political conditionality?
2. What are the legal, political, and ethical justifications for it in spite of the principle of non-intervention in internal affairs as laid down in Art. II.7 of the UN Charter?
3. What are the factors that limit its application?
4. The credibility of political conditionality is jeopardised by "double standards". What is the responsibility of the donor countries?
5. What can be done by the local and international civil society to protect and promote human rights?

1 Background of political conditionality

For the majority of the developing countries the conditionality of aid is not at all a new experience. The donor community has always transported and transplanted with money, projects and experts its interests and its concept of development. The recipient could offer requests, but the donors selected and decided. It is a matter of course: Aid was never given unconditionally.

The sovereignty of recipient countries has been eroded by the economic conditionality imposed by the IMF and the

World Bank, and by structures of hegemony and dependency in international relations. The debt crisis forced most developing countries to apply for standby-loans from the Bretton Woods-Institutions. These loans were linked to a strict form of economic conditionality in the shape of structural adjustment programmes.[70] Of course, these adjustment conditions were far from being purely economic, because they had far-reaching effects on social policies and the political stability of the debtor countries. The Report of the *South Commission* on "The Challenge of the South" (1990) called the structural adjustment policy a form of "neo-colonialism" over against formally sovereign debtors. But even critics of the IMF did not deny the inevitability of structural reforms. Willy Brandt (1985) formulated the dilemma in a classic manner: "If the IMF comes, it is bad; if it doesn't come or if it comes too late, it is even worse."

During the Cold War the Western donor countries applied a strategic version of political conditionality, which was more or less counter-productive for the protection of human rights: This "double standard" spared dictatorships as long as they were of strategic importance and acted pro-Western, but punished pro-Soviet regimes with a variety of sanctions, which the West commanded as a result of its economic superiority and its dominating influence on the Multilateral Development Banks.

The guiding principle of the "double standard", which tended and fostered many dictators as "friends of the West", was, in President Kennedy's words: "Somoza is a swine, it is true, but he is our swine." That "double standard" was at least in part responsible for the survival of repressive and

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69 cf. Nuscheler 1993.

70 cf. Williamson 1983.

corrupt "Dracula regimes" and thus also responsible in part for the abuses of "bad governance", in which, at the end of the eighties, the World Bank saw a major obstacle to development.

There is no question that dictatorships in the Third World were products both of internal structures and of massive support from outside. It is necessary to remember this pre-history of political conditionality, because its credibility gap is partly due to that history. The "teaching and preaching culture" of the West sometimes has a short memory. It was only after the end of the Cold War, that Western politicians started to call more and more openly for a linkage of aid to political reforms. The collapse of the Communist regimes in Eastern Europe rendered the strategic version of political conditionality unnecessary. Of even greater importance was the collapse of many dictatorial regimes in the Third World, which was brought about by pressure from two different, but interrelated sides: the internal pressure by civic movements, which in turn was reinforced by external pressure. Many dictators might have been able to deal with the internal opposition by means of repression, but their economic plight forced them to give way to external pressure by the donor countries.

The Meaning of Political Conditionality

In 1990 two international documents - mainly, if not exclusively, prepared by political and academic sages of the South - were published, in which special attention was given to the interrelationship between economic, social, and political (or more precisely: democratic) development:

- The Report of the *South Commission*, chaired by Julius Nyerere of Tanzania, stated that democracy and the respect

for human rights are a "must for development".

- The first *Human Development Report* of UNDP, which was elaborated under the guidance of Mahbub ul Haq, defined human development as "enlarging people's choices". These choices include political freedom, participation, and the respect for human rights. It should be remembered that UNDP, under the pressure of authoritarian Third World regimes, had long strictly rejected political conditionality as a means of enforcing human rights.

It was now easy for the donor countries to justify their new doctrine of political conditionality. In accordance with this understanding of development as expressed in the Report of the *South Commission* and in the *Human Development Report* (and in many other reports and declarations) the *European Council* declared, in November 1991, the promoting of human rights and democratic reforms a principal goal of foreign aid. Political conditionality should serve three objectives:

- *Respect for human rights* (in particular the eradication of torture, safe-guarding the due process of law, the protection of minorities and freedom of religion).
- *Participation of people in political decision-making* (by free elections, freedom of association for parties, trade unions and other interest groups, freedom of the press).
- *Legal security* by establishing the rule of law and good governance (i.e. accountablility and transparency of government actions).

This *European Council* resolution of 1991[71] made an important distinction: It gave priority to a *positive approach* by

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[71]   cf. Tetzlaff 1993: 273-284.

supporting the democratization process. At the same time it did not rule out a *negative approach* in the case that regimes are not willing to undertake reforms, continue to violate human rights severely, do not live up to the principles of good governance and spend too much money by the cutting, suspending or cancelling of aid or other schemes of cooperation (like publicly guaranteed export credits, debt releases etc.). If the "development state" proves to be a "state without development", which wastes and abuses foreign aid (i.e. the money of foreign tax-payers), there remain only two remedies: the complete stop of aid or a strict conditionality.

2 What are the legal, political and moral justifications for political conditionality?

There is one crucial point: The more a country is dependent on foreign aid, the more it is vulnerable and exposed to pressure from outside, the more the political conditionality conflicts with the principle of non-intervention. The principle becomes a matter of power beyond theoretical reflections.

A scholar of the Tokyo University questioned principally the compatibility of political conditionality as laid down in the Japanese ODA-Charter with the principle of non-intervention of Art. II.7 of the UN Charter.[72] To him the "negative linkage" by cancellation or suspension of aid constitutes an illegal intervention or even a "dictatorial interference" in the following cases:

- if it touches upon a matter within the domestic jurisdiction of the recipient country;

- if it is effective in bringing about a policy change.

This is the crucial point. The purpose of political conditionality is to bring about policy changes. If this purpose should constitute an "illegal intervention", the IMF and World Bank would then have to be taken to the International Court in The Hague.

This very conservative and legalistic interpretation of Art. II.7 as a superior principle does not represent the mainstream in the international legal debate. Other schools of thought emphasize Art. I.3 of the UN Charter which submits all UN members (the international community) to the objective to respect human rights and basic liberties.

Regional human rights declarations explicitly accept the universality of human rights. The Declaration of the *World Conference on Human Rights* in Vienna, which was passed with the consent of 171 delegations, not only confirmed the principle of universality but also the legitimacy of international efforts to protect human rights. The Vienna Conference developed a symbiosis of the "Human Right to Development" and a human rights-based development cooperation.

Nevertheless the linkage of aid and human rights developed into an explosive matter in the North-South-relations. Art. 5 of the Declaration of Human Rights drafted by parliamentarians of the ASEAN in 1993 states that "the respect for human rights must not be made a prerequisite for economic cooperation and development aid".

In view of the painful experiences of colonialism and neo-colonialism, the emphasis which many Third World-regimes place on non-intervention is quite understandable. Since the end of the Cold War they feel under even greater pressure from the North. Fears about the North using

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[72] Nakagawa 1993.

human rights as an instrument of disciplining the Third World were increasing. Political leaders of the South condemn political conditionality as patronising and blackmail; they now complain of a "double conditionality" after the ordeal of the structural adjustment measures. Indeed, behind the "double conditionality" emerged the objective to connect the global market economy with liberal democracy and thus to bring about the "end of history" according to the historic vision of Francis Fukuyama (1993).

The critical question of the legitimacy of external interference for the protection of human rights has a cultural as well as a legal and political dimension. Historically it is true that human rights are closely bound up with Western culture, with the history of enlightenment and with the evolution of constitutional government. But the catalogue of human rights, which are now part of the international law, has been developed by the United Nations with the participation and consent of the Third World. A comparative analysis of constitutional law shows that most constitutions incorporate this catalogue of human rights. The logical consequence is: In legal terms, political conditionality can be justified by the fact that the Human Rights Covenants have become, through ratification, part of the constitutional law of most countries in the world. This ratification includes a commitment over against the international community to protect human rights. If they violate human rights they also violate international law.

As a result of the Kurdish tragedy in Northern Iraq and of the tragedies on the Balkans and in Central Africa the international legal debate moved towards recognizing the primacy of human rights (i.e. the rights of the people) over the sovereignty of states. The "new interventionism", which has emerged after the end of the Cold War, was based on this new understanding of sovereignty, of the rights of states and of the obligations of the international community.[73]

It is quite obvious that many authoritarian regimes invoke non-intervention in internal affairs merely in order to conceal gross violations of human rights, which have nothing to do with particular political traditions or religious values. As a European I would like to add: Who maintains that human rights do not fit non-Western societies, is preaching just another kind of racism, because he does not respect the desire of Asians, Arabs or Africans for freedom and human security.

In addition to this legal justification there is also a political justification for interference aiming at the protection of human rights. The concept of human development, which has been elaborated by UNDP, equates development with human security, which includes political and social human rights. The quintessence is: Without the realization of human rights there is no real human development (which is much more than economic growth). On the *World Food Summit* in Rome the representatives of the European Union declared that democracy, human rights and stamping out corruption were essential in the battle against hunger. If this analysis should be correct, the hunger in the world would provide an additional justification for conditionality.

If the purpose of aid is to promote human development, consequently the donors and recipients have to take care of human rights. The Covenant on Economic, Social, and Cultural Rights and the "20/20-Initia-

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[73]   cf. Debiel/Nuscheler 1996.

tive", which was approved by the *Social Summit* of Copenhagen, also subject the donor countries to the obligation to invest more aid in social development. But, of course, there is a decisive difference between donors and recipients: only the donor can exert effective pressure.

Human rights movements often call on the donors to interfere on behalf of human rights. This call is reinforced by the NGO network in the North. The donors are under pressure of a monitory public opinion. This lobbying of a global human rights network might legally still be irrelevant, but politically it is relevant. The international civil society is a new player in international relations, which plays a substantial part in the emerging global governance structure. This was the central message of the Report of the *Commission on Global Governance* (1995) on "Our Global Neighbourhood".[74] The precon-dition for a "global neighbour-hood" are common values.

The process of globalization is eroding the traditional principle of sovereignty and produces a system of interdependence and mutual intervention, which is no longer consistent with Art. II. 7 of the UN Charter. A legalistic perception of political conditionality, which denounces it as an "illegal intervention", turns a blind eye on political realities. Globalization, which is producing a deregulated world economy, a borderless world society, and a hotchpotch world culture, means a systematic, structural, and mutual intervention in all areas of international relations. Human rights must be made the combining and binding value system of this emerging global village. Otherwise Darwinistic rules of the game, i.e. the rules of a predatory world capitalism, which follow the principle of the "survival of the fittest", would dominate the international relations.

The universality of human rights, which constitutes a kind of global ethics, inevitably leads to a moral obligation to promote human rights everywhere in the world. In the "new world order" borders and the "holy sovereignty" lose their traditional significance. In this "new world order" the rights of people count more than the rights of states. This is, of course, not yet a reality, but a vision. But the international civil society needs such a vision and orientation.

3   Limits to the application of political conditionality

If we analyse the problem in more detail, it becomes evident that the controversy on political conditionality is not so much about WHETHER there should be conditionality but about HOW it should be applied, about the question whether it is wise or counterproductive and whether it is feasible.[75] Should possible sanctions be based on situational indicators (such as the frequency of torture) or on trend indicators (such as the decrease or increase of cases of torture)? How can the obvious danger be avoided that the donors use conditionality as a tool of interests?

Is the Japanese preference for a "positive approach" not only more compatible with Art. II.7 of the UN Charter, but also more effective? The Japanese government has used diplomatic pressure as the primary method of implementing its ODA Charter, has given preference to "silent diplomacy" and has used the "negative approach" only in a few cases - and never against economically and politically important countries. After the massacres on Tiananmen Square and in

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74   cf. Messner/Nuscheler 1996.

75   Cf. Waller 1993: 71ff.

Eastern Timor the Japanese government only expressed "diplomatic concerns". If dictatorial regimes can be sure that an important donor is reluctant to impose sanctions, it will not change its policy and easily resist the pressure of other donors. Indonesia for example used the promise of Japan not to impose sanctions to kick out the Netherlands and make them look like a fool.

Let me clarify my position: "Positive measures" ought to be given preference. Before the application of the "negative approach" there should be an intensive political dialogue. But if a regime continues grossly to violate basic human rights, there must be some "negative measure", otherwise conditionality is toothless and useless.

The decision to impose "negative measures" must take into account who the victims of sanctions will be. If there is reason to fear that repressed people will suffer even more as a result of the cutting of aid, other ways or detours will have to be found, for example giving more support to NGOs.

What must also be kept in mind when the type and extent of sanctions are considered is the question whether they would do harm to opposition groups. Experience shows, however, that opposition groups do not benefit when dictators are spared. China is a telling example.

Up to now, the debate on political conditionality has been dominated by negative sanctions, that is to say that regimes which grossly violate human rights should be punished by stopping or cutting aid. It is essential that any temptation to impose specific political structures (such as a multiparty system) should be resisted. I do not think it right or wise to try to enforce, beyond basic human rights, the introduction of a Westminster model of democracy. This does not only violate the right to self-determination, but also meets with a fundamental problem: Democracy cannot be ordered from above and from outside., but has to develop from the grassroots. As an Nigerian scholar stated for sub-Saharan Africa: "The implementation of political conditionality can only serve as a facilitator for the transition to democracy".[76] It cannot do more, but this facilitating function should not be underestimated.

The donor community can improve the framework for democratization by various measures:

- firstly by a positive discrimination of regimes ready to undertake reforms and to improve their human rights records (e.g. Sri Lanka for signing the Optional Protocol to the International Covenant on Civil and Political Rights);

- secondly by easing the financial pressure to which many developing countries are exposed and which is a hazard to the survival of democracies, especially by means of a substantial reduction of the debt burden. The discussion on political conditionality does not take full account of the fact that there is a correlation between political and social human rights, which are indivisible in principle, but divided in social reality. The promotion of democracy is a good starting point, but not enough for its consolidation.

- Thirdly, a human rights-oriented development cooperation can contribute to an improvement of the human rights situation by means of positive measures: by supporting human rights groups and monitoring organizations, by legal assistance for the judicial system, by technical assistance for the organization of

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[76] Nwokedi 1993: 184.

elections etc. The advantage of this "positive approach" is that it bolsters existing movements and trends towards democratization.[77] Of course this "positive approach" is confined to limits as an authoritarian regime can submit local and foreign NGOs to strict control. If they are considered a nuisance by the government they are always on the verge of being outlawed or kicked out.

4   The problem of "double standards"

Criticism in donor countries of the linking of aid and human rights is directed not so much at the idea as at the gap between the idea and reality. Examples of regimes in which gross violations of human rights occur daily, but which nevertheless get a great deal of aid, are easy to find. This "double standard" is far from being in accordance with the categorical imperative of human rights.

If political conditionality is only directed at economic "have-nots" and political weaklings, it loses all its credibility and legitimacy. If human rights are sacrificed on the altar of diplomacy and profit - as is the case with China, Indonesia, or Nigeria -, then they are downgraded to a bargaining chip. This is also true of the argument that trade is good for political change. We know now that sanctions did not play a minor role in bringing down the Apartheid regime in South Africa.

In the context of the credibility and efficiency of political conditionality another problem arises: the problem of coordination among the donor countries. If cuts by Germany or any other EU member state are counter-balanced by Japan, the overall effect will probably be more or less nil. This was the case in Sri Lanka in the early nineties, when pressure from the USA and Germany was neutralised by Japan, the biggest donor.[78]

Since 1992 Japan has an ODA charter, it is true, but in that charter market-friendly reforms are rated much higher than measures to protect human rights. In the Annual Reports of the Ministry of Foreign Affairs on ODA all one can find with regard to Sri Lanka is the phrase "expression of diplomatic concerns". Even among the EU member states the coordination of aid policies does not work, although the *Maastricht Treaty* calls for a better coordination. As long as Western governments try to snatch billion-worth orders from China or Indonesia away from each other, all appeals to respect human rights are nothing but lip service, whose purpose it is to pacify public opinion at home.

Because I defend the principle of political conditionality I cannot defend the way it is applied. I am not a stickler for principles, and I do realise that it has prevented the survival of many African dictatorships. But it did not do so where there is oil: in Nigeria. Even after the murder of Ken Saro-Wiwa the EU could not bring itself to impose sanctions. Political conditionality was corrupted by economic interests.

How can we overcome this "double standard"? I can see only two potential solutions. First: To quit conditionality by doing business as usual. This comfortable solution is preferred by the business community, but not acceptable on ethical grounds. Secondly: Politics acts under pressure of interest groups. If the international civil rights movement is unable to

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[77] cf. Waller 1993: 66ff.

[78] cf. Rösel 1993.

mobilize and organize sufficient pressure, it will lose the battle for human rights.

5 What can be done by the *international human rights lobby*?

In the donor countries only an intensive monitoring of governments by parliaments, the media and NGOs can lessen the credibility gap. The civil society is called upon to take the challenge, but it is very hard, also in the North, to prevail over economic vested interests. The high unemployment in the EU is one of the major factors that counteract giving priority to human rights. We need the criticism from human rights groups in the Third World, because they give us the legitimacy to act as advocates. The obligation of "advocacy" is an essential motive for campaigns, organized by Anmesty International and other Human Rights Organizations. The governments cannot ignore these campaigns, because they find quite some resonance in the media. What we need is mutual intervention.

If we prefer a "positive approach" of promoting democracy and human rights, we need an active civil society in the recipient countries as agents of change. Democracy has to be developed inside and from below. All we can do is to support human rights movements from outside by various measures. It is then the job of Northern NGOs to exert pressure on the governments of the donor countries to make them revise their "double standards", so that human rights are no longer sold for profits.

CONCLUSION

Since human rights as part of international law can claim universal validity, it is not only legitimate, but also imperative, to subject dictators in every form or shape to political conditionality. They cannot invoke any political traditions or religious values, because no tradition and no religion approves torture or arbitrary arrest. But his endorsement of political conditionality is not unconditional: It must be restricted to the protection of basic human rights and must not be extended to the export of any political or economic model; it must be instrumental in trying to bring about more human security.

Conditionality means intervention - and intervention conflicts with sovereignty. I am fully aware of the danger that political conditionality might be taken as a licence for interventionism and making use of the plight of many developing countries. But if basic human rights are grossly violated, then the rights of people count more than the rights of states - or better: the vested interests of ruling classes. This is not only a personal preference, but an option in accordance with the global ethics enshrined in the Vienna Declaration on the universality and indivisibility of human rights. Defending their universality I defend the conditionality of aid - but not unconditionally.

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