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Abstract

Speech given at Session 4: The Legal Profession and Human Rights. Jerome Shestack explains what is intended by “globalization” of human rights. The term embraces more than the standards themselves and includes the process by which human rights implementation takes place on a global level, the range of those who advocate international human rights, the potential for a meaningful international human rights judicial system, and the role of human rights in the calculus of international relations. He article touches on all of these areas.

GLOBALIZATION OF HUMAN RIGHTS LAW

*Jerome J. Shestack**

INTRODUCTION

This year marks the fiftieth anniversary of the founding of the International Bar Association. It is also a year to celebrate a half century of India's independence from colonial rule. Next year marks the fiftieth anniversary of two seminal documents in the development of international law: the Universal Declaration of Human Rights¹ and the Genocide Convention.² And, in less than 1,000 days, a new millennium begins, invoking that odd combination of historical reminiscence and futuristic indulgence.

Anniversaries are indeed times for celebration. But, also, they are times for reflection and appraisal and for rededication. The theme of this article is the globalization of human rights law. Each of the anniversaries recalls a particular, and in some instances, a seminal advance role in the globalization of human rights.

At the outset, it is prudent to explain what is intended by "globalization" of human rights. By definition, international human rights must be global, in a sense that all nations should observe them, and indeed be so widely recognized as to achieve a *jus cogens* dimension in international law. The very term "Universal Declaration of Human Rights," embraces a global standard. However, the term "globalization of human rights" embraces more than the standards themselves and includes the process by which human rights *implementation* takes place on a global level, the range of those who advocate international human rights, the potential for a meaningful international human rights judicial system, and the role of human rights in the calculus of international relations. Each of these areas will be touched on briefly.

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1. G.A. Res. 217A, U.N. Doc A/810, at 71 (1948).

2. Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 78 U.N.T.S. 278, 1970 Gr. Brit. T.S. No. 58 (Cmd. 4421) [hereinafter Genocide Convention].

I. GLOBALIZATION OF HUMAN RIGHTS STANDARDS

As we look back over the past fifty years, it is startling to realize that prior to the end of World War II, the law of international human rights was essentially non-existent. To be sure, the concept of the human rights of the individual above the state had rootings in the philosophies of Aristotle, Aquinas, and more specifically Grotius, Pufendorf, Locke, Montesquieu, and Rousseau. But these rights were generally asserted in a domestic context, as in the case of the American revolutionaries against George III or the French peasants against Louis XVI.

Indeed, before World War II, except for minor exceptions, individuals had no rights that could be asserted against the state in the context of international law. World War II changed the world's perspective. The Nazi experience and the Holocaust revealed the horror that could result from a legal system in which the individual counted for nothing. As the nations met to draft the U.N. Charter, there was a renewed search for immutable principles to protect humanity against the brutality the world had just witnessed. What developed and became embodied in the Charter of the United Nations and the Universal Declaration of Human Rights was an international morality based on the autonomy of the individual protected by international law. Thus, the very first Article of the U.N. Charter states that the very purpose of the Charter is to maintain peace and promote respect for human rights and fundamental freedoms.³

The U.N. Charter was followed by the Universal Declaration of Human Rights⁴ ("Declaration" or "Universal Declaration") in 1948. The Declaration is a Bill of Rights for the world. Its fundamental concept is asserted at the beginning: "*Whereas* recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world." The Declaration then sets forth the basic civil, political, economic, and social human rights for civilization.

The Universal Declaration, however, only began the edifice of human rights. The foundation provided by the Declaration was built upon by years of arduous law making, with specific

3. U.N. CHARTER art. 1.

4. Universal Declaration of Human Rights, G.A. Res. 217, U.N. GAOR, 3rd Sess., U.N. Doc. A/810 (1948).

human rights treaties in force covering Genocide;⁵ Civil and Political Rights;⁶ Economic, Social and Cultural Rights;⁷ Slavery and Forced Labor;⁸ Racial Discrimination;⁹ Rights of Refugees;¹⁰ Rights of Women;¹¹ Torture;¹² and Rights of Children.¹³ Gradually, these treaties came into force as the requisite number of states assented. By now, we have a full, comprehensive and impressive body of substantive international law to protect the rights of the individual.

It can, therefore, be said that human rights standards have now been globalized. Indeed, the nations who have not assented to those treaties' standards are compelled to explain their departure from the world view.

The creation of such a substantive body of international human rights law is a tremendous achievement. Law guides conduct, molds attitudes, changes practices, shapes morals, and provides the rooting for a universal standard of respect for human worth and dignity that is at the core of a just world order.

II. *THE IMPLEMENTATION OF HUMAN RIGHTS*

The establishment of international human rights legal principles is, of course, a necessity. But equally important is the implementation of human rights. Law without remedies is barren.

For many years after the Universal Declaration and the covenants that followed, implementation of human rights law lay dormant. At the United Nations in particular, complaints of abuse

5. See Genocide Convention, *supra* note 2.

6. International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), 21st Sess., U.N. GAOR, Supp. No. 16, U.N. Doc. A/6316 (1966) [hereinafter ICCPR].

7. International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI), 21st Sess., U.N. GAOR, Supp. No. 16, U.N. Doc. A/6316 (1966).

8. See ICCPR, *supra* note 6, art. 8.

9. International Convention on the Elimination of All Forms of Racial Discrimination, 660 U.N.T.S. 195 (1969).

10. United Nations Convention relating to the Status of Refugees, opened for signature July 28, 1951, 189 U.N.T.S. 150 (entered into force April 22, 1954).

11. Convention on the Political Rights of Women of 1952, 193 U.N.T.S. 135; Convention on the Elimination of All Forms of Discrimination Against Women, 1249 U.N.T.S. 14 (1981).

12. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, U.N. GAOR, 39th Sess., Supp. No. 51, U.N. Doc. E/CN.4/1984/72 (1984).

13. Convention on the Rights of the Child of 1989, G.A. Res. 44/25, U.N. GAOR, 61st plen. mtg., at 166, U.N. Doc. A/44/736 (1989).

multiplied and went unaddressed. Resolutions of condemnation were largely limited to South Africa, and the territories occupied by Israel and Chile. There were few human rights organizations and redress of human rights abuses was virtually non-existent. Lack of human rights implementation became an extremely aggravating and unaddressed issue as abuses multiplied in the world of the 1950s and 1960s.

The process of global implementation has developed on several levels: non-governmental endeavors, implementation at the United Nations, establishment of regional bodies, and by domestic governments.

A. *Non-governmental Implementation*

The initial activity to implement human rights standards came from non-governmental human rights organizations who began to marshal protests against human rights abuses and call for implementation at the United Nations level. Three early ones deserve particular mention.

The International League for Human Rights was the first of the international human rights organizations centered in the United States. Founded in 1942 by Roger Baldwin, it developed human rights affiliates around the world and undertook missions to investigate, report, and publicize human rights abuses and to advocate human rights at the United Nations.

The International Commission of Jurists ("ICJ"), founded in 1952, was the first human rights NGO to organize a highly select group of lawyers and judges with a mission to develop the rule of law in the human rights area. Together with the International League, the ICJ played a seminal early role in persuading governments to include human rights objectives in their foreign policy. This in itself was a start for the globalization of the implementation process.

Amnesty International began in 1961 and eventually became the world's pre-eminent human rights organization. While its original focus was on political prisoners, it soon broadened its scope to encompass all aspects of human rights violations. By mustering thousands of people to work for the release of political prisoners, it helped raise the level of human rights consciousness around the world. These human rights organizations began to give a public face to human rights enforcement.

The work of the non-governmental organizations in marshaling public opinion against human rights abuses is significant, particularly in the absence of enforcement mechanisms. Public opinion arouses people in repressive governments to speak out and take control of their own destinies, a prospect that repressive rulers generally fear. Still, as late as twenty years ago, there were precious few human rights organizations to marshal public opinion. Out of a some four to five thousand international organizations then listed in the *International Yearbook*, less than two-tenths of one percent were exclusively in the human rights field.

At the mid-point of the 1970s, there was a seminal change. One critical advance was the Helsinki Final Act¹⁴ in 1975, by which the countries of Europe, the United States, and Canada agreed to measures of cooperation and security, including a pledge to further human rights covenants and declarations. The Helsinki Accords made untenable the argument that human rights were only a matter of domestic concern and brought human rights implementation into the calculus of international negotiation and agreement.

Another major development was U.S. President Jimmy Carter's advocacy of human rights beginning in 1976, which for the first time made one of the world's superpowers a champion of human rights. Additionally, advances in global communications enabled human rights standards and goals to be disseminated throughout the world, touching the aspirations and yearnings of repressed peoples. Human rights began its march to a position high on the global agenda.

During the mid and late 1970s, the organized bar began to awaken to the human rights call, although it had slept rather late in this field. The International Bar Association, the American Bar Association, and the Union of Advocates finally started to endorse human rights treaties and monitor human rights abuses and send observers to trials of human rights advocates. And the Lawyers Committee of Human Rights, formed in 1977, became an exceedingly effective organization in reporting on and helping redress human rights abuses. Eventually, the organized bar has become a significant non-governmental force in pressuring

14. Conference on Security and Cooperation in Europe: Final Act, Aug. 1975, reprinted in 14 *I.L.M.* 1923 (1975).

governments with the ability to muster bar associations and gain access to governmental leaders.

By the mid 1980s, hundreds of new human rights NGOs around the world were actively engaged in the human rights movement with numerous missions to discover and report on abuses. Dissenters found new hope and encouragement. Human rights, long a sleeping force, had awakened. The human rights revolution around the globe could not be ignored.

B. *Implementation in the U.N.*

For many years, the United Nations was ineffective in the area of implementation. Gradually, that situation improved. Spurred by the increased role of human rights in global crises and the pressure of NGOs and pro-human rights nations, the United Nations has gradually increased its focus on structures to implement human rights.

The "enforcement" tools available consist chiefly of special reporting and investigatory mechanisms in such key legal areas as torture, disappearances, women's rights, summary executions, religious intolerance, and children's rights. In the absence of judicial implementation and effective sanctions, these mechanisms are designed to publicize human rights violations and to pressure offending nations to redress violations.

Additionally, special committees of experts established within the framework of human rights treaties receive reports on observance of human rights obligations. Long dormant, gradually these committees have begun to address implementation of the human rights treaties. While these special bodies have no enforcement power, they are able to focus a public glare on violators. Experience has shown that even repressive rulers often show sensitivity to world opinion and ease restrictions in the face of public exposure and condemnation. As noted earlier, publicity and public opinion is one of the most effective remedies available for human rights enforcement absent a system of judicial enforcement.

The end of the Cold War also brought greater East-West cooperation at the United Nations and a movement for a more pro-active human rights policy. For example, in the February-March 1992 meeting of the U.N. Commission on Human Rights, a record number of twenty-two nations were targeted for further

scrutiny because of human rights abuses. While later meetings of the Commission have been somewhat less promising, overall the U.N. Commission has come a long way from the pre-1980 period when even the name of an abusing state could not be mentioned at Commission meetings.

This "administrative" system of implementation of human rights standards with rapporteurs and committees focusing on acts of nations throughout the world, has its limitations. Still, it has been a further step toward globalization of human rights.

C. Judicial Implementation

In a democratic system where judicial independence prevails, enforcement of legal rules through the courts is the principal safeguard of human rights in the international arena. There is, however, no international court and that is a major deficiency in international human rights enforcement.

International human rights do have court protection in regional systems. Thus, the European Convention on Human Rights provides for a judicial implementation procedure through the European Commission of Human Rights and the European Court of Human Rights. After domestic remedies have been exhausted, petitioners alleging human rights violations under the European Convention have recourse to these two bodies. Numerous decisions by the Commission and the Court have been rendered against state defendants and have been complied with by the states in most cases, albeit often reluctantly and slowly. Gradually the European human rights law is being incorporated into the jurisprudence of the states who are party to the European Convention. Thus, recourse to this judiciary machinery have helped implement human rights law in the states that are party to the European Convention.

The inter-American system protects human rights based on the charter of the Organization of American States. The American Convention on Human Rights established the Inter-American Commission on Human Rights and the Inter-American Court on Human Rights. While these bodies are still feeling their way and have not yet reached the degree of assertiveness exercised by their European counterparts, they are gradually bringing human rights cases within a judicial implementation process.

Unfortunately, other regions of the world have yet to embrace the European or Inter-American approach.

Within the United Nations, progress toward judicial implementation of human rights has progressed, albeit slowly, through the efforts to establish an International Criminal Court. So far, despite nearly half a century of aborted proposals, the only international criminal courts, after Nuremberg, have been the ad hoc tribunals for trials of war criminals in Rwanda and the former Yugoslavia. However, after some fifty years of drafting and redrafting by the International Law Commission and other bodies, a convention establishing an International Criminal Court now seems close at hand and may be ready for assent by the states of the United Nations within the next few years.

Human rights advocates have also encouraged the creation of an International Human Rights Court addressing human rights violations not within the jurisdiction of an International Criminal Court. But this is a prospect still on the distant horizon. Over all, however, despite many obstacles, judicial implementation of human rights can be considered a slow march forward.

D. State Enforcement of Human Rights

It should be obvious that if international human rights are to prevail on a global scale, it is critical for individual nations to include international rights in the calculus of their foreign policy.

As late as the mid 1970s, a focus on international human rights essentially did not figure in the foreign policy of, even democratic Western nations. Of course, the idealistic ends of human rights — peace, freedom, order, justice — have always been staples of political rhetoric. But the engine that drives the foreign policy of most nations is “interests.” And international human rights was regarded almost uniformly, as a moral impulse, rather than a matter of national interest.

On the face of it, it appears reasonable for any nation to concentrate on its own national interest. Realistically, however, at any particular time, national interest is no more than an after-the-fact label to rationalize policies determined by the governing administration. Hence, human rights will occupy a central role in a nation’s foreign policy only when its leaders are persuaded

that a focus on human rights goals advances the nation's interest and is worth pursuing in the face of competing, and sometimes clashing, interests.

By the 1970s, a number of compelling reasons arose to validate the proposition that an international human rights policy was in a nation's national interest, at least for democratic nations.

One reason for a nation to include human rights observance in foreign policy is that the human rights movement had caught fire, appealing to the aspirations of people on every continent. Championing the human rights cause, thus, afforded a unique opportunity for democratic nations to be responsive to those aspirations. Moreover, championing human rights gave democratic nations a lead in the contest with the Communist world for the "hearts and minds of men." Thus, championing human rights was a particularly appealing role for the United States and Western European nations.

Second, furtherance of human rights serves to advance peace. Peace and stability are unattainable in a world where people rise up against their oppressors. Widespread tyranny aggravates international tension and propels external intervention. Also, regimes that violate human rights domestically are more likely to behave as outlaws internationally. Conversely, peace is most likely to exist when states respect their citizens' human rights. Put another way, nations that respect human rights are not likely to war against each other.

Third, human rights abuses also have a spillover effect, generating masses of refugees that increase pressure on nations to which they flee, often creating domestic crises.

Fourth, a just world order requires legalized international institutions, a web of common values, and acceptance of domestic and international legal restraints. Human rights advance these goals.

Finally, a nation's national interest calls for a foreign policy that reflects the fundamental values of its people and, therefore, commands popular support. Human rights represent such values. Moreover, there is a connection between the failure to support human rights abroad and an erosion of human rights at home. A nation enhances its own liberties through its concern for the liberties of others.

These reasons, in varying measure, have kept human rights high on the foreign policy of many nations, particularly democracies and emerging democracies, and has furthered globalization of human rights.

III. THE OBSTACLE OF CULTURAL RELATIVISM

The concept, which today is the chief obstacle to globalization of human rights, is cultural relativism. Its tenets need to be addressed and refuted if globalization of human rights is to prosper.

A universal moral philosophy affirms principles that protect universal, individual human rights of liberty, freedom, equality, and justice everywhere, giving human rights an absolute and *global* foundation. By contrast, cultural relativists, in their most aggressive conceptual stance, argue that there are no human rights absolutes, that the principles that we may use for judging behavior are relative to each particular society, that there is infinite cultural variability, and that all cultures are morally equal or valid. Relativism thus shifts the touchstones by which to measure the worth of human rights practice. To suggest that fundamental rights may be overridden or adjusted in the light of cultural practices is to challenge the underlying moral justification of a universal system of human rights and put an end to globalization of human rights.

The defects in the relativist position are substantial, indeed compelling. First, one does not have to probe deeply to realize that there is a universal cultural *receptivity* to such fundamental rights as freedom from torture, slavery, arbitrary execution, due process of law, and freedom to travel. Moreover, any observer of state practice can cite numerous examples where repression, which an authoritarian government excuses as cultural identity, turns out *not* to be a cultural tradition at all when a democratic government replaces the authoritarian one. Further, there are many examples of peoples of like cultures living virtually side by side, where one state condemns human rights abuses and a counterpart state creates abuses. Thus, most human rights abuses are not legitimately identified with the authentic culture of any society, only with authoritarian rulers of that society.

Second, cultural relativists often incorrectly perceive the attributes of cultural communities. Cultural relativists tend to look

at cultures from a static, romanticized perspective in which traditional societies are defined as unchanging holistic entities, unaffected by human history or the dynamics of cultural change. But as anthropologists acknowledge, culture is flexible and holds many possibilities of choice within its framework. The dynamism of culture normally offers its members a range of development options, or is willing to accommodate varying individual responses to its norms, while preserving legitimate values of authentic tradition. To recognize values held by a given people at a given time in no way implies that these values are a constant or static factor in the lives of current or succeeding generations of the same group.

Third, the dynamics of change have been accelerated in this technological, communicative age with the result that many closed societies, once exposed to individualist benefits, seek to incorporate those values and interests in their culture. In fact, individualist values have a great appeal to all cultures once the values are perceived.

Fourth, there is still another factor which, in part, renders moot the conflict between universalist and relativist theory. Even as theorists have continued to quarrel with each other, fundamental human rights principles have become *universal* by virtue of their entry into international law as *jus cogens*, customary law, or by convention. In other words, the relativist argument has been overtaken by the fact that human rights have become hegemonic and therefore essentially global by fiat.

CONCLUSION

Fifty years ago the concept of global human rights standards and observances was in its nascency. Since then, enormous strides have taken place toward such globalization. But the endeavor is no sport for the short-winded or faint-hearted. Continued success on a global level requires steady block-building, constant education, courageous advocacy, and governmental, as well as individual, champions. In this effort, lawyers can play a significant role, particularly as part of a professional organizations leading human rights endeavors. The ultimate point to remember is there can be no just world order without the globalization of human rights.