THE ETHICAL DIMENSIONS OF HUMAN RIGHTS

a graduate class project of Fairleigh Dickinson University

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INTRODUCTION

HISTORY

There can be no doubt that the subject of human rights in general, and of human rights violations in particular, has begun to preoccupy us completely in recent years. That may be due to the improvements in communications and the knowledge of events as they unfold in different and distant corners of the world. It may also be due to the end of the Cold War, when the sudden collapse in the relatively balanced structure of a bi-polar world and its alliances led to the emergence of a rudderless void and the bubbling of pent up ethnic tensions. Friends became foes, and all their human rights violations which had been ignored for so long, were now the object of our attention and aggressive interest.

Despite this sudden current emphasis on human rights, and the impression that this is a new phenomenon in a post World War II world, the fact remains that the fundamental concepts of human rights are firmly rooted in the basic spiritual underpinnings which underlie all societies.

All religions and beliefs have spoken of the responsibility of man to fellow man, of the need for respect and tolerance, and of the rules of behavior that must govern this relationship.

Even the secular history of mankind spoke of the Golden Rule – “do unto others as you would have them do unto you”. Diverse civilizations then codified this concept in different texts and edicts. For example, the Code of Hammurabi clearly recorded in 1750 B.C. in its opening lines that its governing justification lay in the objective of a desire to “to bring about the rule of righteousness in the land, to destroy the wicked and the evil-doers; so that the strong should not harm the weak”.

So there is nothing new about human rights at all, certainly not in the context of global history. Nor, for that matter, is there anything new in human rights violations.

European civilization, for example, went into a prolonged period of denial in its early stages, when it codified the idea of “the divine right of kings to do no wrong”. This permitted the latter to engage in all forms of personal idiosyncrasies, in which the most intense injustices and indignities were visited upon their peoples.

The reversal then started in a first milestone of the Magna Carta in 1215 A.D., when a group of barons surrounded the King and forced him to agree to limit those untrammeled powers by a process of “consultation”. With his hands forced in this fashion, the King agreed, but as soon as the barons dispersed, he disregarded the document and reverted to his earlier ways.

It took almost four hundred years before the next milestone saw light. In 1679, the British Parliament passed the Act of Habeas Corpus, under which it became illegal for the King to imprison anyone without

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producing him before a third party – a court – to explain the reasons for the incarceration. This fundamental concept of “no detention without charge” then spread around the world into all legal systems, and despite some very visible and obvious violations, it remains an integral part of our global system today.

Then came the third milestone of the 18th Century and the Age of Enlightenment, when prominent thinkers started delving deeper into the injustices of governments in their relationship with the people. Democracy, which had been born in Europe under the Greek civilization, returned to Europe two thousand years later. The glorious revolutions of that 18th Century, first in the British colonies of the United States, and then in France, both spotlighted the importance of the people and their human rights against the excesses of irresponsible government.

The fact that human rights had now been consecrated in the fundamental documents of both countries did not mean that violations did not occur. In the United States, “all men were created equal” but slavery continued for a hundred years, and then in the incarnation of segregation for another hundred years. In France, the “rights of man” did not extend into its colonies in Africa, and abject colonialism cast its heavy shadow for more than 250 years also.

But the greatest transgressions of Western civilization occurred in the form of a genocidal intolerance towards “others”, in crusades and inquisitions and pogroms and outright Nazism. It was as if the inhumanity of man towards man had no bounds at all.

So, there was with a sense of great relief when World War II ended, and the winds of change began to blow. Led by a great American woman, Eleanor Roosevelt, the world was urged and cajoled and cornered into agreeing to a document of primary importance, the Universal Declaration of Human Rights, followed in turn by its two covenants, on Civil and Political Rights, and on Economic and Social and Cultural Rights.

THE SHORTCOMINGS

The cracks in the Universal Declaration began to show up right from its birth. To begin with, a vast proportion of the populations of the world were still governed by colonial masters who had little or no interest in their human rights. The United Nations had just 51 member states at this stage, so the word “universal” betrayed an ignorance of basic mathematics. Few were preoccupied by this fundamental fact, and it was not until a dozen years later that the winds of change really took off in the decolonization movements of the late 1950s and early 1960s.

That fact, namely, that the Universal Declaration was an agreement only among a small minority of the member states of the world, remains its most serious shortcoming even today. A number of countries, and they represent very important population masses, maintain that they were not part of the negotiations, and that they were not there to present
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their own points of view on what should, or should not, be included as fundamental human rights. The debate continues till today.

**The Right to Development**

An essential part of that debate lay in the identification of what were the constituent specifics of human rights.

For some, mostly in the developed countries of the West, these rights were largely political in nature; the right to free speech, the right to free assembly, the right to free belief, the right to freedom of political choice, the right to asylum, etc.

For others, mostly in the developing countries, it was the fundamental economic rights that were far more important, the right to development, the right to food, the right to a decent life, the right to migration, etc. For these developing countries, basic political rights had little meaning when they were starved of food, or mired in poverty, or condemned to shortened live expectancies.

It was this clear division of opinion that led to the amplification of the basic document, the Universal Declaration, into two separate Covenants, on Civil and Political Rights, and on Economic and Social and Cultural Rights, respectively.

The developed countries of the North could not however meekly accept the point of view of the developing South. To do so would imply financial costs. Talk of political rights was cheap; it merely required statements and judgments and finger-pointing at others. It required no financial outlays. To extend the concept human rights into the Right to Development would however require putting money down into the process, and that was neither the objective nor the desirable implementation procedure.

So, while these ideas were tentatively debated in the margins of the Universal Declaration, it was not until almost twenty years later in 1976 that the two Covenants actually received the necessary number of ratifications.

Even then, the second Covenant, on Economic and Social and Cultural Rights was not ratified by all member states, prominently among them, by the United States. The United States position was, and remains, that economic rights do not have the same weight as political rights, and that they thus constitute a “secondary tier” of rights. This position is not shared by the vast majority of the countries and populations of the world.

In 1993, the United Nations organized a global conference on human rights in Vienna. This conference was dominated by the debate on the Right to Development, and it was finally agreed, after protracted and divisive discussions, that this Right to Development was a “fundamental” human right, and that it would enjoy equal “weightage” with political human rights. The United States did not agree with this conference decision despite the over-whelming majority in support. So much for the respect for democracy!
The net result of this disagreement about the Right to Development is that endemic poverty continues to bedevil the world. The developed countries of the North believe that this poverty is the result of bad governance by the rulers of the developing countries themselves. The developing countries of the South believe, on the other hand, that this poverty is the result of decades and centuries of exploitation through colonialism, and that it is consequently the responsibility of those guilty of that unfortunate past to rectify the damage that has been visited on them.

The debate continues, as does poverty in the world. Many believe that it is this continuing poverty that is the greatest violation of human rights, and that those forces that are responsible for this situation need to be properly identified and reversed.

**Selectivity**

Linked to this problem of the Right to Development is a more serious disagreement about the manner in which human rights are being implemented in the world.

A large number of countries believe that human rights are not being implemented as a uniform principle under Rule of Law, but rather as a tool of foreign policy considerations, under which violations in one part of the world are highlighted, and similar violations in other parts of the world are ignored. Examples of such “selectivity” abound. The perception is that the governing principle is really whether the violator is an ally or an enemy. In one case, action can be taken not just to condemn, but even to invade, while in another case, eyes are turned away, and no action is taken at all. This makes a travesty of a noble principle of human rights, which is seen as being held hostage to petty political machinations.

This also produces another unfortunate result. If human rights are not a principle but just a tool of foreign policy, then they lose status and acceptability. Suspicions abound about motives and objectives. Once that happens, violators get a new lease of life in their nefarious activities, and no impartial recourse against them becomes possible.

So, selectivity in human rights becomes a very serious detraction from a principle which should command universal adherence and respect. Violations proliferate, and those whose human rights are violated continue to suffer.

**Globalism versus Nationalism**

Another aspect of the debate emerges from the tectonic forces of globalization that are sweeping the world.

Globalization is the increasing inter-connectedness of peoples and populations around the world, through awareness, through contacts, through communications, through new technical facilities, etc. These are intensifying at historic speeds, and at a dizzying collapse in costs.

The result of this globalization is the progressive erosion of the concept of unquestioned sovereignty. Governance and ideas can no longer
be contained within the limits of erstwhile borders, nor can any nation or state now retain a status of imperial divinity. All are now subject to scrutiny and criticism.

What that means is that protectionism is going against the tide. It is no longer possible to penetrate the borders of others with a right to survey and to judge, while at the same time preventing others from doing the same in reverse. Human rights cannot be a one-way street. Either borders exist, and no judgments are to be allowed against the human violations committed by others within the limits of their own sovereignty, or borders do not exist, and all become vulnerable to oversight and criticism in a globalized world.

The question has not been resolved, and will continue to be the focus of analysis as we try to adjust to the new forces that are changing our world today.

**Migration**

Linked to these points at issue is the question of the existence or otherwise of the Right to Migration. If we live in a globalized world, and if the basic human right is a search for a decent life, then the Right to Migration becomes fundamental to the debate.

There is really nothing new in migration. All scientific research shows that the human species originated in East Africa. All of us are thus African in origin, and almost all have just migrated out from that original source to wherever we find ourselves today.

So, we are all African, and all migrants. The fact that this initial human migration placed us in different corners of the globe, and made us develop different physical and cultural characteristics, cannot detract from the commonality of the human species.

The problem lies in the well-documented tendency of old migrants to resist and to look down on new migrants. That does not, in any way, constitute a justification, as it is no more than an explanation of a psychological tendency. Nothing can justify the right of one person to immigrate, and then to deny immigration to others.

What compounds the problem is the appearance of the nation-state. This is a relatively recent phenomenon, going back no more than a couple of hundred years in the history of the world. Since that history of the world is much longer than those two hundred years, this new phenomenon of the nation-state is of questionable permanence. In fact, it is already being seriously questioned by a number of forces, by globalization itself, by regionalism, and even by a possible reversion to old imperialism.

Meanwhile, given the vast global differences between income and developmental levels in different corners of the world today, and the fact that migration has always been a fundamental safety valve against the scarcity of resources in history, we face a force that just cannot be contained behind protectionist walls, and fences, and immigration policies.
Nor can the simple addition of the adjective “illegal” modify a force of natural and historic proportions. National laws are enacted by humans after all, and cannot have the same weight as natural laws that have governed human behaviour for centuries. It has to be remembered also that human rights are fundamentally about the right to a decent life, so that any laws that attempt to constrict that right for national objectives can only be seen as a violation of that fundamental right.

Racism

Much of the accusation of violations of human rights by “others” can also be attributed to the human tendency to racism.

Racism is not about skin-color at all. It is about the feeling of each individual that he alone is at the center of the world, and that all others fall in the category of “they”. This self-centrality is human, and it is natural.

That does not justify it however. We have many natural human tendencies, and many of them are reprehensible. That is why the history of spirituality is the progressive shift away from the “lower” instincts to “higher” purposes. Society has constantly attempted to control these lower instincts, through laws, and through social rules. Thus, freedom is not about the uncontrolled exercise of desires, but rather about the manner in which they can be channeled along acceptable lines of social behaviour.

Be that as it may, we have racist tendencies in all societies and in all individuals, against persons of a different skin-color, against persons with different facial characteristics, against persons of different languages or accents, against persons of a different gender, against persons of a different origin. All these are incarnations of basic racist tendencies. So, while this may be natural or human in its own way, the fact remains that racism has to be strongly resisted and contained. That is what spiritualism and intellectual thought has attempted throughout history, albeit with limited success. Note the violent and abhorrent examples of racism in contemporary times, some of which will remain as permanent blots on the human face-book. The struggle is not easy, but it must continue.

The Moat and the Speck

Another human tendency lies in finger-pointing at others. There is some merit in noticing that when one points a finger at others, there are normally three fingers that point back at you yourself.

The fact of the matter is that all of us are guilty of serious human rights violations. Those who pontificate about human rights would do well to look into their own histories, and to grade their own past performance first in this field. There is a principle in law, normally referred to as “clean hands”, which implies that your own hands have to be clean before you can accuse others of having dirty hands.

This now poses a problem. Since all of us have some human rights skeletons in our closets, how do we then proceed to further the objective of achieving a more just world, with better human rights for all.
Perhaps the solution lies in understanding that human rights are not a simple and static comparison between those who have them and those who do not, but rather a target that all of us have to aspire towards.

Once we understand that this is a dynamic objective, and a target, then judgmental criticism would be replaced by sympathetic dialogue, and incentives rather than sanctions.

**Universality of Norms versus Cultural Differences**

An even greater challenge is posed by the cultural differences that have emerged in the variety of civilizations that exist around the world. As these have developed over time, they have created new concepts, new habits, and new norms of local behaviour.

Should those differences be respected where they exist, or should they be judged according to one-sided “universal” norms developed elsewhere? Which should command higher respect, “local” norms or “universal” norms? And who, if anyone, is to judge which stands on a higher pedestal vis-à-vis the other? This debate is beginning to occupy center stage now, and once again, there is little possibility yet of any emerging consensus. The world is divided into different civilizations and cultures, and no one of them is willing to accept the primacy of the other. In fact, different population masses in the world have developed different legal systems also, and it is virtually impossible to classify any one as superior to the other.

The current debate about the Islamic Sharia and its injunctions exemplifies this dilemma.

**Women**

Part of the debate also centers around the status of women. Women constitute half of the population of the world, and have been trampled upon throughout history by a male-dominated structure.

This was particularly true of Western societies, where women had to struggle for centuries to obtain the legal right to property, or the legal right to vote. In most of the West, those rights were not obtained until just a century ago, and even today, women struggle to break through a “glass ceiling” under which they do not have equal pay for equal work.

Elsewhere, women did have their rights granted by law, in the case of Islamic society more than fourteen hundred years ago, and yet the actual implementation of those rights remains elusive.

So, the unfortunate case of women is another blot on the pages of human rights. It is amazing that men have succeeded for so long in dominating women, for no reason other than the heavier muscles of their bodies. Their brains are no better, and their testosterone-based aggressiveness has created more damage in history than any other element.

It is high time that the greater sentimental balance of women be given a more prominent say in the affairs of the world. But will men ever learn, and will women ever insist?
Indigenous peoples

Another forgotten group is that of indigenous peoples, who have suffered at the hands of armed settlers, and who continue to have their rights trampled upon. Some have achieved a slightly better status of being recognized as “first peoples”, at least on paper. Others continue to languish in reservations, or in the back-woods of society, or as untouchables, not to be seen or heard or taken into any consideration.

Once again, those who talk glibly about human rights would do well to examine their own past history, and the crimes committed by them against the original populations of the lands that they migrated to and forcefully appropriated. Some are not even capable of expressing an apology for these crimes, let alone extending due compensation for the “conquest” of the lands and properties of others, or for the sufferings of the affected populations.

That too will be called into question by the judgment of history when it is finally written years and centuries hence.

CONCLUSION

These are just some examples of the complexity of the debate, and of the need for re-examining the whole subject of human rights in a mature fashion. It is obviously not a simple division between the good “us” and the bad “them” of the world.

If all of us are guilty, then all of us must make the maximum effort to move up higher along the ladder of human rights. This is not a desirable option, but an essential program.

In actual fact, all of us have been making credible efforts to improve the respect for human rights throughout history. That has been part of the fundamental motivation of all individuals and peoples and nations, and that is why the human rights record has generally moved forwards and not backwards, despite the snags that have slowed it down at different times and places.

Human rights thus represent the best of human endeavour, of a process that begins with the search for a spiritual focus, for a meaning to life, and for a respect for fellow-men as agents of a common human society.

That search is a crusade, in which there are no winners and no losers. All are participants, all are moving in the same direction, and all will be judged in the higher courts of their own conscience about their achievements or shortcomings.

That is why the essence of the problem lies in self-examination on the one side, and in empathy on the other. That is why dialogue and debate and tolerance must replace the intellectual arrogance and missionary zeal that characterizes our judgments about others. That is why we must all espouse modesty while continuing to entertain hope and confidence.
INTRODUCTION

The term “human rights” refers to the "basic rights and freedoms to which all humans are entitled”. Examples of rights and freedoms, which are often thought of as human rights, include civil and political rights, such as the right to life and liberty, freedom of expression, and equality before the law; and social, cultural and economic rights, including the right to participate in culture, the right to food, the right to work, and the right to education.

The promotion and protection of human rights has been a major preoccupation for the United Nations since 1945, when the organization's founding nations resolved that the horrors of The Second World War should never be allowed to recur. Respect for human rights and human dignity "is the foundation of freedom, justice and peace in the world", the General Assembly declared three years later in the Universal Declaration of Human Rights. Over the years, a network of human rights instruments and mechanisms has been developed to ensure the primacy of human rights and to confront human rights violations wherever they occur.

The International Bill of Human Rights consists of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and its two Optional Protocols. In 1966 the General Assembly adopted the two detailed covenants which complete the International Bill of Human Rights; and in 1976, after the Covenants had been ratified by a sufficient number of individual nations, the Bill took on the force of international law.

The Universal Declaration of Human Rights has thus been given concrete legal force through these two covenants: The International Covenant on Economic, Social and Cultural Rights (ICESCR) and The International Covenant on Civil and Political Rights (ICCPR. These are two of six core human rights treaties, together they form the bedrock of the international legal protection of human rights

Although the Universal Declaration of Human Rights and the two covenants are considered to be turning points in human rights field, they have many loopholes.

THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

History

The UDHR was framed by members of the Human Rights Commission, who began to discuss an International Bill of Rights in 1947, with former First Lady Eleanor Roosevelt in the Chair. The members of the Commission did not immediately agree on the form of such a bill of rights, and whether, or how, it should be enforced. The Commission
proceeded to frame the UDHR and other accompanying treaties, but the UDHR itself quickly became the priority.

Canadian law professor John Humphrey and French lawyer René Cassin were responsible for much of the cross-national research and the structure of the document respectively, where the Articles of the declaration were interpretative of the general principle of the preamble. The document was structured by Cassin to include the basic principles of dignity, liberty, equality, and brotherhood in the first two Articles, followed successively by rights pertaining to individuals; rights of individuals in relation to each other and to groups; spiritual, public and political rights; and economic, social, and cultural rights. The final three Articles place, according to Cassin, rights in the context of limits, duties and the social and political order in which they are to be realized. Humphrey and Cassin intended the rights in the UDHR to be legally enforceable through some means, as is reflected in the third clause of the preamble.

Some of the UDHR was researched and written by a committee of international experts on human rights, which included representatives from all continents and all major religions, and consulted with leaders such as Mahatma Gandhi. The inclusion of both civil and political rights and economic, social and cultural rights was predicated on the assumption that basic human rights are indivisible and that the different types of rights listed are inextricably linked. This principle was not then opposed by any member state (the declaration was adopted unanimously, with the abstention of the Eastern Bloc, the apartheid regime of South Africa and Saudi Arabia), however this principle was later subject to significant challenges. The Universal Declaration was bifurcated into two distinct and different covenants, the Covenant on Civil and Political Rights and another, the Covenant on Economic, Social and Cultural Rights. Over the objection of the more developed states, which questioned the relevance and propriety of such provisions in covenants on human rights, both covenants begin with the right of people to self-determination and to sovereignty over their natural resources. Then the two covenants go different ways.1

The drafters of the Covenants initially intended only one instrument. The original drafts included only political and civil rights, but economic and social rights were added soon thereafter. Western states then fought for, and obtained, a division into two covenants. They insisted that economic and social rights were essentially aspirations or plans, not rights, since their realization depended on availability of resources and on controversial economic theory and ideology. These, they said, were not appropriate subjects for binding obligations and should not be allowed to dilute the legal character of provisions honoring political-civil rights; states

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prepared to assume obligations to respect political-civil rights should not be commitments. There was wide agreement and clear recognition that the means required to enforce or induce compliance with socio-economic undertakings were different from the means required for civil-political rights. Despite the divisions over which rights to include, the fact that some states declined to ratify any treaties including certain specific interpretations of human rights, and the opposition of the Soviet bloc and a number of developing countries who argued strongly for the inclusion of all rights in a so-called Unity Resolution, the rights enshrined in the UDHR were split into two separate covenants, allowing states to adopt some rights and derogate others. Though this allowed the covenants to be created, one commentator has written that it denied the proposed principle that all rights are linked which was central to some interpretations of the UDHR.

Declaration provisions

The Declaration consists of a preamble and 30 Articles, setting forth the human rights and fundamental freedoms to which all men and women, everywhere in the world, are entitled, without any discrimination. Article 1, which lays down the philosophy on which the Declaration is based, reads: “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood”. The Article thus defines the basic assumptions of the Declaration: that the right to liberty and equality is a man’s birthright and cannot be alienated: and that, because man is a rational and moral being, he is different from other creatures on earth and therefore entitled to certain rights and freedoms which other creatures do not enjoy.

Article 2, which sets out the basic principle of equality and non discrimination with regard to the enjoyment of human rights and fundamental freedoms, forbids “distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.

Article 3, the first cornerstone of the Declaration, proclaims the right to life, liberty and security of person -a right essential to the enjoyment of all other rights. This Article introduces Articles 4 to 21, in which other civil and political rights are set out, these rights include: freedom from slavery and servitude; from torture and cruelty, inhuman or degrading treatment or punishment; and the right to recognition everywhere as a person before the law; the right to an effective judicial remedy; freedom from arbitrary arrest, detention or exile; the right to a fair trial and public hearing by an independent and impartial tribunal; the right to be presumed innocent until proved guilty; freedom from arbitrary interference with privacy, family, home or correspondence; freedom of movement and

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residence; the right of asylum; the right to a nationality; the right to marry and to found a family; the right to own property; freedom of thought, conscience and religion; freedom of opinion and expression; the right to peaceful assembly and association; and the right to take part in the government of one's country and to equal access to public service in one's country.

Article 22, the second cornerstone of the Declaration, introduces Articles 23 to 27, in which economic, social and cultural rights - the rights to which everyone is entitled "as a member of society" - are set out. The Article characterizes these rights as indispensable for human dignity and the free development of personality, and indicates that they are to be realized "through national effort and international cooperation". At the same time, it points out the limitations of realization, the extent of which depends on the resources of each State.

The economic, social and cultural rights recognized in Articles 22 to 27 include the right to social security; the right to work; the right to equal pay for equal work; the right to rest and leisure; the right to a standard of living adequate for health and well-being; the right to education; and the right to participate in the cultural life of the community.

The concluding Articles, Articles 28 to 30, recognize that everyone is entitled to a social and international order in which the human rights and fundamental freedoms set forth in the Declaration may be fully realized, and stress the duties and responsibilities that each individual owes to his community. Article 29 states that "in the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society". It adds that in no case may human rights and fundamental freedoms be exercised contrary to the purposes and principles of the United Nations. Article 30 emphasizes that no State, group or person may claim any right, under the Declaration, "to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth" in the Declaration.

THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

History

The International Covenant on Civil and Political Rights is a United Nations treaty based on the Universal Declaration of Human Rights, created in 1966 and entered into force in March 1976. Nations that have signed this treaty are bound by it.

The Covenant contains two Optional Protocols. The first Optional Protocol creates an individual complaint mechanism whereby individuals in member states can submit complaints, known as communications, to be reviewed by the Human Rights Committee. Its rulings under the first Optional Protocol have created the most complex jurisprudence in the UN international human rights law system.
The second Optional Protocol abolishes the death penalty. Countries were permitted, however, to make a reservation allowing for the use of death penalty for the most serious crimes of a military nature, committed during wartime.4

**Covenant Provisions**

We can divide the provisions of the Covenant into five categories:

- Protection of an individual’s physical integrity (against things such as execution, torture, and arbitrary arrest).
- Procedural fairness in law (rule of law, rights upon arrest, trial, basic conditions must be met when imprisoned, rights to a lawyer, impartial process in trial).
- Protection based on gender, religious, racial or other forms of discrimination.
- Individual freedom of belief, speech, association, freedom of press, right to hold assembly.
- Right to political participation (organize a political party, vote, voice contempt for current political authority).

The Covenant has two Optional Protocols:

- Mechanism by which individuals can launch complaints against member states.
- Abolition of the death penalty.

The International Covenant on Civil and Political Rights addresses the state’s traditional responsibilities for administering justice and maintaining the rule of law. Many of the provisions in the Covenant address the relationship between the individual and the state. In discharging these responsibilities, states must ensure that human rights are respected, not only those of the victim but also those of the accused. The civil and political rights defined in the Covenant include: inter alia, the right of self-determination; the right to life, liberty, and security; freedom of movement, including freedom to choose a place of residence and the right to leave the country; freedom of thought, conscience, religion, peaceful assembly, and association; freedom from torture and other cruel and degrading treatment or punishment; freedom from slavery, forced labour, and arbitrary arrest or detention; the right to a fair and prompt trial; and the right to privacy. There are also other provisions which protect members of ethnic, religious or linguistic minorities. Under Article 2, all states parties undertake to respect and take the necessary steps to ensure the rights recognized in the Covenant without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status.

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Unlike the Universal Declaration and the Covenant on Economic, Social, and Cultural Rights, the Covenant on Civil and Political Rights authorizes a state to derogate from, or in other words restrict, the enjoyment of certain rights in times of an official public emergency which threatens the life of a nation. Such limitations are permitted only to the extent strictly required under the circumstances and must be reported to the United Nations. Even so, some provisions such as the right to life and freedom from torture and slavery may never be suspended.5

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The Optional Protocols

As mentioned above, the Covenant contains two Optional Protocols. The first Optional Protocol creates an individual complaints mechanism whereby individuals in member States can submit complaints, known as communications, to be reviewed by the Human Rights Committee. Its rulings under the first Optional Protocol have created the most complex jurisprudence in the UN international human rights law system.

The Second Optional Protocol, aiming at the abolition of the death penalty is a side agreement to the International Covenant on Civil and Political Rights. The Optional Protocol commits its members to the abolition of the death penalty within their borders, though Article 2.1 allows parties to make a reservation allowing execution for grave crimes in times of war. Cyprus, Malta and Spain initially made such reservations, and subsequently withdrew them. Azerbaijan and Greece still retain this reservation on their implementation of the protocol, despite having banned the death penalty in all circumstances.6

THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

History

In many respects, greater international attention has been given to the promotion and protection of civil and political rights rather than to social, economic, and cultural rights. This leads to the erroneous presumption that violations of economic, social, and cultural rights were not subject to the same degree of legal scrutiny and measures of redress. This

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view neglected the underlying principles of human rights - that rights are indivisible and interdependent and therefore the violation of one right may well lead to the violation of another. Economic, social, and cultural rights are not quite fully recognized by the international community and in international law, though they are progressively gaining attention. These rights are designed to ensure the protection of people, based on the expectation that people can enjoy rights, freedoms, and social justice simultaneously.

Drafting continued on the convention, but there remained significant disagreements between UN members on the relative importance of negative Civil and Political versus positive Economic, Social and Cultural rights. These eventually caused the convention to be split into two separate covenants, "one to contain civil and political rights and the other to contain economic, social and cultural rights". The two Covenants were to contain as many similar provisions as possible, and be opened for signature simultaneously. Each would also contain an article on the right of all peoples to self-determination.

The first document became the International Covenant on Civil and Political Rights, and the second the International Covenant on Economic, Social and Cultural Rights. The drafts were presented to the UN General Assembly for discussion in 1954, and were adopted twelve years later in 1966.

Although economic, social and cultural rights have received less attention than civil and political rights, far more serious consideration than ever before are currently being devoted to them. The question is not whether these rights are basic human rights, but rather what entitlements they imply and the legal nature of the obligations of states to recognize them.

Economic, social and cultural rights are designed to ensure the protection of people as full persons, based on a perspective in which people can enjoy rights, freedoms and social justice simultaneously. In a world where, according to the United Nations Development Programme (UNDP), "a fifth of the developing world’s population goes hungry every night, a quarter lacks access to even a basic necessity like safe drinking-water, and a third lives in a state of abject poverty - at such a margin of human existence that words simply fail to describe it" the importance of renewed attention and commitment to the full realization of economic, social and cultural rights is self-evident.

Despite significant progress since the establishment of the United Nations in addressing problems of human deprivation, well over one billion people live in circumstances of extreme poverty, homelessness, hunger and malnutrition, unemployment, illiteracy and chronic ill health. More than 1.5 billion people lack access to clean drinking-water and sanitation, some 500 million children do not have access to even primary education; and more than one billion adults cannot read and write. This massive scale of
marginalization, in spite of continued global economic growth and development, raises serious questions, not only about development, but also about basic human rights.

**Covenant Provisions**

The Covenant follows the structure of the UDHR and ICCPR, with a preamble and thirty-one Articles, divided into five parts.

Part 1 (Article 1) recognizes the right of all peoples to self-determination, including the right to "freely determine their political status", pursue their economic, social and cultural goals, and manage and dispose of their own resources. It recognizes a negative right of a people not to be deprived of its means of subsistence, and imposes an obligation on those parties still responsible for non-self-governing and trust territories (colonies) to encourage and respect their self-determination.

Part 2 (Articles 2-5) establishes the principle of "progressive realization" (see below). It also requires that the rights be recognized "without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". The rights can only be limited by law, in a manner compatible with the nature of the rights, and only for the purpose of "promoting the general welfare in a democratic society".

Part 3 (Articles 6-15) lists the rights themselves as rights to:

- work, under "just and favorable conditions", with the right to form and join trade unions (Articles 6, 7, and 8);
- social security, including social insurance (Article 9);
- family life, including paid parental leave and the protection of children (Article 10);
- an adequate standard of living, including adequate food, clothing and housing, and the "continuous improvement of living conditions" (Article 11);
- health, specifically "the highest attainable standard of physical and mental health" (Article 12);
- education, including free universal primary education, generally available secondary education, and equally accessible higher education. This should be directed to "the full development of the human personality and the sense of its dignity", and enable all persons to participate effectively in society (Articles 13 and 14);
- participation in cultural life (Article 15).

Many of these rights include the specific actions that must be undertaken to realize them.

Part 4 (Articles 16-25) governs reporting and monitoring of the Covenant and the steps taken by the parties to implement it. It also allows

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1 http://en.wikipedia.org/wiki/International_Covenant_on_Civil_and_Political_Rights

#Reservations
the monitoring body (originally the United Nations Economic and Social Council, but now the Committee on Economic, Social and Cultural Rights; see below) to make general recommendations to the UN General Assembly on appropriate measures to realize the rights (Article 21).

Part 5 (Articles 26 - 31) governs ratification, entry into force, and amendments of the Covenant.

**Draft Optional Protocol**

Many other UN human rights instruments, such as the ICCPR, the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention Against Torture have Optional Protocols which allow individuals to make complaints directly to the relevant monitoring body. Currently the ICESCR does not have such a Protocol, but has been working towards one for many years. Currently an “open-ended working group” is in the process of producing a draft Optional Protocol for discussion. In the meantime, other monitoring bodies may be able to consider complaints related to economic, social and cultural rights in the context of its treaty.

**CRITICAL REVIEW OF THE THREE DOCUMENTS**

**Praise for the Universal Declaration of Human Rights**

The United Nations’ document Universal Declaration of Human Rights, is a product of its time. There are notable omissions, such as indigenous peoples and children, and the language used is full of gender bias. Notwithstanding these, the Declaration is one of the most important international documents because it has influenced lawmaking, how organizations and institutions operate, personal and collective actions, values, and attitudes and beliefs about human rights.

Conceived as “a common standard of achievement for all peoples and all nations”, the Universal Declaration of Human Rights has become just that: a yardstick by which to measure the degree of respect for, and compliance with, international human rights standards. Since 1948 it has been, and rightly continues to be, the most important and far-reaching of all United Nations declarations, and a fundamental source of inspiration for national and international efforts to promote and protect human rights and fundamental freedoms. It has set the direction for all subsequent work in the field of human rights and has provided the basic philosophy for many legally binding international instruments designed to protect the rights and freedoms which it proclaims. In the Proclamation of Teheran, adopted by the International Conference on Human Rights held in Iran in 1968, the Conference agreed that “the Universal Declaration of Human Rights states a common understanding of the peoples of the world concerning the inalienable and inviolable rights of all members of the human family and constitutes an obligation for the members of the international community”. The Conference affirmed its faith in the principles set forth in the Declaration, and urged all peoples and governments "to dedicate themselves to [those] principles, and to redouble their efforts
to provide for all human beings a life consonant with freedom and dignity and conducive to physical, mental, social and spiritual welfare”.8

Eleanor Roosevelt stated that, "Taken as a whole, the Delegation of the United States believes that this is a good document — even a great document — and we propose to give it our full support. [...] In giving our approval to the Declaration today it is of primary importance that we keep clearly in mind the basic character of the document. It is not a treaty; it is not an international agreement. It is not and does not purport to be a statement of law or of legal obligation. It is a Declaration of basic principles of human rights and freedoms[...]. This Universal Declaration of Human Rights may well become the international Magna Carta of all men everywhere”.9

President Ronald Reagan later stated that, "For people of good will around the world, that document is more than just words: It's a global testament of humanity, a standard by which any humble person on Earth can stand in judgment of any government on Earth”.10

In a speech in October 1995, Pope John Paul II called the UDHR "one of the highest expressions of the human conscience of our time".

Criticism of the Universal Declaration of Human Rights

• Developing countries criticism

The strongest reservations about the Universal Declaration come from the vast majority of Developing Countries, who constitute the vast majority of the membership of the United Nations. Most got their independence in the late 1950s and early 1960s as a result of the strong decolonization movement of the period. Their reservations are based on the fact that they did not even exist in the late 1940s, that they did not consequently participate in the negotiation and drafting of the Declaration, and that their points of view are thus not duly reflected in the final document. Much of the continuing debate on the relative importance of economic rights vis-à-vis political rights is a fall-out of that widely held position.

• Islamic criticism

Predominantly Islamic countries, like Sudan, Pakistan, Iran, and Saudi Arabia, frequently criticize the Universal Declaration of Human Rights for its perceived failure to take into the account the cultural and religious context of non-Western countries. In 1981, the Iranian representative to the United Nations, Said Rajaie-Khorassani, articulated the position of his country regarding the Universal Declaration of Human Rights, by saying that the UDHR was "a secular understanding of the Judeo-Christian tradition", which could not be implemented by Muslims without trespassing Islamic law.

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8 http://www.unhchr.ch/html/menu6/2/fs2.htm
There are more than sixty Muslim nations who are members of the Organisation of the Islamic Conference. In June 2000, the OIC officially resolved to support the Cairo Declaration on Human Rights in Islam, an alternative document that says people have "freedom and right to a dignified life in accordance with the Islamic Sharia".

*Libertarian Criticism*

Libertarians and some conservatives believe the so-called economic rights that must be provided by others through forceful extraction (e.g. taxation) negate other peoples’ inalienable rights. In reference to Article 25’s declaration of a right to medical care, Andrew Bissell (spokesperson for Objectivism, the philosophy of Ayn Rand) argued, "Health care does not simply grow on trees; if it is to be made a right for some, the means to provide that right must be confiscated from others...no one will want to enter the medical profession when the reward for years of careful schooling and study is not fair remuneration, but rather, patients who feel entitled to one’s efforts, and a government that enslave the very minds upon which patients’ lives depend".

*Praise for the International Covenant on Civil and Political Rights*

The Covenant on Civil and Political Rights echoed many of the declaration’s original provisions. As with its sister document, the Covenant on Economic, Social, and Cultural Rights, states that ratified the Covenant on Civil and Political Rights obligated themselves to implement a long list of rights provisions. These included: the right to life, liberty, and security of person; the right to seek compensation or relief before a court or competent tribunal; the right to liberty of movement, including the liberty to leave one’s country; the right to privacy; the right to freedom of thought, conscience, and religion; and the right of peaceful assembly.

The Covenant went even further in some cases, outlawing torture and degrading punishment for all ratifying states, and establishing a committee to whom parties of the treaty would have to report. Furthermore, the Covenant lists specific activities that states must undertake as a means of safeguarding civil and political rights.

*Criticism of the International Covenant on Civil and Political Rights*

The United States long resisted ratification. This was motivated by popular American dislike for the UN, but also out of a fear that the covenant’s anti-death-penalty language could be used by domestic anti-death-penalty activists to litigate against capital punishment.

The United States Senate ratified the ICCPR in 1992, with a number of reservations, understandings, and declarations; with so many, in fact, that its implementation has little domestic effect.

In particular, the Senate declared in 138 Cong. Rec. S4781-84 (1992) that "the provisions of Article 1 through 27 of the Covenant are not self-executing". Where a treaty or covenant is not self-executing, and where
Congress has not acted to implement the agreement with legislation, no private right of action is created by ratification. ¹¹

Thus while the ICCPR is ostensibly binding upon the United States as a matter of international law, it does not form part of the domestic law of the nation.

**Praise for the International Covenant on Economic, Social and Cultural Rights**

The Covenant contains some of the most significant international legal provisions establishing economic, social and cultural rights, including rights relating to work in just and favorable conditions, to social protection, to an adequate standard of living, to the highest attainable standards of physical and mental health, to education and to enjoyment of the benefits of cultural freedom and scientific progress.

**Criticism of the International Covenant on Economic, Social and Cultural Rights**

Article 26 is not the only provision in the Covenant concerned with equality and non-discrimination. Article 2(1) creates an obligation on state parties to ensure the rights of the Covenant to all individuals within their territory and subject to their jurisdiction without distinctions of any kind. The use of the word distinction rather than discrimination does not indicate a difference in meaning by the drafters. Article 3 guarantees equal rights of men and women in enjoyment of all rights of the Covenant. Several Articles contain specific obligations regarding non-discrimination, equality and arbitrariness.

The number of provisions in the Covenant addressing equality and non-discrimination indicate the central place they hold in the scheme for human rights protection. Translating this fundamental value into a workable Article that could attract broad consensus in debate proved a difficult task. The task was achieved by leaving important issues unresolved, the meaning of key terms uncertain, including the definition of discrimination, the scope of the Article, and the relationship between Article 26 and the other non-discrimination provisions of the Covenant.

A number of parties have made reservations and interpretative declarations to their application of the Covenant. For example, Algeria interprets parts of Article 13, protecting the liberty of parents to freely choose or establish suitable educational institutions, so as not to "impair its right freely to organize its educational system". Bangladesh interprets the self-determination clause in Article 1 as applying in the historical context of colonialism only. Belgium interprets non-discrimination as to national origin as "not necessarily implying an obligation on States automatically to guarantee to foreigners the same rights as to their nationals. The term should be understood to refer to

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¹¹ See Fujii v. State 38 Cal.2d 718, 242 P.2d 617 (1952); also see Buell v. Mitchell 274 F.3d 337 (6th Cir., 2001) (discussing ICCPR's relationship to death penalty cases).
the elimination of any arbitrary behaviour but not of differences in treatment based on objective and reasonable considerations, in conformity with the principles prevailing in democratic societies”. China interprets the labour rights in Article 8 in a manner consistent with its constitution and domestic law. Egypt accepts the Covenant only to the extent it does not conflict with Islamic Sharia law. France views the Covenant as subservient to the UN Charter.

CONCLUSION

Human rights are not separate parts, but dependent on one another, so that each of these rights that constitute the main parts work together in the system; for example, the right to participate in public life of society is directly linked to the right of self-expression and the right to education, as well as the right to access to information or the enjoyment of the necessities of life.

Human rights are a set of principles that may seem ideal, but constitute realistic objectives. They inspire principles for the pursuit of the vision of a better world in which everyone enjoys freedom, justice and peace, and the minimum standards that must be incumbent for individuals and institutions. Human rights are those basic standards without which no human can live in dignity. And defending human rights is to demand respect for the dignity of all people.

International human rights law has been designed to protect the full range of human rights required for people to have a full, free, safe, secure and healthy life. The right to live a dignified life can never be attained unless all basic necessities of life—work, food, housing, health care, education and culture—are adequately and equally available to everyone. Based squarely on this fundamental principle of the global human rights system, international human rights law has established individual and group rights relating to the civil, cultural, economic, political and social spheres.

These instruments enshrine global human rights standards and have been the inspiration for more than 50 supplemental United Nations human rights conventions, declarations and bodies of international minimum rules and other universally recognized principles. These additional standards have further refined international legal norms relating to a very wide range of issues, including women’s rights, protection against racial discrimination, protection of migrant workers, the rights of children, and many others.

The two Covenants are international legal instruments. Thus, when member and non-member States of the United Nations ratify a Covenant and become a “state party” to it, they are willfully accepting a series of legal obligations to uphold the rights and provisions established under the text in question.

The Universal Declaration has come to be recognized as a historic document articulating a common definition of human dignity and values. The Declaration is a yardstick by which to measure the degree of respect.
for, and compliance with, international human rights standards everywhere on earth.

The coming into force of the Covenants, by which States parties accepted a legal as well as a moral obligation to promote and protect human rights and fundamental freedoms, did not in any way diminish the widespread influence of the Universal Declaration. On the contrary, the very existence of the Covenants, and the fact that they contain the measures of implementation required to ensure the realization of the rights and freedoms set out in the Declaration, gives greater strength to the Declaration.

Moreover, the Universal Declaration is truly universal in scope, as it preserves its validity for every member of the human family, everywhere, regardless of whether or not Governments have formally accepted its principles or ratified the Covenants. On the other hand, the Covenants, by their nature as multilateral conventions, are legally binding only on those States which have accepted them by ratification or accession.

We can safely say that there is not one single country in this world where human rights violations do not occur. It is a sad fact that human rights violations against human beings take place everyday in every country of this world, be it developed or developing, be it in the North or in the South, the East or the West. The types of violations that are committed may differ, depending whether the country is at war or at peace, for example, but they are human rights violations nevertheless.

Finally, no country in the world should view itself as the incarnation of human rights, and use human rights as a tool to interfere in affairs of and to exert pressure on other countries to realize its own strategic interests.
BASIC INTERNATIONAL MECHANISMS

INTRODUCTION

Human rights are inherent to all human beings, without distinction of gender, race, color, religion, political views, language, national or social origin, economic status, birth or any other differences that humans share. All human rights, whether they are civil or political rights such as the right to life, equality before the law, and freedom of expression, economic or social and cultural rights such as the rights to work, social security and education, or collective rights (such as the rights to development and self-determination) are indivisible, interrelated and interdependent. The improvement of one right facilitates the advancement of the others.

These rights are guaranteed by international law as of 1948 in the Universal Declaration of Human Rights, and later on in the form of treaties, customary international law, general principles, and other sources of international law. International human rights laws lay down obligations of Governments to take positive action in certain ways or to refrain from particular acts in others in order to promote and protect human rights and fundamental freedoms of individuals or groups.

The international human rights system also creates a number of charter-based bodies and treaty-based bodies which are charged with the implementation of the agreed laws.

CHARTER-BASED BODIES

Charter bodies include the former Commission on Human Rights, the new Human Rights Council, and Special Procedures. In the margins of these charter-based bodies is the Office of the High Commissioner of Human Rights (OHCHR).

The Human Rights Council, which replaced the Commission on Human Rights, held its first meeting in 2006. This intergovernmental body, which meets in Geneva 10 weeks a year, is composed of 47 elected United Nations Member States who serve for 3 year terms, and cannot be elected for more than two consecutive terms. The Human Rights Council is a forum empowered to prevent abuses, inequity, discrimination, protect the most vulnerable, and expose perpetrators.12

The Human Rights Council is a separate entity from Office of the High Commissioner on Human Rights. This distinction originates from the separate mandates they were given by the General Assembly. Nevertheless, OHCHR provides substantial support for the meetings of the Human Rights Council, and follow-up to the Council’s deliberations.

Special Procedures is the general name given to the mechanisms established by the Commission on Human Rights to address either specific country situations or thematic issues in all parts of the world. Special

12 www.ohchr.org
procedures for observing human rights are carried out through a rapporteur (representative), an independent expert, or a working group. Special Procedures usually call on mandate-holders to examine, monitor, advise, and publicly report on human rights situations in specific countries or territories. These are known as country mandates. Mandate-holders can also report on cases of major human rights violations worldwide (known as thematic mandates).

There are 28 thematic mandates and 10 country mandates worldwide. All of these groups report to the Human Rights Council on their findings and offer their recommendations.¹³

**TREATY-BASED BODIES**

There are nine core international human rights treaties, two of which cover persons with disabilities and enforced disappearance, which have not yet entered into force. Since the adoption of the Universal Declaration of Human Rights in 1948, all UN Member States have ratified at least one core international human rights treaty, and 80 percent of all international human rights treaties have been ratified.

There are seven human rights treaty bodies, which are committees of independent experts that monitor implementation of the core international human rights treaties. They include the Committee against Torture, the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Discrimination against Women, the Committee on the Elimination of Racial Discrimination, the Committee on the Protection of the Rights of all Migrant Workers and their Families, the Committee on the Rights of the Child, and the Human Rights Committee. They are all created in accordance with the provisions of the treaties that they monitor. OHCHR assists these treaty bodies in harmonizing their working methods and reporting requirements through their secretariats.

**HUMAN RIGHTS COUNCIL**

In 2006, the General Assembly decided to establish a new Human Rights Council responsible for promoting universal respect for the protection of human rights and fundamental freedoms for all, without discrimination of any kind and in a fair and equal manner. Adopting resolution 60/251 by a vote of 170 to 4, with 3 abstentions, the Assembly set up this Council to replace the Commission on Human Rights. The election of the first members of the Council was held the same year, as did the start of their term of office.¹⁴

The Human Rights Council is a completely distinct entity from the Office of the High Commissioner for Human Rights. The latter is part of the United Nations Secretariat, answering to the Secretary-General, and providing technical, substantive and secretariat support to the Council.

¹³ www.ohchr.org
¹⁴ www.ohchr.org
The Human Rights Council consists of forty-seven member states of the United Nations. At its fifth session in 2007, the Council responded to a request and adopted detailed modalities regarding the Universal Periodic Review mechanism. These modalities relate, in particular, to the basis of the review, the principles and objectives to be followed, the periodicity and order of review of countries, processes and modalities, as well as the outcome and the follow-up to the review.

In 2007 also, the Human Rights Council adopted a calendar in relation to the consideration of the 192 Member States of the United Nations to be considered during the first four-year cycle of the mechanism, and decided on the precise order of consideration of the States to be reviewed in 2008.

The purpose of creating the new Human Rights Council

The UN had decided to endorse the proposal and to create the new Council with a mandate to address country situations, including gross and systematic human rights violations. All the details of the new Council were left to the General Assembly to debate, negotiate, and clarify. How can the new Human Rights Council be credible, powerful, and legitimate in a world of power politics? How can the Human Rights Council avoid the flaws and failures of the earlier Commission? If the chief problems of that Commission had been politicization and selectivity, are these not endemic to the current international political system? Is international human rights scrutiny a question of structure or of political will?

The initial purpose of the Commission was standard setting. Its first task was the preparation of the Universal Declaration of Human Rights in 1948. The Commission continued in its standard-setting function in the early years of its existence, creating several new treaties on specific human rights issues such as racial discrimination; civil and political rights; economic, social and cultural rights; torture; and women’s and children’s rights. The second phase of the Commission’s work was to oversee the implementation of these standards. Through debates, discussions, and resolutions it has instituted mechanisms, such as working groups and special rapporteurs, to assist in monitoring the implementation of the standards. Yet, despite all of these efforts, the Commission suffered from a steady decline in its credibility and faced serious challenges in the effectiveness of its work. It came to resemble a club where friendships easily overlooked wrongdoing. A record of selectivity and double standards tarnished its reputation, and its membership often included political regimes that were themselves considered major perpetrators of human rights abuses.

Functioning of the Human Rights Council

The malfunctioning of the Commission meant that human rights concerns had been treated ineffectively and in a biased manner. The Commission had regularly debated many reform ideas. Yet none of the piecemeal reforms yielded effective change. The Secretary-General
therefore took a bold step in suggesting that the UN human rights structure be completely overhauled and that the Commission be replaced by a new Human Rights Council.

The main purpose of the reform plan was to upgrade the status of the Commission to that of a Council, putting human rights on a par with security and development issues. The Council would be a standing body, able to meet on a regular basis rather than restricted to a six-week annual meeting. It would have a chamber of peer review where every member state would periodically come under scrutiny, with equal attention to be given to all areas of rights. The chamber as a standing body would at the same time be able to deal urgently with any crisis situations that might arise. The membership would be more accountable and representative through the proposal that members would be elected by a two-thirds majority vote of the General Assembly. The Council would also be in a position to provide states with technical assistance and policy advice.

A fresh start may be just what the international human rights machinery needs; however, with the same players in entrenched positions, the old political game is likely to be repeated. There are practical points that may be made to avoid the flaws and failures of the past. Yet, without a change in the attitudes of member states to human rights monitoring, the Human Rights Council is in danger of harboring the same constraints and flaws of the old Commission. More forceful and public monitoring that gives equal treatment to all states on a regular basis may help promote an attitudinal change. The principle that all states have equal obligations to report on human rights situations may help to change current reigning assumptions that somehow public condemnation can be negotiated.

A change in election procedures may help to prevent states that are committing human rights atrocities from becoming members. It will be impossible to base membership on precise criteria, as no consensus view prevails on who is a human rights abuser and who is not. Every country in the world violates the Universal Declaration of Human Rights in some way. The majority of state parties are not in favor of introducing criteria for membership of the Council. One way of giving credibility to membership is to exclude certain states from possible election to the Human Rights Council, for example by disallowing any state with a current resolution concerning its negative human rights record. Fifteen states fall under such a resolution at present. The General Assembly will need to pass a two-thirds majority in electing members to the Council, as against the current procedure whereby the Economic and Social Council (ECOSOC), with fifty-four member states, elects the Commission based on regional blocks. It is not yet clear whether the regional blocks could put nominations for the Human Rights Council to the General Assembly. Equitable geographic representation through regional groups will ensure credibility by safeguarding against one region being dominant. This equitability can be
created by setting a minimum number of state memberships of the Council per region. The elections through the General Assembly, with 192 member states, will create a wider potential for change in membership compared to the elections through ECOSOC, which has only fifty-four member states.

As mentioned, double standards have been a key flaw in the Commission; some states with egregious human rights records have not had any resolutions on their human rights situation. In order to sort and classify these countries, the Office of the High Commissioner on Human Rights (OHCHR) should summarize the human rights situation on all countries before their potential election to the new council. A Human Rights Report published by the OHCHR with a summary of the situation in each country would make the election process more transparent. Such a report would serve as a guide in the election process, and all states could be strongly encouraged not to vote for states that the OHCHR has classed as having a questionable human rights record.

As the Secretary General’s reform proposals have suggested, the image of the Human Rights Council should be upgraded, and the body should be given the status of a principal organ of the UN. This would require a charter amendment, which needs to be passed by a two-thirds majority in the General Assembly, including all permanent members of the Security Council.

As a principal organ of the UN, the Human Rights Council would have the increased capability, status, and authority that the secretary-general envisaged. The Commission, as a subsidiary organ, has had to have all its resolutions confirmed by ECOSOC. Although ECOSOC approval has been a more or less rubber stamp exercise, it still has meant that the CHR has been given a subsidiary class status. The president of the General Assembly announced in June 2005 that initially the Council would be a subsidiary organ of the Assembly, but the possibility of promoting it to a principal organ would be left open for the Assembly to decide.

Making the Human Rights Council a principal organ of the UN may also translate into a larger budget for the OHCHR. At present, the OHCHR receives only 1.8% of the UN budget. Most of the remaining OHCHR budget currently comes from extra budgetary contributions. The September 2005 UN World Summit decided to double the regular budget of the OHCHR over the next five years; however, the new council may attract additional funding to be proportionate with its new status.

A chamber of peer review, as suggested by the Secretary General, would enhance the credibility and legitimacy of international human rights monitoring. In fact, the Commission prepared periodic country reports in the 1950s, but the practice was discontinued. Peer review does not require a complex system and should complement the treaty body system. As has been suggested by Amnesty International, the OHCHR should be responsible for preparing a public country dossier based on information in
its reports and UN field sources. Subsequently, the country under review would present an oral statement. The Council, with the help of the OHCHR, would then make a list of points that require action. Given that the International Labor Organization, the World Trade Organization, and the International Monetary Fund also aggregate country review processes, it would be worthwhile to explore how those models could be adapted to the human rights context. Many current international organizations with peer review processes suffer from accountability problems, so it will be important to guard against potential problems in this regard by having peer review through the OHCHR.

The creation of the new Human Rights Council might be detrimental to nongovernmental organizations (NGOs). The potential risk is that the status of NGOs and their ability to contribute could be curtailed. The role of NGOs is essential for ensuring transparency and legitimacy. The ability of NGOs to be involved, contribute to the debates, and participate in the sessions of the Human Rights Council will be indispensable to ensuring accountability in the new structure. Further strengthening the role of NGOs would in turn enhance Council discussions.

**Demonstrated Flaws in Practices**

The General Assembly draft document also stipulates that the system of Special Procedures that has been established under the Commission will be preserved in the new Council. Subsequent decisions by the Council may decide to maintain, change, or create new mechanisms. However, the Sub-Commission on the Promotion and Protection of Human Rights (the main subsidiary body of the Commission) should be handled differently. Over recent years, the Sub Commission has evolved its capacities and productivity as an independent think tank of the human rights system. Its chief functions will continue to be research, studies, and reports, and the membership can continue to be composed of independent experts.

Other practices within the Commission have demonstrated flaws that the Council cannot continue to maintain in a new structure. A new council, free from flaws such as the no-action motion, will safeguard the principle of universal scrutiny. A strong, accountable chamber of peer review will create a foundation of impartiality and credibility.

Moreover, as a standing body in regular session during the year, the Council will be better able to deal with emergencies, although it will be necessary to create efficient procedures for responding immediately to crisis situations.

Ultimately, however, an outstanding design for the structure of the new Human Rights Council will be meaningless without a firm foundation of state commitment. At the close of the sixty-first session of the commission in 2005, High Commissioner Louise Arbour rightly said that to
suggest that an inter-governmental human rights body should be apolitical is like criticizing spring for coming after winter. Politics is an endemic feature of the current international human rights system. What a different institutional structure can do is establish processes, such as peer review, that will not allow political interests to take organs such as the Human Rights Council hostage. A new structure instituting universal peer review procedures, eliminating flaws such as the no-action motion, upgrading NGO participation, being in regular session throughout the year, and responding to urgent crises would be a major step against the intrusions of politicization and selectivity. However, the new body must not inherit the lack of commitment and willpower from the old Commission. Giving the emperor real new clothes will be the only befitting epitaph for the Commission on Human Rights.15

THE OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS

The Office of the High Commissioner for Human Rights (OHCHR) supports the work of rapporteurs, representatives, and other working groups through its Special Procedures Division. In addition, it also supports the work of the Research and Right to Development Division (which aims to improve the integration of human rights standards and principles, including the right to development), and the Field Operations and Technical Cooperation Division, which supports the work of country-mandates.

OHCHR is funded from the United Nations regular budget and from voluntary contributions by Member States, intergovernmental organizations, foundations and individuals. Regular budget funding for the 2006-2007 biennium budget was set at US$ 85.9 million, or less than 2.26 percent of the United Nations global budget of 3.8 billion. In 2006, OHCHR also received voluntary contributions from donors amounting to US$ 85.3 million. 16

OHCHR is staffed by over 900 international civil servants who work on a wide range of human rights activities, and is headed by the High Commissioner for Human Rights, currently Louise Arbour, due to retire soon. The independent role of the High Commissioner as the principal UN human rights official comes from a separate mandate by the General Assembly.

With a number of field presences, her Office assists Governments in strengthening their human rights capacities, and promotes ratification and implementation of international human rights treaties. The Office works with Governments and other partners such as national institutions to ensure all human rights are fully respected. The Office engages with civil society organizations to assists them in promoting and protecting human rights.

rights more effectively. To achieve its comprehensive human rights mandate, the Office provides a forum for identifying, highlighting and developing responses to today’s human rights challenges worldwide, and acts as the principal focal point of human rights research, education, public information, and human rights advocacy activities in the United Nations system.

**Functioning of the Office of the High Commissioner**

The backbone of a strong Council is a strong secretariat that can administer the full requirements of a principal organ. Currently, the Office of the High Commissioner for Human Rights (OHCHR) does not have adequate resources and operational capacities to fulfill such a role. The demands placed on the OHCHR are often not backed with the requisite funding. The demands are not coordinated systematically, because information is not adequately shared between all agencies, and the tasks given to the Secretariat place stress on an administrative system that does not have the adequate resources to cope.

In implementing its legal obligations, the OHCHR system suffers from some significant shortcomings and disadvantages. OHCHR lacks adequate resources and operational capacities. It has an insufficient presence in the world, and faces ever increasing uncoordinated and usually under-funded demands from the General Assembly, other United Nations organizations. Enforcement mechanisms are weak, further undercutting the credibility and effectiveness of the system. While the present plan of action focuses on OHCHR, the overall goal must be to strengthen all aspects of the United Nations human rights programs, the various components of which are interdependent. Credibility or resource deficiencies arising in part from the program inevitably affect the whole.

The United Nations regular budget and voluntary contributions from Member States, intergovernmental organizations, foundations and individuals are not enough to fund these human rights mechanisms. It is necessary for these mechanisms to expand in the future and current financial situation does not make it possible.

The OHCHR leads global human rights efforts, and speaks out objectively in the face of human rights violations worldwide. They provide a forum for identifying, highlighting and developing responses to today’s human rights challenges, and act as the principal focal point of human rights research, education, public information, and advocacy activities in the United Nations system.

**Mainstreaming Human Rights**

Since the establishment of the United Nations in 1945, promoting and encouraging respect for human rights to all without distinction as to

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18 [www.ohchr.org](http://www.ohchr.org)
race, sex, language, or religion, as stipulated in the United Nations Charter, has been one of the fundamental goals of the organization. It is tasked with mainstreaming human rights within the United Nations, which means injecting human rights perspective into all United Nations programs. This is to ensure that peace and security, development, and human rights are present for all human beings.

This task is essential at a time when the United Nations is undergoing its most far-reaching reform. As it faces ever-changing challenges in the new millennium, the international community unequivocally puts human rights at centre-stage in addressing various pressing issues worldwide.

The United Nation’s faces a very important role of mainstreaming human rights into the United Nations system. The UN works with Governments, civil society, national human rights institutions, other United Nations entities, and international organizations.

The UN also works with international organizations such as the International Labor Organization, the Office of the High Commissioner for Refugees, the United Nations Children’s Fund, United Nations Educational, Scientific and Cultural Organization, the International Criminal Court, specialized criminal tribunals such as the ones for former Yugoslavia and for Rwanda established by the Security Council.

The United Nation’s method of work focuses on three major dimensions: standard-setting, monitoring, and implementation on the ground. OHCHR works to offer the best expertise, and substantive and secretariat support to the different United Nations human rights bodies as they discharge their standard-setting and monitoring duties.

**Implementation on the ground**

The United Nations is also responsible for ensuring the implementation of international human rights standards on the ground. It accomplishes this goal by through greater country engagement and its field presences. Field offices and presences play an essential role in identifying, highlighting, and developing responses to human rights challenges, in close collaboration with governments, the United Nations system, non-governmental organizations, and members of civil society. Among these responses of monitoring human rights situations on the ground and implementing projects, such as technical training and support in the areas of administration of justice, legislative reform, human rights treaty ratification, and human rights education, designed in cooperation with member States.

Based on the above facts, one must question whether the Human Rights Council is doing its job in a clear-cut and efficient manner. In addition, one must discuss if the implementation of universal human rights is working out evenly at all levels. There are a few examples which can clearly prove that the Human Rights Council is not living up to the standards it should have.
CONCLUSION

The purpose of this critical review was to focus on the origins of the Human Rights Council and to discuss if the implementation is working out evenly at all levels. Unfortunately, there is big gap between the theory and the practice.

It is generally agreed that credibility and institution building have to be the Council’s highest priorities. There must be an understanding of the time and effort that Council members need to spend on this highly complex task, in which non-Council members and NGOs are also to play a substantive role.

Two imperatives stand out for the Council’s new human rights architecture. The first is to build an effective system of Universal Periodic Review to assess human rights performance in all countries. The second is to preserve and strengthen the system of special rapporteurs and to defeat attempts by some members to weaken their independence.

Concentrating on institution building alone, however, is not the way to create a better human rights body. As was the case with the Commission, many members of the Council have shown a tendency to put politics, and sometimes regional politics, above human rights. Many Council discussions have been marked by suspicion and distrust, and the voices of some members have been stifled by regional or other group positions, leading the former Secretary General to caution the Council that ‘states that are truly determined to uphold human rights must be prepared to take action even when that means, as it sometimes will, giving offense to other States within their own region’.

That brings us back to our starting point. In the ultimate analysis, institutions and mechanisms can only reflect a consensus on the underlying vision. That vision does not quite exist yet, partly because of the debate between universal norms and national sovereignty, partly due to continuing disagreements about the relative importance of political versus economic rights, and partly because of the manner in which one part of the world projects itself as the sole keeper of the truth about human rights. Only the progressive reversal of these factors will result in institutional structures which can measure up to the centrality of human rights in human behavior. That may be a slow process, but it will finally succeed.

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INTRODUCTION

Perhaps the most controversial issues in modern criminal justice relate to the relationship between capital punishment and human rights. The practice of capital punishment is hotly debated with strong opinions for, and against it, with a strong emphasis on religion as a justification for carrying out punishments.

Capital Punishment has long been a practice in humankind and is viewed by many religions as justified punishment for crimes that violated Divine Law or the laws of the state. This was the principle of the Lex Talionis “an eye for an eye, a life for a life”, or in the words of the Quran, “and We ordained therein for them: life for life, eye for eye, nose for nose, ear for ear, tooth for tooth, and wounds equal for equal”.

Also, according to the Old Testament, murder is wrong and its penalty is death. In the Book of Genesis it is stated that, “whoever sheds mans blood by man his blood shall be shed, for in the image of God, He made man”. So, we can conclude that, in accordance with the scriptures, capital punishment is based upon the belief in the sanctity of life as defined in religion, and not as a means of vengeance.

The question of who then should be authorized to carry out the punishments, and the authority under which they exercise this right, has been the subject of debate for centuries. If we refer back to the Bible, the book of Romans makes reference to God ordaining to the governments the responsibility to punish murderers and wrong-doers. The Old Testament teaches that capital punishment was instituted by God in the Jewish Legal Code, as well as, in the Mosaic Laws.

According to Mosaic Law, the punishment of death was instituted for numerous offenses. For example, in the case of a premeditated murder, in what is known in the scriptures as “lying in wait”, a person was sentenced to death if that person intentionally murdered someone. But the laws also stated that anyone practicing the occult, or dealing in sorcery or divination, or acting as a medium and sacrificing to false gods, were committing a crime punishable by death. Sexual sins such as homosexuality, rape, and incest were all punishable by death. If a male child disrespected his parents the punishment was also death. In the Torah, the book of Deuteronomy, speaks of a case where the parents were not able to control their son and his erratic behavior. He became a problem for the household and would not obey his parents. By law the family had the right to bring him before the elders of the city who acted as judges. If convicted of the offense the son was stoned to death by the elders and all the men of the city. Because of laws the father and family were not allowed to participate in the deed. The death of the son was a way to put away the evil from the
family. This law was reserved only for sons only who disrespected their parents; daughters were exempt from the practice.

The violations that warranted Capital Punishment continued to grow, more and more capital offences were added. As civilization advanced, the methods of punishment grew more and more gruesome. In the 5th Century B.C. the Romans carried out death sentences by crucifixion, drowning, beating to death, burning alive, or impaling. In the 16th Century A.D., King Henry VIII of England executed more than 72,000 people using such methods as boiling a person in hot oil, burning them at the stake, hangings, beheadings, and by drawing and quartering.

Not only did the methods of killing a person increase but the number of crimes punishable by death also increased dramatically. For example, in 18th Century B.C., in Babylon, the code of King Hammurabi made 25 crimes punishable by death; by the 18th Century A.D. in Britain more than 220 crimes were punishable by death. Of course, murder was punishable by death, but also stealing, cutting down a tree, or stealing a rabbit, amongst other things, were all punishable by death.

In the West, where the colonies of America were expanding in the 15th Century, they adopted the same laws of Capital Punishment as were used in Britain, and also created some of their own. In 1612 A.D., Sir Thomas Dale, Governor of the colony of Virginia enacted what was known as the “Divine, Moral and Martial Laws”. Under these laws the death penalty could be used for even minor offenses like stealing grapes, killing chickens, or trading with native Indians.

Also, during the slave trade severe punishments, including death, were dealt out to any enslaved person who violated their master’s orders or the local laws. The slaves had no rights and according to the original Constitution the enslaved Africans were only considered three-fifths of a human being. The punishments handed down were harsh, and swift, mostly without any judicial preceding. A slave would be hanged, or have an extremity cut off, chained up, starved, and often whipped at the discretion of his owner.

The supporters of capital punishment feel the harsh punishments handed down for crimes will make the community safer, but statistics have shown throughout the years that this is not true. In fact, in some cases the perpetrators became even more reckless.

To prove capital punishment is effective we must first provide proof that the crime in any region has decreased because of it, and this in turn has made the area safer. We must also review the severity of the punishments handed down for the numerous, and varying offenses that fall under the guise of capital punishment. Are the punishments in anyway a violation of a person’s human or civil rights? Are capital punishment and its doctrines somewhat archaic? Should the power of
government be mindful of its civic responsibilities to individual’s personal rights?

**Statistical Data**

During the temporary suspension of capital punishment in the United States from 1972-1976, researchers gathered murder statistics across the country. In 1960, there were 56 executions in the USA and 9,140 murders. By 1964, when there were only 15 executions, the number of murders had risen to 9,250. In 1969, there were no executions and 14,590 murders, and 1975, after six more years without executions, 20,510 murders occurred rising to 23,040 in 1980 after only two executions since 1976.

In summary, between 1965 and 1980, the number of annual murders in the United States skyrocketed from 9,960 to 23,040, a 131 percent increase. The murder rate of homicides per 100,000 persons doubled from 5.1 to 10.2. So the number of murders grew as the number of executions shrank.

**JUSTIFICATION OF DIVINE LAW**

Practically all nations across the globe have constructed their governments based on one or more of a religion’s principles. Politicians and citizens alike may be guided by faith when it comes to capital punishment, but that does not mean they will agree with all the regulations and punishments added to the already high moral standard set by our religious doctrines.

Many of our cultures and societies question some of the beliefs our religions teach. These aforementioned issues were, in the scriptures, and in many societies, capital offences punishable by death. So, with the advancement of civilization we see that was is accepted as human law may conflict with the religious beliefs of others and that is cause for conflict between, tribes, cultures, societies, and religions, leading to strife and wars.

**THE ISLAMIC VIEW**

In the pre-Islamic era, tribal Arabs used to avenge the killing of any of their individuals. An example was the war famously known as the “Al-Bassous War” which lasted for forty years. The reason was to revenge the murder of one individual.

On the advent of Islam, one of its main principles was to put an end to tribal stifile, and to maintain peace among tribes.

The Quran states, "and there is a (saving of) life for you in Al-Qisas". Thus Al-Qisas, which is retaliation or punishment becomes a reason for the life of the nation, because it deters people against killing others. The individual becomes aware that he will be killed in return if he actually kills another person. Therefore, Al-Qisas is seen as preserving life, and not as savagery or injustice. It is rather like the amputation of a limb in order to save the body.
The Islamic faith teaches moral responsibility for men and women and forbids the shedding of innocent blood. Most nations of the Islamic faith govern under the guidelines of the religion. But with states adding their own moral laws and rules for capital offences, one questions the source of their procedures for the making a criminal act a capital offence.

**INTERNATIONAL VIEWS**

Though many cultures throughout the ages have used capital punishment for grave offences, ranging from theft to murder, today, only 78 countries and territories have retained the right to use the death penalty.

The first attempt by the international community at abolishing the death penalty, or simply minimizing its use, was in 1948 with the adoption of the Universal Declaration of Human Rights. It defined in detail the rights and freedoms of individuals, whereas the UN Charter had discussed human rights only in general terms, but the Universal Declaration clarified that goal in its Article 3, when it stated that "everyone has the right to life". It strongly encourages UN Member States to abolish the death penalty, but allows that the "sentence of death may be imposed only for the most serious crimes" (Article 6, Sec 2).

In 1989, the General Assembly adopted a second Optional Protocol to the Covenant, which entered into force in 1991. It was created because many States Parties believed that "the abolition of the death penalty contributes to enhancement of human dignity and progressive development of human rights" (Preamble). It allows for the use of the death penalty only during wartime and within justifiable reason (Article 2, Sec 1), and requires States Parties to submit reports to the Human Rights Committee on "measures that they have adopted to give effect to the present Protocol" (Article 3).

Persons below the age of 18 who have committed a crime, known as child offenders, are exempt from capital punishment (Article 37) under the Convention on the Rights of the Child, which entered into force within a year of its adoption in 1989. Ratified by 192 countries, the Convention is "the most universally accepted human rights instrument in history". However, two countries, Somalia and the United States, have yet to sign it.

In addition to the Universal Declaration of Human Rights, ICCPR and its Second Optional Protocol, as well as the Convention on the Rights of the Child, there are over fifty resolutions abolishing the death penalty adopted by the UN General Assembly, the Economic and Social Council, and the Commission on Human Rights.

European States are some of the strongest forces within the United Nations in the international effort to abolish the death penalty. The European Parliament has declared that it "considers capital punishment
an inhuman, medieval form of punishment and unworthy of modern societies”. The European Convention, signed by 18 States and ratified by another 24, entered into force in 2003, and is the first international treaty to ban the death penalty in all cases. The abolition of the death penalty is a requirement for countries seeking membership in the European Union.

ABOLISHMENT VERSUS RETENTION OF CAPITAL PUNISHMENT

The Abolition Argument

Opponents of Capital Punishment feel that the laws to punish criminals are unfairly applied to people of different beliefs, races, cultures, or social status. Therefore, they question the criminal justice system of sentencing practices and procedures. These same opponents of capital punishment feel the penalty of death is cruel and in many cases will not deter crime. Opponents feel that capital punishment is less of a deterrent and more of a finality with an irrevocable outcome. A person who has already committed a serious crime may become more violent and do something worse than the initial crime if he knew he would be punished severely for what he has already done. There is no other penalty to give him if the death penalty will be used for his initial crime so, in a sense; he has nothing to lose by committing more crimes.

Opponents of the death penalty also argue that wrongful convictions could lead to the execution of innocent people. If a person is executed for a crime he did not commit and it is later revealed that someone else was the perpetrator what happens? Is the executioner now considered a murderer for killing an innocent man? Opponents of capital punishment thus feel that the death penalty is wrong and may be used prematurely. Once a person is killed there is no reversal, you cannot bring him back to life. So, opponents feel longer term prison sentences, including life imprisonment for murders is the better remedy.

The Retention Argument

Every believer feels that there are punishments and rewards from God. The death penalty is not only a punishment; it is like sin-wash for a killer and a deterrent for others.

The experience of law enforcement officers shows that many offenders do not carry weapons because of their fear of death penalty. It is a deterrent because it affects the conscious thoughts of an individual. Most people will not commit a crime if they know they may be executed as a result: this is an outgrowth of man’s instinct for self-preservation.

UNITED NATIONS MORATORIUM ON THE DEATH PENALTY

The Moratorium on the death penalty was an Italian proposal supported by several countries and NGOs before the General Assembly of the United Nations.

It calls for general suspension (not abolition) of the death penalty throughout the world. As an action under a UN General Assembly resolution, it will not have a binding effect on UN member
states. Therefore, states that currently retain the death penalty (Saudi Arabia, China, USA, Iran, etc) will not be forced by a General Assembly resolution to stop carrying out executions.

The United Nations General Assembly voted in favour of the moratorium under resolution A/RES/62/149, which proclaims a global moratorium on the death penalty, with a vast majority of 104 in favor, 54 against, and 29 abstentions.

CONCLUSION

In conclusion, Capital Punishment marks the abhorrence and revulsion against the crime of crimes. It exists not because of a desire for vengeance, but rather as the society’s reprobation to the grave crime of murder.

Capital punishment has most likely made many civil minded people conscious about the consequences of committing a violent crime or murder. The binding principle is that murderers should be put to death to preserve the sanctity of life. But, if the responsibility of carrying out the punishments of crimes is left to the power of local governments, then should all crimes result in severe punishment for the criminals or should the principles laid down by religions be the only offences punishable by the death penalty? Should a person caught stealing receive the same punishment as a killer?

In many societies capital punishment has also left open a way for people to exploit others by means of discriminatory laws. Many governments have created laws to segregate minority groups in their region. This method of controlling a region usually saw the dominant group enforcing laws making it difficult for others to gain power. One such method was to instill laws that would make even minor crimes punishable by death. Such governments were enforcing laws that were not only harsh but which also violated the rights of the people. That is why the United Nations has established a monitoring system for human rights violations, on the issue of capital punishment throughout the world.

The Universal Declaration of Human Rights initially tackled the problem of human rights throughout the world. It defined in detail the rights and freedoms of individuals. The United Nations Charter had discussed human rights only in general terms before, and had left the issues of human rights basically up to the member states themselves. But since the Declaration many nations have reviewed their policies on human rights, and some have amended their constitutional laws to better serve their people. In other words, but for the watchdog efforts of the United Nations, there would be countless violations of human rights and a far greater spread of capital punishment throughout the world.
DEVELOPMENT AND FOOD

INTRODUCTION

The purpose of this paper is to examine the question of whether the current global economic situation in general, and the food crisis in particular, is a result of inadequate attention to the Right to Development.

The food crisis is a fundamental problem of the inequalities between the have-nots and the haves, and solutions should center on human rights issues as much as on economics or humanitarianism. Given the current rising prices of food, the related food riots, the bio-fuel argument, the imbalance between supply and demand, the unfair trade practices and distorted incentives and subsidies, it is important to examine the Right to Development in the context of this situation. This crisis transcends national boundaries. It also differs from natural disasters in that it is man-made and that its causes can be traced and are identifiable.

The Right to Development is central to any crisis that involves the basic needs of humankind and is true of the food crisis today; therefore it is essential for countries to focus on this Right to Development in all government strategies and policies to avert a future similar food crisis.

THE RIGHT TO DEVELOPMENT

The scourge of two world wars highlighted the truth that all humans were of equal worth regardless of race, creed, social background and nationality. Importantly, human rights constitute a goal that all peoples should aspire to and which not be used as a tool.

In the Preamble of the United Nations Charter the concept of Human Rights is given a prominent position in the very first Paragraph, “We the peoples of the United Nations determined….to reaffirm faith in fundamental human rights, in the dignity and worth of the human person in the equal rights of men and women and of nations large and small”. Human rights are to be interdependent and indivisible, universal and inalienable, equal and non-discriminatory, and include both rights and obligations.

The Basic Right

One of the human rights central to mankind is the Right to Development. The General Assembly Resolution of December 1986 defines this Right to Development in Article 1(1): The Right to Development is an inalienable human right by virtue of which every human person and all persons are entitled to participate in, contribute to, and enjoy economic, social,
cultural and political development, in which all human rights and fundamental freedoms can be fully realized. Article 1(2) further explains the link between this right and the right to self determination “the inalienable right to full sovereignty” over all their natural wealth and resources.

In summary, the Right includes the following five features: full sovereignty over natural resources, self-determination, popular participation in development, equality of opportunity and the creation of favorable conditions for the enjoyment of other civil, political, economic, social and cultural rights.

As with all human rights the human person is identified as the beneficiary of the Right to Development. It can be invoked both by individuals and by peoples. It imposes obligations both on individual States - to ensure equal and adequate access to essential resources - and on the international community to promote fair development policies and effective international cooperation.

The Right to Development is a process of development where all human rights – civil, political, economic, social and cultural - are realized together, and in a comprehensive fashion. It led to the divide on Human Rights into the two separate Human Rights Covenants, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, and it brings forth the original concept of human rights as universal and indivisible.

The Working Group
The Commission on Human Rights established the open-ended Working Group on the Right to Development by its resolution 1998/72 and the Economic and Social Council decision 1998/269. The mandate of the open-ended Working Group is:

- To monitor and review progress made in the promotion and implementation of the Right to Development.
- To review reports and other information submitted by States and international or non-governmental organizations.

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22 Development – Right to Development
http://www2.ohchr.org/english/issues/development/right/index.htm

23 The Right to Development as a Human Right, Arjun Sengupta (paper written at the Francois Xavier Baguada Center for Health and Human Rights Harvard School of Health in Dec 1999. “The consensus over the unity of civil and political rights and economic, social and cultural rights was broken in the Fifties, with the spread of the Cold War. Two separate covenants, one covering civil and political rights and another covering economic, social and cultural rights, were promulgated to give them the status of international treaties in the late Sixties, and both came into force in the late Seventies. It took many years of international deliberations and negotiations for the world community to get back to the original conception of integrated and indivisible human rights. The Declaration on the Right to Development was the result”. However the single dissenting vote of the US set back the process by several years, during which the international community could have tried to translate such a RTD into a reality.

24 The Working Group
http://www2.ohchr.org/english/issues/development/groups/index.htm
• To submit a sessional report to the Commission on Human Rights.

The same resolution initially called on the chairman of the Commission to appoint an independent expert\(^{25}\) with a mandate to present to the Working Group at each of its sessions a study on the current status of implementation of the right of development. When the mandate of the independent expert ended the Working Group decided to upgrade its status by establishing a High Level Task Force to take its place.

**The High Level Task Force**

The objective of the High Level Task Force on the implementation of the Right to Development\(^ {26}\) is to provide the necessary expertise to the Working Group to enable it to make appropriate recommendations to the various actors on the issues identified for the implementation of the Right to Development.

The task force comprises five experts nominated by the chairperson of the Working Group on the Right to Development in consultation with the regional groups of member-States, and representatives from identified international trade, finance and development institutions.

**The Vienna Declaration and Programme of Action**

In June 1993, representatives of 171 states adopted by consensus the Vienna Declaration and Programme of Action. This Declaration reaffirmed the Right to Development as a universal and inalienable right and an integral part of fundamental human rights. It further stated that, while development facilitated the enjoyment of all human rights, lack of development could not be invoked to justify the abridgement of internationally recognized human rights.\(^ {27}\) The Right to Development is articulated in the following Article:

10. The World Conference on Human Rights reaffirms the Right to Development, as established in the Declaration on the Right to Development, as a universal and inalienable right and an integral part of fundamental human rights. As stated in the Declaration on the Right to Development, the human person is the central subject of development.

While development facilitates the enjoyment of all human rights, the lack of development may not be invoked to justify the abridgement of internationally recognized human rights. States should cooperate with each other in ensuring development and eliminating obstacles to development. The international community should promote an effective international cooperation for the realization of the Right to Development and the elimination of obstacles to development.


\(^ {26}\) The High Level Taskforce

http://www2.ohchr.org/english/issues/development/taskforce.htm

\(^ {27}\) ibid http://www2.ohchr.org/english/issues/development/right/index.htm
Lasting progress towards the implementation of the Right to Development requires effective development policies at the national level, as well as equitable economic relations and a favorable economic environment at the international level.

**THE RIGHT TO FOOD**

The Right to Development is an overarching theme of which the right to food is an integral part. The Right to Food is the right to feed oneself in dignity.\(^2\) It is the right to have continuous access to the resources that enable you to produce, earn or purchase enough food, not only to prevent hunger, but also to ensure health and well-being. This Right to Food is articulated in the following Declarations:

- Rome Declaration 1996
- International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966 – Art 11(1)
- Universal Declaration 1948 – Art 25(1)

The Food and Agriculture Organization (FAO) of the United Nations has the task of ensuring humanity’s freedom from hunger. The World Food Summit in November 1996 reaffirmed the right of everyone to have access to safe and nutritious food, consistent with the right to adequate food and the fundamental right of everyone to be free from hunger. The summit produced a specific mandate to the High Commissioner for human rights to better define the rights related to food and propose ways to implement and realize them.\(^2\)\(^9\)

**The Right to “Adequate” Food**

The World Food Summit Plan of Action called upon the Human Rights Commissioner to better define the right of food as contained in Article 11 of the International Convention on Economic Social and Cultural Rights and establish voluntary guidelines for food security.\(^2\)\(^0\) FAO has established a set of guidelines to enable the right to adequate food as “voluntary guidelines to support the progressive realization of the right to adequate food in the context of national food security”.\(^3\)\(^1\)

The objective of these voluntary guidelines\(^3\)\(^2\) is to provide practical guidance to states in their implementation of the progressive realization of the right to adequate food in the context of national food security, in order to achieve the goals of the Plan of Action of the World Food Summit. The voluntary guidelines take into account a wide range of important considerations and principles, including equality and

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\(^2\)\(^8\) The Right to Food [http://www.fao.org/Legal/rtf/rtf-e.htm](http://www.fao.org/Legal/rtf/rtf-e.htm)

\(^2\)\(^9\) ibid. [http://www.fao.org/Legal/rtf/rtf-e.htm](http://www.fao.org/Legal/rtf/rtf-e.htm)


\(^3\)\(^1\) World Food Crisis Statement, ECOSOC Meeting 20 May, 2008 Para 13

\(^3\)\(^2\) Report of the Inter Governmental Working Group for elaboration of the set of Voluntary Guidelines to support the progressive realization of the Right to adequate food in the context of national food security, September 2004 [http://www.fao.org/docrep/meeting/008/j3345e/j3345e01.htm](http://www.fao.org/docrep/meeting/008/j3345e/j3345e01.htm)
non-discrimination, participation and inclusion, accountability and rule of law, and the principle that all human rights are universal, indivisible, inter-related and interdependent. Food should not be used as a tool for political and economic pressure.

**The Food Crisis**

Today, 862 million people are facing acute food shortages and the price increase of 74% for rice and 130% for wheat in the last year. Thirty-six percent of these persons live in Sub-Saharan Africa or in South Asia; 25 million live in transition countries and 9 million in the developed North. In addition, 2 billion persons suffer from undernutrition and malnutrition, due to micronutrient deficiencies in vitamins and minerals. According to the World Health Organization (WHO) deficiencies of iron, vitamin A, and zinc, rank among the top ten leading causes of death through disease in developing countries. The hardest hit will be the poor and vulnerable where it is estimated that the poorest people spend roughly 60-80% of the incomes on staple foods compared with 20% in the developed world.

In emerging economies such as India and China, there has been a growth in the middle class as these and other similar countries industrialize. However, as this occurs, the gulf between the haves and the have-nots has unfortunately increased as well. This larger middle class is affording a larger food budget and foods such as grains, oilseeds and livestock products have seen an upsurge in consumption.

Similarly in the developed world there has been an increase in demand for food as these economies continue to expand.

**Underlying conditions of rise in price**

Price is the result of the interaction of demand and supply. The market price of food is set at the level where demand meets supply. Therefore, addressing the underlying conditions which drive both supply and demand are necessary. The International Food Policy

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33 H.E, Mrs. Asha Rose Migiro UN Deputy Secretary General opening statement at ECOSOC Food Crisis Meeting 20 May, 2008
34 *Analysis of the World Food Crisis* by the UN Special Rapporteur on the Right to Food, Olivier de Schutter, May 2 2008 p 5
37 *Soaring Food Prices: Facts, Perspectives, Impacts and Actions Required* FAO Rome 3-5 June 2008 HLC/08/INF/1
38 Interesting is the *Cost of Production Theory of Value* the Polish economist Michal Kalecki where he distinguished between sectors with "cost-determined prices" (such as manufacturing and services) and those with "demand-determined prices" (such as agriculture and raw material extraction). http://en.wikipedia.org/wiki/Cost-of-production_theory_of_value
Research Institute (IFPRI), a Washington based research group financed by governments, has identified the factors affecting the demand and supply side of food and the resulting high price. The combination of new and ongoing forces, are driving the world food situation and in turn the prices of food commodities. Rising energy prices and subsidized bio-fuel production, income and population growth, globalization and urbanization are among the major forces contributing to the surging demand. On the supply side land and water constraints, underinvestment in rural infrastructure and agricultural innovation, lack of access to inputs and weather disruptions are impairing productivity growth and the needed production response.

The fluctuation of price in the agricultural markets is not a rare occurrence, as FAO has indicated the distinguishing current state of the market is the “hike in world prices of not just a selected few, but all major food and feed commodities and the possibility that the prices may continue to remain high after the effects of short-term shocks dissipate”. The lack of investment in agriculture in the past years is a factor in successive planting seasons resulting in lower yield. Countries that were self sufficient, such as Somalia, are today reliant on food imports, thus the high prices overseas are felt immediately in those countries.

However countries whose staple foods are not cereals are slightly buffered from these international products, but still felt in the imports of new staples foods of milk, butter, and water as a result of a rise in transportation costs resulting from the rise in oil prices which is currently $135 a barrel.

The link with the Millennium Development Goals

The Millennium Development Goals (MDGs) are eight goals to be achieved by 2015 that respond to the world’s main development challenges. The MDG’s are drawn from the actions and targets contained in the Millennium Declaration that was adopted by 189 states during the UN Millennium Summit in September 2000. The food crisis results in compromising Millennium Development Goal 1 on poverty and hunger. The Food Agencies have warned that without rapid and lasting reaction the target of MDG-1 to halve

40 Ibid, Soaring Food Prices: Facts, Perspectives, Impacts and Actions Required, p4
41 Pacific Island countries staples are various types of yam, taro, manioc and kumara although in some cases urbanization has seen tastes change to rice as a staple.
42 Double, double oil and trouble, The Economist, May 29th, 2008
43 The eight MDGs break down into 21 quantifiable targets that are measured by 60 indicators.
44 High Food Prices: Impact and Recommendations, Paper prepared by FAO, IFAD and WFP for ECOSOC Food Crisis Meeting 20 May 2008
the proportion of people who suffer from hunger by 2015 will be missed dramatically. It will affect not only MDG-1 but also other Millennium Development Goals relating to health (nutrition basket) and education (an opportunity cost of food).

**THE DYNAMICS OF THE RIGHT TO DEVELOPMENT**

**The North South Divide**

During the Cold War the western democracies and the socialist countries were not willing to treat civil and political rights and economic, social and cultural rights at par or on equal terms, nor were they willing to regard them as components of an integrated whole of an international bill of rights.

On a formal plane, the controversy was to have been resolved with the adoption of the Right to Development. But the reasons for taking these contrary positions kept lingering and were further complicated when the Third World countries put forward the case of the Right to Development in the name of the collective rights of a group of countries to bring about a new international economic order.

If some of the industrialized countries of the North would not support economic and social rights, they would find it even more difficult to support the Right to Development.

The Declaration on the Right to Development is without question founded on the notion that the Right to Development implies a claim for a social order based on equity.

The tenor of the debates at the UN and in the international arena on the negotiations of the text left no one in doubt that what the proponents of the Right to Development were asking for was an economic and social order based on equity and justice.

The have-nots of the international economy would have a right to share equally in the decision making privileges as well in the distribution of the benefits just as the rich did in developed countries.

\[45\] ibid Segupta p9

\[46\] *New International Economic Order (NIEO)* A set of demands formulated by a group of Third World countries at a special session of the United Nations General Assembly in 1974. The NIEO envisaged a restructuring of the present international economic system to improve the position of the Developing countries (the South) with respect to the advanced industrialized countries (the North). The demands included increased control by developing countries over their own resources, the promotion of Industrialization, an increase in development assistance, and alleviation of debt problems. While the demand for an NIEO was in part a reflection of frustration at the inability to break out of the cycle of underdevelopment, it also drew inspiration from the experience of OPEC in successfully raising world energy prices. By the 1990s the NIEO had not materialized, having met the joint obstacles of Western resistance, and lack of commitment and support from the developing countries themselves.


\[47\] ibid Segupta p9

\[48\] ibid Segupta p13
**Neo-liberalism**

Neo-liberalism is defined as political philosophy or the political view, arising in the 1960s that emphasizes the importance of economic growth and asserts that social justice is best maintained by minimal government interference and free market forces.\(^49\) It is argued that these neo-liberal ideals concretized in the Washington Consensus.\(^50\) These were a set of policies adopted by the International Monetary Fund on trade and capital liberalization, privatization, and lowering of inflation.

Though the aim of liberalizing markets in agriculture is to generate global welfare gains, however the distribution of gains is likely to be skewed. For developing countries the opening of markets, reduction in tariffs and domestic support measures meant that developed countries with large supplies of food-grains could undercut domestic prices and sell to these countries where they now had access. This resulted in a loss of food self sufficiency and food security on the supply side – countries were importing and consuming the cheaper agricultural product affecting the income of the small farmer in loss of earnings.

Although neo-liberalism espoused minimal government interference, the over supply of food was usually a result of a well subsidized domestic market in developed countries, enabling the exporting farmer to produce large surpluses and to profit hugely at the expense of the unsubsidized importing farmer. This begs the question as to why is it that subsidies are good for the developed countries and not for the developing countries.

It can be argued that neo-liberalism did not preserve the Right to Development by letting market forces dictate the development and growth of a country. Market forces or systems require competition and perfect information.\(^51\) In developing countries, the competition is limited and information is far from perfect; thus resulting in skewed development and a widening gap between the rich and the poor. According to a report by the Asian Development Bank (ADB),\(^52\) income inequality has increased over the past decade or so in 15 of the 21 Asian countries it has studied. The three main exceptions are Thailand, Malaysia and Indonesia, the countries worst hit by the 1997 financial crisis. The biggest increases in inequality were in China, Nepal and Cambodia. Income inequality is usually measured by a country’s Gini Coefficient, in which 0 is perfect equality (everyone has the same

\(^{49}\) Definition of Neo Liberalism
http://encarta.msn.com/dictionary_1861682953/neoliberalism.html

\(^{50}\) Globalization and its Discontents, Joseph Stiglitz, W.W.Norton and Company 2002 p74

\(^{51}\) ibid Stiglitz 2002 p74

\(^{52}\) Asia’s rich and poor, The Economist, August 9th 2007. The Article concluded that the Asian levels of income inequality was fast approaching that of Latin America,
income) and 1 is perfect inequality (i.e., one household takes everything). China’s Gini Coefficient rose from 0.41 in 1993 to 0.47 in 2004, the highest in Asia after Nepal.

**Declining agricultural production**

This trend of pushing out the small farmer from his niche of producing local foods for the local markets was a product of comparative advantage – where countries were encouraged to produce and export goods where they had a comparative advantage, and to buy and import from other countries. In Vietnam, farmers were encouraged to give up farming and to specialize in high value cash crops for export such as coffee, cassava, cashew nuts and cotton. But combined with plummeting world prices and expensive farm inputs this resulted in loss of income for purchase of foods that they had previously grown. In Rwanda, because of over-cropping of coffee trees, there was increasingly less land available to produce food, and the peasantry was not able to switch back to food crops.

Small island countries were encouraged to open markets in investment and allow for the tourism industry to flourish – lands were cleared and hotels were built – and the resulting money was used to buy imported food. Tourism was to pay for the food. This increase in import succeeded in reorienting the tastes of populations in developing countries including in rural areas, from domestically produced foods to imported foods.

The diminishing support for the agricultural sector in the form of subsidies, infrastructure, research and development and extension services, has thus contributed to the shift away from agricultural production.

**Food Insecurity**

Today it is estimated that 862 million people lack access to food and are food insecure. Food security exists when all people, at all times, have physical and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life. Food insecurity can be understood as the reverse – lack at certain times or all times to access to food and thus inability to enjoy an active and healthy life. The goal of food security set over ten years ago at the World Food Summit in 1996 is not being met; poverty is still a strong factor in the world economy today. Should the problem of world hunger and food insecurity not be addressed

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53 ibid Chossudovsky p177  
54 ibid Chossudovsky p108  
55 FAO Director General Diouf at Opening of High Level Rome Summit 3-5 June 2008  
56 Rome Declaration and World Food Summit Plan of Action, 1996
immediately, the vicious cycle of poverty will prevail and the population without food will only increase.

**Increase in “real” poverty**

The food slice of household budgets of developing countries is comparatively larger than that of developed countries. The rise in food prices the opportunity cost of food has serious consequences. The impact is severely felt by the mothers who would sacrifice food for children and other vulnerable groups like the elderly.

**Impact on the Nutrition Basket**

A longer term consequence is the impact on the nutrition basket of these food insecure consumers. Micro-nutrient deficiency statistics are such that iron deficiency affects an estimated 1.7 billion people worldwide, half of whom suffer from iron deficiency anemia. Vitamin A deficiency affects 254 million preschool children in 118 countries and still is a leading cause of child blindness across developing countries. Zinc deficiency contributes to growth failure and weakened immunity in young children. According to some estimates each year 5.6 million children of 5 years or less die as a direct or indirect result of malnutrition.\(^{57}\)

If all remains the same, it can be guaranteed that the soaring prices of food will result in increased mal-nutrition as food insecure consumers now purchase cheaper less nutritious foods, or less or no food at all. The danger lies in the deficiency of micronutrients, this deficiency will limit the development of more than 10 \(^{58}\) of world population today and that of future generations.

**Political Instability and Civil Strife**

What is clearly visible is that the rising food prices have influenced the link today between food and politics. Food riots have occurred in Senegal, Bangladesh and Egypt\(^{59}\) and in the case of Haiti\(^{60}\) resulting political instability led to twenty wounded and four killed in the two day food riots in early April 2008 and resulted in the resignation of Prime Minister Alexis.

**SOLUTIONS**

This is an opportunity for the international community to engage in “real” coordination and lift the world out of poverty. In this day of ease of access to information, communication and transportation a paradox still remains. We have come this far and yet the basic need for food has not been met. Mankind has not been able to feed itself.

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\(^{57}\) ibid. de Schutter May 2, 2008

\(^{58}\) 862 million out of world population of 6.6 billion

\(^{59}\) Riots Instability spread as Food Prices rocketed

http://www.cnn.com/2008/WORLD/americas/04/14/world.food.crisis/

\(^{60}\) Food Riots turn deadly in Haiti April 5, 2008

http://news.bbc.co.uk/2/hi/americas/7331921.stm
Short-term Solutions

The World Food Programme (WFP) has asked for $755 million to fund the current budget and feed peoples at today’s food and fuel prices. Saudi Arabia’s contribution of $500 million has resulted in the fund being met.\(^61\)

It is necessary to engage in food aid at this point to meet the urgent and immediate needs of the vulnerable groups. Caution dictates that we understand that this is still no more than a temporary “band-aid”, and that it will not stem the flow of continued future hunger. Food aid should not become a disincentive for local production. Furthermore, laws permitting that food for food aid only be bought in the country donating aid, and not in the recipient country itself should be revisited.\(^62\)

Should there be no domestic market, “food aid should be provided with a clear exit strategy and avoid the creation of dependency.”\(^63\) This clear exit strategy should include increased and sustained support for access to seed, credit and land to rural farmers.

With regard to the ongoing debate over bio-fuels and the use of agricultural commodities such as sugar, maize, cassava, oilseeds and palm oil\(^64\) for fuel (an “abnormal” break from the food chain) it is suggested that a moratorium is imposed on bio-fuel production until its true impact is calculated. It cannot be denied that the increase in demand for these agricultural products has contributed to the increase in food prices. At the High Level Conference on World Food Security or the Rome Summit 3-5 June, 2008 where 181 countries were represented serious debate ensued on bio-fuels and countries were “irreparably split and paralyzed over this issue”.\(^65\) The US Secretary of Agriculture Ed Schafer claimed that ethanol accounted for only 2-3% of the increase in world food prices, others had put forward a percentage as high as 30%. The Final Declaration of the Rome Summit called on in-depth studies to ensure sustainable bio-fuel production and maintenance of food security.

Medium and Long-term Solutions

Economic and political strengthening of a country is necessary to provide an environment conducive for the Right to Development to

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\(^{61}\) Ban Ki Moon hails $500 million offer by Saudi Arabia

\(^{62}\) Global: USAID reviews food aid as prices, 25th March 2008 “American legislation requires that food is bought in America and that 50 per cent of commodities be processed and packed before shipment; and that 75 per cent of food aid managed by USAID, and 50 per cent of the food aid managed by the US Department of Agriculture, be transported in “flag-carrying” US-registered vessels.

\(^{63}\) ibid De Schutter 22 May,2008 p2

\(^{64}\) ibid Soaring Food Prices: Facts, Perspectives, Impacts and Actions Required p7

\(^{65}\) Only at few green shoots The Economist 7-13th June,2008 p70
occur and for world hunger to abate. “Development as Freedom” written by Nobel Prize Laureate Professor Amartya Sen, reminds us that “focus should be on the economic power and substantive freedoms of individuals and families to buy enough food, and not just on the quantum of food in the country in question”. The top priority in this crisis is to feed the vulnerable, thus existing food safety nets and social protection programs, including school feeding, and other nutrition programs need to be scaled up. Productive safety nets on seeds, fertilizers and agricultural tools need to be expanded.

Employment programs, food or cash for work, and employment generation policies are required to recreate the loss of income of potential workers. Amartya Sen captures the benefits in that “the employment route also happens to encourage the processes of trade and commerce and does not disrupt economic, social and family lives. The people helped can mostly stay on in their own homes close to their economic activities (like farming), so that these economic operations are not disrupted”.

Trade strategies for developing countries require an increase in investment in ‘soft’ infrastructure (knowledge and market information) and the “hard” infrastructure (warehousing roads and ports) as vital to turning the potential to trade into the ability to trade.

The partnership with the private sector in engaging in the integration and coordination of food policies will ensure support to government in the initiation of employment or trade.

The re-invigoration of the national economy is necessary, and it is even more important to launch media and marketing strategies promoting pride in the usage of domestic products. The increased level of demand for domestic production will result in increased jobs and ensure incomes for the purchase of food and its security.

It is important that domestic agriculture policies are reconsidered and that levels of investment in agriculture – research, seeds, credit, irrigation and land - particularly to the small farmer are increased. This renewed look at agriculture should include government strategy that promotes food self sufficiency in food staples of that particular country whether it be rice and wheat or yams and manioc. Because the political strengthening lies in the choice to import or export often involves a resolve of the political leadership to resist outside influence in matters of trade.

**International Solutions**

Individual countries cannot combat the food crisis alone. The United Nations architecture to abate world hunger consists of three different food institutions.

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67 ibid Sen, 2000 p177
68 HRC opens special session on world food crisis, 22 May, 2008 – Press Release
First, the Food and Agriculture Organization (FAO) of the United Nations, founded in 1945, leads international efforts to defeat hunger. Serving both developed and developing countries, FAO acts as a neutral forum where all nations meet as equals to negotiate agreements and debate policy. FAO is also a source of knowledge and information. It helps developing countries and countries in transition to modernize and improve agriculture, forestry and fisheries, and practices that ensure good nutrition for all.

Second, the World Food Programme (WFP) which resulted from a proposal in 1960 by President Dwight Eisenhower to the UN General Assembly that “a workable scheme should be devised for providing food aid through the UN system”, WFP was established in 1962 and is the United Nations frontline agency in the fight against global hunger.

Third, the International Fund for Agricultural Development (IFAD), a specialized agency of the United Nations, established as an international financial institution in 1977 as one of the major outcomes of the 1974 World Food Conference. One of the most important insights emerging from the conference was that the causes of food insecurity and famine were not so much failures in food production, but structural problems relating to poverty and to the fact that the majority of the developing world’s poor populations were concentrated in rural areas.

The current international structure of food institutions should work to detect early warning signs that would then trigger early responses to soaring prices of food, related prices such as oil, or related food cycle initiatives such as bio-fuel, so that timely management of the problem occurs before it heightens to the level of the food crisis of today.

It is important to note that there are current realities of international inequality that may impede coherent efforts in the coordination of the food crisis. Mohan Rao states that international inequality is a powerful force in the world order and he continues to define that “first, even when global action is coordinated (or orchestrated), vastly unequal national, military, economic and organizational capacities continue to be a powerful influence. Second, inherited inequalities of wealth and asymmetries in the division of labor continue to structure the world’s markets, and hence market outcomes”. The delay in the response to the food crisis can perhaps be

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70 About WFP http://www.wfp.org/aboutwfp/history/instit_timeline.asp?section=1&sub_section=1#
71 About IFAD http://www.ifad.org/governance/index.htm
72 The Social Basis of International Cooperaion, J Mohan Rao, 1999 International Social Science Journal p 586
attributed to the international inequality force that affects the progress of development.

The Doha Round

The Doha Development Agenda (Doha Round) includes negotiations in 21 subjects of trade including agriculture and services. The Doha Round negotiations have been suspended since July 2006. Given the current unequal agricultural trading system it is necessary for the international community to call for the lowering of barriers to trade in agricultural products and diminish levels of trade distorting subsidies. Over the period 1995–2006 the US paid $177.6 billion in direct payment crop subsidies to 3.3 million farmers.

Legislation that continues this level of subsidies in developed countries impedes development of trade in agriculture of developing countries. Of particular concern is the 2007 Farm Bill of the US Congress which delivered subsidies worth “$305 billion bill payouts to farmers through a complicated overlapping system of government sponsored insurance, counter cyclical assistance, disaster aid and legacy payments tied to nothing. Shockingly the bills authors tied some future subsidies to today’s record commodity prices, therefore guaranteeing already well off farmers high income and should the prices dip leaving the government owing billions in subsidy payments”.

The international playing field is uneven once more and developing countries are unable to compete in the subsidized markets of agricultural products or develop trade necessary for development.

International Financial Institutions

The international financial architecture consists of the Bretton Woods Institutions, namely, the International Monetary Fund (IMF) and the World Bank. A reform of this architecture is essential so that the disbursement of funds is not subjected to accompanying “conditionalities” which call for trade liberalization, for trimming subsidies to local producers, and for limiting bailouts to national sectors. This should be applied to the World Bank also. The question is whether this new pool of funds might not divert from other important sectors relating to the development of education and health.

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73 The World Trade Organization conducts negotiations through what is called rounds. The Doha Development Round commenced at Doha, Qatar in November 2001 and is still continuing. Its objective is to lower trade barriers around the world, permitting free trade between countries of varying prosperity. As of 2008, talks have stalled over a divide between the developed nations led by the European Union, the United States and Japan and the major developing countries (represented by the G20 developing nations), led and represented mainly by India, Brazil, China and South Africa.

74 2006 Farm Subsidies, EWG Environmental Working Group

75 The Farm Bill – A Harvest Disgrace, The Economist 22 May 2008

76 IMF Cure for Food Crisis and Cause, Emad McKay TERRAWIRE – 21 May, 2008

The reform of the International Financial Institutions is at the crux of the issue decided by member states who are the critical mass deciding the direction of the banks. There is rising ground-swell in this direction. The Commonwealth called a mini-summit of leaders in June 2008, aimed at reform of the international institutions including the Bretton Woods Institutions and called for a new generation of international institutions. The Concluding Statement of the Heads of Government called for “policies and instruments to be redefined to serve the needs of members” and for the Commonwealth Secretary General to develop an Action Plan on the Reform of International Institutions. The Commonwealth consisting of countries that span all the regions of the world – Africa, Asia, Caribbean, Europe and Pacific, is better placed for advocacy and achieving consensus on the necessary reform.

Global or Regional Food Banks

The creation of food banks is not a new idea, the Bible records that Joseph of the tribe of Israel interpreted a dream of the Pharaoh of Egypt to create food banks during the seven “fat” years of large harvests to take care of the seven “lean” years of famine. In the case of national storage facilities it is important that it is kept dry to accommodate and properly store foods ensuring spoilage is minimized. Of importance also is the transportation – in its movement and its speed to avoid spoilage of harvests between farm gate and storage facilities. The rising prices of oil will affect costs of transportation in movement of food for storage and affect the prices of food.

CONCLUSION

The Right to Development is an integral part of fundamental human rights as it brings together and influences all rights whether they are civil and political or economic, social or cultural. The central role the human person plays in development reflects its importance in ensuring that the actions taken will result in benefits of long lasting effect. It is only through the lens of the Right to Development that one can re-

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78 What is the Commonwealth? The Commonwealth is a voluntary association of 53 independent sovereign states consulting and co-operating in the common interests of their peoples and in the promotion of international understanding and world peace. The association has no constitution or charter, but members commit themselves to the statements of beliefs set out by Heads of Government. The basis of these is the Declaration of Commonwealth Principles, agreed at Singapore in 1971, and reaffirmed in the Harare Declaration of 1991. The fundamental political values underpinning the Commonwealth include democracy and good governance, respect for human rights and gender equality, the rule of law, and sustainable economic and social development. http://www.thecommonwealth.org/FAQs/20706/faqs/#skipTo33510


80 Marlborough House Statement on Reform of International Institutions, 10th June 2008 http://www.thecommonwealth.org/files/180214/FileName/HGM-RII_08_.marlebroughhousestateMENTonreformofinternationalinstitutions.pdf

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evaluate the underlying causes to the food crisis and provide solutions that are to benefit people in the long term.

The Rome Summit of June 2008 brought about large pledges from the international community. That these funds should be used for the lasting policies of agriculture and not all for food aid is necessary. Food aid is a temporary remedy and is of course necessary to meet the hunger of vulnerable groups but it does not ameliorate the root causes of the food crisis. The root causes require an in-depth analysis into the role of agricultural policies and the international agriculture trading regime as well as the international financial institutions.

The role of bio-fuel in the food crisis has raised a controversial debate around the issue, even if it cannot be denied that it affects the food cycle as food is used for fuel. Thus a moratorium should be imposed until a proper analysis on its impact on the food cycle is studied.

International inequalities influence the way governments can effectively implement the Right to Development. This, in turn, impinges on strategies, such as trade, that could alleviate the food crisis in developing countries. To empower the Right to Development, these inequalities need to be addressed in ways such as reform of the international standards governing trade and finance, beginning with the agricultural sector key to economic and social development ultimately enabling employment and alleviating hunger.

Countries should revisit their commitments to the Right to Development by re-invigorating the economy, especially agriculture, and engaging in political debate on the present and future challenges of development. This renewed commitment will help alleviate the international inequality that permeates our world, thus lifting and restoring each country’s wealth such that all freedoms, especially that of development, are enjoyed by all.
INDIGENOUS PEOPLES

INTRODUCTION

People are naturally attached to their lands, and to their social, cultural and political systems. This also occurs with indigenous peoples. Yet the circumstances of indigenous peoples are improving in some places of the world, while their human rights continue to be abused in others. The arc of globalization should be dynamic and wide enough to recognize their rights as human beings, which consist of their rights to cultural conservation, land rights, the ownership of their own natural resources, self determination and sovereignty, environmental and medical knowledge, health and education. This can be done if genuine priority and neutral understanding is given to the rights of the indigenous people.

Indigenous people are increasingly faced with threats to their sovereignty, environment, and access to natural resources. An example of this is the deforestation of tropical rainforests in Africa where many of their rights are not respected and their native tribal subsistence lifestyles are threatened.

Indigenous societies possess a unique body of cultural and environmental knowledge. The preservation and investigation of specialized indigenous knowledge, particularly in relation to the resources of the natural environment with which the society is associated, is important in order to identify new resources and benefits. That is why scientists are combing rain forests around the world for potential cures for cancer and other ailments.

A range of differing viewpoints and attitudes have arisen from the experience and history of contact between indigenous and non-indigenous communities. The cultural, regional and historical contexts in which these viewpoints have developed are complex, and many competing viewpoints exist simultaneously in any given society.

Across the globe, indigenous peoples are voiceless, oppressed and forgotten, and still struggling for full participation within their societies. Their supporters are promoting capacity building to strengthen the indigenous peoples and other ethnic and racial minorities, with a special emphasis on human rights, land reform and livelihood development. The United Nations and various accredited organizations act as intermediaries or representatives on behalf of indigenous groups in negotiations on issues of concern to them, while others are dedicated to the preservation or study of their very existence.

Indigenous peoples have been identified as primitives, savages, or uncivilized, and these terms were commonly used during the height of European colonial expansion, but still continue to be used in modern times. The Enlightenment philosophers such as Jean-Jacques Rousseau,
considered them as “noble savages”, and others who were close to the Hobbesian view tended to believe themselves to have a duty to civilize and modernize them.

Three terms are used for the meaning of indigenous peoples:

- The term indigenous peoples can be used to describe “any ethnic group who inhabit the geographic region with which they have the earliest historical connection”.
- The common meaning of indigenous peoples is “having originated in and being produced, growing, living, or occurring naturally in a particular region or environment”.
- The contemporary understanding of indigenousness is the political role an ethnic group plays that is “a politically under-privileged group, which shares a similar ethnic identity different from the nation in power, and which has been an ethnic entity in the locality before the present ruling nation took over power”.

**INDIGENOUS LEGENDS**

Many indigenous populations around the world have undergone a remarkable regression and even extermination, and are still threatened in many parts of the world. Some have also been assimilated by other populations or have undergone various other changes.

Recent sources estimate the indigenous population to be from 300 million to 350 million as of the start of the 21st Century. This would equate to just fewer than 6% of the total world population. This includes at least 5000 distinct peoples in over 72 countries.

Before the arrival of the Europeans, the indigenous people were self-governing sovereign political communities, like all sovereign bodies, they then had the inherent power to prescribe laws for their members and to punish violations of those laws.

As an initial guide to behavior, their lives were based upon communal values or collectivism rather than individualism. The rapid and extensive spread of the various European powers from the early 18th Century onwards had a profound impact upon many of the indigenous cultures with whom they came into contact.

Some indigenous societies carry on even though they may no longer occupy their traditional lands due to migration, re-location, forced re-settlement, or having been displaced by other cultural groups.

Indigenous societies vary from those who have been significantly exposed to colonization or the expansion of other societies, such as the Maya peoples of Mexico and Central America, to those who continue to be in isolation from any external influence, such as the Sentinelese and Jarawa of the Andaman Islands.

The interaction between indigenous and non-indigenous societies has been complicated throughout history, ranging from conflict and suppression to some degree of mutual benefit and cultural transfer.
In many other respects, the transformation of the culture of indigenous peoples is ongoing, and involves a permanent loss of language, loss of lands, intrusion on traditional territories, and disruption of traditional life.

Certain issues are associated with the status of indigenous peoples in relation with other cultural groups, as well as changes in their inhabited environment. Some challenges are specific to particular groups, while others are regularly encountered.

**EUROPE**

Since most of the European continent was never colonized by non-European powers, present day recognized indigenous populations are quite few, and are mainly limited to the northern and far-eastern reaches of the Eurasian peninsula.

Even though there are various ethnic minorities distributed within European countries, few of these still maintain traditional cultures and are recognized as indigenous peoples. Examples of the latter include the Sami people of Scandinavia, the Nenets and other Samoyedic peoples of northern Russian Federation, and the Komi peoples of the western Urals.

The Basque people, who inhabit northern Spain and south-western France, are the oldest indigenous ethnic group in Europe. The main theory about their origin suggests that they are a remnant of the Paleolithic peoples inhabiting the region since Magdalenian times.

The Caucasus is unique in its ethnic diversity, with a great variety of languages spoken there than in any region of similar size in the world. The Caucasus is the home of more than 50 indigenous ethnic groups.

The exploratory and colonial ventures of the Europeans in the Americas, Africa, Asia, Australia, and the Pacific, often resulted in territorial and cultural conflict, and the intentional or unintentional displacement, migration, relocation, and devastation of the indigenous populations.

The Maya in America, the Sentinelese from Asia, the Bushmen and Tuareg from Africa, the Aborigines from Australia, all suffered at the hands of the colonialists in this fashion.

After World War I, many Europeans came to doubt the value of their own “civilization”. At the same time, the anti-colonial movement, and advocates of indigenous peoples argued that words such as “civilized” and “savage” were products and tools of colonialism, and that colonialism itself was savagely destructive.

**AFRICA**

The vast majority of African peoples can be considered to be indigenous in the sense that they have all originated from within that continent itself.
Some independent African states nevertheless hold within them various peoples whose situation – cultures, pastoral, or hunter-gatherer lifestyles – are generally marginalized and set apart from the main political and economic structures of the nation.

Since the late 20th Century these peoples have gradually wanted more recognition of their rights as distinct entities in both the national and international contexts.

**The Bushmen**

The Bushmen, San, Basarwa, Kung or Khwe are indigenous people of southern Africa which spans most areas of South Africa, Zimbabwe, Lesotho, Mozambique, Swaziland, Botswana, Namibia and Angola. They were traditionally hunter-gatherers, part of the Khoisan group, and are related to the traditionally pastoral Khoikhoi.

Genetic evidence suggests that they are one of the oldest, if not the oldest, peoples in the world, a "genetic Adam"\(^{81}\), from which all humans came. In Lesotho they are referred to as Baroa, or the people of the south.

Traditional nomadic gear is simple and effective: a hide sling, blanket, and cloak called a Kaross to carry foodstuffs, firewood, smaller bags, a digging stick, and perhaps a smaller version of the Kaross to carry a baby. Women would gather, and men hunted using poison arrows and spears in laborious days-long excursions. Children had no duties besides play, and leisure was very important. They spent large amounts of time with conversation, joking around, music, and sacred dances.

Bushmen had hereditary chiefs, but the chief’s authority was limited and the Bushmen instead made decisions among themselves, on a consensus basis.

Women’s status was relatively equal. Women did not begin bearing children until about 18 or 19 years of age due to late first menstruation because of the low calorie and low fat diet and had them spaced four years apart, due to lack of enough breast milk to feed more than one child at a time, and the requirements of mobility leading to the difficulty of carrying more than one child at a time.\(^{82}\)

The central government of Botswana, since the mid-1990s, has implemented a relocation policy, aiming to move the Bushmen out of their ancestral land on the Central Kalahari Game Reserve into newly created settlements.

Even though the government categorically denied that relocation has been forced,\(^{83}\) a recent court ruling confirmed that the removal was unconstitutional and residents were forcibly removed.

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\(^{81}\) According to Spencer Wells.

\(^{82}\) Shostak 1983.

\(^{83}\) Government of Botswana Web Site.
**The Tuareg**

The Tuareg are known as Twareg or Touareg are a nomadic pastoralist people, and are the main inhabitants of the Saharan interior of North Africa. They call themselves variously Kel Tamasheq or Kel Tamajaq ("speakers of Tamasheq"), Imuagh, Imazaghan or Imashaghgen ("the free people"), or Kel Tagelmust, i.e., "people of the veil".

Tuareg are descended from Berbers in the region that is now Libya, they are descendants of ancient Saharan peoples described as Garamantes. Lately they have expanded into the Sahel and then operated the trans-Saharan caravan trade connecting the great cities in the south of the Sahara via five desert trade routes to the northern (Mediterranean) coast of Africa.

The Tuareg adopted camels about two thousand years ago, when the camel was introduced to the Sahara from Saudi Arabia. Like numerous African pre-modern times, the Tuareg were taken captives, either for trade or for domestic purposes. Those who were captive became servants and herdsmen and those who were not sold became assimilated into the Tuareg community.

Traditionally, Tuareg society is strictly hierarchal, with nobility and vassals. Each Tuareg clan (tawshet) is made up of several family groups, led by their collective chiefs, the amghar. A series of tribes may bond together under an Amenokal, forming a Kel clan confederation, for example, Kel Dinnig (those of the east) or Kel Ataram (those of the west).

The Tuareg resisted the French invasion in the late nineteenth Century of their Central Saharan homelands. Their broadswords were no match for the more advanced weapons of French squadrons, and after numerous massacres on both sides, the Tuareg were subdued and signed treaties in Mali, Niger, and Algeria.

Before French colonization, the Tuareg were organized into loose confederations, each consisting of a dozen or so tribes. Major fighting between the Tuareg resistance and government security forces ended after the 1995 and 1996 agreements, but in 2004, sporadic fighting continued in Niger between government forces and groups struggling to obtain Tuareg independence.

**AMERICAS**

Indigenous peoples of the American continents are broadly recognized as being those groups and their descendants who inhabited the region before the arrival of European colonizers and settlers. Such peoples, who maintain, or seek to maintain, traditional ways of life are

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84 Wikipedia, the free encyclopedia.
85 By Herodotus, who mentions the ancient Libyan people.
found from the high Arctic in the north to the southern extremities of Tierra del Fuego.

The impact of the European colonization of the Americas on the indigenous communities was quite severe in general, with many significant population declines due to the ravages of various epidemic diseases, like smallpox and measles, as well as outright displacement, conflict, and exploitation.

**The Taíno**

The Taíno welcomed Christopher Columbus in the Caribbean Sea at the time when he arrived to the New World. Taíno Indians are a subgroup of the Arawakan Indians which is a group of American Indians in northeastern South America, inhabited the Greater Antilles known today as Cuba, Jamaica, Haiti and the Dominican Republic, and Puerto Rico. They originated from the Orinoco and Amazon River basins, what is now Venezuela and Guyana. The Taínos began their migration, in waves, through the Caribbean Islands in approximately 900 B.C. They developed a distinct culture that we now call Taíno which is somewhat different from the original Arawak culture and different from that of their brothers, the fierce Caribs of the Lesser Antilles.

Taíno culture was the most highly developed in the Caribbean when Columbus reached Hispaniola in 1492. Islands throughout the Greater Antilles were dotted with Taíno communities nestled in valleys and along the rivers and coastlines, some of which were inhabited by thousands of people. The first New World society that Columbus encountered was one of tremendous creativity and energy. The Taíno had an extraordinary collection of significant forms of sculpture, ceramics, jewelry, weaving, dance, music, and poetry. Their inventiveness and dynamism were also reflected in their social hierarchies and political organization.

DNA survey cited the historical descriptions of life in Puerto Rico during the 17th and 18th centuries as an example that proved the influence of Taino’s culture was very strong for about 200 years in the way they fished, in their methods of farming, etc.

Our knowledge of the Taíno comes from several sources. Sixteenth-Century Spanish archives provide incomplete but critical information about Taíno society. Serious archaeological excavation of Taíno sites, which began about 1950, has unearthed many types of pottery and artifacts, confirmed Taíno burial customs, and revealed what their ancient communities looked like. Ethnologists have shed further light on Taíno daily life, myths, and ceremonies by gathering comparative data from contemporary societies with similar cultures in Venezuela and the Guyanas.

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86 Dr. Juan Martinez Cruzado, a geneticist from the University of Puerto Rico Mayaguez.
The Maya

The Maya originated around 2600 B.C. and rose to prominence around A.D. 250 in present-day Mexico, Guatemala, Belize, Honduras and El Salvador. This whole area lies south of the tropic of Cancer, and north of the equator, and is about 900 kilometers from north to south and 550 kilometers in the east-west direction.

Inheriting the inventions and ideas of earlier civilizations, the Maya developed astronomy, calendar systems, hieroglyphic writing, ceremonial architecture, and masonry without metal tools.

The Maya were noted as well for elaborate and highly decorated ceremonial architecture, including temple-pyramids, palaces and observatories, all built without metal tools. They were also skilled farmers, clearing large sections of tropical rain forest and, where groundwater was scarce, building sizeable underground reservoirs for the storage of rainwater. The Maya were equally skilled as weavers and potters, and cleared routes through jungles and swamps to foster extensive trade networks with distant peoples.

The Maya of the Classic period (250-900 A.D.) developed a sophisticated artistic tradition, producing sculpted stone, painted ceramics, clay figurines, and screen-fold bark books of drawings and hieroglyphic writing. Around 300 B.C., they adopted a hierarchical system of government with rule by nobles and kings. This civilization developed into highly structured kingdoms during the Classic period, 200-900 A.D. Finally, around 900 A.D., Maya civilization started to decline and the northern Maya were integrated into the Toltec society by 1200 A.D. The Mayan dynasty was finally conquered by Spanish in the early 16th Century.

Asia

The vast regions of Asia contain the majority of the world’s present day indigenous populations, or about 70% according to recorded figures.

The Adivasis

The most substantial populations are in India, which constitutionally recognizes a range of “scheduled tribes” within its borders. These various peoples, are collectively referred to as Adivasis or tribals, and collectively number about 68 million, or approximately 8% of the total national population.

The Sentinelese

The Sentinelese of the North Sentinel Island, are one of the indigenous peoples of the Andaman Islands, located in the Bay of Bengal, and claimed by India.

They are among the most isolated and unassimilated peoples on earth, resisting all attempts of contact by outsiders, and noted for vigorously maintaining their independence and sovereignty over the
island. By their long-standing separation from any other human society, their social practices are almost entirely free of any recorded external influence. The estimate of their present population is not known with any degree of accuracy, ranging from fewer than 40 to a maximum of 500. In the 2001 Census of India, officials recorded 39 individuals (21 males and 18 females), but this survey was conducted from a distance as most Sentinelese hide out of sight whenever encountering foreigners. Even the impact of the 2004 earthquake and tsunami remains unknown.

AUSTRALIA

The original inhabitants of the continent of Australia are the Aborigines, who are the best known and perhaps the least understood people in the world. Since the 19th Century they have been singled out as the world’s most primitive culture and the living representatives of the ancestors of mankind.

In reality, aboriginal culture, as anthropological work over the last hundred years has revealed, is a complex, subtle, and rich way of life. To describe and understand Aboriginal traditions, we need to look briefly at their culture, what it was in the past and what it has become today.

The Aborigines

The translation of the word “aborigine” means “the people who were here from the beginning”. There is no written record regarding prehistoric aboriginal Australia. Some knowledge of the past is found in archaeological evidence and Aboriginal oral traditions which have been handed down from generation to generation.

Prior to colonization, which began in January 1788, the Australian Aborigines lived a lifestyle based on their dreamtime beliefs. They had survived as a race for thousands of years and their lifestyle and cultural practices had remained virtually unchanged during that time.

However colonization imposed changes on the Aborigines because they lived in areas that were being settled by the Europeans and were forced off their land as towns and farms were developed. The sort of changes that took place usually commenced with explorers entering the area of a tribe and being challenged by the people for trespassing on their land. The Europeans often responded by shooting at the people and many were killed. When settlers followed the explorers and began felling trees and building farms, they restricted the ability of the Aborigines to move freely around their land. They also destroyed their traditional food sources. These changes took place throughout the continent at different times.

The settlers had arrived in this country to build a new life for themselves and their families. Many were killed by diseases such as
influenza. Thousands were massacred to make way for farms and settlements.

On the other hand some aboriginal people adapted to new laws and lifestyles. In doing so, many were reduced to paupers and beggars. Others broke the traditional tribal laws by moving into the traditional lands of other tribes. In many cases they had no choice in doing this as they were facing starvation or the gun.

Overall, the Australian Aborigines went through stages of being conquered through an “invasion” and expropriation of their lands. Many adapted to the new lifestyle when many became reliant on alcohol, tobacco and handouts of food and clothing. However the settlers were often contemptuous of the Aborigines and separated them from their lands. Others were removed from their families and placed in institutions. From the late 1830s the remnants of the tribes in the settled areas were moved onto reserves and missions where they were “managed” by white men and were forbidden from teaching their children their own language and customs.

During the 1900s, “separation” was an official government policy which lasted for many decades. As a result today, many Aboriginal people do not know their own origins. In other words, they do not know which tribe they are descended from or the names of their parents or grandparents. They are a lost generation.

The Māoris

Next door, we have the Māori people, who came to New Zealand from eastern Polynesia, probably in several waves, most likely towards the end of the 13th Century. They spread throughout the country and developed a distinct culture. Europeans came to New Zealand in increasing numbers around the late 18th Century, and the technologies and diseases they brought with them completely destabilized Māori society. After 1840, the Māori lost much of their land and went into a cultural and numerical decline, but their population began to increase again from the late 19th Century, and a cultural revival began in the 1960s.

UNITED NATIONS

Indigenous peoples and their interests are represented at the United Nations primarily through the mechanisms of the Working Group on Indigenous Populations (WGIP). In April 2000, the UN Commission Human Rights adopted a resolution to establish the Permanent Forum on Indigenous Issues (PFII) as an advisory body of the Economic and Social Council (ECOSOC) with a mandate to review indigenous issues.

In December 2004, the General Assembly proclaimed the years 2005-2015 to be the Second International Decade of the World's Indigenous Peoples. The main goal of the Decade will be to strengthen
international cooperation in resolving the problems faced by indigenous peoples in areas such as culture, education, health, human rights, the environment, and social and economic development.

In September 2007, after a process of preparations, discussions, and negotiations stretching back to 1982, the General Assembly adopted the Declaration on the Rights of Indigenous Peoples. In the vote on this Declaration, 143 states voted in favor. Four nations with significant indigenous populations voted against, namely, Australia, Canada, New Zealand, and the United States. Eleven nations abstained, namely Azerbaijan, Bangladesh, Bhutan, Burundi, Colombia, Georgia, Kenya, Nigeria, Russia, Samoa, and Ukraine.

In 1994, the General Assembly decided that August 9th should be observed every year as the International Day of the World’s Indigenous Peoples.

**INTELLECTUAL PROPERTY RIGHTS**

Regarding the intellectual property of indigenous peoples, the General Assembly recognized “the urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic, and social structures, and from their cultures, spiritual traditions, histories and philosophies”, and reaffirmed that “indigenous peoples possess collective rights which are indispensable for their existence and integral development as peoples”.

Indigenous peoples may be victims of copyright theft when they are subjected to external patenting of their native biological resources and their traditional knowledge about these biological resources, with a totally unequal share of benefits between them and a patent holder.

To this day, many customs and history were handed down through verbal tradition, and still there are many people who use medicinal plants and farming methods that come directly from the indigenous people.

**CONCLUSION**

Despite the diversity of indigenous peoples, it may be noted that they share common problems and issues. The cultures of all indigenous peoples are being lost and they all suffer both discrimination and pressure to assimilate into their surrounding societies. This is borne out by the fact that the lands and cultures of nearly all of the indigenous peoples are under threat.

Far from benefiting from global culture, knowledge, art, style, and productivity, indigenous peoples are experiencing shortages, malnutrition, destitution, isolation, discrimination, famine, and marginalization. In fact, if the developed populations of the world had the courage to dispassionately review the sources of their wealth, they would realize that it has grown largely through out of misery of the indigenous peoples whose resources they have exploited.
INTRODUCTION

The purpose of this paper is to examine the other forgotten indigenous populations around the globe that exist today, their origins and history, their characteristics, their rich cultures and most importantly their rights as unique human beings living among modern societies.

According to current statistics, there are approximately 300-500 million indigenous peoples on all continents, occupying 20% of the earth’s land surface. In most cases, they are the first human beings in a region who lived in that region for a long time before the first intruders or colonialism.

In other words, they have been the first inhabitants historically connected with a particular area. In other cases, although they might have a specific origin, they have abandoned their “traditional” lands and moved elsewhere due to forced migration, relocation or resettlement. That is how many tribes were spread in many places, living nowadays in different countries.

Surprisingly they maintain the same customs, folkways and mores, with the only differentiation in most cases, of a new language. The Romany, or as they are more commonly called the Gypsies, are one good example of this case.

Indigenous peoples, as history has shown until today, have suffered as a result of political, social and economical factors. As a matter of fact, throughout the past centuries, millions of indigenous peoples have been killed or burglarized under circumstances that are totally inhumane, and thousands of distinct tribes have been wiped off of the map. The human rights of these people have been violated in the worst manner and until today no reparations have been made by the governments of the countries where they have been settled.

The right of the indigenous peoples to self-determination and to a preservation of their diverse features, their lush cultures and their rare languages, is a matter of great importance to be taken into consideration by all governments and national organizations.

Indigenous populations embody and nurture 80% of the world’s cultural and biological diversity. Due recognition of their vast contribution would lead to the protection of their human rights and the elimination of any possibility of their extinction.

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87 The Rights of Indigenous Peoples, University of Minnesota, Human Rights Library (http://www1.umn.edu/humanrts/edumat/studyguides/indigenous.html)
88 Magenta Polylexicon, All languages Dictionary, English< - >Greek
**Definitions**

Indigenous, from the Latin word “indigent” which means native or original inhabitant, are the people who have first inhabited a particular geographic region and are attached to it historically or still have a historical continuity with it. They are considered by others to be distinct, or they consider themselves distinct, from the rest of the population of the location or the country they live in. They usually have peculiar cultural characteristics that differentiate them from the vast majority of the population.

Some synonyms of the word indigenous are: autochthon which derives from Greek word “Αυτόχθων=autochthon” and means “sprung from the earth”, aboriginal people, enchorial (domestic) or as it is very often used, native people.

As defined by the United Nations Special Rapporteur indigenous communities, peoples and nations are: “those which having a historical continuity with pre-invasion and pre-colonial societies, that developed on their territories, consider themselves distinct from other sectors of societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop, and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems”.

**Characteristics of the Indigenous Peoples**

Even though every tribe or ethnic group is distinguished by its own characteristics, language or dialect and unique cultural specialties, it is a matter of fact that indigenous people have some characteristics common to each other even if they are located in completely different regions or even continents. Their strong connection and respect for the earth and nature, their admirable hunting or fishing techniques, and their nomadic lifestyle are some features common to almost every tribe or indigenous group of people.

But in addition, indigenous peoples appear to have a close attachment to their ancestral territories and their natural resources, they are self-identified or identified by others as members of a distinct cultural group, sharing an indigenous language, and known to be self-subsistent in the production of goods.

**Indigenous Peoples around the World**

Indigenous people are found in every continent of the earth and in every inhabited climate zone. No matter how unbearable the
living conditions might seem to be due to intense weather conditions or
dangerous wild life, they have survived throughout the centuries, thus
proving the strong association that exists between themselves and the
land they live in.

**Europe**

In the stricter sense of the term, as identified by the United
Nations, there are not so many indigenous populations in Europe
nowadays. On the other hand, in the whole geographical area of
Europe, the Eurasian peninsula which includes the region from the Ural
mountains and the Mediterranean Sea islands to the North Atlantic
Ocean, we meet a variety of ethnic minorities, few of which are
perceived as indigenous *per se.*

Indigenous populations of Europe are mainly found in the North in
Scandinavia, and in the Far East, or in very small numbers in other
regions of Balkans and the Mediterranean coasts.

The Basque people of northern Spain and southern France, the
Crimean Karaites, the Crimean Tartars and the Krymchaks of the
Crimean Peninsula in Southern Ukraine, the Sami people of northern
Scandinavia in Sweden, Finland, Norway and the Kola Peninsula of
Russia, the Nenets, the Evenks, the Enets, the Oroks, the Izhorians, the
Veps and other Samoyedic peoples of the north Russian Federation, the
Komi peoples of the western Urals. In addition, the Roma people
mostly in the Balkans and Romania but also spread all over the
continent and other parts of the world, such as the Americas and the
Middle East. Other ethnic groups that exist today that are trying to be
identified as indigenous include the Guances of the Canary Islands or
the Kvens of Norway.

**The Americas**

In the so-called New World, the Americas, consisting North
and South America and all the associated Islands and regions, there are
millions of indigenous populations living today. The history of these
peoples is very rich and is dated long before the European colonization
of the Americas, which totally changed their lives, bloodlines and
cultures.

The indigenous peoples of the Americas are the pre-
Columbian inhabitants of the Americas, their descendants, and many
ethnic groups who identify with those peoples. They are often also
referred to as Native Americans, First Nations, and due to Christopher
Columbus’ historical mistake, Indians, also referred to as the American
Indian race, American Indians, Amerindians, or Red Indians.

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91 [Indigenous People of Europe, Wikipedia, the free encyclopedia](http://en.wikipedia.org/wiki/Indigenous_Peoples_of_Europe)
92 [www.wikipedia.com](http://www.wikipedia.com)
According to the still-debated New World migration model, a migration of humans from Eurasia to the Americas took place via Beringia, a land bridge which formerly connected the two continents across what is now the Bering Strait. The minimum time depth by which this migration had taken place is confirmed at 12,000 years ago.93

In North America, Canada, Greenland, Mexico and the United States there exist the indigenous groups of: Haida, Nuu-chah-nuth, Innu, Inuit, Secwepeme, Statime, Tsimshian.

In the Caribbean or West Indies one can meet the Taínos, the Galibis and the Neo-Taínos nations such as the: Ciboney, Ciguayo, Luchaya, Macorix, Guanahatabey and Eyeri (or Carib).

A large variety of indigenous populations live in Central America, from Panama to the south of Mexico, some of which are: the Mayan Peoples (in the southern Mexican states, in Guatemala, El Salvador, Belize and the western Honduras), the Miskito people (whose territory extends from Cape Cameron, Honduras, to Rio Grande, Nicaragua along the Mosquito Coast), the Boruca and Guatusos in Costa Rica, the Chorti people (one of the indigenous Mayan peoples, who primarily reside in communities and towns of southeastern Guatemala and west-northern Honduras), the Jakaltek (Mayan people of Guatemala), the Kuna or Cuna people (of Panama and Colombia), the Lenca people (situated in the western highland regions of Honduras and eastern El Salvador), the Mixe or Mije of the Mexican State Oaxaca, the Naso, Teribe or Tjer Di people (located in northwest Panama, in the province of Bocas del Toro), the Pech in Honduras, the Sumo or also known the Sumu or Mayangna located in Nicaragua and Honduras, the Tolupan people in Honduras, the Xinka in Guatemala, and the Yasika (a Misumalpan or Matagalpan Indian tribe that lived in the highlands of Nicaragua).94

In South America there are numerous indigenous populations in every country. There are more than two hundred indigenous peoples in Brazil alone some of which are the: Ache, Amamye, Awa, Baniwa, Botucudo, Caingang (Kaingang), Enawene Nawe, Guarani, Kamayura (Kamaiura), Karaja, Kayapo, Korubo, Matses, Mayoruna, Munduruku, Nambikwara, Ofaye, Panara, Piraha, Quilombolo, Tapirape, Ticuna, Tremembe, Tupi, Tupiniquim (Tupinikim), Waorani, Xavante, Xoko, Xucuru, Yanomami, Yawanawa, and the Zuruaha.95

In Bolivia one can find the Bororo people (also living in the state Mato Grosso of Brazil), the nomadic Guato, the Toba (also living

93 ibid
in Argentina and Paraguay) and the wichi (also in Argentina). The indigenous groups of Argentina are: Charrua, Lule, Mbya-Guarani, Mocovi, Plaga, Toba, Tonocote, Vilela, Wichí, Atacama, Ava-Guarani, Chane, Chorote, Chulupí, Diaguita-Calchaquí, Kolla, Oeloya, Omaguaca, Tapiete, Toba, Tupi-Guarani, Mapuche, Ona, Tehuelche, Yamana, Diaguita-Calchaquí, Huarpe, Kolla, Rankulche, and the Comechingon. In Chile, the 2002 census recorded approximately 692,000 self-identified persons of indigenous origin (5 percent of the total population). The Mapuches, from the south, accounted for approximately 85 percent of this number. There were also small populations of Aymara, Atacameño, Rapa Nui, and Kawaskhar in other parts of the country.

Many similar Amerindian groups are found in every other country of southern Latin America, in Colombia, in Paraguay and Uruguay, in Ecuador and Peru, in Belize, Venezuela, Suriname and Guyana.

**Africa**

The vast majority of the African peoples are considered to be inherently indigenous. The ethnic groups who claim to be recognized as indigenous are those who have been placed outside the state systems due to historical and environmental circumstances or the fact that their customs and land claims brought them into conflict with the rest of the society of the nation state. Some of those indigenous peoples are: the Pygmy peoples in Central and Western Africa, the Tuareg and Berber (or Amazigh) in North Africa, the Bushmen, the Khoikhoi andNamaqua in Southern Africa, the Baka, Balengets, Bubi, Bujeba, Combe or Ndowe, Duala people, Fang, Ogoni people, Tuareg, and Toubou in West Africa. A large number of indigenous people live in East Africa and particularly in Zambia, Uganda, Ethiopia, Somalia, Madagascar, Tanzania, Kenya, Mozambique, Comoros, Sudan, Malawi, Eritrea, Rwanda, Burundi and Djibouti. Some indigenous peoples living in these countries are the: Acholi, Afar, Agaw, Akisho, Alur, Ambo, Amhara, Ankole, Anuak, Antalote, Arap, Aushi, Aw-Qutub, Ayoup, Baganda, Bagisu, Bagwere, Chopi, Dir (clan), Tutsi, Zulu, and many other tribes.

**Asia**

The central and eastern parts of Eurasia (with the exclusion of Europe), the Middle East and India contain a huge variety of indigenous peoples and ethnic groups, each with a different culture rich in history and traditions. These groups face many problems related to their preservation. The list can be endless. In Central Asia there are the

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Tibetans. In East Asia, we meet the indigenous peoples of the Ainu in Japan and the Taiwanese aboriginal ethnic groups of: Ami, Atayal, Bunun, Kavalan, Paiwan, Puyuma, Rukai, Saisiyat, Tao, Thao, Tsou, and Truku.

In Northern Asia there are approximately 40 distinct peoples with their own language and culture in Siberia, and the Turkic peoples in Russia and the Central Asian states. Some of these peoples are the: Sakha (or Yakut Turkic people), Tuvans (Turkic people known also as Uriankhai), Altayans (Turkic people inhabiting the Altai region), Buryats (or Buriats), Khakas (Turkic people living in Khakassia) and Tungus (or Evenks of Russia and China).

A large population of indigenous peoples lives in the Southern part of Asia. In the South and mainly around India and the Himalayan states, there are the Adivasi (autochthonous peoples in India), the Kisan tribals, the Andamanese indigenous peoples, the Nicobari and Shompen, the Naga in north-east India, the Kalash in northern Pakistan and the Wanniyala-Aetto in Sri Lanka.

In the south-east region of Indochina and the Malay Archipelago there are the: Bajau (Malaysia, Indonesia, Philippines), Akha (Thailand, Laos, Myanmar and China), Degar, Igorot, Lumad and Mangyan in the Philippines, Negrito (includes the Semang of the Malay peninsula, the Aeta of Luzon, the Ati of Panay, the Mani of Thailand, and the Andamanese), Penan in Malaysia, Sakai in the Malay peninsula, the Palawan in Philippines and the Hmong.

Finally, in the southwest of Asia there are the Aramean-Syriac people (a Christian Aramaic-speaking minority that inhabits northeastern Syria, southeastern Turkey and Lebanon) and the Assyrians (the Aramaic-speaking minority inhabiting northern Iraq, northeastern Syria, southeastern Turkey, and northwestern Iran).97

**Oceania**

The region of Oceania is comprised of Australia, Micronesia, Melanesia, and Polynesia. The original inhabitants of this vast area were the Aborigines, Melanesians, and Austronesians, who first arrived from Southeast Asia about 60,000 years ago. The various forms of social organization and isolation gave rise to a large diversity of languages and customs among indigenous groups in the region. There are approx. 400,000 aborigines living in Australia. The Torres Strait Islanders and the Australian Aborigines, together 2.6 % of the total population of Australia, encompass many different communities and societies which

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are further divided into local communities with unique cultures and alternate characteristics.

In Melanesia, and in particular in New Guinea, and the Pacific Islands from the Arafura Sea to Fiji we meet the Papuans, as well as the Wopkaimin, a small aboriginal tribe living in the Star Mountains.

In Micronesia and in particular the islands of Guam and the Mariana Islands there are the Chamorro people (or Chamorou) who also live nowadays in a few US States. Finally, in Polynesia and New Zealand there are the Aborigines of Kanaka maoli in Hawaii (native Hawaiians), the Maohi in Tahiti, the Maóri in New Zealand, the Moriori at the archipelago of the Chatham Islands, the Rarotongans in the Cook Islands, the Samoan, the Fijian and the Tongan people.

**HUMAN RIGHTS OF INDIGENOUS PEOPLES**

Self-determination is the inherent right of all peoples to determine their own social, economical and cultural development, and is a fundamental principle in international law.99 “We, the indigenous peoples, maintain our inherent rights to self-determination. We have always had the right to decide our own forms of government, to use our own ways to raise and educate our children, to our own cultural identity without interference… We continue to maintain our rights as peoples despite centuries of deprivation, assimilation, and genocide”.100

**The United Nations**

To date, the Universal Declaration of Human Rights is the most comprehensive statement on the rights of indigenous peoples. It affirms the inherent dignity, equality, and inalienable rights of all members of the human family. The rights of all members of indigenous populations are included in this declaration. However, indigenous peoples also have rights as distinct cultural groups or nations. The Declaration establishes the rights of indigenous peoples to their protection of their cultural property and identity as well as their rights to education, employment, health, religion, language and in addition their right to own land collectively.

**The European Union**

The development of European Union policy on indigenous peoples is relatively recent. Indigenous peoples were involved in the development of the European Commission Working Document of 1998. This document was rapidly followed by the adoption of the Council Resolution on Indigenous Peoples within the Framework of the Development Cooperation of the Community and Members States, which provides the main guidelines for support to indigenous peoples.

In this Resolution, the Council calls for “concern for indigenous peoples to be integrated into all levels of development cooperation, including policy

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dialogue with partner countries”. It also encourages “the full participation of indigenous peoples in the democratic processes of their country” within an approach that “asserts they should participate fully and freely in the development process”, recognizing “their own diverse concepts of development” and “the right to choose their own development paths”, including “the right to object to projects, in particular in their traditional areas” which includes “compensation where projects negatively affect the livelihoods of indigenous peoples”. It thereby acknowledges the importance that indigenous peoples attach to their own self-development, that is, the shaping of their own social, economic and cultural development and their own cultural identities. The Resolution states that “indigenous cultures constitute a heritage of diverse knowledge and ideas, which is a potential resource to the entire planet”.101

Other Organizations

Many other national and international organizations have accredited the importance of the protection of the rights of indigenous peoples all over the world. They have been devoted to the preservation or study of indigenous peoples and some of them have been widely-recognized as credentialed to act as an intermediary or representative on behalf of indigenous peoples’ groups in negotiations on indigenous issues with governments and international organizations. Some of these organizations are: The African Commission on Human and Peoples’ Rights (ACHPR), the Society for Threatened Peoples International (STP), the International Work Group for Indigenous Affairs (IWGIA), the Indigenous Peoples of Africa Coordinating Committee (IPACC), the Movement in the Amazon for Tribal Subsistence and Economic Sustainability and many other regional organizations, mainly protecting the needs of the indigenous peoples at a local scale.

Mistreatment of Indigenous Peoples

Indigenous peoples around the world have been historically threatened and even today in the new millennium, after their recognition by the international community as distinct peoples with respected differences, they are the most disadvantaged people on earth struggling to survive.

The Nation State

Negative responses to minorities within the nation state have ranged from state-enforced cultural assimilation, to expulsion, persecution, violence, and extermination.

The whole concept of the indigenous population arises because of the creation of the “nation-state”. The separation of land into segregated territories and the creation of man-made borders is the

significant cause of all the issues and concerns related to the indigenous peoples.

Nations are culturally homogeneous groups of people, larger than a single tribe or community, sharing a common language, institutions, religion, and historical experience. Indigenous peoples have had to assimilate with this notion of the nation, or were forced to assimilate.

**Colonialism and European Expansion**

With the term colonialism we refer to the policy of a nation to expand its authority over other territories beyond its borders and to establish administrative dependencies known as colonies. The powerful nations established large colonial empires around the globe in the early 18th Century. Colonialism was led by Portuguese and Spanish exploration of the Americas, and the coasts of Africa, the Middle East, India, and East Asia.

Despite some earlier attempts, it was not until the 17th Century that Britain, France and the Netherlands successfully established overseas empires outside Europe, in direct competition with Spain, Portugal, and each other. In these colonies, in almost all cases, indigenous peoples were totally subjugated by the colonizers who imposed social, cultural, religious or even linguistic structures on them. The colonial territories were well dominated by the intruders, in terms of labor and markets and natural resources. This rapid and extensive spread of the various European powers from the early 18th Century onwards had a profound impact upon many of the indigenous cultures with whom they had came into contact.

**Cultural Assimilation**

Historically, forced cultural assimilation has happened everywhere due to colonialism. It is a matter of fact that even nowadays, indigenous peoples are, in a way, forced to behave differently from what is their nature to behave. Wherever they are settled, they have to accept the laws and instructions of their occupying nation and in most of the cases they have been even urged to forget their own language.

Indigenous peoples should be able to express themselves freely and the county they live in should respect them in all ways. The education system of each country should be flexible and accept the specialties of these peoples by providing general education to them and by respecting their native language, religion, customs and folklores. According to Article 8(1) of the Declaration on the Human Rights of

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Indigenous Populations, indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.

**Racial Discrimination**

Mistreatment of indigenous peoples can cover: racism of color, racial discrimination, xenophobia and related intolerance, oppression, marginalization and exploitation, slavery and other injustices. Unfortunately, indigenous peoples continue to be victims, as they are treated in many parts of the world as second-class citizens.

No matter what the underlying reasons, racism is an unforgivable and unacceptable crime. The differentiation of a person in terms of color and skin type features, or ethnic bodily features, does not give the right to anyone to treat his fellow man as inferior.

Native children and women have been burglarized, raped, killed or even sold not only during colonization but also during the past decades. In most of the cases this happened not only because of the fact that children and women were physically weak, but mainly because they were the wives and off-spring of subordinate peoples, or were second class.

**The Environmental Factor**

The careless destruction of our environment is not only relevant to the preservation of indigenous peoples, but something that everyone on our earth should be conscious about. Deforestation, global warming, pollution and the uncontrolled use of natural resources threatens the lives of all, and not just the lives of the native tribes. It is well known that the majority of indigenous peoples are located in forest and tropical environments and their everyday life depends on the hunting, fishing and other sources that nature provides.

For instance, many native subsistence lifestyles are threatened by the deforestation of tropical rainforests in the Amazon River Basin. It holds countless natural resources and is home to over 300 indigenous peoples. Many different groups have interests in the Amazon. The governments of Ecuador, Brazil and Peru use the land and resources to increase the income of their countries. Transnational corporations interested in extracting raw materials such as gold, tin, iron, and oil are also claiming land in the region.

Many of these claims conflict with the ancestral homelands of indigenous peoples. Decades of industrial development within the Amazon has had a devastating effect on these peoples and the rainforest. Millions of acres of forest have been cleared or destroyed. Some indigenous peoples, such as the Ashaninka, have been forced to work for plantation owners without pay. As a result of these common threats, the indigenous peoples of the Amazon region formed the Coordinating Body for the Indigenous Peoples’ Organizations of the
Amazon Basin (COICA) in 1984. They are actively meeting and mobilizing to assert their rights to their ancestral lands and to ensure their participation in the future development decisions that affect their lives. 104

**Copyright Issues**

It is widely known that the close association of the indigenous peoples with nature, the natural resources, and the environment throughout the centuries or even the millennia, has enlightened them with sophistication in discovering many natural biological extracts that they have traditionally used as medicines. Through these techniques, natives in the Amazon forest or India and Malaysia have become victims of the big pharmaceutical companies that they have “stolen” their native knowledge, producing a variety of goods that are now sold in the market as originating from the pharmaceutical companies themselves. This could be conceived as bio-piracy, since the knowledge of the indigenous peoples has been used without due authorization or compensation.

**WHAT SHOULD BE DONE?**

Although the international community has become more conscious about the issues that affect indigenous peoples, the remedial efforts, if any, are just cosmetic.

**Reparations and Compensation**

No one has ever been officially accused nor has any government ever taken responsibility for all the devastation of the native peoples of the earth over past centuries.

An exception could be the statement made recently by the Prime Minister of Australia, “For the pain, suffering and hurt of these stolen generations, their descendants and for their families left behind, we say sorry. To the mothers and the fathers, the brothers and the sisters, for the breaking up of families and communities, we say sorry. And for the indignity and degradation thus inflicted on a proud people and a proud culture, we say sorry”. 105

But apologies are not enough; reparations are necessary. Of course, lost human lives and lands, destroyed natural resources, violated people and raped cultures cannot be replaced with monetary compensations, but it is the only way for the international court and the regional legislation to address a means of repayment for the damage done to the indigenous populations.

**Funding Education**

Indigenous languages and cultures were subjugated, demeaned and diminished through the forced assimilation into the dominant or common language and culture. In addition to that, indigenous

populations throughout the world have been deprived of opportunities for advanced education, thus limiting their ability to participate fully in their societies.106

This inequality of opportunity has led millions of indigenous people to live below the poverty line, or without basic education. Education can be seen as the opportunity to widen the horizons of indigenous peoples in an effort to let them be aware of their rights and needs, and put them in a position to be able to fight for these rights. Education is the key arena to reclaim and revalue their languages and cultures and realize the importance of protecting their heritage.107

CONCLUSION

Despite the importance of protecting the human rights of the indigenous peoples and of preserving their cultures, their linguistic variety and traditions, their useful knowledge about flora and fauna, indigenous peoples are still facing a lot of problems, fighting for their preservation, the protection of their women, children, land and natural resources, and against the devastating consequences of technology to the nature and their lands. Indigenous peoples have seen their lands invaded by governments that often do not respect their cultural systems, or law and justice. They have watched as rivers once providing food have become polluted with industrial waste. They have struggled to preserve their homelands, their health and often their lives in the face of alien development. For these reasons and more, indigenous peoples are advocating for their rights locally as well as globally and they are joining together to claim their rights to autonomy, self-determination and cultural identity. The General Assembly of the United Nations has rightly decided to celebrate the International Day of the World’s Indigenous People on August 9th every year with the goal of strengthening international cooperation for the solution of problems faced by indigenous peoples in such areas as culture, education, health, human rights, the environment, and social and economic development.108

Much still remains to be accomplished if we are to respect the great contributions of indigenous peoples to our own history, as our ancestors, as part of the diversity in the world, and as a source of native knowledge and learning.

107 Indigenous Community-based education, Steven May, University of Bristol, http://books.google.com/books/education+for+indigenous
INDIVIDUALISM VERSUS COLLECTIVISM

INTRODUCTION
The six episodes below can be used to explain the two constructs of individualism and collectivism.

1. In Botswana, a waiter brings one menu for four people and gives it to the senior member of the group, who orders the same food for all.
2. In Berlin, each member of the group orders a different entrée at a restaurant.
3. In India, a senior engineer is asked to move to New York, at a salary that is thirty-five times his salary in New Delhi, but he declines the opportunity.
4. In Florida, a senior engineer is asked to move to New York, at a salary that is fifty percent higher than his salary in Washington, D.C., and he accepts.
5. On a street in Lesotho, an older woman scolds a mother she does not know because she thinks the mother has not wrapped her child warmly enough.
6. In Australia, a man marries a woman his parents disapprove of.

As we analyze episodes of this kind, we find that the even-numbered episodes reflect an aspect of individualism; the odd-numbered ones an aspect of collectivism. The fact that six so diverse behaviors can be explained by just two constructs indicates that the constructs are useful and powerful. However, the wide applicability also represents a danger. Like the man with a hammer who uses it at every opportunity, if we do not sharpen their meaning, we can overuse the constructs.

The terms individualism and collectivism are conflicting views of the nature of humans, society and the relationship between them. They are used by many people in different parts of the world and are given various meanings; and because they are fuzzy, they are difficult to measure. Galileo Galilei said, "science is measurement," meaning that if we are going to understand, classify, and predict events, we need to measure them. In recent years social psychologists have made numerous attempts to measure tendencies toward individualism and collectivism, and in doing so they discovered considerable complexity in what should be included in these constructs. They have also theorized about the causes and consequences of people's behaving in individualistic and collectivist ways and discovered that people are typically both individualists and collectivists. The optimal states of individual and societal health are linked to too much individualism, whereas a lack of human rights can be attributed to too much collectivism.

The reader will want some explanation of why the six
behaviors mentioned earlier reflect these constructs. Botswana, India and Lesotho are collectivist countries, though to different degrees. The United States, Germany and England are individualistic countries, also to different degrees. Nevertheless, one can find both collectivist and individualistic elements in all these countries, in different combinations.

In Botswana, the waiter assumes that the senior member of the group will decide what to eat and that ultimately consuming the same food will intensify bonds among the members of the group, whereas in Germany, the waiter infers that each person has personal preferences that must be respected.

In India, the senior engineer feels that he must stay close to his family and Florida is simply too far. If his father was dying, it would be the engineer’s duty to be at his bedside and facilitate his passage to the other state. Under similar conditions in the United States, it is more likely that the parent would be placed in a nursing home. The parent and his son have their own lives and are independent entities.

In Lesotho, it is assumed that the whole community is responsible for child rearing. If the parent is not doing an adequate job, an older person is responsible for upholding community standards. “Putting one’s nose in another person’s business” is perfectly natural and expected.

In most cultures, people try to marry a spouse that their parents find acceptable. However, in very individualistic cultures like the United States, it is assumed that people are independent entities and that marriage is a link between two individuals regardless of parental disapproval. In collectivist cultures marriage is an institution that links two families, in which case it is mandatory that the families find the mate acceptable.

**Countries and Cultures**

In the foregoing example, the country is used as the equivalent of the culture. The equivalence is very approximate. Some estimates of the number of cultures begin with ten thousands. The UN has 192 member states; thus it is obvious that each country includes many cultures. Most countries consist of hundreds of cultures and corresponding sub-cultures. For example, occupational groups, corporations, or ethnic groups have fairly distinct cultures. A culture is usually linked to a language, a particular time period, and a place. English is widely used in different parts of the world, for example, India and Singapore, but that does not mean that all people who speak English posses the same culture. They may have more in common, of course, with other English speakers than with people who speak French, but language on its own is insufficient to create a common culture.

**Cultural differences**

Culture is to society what memory is to individuals. It includes
the things that have “worked” in the past. For example, one who invents a tool might tell his or her children about the tool. Others may pick up the idea and use it too. Soon, people come and go and the tool remains. The society uses the tool like a memory of what has worked in the past. Tools are parts of culture, just as words, shared beliefs, attitudes, norms, roles, and values, which are called elements of “subjective culture”.109

**Individual Differences**

We know that there are people in each of the countries that were mentioned in the examples who would have acted very differently. In every culture there are people who are “allocentric”, who believe, feel, and act very much like collectivists do around the world. There are also people who are “idiocentric”, who believe, feel, and act the way individualists do around the world. For example, we know Americans who would not hesitate to marry someone their parents dislike, but we also know Americans who would never do such a thing. In China those who press for human rights are likely to be idiocentric in a collectivist culture. In the United States, those who join communes are likely to be allocentric in an individualistic culture. Thus, in every culture we get the full distribution of both types.

**HISTORICAL BACKGROUND**

Most people think the terms individualism and collectivism were first used by English political philosophers of the eighteenth and nineteenth centuries. In the eighteenth Century the individualistic ideas of the American Revolution (all men are created equal, pursuit of happiness) and the French Revolution (liberty, equality) provoked reactions that were termed collectivism. In actual fact, other civilizations discovered them much earlier. A major attempt to understand English individualism was made by Macfarlane.110 He provided evidence that there was individualism in Britain as early as 1200 A.D. Interesting parallel thinking is found in the work of Galtung.111 He provided a macro-history of the West, examining the past two thousand and five hundred years and anticipating the next five hundred. He explicitly broke the past two thousand and five hundred years into three parts: up to the fall of the Roman Empire in 476 A.D., which he called antiquity; up to the fall of the Eastern Roman Empire (Byzantium) in 1453 A.D., which he called the Middle Ages; and up to present day, which he called

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the modern period. He saw antiquity as characterized by “vertical individualism”, the Middle Ages by “vertical collectivism”, and the modern period by “vertical individualism” again.

Galtung argued that the transition from one to the other cultural pattern was possible only because in each there were countercultural types ready to change the society. For example, in the Middle Ages there were landed aristocrats and city burghers with individualistic tendencies, so when the old system failed, they were ready to provide a new system. He anticipated a shift toward collectivism in the next five hundred years because the modern period is characterized by impersonal, cold, bureaucratic social structures and people are going to discover collectives that provide them with close-knit, more satisfying relationships. He saw the one thousand nine hundred and sixty eight student revolutions, the revival of occultist traditions, the explorations of Eastern religious experiences, and the general trend toward the withdrawal to private life as examples of the search for meaning in the West and as the first signs of the crisis, which will eventually result in new social systems with a greater role for homogenous, close-knit collectives.

The terms individualism and collectivism have a history of about three hundred years. Durkheim\textsuperscript{112} drew a distinction between “mechanical solidarity,” which occurs when members of a society are so similar that they relate to each other automatically without considering that any other option exists, and “organic solidarity,” where there is functional specialization and people are interdependent because it is advantageous. The first pattern is similar to basic collectivism; the second to individualism.

**Attributes of Individualists and Collectivists**

**Individualism and Individualists**

Individualism is a social pattern that places the highest value on the individual. Individualists view themselves as independent and only loosely connected to the groups of which they are a part. When establishing the level of their commitment to others, they balance the advantages and disadvantages of cultivating and maintaining a relationship; the level of commitment generally corresponds to the level of perceived benefit. Personal preferences, needs, rights and goals are their primary concerns, and they tend to place a high value on personal freedom and achievement. Self-reliance and competitiveness are common individualist features. When personal goals conflict with group goals, individualists tend to give priority to their personal goals.\textsuperscript{113}

\textsuperscript{112} Durkheim, E. (Orig. 1893; retransl. 1984). The division of Labor in society. London Macmillan.

Individualist cultures are those of the United States, Canada, and Western Europe. For Americans, individualism is part of what it means to be an American. Though there are negative critiques of the degree to which individualism can be taken in America, it still assumed to be a positive value at its base.

**Collectivism and collectivists**

Collectivism is a social pattern that places the highest value on the interests of the group. Collectivists view themselves as interdependent and closely linked to one or more groups. They often are willing to maintain a commitment to a group even when their obligations to the groups are personally disadvantageous. Norms, obligations and duties to groups are their primary concerns, and they tend to place a high value on group harmony and solidarity. Respectfulness and cooperation are common collectivist traits. When personal goals conflict with group norms, collectivists tend to conform to group norms.114

**Human Rights**

Under individualist cultures, individual rights are regarded as the most important thing, while in collectivist cultures, group, family or rights for the common good seen as more important than the rights of individuals.

Collectivists and individualists both agree that human rights are important, but they differ over how important and especially over what is presumed to be the origin of those rights. There are only two possibilities in this debate. Either man’s right is intrinsic to his being, or they are extrinsic, meaning that either he possesses them at birth or they are given to him afterwards.

In other words, they are either hardware or software. Individualists believe they are hardware. Collectivists believe they are software.

If rights are given to the individual after birth, then who has the power to do that? Collectivists believe this is a function of government. Individualists are nervous about that assumption because, if the state has the power to grant rights, it also has the power to take them away, and that concept is incompatible with personal liberty.

According to Thomas Jefferson, "Under the law of nature, all men are born free; every one comes into the world with a right to his own person, which

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114 Triandis, supra note 1, at 2, 12, 28, 34-35, 43-44; see also Hofstede, supra note 1, at 50-51; Brishkai Lund et al., conflict and Culture: Report of the Multiculturalism and Dispute Resolution Project 4 (1994). For a discussion of a collectivism and collectivists in Japan, see Robert C. Christopher, the Japanese Mind 38-58 (1st Tuttle Co., Inc. ed. 1987)
includes the liberty of moving and using it at his own will. This is what is called personal liberty, and is given him by the Author of nature, because necessary for his own sustenance".115

**State Power**

Collectivists and individualists are also divided on the origin of state power. Individualists believe that a just government derives its power, not from conquest and subjugation of its citizens, but from the free consent of the governed. That means the state cannot have any legitimate powers unless they are given them by its citizens.

Another way of putting it is that governments may do only those things that their citizens also have a right to do. If individuals do not have the right to perform a certain act, then they can not grant that power to their elected representatives. They can not delegate what they do not have.

**Group Supremacy**

Collectivists and individualists are again divided on the concept of group supremacy. Collectivism is based on the belief that the group is more important than the individual. According to this view, the group is an entity of its own and it has rights of its own. Furthermore, those rights are more important than individual rights. Therefore, it is acceptable to sacrifice individuals if necessary for "the greater good of the greater number". How many times have we heard that? Who can object to the loss of liberty if it is justified as necessary for the greater good of society? This concept is at the heart of all modern totalitarian systems built on the model of collectivism.

Individualists on the other hand say, "Wait a minute, group? What is group? That is just a word. You can not touch a group. You can not see a group. All you can touch and see are individuals". The word group is an abstraction and does not exist as a tangible reality. It is like the abstraction called forest. Forests do not exist. Only trees exist. A forest is the concept of many trees. Likewise, the word group merely describes the abstract concept of many individuals. Only individuals are real and, therefore, there is no such thing as group rights. Only individuals have rights.

Just because there are many individuals in one group and only a few in another does not give a higher priority to the individuals in the larger group - even if you call it the state. A majority of voters do not have more rights than the minority. Rights are not derived from the power of numbers. They do not come from the group, they are intrinsic to each human being.

**Coercion versus Freedom**

Coercion versus freedom is the other concept that divides

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115 Thomas Jefferson: Legal Argument, 1770.
collectivism and individualism; it has to do with responsibilities and freedom of choice. We have spoken about the origin of rights, but there is a similar issue involving the origin of responsibilities. Rights and responsibilities go together. If you value the right to live your own life without others telling you what to do, then you must assume the responsibility to be independent and to provide for yourself without expecting others to take care of you. Rights and responsibilities are merely different sides of the same coin.

If only individuals have rights, then it follows that only individuals have responsibilities. If groups have rights, then groups also have responsibilities; and therein, lies one of the greatest ideological challenges of our modern age.

Individualists are champions of individual rights. Therefore, they accept the principle of individual responsibility rather than group responsibility. They believe that everyone has a personal and direct obligation to provide, first for himself and his family, and then for others who may be in need. That does not mean they do not believe in helping each other. Just because I am an individualist does not mean I have to move my piano alone. It just means that I believe that moving it is my responsibility, not someone else's, and it is up to me to organize the voluntary assistance of others.

The collectivists, on the other hand, declares that individuals are not personally responsible for charity, for raising their own children, providing for aging parents, or even providing for themselves. These are group obligations of the state. The individualist expects to do it himself; the collectivist wants the government to do it for him: to provide employment and health care, a minimum wage, food, education, and a decent place to live. Collectivists are enamored by government. They worship government. They have a fixation on government as the ultimate group mechanism to solve all problems.

Individualists do not share that faith. They see government as the creator of more problems than it solves. They believe that freedom of choice will lead to the best solution of social and economic problems. Millions of ideas and efforts, each subject to trial and error and competition - in which the best solution becomes obvious by comparing its results to all others - will produce results that are far superior to what can be achieved by a group of politicians or a committee of so-called wise men.

By contrast, collectivists do not trust freedom. They are afraid of freedom. They are convinced that freedom may be all right in small matters such as what color socks you want to wear, but when it comes to the important issues such as money supply, banking practices, investments, insurance programs, health care, education, and so on, freedom will not work. These things, they say, simply must be
controlled by the government. Otherwise there would be chaos.

**Equality versus Inequality**

Equality versus inequality divides collectivism from individualism. Individualists believe that no two people are exactly alike, and each one is superior or inferior to others in many ways but, under law, they should all be treated equally. Collectivists believe that the law should treat people unequally in order to bring about desirable changes in society. They view the world as tragically imperfect. They see poverty and suffering and injustice and they conclude that something must be done to alter the forces that have produced these effects. They think of themselves as social engineers who have the wisdom to restructure society to a more humane and logical order. To do this, they must intervene in the affairs of men at all levels and redirect their activities according to a master plan. That means they must redistribute wealth and use the police power of the state to enforce prescribed behavior.

**Personality**

In collectivistic cultures, self-esteem is not derived from idiosyncratic behavior or from calling attention to one’s own unique abilities. There is greater emphasis on meeting a shared standard so as to maintain harmony in one’s relationship to the group. People in collectivistic cultures are therefore not motivated to stand out from their group by competitive acts of achievement or even making positive statements about themselves. Instead, there is a tendency toward self-improvement motivated by concern for the well being of the larger social group. Whereas members of individualistic cultures strive for special recognition by achieving beyond the norms of the group, collectivists are more motivated to understand the norms for achievement in the particular context so as to meet that standard. Therefore, one might expect groups defined by collectivistic norms to be high in collaboration and achievement of collective goals, whereas groups with individualistic norms may have greater variability in performance among its individual members.

**Attitudes**

A major study by Bellah et al. expressed concern that individualism is becoming cancerous in American life. Individualism was

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118 Azima, R.D. (1994)"Group Psychotherapy with Personal Disorders". In Kaplan & Shaddock, (eds.)


seen as emphasizing hedonism, competition, self-reliance, utilitarian pursuits, and open communication with the community only if it serves the person. Most importantly, it emphasizes freedom, equality and equity, participation, trust of others, competence, exchanges, fairness, independence and separation from family, loneliness and sometimes alienation. The standard is no longer “what is good?” but “does it feel good?” The scholar saw a crisis in the relating of personal and community goals and noted that therapy is thought of as an answer to any problem.

Bellah et al. also identified several kinds of individualism: religious, utilitarian and expressive. For example, according to the biblical individualist, the individual relates directly to God; the utilitarian emphasizes exchanges that maximize returns for the individual. Expressive individualists emphasize having fun. The self is what really matters. However, individualism is compatible with conformity, since people who do not know what is right have to depend on social comparisons to guide their life. Keeping up with Joneses is the central motto of life among these individualists. Since members of the upper class pay attention to traditions and social norms that secure their comfortable positions in society, and members of the lower class have to do their duty in order to keep their jobs, individualism is maximal in the middle class. This view is inconsistent with other findings, and further research is needed.

**Number of Choices**

In complex environments, such as modern information societies, people have a large number of choices. In most preliterate cultures there are few choices. Also, among the poor, underprivileged segments of even the most modern societies, the number of choices is small. As affluence and complexity increase, the number of choices also increases. In information societies the data banks include information of enormous complexity. The significance of the number of choices is that it implies that individuals may arrive at different decisions depending on how the information is processed. The individual is conscious of the personal nature of a decision. People make their own decisions and may be labeled individualists.

**In-Groups**

If only one in-group is present, it dominates social life. It provides the only sources of norms, identity, and social support. Collectivists may have relatively few in-groups, but they identify very strongly with them. The in-groups of collectivists provide social insurance, protection, and a relaxing atmosphere.

The presence of many in-groups encourages individualism. For example, the separation of church and state in the United States automatically creates more than one in-group and is a premise upon
which multiculturalism and democracy are based. It is also the
foundation for social movements because each in-group can potentially
become a social movement.

Multiple in-groups are especially important in large urban
centers, where the social controls of small in-groups are often weak. The
social structures of these communities are loose, and several of the
factors we have discussed converge to put more emphasis on personal
responsibility and less on norms. With more in-groups these is an
increase in social diversity, tolerance for deviance, and multiculturalism.
Thus the factors that make cultures loose and allow many choices favor
individualism. Conversely, collectivism is maximal in tight cultures,
where there are few choices.

There is less distinction between in-group and out-group in
individualist cultures, while in collectivist cultures deeper distinctions are
made between in-group and out-group. Because the person’s identity is
closely linked to his or her social group in collectivistic cultures, the
primary goal of the person is not to maintain independence from others,
but to promote the interests of the group. In contrast, most people in
individualistic cultures assume that their identity is a direct consequence
of their unique traits. Because the norms of individualistic cultures state
being "true" to one’s self and one’s unique set of needs and desires, the
person may be encouraged to resist social pressure if it contradicts
his or her own values and preferences. Thus, people in individualistic
cultures can be expected to be consistent in their views and maintain
them in the face of opposition, while people in collectivistic cultures
might consider the failure to yield to others as rude and inconsiderate.

The individualistic cultures emphasized goals like self-
sufficiency and self-glorification; the collectivist cultures emphasized the
good of the in-group. Among individualists, power was desired and
often achieved, whereas the collectivists were less status conscious. The
individualistic cultures had a view of the universe that included a
struggle between individuals and gods, whereas the collectivists expected
that if they did their duty, everything would be all right.

Identity and Emotions

Identity among collectivists is defined by relationships and
group memberships.

Individualists base identity on what they own and on their own
experiences. Not surprisingly, the emotions of collectivists tend to be
empathetic and other-focused and of short duration (they last as long as
the collectivists are in a situation). The emotions of individualists on the

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121 Fiske, Kitayama, Markus, and Nesbit, 1998

86
other hand are ego-focused and of long duration (do not necessarily change with the situation). Markus and Kitayama described the rich vocabulary of the Chinese language for other-focused emotions, such as *amae* (hope or expectation of someone’s indulgence and favor). Matsumoto found that collectivists identify sadness more easily than individualists, and individualists are more likely to perceive happiness than collectivists. Americans are more likely than Chinese to seek "fun" situations, and Chinese are more likely than Americans to seek situations that produce harmonious interpersonal atmospheres.

In Chinese society, collectivism has a long tradition based on Confucianism, where being a "community man" or someone with a "social personality" is valued. Additionally, there is the personality type which is worldly and committed to family. Individualist thinking in China was formed by Lao Zi and Taoism. He taught that individual happiness is the basis of a good society. He was an opponent of taxation and war, and his students and the tradition that followed him were consistently individualistic.

**Helping Behavior**

Interpersonal relations sometimes involve different assumptions in collectivist and individualistic cultures. Specifically, in individualistic cultures it is assumed that whether a person helps or not is a matter of personal choice. But in many collectivist cultures helping is a moral obligation, thus, obligatory, not voluntary.

In many collectivist cultures doing one’s duty is realizing one’s nature, and individual happiness is not important. Miller showed that the conditions under which one may or may not help are often different in India and the United States.

In general, people must help in India under conditions where help might not be required or be optional in the United States. Greater priority is given to interpersonal responsibilities than to justice obligations in collectivist cultures.

**Social Loafing**

Earley showed that social loafing, or doing less than one is capable of doing when one’s performance is not observable, is less likely among collectivists working with in-group members than among

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124 Miller, K.S. (1994) “Public Relations, the Community, and Newspaper Coverage of a local Steel Strike, 1946”. American Journalism Historians Association; Roanoke, Virginia; October.
individualists. Similarly, Wagner\textsuperscript{126} showed that individualists were more likely to "free ride" or avoid responsibilities, or let others do a greater share of the work, or allow others to pay for them, than is common among collectivists.

However, Yamagishi\textsuperscript{127} argued that Japanese subjects do not free ride because they are monitored very closely, and if they fail to do their share, they are likely to face severe sanctions. He showed in an experiment that when monitoring is not possible, the Japanese subjects who contribute much to the group exit the group. This is an individualistic solution to the free rider problem.

\textit{Culture and politics}

The stereotype of a "good person" in collectivist cultures is trustworthy, honest, generous, and sensitive, all characteristics that are helpful to people working in groups.

In contrast, a "good person" in individualist culture is more assertive and strong, characteristics helpful for competing. The idea of the "artistic type" or "bohemian" is not usually found in collectivist cultures. However, collectivist cultures usually have a "community man" concept not present in individualist cultures.

\textbf{Advantages and Disadvantages of Collectivism}

\textbf{Advantages}

Studies of morality reviewed by Eckensberger\textsuperscript{128} indicated that all children go through certain stages of moral development.

- In stage one, the child focuses on punishment, and obedience is considered essential. This is a universal "primitive" view of morality.
- In stage two, one follows rules only if it is to one’s advantage to do so; what is right is an equal exchange, a good deal. That view is already individualistic, but it is a primitive individualism.
- In stage three, one does what one is expected to do by the in-group and by one’s role. This is a primitive collectivist position.
- In stage four, one does one’s duty, and laws must be upheld unless they are in conflict with other fixed social duties. This is a more sophisticated collectivist position.
- In stage five, the emphasis is on social contract and individual


individualism versus collectivism

Individualism and Collectivism deeply pervade cultures. People simply take their culture's stance for granted. In the US, everything from "self-serve" buffet tables to corporate structures to cowboy movies reflects the deeply ingrained individualism. In China, after a professor gave a lecture on individualist culture, the students asked the professor if what he said could "really be true".

When we reach a certain age we are encouraged to get a job, go to college, go into the military or travel the world. In other cultures rights. This position argues that people hold a variety of options and that most values and rules are relative to the group one belongs to and should usually be upheld because there is a social contract.

- In stage six; humans may reach the most individualistic view. In this stage the focus is on universal ethical principles and particular laws and rules.

Disadvantages

Collectivism has disadvantages at both private and public levels. At the private level, we find less willingness to cut the bonds with the family when that is required for study abroad or for occupational achievement. There is evidence of high level of homesickness when a collectivist is away from the family.

At the public level of the relationship of individuals to the state, extreme collectivism has the most disadvantages, for example, both Nazis and the Communists established regimes that strongly subordinated the individual to state goals.

In collectivist cultures people have so many obligations toward their in-groups that they do not have the interest or energy to do volunteer work.

Advantages and Disadvantages of Individualism

Advantages

Individualists have a sense of high self-efficacy. Because their self-esteem is high, they are more likely to try risky activities, so achievement is often associated with individualism. Individuals insist on equal treatment under the law. This is especially significant in political situations.

Disadvantages

Individualism is linked to loneliness and poor social support, and high probabilities of family conflict and divorce. Individualism has serious disadvantages in the area of international economic competition stemming from the fact that as jobs become more complex and more demanding, they require more training. In short, for firms in individualistic countries, individualism is making competition in the global marketplace more difficult than it has to be.

Comparative Analysis

Collectivism and Individualism
children are closer and more respectful of family values and can stay in the home or in the same neighborhood as long as they wish.

It is a matter of cultural values of course. The main difference between China and America, for example, is that China believes in collectivism and America in individualism. Collectivism means that the group is more important than the individual. Individualism means that the individual is more important than the group.

This is why many Eastern cultures, such as China, Indonesia, Malaysia, etc., have closer-knit and much larger families, as they believe the whole family unit is more important than any one individual within it. That is, even remotely extended family is considered family, and all are included.

Many Native American indigenous cultures were consistently this way before the white man came as well. Now, many Native Americans are working to get back to those roots, but it is difficult. White American culture is addictive, and that is not always a good thing.

In white, middle-class America, the culture stresses independence, and as quickly as possible. But they pay a high price for that value obviously. It is not all bad, but in general, it is not helping American cohesiveness. A little less individualistic obsession and a little more collective care might create a stronger nation. Balance is always healthier.

The culture in which each of us lives influences and shapes our feelings, attitudes, and responses to our experiences and interactions with others. Because of our cultures, each of us has knowledge, beliefs, values, views, and behaviors that we share with others who have the same cultural heritage. These past experiences, handed down from generation to generation, influence our values of what is attractive and what is ugly, what is acceptable behavior and what is not, and what is right and what is wrong. Our cultures also teach us how to interpret the world. From our culture we learn such things as how close to stand to strangers, when to speak and when to be silent, how to greet friends and strangers, and how to display anger appropriately. Because each culture has a unique way of approaching these situations, we find great diversity in cultural behaviors throughout the world.

Many cultures value collectivism, we believe that the group we belong to is the most important part of the society. When we make decision, we consider the groups’ goals and wants. We value the group we belong to more than our individual selves. People are very loyal to the groups they are part of, and they usually stay at the same job all their lives. In our culture, when people make choices about marriage, education, and work, they always make their decisions together with their families. Their decisions are made based on what their families want them to do.
In individualist culture, people are encouraged to base their decisions on their personal goals and wants. They feel that each individual is special and different from others. People in this culture believe that they are the most important thing in their environment. Individualistic culture encourages people to do things because they want to do them and to make decisions based only on their wants. If people are not happy at their jobs, they are encouraged to look for jobs that will make them happier.

**Power Distance**

One may realize that in collectivist culture people believe in high-power distance, which means that people who have more power and have higher positions are treated more formally than other people. In this culture, people are taught that we are not all equal. Some people have more power and authority than others do, and we should treat these people with more respect. In this culture, students do not call their teachers by their names, and teachers and students do not spend time together outside of the classroom.

Individualist culture also believes in low-power distance. This means that the individualistic culture people believe all people are equal and should be treated equally regardless of their positions and authority in the society. In this culture, supervisors and people in power and their subordinates perceive each other to be the same kind of people. Many students call their teachers by their first names, and many teachers socialize with their students outside of the classroom.

In individualist culture society is future oriented, which means that people are very optimistic and excited about the future. In this culture, people have discussions about the future and they believe that the future will bring them more happiness and good things. Note that the United States and Canada exemplify the culture profile for individualism and future-orientation. Finland, Denmark and Norway fit the individualistic culture profile for low power distance.129

Collectivist culture is past oriented, which means that people stress the importance of history. They believe that the events of the past determined what the society is today. When society makes decisions, the events of the past should be considered and respected. The people in the collectivist culture do not easily make changes in their culture because they want to hold on to the past. Note that China, Japan and Korea are examples of the collectivist culture profile for time orientation and collectivism.

**Groups**

In collective cultures, on the other hand, individuals are very loyal to all the groups they are part of, including the work place, the

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family, and the community. Within collectivism, people are concerned with the group’s ideas and goals, and act in ways that fulfill the group’s purposes rather than the individual’s. Samovar et.al.¹ believe that it is important to note that while individualism and collectivism can be treated as separate dominant cultural patterns, and that it is helpful to do so, all people and cultures have both individual and collective dispositions.

Persons in collectivist societies are taught a sense of group responsibility and belongingness unlike children in individualistic ones, where children learn to become quickly self-reliant and individual growth and success lies in direct contrast to group benefit; hence, the concept of profit-making capitalism. Respect towards others, again, is viewed differently in these two societies. Collectivist societies are strongly hierarchical, both with respect to gender and age. Younger people are not expected to express independent opinions or share their knowledge; such roles are reserved for people of higher status, mainly older people. This is in direct contrast to an individualist society like America, where self-expression and exhibiting one’s knowledge is usual. These two modes often create confusion in social interactions, where Americans tend to take their counterparts as lacking in intelligence because those traits have not been publicly exhibited, and collectivists thinking of Americans as showing disrespect and arrogance because they have.

There are two objections to collectivism. One is that in collectivist societies, individuals tend to loose their identity and drive for self-expression and self-growth. Promotion of state-power at the cost of the individual, and its subsequent historical misuse is another criticism against collectivism. Individualism, on the other hand, is vilified because it is taken to lead to social anarchism if pursued to its logical end. Morally, too, critics point out the lack of family values and loss of a healthy sense of belonging that is promoted by individualistic societies. The subjugation of individual will to the greater good is a higher moral ideal than the pursuit of individual success and happiness.

**Individualist Cultures**

Individualistic cultures like USA and France are more self-centered and emphasize mostly their individual goals. People from individualistic cultures tend to think only of themselves as individuals and as "I" distinctive from other people. They make just a little different between in-group and out-group communication. They prefer clarity in their conversations to communicate more effectively and come in

general directly to the point. An exception here is the Germans who indeed are an individualistic culture but their communication style is different. First details will be named and discussed, and only after that will they come to the point. Americans might feel annoyed because they say first what it is about and explain afterwards.

People in individualistic cultures emphasize their success and achievements in job or private wealth and aiming up to reach more and a better job position. It just counts to get there, regardless of who it will leave behind. In business they try to improve their connections and to be involved in a calculative way. Employees are expected to defend their interests and to promote themselves when ever possible.

**Collectivist Cultures**

Asian collectivist cultures as in China view other companies with less collectivistic philosophy as cold and not supportive. Collectivist cultures have a great emphasize on groups and think more in terms of “we”. Harmony and loyalty within a company is very important and should always be maintained and confrontation should be avoided.

In China it is out of the question to disagree with someone’s opinion in public. You will do that in a more private and personal atmosphere to protect a person from the “loss of face”. In collectivistic cultures a direct confrontation will always be avoided. Expressions or phrases are used which describe a disagreement or negative statement instead of saying no. Saying no would mean to destroy the harmony in the group. The relationship between employer and employee or business partners is based on trust and harmony and a deep understanding of moral values. The wealth of the company and the groups inside are more important than the individual ones.

David Yaou-Fai Ho, a Hong Kong social scientist is quoted as defining “losing face” as follows: “Face is lost when the individual, either through his action or that people closely related to him, fails to meet essential requirements placed upon him by virtue of the social position he occupies”. This can be compared with “self-respect” in individualistic cultures. There is understanding and help for employees who have poor performance.

It seems likely that some form of balance between individualism and collectivism is optimal. The great stage of the past, such as Confucius and Socrates, emphasized balance. Many of the knee-jerk proponents of the free market have forgotten this. Balance requires cognitive complexity. Any extreme position is simple, couched in terms that the crowd can support and the voters can understand.

The lack of balance is corrected in democracies by switching

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132 ibid pg 61
from one side of the argument to the other, that is, by changing parties in power. That is the strength of democracies. But it may be more profitable to develop middle courses that can be steady and provide predictability for social and economic planners. These considerations suggest that neither individualism nor collectivism is desirable unless one is balanced by the other.

CONCLUSION

To conclude, most people prefer living in a society that embraces individualism. Because the more technology and wealth people create the less generosity it would take to address their needs, and more than enough generosity would be available. And the more individualized the nation, the more citizens enjoy their life. In this regard, this suggests that the benefits of individualization are greater than the costs. One acquires the knowledge and skills needed to create the values that promote his or her survival and happiness.

On the other hand, collectivism can be regarded as an important concept because respectfulness and cooperation are common collectivist features. One can advise that even where there is teamwork each member of the group should be given an opportunity of leading a group, for example, maybe a month as a leader to get knowledge, ability and skills. This will help to avoid a society of malevolence and poverty, and thus be well prepared to deal with emergencies.

This distinction is particularly important at a time when states subscribing to individualist cultures are focusing their accusations about human rights violations on states with collectivist cultures. Not much of a dialogue is possible between them, as the one sees human rights as the rights of individuals, and the other sees human rights as the rights of society. This is for no reason other than the history of their respective intellectual and cultural development. In a way, neither is right, and neither is wrong; they are just different.

One would therefore suggest that if individualist and collectivist cultures get their priorities straight, and get to know each other a little better, they will not only see that they are not as far as they thought, but they will also see that there is a lot they can learn from each other. As so often happens in good marriages, each might see in the other a part that is missing in them. They can learn that they are complementary and necessary pieces of the whole system.
INTERNATIONAL CRIMINAL COURT

INTRODUCTION

This paper attempts to show that the establishment of the International Criminal Court, which is considered by many as a turning point for justice and rule of law, may turn out to be no more than another attempt to reduce the sovereignty of states. Since that will be resisted by the large majority of states, the Court is unlikely to succeed.

Following the Nuremberg and Tokyo tribunals that came after the World War II, the United Nations General Assembly first recognized the need for a permanent international court to deal with the kind of atrocities that had taken place during the war. Since then, the need for such a court has been discussed off and on in the UN. The scope, scale and hateful nature of atrocities that have taken place during the last 20 years in many parts of the world gave a further impetus to create a permanent mechanism to bring to justice the perpetrators of such crimes as genocide, ethnic cleansing, sexual slavery and maiming, including amputation of limbs of non-combatants, even women and children, and to finally put an end to the impunity so often enjoyed by those in positions of power.

INTERNATIONAL CRIMINAL TRIBUNALS AND SPECIAL COURTS

Nuremberg and Tokyo trials

In many ways, the ICC is a legacy of the Nuremberg trials of Nazi officials after World War II. These were the first ever convened by multiple states for the purpose of trying individuals accused of war crimes and crimes against humanity. In the Moscow Declaration of November 1943, the Allies affirmed their determination to prosecute the Nazis for war crimes. The United Nations Commission for the Investigation of War Crimes, composed of representatives of most of the Allies, and chaired by Sir Cecil Hurst of the United Kingdom, was established to set the stage for post-war prosecution. The Commission then prepared a Draft Convention for the Establishment of a United Nations War Crimes Court, basing its text largely on the 1937 treaty of the League of Nations, and inspired by work carried out during the early years of the war by an unofficial body, the London International Assembly.

But it was the work of the London Conference, convened at the close of the war and limited to the four major powers, the United Kingdom, France, the United States and the Soviet Union, that laid the groundwork for the prosecutions at Nuremberg. The Agreement for the Prosecution and Punishment of Major War Criminals of the European

133 www.unausa.org
Axis, and Establishing the Charter of the International Military Tribunal (IMT) was formally adopted in August 1945. It was promptly signed by representatives of the Four Powers. The charter of the International Military Tribunal was annexed to the Agreement. This treaty was eventually adhered to by nineteen other states who, although they played no active role in the Tribunal’s activities or the negotiations of its statute, sought to express their support for the concept and indicate the wide international acceptance of the norms the charter set out.

Doubts about the legitimacy of the Nurnberg and Tokyo Tribunals focused on two points: Firstly, that the law that was being applied by these tribunals was retro-active, since it had had been enacted after the crimes were actually committed. Secondly, that it was only the law of the victors that was being applied, since there was no agreement or consensus about international law on the subject. Both these objections lie at the basis of the subsequent work on the establishment of the International Criminal Court.

**International Criminal Tribunal for Yugoslavia**

The Bosnian war in the early 1990s saw ethnic cleansing, genocide and other serious crimes. In May 1993, the UN Security Council established the International Criminal Tribunal for Yugoslavia (ICTY) to try those responsible for violations of international humanitarian law in the territory of the former Yugoslavia since 1991. The tribunal seeks to bring justice to the victims of the conflict and deter future leaders from committing similar atrocities. The ICTY has also begun to take on cases from the Kosovo crisis of the late 1990s.

The court was the UN’s first special tribunal. Not surprisingly it has come under intense security. Critics argue that the tribunal is a political tool rather than an impartial judicial institution. Slobodan Milosevic, the court’s highest profile defendant, has argued that the court is unfair, but critics also point to troubling examples of politicization and bias.

**International Criminal Tribunal for Rwanda**

Torn by ethnic conflict between the Tutsis and the Hutus, Rwanda experienced the worst genocide in modern times. The conflict had origins in Belgian rule, which favored the minority Tutsis and fostered differences between the two groups. In 1962, when the country gained independence, Gregoire Kayibanda headed the first recognized Hutu government. Juvenal Habyarimana seized power in a military coup a decade later, following the massacre of thousands of Hutus in neighboring Burundi. For nearly twenty years under Habyarimana, ethnic relations simmered with sporadic outbreaks of violence. In 1993, Habyarimana signed a short-lived power-sharing agreement with the Tutsis, aiming to end the fighting. In April 1994, the plane carrying
Habyarimana and the President of Burundi was shot down. The event triggered the notorious genocide. Extremist Hutu militia aided by the Rwandan army launched systematic massacres against Tutsis.

In 1994, the United Nations General Assembly decided to pursue work towards the establishment of an international criminal court, taking the International Law Commission’s draft as a basis. Despite reports of mass killings, the UN failed to take immediate action to stop the massacres, reportedly due to opposition from France and the US. As a result, around 800,000 Tutsis and moderate Hutus were killed in a short period of 100 days, and over three million people fled to neighboring countries. In 1995 a UN appointed International Criminal Tribunal for Rwanda (ICTR) began trying those responsible for the 1994 atrocities. However, Rwanda’s efforts at recovery have been marred by its involvement in the conflict in Democratic Republic of Congo.

**Special Court for Sierra Leone**

Sierra Leone suffered a gruesome, ten-year civil war. The Revolutionary United Front (RUF), led by Foday Sankoh, used amputations and mass rape to terrorize the population and gain control of the country’s lucrative diamond mines. Charles Taylor, then president of neighboring Liberia, backed the insurgency by providing arms and training to the RUF in exchange for diamonds. The pro-government Civil Defense Force (CDF), under the leadership of Sam Hinga Norman, committed serious offenses as well. In 1999, the UN eventually brokered the Lome Peace Accord between the warring parties.

In January 2002, the UN approved the Special Court for Sierra Leone (SCSL) to try those responsible for the crimes committed during the civil war. Based in the country where the atrocities were committed and combining international and domestic law, the SCSL ushers in a new generation of international tribunals. Experts believe this model will deliver justice faster and at a lower cost than its counterparts for Rwanda and Yugoslavia.

Since the trials opened in June 2004 the SCSL has received both criticism and praise. Some argue that the Court is too constrained in terms of its time frame, jurisdiction and enforcement powers, which will weaken its ability to deliver justice. Others see the Court as an exemplary model for other international tribunals.

**The Rome Statute**

**Negotiations to establish an International Tribunal**

In 1994, the United Nations General Assembly decided to pursue work towards the establishment of an international criminal court, taking the International Law Commission’s draft as a basis. It

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Idrees Mohamed Ali

International Criminal Court

convened an Ad Hoc Committee, which met twice in 1995. Debates within the Ad Hoc Committee revealed rather profound differences among States about the complexion of the future court, and some delegations continued to contest the overall feasibility of the project, although their voices became more and more subdued as the negotiations progressed. The International Law Commission draft envisaged a court with primacy much like that of the ad hoc tribunals for the former Yugoslavia and Rwanda. If the court’s prosecutor chose to proceed with a case, domestic courts should not be able to preempt this by offering to do the job themselves. In meetings of the Ad Hoc Committee, a new concept reared its head, that of “complementarity” by which the court could only exercise jurisdiction if domestic courts were “unwilling or unable” to prosecute. Another departure of the Ad Hoc Committee from the International Law Commission draft was its insistence that the crimes within the court’s jurisdiction be defined in some detail and not simply enumerated. The International Law Commission had contented itself with listing the crimes subject to the court’s jurisdiction- war crimes, aggression, crimes against humanity and genocide – presumably because the draft code of crimes, on which it was also working, would provide the more comprehensive definitional aspects.

It had been hoped that the Ad Hoc Committee’s work would set the stage for a diplomatic conference where the statute could be adopted. But it became evident that this was premature. At its 1995 session, the General Assembly decided to convene a “Preparatory Committee”, inviting participation by Member States, non-governmental organizations and international organizations of various sorts. The PrepCom, as it became known, held two three-week sessions in 1996, presenting the General Assembly with a voluminous report comprising a hefty list of proposed amendments to the International Law Commission draft. It met again in 1997, this time holding three sessions. These were punctuated by informal inter-sessional meetings, of which the most important was surely that held in Zutphen, in the Netherlands in January 1998. The “Zutphen Draft” consolidated the various proposals into a more or less coherent text. The “Zutphen Draft” was reworked at the final session of the PrepCom, and then submitted for consideration by the Diplomatic Conference.

Pursuant to the General Assembly resolutions adopted in 1996 and 1997, the Diplomatic Conference of Plenipotentiaries on the

137 Report of the Preparatory Committee on the Establishment of an International Criminal Court, UN Doc.A/51/22
Establishment of an International Criminal convened in June 1998 in Rome, at the headquarters of the Food and Agriculture Organization

**Entry into Force**

The Statute required sixty ratifications or accessions for “entry into force”. The date of entry into force – 1 July 2002 - is an important one, if only because the Court cannot prosecute crimes committed prior to this date of entry into force. Entry into force also began the real formalities of establishing the Court, such as the election of judges and Prosecutor. States were also invited to sign the Statute, which is a preliminary step indicating their intention to ratify. They were given until the end of 2000 to do so, and some 139 availed themselves of the opportunity. Even States that had voted against the Statute at the Rome Conference, such as the United States and Israel, ultimately decided to sign. Many of those which had abstained in the vote in July 1998 also signed. States wishing to join the Court who did not deposit their signatures by the 31 December 2000 deadline are said to accede to, rather than ratify, the Statute.

The pace of ratification was speedier and more dramatic than anyone had realistically expected. By the second anniversary of the adoption of the Statute, fourteen ratifications had been deposited. By the deadline of 31 December 2000, when the signature process ended, there were 27 parties. On the third anniversary of adoption, the total stood at 37. Today there are over a hundred.

**Operationalisation**

The Assembly of States Parties was promptly convened for its first session, which was held in September 2002. The Assembly formally adopted the Elements of Crimes and the Rules of Procedure and Evidence in versions unchanged from those that had been approved by the PrepCom two years earlier.

A number of other important instruments were also adopted, and plans made for the election of the eighteen judges and the Prosecutor. Elections of judges were completed by the Assembly during the first week of February 2003, at its resumed first session. In a totally unprecedented development for international courts and tribunals, more than one-third of the judges elected in February 2003 were women.139

The first Prosecutor, Luis Moreno-Ocampo of Argentina, was elected in April 2003.

**Structure of the Court**

**Presidency**

The Presidency is responsible for the overall administration of the Court, with the exception of the Office of the Prosecutor, and for

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specific functions assigned to the Presidency in accordance with the Statute. The Presidency is composed of three judges of the Court, elected to the Presidency by their fellow judges, for a term of three years.\footnote{140 www.icc-cpi.int.}

**Judicial Divisions**

The Judicial Division consists of eighteen judges organized into the Pre-Trial Division, the Trial Division and the Appeals Division. The judges of each Division sit in Chambers which are responsible for conducting the proceeding of the Court at different stages. Assignment of the judges to Divisions is made on the basis of the nature of the functions each Division performs and the qualifications and experience of the judge. This is done in a manner ensuring that each Division benefits from an appropriate combination of expertise in criminal law and procedure and international law.\footnote{141 ibid.}

**Office of the Prosecutor**

The office of the Prosecutor is responsible for receiving referrals and any substantiated information on crimes within the jurisdiction of the Court, for examining them and for conducting investigations and prosecution before the Court. The office is headed by the Prosecutor, who is elected by the States parties for a term of nine years. The Prosecutor is assisted by two Deputy Prosecutors, one with responsibility for investigations and the other for prosecution.

**Registry**

The Registry is responsible for the non-judicial aspects of the administration and servicing of the Court. The Registry is headed by the Registrar who is the principal administrative officer of the Court. The Registrar exercises his or her functions under the authority of the President of the Court. The Registrar elected by the judges for a term of five years.

**Jurisdiction and Admissibility of the Court**

**Complementarity**

The Statute provides a framework for determining whether the national justice system is “unwilling or unable genuinely” to proceed with a case.

With respect to inability, Article 17(2) declares that “having regard to the principles of due process recognized by international law; the Court is to consider whether the purpose of the national proceedings was to shelter an offender, whether they have been unjustifiably delayed, and whether they were not conducted independently or impartially”, and that “they were or are being conducted in a manner which, in the circumstances, is inconsistent with an intent to bring the person concerned to justice”. Article 17(3) says that, in ruling on inability, the Court
is to consider “whether, due to a total or substantial collapse or unavailability of its national judicial system, the State is unable to obtain the accused or the necessary evidence and testimony or otherwise unable to carry out its proceedings”.

The key word is “complementarity”, a term that does not in fact appear anywhere in the Statute. However, Paragraph 10 of the preamble says that “the International Criminal Court established under this Statute shall be complementary to national criminal jurisdiction”, and Article 1 reiterates this.

**Non-Retroactivity**

The Court is a prospective institution in that it can not exercise jurisdiction over crimes committed prior to the entry into force of the Statute. In this respect, it differs from all of its predecessors. Previous international criminal tribunals were established primarily to deal with atrocities committed prior to their creation, although they have also been given a prospective jurisdiction.

**Territoriality**

The Court has jurisdiction over crimes committed on the territory of States Parties, regardless of nationality of the offender. This general principle is set out in Article 12(2) (a) of the Statute. It also has jurisdiction over crimes committed on the territory of State that accept its jurisdiction on an ad hoc basis, in accordance with Article 12(3).

**Acceptance of jurisdiction by a Non-Party State**

In addition to the territorial and personal jurisdiction that results from ratification of the Statute with respect to a State Party, Article 12(3) also contemplates the possibility of a non-party state accepting the jurisdiction of the Court on an ad hoc basis. The provision requires such a state to lodge a declaration with the Registrar by which it accepts the exercise of jurisdiction by the Court “with respect to the crime in question”. The Statute describes such a state as an “accepting state”. The final sentence in Article 12(3) says that “the accepting state shall cooperate with the Court without any delay or exception in accordance with Para 9”. However, there does not seem to be any consequence should an accepting state fail to cooperate as required.

**CRIMES**

**Genocide**

The word Genocide was coined in 1944 by Raphael Lemkin in his book on Nazi crimes in occupied Europe. Lemkin felt that the treaty regime aimed at the protection of national minorities established...
between the two world wars had important shortcomings, amongst them the failure to provide for prosecution of crimes against groups. The term “genocide” was adopted the following year by the prosecutors at Nuremberg (although not by the judges), and in 1946 genocide was declared an international crime by the General Assembly of the United Nations.\textsuperscript{145}

Genocide is defined in Article 6 of the Rome Statute. The provision is essentially a copy of Article II of the Genocide Convention.

**War crimes**

The lengthiest provision defining offences within the jurisdiction of the International criminal Court is Article 8, entitled “War Crimes”. This is certainly the oldest of the four categories. War crimes have been punished as domestic offences probably since the beginning of criminal law.\textsuperscript{146}

**Crimes against humanity**

Although occasional references to the expression “crimes against humanity” can be found dating back to several centuries, the term was first used in its contemporary context in 1915.

Article 7 of the Rome Statute begins with an introductory paragraph or chapeau stating: “For the purpose of this Statute, ‘crimes against humanity’ means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack”.

**Aggression**

It was principally the non-aligned countries who insisted that aggression remain within the jurisdiction of the Court. These states pursued a “compromise on the addition of aggression as a generic crime pending the definition of its elements by a preparatory committee or a review conference at a later stage”.\textsuperscript{147} The Bureau of the Rome Conference suggested in July 1998 that, if generally accepted provisions and definitions were not developed forthwith, aggression would have to be dropped from the Statute. This provoked much discontent among the delegates, and forced the Bureau to reconsider the matter. Literally on the final day of the conference, agreement was reached that authorizes the Court to exercise jurisdiction over aggression, but only after the crime is defined and its scope designated in a manner consistent with the purpose of the Statute and the ideals of the United Nations. It is important to note that, though Article 5(1) (d) of the Statute lists “the crime of aggression” as one of

\textsuperscript{145} GA Resolution 96(1).


four crimes within the jurisdiction of the Court, no definition of aggression has yet been agreed upon.

**Other offences**

The Court is also given jurisdiction over what are called “offences against the administration of justice”, when these relate to proceedings before the Court. The Statute specifies that such offences must be committed intentionally. These are: perjury or the presentation of evidence known to be false or forged; influencing or interfering with witnesses; corrupting or bribing officials of the Court or relating against them; and, in the case of officials of the Court, soliciting or accepting bribes. The Court can impose a term of imprisonment of up to five years or a fine upon conviction. States parties are obliged to provide for criminal offences of the same nature with respect to offences against the administration of justice that are committed on their territory or by their nationals.

**THE WORKING OF THE COURT**

**Investigation**

The jurisdiction of the Court may be triggered by one of the three sources: a State Party, the Security Council, or the Prosecutor himself. Once the jurisdiction has been triggered, the Prosecutor analyses the information in order to determine whether or not to “initiate an investigation”. When the Prosecutor is acting pursuant to his \textit{proprio motu} powers, as set out in Article 15, he is to determine whether or not a “reasonable basis” exists for proceeding, and then seek the authorization of the Pre-Trial Chamber in order to “initiate an investigation”. When a State Party or the Security Council is the trigger, he still determines at a preliminary stage whether there is “reasonable basis” to proceed. This first stage in the proceedings is termed “preliminary examination” when the Prosecutor is acting pursuant to his \textit{proprio motu} powers, and a “pre-investigative phase” when the matter is the result of a referral by the Security Council or a State Party.

The Prosecutor has “duties and powers” with respect to an investigation. He is required “to cover all facts and evidence relevant to an assessment of whether there is criminal responsibility under this Statute, and, in doing so, investigate incriminating and exonerating circumstances equally.”. The wording suggests a Prosecutor with a high level of neutrality and impartiality. Such a Prosecutor is rather more like the investigating magistrate or \textit{juge d'instruction} of the continental legal system than the adversarial prosecuting attorney of the common law system.

**Preparation for trial**

Once the Pre-Trial Chamber has determined there is “sufficient evidence” to establish substantial grounds to believe that the person

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committed each the crimes charged the accused is then committed for trial. The Pre-Trial Chamber’s work is complete. The Presidency is required to constitute a Trial Chamber, and to refer the case to it. The Trial Chamber convenes a status conference “promptly”, in order to set the date for trial. The Trial Chamber is also required to confer with the parties so as to adopt procedures to facilitate the fair and expeditious conduct of the proceedings and to determine the language or languages to be used at trial.

**Trial and appeal**

Although much of the procedure of the Court is a hybrid of different judicial systems, it seems clear that there is a definite tilt towards the common law approach of an adversarial trial hearing. However, the exact coloring that the Court may take will ultimately be determined by its judges.

The trial is to take place at the seat of the Court, in The Hague, unless otherwise decided. Already, the Court has contemplated the possibility of holding proceedings elsewhere. The trial shall be held in public, something that is expressed both as a duty of the Trial Chamber and as a right of the accused. Nevertheless, the Trial Chamber may depart from the general principle of a public hearing. Article 64(7) explicitly allows in camera proceedings for the protection of victims and witnesses, or to protect confidential or sensitive information to be given in evidence.

**Reservations due to national sovereignty**

**United States concerns about foreign and military activities**

In 1998, the United States was one of seven countries to vote against the adoption of the ICC Statute. One of the central reasons for its opposition is the ICC’s potential to undercut US foreign and military activities. This concern converges with a deep-seated suspicion against external checks on legislative or executive independence. Debates on the ICC have been vehement, and the ICC generated so much opposition that a Republican Congressman introduced a bill entitled the “American Servicemen’s Protection Act” (ASPA) which would deny US aid to any nation that cooperates with the ICC, in order to prevent any possibility of a US citizen coming before the ICC. Even prior to entry into force, it became increasingly clear that a show-down was looming between the United States and the Court. During the negotiations to establish the Court, the United States had made many constructive contributions. Nevertheless, it was unhappy with the final result. Many assessments of the position of the United States often reduce it to the

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150 Strategic Plan of the International Criminal Court,Doc.ICC-ASP/5/6, Para.34.
simple proposition that Washington wanted to protect its own citizens from the jurisdiction of the Court. In an official statement, one American diplomat said; "the United States respects the decision of those nations who have chosen to join the ICC; but they in turn must respect our decision not to join the ICC or place our citizens under the jurisdiction of the Court".151 This is, of course, a perfectly logical response by Washington to a Court that it does not like.

The US also tried to sanctify the ASPA provisions in a Security Council resolution on peacekeeping. While it succeeded initially, the general discontent with this course of action led to the Resolution being dropped when its initial term expired.

**The European Union concerns about national sovereignty**

Most European countries appear far less concerned with the ICC’s potential incursions into national sovereignty. Perhaps this is due to the acceptance of trans-national bodies such as the European Union and the European Court of Human Rights, or to widespread support for such an institution due to historical realities. In any event, Germany, Austria, and the Netherlands, amongst several others, took the lead in drafting provisions throughout the negotiations in order to secure a strong ICC, and all voted in favor of the final Statute. Eight of the European Union’s fifteen members have already ratified the ICC Statute.

**State Party referral**

When the Rome Statute was being drafted, referral of a situation by a State Party was thought to have the least potential for making the Court operational. It was frequently pointed out that States were notoriously reluctant to complain against other states on a bilateral basis, unless they had vital interest at stake. They would not, however, be likely to act as international altruists, submitting petitions alleging that other states were committing international crimes. In support, the atrophied provisions of international human rights treaties establishing inter-state complaint mechanisms were cited. Most of these have never been used.152

The main exception is the European Convention on Human Rights, but even its inter-state complaint provision has rarely been invoked. Its handful of major cases have involved Cyprus against Turkey and Ireland against the United Kingdom, and tend to confirm the observation that these remedies are only invoked when there is a genuine dispute between the two states concerned, generally about

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treatment accord to the nationals or the property of the complaining State. States that desire the Court to take up a matter are more likely to lobby the Prosecutor than to launch the proceedings formally themselves.

It was astonishing, therefore, and completely unexpected, when the State Party referral mechanism became the source of the first two situations to be triggered before the Court. The mechanism did not, however, operate as was intended. These were not inter-State complaints at all. Rather, the State in question referred a “situation” within its own borders. These quickly became known as “self-referral”. Article 14 of the Rome Statute sets out the terms of referral of a “situation” by a State Party:

A State Party may refer to the Prosecutor a situation in which one or more crimes within the jurisdiction of the Court appear to have been committed requesting the Prosecutor to investigate the situation for the purpose of determining whether one or more specific persons should be charged with the commission of such crimes.

The ICC and the Security Council

The relationship between the Security Council and the ICC has proved to be one of the most controversial aspects of the Rome Statute. This relationship was initially outlined in Article 23 of the International Law Commission’s 1994 views. While partially settled through the adoption of Articles 5, 13(b) and 16 of the Statute, the debate over the role of the Security Council in respect of crime of aggression - a debate which was postponed in Rome - is at present still continuing.

The linkage between political and judicial organs is based on the recognition that the functions of the ICC and the Council are complementary in respect of four crimes over which the Court assumes jurisdiction. Unlike the case of State Party referral, there is no detailed provision in the Statute concerning Security Council referral. The provision governing Security Council referral was part of the 1994 International Law Commission draft, and did not undergo any significant change during the negotiations process. Though the ICC has its own treaty basis it will have a formal relationship with the United Nations. The Rome Statute further engages the Security Council in the process of institutionalizing criminal responsibility. It avoids the original pitfalls and potentially wide-reaching implications for criminal law enforcement of the original LIC draft. However, it likewise embeds the Council’s discretionary determinations under Article 39 within the Court’s procedures, with potentially important implications for the legal position of individuals.

154 www.welpolitik.net.
Under the Rome Statute, the Council has been given powers of referral and deferral in respect of Court proceedings and a potential role in the determination of the crime of aggression. It has also been enlisted as an enforcement mechanism in ensuring the cooperation of states with the Court.

The question of the links between the Security Council and the International Criminal Court goes beyond the Statute itself. One issue concerns the relationship between political and judicial bodies when the former acts in a quasi-judicial capacity.

Undoubtedly, the fields of operation \textit{ratione materiae} of the Security Council and the Court overlap. It is therefore important to ensure that the role the Council is called on to play in the ICC does not serve to obstruct the judicial integrity of the Court. This is an important factor in modeling a workable relationship between the Council and the ICC.

\textbf{Passive and Proactive Complementarity}

The concept of proactive complementarity differs considerably from the understanding of complementarity articulated at the time of the drafting of the Rome Statute in 1998 and in the Court’s practice to date. Compared to proactive complementarity, the Court’s current practice and the understanding of the drafters might better be termed “passive complementarity”. The complementarity provisions of the Rome Statute, at least as understood in 1998, highlight the Court’s role as a backstop to national jurisdiction.

Passive complementarity suggests that the ICC would step into undertake its own prosecution only where national governments fail to prosecute and where the Court has jurisdiction.\textsuperscript{155} The ICC, it was thought, would simply substitute an international forum for a domestic one. In contrast to passive complementarity, proactive complementarity recognizes that the ICC can and should encourage, and perhaps even assist, national governments to prosecute international crimes.

Proactive complementarity builds on the fact that the Rome Statute does far more than merely define the limits of the Court’s power. The Statute creates a system of judicial enforcement for the prosecution of the most serious international crimes at both the domestic and international levels of governance. The Statute also affirms the duties and rights of both national governments and the ICC to prosecute such crimes and reifies the obligations of States to assist the ICC in its own investigations and prosecutions. In so doing, the Rome Statute creates a tiered system of prosecution authority that could be characterized as the “Rome System of Justice”. Within this system, both the domestic and international levels of governance have

\textsuperscript{155} See Holmes, Complementarity; National Courts versus the ICC supra note 11, at 677.
interrelated international legal duties to provide accountability for international crimes.

As a strategy for encouraging national governments to undertake their own prosecutions of international crimes, proactive complementarity would allow the Court to catalyze national jurisdiction to fulfill their own obligations to prosecute international crimes. Those obligations are found in a wide range of international treaties, including the Geneva Conventions of 1949 and the Genocide Convention, and such obligations are reaffirmed in the preamble to the Rome Statute itself. Specifically, a strategy of proactive complementarity would use the Court’s legal and political powers to activate states’ domestic courts in international criminal prosecutions. The admissibility requirements of Article 17 of the Rome Statute do not merely limit the cases the ICC can hear; rather, they regulate the allocation of authority between States and the ICC. Article 17 recognizes the shared competence, and perhaps even common duty, of national and international institutions to help bring about an end to impunity. In the Rome System, then, the ICC and national governments are engaged in a broad set of interactions directed toward accountability for international crimes.

Proactive complementarity derives its force from this broad perspective on the Rome System of Justice since it utilizes the potential for the ICC to encourage domestic prosecutions and contribute to the effective functioning of national judiciaries. Such a policy could produce a virtuous circle in which the Court stimulates the exercise of domestic jurisdiction through the threat of international intervention. As a result, the Court would not have to undertake prosecutions of at least some cases itself and could focus its energy and resources on those cases in which there is no available domestic alternative, thereby maximizing its contribution to the statutory goal of ending impunity.

For the ICC to meet its mandate and to fulfill expectations, the Prosecutor’s early rhetoric encouraging domestic prosecutions must be transformed into a formal policy of proactive complementarity that would structure the ICC’s interactions with national governments. Specifically, a strategy of proactive complementarity would draw upon the fact that the potential for intervention by the ICC, if backed by a strong track record of investigations and prosecuting the most serious crimes within the Court’s jurisdiction, will often have a catalytic influence on national governments.

The possibility of international prosecution can create incentives that make states more willing to investigate and prosecute international crimes themselves. Likewise, proactive complementarity recognizes that some outside assistance may allow States to undertake prosecutions when they lack the means to do so alone. Finally, proactive complementarity can shift both expectations and burden of action back
to States, which after all, have the primary legal obligations to prosecute international crimes.\textsuperscript{156}

Just as proactive complementarity offers a potentially effective and efficient means of allowing the ICC to fulfill its mandate; its implementation raises new questions for the Court. These include the development of useable tactics of political influence, the practical difficulties of coordinating with national governments, the legal dangers around compromising a case’s subsequent admissibility before the ICC.

A policy of proactive complementarity and the full activation of the Rome System of Justice offer the most effective, and perhaps the only, way for the ICC to meet its mandate and expectations. In particular, as the 2009 Review Conference approaches, if the Court is to avoid an early and visible failure, the formal adoption of a policy of proactive complementarity is an urgent imperative.\textsuperscript{157}

Asserting that proactive complementarity would go far to remedy the misalignment of expectations and resources available to the ICC.

\textit{National Amnesties and Immunities}

Recent attempts to indict and prosecute heads of State such as Augusto Pinochet, Slobodan Milosevic and Ariel Sharon are bringing the full potential of an enforceable international criminal regime into focus. It is likely that the ICC will further this development, since the ICC Statute applies equally to Heads of State, members of government, elected representatives and government officials. Article 27 also provides that the ICC will not be barred from exercising its jurisdiction due to immunities or special procedural rules which apply under national or international law. This provision is consistent with recent developments in International Criminal Law, which limit the scope of head of State immunities in recognizing that certain acts, such as torture, forced disappearances and other mass atrocities, are outside of the scope of the immunity afforded to leaders.

Despite the clarity of Article 27, a number of provisions dilute the ICC’s ability to try Heads of State. Article 89 provides that the ICC cannot proceed with the surrender of an individual held by a third party State if it would be inconsistent with State’s international law obligations regarding diplomatic immunity, unless the third State waives the immunity. Furthermore, in negotiations subsequent to the Rome Conference in 1998, a number of States have made a considerable effort to further restrict the ICC’s ability to override national immunities.

\textsuperscript{156} See Rome Statute, supra note 11, preamble. (Recalling the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes……..)

\textsuperscript{157} Pursuant to Article 123(1) of the Rome Statute, a Review Conference will be held seven years after the Statute’s entry into force, at which amendments and changes to the Statute can be proposed and considered. See id.art.123 (1).
OPERATIONALISATION OF THE COURT

Uganda and the Lord’s Resistance Army

Before the year 2003 was over, the Prosecutor announced that a case had been referred to the Court by a State Party, in accordance with Article13 (a) and 14. Moreover, this was a referral by a state of a situation within its own borders. On 16 December 2003, the Government of Uganda referred the situation in northern Uganda.158 In July 2004, the Presidency assigned the “situation in Uganda” to a Pre-Trial Chamber. More than seven months after the initial referral by the Government of Uganda, the Prosecutor announced his conclusion that there was a “reasonable basis” to proceed with an investigation.

In May 2005, nearly seventeen months after the referral by Uganda, the Prosecutor submitted applications for five arrest warrants, in accordance with Article 58 of the Rome Statute. These were subsequently amended, and considered by three judges of the Pre-Trial Chamber, and in hearings during the month of June. In September 2005, the Prosecutor applied to have warrants unsealed. The Pre-Trial Chamber so decided in October 2005 and the warrants became known to the general public. Yet, by the end of 2006, none of the warrants had been executed.

Democratic Republic of Congo and the Lubanga case

The Uganda “self-referral” inspired the Prosecutor to attempt the same strategy in the Democratic Republic of Congo. This was the situation he had indicated as his first priority in July 2003. Then, he was planning to precede on the basis of his proprio motu powers, in accordance with Article 15 of the Rome Statute. This changed in March 2004, when the Democratic Republic of Congo followed Uganda’s example and referred the situation in the Ituri region to the Court. Congo was not only referring the case but indicating that it conceded the admissibility of the case. It did not, however, indicate whether this was because it was unwilling or because it was unable to proceed.

In June 2004 the Prosecutor informed the Presidency of the referral, and after citing an estimated 5,000-8,000 unlawful killings committed in the region since July 2002, he announced the opening of a formal investigation.

While the Prosecutor worked with the authorities of the Democratic Republic of Congo in order to ensure the accused person’s transfer to The Hague, the Lubanga arrest warrant remained under seal. The Registrar formally transmitted the request to the Congolese Government for arrest and surrender of Lubanga in March 2006. Lubanga was apparently brought before a Congolese judicial authority.

158 For the background to the conflict, see Mohamed El Zeidy, “The Ugandan Government Triggers the First Test of the Complementarity Principle: AN Assessment of the First State’s Party Referral to the ICC ; (2005)5 International Criminal Law 83.
which authorized his surrender and transfer to the International Criminal Court.

The suspect was promptly transferred to The Hague by French military aircraft, with the assistance of the United Nations mission. In March 2006, Lubanga came before the Pre-Trial Chamber, the first defendant ever to appear before the International Criminal Court, and the Pre-Trial Chamber confirmed the charges against him concerning the enlistment, conscription and active use of child soldiers. He became the first person to be committed for trial before the International Criminal Court.

**Darfur referred by the Security Council**

The third “situation” to come before the Court, that of Darfur in western Sudan, is the result of a Security Council referral in accordance with Article 13(b) of the Rome Statute. Though Sudan signed the Statute in September 2000, it has not yet ratified it.

The referral really followed American pressure after the statement made by US Secretary of State Colin Powell when he called upon the Security Council to take action with regard to what he described as genocide in Darfur. In actual fact, the situation in Darfur was never acknowledged by the United Nations or the Security Council as genocide, nor did the US ever push for such acknowledgement.

As of May 2006 there have been two missions to Khartoum. The first, in November 2005, was largely preparatory. The second, in February 2006, focused entirely on the issue of admissibility and had as its objective the assessment of national proceedings.

The Government of the Sudan has on many occasions stated that the issue has been highly politicized and the Prosecutor himself has been used by the Western circles in order to weaken the country through the Court.

The recent decision of the Prosecutor to indict the President of Sudan is another major escalation of the jurisdiction of the ICC, and is likely to produce a serious debate about consequences, including for the ICC itself.

**CONCLUSION**

In conclusion, neither the legal mandate of the International Criminal Court, nor the resources available to it, are sufficient to allow it to fulfill the world’s high expectations. The global community expects the ICC to provide worldwide accountability, yet the Court’s own internal predictions and the current level of funding from the Assembly of States Parties anticipate a maximum of no more than two or three trials per year. In addition, the Court optimistically assumes that States will cooperate in the arrest and surrender of indictees.

This combination of unrealistic hopes and limited capacity raises the real prospect that the Court may be seen as a failure only a
few years after its creation. Any limited contribution it may make will inevitably fall short of the global community’s high expectations.

As a potential solution to this misalignment of expectations, mandate, and resources, the ICC could participate more directly in efforts to encourage national governments to prosecute international crimes themselves. This solution, predicated upon the ICC’s ability to motivate and assist national judiciaries, could be termed “proactive complementarity”. Under such a policy, the ICC would cooperate with national governments and use political leverage to encourage states to under take their own prosecution of international crimes.

As is well known, the U.S has concluded ASPA agreements with 99 countries - over half the States Members of the United Nations - to protect against the possibility of transfer or surrender of any US personnel to the Court, even if they have committed any of the serious crimes falling within the latter’s jurisdiction. While the US certainly appreciates that Security Council Resolution 1593 on the referral of the Darfur situation to the Court took note of the existence of these ASPA agreements, this exception will limit the ability of the Court to exercise its jurisdiction with universality and impartiality and will strongly prove that the ICC can not succeed unless the United States changes its approach.

The recent arrest of one of the main culprits of ethnic cleansing in Bosnias, and his transfer to the ICC will give the Court a distinct fillip in credibility, and may help bring the US around to accept its existence and jurisdiction.
ISLAM AND WOMEN

INTRODUCTION
Whenever the issue of violence against women or that of the maltreatment of women or of the violation of women’s rights comes up, the critical finger is usually pointed at the Islamic world.

This paper highlights the fact that the maltreatment of women and the violation of their rights in Islamic countries do not represent the real Islamic rights as recommended in Islam and the Quran. It is intended to analyze the misconceptions, reasons, wrong practices and differences between traditions which have affected culture in Islamic countries, and to elaborate on the status of women as well as on women’s rights in Islam.

THE DEFINITION OF WOMEN’S RIGHTS
Since women are human beings, all the rights that belong to human beings are to be enjoyed by them. In other words, the term women’s rights refers to the freedoms inherently possessed by human beings of all ages, which may be institutionalized, ignored or suppressed by law, custom, and behavior in a particular society. These liberties are grouped together and differentiated from broader notions of human rights because they often differ from the freedoms inherently possessed by or recognized for men in male-dominated societies.

Issues commonly associated with notions of women’s rights include, though are not limited to, the right to bodily integrity and autonomy, to vote (universal suffrage), to hold public office, to work, to fair wages or equal pay, to own property, to education, to serve in the military, to enter into legal contracts, and to have marital, parental and religious rights. Women and their supporters have campaigned and in some places continue to campaign for these same rights as for modern man.

THE HISTORY OF WOMEN’S RIGHTS
Since early times women have been uniquely viewed as the creative source of human life. Historically, however, they have been considered not only intellectually inferior to men but also a major source of temptation and evil. In Greek mythology, for example, it was a woman, Pandora, who opened the forbidden box and brought plagues and unhappiness to mankind. Early Roman law described women as children, forever inferior to men.

Early Christian theology perpetuated these views. St. Jerome, a 4th Century leader of the Christian church, said: "Woman is the gate of the devil, the path of wickedness, the sting of the serpent, in a word a pernicious object". Thomas Aquinas, the 13th-Century Christian theologian, said that woman was "created to be man’s helpmate, but her unique role is in conception since for other purposes men would be better assisted by other men".
The attitude towards women in the East was more favorable. In ancient India, for example, women were not originally deprived of property rights or individual freedoms by marriage. But Hinduism, as it evolved in India after about 500 B.C., required the obedience of women toward men. Women had to walk behind their husbands, they could not own property, and widows could not remarry. Male children were preferred over female children.

Nevertheless, whenever they were allowed personal and intellectual freedom, women made significant achievements. During the Middle Ages, nuns played a key role in the religious life of Europe. Aristocratic women enjoyed power and prestige. Whole eras were influenced by women rulers such as, Queen Elizabeth of England in the 16th Century, Catherine the Great of Russia in the 18th Century, and Queen Victoria of England in the 19th Century.

This paper would like to review briefly how women were treated in general in previous civilizations and religions, especially those which preceded Islam (pre-610 A.D.). Part of the information provided here, however, describes the status of woman as late as the 19th Century, or more than twelve centuries after the advent of Islam.

Women in Ancient Civilizations

Describing the status of the Indian woman, Encyclopedia Britannica states: "In Hindu India, subjection was a cardinal principle. Day and night must women be held by their protectors in a state of dependence says Manu. The rule of inheritance was agnatic, that is descent traced through males to the exclusion of females." 161

In Hindu scriptures, the description of a good wife is as follows: "A woman, whose mind, speech and body are kept in subjection, acquires high renown in this world, and, in the next, the same abode with her husband." 162

In Athens, women were not better off than either the Indian or the Roman women. Athenian women were always minors, subject to some male - to their father, to their brother, or to some of their male kin. 163

Her consent in marriage was not generally thought to be necessary and "she was obliged to submit to the wishes of her parents, and receive from them her husband and her lord, even though he were stranger to her." 164

A Roman wife was described by an historian as: "a babe, a minor, a ward, a person incapable of doing or acting anything according to her own

159 "C.E." throughout the paper stands for Christian Era (A.D.).
160 According to Dr. Jamal A. Badawi
164 Ibid., p. 443
individual taste, a person continually under the tutelage and guardianship of her husband".\textsuperscript{165}

In the Encyclopedia Britannica, we find a summary of the legal status of women in Roman civilization:\textsuperscript{166}

In Roman law a woman was, even in historic times, completely dependent. If married, she and her property passed into the power of her husband. The wife was the purchased property of her husband, and like a slave acquired only for his benefit. A woman could not exercise any civil or public office, could not be a witness, surety, tutor, or curator; could not adopt or be adopted, or make a will or a contract.

Among the Scandinavian races women were under perpetual tutelage, whether married or unmarried. As late as the Code of Christian V, at the end of the 17th Century, it was enacted that if a woman married without the consent of her tutor he might have, if he wished, administration and usufruct of her goods during her life.\textsuperscript{167}

According to English Common Law all real property which a wife held at the time of a marriage became a possession of her husband. He was entitled to the rent from the land and to any profit which might be made from operating the estate during the joint life of the spouses.

As time passed, the English courts devised means to forbid a husband’s transferring real property without the consent of his wife, but he still retained the right to manage it and to receive the money which it produced. As to a wife’s personal property, the husband’s power was complete. He had the right to spend it as he saw fit.\textsuperscript{168}

Only by the late 19th Century did the situation start to improve. "By a series of acts starting with the Married Women’s Property Act in 1870, amended in 1882 and 1887, married women achieved the right to own property and to enter contracts at par with spinsters, widows, and divorcees".\textsuperscript{169} As late as the 19th Century an authority in ancient law, Sir Henry Maine, wrote: "No society which preserves any tincture of Christian institutions is likely to restore to married women the personal liberty conferred on them by the Middle Roman Law".\textsuperscript{170} In his essay The Subjection of Women, John Stuart Mill wrote: "We are continually told that civilization and Christianity have restored to the woman her just rights. Meanwhile the wife is the actual bondservant of her husband; no less so, as far as the legal obligation goes, than slaves commonly so called."\textsuperscript{171}

\textsuperscript{165} ibid., p. 550.
\textsuperscript{166} The Encyclopedia Britannica, 11th ed., 1911, op. cit., Vol. 28, P.782
\textsuperscript{167} ibid., p.783.
\textsuperscript{168} Encyclopedia American international (edition), Vol. 29, p. 108.
\textsuperscript{170} Quoted in Mace, marriage east and West, op. cit., p. 81.
\textsuperscript{171} ibid., pp. 82-83.
Before moving on to the Quranic decrees concerning the status of woman, a few Biblical decrees may shed more light on the subject, thus providing a better basis for an impartial evaluation.

In Mosaic Law, the wife was “betrothed”. The Encyclopedia Biblica states: “To betroth a wife to oneself meant simply to acquire possession of her by payment of the purchase money; the betrothed is a girl for whom the purchase money has been paid”. From the legal point of view, the consent of the girl was not necessary for the validation of her marriage. “The girl’s consent is unnecessary and the need for it is nowhere suggested in the Law”.173

As to the right of divorce, we read in the Encyclopedia Biblica: “The woman being man’s property, his right to divorce her follows as a matter of course”.174 The right to divorce was held only by man. In Mosaic Law, “divorce was a privilege of the husband only”.175

Writers assumed that a patriarchal order was a natural order that had existed as John Stuart Mill wrote, since “the very earliest twilight of human society”. This was not seriously challenged until the 18th Century when Jesuit missionaries found matrilineal social orders in native North American peoples.

Some have claimed that women generally had more legal rights under Islamic law than they did under Western legal systems until more recent times. English Common Law transferred property held by a wife at the time of a marriage to her husband, which contrasted with the Quranic Sura: “Unto men (of the family) belongs a share of that which Parents and near kindred leave, and unto women a share of that which parents and near kindred leave, whether it be a little or much - a determinate share”.176

French married women, unlike their Muslim sisters, suffered from restrictions on their legal capacity which were removed only in 1965. In the 16th Century, the Reformation in Europe allowed more women to add their voices, including the English writers Jane Anger, Aemilia Lanyer, and the prophetess Anna Trapnell. It has been claimed that the dissolution and resulting closure of convents had deprived many such women of one path to education. Giving voice in the secular context became more difficult when deprived of the rationale and protection of divine inspiration. Queen Elizabeth I demonstrated leadership amongst women, even if she was unsupportive of their causes, and subsequently became a role model for the education of women.

THE STATUS OF WOMEN IN ISLAM

The attitude of the Quran and the early Muslims bear witness to the fact that a woman is, at least, as vital to life as a man, and that she

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173 ibid., p.2942.
174 ibid., p. 2947
is not inferior to him, nor is she one of the lower species. Had it not been for the impact of foreign cultures and alien influences, this question would have never arisen among Muslims. The status of woman was taken for granted to be equal to that of man. It was a matter of course, a matter of fact, and no one considered it as a problem at all.

Islam has given women rights and privileges which she had never enjoyed under other religious or constitutional systems. The rights and responsibilities of a woman are equal to those of a man, but they are not necessarily identical with them. Equality and sameness are two quite different things. This difference is understandable because man and woman are not identical, and yet they are created as equals.

This distinction between equality and sameness is of paramount importance. Equality is desirable, just, and fair; but sameness is not. People are not created identical but they are created equals. With this distinction in mind, there is no room to imagine that woman is inferior to man. There is no ground to assume that she is less important than he just because her rights are not identically the same as his. Had her status been identical with his, she would have been simply a duplicate of him, which she is not. The fact that Islam gives her equal but not identical rights shows that it takes her into due consideration, acknowledges her, and recognizes her independent personality.

It is not the tone of Islam that brands woman as the product of the devil or the seed of evil. Nor does the Quran place man as the dominant lord of woman who has no choice but to surrender to his dominance. Nor was it Islam that introduced the question of whether or not woman has any soul in her. Never in the history of Islam has any Muslim doubted the human status of woman or her possession of soul and other fine spiritual qualities.

Unlike other beliefs, Islam does not blame Eve alone for the First Sin. The Quran makes it very clear that both Adam and Eve were tempted; that they both erred; that God’s pardon was granted to both after their repentance; and that God addressed them jointly

In fact the Quran gives the impression that Adam was more to blame for that first sin from which emerged prejudice against woman and suspicion of her deeds. But Islam does not justify such prejudice or suspicion because both Adam and Eve were equally in error.

The rights of women in modern times were not granted voluntarily or out of kindness to the female. Modern woman reached her present position by force, and not through natural processes or mutual consent or divine teachings. She had to force her way, and various circumstances came to her aid. Shortage of manpower during wars, pressure of economic needs and requirements of industrial

176 Verses (2:35-36); 7:19, 27; 20:117-123.
developments forced woman to get out of her home, to work, to learn, to struggle for her livelihood, to appear as an equal to man, to run her race in the course of life side by side with him. She was forced by circumstances and in turn she forced herself to acquire her new status. Whether or not all women were pleased with these circumstances, and whether they are happy and satisfied with the results is a different matter.

The fact remains that whatever rights modern woman enjoy, fall short of those of her Muslim counterpart. What Islam has established for woman is that which suits her nature, gives her full security and protects her against disgraceful circumstances and uncertain channels of life.

The status of women in Islam is something unique, something novel, and something that has no similarity in any other system. Under Islamic law, marriage was no longer viewed as a "status" but rather as a "contract", in which the woman's consent was imperative. Women were given inheritance rights in a patriarchal society that had previously restricted inheritance to male relatives. Annemarie Schimmel states that "compared to the pre-Islamic position of women, Islamic legislation meant an enormous progress; the woman has the right, at least according to the letter of the law, to administer the wealth she has brought into the family or has earned by her own work".

Women were not accorded such legal status in other cultures, including the West, until centuries later. The social system built up a new system of marriage, family and inheritance; this system treated women as individuals too and guaranteed social security to her as well as to her children. Legally controlled polygamy was an important advance on the various loosely defined arrangements which had previously been both possible and current; it was only by this provision (backed up by severe punishment for adultery), that the family, the core of any sedentary society could be placed on a firm footing. The attitude of Islam with regard to woman is then explained as follows:

- Women are recognized by Islam as full and equal partners of men in the procreation of humankind. He is the father; she is the mother, and both are essential for life. Her role is not less vital than his. By this partnership she has an equal share in every aspect; she is entitled to equal rights; she undertakes equal responsibilities, and in her there are as many qualities and as much humanity as there are in her partner. To this equal partnership in the reproduction of human the Quran says: "Mankind! Verily we have created you from a single (pair) of a male and a female and made you into nations and tribes that you may know each other".177

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177 (Quran, 49:13; cf. 4:1).
• Women are equal to men in bearing personal and common responsibilities and in receiving rewards for their deeds. She is acknowledged as an independent personality, in possession of human qualities and worthy of spiritual aspirations. Her human nature is neither inferior to nor deviant from that of man. Both are members of one another. The Quran says: “And their Lord has accepted (their prayers) and answered them (saying): Never will I cause to be lost the work of any of you, be he male or female; you are members, one of another”.178

• Women are entitled to freedom of expression as much as men. Her sound opinions are taken into consideration and cannot be disregarded just because she happens to belong to the female sex. It is reported in the Quran and history that women not only expressed their opinions freely but also argued and participated in serious discussions with the Prophet himself as well as with other Muslim leaders179. There were also occasions when Muslim women expressed their views on legislative matters of public interest, and stood in opposition to the Caliphs, who then had to accept the sound arguments of these women.

• Historical records show that women participated in public life with the early Muslims, especially in times of emergencies. Women used to accompany the Muslim armies and engaged in battles to nurse the wounded, prepare supplies, and help the warriors when needed.

• Islam grants women equal rights to contract, to enterprise, to earn and possess independently. Her life, her property, her honor are as sacred as those of men. If she commits any offense, her penalty is no less or more than of man's in a similar case. If she is wronged or harmed, she gets due compensation equal to what a man in her position would get.

• Islam never tolerates those who are inclined to prejudice against women or discriminate between men and women. Time and again, the Quran reproaches those who believe women to be inferior to men180.

• Apart from the recognition of women as independent human beings, acknowledged as essential for the survival of humanity, Islam has given them a due share of inheritance. Whether she is a wife or mother, a sister or daughter, she receives a certain share of the deceased

179 (Quran, 58:1-4; 60:10-12)
kin’s property, a share which depends on her degree of relationship to the deceased and the number of heirs. This share is hers, and no one can take it away or disinherit her. Even if the deceased wishes to deprive her by making a will in favor of others, the Law allows him to limit such derogations to no more than one-third of his property. The remaining two-thirds must go to the normal heirs. In the case of inheritance, the question of quality and sameness is fully applicable. In principle, both men and women are equally entitled to inherit proportions of the property of the deceased, but the portions they get may vary. In some instances men receive two shares whereas women get one only. This is not a sign of giving preference or supremacy to men over women. The reasons are as follows: First of all, men are solely responsible for the complete maintenance of the wife, the family and any other needy relations. It is their duty by Law to assume all financial responsibilities and maintain his dependents adequately. It is also his duty to contribute financially to all good causes in his society. All financial burdens are borne by him alone. Second, and in contrast, women have no financial responsibilities whatsoever except for their own personal expenses. She is financially secure and provided for. If she is a wife, her husband is the provider; if she is a mother, it is the son; if she is a daughter, it is the father; if she is a sister; it is the brother, and so on. If she has no relations on whom she can depend, then there is no question of inheritance because there is nothing to inherit and there is no one to bequeath anything to her. Third, when a woman gets less than a man does, she is not actually deprived of anything that she has worked for. The property inherited is not the result of her earning or her endeavors. It is something coming from a neutral source, something additional or extra. It is a sort of aid, and any aid has to be distributed according to the needs and responsibilities. We can thus say that when taken as a whole the rights of women are equal to those of men although not necessarily identical.  

- In some instances of bearing witness in certain civil contracts, two men are required or one man and two women. Again, this is no indication of the women being inferior to men. It is a measure of securing the rights of the contracting parties, because women as a rule do not normally participate in practical life. This lack of experience may cause a loss to a party in a given contract. So the Law requires that at least two women should bear witness along with one man.  
- Women enjoy certain privileges of which men are deprived. She is exempt from some religious duties, for example at times of confinement. She is exempt from all financial liabilities. As a mother,
she enjoys more recognition and higher honor in the sight of God.\textsuperscript{182} The Prophet acknowledged this honor when he declared that Paradise lay under the feet of mothers. As a wife she is entitled to demand of her prospective husband a suitable dowry that will be her own. She is entitled to complete provision and total maintenance by the husband. She does not have to work or share with her husband the family expenses. She is free to retain, after marriage, whatever she possessed before it, and the husband has no right whatsoever to any of her belongings. As a daughter or sister she is entitled to security and provision by the father and brother respectively. That is her privilege. If she wishes to work or be self-supporting and participate in handling the family responsibilities, she is quite free to do so, provided her integrity and honor are safeguarded.

- Women must stand behind men or in a separate enclosure during prayers. The standing of women in prayers behind or separately does not indicate in any sense that she is inferior to him. Women, as already mentioned, are exempt from attending congregational prayers, which are obligatory on men. But if she does attend she stands in separate lines made up of women exclusively. This is very important because Muslim prayers involve actions, motions, standing, bowing, prostration, etc. So if men mix with women in the same lines, it is possible that both may be distracted from the concentration that is required during prayers.

- Muslim women are always associated with an old tradition known as the "veil". It is Islamic tradition that the woman should beautify herself with the veil of honor, dignity, chastity, purity and integrity. She should refrain from all deeds and gestures that might stir the passions of people other than her legitimate husband. She is warned not to display her charms or expose her physical attractions before strangers. Islam is most concerned with the integrity of society and the family, with the safeguarding of its morals and morale and with the protection of character and personality.\textsuperscript{183}

Muslims believe that the status of woman in Islam is unprecedentedly high and realistically suitable to her nature. Her rights and duties are equal to those of man but not necessarily or absolutely identical with them. The whole status of woman is given clearly in the Quranic verse which may be translated as follows: "And women shall have rights similar to the rights according to what is equitable; but man has a degree of advantage (as in some cases of inheritance) over them".

THE STATUS OF WOMEN IN NON-ISLAMIC COUNTRIES

According to Amnesty International, in the United States, a

\textsuperscript{182} Quran 31:14-15;46:15
\textsuperscript{183} Quran, 24:30-31.
woman is raped every 6 minutes and battered every 15 seconds.\textsuperscript{184} Millions of underage girls become sex slaves. Statistics from the Department of Justice show some 100,000 to three million American children under the age of 18 as involved in prostitution.

Elsewhere, this year, more than 15,000 women will be sold into sexual slavery in China. More than 7,000 women in India will be murdered by their families and in-laws in disputes over dowries. According to Amartya Sen, the Nobel Prize winning economist, there are 60 million women missing in India alone, due to female abortions and infanticide.

Consider some facts and figures from the alarming litany of gender violence collated by the United Nations Division for the Advancement of Women:

- A 1997 survey of 1,500 Swiss women found that a full 20% reported physical abuse in their relationships.
- Attempts at suicide are 12 times more common among women who are subject to abuse.
- Battered women are over-represented among female alcoholics, drug abusers, and sufferers of mental illness.
- Every day in Scotland (population 5 million) more than 50 women, with their children, leave their homes to escape from abusive men.
- Over 15,000 Russian women were killed by their husbands or partners in 1997.
- An English study in 1994 indicates that 6 out of 10 men regard violence against their partner as an option.
- In statistics and data from 7 countries, more than 60% of sexual assault victims know their attacker.
- In Germany, a woman or female child is raped every three minutes.
- In surveys from six countries, 27% to 34% of women reported sexual abuse during childhood or adolescence.
- Studies have shown that between 36% and 62% of all known sexual assault victims are aged 15 or under.
- More than 130 million women and girls living today have been subjected to female genital mutilation.
- In former Yugoslavia, Rwanda and other conflict zones, thousands of women were raped as a deliberate war strategy.

Millions of women throughout the world live in conditions of abject deprivation of, and attacks against, their fundamental human rights for no other reason than that they are women.

\textsuperscript{184} Amnesty International, Abuse of Women in Custody, Sexual Misconduct and the Shackling of Pregnant Women in 50 States of USA
Combatants and their sympathizers in conflicts, such as those in Sierra Leone, Kosovo, the Democratic Republic of Congo, Afghanistan, and Rwanda, have raped women as a weapon of war with near complete impunity. As a direct result of inequalities found in their countries of origin, women from Ukraine, Moldova, Nigeria, the Dominican Republic, Burma, and Thailand are bought and sold, trafficked to work in forced prostitution, with insufficient government attention to protect their rights and punish the traffickers. In Guatemala, South Africa, and Mexico, women’s ability to enter and remain in the work force is obstructed by private employers who use women’s reproductive status to exclude them from work and by discriminatory employment laws or discriminatory enforcement of the law.

Abuses against women are relentless, systematic, and widely tolerated, if not explicitly condoned. Violence and discrimination against women are global social epidemics, notwithstanding the very real progress of the international women’s human rights movement in identifying, raising awareness about, and challenging impunity for women’s human rights violations. Women in state custody face sexual assault by their jailers.

Violences against women are rooted in a global culture of discrimination which denies women equal rights with men and which legitimizes the appropriation of women’s bodies for individual gratification or political ends.

VIOLATIONS OF WOMEN’S RIGHTS IN ISLAMIC COUNTRIES

That does not mean that Islamic countries have a clean balance sheet. On the contrary, there are visible malpractices against women’s rights in Islamic countries. Some of the more reprehensible ones are:

- **Honor killings**: In some Muslim societies, women are often looked upon as representatives of the honor of the family. When women are suspected of extra-marital sexual relations, even if in the case of rape, they can be subjected to the cruelest forms of indignity and violence, often by their own fathers or brothers. Women, who are raped and are unable to provide explicit evidence, are sometimes accused of *zina*, or the crime of unlawful sexual relations, the punishment for which is often death by public stoning. Such laws serve as a great obstacle inhibiting women from pursuing cases against those who raped them. Assuming an accused woman’s guilt, male family members believe that they have no other means of undoing a perceived infringement of “honor” other than to kill the woman.

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185 According to Amnesty International
Female Genital Mutilation: According to the World Health Organization, 85 million to 115 million girls and women in the population have undergone some form of female genital mutilation and suffer from its adverse health effects. Every year an estimated 2 million young girls undergo this procedure. Most live in Africa.

Acid Burning and Dowry Deaths: Women’s subjugation to men is pervasive in the political, civil, social, cultural, and economic spheres of many countries. In such societies, a woman who does not get along with her in-laws far too frequently becomes a victim of a violent form of ultimate revenge - acid burning. Acid is thrown in her face or on her body and can blind her in addition to often fatal third-degree burns.

Preference for Sons: Son preference affects women in many countries, particularly in Asia. Its consequences can be anything from abortion or female infanticide at birth to the neglect of the girl child over her brother in terms of such essential needs as nutrition, basic health care and education.

Dowry-related violence and early marriage: In some countries, weddings are preceded by the payment of an agreed-upon dowry by the bride’s family. Failure to pay the dowry can lead to violence. In Bangladesh, a bride whose dowry was deemed too small was disfigured after her husband threw acid on her face. In India, an average of five women a day are burned in dowry-related disputes, and many more cases are never reported. Early marriage, especially without the consent of the girl, is another form of human rights violations. Early marriage followed by multiple pregnancies can affect the health of women for life.

GENERAL EVALUATION

Violence and maltreatment affect the lives of millions of women worldwide, in all socio-economic and educational classes. It cuts across cultural and religious barriers, impeding the right of women to participate fully in society. Violence against women takes a dismaying variety of forms, from domestic abuse and rape to child marriages and female genital mutilation.

The issue of women in Islam is highly controversial. Any materials on this subject, whether in print or online, should be used with caution because of the lack of objectivity. While it is generally agreed that the rights granted to women in the Quran and the practice exemplified by the Prophet were a vast improvement in comparison to the situation of women in Arabia prior to the advent of Islam, after the Prophet’s death the condition of women in Islam began to decline and revert back to pre-Islamic norms.

Even where these differences are acknowledged, scholars and other commentators vary as to whether they are just and whether they
are a correct interpretation of religious imperatives. Conservatives argue that differences between men and women are due to different status and responsibilities, while liberal Muslims, Muslim feminists, and others argue in favor of more progressive interpretations.

There are different factors for the suppression of women in Islamic countries, for example, the male dominant culture, or the wrong traditions which are still practiced even if they do not have logical basis.

In Afghanistan, for example, women or girls are married to men of different age or status in retaliation of a murder by the male of that family or tribe to make peace. Why should the girl, who has her own desires for her future, pay for her brother's crime?

These acts are not Islamic at all; they are not even Islamic culture. How can you respect practices that force women into polygamous marriages, mutilate their genitals, forbid them to drive cars and subject them to the humiliation of "instant" divorce? In fact, none of these practices are Islamic at all.

Anyone wishing to understand Islam must first separate the religion from the cultural norms and style of some societies. Female genital mutilation as still practiced in certain pockets, is viewed as an inconceivable horror by the vast majority of Muslims. Forced marriages may still take place in certain areas, but are total anathema to Muslim women from other backgrounds. Indeed, Islam insists on the free consent of both bride and groom, so such marriages could even be deemed illegal under religious law. A woman forbidden from driving a car in one country will cheerfully take the wheel when abroad, confident that her country’s bizarre law has nothing to do with Islam.

The veiling of Muslim women is a more complex issue. Certainly, the Koran requires them to behave and dress modestly, but these scriptures apply equally to men. In practice, most modern Muslim women appreciate attractive and graceful clothes, but avoid dressing provocatively.

What about polygamy, which the Koran endorses up to the limit of four wives per man? The Prophet, of course, lived at a time when continual warfare produced large numbers of widows, who were left with little or no provision for themselves and their children. In these circumstances, polygamy was encouraged as an act of charity. The Koran states that wives need to be treated fairly and equally, a difficult if not an impossible requirement at best.

Sexual intimacy outside marriage is forbidden in Islam, including sex before marriage, adultery or homosexual relationships. However, within marriage, sexual intimacy should be raised from the animal level to “sadaqah" or a level of worship, so that each considers the happiness and satisfaction of the other, rather than mere self-gratification.
Contrary to Christianity, Islam does not regard marriages as "made in heaven" or "till death do us part". They are contracts, with conditions. If either side breaks the conditions, divorce is not only allowed, but is usually expected. Nevertheless, a "hadith" (saying of the Prophet) makes it clear that: "Of all the things God has allowed, divorce is the most disliked". In good Islamic practice, before divorce can be contemplated, all possible efforts must be made to solve a couple's problems. After an intent to divorce is announced, there is a three-month period during which more attempts are made at reconciliation.

So, does Islam oppress women? While the spirit of Islam is clearly patriarchal, it regards men and women as moral equals. Moreover, although a man is technically the head of the household, Islam encourages matriarchy in the home. Women may not be equal in the manner defined by Western feminists, but their core differences from men are acknowledged, and they have rights of their own that do not apply to men.

CONCLUSION

Why then should we react so sensitively against Islam or blame Islam in terms of maltreatment of women? Today there is no country that really observes women's rights and respects them in the world. In fact, in the West women are treated as instruments for luxury and enjoyment, as ornaments for beautifying commercials, and used as a mere commodity for attracting customers into restaurants and shops. This is the major difference between the real status of women in Islam, where they are expected to be valued and honored as equals.

When we are tempted to criticize the violation of women's rights in some Islamic countries, we should not forget the role of their governments and actual regimes. Islam has unfortunately been politicized and misused by fundamentalists, politicians, political parties and even governments. In order to prevent future tensions and religious intolerance, it is responsibility of all to fight against these wrong traditions and maltreatments in their relevant countries.

None of this is meant to condone the serious violations of women's rights that exist in actual practice in many states. These are reprehensible, and must be condemned. In addition, all efforts must be made to improve the actual enjoyment of rights in accordance with the injunctions of Islam, and of rational and logical thought. Extremism has no place in Islam.

We therefore conclude this paper with the fervent wish that there should not be any violations against the rights of women anywhere in the world.
INTRODUCTION

Migration is a fundamental thread running through human history. Since the beginning of time, man has traveled from place to place, striving for the response to his needs. He traveled seeking water, a clement season, a safer place, or knowledge and wisdom, all for the betterment of his life and the satisfaction of his needs.

The right to movement derives from the right to freedom. Some say that it should be put on an equal footing with the right to food, to shelter, to education and to decent life, thus considering it one of the fundamental basic human rights.

Throughout the different stages of history, the reasons that have pushed man to leave his native place and to head to distant places are similar to the push and pull factors of migration in today’s globalized world. They are economic, social, political or environmental.

However, the right to migrate is no longer universally recognized as a human right. It cannot be exercised freely without the intervention of the state. The latter will put in place many regulations and frameworks to regulate the movement of the people. The constraints are such that they are meant to prevent people from leaving their own borders.

Migration is not only international, it can also be internal. Indeed, migration within countries is also on the rise, as people move in response to inequitable distribution of resources, services and opportunities, or to escape violence or natural disaster. The movement of people from rural to urban areas has contributed to the explosive growth of cities around the globe.

According to the United Nations Population Fund, in 2005, some 191 million people, or 3 per cent of the world’s population, live outside their country of origin. The magnitude and complexity of international migration makes it an important force in development and a high-priority issue for both developing and developed countries. The fact that about half of all migrants are women, mostly of reproductive age, is another reason this is a pressing issue to be considered.

MIGRATION AS A FUNDAMENTAL HUMAN RIGHT

History of Migration

Historical migration of human populations begins with the movement of homo-erectus out of Africa across Eurasia well before recorded history. Homo sapiens appear to have colonized all of Africa about 100 thousand years ago, moved out of Africa 70 thousand years ago, and had spread across Australia, Asia and Europe about 40 thousand years ago. Migration to the Americas took place 20 to 15
thousand years ago, and by 2 thousand years ago, most of the Pacific Islands were colonized.

The spread of migration to the different regions of the world is thus as old as the history itself. This shows that migration has always been an integral part of man’s existence. While the pace of migration had accelerated since the 18th Century already (including through the slave trade), it had increased further in the 19th and 20th Centuries.

**Forms of Migration**

A distinction establishes three major types of migration: urbanization, labor migration, and refugee migrations.

Millions of agricultural workers left the countryside and moved to the cities causing unprecedented levels of urbanization. This phenomenon began in Britain in the late 17th Century at the start of industrialization, and spread around the world and continues to occur in this day in many areas.

Industrialization encouraged migration wherever it appeared. The increasingly global economy globalised the labour market. Population growth, agricultural and rising industrial centers attracted voluntary, encouraged, and sometimes coerced migration. Moreover, migration was significantly eased by improved transportation techniques.

In the early 20th Century, transnational labor migration reached a peak of three million migrants per year. Italy, Norway, Ireland and the Quongdong region of China were regions with especially high emigration rates during these years.

These large migration flows influenced the process of nation state formation in many ways. Immigration restrictions have been developed, as well as diaspora cultures and myths that reflect the importance of migration to the foundation of certain nations, like the American melting pot. The transnational labour migration fell to a lower level from 1930s to the 1960s and then rebounded.

The 20th Century also experienced an increase in migratory flows caused by war and politics. Muslims moved from the Balkans to Turkey, while Christians moved in the other direction, during the collapse of the Ottoman Empire. Four hundred thousand Jews moved to Palestine. The Russian civil war caused some three million Russians, Poles and Germans to migrate out of the former Soviet Union. World War II and decolonization also caused major migrations.

**Causes of Migration**

The causes of migration have modified over hundreds of years. Some causes are constant, but others do not carry the same importance as they did years ago. For example, in 18th and 19th Centuries labor migration did not have the same character as it has today.
The push factors of migration are forceful and can be economic, political, cultural, and environmentally based. They can be distilled, on a macro level, into two main categories: the security dimension of migration such as natural disasters, conflicts, and political fear; and the economic dimension that results from poverty and lack of opportunities.

The pull factors are generally considered to be the benefits that attract people to a certain place, and they are also very much related to the betterment of economic, social and political life of the migrant.

Globalization has introduced a third set called "network" factors, which include free flow of information, improved global communication and faster and lower cost transportation. While network factors are not a direct cause of migration, they do facilitate it.

As well as encouraging migration, globalization also produces countervailing forces. For example, as businesses grow and become more internationalized, they often outsource their production to developing countries where labor costs are lower. This movement of jobs from the developed to the developing world mitigates those factors leading to migration. In a global economy, in other words, jobs can move to potential migrants instead of migrants moving to potential jobs.

**Impacts of Migration**

The impacts of migration are complex, bringing both benefits and disadvantages. The arguments over the benefits of immigration are also fairly complicated. Immigrants themselves clearly gain, since they move usually in order to work for a more decent life than they can enjoy at home. There is some evidence that European economies that have taken in many migrant workers have also benefited, not only in total output but also in terms of Gross Domestic Product (GDP) per head.

Immigration is a source of low cost labor for host countries, while the remittances of emigrant workers can be an important source of foreign exchange for the countries of origin. On the other hand, migration can stoke resentment and fear in receiving countries as immigrants are accused of lowering wages and causing crime. For the economies of the countries’ of origin, migration leads to a loss of well-educated and highly productive citizens.

The economic effects of migration vary widely. Sending countries may experience both gains and losses in the short term but may stand to gain over the longer term. For receiving countries temporary programs help to address skills shortages but may decrease domestic wages and add to the public welfare burden.

For sending countries, the short-term economic benefit of emigration is found in remittances. According to the World Bank, remittances worldwide were estimated at $232 billion in 2005, of which
developing countries received $167 billion. This is far more than the development aid given to developing countries. This figure only takes into account funds sent through formal banking channels, so the number is much larger in reality.

For example, according to a study by the researcher Ismail Ahmed reported in the Financial Times, Somaliland, a breakaway region of conflict-devastated Somalia, receives an estimated $500 million a year in money sent home from abroad, or four times more than the income from its main export of livestock. In the case of Mexico, remittances have become the country’s second most important source of foreign exchange, after oil. The income from remittances is so large that Mexicans working outside of the country were even able to gain the right to vote from abroad after threatening to withhold remittances.

Meanwhile, the positive gains from immigration for developed countries are a result of the infusion of cheap and eager labor into the economy. In the United States and Canada, migrant workers often fill low-wage jobs for which there is not enough local supply of labor, such as farm labor. Just as cheap imports of industrial goods benefit the American economy, so too does the import of cheap labor. Economists who support the notion of these positive gains claim that immigration has little impact on wages or job availability for domestic workers.

At the same time, developing countries can suffer from "brain drain" or the loss of trained and educated individuals to emigration. This is an example of the possible negative effects of emigration for developing countries. For example, there are currently more African scientists and engineers working in the United States than there are in Africa.

In India, 100,000 skilled technology workers are expected to leave over the next three years. Since it costs India about $20,000 per student to educate these individuals, India will essentially be subsidizing the rest of the world for $2 billion worth of technology education.

INTERNATIONAL CONSTRAINTS ON MIGRATION

National Policies

The development of migration flows in this globalized world has led states to establish regulations and to exert control over migration. State responses to both immigration and immigrant pressures are typically examined in form of national legislation and immigration reforms.

One of the key tools states used to regulate immigration is through the definition and selection of immigrants, a mechanism that is not necessarily marked by restrictive acts, but rather by positive preferences. For instance while it might not be appropriate for liberal states to judge the “desirability” of an immigrant on the basis of ethnic or national criteria, and to refuse entrance on the basis of negative
discrimination, many countries practice a form of “positive discrimination” such as welcoming legal immigrants from selected countries to meet market needs. This has become a humanitarian justification for a policy which condones the selection of desirable legal immigrants.

**Regional Policies**

As international human rights develop, national governments also engage at the international level to regain some of the control that they have lost over migration flows. This had led to the multiplication of international cooperation groups on immigration, asylum, police and border control. These groups do not have to answer to a more representative body or international courts such as the European Parliament or the European Court of Justice.

The evolution of the European Union (EU) underscores how seemingly contradictory streams of interests between domestic and international constraints may be reconciled to promote state interests in migration. The compatibility of diverse national interests to control migration has led to increasing coordination, and the devolution of decision making to international organizations to increase state effectiveness in controlling migration.

Despite all the constraints, conventions and migration instruments, it is hard to imagine that migration will stop unless it is tailored to the developed world needs. The intensity of the gap between rich and poor countries will always be at the heart of the migration issue.

**THE NEGATIVE VISION OF MIGRATION AND ITS IMPACT**

One should ask why the perception of migration has suddenly changed in the second half of the 20th Century whereas it has always been perceived and exercised as a normal feature of life. Why is it nowadays perceived as a challenge and as a threat to be fought against by states instead of being and benefited from? The answer to these two questions lies in exploring the psychological effect of migration in the developed world, and its impact on the world society, especially in developing countries.

The end of the Cold War marked a major break for migration policies in Europe. Defensive projections and visions of migration came to the foreground in the European Union, whose integration and openness towards the internal border-free single market went hand-in-hand with an undesirable migration from outside its borders.

This reality was reflected by the International Social Survey conducted in 1995. The survey asked people in many different countries if they were in favor or against higher levels of immigration. Those that

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186 The Schengen Group and the Justice and home affairs European groups.
favored reductions in the level of migration were an absolute majority in almost every Western European country and composed the largest category everywhere else.

In the United States, these statistics have likely become more pronounced in the aftermath of 9/11, where it was reported that almost two-thirds of Americans were in favor of halting all entry of any kind from countries suspected of harboring terrorists.

Yet, the power of economics appears to have trumped cultural prejudice in Western Europe, whose aging societies increasingly depend on new arrivals to fill jobs in child-care, construction, and other industries. Many Europeans may oppose that trend, knowing that stopping the flow of migrants would cause great economic harm.

_Fear of Migration_

The economic factor: Fears have arisen about migration when the issue of the cost to the taxpayer of integrating poorer economies into the European Union (EU) had been widespread. That meant absorbing the environmental legacy of communism, and, perhaps most crucially, the volume of migrants from east to west. For the skeptics in the west, unregulated migration means encouraging job hunters to come to the West, adding to the millions of people already out of work.

For instance, during the national debate on the enlargement of the EU, this argument was particularly strong in Germany since this country alone had about 75% of the migrants from application countries. The issue of immigration had rapidly turned into a major battleground for the parliamentary elections, and the social democrats took a liberal line on immigration, epitomized by the end in 1998 to laws which had allowed only those with a blood right to take German citizenship. Some of Germany’s Christian democrats, on the other hand, came up last year with the “Kinder Statt Inder” (Children not Indians) slogan, which suggested that the solution to the ageing German workforce lay in breeding more Germans, rather than allowing people in from outside.

The fears of massive European migration from east to west have certainly been exaggerated. One notorious example was an estimate by the United Nations High Commission for Refugees in 1989 which supposed that 25 million people from the communist bloc would move to the west in the 1990s. In the end, fewer than 2.5 million actually made the move.

187 In the other countries bordering candidate states, Austria and Italy - both countries with far right, anti-immigration parties in government - the migration flows that will arise from enlargement have led to threats about the national veto being wielded on EU enlargement.

188 Figures through the 1990s show that net immigration from the 10 countries in Central and Eastern Europe to the European Union fell considerably through the decade. According to the University of Kent, while 330,000 made the move in 1990, by 1997 the total was under 14,000.
The extent of the negative perception of migration in some countries is such that migration can be perceived as a felony, thus linking it to crime. In France, for instance, many white voters see crime as a virtual monopoly of the ethnic minorities, whether from North Africa, West Africa or Eastern Europe. In fact, most French people use the term immigrants very loosely, to describe anyone from a non-white background. Even second or third-generation French citizens are usually lumped in together as "immigrants", or "foreigners".

**The religious factor** In France, Germany and across Western Europe, a vigorous public debate is under way over the preservation of national identities, the assimilation of minorities and tolerance of different cultures. Religion, particularly Islam, whose image has been wrecked following the 9/11 attacks and the spread of the Al-Qaeda network, has caused deep fear in western societies. Therefore, migrants from Muslim countries are undesirable, despised and rejected.

The Netherlands, had long taken pride in its religious, political and social tolerance, as well as its acceptance of ethnic minorities. And many in the Netherlands’ new coalition government boast a pro-immigrant stance. However, the threats of terrorism and sheer demographics are challenging traditional Dutch open-mindedness. Studies estimate that Muslims will form the majority in the four largest cities of the Netherlands by 2020. The tensions have spawned legislative proposals to ban the Quran, make it illegal for women to wear veils in public, and create more legal options for closing mosques. The debate intensified, in November 2004, after the murder of Theo van Gogh, a filmmaker who had made a movie called “Submission” that featured a beaten, naked Muslim woman covered like graffiti with writings from the Quran.

**The Policy of Border Controls**

At the level of the European Union, the European Commission has proposed setting up a border patrol system and a requirement for travelers to submit their fingerprints before entering the Union.

*European Union Model:* Currently, anyone crossing a border into the EU’s twenty-four Schengen countries faces an entry and exit check, whether they are an EU citizen or not. Non-EU nationals face a more thorough check, including a search of databases.

Under the new proposals, all non-Europeans would have to submit biometric data to enter the EU even if they come from countries such as the United States and Canada, from which visa-free travel is currently permitted. A central aim of the measures is tackling the large

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189 The country has one of the largest populations of Muslims in Western Europe — about 1 million, roughly 6 percent of the population, second only to France. The largest groups are people with origins in Morocco or Turkey.
number of illegal immigrants who in fact first entered the EU legally: "The factor number one is overstayers in Europe". The Commission believes that more than half of all illegal immigrants enter the EU with valid paperwork but overstay their permitted time. Under the proposed entry and exit register, an alert would be sent to all member states when a visa expired and no exit from the Schengen zone had been recorded.

United States Immigration Control Border Policy: The first three questions put in the first page of a US website: www.bordersens.com, entitled, «For Sensible Border, Immigration, and Population Policies», reflect the US negative perception on migration. They read as follows:

Would you not agree it is sensible for a nation to have enough control of its borders to prevent (or at least impede) the entry of terrorists, drug smugglers, criminals, infectious disease carriers, and other persons who wish to enter illegally? Is it not it sensible that a country such as ours should have some degree of control over who immigrates to our country? Does it not make sense to weed out the bad and to help the good to assimilate to our culture and our ways so they can prosper and ultimately contribute to the success of America? Is it not sensible to establish and maintain a sustainable population level rather than wait until overcrowding, environmental destruction, disease, and poverty force a reduction in population?

The long-running debate in the US over comprehensive immigration reform has led to the construction of a fence along 700 miles of the 2,100-mile frontier between the United States and Mexico. The fence would stretch from points in California, to a long, 360-mile stretch largely in Arizona, to a 170-mile expanse along the Texas border.

Illegal Trafficking and Human Smuggling

The multiple constraints on migration have not succeeded in halting human flows from moving and seeking the possibility to enter.

The Inter-American Human Rights System had created its own Rapporteur on migrant workers. His reports, together with those of the UN Special Rapporteur, have documented the failure of restrictive policies to halt irregular migration, and the negative consequences of fortified borders in creating opportunities for trafficking and smuggling, leading to increasingly dangerous journeys and a rise in migrant deaths. They also note the effect of restrictive policies in discouraging circular and temporary migration.

According to the official statistics compiled by the US Border Patrol, there has been an unprecedented increase in the number of deaths each year among unauthorized border-crossers in the deserts and mountains of southern Arizona for almost a decade now. Experts, 190 The Commissioner said the EU had to use the most advanced technology to reach the highest level of security to stop visitors overstaying their welcome in Europe and to prevent terrorists from entering. 191 The official statistics compiled by the US Border Patrol consistently undercount the actual number of deaths in Arizona and elsewhere along the US-Mexico border. But various academic and government studies estimate that the bodies of between 2,000 and 3,000 men, women,
including the US Government Accountability Office, now explain this crisis as a direct consequence of US immigration-control policies instituted in the mid-1990s.

The “prevention through deterrence” approach to immigration control, implemented by the US Government in the 1990’s, had resulted in the militarization of the border and a quintupling of border-enforcement expenditures. However, the new border barriers, fortified checkpoints, high-tech forms of surveillance, and thousands of additional border patrol agents stationed along the southwest border have not decreased the number of unauthorized migrants crossing into the United States. Rather, the new strategy has closed off major urban points of unauthorized migration in Texas and California, and funneled hundreds of thousands of unauthorized migrants through southern Arizona’s remote and notoriously inhospitable deserts and mountains.

The cumulative effect of these developments has been to bring migrants from the margins into the mainstream of human rights law and practice, at least in theory.

The Human Rights of Migrants

As a vulnerable population, migrants have been low, often invisible, on the international human rights agenda. No single institution has a mandate that is comparable to UNHCR’s protection role for refugees, and much, perhaps most, national migration policy making takes place outside the human rights framework. The challenge of enforcing human rights at a national level and integrating human rights into international migration governance discussions remains difficult.

Human rights of migrants are largely defined by the migration "category", and by the reasons underlying that migration. At one end of the human rights/migration spectrum are voluntary migrants, including migrant workers and other economic migrants. At the other end, more than 10 million refugees are forced to leave their countries to escape persecution.

Victims of trafficking occupy an intermediate point on the spectrum. Both they and refugees have special rights protections in international law. In the case of refugees, these protections have become a separate and well-established protection regime.

Women and children account for more than half of the refugees and internally displaced persons. 96 % of children who work and sleep in the street are migrants, about half of them are girls aged between 8 and 14.
Migrants are a particularly vulnerable group and see their rights routinely violated, not only as workers, but as human beings. They commonly face discrimination and xenophobic hostility.192

As noted by Ms Gabriela Rodriguez Pizarro, United Nations Special Rapporteur on the Human Rights of Migrants, "This is especially true in the case of the many migrants who are undocumented or in an irregular situation, including the victims of trafficking in persons, who are the most vulnerable to human rights violations". According to the UN, between 300,000 and 600,000 women are smuggled each year into the European Union and certain Central European countries. The problem is also widespread in Africa and Latin America.

Voluntary migrants, who constitute most of the world's estimated 185 million migrants, are protected under general principles of international human rights law, and under the UN International Convention on the Protection of the Rights of All Migrant Workers and Their Families (ICMW), which recently entered into force.

Few governments have yet ratified the Convention, despite the fact that it is mostly drawn from the core human rights treaties and International Labor Organization (ILO) standards, and requires states to work together to prevent irregular migration. One obstacle is that while the Convention gives greatest protection to regular migrants, it protects the rights of all migrant workers, including irregular migrants, and governments object to its ratification for this reason.

But these objections overlook the fact that the human rights of migrants are already protected through the core human rights treaties, which the majority of governments have ratified and agreed to implement nationally. Although these treaties do not explicitly refer to migrants, they nonetheless protect migrants because they are universal in scope. They recognize the fundamental rights of all persons to due process guarantees in the criminal justice system, and the right not to be subjected to torture, cruel or inhuman treatment or punishment, or held in slavery. Governments may exercise their national sovereignty to decide who to admit to their territory, but once that individual has entered the country, the national authorities are responsible for his or her safety. Police and criminal justice systems, for example, have a duty to protect immigrants from assault or robbery in the same way as any citizen, and without discrimination.

**Demographic Reasons for the Migration Stream**

In most of Europe there is another big reason for accepting more immigration: demography. Most countries, in western and eastern Europe alike, face the prospect of populations that will both age and

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192 According to the International Organization for Migration (IOM) migrants "are more and more targeted as the scapegoats for all manner of domestic problems facing societies today, particularly unemployment, crime, drugs, crime, terrorism".
shrink over the next 50 years. The implications for their economies and their public finances are worrying. One obvious answer is to boost the working-age population by admitting more immigrants.

**Migration in the Realm of Globalization**

Government policymakers are operating in a globalized economy, in which the mobility of resources and jobs has not been accompanied by the free movement of labor. The very logic of globalization, however, encourages workers to cross borders to take employment, and thus act against national restrictions.

Managed migration is now on the national and international agenda. The Global Commission on International Migration (ICMW), which was launched in January 2004, is one example of a new, albeit hesitant, willingness to consider multilateral approaches to immigration control. Another is the High-Level UN General Assembly discussion that took place in September 2006.

The ICMW is an important starting point for developing this agenda, and optimists argue that states will be willing to ratify it once they recognize that it is not a radical departure from standards that most industrialized countries have already accepted. In the meantime, general human rights law continues to offer a sound basis for rights-based migration policies.

It is also important to recognize the close links between development, migration, and human rights in terms of prevention. There is a need for development policies that address the migration push factors by strengthening rights in areas of high emigration, as is being done in Morocco.

Prevention should become a third element in anti-trafficking policies. This would complement prosecution of traffickers and protection of victims with policies that empower women and girls in their home countries, and reduce their incentives to leave.

Addressing the human rights aspects of migration, including the rights of irregular migrants, will not be an easy task. But breaking the vicious circle in which fear of detection prevents irregular migrants from reporting abuse, which in turn strengthens the hand of traffickers, smugglers, and abusive employers, is at the heart of effective rights protection.

The same resolve shown by governments in combating trafficking is needed to ensure that migration takes place in conditions of dignity, and in the longer term can become an informed choice rather than a survival strategy in an economically asymmetric world, which is the situation today for many migrants.

**CONCLUSION**

Against a backdrop of widespread and confused fears of migration, and the general denial of the right of people to enter the
industrialized world, it was difficult to bring the issue of migration to the core of the international and development agenda. Yet migration has remained strictly off the agenda for so many years.

Now that it is at the core of the world agenda, for multiple reasons among which, the insecurity caused to western receiving countries, it is not sufficiently dealt with in a profound holistic way that is able to respond to the root causes of migration.

Unfortunately, the "Millennium Development Goals" (MDGs) which had put 2015 as the target year to halve poverty, ensure universal completion of primary schooling, and reduce infant mortality by two-thirds, are obviously far from reach. This situation pushes us to look for an alternative. The backup plan should be to create mechanisms for enhanced labor mobility to create an integrated, truly global international system.

Since no one would embrace entirely free labor flows, a set of proposals made by the Social Political Group merit our interest. This scheme could allocate specific numbers of workers to work in specific industries on an explicitly temporary basis. It could also provide compensation to the sending country for tax loss and "development impact". The country could be allocated a quota for the stock of immigrants, and any failure of return would be deducted from the allowed flow.

Designing policies that are simultaneously development-friendly, respectful of human rights, and politically viable in recipient countries, are very challenging. However, if the same degree of intellectual creativity is channeled into that challenge as has gone into making trade freer and into increasing capital flows, the world could be just as successful in putting a personal face on globalization.

The only “solution” envisaged by international migration forums is to improve the living standards, political stability and democratic institutions in countries of origin, so that people no longer want or need to move.

This solution obviously entails a long-term effort, and one that in the short to medium term will increase rather than decrease migration pressures. In the meantime, receiving countries will continue to tighten border controls and attempt to restrict asylum seeker entry. The effort is unlikely to succeed. Migration is too fundamental a force in the history of humankind to be contained in this fashion.

194 OECD, SOPEMI 1999.
MINORITIES

INTRODUCTION

Almost all states have one or more minority groups within their national territories, characterized by their own ethnic, linguistic or religious identity which differs from that of the majority population. Harmonious relations among minorities and between minorities and majorities, and respect for each group’s identity are a great asset to the multi-ethnic and multi-cultural diversity of our global society. Meeting the aspirations of national, ethnic, religious and linguistic groups and ensuring the rights of persons belonging to minorities acknowledges the dignity and equality of all individuals, furthers participatory development, and thus contributes to the lessening of tensions among groups and individuals. These factors are a major determinant of stability and peace.195

The protection of minority rights has not attracted the same level of attention as that accorded other rights which the United Nations considered as having a greater urgency. In recent years, however, there has been a heightened interest in issues affecting minorities as ethnic, racial and religious tensions have escalated, threatening the economic, social and political fabric of States, as well as their territorial integrity. Many problems faced by minorities and persons belonging to them, if unresolved, may lead to tensions and conflicts. One of the routes to minority-related conflict prevention is to address legitimate claims of persons belonging to minorities and to reduce inequalities between groups. The recognition, promotion and protection of human rights of persons belonging to minorities, is an integral part of national security and unity, and is crucial to establishing and maintaining just and peaceful societies.

DEFINITIONS

No definite and satisfactory universal definition of the term "minority" has proved acceptable. Despite that, various characteristics of minorities have been identified, which, taken together, cover most minority situations. The most commonly used description of a minority in a given state can be summed up as “a non-dominant group of individuals who share certain national, ethnic, religious or linguistic characteristics which are different from those of the majority population”.196 Yet, the international understanding of what is a minority is quite straightforward, “it is a group of people who believe they have a common identity, based on culture/ethnicity, language or religion, which is different from that of a majority group around them”.197

197 Clive Baldwin, Chris Chapman and Zoë Gray: Minority Rights: The Key to Conflict Prevention
Some groups of individuals may find themselves in situations similar to those of minorities. These groups include migrant workers, refugees, stateless persons and other nonnationals, who do not necessarily share certain ethnic, religious or linguistic characteristics common to persons belonging to minorities. These particular groups are, however, protected against discrimination by the general provisions of international law, and have additional rights guaranteed in many known conventions.

**Minority Rights**

This refers to the rights of minorities as groups, but also the rights of those individuals within them. They include:

**Existence**

All human beings, regardless of whether they are seen singularly as individuals or as in the form of such collectivities as minorities, have a basic right to existence. However existence is a term reflects difference in the case of individuals and minorities. Individual existence is the essence of life, but minorities relish their collective sense of identity. For minorities, any right to existence is not just relevant to their physical existence but must also include their cultural, religious and linguistic existence, without which the group in question would lose its distinctiveness. Minorities have the right to exist, and to be recognized as the groups they define themselves to be.

**Recognition of Identity and Special Rights**

Identity is a sense of belonging to a place or to a group. Individuals have the right to choose their identity or identities, and not suffer any detriment for doing so. Groups struggling for political control often base their claim to be in legitimate control of their identity. Religious minorities can be groups whose religion is different from that of the majority of the population, or those whose interpretation of their religious texts is different from the majority of adherents.

Special rights are not privileges, but they are granted to make it possible for minorities to preserve their identity, characteristics and traditions. Special rights are just as important in achieving equality of treatment as non-discrimination. Only when minorities are able to use their own languages, benefit from services they have themselves organized, as well as take part in the political and economic life of states can they begin to achieve the status which majorities take for granted.

**Prohibition of Discrimination**

The prevention of discrimination has been defined as the "prevention of any action which denies to individuals or groups of people equality of treatment which they may wish". Discrimination has been prohibited in a
number of international instruments that deal with most, if not all, situations in which minority groups and their individual members may be denied equality of treatment. Discrimination is prohibited on the grounds of inter alia, race, language, religion, national or social origin, and birth or other status. Important safeguards from which individual members of minorities stand to benefit include recognition as a person before the law, equality before the courts, equality before the law, and equal protection of the law, in addition to the important rights of freedom of religion, expression and association.

**Participation**

This is the right of everyone to influence the decisions that affect them. It is of particular importance to minorities. Minorities have a right, like all people, to participate in decisions that affect them, particularly in:

- **Political decisions that affect them:**

  The principle of non-discrimination in the right of political participation is central to liberal democratic thought. Citizens who are members of an ethno-cultural, national or any other type of minority group enjoy an equal right of political participation with all other members of the polity. The point is made clear in the International Covenant on Civil and Political Rights. Article 25, provides that the right of political participation is to be enjoyed without discrimination, on grounds of race, language, national origin or other status. Non-discrimination in the right of political participation is essential for the protection of the interests of all minority groups. When minorities are excluded from the decision-making process they may challenge the legitimacy of majority decision. Individuals from minority groups expressing intolerant or anti-democratic positions may be excluded on the basis of their political opinions, but not their identity.

  The right to vote cannot be abridged based on race, color, or previous condition. Elections provide the clearest expression of the will of the people. The role of the citizen, however, extends beyond the right to vote in free and fair elections to determine who will hold power. All citizens have the right to participate in political deliberation and activity as the society seeks to determine the answers to the political questions of the day. The right of inclusion in the process of deliberation and decision-making is clearly important for minorities. If democracy is conceived as a process to determine where a majority lies on a particular issue, then participation, particularly for minorities will provide insufficient protection for their interests.

  Citizenship is a key to full participation in political life. For example, in most countries non-citizens are not able to vote or stand for election. Whereas governments have the right to put in place mechanisms and legislation governing the process by which people can
gain citizenship of the country, some may intentionally restrict certain
groups’ access to citizenship to exclude them from political
participation, or from enjoying other rights such as access to public
services, or land/property rights.

- **Economic decisions that affect them:**

  Ethnic, religious and linguistic minorities are vulnerable to
economic exclusion largely due to direct and indirect discrimination.
Minorities, many of whom live in remote areas, will often also face
barriers due to regional underdevelopment. Economic exclusion can
mean minorities have inadequate access to markets, resources, services,
socio-political institutions and technology. Factors causing this include
barriers to citizenship; “ethnically disqualifying” criteria for education
and employment; lack of or inadequate implementation of anti-
discrimination legislation; language barriers; and regional under-funding.

  Under the UN Declaration on the Right To Development,
Article 2.3: “states have the right and the duty to formulate appropriate national
development policies that aim at the constant improvement of the well-being of the
total population and of all individuals, on the basis of their active, free and
meaningful participation in development and in the fair distribution of the benefits
resulting there from”.

**PROMOTION AND PROTECTION**

Modern human rights legal protection for minorities began
with the system of minority rights created under the League of Nations
through special treaties with Central and Eastern European states. In
1945, this system was replaced by the Charter of the United Nations and
later on by the Universal Declaration of Human Rights. With that, the
particular vulnerability of minorities to human rights abuses was
recognized by the establishment the Sub-Commission for the
Prevention of Discrimination and the Protection of Minorities.

**Minority Rights in International Law**

The protection of minorities was not explicitly referred to in
either the Charter of the United Nations or the Universal Declaration of
Human Rights. The first reference to the rights of persons belonging to
minorities, in major human rights treaties, was contained in Article 27 of
the International Covenant on Civil and Political Rights.

- **Article 27 of the International Covenant on Civil and Political Rights**

  The most widely-accepted legally-binding provision on
minorities rights is Article 27 of the International Covenant on Civil and
Political Rights, which states: “In those States in which ethnic, religious or
linguistic minorities exist, persons belonging to such minorities shall not be denied the
right, in community with the other members of their group, to enjoy their own culture,
to profess and practice their own religion, or to use their own language”.

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199 http://www.minorityrights.org/?lid=555
Article 27 of the Covenant was adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966. It grants persons belonging to minorities the right to national, ethnic, religious or linguistic identity, or a combination thereof, and to preserve the characteristics which they wish to maintain and develop. Although Article 27 refers to the rights of minorities in those States in which they exist, its applicability is not subject to official recognition of a minority by a State. Article 27 does not call for special measures to be adopted by States, but States that have ratified the Covenant are obliged to ensure that all individuals under their jurisdiction enjoy their rights; this may require specific action to correct inequalities to which minorities are subjected.

- Declaration on the Rights of Persons Belonging to National or Ethnic Religious and Linguistic Minorities, adopted by General Assembly resolution 47/135, 1992

This is the only United Nations instrument addressing exclusively the rights of persons belonging to minorities. It does not only provide for the protection of the existence and identity of minorities but also recognizes that the promotion and protection of the rights of persons belonging to minorities contributes to the political and social stability of states. Its provisions accord particular attention to the rights guaranteeing effective participation in cultural, religious, social, economic and public life and in relevant decision-making. The text of the Declaration, while ensuring a balance between the rights of persons belonging to minorities to maintain and develop their own identity and characteristics and the corresponding obligations of States, ultimately safeguards the territorial integrity and political independence of the Nation as a whole.

The principles contained in the Declaration apply to persons belonging to minorities in addition to the universally recognized human rights guaranteed in other international instruments.

- The Convention on the Elimination of all forms of Discrimination:

This treaty is the most comprehensive treaty concerning the rights of racial and ethnic minorities. It lays down in detail the steps required by states to prevent racial discrimination and violence and to foster greater racial harmony. It was adopted and opened for signature and ratification by General Assembly resolution 2106 (XX) of December 1965, and it entered into force in 1969.200


200 http://www.minorityrights.org/?lid=758
The statute of the International Criminal Court (ICC) gives the court jurisdiction over acts of genocide of specific national, ethnic, racial or religious groups under Article 6.

**Minority Rights in National Law**

To protect minority rights, those rights should be enshrined in constitutions and implemented through electoral, justice and educational systems.

Many countries have specific laws, enriched with ethnic elements, and/or commissions or ombudsman institutions.

- **Personal Law:**
  
  Personal laws govern issues relating to family life such as childcare, custody, divorce and marriage, and play a key role in how communities can exercise culture and traditions.

  In some states, minorities are granted freedoms to implement personal laws in accordance with their cultures. On the other hand it is important that any such application of personal laws does not exacerbate division between communities.

  Some states have opted for applying personal law according to territory, which can also be problematic for minorities. It is important to retain strong safeguards of individual rights, particularly women’s rights, within personal law frameworks.

  On some occasions, personal laws have been applied to overly favour the position of males, on issues such as inheritance rights.

- **Public Law:**

  A lack of legislative framework, to prevent racism and punishment, leads to the rise of tension. Discrimination within the justice system itself is one of the most obvious areas where minorities can feel day to day grievances.

  On the criminal justice side, it is very often minorities who suffer when it comes to being stopped, arrested, prosecuted, convicted and sentenced; and who do not get a fair investigation of crimes against them. Minorities may feel that they cannot expect anything from a justice system biased against them at all levels.

  Identity recognition should be backed up by strong guarantees of specific rights protecting identity in the constitution or other laws in secondary legislation.

**Implementation of Special Rights**

**The United Nations**

In order to implement the rights of persons belonging to minorities as enunciated in the International Conventions, the United Nations has established many committees to monitor the progress made by States parties in fulfilling their obligations, in particular, in bringing national laws as well as administrative and legal practice into line with their provisions.
The Committees which are of particular relevance to the implementation of minority rights are the Committee on Human Rights (which oversees implementation of the International Covenant on Civil and Political Rights); the Committee on Economic, Social and Cultural Rights (International Covenant on Economic, Social and Cultural Rights); the Committee on the Elimination of Racial Discrimination (Convention on the Elimination of All Forms of Racial Discrimination); and the Committee on the Rights of the Child (Convention on the Rights of the Child).

**Reporting procedure**

States parties undertake to submit periodic reports to the respective Committees outlining the legislative, judicial, policy and other measures which they have taken to ensure the enjoyment of the minority-specific rights contained in the relevant instruments. When a state report comes before the respective Committee for examination, a representative of the country concerned may introduce it, answer questions from the expert members of the Committee, and comment on the observations made.

**Complaints Procedures**

Complaints against the violation of human rights, including minority-specific rights, can be brought to the attention of the United Nations. They may be submitted by an individual, a group or a state under a number of procedures.201

**High Commissioner for Human Rights**

The High Commissioner for Human Rights has been entrusted with the task, among others, to promote and protect the rights of persons belonging to minorities. More specifically, the High Commissioner has been entrusted, by the General Assembly, to promote implementation of the principles contained in the Declaration on the rights of persons belonging to minorities and to continue to engage in a dialogue with Governments concerned for that purpose. To this end, a comprehensive three-pronged programmes, has been elaborated to: promote and implement the principles contained in the Declaration on the rights of persons belonging to minorities; cooperate with other organs and bodies of the United Nations, including the international human rights community, and programmes of technical assistance and advisory services; and to engage in dialogue with Governments and other parties concerned with minority issues. These three activities are interrelated and have preventive functions as their common denominator.

The report of the High Commissioner in 2000 focused on the prevention of human rights violations, including those resulting from

201 http://www.unhchr.ch/html/menu6/2/fs18.htm#*17
discrimination, intolerance, exclusion and marginalization. In that report, the High Commissioner expressed the firm conviction that efforts to combat impunity, including for genocide, must be integrated within an effective early-warning and conflict prevention system, because serious violations of human rights if left un-prosecuted and unpunished could provide for the escalation of conflict into “open hostilities and, even war”.

**Working Group on Minorities**

The Working Group on Minorities, which was established in 1995 pursuant to Economic and Social Council resolution 1995/31 of July 1995, is a subsidiary organ of the Sub-Commission on the Promotion and Protection of Human Rights (previously called the Sub-Commission on Prevention of Discrimination and Protection of Minorities). It meets for one week annually prior to the session of the Sub-Commission on the Promotion and Protection of Human Rights.

The Working Group on Minorities was set up with a threefold mandate: to review the promotion and practical realization of the Minorities Declaration; examine possible solutions to problems involving minorities; and recommend further measures for the promotion and protection of the rights of persons belonging to minorities. The Working Group facilitate greater awareness of the different perspectives on minority issues and, consequently, to seek better understanding and mutual respect among minorities and between minorities and Governments.202

The Working Group is a forum at which problems faced by minorities can be articulated and brought to the attention of the international community. It is becoming a more important focus for UN activities regarding minority issues and some of the issues discussed in its meetings which may interest its various partners are:

- multicultural and intercultural education
- recognition of the existence of minorities
- participation in public life, including through autonomy and integrative measures
- inclusive development, and
- conflict prevention

**Investigations, technical assistance and advisory services**

The independent experts appointed by the United Nations to investigate and report on the human rights situation in specific countries, as well as thematic issues, often address concerns pertaining to the rights of persons belonging to minorities or confronted with violations of minority rights. The conclusions and recommendations of these special reporters are published and debated, bringing the issues

202 http://www.unhchr.ch/minorities/group.htm
they address to international attention and serving either as guidance for
the Governments concerned or as a means of pressure to ease or
eliminate the problems which have been identified. Of particular
relevance are the reports on countries where minority rights are not
respected, often resulting in ethnic and religious tensions and inter-
communal violence and on thematic issues such as religious intolerance
and racial discrimination.

**Early Warning Mechanisms**

Early warning mechanisms have been set up in order to
prevent racial, ethnic or religious tensions from escalating into conflicts.
Two types of provisions for early warning mechanisms established by
the United Nations deserve to be mentioned in the context of minority
protection.

The Committee on the Elimination of Racial Discrimination
has established an early-warning mechanism drawing the attention of
the members of the Committee to situations which have reached
alarming levels of racial discrimination. The Committee has adopted
both early-warning measures and urgent procedures to prevent, as well
as to respond, more effectively to violations of the Convention. Criteria
for early warning measures could, for example, include the following
situations: the lack of an adequate legislative basis for defining and
prohibiting all forms of racial discrimination; inadequate implementation
of enforcement mechanisms; the presence of a pattern of escalating
racial hatred and violence or appeals to racial intolerance by persons,
groups or organizations; and significant flows of refugees or displaced
persons resulting from a pattern of racial discrimination or
encroachment on the lands of minority communities.203

The work of the special procedures has the potential to act as
an early-warning system, including through country visits and by
analyzing the letters and urgent appeals sent out following the receipt of
allegations of human rights violations.

**Role of Non-governmental Organizations**

International non-governmental organizations (NGOs) play an
important role in promoting and protecting the rights of persons
belonging to minorities. They are - either directly or through their
national affiliates - close to situations of tension and possible sources of
conflict. They are frequently involved in mediation, and they are able to
sensitize international as well as national public opinion when the rights
of minorities are neglected or violated.

NGOs can have a significant impact in the field of minority
protection through research, the publishing of reports and by serving as
channels and platforms for minority groups on the one hand and, on

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203 ibid
the other, by providing timely and factual information to governmental and intergovernmental bodies on situations involving minorities.

**VIOLATIONS OF MINORITY RIGHTS**

Problems faced by minorities have most often been caused by the non-recognition of constitutive elements of their identity, including their language, religion or history. Minorities complain about the relative disadvantage of their members as regards access to employment, public service and political institutions, as well as about inadequate access to resources, enabling minorities to preserve their identity.

**Genocide**

Genocide is the attempted destruction of a group because of their ethnic, religious or linguistic identity. It is the ultimate violation of minority rights. Minorities are threatened by the simple denial of their existence, especially when such a denial is official state policy.

This systematic denial of the existence of particular groups is vital in tracking the rise of tension that leads to violence. Mass crimes such as genocide or ethnic cleansing are remembered by minorities for decades. The memory of such acts can fester for generations and lead eventually to violence between peoples.

**Repression of Identity**

Identity may be the main, or at least the most evident factor in tensions between minorities and majorities. Other factors such as political and economic participation come into play in later stage. The problems of identity often stem from the lack of official recognition. Signs of problems within a state can be when the official (constitutional or otherwise) definition of a state is one based on ethnicity, language or religion. In genocides and “ethnic cleansing”, people are targeted because of their ethnic, religious or linguistic identity. The heavy-handed approach to the identities of government encouraged the development of a completely separate identity. The language and religion aspects of identity of minority are often at stake and can give rise to intense conflicts.

**Ethnic entrepreneurs**

In conflicts which are mainly about an issue not directly related to identity, such as control of resources, one group or leader may use identity issues to mobilize people against another group. The phenomenon of “ethnic entrepreneurs” (someone who uses issues of ethnicity for their own ends) can easily be manipulated by leaders, and can lead to conflicts.

**Persistent Discrimination**

Discrimination has been interpreted to "imply any distinction, exclusion, restriction or preference which is based on any ground such as race, color, language, religion, national or social origin, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all
"persons, on an equal footing, of all rights and freedoms". Persistent and systematic discrimination which affects minorities in a negative manner, on many different grounds - politically, socially, culturally or economically, is one of the major causes of conflicts, causing groups and individuals to feel excluded and divided.

**Exclusion from political participation**

A political voice is the key to the enjoyment of all other rights. When minorities fail to influence government policy and practice it results in their exclusion from education/employment opportunities and land rights. Further, a strong signal is sent to minorities that the dominant community does not see them as belonging in the nation.

Lack of power is an essential issue in the feeling of exclusion by minorities. Minorities can be excluded from political participation for numerous reasons.

For example, central governments may be founded on an exclusive concept of the national identity of one or a small, restricted, ethnic/religious groups, and other groups which form part of the country are implicitly or explicitly excluded.

**Denial of Citizenship**

Denial of citizenship to a group of people based on their belonging to a minority community will also have a significant impact on their sense of identity, and also results from how the nation defines itself.

Identity is as much about a sense of belonging to a place as to a group, and the state is sending a clear message, you do not belong here. The lack of citizenship may hinder access of minority to critical rights such as the right to education, the right to recognition of juridical personality, the right to vote or stand for election.

**Hate Speech**

This is the systematic use and acceptance of speech or propaganda promoting hatred and inciting violence against people on the basis that they belong to a minority community, particularly in the media, and grave statements by political leaders and prominent people that express support for the affirmation of superiority of a race or an ethnic group, dehumanize and demonize minorities, or condone or justify violence against a minority. Hate speech is a sign of a society which does not tolerate diversity and different identities.

**Economic Exclusion**

Economic exclusion, competition over scarce resources, inequality in the delivery of basic services and a lack of opportunities for minorities with their gross under-representation in employment, all lead to tensions. Economic exclusion can propel or maintain a minority
community into a sub-status or cycle of deprivation. It can greatly impede minorities’ ability to access their civil, political, social and cultural rights, and this can have enormous implications for their security, status and wellbeing. Minority communities in general tend to have fewer educational opportunities, higher mortality rates, higher rates of poverty, and higher unemployment than other poor groups.

Ill planned, top-down, resource extractive projects such as conservation and tourism projects, hydroelectric plants and large-scale dams, can have a major negative impact on minority livelihoods and wellbeing, often eradicating their economic base and eroding their culture and traditions. The land owned by minorities is coveted for many reasons; not least of these are the natural resources, such as arable land, fishing, minerals, oil, water, or tourism. Among other reasons for seizing land is specifically to expel the minority through ethnic cleansing, often during wars and other violent conflicts.

The reality and perception of exclusion increase when governments do not take action to promote and protect minority rights, the development of minority communities is neglected and the reality and perception of exclusion is increased.

**Injustice**

The collective belief of minorities that they are being unjustly treated today leads to ongoing feelings of alienation and anger. This is about what is now labeled as discrimination. The feelings of unfairness and humiliation that such discrimination creates in those who suffer it can lead to violence. It alienates communities from the rest of society and again leads to a tendency to blame other communities for this.

When minorities believe there is no mechanism that can identify and remedy the injustice that they suffered or is suffering from, this inevitably leads to violence. Discrimination within the justice system itself frequently compounds the problem.

**VIOLENCE AND MINORITIES**

**Attacks on Minorities**

Violence is directed at minorities, because the minorities are an easy scapegoat for other problems in society, or because authorities want their land or other possessions, or simply because they are “different”. Violence may be carried out directly by government agents or it by third parties, but almost always with government connivance.

**Violence by Minorities**

When members of the minority community feel they are under threat and have nothing to lose from violence, they resort to it themselves.

Once violence started, it may easily escalate and continue for generations. For many minorities the only way of raising the profile of
their concerns at an international level may seem to be a resort to violence.

That has certainly worked for other minorities, though it is almost always the members of the minority who suffer most during the conflict.

**PREVENTING RELIGIOUS OR ETHNIC CONFLICTS**

An understanding and application of minority rights for all communities is vital for resolving ethnic or religiously-based conflicts.\(^\text{205}\)

Promoting the concept of nation that recognizes its full diversity.

Many minorities wish to seek official recognition by ensuring that they are all named in the Constitution, and that concrete measures are taken to promote and protect identity.

Instituting strong guarantees of the right to practice identity in law and in practice:

Group identity exists regardless of state acceptance or denial, so there are major dangers in ignoring its relevance. The recognition of groups may be a significant first step towards realizing the protection of their identity, and sends a signal of goodwill to those groups. Such recognition should be backed up by strong guarantees of specific rights protecting identity in the national Constitution.

Implementing an education system respectful of minority languages and cultures:

The school curriculum is a key mechanism. A positive curriculum, in history and other subjects, can promote mutual and positive understanding of different minority cultures and their contribution to national identity. It then becomes much more difficult for nationalist leaders to incite hatred against other groups. Ethnic elements should be incorporated in the school curriculum of either regular or ethnic schools in ethnic autonomous areas. Separate schooling, especially on religious or linguistic lines, is rarely helpful in terms of integration and promoting understanding between communities.

Special attention must be given to ensure that children can grow up understanding their culture (including language and religion) combined with the need for the understanding between communities. Education systems can combat or condone hate speech, can erode or support minority languages, and have a direct impact on building understanding between minority and majority cultures.

Strengthening minority representation in legislatures and governments:

Strengthening the voice of minorities in political life can be done at the national or local level through many steps such as; increasing the number of minority representatives in legislatures, reserved seats, political parties based on minority identity, consultative

\(^{205}\) http://www.alertnet.org/thenews/newsdesk/IRIN/1fcd6eceede02e908439b846384e9487.htm
or advisory bodies, and ministerial posts in governments. It is important that minority representatives represent their community fully. The political participation and autonomy granted to minorities have been identified as contributing to the prevention or the resolution of conflicts.

**Enforcement of laws against hate speech:**

Clear prohibitions against the advocacy of national, racial or religious hatred that incites discrimination, hostility or violence, can minimize the role that can be played by hate speech in conflicts. 

**Economic development that does not marginalize certain communities:**

Monitoring development policies and programmes through ethnically and gender-disaggregated data will also be an important step. There needs to be real minority participation throughout development policies, programmes and projects, in the design, implementation and the benefits – to include both minority women and men. Programmes and budgets need to be monitored across geographical, ethnic and gender divides, with the involvement of minority women and men. Where a large-scale project affects a community, a just proportion of benefits should go to the minority communities. Equitable access to economic growth and, importantly, economic opportunity inhibits deadly conflict.

Attempts to address inequalities cut across ethnic, religious, or linguistic divides. This underlines that care needs to be taken in selecting the forms of targeted programmes and affirmative approaches to ensure that they do not increase resentment or conflict. Projects fostering inter-community relations can be important in promoting understanding between communities to avoid such tensions. Due attention to address the root causes of economic exclusion can play an important role in reducing inequalities and tensions.

**Ensuring a fair and unbiased judicial system:**

Justice needs to be implemented at the most local level possible to ensure that, for minorities, justice is not only done, it is seen to be done. The basic remedy for injustice is the rule of law. For ongoing injustices, what is needed are clear laws that outlaw such practices, and a justice system that will apply such laws; i.e. it identifies such practices, ends them and provides remedies to those who have suffered from them. For criminal activities, the system should identify the perpetrators (and particularly the leaders and instigators) of such crimes, and prosecute and punish them. For historic crimes, the response begins with investigation and acknowledgement of what happened, and of the individuals responsible. Once this has been done, if the perpetrators and victims are still alive, prosecution and compensation are vital. If not, a system of fair compensation for a community is needed the possible restitution of what has been lost.
Autonomy

In countries where minorities are concentrated in specific areas, arrangements for political decision-making at the regional level may be set up. A common mechanism is autonomy, where an agreed set of powers (often covering culture, economy, education and religion) is ceded by the central government to a local government with jurisdiction over a specific territory. Autonomy enriches the national culture, recognizes and strengthens ethnic identity; it respects the specificities of the cultures of the minority communities; it redeems the history of the same; it recognizes property rights to communal land and repudiates any type of discrimination; it recognizes religious freedom and without deepening differences it recognizes distinct identities as coming together to build national unity.

Conclusion

One of the fundamental bedrocks of human rights is the principle that all human beings are born free and equal in dignity and rights. Violations of this principle can take many forms, in particular on the grounds of race and ethnicity, where certain racial and ethnic groups are prevented from enjoying the same civil, political, economic, social and cultural rights as other groups in society. Conversely, violations of minority rights such as hate speech, political exclusion or territorial “ethnic engineering” can provide early warning signs that a country is at risk of erupting into a conflict.

The problems faced by minorities have most often been caused by the non-recognition of the constitutive elements of their identity, including their language, religion or history. Suppression of identities, and exclusionary and discriminatory practices, do not foster stable societies or durable peace, and the non-recognition of minorities or elements of their identity by states is a potential source of conflict.

Governments should put in place legislation and mechanisms to promote and protect minority rights, and must implement their obligations to promote minority rights to practice their culture, religion and language, in public and in private, and should take effective measures to promote mutual respect, understanding and cooperation among everyone living on their territory, including through educational curricula, culture and the media.

Advocating intra-religious as well as inter-religious dialogue and emphasized the important role of education in ensuring respect for and acceptance of pluralism and diversity in the field of religion or belief is needed to improve respect for the rights of persons belonging to minorities and freedom of religion.

One of the critical reasons for past and on-going ethnic crises the world over is the fact that minority ethnic groups are excluded from participating in the power sharing and decision-making processes of
their political system. Unless a formal or informal arrangement for power-sharing is guaranteed to all minorities, besides according them legal protection and practicing tolerance towards them, peace is not possible in multi-ethnic states.

Political participation granted to minorities has been identified as contributing to the prevention or resolution of conflicts. The right of political participation implies the need to introduce special measures, including where necessary the introduction of autonomy regimes, to protect and promote the minority culture. The participation of national minorities in public life is an essential component of a peaceful and democratic society. In order to promote such participation, governments often need to establish specific arrangements for national minorities.

Where members of minorities are not fully represented, the state must consider the introduction of measures to facilitate representation. This may be achieved by the removal of barriers to participation that is to be preferred. Where minorities are concentrated territorially, single-member districts may provide sufficient minority representation.

The inclusion of minorities into the mainstream of society is a critical task to many states. The achievement of this goal would be easier if members of minority groups are equally active in politics as members of the majorities and measures are taken to ensure effective participation by minorities in the deliberative and decision-making processes of the democratic state.

Finally, any disadvantageous access to employment and public service and inferior situations within political institutions, under which minorities frequently suffer, can become a potential source of conflict. The outbreak of conflict could reverse the development achievements of decades, so the integration of minority rights in the development agenda should be perceived as an essential and not a peripheral component of all development efforts.
PRISONERS IN DEVELOPED COUNTRIES

INTRODUCTION

The aim of this paper is to discuss the current situation with regard to the treatment of prisoners in both the developed and developing world. The report aims to explore the thesis that although the rights of prisoners in developed countries may be better upheld than the rights of prisoners in developing countries, the conditions remain far from ideal. The study aims to explore not only the violation of human rights, which are often the occurrences most publicized, but also the violation of other basic rights to which all prisoners should be entitled.

This is an important topic as it is only through investigation of the situation that any problems may be addressed. For example through a careful examination of the conditions which may be present in prisons in developed countries at the present time, it may be possible to identify which areas require attention. Although prisoners may be thought of as a population group of low importance, it is worth remembering that many of these may be remand prisoners and may therefore have not been proven guilty of any crime.206 This therefore indicates that the importance of these individuals’ rights may not be considered to be any less substantial than those of the general population. They also represent a substantial group within the population, given that as of 2003 there were estimated to be more than 8.75 million individuals held within the world’s penal systems.207 In particular, the violation of human rights of prisoners is of public concern and political importance.208

It is expected that this paper will demonstrate that the rights of prisoners in the developed countries may be breached in numerous ways. It is expected that these same rights and more may be breached in developing countries. This paper will show that the rights of prisoners in developed countries are more respected than those of prisoners in developing countries, although these are likely to remain far from ideal.

THE CURRENT SITUATION IN PRISONS IN WESTERN COUNTRIES

The numbers of prisoners in developed countries has increased drastically over recent years. The US has one of the largest western prison systems, and as such provides a good example of the pattern of increase. In 1970 there were a total of just over 196,000 prisoners held in detention, and this increased to just over 1.276 million

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In 1999.\textsuperscript{209} In particular it is important to note that there has been a drastic increase in the number of female prisoners in the US, with figures going from around 5,600 in 1970 to around 40,500 in 1999.\textsuperscript{210} These figures have even further increased to the present day, and in 2006 it was estimated that around 0.75 \% of the population were prisoners.\textsuperscript{211} Overall, this means that by December 2006 there were 2,258,983 prisoners held in Federal or State prisons or local jails. There are no later figures than these available, although it is anticipated that the current rate of detention would be even higher. This is based on the observation that the prison population had increased by 2.9 \% in 2006 from 2005.\textsuperscript{212}

As prisoners within the US constitute the highest proportion of prisoners from across the world, they provide possibly the best example of prisoners in developed countries. Also, because a large amount of information is within the public domain it is possible to more fully analyze the situation in the US prison system than in some others. There are however other prisons which may serve as adequate examples of prisons within developed countries, including those in the UK, Western Europe and Australasia. In particular, prisons within the UK also provide a large amount of information that is available in the public domain. Figures available for the UK for May 2008 show that there are currently just fewer than 83,000 prisoners in the UK.\textsuperscript{213} This may also serve as a good example of developed prisons given that this is the highest rate of prisoners per 100,000 populations in Western Europe.

**RIGHTS OF PRISONERS**

The overall rights of prisoners may vary by country, just as attainment or violation of these rights may vary widely by country.\textsuperscript{214} In particular, the judicial system in the US has considerable control over determining the rights of prisoners once incarcerated. Although certain human rights are fundamental regardless of circumstances, the decisions as to which civil and other rights prisoners possess may be open to change. The decisions which are reached may be impacted by pressure from civil rights groups, human rights groups and other groups concerned with the rights of prisoners. It has however been suggested

\begin{itemize}
  \item \textsuperscript{211} World Mapper (No date) Prisoners. http://www.sasi.group.shef.ac.uk/worldmapper/display.php?selected=293.
\end{itemize}
that increasing problems with violence in prisons may have led to a
decrease in sympathy for prisoners, and this may have begun to reflect
in judicial decisions. It is however important to recognize that the
removal of these rights is specific to the country and is not universal.
This is in direct contrast to human rights, which are considered to be
universal and are generally not considered to be flexible in their
application.

The general human rights to which all prisoners should be
entitled include the right to a court and legal assistance, and the rights to
humanity, respect and dignity. This may encompass many more specific
rights, such as the right not to be assaulted and the right to access health
care resources. There are a number of human rights groups which
monitor the provision of these rights in all countries around the world,
including in prisons in developed countries.

Many developed countries have legislation which specifically
details the rights which prisoners have when they are incarcerated. An
example of this may be seen in the UK, where the Prison Act 1952 and
the Prison Rules 1999 detail the general rights of prisoners. Even in this
instance, however, the courts may use case law from elsewhere in
determining any area which is considered not to be explicitly detailed in
these documents. It is also the case that these laws may be subjected to
change and may further develop as the laws of a country also develop.

In the US there is a legislative group called the American Civil Liberties
Union, which specifically acts on behalf of prisoners and governs the
preservation of rights for those incarcerated in prison. There are also
numerous pieces of legislation which may deal explicitly with specific
areas of rights, for example the Prison Rape Elimination Act 2003.

There are also usually channels provided for prisoners in developed
countries to complain should they feel that their rights have been
breached.

The decision of which rights of an individual may justifiably be
restricted is usually based on an assessment of the “dangerousness” of
the prisoner. However, suggests that this may not be an entirely
appropriate means of deciding which rights should be restricted for an
individual. This is due to the method having been shown to often lead

217 These agencies include most notable Amnesty International, the UN Commission on
Human Rights and Human Rights Watch.
218 Strutin, K. (2006) Features – Criminal justice resources: Prisoners’ rights and resources
to inappropriate conclusions. Most errors committed are due to excessive caution being exercised.

In the period spanning from the 1960s to the present day, the US has experienced a prisoners rights movement which was aimed at attracting attention to the issues which were inherent in the treatment of prisoners in that country. It appears that this movement was successful to some extent in its aims, and managed to lead to the creation of a number of policies that ensured better maintenance of prisoner's rights in the US. This movement has since continued, and Freudenberg suggests that that movement has actually gone from strength to strength in recent years.

CRITICISM OF OTHER NATIONS

Developed countries may be very critical of the practices of developing nations with regard to their prison systems. Although it may be difficult for developed countries to comment on the laws of any other country in terms of how they determine the civil rights of prisoners, the criticism usually focuses on human rights breaches. This is considered justifiable given the universal nature of basic human rights. In particular, a substantial amount of research has focused on a discussion of how the history of human rights of a country may determine the US foreign policy towards that country. It may not only be the US which engages in these criticisms however, as the UK and other European countries, along with organizations such as the UN, may also engage in such criticism.

The focus of the criticism of some countries often relates specifically to the treatment of political prisoners rather than those convicted of more general crimes. The criticism also usually relates to the occurrence of torture and capital punishment rather than more “trivial” breaches of human rights such as confinement in inappropriate accommodations. A particular area of criticism has also been of the manner in which these prisoners may have been detained, specifically under accusations of terrorism, a claim often judged to be unsubstantiated.

It is not clear why the focus is on these political prisoners, as it would be assumed that all other prisoners within these countries are also subjected to frequent human rights violations if this is determined to be acceptable within that country’s penal system. It is also unclear why government criticism may focus on some countries while ignoring

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223 Examples of this may include the publications of agencies such as Christus Rex (http://www.christusrex.org/www1/sdc/hr_facts.html) and Amnesty International (http://www.amnesty.org.uk/news_details.asp?NewsID=17393).
others. For example treatment of prisoners in Africa appears to go largely unnoticed by Western governments.224

**FAILURE TO MEET BASIC RIGHTS**

It appears to be the case that even in developed countries there may continue to be significant breaches of human rights for prisoners. This is initially based on the observation that agencies such as Amnesty International appear to receive significant complaints regarding the treatment of prisoners even from countries such as the US. Overall, the entire process of incarceration ensures that some of the basic rights of prisoners may be compromised, for example prison removes the freedom of movement for every individual to a certain extent. This is, however, an integral part of the imprisonment process, and as such the only alternatives which would ensure that this right was not violated to any degree would be through the use of punishments other than imprisonment. Although alternative punishments have previously been suggested as more appropriate for the sake of preservation of human rights, it is acknowledged that these solutions may not be entirely practical.225 There do appear to be different extents of the removal of these rights even within one country’s system, such as the extent to which freedom is actually removed. For example in the UK prison system not all prisons involve being confined to a cell each day, and some open prisons may actually allow offenders to leave the prison under certain circumstances, for shopping trips for example. On the other extreme of the spectrum, many prisons in the UK, US and Europe may use isolation as a punishment for prisoners who breach specific rules in the prison. This may involve being confined to a very small space, being isolated from others, and may also include the use of restraints. This practice is very controversial in terms of whether the violation of rights which this involves may be justifiable.226

Not all cases of violation of rights may however be justifiable. It is recognized particularly that there may be a provocation and temptation for members of staff within prisons to use excessive force when dealing with prisoners, particularly when they themselves may have been attacked or provoked in some manner.227 The use of excessive force may be in direct violation of the rights of the prisoner, no matter of the circumstances surrounding the use of the excessive force. It may be hard to determine the exact extent to which this may be a problem within the system in developed countries as there is a lack of specific data available.

It is possible that the violation of rights may be different between different groups within the prison population in one country. For example, Freudenberg\textsuperscript{228} discusses the impact on the rights of imprisoned women of color. The study found that when these women are incarcerated, they are removed from their communities, removed from the opportunity of accessing needed services and also placed in close proximity with others who have higher rates of infectious diseases.

It may not be the prison which is directly responsible for the violation of prisoners’ rights; it may simply be that they have failed to protect the rights of the prisoner. There are many instances where it may be the other prisoners who are responsible for the actual violation of rights. For example a study into the prison system in Australia identified substantial occurrences of sexual and other assaults of prisoners each year.\textsuperscript{229} A further study by Robertson found significant incidences of rape of male prisoners within the US prison system.\textsuperscript{230} Another example of this may be the case in which prisoners’ health is not protected. Prisoners have a right to have their health, both physical and mental, protected while incarcerated. When incarcerated, it is possible that prisoners are placed in direct contact with many infectious diseases, and this may lead to much higher rates of these diseases within the prison population.\textsuperscript{231} Although it could be suggested that this would be an unavoidable problem of imprisonment, it may however be that a contributory factor is the failure of provision of basic health care services. An example of how this may be the case is that only around two fifths of prisoners who have mental health problems ever receive any kind of help while in prison.\textsuperscript{232}

It is possible that prisoners may pursue legal action for incidences when they believe their rights to have been unjustifiably violated while in prison. Studies suggest however that this may not often be successful.\textsuperscript{233} It has also been suggested that as a result of the pursuit of litigation by prisoners who are still incarcerated it is possible that their rights will be further compromised. A study by Brown\textsuperscript{234} found there to be widespread violence by prison guards towards inmates who were pursuing litigation against the prison system for alleged sexual abuse. This violence therefore would further violate the rights of prisoners.

\textsuperscript{229} Heliperm, D.M. (1998) \textit{Fear or Favour: Sexual assault of young prisoners}.
\textsuperscript{230} Robertson, J.E. (2003) \textit{AIDS, Patient Care and STDs}, 17, 423.
\textsuperscript{232} Ditton, P.M. (1999) \textit{Mental Health and Treatment of Inmates and Probationers}.
\textsuperscript{233} Robertson, J.E. (2003) \textit{AIDS, Patient Care and STDs}, 17, 423.
A further area which is the subject of immense controversy in any human rights discussion is the continuation of capital punishment within a number of developed countries’ legal systems. Aside from the arguments against capital punishment which are based on the problem of miscarriage of justice, whereby someone may be wrongfully convicted and subsequently killed, it is also argued that capital punishment is a complete violation of human rights. One of the fundamental human rights is the right to life, and it is very difficult to justify ever removing that right from an individual. With the sentence of the death penalty, this fundamental human right is removed.\(^{235}\) Amnesty International also suggests that not only is the right to life compromised with capital punishment, so too is the right to not be submitted to any cruel, inhuman or degrading punishment.\(^{236}\)

**Changes in the Prison System**

There are a number of changes which may have recently occurred in the legislation of some developed countries which affect the governance of the penal systems within those countries. Most of these changes have been brought about as a result of terrorism against the West, and have been designed to allow these countries to better protect themselves from potential terrorist attacks.

In the UK, the main piece of legislation introduced was the Terrorism Act 2000, although there were further subsequent acts put in place to supplement the new laws. This included the introduction of the Anti-Terrorism, Crime and Security Act 2001, the Prevention of Terrorism Act 2005, and the Terrorism Act 2006. The introduction of the new legislation in 2000 and March 2007 resulted in 1165 arrests in the UK under the new laws. It is the Terrorism Act of 2006 which contains a number of measures that increase police powers when investigating suspected terrorists. This specifically extends the rights of police in such a manner as may actually contravene some rights of prisoners in a way which was not previously permitted explicitly by law. An example of this may be that the police are able to detain suspects for much longer periods while under investigation.\(^{237}\) There does not however appear to be any change in the UK’s laws which specifically impact the treatment of prisoners once detained. This is in stark contrast to the anti-terrorism laws introduced in the US.

In the US, legislation has also changed, particularly post-9/11. The new legislation includes the Terrorism Risk Protection Act 2001, the Financial Anti-Terrorism Act 2001, and crucially, the Patriot Act


2001. This Patriot Act serves to greatly extend the powers of investigation authorities in the US in their investigation of terrorist suspects, to such an extent as to greatly impose on the civil liberties of the general population. In addition to this, however, the most controversial move which the US has made in fighting terrorism is the decision to alter the manner in which terrorist suspects are detained. Rather than being incarcerated in the normal prison system, the US government has sanctioned the use of Guantanamo Bay naval base for interrogation of these suspects. This decision was made because of a convenient legal loophole: because the prisoners have been moved to a US base in another country (Cuba), the laws which govern imprisonment on US soil no longer apply.  

There are various reports from ex-prisoners which claim that the fundamental human rights of prisoners within Guantanamo Bay are being grossly violated. In particular, the use of this overseas base in itself implies that the purpose is specifically to allow for the denial of the human rights of the prisoners. It would therefore indicate that despite the criticism which the US focuses on other countries in their breach of the human rights of prisoners, there may also be many instances in which developed countries also regularly violate the human rights of prisoners, even though these countries may attempt to justify this treatment.

**NECESSITY OF RESTRICTION ON RIGHTS**

It is clear that prisoners in both developed and developing world have a number of their rights restricted upon entering prison. It is, however, critical to consider whether it is truly necessary for these rights to be restricted before any judgment may be made as to how this impacts on the system, or makes it better or worse than another.

Although human rights activists argue for the rights of prisoners and claim that prisons should work to maintain their rights, there is an important distinction to be made between basic human rights and civil rights. In particular, as discussed in the previous section, the main difference is that human rights are considered to be universal and applicable to all, whereas civil rights are bestowed upon individuals by a country, and as such may also be removed by that country. Therefore the laws within each individual country will take account of precisely which civil rights may be restricted within the prison system, in accordance with the initial civil rights which individuals within that country have when free. In contrast to this, although prisoners are subject to strict regulations while in prison, the purpose of prison is not to remove their human rights.  

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This distinction means that, if governments perceive it to be necessary to restrict certain civil rights than they may do so. They may also attempt to include legislation which restricts certain human rights, but there are many councils and agencies in place across the world which may oversee these decisions, such as the European Council of Human Rights and the United Nations. As also previously discussed, the choice about whether it is considered necessary to restrict a particular right is based upon the judgment of dangerousness of an individual. In particular, dangerousness is defined as an “individual's propensity to cause serious physical injury or lasting psychological harm”\textsuperscript{240}, this may be understood as both harm to others and harm to themselves. This may therefore lead to justification to restrict certain civil rights of criminals while in prison.

One pertinent example of this may be in the restriction on voting which most countries have regarding prisoners. For example if known criminals were allowed to vote while still incarcerated, this may be considered to be quite dangerous; it is possible that large numbers of prisoners would be able to collaborate in order to bring about a political result which met their own criminal agendas, which could lead to long term damage to the country.\textsuperscript{241} Therefore many countries have legislation in place which severely restricts voting rights for prisoners. In a number of countries, such as the UK, there is in fact a blanket ban on all prisoners voting.\textsuperscript{242}

Recently, such behavior was found by the European Court of Human Rights to be in contravention of these prisoners’ human rights. In addition to being considered a political and civil right, the right to vote is also generally recognized as a basic human right. This does not, however, indicate that the countries affected by the ruling must immediately allow all prisoners to vote. Instead the UK initiated a review of the system which would consider a number of elements, such as sentence length and seriousness of offence, and then use this to individually decide which prisoners should be entitled to vote while incarcerated.\textsuperscript{243} This system is therefore considered to be more just as the information collected allows for an individualized assessment of the dangerousness of allowing a particular prisoner to vote. The main problem with this is that it is not deemed justified to restrict the rights of all prisoners as a matter of course, instead the decision may only be justified when based on an assessment of the individual prisoner’s dangerousness.

Given that the European Court of Human Rights deemed it justifiable that the rights of some prisoners to vote should be restricted, this would suggest that other human rights may also be justifiably restricted based on judgment of dangerousness. Another major example of this is in the restriction of the prisoners’ right to free movement, which may also be considered a human right. It is however clear that there must be some degree of restriction on this movement or there would not be such a thing as prisons in the first place. Again, it may not be justifiable to impose the same restrictions on all prisoners; instead, this should be done on an individualized basis. In the US, this is partially achieved at the time of sentencing. Instead of one standardized prison to which the individual is sentenced, there are a range of different types of institutions. This means that those who are considered to be a high danger to others may be incarcerated in a type of institution termed a “SuperMax Prison”. In this type of institution, the movement of the prisoner is severely restricted, as are other elements of their daily life, such as contact with staff and other inmates.244 In addition to this, in countries such as the UK and the USA, it is possible that movement may be entirely restricted through the use of restraints. This is performed usually only as a temporary measure, in cases where there is suspected to be a mental health issue in which the prisoners present a threat of extreme violence towards themselves or other inmates or staff.245

In direct contrast to high security prisons, there are also allowances to ensure that those prisoners who are considered to be of low threat have their freedom of movement preserved as much as possible. In the UK this includes sending these prisoners to open prisons, in which there are few restrictions on movement, and in which some prisoners are even allowed beyond the confines of the prison under agreed circumstances.246 This is therefore a further example of how certain rights may be restricted in developed countries, but that this may be justifiable.

THE JUSTIFICATION FOR RESTRICTIONS ON RIGHTS

Although it has so far been demonstrated that it may be justifiable and necessary to restrict some of the rights of prisoners while they are incarcerated, the discussion has also raised some other important elements which must be considered in the process of initiating these restrictions. The main issue is that of the Parameters on which the assessment of risk of prisoners is based. Baker247 suggests that at the present there is a lack of a definitive definition of what precisely

constitutes danger in a prisoner. For example, the current definition which is given earlier in this essay may be highly subjective. This means that where one person may judge a particular prisoner to be highly dangerous, another may consider them to present little threat to anyone else. It is likely that this would then result in large differences in the treatment of the prisoner, and which rights were considered could be justifiably restricted. In particular it has been demonstrated that errors may be made in the assessment of dangerousness which is made at sentencing in the US.\(^{248}\) This includes errors in both judgment and in the application of the available tools which may help with such a judgment, and also the assertion that there may be fundamental flaws in these tools themselves. Overall this would therefore indicate that the restriction of rights of a prisoner may currently be based on very subjective perceptions at the time of sentencing. Despite this, it is also clearly necessary for an individualized judgment to be made rather than blanket restrictions imposed. It would therefore appear that this is an area which requires further improvements in method, even in developed countries.

Some suggest that the importance of risk assessment of prisoners should stretch beyond the courtroom and those sentencing the prisoner to the actual establishments themselves. For example it is clear that while a prisoner may not be deemed to be of significant threat upon presenting in the courtroom, there may be incidents which occur during incarceration which alter the perceived dangerousness of the individual. For example it is important within a prison that every individual who both resides and works there is able to feel safe.\(^{249}\) This, therefore, means that it may be necessary for the prison itself to engage in continual risk assessment of prisoners to ensure that the rights of all others within the establishment are also met. It is important that the actions which are taken by the institution in such a case remain in keeping with the ethics of a system which is humane, healthy and constructive.\(^{250}\) This means that there must be a careful assessment made before further restrictions on the rights of the prisoner are imposed, such as through solitary confinement, as this may not be entirely in keeping with this ethos.\(^{251}\) In particular, while these types of restrictions on an individual’s rights may be necessary in the short term, the process of risk assessment should be continual as prolonged exposure to these circumstances may be damaging to prisoners,\(^{252}\) and therefore may not be justifiable as long-term solutions.

CAN THE RESTRICTION OF ALL RIGHTS BE JUSTIFIED?

Although it is clear that developed countries may be justified in restricting the rights of prisoners to a certain extent, it is not possible that all such restrictions may be justified. One prime example of this is in the use of capital punishment, which is promoted by certain individuals within the developed world, but also comes under harsh criticism by human rights groups. The use of capital punishment within the developed world is not as widespread as in previous times. Some countries, including certain states of the US, do however maintain capital punishment for the most heinous crimes. This punishment however completely removes the human right to life of the individual, and as such, it would be extremely difficult to justify this punishment on the argument which has thus far been presented. In the US, the use of capital punishment is considered to be justified where there is an assessment made that an individual poses a continued and great threat of violence to the public. As previously discussed, however, there have been shown to be numerous errors in judgment which have occurred by mental health care professionals in relation to making this decision. It has also been suggested that much of the information which may be used in forming these decisions is inadequate for its purpose.\(^2^{53}\)

This in itself indicates that the process of judging the appropriateness of this punishment is complex, and it is suggested that removing the right to life may in fact never be justifiable. It is unlikely that the threat of continued and significant aggression towards others may be controlled to any greater extent using capital punishment than through long-term incarceration. For example it has been demonstrated that those who are subjected to prison terms under five years are in fact those who are most likely to exhibit aggression towards others while in prison.\(^2^{54}\) It has also been shown that the level of violence which is exhibited in prison by those convicted of capital crimes may not be significantly higher than that of those convicted for less serious offences.\(^2^{55}\) In addition, those who are convicted of capital crimes but fortunate enough to be released also exhibit lower levels of return to prison than those convicted of less serious offences\(^2^{56}\), which is indicative that many do not in fact pose a continued threat to society upon release from prison.

Another important consideration is that the restriction of rights was based predominantly on the intent of protecting the rights of others. It is not however clear how the use of capital punishment and

the removal of the right to life may better protect the rights of others than simply imprisoning an individual. Removing the individual from society by putting him in a prison should be able to protect the rights of other individuals living within that society.

It is also difficult to justify the restriction of a number of other human rights based on this argument. For example, restricting the right of the prisoner to dignity would serve no purpose in protecting the rights of other prisoners, staff or the wider community. There would however appear to be frequent incidences in prisons in developed countries when this particular right is restricted. An example of this was that of excessive violence used by staff within prisons towards prisoners.

In fact, such acts not only encroach on the prisoner’s right to dignity, but also directly on their right to safety from violence. There are also other occurrences within prison which may equally breach these rights in a manner which is not justifiable. For example being subjected to sexual assaults appears also to not be uncommon\(^\text{257} \ 258\), and this too is a direct violation of the rights of the prisoner. Even though such occurrences may not be directly attributable to the prison, it is the responsibility of the prison worker responsibility to protect prisoners from such incidents, and therefore promote the human rights of the prisoners.

**DEVELOPED VERSUS DEVELOPING NATIONS**

While there is great interest in protecting the rights of prisoners in developed nations, in many developing countries, not only are the civil rights of prisoners removed, but also their basic human rights. It appears that the observation of rights of prisoners in the developed world is thus superior to that in the developing world in general.

The main exception lies in the recent changes to the law, and the use of legal loopholes, which allow for the rights of suspected terrorists to be effectively removed. Although these prisoners are judged to be of a great and prolonged threat to the wider population, it remains difficult to justify why terrorism suspects may be treated differently than any other criminal suspect. In particular this is true given that it is a fundamental human right that an individual should be assumed to be innocent until proven guilty, and should therefore also have the right to legal counsel among other rights. In particular, it is noted that the changes in the law are specifically designed to extort loopholes in the law so that they would appear not to breach human rights laws. A notable example within the Patriot Act 2001 is in the use of the term


“torment”, which is used due to the prohibition of torture, but remains very ambiguous in meaning. In particular, this type of treatment also makes it very difficult to justify the criticism which is placed by these developed nations onto developing countries. One of the main criticisms has been in the manner in which those out of favor are held as political prisoners, and accused of terrorism, in order to justify particularly brutal treatment or capital punishment. In effect, this is not entirely dissimilar to some of the behavior in which some developed countries may currently be engaging.

**CONCLUSION**

Overall, it appears clear that the rights of prisoners in the developed world are reasonably well protected. There are many rights which are actively promoted by prison services within these countries, such as the right of religious choice and the right to education. There remain, however, some issues which require further attention, including some rights, such as the right to vote, which are intentionally removed, as well as some rights such as that of protection from violence, which are not intentionally violated, but are nevertheless inadequately protected.

There are governments in the developed world that are attempting to foster a more rights-based approach to prisoners at the present time. This is reflected in a number of new initiatives which are being put into place, with evidence of these changes particularly obvious in the UK and the US. A great deal of this change has been brought about through pressure from the public and various agencies, as awareness of prisoners’ rights and the conditions within prisons seems to have increased over recent years. In particular, Boston implicates the media attention which was received by abuses of human rights of prisoners in Abu Ghraib, in Iraq, as being critical in raising awareness of those in the developing world to the treatment of prisoners on their own soil. Another focus of media attention, the prisoners detained by the US in Guantanamo Bay is also likely to have contributed to increasing public awareness and the debates which have taken place.

It is however actions such as those which occur in Guantanamo Bay which create a significant blot on the record of some developed nations, and as such belittle the efforts which are being made in other areas to foster a rights-based approach to prisoners. It is clear therefore that the conditions within prisons in the developed nations may still require further improvement in the near future if the rights of prisoners are to be fully observed and protected.

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PRISONERS IN DEVELOPING COUNTRIES

INTRODUCTION

The purpose of this paper is to raise awareness regarding the horrible and unfair incarceration conditions of prisoners in the Third World. Prisoners in those countries have nobody to turn to for help and no money for legal help. Therefore, they need spokesmen to speak out for them. Moreover, the common overcrowding of prisons has direct links with the increase of population of a country and increases in crime rates resulting from socio-economic factors.

This paper hopes to sound the alarm in the minds of those, who have the responsibility to administrate detention facilities but also in the minds of government leaders, because this problem might have strong socio-economic repercussions on the development of a country as well.

DOCUMENTS

Many documents and treaties guaranteed the protection of prisoner’s rights. At the United Nations level, there were both binding and non-binding instruments applicable to prisoners’ treatment or dealing with issues related to the prison services.

Binding documents

Binding documents are the best guarantors for the protection of prisoners, because of their binding nature under international law.

The International Covenant on Civil and Political Rights and the International Convention on Economic, Social and Cultural Rights are both generally applicable to prisoners following the principle of universality of human rights. Amongst other rights, prisoners had the right to dignity and privacy; the right to education, and to health care and food.

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was to a certain extent applicable to prison services, as acts of torture and ill treatment were often committed in prisons. Provisions regarding the criminalization of torture and accountability of perpetrators, as well as the requirement to develop a framework, legislative and administrative, for the prevention of torture are examples of provisions applicable to prison services. The

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implementation of the Convention against Torture was monitored by the Committee against Torture, which was mandated to evaluate states periodic reports and individual communications against state parties. The newest development in relation to the protection of torture was the development of an Optional Protocol to establish inspections mechanisms at national and United Nations level. The Optional Protocol was the result of a long process and it was approved by the General Assembly in 2002.

**Non-binding documents**

The Standard Minimum Rules for the Treatment of Prisoners provided for basic rules for the management and treatment of prisoners, including material conditions (food, clothing and personal hygiene), access to health care, disciplinary proceedings and prison activities (educational, vocational training, etc).

Even though the range of areas included in the Standard Minimum Rules was great in scope, it did not aim at creating a set of rigid rules or a prison model. The Standard Minimum Rules provided only basic and minimum requirements for the operation of any prison system: the necessary conditions for a prison system to achieve minimally humane and effective standards.

**Other non-binding documents**

Although non-binding, some documents are worth mentioning, as they could, to a certain extent, also be used for the advancement of the protection of prisoners. These include:

The Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment (1988), the Basic Principles for the Treatment of Prisoners (1990) and the Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment were a few of those documents.

Other non-binding documents of relevance were some of the United Nations Human Rights Commission special mechanisms. For the prison services area, the Special Rapporteur on torture would be the

265 ibid
266 ibid
most relevant special mechanism as its mandate included visits to places of detention in the countries, where the Special Rapporteur chose to undertake a field mission.

THE CURRENT SITUATION

Prisoners in developing countries endured some of the most severe and inhuman treatment in the world. Besides the poor sanitary situations, we will also focus on the malfunction of justice in the third world and its consequences for the prisoners.

Sanitary and health conditions

Overcrowding was without a doubt the biggest challenge in Third World prisons and played a big role in the poor sanitary conditions of those prisons. The developed countries might have a different interpretation of the scale of prison overcrowding than what it means to developing countries. The developed countries used such criteria as minimum floor space, cubic content of air ventilation and other basic amenities to measure overcrowding. To the developing countries, however, the single cell accommodation with specifications considered as minimum by the developed countries would be a luxury. In such countries, overcrowding was necessarily followed by gross inadequacy of essential facilities such as sleeping accommodation, sanitary and bathing installations, medical and recreational facilities. Hence, there were no common criteria on the required accommodation or floor area or other conditions per prisoner in developing countries.

Rule 10 of the United Nations Standard Minimum Rules for the Treatment of Prisoners 268 however provided: "All accommodations provided for the use of prisoners and in particular all sleeping accommodations should meet all requirement of health, due regard be paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation".

The reality was another story. Inadequate living space, poor or nonexistent ventilation, limited sanitation facilities, low levels of cleanliness and hygiene, and inadequate food and medical supplies make prisons life-threatening in many countries.

In a recent Human Rights Watch report 269, overcrowding was apparent in 13 out of the 15 African countries surveyed, with many prisons operating at over 50 % of their official capacity, and being unable to provide adequate arrangements to meet the special needs or prevent abuse of incarcerated women and juveniles. In the central prison in Karachi, Pakistan, there were four times as many prisoners as the prison was designed to hold and only two toilets available per hundred prisoners. In Uzbekistan, ten to fifteen inmates were reportedly

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268 ibid 4
confined in cells designed for four. The La Loma prison in Mexico, built to hold two hundred prisoners, housed nearly 1,200. In Bolivia, cells were "sold" to incoming prisoners by previous occupants or other prisoners; in the poorest areas, cells measured three or four by six feet and lacked ventilation, lighting, or beds. The crowding in some prisons is so bad that prisoners must sleep sitting up.

Epidemic diseases were spreading rapidly and health care in most prisons was poor to non-existent. The spread of communicable diseases in numerous prison systems was the predictable result of overcrowding, malnutrition, poor ventilation, lack of potable water, inadequate sanitation, and lack of medical care. In 2001, there was increasing awareness that Hepatitis-C had joined HIV/AIDS and tuberculosis as a major scourge of prisoners. Twelve percent of the prison population in Kazakhstan had tuberculosis. Access to anti-retroviral drugs was inexistent. The prevalence of HIV infection in South African prisons was reported to be about 40%, which was double the level in the general population, but figures are lacking for inmates in many African countries.

HIV/AIDS resulted particularly from the failure of prison authorities both to protect inmates from sexual violence and to offer even simple and cheap services such as access to condoms. South Africa is the only African country where condoms are provided for prisoners on request since 1996.

In the 2006 edition of the journal, Medical Microbiology reporters went inside three prisons in the West African country of Ghana to determine the prevalence of HIV and syphilis. The data provided tangible evidence to support anecdotal suggestions that an outbreak of these infections might be occurring in African prisons, affecting both inmates and prison staff. Furthermore, this high-risk group might represent the nucleus for the beginning of outbreaks in the general population according to the journal. The authors also highlighted the lack of access to medical facilities, and the absence of screening, immunization or health education programs in these penal institutions. Their findings represented the similar state of affairs in penal institutions in many poor developing countries.

As we can imagine, prisons in this part of the world are not maintained correctly partly because of a serious lack of resources.

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270 ibid
271 *Analyzing prison sex: Reconciling self-expression with safety*. Brenda Smith
Corruption and extortion accompany the low salaries generally paid to guards and their inadequate training and supervision. In Angola, whose prison population is five times larger than the prison system’s capacity\textsuperscript{273}, many prisons lacked financial support from the government.

In many countries, prison authorities failed to provide basic necessities to prisoners, who were obligated to depend on families, friends or international relief organizations for food, blankets, mattresses, toiletries, and even toilet paper. Insufficient food or poor diet led to many cases of malnutrition, semi-starvation and even death. The prisons are also not well maintained. In some countries, cells lacked toilets or latrines, requiring prisoners to “slop out,” using buckets that they periodically emptied out. Inmates at Makala prison\textsuperscript{274} in the Democratic Republic of Congo had no toilets at all.

Another problem is simply that prison maintenance is a low priority for governments. In countries, where food self-sufficiency itself was out of reach, taking care of criminal offenders is by far their lowest priority.

Insecurity was a problem common to any prison, in a developing or a developed country. Prison homicides and mistreatment were however more frequent in developing countries for a few reasons. In fact, prison authorities were corrupt and often did not interfere when prisoners were hitting on other inmates: In Mexico\textsuperscript{275} for example, inmates were able to coerce fellow inmates with little interference from prison authorities, and to engage in violence, sexual abuse, drugs and arms trafficking, and influence peddling. The overcrowding made it also difficult, even life threatening for prison staff to interfere. They risked being killed by a perpetrator who could easily hide in the mass of prisoners.

Incidents of collective violence, particularly in South America, also led to inmate deaths and injuries. During 2000, 276 Venezuelan prisoners\textsuperscript{276} were killed during gang fights or riots.

Physical abuse of prisoners by guards remained another chronic problem. The UN Special Rapporteur against torture reported in April that torture and ill-treatment were widespread in Brazilian prisons and detention centers. Unwarranted beatings were so common as to be an integral part of prison life in many prison systems. In Indonesia\textsuperscript{277}, officers punished inmates with electric shock batons and by stapling their ears, nose and lips.

\textsuperscript{273} ibid 10
\textsuperscript{274} http://www.worldpress.org/Africa/2674.cfm
\textsuperscript{275} www.wilsoncenter.org/index.cfm?fuseaction=events.event_summary&event_id=107719
\textsuperscript{276} www.ciaonet.org/wps/icg427/icg427.pdf
\textsuperscript{277} Indonesia Country report on Human Rights Practices. Us Department of State.
Women prisoners are vulnerable to custodial sexual abuse. In Haiti\textsuperscript{278} for example, female prisoners were even held together with male inmates, a situation that exposed them to rampant sexual abuse and violence.

Juvenile inmates are also held together with adults, a situation that was unacceptable for their human dignity because they had no chance to defend themselves and they serve as slaves of adult inmates.

**Relevance of imprisonment**

The liberal use of imprisonment as a punishment was a big concern in developing countries. In too many cases, imprisonment in those countries was unjustified or excessive.

In some countries, especially in Asia, the biggest prisoner portion was made up of short-term sentences. In Sri Lanka\textsuperscript{279}, sentences of less than a year represented 83.8\% of the convicted population. Out of a total of 20,800 convicted prisoners admitted to prisons in Sri Lanka in 1998, 16,603 or 79.8\% had been fine defaulters, whom the courts initially thought, did not deserve a prison sentence. From the very fact that they were given short-term imprisonment, it was clear that most of them could not have been found guilty of serious offences for which alternative punishments to imprisonment could not have been given.

The admission of large numbers of offenders to prison for non-payment of fines was also contributing largely to the problem of overcrowding, particularly in Asia. In the third world in general, people were imprisoned for minor infractions such as stealing of insignificant objects, minor violations of traffic laws, etc. Some people even went to prison for stealing a fruit at the market. Even if they offered to repay a stolen object, individuals were still sent to jail. Once in jail, a long journey that was supposed to last only a few months could last for years, if they did not get legal help or because of delays and remanding. More than that, the damage was done and those individuals might become worse men than they were prior to being sent to jail. Furthermore, they had lost the respect of society and had a hard time landing a job after their stay in jail.

Another recurrent problem was the delay in bringing prisoners to trial, a result of the slow penal system and corruption in developing countries. Available statistics showed that a large proportion of the Third World’s prisoners had not been convicted of any crime, but were instead being detained pending trial, creating unnecessary overcrowding.

\textsuperscript{278} ibid 10

In Sri Lanka\textsuperscript{280}, 13\% of the remanded had to wait for periods more than a year until their cases are heard, and about 3\% had to wait for periods over two years for their trial. In many cases, prisoners exceed their jail sentence before being even convicted. As long as they had not been in court, they were not eligible for release.

In many developing countries, remanding was resorted to as a punitive measure by the police. Ticketless travelers, vagrants, drunkards, persons of unsound minds, prostitutes and drug addicts, are all lingering in prisons on being remanded. The absence of legal help and small number of lawyers compared to the staggering number of prisoners could also further extend this delay.

Excessive bail or inadequate use of bail provisions was also part of the problem. Traditionally, bail was, according to Wikipedia,\textsuperscript{281} some form of property deposited or pledged to a court in order to persuade it to release a suspect from jail, on the understanding that the suspect would return for trial or forfeit the bail (and be guilty of the crime of failure to appear). In most cases bail money would be returned at the end of the trial, if all court appearances were made, no matter whether the person is found guilty or not of the crime accused.

However, this traditional use of bail provisions was distorted in the Third World. In countries, where the vast majority of the population lived with less than one US dollar a day, paying a bail for stealing a fruit was impossible. Some people stayed in prison for years if not their whole lives for minor infractions, because they did not have the money to pay for their bail, which contributed unnecessarily to the overcrowding in prisons.

The penal system in the Third World had the reputation of being very slow and bureaucratic, resulting in unnecessary and excessive remanding.

One of the aspects of this bureaucracy was a lack of workers in the courts in comparison to the high number of cases. The result was that remand prisoners have to wait years for their case to be heard and decided. In the meantime, they spent years in inhuman conditions surrounded by dangerous criminals and infectious diseases. Even individuals, who committed minor infractions saw their case being remanded unnecessarily. Remanding was often used by the justice to keep individuals in prison longer than they should have to stay.\textsuperscript{282}

\textbf{THE WAY FORWARD}

The conditions described above have had many repercussions on the lives of prisoners, their ability to survive detention and ultimately their reinsertion in society.

\textsuperscript{280} ibid
\textsuperscript{281} Definition of Bail. \texttt{http://en.wikipedia.org/wiki/Bail}
\textsuperscript{282} ibid 20
Consequences of poor incarceration conditions

The situation in prisons is so bad that it creates more problems than it had solved. Bullying and self-harm are major problems, and suicides in custody are more common than ever. There are a huge number of suicides, because inmates cannot endure these horrible conditions. Most of the time, suicides occur during the first days of their stay and particularly amongst the young prison population and women.

The most obvious consequence of poor sanitary conditions in these countries is the high rate of inmates contracting diseases. This has an impact on public health and the community. Once released from prison, detainees infected with a communicable disease while incarcerated pose a public health risk to the communities to which they return.

These poor detention conditions have created detrimental health effects. In fact, detainees infected with HIV/AIDS, tuberculosis, were likely to pass those to their families and community after their release. Given that the biggest portion of prison population were short term sentenced detainees and remand prisoners, given that they had a high likelihood of eventually being released, the health of detainees should be a serious public health concern. In South Africa, where an estimated 40% of inmates were reported to be HIV positive, some 25,000 prisoners were released every month.

Overcrowding is the most serious challenge in developing countries prisons. Overcrowding creates security problems and encourages subversive activities among prisoners. The staff becomes unable to intervene and watches them kill each other with no consequences. Prisons become jungles, where only the strongest survive. Moreover, in an overcrowded prison, segregation of dangerous criminals from mild offenders becomes impossible. Overcrowding is also responsible for the severe strain on the essential services mentioned above, resulting in serious health hazards and disruptions in penal reformation and rehabilitation programs. Furthermore, prison overcrowding contributes to additional pressure and strain on the staff and affected their morale.

Excessive use of imprisonment and pretrial detention

Imprisonment was designed to punish offenders and teach them a lesson to make them better and more responsible citizens. Prisoners were supposed to return to a better life than the one they had prior to their imprisonment. However, as we have seen earlier, the use and purpose of imprisonment has been distorted. The consequences are incalculable.

This also had repercussions on the society. Most prisoners condemned for short-term sentences or on remand were treated like dangerous criminals. This affected their confidence and weakened them
psychologically. The result was that instead of transforming those men into better citizens, we created criminals, who would be released only to increase the criminality rate. After their jail stay, whether they were in prison on remand for a minor infraction or even declared not guilty after trial, they were still criminals in the eyes of society.

Pretrial detainees could lose their jobs, even if they stayed in preventive detention for a short period of time. Pretrial detainees endured worse detention conditions than their sentenced counterparts. There were locked up 23 hours a day. They also suffered regular invasion of privacy each time they were searched, and often feared danger from those incarcerated with them.

Detention, like incarceration, disproportionately affected individuals and families living in poverty. When an income-producing parent was detained, the family had to adjust to the loss of that income. The impact could be especially severe in poor developing countries, where the state did not provide reliable financial assistance to the indigent and where it was not unusual for one breadwinner to financially support an extended family network.

A hypothetical example from a poor rural community in the developing world revealed the medium-to-long-term economic shocks within a household as a result of the detention of one of its members. In one example, after the male head of a household was arrested and detained, the family had to sell its maize-milling machine to obtain cash for his legal fees, bail, and or money to bribe him out of jail. As the milling machine brought steady income into the household, the sale of working capital meant that soon the family had no money to hire labor or buy inputs for their beetroot plots. Beetroot production ceased, and so did income for crops. The new owner of the milling machine moved it to a distant location. Other households in the village felt the absence of the machine, and women went back to pounding maize, which increased their workload.

Detainees and their families often bribed the administration for their liberty. But corruption destroyed citizen trust in government and undermined government legitimacy. Corruption also exacerbated poverty, deterred foreign investment, and stifled economic growth and sustainable development, and undermined legal and judicial systems. Moreover, by corrupting the administration of justice, and undermining the rule of law, the irrational and excessive application of imprisonment weakened governance overall.

Consequences of the absence of reinsertion strategies

The problem of limited resources and the absence of political will can be applied here again. Following the path of their careless attitude regarding prisoners, no effort was made to facilitate the reinsertion prisoners into society. Prisoners came out of prison with no
self-esteem or self-belief, with no money, and most of all with no pride. They feel humiliated, devalued and unable to find their place in society. Instead of helping them, the society treated them as rejects, no matter what they had done, how they had changed and regardless of their culpability, they were treated with the same intolerance.

Of course, in a poor family, this had deep socio-economic and psychological repercussions. If the man of the house was unable to produce, the income of the family decreased. Even more than the economic dimension, there was a strong psychological tie to this problem. The family is torn apart with disputes, fights, and finally a divorce happened because the woman could not see her man let her and her children down. The ex prisoner found himself alone with nobody to turn to, nobody who could understand his humiliation and what he had just been through.

Society has also put innocent men in jail and released criminals. That was the sad consequence of the careless and marginal attitude of the society and the government towards prisoners. Then criminality added to the endless list of problems that developing countries had to deal with.

**REMEDIAL MEASURES**

Although the situation looks desperate, much can be done to alleviate the conditions of prisoners in detention facilities. Some proposals are as follows:

**Sanitary conditions**

AIDS is the most feared disease in developing countries. In December 2005, at Africa’s 14th International Conference on HIV/AIDS, the executive director of The Joint United Nations Program on HIV/AIDS (UNAIDS) stated that “urgent and sustained action was needed at all levels to increase access to HIV prevention and treatment services across Africa”\(^\text{283}\).

One of these levels would be to address the issue of HIV and other blood/sexually transmitted infections in the prison system. Primarily, we needed more research, as the paucity of accurate data impeded proper appraisal of the impact of the prison population on the dynamics of the HIV/AIDS epidemic in Africa. Women accounted for over 50% of people with HIV/AIDS in Africa\(^\text{284}\) and this gender disparity is even more marked among those aged 15–24 years.

\(^{283}\)Increased coordination and scale up of HIV prevention and treatment programmes needed urgently to turn the tide on AIDS in Africa, says UN-AIDS Executive Director at Africa’s 14th International Conference on AIDS. Dominique De Santis. http://www.aidsmedia.org/content/news/detail/1289

Therefore, these studies had to investigate the specific characteristics and needs of incarcerated women and juveniles as well as young children who were living in prisons with their mothers. Second, there is a need to identify which policies and intervention programs would work in developing countries’ prisons in the face of limited resources and cultural norms. For example, condom distribution recommended by WHO and UNAIDS remained highly controversial due to moral and legal barriers in many countries.

Education was a key component in a successful health intervention program. The prison offered a controlled environment where health education and risk assessment could be offered to a traditionally hard to reach population. However, what worked well on the outside might not necessarily apply behind prison walls. Therefore, the medium and content of such an intervention needed to take into account the prison “subculture” that put inmates at risk, as well as the deep-seated suspicion of authority and the low literacy rate in the prison population. Even with resource limitations, peer education and counseling programs implemented by inmates (particularly gang leaders) and correctional officers were achievable, as shown by experiences in some African prison systems, and deserve serious consideration.

To make headway in addressing issues of prison health as public health issues, developing nations would benefit from partnerships with non-governmental organizations, donor agencies and international bodies. With such backing, effective prison health initiatives providing counseling, health education, confidential voluntary testing, care pathways, strategies for interrupting transmission as well as harm reduction could be developed and implemented. Such an approach would ultimately benefit the inmates, the correctional officers, families, communities and the general populace.

**Overcrowding**

Overcrowding of convicted prisoners could be reduced to a great extent by courts resorting to alternatives to imprisonment including non-institutional treatment. Some countries such as New Zealand, Australia, and Hong Kong have developed over the years a wide range of alternatives to imprisonment, such as forfeiture and confiscation, restitution and compensation orders, home detention and periodic detention, electronic monitoring and sentencing to drug rehabilitation centers.

Many countries had probation, parole and community service, which were commonly known as traditional alternatives to imprisonment. These non-institutional treatment methods are widely used in many developed countries. However, the facts showed that very few non-institutional methods were used by developing countries. Even
these few have not been very effective due to lack of administrative provisions.

The non-institutional measures were mostly community-based corrections. The concept had evolved with the thinking that correction, if linked to the community, will be less costly, more humane and more effective than imprisonment in dealing with offenders convicted of minor offences. There was a need in the field of community corrections for a systematic and orderly development having due regard for local conditions and local needs. In developing such a system it was necessary to ensure that no individual who did not require incarceration for the protection of others was confined in an institution and that no individual was subjected to more supervision or control than required. On the other hand creation of community-based programs should have ensured that they respond not only to the needs of the offenders but also the interest of the community. If they were not administered properly it would amount to the criminal justice system going soft on crimes and criminals.

There were also economic arguments in favor of alternatives. In western societies, the supervision of offenders within a probation system was normally much less costly than the upkeep of a prisoner. On the other hand, western style probation services might not be practical options for many countries, where resources were too scarce to set up and maintain a probation system with adequate staff and finances. In these circumstances, the development of existing structures and the use of existing staff (e.g. staff of magistrates courts, municipal authorities, social agencies, administration staff of institutions where community service is implemented) and volunteers for the supervision of non-custodial sentences might be more viable and effective option (successful examples include Zimbabwe, Latvia and Russia). In Zimbabwe, for example, where a community service scheme was developed on this basis in the early 1990’s, the monthly cost of supervising an offender on community service was estimated to be about one third of that of keeping a prisoner in jail.

In order to counteract some of the negative consequences of prison overcrowding and poor sanitary conditions, specific modalities for the enforcement of custodial sentences should be used as much as possible with the aim of contributing to the treatment and resettlement of prisoners, to maintaining their family and other community ties and to reducing the tension in penal institutions.

**Modification of the criminal justice system**

An integrated approach involving all parts of the criminal justice system might be part of the solution. However, in practice, each agency worked in tight compartments isolated from each other. In some Asian countries, police, prisons, and probation came under three
separate ministries. The courts functioned independently under judicial service commissions. There was very little or no coordination existing between the different agencies, though they work to achieve interrelated objectives. Therefore the problem of overcrowding of prisons became the exclusive problem of the correctional institutions. Having realized the roles the other agencies could play in reducing the prison population such as the police expediting the investigations, and courts expediting the trial process and utilization of non-custodial methods in a greater measure, workshops, seminars and conferences have been conducted involving the different agencies through the initiative of their respective department of prisons and ministry of justice.

It was important to emphasize that the alternatives cited in the previous section alone would have very little effect on the size of the prison population. In order to meet the goal of reducing the number of prisoners, comprehensive reforms of criminal legislation need to be undertaken and sentencing practices need to be changed. Measures could include decriminalizing certain acts, providing shorter terms of imprisonment for certain offenses in addition to introducing a wide range of non-custodial sentences as an alternative, and widening possibilities for parole. By reducing the number of detainees, most countries would save enough money to build schools, instead of prisons.

However, the goal of introducing alternatives to prison was not only to address the problem of overcrowding in prisons. The wider use of alternatives reflected a fundamental change in the approach of crimes, offenders and their place in societies. This changed the purpose of penitentiary measures from punishment and isolation, to restorative justice and reintegration. When accompanied by adequate support for offenders, it assisted some of the most vulnerable members of society to live a life without having to relapse back into criminal behavior patterns. Thus, the implementation of penal sanctions within the community, rather than through a process of isolation from it, offered in the long term a better protection for society.

The private sector could provide alternative methods of design, construction, management and financing of new prisons. In fact, prisons did attract many private prison management companies and investors as long as these countries implement a series of acts designed to mitigate risks. Prisons are profitable, because prisoners represent a cheap workforce. Private management of prisons benefits prisoners also, because they have more money to invest in the maintenance of prisons, more control over the staff and offer them employment while they are in jail.

However, the most viable alternative would be a private/public cooperation to ensure the government still has some sort of control
over the operations of those private companies, while it simultaneously benefits from the private sector’s financial contribution.

States that spent large amounts of money on incarceration in an effort to promote public security could arguably use some of that money more effectively on crime prevention.

**CONCLUSION**

Developing countries need to understand that the problem of prisoners goes much deeper than decreasing the crime rate only. Prisoners released numerous transmissible diseases creating a public health concern. Most male prisoners were the primary income earners of the family. Their presence in the family was vital for many people as a man usually took care of more people than his direct family in developing countries. The excessive use of imprisonment created more problems than it had resolved. It destroyed people’s lives beyond the imaginable, leaving a definite negative mark next to their name in the eyes of society. It also created overcrowding, which was commonly responsible for most of the poor sanitary conditions in prisons and the delay in the administration of justice with the consequences we knew.

To improve the condition of prisoners in Third World countries, a number of measures need to be taken. However, because of the limited resources and the low priority of prison maintenance for developing countries governments, the measures must be different from the ones employed in developed countries to resolve the long-lasting problems in prisons. First, a revision of the legal system is imperative to apply alternative measures of imprisonment and avoid jail sentences at all costs. Then, a close monitoring of prisoners after their release to prevent the severe socio-economic consequences enumerated above is necessary. Finally, it appears urgent to determine what kind of diseases were developing inside jails, how affected the prisoners were and then to treat those affected before their release in the society to avoid contamination and possible epidemics.
RACISM

INTRODUCTION

Racism exists everywhere, and almost at the same level as in the past. Despite the popular notion of confusing it with skin-color, it is a phenomenon of far wider content, covering racism of origin, racism of gender, racism of culture, racism of social status, just to name a few of its manifestations.

Issues of race and racism have now become the essential point of interest in the social sciences. In the past two decades there have been noticeable advancements in the study and analysis of race and racism in modern-day societies. This has been reflected in the growing body of theoretical and empirically works on various facets of race and racism in both contemporary societies and historical periods.285

Racism is not a universal staple of the human condition. Racism did not always exist in the West, nor is racism a product of slavery. Moreover, even the word “racism” was not always a part of the English language. Examinations of historical records reveal that racism did have a beginning. Although it can be found in an embryonic form among the Chinese and in the late middle ages, racism is a modern and Western ideology. Racism developed prior to slavery, although it was later reinforced and magnified by slavery. Far from being the product of irrationality, fear and hatred, racism developed in Europe as a product of the Enlightenment. That “enlightenment” started a rational and scientific project to understand the world. Racism was inspired by the European voyages abroad, as a product of efficiency, a project was formed to classify and rank the diversity of the world’s plants, animals and people. For European travelers, missionaries, and ethnologists, racism provided a rational way to differentiate large civilizations based on race instead of location. Racism then originated as a theory of the superiority of western civilization.286

It is when differences that might otherwise be considered ethno-cultural are regarded as innate, indelible, and unchangeable that a racist attitude or ideology can be said to exist. Racism is most clearly expressed when the kind of ethnic differences that are firmly rooted in language, customs, and kinship are over-simplified in the name of an imagined collectivity based on pigmentation, or in the myth of descent from a superior race, as in Aryanism. But racism is not merely an attitude or set of beliefs; it also expresses itself in the practices, institutions, and structures that a sense of deep difference justifies or validates.287

Racism has had a long historical trajectory and is mainly, if not exclusively, a product of the West. It originated in a prototypical form in the 14th and 15th Centuries rather than in the 18th or 19th, and was originally articulated in the idiom of religion more than in that of natural science.

Racism is therefore not merely “xenophobia”, a term invented by the ancient Greeks to describe a reflexive feeling of hostility to the stranger. Xenophobia may be a starting point upon which racism can be constructed, but it is not the thing itself.

Racism that developed in the West had greater impact on world history than any other functional equivalent that we might detect in another era or part of the world.

DEFINITIONS

There are many definitions of racism, some of which are as follows:

- Racism is an ideology of intellectual or moral superiority based upon the biological characteristics of race. Racism typically entails a willingness to discriminate based upon a perceived hierarchy of superior and inferior races. According to Webster’s New World Dictionary, racism is a "doctoring or teaching that claims to find racial differences in character and intelligence, that asserts the superiority of one race over another, that seeks to maintain the supposed purity of a race".

- Racism is an individual’s negative prejudicial attitude or discriminatory behavior toward people of a given race or institutional personnel, policies, practices, and structures even if not motivated by prejudice that subordinate people of a given race.

- Racism is a mode of thought that offers a particular explanation for the fact that population groups that can be distinguished by ancestry are likely to differ in culture, status and power. Racists make the claim that such differences are due mainly to immutable genetic factors and are not due to environmental or historical circumstance.

- Racism is a tool to oppress and exploit specific social groups and to deny them access to material, cultural and political resources. On the other hand, these affected groups have adopted the idea of “race”. They have turned the concept around and used it to construct an alternative, positive self-identity; they have also used it as a basis for political resistance and to fight for more political autonomy, independence, and participation. From a linguistic point of view, the term “race” has a relatively young, although not precisely clear, etymological history.

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288 Waller, James, 1998 p47.
289 d Souza, Dinesh, 1995 p27.
290 Reisigl, Maryin, 2001 p2.
• Racism is a term that encompasses hatred, discrimination, segregation, overt hostility and other negative actions directed toward a racial group.291

• Racism is an ideological, structural and historic stratification process by which the population of European descent, through its individual and institutional patterns, has been able to sustain the dynamic mechanics of upward or downward mobility to the general disadvantage of the population designated as non-white, using skin color, gender, class, ethnicity or nonwestern nationality as the main indexical criteria.292

• Racism is the institutionalized oppression of groups of people based on their race. Racism is an attitude, action, or way of life whose outcome oppresses people of color and benefits white people, regardless of the stated intent.293

• In the International Convention on the Elimination of All Forms of Racial Discrimination, the term "racial discrimination" was defined as any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

• Racism is simply an irrational prejudice, a product of ignorance and fear.294

**HISTORY OF RACISM**

Racism is universal. We can find it in all societies, civilizations, and cultures from ancient history to the modern era. As we explore the globe we can see racism rear it ugly head everywhere from Europe, to Africa, Asia and the Americas.

Chinese historians of the Han dynasty in the 3rd Century B.C. describe their encounters with “savages”. The historians seemed to show unmitigated contempt for the nakedness and primitivism of the dark islanders of the south.

In ancient India, the invading Aryans described themselves as "nobly born" and the dark-skinned natives as Anaryan (not-Aryan) or "dasa" (slave), a fact which seems to give the Indian caste system a racial character, as can be seen even today.

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291 Waller, James, 1998 p47.
293 Students, Pomona College, 2002.
294 D'souza, Dinesh, 1995p2.
Africa itself is not immune to racism. The majestic Zulus in Africa have historically linked other tribes with wild beasts, and describe the rival Sothos as, "those having the color of a yellowish clay pot".295

In Europe, the Greeks being regarded aliens as "barbarians’. One of the clearest expressions of the Greek understanding of racism and slavery is evident in the work of Aristotle, "it is clear that some are by nature free, and others are by nature slaves'. Aristotle denounces virtually all non-Greeks as barbarians.

Scholars have found lots of evidence of prejudice and hostility in the Christian era, so that Christianity today is routinely criticized for encouraging, if not inventing, racism, sexism, and homophobia, and for providing a spiritual justification for slavery and colonialism. The Greeks, Romans, and early Christians made crucial distinctions between nature and custom, between civilization and barbarism, between salvation and damnation that would later be invoked to justify racism. But there is no racism in the distinctions themselves, nor can the ancient and early Christian societies of the West be rightly accused of color prejudice.296

In the late medieval and early modern periods, the differences between Christians and Jews or between Europeans and Africans embraced a racist doctrine, on Jews for the killing of Christ and on blacks for the sins of Ham.

By the early 17th Century you had to be black to be a slave in the American colonies, but it was a legal and religious status rather than a physical one that actually determined who was in bondage and who was not. In every New World slave society, some proportion of the population of African descent was acknowledged to be free or semi-free. The black servants who were imported into England and France during the 17th and 18th Centuries were automatically at the bottom of society, but they were not a separate caste below the white lower class.

Intermarriage among white and black servants occurred in both countries. In Britain it was more or less taken for granted, but in France it became a matter of official concern and led to restrictions on the bringing of black slaves back from the colonies to serve in French households. In 1778, the French government enacted a formal ban on intermarriage, but the law was not enforced.

In the 17th and early 18th Centuries, the status of Jews in Europe improved somewhat (their readmission to England and France was perhaps the strongest indication of this relative tolerance), although religiously based anti-Semitism remained endemic. The entrepreneurial Jews of Central Europe were able to widen their economic

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opportunities by shifting from money lending to general commerce. The scientific thought of the enlightenment was a precondition for the growth of a modern racism based on physical typology.

In 1735, the great Swedish naturalist Carl Linnaeus included humans as a species within the primate genus and then attempted to divide that species into varieties. This early stab at the scientific classification of human types included some mythical and “monstrous” creatures; but the durable heart of the schema was the differentiation Linnaeus made among Europeans, American Indians, Asians, and Africans. There was little doubt among whites on either side of the Atlantic that Africans were currently less “beautiful” than whites and more barbarous in their habits, and probably less intelligent. Hence, for most practical purposes, they were members of an inferior race.

The term "race" which we use so freely today did not come into general use until the 18th Century. Etymologists themselves are not sure, but the term "race" may have derived from an Arabic word “ras”, which means "head" or beginning. Yet "race" did not become a biological category, adorned with the respectability of science, until the 19th Century.

Moreover in the 20th Century, the term "race" has been used in a different sense, sometimes suggesting nationality, sometimes religion or ethnicity, or the species itself: "the German race", "the Celtic race" and "the Jewish race".297 The 20th Century witnessed many crimes of racism at the state level. Ethnic minorities in many western countries were victims of racial discrimination in employment, education and housing and numerous crimes were committed against them.

MODERN RACISM

The modern concept of races as basic human types classified by physical characteristics (primarily skin color) was not invented until the 18th Century. In the New World, where European pigmentation could be readily compared to that of black slaves or copper-toned Indians, color soon became one, but only one, of several salient identities. The term for “race” in Western European languages did have relevant antecedent meanings associated with animal husbandry and aristocratic lineages. The notion that there was a single pan-European or “white” race was slow to develop and did not crystallize until the 18th Century and the terms Christian, free, English, and white were for many years employed indiscriminately as metonyms.

In America, there were racist crimes committed against native Indians, and later against non-white immigrants such as Mexicans, Puerto Ricans, Chinese and Japanese. The society of United States has long been divided into two major racial types, white and black. Those

with a black skin color have been defined traditionally as all persons with any black African ancestry, who cannot "pass" as whites.

The most common form of contact between the two that molded the entire pattern of race relations, took place on the slave plantations of the South. Slavery was not restricted to the southern states; it existed on a smaller scale outside the South until the Civil War. Not all Negroes were slaves, but the vast majorities were.298

The climax of the history of racism came in the 20th Century. In the American South, the passage of segregation laws and restrictions on black voting rights reduced African Americans to lower-caste status, despite the constitutional amendments that had made them equal citizens.299

It is important to understand that the effort to guarantee "racial purity" in the American South has similar actions and ideologies to that of the official Nazi persecution of Jews in the 1930s. The Nuremberg Laws of 1935 prohibited intermarriage or sexual relations between Jews and gentiles, and the propaganda surrounding the legislation emphasized the sexual threat that predatory Jewish males presented to German womanhood and the purity of German blood.

Racist ideology was of course eventually carried to a more extreme point in Nazi Germany than it ever was in the American South of the Jim Crow era. Individual blacks were hanged or burned to death by the lynch mobs to serve as examples to ensure that the mass of southern African Americans would scrupulously respect the color line. But it took Hitler and the Nazis to attempt the extermination of an entire ethnic group on the basis of a racist ideology to catapult the problem of racism front and center.300

**Types of Racism**

There are many types of racism that reside throughout the world. Some of those include racism against origin and color, racism against gender, racism against belief and religion, etc. Other types of racism include spatial racism, institutional racism, internalized racism and individual racism.301

Racism against indigenous and native people, such as the racism faced by American Indians through the killings and displacement, or the problems of the Aboriginal people in Australia because of racism against descent, national origin and ethnicity.

Discrimination related to gender, disabilities, socioeconomic conditions and immigrants and foreigners (xenophobia), discrimination against interracial and interfaith marriages and marriages of individuals

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from different social classes. There is also racism in the arts, sports and music as well as discrimination against cultures, customs and traditions of ethnic minorities.

Cultural racism, on both the individual and institutional level, is manifested in the twin beliefs that philosophy, law, politics, aesthetics, economics, values, science, music and medicine are inherently superior to other disciplines. History is frequently written by winners of wars on the basis of biased political and cultural interests. Cultural racism is the most intractable, subtle, and insidious form of racism.  

No matter what the form or definition, racism hurts. It prejudices you as an individual before you even have a chance to shake hands. It makes you feel less than human because now you have to prove that you do not fit a certain stereotype.

**Contemporary Manifestations**

At the beginning of the 20th Century, what became South Africa was composed of two British colonies and two Afrikaner republics. From the end of the South African War in 1902 to the emergence of an autonomous, white-dominated Union of South Africa in 1910, the British imperialists who were in control laid the foundations for the policy that quickly became known as “native segregation”, initially the maintenance of a territorial separation between indigenous populations and the settlers.

However, in Europe and in particular in Britain, violent racism was a genuine social problem that escalated to an unprecedented level of intensity and ferocity between 1979 and 1981, and increased until 1994. In the beginning of the 21st Century, Europe saw a growing movement to clear xenophobic racism as several factors played a prominent role in feeding racist feelings and movements. Attacks on foreigners became a phenomenon characteristic of many European cities and many of those cities recorded bloody confrontations between young white racists on one hand and the young Asians or blacks on the other. Although these movements have not yet arrived in all European countries to become a scourge, the projections indicate that they will pose an increased danger in subsequent years if sufficient action is not taken to stand in their face.

In comparison, racism in the United States of America was violent and divided the South of the 1940s, 1950s, and 1960s. The violence reflected the unbelievable reality of living as a black in the American South during those decades. African Americans faced cross burnings, assaults, and racial epithets; they were required to eat at the back door of cafes; sit in the back of buses; to drink at separate water fountains.

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302 Waller, James, 1998 p49.
fountains; and to be educated with secondhand books and materials cast off from the local white schools. 305

Systems of ethnic and racial stratification have differed historically, not only in terms of the groups involved, but also the complexity and the magnitude of the distinctions made between groups. The workings of formal institutionalized systems of racial stratification, as existed in South Africa prior to 1990, or under slavery in the USA, were relatively transparent. In the former South Africa (though this is only the most paradigmatic and contemporary historical example of racial hierarchy), black people were deemed inferior to both “coloreds” and whites, and they lived in segregated “townships” as lesser beings.

Racism also came under devastating attack by the new nations resulting from the decolonization of Africa and Asia and their representatives in the United Nations. The civil rights movement in the United States, which succeeded in outlawing legalized racial segregation and discrimination in the 1960s, was a beneficiary of revulsion against the Holocaust as the logical extreme of racism. 306

The struggle of Martin Luther King, in the 1960 Civil Rights Movement, which changed the injustice and racial discrimination against black Americans, has become one of the nation’s major symbols of the loud cry against racism. 307 Even today, years after the abolition of slavery and segregation, collective inferiority feelings, emulation of white standards and values, and compensatory phenomena are still evident among some African Americans.

Even though things are getting better they are not perfect. Fully employed African Americans make only around 60% of the income of whites who have the same jobs. The African-American unemployment rate is double that of the country as a whole, 33% of blacks are poor compared to only 10% of whites, 50% of all black children live in poverty, the infant mortality rate is double that of whites, the percentage of black male high school students that go to college is lower than in 1975, and finally there are more black males in prison than in college.

Although forms of both overt and covert discrimination and prejudice are still all too prevalent in the USA and Europe, and “race” continues to play a significant role in shaping overall life chances and experiences, the USA and Britain are no longer characterized by rigid sociopolitical constraints. Rather, they are defined by a gradual modification of the social and economic parameters dividing white and non-white peoples, and by ideologies and seemingly legitimate

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305 Waller, James, 1998 p99.
discourses that enable dominant groups to maintain their hegemonic position over subordinate groups.308

Factors that Perpetuate Racism

Many factors play a political, cultural and social role in feeding racism and its sustainability in the world. The following factors are the most influential in the growth of racism:

A culture of racial superiority is the culture that contributed significantly to the modern history of the West, justified the waves of colonialism, domination and the destruction of other peoples in various continents of the world.

The media in most Western countries focuses on the many issues that awaken feelings of racism, such as issues of asylum and immigration and extremist groups. This frequently portrays indigenous communities of ethnic and religious minorities as communities harboring war and underdevelopment, violence and terrorism.

Widespread unemployment among young Westerners, who feel that foreigners "crawl" into their countries, and become competitive cheap labor, also contributes to racist feelings. This factor is an important milestone. Opinion polls have shown that unemployment is among the main concerns of European citizens.

Meanwhile, the bad behavior and misdeeds of some members of ethnic minorities living in the West contribute to reinforcing racism and lead to racist countermeasures. Such behavior leads Western societies to feel threatened in their cultural, religious, and social identity and to strengthen their fears of foreign minorities.

International Conventions and Conferences

The United Nations and other international bodies were active in addressing racism and in trying to protect people all over the world from discrimination. Here is a list of some of the major related conventions that were adopted and some of the conferences that took place:

2. World Conference against Racism, Xenophobia and Related Intolerance (May-June 2001).
3. European Conference against Racism (October 2000).
4. Regional Conference of the Americas (December 2000).


CONCLUSION

In conclusion, it is important to have a clear perspective of the existence and impact of racism today. Racism still exists and we can see it in different forms and expressions. In some parts of the world racism is still strikingly obvious, but in other parts where progress has been made towards civil liberties, racism takes more subtle forms that still alienate many ethnic minorities and immigrants in both legal and illegal ways.

Discrimination is also present against states and governments and it is based on the level of their development as well as their lack of compliance with the rules of the powerful states that do not necessarily have an internationally inclusive policy. For example, the governance of international organizations and special agencies are generally not as participatory and democratic as their charters require.

Discrimination against faith and religion has taken a sharper tone in the last decade, given a polarization in the world resulting from terrorism and the counter measures against it. Many leaders in the world are trying to counter this trend through the idea of “Dialogue among Civilizations”.

Even the Security Council of the United Nations has been a disappointing example of discrimination in international governance when it comes to the management of conflicts and the establishment of security in the world. This is, after all, where a “race” of a few powerful states calling themselves “permanent members” take and enforce decisions, that are obviously biased on their own interests.

Research has found that racism is the major challenge to the unity of people, and has contributed politically and culturally in eroding the sovereignty of nations. Racism is thus a clear and great threat to the culture of states. Discrimination at the international level creates conflicts, poverty, ignorance, and health problems and seriously prevents the development of the world at all levels.

All universal religions such as Judaism, Christianity and Islam call for no distinction and discrimination between peoples. They express no racial or color prejudice. Hopefully, that truth in these great religions will help reverse the trend towards a racism that remains a blot on the face of human history.
RESPONSIBILITY TO PROTECT

INTRODUCTION

The Declaration on Human Rights of 1948, and the two additional Covenants on Social, Economic and Cultural Rights, and on Political and Civil Rights of 1976, established a new area of concrete action and possibilities for the member states of the United Nations.

At the beginning of the 1990s, and largely as a result of the end of the Cold War, the relative “stability” of a bipolar world was replaced by a new structure which saw the disintegration of the Soviet Union and Yugoslavia, and a noticeable increase in intra-state violence. The world appeared to be suddenly overtaken by xenophobic nationalism, ethnic cleansing and mass atrocities. The decade was marked by the events in Somalia and Rwanda and Bosnia-Herzegovina, and names like Srebrenica were permanently etched on the history of contemporary times.

These atrocities placed the reputation of the United Nations and the Security Council at great peril, because of the inaction or mistiming of its decisions on the human rights basis of these conflicts. Public opinion judged the organization as guilty for its inability to fulfill due responsibility to protect human rights.

In the architecture of international law, sovereignty and the right of intervention are two conflicting principles that are widely discussed. On the one side are those who see sovereignty as a pure and absolute concept, and who quote Article 2.7 of the UN Charter, as one of the most important pillars and principles governing inter-state relationships. On the other side there are those who are committed to the concept of human rights just as absolutely, and who want it to take precedence over sovereignty.

The controversy was brought to the forefront by the former Secretary-General, Kofi Annan, in his address to the 54th General Assembly when he announced that an automatic right to protect was needed to face the new challenges. In his speech, Annan highlighted the dilemma of humanitarian intervention in Kosovo as follows: “On one side, the question of the legitimacy of an action taken by a regional organization without a United Nations mandate; on the other, the universally recognized imperative of effectively halting gross and systematic violations of human rights with grave humanitarian consequences”.

The Secretary-General then proposed to find common ground in intervention, and justified it by stating that, as a result of the crises and the uncertainty about how to proceed in the face of growing human

Secretary-General’s address to the 54th G.A. on 20 September 1999.
rights violations, the spirit of the UN Charter should be the inspiring guidance in the challenges of a new world order.

**Preliminary Conditions**

**Mandates**

The Secretary General, Kofi Annan, assigned to the Canadian government, along with a panel of experts, the task of launching the concept of Responsibility to Protect through the International Commission on Intervention and State Sovereignty (ICISS). The latter published a report in 2001 entitled “The Responsibility to Protect”. The objective of the proposal was to satisfy both the concepts of sovereignty, and of the right to intervene under some conditions when a State was unable to meet its responsibilities.

Even though there was no agreed international law or doctrine or UN instrument that regulated this new Responsibility to Protect, the provisions of Paragraphs 138 and 139 of the 2005 World Summit Outcome Document did pick up on the idea.

Jan Egeland, former Under-Secretary-General for Humanitarian Affairs, in his address to the Security Council, the stated that there were too many instances in which the United Nations did not know how to come to the defence of civilian populations in need. Security Council Resolutions 1265, 1296 and 1674 on the protection of civilians in armed conflict could eventually be the frame of reference in order to find valuable guidelines on how to proceed with Responsibility to Protect. In the last of these three resolutions, the Security Council endorsed the approach of the Outcome Document. In the same year, "the responsibility of the government of the Sudan to protect civilians under threat of physical violence" was recalled in Resolution 1706, in which the Council cited the Responsibility to Protect as a principle in the context of a specific situation.

General Assembly Resolution 46/182 on the strengthening of the coordination of humanitarian emergency assistance of the United Nations and of the guiding principles known as humanity, impartiality and neutrality, could also apply to the Responsibility to Protect, even though this resolution was designed to be implemented to help the victims of natural disasters and other emergencies that involve the loss of human lives, the flow of refugees, the mass displacement of people, and material destruction.

Another legal anchor is the Convention on the Prevention and Punishment of the Crime of Genocide of 1948. In this legal instrument, Article 1 of the Convention on the Prevention and Punishment of the Crime of Genocide asserts that "genocide, whether committed in time of peace or
in time of war, is a crime under international law which [States] undertake to
prevent and to punish”.

The tribunals such as the International Criminal Tribunals for the former Yugoslavia and Rwanda and the Rome Statute of the International Criminal Court recognize genocide, war crimes and crimes against humanity as crimes to be defeated and punished.

In this sense, the doctrine on Responsibility to Protect can count widely on humanitarian law instruments and principles of international law. Along with the tribunals, the expanding reach of international criminal law requires the international community to exercise its duty to protect and fully implement the prohibition against genocide, war crimes and crimes against humanity. The key question on Responsibility to Protect is how the international community should proceed when faced with an opposition from the requirements of state sovereignty.

**Sovereignty**

Secretary General Kofi Annan in his original address had stated that the concept of state sovereignty could be seen from different perspectives, and as such it had to evolve with the passage of time. In this regard, it meant that responsibilities were not longer just internal matters of the state.

Internally, sovereignty refers to the exclusive decisions that the government and its executive, legislative and judicial branches take. Externally, sovereignty is a status and the way in how the state interacts with others in the international sphere.

The behavior of the state towards its individuals, especially in the human rights arena, is the bridge between external and internal sovereignty. Because of this, it is imperative that states become answerable before their own society as well as other states about the manner in which they assume their responsibilities. The new doctrine on the Responsibility to Protect thus opens the gate to external intervention, and this is the principal cause of the reluctance of the majority of the member states in accepting it.

Shadows of the past also cause one of the main fears, because the colonial experience traumatized many of the States, and there are fears that this could presage a new form of colonial intervention based on the interests of external states.

If state sovereignty provides order, stability and predictability in international relations, would the Responsibility to Protect not open a new Pandora’s Box? The answer, as Thakur states, is that where a population is suffering serious harm as a result of internal war,

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insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention or sovereignty yields before the international Responsibility to Protect\(^{312}\).

It thus becomes necessary to re-conceptualize sovereignty as responsibility. “This has threefold significance. First, it implies that state authorities are responsible for the functions of protecting the safety and lives of citizens and promoting their welfare. Second, it suggests that national political authorities are responsible to citizens internally and to the international community through the UN. And third, it means that agents of state are responsible for their actions, that is to say, they are accountable for their acts of commission and omission. Would-be perpetrators of mass atrocities should fear the growth of universal justice, as a result of which they will ultimately have nowhere to run, no place to hide”. \(^{313}\)

**Selectivity**

In order to avoid the continuing Paradigm of using human rights as a political tool, selectivity must be answered by multilateralism.

Responsibility to Protect could imply a blank check signed by the developing countries to the developed countries, who rather than being interested in cooperation may use this doctrine to open doors for political interventionism.

The Bush doctrine “has had the effect of reinforcing fears both of US dominance and of the chaos that could ensue if what is sauce for the US goose were to become sauce for many other would-be interventionist ganders...one probable result of the enunciation of interventionist doctrines by the USA will be to make states even more circumspect than before about accepting any doctrine, including on humanitarian intervention or on the Responsibility to Protect, that could be seen as opening the door to a general pattern of interventionism” \(^{314}\)

Borderlessness in an interdependent world would inevitably result in political selectivity. It is even more obvious that for weak and poor states their sovereignty could become worthless before the power of the permanent members of the Security Council.

The human rights decisions and the doctrine of Responsibility to Protect thus face a dilemma: “Intervention, like nonintervention, produces resistance and de-legitimization. Not to intervene can bring upon itself the reproach of ignorance, double standards and selectivity. Inversely, the imposition of the cosmopolitan rights against resistance (not only in the concerned country, but also in the international community) sets off a standard avalanche of reproaches of imperialism and raises the coals of suspicion that one is forcing the clash of civilizations”. \(^{315}\)

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\(^{312}\) ibid, pg. 330

\(^{313}\) ibid, pg.331


\(^{315}\) ibid, pg. 15
Rule of Law

In accordance with the principles of international law and the objectives and purposes of the Charter of the United Nations, the procedures in all UN activities should follow and respect the three main pillars of the United Nations: development, maintenance of peace and security, and respect for human rights. These principles apply in all circumstances, including crises, conflicts, conflict-prevention, as well as in post-conflict and developmental contexts.

In accordance with the principles of international law, the rule of law means that activities and decisions are going to be ruled by these axioms of governance, and that all persons, institutions and entities, public and private, including the state itself, shall be accountable to laws that are publicly promulgated, equally enforced and independently adjudicated. These actions must be consistent with international human rights norms and standards. It also requires dimensions that ensure adherence to the principles of supremacy of the law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness, and procedural and legal transparency.

In all these aspects, due process is a preliminary requirement if the Responsibility to Protect is going to be implemented fairly. Rule of law should inspire the actors involved to avoid the use of the force for personal or national purposes. It also encourages refraining from the threat or use of force against the integrity or political independence of any State, the proper maintenance of peace and international security, and non-intervention in matters which are essentially with the domestic jurisdiction of any state.

Threshold criteria should be followed in every single case. This threshold should define what is an extreme case, and should draw the line in determining when military intervention is defensible, what other conditions or restraints, if any, should apply in determining whether and how that intervention should proceed, and who should have the ultimate authority to determine whether an intrusion into a sovereign state, involving the use of deadly force on a potentially massive scale, should actually go ahead?

Framework of Action

Procedure

The 2004 report of the Secretary-General “A More Secure World: Our Shared Responsibility” mentions that collective security today is weakened by three factors: (a) threats which recognize no national boundaries, are connected, and must be addressed at the global, regional

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316 A/RES/60/1. 2005 World Summit Outcome
317 Guidance Note of the Secretary-General. UN Approach to Rule of Law Assistance. April 2008
and national levels; (b) no state, no matter how powerful, can by its own efforts alone make itself invulnerable to today’s threats; and (c) it cannot be assumed that every state will always be able, or willing, to meet its Responsibility to Protect its own people and not to harm its neighbors.

Under the above circumstances, one of the aspirations of the UN, as expressed in the Charter, is to provide collective security for all. The Report highlights the continuing relevance of the idea of collective security today, emphasizing the mutual vulnerability of both weak and strong that results from increasing global economic integration. Whilst the duty of the state to protect and provide for the welfare of its own people is recognized, historical evidence demonstrates that the state can also be unable or unwilling to perform this role by itself and thus, that the principles of collective security require the international community to step in to assist in the provision, or development of the capacity to provide, necessary protection where needed. Past failures of collective action are recognized, with the report noting that “early warning is only effective when it leads to early action for prevention”. 318

Conflict prevention is one of the primary obligations of member states set forth in the Charter of the United Nations, and their efforts must be in conformity with the purposes and principles of the Charter. 319 Good offices also are one of the political tools than can strengthen the efforts to avoid a conflict, and the main role of the UN and the international community is to support such efforts at the national level.

In case that mediation, negotiation, good offices or other political exercise are not able to achieve the goal of conflict prevention, sanctions and other coercive measures should be implemented. The very last resource is military intervention as an extraordinary means once all pacific and preventive policies have been exhausted. The key question is how, who and under which circumstances could the Responsibility to Protect be implemented?

It could be under the aegis of a majority of states of the General Assembly, working under the direction of the newly created Human Rights Council, that mandates should be given to carry out the functions of the right to protect under established principles of international law, such as good faith, just cause, and the avoidance of political selectivity.

The framework of Responsibility to Protect should be upheld under the principles of upholding respect for humanity, neutrality, impartiality and independence, and above all, the rule of law.

318 Summary of “A More Secure World: Our Shared Responsibility”
319 Conflict prevention is also an activity best undertaken under Chapter VI of the Charter.
Regional organizations and other intergovernmental institutions could play a key role in the Responsibility to Protect, and as such they should be included in the process of consultations as a valuable partner.

State sovereignty should only be breached as a result of a majority agreement in the international community. In order to prevent the appearance of unilateral intervention on behalf of the Security Council, the decision making process within the UN should be reached multilaterally by the General Assembly, for example, through a majority vote in the General Assembly which is then passed on to the Security Council for ratification and enactment under Chapter VII of the UN Charter. To make the process credible, it could be mandatory that the permanent members of the Security Council refrain from using their veto powers.

**Threshold criteria**

The Responsibility to Protect embraces three specific responsibilities: *The responsibility to prevent* to address both the root and direct causes of internal conflict and other man-made crises putting populations at risk. *The responsibility to react* to respond to situations of compelling human need with appropriate measures, which may include coercive measures like sanctions and international prosecution, and in extreme cases military intervention. *The responsibility to rebuild* to provide, particularly after a military intervention, full assistance with recovery, reconstruction and reconciliation, addressing the causes of the harm the intervention was designed to halt or avert.

Military intervention for human protection should only be used in the case of a large-scale loss of life due to deliberate state action, neglect or inability to act, or a failed state situation; or in the circumstance of a large-scale ethnic cleansing, actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape.

**Peace building**

The United Nations has developed increasingly useful tools for peace-building. However, once the peacekeepers leave, the risk of a relapse into violence increases. The Peace Building Commission must develop itself into a critical tool for helping Governments to protect their people as countries emerging from conflict often lack both the necessary tools and wherewithal. It was easy for the international community to harangue and criticize, but it is expected that the Commission should be able to go behind the scenes and find out why the violence is occurring. By doing so, the Commission would be able to build an inclusive and sustainable strategic approach to peace-building.

**THE WAY FORWARD**

Civilians are increasingly the targets in violent conflicts, representing 80 percent of all casualties; their injuries, fatalities and
displacement often constitute deliberate war aims. Do human rights trump state sovereignty, and in what way?

Atrocities against human rights cannot be put on hold while waiting for Security Council authorization. On the other hand, it is also necessary to establish mechanisms for strengthening international law and streamline processes that not undermine the already turbulent security system.

In response to this turbulent era of crises and interventions, there are those who have suggested that the UN Charter should establish appropriate guidelines on how to act in times when the use of force may be legitimate in the pursuit of peace. However, it is a must that the Permanent Members of the Security Council should not use their power to advance their own national interests. This is especially important when one takes into account situations such as Iraq, Sudan, or even Iran.

It is important to define intervention as broadly as possible, to include actions from the most pacific to the most coercive without any shadow of national or strategic gain. The commitment of the international community to peacekeeping, to humanitarian assistance, to rehabilitation and reconstruction, varies greatly from region to region, and from crisis to crisis.

If the new commitment to intervention in the face of extreme suffering is to enjoy the support of the world’s peoples, it must be, and must be seen to be, as fair and consistent as possible with human rights principles. Each region and nation differs from others, and in this sense, it is also necessary to recognize that any armed intervention is itself a result of the failure of prevention. When considering the future of intervention one should take into account the values of democracy, pluralism, human rights, and the rule of law, along with preventive capabilities, such as early warning, preventive diplomacy, preventive deployment and preventive disarmament.

Prevention is the single most important aspect of the Responsibility to Protect and as such, preventive options should always be exhausted before intervention is contemplated. The exercise of the responsibility to both prevent and react should always involve less intrusive and coercive measures being considered before more coercive and intrusives ones are applied.

Because many of the conflicts are occurring in the developing world, the concept of accountability of member states towards their citizens differs, and the different perspectives between the developed and developing world run the danger of being politicized.

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52 Human Security and the New Diplomacy: Protecting People, Promoting Peace By Robert Grant McRae, Rob McRae, Don
The United Nations and the international community in general have a role to play in support of national protection efforts. If humanitarian assistance is to be trustworthy and predictable, it must be undertaken in conformity with the United Nations Charter and the principles it enshrines.

The existing institutional structures are sufficient to allow the United Nations to address issues concerning the protection of civilians in an adequate and effective manner. “It is equally necessary to maintain an adequate level of cooperation between the Security Council and other relevant organs of the United Nations. Such coordination is all the more productive when the Council operates within the limits of its competence”. S21 The only change that is required is a new commitment to the principle of the Responsibility to Protect, implemented in a fair and just manner, and only after due agreement of the international community.

CONCLUSION

As the High Commissioner for Human Rights, Louise Arbour, stated, whether one likes it or not, the fact is that the global web of our interdependence makes it impossible for anyone to claim the status of a powerless bystander in the face of gross violations of human rights. S22

Responsibility to Protect was born at a moment when state sovereignty has been redefined by the forces of the globalization, and when the state must serve its individuals and not vice versa. The 1990s was a decade that concluded with a failure to prevent or stop genocide. The UN report on Srebrenica affirms that “through error, misjudgment, and an inability to recognize the scope of the evil confronting us, we failed to do our part to save these people from the Serb campaign of mass murder”. S23

But selectivity has to be avoided, especially when some countries of the West are just as guilty as other countries of many human rights abuses. These are neatly swept under the carpet and kept away from international condemnation.

The foundations of the Responsibility to Protect, as a guiding principle for the international community of states, lie in the criteria inspired by the Charter of the United Nations and under specific legal obligations on human rights and human protection declarations, covenants and treaties, international humanitarian law and national law; the developing practice of states, regional organizations and the Security Council itself.

Sovereignty also entails the responsibility of a state to protect its people. If it is unable or unwilling to do so, the international

S21 S/PV.5898 (Resumption 1)
S22 High Commissioner addresses Dublin’s Trinity College on Responsibility to Protect, November 23, 2007
S23 Responsibility to Protect brochure
community has the responsibility to help that state achieve that goal. Authors specializing in human rights therefore pose the question of how the international community can best respond to the new challenges. Perhaps the concept of sovereignty always remains as the will of the state in acting and making the most adequate decisions for its inhabitants.

It has to be accepted that although this responsibility initially belongs to states vis-a-vis their own citizens, this responsibility must be picked up by the international community if that first tier responsibility is abdicated, or if it cannot be exercised.

Intervention in the affairs of another state has no basis in international law or in the UN Charter. Any intervention on humanitarian grounds should have the support of the international community; hence any decisions to intervene should be made multilaterally, by a majority vote within the General Assembly, and not just in the Security Council.

Preventive action should be initiated at the earliest possible stage of a conflict cycle in order for it to be the most effective. One of the principal aims of preventive action should be to address the deep-rooted socio-economic, cultural, environmental, institutional and other structural causes that often underlie the immediate political symptoms of conflicts. An effective preventive strategy requires a comprehensive approach that encompasses both short-term and long-term political, diplomatic, humanitarian, human rights, developmental, institutional and other measures taken by the international community, in cooperation with national and regional actors.

Conflict prevention and sustainable and equitable development are mutually reinforcing activities. An investment in national and international efforts for conflict prevention must be seen as a simultaneous investment in sustainable development since the latter can best take place in an environment of sustainable peace.

A successful preventive strategy depends on the cooperation of many United Nations actors, including the Secretary-General, the Security Council, the General Assembly, the Economic and Social Council, the International Court of Justice, and other UN agencies, offices, funds and programmes, as well as the Bretton Woods Institutions.

Even so, the UN is not the only actor in prevention and may often not be the actor best suited to take the lead. Therefore, member states themselves, international, regional and sub-regional organizations, the private sector, non-governmental organizations, and other civil society actors also have very important roles to play in this field.
SELECTIVITY

INTRODUCTION

Ethical issues play a tremendous role in the international political arena, especially in the lead up to, and during, World War II, when violations of human dignity reached a level of cruelty that the world had never before experienced. The extreme violence of the war, which resulted in more than 40 million deaths,\(^{324}\) demonstrated that ethical norms could easily be broken by the human tendency to strive for power.

Thus, international institutions like the United Nations, the European Union, or NATO, were created with the purpose of preventing a repetition of such violence. However, it was, and still is, necessary to question the reliability of those human rights conventions. Despite the increasing promotion of human rights all over the world, a phenomenon known as selectivity leads repeatedly to human rights violations by ignoring and even tolerating abuses against human dignity.

Global players seem willing to spread human rights ideas throughout the world, but on the other hand, they are exercising a targeted and selective policy by tolerating or ignoring the human rights violations of their friends and allies.

Reflecting on the world situation today, it is clear that it is the pursuit of national self-interest that is creating many conflicts. This is primarily due to the unequal distribution of limited human and natural resources worldwide. These are made greater by selectivity. The wealthiest countries control these resources, and obviously protect their own needs and the needs of their allies before sharing these resources with other countries. This fact contradicts the message of the United Nations Charter, which stands for human equality in all aspects of life, and for righteousness in the world as a guarantee of peaceful living in a neighborhood. It is therefore important to deal with the question of to the extent to which selectivity jeopardizes the UN’s goals and its legitimacy; as well as what major consequences that could emerge from selectivity when dealing with human rights issues.

HUMAN RIGHTS VIOLATIONS

“...The purpose of the United Nations is to bring all nations of the world together to work for peace and development, based on the principles of justice, human dignity and the well-being of all people.”\(^{325}\) Clearly, the protection of human dignity is considered to be an essential goal in the Universal Declaration on Human Rights (UDHR) as well as two subsequent International Covenants: the International Covenant on Civil and Political Rights

\(^{324}\) [wiki.answers.com](http://wiki.answers.com/Q/How_many_people_died_in_World_War_20)

(ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Unfortunately, one cannot rely on the reliability of each UN member state to promote and protect the rights that they pledge to support by signing these covenants. Despite the common desire for a peaceful world in which everybody can exercise his or her civil, cultural, economic, political and social rights, selectivity repeatedly leads to violations of these human rights. The following are some examples of rights that have been violated:

**Violation of the Right to Freedom of Expression**

Article 19 of Universal Declaration of Human Rights states “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”. The most common examples of the violation of this right come from developing countries, like the Congo or Ethiopia, where political instability often leads to excessive government control over the political opposition and the media. However, violations of this right are not limited to developing countries. Outrageous violations of the right to freedom of expression also occur in economically developed countries.

Dissenting opinions about the government in some countries are also said to be stifled. These governments constantly control both the international and national media coverage of events in an effort to prevent the full exercise of human rights by their citizens. Cases of this type of abuse almost always gain media attention. In cases where the abuse occurs in powerful economically developed nations, the abuses are treated with caution. Weaker countries who commit similar abuses have to face regular critics from human rights activists as well as criticisms about the country’s bad governance and economic struggle.

**Violation of the Right to Work**

The UN consistently recognizes the right to work, stating “Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment” and emphasizes that state parties have to ensure “fair wages and equal remuneration for work of equal value without distinction of any kind, a decent living, and safe and healthy working conditions”.

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326 www.pdhre.org/conventionsum/covsum.html
327 www.un.org/Overview/rights.html
328 www.cpi.org/attacks07/africa07/africa_analysis_07.html
329 www.globalissues.org/HumanRights/Abuses/China.asp#Chinaslackofpoliticalfreedoms
331 www.cesr.org/work/instruments; UDHR art.23
332 www.cesr.org/work/instruments ; Art. 6 ICESCR
Ideally, Western countries with a strong record of democratization would defend this principle; however this is often not the case. Unfortunately the right to work often goes unrecognized as an essential aspect of equality. That is the reason why gender inequality still manifests its self in unequal salaries between men and women even in the US. While certain countries are promoting women’s rights and gender equality in the world by criticizing others, they simultaneously ignore the gender inequality that exists in the work force of their own countries.

It is also worth mentioning the fact that the European Union uses an extremely selective policy that attempts to prevent non-Europeans from working in EU countries. The policy states that only specially qualified non-European workers are admitted to legally work in the EU. This discriminatory policy is especially prevalent in the UK. Thus, the new EU constitution reduces the common human right, the right to work, to a right exclusively for Europeans.

Violation of the Right to Freedom of Movement

The right to freedom of movement is declared in Article 13 of the Universal Declaration of Human Rights, which states: “Everyone has the right to freedom of movement and residence within the borders of each State. Everyone has the right to leave any country, including his own, and return to his country.”

First of all, when the concept of selectivity is applied to immigration laws, it creates obstacles for members of less developed countries. For example, European citizens are more or less free to travel to foreign countries without visas. However, members of developing countries may only obtain very limited visas in return, or no visas at all.

Secondly, the right to freedom of movement is usually only enjoyed by members of Western countries. Primarily because of their country’s international relations and financial aid to other countries, citizens of Western nations enjoy an uncomplicated migration system worldwide. However, visas for members of the Third World are only approved after a thorough investigation of the applicant’s educational or financial background, and are frequently refused.

Violations of Economic, Social and Cultural Rights

“Economic, social and cultural rights relate to the conditions necessary to meet basic human needs such as food, shelter, education, health care, and gainful employment. They include the rights to education, adequate housing, food, water, the highest attainable standard of health, the right to work and rights at work, as well as

333 www.guardian.co.uk/politics/2008/may/06/immigrationpolicy.immigration
334 www.news.bbc.co.uk/1/hi/programmes/newsnight/4603985.stm
335 www.hrea.org/index.php?base_id=148

205
the cultural rights of minorities and indigenous peoples”. Without these enumerated rights, human dignity would undoubtedly be endangered. However, worldwide economic and social disparities inhibit some from enjoying these rights, both in developed and developing countries worldwide.

The evidence of these violations can be found in an interesting report of Dr. Sengupta, an expert on human rights and extreme poverty, who serves as an adviser to the United Nations human rights system. He criticizes the USA for being the wealthiest country on earth, while simultaneously having one of the highest poverty rates in the First World. He supported his view by publishing statistics about this disparity. According to him “Over 12 percent of the United States population—or about 37 million people—lived in poverty in 2004, with nearly 16 percent—or about 46 million—having no health insurance,” and that, “38 million people, including 14 million children, are threatened by lack of food.” Furthermore, ethnic minorities in the United States suffer an extreme disadvantage, as, “Nearly one in four Blacks and more than one out of every five Latinos are extremely poor in the United States”.

Like the US, Germany has also been criticized by the UN Special Rapporteur on the Right to Education, Mr. Vernor Munoz, for its segregated school system. Mr. Munoz considers the German system to have “One of the lowest school-integration rates for handicapped children in all of Europe.” He also regards it as an obstacle for children from low income and migrant backgrounds in obtaining a good education. These sub-standard examples from these two developed nations have a tremendous international impact. When two of the richest countries on earth deviate from the standards of economic, social and cultural rights, less developed nations question why they should be held to these standards.

**Violation of the Right of Self-Determination**

The right of self-determination is embedded in the Charter of the UN as well as in the Covenant on Economic, Social and Cultural Rights, which states, “All peoples have the right of self-determination … to freely determine their political status and freely pursue their economic, social and cultural development”.

The Covenant also protects free disposition of natural wealth and resources for each individual “without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of...
This right relies on the individual’s freedom to make choices about their political, economic, cultural and social development.340

**The principle of “Good Governance” vs. financial aid from donors**

In an academic discourse good governance can be used to better understand the connections among states and societies. The concept of good governance is directly contradicted by the idea of a donors’ financial aid. A donor-driven discourse implies that donor agencies (the World Bank, IMF, etc.) take a leadership role in the countries in which they work. The donor agency is empowered to make decisions on how recipient countries ought to be governed in order to obtain financial aid. The role of the donor agency implies two things for the country that receives aid: democratization and an economic plan that requires maintaining political stability and reducing the country’s poverty. The main objectives of this system were democratization and the insertion of a multi party system worldwide. Furthermore, the donor system was designed to enhance the effectiveness of the national government policy, and to make the recipient countries more accountable in order to guarantee the financial transactions. To avoid misunderstandings, the good governance of a country is measured by transparency, the quality and process of decision-making.

**From “Good Governance” to “selectivity” in international aid**

External interference in developing countries changes over time, and recently the efforts of donor organizations to alter national methods of governance have drawn many critics. The expected outcome of good governance never materialized, and in most cases the results were less successful than envisioned. Because of this disappointment, the Netherlands decided to redefine their foreign aid policy in 2000. The idea was to reduce the list of countries that received aid from the Dutch by selecting only qualified candidates “with a good governance record as measured by economic performance”.342 Unlike the concept of good governance, selectivity in the international aid fund puts an emphasis on the economy and does not necessarily require a democratic system. Thus, aid funds are not viewed as necessary, but voluntary. This means that it is up to the recipient country to improve its governance structure in order to receive the financial aid. This new trend in policy promises to be more cost-effective and result-oriented; and the US and the World Bank, have tried to reorient their policies around it.

**The role of selectivity in the modern political era**

With a clear definition of selectivity as the rational best choice that is based on self-interest, and an understanding of how selectivity

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340 [www.hrweb.org/legal/cpr.html](http://www.hrweb.org/legal/cpr.html)
341 [www.unpo.org/content/view/4957/72/](http://www.unpo.org/content/view/4957/72/)
can lead to violations of human rights, we can now proceed to analyze the causes of selectivity and its impact on the world.

**Selectivity as a Tool of Policy**

We must understand the international political arena as a jungle in which only the strongest and cleverest can survive. The international community lacks a centralized authority. As a result the economically and militarily powerful countries easily exercise control over international policy. In addition, these more powerful countries determine how to distribute the limited human and natural resources. Hence, it is very important for weaker and smaller countries to obtain the protection of a powerful country and benefit from the advantages of that relationship. The main problem for these weaker countries is, finding the best choice of a powerful ally that will serve the smaller nation’s best interest. This choice is complicated by the fact that the balance of power has been changing dramatically in the last decades. This change has primarily been caused by the end of the Cold War and the collapse of the Eastern block in 1990.

**Selectivity and the new balance of global power**

With the fall of the Eastern block, the bi-polarity of world power has disappeared and has been replaced by a slowly emerging multi-polar power system. Nevertheless, since there is no central authority to govern all nations, the United States has assumed the role of leader because it is the wealthiest of all nations on earth. However, the economic development of many new countries, particularly the European Union, China, and India, jeopardizes this order.

The strong actor in this new multi-polar power system is China, whose annual economical growth attains up to 8% and whose military expenses are matching this rate of growth. This causes fear. We should not forget that until the 1980s, China was a Third World country, and only the fact that China has undergone a remarkable economical development has raised its ambitions to become a power on the world stage. China’s emerging strength threatens the US domination of international politics, because it is also a permanent member of the Security Council, where it has a big influence on critical global issues and can oppose US decisions and desires. For instance, in case of the Darfur crises, the US criticized the crises as genocide and urged the members of the Security Council to impose sanctions against Sudan. China and Russia, however, refused to recognize the situation in Darfur as a case of genocide. Both countries were obviously protecting their own interests with this decision. Russia had a weapons contract with the
Sudanese government, and China was primarily interested in the resource of oil.

In addition, China’s growing interests in Africa, especially for its natural resources, angers Western societies because Chinese foreign policies often differ strongly from Western foreign policies. The Chinese are known to seek markets, to directly invest in foreign infrastructures, and more importantly, not to be involved in internal political issues. China’s gain of power is not welcome in Western eyes as Chinese values strongly differ, and these differences evoke uncomfortable feelings. To the West, China seems uncontrollable.

The potential power of Russia is less worrisome than is the growing power of China, though Russia too is slowly regaining its erstwhile strengths.

**Latent instruments of Selectivity**

Since there is a lack of a central authority to lead all nations on earth, economically powerful countries have claimed world leadership. The dominance of economically developed countries is facilitated by their dominance within international institutions. There, they have the necessary power to control international politics, including international money transactions and the internal governance of developing countries. The use of those powers can take place in form of persuasion or coercion or “conditionalities”. The IMF together with the World Bank plays the key role on the international stage. The danger attached to the power of those institutions is very high, and unfortunately very few people are aware of the fact that these organizations are benefit mainly the most powerful sovereign countries, and not the Third World.

**The Western influence in the UN**

The United Nations was founded right after the Second World War, as an independent organization with the ambition of creating harmony among all nations. These nations were required to obey the declarations of human rights and other treaties. Since then, the UN’s main goal has been to promote human equality, justice and freedom in all rights and to provide a peaceful world where every citizen can exercise his or her civil, cultural, economical, political and social rights. Unfortunately, the institution is being hindered in this mission by the principle of selectivity that repeatedly violates human rights.

Theoretically, the UN ought to apply its laws protecting human rights to the law-breakers without considering whether the concerned nation has made a huge financial contribution to the UN, or whether or

344 [www.washingtonpost.com/wp-dyn/content/Article/2007/01/29/AR2007012901686.html](http://www.washingtonpost.com/wp-dyn/content/Article/2007/01/29/AR2007012901686.html)
346 [www.eng.globalaffairs.ru/numbers/21/1150.htm](http://www.eng.globalaffairs.ru/numbers/21/1150.htm)
not it is a friend of a powerful country. Nonetheless, the reality is that UN sanctions against nations, and the use of military force in conflict regions, have always been influenced by the Western political agenda. Because of this the UN’s legitimacy has been questioned throughout the world. Even though from the Western point of view the UN has a positive impact in the world, “in other parts of the world, however, it is no longer regarded in this beginning light. Indeed, it has come to seem an instrument of Western oppression and US hegemony - a club of the big boys intent on bullying smaller countries in the interests of Washington and its European allies.\"\n
The selective exploitation of UN power is made possible by the structure of the Security Council, which has only five permanent members: China, France, Russia, the United Kingdom and the United States. The original purpose of the Security Council was to keep all control and power in a closed committee of these Permanent Five to help prevent the escalation of local conflicts into global ones. As long as the absolute veto right will be shared only by a handful number of industrialized countries, the abuse of power will still exist.

**The role of the Bretton Woods Institutions**

Both the International Monetary Fund (IMF) and the World Bank (also known as International Bank for Reconstruction and Development), were originally launched at a meeting at \*Bretton Woods\* in 1944, before the establishment of the United Nations itself. These institutions were created to help rebuild Europe, and to avoid future economic depressions. The main task of the International Monetary Fund (IMF) is to ensure global economic stability and deal with macroeconomic issues, while the World Bank is assigned to deal with structural issues that effect economic and social development. Despite their different obligations, the institutions have become intertwined over the years, and are criticized for the policy of “good governance” which they require from recipient countries as a condition for assistance in development loans.

**The Media as a tool of “Thought Control”**

With the technological innovations of the last Century, such as the internet, radio and television, that facilitate a fast exchange of information and news, the media has gained an essential role in international affairs. Given this, the media is being used as a tool of the political leaders to systematically control the thoughts of the masses in different areas. One example is the Iraqi conflict that is being reported in the news on a daily basis. Despite the frequency of the reporting, the only emphasis lies on the American military losses or American military victories. Rarely does the media portray the Iraqi side of the war, or the number of Iraqi civilian casualties and deaths. According to the British

\[347 \text{ www.commondreams.org/archive/2007/12/13/5806/} \]
medical journal, the Lancet, approximately 30,000 Iraqi deaths were counted just in the first half of 2006. Other British studies have mentioned a total figure of well over a million for the six years since 2003. If these statistics are true, they would prove that the media can be used as a tool of mind control. Furthermore, this would prove that an essential part of the Iraqi reality is being hidden from the masses in order to not jeopardize foreign interests in the region by allowing people to question the legitimacy of these foreign interests. Since the Iraq war has been promoted worldwide as a “war against evil”, there should be no justification for the killing of innocent civilians.

**The Impact of Selectivity in Human Rights**

The majority of national and international conflicts today are caused when the principle of selectivity is applied by one side in order to pursue its own national interests. It is also worth mentioning the fact that the West claims leadership and thereby, taking the “**responsibility in maintaining the balance of power and Western values around the world**”. It does this by controlling and steering the internal governance of many countries through the international economical institutions IMF and World Bank. In analyzing this phenomenon, it can be said that there is a “**neo-colonialism**” that is enforced today by international institutions in order to undermine the national sovereignty of smaller nations. Both IMF and World Bank can thus be seen as actually debilitating the economy in these countries. The gap between the first world and impoverished countries continues to widen. Hence, the growing poverty in marginalized societies leads to mass migration towards more industrialized countries. But supranational organizations, like the European Union, have been adjusting migration policies to stop the migration flow that could negatively affect their national employment market.

Additionally, the accumulation of international conflicts in areas rich in limited natural resources are mostly caused by Western involvement. This has promoted an anti-Western sentiment and especially an anti-American feeling.

**CONCLUSION**

One of the main desires of human beings is to live in peace and security, free from war, while enjoying economic prosperity. However, throughout history, many have been denied this basic human urge because of the rivalry and conflicts between nations. Just as in a jungle, only the strongest and cleverest countries can survive and prosper in the international arena. There, international laws are meted out by the
economically strongest countries. Because of the preponderant influence of these countries, rules are imposed through international institutions like the IMF that ask weaker countries to follow the principle of “good governance” in order to accede to financial aid. This aid includes external and internal support, such as military supplies in conflict regions, or financial support for investing in infrastructure or social areas. Countries that jeopardize Western interests have to face political consequences such as international media criticism about their government and their violence against human rights.

In certain situations, when a weak country challenges Western nations, it can be punished with economic sanctions. Therefore, leaders of weaker nations must have good relations with Western countries if they want to guarantee internal political stability and their own survival. It does not matter whether or not the leaders are committing crimes against human rights, as long as they maintain good relations, they will continue to get support.

The developed countries are especially interested in maintaining their economic growth. This goal can only be achieved by preventing the development of poorer countries, and keeping them as suppliers of raw materials.

If a formerly underdeveloped country, like China, gains a higher level of unexpected political and economical power, a new distribution of global power is inevitable. This new balance of power can help prevent the escalation of international conflicts caused by the principle of selectivity, and should thus be seen as a positive development.

Furthermore, the tendency of powerful nations to fight for their own best interests at any cost often has very negative consequences. That is why many countries are questioning the United Nations and other institutions whose task it was to achieve global coherence among all nations. The absence of such agreed non-selective principles can lead to conflicts and wars, and is not in the interest of any country, weak or powerful.
SELF-DETERMINATION

INTRODUCTION
In recent years, the right of self-determination has become a very divisive subject in the international community. The post-Cold War, and the post 9/11 periods have raised new challenges and motivations in the field of human rights. Emerging ideas in a uni-polar world with an idealistic vision of extending democracy around the globe, promoting good governance, and fighting against terrorism have all become the main pretexts to insert selectivity in the implementation of the right of self-determination.

According to historians, the right of self-determination has surfaced during profound political mutations. In 1776, Americans from the 13 colonies revolted against the British because they did not have the right to decide their own political and social future. That revolt was the core of the American Revolution.

In 1789, during the French Revolution, the right of self-determination was proclaimed as a revolutionary principle of the people against the monarchy. During this era, the right of self-determination was neither a legal concept nor a human right principle; it was considered a philosophical judgment, an inspiration to fight against the monarchy and the tyranny.

The right of self-determination is mainly a moral obligation and a legal right. It is also viewed as a universal political tool to liberate people under colonial rule and foreign oppression. It has been a vital and influential ingredient in the establishment of the concept of human rights in modern international relations.

This concept is basically a Western idea, because it did not exist in other cultures or civilizations prior to the era of colonialism, and it does not exist in Islamic theology.

Since the scourges of World War II, the principle of the right of self-determination is viewed as a vital element for peace and stability around the world. It was incorporated in the Charter of the UN in 1945, though with some ambiguity. Since then, however, this principle has become anchored in international law.

Despite its vagueness and lack of a clear definition, self-determination has been a key factor in ending colonization for more than 80 countries, now full members of the United Nations.

The objective of this paper is to demonstrate that, since its foundation, the United Nations has considered the notion of the right of self-determination as an important aspect of its rationale and raison d'être.

While observing the advancement of the right of self-determination, it can be seen that it has not been applied equally to all
peoples. Rather than being a legal human right under rule of law, many have used it to advance their own political and economic hegemony.

Despite the adoption of several international legal instruments and UN documents supporting the achievement of the right of self-determination, several cases around the globe illustrate the deviation of its application from its original legal framework as an inalienable human right, to a political tool. This paper will illustrate this point with some examples.

**SELF-DETERMINATION AS A BASIC HUMAN RIGHT**

**Philosophical concept and evolution**

According to scholars, the right of self-determination has undergone several periods of its own evolution. The first period started with the Peace Treaty of Westphalia in 1648 where the idea of the sovereign nation-state was initially proposed. Each royal family was authorized to rule on his own territory without any foreign interference. This period ended with the Napoleonic era. The second period then started with the Treaty of Vienna in 1815. A third period can be seen between the after World War I, and particularly after World War II. One could assume that a fourth period is now on its course; and that it started after the collapse of the Soviet Union.

President Woodrow Wilson had raised the notion of self-determination in 1918 after the victory of the allies in World War I. He submitted to the US Congress a fourteen-point proposal designed to establish a just and lasting peace around the world.

His vision was to establish a New World Order enforcing the idea that people should be free to determine their own social and political freedom and way of development. At the same time he anticipated the demise of the German colonial power and suggested that the fate of its colonies should be determined after the conclusion of the war in accordance with the wishes of their populations. This idea raised concerns from some allies who feared that the idea would open a Pandora’s Box in their own colonies.

At around the same time, Lenin raised the issue of self-determination when the Bolsheviks came to power in 1917. He demonstrated to workers and peasants that imperialists were fighting to annex other countries while the Bolsheviks were defending their right of self-determination, and thus it was important to defend the right to independence of smaller countries. For Lenin and the Bolsheviks, the notion of self-determination was not a human rights concept but a political strategy to attract nationalists to join their struggle.

Yet, when the Bolsheviks centralized power under the leadership of the Communist Party and founded the Soviet Union,
they conveniently abandoned the principle of self-determination, particularly in the Caucasus and in Central Asia.

It’s important to highlight that during this period the right of self-determination was not yet considered a legal human rights principle but it was still an idealistic judgment. It would become a basic human rights concept only after World War II, as one of the positive ideas formalized after the War.

**Self-Determination as a Western concept**

It is also important to underline that the right of self-determination is basically a Western concept because this principle did not exist in the African civilizations prior to the arrival of foreigners, whether Arabs or Europeans. Normally Africans lived under tribal or chiefdom structures. During that era, Africans who were mainly peasants and nomads could freely travel from one place to another in the quest of food or to feed their livestock. “Prior to European colonization of Africa, the Masai herded their cattle freely across the Great Rift Valley of East Africa”.

The current African boundaries were created and imposed by the colonialists who divided Africa without taking into consideration the cultural or tribal backgrounds of the people.

The concept of the right of self-determination does not exist in Islamic theology either. The latter preaches the unification of its believers in a single community, the Muslim *Umma*. Yet, the expression *Umma* has been employed in a variety of allusions, as a nation, or a group of people, or a religious community, or humanity at large.

From this logic, one could assume that the Islamic religion does not preach any territorial limits for its *Umma*. In Iran, for example, “the Supreme Leader said the Muslim world which enjoys rich natural resources, strategic geographical locations, wide lands, large population, active work force and experts can easily turn into a unified power but big powers are opposed to such a phenomenon”.

**Self-Determination as a concept introduced in the UN Charter**

The Right to Self-Determination appeared in the international lexicon in 1945 when the founding members of the United Nations crucially incorporated it in Article 1 Paragraph 2 of the UN Charter stipulating that, “To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace”. It is also mentioned in Article 55. Primarily, it was included in the Charter of

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the UN, with an anti-colonial objective. ‘self-determination originated as an enforceable right to freedom from colonial rule’.354

Despite the inclusion of the concept of ‘equal rights and self-determination of peoples’, in the Charter of the UN in 1945, until the late 1950s the majority of people in Africa and Asia were still under colonialism or foreign occupation.

Indeed the procedure to uproot colonialism from a territory was not an easy task, and the struggle against colonialism did not end peacefully around the world; independent states were born with a costly loss of human lives.

An important study concluded that, “The entire process of decolonization was not all-smooth sailing. There were many instances when those states still intent on holding on to their colonies put up a strong resistance against having their dominions stripped from them but the calls for independence – brought home the international community the importance of achieving self-determination in order to ensure peace and security”.355

Liberation movements around the world pressured imperialists by using all means necessary to end colonialism. It was not until 1960 that the United Nations General Assembly adopted the milestone Resolution, 1514 (XV) entitled Declaration on the Granting of Independence to Colonial Countries and Peoples.

This resolution boosted the efforts of the liberation movements to continue with their struggles to end colonialism. Like all UN General Assembly resolutions, Resolution 1514 (XV) was a non-binding political declaration, yet, because of a determined political pressure it boosted decolonization efforts throughout the world.

“Despite the success of the UN’s decolonization policies, many countries felt the organization was working too slowly. Dozens of territories were still not self-governing and needed support to achieve independence. The UN General Assembly discussed the issue of decolonization and decided to put an effort into making it a higher priority. On December 14, 1960, it issued the Declaration on the Granting of Independence to Colonial Countries and Peoples also known as Resolution 1514. This declaration affirmed the right of all peoples to independence, including political freedom to help determine how they are governed”.356

Since its introduction in the UN Charter, the right of self-determination has been a vital instrument for people fighting against colonialism or foreign occupation.

355 In pursuit of the Right to Self-Determination By Y.N. Kly, D Kly Clarity Press, 2000 pg 20
But sixty years later, some territories are still under colonialism or foreign occupation.

**SELF-DETERMINATION AND THE END OF COLONIALISM**

It is important to underline that the right of self-determination is a natural and essential right for all human beings. It is universal, inalienable and indivisible and should be applied equally to all peoples. It should serve as the guiding light for humanity in the struggle for freedom and democracy around the world. Unfortunately this basic human right is not applied equally to all peoples.

Despite its ambiguous definition, the principle of the right of self-determination was introduced in other relevant international instruments and documents, for example, the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social, and Cultural Rights (ICESCR), and the International Covenant on Civil and Political rights (ICCPR).

The right of self-determination, which is considered a principal element in the motivation behind the creation of the United Nations, was only mentioned twice in its Charter (Articles 1 and 55) without any guideline or obvious definition, and in Article 73 with a clear orientation towards decolonization. “In Art.73, it is stated that UN members charged with the responsibility for peoples not enjoying self-government are obliged to respect the interests of the inhabitants of these territories”.

The negligence in not suggesting a definition of “equal rights and self-determination of peoples”, has clearly introduced some ambiguity in international law; especially when it comes to interpreting who has the right to “self-determination” or who are the “peoples’. Are they a group of people belonging to the same ethnical religious and cultural background? If yes, could they just decide their own parameters in issues of a political, social and sovereign nature? Also there’s a need to clarify the idea of territorial integrity or a nation/state boundary. These questions have allowed some countries to apply this concept in a selective way or to give consent to some minorities or groups of people for their own political aspirations.

In some regions, political and economic hegemony motivated some former colonial powers to resist quitting all their colonies, or when they were forced to leave, they unilaterally and arbitrarily introduced boundaries, which created irreparable tribal divisions and even separated unified families. “The British officials did not consult the islanders. They did not tell them what was happening to them. They did not tell anyone else what they planned to do. They just went right ahead and uprooted an entire community, ordered people from their jobs and their homes, crammed them on

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to ships, and sailed them away to a new life and foreign country. They trampled on two centuries of community and two centuries of history, and dumped their detritus into prison cells and quaysides in Victoria and Port Louis”.

In some countries, the post-colonial period created continuous conflicts among people of the same family, social, religious, and cultural backgrounds. That was the legacy of a foreign imperialism which is still devastating millions of people around the globe. Despite the fact that some countries had freed themselves from colonialism and foreign occupation, the former administrators kept a stranglehold on them. They created a neocolonialism concept; an international economic system that allows the former colonial powers to control their former colonies.

An example of a neocolonialism policy is the CFA, a monetary system which is applied in some former French African colonies. The CFA Community includes Burkina Faso, Senegal, Guinea Bissau, Côte d’Ivoire, Togo, Benin, Equatorial Guinea, Gabon, Mali, Chad, the Central African Republic, Cameroon, the Congo, and the Comoro Islands, all of whom had a common currency during the period of French colonialism. It was first introduced by the colonial power in 1945, and now, more than forty years after the independence of these countries, that CFA currency is still strongly coupled with the monetary system of their former colonial power. “In 1945 General Charles De Gaulle and his officials knew that sooner than later there would be enough pressure for them to grant independence to their colonies. So they created the CFA, which guaranteed that they would control the colonies for many decades after the so-called independence”.

The neo-colonial presence was also justified by development assistance programs, military presence or by introducing economic programs that would allow the former colonial administration a high degree of control.

THE ILLUSION OF FREEDOM

Freedom, while clearly stated on paper, was illusory everywhere. In the case of India, for example, “Indirect rule in India has a long history; the Rajputs and princely states had a fair degree of autonomy in relation to the British colonial government. In contrast, under the IMF-World Bank tutelage, the Union Minister of Finance reports directly to 1818 Street N.W., Washington D.C bypassing parliament and the democratic process”.

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358 War on America seen from the Indian Ocean by James R. Mancham page 44 Paragon House, St Paul Minnesota 1st Edition 2001
359 CFA – Currency Designed to Keep Francophone African Countries Poor? by Hinsley Njila Published 04/10/2008 http://business.africanpath.com
As mentioned previously, the right of self-determination is an inalienable human right, which should not be deviated from under any circumstances or for any political, social or religious purposes. Yet, some countries apply this vital legal human rights concept by a modus operandi under which they pick and choose who to apply this concept to and when to do so. They have thus politicized this fundamental human rights principle. Consequently, they disregard the fact that by signing and ratifying the instruments to become members of the United Nations, they have committed themselves to respect and endorse the principles of the UN Charter. “Court and governmental organizations, no matter how international in purview, will always be slowed down by considerations of geopolitics”.361

The right of self-determination should not be politicized nor manipulated to serve ideological ends or interests that might harm peoples. It should not serve a narrow national interest, but instead it should be a tool to protect humanity against injustice.

As a basic human rights element, the right of self-determination should be applied impartially, because it is essential in promoting order, security, justice and sustainable peace. It should also be a key element to establish rule of law and promote human rights in general.

Moreover, the right of self-determination has been trampled on by some countries, which supposedly claim to possess the ethical obligation of being the custodians of human rights. These ethical values do not reflect their responsibilities as custodians of human rights because they prefer to put their national, political self-interests ahead of collective interests and international moral values.

CASE STUDIES

The occupation of the Comorian island of Mayotte

Several cases of colonialism and foreign occupation around the world confirm the above assumption and can therefore be easily illustrated with examples.

The question of the occupation of the Comorian Island of Mayotte by the former colonial power, France, is one such example. It is unique in the chronicles of decolonization, a violation of the United Nations Charter and the denial of Security Council and General Assembly resolutions regarding the right of self-determination and of all UN resolutions related to this question.

In conformity with United Nations resolution 1514 (XV) of June 1973, an Agreement was signed between the colonial administrator, namely France, and the Comorian internal self-

government, to organize a global referendum for self-determination for the four Comorian islands, Grand Comore, Anjouan, Mayotte and Moheli which comprised the Comoros Archipelago. They both agreed that the independence of the Comoros Archipelago would be determined by the total results of the four islands composing the Comoros.

In December 1974 a global referendum took place on the four islands. In this referendum, 95% of Comorians voted for independence. Surprised by the unexpected result, the French Government attempted to change the law and intended to sign another agreement with the Comorian authorities to reorganize another referendum of which the result of the referendum and independence of the Comoros would be determined by the results of each island separately, and not by the Comoros as a whole. That was a transparent attempt to create divisions in the Comoros archipelago.

Learning that the French government was attempting to introduce a new law which would violate the wish of the Comorian peoples’ right of self-determination, the Comorian authorities who had adhered strictly to the Agreement of June 1973 which had stipulated that the results of the archipelago-wide referendum would determine the future of the Comoros, declared independence in July 1975.

The new Comorian State was unanimously admitted to the United Nations in November 1975 by General Assembly resolution 3385 (XXX). This resolution reaffirmed the need to respect the unity and territorial integrity of the Comoros composed of all the four islands of Anjouan, Grand Comore, Mayotte and Moheli.

Unfortunately, France decided unilaterally to occupy Mayotte, one of the four islands of the new Comorian sovereign state, without any international legal reference or without any local agreement with the Comorian people.

The occupation of the Comoros island of Mayotte is an example that proves how the rule of law could be transformed and become a theoretical principle, and how political hegemony could be permissible in an international context.

This case illustrates how those who pretend to be guardians of human rights and the rule of law are at the very those abusing the same human rights they profess to protect.

Around the globe, this idea has been used in several other similar or different matters where powerful countries use their political and economic power or military muscle to implement their hegemonic interests.

This denial is also an objection to the promotion of the rule of law, a rejection of the protection of human rights in general, an
abuse of the responsibility to preserve international peace, order and security in particular.

The unsuccessful extensive efforts by the international community to persuade violators to respect their international obligations, demonstrates the failure of the United Nations in its unfinished decolonization mission. Looking away and doing nothing is tantamount to a failure of the international community in protecting an independent state from aggression by another state.

The task of decolonization is not yet complete either, as there are still 16 Non-Self-Governing Territories remaining on the United Nations list. “We must continue with our common endeavor, in the spirit of cooperation among all parties involved to bring an end to colonialism in the shortest possible time”.

Given the lack of an implementing mechanism and a genuine procedure for executing UN resolutions, it is easy to understand how some influential member states can use their political or economic power either to protect their interests or those of their close allies by omitting to respect the rule of law and thereby applying selectivity. This lacuna and laxity has demonstrated the weakness of the UN in implementing its own decisions.

To overcome these original handicaps, to achieve its noble mission and for the UN to be more useful to human beings and to be a productive instrument of multilateralism, an efficient tool for development, several essential and substantial issues should be addressed. Member states should reform the UN particularly its bureaucratic and heavy procedural methods; they should introduce a mechanism to implement its resolutions and a procedure to follow up and monitor the implementation of its decisions. “In this connection, it appears that the 2008 session has provided us with an important “wake up call”.

We have heard detailed critiques of our method of work made by a number of territorial governmental and non-governmental representatives, which have repeated long-held criticisms over the lack of implementation of the decolonization mandate.”

Thus, the reform of the UN General Assembly and particularly the UN Security Council is a sine qua non to save the UN from pursuing the same inauspicious path as the League of Nations.

362 The list of Non-Self-Governing Territories includes, Western Sahara in Africa; Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Falkland Islands (Malvinas), Montserrat, St. Helena, Turks and Caicos Islands, United States Virgin Islands in the Atlantic and Caribbean; Gibraltar in Europe; and American Samoa, Guam, New Caledonia, Pitcairn, and Tokelau in the Pacific and Indian Oceans.

363 Press Release, 02 October 2006 GA/GASP/341 Statement by the Chairman of Fourth Committee Madju Raman Acharya.

364 Statement by Ms Michelle Joseph of St Lucia at the Closing of the 2008 Session of the United Nations Special Committee on Decolonization June 23, 2008
Efforts should be made to align it with its original mission, peace, security, and development.

The UN should emphasize its activities on its un-finished mission to liberate people under colonialism or foreign occupation. Moreover the unsolved problems of colonialism are sources of war or regional destabilization around the world. The majority of the civil wars that occurred since the fall of the Berlin Wall were basically all rooted in territorial disputes.

In the post-Cold War world, the decision to apply the right of self-determination has been applied unevenly. In some former republics or entities that broke off from their original federated states and had all political and legal merits to exercise their right of self-determination, the lack of economic and political incentives have failed to motivate the ‘custodians of human rights’ and the international community to support, recognize and implement their inalienable right of self-determination.

The cases of the Former Somalia Republic and the Former Socialist Federal Republic of Yugoslavia

The following are two further identical and comparable cases that took place in Africa and in Europe at the same period. Both the independence of the Republic of Somaliland and the break-up of the Former Republic entities of the Socialist Federal Republic of Yugoslavia are two identical cases that illustrate the above assumption.

The Republic of Somaliland was a former British protectorate which became independent in 1960. The new independent state decided to unite with the Italian Somaliland and formed the Somali Republic.

In 1991, during a period of internal tribal unrest, the central government of the Somali Republic was ousted by a coup d’etat. This crisis led to the disintegration of the Somali Republic which coincided with a period of turmoil around the world following the fall of the Berlin Wall.

In Europe at the same time period, a similar collapse took place in the Socialist Federal Republic of Yugoslavia which was a Federated State composed of six republic entities (the Socialist Republics of Slovenia, Croatia, Bosnia-Herzegovina, Montenegro, Serbia, and Macedonia). Immediately after that, most of these republic entities declared their independence.

Even though these two countries, Somalia Republic and the Socialist Federal Republic of Yugoslavia were located in different continents, their political problems in the early 1990s were similar. Originally, they were both Federated States constituted by republic entities, which seceded when the central governments disintegrated.
These two countries were also devastated by Civil Wars at the same period.

In 1991, when the Republic of Somaliland seceded from the Somali Republic, it re-acquired its original international boundaries inherited from the British after its independence in 1960, prior to its unification with the Somali Republic. It has established a functioning and stable constitutional democracy. Eighteen years later, however, it is still in pursuit of international recognition as a sovereign country. In Europe, however, the former Yugoslavia Republics entities which seceded from the central government and declared their independence, were duly recognized by the international community as sovereign states.

Similarly, earlier this year, Kosovo, an autonomous province of the Republic of Serbia, declared its independence and was also immediately recognized as a sovereign state by several countries. By doing so, these countries have created a precedent in the international community because several provinces and regions which are integral parts of sovereign states might also claim similar independence. The recognition of the controversial independence of Kosovo was an obvious demonstration of a political objective, because Kosovo was an autonomous province of a sovereign state and did not have any independent republic status as was the case of the other republic entities of the former Yugoslavia. Its recognition was therefore a violation of the territorial integrity of a sovereign state. Politically speaking, the countries that have recognized the independence of Kosovo have participated and accepted the dismemberment of the Republic of Serbia, an independent state, a member of the United Nations, and have therefore created a precedent, and have also generated tension and instability in a volatile region.

It is important to emphasize that to preserve peace and security around the world and promote human rights to all peoples, the right of self-determination should be respected and applied equally and should not be used to separate or dismantle sovereign and independent states. The international community should solidify the vested right acquired through different international instruments and treaties.

The fact of recognizing the independence of the Republic entities of the former Yugoslavia and a province of a sovereign state, and of failing to recognize the independence of the Republic of Somaliland is an ideal example which proves that the right of self-determination is not applied equally to all peoples as stipulated by the Charter of the United Nations.

Based on the original independent status acquired from the former colonial power, the British, in 1960, the case of the Republic of
Somaliland has all the political merits to be recognized as a sovereign state but the international community has denied this basic human right. “Somaliland has done what it could on its own, and is now appealing to the international community not to let its people down, who have played by the highest standards of international rules and acted with exceptional fortitude, but who face onerous difficulties due to the isolation brought about by non-recognition. It would be unfair to tie their fate to that of their brethren in the rest of the former Somali Republic, which is still in turmoil”.

The question of Jammu and Kashmir is another one of the most complex legacies of Western colonization; its geographic location has made the issue of the unfinished liberation of the people of Kashmir more complicated because four countries, Afghanistan, China, India and Pakistan, surround the disputed territory. “Since the founding of India and Pakistan as separate states in 1947, the dispute over who should control Kashmir has been one of the world’s most enduring and violent conflicts. In 1999, the two states came close to war over a border incursion by Muslim partisans into the Kargil region, which borders Kashmir in India. According to the Indian government those involved were trained in and backed by Pakistan”.

The Kashmir dispute is definitely an issue of self-determination; it is also a territorial claim between three rival countries sharing borders with Kashmir, namely, China, India and Pakistan. Their claims are essentially based on religious rights and political and cultural affiliations The problem is also an issue of human rights because the people of Kashmir have being deprived from their right to decide their own future without the interference of any external political support or guidance.

The disputed territory of Kashmir has instigated wars and border fighting between India and Pakistan and India and China who all claim partial or full claims to the territory. This disputed territory is now occupied and administrated by these three rival countries. Thus the problem has become a regional issue of international concern. Consequently, the crisis in Kashmir has fueled a nuclear competition between the rivals involved in the issue and has thereby created permanent ethnical and religious conflicts and tension in the region and around the globe. “This conflict, between two of the world’s most populous countries, both with nuclear capability has the ominous potential to escalate into theater nuclear war, or beyond”.

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365 Accomplishments and remaining challenges.  
http://www.somalilandgov.com/challenges.htm

366 http://www.globalpolicy.org/security/issues/indindx.htm

367 http://www.flashpoints.info/countries-conflicts/Kashmir-India_vs_Pakistan
The core of the problem is the disputed ownership of Kashmir. Pakistan is advocating the cause of the people of Kashmir and claims that the latter have been “united” with India against their will because they were never exercised their right of self-determination. India supports its claims by stating that the question of Kashmir is a matter of territorial integrity, while at the same time disregarding a very large number of UN Security Council resolutions relating to this dispute. China’s interest in this disputed land is mainly based on the territory geostrategic situation. Meanwhile within Kashmir, a separatist movement has surfaced and is struggling for an independent state.

The question of Kashmir started during the partition of India and Pakistan in 1947 when the Britain, the former colonial power, withdrew from the India, and divided it along religious backgrounds. It created Pakistan, predominantly Muslim, and India, largely Hindu.

The question was one of dealing with the “Princely States” of which Kashmir was among several others. The British offered those Princely States two choices, either to accede to India or Pakistan or to become independent nations. Most of the Princely States; took their decisions according to the religious background of their population, and to the geographic contiguity with either Pakistan or India.

Yet this procedure did not work for Kashmir because while the vast majority of the population was Muslim, the ruler happened to be a Hindu. This internal political structure raised the issue on who had the right to decide the future of Kashmir, the population or the ruler (Maharaja).

In October 1947, after an incursion of tribes from across the border in Pakistan the situation in Kashmir deteriorated. Facing that situation, the Maharaja who was in favor of the independence of Kashmir requested military assistance from India. The latter agreed to assist the Maharaja under two conditions; first that the Maharaja should first declare Kashmir’s accession to India in consultation with the people of Kashmir. The Maharaja signed the accession of Kashmir to India without consulting the population.

In 1948, India approached the UN to resolve the problem and the UN Security Council adopted several resolutions instructing that the will of the people of Kashmir must be expressed through a democratic, free and impartial plebiscite under the supervision of the UN. The government of India, disappointed with this unexpected outcome, initially agreed to that plebiscite, but later reneged. To date the plebiscite ordered by the Security Council has not taken place.

The Kashmir dispute is also the result of a mismanaged decolonization process where the people of the territory were not given their inalienable right to decide their own political, cultural and economic future.
The problem of Palestine

The problem of Palestine is another example that proves the same hypothesis. Like the Kashmir dispute, the problem of Palestine started in 1947 when the former British colonial power, decided to terminate its mandate on Palestine and to hand over the responsibility to the United Nations.

In November 1947 the UN General Assembly passed Resolution 181, the United Nations Partition Plan for Palestine, which was a plan to resolve the Arab-Jewish conflict by partitioning the territory into two separate states, Jewish and Arab.

The plan was rejected by Arab and Muslim countries, which reacted violently. Later, it was accepted by the Jewish leaders who declared the creation of the State of Israel on 15 May 1948, a day before the end of the British mandate. Following the independence declaration of Israel, Arab-neighboring countries attacked Israel and the 1948 Arab-Israeli War followed. As a result of the War, Israel occupied more than 77% of the Palestine territory. Consequently, the United Nations Partition Plan for Palestine was never implemented and it has inflamed a larger Arab-Israeli conflict.

Despite the active role of the UN General Assembly to resolve this conflict, several resolutions have been adopted in this regard but since the latter are non-binding, they only play the role of an international political pressure and have symbolic influences. The problem was complicated during the 1967 War between Arab countries and Israel; also known as the Six Day War, during which Israel seized additional Palestinian territory, the Egyptian Sinai Peninsula and the Syrian Golan Heights.

In November 1967 after the Six Day War, the UN Security Council adopted Resolution 242 calling upon Israel to withdraw from the Arab territories that were occupied. Yet in this resolution, the Security Council did not request the application of Chapter VII of the Charter of the UN, thus, arguably it becomes a non-binding, and consequently, Israel has disregarded all Security Council resolutions related to this issue. Since then the Security Council has tried to adopt consequential resolutions but these were unsuccessful because of the supporting veto that they received from one Permanent Member.

Selectivity and double standards

The above cases are few classic examples, which prove that the right of self-determination is not applied equally to all peoples. They also demonstrate how the UN Security Council applies selectivity and double standards on political issues and neglects the rule of law. Thus, despite the fact that all UN Security Council resolutions are mandatory, depending on the interest of some Permanent Members of the Security Council, the Security Council adopts unambiguous
resolutions requiring mandatory action in some cases, and non-binding resolutions in others.

It’s important to underline that the problem of the people of Kashmir and Palestine are politically and historically identical, because they were both colonized by the British and their plights started after the former colonial power decided the partition of these two former colonies. Besides, they are both conspicuous examples that demonstrate how the principle of the right of self-determination and human rights are sometimes applied on a selective basis by the UN Security Council.

When comparing these few examples and many other similar cases around the globe, one could thus presume that the right of self-determination is not always applied equally to all peoples. Its application depends on the political will and economic interests of the more powerful states, and could therefore be applied accurately to one case and ignored in another similar one.

CONCLUSION

The right of self-determination is a concept originating from the Peace Treaty of Westphalia in 1648. It then went through several changes during global mutations. It is actually a Western concept introduced in international law as a basic human rights principle only after the creation of the United Nations in 1945.

Since its introduction in the Charter of the UN and in other international instruments and treaties, the right of self-determination has played a major role on the de-colonization and liberation of more than some 80 countries.

The struggle against colonialism did not end peacefully around the world because in some cases, the right of self-determination was misinterpreted and mismanaged by the former colonial powers, obliging some countries to revolt and free themselves. Yet, until today, several territories are still under colonialism or foreign occupation or alien domination.

The right of self-determination is an inalienable legal human right in international law, a right that offers every human being to contribute and enjoy religious, economic, social, cultural and political freedom, a right that should be applied logically and equally to all. Unfortunately, in some cases it has been applied according to economic and political interests, and in others it has not.

In recent years and particularly after the end of the Cold War, the right of self-determination has raised anxieties around the world. Some rich and powerful countries interpret it as a tool to advance their own political and foreign policy interests, instead of as a principle of the rule of law.
Good governance, the imposition of democracy, humanitarian intervention, political aspirations, and the fight against terrorism, have all been used as justifications by some for the double standards in the imposition or denial of the right of self-determination without impartial reference to rule of law, or to the territorial integrity and political unity of independent states. “The September 11, 2001 terrorist attacks and the war on terror have brought a sense of wariness to the world, and especially to countries such as the United States and the United Kingdom. This limiting for the sake of security has made the ideals of the United Nations more difficult to keep-ideals such as promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion”.

The right of self-determination is a complex concept. It is considered as a universal right for individuals living in a society to have their own political, religious, social and cultural freedom. It is also claimed as a collective right of peoples living within specific geographic and political parameters.

Around the globe there are several cases where people are still under foreign occupation and have been denied their right of self-determination because of political motivations or abuse of the rule of law. In some identical cases with similar political and historical merits, the right of self-determination is applied by some countries in a selective manner at the expense of the rule of law. One could thus conclude that the right of self-determination is not applied equally to all peoples.

Complicating this even further is the difficulty of deciding how deep this right of self-determination should go in its relationship with the possibility of secession. Since the concept of territorial integrity is built into the structure of international relations (Article 2.7 of the UN Charter), the problem becomes one of identifying who are the peoples or groups who are entitled to exercise this right of self-determination. The right of self-determination thus borders dangerously on the “right of secession”, something that states have never been inclined to accept easily. That is perhaps why an effort is currently being made by some Western states to replace the established concept of the “right of self-determination” with a new concept of the “right of autonomy” instead.

368 Decolonization, Dismantling Empires and building Independence by Sheila Nelson pg 72 Mason Crest Publishers
SLAVERY

INTRODUCTION

There is no doubt that slavery and the slave trade were appalling tragedies in the history of humanity, not only because of their abhorrent barbarism but also because of their magnitude, organized nature and especially their negation of the essence of the victims. Slavery is a crime against humanity and should always have been considered as one.

This paper will examine the definition of slavery, review the history of slavery worldwide, highlight the efforts to eliminate slavery and examine the contemporary situation.

Although slavery is a very old phenomenon, it exists in modern time, and efforts to eliminate it are largely unsuccessful.

DEFINITIONS

The word slavery is often used as a pejorative to describe any activity one finds unpleasant or distasteful. On the one hand, this means the word slavery is applied in situations where it does not technically fit the definition. On the other hand, it also means that it is often not applied in situations that do fit the definition, but where the speaker feels that everyone has a duty to perform the action. Examples of the latter might include jury duty or military conscription, where a person is compelled to perform a job and is paid much less than one would have sought for a similar job in a free market.369

The first definition of slavery that appears in an international agreement appeared in the Slavery Convention of 1926 which defined slavery in the first Article as: “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised... and the slave trade includes all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves”.370

The definition of slavery was further refined and extended by a 1956 supplementary convention. The treaty augments the 1926 convention by acting to ban debt bondage, serfdom, servile marriage and child servitude.

Enslavement is deemed a criminal against humanity that falls under the jurisdiction of the international criminal court, which was established in 2002, and it is defined as "the exercise of any or all of the powers attaching to the right of ownership over a person and includes

370 Slavery Convention of 1926.
the exercise of such power in the course of trafficking in persons, in particular woman and children.” It is obvious that this definition is similar to the definition of the Convention of 1926.

In addition, slavery is defined as a social-economic system under which the slaves are deprived of personal freedom and compelled to work.

The definition of slavery has been controversial because there have been arguments about which practices should be categorized as slavery and thus designated for elimination. Also, while definitions have often been accompanied by obligations on states to carry out particular actions, there has been confusion about how to best accomplish the eradication of different forms of slavery.

Definitions of slavery have caused controversy because opinions differ about which practices should be categorized as slavery and thus designed for elimination. Nevertheless, there is general agreement among historians, anthropologists, economists, sociologists, and others who study slavery, that most of the following characteristics should be present in order to term a person a slave:

In some societies slaves were considered movable property, in others immovable property, like real estate. They were objects of the law, not its subjects. Thus, like an ox or an ax, the slave was not ordinarily held responsible for what he did.

As there are limits in most societies on the extent to which animals may be abused, so there were limits in most societies on how much a slave could be abused.

The slave was removed from lines of natal descent. Legally and often socially he had no kin. No relatives could stand up for his rights or get vengeance for him. As an “outsider,” “marginal individual,” or “socially dead person” in the society where he was enslaved, his rights to participate in political decision making and other social activities were fewer than those enjoyed by his owner. The product of a slave’s labour could be claimed by someone else, who also frequently had the right to control his physical reproduction.

**HISTORY OF SLAVERY IN ANCIENT CIVILIZATIONS**

**Slaves in Ancient Babylon**

Information about slaves in early societies relates mainly to their legal status, which was essentially that of an object, or part of the owner’s valuable property.

The Code of Hammurabi, from Babylon in the 18th Century B.C., gives chilling details of the different rewards and penalties for

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371 Rome Statute of the International Criminal Court.
surgeons operating on free men or slaves. Surprisingly, Babylonian slaves were themselves allowed to own property.

**Slaves in Ancient Greece**

The first civilization in which we know a great deal about the role of slaves is that of ancient Greece. Slaves in Ancient Greece suffered a lot because they had no power or status. They had no right to a family of their own, could not own property, and had no legal or political rights.

By the 5th Century B.C. slaves accounted for as much as one-third of the total population in some city-states. Greeks took many slaves from non-Greek populations, but they also enslaved other Greeks in war. Unlike in Rome, freed slaves in Greece did not become citizens.

**Slaves in Ancient Rome**

As the Roman Republic expanded outward, entire populations were enslaved, thus creating an ample supply. The people subjected to Roman slavery came from all over Europe and the Mediterranean.

Such oppression by an elite minority eventually led to slave revolts, among which the Third Servile War led by Spartacus was the most famous.

Greeks, Berbers, Germans, Britons, Thracians, Gauls (or Celts), Jews, Arabs, and many more were slaves used not only for labor, but also for amusement. If a slave ran away, he was liable to be crucified. By the late Republican era, slavery had become a vital economic pillar in the wealth of Rome.

**Slaves in Ancient Egypt**

The Egyptians used slaves captured in war or bought from foreigners. Contrary to popular belief, the great pyramids were built by free, not slave, labor. The Egyptians did not use slaves in great numbers. The lands were farmed by free peasants who gave the Pharaoh a portion of their crops.

All of the slaves captured in war were considered the property of the Pharaoh and were not sold to private citizens.

Slavery is also found in the sections of the Bible related to Egypt. Joseph is sold into slavery in Egypt, and after his time, at the beginning of Exodus, all the Hebrews of Egypt had been reduced to slave laborers.

**Slaves in Ancient China**

In ancient China, the lives of slaves were the hardest of all Chinese. Many rich Chinese families had slaves to do the menial work.

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for them, both in the fields and at home. The Emperor and his court usually owned hundreds or even thousands of slaves. Most people were born slaves because their mothers were slaves; other people were sold into slavery to pay debts and others were captured in raids or battle.\(^{379}\)

**EUROPE**

**Old Times**

In the Viking era the Norse raiders often captured and enslaved the weaker peoples they encountered. In the Nordic countries the slaves were called "thralls". The thralls were mostly from Western Europe, among them many Franks, Anglo-Saxons, and Celts. There is evidence of German, Baltic, Slavic and southern European slaves as well. The slave trade was one of the pillars of Norse commerce during the 6th through 11th Centuries. The slave raids came to an end when Catholicism became widespread throughout Scandinavia. As in the rest of Catholic Europe, the Scandinavian representatives for the church held that a Christian could not morally own another Christian. However, the moral aspect was not considered binding by church representatives in regards to enslavement of Africans. The thrall system was finally abolished in the mid-14th Century in Scandinavia. In the late 18th Century, Denmark-Norway set up slave colonies on the Caribbean islands of Saint Croix, Saint Thomas and Saint John and the Swedish King Gustav III established a Swedish slave trade colony on the Caribbean island Saint Barthelemy. In 1803, Denmark-Norway banned export trade in slaves, the first nation to do so, and in 1813 Sweden followed suit. Slavery in the colonies was finally abolished by Sweden (then in union with Norway) in 1847 and by Denmark in 1848.\(^{380}\)

Slavery in early medieval Europe was so common that the Roman Catholic Church repeatedly prohibited it—or at least the export of Christian slaves to non-Christian lands was prohibited. The Mongol invasions and conquests in the 13th Century made the situation worse. Slave commerce during the Late Middle Ages was mainly in the hands of Venetian and Genoese merchants and cartels, who were involved in the slave trade with the Golden Horde. For a long time, until the early 18th Century, the khanate maintained a massive slave trade with the Ottoman Empire and the Middle East. Medieval Spain and Portugal was the scene of almost constant warfare between Muslims and Christians. Slavery remained a major institution in Russia until the 1723, when the Peter the Great converted the household slaves into house serfs.\(^{381}\)

The 15th Century Portuguese exploration of the African coast is commonly regarded as the harbinger of European colonialism. Britain played a prominent role in the Atlantic slave trade. The "slave triangle"

\(^{379}\) ibid


\(^{381}\) ibid
was pioneered by Francis Drake and his associates. In 1807, following many years of lobbying by the Abolitionist movement, the British Parliament voted to make the slave trade illegal anywhere in the empire. Only in 1768 was a law passed in Poland that discontinued the nobility’s right of life or death over serfs. Some of the Roma people were enslaved over five centuries in Romania until abolition in 1864. Slavery in the French Republic was abolished in February 1794.382

**Modern Times**

Between 1933 and 1945, the Nazi regime created labor camps in Germany and Europe. Between 1930 and 1960, the Soviet regime created many Lageria (labor camps) in Siberia. It is estimated that there may have been 5-7 million people in these camps at any one time. Since the fall of the Iron Curtain, the impoverished former Eastern bloc countries such as Albania, Moldova, Romania, Bulgaria, Russia, Belarus and Ukraine have been identified as major trafficking source countries for women and children. Young women and girls are often lured to wealthier countries by the promises of money and work and then reduced to sexual slavery. It is estimated that two-thirds of the women trafficked for prostitution worldwide annually come from Eastern Europe, three-quarters have never worked as prostitutes before. The major destinations are Western Europe (Germany, Italy, Netherlands, Spain, UK, and Greece), the Middle East (Turkey, Israel, and the United Arab Emirates), Asia, Russia and the United States. An estimated 500,000 women from Central and Eastern Europe are working in prostitution in the EU alone. It is estimated that half million Ukrainian women were trafficked abroad since 1991 (80 % of all unemployed in Ukraine are women). Russia is a major source of women trafficked globally for the purpose of sexual exploitation; Russian women are in prostitution in over 50 countries. In poverty-stricken Moldova, where the unemployment rate for women is estimated as high as 68 %, one-third of the workforce lives and works abroad.383

**AFRICA**

**Old Times**

Slavery was endemic in Africa and part of the structure of everyday life. During the 16th Century, Europe began to outpace the Arab world with its slave traffic from Africa to the Americas. The Dutch imported slaves from Asia into their colony in South Africa. The Middle Passage, the crossing of the Atlantic to the Americas, endured by slaves laid out in rows in the holds of ships, was only one element of the well-known triangular trade engaged in by Portuguese, Dutch, French and British. The Atlantic slave trade peaked in the late 18th

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382 ibid
Century, when the largest numbers of slaves were captured on raiding expeditions in the interior of West Africa. It is estimated that over the centuries, twelve to twenty million people were shipped as slaves from Africa by European traders, of whom some 15% died during the terrible voyage, many during the arduous journey through the Middle Passage. The great majority was shipped to the Americas, but some also went to Europe and the south of Africa. The end of the slave trade and the decline of slavery were imposed upon Africa by its European conquerors. It is estimated that up to 90% of the population of Arab-Swahili Zanzibar was enslaved. Roughly half the population of Madagascar was enslaved. Slavery continued in Ethiopia until the brief Second Italo-Abyssinian War in October 1935, when it was abolished by order of the Italian occupying forces. In August 1942, Haile Selassie issued a proclamation outlawing slavery. Between 1609 and 1616 England alone had a staggering 466 merchant ships lost to Barbary pirates. Slave-taking persisted into the 19th Century when Barbary pirates would capture ships and enslave the crew. Even the United States was not immune. In 1783 the United States made peace with, and gained recognition from, the British monarchy, and in 1784 the first American ship was seized by pirates from Morocco. Payments in ransom and tribute to the Barbary States amounted to 20% of United States government annual revenues in 1800. In Africa, the most important slave markets were the ports of Morocco, Tripoli, Algiers and Tunis.

**Modern Times**

Slavery in Mauritania was legally abolished by laws passed in 1905, 1961, and 1981, but it has never been criminalized, and several human rights organizations report that the practice continues there. In Niger, slavery is also a current phenomenon; a study has found that more than 800,000 people are still slaves, almost 8% of the population. The trading of children has been reported in modern Nigeria and Benin. In parts of Ghana, a family may be punished for an offense by having to turn over a virgin female to serve as a sex slave within the offended family. In this instance, the woman does not gain the title or status of "wife". In parts of Ghana, Togo, and Benin, shrine slavery persists, despite being illegal in Ghana since 1998. In this system of ritual servitude, sometimes called *trokosi* in Ghana or *vodounsi* in Togo and Benin, young virgin girls are given as slaves to traditional shrines and are used sexually by the priests in addition to providing free labor for the shrine. Slavery in Sudan continues as part of an ongoing civil war.

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384 ibid
Evidence emerged in the late 1990s of systematic slavery in cacao plantations in West Africa.  

**AMERICAS**  
**Old Times**

In pre-Columbian Meso-America the most common forms of slavery were those of prisoners-of-war and debtors. Slavery was not usually hereditary; children of slaves were born free. Many of the indigenous peoples of the Pacific Northwest Coast, such as the Haida and Tingit, were traditionally known as fierce warriors and slave-traders, raiding as far as California. The Paraguayan War contributed to end slavery, since slaves enlisted in exchange for freedom. In Colonial Brazil, slavery was more a social than a racial condition. Slavery was legally ended nationwide and Brazil was the last nation in the Western Hemisphere to abolish slavery. Slavery was commonly used in the parts of the Caribbean controlled by France and the British Empire.

The first historically significant slave in what would become the United States was Estevanico, a Moroccan slave and member of the Narváez expedition in 1528, who acted as a guide on Fray Marcos de Niza’s expedition to find the Seven Cities of Gold in 1539.

It was not until the Slave Codes of 1705 that the status of African Americans as slaves would be sealed. This status would last for another 160 years, until after the end of the American Civil War with the ratification of the 13th Amendment in December 1865, eight months after the cessation of hostilities. After the failure of Reconstruction, freed slaves in the United States were treated as second class citizens. For decades after their emancipation, many former slaves living in the South sharecropped and had a low standard of living. In some states, it was only after the civil rights movement of the 1950s and 1960s that blacks obtained legal protection from racial discrimination.

**Modern Times**

Although slavery has been illegal in the United States for nearly a century and a half, the United States Department of Labor occasionally prosecutes cases against people for false imprisonment and involuntary servitude. These cases often involve illegal immigrants who are forced to work as slaves in factories to pay off a debt claimed by the people who transported them into the United States. Other cases have involved domestic workers.

With regard to other South American countries, during the period from late 19th and early 20th Centuries, demand for the labor-intensive harvesting of rubber drove frontier expansion and slavery in Latin America and elsewhere.

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385 Ibid
387 Ibid
ASIA

Old Times

Even though no formalized slave trade has existed in South Asia, un-free labor has existed for centuries since the medieval ages, in different forms. The early Arab invaders of Sind in the 700’s are reported to have enslaved tens of thousands of Indian prisoners, including both soldiers and civilians. Later, during the Delhi Sultanate period (1206-1555 A.D.), references to the abundant availability of low-priced Indian slaves abound. Slavery was abolished in both Hindu and Muslim India by the Indian Slavery Act of 1843. Provisions of the Indian Penal Code of 1861 effectively abolished slavery in India by making the enslavement of human beings a criminal offense. Elsewhere, Korean slaves were shipped to Japan during the Japanese invasions of Korea in the 16th Century. Between the 17th and the early 20th Centuries one-quarter to one-third of the population of some areas of Thailand and Burma were enslaved.388

According to Modern Times Human Rights Watch, there are currently more than 40 million bonded laborers in India, who work as slaves to pay off debts; a majority of them are Dalits. There are also an estimated 5 million bonded workers in Pakistan. As many as 200,000 Nepali girls, many under 14, have been sold into the sex slavery in India. Nepalese women and girls, especially virgins, are favored in India because of their fair skin and young looks. Slavery was abolished in Nepal in 1924. Slavery in China has repeatedly come in and out of favor. Slavery in China was finally abolished in 1910, although the practice apparently still continues unofficially in some regions. Slavery in Japan was, for most of its history, indigenous, since the export and import of slaves was restricted by the fact that Japan is a group of islands. During the Pacific War of 1937-45, the Japanese military used millions of civilians and prisoners of war as forced labor, on projects such as the railways. Approximately 5,400,000 Koreans were conscripted into forced labor from 1939 to 1945. About 670,000 of them were taken to Japan, where about 60,000 died between 1939 and 1945, due mostly to exhaustion or poor working conditions. According to the International Labor Organization (ILO), an estimated 800,000 people are subject to forced labor in Myanmar.389

OCEANIA

In the first half of the nineteenth Century, small-scale slave raids took place across Polynesia to supply labor and sex workers for the whaling and sealing trades, with examples from both the westerly

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389 Ibid

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and easterly extremes of the Polynesian triangle. By the 1860s this had grown to a larger scale operation with Peruvian slave raids in the South Sea Islands to collect labor for the guano industry. Slavery was outlawed when the British annexed New Zealand in 1840, immediately prior to the signing of the Treaty of Waitangi, although it did not end completely until government was effectively extended over the whole of the country with the defeat of the Kingi movement in the wars of the mid-1860s. The isolated island of Rapa Nui/Easter Island was inhabited by the Rapanui, who suffered a series of slave raids from 1805 or earlier, culminating in a near genocidal experience in the 1860s. The 1805 raid was by American sealers and was one of a series that changed the attitude of the islanders to outside visitors. Reports in the 1820s and 1830s indicated that all visitors were receiving a hostile reception. In December 1862 Peruvian slave raiders took between 1,400 and 2,000 islanders back to Peru to work in the guano industry; this was about a third of the island's population and included much of the island's leadership, and possibly the last who could read Rongorongo. After intervention by the French ambassador in Lima, the last 15 survivors were returned to the island, but brought with them smallpox, which further devastated the island.390

**ISLAMIC WORLD**

**Old Times**

Historians say the Arab slave trade lasted more than a millennium. The Arab or Middle Eastern slave trade is thought to have originated with trans-Saharan slavery. Arab, Indian, and Oriental traders were involved in the capture and transport of slaves northward across the Sahara desert and the Indian Ocean region into Arabia and the Middle East, Persia, Central Asia and India. The slave trade from East Africa to Arabia was dominated by Arab and African traders in the coastal cities of Zanzibar, Dar es Salaam and Mombasa. Some historians estimate that between 11 and 17 million slaves crossed the Red Sea, Indian Ocean, and Sahara Desert from 650 to 1900 A.D. Even as late as 1908, women slaves were sold in the Ottoman Empire. Most of the military commanders of the Ottoman forces, imperial administrators and de facto rulers of the Ottoman Empire, such as Pargalı İbrahim Pasha and Sokollu Mehmet Paşa, were recruited in this way. Mamluks were slave soldiers who converted to Islam and served the Muslim caliphs and the Ayyubid sultans during the Middle Ages. The Moroccan Sultan Moulay Ismail "the Bloodthirsty" (1672-1727) raised a corps of 150,000 black slaves, called his Black Guard, who coerced the country into submission. In response to the Hazara uprising of 1892, the Afghan Emir Abdur Rahman declared a "jihad" against the Shiites. The large

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390 ibid
army defeated the rebellion at its center, in Oruzgan, by 1892 and the local population was severely massacred. Until the 20th Century, some Hazaras were still kept as slaves by the Pashtuns; although Amanullah Khan banned slavery in Afghanistan during his reign, the tradition carried on unofficially for many more years.391

**Modern Times**

The Arab or Middle Eastern slave trade continued into the early 1900s, and by some accounts continues to this day. As recently as the 1950s, Saudi Arabia had an estimated 450,000 slaves, almost one-fifth of the population. It is estimated that as many as 200,000 black south Sudanese children and women have been taken into slavery in Sudan during the Second Sudanese Civil War. In Mauritania it is estimated that up to 600,000 men, women and children, or 20% of the population, are currently enslaved, many of them used as bonded labor. Slavery in Mauritania was finally criminalized in August 2007. The Arab trade in slaves continued into the 20th Century. Many of the Iraqi women fleeing the Iraq War are turning to prostitution; others are trafficked abroad, to countries like Syria, Jordan, Qatar, the United Arab Emirates, Turkey, and Iran. In Syria alone, an estimated 50,000 Iraqi refugee girls and women, many of them widows, are forced into prostitution, and cheap Iraqi prostitutes have helped to make Syria a popular destination for sex tourists.392

Based on what was mentioned above we can say that slavery is a very old phenomenon and it occurred in civilizations as old as Sumer, and in every such civilization, including Ancient Egypt, the Akkadian Empire, Assyria, Babylon, Ancient, and Rome.

Slavery was a form of dependent labour performed by a non-family member. A slave was deprived of personal liberty and the right to move about geographically. There were likely to be limits on his capacity to make choices with regard to his occupation and sexual partners as well. Slavery was usually, but not always, involuntary. If not all of these characterizations in their most restrictive forms applied to a slave, the slave regime in that place is likely to be characterized as “mild”; if almost all of them did, then it would be characterized as “severe”.

Slaves were generated in many ways. Probably the most frequent was capture in war, either by design, as a form of incentive to warriors, or as an accidental by-product, as a way of disposing of enemy troops or civilians. Others were acquired through kidnapping on slave-raids or piracy expeditions. Many slaves were the offspring of slaves. Some people were enslaved as a punishment for crime or debt; others


392 ibid
were sold into slavery by their parents, other relatives, or even spouses, sometimes to satisfy debts, sometimes to escape starvation.

Slavery and the slave trade, including the transatlantic slave trade, were appalling tragedies in the history of humanity not only because of their abhorrent barbarism but also in terms of their magnitude and organized nature. These characteristics further acknowledge that slavery and the slave trade are a crime against humanity and should always have been so.

Slaves have made significant contributions to the slaveholding societies. For instance, slaves in maritime employment in America and the Caribbean were essential to the functioning of the early modern economy. Without their contribution on the docks of colonial and later American ports and their skilled handling of small boats throughout the region, ships carrying the agricultural cargoes of the New World could not have weighed anchor.

Sporadically there have been movements to achieve reparations for those formerly held as slaves, or sometimes their descendants. Claims for reparations for being held in slavery are handled as a civil law matter in almost every country.

**Efforts at Elimination**

*Individual efforts*

There is no doubt that, human beings naturally want to live in freedom, thus the first attempts to reject slavery were made by the slaves themselves. The Prophet Moses led Israelite slaves out of ancient Egypt. This is possibly the first written account of a movement to free slaves.

In the last centuries, the first fighters for the abolition of slavery were the captives, and the slaves themselves who fought from their capture in Africa for their sale and exploitation on plantations in the Americas and the Caribbean. Rebellion and suicide were often used as the main forms of resistance. The American colonies were frequently disrupted by slave revolts, or the threat of revolt. The administrators of the British and French colonies in the 1730's observed that a "wind of freedom" was blowing in the Caribbean, thereby indicating the existence of a veritable resistance to slavery. This was to materialize some 50 years later with the slave rebellion in Santo-Domingo. As early as the late 17th Century, individuals, as well as the various abolitionist societies that had been established, began condemning slavery and the slave trade.393

*National efforts*

The destruction of the slavery system began in the French colony of Santo Domingo towards the end of the 18th Century. The slave rebellion on Santo Domingo in August 1791 profoundly weakened

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393 ibid
the Caribbean colonial system, sparking a general insurrection that led to
the abolition of slavery and the independence of the island. It marked
the beginning of a triple process of destruction of the slavery system,
the slave trade and colonialism. This long-running process lasted until
1886 in Cuba and 1888 in Brazil.

Two outstanding decrees for abolition were produced during
the 19th Century: the Abolition Bill passed by the British Parliament in
August 1833 and the French decree signed by the Provisional
Government in April 1848. In the United States, the Republican
President, Abraham Lincoln, extended the abolition of slavery to the
whole Union in the wake of the Civil War in 1865. The abolition of
slavery – which at the time concerned approximately 4 million people -
became the 13th Amendment to the Constitution of the United States.394

**International efforts**

The 1926 Slavery Convention, an initiative of the League of
Nations, was a turning point in banning global slavery. The Convention
was amended by a Protocol that entered into force in July 1955.

Article 4 of the Universal Declaration of Human Rights,
adopted in 1948 by the UN General Assembly, explicitly banned slavery
it says that “No one shall be held in slavery or servitude; slavery and the slave trade
shall be prohibited in all their forms”.395

The United Nations 1956 Supplementary Convention on the
Abolition of Slavery was convened to outlaw and ban slavery
worldwide, including child slavery.

In December 1966, the UN General Assembly adopted the
International Covenant on Civil and Political Rights, which was
developed from the Universal Declaration of Human Rights. Article 8
of this international treaty bans slavery. It says that no one shall be held
in slavery; slavery and the slave-trade in all their forms shall be
prohibited.396

The 2001 World Conference against Racism (WCAR) which
was held in Durban, South Africa, under UN auspices dealt with several
controversial issues, including compensation for slavery. The issue of
“Compensation for Colonialism and Slavery” is addressed in Paras 13,
14, 15, and 29 of the Declaration.397

By its Resolution 19/61, the General Assembly decided to
designate 25 March 2007 as the International Day for the
Commemoration of the Two Hundredth Anniversary of the Abolition
of the Transatlantic Slave Trade. The Assembly also urged member

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394 ibid
395 Universal Declaration of Human Rights.
396 International Covenant on Civil and Political Rights.
397 The Declaration of World Conference against Racism, Racial Discrimination,
Xenophobia and Related Intolerance.
states that had not already done so to develop educational programmers, including through school curricula, designed to educate and inculcate in future generations an understanding of the lessons, history and consequences of slavery and the slave trade. 398

The international community has drafted treaties on slavery but many states have yet to ratify and implement the different treaties and to identify what needs to be done to eliminate slavery in all parts of the world. Surely, the time has come to unite all states behind the principle of ending slavery. Furthermore, there is an urgent demand for laws and action to ensure that new forms of exploitation and oppression do not take the form of slavery, and that those responsible for slavery-like practices are identified and stopped.

There is no international mechanism for the monitoring and enforcement of state obligations to abolish slavery and related practices. The right of all individuals to be free from slavery is a basic human right; yet this lack of an adequate implementation procedure does little to encourage states to establish safeguards against all contemporary forms of slavery.

With regard to the international effort to eliminate slavery, the mandate of the Working Group on Contemporary Forms of Slavery could be extended to incorporate such a function to provide for a systematic review procedure. Alternatively, the Working Group could improve its own procedures to focus on thematic issues relevant to the prevention of slavery. Another option would be for the Commission to revive its previous proposal that the Working Group be upgraded into a Special Rapporteur of the Commission on Human Rights.

Whatever mechanism the Commission and Sub-Commission might choose to improve the implementation of the many treaties against slavery, an updated review of the international law against slavery has been published in order to continue the work of the Sub-Commission’s previous studies and as a means of further understanding the long-standing struggle to abolish slavery and its contemporary manifestations. 399

Some countries have apologized for slavery but some still reject this idea because it could lead to reparations. Others have not even apologized, and resist all efforts to do so.

THE CONTEMPORARY SITUATION

The current status

Although outlawed in nearly all countries today, slavery is still practiced in many parts of the world. According to a broad definition of slavery some human organizations state that there are 27 million people

398 General Assembly resolution No. 61/19.
throughout the world in virtual slavery today. According to Free the Slaves (FTS), these slaves represent the largest number of people that has ever been in slavery at any point in world history.

Although it is now outlawed in most countries, slavery is, nonetheless, practiced secretly in many parts of the world. Outright enslavement still takes place in parts of Africa and Asia. In Mauritania alone, it is estimated that up to 600,000 men, women and children, are enslaved, many of them used as bonded labour. In Niger, slavery is also a current phenomenon. A Nigerian study has found that more than 800,000 people are enslaved, almost 8% of the population. Child slavery has commonly been used in the production of cash crops and mining. According to the US Department of State, more than 109,000 children were working on cocoa farms alone in Côte d’Ivoire in “the worst forms of child labor” in 2002. According to the International Labor Organization (ILO), an estimated 800,000 people are subject to forced labour in Myanmar. In June and July 2007, 570 people who had been enslaved by brick manufacturers in Shanxi and Henan were freed by the Chinese government.

**Modern slavery**

Contemporary slavery takes various forms and affects people of all ages and sexes. For example bonded labor affects millions of people around the world. People become bonded laborers by taking or being tricked into taking a loan for something as little as the cost of medicines for a sick child. To repay the debt, many are forced to work long hours, seven days a week, up to 365 days a year. They receive basic food and shelter as “payment” for their work, but may never pay off the loan, which can be passed down for generations. In addition, early and forced marriage affects women and girls who are married without choice and are forced into lives of servitude often accompanied by physical violence. Forced labour is another form of slavery and affects people who are illegally recruited by individuals, governments or political parties and forced to work - usually under threat of violence or other penalties. Moreover, trafficking involves the transport and/or trade of people – men, women, and children - from one area to another for the purpose of forcing them into slavery.

We can thus conclude that though many believe slavery ended in the 1800s, only the face of slavery has simply changed. There are an estimated 27 million slaves in our world today, and they are enslaved in every nation of the world.\(^{401}\)

New forms of slavery, such as sexual exploitation of children, child labour, bonded labour, serfdom, migrant labour, domestic labour,
forced labour, slavery for ritual or religious purposes and trafficking pose a great challenge to all of us.

Looking at the nature of the new slavery we see obvious themes: slaves are cheap and disposable; control continues without legal ownership; slavery is hidden behind contracts; and slavery flourishes in communities under stress. Slavery grows best in extreme poverty, so we can identify its economic as well as social preconditions. Being poor, homeless, a refugee, or abandoned, can all lead to the desperation that opens the door to slavery, making it easy for the slaver to lay an attractive trap. And when slaves are kidnapped, they lack sufficient power to defend themselves against that violent enslavement. We are facing an epidemic of slavery that is tied, through the global economy, to our own lives. If those whose rights are violated cannot find protection, they are unlikely to accuse and fight those with guns and power. Such is the case in many of the countries where slavery exists today.402

There are numerous problems hindering effective measures to eradicate these modern forms of slavery. Aside from obvious ones, such as the political unwillingness of many states to allocate resources to combat the crime, efforts to expand the meaning of slavery can be problematic. The international agreements all limit the definition of slavery to conditions similar to ownership.403 Unfortunately, there is no international mechanism for the monitoring and enforcement of state obligations to abolish slavery and related practices. The right of all individuals to be free from slavery is a basic human right; yet this lack of an adequate implementation procedure does little to encourage states to establish safeguards against all contemporary forms of slavery.

CONCLUSION

Despite the many efforts made to abolish all forms of slavery, it is not dead. It exists, and is even on the rise in some parts of the world, and new forms and manifestations of slavery pose a great challenge to all of us. We need to raise awareness about the scale of the problem, promote international partnerships, and work to gather to tackle this issue.

We must acknowledge the great lapse in moral judgment that allowed it to happen. We must urge present and future generations to avoid repeating history. We must acknowledge the contributions that slaves made to civilization. And countries that prospered from the slave trade must examine the origins of present-day social inequality and work to unravel mistrust between communities.

Above all, even as we mourn the atrocities committed against the countless victims, we take heart from the courage of slaves who rose up to overcome the system which oppressed them. These brave individuals, and the abolitionist movements they inspired, should serve as an example to us all as we continue to battle the contemporary forms of slavery that stain our world today.

We must promote the history of the slave trade and slavery, and make it known to the general public; we must also devote ourselves to rigorous scientific research that highlights the whole historical truth about the tragedy in a constructive perspective. As a matter of urgency this major episode in the history of humanity, whose consequences are permanently imprinted in the world’s geography and economy, should take its full place in the school textbooks and curricula of every country in the world.

The international community has drafted treaties on slavery but many states have yet to ratify and implement the different treaties and to identify what needs to be done to eliminate slavery in all parts of the world. Legal instruments are only one aspect of this struggle. Just as important are the efforts that are undertaken every day, in every country plagued by slavery, by courageous individuals who have committed themselves to ending it. Surely, the time has come to unite all states behind the principle of ending slavery, so that we can end it in practice. Furthermore, there is an urgent demand for laws and action to ensure that new forms of exploitation and oppression do not take the form of slavery, and that those responsible for slavery-like practices are identified and stopped.

Nowadays, forced labour, sexual exploitation and human trafficking afflict millions of people worldwide, including children toiling under unspeakably abusive conditions. Racism and racial discrimination still take a serious and sometimes deadly toll. We are all shamed by these repugnant crimes. And we are all challenged to respond.

We should carry the effort forward until no individual is deprived of liberty, dignity and human rights.
TOLERANCE

INTRODUCTION

Our world is our home. It is a home for every human being on our planet, not only for black, white, or yellow or green people, but for everybody. Our society is characterized by permanent interrelations among all its elements.

Although some human beings may be able to live without any aim, the majority of mankind has a clear objective in its search for perfection. People from all over the world understand that the first priority of the mankind is communication with each other, which means tolerance and respect. But what does tolerance mean, and do we really need it? Tolerance is patience and respect for everybody's opinions, everybody's religion, everybody's culture, everybody's origin and nationality no matter what skin color, race, gender, or political ideology. In summary, tolerance is respect for everybody, everywhere, every time.

From the history of mankind, we already know how much societies have suffered much because of lack of tolerance. For example, during the World War II but it had not been for racial prejudices, millions of peaceful people would have been alive today.

Tolerance is like the building-blocks of society, for a building which needs to be planned and designed, and to be built up step by step, according to a strategic plan of human behavior, to be occupied by decent people, in the hope of the constant forward movement of human society

Tolerance is thus a fundamental part of all human rights, the very essence of the principles on which they are based.

DEFINITIONS

The word "tolerance" is surely imperfect, yet the English language offers no single word that embraces the broad range of skills we need to live together peacefully. The Reverend Dr. Martin Luther King Jr. used the Greek word "agape" to describe the tolerance or the universal love that "discovers the neighbor in every man it meets".

In the same way, tolerance could be defining like the ability or willingness to tolerate something, in particular the existence of opinions or behavior that one does not necessarily agree with.

The various disciplines concerned with human behavior have also offered a variety of synonyms for “tolerance”, among them: patience, sufferance, forbearance, liberalty, impartiality, and open-mindedness.

405 http://www.encyclopedia.com/doc/1O999-tolerance.html
In addition, tolerance suggests a liberal spirit toward the views and actions of others: Tolerance toward religious minorities implies necessarily the allowance or sufferance of conduct with which one is not in accord.

At the same time, we can say that tolerance is the appreciation of diversity and the ability to live and let others live. It is the ability to exercise a fair and objective attitude towards those whose opinions, practices, religion, nationality differ from one’s own. As William Ury notes, “tolerance is not just agreeing with one another or remaining indifferent in the face of injustice, but rather showing respect for the essential humanity in every person."

On the opposite side, intolerance is the failure to appreciate and respect the practices, opinions and beliefs of another group. For instance, there is a high degree of intolerance between Israeli Jews and Palestinians who are at odds over issues of identity, security, self-determination, statehood, the right of return for refugees, the status of Jerusalem, the legality of settlements in the Occupied Territories, and many other issues. The result is continuing inter-group violence.

From the history of mankind, we already know how deeply societies have suffered much because of lack of tolerance. For example the ethnic cleansings during the World War II by the Nazis and in Bosnia-Herzegovina during the Balkan War, in Sudan between Arabs and Black people, and in dozens of places elsewhere. Examples of intolerance abound, as does the long list of suffering peoples.

**Tolerance according to the UNESCO**

On an initiative by UNESCO, the United Nations decided to proclaim 1995 (the 50th anniversary year of both organizations) as the International Year for Tolerance.

Tolerance, multiculturalism, global diversity, religious and cultural dialogue were among the topics that were debated in over fifty national, regional and international meetings throughout the year. Serving primarily as occasions to exchange views and knowledge, these meetings also worked on the definition and requirements of tolerance and negotiated lines of action to promote tolerance and counter the rise of intolerance in coming years. These efforts culminated in the Declaration of Principles on Tolerance, which was adopted and signed in Paris by UNESCO’s 185 Member States in November 1995.

In this Declaration, UNESCO offers a definition of tolerance that most closely matches our philosophical use of the word:

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406 http://books.google.com/books?hl=en&id=sjH3emOIkC1MC&dq=William+Ury
Tolerance is respect, acceptance and appreciation of the rich diversity of our world's cultures, our forms of expression and ways of being human. It is fostered by knowledge, openness, communication and freedom of thought, conscience and belief. Tolerance is harmony in difference. It is not only a moral duty; it is also a political and legal requirement. Tolerance, the virtue that makes peace possible, contributes to the replacement of the culture of war by a culture of peace.

Tolerance is not concession, condescension or indulgence. Tolerance is, above all, an active attitude prompted by recognition of the universal human rights and fundamental freedoms of others. In no circumstance can it be used to justify infringements of these fundamental values. Tolerance is to be exercised by individuals, groups and States.

Tolerance is the responsibility that upholds human rights, pluralism (including cultural pluralism), democracy and the rule of law. It involves the rejection of dogmatism and absolutism and affirms the standards set out in international human rights instruments.

Consistent with respect for human rights, the practice of tolerance does not mean toleration of social injustice or the abandonment or weakening of one's convictions. It means that one is free to adhere to one's own convictions and accepts that others adhere to theirs. It means accepting the fact that human beings, naturally diverse in their appearance, situation, speech, behavior and values, have the right to live in peace and to be as they are. It also means that one's views are not to be imposed on others.

HISTORICAL DEVELOPMENT

As a practical matter, governments have always had to rule on the importance of tolerance. The earliest known example of ethnic and religious tolerance is found in the Cyrus cylinder, published by Cyrus the Great after he founded the Persian Empire. Similarly, the Edicts of Ashoka the Great in the Maurya Empire also declared ethnic and religious tolerance.

The expanding Roman Empire later faced the question of whether or to what extent it should permit or persecute the local beliefs and practices of groups inhabiting the annexed territories. Jewish or Christian practices or beliefs could be tolerated or vigorously persecuted. Likewise, during the Middle Ages, the rulers of Christian Europe or the Muslim Middle East sometimes extended tolerance to minority religious groups, and sometimes did not. Jews in particular suffered greatly under anti-Semitic persecutions in Medieval Europe.

In Europe, the development of a body of theory on the subject of tolerance did not begin until the 16th and 17th Centuries, in response to the Protestant Reformation and the Wars of Religion, and the persecutions that followed the breaks with the Catholic Church instigated by Martin Luther, Huldrych Zwingli, and others. In response

409 http://www.iranchamber.com/history/cyrus
to the theory of persecution that was used to justify wars of religion, and the execution of persons convicted of heresy and witchcraft, writers such as Sebastian Castellio and Michel de Montaigne questioned the morality of religious persecution, and offered arguments for tolerance.410

A detailed and influential body of writing on the question of tolerance was first produced in Britain in the 17th Century, during and after the destructive English Civil Wars. John Milton and radical parliamentarians such as Gerrard Winstanley argued that Christian and Jewish worship should be protected, and it was during the period that Oliver Cromwell allowed the return of Jews to England. These early theories of tolerance were limited however, and did not extend to Roman Catholics (who were perceived as disloyal to their country), or atheists (who were held to lack any moral basis for action). John Locke, in his Letter Concerning Toleration and Two Treatises of Government proposed a more detailed and systematic theory of tolerance, which included a principle of Separation of Church and State that formed the basis for future constitutional democracies.411

The British Toleration Act of 1689412 was the political result of 17th Century theorists and political exigency, which despite the limited scope of the toleration it granted was nevertheless a key development in history, and which helped produce greater political stability in the British Isles.413

The philosophers and writers of the Enlightenment, especially Voltaire and Lessing, promoted and further developed the notion of religious tolerance. This was however not sufficient to prevent the atrocities of the Reign of Terror. The incorporation by Thomas Jefferson and others of Locke's theories of toleration into the Constitution of the United States of America was arguably more successful.414

Recent developments

Though developed to refer to the religious toleration of minority religious sects following the Protestant Reformation, the terms "toleration" and "tolerance" are increasingly used to refer to a wider range of tolerated practices and groups, such as the toleration political parties or ideas widely considered objectionable. Changing applications and understandings of the term can sometimes make debate on the question difficult.

410 http://www.nndb.com/people/504/000094222
411 http://books.google.com/books?id=MXnlwrbL5UICJohn+Locke
413 http://www.britannica.com/EBchecked/topic/399808
414 http://books.google.com/books?id=MXnlwrbL5UICJohn+Locke
For example, a distinction is sometimes drawn between mere "toleration" and a higher notion of "religious liberty". Some philosophers regard toleration and religious freedom as quite distinct things and emphasize the differences between the two. They understand toleration to signify no more than forbearance and the permission given by the adherents of a dominant religion for other religions to exist, even though the latter are looked upon with disapproval as inferior, mistaken, or harmful. In contrast these thinkers recognize religious liberty as the recognition of equal freedom for all religions and denominations without any kind of discrimination among them in the case of religious liberty; no one is rightfully possessed of the power not to tolerate or to cancel this liberty.

Discussions of toleration therefore often divided between those who view the term as a minimal and perhaps even historical virtue (perhaps to be replaced today by a more positive and robust appreciation of pluralism or diversity), and those who view it as a concept with an important continuing vitality, and who are more likely to use the term in considering contemporary issues regarding discrimination on the basis of race, nationality, gender, sexuality, disability, and other reasons.

There are also debates with regard to the historical factors that produced the principle of toleration, as well as to the proper reasons toleration should be exercised, with some arguing that the growth of skepticism was an important or necessary factor in the development of toleration, and others arguing that religious belief or an evolving notion of respect for individual persons was or is the basis on which toleration was or should be practiced.

RETHINKING TOLERANCE

Tolerance has become a buzzword, which we use with little thought of its meaning. We often perceive of an idyllic tolerant environment that is fair and permissive to others' opinions and views that are different from our own. If this definition is the correct understanding of the word, we have come to find that achieving a tolerant environment is inherently impossible.

Our society has constructed, more or less, a political system where we tend to be located in one specific part of a range of choices or possibilities. In doing so, we become, to some extent, intolerant of the opinions of the other side. We think we are right and they are wrong, and that we should do everything we can to change their minds. When polemic disputes occur, rarely do we observe the tolerant ideal.

416 http://orient.bowdoin.edu/orient/article.php
Consider an institution that wishes to create an entirely tolerant community dedicated to every kind of diversity. Upon hearing this news, a group of Nazis wishes to attend, excited at the opportunity to express their views in an all-accepting environment. However, by the very nature of the group, we encounter our first dilemma. If the institution is to be tolerant to every kind of diversity, the Nazis should be granted a forum where their opinions can be expressed. However, the Nazi believe that their views are superior to those of everyone else, and such a mentality is antithetical to the ideals of the institution. How do we then resolve the dilemma?

If we are to be an entirely tolerant place where every kind of diversity is accepted, we are going to run into these problems. Imagine an openly gay person being verbally assaulted by individuals in a passing vehicle. If we are to be tolerant of everyone, should the individuals in the passing vehicle be allowed to express such a viewpoint?

After realizing the impossibility of an all-tolerant community, we have come to find that intolerance is perhaps not such a bad thing. Our use of the buzzword has pinned a negative connotation on any attitude which is deemed less than permissive.

We are very intolerant people. We refuse to put up with murder, abuse, rape, theft, and a myriad of other things. Our society is committed to being intolerant of any injustice or "discrimination on the basis of age, race, color, sex, sexual orientation, marital status, religion, creed, ancestry, national and ethnic origin, or physical or mental handicap". Such intolerance is a good thing. The word "tolerance" has suddenly lost its meaning. In a thesaurus, one can find "stupidity" as a synonym for intolerance. Is society then stupid for upholding an intolerant attitude toward discrimination?

For the most part, we have already taken stands on what we believe is right. These views are then somehow deemed "tolerant" simply because we believe they are right and it sounds good. Rather than putting on a façade of permissiveness and acceptance toward every opinion and idea brought to the table, we should acknowledge the ideas for which we stand and those we reject. Such action would curtail the use of meaningless buzzwords that we eagerly throw around in an effort to support a point.417

Tolerance and Toleration

Toleration and tolerance are terms used in social, cultural and religious contexts to describe attitudes and practices that prohibit discrimination against those practices or group memberships that may be disapproved of by those in the majority. Conversely, intolerance may be used to refer to the discriminatory practices sought to be prohibited.

417 ibid.
Though developed to refer to the religious toleration of minority religious sects following the Protestant Reformation, these terms are increasingly used to refer to a wider range of tolerated practices and groups, such as the toleration of sexual practices and orientations, or of political parties or ideas widely considered objectionable.\textsuperscript{418}

The principle of toleration is controversial. Liberal critics may see in it an inappropriate implication that the "tolerated" custom or behavior is an aberration or that authorities have a right to punish difference; such critics may instead emphasize notions such as civility or pluralism. Other critics, some sympathetic to traditional fundamentalism, condemn toleration as a form of moral relativism. On the other hand, defenders of toleration may define it as involving positive regard for difference or, alternately, may regard a narrow definition of the term as more specific and useful than its proposed alternatives, since it does not require false expression of enthusiasm for groups or practices that are genuinely disapproved of.

**Tolerance and Monotheism**

One theory of the origin of religious intolerance, proposed by Sigmund Freud in Moses and Monotheism, links intolerance to monotheism.\textsuperscript{419} More recently, Bernard Lewis and Mark Cohen have argued that the modern understanding of tolerance, involving concepts of national identity and equal citizenship for persons of different religions, was not considered a value by pre-modern Muslims or Christians, due to the implications of monotheism. The historian G.R. Elton explains that in pre-Modern Times, monotheists viewed such toleration as a sign of weakness or even wickedness towards God. The usual definition of tolerance in pre-modern times as Bernard Lewis puts it was that: "I am in charge. I will allow you some though not all of the rights and privileges that I enjoy, provided that you behave yourself according to rules that I will lie down and enforce."\textsuperscript{420}

Mark Cohen states that it seems that all the monotheistic religions in power throughout the history have felt it proper, if not obligatory, to persecute nonconforming religions. Therefore, Cohen concludes, Early Islam and Medieval Christianity in power should have persecuted non-believers in their lands and "Judaism, briefly in power during the Hasmonan period (2\textsuperscript{nd} Century B.C.) should have persecuted pagan Idumeans...When all is said and done, however, the historical evidence indicates that the Jews of Islam, especially during the formative and classical centuries (up to thirteenth century), experienced much less persecution than did the Jews of..."
Diego Rivera

Tolerance

Christendom. This begs a more thorough and nuanced explanation than has hitherto been given. 421

Tolerating the Intolerant

Philosopher Karl Popper's assertion in The Open Society and Its Enemies that we are warranted in refusing to tolerate intolerance illustrates that there are limits to tolerance.

In particular, should a tolerant society tolerate intolerance? What if by tolerating action "A", society destroys itself? Tolerance of "A" could be used to introduce a new thought system leading to intolerance of vital institution "B". It is difficult to strike a balance and different societies do not always agree on the details, indeed different groups within a single society also often fail to agree. The current suppression of Nazism in Germany is considered intolerant by some countries, for instance, while in Germany itself it is Nazism which is considered intolerably intolerant. 422

Similarly, continues Rawls, while the intolerant might forfeit the right to complain when they are themselves not tolerated, other members of society have a right, perhaps even a duty, to complain on their behalf, again, as long as society itself is not endangered by these intolerant members. The ACLU is a good example of a social institution that protects the rights of the intolerant, as it frequently defends the rights of the intolerant, as it frequently defends the right to free speech of such intolerant organizations as the Ku Klux Klan. 423

Followers of Ayn Rand tend to see tolerance as associated with the institution of objective law. 424 Attempts to increase tolerance by applying different rules to different people would ultimately be self-defeating.

421 books.google.com/books/Mark+Cohen+Medieval+Islam+and+Medieval+Christianity
422 http://plato.stanford.edu/entries/popper/
423 http://plato.stanford.edu/entries/rawls/
424 ibid.
Many universities, in attempting to enforce certain political and ideological viewpoints through means other than instruction and debate have been come to be viewed by some as intolerant.

At a recent post-9/11 conference on multiculturalism in the United States, participants asked, "How can we be tolerant of those who are intolerant of us?" For many, tolerating intolerance is neither acceptable nor possible.425

Though tolerance may seem an impossible exercise in certain situations being tolerant nonetheless the key remains to easing hostile tensions between groups and to helping communities move past intractable conflict. That is because tolerance is integral to different groups relating to one another in a respectful and understanding way. In cases where communities have been deeply entrenched in violent conflict, being tolerant helps the affected groups endure the pain of the past and resolve their differences. In Rwanda, the Hutus and the Tutsis have tolerated a reconciliation process, which has helped them to work through their anger and resentment towards one another.

**ORIGINS AND CONSEQUENCES**

In situations where conditions are economically depressed and politically charged, groups and individuals may find it hard to tolerate those that are different from them or have caused them harm. In such cases, discrimination, dehumanization, repression, and violence may occur. This can be seen in the context of Kosovo, where Kosovar Albanians, grappling with poverty and unemployment, needed a scapegoat, even supported an aggressive Serbian attack against neighboring Bosnian Muslim and Croatian neighbors.

Intolerance will drive groups apart, creating a sense of permanent separation between them. For example, though the laws of apartheid in South Africa were abolished a decade ago, there still exists a noticeable level of personal separation between black and white South Africans, as evidenced in studies on the levels of perceived social distance between the two groups. This continued racial division perpetuates the problems of inter-group resentment and hostility.

**The perpetuation of Intolerance**

*Among Individuals:* In the absence of their own experiences, individuals base their impressions and opinions of one another on assumptions. These assumptions can be influenced by the positive or negative beliefs of those who are either closest or most influential in their lives, including parents or other family members, colleagues, educators, and/or role models.

*In the Media:* Individual attitudes are influenced by the images of other groups in the media and the press. For instance, many Serbian
communities believed that the western media portrayed a negative image of the Serbian people during the NATO bombing in Kosovo and Serbia. This de-humanization may have contributed to the West's willingness to bomb Serbia. However, there are studies that suggest media images may not influence individuals in all cases. For example, a study conducted on stereotypes discovered people of specific towns in southeastern Australia did not agree with the negative stereotypes of Muslims presented in the media.426

In the Educational System: School curricula and educational literature frequently provide biased and/or negative historical accounts of world cultures. Education or schooling based on myths can demonize and dehumanize other cultures rather than promote cultural understanding and a tolerance for diversity and differences.

Dealing with Intolerance

To encourage tolerance, parties to a conflict and third parties must remind themselves and others that tolerating tolerance is preferable to tolerating intolerance. Some useful strategies that may be used as tools to promote tolerance are as follows:

Inter-Group Contact: There is evidence that casual inter-group contact does not necessarily reduce inter-group tensions, and may in fact exacerbate existing animosities. However, through intimate inter-group contact, groups will base their opinions of one another on personal experiences, which can reduce prejudices. Intimate inter-group contact should be sustained over longer periods in order for it to be effective.

Dialogue: To enhance communication between both sides, dialogue mechanisms such as dialogue groups or problem solving workshops provide opportunities for both sides to express their needs and interests. In such cases, actors engaged in the workshops or similar forums feel their concerns have been heard and recognized. Restorative justice programs such as victim-offender mediation provide this kind of opportunity. For instance, through victim-offender mediation, victims can ask for an apology from the offender.

The role of the individual

Individuals should continually focus on being tolerant of others in their daily lives. This involves consciously challenging the stereotypes and assumptions that they typically encounter in making decisions about others and/or working with others in either a social or a professional environment.

The role of the media

The media should use positive images to promote understanding and cultural sensitivity. The more groups and individuals

426 http://www.beyondintractability.org/essay/tolerance/
are exposed to positive media messages about other cultures, the less they are likely to find faults with one another; particularly those communities who have little access to the outside world and are susceptible to what the media tells them.

This is particularly important in an age when television plays such a pervasive influence in forming our opinions. This is partly due to the power of the medium itself, and partly due to the growing intellectual laziness of the public, and its willingness to base opinions on “instant” news and catchy sound-bytes.

**The role of the educational system**

Educators are instrumental in promoting tolerance and peaceful coexistence. For instance, schools that create a tolerant environment help young people respect and understand different cultures. In Israel, an Arab and Israeli community called Neve Shalom or Wahat Al-Salam (“Oasis of Peace”) created a school designed to support inter-cultural understanding by providing children between the 1st and 6th grades the opportunity to learn and grow together in a tolerant environment.427

Similar initiatives are espoused in Seeds of Peace428, now part of the educational system in several universities, and elsewhere.

**The role of other third parties**

Conflict transformational NGOs and other actors in the field of peace-building can offer mechanisms such as training programs to help parties in a conflict to communicate with one another. For instance, several organizations have launched a series of projects in Macedonia that aim to reduce tensions between the Albanian, Romani and Macedonian populations in the country, including activities that promote democracy, ethnic tolerance, and respect for human rights.

International organizations need to find ways to enshrine the principles of tolerance in policy. For instance, the United Nations has already created The Declaration of Moral Principles on Tolerance, adopted and signed in Paris by UNESCO's 185 member states in November 1995, which qualifies tolerance as a moral, political, and legal requirement for individuals, groups, and states.429

Governments also should aim to institutionalize policies of tolerance. For example, in South Africa, the Education Ministry has advocated the integration of a public school tolerance curriculum into the classroom; the curriculum promotes a holistic approach to learning. The United States government has recognized one week a year as International Education Week, encouraging schools, organizations,
institutions, and individuals to engage in projects and exchanges to heighten global awareness of cultural differences.

The diaspora community can also play an important role in promoting and sustaining tolerance. They can provide resources to ease tensions and affect institutional policies in a positive way. For example, Jewish, Irish, and Islamic communities have contributed to the peace building effort within their places of origin from their places of residence in the United States.

CONCLUSION

In conclusion, one can thus state that, even though the _de facto_ powers may wish to maintain their own societies at a level of high intolerance for their own benefits, global human society can nevertheless build, develop and preserve tolerance by understanding the importance of the following elements:

_Democracy:_ A democratic political system and a democratic economy go hand in hand with a democratic society. It is necessary to take fundamental political reforms aimed at finally realizing the full democratic promise of peoples, including: easy access to the state structure and its services; equal access to educational and social benefits; equal access to information; equal access to the law; proportional representation in the legislative bodies and government; among others.

_Human Rights:_ We have to support basic rights for all peoples, including the indigenous and native nations, handicapped persons, as well as affirmative action and reparations for people of color, women and other victims of historic injustice and oppression. We have to oppose the repression directed against immigrants, particularly economic immigrants. We have to oppose to all forms of discrimination based on race, gender, ethnicity, age, class, religious beliefs, sexual orientation, disabilities, health status (including HIV), national origin or citizenship. Likewise, we have to support full reproductive freedoms for women and oppose all forms of violence, particularly against women and children, including domestic violence, rape, incest and sexual harassment.

_Equal justice:_ We have to oppose the deep-seated racism and class bias that permeate our so-called "judicial system". It is necessary to create a crash program to re-train and re-structure civil security institutions that, in a great majority of countries, are steeped in a culture of racism, abuse, corruption and brutality. Society needs to develop a humane criminal sanction system that is genuinely aimed at the rehabilitation of those who have engaged in anti-social activity, and

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43 Graziano, Walter “Hitler Ganó la Guerra” (Hitler Won the War), Edit. Debolsillo. 2007

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which depends on alternatives to incarceration except for those who pose a clear danger to society unless incarcerated.

Support for Diversity and Equality: People of color and women must be substantial in numbers in the membership and particularly in leadership positions in our independent political networks. Opposition to racism must be a priority for all people but especially for the majority group of the society. Men have a special responsibility to cultivate positive environment for participation by those of all abilities, sizes, ages, and genders.

Political independence: We have to promote independent candidates and parties who subscribe to the above principles and who are part of the solution. In order to get a better global society, we have to promote and support solidarity across our countries, and beyond our geopolitical borders.

People's power: We have to find and support the power to change our world and develop a society that places human needs over profit. People organized into democratically controlled organizations and institutions are the wellspring from which a powerful movement for social and economic change must emerge. It is from the experience and struggles of the people that solutions to the severe crises facing our nations will be found. It is with the consent and will of the people that governments are legitimized and leaders empowered.

Economic justice: Only through such a social movement can we build a just and sustainable society in which the gross and obscene concentration of corporate power and personal wealth is overcome by the achievement of basic political and economic rights for all: equality and tolerance; secure jobs at living wages; decent and affordable housing; adequate food and clothing; universal health care; quality education; a safe, clean environment; an equitable, progressive tax system; sustainable food production based upon family farms and farm cooperatives; and protection from economic insecurity caused by disability, old age, sickness, accident or unemployment.

Sustainable environment: An ecologically sustainable society requires replacing the endless "growth" compelled by a profit-oriented society with a democratic economy enabling people to gear production to human needs on a sustainable basis.

All this requires the sustained tolerance of and respect for the opinions of the “other”, as has been ingrained into us by the history of thousands of years of our spiritual and intellectual development. That attitude, and that attitude alone can guarantee the fundamental ethical dimensions of human rights towards which we must all strive.