

## Conference Educating Lawyers for Transnational Challenges

### HUMAN RIGHTS

#### Human Rights Challenges and Perspectives

by

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#### **I. Introduction: The contemporary conception of human rights**

The aim of this paper is to focus on contemporary human rights challenges and perspectives, so that these may be considered in the redefinition of the role that law schools and law curricula should have in preparing tomorrow's transnational lawyers.

As moral demands, human rights are born when they can and should be born. As pointed out by Norberto Bobbio, human rights are not born all at once or once and for all.<sup>2</sup> Hannah Arendt sees human rights not as a given but as a construct, a human invention undergoing a constant process of construction and reconstruction.<sup>3</sup> Considering the historicity of these rights, one may state that the definition of human rights points to a plurality of meanings. Given such plurality, this paper focuses on the so-called contemporary conception of human rights brought about by the advent of the 1948 Universal Declaration and reiterated by the 1993 Vienna Declaration of Human Rights.

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<sup>2</sup> Norberto Bobbio, *Era dos Direitos*, translated by Carlos Nelson Coutinho, Rio de Janeiro, Campus, 1988, p.30.

<sup>3</sup> Hannah Arendt, *As Origens do Totalitarismo*, translated by Roberto Raposo, Rio de Janeiro, 1979. On this, see also Celso Lafer, *A Reconstrução dos Direitos Humanos: Um diálogo com o pensamento de Hannah Arendt*, Cia das Letras, São Paulo, 1988, p. 134. For Allan Rosas: "The concept of human rights is always progressive. (...) The debate on what human rights are and how they should be defined is part and parcel of our history, of our past and our present." (Allan Rosas, 'So-Called Rights of the Third Generation'. In: Asbjorn Eide, Catarina Krause and Allan Rosas, *Economic, Social and Cultural Rights*, Martinus Nijhoff Publishers, Dordrecht, Boston and London, 1995, p. 243.)

This conception is the fruit of the movement for internationalization of human rights. This is an extremely recent movement, having emerged in the post-war period as a response to the horrors and atrocities committed by the Nazi regime. In this setting, there comes about the effort of human rights reconstruction as a paradigm and ethical point of reference guiding the contemporary international order. If the Second World War meant a break with human rights, the postwar period should mean their reconstruction.

It is, then, as the major watershed in the process of reconstruction of human rights that on December 10, 1948, the Universal Declaration of Human Rights was passed. It introduced the contemporary conception of human rights, characterized by their universality and indivisibility. Universality, because the Declaration calls for the universal extension of human rights, in the belief that the human condition is the only pre-requisite for entitlement to them and considering humans as essentially moral beings with existential uniqueness and dignity. Indivisibility, because ensuring that civil and political rights are respected is a precondition for the observance of social, economic and cultural rights and vice-versa. When one of them is violated, the others are as well. Hence, human rights make up an indivisible, interdependent and inter-related unit, capable of bringing together the whole range of civil and political rights and that of social, economic and cultural rights.

Starting with the passing of the 1948 Universal Declaration, International Human Rights Law began developing by means of the adoption of several international treaties geared to the protection of fundamental rights. These reflect, above all, the contemporary ethical conscience shared by States, inasmuch as they invoke the international consensus on minimum protective parameters regarding human rights (the “irreducible ethical minimum”).

It is worth emphasizing that the 1993 Vienna Human Rights Declaration reiterates the conception of the 1948 Declaration when it states in paragraph 5: “All human rights are universal, indivisible, interdependent and inter-related. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis.” The Vienna Declaration also affirms the interdependence between the values of human rights, democracy and development.

## **II. Contemporary Human Rights Challenges and Perspectives**

Considering the contemporary conception of human rights, as well as the international system for their protection, seven contemporary human rights challenges and perspectives stand out:

### **1) Consolidating and strengthening the conception of the integral and indivisible nature of human rights**

If, traditionally, the human rights agenda was centered on support for civil and political rights under the strong impact of the 'voice of the North', one currently witnesses a widening of this agenda with the incorporation of new rights and an emphasis on economic, social and cultural rights, on the right to development, on the right to social inclusion and on poverty as a human rights violation. This process allows the 'South's own voice' to echo, so revealing the concerns, demands and priorities of the region.

It is therefore necessary to advance continuously in the expansion of the conceptual reach of human rights, hence meeting basic social justice needs.

### **2) Incorporating a gender, racial and ethnic approach to the conception of human rights, as well as creating specific policies in support of socially vulnerable groups**

The effective protection of human rights demands not only universal policies but also specific ones aimed at socially vulnerable groups, the chief victims of exclusion. In other words, the implementation of human rights requires their universality and indivisibility, with the added value of diversity. The problems of discrimination, xenophobia, racism and intolerance must be challenged.

For Nancy Fraser, justice demands redistribution and recognition of identities, simultaneously. As she points out: "Recognition cannot be reduced to distribution because status in society is not only a function of class. (...) Conversely, distribution cannot be

reduced to recognition because access to resources is not simply a function of status.”<sup>4</sup>  
 There is, hence, a two-dimensional character to justice: redistribution plus recognition.

### **3) Reaffirming States’ responsibility for the implementation of minimum international standards related to human dignity, especially with regard to economic, social and cultural rights**

Considering the excluding impact of economic globalization and the grave risks of the process of dismantling of public social policies, States’ responsibility for the implementation of minimum international standards related to human dignity, especially with regard to economic, social and cultural rights, must be emphasized.

Government action must promote social equality, tackle social inequalities, compensate the imbalances created by markets and ensure sustainable human development. Along these lines, Jack Donnelly states: “Free markets are an economic analogue to a political system of majority rule without minority rights. The welfare state, from this perspective, is a device to ensure that a minority who are disadvantaged in or deprived by markets are treated with minimum economic concern and respect. (...) Markets foster efficiency, not social equity or the enjoyment of individual rights for all.”<sup>5</sup>

### **4) Putting social human rights on the agenda of international financial institutions, regional economic organizations and the private sector**

In the context of economic globalization, it becomes pressing for non-State actors to incorporate the human rights agenda. In this sense, there are three crucial actors: a) international financial agencies; b) regional economic blocs; c) the private sector.

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<sup>4</sup> Nancy Fraser, ‘Redistribución, Reconocimiento y Participación: Hacia un concepto integrado de la justicia’. In: *Informe Mundial sobre la Cultura – 2000-2001*, Unesco, p. 55-56.

<sup>5</sup> Jack Donnelly, *International Human Rights*, Westview Press, Boulder, 1998, p. 160. Elsewhere, he states: “Assuaging short-term suffering and assuring long-term recompense are the work of the (welfare) state, not the market. These are matters of justice, rights and obligations, not efficiency. They raise issues of individual rights. Markets simply cannot address them – because they are not designed to.” (Jack Donnelly, ‘Ethics and International Human Rights’. In: *Ethics and International Affairs*, Japan, United Nations University Press, 2001, p. 153.)

In relation to the international financial agencies, there is the challenge of human rights coming to permeate macro-economic policy in the broad sense (fiscal, monetary and exchange rate policies). International economic institutions must seriously take into account the human dimension of their activities and the strong impact that economic policies may have on local economies, especially in an ever-more globalized world.<sup>6</sup>

As for the regional economic blocs, the movements that endorse democracy and human rights as parameters offering ethical and moral grounding for the creation of a new world order need strengthening.

As for the private sector, especially multinational corporations, there is also a need to deepen social responsibility inasmuch as they are the main beneficiaries of globalization. Suffice it to say that of the world's 100 largest economies, 51 are multinational corporations and 49 are States.

### **5) Strengthening the process of justicialization of International Law**

At the international level, the focus rests on the binomial: law of force x force of law. The growing process of justicialization of International Law, in particular of human rights, celebrates the passage from the rule of the 'law of force' to that of the 'force of law'.

It is necessary to advance in the process of justicialization of internationally enunciated human rights. As Richard Bilder states: “(...) the Courts symbolize and strengthen the idea that the international human rights system is in fact a system of legal rights, that involves legally binding rights and obligations. The idea of the Rule of Law is associated with the existence of independent Courts capable of making obligatory and binding decisions.”<sup>7</sup>

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<sup>6</sup> Mary Robinson, *Constructing an International Financial, Trade and Development Architecture: The human rights dimension*, Zurich, 1 July 1999, [www.unhchr.org](http://www.unhchr.org). She adds: “As an example, an economist has warned that trade and exchange rate policy may have a greater impact on the development of children's rights than the actual health and education budgets. An incompetent Central Bank director may be more prejudicial to children's rights than an incompetent Minister of Education.” (op. cit.)

<sup>7</sup> Richard Bilder, 'Possibilities for development of new international judicial mechanisms'. In: Louis Henkin and John Lawrence Hargrove (eds.), *Human Rights: An agenda for the next century*, Washington, 1994, Studies in Transnational Legal Policy, number 26, p. 326-327 and p. 334.

The Courts possess a special legitimacy and constitute one of the most powerful tools for persuading States to fulfil their obligations regarding human rights. Hence, the importance of advancing in the process of creating an International Human Rights Court.

**6) Strengthening the process of recognition of new actors in the international order, by means of the democratization of international instruments and of access to justice at the international level**

If, on the one hand, the justicialization of human rights is made necessary, on the other, a widening of the individual's ability to sue, by means of the democratization of the international system, is urgently needed. In other words, the affirmation of jurisdictional instances of human rights protection must go hand-in-hand with a consolidation of the individual as a true subject of rights at the international level.

If States have for a long time been the protagonists of the international order, nowadays one witnesses the emergence of new international actors, such as international organizations, regional economic blocs, individuals and international civil society (international non-governmental organizations, for example). The strengthening of international civil society by means of a communication and advocacy network made up of local, regional and global organizations, and of the consolidation of the individual as a subject of international rights, demands a democratization of international instruments, greater access to international mechanisms and to international justice itself.

**7) Strengthening the Rule of Law and the Construction of Peace at global, regional and local levels, by means of a culture of human rights**

In the post-September 11 and post-Iraq War context, there emerges the challenge of continuing to build an 'International Rule of Law', within an international setting which prioritizes a 'Police State' that is fundamentally guided by force and international security. The risk is that the fight against terror compromises our civilization's structure of rights, freedoms and guarantees under the clamor of maximum security. Research shows the perverse impact of September 11 in the makeup of a global agenda biased towards the restriction of rights and freedoms.<sup>8</sup>

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<sup>8</sup> 'For whom the Liberty Bell tolls', *The Economist*, 31 August, 2002, p. 18-20.

Countering the risk of State terrorism and of fighting terror with terror's own weapons, there remains only one route – the constructive route, of consolidating the outlines of a 'Rule of Law' at the international level. There will only be an actual International Rule of Law with the primacy of law and the legitimacy of political consensus.

In the light of this context, a re-balancing of the international order will require a revival of multilateralism and a strengthening of international civil society.

### **III. Conclusion**

Rethinking the responsibility of law schools in preparing tomorrow's transnational lawyers will demand facing up to the human rights challenges and perspectives in the contemporary order through changes in law schools' curricula, teaching methods, tools and practices, as well as opportunities provided to students.

If Universities constitute a privileged locus for the production and transmission of knowledge, as well as for action for social change, it is fundamental to incorporate the contemporary challenges of implementation of human rights, inasmuch as they constitute the only emancipatory platform of our time.

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