Introduction

The controversies surrounding the rights and freedoms which we are entitled to have complex sides, and often depend on the justification used for recognizing the rights. The common justification used in defense of these rights is our nature, which again triggers many other questions. Do we have unique attributes justifying the recognition of certain rights? Is the human being a social being or a self-centered, autonomous unit? Is s/he a nice or humane person? If the latter is not the case why punish inhuman or cruel behavior? Who is to decide what the requirements of the state of nature are for purposes of forming the human rights law, and how? Should this be left to religion, culture, reason, governments or the requirements for survival? Is the human rights talk basically a religious talk? Is it essentially a political subject-matter? Do human rights exist? If they do, are they universal, to be interpreted and applied in the exact same ways globally, or are they relative – to be harmonized with the local religious, cultural, political and other requirements? How were these questions answered by the international community when it developed the international regime of human rights?

The existence of the international community itself is sometimes questioned, especially by the adherents of *realpolitik*, mainly because there is no centralized legislative and law enforcing body. Instead, the skeptics speak of the presence of 'international societies' and the anarchical international order. Yes, international law is weak because its foundation is state sovereignty, and it lacks a centralized law-enforcing body. However, that in itself does not prevent the emergence of an international community. No one denies that international law is disregarded by some or many states now and then. Individuals and political actors too violate or disregard national laws, yet, we hardly question the existence of these laws or the national communities when this happens. Just as national laws and national communities are socio-political constructions, international law and the international community too are socio-political construction that exist because we need them.

The fact remains that the overwhelming majority of states use international law on a daily basis – to facilitate trade and commerce, to regulate health issues, to facilitate communication, to stimulate tourism, to promote educational, cultural or other activities. All the sovereign states are members of the United Nations, and meet regularly to discuss matters of common interest. This organization has clear-cut purposes and principles and

monitoring bodies. It is true that the system is based on state sovereignty (article 2(1) of the Charter). However, there is also the requirement to comply in good faith with obligations assumed under the ratified legal international instruments (art. 2.2 of the Charter). Failure to do so has political consequences, because disruptive or anarchical conducts are not accepted. When international peace, security and order are threatened, the UN Security Council is required to respond to restore the international order (collective security). Its decisions are binding on all states (articles 24 and 25 of the Charter). The UN and its members have always proceeded on the assumption that there is an international community that is legally formed.

The UN is not the only international organization that is responsible for the international regime of human rights. The International Labour Organization, UNESCO, WHO, FAO, regional organizations and non-governmental ones too influence the direction in which the regime of human rights regime is developing. ILO uses more than 180 conventions related to economic and social rights (and recommendations), more instruments than those adopted by the UN. The same can be said about the mandates, laws and activities of the other specialized agencies. Their relationship with the UN is coordinated by the UN Economic and Social Council, as provided by articles 63 and 64 of the UN Charter. Regional organizations and non-governmental organizations also cooperate with these agencies and with the UN even if they have their own human rights mandates, bodies and activities. While it would be wrong to claim that there is no tension in how all these organizations operate when pursuing their respective human rights agendas, the differences that exist are sometimes exaggerated.

The existence of the international regime of human rights is questioned or belittled mostly because of skepticism towards international law. The factors which speeded up the evolution of international human rights law are linked to the horrors endured during World War II. The peoples of the world were alarmed by the grotesque instances of inhumanities and the sufferings of that time as well as by the disorder and devastation that accompanied it, evils which took the lives of well over one hundred million people. By the end of that war, the insecure and militarily exhausted states, including the victorious powers, had to take a pause for soul searching to find the formula for ensuring lasting peace and stability without sacrificing human values. It was abundantly clear that the ideological and political goals of the aggressive powers were hostile to the human rights values. There was no international

human rights regime in place to challenge their conduct. The earlier organizations were not fit for this, which is why the Concert of Europe or the League of Nations failed to guarantee international peace and justice. If the new international organization that was contemplated for the post-World War II era was to be legitimate and endure, it had to embrace human rights values. The only problem ahead was on whose image this world order should be shaped. Both the Western and the Eastern powers were determined to use their political and diplomatic weapons to win the hearts and minds of the peoples of the world.

The drafters of UN Charter justified the universal promotion of human rights based on "faith in fundamental human rights, in the dignity and worth of the human person (and), in the equal rights of men and women". Now that the professed racist powers were militarily crushed, it became inconceivable to tolerate the kinds of inhumane political systems these states once had or to resist the emergence of an international order based on the promotion of respect for human rights. It is true that the Allied Powers were forced to enter that war for self-defense rather than in opposition to racist policies and conducts. However, once the war was in full swing, the narratives had changed to that of a military campaign against Fascists and Nazis and their sympathizers: a struggle between good and evil (progressives and reactionaries).

The inscription of human rights in the UN Charter, in 1945, transformed the idea of human rights from a philosophical and national legal concept to a universal legal concept. The UN was also given the mandate of "promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion" (article, paragraph 3) More specifically, its General Assembly, and the Economic and Social Council, under it were assigned to promote: "Universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion." (art. 55, and 60. Emphasis added).

Further, the members of the UN gave their pledge, under article 56, "to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55." Although the political and legal pillars for constructing the international regime of human rights were clearly made, in 1945, it took time before this regime emerged since it could not operate without defining the rights and obligations and developing the monitoring mechanisms.

The UN Charter does not list the human rights that should be acknowledged, although reference is made, in broad and vague ways, to the obligations to respect the principle of equal rights (art. 1(2), 1(3)) and some of some economic and social rights (article 55, 73 and 76), especially in the context of the dependent territories (colonies). The task of preparing the document which lists these human rights was left to the General Assembly which was expected to initiate studies and make recommendations for "the progressive development of international law and its codification" and "assisting in the realization of human rights and fundamental freedoms" (art. 13.1.a. and c. of the Charter).

When the UN started to prepare the first universal instrument which would identify, define and proclaim the human rights that should be recognized (by the Universal Declaration of Human Rights) the ideological controversies relating to discourse on human rights surfaced in highly politicized ways. As expected, the Western states defended the individualized civil and political rights in line with their national laws and political traditions. The Socialist states propagated for economic and social rights, loyal to the Marxian traditions. The Latin America states stood behind the Western position since they had similar political systems to that of the West. The Organization of the American States even proclaimed its own Declaration on the Rights and Duties of Man before the UN proclaimed the Universal Declaration of Human Rights. Most of the remaining Third World countries backed both positions, although they were worried about the political implications of some of the political rights. Since it was known from the outset that this instrument was not intended to be legally binding (because under article 10 of the Charter the UN General Assembly resolutions are only recommendatory) the insertion of both these sets of rights did not prove to be problematic. After all, as the last paragraph of this Declaration makes it plain this instrument was to serve merely "as a common standard of achievement …to promote respect for these rights and freedoms and by progressive measures… to secure their universal and effective recognition and observance". Still, the six Socialist States, South Africa and Saudi Arabia abstained when the Universal Declaration was proclaimed on 8 December 1948.

Using this new standard setting, the UN General Assembly proceeded to prepare and adopt other non-binding declarations which were intended to provide protection from race and gender-based discrimination and to defend the rights of the members of vulnerable groups, such as, children, refugees, the disabled, etc. While these instruments defined the rights of

the beneficiaries and mentioned the kinds of measures that should be taken to make them practical, they lacked the enforcement mechanisms precisely because they were not perceived to be legally binding.[1] Later, however, this 'soft-law' political approach was complemented by preparing and adopting binding human rights conventions which came into force through ratification.[2]

We now have not only an international regime of human rights which uses international law, but also two separate paths to monitor how states conduct themselves in accordance with their human rights obligations. The convention-based monitoring bodies consider the reports of states submitted pursuant to the ratified legal instruments and publish their reports. They also examine the petitions sent by victims and state parties who allege the existence of human rights violations, provided that the concerned state has accepted this system. The UN Charter-based monitoring bodies consider the reports of states and those submitted by states, by special rapporteurs (country-rapporteurs and thematic rapporteurs), by working groups and others. Bearing this in mind the UN Human Rights Council publishes country reports on the human rights situation inside states. The High Commissioner for Human Rights represents the UN on matters concerning human rights also by visiting states, conducting inquires or fact-finding missions, to inspire states to ratify human rights instruments, etc.. The UN High Commissioner for Refugee follows developments concerning refugees, including when it comes to mobilizing contributions for the welfare of refugees, urging states to share the burden of accepting refugees and ending the involuntary deportation of asylum seekers whose lives could be endangered. There are many other UN offices, units and programs that also provide important functions or monitor human rights issues. Among these are UNICEF, World Food Programme, UN-Habitat, and the Commission on the Status of Women. Complementing these are also the human rights mechanisms that are used by the specialized agencies and the regional organizations.

With all this evidence at hand, it is difficult to deny that we now have an international regime of human rights which is politically and legally constructed in the process of giving effect to the purposes and principles of the UN Charter. This regime governs how states behave in the field of human rights by monitoring the application of the adopted international instruments. This is not to deny that this regime has weaknesses emanating from the absence of centralized legislative and enforcement bodies. If the existence of regimes is measured on the basis of the strength of the applicable laws or the strength of

the monitoring bodies and mechanisms of these laws, then the existence of many national regimes would also come to doubt. Clearly, there is a long way to go before one is fully satisfied and the political roads ahead may not be that smooth. Bridging the ideological and political gaps surrounding the human rights debate is far from easy. But it is equally important not to forget or deny what has been achieved. The UN has managed to navigate through the past troubled waters. How this was done will be clarified later after first examining closely what the contentious ideological and political positions are.

The discourse on human rights

***Right*:** As can be seen from the long list of definitions provided in dictionaries the word 'right' is understood differently depending on the context in which it is used. Its adjectival usage means accurate or correct (as in the 'right answer'), exact or perfect (as in it 'fits right'), reasonable or sound ('right mind'), immediate ('right now'), fair ('right share'). It is also used to describe directions (the opposite of left) including political or ideological stands (as in 'right wing').[3] Its noun form ('a right') denotes title, privilege, guarantees, power officially recognized.[4] *The New International Webster's Comprehensive Dictionary of the English Language* adds one other definition of a right which is described as that which is given "in accordance with or conformable to moral law or to some standard of rightness; equitable; just; righteous… "[5]

Indeed, most leaders want to convince us that the rights which are recognized in our national laws have a just character or are also correct, morally speaking. This, however, may not always be the case, since a right that is sanctioned by law or culture can be wrong morally speaking, depending on the frame of reference one uses. The *right* to buy and sell human beings, which was legally recognized in some countries in the past, or that which tolerates the freedoms of men to 'buy sex' from desperate women is morally wrong. The justness of the traditional rights of parents to arrange for the marriages of minors or that of a man to inherit the wife of his deceased brother in accordance with cultural norms or traditions in some countries, are equally questionable. It is interesting to note that these rights continue to be exercised although there are also laws which require full consent for marriage in these states. In other words, one observes a certain tension between rights that are derived from culture and traditions and those emanating from laws.

***Human*:** One of the reasons why scholars disagree on the kinds of rights and freedoms that should be acknowledged is the divergence of views on the nature of the human being and hence on what is due to him/her as just. Inseparable from this is the requirements of responding to order and stability when living in social settings. For Thomas Hobbes (1588-1679) *human* beings were, by nature, evil-minded, ego-centric, jealous and power-driven individuals. Although he starts by accepting the existence of 'natural rights' he concluded by calling for their surrender – in favor of a chosen despot for the sake of peace and the general welfare. If this is not done, the cycle of envy, hatred and competition would only further war of all against all.[6]

Hobbes's premise was rejected by Immanuel Kant (1724-1804) because it reduced the state of nature to "a state of absolute injustice, as if there could have been no other relation originally among men but what was merely determined by force…""[7] For Kant to relinquish the natural inborn rights amounts to relinquishing being human. The purpose of civil union should therefore be to protect those "inborn" rights based on social contract by ensuring "the right of every citizen to have to obey no other law than that to which he has given his consent or approval." "[8] His thoughts were inspired by the positive impression that John Locke (1632-1704) had concerning human nature, and his call for the protection of natural rights. As Locke saw it, the aggressive behavior which Hobbes noted were only consequences of defying the demands of nature to respect life, liberty, possession and other interests which create self-defense, retribution and hence disorder. .[9]

Theologians consider humans as social creations that should live in peace and harmony, and that have duties towards one another (inside their communities). Since religion also prescribes what the acceptable rights and duties are, theologians see the talk about human rights as basically a religious talk.[10] For Christians, this means following those Divine commands stipulated in the Bible. For Moslems, it is that which is provided by the Islamic Shari'ah and the "divine commands, which are contained in the Revealed Books of Allah."[11]

Atheists and most liberals or libertarians do not subscribe to this point of view for different reasons. For atheists religion is fictitious, and man's creation. Liberals and libertarians are interested in empowering individuals by maximizing the enjoyment of individual freedoms, rather than restricting them. According to Ayn Rand (1905-1982), rights emanate from

'man's nature' ('the law of identity'). She considered them to be "the property of an individual", and "a man's freedom of action"[12], which are used to secure the "human good", including the protection of selfishness without requiring sacrifices for anyone. [13] This is why she insisted that right should always be articulated as individual freedom of action and thus as something individualized.[14]

Socialists approach mankind as social. Egocentric and inhumane characteristics are inherited from the conditions of life, rather than being natural attributes. As Karl Marx (1818-1883) saw it, Hobbes had confused class war with 'war of all against all' and wrongly linked the conflicts which he observed with the state of nature. Although Marx was in full agreement with Rousseau's observation that mankind was born free but lived in chains, he rejected Rousseau's prescription calling for defending 'the rights of man' because these rights were framed in the context of the appropriation of private property inside the political state. For him, as long as social relations are based on private property relationships, we can only behave as representatives of property. These rights, as articulated by Rousseau and the other supporters of the capitalist order, should be rejected because they do not "go beyond the egoistic, man as he is, as a member of civil society; that is, an individual separated from the community, withdrawn into himself, wholly preoccupied with his private interests and acting in accordance with his private caprice."[15]

Human rights: sources/foundation/origins. The sources, foundations or origins of human rights are generally approached from the perspectives of the two opposed schools of thoughts: Natural Law and positivism. Proponents of the former are sub-divided between those who follow the spiritual line (Divine Law) and the secular path (higher reason or morality). The former is defended by theologians who rely on religion as the primary source for valid rights, freedoms and duties. For them conducts and social relationships that defy the tenets of religion constitute sins that are punishable. There is no room for fetish-driven ways of living, and deviations determined by individual morality. Even if the law permits this by protecting the right to privacy, it should not be followed for such laws are not proper "but a corruption of law."[16]

Natural Law is also defended on secular grounds by those who invoke "higher reason" or "rational nature" – from which concepts such as justice, equity, modesty and the likes are derived from.[17] Thomas Hobbes used this when he defended the existence of natural

liberties and freedoms in the state of nature, and which he wanted us to surrender in favor of despotism for the sake of peace and order.[18] John Locke too believed that we had *inherent* rights, such as those protecting life, liberty and property, those that should not be taken away.[19] Kant distinguished between natural or innate rights and positive or acquired rights. He called the former innate rights, derived from "practical laws of reason" and that constitute "the Birthright of Freedoms" of every person..[20] He approached natural rights from "a pure practical conception of the reason in relation to the exercise of the will under laws of freedom"[21], as those that should neither be restricted nor denied by man-made constitutions since they are "deduced from principles a priori as the condition of such a constitution." [22]

Liberals and libertarians vigorously defend individual liberties because the ontological core of their school of thought is individualism. "It is from this premise that the familiar commitments to freedoms, tolerance and individual rights are derived." [23] Their point of departure may vary but the end point is similar in that both see individual rights as inalienable. "If we are serious about the idea of human rights," maintained Jack Donnelly, "there is no alternative to holding firm on the principle that they are the rights of individuals and of individuals only."[24] Rand, a libertarian, offered the following explanation: "If man is to live on earth, it is right for him to use his mind, it is right to act on his own free judgment, it is right to work for his value and to keep the product of his work. If life on earth is his purpose, he has a right to live as a rational being; nature forbids him the irrational."[25]

Rand was unapologetic in defending individual morality, in praising unregulated capitalism and in dismissing group rights or economic, social and cultural rights not least because they are 'solidarity' rights that are financed by unjustly sacrificing individual rights (through heavy tax) to benefit others. According to her:

"There is no such thing as 'a right to a job' – there is only the right of free trade… no 'right to a home' …There are no 'rights to 'fair' wage …There are no 'rights' of special groups' … There are only the Rights of Man…Property rights and the right of free trade are man's only 'economic rights' (they are, in fact, political rights…)"[26]

In essence, the position which regards the individual as autonomous unit and which

questions his/her social nature consider human beings very much like finished industrial product like a car or a piano that is ready to operate, as if we are not continuously enriched or developed mentally and emotionally from birth to death. If we are not social how do we end up possessing linguistic, religious and cultural identities? How can loyalty, nepotism, fanaticism, social prejudice, racism and extreme nationalism be explained? Why bother to take part in cultural festivities, or pay a high price for expensive cars, cloth, perfume or watches or get satisfaction from providing altruistic or humanitarian assistance? Why use prison for punishment (including for offending 'public morality')? Why bother about problems emanating from social isolation? The fact remains that a person who is totally isolated for too long from others can end up being mentally derailed – if not suicidal.

Communitarians reject the liberal and libertarian viewpoints of the autonomous nature of the individual. Instead, they proceed from the premise that all individuals derive their identity and wellbeing from their social environment.[27] "The highest conceivable form of human society", according to Huxley, "is that in which the desire to do what is best for the whole, dominates and limits the action of every member of the society."[28] Those who reject the social nature of mankind are not only dishonest since they know how social they are, but are actually hiding behind individualism for purposes of obstructing the efforts that are made to protect and promote the rights of those marginalized groups.[29]

Positivists dismiss *inalienable* natural rights as nonsense. According to Jeremy Bentham, the father of positivism, the proponents of Natural Law are very good at fabricating fictitious rights and 'laws' using passions.[30] *Real* rights exist only in the political world and are recognized and enforced by laws. "There are no rights without law", he wrote, and "no rights contrary to the law."[31] For Bentham, governments were established because there are no rights "anterior or superior to those created by the law"[32] Legal rights which are enacted by governments determine legitimate freedom of action and the enjoyment of the benefits to be given to the right-holders.[33] To be practical, 'right' would have to be complemented by obligations, and when the latter are violated they become offenses.[34] In short, "law, offence, right, obligation, service, are therefore ideas which are born together, which exist together, and which are inseparably connected. …"[35]

Karl Marx appreciated the manner in which Natural Law was ridiculed by Bentham. He also discredited Bentham for accepting the legitimacy rights made by governments. This was

why he dismissed his intellectual contributions as nothing more than a "pedantic, leather-tongued oracle of the ordinary bourgeois intelligence"[36] As Marx saw it, the political state enacts laws recognizing rights and freedoms to protect the interests of the oppressing class by subordinating the oppressed groups. The kinds of rights which Marx and his followers endorsed were those that helped the proletarian class in achieving their revolutionary goals. They also supported national self-determination as a means of bringing about emancipation from their oppressive, alien rulers. Marx did see the advantages in the few 'illusive' 'rights of man' proclaimed by the American and French revolutionaries, except those that can be used to speed up the proletariat's revolution.[37] The writings and campaigns of Karl Marx and his followers did serve as powerful engines for stimulating the revolutionary changes seen in Europe, during the second half of the 19th century, including the emergence of national states.

The divergent approaches to the definition. With so many differences in the perception of the sources, justifications, objectives and nature of human rights, the definition of 'human rights' can only be confusing, to say the least. Much depends on which side one takes when speaking about this contentious subject. Thomas Perry understood this subject in the religious sense, calling it a religious talk.[38] Jack Donnelly saw it as a set of socially constructed "moral claims" relating to entitlement "held by all human beings simply because they are human and exercisable against the state and society" and that is used to shape "social and political relations."[39] According to R.J. Vincent, these rights represent "the moral possessions to which all human beings are entitled, and each of them equally."[40] For Alan Gewirth they constitute "a species of moral rights" or requirements that are derived from valid moral principles.[41] And in the opinion of Justice Stayton this "means nothing more nor less than a claim recognized or secured by law."[42]

One of the reasons why writers link claims to rights is their desire to give the kinds of practical support that strengthens rights. "Having rights, of course, makes claiming possible; but it is claiming that gives rights their special moral significance …", states Feinberg. "Having rights enables us to 'stand up like men', to look others in the eye, and to feel in some fundamental way the equal of anyone."[43] Claim is here given a normative character, as if right cannot stand without it. Feinberg also admits "(I)t will not help to attempt a formal definition of rights in terms of claims, for the idea of a right is already included in that of a claim, and we would fall into a circle."[44]

The academic rivalry. Because human rights are explained in political, philosophical, religious, moral, legal and other senses, the disciplinary rivalry to claim it or to exclude others is serious. There are philosophers who take pride in the roles played by earlier philosophers in elucidating and popularizing this concept, a task which requires the input of contemporary thinkers. Jurists are happy that human rights are regulated by laws, not least because this fact makes them the only competent experts in the field. As one professor of politics, David Beetham, conceded "all these are eminently suited to analysis from a legal perspective" and "political science as a whole should have preferred to keep the subject at arm's length."[45]

For Michael Freeman the concept of human rights cannot be seen outside the political framework since these rights are "made and interpreted by a political process", which is why he warns legal positivists not to be carried away by legal stipulations alone: "He maintains:

"The legal-positivist approach to human rights not only misrepresents their character but also has dangerous implications. …Legal positivists sometimes say that the only rights are those that are legally enforceable … it is not necessary that they should be so, and the concept of human rights implies that often they are not."[46]

There are social scientists, especially social workers, that have expressed regret over the attempts that are made to exclude them from this field. According to Professor Elisabeth Reichert, a professor of social work, "Not only are politicians muddying the waters regarding human rights, but lawyers, too, speak of human rights in legalese that is more applicable to the courtroom or an academic treatise than to everyday life"[47], stated one professor of social work, Professor Elisabeth Reichert. In her view, "social workers have at least as much claim to the exercise of human rights principles as do politicians and lawyers." [48]

Universalism and relativism: The debate relating to this topic may be intellectually stimulating but it is also politically divisive and toxic. This is not simply because it is approached with emotionally charged arguments, claims and acrimonious language, but also because the ideological and political interests behind the debate are obvious. The roots of most of these controversies go back to the familiar core issues concerning who the human

being by nature is, what the sources, foundations and origins of human rights are, and the weight that should be given to cultural values. We shall lift forth three core issues around which most of the past debates have been rotating. These are i., whether there are inalienable or fundamental rights that should be accepted as universal and others that are relative; ii. whether there is a room for interpreting the rights recognized in the international regime of human rights bearing in mind the requirements of local religions, cultures, traditions, and the economic and political conditions, and iii., whether the origins of human rights are to be traced only to Western ideals and traditions alone and if, assuming that that is the case, whether this Western model should serve as a universal model for rights.

Before addressing these issues, it is necessary to identify who is behind the opposing camps. The literature on this subject reveals that universalism is strongly supported by the Western countries and echoed by most Western scholars. Relativism is vehemently defended by the governments of Third World countries and scholars engaged in the subject. However, this simplistic division can be misleading there are Western scholars that share the views of moderate relativists, as there are Third World relativists who defend aspects of universalism. This in itself reveals the existence of a third front which seeks a middle-of-the-road approach to reconcile the two extreme positions. Interestingly enough, one also notices a meeting point where the extremists on both sides converge, as will be explained later.

Linked to the issue of avoiding the dangers of oversimplification is the problem of how to interpret the word ‘Western’. Is this a geographic designation? If so, who is included in and who is excluded from this understanding of the term? Can Marx be included in the Western camp, as some claim [49], even when though his writings were so hostile to Western capitalism and to individual rights? For him, his writings were ‘scientific’, derived from the use of dialectic and historical materialism which any other person from any corner of the world could have written. If the term ‘West’ designates an ideological tradition, should the countries of Eastern Europe and Russia and all of the Latin American countries be included?

This is not to suggest that there is no such a thing as ‘the West’. In our political world we do see political camps and a harmonization of policies between states described as ‘Western’, ‘Eastern’, ‘Non-Allied Nations’, etc. also when human rights approaches or issues are debated at the universal forum. We have regional organizations, such as the European

Union, the African Union and the Arab League operate, and these groups also join like-minded ones outside their own organizations when they operate in defense of their common interests. However, equally important to note is that reducing the discourse on human rights to issues of political confrontation between the West and the rest could blur the complex nature of this subject. Regrettably, this is how this debate has been used and this is how we shall proceed in approaching it now.

Universal human rights is presented by most Western writers and governments as that originated from the West and which reflects Western ideals, values and traditions. As Sir Stephen Sedley understood it, "human rights are historically and ideologically the property of the liberal democracies of the West"[50] According to Forsythe, "human rights as intellectual construct … was indeed associated with the west."[51] Jack Donnelly traced this to European writings, ideals and values, those which entered "the mainstream of political theory and practice in seventeenth-century Europe."[52] Michael Freeman pin pointed this to"(T)he first systematic human-rights theory" as formulated by John Locke who "assumed that God was the 'source' in question."[53] The proponents of this position also dismiss the notion that non-Western societies have contributed to the human rights concept as "historically inaccurate."[54] Underscoring this same position, Forsythe wrote: "Other regions or cultures displayed moral principles and some movements in favor of some version of human dignity but they were not grounded in a right discourse"[55]

More concretely, Donnelly described the nature of these rights which have originated in Europe and which should be regarded as universally valid as those that are: "inalienable rights: one cannot stop being a human being, and thus cannot stop having these rights … (they) rest on and seek to realise a particular conception of human nature, dignity, well-being, or flourishing. Human beings are seen as equal and autonomous individuals rather than bearers of ascriptively defined social roles"[56]

The refusal of non-Western governments and writers to endorse the position above has been viciously attacked by some of the proponents of universalism. Rhoda Howard, for example, had difficulties in understanding why African elites have "to adopt a defensive posture, arguing for the uniqueness of African culture, to explain why Africa cannot implement all of the Western and United Nations' ideals of human rights".[57] As she saw it: "The advocacy of a theory of African communalism by African intellectuals may well be in their own self-

interest. In general the defence of 'indigenous' customs by African intellectuals may facilitate their 'big-man' domination over local groups who find their cherished value threatened."[58] Likewise, discrediting the arguments used by the Asian leaders and intellectuals who defended "the Asian value", Michael Freeman stated: "Many individuals and groups throughout history have claimed to speak for 'the people', but we have theoretical and empirical grounds for being quite skeptical of such claims. Theoretically, elites may well lack the capacity to understand the culture of the people and may well lack the incentive to understand it. Empirically, we know that elites have commonly been unconcerned with, or hostile to the culture of the people."[59] Endorsing this position Jack Donnelly calls the defense which the leaders and elites of the Third World countries as "cynical manipulations" since they themselves often embrace the Western ways of life..[60]

Relativists dismiss the premises and conclusions made by universalists to market the Western model of human rights to the rest of the world. According to them, if Europe is the origin of human rights just because John Locke and the others Western Natural Law thinkers wrote about it, then the sources of rights are incorrectly presumed to be these writers, when what they wrote claim that rights are derived from nature or the Creator. If the latter is the case, the origin of human rights cannot be geographic, as if rights are patented products. Relativists did not question the significance of the contributions made by Western thinkers for the evolution of the human rights that are recognized in the West or for the political process that led to the emergence of the Western model of rights. What they are saying is that the six thousand or so societies outside the West too had their own thinkers and have constructed their own models of human rights reflecting their needs and interests.

The other problem with the approach taken by Universalists in this regard is their refusal to accept the validity of collective and group rights that are acknowledged by non-Western cultures just because they differ from the individualized approach to rights. If human ideals, aspirations and values are derived from morality, as most of the defendants of universalism maintain, there must surely be different ways of constructing human aspirations, rights and obligations based on the prevailing conditions and mores, other than those which work in the West. The fact remains that different societies use different types of moral codes. What is acceptable in one place is not necessarily acceptable elsewhere.

Viewed from this perspective, it is not difficult to understand why scholars from the non-Western societies feel offended by some of the remarks that are made discrediting relativism and belittling the significance of the non-Western value systems for human rights. "Before seeking to criticize practices in another culture in the name of human rights" stated one Nigerian professor, "one should ask how we might feel if people from other cultures questioned practices within our own cultural community."[61] As these scholars see it, respect for social values and the collective interests have crucial importance and are linked to the enjoyment of economic, social and cultural rights. Without the latter, human dignity and worthiness cannot be guaranteed. This is also why most Third World scholars regret to read many Western writings without understanding the very context the peoples in the Third World live. Professor Hountondji from the University of Benin, wondered:

"Who has decided from now on, human history must reproduce everywhere the choices or, at best, the alternatives of European history, that these alternatives were the only ones imaginable and practicable…?"[62]

As this scholar saw it, individual morality as appreciated in many Western societies is at odd with the collective morality valued in African societies. The distinction between these two value systems should not be belittled, since in the African societies:

"[T]he individual is nothing in himself and has value only when linked to his people. Above the rights of man is therefore the right of peoples. No conflict between these two orders can be tolerated: the individual has rights only in so far as he fulfils his obligations towards his people, and wherever there might be a conflict, the rights of the individual must naturally be sacrificed. What is more, it is not Europe's role to dictate to us what we ought to do. It is in our traditional cultures themselves, in the standards and values they have bequeathed to us."[63]

According to Professor Ife, the calls of some of the universalists urging the absorption of the Western model human rights by the Third World, represents a dangerous, dubious and 'one-directional' positivist worldview, one that "raises the danger of colonialism"[64] Ife, like other moderate relativists, supports universalism as long as its tenets take into consideration the particular regional characteristics and priorities. Bearing this in mind, he calls for a dialogue where one is prepared to listen to and learn from the other side, instead

of assuming that one knows all the answers to controversial questions. By such an approach one could be better equipped to appreciate "what it means to be human and what it is that we value in our own humanity and that of others."[65]

As stated earlier, there are many Western Universalists that are sympathetic to the concerns of relativists. R.J. Vincent, an ardent defender of universalism, for instance, concedes that the moral and political dilemma which universalism poses are obvious. "After all, "the argument provided by cultural relativism against imperialism appeals not merely because it is an argument against imperialism, but because it seems true. There is a pluralistic of cultures in the world, and these cultures produce their own values. There are no universal values." [66]

Professor Antonio Cassese also believes that universalism sounds like a 'myth' that conceals "underlying disputes and differences" since it is obvious that Socialists, Islamists, Buddhists, Hindus, etc., just like the West, have all differing perceptions of what legitimate rights are.[67] Langlois went a step further in arguing that "as long as human rights is centred around a particular non-universal tradition – Western liberalism (in all its variety) – it cannot be universal: it fails on its own terms."[68] According to Susan Mendus, "of course, an understanding of human rights as merely manifestations of a particular tradition is entirely at odds with the universalism implicit in the language of rights".[69] Professor David Kennedy of Harvard University also states that: "The human rights tradition might itself be undermined by its origin … perhaps we should downplay the universal claims, or look for parallel developments in other cultural traditions, etc."[70]

Likewise, as far as Professor Reichert is concerned: "Applying human rights universally, without deference to specific cultural principles, diminishes a nation's cultural identity – a human rights violation in itself.… Culture, by necessity, often shapes the way individuals and groups view human rights, and this complicates the idea of human rights as universal."[71]

The convergence: Both the above extreme positions link the origins of human rights to the West. This is why extreme relativists reject it as 'alien' and disruptive of their societies. They rely on their own religious and cultural values to oppose the equal rights of women and men and the different social groups (e.g., when opposing the termination of the cast

system). Like extremist universalists, they also question the validity of economic and social rights since their realization could end up disrupting the existing social order. If women are educated and trained for work, then they may not end up spending the rest of their lives as housewives subordinated to their husbands. If the victims of the cast system get education and the freedom to choose the work they prefer, then they could end up taking up work other than the type that they have been compelled to engage in traditionally.

Extreme relativists and universalists have also one other thing in common, i.e., to perpetuate problems which the human rights law seeks to resolve by responding to needs, aspirations, justice and order. Extreme relativists do this by clinging to past traditions, beliefs and by linking politics with religion and culture by refusing change which liberates the oppressed. Extreme universalists agitate for individualism by underlining the importance of defending almost unrestricted freedoms of expression and privacy, often to the extent of fomenting anti-social conducts and undermining dignity and social and religious values and identities. They are insensitive to the collective interests of the marginalized groups and social conflicts because groups do not exist for them. What matters is the interests and morality of the individual, which should override collective morality. When social order is poisoned or disrupted through excessive individualism, extreme universalists have no solutions for the consequences. Their campaign for individualism appeals to the new generation in the South or East, who long to escape from the tentacles of the collective life (requiring the discharge of duties). However, once these youth are dislocated in their country or if they end up migrating to the 'promised land' (the West), and become vulnerable, extreme universalists have no human rights based solutions for their miserable state, since they do not recognize the legitimacy of economic and social rights. Individualism is preached aggressively mostly for disruption.

The regime of human rights and the discourse: critical assessment

The definition of human rights. While UN instruments generally avoid providing clear definitions for politically divisive terms, it is not difficult to see how the UN understands the concept of human rights. From some UN publications and the manner in which the provisions of some of the international instruments are construed one can see the general definitions that have been accepted. For instance, the opining paragraph of the 1993 Vienna Declaration and Programme of Action refers to human rights and fundamental freedoms as

"the birthright of all human beings." In one 1987 UN publication we see this concept defined as "those rights which are inherent in our nature and without which we cannot live as human beings … (which) allows us to fully develop and use our human qualities, our intelligence, our talents and our conscience and to satisfy our spiritual and other needs."[72] More recently, the Office of the UN High Commissioner for Human Rights, provided the following broad definition:

"Human rights are rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. … Universal human rights are often expressed and guaranteed by law, in the forms of treaties, customary international law.., general principles and other sources of international law. International human rights law lays down obligations of Governments to act in certain ways or to refrain from certain acts, in order to promote and protect human rights and fundamental freedoms of individuals or groups." [73]

As will be explained later the reference that is made to "inherent", "birthrights", 'general principles' above does not please positivists since they accept rights that are recognized by governments only. Equally important and noteworthy is perhaps not so much what was said, but also what was not said. Does the fact that religion or culture was not mentioned imply that the UN has taken an a position dismissing the view which regards human rights as a religious or cultural talk? What about the fact that human rights are not said to be moral or legal or political 'claims' as some writers have argued?

The reasons why the UN did not regard claims and rights as the same are apparent. On the one hand, seeing rights in this manner gives the impression that legal rights are empty words awaiting to be activated through claims, as if claims have a normative character. On the other hand, it also gives the impression that rights are recognized but not framed as claimable before courts (e.g., economic, social and cultural rights) are not legitimate (not real rights but mere aspirations).

Claims obviously strengthen the practicality of rights. However, rights do not necessarily depend on claims. If rights are claims, what happens if they are not claimed? Infants, mentally challenged persons or the terminally ill in the hospitals cannot claim their rights personally. People sometimes fail to claim their rights because of shortage of money or time,

because there are no courts in the vicinity, or because they were simply unaware of their rights or of the fact that they had been violated. Black Americans were prevented from exercising their civil rights for nearly two centuries. To argue that they did not have rights during those years because they did not claim them is to approve of the violations of their constitutionally recognized rights on technical grounds.

If claims bring rights, one can very well ask what the point would be in having rights at all. This, in fact, is how some relativists defend rights based on moral, religious or customary requirements. The fact remains that people approach courts to ask for remedies for the violations of their rights. In states that use the civil law system, courts are not mandated to make or distribute rights based on claims. They are there to interpret and apply existing laws. The body that enacts rights is the legislative branch (the parliament, and in some countries the Executive branch as well). When claims are made before courts, what is at issue is redress or remedies for the rights that are violated or disregarded. The victims are generally are free to exercise their rights their claim for remedies, unless the case involves crimes, which the prosecutor may pursue in the interest of the public. The fact that the victims have chosen not to press claims does not belittle their rights. These rights and the option to claim should not be equated as one and the same.

The view which ties rights to claims actually describes the legal situations in some of the common law countries, such as the United States, whose courts (at least at the level of the Supreme Court) are given wider powers to expand the regime of rights by interpreting the constitutional guarantees. The fact that economic, social and cultural rights are not claimed before courts in many Western countries, like the U.S., is frequently used as an important reason for questioning the validity of these rights.

The international regime of human rights recognizes civil and political rights as well as economic, social and cultural rights as universally valid. Unlike the former, that can be delivered immediately, the latter, as stated in article 2(1) of the covenant on economic, social and cultural rights, are realized progressively by using the “available resources”. Assuring education, health, adequate standard of living and the other benefits to all overnight is unrealistic. To weaken the arguments used by the skeptics of economic and social rights on the basis of the view that such rights cannot be claimed before courts, the UN introduced a protocol to the covenant on economic, social and cultural

rights, allowing individuals and states to send petitions to the Committee on Economic, Social and Cultural Rights. The latter, which monitors how the recognized rights are promoted or disregarded, could consider if the formalities set for this process had been complied with. The covenant on civil and political rights also has a similar protocol. In addition, it requires that states which are parties to that instrument provide effective remedies to the violations of rights (article 2.3.b).

The justification used by the UN for promoting human rights universally is the conviction in 'the dignity and worth of the human person' which is stated in the preamble of its Charter. This is a clear philosophical statement by a political organization. This is because all the schools of thinking which question the equal dignity and rights of human beings based on race, gender or other consideration are rejected. Aristotle, for example, believed that some people were born free by nature and others as slaves. Rousseau dismissed this idea and claimed that all were born free by nature. Apparently, the UN has taken sides here by rejecting the former and accepting the latter. But this is not the creation of the UN. As the records of the drafting committee states: "That faith has never faded away. … But that faith needed reaffirmation in our Charter, especially after it has been trampled upon in Europe by Nazism and Fascism"[74] The word 'worth' was introduced to replace the original suggestion to use 'value' because the latter has economic connotations. [75]

The Universal Declaration of Human Rights elaborated this further by recognizing that: "the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace". This formulation can be interpreted in at least two different ways. On the one side, it can mean that dignity is the basis or source for freedoms, justice and peace. It can also be understood to mean that if rights are denied (whatever their sources is) dignity, peace and justice would be undermined. The relationship between rights and peace is elaborated further in the third preamble of this same declaration, in the following words: "… it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law"

What the sources of dignity and worthiness are is not stated clearly. Do they arise from rational thinking (reason) or from beliefs based on religious or cultural values or norms? During the drafting of this declaration suggestions were made by some to make an explicit

theological reference by mentioning that we are created in the image of God, but this was not acceptable to others who preferred to use Nature as a source or to leave this matter open.[76] It goes without saying that beliefs that question the dignity and worth of the human being on whatever ground was not be tolerated. Evidently, this political organization has taken a clear philosophical stand against beliefs or ideologies that question the equal worth and dignity of people, on the basis of factors like race, gender, age, and disabilities.

International human rights and the foundations/sources of rights.

Is positivism endorsed? Positivists do not feel that their position has become weakened by the international regime of human rights. The fact that the UN Charter has reaffirmed faith in the dignity and worth of the human being only reflects the shared belief or faith on this matter. Moreover, it merely reaffirmed what states agreed upon and recognized before. Furthermore, this is stated only in the preamble, which is not legally binding as are the operative paragraphs of that legal instrument. The fact that this faith has been echoed in the preambles of the Universal Declaration of Human Rights and the international conventions does not change anything as these preambles are not legally binding and what is stated in them is what the state parties merely agreed upon. In other words, there is nothing to suggest that Natural Law thinking has been crowned.

What is clear is that the recognition of the principle of sovereignty in the Charter protects their right to ratify or not to ratify the human rights instruments. When they do decide to ratify these instruments, they can make reservations to the provisions of the treaty by explaining how the obligations they have assumed are to be understood or interpreted. The only exception to this rule would be instances where the reservation that is made defeats the purposes and objects of the instrument. If one looks closely at some of the reservations which some states have made, one is led to wonder what the whole point was in ratifying the instrument in the first place. There are those who opt not to ratify the instruments and defend their stance by reference to their ideological convictions. For example, the U.S. has not ratified the covenant on economic, social and cultural rights, and China has not ratified the covenant on civil and political rights.

This is by no means to say that states are free to commit serious international crimes, such as genocide, war crimes, crime against humanity, or even to resort to widespread

systematic and persistent cycles of human rights abuses. The Charter-based mechanism and the international criminal court can be used to respond to such challenges if abuses do occur. Such violations are deemed to be of essential concern to the international community.

Is Natural Law endorsed? The defenders of Natural Law appreciate the inscription of human rights in the international human rights instruments not least because some of these documents make a clear reference to "the inherent dignity and the equal and inalienable rights of all members of the human family" confirming the existence of the rights prior to governments. Added to this is the reference that is made to the relevance of 'general principles' which is included in the human rights definition provided by the office of the UNHCHR, which is taken from article 38 of the Statute of the international Court of Justice (as one of the sources of international law). However, the fact remains that it is the political actors who are entitled to interpret these 'inalienable' and 'inherent' rights: This, however, cannot be done through arbitrary methods but "according to due process" [77]

There are also expressions in the international instruments which could be interpreted to strengthen the viewpoint which claims that human rights respond to the requirements for survival. The recognition of the right to life, work, health, to freedom from cruel and inhuman treatment or punishments etc. support this. Furthermore, the third preambular paragraph of the Universal Declaration of Human Rights states that "it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law". This suggests that rights are protected out of necessity – because there is no choice but to do that – to avoid rebellion.

Individualization: When the UN turned attention to the preparation of the first universal instrument recognizing the legitimate human rights and freedoms, one of the challenging questions was whether the rights that are legitimate are only those that belong to individuals, thus questioning the validity of collective rights. Should these rights be articulated only as individual rights? The first two articles of the Universal Declaration of Human Rights laid down the ground for this individualized approach to rights by proclaiming that "All human beings are born free and equal in dignity and rights" (art. 1) and that: "Everyone is entitled to all the rights and freedoms set forth in this Declaration,

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." (art. 2. Emphasis added)

The catalogue of rights that are recognized in this Declaration include the civil, political, economic, social and cultural rights which 'everyone' has and the prohibition of exposure to slavery, torture, cruel, inhuman and degrading treatment or punishment etc. This instrument also defends the principle of equal rights and non-discrimination when it comes to the enjoyment of the proclaimed rights, including equality before the law, the equal protection of the law and recognition as a person before the law.

This approach was repeated in more elaborated and legally binding languages when the covenant on civil and political rights, the covenant on economic, social and cultural rights and other conventions were prepared and adopted. For instance, the covenant on economic, social and cultural recognizes the rights of everyone to education, health, work, adequate standard of living and participation in culture. The covenant on civil and political rights acknowledges the rights of everyone to life, liberty, security, privacy, freedom of thought, expression, association, assembly, political participation, effective remedy and protection from slavery, torture, cruel, inhuman and degrading treatment or punishment.

The 'social' nature of mankind is not questioned by the international community for obvious reasons. On the contrary, the human rights instruments provided protection to the family, and recognized the existence of duties to the national communities. States have reserved their rights to limit most individual rights in the interest of protecting 'public' order, 'public' moral or 'public' safety. 'Public' connotes a social or collective entity. The right of peoples to self-determination, which is recognized in the UN Charter, and later used for purposes of decolonization is an obvious group right. In 1950 the UN General Assembly reaffirmed this right by considering it as human right (res. 421 D (V), on 4 December 1950) and as a pre-requisite for the full enjoyment of human rights (res. 637 (VII) 16 Dec. 1952). This right was finally included into the two international covenants (article 1) on the basis of the instruction given to the drafting Commission by UN General Assembly resolution 545 (VI).

However, this right to self-determination was not meant for smaller groups, such

as minorities possessing linguistic, religious or ethnic identities. The minority rights that are recognized in article 27 of the International covenant on Civil and Political Rights, merely states that:

“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 practise their own religion, or to use their own language.”

This twisted and negatively construed provision is evidently shy when it comes to acknowledging that minorities do exist and have their group rights. Instead of affirming their rights explicitly it refers to the rights of their individual members that should not be denied. True, the provision mentions that states should not prevent individuals from expressing their characteristics which can be exercised “in community with the other members of their group”. The Human Rights Committee, which monitors how the states that have ratified this convention, give practical effect to their undertakings, also by making sure that these characteristics are protected. By so doing, this Committee endeavored to strength the weakly formulated minority rights provision used in article 27 of the covenant on civil and political rights. [78]

When the UN was criticized for abandoning minorities, by dragging its feet on the matter of protecting minorities it adopted the 1992 minority declaration. This declaration improved the defective formulation of article 27, by urging states to “protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories” also by encouraging the “conditions for the promotion of that identity” (art. 1(1)). While this is important, it still fell short of empowering the subjects by enabling them to create these conditions. In other words, states are still left free to determine if minorities exist by taking “appropriate legislative and other measures” (art. 1(2)), although this should not be done arbitrarily (defying the objective reality). No reference is made to a right to use minority languages in schools, let alone to establish their own schools. There is the expectation that “states should take appropriate measures so that, wherever possible, persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue.” (art. 4(4)) When it comes to the promotion of participatory rights, what is provided is that states should have

"due regard to (their) legitimate interests" when planning and implementing the national policies and programmes (art. 5(1), and to "consider appropriate measures so that persons belonging to minorities may participate fully in the economic progress and development in their country" (art. 4(5)).

By 2007, the UN has adopted separate declaration for indigenous groups – which up until then were mostly treated as minorities and relying on article 27 of the covenant on civil and political rights for protecting their rights. This non-legally binding instrument protected the collective rights of indigenous peoples to self-determination in the form of autonomy or self-government (arts. 3 & 4) and the use and exploitation of their traditional lands, territories and resources (art. 26). They were also allowed to maintain and strengthen their economic, social, cultural and legal systems and institutions (arts. 5, 20 & 34), and to continue determining the priorities and strategies for exercising their rights to development (art. 23). The declaration also acknowledges their rights "to establish and control their educational systems and institutions" (art. 14), to use "their own media in their own languages" (art. 16), to maintain, practice and develop cultural traditions and customs (arts. 11 & 12). The kinds of protection that are extended for them by this declaration includes from forcible eviction from their traditional lands or territories (art. 10) and from hindrances in using "their traditional medicines … medicinal plants, animals and minerals" (art. 24).

If the UN was forced to take a clear stand in this way by defending the collective interests of indigenous groups, why it is not doing the same when it comes to minorities, when the situation confronting some of them is similar to that of indigenous groups? The ILO appears to be more consistent in this regard since its 1989 convention (no 169) was extended to tribal peoples whose ways of life resemble that of the indigenous. But what about minorities who have neither 'tribal' nor 'indigenous' characteristics? Is the principle of equal rights and non-discrimination sacrificed here? This discrepancy vindicates the viewpoint which regards international human rights law as a political construct. When it comes to recognizing the self-determination of those that have internationally recognized territories (which were basically used for purposes of decolonization), the UN General Assembly had to instruct the UN Commission on Human Rights in 1950 to insert an article dealing with the right of peoples to self-determination into the covenants (which were being drafted at the time). This was also reaffirmed in the 1960 Declaration on the Granting of Independence to

Colonial Countries and Peoples.

Universalism v. relativism. The UN is mandated and obliged to promote "universal respect for, and observance of, human rights and fundamental freedoms", and the members have pledged "to take joint and separate action in co-operation with the organization."[79] On the other side, the organization is based on the recognition of the principle of sovereignty which means that states are entitled to protect their national interests. Is it possible for these states to give up these national interests in favor of a uniform human rights policy when these political actors have different ideological, political, economic and other interests including inside other states? Can political traditions based on Natural Law, positivism, religious convictions etc. be harmonized?

The Western ideals and political traditions relating to human rights were inspired by the gains secured from the American and French revolutions. The 1789 French Declaration on the Rights of Man and the Citizens clearly reaffirmed the "natural, inalienable, and sacred rights of man."[80] Following the occupation of the neighbors of France by Napoleon, the gains of the French revolution were introduced to the occupied countries. The Law of Nature was also invoked in the 1776 American Declaration of Independence as the justification for the independence of the United States and the exercise of the peoples' "inalienable Rights" including "Life, Liberty and the pursuit of Happiness", to which "God entitles them". According to this declaration "whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it".[81] The members of the Organization of the American States had already adopted their own Declaration on the Rights and Duties of Man, several months before the adoption of the Universal Declaration of Human Rights by giving a stamp of approval to the Western version of human rights, by defending "the dignity of the individual" and "the essential rights of man".[82]

About a year after the UN adopted the Universal Declaration of Human Rights, Western European countries too adopted their own regional convention to strengthen their civil and political rights. One of the grounds for their resolve to do so was their view that they were "like-minded" states, possessing "a common heritage of political traditions, ideals, (on) freedom and the rule of law. They were in a position to take the first steps for the collective enforcement of certain of the rights stated in the Universal Declaration" (the last preamble).

The like-minded East European Socialist states too forged their alliance with the Soviet Union by the middle of the 1950s, by establishing, for example, the Warsaw Pact (in response to the formation of NATO). When the UN was debating the human rights agenda these Socialist bloc countries were operating in ways that were harmonious with the Marxist ways of thinking.

In short, although the UN managed to adopt the first non-binding Universal Declaration of Human Rights in 1948 by 'pleasing' both sides, all these states had already positioned themselves in defense of their preferences for shaping what should be universal, when it was time to prepare the legally binding covenants. The East was glamorizing economic and social rights, and the West had dug in to protect civil and political rights. Both were engaged in rallying the countries of the 'Third World' that were emerging from colonialism. Although this East-West description of the politics of human rights encapsulates the basic features of the diplomatic struggle of that time, the reader should be aware of the dangers involved in over-simplifying this complex subject-matter, not least because ideological pretentions or political propaganda are often deceptive, and what is claimed politically may not always be true in the real political world. After all, two of the Four Freedoms which President Roosevelt of the U.S. defended during World War II and which the U.S delegation supported when the Universal Declaration was drafted concerned responding to wants and needs. The U.S. was behind Europeans even when they were struggling to rebuild their destroyed infrastructure at the end of World War II. Again, even if the U.S. was raising the banners of civil and political rights very high during the debates in the UN, it is dishonest to claim that it was respecting them at home before the civil rights movements of the 1960s. The ratification of the covenant on civil and political rights itself had to wait until the USSR had collapsed.[83]

Following the demise of the socialist order in the USSR and Eastern Europe, in 1991, many observers applauded the triumph of the Western political systems and values, fully convinced that this model will now serve as the basis for the universalizing of human rights. However, what was once an East-West political confrontation now took the form of a North-South confrontation or what latter came to be debated as the discourse on 'universalism and cultural relativism'. This was because the latter states were vigorously defending their traditions and political systems in line with their values.

The African Union (previously the Organization of African Unity) had already adopted its African [Banjul] Charter on Human and Peoples' Rights in 1981, making it clear that group-rights, economic and social rights and African values would always matter in Africa. This Charter was adopted with a view to protecting "the virtues of their historical tradition and the values of African civilization."[84] More specifically, it underlined the duties which the individual had "towards his family and society" [85] and "to preserve and strengthen positive African cultural values". The features of relativism could not have been clearer.

When the Member States of the Organization of the Islamic Conference met in Cairo, in 1990, and adopted their Declaration on Human Rights in Islam they too had made it clear that the rights and freedoms which they recognized would be those that could be harmonized with Islamic Shari'a and the "divine commands, which are contained in the Revealed Books of Allah"[86] The Asiatic governments too had adopted their own Bangkok Declaration[87] defending relativism, shortly thereafter. Although this document recognized the universality, indivisibility and interdependence of economic, social, cultural, civil and political rights, it also stated: "that while human rights are universal in nature, they must be considered in the context of a dynamic and evolving process of international norm-setting, bearing in mind the significance of national and regional particularities and various historical, cultural and religious backgrounds." [88] This document rejected the promotion of human rights through "the imposition of incompatible values" [89] and regarded intervention on the pretext of human rights as a violation of the principle of national sovereignty and non-interference in internal matters.[90]

However fragmented the political scenario presented above may appear, it did not hinder the UN from devising a formula that would reconcile the deadlocked positions. Thus, when international communities met in Vienna, in 1993, and adopted the Vienna Declaration and Programme of Action, the deadlock between the universalists and relativists was reconciled on the basis of the following formula:

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

promote and protect all human rights and fundamental freedoms. "[91]

This passage raises two interesting points. On the one hand, it appears that the UN had retracted its earlier assumption, mentioned in the 1968 Tehran Proclamation, which stated in operative paragraph 13, that "the full realization of civil and political rights without the enjoyment of economic, social and cultural rights is impossible." Secondly, if all human rights are universal and interdependent and indispensable for protecting human dignity, then those who reject either civil and political rights or economic, social and cultural appear to be relativists. True universalists recognize both these categories of rights. The rejection of the formula embodied in the above quotation would have left states deadlocked on how to proceed. One can also view this formula as one that has not broken any new ground, since the paradox of universalism and relativism have always been vivid in the international system. In support of this conclusion the following points could be mentioned.

Universalism was the obvious point of departure for the recognition and development of the international regime of human rights. The UN Charter has affirmed the dignity and worth of the human person and has mandated the organization to promote human rights universally and without discrimination. The manner in which the international instruments have been framed underline the assumption. As the title used for the Universal Declaration of Human Rights suggests, the rights and freedoms that are proclaimed in these instruments are intended to be universal. This was reaffirmed by the UN General Assembly in the 1968 Tehran Declaration when it celebrated the twentieth anniversary of the adoption of the Universal Declaration of Human Rights and on other similar occasions (such as the adoption of the 1993 Vienna Declaration and Programme of Action). Like the provisions of the Universal Declaration on Human Rights, the provisions of the ratified core conventions also acknowledge that "everyone" is entitled to the rights and freedoms that are recognized therein and the obligations of the ratifying states, include to respect and promote these for "all" under their jurisdiction. Because human rights are universal, they remain of concern to the international community, as it has the mandate to promote them universally – especially when the ratified instruments are disregarded.

Relativism is also firmly anchored in the international system and the human rights instruments. The fact that the whole international system rests on state sovereignty furthers relativism, since states are free to choose the convention they want to ratify or reject. When

they choose to ratify, they have the power to make reservations by explaining how their obligations are to be understood.

Respect for “the principle of equal rights and self-determination of peoples” which is recognized in article 1(2) of the UN also supports the relativist stance since it entitles all nations the right to use the individualistic or collectivistic political and cultural system. Paragraph 5 of the 1970 UN Declaration on Friendly Relations among Nations elaborates this principle to mean recognition of the rights of all peoples “to determine, without external interference, their political status and to pursue their economic, social and cultural development”. This right is also restated in article 1(1) of the two international covenants. Article 5 of the 2001 UNESCO Universal Declaration on Cultural Diversity, considers cultural rights “an integral part of human rights (art. 5) Moreover, according to art. 4 of this Declaration: “The defence of cultural diversity is an ethical imperative, inseparable from respect for human dignity. It implies a commitment to human rights and fundamental freedoms, in particular the rights of persons belonging to minorities and those of indigenous peoples.”

The interests of relativists are further served by the fact that the great majority of the recognized human rights and freedoms are framed not only in broad and general ways, but also by recognizing the rights of national authorities to restrict them on grounds, such as, national security and morality. If states are free to do this at the national level, to require some nations to change their political, social and cultural systems to fit the traditions of foreign states will be unjust and a violation of the principles of sovereignty and self-determination.

Conclusion

There is no question that what was once dismissed as ‘the human rights talk’ has now taken center stage as an integral part of the international regime of human rights. This regime is a political construct, one that is shaped by states and inter-governmental organizations. These actors recognize the political nature of human rights and use political tools to promote these rights. The road forward was long and twisted. What was started as broad and generalized standard setting based the Universal Declaration of Human Rights gradually led to the adoption of a long list of legally binding conventions. Needless to say, the fact that human

rights are legally recognized now does not mean that they have ceased to be political.

The political nature of human rights is obvious from the fact that they provide the foundation for order and stability. Some of the recognized rights are used for political ends, e.g., the rights to the freedoms of expression, association and voting rights. States also rely on human rights to criticize or undermine other political entities, especially their opponents, even when their own human rights records are not any better. Until the end of the Cold War, the U.S. was perceived as the leader of the civil and political rights movement although it did not even ratify the covenant on civil and political rights prior to 1992. Communist Soviet Union, which was critical to the legitimacy of the individualized 'rights of man', ratified the civil and political rights covenant in 1973 to gain political currency.

Because human rights are political, the states that developed the international regime of human rights had to be careful in navigating between the religious, cultural and ideological currents hindering consensus. The factor that was used to unify the diverse political actors behind a common platform to justify the development of the human rights law was conviction in the dignity and worth of the human being. Where this is derived from was left open. If human beings are worth, life has to be protected, including also by recognizing the rights to the freedoms of expression, association, assembly, religion, movement, and other rights. If dignity and worthiness are to be appreciated, then the rights to health, food, water, shelter, adequate standards of living, education, etc. cannot be questioned. This was why the international regime of human rights had to acknowledge all these rights, and why the international community viewed civil, political, economic, social and cultural rights as interdependent and universally valid. This is a political philosophy which takes a clear stand by dismissing the different schools of thought which rejected or belittled economic, social and cultural rights or civil and political rights or the principle of equal rights. This is not to say that the goals set in 1945 have been achieved. It is merely to acknowledge the gains made by transforming 'the human rights talk' to an international emergence of regime that follows its own political philosophy. There is still the need of sharpening the language of some of the human rights instruments, since they are infested with vague and general formulations, making them susceptible to ideologically and politically inspired interpretations. If this international regime is to strengthen its legitimacy, it should respond to the needs and interests of all the beneficiaries, also by developing more efficient mechanisms for monitoring the promised rights.

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Notes

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[1] See Declaration on the Elimination of All Forms of Racial Discrimination (res. A/RES/1904 of 20 Nov. 1963), Declaration on the Elimination of Discrimination against Women (res. A/RES/2263(XXII) of 7 Nov. 1967), the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief (res. A/RES/36/55 on 25 Nov. 1981), Declaration of the Rights of the Child (res. 1386(XIV) of 20 Nov. 1959), and Declaration on the rights of disabled persons (res. 3447 (XXX) of 9 Dec. 1975).

[2] See the International Convention on the Elimination of All Forms of Racial Discrimination (res. A/RES/2106 A(XX) of 21 Dec. 1965), the International Covenant on Civil and Political Rights (CCPR) (res. A/RES/2200A(XXI) of 16 Dec. 1966), the International Covenant on Economic, Social and Cultural Rights (CESCR) (res. A/RES/2200A(XXI) of 16 Dec. 1966), the Convention on the Rights of the Child (res. A/RES/44/25 of 20 Nov. 1989), and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (res. A/RES/45/158 of 18 Dec. 1990).

[3] *Burton's Legal Thesaurus*, 3rd ed. William C. Burton, ed., (New York: McGraw-Hill, 1980 {1989}); *Random House Webster's College Dictionary*, 2nd ed., (New York: Random House, 1991 (1998)).

[4] *Burton's Legal Thesaurus*…; *Black's Law Dictionary*, 7th ed. Bryan A. Garner, el al, eds., (St Paul: West Group, 1999).

[5] *The New International Webster's Comprehensive Dictionary of the English Language* (Florida: Trident Press International Law, 1971 {1999}).

[6] Thomas Hobbes, Leviathan, in *Great Books of the Western World*, Robert Maynard Hutchins el al, eds., Vol. 23 (Chicago: Encyclopaedia Britannica, Inc., 1952 {1990 prt.}), pp. 85-8 & 100 – 103 & 116.

[7] I. Kant, The Science of Right" in, *Great Books of the Western World*, Vol. 42, R. M. Hutchin el al, eds. (Chicago: Encyclopaedia Britinnica, Inc., 1952), p. 435 (Author's Emphasis).

[8] Ibid., p. 436.

[9] John Locke, “An Essay Concerning the True Original Extent and End of Civil Government”, *Great Books of the Western World*, Robert Maynard Hutchins el al, Vol. 35, p. 27.

[10] Michael J. Perry, *The Idea of Human Rights: Four Inquiries*. Oxford: Oxford University Press, 1998), pp. 12-21.

[11] Cairo Declaration on Human Rights in Islam, Aug. 5, 1990, University of Minnesota Human Rights Library, in http://www1.umn.edu/humanrts/instree/cairodeclaration.html

[12] Ayn Rand, *The Virtue of Selfishness: A New concept of egoism* (New York: The New American Library, 1962{1964}), pp. 124-5.

[13] *Ibid*., p. 28.

[14] Ibid, pp. 124-5; See also Donnelly, *Universal Human Rights in Theory and Practice* (Ithaca: Cornell University Press, 1989), p. 214; & R.J. Vincent, *Human Rights and International Relations*, Cambridge: University Press, 1986 (1988), ch. 1.

[15] Marx, ‘On the Jewish Question’, in K. Marx/F. Engels, *The Marx-Engels Reader*, 2nd ed., Robert C. Tucker ed., (New York: Princeton University, 1978) pp. 42-43.

[16] Thomas Aquinas, The Summa Theologica, in, *Great Books of the Western World*, Vol 20, p. 228. See further, John D. van der Vyver, “Introduction: Legal Dimension of Religious Human Rights: Constitutional Texts”, in, John D. van der Vyver and John Witte, Jr., eds. *Religious Human Rights in Global Perspective: Legal Perspectives* (The Hague, Martinus Nijhoff Publishers, 1996), specially pp. xxx-xxxi.

[17] Hugo Grotius, *The Law of War and Peace: De Jure Belli ac Pacis Libri Tres*, trans. Francis W. Kelsey (New York: The Liberal Arts Press, 1925), pp. 38-9.

[18] Hobbes, pp. 86-7 & 101.

[18] Locke, pp. 26-30, & 46-47.

[20] Kant, p. 401.

[21] *Ibid*., p. 405.

[22] *Ibid*., p., 409.

[23] Anthony Arblaster, *The Rise and Decline of Western Liberalism* (Now York: Basil Blackwell Inc., 1984), p. 15.

[24] Jack Donnelly, "Human Rights, Individual Rights and Collective Rights", in Jan Berting, and el al., eds *Human Rights in a Pluralist World: Individuals and Collectivities* (London: Meckler, 1990), p. 45. According to Donnelly "We do not need a human rights to cultural identity". Ibid., p. 59.

[25] Rand, p., 126, citing her own work, in Atlas Shrugged. See also R.J. Vincent, *Human Rights and International Relations* (Cambridge: Cambridge University Press, 1986), pp. 7-9 & 13-14; Jack Donnelly, *Universal Human Rights in Theory and Practice*, 2nd ed. (Ithaca: Cornell University Press, 2003), pp. 1-2 & 13.

[26] Rand, *Ibid*, pp. 130-131. See further pp. 31 and 129

[27] "If the desires, values and development of the individual are socially determined", wondered Crowley, "then in what way are his 'choices' morally significant and sovereign?". Crowley, p. 57. By rejecting collective rights, added Crowley, those who dismiss the social nature of people actually obstruct the basis for formulating the legal language for resolving the problems faced by the marginalized groups.

[28] T. H. Huxley, Science and Christian Tradition, Prologue, in Mortimer J. Adler & Charles Van Doren, eds., *Great Treasury of Western Thought: A Compendium of Important Statements on Man and His Institutions by the Great Thinkers in Western History* (London: R. R. Bowker Co., 1977), p. 693.

[29] Crowley, p. 57.

[30] *The Works of Jeremy Bentham*, (New York: Russell & Russell, Inc., 1962, reproduced from the Bowring editions of 1838-1843, by John Bowring), Vol. III, pp. 218-220. This collection will hereafter be cited as Works…).

[31] *Ibid*., Vol. III, p. 221.

[32] *Ibid*… See further pp. 221 & 219.

[33] *Works* …, Vol. III, p. 159; and *An Introduction to the Principles of Moral and Legislation*, pp. 2-4, & 224-225.

[34] *Works*, Vol. III, pp. 217-218, 220-1; & Vol. 1 p. 301.

[35] *Ibid*., Vol. III, p. 159.

[36] Quoted by H. L. A. Hart, in *Essays on Bentham: Studies in Jurisprudence and Political Theory*, (Oxford: Clarendon Press, 1982), p. 2.

[37] Letter of Marx to Engels, dated 18 Feb. 1865, in *Karl Marx & Friedrich Engels, Correspondence: 1846-1895. A Selection with Commentary and Notes* (Bristol: Western Printing services, Ltd., 1934?), p. 193.

[38] Perry, pp. 12-21, especially p. 20.

[39] J. Donnelly, The social construction of international human rights, in Tim Dunne and Nicholas J. Wheeler, eds. *Human Rights in Global Politics* (Cambridge: University Press, 1999) p. 81.

[40] R. J. Vincent, "Introduction" in Vincent ed., *Foreign policy and human rights: Issues and responses* (Cambridge: Cambridge University Press, 1986), p. 3. The source of human rights, according to Vincent is Natural Law, *ibid*., pp. 11 & 33.

[41] Alan Gewirth, *Human Rights: Essays on Justification and Applications* (Chicago: The University of Chicago Press, 1982), pp. 1 & 3.

[42] Statement of Mr. *Justice Stayton, in Mellinger v. City of Houston* (1887), 68 Tex., 37, 45; 3 S. W., 249, 253, sited by Wesley N. Hohfeld, *Fundamental Legal Conceptions As Applied in Judicial Reasoning,* Walter Wheeler Cook, ed. (New Haven: Yale University Press, 1919 {1966}), p. 71, note 16.

[43] Joel Feinberg, Rights, *Justice, and the Bounds of Liberty: Essays in Social Philosophy* (Princeton: Princeton University Press, 1980), p. 151.

[44] *Ibid*., p. 139.

[45] David Beetham, "Introduction: Human Rights in the Study of Politics", *Political Studies* (1995), Vol. XLIII, special issue p. 3.

[46] Michael Freeman, *Human Rights: An Interdisciplinary Approach*, 2nd ed Cambridge: Polity, 2012, p.11.

[47] Elisabeth Reichert, "Human Rights in the Twenty-first Century: Creating a New Paradigm for Social Work", in E. Reichert, ed. (2007). *Challenges in Human Rights: A Social Work Perspective.* New York, University Press p. 5.

[48] *Ibid*, p. 6.

[49] David P. Forsythe, *Human Rights in International Relations*, Cambridge, Cambridge University Press, 2012 2nd ed., p. 6.

[50] Sir Stephen Sedley, "Human Rights: A 21st Century Agenda", in Robert Blackburn and James J. Busuttil, eds., *Human Rights for the 21st Century*. London: Printer, 1997, p. 1.

[51] Forsythe, p. 40.

[52] Donnelly, The social construction of international human rights, p. 82.

[53] Freeman, Human Rights…, p. 11

[54] Donnelly, *Universal Human Rights* p. 87.

[54] Forsythe, p. 40.

[56] Donnelly, The social construction of international human rights, p. 80.

[57] Rhoda Howard, Rhoda Howard, "Is there an African concept of human rights?", in R. J. Vincent, ed., *Foreign Policy and Human Rights: Issues and responses*, p. 25.

[58] Ibid., p. 24.

[59] Michael Freeman, "Universal Rights and Particular Cultures", Michael Jacobsen and Ole Bruun, eds., *Human Rights and Asian Values: Contesting National Identities and Cultural Representations in Asia* (Richmond: Curzon Press, 2000), p. 49.

[60]. Donnelly, *Universal human rights* p., 119.

[61] Jim Ife, "Cultural Relativism and Community Activism", in E. Reichert, ed., *Challenges in Human Rights*, p. 79.

[62] Paulin J. Hountondji, "The master's voice – remarks on the problem of human rights in Africa", in *Philosophical foundations of human rights,* (Paris: UNESCO, 1986), p, 326.

[63] *Ibid*., p. 328.

[64] Ife, pp. 77-78. Obrad Savić also took this as an example of Western hegemonism. Obrad Savić, Introduction: The Global and Local in Human Rights: The Case of the Federal Republic of Yugoslavia", in Savić, ed., *The Politics of Human Rights*, Verso, 1999, p. 7.

[65] *Ibid*., p. 88. See further Mohammed Allal Sinaceur, "Islamic tradition and human rights", in *Philosophical Foundations of Human Rights*, p. 199; Fouad Zakaria, "Human Rights in the Arab World: the Islamic Context", ibid., pp. 227-228; & Ryosuke Inagaki, "Some Aspects of Human Rights in Japan", in *ibid*., p. 187.

[66] R. J. Vincent, *Human Rights and International Relations*, p. 38.

[67] Antonio Cassese, Cassese, "Are Human Rights Truly Universal?", in Savic (ed.), *The Politics of Human Rights*, p. 161 & pp. 162-164.

[68] Anthony J. Langois, *The Politics of Justice and Human Rights: Southeast Asia and Universalist Theory* (Cambridge: Cambridge University Press, 2001); p. 7.

[69] Susan Mendus, "Human Rights in Political Theory", *Political Studies* Vol XLIII (1995), Special Issue, Politics and Human Rights p. 13.

[70] David Kennedy, "The International Human Rights Movement: Part of the Problem?, (2000), *E.H.L.R.,* Issue no.3, p. 257.

[71] Reichert, *Human Rights in the Twenty-first Century*, p. 9.

[72] Cited in UN Center for Human Rights, *Human Rights and Social Work: A Manuel for Schools of Social Work and the Social Work Profession* – Professional Training Series, no 1, 1994 (HR/P/PT/1).

[73] UNHCHR, "What are Human Rights?" http://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx

[74] Report of Rapporteur of Committee I/1 to Commission I, Doc 944, June 13, 1945, The *United Nations Conference on International Organization, Selected Documents*, U.S. State Department, 1946 reproduced in https://babel.hathitrust.org/cgi/pt?id=mdp.39015030752813;view=1up;seq=504, p. 493.

[75] *Ibid*., pp. 490-3.

[76] Tore Lindholm, "Article 1" in Asbjorn Eide, Gudmundur Alfredsson, Goran Melander, ,Lars Adam Rehof and Allen Rosas eds. *The Universal Declaration of Human Rights: A Commentary*. Oslo: Scandinavian University Press, 1992, pp. 31-55, especially pp. 42-48.

[77] UNHCHR, ”What are Human Rights?” http://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx.

[78] General Comment 23, Art. 27, para.. 6.1, in U.N. Doc. HRI/GEN/1/Rev.1 at 38 (1994).

[79] Arts. 55 and 56 respectively. Emphasis added.

[80] See the History Guide, Declaration of the Rights of Man and the Citizen, August 1789. in http://www.historyguide.org/intellect/declaration.html

[81] See The Declaration on Independence: A Transcription, The Charters of Freedom, in http://www.archives.gov/exhibits/charters/declaration_transcript.html.

[82] https://www.cidh.oas.org/Basicos/English/Basic2.American%20Declaration.htm Emphasis added.

[83] This is why one should not confuse human rights ideals with actual behavior. Indeed if the defense for civil and political rights was in line with the ideological orientation and national traditions of the American States as it is often claimed, one may wonder why the members of the Organization of the American states had to wait until late in 1978 to ratify the American Convention on Human Rights. The West European countries did manifest their loyalty for the defense of civil and political rights by adopting the 1950 European Convention on Human Rights. However, a decade later they also adopted the Social Charter recognizing economic and social rights, in haphazard ways. Most of the states that ratified this instrument were also parties to the ILO conventions protecting economic rights. These Western states also gradually ratified the covenant on economic, social and cultural rights blurring the East-West divide relating to the kinds of rights that should have been recognized. The fact that the defectively formulated Social Charter was revised several times and that the European Union too adopted its own Charter on Fundamental Rights also shows further that economic and social rights are not as alien to the West as it is often claimed.

[84] See preambular paragraphs 7 and 4 respectively, in OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982).

[85] Arts. 27(I) & 29(1).

[86] Cairo Declaration on Human Rights in Islam, Aug. 5, 1990, University of Minnesota Human Rights Library, in http://www1.umn.edu/humanrts/instree/cairodeclaration.html

[87] Final Declaration of the Regional Meeting for Asia of the World Conference on Human Rights, in http://www://google.com. This instrument was adopted by the representatives of Asian States, at the end of their meeting (from 29 March to 2 April 1993), in Bangkok, in the context of preparations for the World Conference on Human rights.

[88] *Ibid*., 8th operative para.

[89] *Ibid*, preambular para. 10, & operative para. 3.

[90] *Ibid*, preambular para. 8, & operative para. 5.

[91] Part I, operative paragraph 5 of the Programme of Action. Operative paragraph 10 also states that “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.”