

**IN SEARCH
OF
UNIVERSAL HUMAN RIGHTS**

HUMAN RIGHTS AND DEVELOPMENT

Human Rights, Development and the Social Clause

by

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The idea of human rights has its roots in Europe's history of intellectual and social achievements. This is also reflected by the spirit of the 1948 Universal Declaration of Human Rights. As the system of international law has been developed and refined, human rights have become natural and unalienable rights of every individual. Even those states that regard this individualistic approach to human rights as an element alien to their cultures have adopted most of them.

Indivisible Human Rights

Speaking as from the perspective of the trade unions, human rights are indivisible political, economic, social and cultural as well as collective rights. These may not be played off against one another. Only the combined effect of these rights would sustain each others.

However, in spite of the concert of the voices stressing that human rights are indivisible, social rights seem to be secondary in importance in the opinion of many. This indivisibility of human rights always has been and still is a matter of dispute between the North and the South. It is regrettable that both attempt, all too often, to interpret the indivisibility of human rights in a way that suits their own purposes best. This is contrary to my belief that international human rights are equal in rank and indivisible.

Trade Unions and Human Rights

Free trade unions must not be subject to restrictions when carrying out their activities. Their existence is an important prerequisite of economic, social and political stability as well as of the development of democratic states. They thus represent an indispensable condition for the maintenance of basic human rights.

From my experience in the International Labour Organization Committee on the Freedom of Association, I know how close the link is between the freedom of expression and the freedom of association. About one half of all the cases

to be dealt with by the Committee concern violations of the trade unions' basic freedoms.

The absence of basic freedom makes it impossible to enforce trade union rights. Where basic human rights are not observed in a working environment, social justice cannot thrive. Only where labour has the freedom of association, where workers are able to form independent trade unions in defense of their interests, has social justice a chance to develop.

The very basis of democracy includes, in our view, not only the basic freedom of organization to form free trade unions and political parties, under a system of independent courts of law. Additionally, there must be a link to freedom with equality.

Violations of human rights are no matter of pure chance. In many cases, such violations do not simply represent aberrations in an otherwise equitably structured system; in most cases, they occur in systems that have their roots in injustice and inequality.

In spite of the impressive body of international standards and rules that exists, it is impossible for us to overlook the numerous situations in which human rights are violated. In an undignified way, day by day, the socially weak and the vulnerable are mercilessly exploited. There is the forced labour and debt imprisonment of millions of children. There are still many people who, taken as prisoners, are being tortured, exploited and suppressed every day.

Realizing Human Rights

In view of such blatant violations of human rights, the question arises as to whether the international efforts made in support of them are credible and effective.

Progress in the realization of human rights does not come of itself, but requires changes in social and economic relations and a balancing of countervailing interests, both domestically and between nations.

Another problem in human rights are the differences in their enforceability of human rights. This includes the fact that there is not yet any viable concept for a sustainable development policy concept acceptable in social terms. However, the international community of nations as well as the socially responsible forces in different societies cannot afford to permit matters take their own course. Those who

wish to strengthen economic and social human rights must do their best, both at the national and the international levels, to improve the effectiveness of the protection they afford to these rights.

We should not have the slightest doubt that securing subsistence for living is not inferior in rank to the need to guarantee the basic freedoms. Starving in freedom always has been and will be a human-right violation. Conversely, if we secure that subsistence in an environment that lacks political and social freedom, this is not a viable solution either.

Human rights are violated also where part of the population is poor owing to the unsatisfactory access they have especially to goods and services on account of an inequitable income distribution. Former World Bank President, Barber Connable, once emphasized, "The ethical values on which our society is based require everybody throughout the world to fight starvation and malnutrition, illiteracy and disease which are making the lives of the poor miserable to an extent that is beyond our imagination".

This is correct. But I note with regret that the World Bank has not been able to realize this concept so far. In a number of cases, the policy of international financial donors imposes conditions on governments that jeopardize human rights, not improve them. Neither have the industrialized countries always been trustworthy defenders of human rights. The same holds true for the multinational enterprises which have done business with dictators without showing too many moral scruples.

The credibility of the efforts made in favour of enforcing human rights internationally grows as our sense of commitment grows at the domestic level. This is true no matter in which part of the world we live. Human rights problems in the North are different from those in the South, in dimension as well as in terms of quantity and quality. However, an active policy aimed at the protection of human rights at home is an urgent imperative for human rights everywhere.

The East-West Debate

Self-righteousness of the industrialized countries soon confronts them with the blame that human rights may be instrumentalized for achieving different types of political and economic interests in North-South relationships. Self-

righteousness by the North is harmful as it denies the universal character of human rights.

But while this should be avoided, the universal nature of human rights also means that their applicability cannot be restricted by special cultural traditions. This is a demand to be heard in South. For example, in 1993, the ASEAN Inter-Parliamentary Organization emphasized that the public interest must take precedence over individual interests and that individuals are obligated to fulfill duties before they can assert rights.

It may be true that cultural aspects have been neglected for too long in thinking about human rights. However, the crucial question is whether wider consideration of cultural differences would make the quality of human rights a relative one or ultimately strengthen their weight. Human rights may not be restricted by reference to special cultural traditions. If this were permitted, the door would be open to discretion and to introducing an element of relativity into the system of moral and ethical values which should be universal.

What can be allowed is that the enforcement of human rights should not be linked to general economic policy interests. For instance, the ILO Convention stipulates with respect to the freedom of association that a non-partisan industry-based trade union must be the result of free trade-union decision-making. However, where trade union unanimity is the result of legislation, governments may be accused of intervention which is contrary to the principles of international law. This is so even where legislation to that effect just confirms a process set in motion of the trade union movement itself. For, what used to be a matter of free decision-making before, may all too soon become forced decision-making on account of government regulation.

The developing countries of the South are right in emphasizing time and again that any unfair international economic and trading system represents a big stumbling block on the road towards realizing economic and social rights. Their demands for a new international economic and social order aim for improving the enforcement of individual and collective human rights.

On this point, from the perspective of the trade unions, we are in agreement with the developing nations. Any positively interpreted right to development must contribute to the realization of the universally acknowledged political and

social rights of human beings. Such a right might become a welfare-state principle under international law. Germany, for instance, provides for this in its Constitution. This collective right to development is very important and I regret that it has slipped between the millstones of the North-South conflict. The result threatens to open the door to an ideologisation of human rights.

The industrialized countries reject demands for making economic and financial concessions to the South as part of the right to development. In many cases, moreover, the demanded "right to development" is misunderstood to stand for all those demands the developing countries have introduced into the North-South Dialogue.

Such a right, if given a positive interpretation, might build a bridge between the demands for a new international economic order and the realization of international human rights. This is especially in the newly industrializing countries, which reject the existence of a direct relationship between the liberalization of trade and social rights of human beings.

The Social Clause

The right to development and the demand for social clauses to link trade and economic matters to human rights have much in common. Both concepts are aimed at strengthening human rights within the framework of a new international economic order. Both promote a sustainable and socially acceptable development concept based on constructive partnership.

Both concepts equally reject ideas whereby socially and economically objectionable methods are used as a pretext to legitimize human right violations in order to obtain competitive advantages or ensure their existence on a lasting basis.

Both concepts also run the risk of being misinterpreted or misunderstood in the other hemisphere. This should not be. There are somethings which cannot be tolerated or accepted, irrespective of whether the North or South bears responsibility for it. For instance, unfair and unsociable practices associated with suppression of key human and trade union rights.

The German trade unions have committed themselves to upholding the principle of an open, but fair multilateral trading system. Our demand for social clauses is in no way

meant to place the developing countries at a disadvantage or to promote protectionism.

What we do believe is that a far-reaching consensus should be reached at the international level. This consensus should hold that, irrespective of a country's level of development, extreme forms of exploitation -- of prisoners, for example, or blatant violations of trade-union rights -- can in no circumstance be tolerated.

Through their demand for social clauses, the trade unions do not at all seek to undermine the developing nations' relative cost advantages or to impose the industrialized countries' social systems on poorer countries. Their sole aim is to ensure a hard core of collective and individual basic rights which are indispensable for safeguarding the functioning ability of an economy based on the principle of competition. It is not intended to impair the developing countries' comparative cost advantages; the aim simply is to forestall serious violations of elementary basic rights in a working environment by strengthening those rights at the international level.

But what do we recognize as a comparative cost advantage? Differences in the levels of output can only be legitimate where the elementary basic rights are not affected. Where the level of wages, for example, represents the outcome of free collective bargaining by the trade unions. In such cases, the social clause is not intended to negate the country's competitive advantage that comes from lower unit labour costs.

To deal with these different cases, the trade unions in Germany and the International Confederation of Free Trade Unions have proposed a system of differentiated and graded social clauses. This would be based, as a matter of priority, on development policy incentives. In contrast, trade policy sanctions will be provided for only as a means of last resort.

The key to this approach is the question how we can succeed in ensuring that the basic human rights will remain unalienable in the future, and how the industrialized countries as well as the international organizations can be motivated to show a greater sense of commitment to linking human rights and development.

How do we prevent this from leading to a new kind of protectionism? We need urgently to strengthen the international level. This is the only way to counteract the

instrumentalisation of human rights by the industrialized countries. A stronger international system would also strengthening the autonomy of the developing countries.

This need not threaten those developing countries which are already working towards a socially acceptable development. It will help them as they are the ones who face disadvantages in competing in situations where other countries deliberately pursue trade policies at the expense of the elementary human rights, leading to "social" dumping.

It follows from this that trade policies as well as international social and development policies must be better co-ordinated. This is, in my view, not at all contradictory to any right to development. It is gratifying to see that the developing countries themselves have launched a differentiated discussion about the question of human rights and international trade as well.

Wide scale rejection by some parties in Asia contrasts with agreement among others. Take for example, the statement adopted in conclusion of the March 1995 New Delhi consultations on the question of social clauses. This recognizes the links between labour standards, the environment and poverty and supports the need for a social clause.

The statement reads as follows: "The participants point out with concern the entirely unsatisfactory situation in the field of compliance with labour standards, the pollution of the environment and the threats to the lives and cost of living of a very large number of people in the whole world, especially India. The participants also stress that the fault of national governments and multi-lateral organizations that have brought this situation about through a mistaken and élitist policy."

The statement also pointed out that the fight for application of labour standards must be intensified even though such clauses are rejected by most because the inequitable and unfair trading system has largely been promoted by the GATT and its successor, the World Trade Organization, as well as by the programmes operated by the World Bank and the International Monetary Fund.

The concluding statement also reads: "Advocates of the other position are of the opinion that, in view of this undoubtedly criminal governmental record, the social clauses in multi-lateral trade agreements could create a good bargaining basis and allow the international pressure to be

strategically exploited for enforcing the rights of labour, women and children."

There are other examples of support for a social clause to link labour and human rights with development. In 1994, the Southern Asian Forum of National Rights Organizations (NROs) issued a declaration on "Human rights and Development" that stated: "... the ASEAN Governments must be held responsible in the first place for recurring violations of labour rights, for undermining labour standards and or harming the environment in their countries. We believe that as long as such violations persist, considerations pertaining to measures for the protection of human rights should be included in every single trade agreement."

The right to development and the strengthening of elementary rights in a working environment are aimed at bringing about an improved balancing of North-south interests as well. If interpreted in a positive sense, both seek to improve the realization of the social rights of human beings. So far, there has been a lack of mutual trust that is necessary. All those in the North and in the South who feel committed to working towards a socially acceptable development concept should support the social clause, both nationally as well as internationally.

Unless we succeed in opening a new chapter in achieving social rights, we will be facing all too soon a situation in which the economic successes of the liberalization of trade are at stake.

Linking Democracy and Development: The Perspective from South East Asia

by

Marzuki Darusman

The relationship between democracy and development actually defines a certain geo-political relationship between Asia and the "West". In this, democracy is on one side and development on the other.

The Rise of Asia

There is a focus on Asia's development. There is, for example, talk about the 21st Century being the "Asian century". Average growth rates of 7% plus for the last 20 years, and the existence of the majority numbers of Newly Industrializing Countries (NICs) in this area: all these happenings conjure up some sort of a image of an Asian 21st Century. This is said to be related to what is known as Asian values. And therefore some say that the growth is sustained by these Asian values. These values and that growth are projected indefinitely into the future. Hence an "Asian Century".

Asian values are supposed to be communitarian, hierarchical. On the other hand, there is this "Western" view about international relations and the linking of trade with peace, and the linking of peace with democracy and human rights. Therefore, the conclusion comes to link trade with human rights. What we have at this point, is a stand-off between these two perspectives.

For what in fact, Asia calls the "West" relates to the USA. We go on to define what is or is not "Asia" in terms of what is or is not American. In this exercise, we do not define either the West or Asia in the context of Europe. This is a matter of particular importance as we go into the problems of the relationship between Asia and Europe.

Trading Off Democracy and Development

The theme of "democracy and development" is one of the most significant issues today. The focus on development brings in related concerns, not only economic development, but also issues of gender, culture, ideology".

Previously in development, the democracy theme was somehow displaced. Instead, the political discourse, both national and international, focused on which can be described as the end class cluster of problems. We have "nation and class", "state and class", "capital and class", "power and class", "religion and class" and others.

The displacement took place because it probably came to be realized that the concept of class was somewhat enfeebled in its analytical power. This was because of the general advancement of economics and the blurring of social stratification as a result. Another more compelling reason would be that the recent disuse of this concept was the resurgence of what we have come to recognize as "identity politics" as opposed to what is known conventionally as "justice politics".

Identity politics focus on the national question of freedom, democracy and civil societies. This somehow shifts away the emancipative discourse from the so-called social question. The social question that we discuss and focus on are equality, poverty elevation, class and development. This could be termed, "justice politics".

I am bringing this up as it is very important to look at the matter in terms of the degree of distance and focus between the discourse on democracy and that on development. This does not mean that they cancel each other out, or both discourses cannot be concluded at the same time. But it does mean that there are two distinguishable discourses; one on democracy and international question and one on development.

I would like to suggest that whatever the relationship between democracy and development, it is not immediately a trade-off. In that sense, when we understand the different discourses we can understand that such statements as, "economic development is a pre-requisite for democracy", do not really follow in either the developmental or democratic discourse. Likewise, a proposition such as, "economic development does not necessarily lead to democracy and observance of human rights". It is self evident that such statements may not even be an argument on the same terms, about the same thing.

What then could be the link between democracy and development?

It is generally assumed that the co-relation is inverse. Some people argue that if you have democracy, you will have less development, or vice-versa. This is a trade-off formula between the imperative of unobstructed economic or technocratically-designed economic policies on one side and the allowance of dynamics of democratic politics on the other side. The formula presumes that democracy creates uncertainties which disturb development. Human rights are said to be disruptive to economic processes and therefore need to be minimized.

The reality however, it that, for whatever reasons, restriction of civil and political rights are enforced, these restraining matters are purely political decisions. They are not a reflection of any technical requirement or economic planning. In other words, sound macro economic and implementation do not -- in any theoretical or structural manner -- require the suspension of democracy.

If democracy is abridged to bring economic development, this is due only to one specific method of development. This is the mode of development that presumes no necessity for effective and sustained public participation. Advocates of this view see that there is no need in administrative procedures and political processes for open and real public engagement in reasoned arguments. The state imposes its judgment by a leadership that claims infallibility.

The importance of economic development has never been denied among Asian and ASEAN countries. Great economic resources are allocated for development in every developing nation. This emphasis on development stands to divide "Asian" or "European" perspectives, rather than questions of culture.

What about "Asian" values such as thrift and the postponement of gratification? They are commendable values on their own and have been essential to economic well-being, as proven by dramatic Asian economic growth. But are these not the very same values that similarly underpinned European or Western economic progress?

The Phenomena of Corruption

What are we to make of a phenomenon of corruption? A number comments have brought up the topic of corruption, which is sadly witnessed in many countries? There is a definitely a whole world of difference between simple living and the delay of satisfaction as a matter of moral economics

and the rampant prevalence of unbridled corruption. Corruption demoralizes. It brings a paralysis to meaningful, corrective political action. The abuse of public trust is a gross, domestic, democratic deficiency that must be addressed both in terms of development and of democracy.

We need to recast our perspectives on the relationship between democracy and development. For too long, this has been perceived in terms of dichotomies -- nationally and internationally -- pitting one group of nations against the other. In re-casting the debate, we may have to jettison some favourite theories. For example, how could a theory of democratic development apply to all nations irrespective of their particular constitution arrangements?

If we do not do this, we will continue and deepen the division between groupings of states and perpetuate the existing state of conflictual international affairs. We will then find it untenable to maintain human and acceptable political domestic situations, not only in developing countries, but also in the West.

We might be able to move away from the ongoing format of an East-West perspective towards a new perspective, which can be a synthesis. From this, we can move ahead in trying to sort out the existing problems of the day. I think we should move away beyond the problems of double standards; of ambivalence, of linkages, of conditionality, of social dumping and the like. We have those problems on the agenda and I think it is important to move beyond definition, to move beyond pragmatism and to move beyond conventional issues.

Only by doing this, will we be able to avoid the present conflict between East and West and see a new and truer relationship between democracy and development.

Human Rights and Democracy in Vietnam's Development

by

Chu Hong Thanh

Democracy and human rights have played an increasingly important role in the world community. The world community, and all its state members, have recognized the fundamental values of democracy and human rights more clearly. That is why UN General Secretary, Mr Boutros Boutros-Ghali affirmed that, "Human Rights is the common language of Mankind".

A Common Language

By codifying democracy and human rights in international legal instruments, the world community has a human rights guarantee to all people. This has set the standards for states to observe and respect in their pursuit of national interests and development. Democracy and human rights is one of the principal contents of contemporary international law. It is also the linking factor between national and international legal systems.

By implementing democracy and human rights, human society finds safer solutions for the existence and development of man and his community. Because of their great values, democracy and human rights have generated a dynamism for the development of human society, and become part of the essential content of constitution making.

The Link to Development

However, on the eve of the 21st century, despite the increase in both quantity and quality of rights, the human rights picture is still a gloomy one. Wars and conflicts are increasing. Crimes and cruelties are occurring everyday. Poverty and epidemic disease are threatening mankind in different regions in the world over. Day by day, human beings face the danger of being denied the right to life. Democracy and human rights problems have become imperative not only in developing countries, but also in developed countries, both those in Europe and those in Asia.

The year 1996 was chosen at the UN Social Development Summit in Copenhagen as the international year against

poverty. According to UN statistics, we have, world-wide, more than 1,300 million people who are living in poverty. Of the 2,500 million working people all over the world, some 820 million are unemployed -- 60% of them, women.

There still are one billion illiterate adult people, 500 million children who are unable to go to school and many thousands of poor and homeless children. This epidemic increases annually.

Many of the governments in ASEAN consider that if poverty continues, we cannot truly say that human rights are respected. So the right of development must be seen as fundamental right. European and Asian experiences both show that society development must be the major objective for the happiness of mankind.

In Vietnam, poverty eradication has become an important movement in the national programme. In Summit of Copenhagen, the Vietnamese delegation emphasized that human life will be the most important concern in the process of development. In Vietnam, we are trying to activate UN's policies on poverty eradication to achieve effective and planned progress.

It is obvious to say that we face many problems in guaranteeing democracy and human rights in the world today. Today, there are more than 200 states and territory with thousands different peoples and culture. Their national histories, traditions and customs differ from one to another. If human rights are to be fully observed, they must be observed with respect of national sovereignty. The equal sovereign right of nations in international legal framework and each region's own characteristic of democracy and human rights must also be respected.

Human rights are now the common language for the international community. But each state must be responsible to protect and ensure the values of democracy and human rights for its people, while preserving genuine cultural traditions and national identities.

Vietnam's Experience

In Vietnam, the idea of man and citizen rights had appeared very early and have continued to develop through our history of nation building. The progressive and lasting values of human civilization have been recognized and reconfirmed in the 1945 Vietnamese Declaration of

Independence, as well as in provisions of our Constitutions of 1946, 1960, 1980 and, especially, in the Constitution of 1992.

In recently-enacted codes of law, most fundamental principles on civil political, economic, cultural and social rights have been guaranteed. Citizens are entitled to work, to do business, to have ownership of prosperity, estates and means of production and consumption, to study and research, and so on

There is no doubt that much has been done to ensure that human rights have fully observed in Vietnam. These efforts conform with the evolutionary tendency of our era, in which we have witnessed the advancement of human rights mentioned in the International Declaration on human rights and the International Covenants and Conventions.

Economic development, democratization process and administrative reform are being carried out simultaneously to establish the rule of law in a state of the people, by the people and for the people. This is the essence of the renovation or "Doi Moi" process in Vietnam today.

Nevertheless, to establish a mechanism to promote human rights in a poor, economically-backward country like Vietnam is not an easy task. Industrialization and modernization goes hand in hand with the struggle against corruption, bureaucracy, abuses of authority and other negative phenomena.

In this, it is important to note that Vietnam has joined ASEAN since July, 1995. ASEAN with 10 members will become a peaceful, safe and development-oriented environment for more than 400 million people. ASEAN and others nations in Asia will create more opportunities for cooperation and development and for enhancement of human rights and democratic values. It is also noteworthy that Vietnam has signed a Framework Agreement on economic cooperation with European Union in July 1995. This event creates a favorable base for extending the inter-regional exchanges on economy, culture and human rights.

The most effective way to eradicate poverty and social vices, human rights issues, and other problems facing us is to promote cooperation between every state and the world community, including Europe and Asia.

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HUMAN RIGHTS SYSTEMS

The European Experience

by

Erik Fribergh

The European approach to human rights monitoring has been and is, to a large extent, a judicial approach. It is of course also political, but one of its characteristics is the important element of judicial examination of alleged violations of human rights.

A Judicial Approach

The European approach is first and foremost represented by the system established under the European Convention on Human Rights which was signed on 4 November 1950 and came into force on 3 September 1953. Ever since the system has been established, the European approach with judicial examination of alleged human rights violations has been widened and deepened.

The main characteristic is that the procedural system established by the European Convention may terminate with a judgment by a Court. Such a judgment is binding on the states. It is also a judgment that has been arrived at following public judicial proceedings, following pre-established rules of procedure that ensure the equality of parties in making their representations.

The European Convention on Human Rights is closely linked to the Council of Europe. Established in 1949, the Council of Europe in recent years has been enlarged considerably. This follows political changes in Eastern and Central Europe. Since 1990, the number of states in the Council of Europe has gone up from 25 to 39. The recent accessions of Ukraine and Russia will have particular repercussions on the work of the Council.

Over the years, the principle has developed that a state which adheres to the Council of Europe must guarantee that, within a reasonable time, it will also ratify the European Convention on Human Rights. Today there are 33 States parties to the Convention. Following this principle, it is likely more will also sign on.

The Convention sets out and guarantees certain rights and freedoms. Furthermore, it provides for a judicial procedure to

examine alleged violations of these rights and freedoms. There are three supervisory bodies to this process. One is the Commission; the second is the Court created by the Convention; and third, is the Committee of Ministers of the Council of Europe, the highest political organ of the Council. The basic procedure before these institutions is laid down in the Convention. This provides that the decisions of the Court and the Committee of Ministers of the Council of Europe are binding on the state involved.

When the Convention was introduced, it was not so much the contents of the rights and freedom which were debated and difficult, but rather the procedure to guarantee compliance. In this sense, it went beyond the declaratory nature of other human rights treaties and statements. Some have characterized the system as revolutionary because it was really the first instrument in international law which provided for an effective enforcement of the rights guaranteed by the Convention. For this very reason, many states were reluctant in the beginning to accept an international monitoring of how domestic law was applied in individual cases. At that point, they still considered such matters as an internal affair of the state. For this reason a rather complex system was introduced with three different organs involved in the system of protection.

The Commission allowed individuals to make individual complaints against states, if that state had separately recognized the right of individual petition. The Commission would examine the case and make a decision whether or not to specifically refer it to the Court for judicial examination. The state involved could also make the reference to the Court. The individual however could not refer the case to the Court on his own initiative.

If a case examined by the Commission is not referred to the Court, it is for the Committee of Ministers of the Council of Europe, a purely political organ, to finally determine the case. The Committee of Ministers also has the task of ensuring that the judgments of the Court enforced.

Deepening Judicial Protection

It took a long time before the States generally and truly adhered to the system. Even into the 1980s, many states had not accepted the right of individual petition. France did so only after the election of President Mitterand in 1981. Other states were slow to accept the right to refer cases to the

Court. While Sweden did so in 1968, Turkey only agreed in 1986.

Today, the optional clauses regarding the right of individual petition and the jurisdiction of the Court is no longer controversial because all states which have ratified the Convention have also recognized the right of individual petition and the jurisdiction of the Court. However, this has been a long and difficult development.

Over the years the system has undergone several changes which have widened and deepened the judicial protection. These changes are:

1. New rights and freedoms have been added to those which were contained in the original Convention.
2. For some rights, such as the right to work, right to health and social insurance, a specific Charter -- known as the Social Charter -- was signed in 1961. There is a specific monitoring system under the Social Charter based on reports submitted by the states to a Committee of Independent Experts which will assess how well the states fulfill their obligations. At the end, the Committee of Ministers issues recommendations to states which do not comply with the Charter's requirements.
3. As regards the prohibition against torture and cruel and inhuman treatment, the situation of persons deprived of their liberty is particularly precarious. They are not always in a position to submit a complaint to the European Commission of Human Rights. Therefore a specific system of monitoring the situation in prisons and hospitals have been set up by the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. According to this Convention, a Committee of independent persons is established with the task of examining the treatment of persons deprived of their liberty. This is done by means of visits on the spot. The Committee may organize periodic visits and ad hoc "surprise" visits. It shall have unlimited access to all places where persons are deprived of their liberty. The examination leads to a report with recommendations to the State concerned. If the State fails to cooperate or refuses to improve the situation, the Committee may decide to make public the matter. A general report is submitted every year by the Committee to the Committee of Ministers of the Council of Europe.

4. Another example of how the judicial character of the proceedings has developed is the applicant's position before the European Court of Human Rights. At first, the proceedings before the Court were conducted without the presence of the person who had made the complaint to the Commission. Only the state concerned and the Commission were appearing before the Court. In order to get the applicant into the proceedings, it was arranged that the applicant was part of the delegation of the Commission before the Court. Subsequently, the Rules of Procedure of the Court were changed to give the applicant a more independent position before the Court. Additionally, while individuals previously could refer a case directly to the Court, this is now possible under Protocol No. 9. There is still a difference from the national system as this procedure only gives access to a sifting procedure before the Court. Today, some 23 States have accepted this provision.
5. The whole system is now ripe for a total reshape. Protocol No. 11, which was opened for signature on 11 May 1994, sets out a new system of supervision by one permanent single court. This system will enter into force one year after all the contracting States have ratified the Protocol. Today the Protocol has been ratified by 22 States. Many foresee that the new system will enter into force in 1998.

These reforms can be seen as the ultimate recognition of the judicial approach to solving human rights disputes. The main reason for the reforms, however, was simply to make the system more effective. The current Commission and Court are part-time bodies assisted by permanent secretariats. The institutions are inundated with complaints. Last year the Commission received over 10,000 complaints and the delay in the procedure was considerable. When the existing bodies are replaced by a single and permanent Court, some efficiencies may result.

Cases under the Convention

It is not possible in this presentation to give an exhaustive description of the cases dealt with by the Convention organs in Strasbourg. I will, instead, highlight just some types of cases.

First, it should be said that any side can raise issues under the Convention. It is impossible to predict anything about

cases and issues to come. At this point in time, the Commission of Human Rights is particularly seized with a number of cases concerning the expulsion of persons from states that has signed the Convention to a country outside or inside Europe. The issues which arise are whether an expulsion can involve a violation of family life because the family might be split up by an expulsion. Alternatively, and these are the most difficult cases, the case can be seen as an issue over whether an expulsion can involve a breach of the prohibition against torture and inhuman treatment. This is particularly if the person expelled may face such treatment in the country to which he or she will be expelled.

Another category of cases are those arising out of the conflict in Turkey with Kurds and the allegations of killing, torture and inhuman treatment by states or their representatives. These cases involve severe difficulties as to the establishment of facts. The Commission is involved in a painstaking exercise to try to establish, through visits on the spot and the hearing of witnesses, what are the true facts.

Domestic law: The Prime Guarantee

While the Convention creates access to an international court, it is still important to underline the subsidiary nature of the proceedings in Strasbourg. It is primarily domestic law of the state itself which should protect human rights. The European system recognizes this in many ways.

First, most States have now incorporated or adopted the Convention as applicable domestic law. This is a change from the earlier situation in many countries where the Convention, as an international treaty, did not have the force of law. Today, there only remain a few States where the Convention is not directly applicable, such as the United Kingdom, Ireland and Norway. There has been an ongoing development to reinforce the subsidiarity principle in the different Convention countries by introducing the Convention rules into domestic laws.

Secondly, access to the Court and the institutions of the Convention is on the condition that domestic remedies within the state have first been exhausted. This underlines the principle of subsidiarity. The Convention organs will thus ensure that, before they examine an alleged violation, the domestic legal protection system has had a chance to correct any violation.

A third feature that indicates the subsidiary nature of the system is that when the Court decides against a State it does so by a declaratory judgment. This states whether the facts found constitute a violation of human rights or not. However, the judgment does not indicate the measures necessary to bring any legal situation, found to be in violation of the Convention, into conformity with Convention law. This is left to the national authorities, notably the legislator, to decide. Thus, the Court cannot quash a national law even if it finds that law to be in breach of the Convention. This is up to the state. The implementation of the judgments is supervised by a political body -- the Committee of Ministers -- and not the Court.

Other characteristics

The European system focuses on the individual. Apart from Inter-State applications, there must exist a complaint originating from an individual who has been himself (or herself) the victim of the violation. The institutions cannot examine human rights violations on their own initiative.

The procedure is very judicial before the Courts and institutions in Strasbourg. There are political elements as well, however. The cases dealt with by the Commission and Court of Human Rights in Strasbourg often have their origin in political disputes, and the result of the proceedings in Strasbourg often has a political impact.

The functions of the Committee of Ministers as decision-making body and supervisory of the implementation of the Court's judgments are clearly political elements in the procedure. Originally, states were not prepared to accept the jurisdiction of the Court. In order to have a final decision it was necessary to entrust the Committee of Ministers with the task of finally deciding cases. Today, it could be said that the cases which are left with the Committee of Ministers for a decision are the cases which raise no particular issue of principles, mass cases and cases in which no violation has been found.

The political element in the decision making process is not so important as one might think because in reality, the Committee of Ministers almost always follows the opinion of the Commission. And where there is a question of granting compensation to the applicant the Committee always asks the Commission for an opinion and then normally follows the Commission's proposals.

The function to supervise the execution of the Court's judgment may naturally involve political considerations. A procedure for this has been established. This terminates with a resolution by the Committee including an indication of the measures taken by the State. Problems seldom arise, but in a recent case against Greece where the Court found a violation of the right to property, the Greek government did not pay the sums awarded by the Court within the stipulated time-limit. In this case, the Committee of Ministers has now issued a resolution strongly urging the Greek government to proceed to the payment.

The Convention provides that States are bound to follow the judgments of the Court and the decisions of the Committee of Ministers. However, we all know how difficult it is to implement decisions. It is here that we have the true reason for the success of the Convention system.

States respect judgments and decisions, not only in word, but also in action. They comply with decisions and judgments by the supervisory bodies, although they may disagree with the outcome. It is true that there may have been certain cases where states have delayed, if not refused, implementing the judgment of the Court. However, on the whole, states comply with their obligations. This has been the key to the success of the European system.

The impact of the Convention on the states is also indirect in the sense that national laws before they are adopted are closely scrutinized from the point of view of compliance with the Convention.

Bosnia and Herzegovina

The experience of Europe in dealing with developments in Bosnia and Herzegovina has a human rights dimension. This has lessons for the application of the European system beyond the states which are already members.

The Agreement for Peace in Bosnia and Herzegovina (also known as the Dayton/ Paris Accords) was signed in Paris on 14 December 1995. The Peace Agreement sets out a number of measures designed to ensure a durable peace in Bosnia and Herzegovina. The creation of new institutions is one of the corner stones in the peace plan. And among them, the creation of the Human Rights Commission for Bosnia and Herzegovina plays a particular role.

The Peace Agreement contains a new Constitution for Bosnia and Herzegovina which provides that Bosnia and Herzegovina and both its Entities - Federation of Bosnia and Herzegovina and the Republic Srpska - shall ensure the highest level of internationally recognized human rights and fundamental freedom. The Constitution further provides that the European Convention for the Protection of Human Rights and Fundamental Freedom and its Protocols shall apply directly in Bosnia and Herzegovina. These laws have priority over all other law. All persons within the territory of Bosnia and Herzegovina shall enjoy these human rights.

The Human Rights Commission, created by the Constitution, consists of two parts; the Office of the Ombudsperson and the Human Rights Chamber. In many respects the Human Rights Commission has been modelled after the system under the European Convention on Human Rights in Strasbourg. Although there are certain significant differences, the Office of the Ombudsperson can be compared with the European Commission of Human Rights and the Human Rights Chamber with the European Court of Human Rights.

Just before Christmas 1995, Gret Haller, a Swiss Ambassador and former politician, was nominated Ombudsperson for Human Rights for Bosnia and Herzegovina by the Chairman-in-Office of the Organization for Security and Cooperation in Europe (OSCE) for a non-renewable term of five years.

The Chamber is composed of 14 members, eight of whom are international lawyers appointed by the Committee of Ministers of the Council of Europe, which appoints among the eight, the President. The other six are nominated by the Entities; four by the Federation of Bosnia and Herzegovina and two by the Republic Srpska. The Committee of Ministers made the nominations in March 1996. It nominated Mr Peter Germer (Denmark) as President.

The Commission held its inauguration on 27 March 1996. The Office of the Ombudsperson opened the next day and the Human Rights Chamber held its first session that week.

On paper, the machinery established for internal monitoring of human rights in Bosnia and Herzegovina is the most advanced in the world. It builds on and goes beyond the Convention. It is certainly too early to make any assessment

or prediction as to the effectiveness of this new feature under the Bosnian law.

However, it will be a very interesting test case. It can be said that the international community has imposed a traditional European judicial solution regarding human rights on a country which is coming out of years of a political situation and a tradition which is not at all adapted to or prepared for such solutions. A Western European value is being imposed on a state which is perhaps not prepared to accept such values, at least not its leaders.

What will result is of course important to the people of Bosnia and Herzegovina. It will also impact on the development and spread of the European system of human rights.

The Vision and Experience of the Philippines

by
Aurora Recina

In promoting human rights, a sustained and coordinated effort is needed. This is especially at the national level. In the Philippines, this role is played by the Human Rights Commission.

Creation and Aims

The Commission comprises one chairperson, four commissioners and almost six hundred employees -- four hundred or so in Manila, and the rest spread out in different regions of the country. The Commission came into being as a result of the 1987 amendment in the Philippines constitution. The Commission is created under Section 18, Article 13 of the Constitution. Its mandate is, "to investigate on its own or on complaints by any person, all forms of human rights violation, involving civil and political rights, it adopts operational guidelines, rules of procedures and sides for contempt for violation, thereof in accordance with the rules accord."

The Commission is an independent office created by the constitution to protect human rights, aimed to provide timely, impartial and objective investigation of human rights violation, assist its victims and other families with legal services and other forms of assistance. It also conducts information, education, research and training programs for all sectors of society.

The Commission provides appropriate legal measures for the protection of human rights of all persons within the Philippines. It also reaches out to Filipinos residing abroad. Of special concern is to provide for preventive measures and legal services to the underprivileged whose human rights have been violated. The Commission exercises powers over jails, persons and detention facilities.

Specific Roles

The Commission has established a continuing program of research, education and information to enhance respect for the

primacy of human rights. Comments have also been given to the Philippine Congress as the law-making authority for effective measures to promote human rights and to provide compensation to victims of human rights violation or their families.

The Commission also plays a role in helping victims of human rights violations. There are funds set aside for such people. The Commission gives at least 10,000 pesos to victims who can prove themselves to be true victims of human rights.

It also has a role in the judicial process in prosecuting human rights violations. The Commission has powers to grant immunity from prosecution to any person whose testimony or whose possession of documents or other evidence is necessary or convenient to determine the truth in any investigation conducted by or under its authority. The Commission can request the assistance of any department, bureau office or agency in the performance of its functions.

Mission

What is the vision and mission of the Commission? We are an institutional body committed to the primacy and sacredness of life through the protection and promotion of human rights. Towards this end, we engage in sustained efforts to achieve credible action in seeking justice. We are orientating the agents of the states towards human rights norms, advising the State on national collaboration with national and international human rights organizations.

We affirm our role as the advocate of principles, standards and practices, model of public consciousness, conveyer and adviser of other organizations and interest groups and direct services surveyor of human rights. In the courageous and unwavering pursuit of its vision, we maintain our independence, preserve our integrity, develop our potential and perform our best in the spirit of justice, equality and freedom for all, especially the voiceless and powerless.

Links with Other Institutions

In taking up advocacy and information campaigns, the Commission networks with other agencies in the government, and mobilizes people's organizations, particularly partnership with non-governmental organizations (NGOs). This includes

international human rights groups, like the Amnesty International, with whom we are entering into a memorandum of agreement with Amnesty International.

One of the most important programmes the Commission has with government agencies is with the armed forces of the Philippines. Pursuant to a memorandum of agreement, we have given 87 advocacy courses on human rights to armed forces personnel. Each course takes in about 100 to 150 commissioned and non-commissioned officers. In this memorandum of agreement, it is agreed that no member of the armed forces will be promoted to the next rank unless he has taken an advocacy course in human rights. Before promotions are given, clearance has to come from our office stating that the personnel has not committed or been involved in any human rights violation. Human rights violation cases involving the armed forces of the Philippines has been dramatically reduced. From the experience of this agreement, we are entering into more memorandums of agreement with government agencies and non-government organizations.

Pro-Active Grassroots Work

The program of the Human Rights Commission now is proactive, not reactive. This is a change from the past, when we would just react to things that had happened. In becoming proactive, one programme is for us to give ordinary people more about the human rights that they have. We have come up to the Barangay Human Rights Action Centre's training trainers program to work at the local level.

We have found this very effective. The masses now know where to go for advice and help on human rights issues, because our barangay centres are widely spread throughout the country. At present, we have offices in twelve regions. We cannot reach everyone and so we emphasize training those who will inform and train others. This will give the Commission more grassroots representatives who go for our training who can then reach out to the masses. This strategy has proven to be effective. On the whole, I think the people are beginning to realize what human rights are and, with the Human Rights action centre, they can go to for assistance. More people are realizing the importance of knowing their rights.

Definitions and Visions

As far as the Commission is concerned, we have come up with a definition of what human rights are. We define human rights as the supreme, inherent, inalienable rights to life, to dignity and to self-development. We are concerned with issues involving areas of civil and political rights, economic, social and cultural rights that are founded in the internationally accepted human rights obligations to which the Philippines government is a state party.

All human rights are universal and indivisible, interdependent and inter-related. In the words of Hose W Jobnob, the father of human rights in the Philippines, "Human rights are more than legal concepts, they are the essence of man, they are what make man human. Deny them and you deny man his humanity."

There is one dream that all Filipinos share. This is that all children may have a better life than we have had. The vision to make this country, our country, a nation for our children is a distinctive Filipino dream. We may well change the word "Filipino" and say that one dream that all humanity must share, that all children may have a better life than we have had. So that there is one vision that is distinctively humane, the vision to make our world, a nation for our children.

Thai and ASEAN Initiatives for Human Rights

by

Dr Suthin Nophaket

The 1993 World Conference on human rights in Vienna reiterated the need to establish regional arrangements for the promotion and protection on human rights. The ASEAN Ministerial Meeting, held concurrently, declare that it was responsible for establishing the mechanism on human rights among member states.

Thai Initiatives

In complying with those obligation, Thailand has taking new initiatives in its institutional and regulatory framework. In the past, Thailand had government agencies to oversee human rights issues, such as the Office of the Attorney General, the Office of the Commission of Counter Corruption, Police Department and Local Administration Department. But these institutions operated without coherence and with long bureaucratic processes. To provide better cooperation and a more efficient system, there have been attempts establish a national commission on human rights. This is aimed to improve human rights protection by having an institution that can operate independently to administer and oversee other agencies.

Another initiative is in the Standing committee on Human Rights for the Thai Parliament. The Committee will jointly operate with non-government organizations (NGOs). Some of these NGOs are the Coordinating Committee for Primary Health Care of Thai NGO, Duangprathip Foundation, Union for Civil Liberty (UCL), Asian Cultural Forum for Development (ACFOD), Friends of Women Foundation, Center for Protection of Child Rights, Coalition for Peace And Development, Justice and Peace Commission of Thailand, and Coordinating Committee of Human Rights Organizations in Thailand (CCHROT).

The Standing Committee on Human Rights, along with the sub-committee for Human Rights for the Thai Parliament, has played an important role in resolving complaints. It has also proposed bills for human rights promotion and protection.

On the regulatory side, the Thai Parliament is reviewing the draft of a bill on the promotion and protection of human rights. The provisions of this bill will establish the National Commission on Human Rights, comprising representatives from parliament as well as concerned members of the public. With this bill, human rights advocates in Thailand are planning to build up the awareness of human rights at every level.

The Royal Thai Government, the Thai Parliament and the NGOs acknowledge the important of the human rights because people are the engine of the nation. From this, we can surmise that the more protective the human rights are, the more progressive the country is.

An ASEAN Initiative

In addition to efforts at the national level in Thailand, there has also been a recent initiative for a system for human rights at the regional level.

This initiative has been started by institutions in three ASEAN countries. These were the standing committee on Justice and Human Rights of the House of Representatives of Thailand, the Philippine Commission on Human Rights and the Indonesian National Commission for Human Rights. Representatives from these three institutions met with the ASEAN foreign ministers at the 29th ASEAN Ministerial Meeting in Jakarta on 21 July 1996. The initiative is a sincere effort for the establishment of a regional human rights mechanism and framework. This is in accordance with the call of the Vienna World Conference on Human Rights for the promotion and protection on human rights, and with communiqué on human rights from the 26th ASEAN Ministerial Meeting.

The initiative cannot claim success at this stage. However, I think that it is significant that the foreign ministers agreed to the meeting. In addition to promoting a regional mechanism, the initiative has also asked for governments to help establish contacts between the appropriate human rights institutions in ASEAN member countries.

**IN SEARCH
OF
UNIVERSAL HUMAN RIGHTS**

ABOUT THE CONFERENCE

Conference Summary

by

Marvic M V F Leonen

In summarizing the conference, my principal role was to provide an overview of what had happened and the state of the discussions. The summary is of course shaped by own experience as an activist and academic in human rights.

All law, and in fact all norms, articulate a culture. The fact that it articulates a culture does not however, mean that it is a culture that is rooted on or emanates from the society that it governs. Like many states in Asia and perhaps a lot more from the developing world, the Philippine legal system for instance, borrowed a lot of its normative patterns within its official legal system from its past colonial masters. Much of it have not changed significantly.

Some of it, from the perspective of those that work under it, might have to be changed because it is both anachronistic and antiquated. If this is true for those that have already been assimilated into dominant western cultural patterns, how much more with indigenous peoples that have maintained a sense of ethnic identity and cultural integrity?

What we have tried to do in this two day conference, it seems to me, is what an ethno-linguistic grouping in Mindanao calls "tibalyaw" - truth telling. To tibalyaw means to literally gather and share one's version of the truth. It has been said by many of the speakers as well as those that intervened during the various exchanges in this gathering that no one can really be objective. Objectivity is even based on one's own truth and sharing is a means to reach a consensus of not anyone's truth but the truth of those that are gathered.

Human Rights as language and as norms

Many of us have also said that human Rights is a bond that keeps us together. It is a common language through which we all communicated. Citing the UN Secretary General, Boutros-Gali, we all agreed that in a sense we are part of one global village - one community of nations.

A common language however does not ensure clarity in communications. Nor does it ensure the least differences. There are a lot of ways not only to describe concepts but also to conceptualize based upon the language that we use.

Our conference has moved from simply looking at the concept of a human rights violation. We have assumed the concept of what a norm is and moved towards a discussion of the basis of norms. We have also discussed the effectiveness of norms and the possibility that the bases of norms might provide some authority to make them more binding and perhaps even more effective.

We have agreed to disagree. We have also recognized, in the early part of our discussions, that while we are speaking about the basis of our normative language, there still is in reality a lot more things to do just to make our societies comply fully with human rights provisions as we have them today.

The rules, laws and norms we deal with have three characteristics which were implied in some of the discussions. First, norms are prescriptive. They are statements of what a society believes it ought to do in the future. Sometimes it is mandatory. At other times it is simply a guideline for behaviour. Certainly however norms can only change societies based if it is effective enough to demand compliance. It does not alter societies simply because it is promulgated.

Second, norms reflect a current thinking about the future of that society in which it is made to operate. In a sense therefore it reflects the current balance of social, political, economic and even cultural power. Our discussions led us into questions of whether this consensus is based on universally accepted ideas or simply a consensus of convenience or even a consensus of power. Perhaps it could even be a mixture of all of these.

Third, norms change. They change in the context of actual concrete changes in the societies that promulgates them. They also change simply on the basis of new aspirations of existing cultures within societies.

First Definitions

A lot of our discussions therefore centered around the concept of cultures. Some think of culture as manifestations of a societal perspective. Others see it as the perspective itself.

Others want to distinguish a culture from an ideology and differentiate between the universalities of culture from the demands of an ideology.

We then attempted to discuss definitions. One thing that perhaps most of us realized during these discussions was that we did not define. It was clear in our minds that there was not one Asian definition of what human rights was or on what it is based. It was also clear that there was not also one European definition. It was difficult as it is to define who was Asian, more so if one attempted to define "Asianess". Our histories are far too complex for any useful generalizations at that level. Our viewpoints are so rich and varied that it might not even be worth the effort to homogenize.

Democracy and Development

We then proceeded to a discussion of economic development and its relation with human rights and vice versa. Some felt that there was a modicum of economic development necessary to enjoy some of the trappings of democracy. Our attention was called to the phenomenon of the rising numbers of middle and upper classes within the emerging economies of Asia. Others however felt that democracy was not necessarily correlated with economic development. Indigenous cultural communities have had their own concept of democratic structures even if their economic development was not at par with the emerging economies of the dominant cultures.

The other side of the discussion was of course development in the context of democracy. Many felt that the political set up of a society did not guarantee its economic development. Whether a government wants to make use of an "authoritarian" or a "democratic" path, and I am using the categories rather loosely, does not guarantee per se a level of economic development. Many believed that economic development could not be defined in terms of political development. It is like making use of a mango to explain an apple.

It was however also as forcefully argued that a democracy tended to ensure some consistency and accountability in its

choice of leaders. It might be possible that an authoritarian leader can turn out an economic development agreeable to an entire society. However, whether this can remain the state of affairs or whether the authoritarian will easily give up its political power gives doubt to its permanence or consistency.

Not all of us agreed to accept the dichotomy of development and democracy. Whether it is development that provides the context of democracy or whether it is democracy that causes development was felt to be a sterile discourse. Some felt that we could and should transcend these types of discussions because it was wasting a lot of our efforts and energies. Someone even pointed out that engaging in this discussions might somehow hide the real issues from its real audience.

The definition of democracy and development was therefore lively and enlightening. Democracy was alternatively defined as political participation in the context of individuals and organized groups. Of course, the concept of organizing did have its share of the limelight as there were indeed even various concepts and practices of what organizing communities or political parties or even trade unions. Some shared that even governments also had their own nuances of doing organizing of its own citizenry and therefore put into question this entire question of what exactly was an organized civil society.

We also heard about the small farmer and the maturity implicit in its simplicity of thought. To a farmer, its prime consideration after having planted its seeds was to remove the pests. It was pointed out that corruption was the pest that was ailing much of our societies.

We also heard about the political renovation happening in places like Vietnam. They are trying to look at and prioritize poverty alleviation, enhance participation and build the capability of its citizens to do business.

As many as there were definitions of democracy, so too were there as many definitions of development. This ranged from the traditional definition of development as economic growth to development that considered not only the economic as the principal factor but also its human dimensions. Our keynote speaker perhaps provided the impetus of this discussion when he reminded us of the presence of a human

Rights index. Others felt that the key to understanding development was to ask for whom and for what.

There was however a consensus that whatever development was, it should not be imposed by any geographical area over another, whether this be west on east or north on south. The CNN factor was also deplored. It was said that sometimes Western governments reacted more because of the impact of mass media rather than because of the catastrophes. There were also suggestions that the agenda of developed countries be changed. For instance, instead of focusing on the arms export, there should be instead a recognition of the economic imbalance between one country and the other.

The method of bringing about development also encouraged a lot of discussion and debate. At the end, it was convenient to categorize the various concepts of bringing about development into two. The first was organizing happiness. The other was, as the conference organizers perhaps tried to do in this forum, to allow individuals to organize happiness themselves while providing the conditions for allowing them to do so.

Engagements

The other set of discussions I would loosely categorize as engagements. This could cover the discussions regarding the engagements of the west on the east; the north on the south; Asian country to another Asian country; region to another region.

Many felt that there were certain concepts which could not be debated anymore because it was already part of reality.

First, the concept of non-interference is not as absolute a concept as it had been in the past. Human Rights is already part of international norms, thus, in so far as it recognizes individual Rights and only to that extent, the principle of non-interference arising out of the concept of sovereignty has been nuanced a bit during the past few years. Second, in spite of the changes in its consequences the concept of sovereignty was still recognized. Third, the concept of varying cultures was also accepted. Finally, that law could be and is actually used.

Cambodia was used as an example of the use of law. It was recalled that a peace pact had been entered into in Paris among the principal parties of its internal conflict as well as with some states. Since the countries were signatories to a multilateral international agreement, then therefore, it was believed, that the concept of Rights as embodied and articulated in the agreement could no longer be questioned. The problem however was how it was going to be implemented.

The question of how implementation could be achieved was very much a part of the discussion during the first and second day. Perhaps it would be useful again if we viewed the discussions from different angles.

First, there is the question of what can or should be done on various levels. For instance, what we could do on an international level might be different from what one can do on an inter-regional basis. What one can do between regions might be different from what one proposes within the Asian or European context. Finally, and perhaps as important is what can be done on a local level.

On a regional level, the concept of an Asian Charter was forwarded and endorsed by some. On an inter-regional level, some of the discussions focused on the concept of institutionalization. We compared the differences in the ways European country institutionalized their system of enforcing human Rights norms characterized by a judicial system enforced by a political decisions of the European Commission. On a local level, points were raised regarding how ready certain countries were to enter institutional arrangements such as various forms of Commissions on Human Rights.

Second, the discussions could be categorized on the basis of who was being made accountable. For instance, there were discussions on the ultimate responsibilities of states. However, others pointed out that it was also important to look at the phenomenon of multinational corporations and the limitations of state power over these entities.

Third, the discussions could be seen from the standpoint of the workability or propriety of putting on conditionalities. There was very passionate discussion on this point.

Conditions of course could happen in different institutional settings. We have already mentioned the case of Cambodia as an example where the parties have entered into a multilateral international agreement in Paris to be bound by specific human Rights norms. There were also suggestions made about the articulation of core values and/or multi-cultural Rights into specific regional instruments.

A lot of discussions however centered on social clauses and what is meant by including these social clauses. I think that the discussion regarding social clauses was not about whether we should have social clauses but on where the line should be drawn so to speak. What were the conditions that could be given? Our friend from the trade unions said that, as to human and labour Rights there were three things that should be taken into consideration; free trade unionism, forced labour and the efforts of countries to address child labour. Some felt that social clauses should only cover efforts towards ensuring free trade unionism. As to child labour and forced labour, it should be left to a particular country, specifically to particular trade unions in that country, to determine the level of protection. Others felt that there should be no conditions at all. Still others alluded to the clarity in the United Nations documents. They mentioned that the standard in so far as the Declaration of Human Rights is concerned is that countries are allowed to interfere only if "there are gross and persistent violations of human rights."

There was a consensus that no one acted out of altruistic motives and that all interference or engagements were only for humanitarian reasons. Some of our friends from Europe made this very clear. It is to them as practical as a vision of a society that they wanted to live in. What many however wanted was more transparency from governments so that we clearly knew what the motives really were.

Discussions on social clauses of course will ultimately lead to discussions about safeguards. There was near consensus on international multi-lateral cooperation as an effective way of producing safeguards. It was however recognized that in many international fora, "social clauses" carried with it a lot of economic as well as political innuendoes. The need to clearly articulate and define what was meant by social clauses was emphasized.

Engagements, it was pointed out, do not necessarily have to take place in contentious moulds. It was suggested that dialogue was as acceptable. A speaker emphasized conditions that led to a constructive dialogue in the Asian context. First, there needed to be some openness. Second, there was need to avoid imposing one's interpretation of certain universal norms. Third, there was need to validate interpretations among Asian countries. Fourth, one should avoid using threats unless there was a "gross and persistent violation of human rights." Finally, Asian countries should be given support in the process.

Gender

At this point, I wish to emphasize that through the discussions in this conference, our attention was called regarding the gender dimension. We were asked to look at the capability of our people but at the same time give special regard for the feminization of poverty and the role of gender in economic development.

Institutional Mechanisms

Having considered norms, the conference turned to discuss the institutional mechanisms that regulate and enforce human rights in practice. From the presentations made, a few salient points may be emphasized.

The European system evolved only during the past fifteen years. It is quite recent. The process however is not entirely judicial. Its enforcement is political. However, in practice the European Commission follows the declarations of its courts. We were asked to keep an eye on the development of one of their cases. This was the case of Bosnia. It is a test case because it seems that it would involve interpretations of norms evolved from a western standard on a different culture. There was also a concern about the number of cases that had been filed and how the system was accommodating its growing docket.

The European experience served as a contrast to the briefer presentations on institutional developments in ASEAN. We heard about the Thai initiatives at institutionalization within their political system. The Philippines Commission had earlier presented an overview of its work. There was also discussion of the initiatives towards an ASEAN system.

About the Participants

Participants at the Friedrich Ebert Stiftung Conference on Development and Democracy, Manila 1996, whose presentations or comments are reflected in this book are:

Simon SC Tay, Singapore: Senior Lecturer at the Faculty of Law, National University of Singapore, Simon teaches public and international law, with a focus on the environment and human rights. He holds a Bachelor in Laws (Honours) from the NUS and a Masters in Law from Harvard University. As Fulbright Scholar, he won the 1994 Laylin Prize at Harvard Law School for the best thesis in international law. His articles on human rights include, Culture, Human Rights and the Singapore Example, McGill Law Journal No. 41. Simon is active in civil society and is also the prize winning author of five books of fiction, poetry and prose.

Professor Rene V Sarmiento, the Philippines:

Gunter Verheugen, Germany: A leading member of the German Socialist Democrats.

Professor S H Alatas, Malaysia: The former Vice-Chancellor of the University of Malaya, author of books including the Myth of the Lazy Native and

Erik Fribergh, Sweden: Council of Europe

Dr Lao Mong Hay, Cambodia

Dr Ursula Engelen-Kefer, Germany: A leading member of the trade unions and ICFTU

Marzuki Darusman, Indonesia: lawyer and Vice-Chairman of Indonesia's National Commission on Human Rights

Chu Hong Thanh, Vietnam:

Aurora Recina, Philippines: Chairperson of the Philippines National Commission for Human Rights

Dr Suthin Nophaket, Thailand: Former Member of Parliament of Thailand from the Palang Dharma Party.

Marvic M V F Leonen, Philippines: University of the Philippines.

Other participants at the Conference included:

Mr Dieter Schanz, Germany: Member of Parliament of the Federal Parliament of Germany

Mr Roland Roescheisen, Germany: Co-ordinator of North-South Programme of the German Social Democrat Party

Mr Thomas Fitschen, Germany: Assistant Secretary of German Embassy in the Philippines

Mr Roland Feicht, Germany: Resident Director of Friedrich-Ebert-Stiftung in the Philippines

Mr Norbert von Hofmann, Germany: Head of Office, Office for Regional Activities in Southeast Asia, Friedrich-Ebert-Stiftung in Singapore

Mr Samreth Pich, Cambodia: A member of the Commission on Human Rights and Reception of Complaints of the National Assembly in Cambodia

Dr T Mulya Lubis, Indonesia: lawyer and Chairman of the Center for Human Rights in Indonesia

Ms Ati Nurbaiti, Indonesia: a reporter with Indonesia Jakarta Post

Ms Nursyahbani Katjasungkana, Indonesia: Director of Indonesia for Association for Justice

Mr K Goval, Malaysia: Vice President of Malaysian Trades Union Congress

Mr Sedfrey Ordenez, the Philippines: Former Secretary of the Philippines Department of Justice, Former Chairperson of Philippines Commission on Human Rights

Mr Randy David, the Philippines: Professor of University of the Philippines

Mr Amado Doronila, the Philippines: Columnist and Editorial Consultant of the Philippines Daily Inquirer

Mr Remedios Rikken, the Philippines: Chairperson of PILIPPINA-Women's Movement

Mr Daniel Edralin, the Philippines: Secretary General of the Philippines NUWHRAIN-International Union of Food

Mr Zulkifli Baharudin, Singapore: Secretary of the Roundtable

Dr Ooi Giok Ling, Singapore: Senior Research Fellow at the Institute of Policy Studies

Ms Evelyn Sue Wong, Singapore: Director of Singapore Institute of Labour Studies

Mr Simon De Cruz, Singapore: Singapore Ambassador to the Philippines

Ms Suranuch Thonsila, Thailand: Secretary of the Subcommittee for Human Rights in Thailand

Mr Nguyen Quang Tao, Vietnam: President of Vietnamese Union for Friendship

Mr Nguyen Song Binh, Vietnam: an Expert of the Vietnam Union of Friendship Organisations

Ms Nguyen Thi Tran Anh, Vietnam: an Expert of the Vietnam Union of Friendship Organisations