

INSTRUMENTALISATION / POLITICISATION OF HUMAN RIGHTS (Double Standards)

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Summary

The article discusses issues related to tensions arising between human rights as political aspirations and as legally binding obligations as well as security and human rights, peace-building (political decisions) and human rights (legal obligations). Also discussed are the self-regulation of human rights inside the state-structure, the responsibility for human rights as a relation between the state and the individual, and a human rights-based approach.

Freedom of religion has through the history of human rights been looked upon as foundational for freedoms and rights, and in the European setting (the European Court of Human Rights) essential for a democratic society. Being incorporated in the *Covenant on Civil and Political Rights* (Article 18), freedom of religion belongs to the basic freedoms and rights. In 1981 the UN General Assembly proclaimed the *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief* (Resolution 36/55). But in contrast to other declarations like the ones on discrimination against women, the rights of the child, and protection of all persons from being subjected to torture, there has been no follow up about freedom of religion through a specific binding covenant. This may be ascribed to a lack of political will and even tensions between states concerning issues such as, for example, the right to change religion.

The division in the human rights system, with declarations on the one hand and covenants on the other, is in one way symptomatic of a kind of tension between political aspirations for human rights and the implementation of human rights with legally binding commitments. Declarations about human rights are important as an expression of political will by a state; but to transform goodwill into legally binding obligations is to make human rights instrumental for change and protection. In the case of freedom of religion it can be seen in the difference between expressing a good intention without any obligations and taking on obligations granting rights.

The process of transforming the *Universal Declaration of Human Rights* of 1948 into a binding covenant resulted in two main covenants, the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights*, both adopted in 1966 and entering into force in 1976. This process is usually ascribed to the Cold War situation. In many books on human rights the argument goes that the Cold

War blocked the establishment of one convention, with the Eastern block arguing for the economic and social rights and the US defending civil and political rights. In a recent analysis of the process behind the covenants this way of arguing has been described as “the myth of Western opposition”.¹ According to the authors the decision in 1952 to draft two covenants had nothing to do with any kind of opposition or disregard either to economic and social rights or to civil and political rights. Rather it was a question of how best to recognize and implement the rights.

Still, the discussion following World War II concerning the two covenants really pinpoints the gap between political decision-making and legally binding obligations. Making most of the civil and political rights legally binding was agreed upon, incorporating or transforming them into national law, with violations to be treated by the court system. But the fulfilment and jurisprudence concerning most of the economic and social rights were looked upon as being ongoing processes and thus connected to political decision-making. But as the Cold War grew in intensity, the Eastern block headed by the Soviet Union faced critiques over civil and political rights, and the counter-attack focused on economic and social rights in the West, thus creating tension between two blocks of human rights.

Today, the international human rights system is a body of laws, of legal documents, founded on the principle of the inherent dignity of the human being, recognizing the rights of all human beings to freedom, justice, and non-discrimination. The rights agreed on by the states, with an accompanying will to implement and improve them, may be considered as a framework, even if not all conventions are ratified by all states. Political decisions have established and continue to discuss improvements of the human rights system.

But sometimes the political decision-making bodies try to influence the implementation and the interpretation of the rights. In specific states a lack of commitment by state parties is sometimes all too apparent as well as a lack of enforcing implementation and control mechanisms. In other situations the concept of human rights is used but given another interpretation, based, it is claimed, on religious or cultural understanding. This is a threat to universal human rights. Another threat is when political decisions side-step the totality of human rights and argue in favour of only some specific rights or claim that only some rights are the human rights.

There is a tendency in the US followed by Western European states, to focus more and more on identifying human rights with civil and political rights. Such an approach will emphasize important concepts such as freedom, democracy and a free choice. This is of course important but easily leads to a reduction of human rights to “freedom”. The vulnerable in today’s world – the poor, the homeless, the starving, the children and the women without rights etc. are, even if they are in full possession of civil and political rights, not free. Through not taking into account social, economic and cultural rights, there is a risk of the entire concept of human rights being undermined.

In principle, the rights that have been agreed upon should mean each and every person will have the same rights in relation to the state and should be protected against the state abusing and exceeding its power, as well as being protected against abuse by other actors in society.

Rights – but for whom?

¹ Daniel J. Whelan and Jack Donnelly, “The West, Economic and Social Rights, and the Global Human Rights Regime: Setting the Record Straight.” In *Human Rights Quarterly* 29 (2007) 908–949.

The individual state takes the decision as to which human rights instruments it will ratify and therefore be obliged to follow. The individual state establishes its own national agenda for interpreting, protecting and implementing human rights. And the individual state sets up its own mechanism for monitoring and evaluating their way of fulfilling their human rights obligations. In one way this means that the state is the duty-bearer and at the same time the protector and evaluator. In the worst cases this implies that a state can have a political system that on a daily basis negates and tramples on human rights and disregards human rights on its own territory. In other cases it can imply that the state may have a weak mechanism for implementing them or may concentrate on specific rights while neglecting others. Keeping traditional privileges and power structures is too often connected with political power and can jeopardize instrumentalisation of human rights. And it is one thing to accept the human rights system in words and another to establish a human rights culture through deeds.

Once a specific state has ratified a covenant and thereby agreed on the rights according to that covenant, the responsibility still lies basically with that same state. Ultimately, it is a case of self-regulation within the state-structure, with some possibilities for criticism coming from other states, international supervising committees and councils. Or you can count on the "mobilization of shame" model - exposing violations of human rights and hoping that international political and moral pressure will give results. Yet, we know it is not always that easy since there is still human vulnerability, discrimination, and misuse of power and unequal distribution of resources.

To be able to uphold human rights, it is crucial that the sphere of law and human rights be separated from that of the state and from politics. It is also important to stress that human rights are mutually dependent on each other. This is a unity that must be upheld.

Taking into account that human rights is basically about the relation between the state – the public sector – and the individual, it is important to determine a relationship between the state and the individual. A human rights-based approach looks upon power-relations and power structures through a specific perspective distributing different key-roles to participants. A human rights-based approach identifies rights-holders (mainly the individual but in some instances a group) and duty-bearers (mainly the state). Focusing on a human rights-based approach implies that human beings will insist on their rights. Rights are not granted through the goodwill of the state or according to need but just as rights, since the state is a duty-bearer.

All rights – civil and political as well as economic, social and cultural – are, in their entirety, worth fighting for. At the same time a human rights-based approach sets fundamental priorities – with a focus on the marginalized, non-privileged and those excluded from society. These priorities may look different in different settings and countries, and in a global setting it may also be a question of relations between the South and the North in the struggle for reducing poverty and hunger in the world. The priority is very much towards those human beings forced into powerlessness and lacking control over their situation. All too often, that is strikingly true for women. The priority will then include gender and equality issues with equal treatment of men and women. Thus human rights claim to empower individuals, regardless of their relationship with authorities or their status in the community.

Today, the responsibility for human rights, as primarily a relation between the nation-state and the individual, is being questioned. That is not the same as questioning human rights as such, nor as questioning the need for legal implementation - but questions the state as the sole actor, with the individual person in isolation as counterpart. Non-governmental organizations including the Churches have a special duty to assume responsibility in this situation by for example putting pressure on state parties, educating and empowering rights-holders as well as duty-bearers, and adopting a trans-national approach with stress on the need for protecting and implementing human rights. Put in

another way, it is important not to allow state authorities to hold the monopoly for trying to shape justice.

Power – but for whom?

The *Human Development Report* presents a table for all the states in the world of economic performance per capita GDP (2005).² Sweden is at number six with US\$ 39,637 and France number ten with US\$ 34,936. If on the other hand you look down to the bottom you will find for example Mozambique with US\$ 335 and the Democratic Republic of Congo with US\$ 123. And the difference is catastrophic indicating a pretty hopeless situation if you belong to one of the poorest countries of the world. From the Asian context, Vandana Shiva has warned repeatedly, human rights have not been globalised but human wrongs have been turned into law. She targets the trade agreements and rules set up by the WTO that she labels as “genocide.”³ Just a few more examples: the people of Peru account for 0.1 percent of the world’s carbon emissions but will pay a high price for the glacial melting because of the emissions of other countries. And calculations for sub-Saharan Africa estimate that between 75 million and 250 million more people could have their livelihoods “compromised by a combination of drought, rising temperature and increased water stress”⁴.

Of course, there can be lots of explanations for the power gap and economic imbalance. One is the economic or political weakness of the state in developing countries, and also the resistance of the privileged and powerful groups in those countries. But it is also due to the political system of the world today neglecting economic and social rights as tools for change and defining problems mainly as inter-state issues and not as a concern for all human beings to be equal and have the same rights.

Over twenty years ago the UN adopted the *Declaration on the Right to Development* (Resolution 41/128). Coming back to the difference between declarations and covenants it is of interest to see that this declaration has never been turned into a covenant. Even if there is a UN Working Group on the Right to Development, it would seem to be far off, since to enforce the right to development would need a redistribution of resources between states that goes beyond existing international co-operation. In the report from the group to the General Assembly 2008 it states: “The European Union believed that States had the responsibility to create internal conditions favourable to their development and to co-operate on an international level to eliminate obstacles to development.”⁵ It is clear that the EU puts the responsibility on each individual state (in the South) to solve its own development problems but is ready to talk about its own solidarity and commitment. Once again, international political decisions determine what to do with human rights.

This is not just about giving each state its authority. It is about power structures and it is about control. In the discussion following on from the South African Truth and Reconciliation Commission, theologians talked already ten years ago about the need for distributive justice, biblically referring to the notion of the jubilee in Leviticus⁶.

Human rights and security

² *Human Development Report 2007/2008*. New York, United Nations Development Programme, 2007, 292. Online: http://hdr.undp.org/en/media/HDR_20072008_EN_Complete.pdf

³ Shiva, Vandana. “Set Farmers Free from the Binds of ‘free trade.’” International Forum on Globalization. Online: http://www.ifg.org/pdf/supple-vandana_oped.pdf_1.pdf

⁴ *Human Development Report 2007/2008*. New York, United Nations Development Programme, 2007, 292. Online: http://hdr.undp.org/en/media/HDR_20072008_EN_Complete.pdf

⁵ Report of the Working Group on the Right to Development from its Ninth Session. (A/HRC/9/17, 10 September 2008).

⁶ Tsele, Molefe. “Kairos and Jubilee.” *To Remember and to Heal: Theological and Psychological Reflections on Truth and Reconciliation*, edited by H. Russell Botman, and Robin M. Petersen. Cape Town: Human and Rousseau, 1996.

On at least the Western political agenda today is the issue of attaining "security". The concept of security is used in many ways in the debate but here I will focus on security as a concept allowing excuses for restrictions on basic human rights. Individual states are today seeking ways or motivations for how they can restrict human rights in the name of security. Guantanamo is one expression of a situation where human rights are set aside in the name of security. Another example is what the State of Israel calls the security barrier but what for the Palestinian population in the occupied territories is a Wall with severe human rights abuses. A third example can be the OSCE expert meeting on security, radicalisation and prevention of terrorism in July 2008. The report states that radicalisation leading to terrorism is growing and that there is a potential link between failure to respect human rights and radicalisation. One conclusion could have been a message on the need to implement all human rights in the member states. But according to the report the questions discussed concerned religion in prison and detention facilities, religious/ethnic/racial profiling, and surveillance and security in relation to religious sites and communities. The political pressure for security seems to question human rights protection. It is clear that the authorities have the responsibility to protect human rights in prisons. But if the prisons are a potential recruiting ground for terrorists, is there then a need to regulate the practice of religion?

"For the authorities, an important issue is who decides when a restriction is to be placed on religion (e.g. the prison director) and ensuring that the prisoner in question be entitled to appeal against such decisions to an independent body. Limitations on the circulation of religious literature in places of detention were considered to be a crucial topic in this regard. An issue requiring further study is whether restrictions or violations on the freedom of religion or perceived abuses of prisoners' religious sensibilities contribute to radicalisation"⁷.

If the state were to forbid circulation of religious literature in the prisons, would it in that case offend the freedom of religion; and what comes first - security (political intentions) or freedom of religion (human rights)? The fear is that as long as the state is the decisive actor in human rights, political issues may interfere.

Rights and peace

The International Criminal Court⁸ decided in March 2009 to issue an arrest warrant for Sudanese President Omar al-Bashir. The accusation included war crimes and crimes against humanity in Darfur. The decision is undoubtedly one of great significance. For the first time a President in office was convicted in the ICC. As head of the government and using the entire state apparatus he is guilty of crimes against humanity and international law, an important step in the instrumentalisation of human rights.

But organizations involved in political processes encouraging peace negotiations say the decision will shatter the fragile peace negotiations. Or maybe this process has never been serious from the governmental side but the ICC decision will open the door for more human rights abuses.

The response from President Omar al-Bashir has been to order the expulsion of foreign aid agencies from Sudan. Obviously, that will worsen the situation for the targeted population in Darfur. From a human rights perspective it may be argued that justice can never be bargained for or prosecution avoided through political manipulation. On the other hand, from a peace negotiating perspective it is possible to argue that chances of

⁷ *Expert Meeting on Security, Radicalisation and Prevention of Terrorism*. OSCE/ODIHR July 2008, paragraph 13.

⁸ The International Criminal Court (ICC) is the permanent international criminal court established to help end impunity for the perpetrators of the most serious crimes of concern to the international community. Online: <http://www.icc-cpi.int/>

peace would be destroyed by an indictment. Or can there be peace without rights (justice)?

A lot of efforts today are directed at finding ways of dealing with peace-building activities (political decisions) and human rights activities (enforcing legal obligations). There is a need for an inventory of principles and areas of effective mutual co-operation between peace building and human rights to make better use of both agendas and a need to implement Human Rights in the peace-building process.