

Reflection: The Concept of Human Rights – Relative or Universal

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1998 marks the fiftieth anniversary of the Universal Declaration of Human Rights. This is an important milestone for one of the most notable international instruments for the protection of human rights in the contemporary world.

Prior to the Second World War, there was no general concern for the international protection of human rights. Human rights issues were treated as the internal affairs of sovereign states; there was no international law governing human rights, except on some narrowly defined issues such as prohibition of slavery and limited protection of certain groups for humanitarian reasons. After witnessing the complete disdain of human rights exhibited during the Second World War, however, many people realized that human rights could no longer be perceived as the private business of a country, but was a common concern for international community. Since then on, a general concept of international protection of human rights began to develop and enter the field of international law. Now it is recognized as an indispensable part of contemporary international law.

Approaching its fiftieth anniversary, it is time to review not just the Declaration itself but also the concept of human rights in general. This article shall first discuss the international protection of human rights under contemporary international law. Then it will succinctly address the debate on the universality of human rights, especially from an Asian perspective. Finally, we shall briefly look at the changing concept of human rights.

Human Rights under International Law

Along with the Universal Declaration of Human Rights, the Charter of the United Nations and the two international covenants on human rights in 1966 remain the most important contemporary instruments for the international protection of human rights.

Charter of United Nations:

In response to the contempt and disregard of human rights during the Second World War, human rights provisions were included in the Charter. Foremost, the Preamble clearly states the spirit of the Charter is, *inter alia*, "... to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small ..."

Article 1 (3) states one of the purposes of the United Nations is, "To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion."

Above all, one of the most important Articles which deals with human rights is Article 55 which states,

"With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote ... universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."

For the purpose of this Article, Article 56 states,
"All Members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55."

Articles 62 and 68 go on to mandate that the Economic and Social Council take steps toward promoting human rights, as well. This requirement forms the legal basis for the establishment of the Office of the United Nations High Commissioner for Human Rights. In addition, Article 76 (c) also states one of the objectives of the United Nations trusteeship system is to "encourage respect for human rights."

These provisions are very general and abstract in nature, containing no specific definition on the concept of human rights, so it is said that they could not impose any positive obligation on the Members. However, it was argued that Article 55, when read together with Article 56, does indeed constitute an obligation for the Members.

This raises a controversy among scholars of international law. Notwithstanding this particular debate, these provisions became the guiding principles of international protection of human rights and also provided the basis for the Universal Declaration of Human Rights in 1948.

Universal Declaration of Human Rights:

The Declaration is composed of a Preamble and thirty articles. Article 1 and 2 form the principle of the Declaration. Article 1 states, "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."

Article 2 states the basic principle of equality and non-discrimination, that is, "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

Articles 3 to 21 states specifically the civil and political rights. Articles 22 through 27 go on to list the various economic, social and cultural rights guaranteed for everyone. The last three articles of the Declaration examine the implications of human rights on both individual nations and the international community. For instance, Article 28 states,

"Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized."

The Declaration was passed and proclaimed as a resolution by the United Nations. It was not an international treaty, and strictly speaking, it was not legally binding. However, because of its worldwide recognition under the domestic law of many countries and by other international human rights instruments, arguably, it formed part of the customary international law. Moreover, as it was passed unanimously, (with only 8 abstentions) it could also be treated as an authoritative interpretation of the human rights provision in the United Nations Charter. Additionally, it formed the basis of many international human rights instruments and is one of the most frequently cited human rights principles. Most notably, the principles contained in the Declaration had been reaffirmed in The Vienna Declaration and Program of Action.

Nonetheless, the agreement was not comprehensive enough as it excluded two important areas that deserved mention, namely, explicit protection of minority populations and the right of everyone to self-determination. Therefore, these areas were later covered by two international covenants.

International Covenants in 1966:

In 1966, two very important international covenants on human rights were opened for signature for any members of the United Nations. The first one is International Covenant on Civil and Political Rights (ICCPR) and the second one is International Covenant on Economic, Social and Cultural Rights (ICESCR). With the collapse of colonialism and the rise of newly independent countries, the right to self-determination became widely recognized. Therefore, in Article 1 (1) of both covenants, it states that "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."

Moreover, for the purpose of giving those newly independent countries not only political independence but also economic independence, the guarantee of natural endowment were put in Article 1 (2) of both covenants which states,

"All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence."

These concepts were not extensively covered under the Declaration. In addition, based itself on the Declaration, the ICCPR has more comprehensive provisions under Article 6 to 27. Regarding ICESCR, it contains ten Articles (from Article 6 to 15) which dealt with economic, social and cultural rights, in contrast to only six in the Declaration. Furthermore, these provisions were more specific and detailed than the Declaration.

Review:

In addition to the documents discussed above, there are also many other international treaties and conventions respecting human rights, most notably, the 1979 Convention on the

Elimination of All Forms of Discrimination against Women, as well as the 1951 Convention and 1967 Protocol Relating to the Status of Refugees. Yet for all of these documents, the protection offered by the conventions or treaties were only available to the citizens of signatory nations. Indeed, even for the signatories, there is still a question of whether the protection is automatically guaranteed to individuals in the absence of enabling domestic legislation. Furthermore, the extent of protection under these treaties is also subject to various reservations made by the signatories. In many cases, the protection of individual human rights, despite changes over the past five decades, still depends on the domestic law of a country.

On the other hand, if the provisions contained in the treaties form part of the customary international law, they could be effective even against those countries which were not signatories to the treaties. Nevertheless, it is extremely difficult, if not impossible to determine exactly which provisions have become part of the customary international law, and this remains one of the biggest tasks for the scholars in the field.

With the growing concerns for human rights in the international community and the development of international law in the field, many people have regarded that human rights are universal in nature. However, in recent decades especially among the Asian countries such as China and Singapore, it has been argued that human rights are **relative** rather than **universal**, and that the traditional concept of human rights which places emphasis on political and civil rights must be adapted to such emerging concepts as the right to development.

Universal or Relative?

The controversy over the universality and relativity of human rights seems to have developed into a contention between the West and the East. While many Western nations support the former notion, many Asian countries argue the latter. However, as Professor Onuma Yasuaki has pointed out, neither theory is flawless.

First of all, it must be noted that empirical data between human rights and various development factors are mixed, so they cannot give a decisive answer between economic, social and educational development on the one hand and improvement of human rights on the other. Secondly, the universality theory cannot be proved by sheer logic either. Any normative conclusion, such as the one stating that human rights are universal, necessarily rests on at least one normative premise, which at some level cannot be conclusively proven, but must instead be either postulated or rejected. For instance, some believe that human rights are inherent in human beings and therefore are universal in nature. However, this is almost begging the question; it assumes the conclusion in order to prove that conclusion. Simply from the empirical study of human history, as well as the contemporary world, it could be seen that human rights are not held and guaranteed in all places, at all times. Modern Western society increasingly subscribes to only one absolute: that there are no absolutes, that everything is relative.

On the other hand, this theory of subjectivity is also equivocal and problematic. It was argued that human rights are relative because human beings are constrained within limit of their own existence, which could be in terms of culture, religion, economy, ethnicity, class and so on. These values must be respected and it is not permissible to impose "universal values" upon them.

In the Vienna Declaration, it was proclaimed that the universal nature of human rights was beyond question. In the words of the United Nations High Commissioner for Human Rights, "The Vienna Declaration and Program of Action consecrated the notion that all human rights are universal, indivisible and interdependent and interrelated and called on the international community to treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis."

Therefore, though the theoretical conflicts between a universal and relativist approach to human rights remain unresolved, the former has become codified in international agreements.

The Changing Concept

The notion of human rights is, like any other notion, a product of a specific time and place. As seen from above, the concept of human rights is not static but expanding. In 1996, the United Nations Commission on Human Rights adopted by consensus, for the first time, resolution 1996/15 of 11 April 1996 entitled "The Right to Development." Since then, the right to development has been recognized internationally as a human right. However, this should not signify the end of further development or expansion of the concept. If one accepts that the mechanism of human rights is one of many ways to realize human wellbeing, it is necessary to constantly re-conceptualize human rights in order to make them less flawed and more universal. One possible future development is the so-called "third dimension of human rights" advocated by Dr. Brzezinski. In his words, "The emerging third dimension pertains to the rapidly growing potential for the actual alteration of human individuality and for the inequitable social exploitation of that potential... the emerging interface is among politics, ethics, and science."

With the advance of science, it is possible to alter, to improve, and even eventually to artificially produce or clone the human being. Its benefits can be enormous, but can also be very discriminatory. Should these rights be only available to the rich? Whether these rights should be socially controlled by the government? All these questions cannot be answered by the traditional concept of human rights.

One of the greatest concerns in this emerging issue area can be illustrated by a letter to *Science* magazine from S.E. Luria, the Nobel laureate in biology at the Massachusetts Institute of Technology: "Will the Nazi program to eradicate Jewish or otherwise inferior genes by mass murder be transformed into a kinder, gentler program to perfect human individuals by correcting their genomes in conformity, perhaps, to an ideal, white, Judeo-Christian, economically successful genotype?" The answer to these questions should and must be addressed, one day, in the broadening concept of human rights on an international level.

Conclusion

Human rights are no longer merely domestic affairs but global concerns. Despite the controversy on the concept of human rights, every nation is required to make its best effort to reach the standard stated in these international instruments. Since human right is a developing concept embracing all dimensions of a human being, it seems wrong to place special emphasis on certain dimensions, especially in disregard of the others. Civil and political rights are no less important than economic rights and the right to development; all human rights are of equal.

