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# SYMPOSIUM: HUMAN RIGHTS

## International Human Rights Law has come of Age

VED P. NANDA\*

### I.

International human rights law has come of age. There has been a transformation of the subject since 1963-64 when I attended the first ever seminars on the subject offered by the late Egon Schwelb at Yale Law School.<sup>1</sup> As Deputy Director of the Division of Human Rights at the United National Secretariat, Schwelb was a practitioner of Human Rights. He was also a meticulous scholar who thoroughly probed the jurisprudential aspects of human rights and conducted a comprehensive inquiry into the strengths and weaknesses of the discipline, then in a nascent stage of development. The course was primarily structured, in a historical context, on the developments in the field since the inception of the United Nations, especially since the adoption of the Universal Declaration of Human Rights. The focus was on the United Nations and Europe. Conventions adopted at the United Nations, the progress on the International Covenant on Civil and Political Rights and on the International Covenant on Economic, Social and Cultural rights, the case law of the European Commission and Court of Human Rights, and regional experimentation in Latin America were then the major areas covered. The concentration was on civil and political rights.

The last 20 years have witnessed the maturing of the discipline. Courses and seminars on international human rights are being offered in an increasingly large number of law schools.<sup>2</sup> Voluminous literature on the subject, rich in substance and varied in scope, exists<sup>3</sup> and is growing

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1. See Schwelb, *Teaching the Law Relating to the International Protection of Human Rights: An Experiment*, 17 J. LEGAL ED. 451 (1965). See also *The Teaching of the International Law of Human Rights*, 11 HOWARD L. J. 527 (1965). Human Rights was not a separate category in the *Index to Legal Periodicals* until 1964.

2. See Lillich, *The Teaching of International Human Rights Law in U.S. Law Schools*, 77 AM. J. INT'L L. 855 (1983).

3. See, e.g., M. McDUGAL, H. LASSWELL & L. Chen, *Human Rights and World Public Order* (1980); Vincent-Daviss, *Human Rights Law: A Research Guide to the Literature*, 14

each year. Intersection between U.S. constitutional law and human rights law is being recognized.<sup>4</sup> Our domestic courts have begun to acknowledge the existence of applicable norms of customary international law pertaining to human rights.<sup>5</sup>

Centers for human rights study, especially at Columbia and the University of Cincinnati Law Schools are noteworthy. At Strasbourg, a summer human rights institute is held yearly. Students can earn a Master of Law degree in human rights at many universities. Several journals exclusively cover developments in human rights law, while others publish occasional symposia, and frequent articles and developments on various aspects of human rights.

A network of practitioners, specializing in the practice of human rights law, is growing in the United States. In the United States and abroad several international human rights law groups are actively engaged in advocacy. Several law schools, notably Columbia and Denver, offer clinics in the practice of human rights law. The U.S. Institute of Human Rights has been active for the last decade. At the annual meeting of the American Society of International Law in April 1985, an interest group on human rights advocacy was established, which drew the largest number of scholars and practitioners attending the various interest group meetings. An impressive range of interests was represented by those in attendance.

The range of issues discussed under international human rights law is growing as well. Along with civil and political rights, inquiry also has been increasingly focused on economic, social and cultural rights. Emerging new areas under investigation include the right to development and the right to peace.

Accompanying these desirable developments are the growing pains and discipline is still experiencing. Cohesion is lacking and conceptual problems and challenges of implementation are formidable. To illustrate, each year students at the Graduate School of International Studies at the University of Denver where George Shepherd and I annually teach a course, "Human Rights and the Third World," challenge the concepts, theories and premises we put forward and take issue with us on our analysis and conclusions. Varying degrees of disagreements are evident on issues such as the definition of human rights, the establishment of priorities, and the selection of appropriate means for the promotion and protection of human rights. I was struck with a similar lack of consensus

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N.Y.U. J. INT'L L. & POL. 299, 487 (1981); 15 *id.* at 211 (1982).

4. See H. HANNUM, MATERIALS ON INTERNATIONAL HUMAN RIGHTS AND U.S. CONSTITUTIONAL LAW (PAIL 1985).

5. See, e.g., Burke, et al, *Application of International Human Rights Law in State and Federal Courts*, 18 TEX. INT'L L. J. 291, 315-22 (1983); *Symposium on International Human Rights in State Courts*, 18 INT'L LAW. 59 (1984); *Symposium—Federal Jurisdiction, Human Rights, and the Law of Nations, Essays on Filartiga v. Pena-Irala*, 11 GA. J. INT'L & COMP. L. 305 (1981).

on these issues at a recent meeting in Denver hosted by the Institute of International Education and the University of Denver College of Law. There were present students from over 30 countries who after graduating from U.S. universities were returning to their homelands.

## II.

The symposium that follows discusses wide-ranging aspects of international human rights. Subjects addressed include "Development as an Emerging Human Right under International Law," "The Right to Communicate," "Influencing U.S. Foreign Policy on Human Rights," and "Trade Union Rights in . . . Poland and the [International Labor Organization]." In addition, three articles with comparative or regional orientation—an article on gender discrimination in a comparative setting, an appraisal of the exercise of advisory jurisdiction by the Inter-American Court of Human Rights, and a comment on the *Marckx* case in which the European Court of Human Rights declared Belgian illegitimacy statutes violative of the European Convention on Human Rights—, and a report on an international human rights clinic at the University of Denver College of Law round off the symposium.

The Symposium opens with a study of the right to development under international law. The author recognizes the lack of precision with respect to the term development; however, he rejects the narrow definition of development under which the preoccupation was on economic growth, accepting instead the broader approach to the development process under which an increasing emphasis is "on human beings and the human potential as the basis, the means, and the ultimate purpose of the development effort."<sup>6</sup>

Next he discusses in a historical setting the relationship between development and human rights. His inquiry is focused primarily on the efforts undertaken at the United Nations. He suggests that both aspects of development—international and national—should be given equal attention, and concludes that "the development of the individual . . . is a prerequisite to the development of every society and the world community."

Finally, he addresses the role of international role in ensuring that "the realization of equity and justice both domestically and in the international arena" be realized. He calls for further studies and action by the United Nations, regional organizations and nongovernmental organizations.

Christopher Docksey studies sex discrimination in Britain, the United States and the European community. His inquiry is focused on legal responses to the common problems of gender discrimination which arise in these countries. After a thorough analysis of both statutory and

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6. Soedjatmoko, *The Human and Cultural Dimensions of Development: Accomplishments and Failures*, in A SOCIETY FOR INTERNATIONAL DEVELOPMENT: PROSPECTUS 1984, 18 at 19 (1983).

judicial responses, he concludes on an optimistic note: "[T]here seems to be a growing acceptance of the concept of comparable work, without which pay equity is impossible. In the area of equal pay, more than any other, there are grounds for cautious optimism that injustice may be significantly mitigated by law over the next few years."

Howard Anawalt faces the same initial difficulty in the right to communicate as was confronted earlier in the right to development, that of a lack of consensus on definition. He, however, considers an emerging consensus on defining the right in terms of two concepts—access and participation. Still he finds a divergence of views among the major proponents of the three identifiable approaches on the issue—the western point of view with its focus on communication freedom as a political process, as a set of journalistic freedoms, and an important commercial activity; the development point of view espoused by the Third World which emphasizes the role of communications in the creation and preservation of national identity and national economic and social strength; and the Soviet point of view reflecting a strong orientation toward preservation of public order. This leads to a different emphasis under each approach on the freedom to initiate message and the need to control content of message in the name of public order. Anawalt concludes that further efforts be directed not in the elaboration of new international norms but in exploring means of implementation which are effective.

Otwin Marenin addresses an important question: "What can be done by members of the public to encourage the salience of human rights as a foreign policy goal?" After providing a refreshing analysis of the Reagan administration's approach to human rights, he outlines the difficulties one faces in shaping and influencing U.S. foreign policy on human rights. His conclusion is that one's work on influencing this policy is effective when it is "based on a clear understanding of how the complex foreign policy process works, what its limitations are and when advocacy is fuelled by the indignation which all violations of human rights deserve."

Bert Lockwood provides an illuminating study of the first two advisory opinions of the Inter-American Court of Human Rights. Suggesting that these decisions have important implications for the eventual acceptance by member states of the Court's compulsory jurisdiction, and for the future development of procedures for the protection of human rights in the hemisphere, he concludes that the Court is "off to a good start."

David Wirth presents with clarity a case study of Poland's conflict with the International Labor Organization on trade union rights. After detailing the pertinent ILO prescriptions on the subject, its investigation of the alleged violations of trade union rights by the government of Poland, the government's refusal to cooperate with the investigation, the recommendations of the ILO Commission of Inquiry, Wirth considers Poland's notice of withdrawal from the ILO to be an inappropriate response. He suggests that "[i]nstead of withdrawing from ILO, the Policy government might more profitably invest its effort in working with the Organization once again to begin to establish a trade union environment consis-

tent with fundamental principles of freedom of association.”

Marc Salzberg comments on the *Marckx* case in which the European Court of Human Rights declared that Belgian illegitimacy statutes violated the European Convention on Human Rights. Salzberg provides an interesting historical background to the decision and updates the reader on subsequent decisions in European national courts. He considers the decision a landmark and finds the Court's success remarkable, attributing it to the confidence and respect that it has gained among member states because of its usually cautious and well-reasoned approach.

The symposium concludes with a report on a human rights clinic offered at the University of Denver College of Law in the summer of 1983. Thirteen students were enrolled in the clinic. They worked on nine projects ranging from a complaint to the U.N. Commission on Human Rights prepared pursuant to ECOSOC Resolution 1503 on behalf of a Russian citizen, a brief prepared on behalf of the KaNgwane people for submission to the South African government, and an opinion on Argentina's then proposed amnesty law, to two briefs prepared on behalf of Haitian and Salvadoran refugees seeking political asylum and an amicus brief prepared for presentation to the Inter-American Court of Human Rights. The instructors share their experience with and offer suggestions to law teachers who might contemplate offering such a clinical experience to their students.

### III.

The subjects addressed in the symposium cover a wide spectrum. Two common features underly these articles: the need to (1) strengthen and build on the fragile consensus that seems to be developing on several aspects of human rights, and (2) explore effective means of implementation. International lawyers have an important role in working toward the realization of both these objectives.

