CHAPTER - 3

UNITED NATIONS AND HUMAN RIGHTS
3.1 : The Universal Declaration :

The doctrine of human rights under the universal declaration is an egalitarian doctrine. It ascribes a number of rights to human beings indifferently and makes pronouncements that those rights are held equally by all human beings. Just how egalitarian the doctrine turns out to be in effects will depend upon how extensive are the rights which all human beings reckoned to possess. Nevertheless the universal declaration provides a useful strating point for a survey of the sorts of right that are most commonly claimed as human rights and which regularly appear in declaration of rights.

First, there is the right to life. That might be regarded as the most fundamental of rights since being alive is prerequisite of enjoying other rights. However, what more precisely the right to life is a right to is open to widely different interpretations. At a minimum, it can be understood as the right to be safegurded from murder. Article 3 of the UN Declaration. Which states that ‘everyone has the right to life’ also states that everyone has the right to ‘personal security’, which implies not only a right not to be murdered but also a right, typically held against a government, to be protected from murder and other forms of personal injury. But life may be threatned by more than just the wilful hostility of human beings. It may also be threatened, for example, by
disease or famine. Thus the right to life may become linked to rights to certain material goods and services which figure in later articles of the UN Declaration.

Second, right to liberty or to liberties have always figured prominently in declarations of rights and do so in the UN Declarations, sometimes what is asserted is right to liberty as such. However this cannot really mean that people are rightfully free to do whatever they like. For one thing the existence of other people's rights, including their rights to liberty, must set limits to the liberty of any particular individual. The 'right to liberty' therefore is usually either a way of asserting a right not be enslaved (which right is stated explicitly and separately in article 4 of the UN Declaration) or it is a right to a certain 'area' of personal liberty whose precise boundaries are not spelled out whose general nature is left to be 'understood' by those to whom the declaration is addressed. It has also become common to assert rights to specific liberties such as rights to freedom of opinion and expression, freedom of religion, freedom of movement, freedom of association and freedom from intrusions into one's privacy.

Third, there is the right to property. For centuries property was regarded as an entirely man-made institution and not something to
which there could be a natural right. However Locke's argument that individuals could acquire natural rights to property has proved particularly influential and it has become a common ingredient of declarations of rights, including the UN Declaration. As without many other rights, just how we are to understand the scope and content of this right as it appears in declarations of human rights is usually left extremely unclear.

Fourth, there are a number of what may be called 'civil' rights - rights which concern the administration of justice and the possible abuse of governmental power. Article 5 provides that no one shall be subject to torture or to 'cruel, inhuman or degrading treatment or punishment'. Article 7 declares that 'All are equal before the law'. Article 11 provides that everyone charged with a criminal offence has the right to be presumed innocent until proved guilty.

Fifth, the UN Declaration includes a number of 'political' rights, rights which relate to the workings of political processes. Article 21 of the UN Declaration, for example, states that 'everyone has the right to take part in government of the country, directly or through freely

chosen representatives'.

Finally, the UN Declaration includes a number of what are usually described as socio-economic rights. Article 22 states that everyone has the right to social security and to the 'social and cultural rights indispensable for his dignity and the free development of his personality'. Other articles go on to declare that everyone has the right to work, to rest and leisure, to education, to health care and to a certain minimum standard of living. These are sometimes referred to as the 'new' human rights since they are largely, though not wholly, absent from earlier declaration of rights.

These are only loose groupings of rights. The UN Declaration does not itself group rights into 'families' and it includes some articles which do not fit easily into any of the above groupings - for example, article 15, which declares that everyone has the right to a nationality, and article 16, which declares that everyone has the right to marry and to found a family.

Although the UN Declaration is very important document and an obvious focus for discussions of human rights, it should not be regarded as the definitive statement of human rights. It was produced under
difficult circumstances and those who drafted it had to secure the support of governments espousing very different ideologies and of nations with very different cultural traditions. Whatever its defects, it represents a considerable achievement in international co-operation. But it is still a rather ramshackle document and it should not be treated as the touchstone by which the whole doctrine of human rights is to be judged. Some of what are claimed as human rights but they are not truly human rights. There may also be human rights which go unrecognised in the UN Declaration. Critical discussion of the Declaration must not therefore be confused with critical discussion of the very idea of human rights.

3.2 : Institutional Management :

The Universal Declaration of Human Rights adopted by the General Assembly of the United Nations is the most celebrated statement of human rights. Soon after the World War II, the people of the United Nations determined not merely to save succeeding generations from the scourge of war, but to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, and in the equal rights of men and women and of nations large and small. The kind of
language associated with revolutions within the member-states of international society, notably America and France, was now asserted on behalf of world society as a whole consistent with this, the United Nations took as its purpose, in addition to the maintenance of international peace and security, the promotion of respect for human rights and fundamental freedoms, and the members pledged to take joint and separate action in cooperation with the organization to achieve this goal.²

When it is said that this commitment represents a revolution in international politics, two things are meant. The first is that while states still constitute the membership of international society, they have taken on a revolutionary purpose, adding the needs and interests of individuals and groups other than states to their traditional preoccupation with peace and security among themselves. The second is that, in taking on these purpose, states have dissolved international society into a world society in which groups and individuals have equal standing with states.³

². See Article 56 of the UN Charter.
The acceptance of human rights as a general part of the business of international society was signalled institutionally by the establishment - by the Economic and Social Council in 1946 - of the United Nations Commission on Human Rights. It is states that sit on the commission, and progress in it on the question of human rights is constrained by the preoccupations of states and interstate society. But in the year of its own establishment, the commission appointed a sub-committee on the Prevention of Discrimination and Protection of Minorities, whose members sit as experts and not as representatives of governments.

A second set of human right institutions whose range is global is that composed of committees of review set up under various conventions such as that on the Elimination of Racial Discrimination, and that on the elimination of Discrimination against Women. The Human Rights Committee, established under the covenant on Civil and Political Rights, is the best known of these. Then there are the political organs of the United Nations, which have an official interest in human rights, notably the social, humanitarian and cultural committee, trusteeship committee and legal committees of General Assembly. Finally, human rights are entrenched in the global bureaucracy: in the Division of Human Rights of the United Nations Secretariat.
If there are reasons for rejecting a view of international law as composed entirely of principles for a society of states, what principles would appear on the global map of human rights? The Universal Declaration, the covenants, the various conventions on, for example, slavery, the Elimination of Racial Discrimination, the Prevention of Genocide, are all international measures which not only recognize the existence of a society beyond the society of states, but also seek to constrain the conduct of states towards that society. It is true that the map which sought to depict the principles of this society would be fuzzy, and unevenly shaded, but there would be some point in enterprise in virtue of obligations that the states themselves had accepted. It is also true that the map would be drawn differently in different society according to local views about the principles that most mattered in the area of human rights.

What is called implemention of international human rights instruments is not the kind of process that one associates with a civil service carrying out the will of an elected government. What is most commonly meant by implemention, in the United Nations context, is a system whereby states parties to conventions report on their fidelity to their engagements, and then a peer group reviews the reports according
to procedures varying with the instruments. Finally, recommendations to the states parties may follow, and, much more rarely, international conciliation to resolve a particular problem. Binding measures under the security Council of the United Nations, or after referral to the International Court of justice, are still rarer.

Such modest measures of implementation revive modest mapping. And modesty might turn to cynicism on two grounds. The first is that where states themselves are the judges of each others' human rights records, one should not be surprised if a kind of freemasonary operated among them, making them reluctant to call each other names in public in case such a policy were to rebound to their disadvantage. Secondly, when name-calling takes place despite this constant, one should not be surprised if it is directed not at some situation which by an objective measures of the community of states whose hold on their places in the esteem of other is weakest: pariah states like Israel or South Africa. The prospects for the implementation human rights, evenly, throughout international society, look on this account very bleak.

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There are, however, some small indicators of a brighter prospect, arising from the possibilities of turning the objection to pariahs to more general account. In 1967, with its eyes fixed on southern Africa, the Economic and Social Council of the United Nations passed Resolution 1235 (XLII), which authorised its human rights bodies 'to examine information relevant to gross violations of human rights and fundamental freedoms'. Then three years later, the same council adopted Resolution 1503 (XL,VIII), which, among other things, allowed the sub-commission on Prevention of Discrimination and Protection of Minorities to consider communications from individuals on situations 'which appear to reveal a consistent pattern of gross and reliability attested violations of human rights and fundamental freedoms.\(^6\) This is, however, not to suggest that a bright new day had downed for human rights with the passage of these resolutions. The dogs that get kicked are still predominantly the dogs that were kicked before. But there is no reason in principle why these bits of international constitutional law should not be turned in other directions as well, and this the West and some Third World countries have sought to do with increasing success in recent years.

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3.3 : Regional Arrangements:

The United Nations has directly encouraged the development of human rights institutions at regional level, and the regions in turn have identified themselves as the local bearers of a global burden. This is most notable in Western Europe, America and Africa.

Of the three regions, western Europe has the best-established human Rights, which entered into force in 1953, was not merely the Universal Declaration translated into European. It sought to guarantee rights as well as to state them. For this purpose, a commission and a court of human rights were established, and a further role given to the Committee of Ministers of the Council of Europe. States could bring cases against states to the Commission, however, was the establishment of a machinery even against their own governments. The revolution in regard to the membership of international society might at least be beginning to happen in Europe. And, on the American continent, with the entry into force of the American Convention on Human Rights in 1978, this may also be said of the western hemisphere. Here similar institutions to the European ones, a commission and a court have been established for the regional guarantee of human rights. Here too there is provision for individual petition. And it is stronger than in the
European case for being written into the Convention without the additional requirement of states opting to recognize the Commission's competence in this regard. Africa, in the matter of the creation of human rights institutions, is some way behind both Europe and America. The Banjul Charter envisages the establishment of an African Commission on Human and People's Rights but the functions of the Commission are to be concerned first with promotion, and then with implementation. In this respect, the Charter follows the American experience.

In the matter of principles, attention to local circumstances in the three regions is added to a case of common values. The local European circumstance is precisely its restrictionist interpretation of the case values, such that they may be rendered as legal rights and not as political aspirations. The European convention, in A.H. Robertson's expression, restricts itself to the civil and political rights 'necessary in democratic society', and does not include rights 'me might wise to see guarnteed in an ideal commonwealth'.

The American Convention is more ambitious. It lists more rights.

It adds duties to rights in the spirit of the American Declaration of Rights and Duties of Man of 1948. And it incorporates the economic, social and cultural rights which the Europeans chose to hive off to the European social charter. The Banjul charter by no means abandons individual rights, but it adds to them a rather comprehensive set of duties to family, nation, state and confinent. And its stress on the importance of peoples’ right addes to this a collectivist dimension in a way which is studiedly different from the European and American conventions.

The handling of implementions under the Benjul charter is different too. Under the European Convention, implementation is itself institutionalized. The Commission is empowered to resolve differences, the court to make authoriatative judgements where resolution is not possible, and the Committee of Ministers to surprise complains with the court’s judgements. Similarly in America, the commission has the court to judge infractions of human rights. The court also has the power to bring any failure to abide by its judgements to the attention of the Assembly of the Organisation of American States. Even the Benjul charter, while not establishing a court, envisages a procedure for

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amicable settlement, and, if this fails for reporting the Assembly of Heads of State and Government. In each case, whatever the institutional arrangements, publicity is control to the process of enforcement.

### 3.4: Non-Governmental Organisations

Just as regional institutions in the field of human rights have seen as the local promoters of the global principles, so non-governmental institutions have taken their cue from the most widely endorsed international declarations. Amnesty International, for example, in its Statute of 1980, has its object the securing throughout the world of the observance of the provision of the Universal Declaration of Human Rights. In fact, as the statute goes on to reveal Amnesty specializes. And there are a number of specialist organizations which, like Amnesty, seek to protect particular human rights: for example, the Minority Rights Group, the Anti-Slavery Society and the International Committee of the Red Cross. There are also non-governmental organizations whose human rights concerns are more general: for example, the International League for Human Rights and the International Commission of Jurists. Then there are organizations
not established for the purpose of promoting human rights, but having them as part of their more general concerns, such as churches, trade unions, professional associations and political parties.

There is now the question of what these non-governmental organizations do. Not having even the rudimentary machinery for implementation that is available to global and regional organisations, how can they act to promote and protect their principles in the world at large? In the first place, they can just have principles. Principles give point to politics. In order that slavery could be abolished, it might reasonably be argued, someone had first to think it wrong. In order that human rights could appear on the agenda of contemporary international politics, someone had first to think they belonged there.

Then the second step is to agitate for the wider acknowledgement of and adherence to these principles. In the case of slavery, the campaign was carried on in parliament, in political society beyond parliament, and in international society through the lobbying of delegates at international conferences.\(^\text{10}\) In case of human rights in modern world politics their place on the agenda at all is due in large

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measures to the energy of the non-governmental groups at the Sanfrancisco conference which established the United Nations. This of course, was acknowledgement, and not adherence, and it is adherence which is the far more demanding condition. But, even here, agitation has a part: expressing views, drawing up resolutions, drawing attention to violations, urging studies, sending fact finding missions, protesting misconduct and so on.\(^{12}\)

The third step is direct action on behalf of oppressed individual or groups. Again, there are not the means available here that are at the disposal of governments, but non-governmental organisations can make a nuisance of themselves by launching letter-writing campaigns, passing governments for improvement, visiting prison and attending trials.\(^{13}\) What informs all these activities is the idea that people in position of authority are more likely to act properly when they know


that their conduct is under public scrutiny.

Non-Governmental organisations in the field of human rights belong, then, in the liberal tradition of belief in the power of opinion. They believe that standing in the eye of the public both at home and abroad is important to all governments, though they recognize at the same time that some are more sensitive to opinion than others. They argue that if reputation is something which matters to all governments, then their actions can be affected by pointing out the harm or good that might result from the publicity that will follow certain choices, so the non-governmental organizations involved in human rights, believe not merely in the power of opinion, but also in the idea that opinion must be founded on truth.

3.5 : Human Rights and the World Society :

There are a member of institutional arrangements that are concerned with the promotion and protection of human rights in the contemporary world. It may be said of these arrangements that they constitute international human rights regimes: 'consistent sets of normative and procedural expectations on the part of
states' concerning the treatment of individuals and groups throughout the world whatever their nationality. If there are such expectations, it may also be said that there has come into being a world society which includes in its membership individuals and non-state groups as well as states, and that the old principles of international society, like sovereignty and non-intervention, no longer have a clear run.

Beginning at the global level, an obvious indicator of the extent to which human rights have become a legitimate concern of international society might be taken to be the support given by states to the various conventions. It might be decided, on such a basis, that freedom from racial discrimination, freedom from slavery, the rights of refugees, and the political rights of women were the rights about the existence and importance of which there was the closest to a consensus in contemporary international society.¹⁵

On the same basis, it might be decided that the reduction of statelessness and the international right of coercion were the human rights issues that least concerned the international society. But if these


indicators are obvious, they are also crude. For signature and ratification of conventions are not the same thing as fidelity to them. As Richard Falk has pointed out, the absence of any real prospect of enforcement makes it feasible for some government to ratify agreements that might observe them are deterred from becoming parties to conventions by the theoretical possibility of enforcement.\textsuperscript{16}

A second indicator, at the global level, of the reception of human rights in international society is the work of the United Nations on the subject. Of particular interest here might be the extent to which individuals have been able to make headway with complaints against the states whose organisation the United Nations is.\textsuperscript{17}

In the first twenty years of the United nations, it seemed that, in the matter of human rights at least, international society was sucessfully defending the principle of exclusive state authority. It seemed to be the rule that the United nations would take no action with respect to the complaints of individuals against their own governments.


The breach in this wall was made by activity of the United Nations in the area of colonialism and apartheid held hearings for complaints and published the complaints. General Assembly Resolution 2144 of October 1966 followed, inviting the Economic and Social Council through the Commission on Human Rights to give urgent consideration to ways and means of improving the effectiveness of the United Nations in the area of human rights. The United Nations has been continuing, since then, to take resolution in matters of human rights violations.

The theme of all such complaints and resolutions might be taken to be the individual emerging from the shadow of the state, and the states themselves assembled at the United Nations mustering the courage to give and accept criticism of their own human rights records. There are, however, a number of difficulties in taking this as the true theme of which two are important. In the first place, individuals are not all stepping out together from the shadow of the state. Notice can be taken only of consistent patterns of violations - which leaves the victims of random violations internationally defenceless. Secondly, the states in international society still control the pattern of protest at the United Nations.

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Nations. As Richard Falk has pointed out, it is not severity of abuse of human rights which is the principal criterion of agenda attention. Rather, it is the Israel, South Africa or Chile to be pilloried for human rights violations: another shy at a state which has already been made a pariah is relatively cost-free politically. And while some human rights violations, like those in these countries, are 'supervisible', others elsewhere remain 'invisible'.

In the politics of the United Nations, there are untouchable in both senses of the word. So although human rights issues at the United Nations are no longer simply settled in the interests of governments on committee of which they alone are members, the shadow of the state has not significantly shortened. This is a conclusion which is strengthened the further one moves away from the formal human rights institutions of the United Nations. In the debate in the General Assembly about the content of human rights, one might find more evidence for competing conceptions of what world society should consist of then for a solidarist conception of what world society now is.

Human rights arrangements at the regional level are made to carry global standards into all provinces of international politics. The United Nations has itself encouraged the establishment of European, American, Arab and African institutions for this purpose, and the regions have seen themselves as the local carriers of a global message. This benign view of the discrimination between regions in the matter of human rights is made possible by the idea that while the standards are universal, their implementation will be the more successful the closer the attention to local circumstances. States, it is argued, are more likely to accept machinery for implementation if it is established among a group of neighbouring and like minded countries than if it allows the snooping of strangers.\(^2^2\)

The benign view of the connection between global standards and regional enforcement is not the only one, and it glosses over large difficulties. There is, first, the well known problem of the definition of a region. In the second place, there is the uncomfortable fact that neighbourhood is no guarantor of solidarity. Burke's ground law of vicinage' does not automatically apply. It may even be the case that such solidarity as has been established on the question of human rights

within regions has been achieved against a regional 'outsider': In Europe, Eastern Europe; in the Americas, the communist enemy within; in the Arab world, Israel; and in Africa, South Africa. Third, and most important, the easy distinction between global standards and their regional implementation seems on reflection an improbable one. This makes the regions mere executives to a global legislature. It seems more plausible that the homogeneity of culture which is supposed to make it possible to consider regions as political units generates principles as well as procedures; and that localities are to be marked off by their different conceptions of rights, and not merely by their different routes to the same basic rights.

Also, the kind of transnational society which the world has, is being called as predominantly a western society with characteristically western values. The criticism, then, is not far behind that it is an organisation, and human rights an ideology, which after western interests while pretending to a selfless concern for the interests of others. This criticism takes two forms, one concerning what it is seeking to do for itself. The first is the familiar notion of human rights

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as cultural imperialism: 'We have defined as fundamental human rights those rights which can be accorded to people in our society without posing a threat to our socio-political system.'\(^{25}\) Change, then, is the duty of foreigners: it is they who must get into step with us. The second form of the criticism is less familiar. It has human rights activism as the opiate of the West, a device by means of which the privileged cope with the existence of underprivileged, the oppressed. Human rights organizations exist for the benefit of their members, not of victims. If the victims in the Third World were to shape the transnational society of human rights, it is argued, they would bring to it different values, such as those contained in the Universal Declaration on the Rights of Peoples adopted at populist Third World initiative in Algiers in 1976: rights not of individuals but of groups against the oppression of imperialism.\(^{26}\)

The overall conclusion, in regard to the question of human rights institutions as a measure of the solidarity of world society, must then be modest. At the universal level, human rights institutions are unreliable indicators of commitment to human rights in practice. They

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play host to the airing of disagreement as well as to reconding solidarity. They reflect the preoccupations of international and not of cosmopolitan society. At the regional level, there is reason to be suspicious of the idea that regions are the agents of universal values and not of regional ones. In regard to non-governmental organisations, their values are skewed in a western direction, and do not faithfully record the views of an imaginary apolitical transnational world beyond the state. Finally, at the level of the state, while there is widespread homage paid to the idea of universal human rights, their context is contested and the prospect of their achievement for the most part remote.

The world society that might be said to exist in virtue of the acknowledgements of and commitment to universal human rights is then uneven and in several places barely visible. But this does not mean that it does not exist at all. Certain human rights principles, such as freedom from racial discrimination, and self-determination, have become pre-emptory norms of international law, and it is no longer controversial to argue that there is a body of customary rules constituting the international law of human rights. If, beyond these basics, it is fair to say that discourse about human rights in international politics is about the contest between them, then, again
there is in the debate among them at least a recognition of the value of a conversation between the cultures. Out of this conversation might come the beginning of change in patterns of practice in the matters of human rights.

For the place of human rights in contemporary world society there remain two questions: that of how world society came to take this shape; and that of whether the direction of change in that society is something we should approve of.

One answers to the first of these questions is circumstance. Attention to human rights might track the capriciousness of human wrongs. Thus the argument that human rights surfaced in international society because of western revulsion at evil done within its midst before and during the Second World War. One may refer also to a contemporary example of reaction to circumstance. The problem of refugees and migrants is a substantial one in every part of modern international society. States, and especially the popular target status for immigrants and refugees, have form a view about the rights of these individuals however uncomfortable it makes them about understanding the rules of international society. This is not a new problem: the right

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of asylum is an ancient recognition of it. But the scale and scope of it in the contemporary world is a vivid illustration of the demands that individuals and groups are making of the club of status. Nor are the demands abstract, indicative of some national transition from international to world society. A connection is often made between a states’ observance of human rights and the popensity of its population to emigrate. So one of the reasons for states to be interested in the human rights record, not merely of a neighbour but of another state across the globe, is the interest it has in not suddenly being made a receiver of numbers of unmanageable refugees. An interest in human rights becomes part of the calculation of raison d'etat. Thus circumstances produce practices which are defended on the ground of interest and harden over time into custom.

Other theories are less innocent politically. A widespread view about the place assumed by the rights in contemporary international society is that it is the outcome of the grafting of a western tradition onto the rest of the world. The west, in the first place, sets the standards for everybody else. The British Beveridge Report of 1942, it is said, became an international reference standard just as previous

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items of domestic progress in the west became proposals about how all societies ought to develop.\textsuperscript{29} Secondly, it is not merely that the international human rights revolution of the 20th century followed the revolutions within western countries in the previous two centuries, but it was shaped by them: it came from this and not another historical mould. So reading modern western history in the matter of human rights is what it required to group the debate about human rights in contemporary international politics. The recent argument between civil and political rights and economic and social rights is but a gloss on the old debate about the significance for the world of the American and the French Revolution, the first-being against tyranny and oppression, the second against exploitation and poverty.\textsuperscript{30}

Americans assumed that the problem of poverty has been solved, and that the task of the revolution was to constitute liberty. The Jacobins, on the other hand, took the revolution to be the solution to the problem to poverty, the new principle to be the welfare of the people. The International Covenants on Civil and Political Rights might be read in this light. In the same way the recent argument between individual

\textsuperscript{29} Gaston V. Rimlinger, 'Capitalism and Human Rights', \textit{Daedalus}, vol.112 (19830, no. 4, p.68.

and collective rights can be taken as gloss on the old differences between Locke and Rousseau. The arguments here is that the French and the Americans in the 18th century created a revolution for all people and not just for themselves, and established the language in which world politics have been discussed ever since.

A third theory of the nature of change in regard to the place of human rights in world society is opposite of the second. It sees the international law of human rights as an attempt on the part of international society to detach itself from what are purely western values, rather than seeking to entrench them. The task here would be, not to trace the imprint of the enlightenment in the contemporary world, but to stand outside any particular cultural tradition and observe the patterns of values which are shared across societies. Antipathy to torture, or to genocide, it is suggested, might command a wide consensus. The attempt at objectivity in this procedure might of course itself be a product of the Enlightenment, as Peter C. Reynolds says of the subject of anthropology that it was the institutionalization

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of a moral injunction to look at other societies 'as if they were created by human beings with as much intelligence and integrity as ourselves'. But if this were the motto for the international law of human rights, there would be little for non-western cultures to object it.

Taken straight, these theories of change are plainly not consistent with each other. But it is possible to run them together in the following way. It may be true that social rules emerge from the experience of coexistence. They may be responses to circumstance. But the circumstances themselves have a context, and it happens that the context of contemporary world politics is predominantly a western one. However, if the modernization which was associated at it outset with westernization continues, even in circumstances of relative western decline, we may call it a universal social process in which it is difficult to identify the particular contribution of this or that culture. In this regard, the expression of this global process, and not merely the American law of human rights writ large, the gradual accumulation of standards of right conduct, expressed in international conventions against slavery, or genocide, or racial discrimination, becomes, in this

interpretation, the measure of consensus in an evolving international society rather than expression of the hegemony of one state or culture within it.

Whether or not this is plausible, there is one thing that these theories plainly have in common. They all give reasons why a particular social pattern prevails, rather than asserting that this or that pattern ought to prevail. And it is only in the light of a calculation of the latter kind that one can judge whether the international law of human rights becoming more entrenched is good thing or a bad thing. Behind this assumption lies a particular kind of progressivist theory which 'regards the state as a temporary association suspended between, for example, a supposed state of nature and a condition which would fully express the human capacity to develop more inclusive social relations.\(^\text{34}\)

### 3.6 : Human Rights and International Actors :

Human rights now play a part in the decision about the legitimacy of a state and of other actors and institutions in

international society, about whether what it is or what it does is sanctioned or authorized by law or right. It is not now enough for state to be, and to be recognised as, sovereign. Nor is it enough for it to be a nation-state in accordance with the principle of self-determination. It must also act domestically in such a way as not to offend against the basic rights of individuals and groups within its territory. The question of what these basic rights are may not be revised in international law, but the argument here is that the right to life is basic if there are such things as basic rights.

So when reference is made in contemporary international politics to the notion of international legitimacy, something more is meant than a 'king's peace' of sovereign states that refrain from intervention in one another's internal affairs, but come to one another's aid when aggression take place across international frontiers. This is the conservative, western interpretation of the fundamental principles of the UNited Nations Charter which Ali Mazrui sought to confront in his Third World interpretation of that document as a proclamation of global liberation in which human rights rather than state sovereignty held the first place.35 This is to place to 1945 in the tradition of 1776 and 1789.

The significance of such a location is that it legitimizes revolution. If human rights really do stand in this tradition, then they are not to be interpreted as the anodyne compromises of committee rooms at the United Nations, but as a call to arms.

The crucial question for foreign policy in regard to human rights is how far what we have suggested to be international legitimacy penetrates or ought to penetrate, the real world of diplomacy. Two levels of this reality are of interest here. There is, first, the diplomacy of standard-setting in international relations from the conventions of the International Labour Organisation to the declarations of the General Assembly of the United Nations on the reform of the international economic order. This is the level at which, it might be argued, criteria of international legitimacy are established and changed, and human rights are a prominent, if not the dominant, criterion. The size and complexity of this enterprise demands, for no more than the bureaucratic requirement of engaging in international relations, the attention of departments of foreign affairs, and other interested departments of government, around the world. Second, there is the level of standard-keeping in international relations. If states or

other participants in international politics fail to meet the standards set, what are or should be the consequences? Invasion? Armed support for justifiable revolution? Economic intervention? Persuasion? Nagging? Indifference? Or a pointed stare in the opposite direction (when it comes to enforcement) in order not to ruffle sovereign feathers? In order to make the judgement possible, we should in the first examine the argument of the professionals against too much zeal on human rights in foreign policy, in the second, subject this to scrutiny; and in the third establish some priority among the claims asserted as human rights in contemporary international politics.

Granted that human rights are now part of the calculation of what is legitimate internationally, we might except the hand that career diplomats extend towards them to be somewhat fastidious. If the first function of diplomacy is communication among states,\(^{37}\) then is may be argued that a concern with human rights obstructs the fulfilment of that function. If a state with a poor human rights record is to be excluded socially, or, which is an alternative, lectured at, communication suffers. The professional diplomat, sensitive to cultural differences, and sensitive too to the sensitivities of other diplomats, is

disclined to allow political questions like that of human rights to upset
the professionalism of his or her communication.

Also systemic is the preoccupation of diplomats with solving
today's problem before tomorrow's crisis.\textsuperscript{38} If all politics lies in the
realm of circumstance, it might be argued that international politics is
the most exposed to the contingent. Diplomats are at the mercy of the
whims of their hosts as well as those of their masters, of global as well
as local pressures. In this situation, the best they might hope for is an
intelligible reply to the latest cable, a reasonable snapshot of the current
situation for the next diplomatic bag. For these purposes, good relations
with the government to which they are accredited are crucial.

Beyond the freemasonry of diplomacy, there is the fraternity of
free trade. According to this argument, the societies that diplomats
represent have mutual interest in trade which would not be advanced
by any notion that the failure of any one of them in regard to its human
rights performance should exclude it from trade, or diminish its
participation in it. And the argument is extended on human aid: better
to trade and aid than to make either of them dependent on human

\textsuperscript{38} Stephen B. Cohen, 'Conditioning US Security Assistance
on Human Rights Practices', \textit{American Journal of
rights records. Why? First, because the interest of the manufacturing class should determine the policy of the state as Richard Cobden argued. This should result in material advantage for all at home, and in peace, which is the best condition for trade abroad. In the second place, there is the idea that trade as a mode of contact among societies is itself a civilizing influence which governments cannot rival.

In addition to the arguments for preferring communication, friendly relations and trade to human rights in foreign policy, but perhaps first in importance, are the arguments advocating caution on human rights for reasons of security. It is in this connection that the card of national interest is most frequently played against human rights. When it is a question of finding allies against Hitler, even devils will do, and to scrutinize domestic human rights records in this context is to court disaster by dwelling on a lesser evil.

The arguments here is that even if human rights are in general a good idea, and in particular things deserving of recognition in the foreign policies of states, they are and should be trumped by considerations of national security. Thus, while the famous Section

502B of the United States Foreign Assistance Act requires that military aid not be given, and arms not be sold, to any country 'the government of which engages in a consistent pattern of gross violations of internationally recognized human rights', exceptions may be made in 'extraordinary circumstances' when 'on all the facts it is in the national interest' that such assistance should continue. This is the argument as applied to friends, The overriding interest in security is also invoked against taking human rights too seriously in relations with adversaries. The advocate of human rights emerges from this discussion of foreign policy as an innocent abroad. Indeed, in the United States, the Bureau of Human Rights was defeated in the bureaucratic battle within the State Department during Carter's presidency because of its alleged lack of expertise on such arcane matters as that of national security. But this too, is systematic. It is not necessarily the heavies of the state Department pushing the good guys around for the hell of it. The State Department is charged with guarding the national interest, not the human interest. It sees it as no part of its duty to place at risk the safety or well-being of American citizens in the service of some supposed obligation to humanity. And this is a conception of its role which it


41. Ibid, p.271.
shares with all foreign offices that have received the tradition of raison d'etat. The criterion of individual morality which leads us to esteem a person who prefers another's interest to his or her own is not appropriately applied to states. If states were to act like this, they would need to be criticized for neglecting the interests of their own populations, not praised.

The reason to be self-centred may be especially applicable to democracies, where policy, formally at any rate, must meet the wishes of the people. What little we know about the wishes of the people in regard to human rights in foreign policy suggested that they are approved of in principle, provided they do not cost anything, there is also approval for waiving them in support of repressive government if communism is the alternative. In any event, domestic obligations outweigh obligations to foreigners otherwise is the point of citizenship? in these circumstances, human rights are a politician's graveyard. There domestic constituency is small. They are a subject, accordingly, taken up by losers as well as on behalf of them.