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"HUMAN RIGHTS - THE OBLIGATION TO INTERFERE"

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HUMAN RIGHTS - THE OBLIGATION TO INTERFERE

by Michael Schaefer [1]

"Massacres, rape, ethnic cleansing, arbitrary killings of civilians, all of this concerns every one of us, no matter to which nationality we belong or where we live. Crimes are of concern to us, because they jeopardize the very principles of civilization laid down in the international human rights standards".

Antonio Cassese, President of the International Criminal Tribunal for the former Yugoslavia

I. The new quality of human rights protection

After the peaceful revolution in Eastern Europe and the end of the cold war in 1989, hopes were high that the international community would engulf into a new era, an era characterized by a new world order whose pillars would be the mutual striving of all States for the maintenance of international peace and security, for democratization and the establishment of the rule of law. But political reality has revised this optimistic scenario. The first half of the last decade of the millenium has witnessed an unprecedented occurence of massive violations of human rights all over the globe. The systematic practise of rape, murder and ethnic cleansing as weapons of warfare in former Yugoslavia, the death of more than half a million and the displacement of even more cilvilians in Rwanda in 1994, or the ongoing "creeping" genocide in Burundi are alarming images of this undeniable trend.

It would be too simple to conclude that these massive violations of human rights and humanitarian standards reflect an increased readiness of numerous governments in all continents to ignore international obligations. We cannot but realize that they are, to a large degree, a feature of the new nature of conflicts with which the international community is confronted. Inter-state conflicts have become the exception, now the rule is internal conflicts resulting from the recurrence of nationalism, from political, economic and social instabilities or from ethnic tensions, as well as from racial, religious and other forms of discrimination.

The World Organization has only slowly been able to react to these new realities. Still today, peace-keeping and peace-making efforts by the UN or regional organizations demonstrate that the human rights dimension in conflict-prevention, in the management of complex crisis situations, and in post-conflict programmes, remains fragmentary at best. Conceptional approaches are still based on cold-war thinking, which proves inadequate in solving the challenges of today. These inadequacies are often aggravated by existing

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[1] *This paper reflects the personal opinion of the author.

organizational structures: in the formulation of peace-keeping concepts by the UN. For instance, human rights components are developed in New York without due consultation and cooperation with Human Rights experts and competent UN forums based in Geneva.

The trend toward more complex challenges in the field of human rights protection can be demonstrated with two important examples:

- **The Great Lakes Region**

In 1994, the international community proved to be politically incapable of preventing a massacre and mass-exodus of unprecedented dimensions in **Rwanda** through resolute collective measures. It is currently trying to assist in a complex post-conflict management situation which is characterized by extremely difficult efforts to repatriate more than a million refugees and internally displaced persons, *inter alia* , by laying the groundwork for democratic institutions and safeguards for the respect of human rights. This is taking place with the assistance of a Human Rights Field Operation of the UN High Commissioner for Human Rights.

At the same time, we are confronted with developments in **Burundi** that threaten to repeat -- albeit with great differences in the underlying causes for the conflict -- the Rwanda experience. Despite various political efforts undertaken at the regional and global levels to assist Burundi in containing and stabilizing the situation, it seems evident that lessons learned in Rwanda have not been applied through active measures of preventive diplomacy, including human rights measures, to prevent a worst case scenario. Notwithstanding other international action, efforts in the field of human rights proved to be either too late or without the necessary sting. The 52nd UN Commission on Human Rights, devoting a special session to Burundi in March 1996, supported the political efforts, condemned all threats to the democratic process, and demanded an immediate end to violations of human rights, acts of violence and intimidation, as well as the massacre of civilians. It urged, inter alia, the UN High Commissioner for Human rights to increase the number of human rights observers (now five) and requested him to set up an assistance programme in the field of human rights. Upon recommendation of the Special Rapporteur on the situation of human rights in Burundi, it requested the High Commissioner to provide ongoing technical assistance, particularly in the fields of justice, and the training of members of the armed forces and police.
None of these efforts, representing only a minimum of requested action, have yielded substantive results. Human rights activities, however important for laying the basis of a new civil society and for building confidence among warring parties, have remained a side aspect. The argument that the ever more explosive political situation would first have to be contained, remained unsatisfactory to many observers. In the meantime, the chances for successful preventive action seem more and more distant. As in comparable cases, human rights have become hostage of overriding political considerations.

- **Bosnia and Herzegovina**

This is not the place for a thorough analysis of the most complex crisis to shatter Europe since the end of World War II. Pictures of mass graves, ethnic cleansing and massive flows of refugees are as eminent as the alarming reports by the UN Special Rapporteur on cruelties unimagined hitherto, committed by Serbs in Zepa, Srebrenica or elsewhere in BiH.
For the first time since the outbreak of the civil war in 1992, concrete prospects of stabilization and peace have materialized as a result of the Dayton peace agreement. One aspect deserves special attention in this context.
The Dayton agreement, in dealing with all elements of a comprehensive peace settlement, accords highest priority to the respect for human rights. The agreement contains, as integral parts, not only the framework for a new constitution for BiH based upon the classical catalogue of human and civil rights but also mechanisms to safeguard human rights in the future. The parties in Bosnia are bound to secure for all persons under their jurisdiction the highest level of human rights standards. Light must be shed on massive violations of human rights and humanitarian law. Those responsible for war crimes and crimes against humanity must be brought to justice. An ad hoc International Criminal Tribunal has been established to this end. Economic assistance by the international community for the reconstruction of the country will and must be conditional on the cooperation by the parties with this Court and their compliance with the agreed upn human rights obligations. The holding of free and fair elections in Bosnia under the supervision of the OSCE forms part of the human rights machinery as well as the establishment of democratic institutions at local, entity and federal levels.
Coordination of all activities relevant to the protection and promotion of human rights is essential for the efficient implementation of human rights objectives which, despite other political, military and economic priorities, might be the single most important element in building confidence between warring parties. While recognizing the essential role of the High Commissioner for Human Rights, the OSCE and the Council of Europe, the central responsibility for the implementation of all civil aspects of the peace agreement, including human rights mechanisms, lies with the High Representative, Carl Bildt.
Far from having achieved lasting results, it can be noted that in this case, as opposed to the Burundi experience, human rights issues are at the heart of the process undertaken to restore peace in the region. Nonetheless, the readiness of all parties, Bosnians, Croats and Serbs, to fulfill their obligation to guarantee human rights for all, regardless of ethnic background, is hesitant, if existent. Constant pressure by the international community is adamant.

Distinct from complex crisis situations, cases of "traditional" human rights violations continue to be of great concern. The cruelities reported daily in countries like Afghanistan, Algeria, Angola, Colombia, Chechnya, Liberia, Nigeria or Turkey are as alarming as regular reports by special reporters or independent experts of the United

Nations, embassies or NGOs on the increasing number of illegal executions, torture or unaccounted-for "disappearances". More and more urgent cases of human rights violations in countries around the globe -- particularly in Asia, Africa and Latin America, but also in Europe -- underscore the thesis of lacking progress in the fight for more respect of human rights in general. A particular concern remains the practise of "impunity", which has become a priority issue on the agenda of the Sub-Commission of the UN Commission on Human Rights.

Many of these cases have become the subject of bilateral efforts by governments, multilateral measures by the United Nations bodies entrusted with human rights mandates or action by NGOs like Amnesty International. An allegation often heard is that of selectivity of international action vis-á-vis breaches of human rights obligations. Indeed, this allegation seems to be one of the underlying reasons for the topic of this Conference's panel discussion.

A superficial glance at the agenda of the last (52nd) Session of the UN Commission on Human Rights (CHR), the main UN organ mandated to deal with all human rights issues, might confirm some degree of selectivity resulting from political consideration extraneous to human rights matters. The CHR adopted resolutions on only 14 country situations (Afganistan, Bougainville, Burundi, Cuba, Equatorial Guinea, Iran, Iraq, Southern Lebanon, Myanmar, Nigeria, Ruanda, Sudan, Former Yugoslavia and Zaire) plus three so-called Chairman's Statements on Chechnya, Colombia and East Timor. Despite specific allegations of serious human rights violations in a number of other countries, the CHR did not deal with these situations at all, for the simple reason that no government or group of governments took the initiative of raising these issues.

But there is also the other aspect of selectivity: In some cases, a situation was brought before the CHR, but the majority of its members refused to take appropriate action. The example of China - widely discussed in the international media - might be a case in point. In view of serious human rights problems, *inter alia*:

- Many prisoners of conscience remain in detention, including administrative detention,
- the practice of "re-education through labour" continues;
- access to prisons has not been granted to international organizations,
- inadequate protection of the cultural, ethnic, linguistic and religious identity of Tibetans and others continues,
- the treatment of children in so-called orphanages continues to give rise to concern,

the European countries, before the session of the Human Rights Commission, have done much to persuade the Chinese government, in an intensive dialogue, to take further, concrete steps to improve its human rights record. Since results of that dialogue were not concrete and substantial enough, the EU and USA presented - as in previous years - a draft resolution on the human rights situation in China. The German Foreign Minister, in his

address to the Commission, indicated the rationale of this draft: "Respect for human rights is no question of rich or poor. Freedom of religion, freedom of opinion and freedom of the press do not cost a thing. Disregard of these basic rights cannot be excused by poverty and underdevelopment." The delegation of China, on its part, accused western countries of massive interference in its internal affairs. As in previous years - except in 1995 - it succeeded in preventing the adoption of the resolution with a procedural motion "not to take action", thanks to the support of many Third World countries. In 1995, the procedural motion had been turned down, but the adoption of the substance of the resolution was prevented by one vote.

These cases of reciprocal selectivity raise key questions such as: Are human rights universal in their application or arbitrarily subject to the principle of political sovereignty? Can powerful countries like China demand a seperate treatment as distinctive from smaller countries like Myanmar, Cuba or Sudan who might not find the necessary political support by a majority to block action? In practical terms, the international community is faced with the problem, whether the rules of the Commission on Human Rights or other treaty bodies apply to all of their members alike.

II. The key issue - Universality vs. Political Sovereignty

1. Foundations of Human Rights

The concept of universality of human rights has been subject to numerous philosophical controversies. Freeman (The Philosphical Foundations of Human Rights, Human Rights Quarterly, Vol.16 No.3 August 1994, p.491-514) has recently illustrated that there are no uncontested philosophical foundations of human rights. With Freeman, two basic approaches can be differentiated.

A first school of thought might be called the anti-foundationalist approach. Their theories are based "on contingency, construction, and relativity", the various proponents arriving at very different conclusions however. Richard Rorty (Human Rights, Rationality, and Sentimentality, in On Human Rights (Stephen Shute & Susan Hurley eds., 1993)) objects to attempts to provide human rights with theoretical foundations on the grounds that no such foundations can be "absolutely" or "objectively" true. Truth is, according to him, "based on perspectives and there is no super-perspective to justify one perspective over another". Alasdair MacIntyre (After Virtue: A Study in Moral Theory 69 (1981), in contrast, rejects the very concept of human rights: "The best reason for asserting...that there are no (human) rights is indeed of precisely the same type as the best reason which we possess for asserting that there are no witches...or unicorns" (Freeman, p.498). While MacIntyre regards the belief in human rights as an ontological error, Rorty treats it as a

commitment to norms of conduct derived from contingent values. The case that human rights are subject to varying conceptions is also argued by Jack Donnelly (Universal Human Rights in Theory and Practice 1, 23-27, 112-14 (1989)) who - in subscribing to the principle of universality of human rights - sets aside philosophical foundations in favour of *de facto* international consensus. According to him, "the contingency of human rights is consistent with a conception of human rights as universal moral rights. Human rights represent a social choice of a particular moral vision of human potentiality, which rests on a particular substantive account of the minimum requirements of a life of dignity". Thus, "human nature is a social project as much as it is a presupposition. The human nature underlying human rights combines natural, social, historical and moral elements" (ibidem, 16-19, 22-23).

The second school of thought bases its argument for objective foundations of human rights in reason and morality. While Donnelly (see para above) believes that the concept of human rights and any list of human rights are historically specific and contingent, Alan Gewirth (Reason and Morality 25, 26-27 (1978)), by contrast, holds that human rights are based not on contingent values but on necessary truths. According to Gewirth, "claims to human rights are transhistorical because they are grounded in the general requirements of action. Action entails purpose. Purpose entails judgement as to the good. Judgement as to the good entails claims of right for that which is necessary to attain the good". Therefore, says Gewirth, rights are necessarily, rather than contingently, connected with being human. "Prudential human rights must however, be universalized to all agents. Each agent claims the right to freedom and well-being by virtue of the requisites of agency. Accordingly, each agent is logically committed to recognizing that all actual and prospective agents have these rights. Agency, the presupposition of morality, is the ground for universal moral rights" (Freeman, p.507). The concept according to Gewirth is therefore grounded in the fundamental idea that human lives can and should have value, and that they aquire value only through voluntary actions. The ultimate purpose of human rights is consequently to secure for each person a certain fundamental moral status, to enable persons to be rational, autonomous players, to control their own lives, to develop themselves, to pursue and sustain effectively their purposes without being subject to domination and harm from others (in this sense Freeman, p.508).

At the heart of the dispute of these two schools of thought is the assertion (by Gewirth) that implicit claims to rights are universal and the counter-assertion (by MacIntyre) that intelligible claims to rights are not universal. Are then human rights necessary or contingent?

Both approaches remain inconclusive and are not entirely convincing. Freeman rightly cites an example, in which a State restricts freedom of speech on the grounds of national security. Gewirth would find that two rights - the right to freedom and well-being -

are in conflict. His theory - probably like any other theory - does not provide a way to balance the conflict, as it does not offer a sound basis as one moves from abstract to concrete questions. On the other hand, the contingency and constructivist approaches are alarming because human rights are reduced from universal values to either arbitrary products of power or particular cultural developments.

Freeman concludes that the foundations of human rights are found in the principles of equal concern and respect for human beings. This principle is "not necessary, it is contingernt and constructed". But, he asserts, "it is also not arbitrary, because it is based on general anthropological realities and contemporary political conditions". According to him, "a theory of human rights that is contingent ... (but) not arbitrary should not be alarming. A conception of human rights should rather be flexible enough to allow space for the human creativity it seeks to defend and to adress the changing conditions of the world that may threaten its values" (p. 504).

It, therefore, seems logically to conclude that there are no clear philosophical foundations of human rights.

2. Human Rights Law in Process

It is not my intention to discuss the nature of obligations arising from human rights treaties, customary law or so-called soft law in detail. Various excellent works have dealt with these problems (see Bruno Simma, International Human Rights and General International Law: A Comparative Analysis, Collected Courses of the Academy of European Law, Vol. IV, Book 2 (1995) 153-236 with further references). Some conclusions should, however, be reiterated:

There are numerous treaty instruments containing obligations of States in the field of human rights as well as entitlements for the international community to raise human rights related questions. The Charter of the United Nations, in the first place, clearly expresses the concern of the intenational community for the promotion and protection of human rights under Article 1. Furthermore, under Article 55, the UN have the duty to promote "universal respect for and observance of human rights and fundamental freedoms". According to Article 56, member States pledge to pursue the purposes set forth in Article 55 through joint and separate action in cooperation with the UN. In a number of further articles, the Charter authorizes the General Assembly and the Economic and Social Council to deal with questions of human rights. The Charter does not, however, enumerate or define the specific rights to be observed by the Member States. This task was left to the GA, ECOSOC and their subsidiary organs, in particular the Commission on Human Rights. They have produced an impressive series of declarations, conventions, protocols and other instruments designed to promote and protect human rights. To mention only the most important ones:

- The Universal Declaration of Human Rights, adopted by the General Assembly in 1948 "as a common standard of achievement for all peoples and all nations". The declaration was adopted without any vote against.

- A number of accompanying binding instruments, the first and most important ones being the two Covenants of 1966, i.e. the Covenant on Economic, Social and Cultural Rights and the Covenant on Civil and Political Rights as well as the Optional Protocol to the latter one.
- Five international conventions monitored by special bodies: The International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Suppression and Punishment of the Crime of Apartheid, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Rights of the Child.

In addition to these conventions, the United Nations and its specialized agencies developed a wide variety of instruments in the field of human rights which cannot be enumerated here in detail.

The human rights treaty law connected to the United Nations system is complemented by a series of international instruments adopted either on a global (mention has to be made of the Geneva Conventions and the Additional Protocols thereto) or on a regional level by intergovernmental organizations such as the Council of Europe, the Organization of African Unity, the Organization of American States and Organization for Security and Cooperation in Europe (formerly: CSCE).

Human rights related treaty law has reached a high degree of complexity. The often overlapping provisions leave only few areas uncovered. Human rights treaty law is almost equalled in complexity by a series of declarations adopted by the General Assembly or UN conferences, most recently by the World Conferences in Vienna, Copenhagen, Beijing and Istanbul.

Furthermore, the General Assembly and the Economic and Social Council as well as their subsidiary organs have produced an overwhelming profusion of decisions reaffirming principles embodied in treaties and declarations as well as creating new ones. The question to which extent these decisions create obligations for Member States is not clear, however. Resolutions and decisions by UN Organs are considered by some as customary law. According to a more modernist view, customary law in human rights is all-embracing and the truly universal basis for the international community's action in the field of human rights. The question of customary law as basis for human rights obligations is of great relevance, because admission to the main human rights instruments is not yet

universal. A number of important human rights obligations could not be regarded as being of universal validity if we had to rely exclusively on human rights treaty law.

I will not endevour to discuss or even reproduce the various differing opinions on the existence of customary human rights law. What can be said here in a nutshell, is that traditional approaches in general international law to identify customary law according to the existence of a generalised practice and a corresponding *opinio iuris* do not work when it comes to human rights. A few theories regard the virtually universal adherence to the UN Charter together with the permanent and consistent affirmation of certain fundamental principles by the competent bodies of UN as sufficient for the establishment of a comprehensive customary human rights law. The major argument against these theories, is the partial inconsistence between the affirmation of the principles in question by the UN Member States and the actual State practice. The solution does not only depend on the degree of strict adherence to the traditional understanding of customary law. It also depends on a difficult quantitative assessment regarding the global observance of human rights. Are violations of human rights exceptions to their general observance? Or can the fact be disregarded that the international community usually reacts to violations of human rights condemning them and reaffirming the obligations of the country in question?

From the point of view of international law, the question of whether substantive obligations based on customary human rights law exist cannot be answered affirmatively beyond any doubt. What can be identified on the basis of the numerous declarations, decisions and other emanations from international bodies with universal membership is, however, a customary "droit de regard", i.e. the entitlement of the international community to raise human rights concerns and take action thereupon.

Jack Donelly seems to agree with this assessment when he characterizes the universal human rights regime as "a relatively strong promotional regime, composed of widely accepted substantive norms, largely internationalized standard-setting procedures, some general promotional activity, but very limited international implementation, which rarely goes beyond information exchange and voluntarily accepted international assistance for the national implementation of international norms. There is no international enforcement" (Donelly, 'International Human Rights: A Regime Analysis', 40 International Organization (1986) 616-7).

Despite the fundamental political changes since the late 80s, this assessment still holds true today, although a distinction could well be made between strictly legal

obligations and the factual side of implementing them. The problem of implementation of human rights obligations, therefore, is at the center of the third and last part of this paper.

III. Human Rights - the obligation to interfere

The problem underlying my hypothesis that States, and indeed the international community as a whole, have the obligation to interfere with regard to situations of serious human rights violations whereever they occur, stems from the fact that any international action, bilateral or multilateral, represents, by its very nature, an interference in the internal affairs of the State accused of human rights violations. This seems to be in contradiction to the principle of non-intervention contained in art. 2(7) of the UN Charter. There is, however, sufficient legal ground, supported by a longstanding international practice, to justify international counter-measures to violations of human rights obligations. The relevant legal aspects as well as political considerations regarding procedures and the scope of necessary intervention are therefore to be discussed, if only summarily.

1. Some legal considerations

I have already referred to the fact that the recent practice in the UN Commission on Human Rights and other relevant human rights bodies indicates that a number of non-aligned States are objecting to what they regard as an octroi of the Western conception of human rights upon their own systems of governance. Legally, this problem could easily be solved, if human rights treaties could be regarded as 'self-contained regimes', providing for an effective and exhaustive machinery of supervision and control serving as adequate remedies against violations not only in law but also in fact. However, the only system which would qualify in this regard, is that of the European Convention. Human rights treaties on the global level only provide for a reduced set of implementation procedures. They establish, as a rule, treaty-bodies to perform supervisory functions like monitoring, gathering of information, examining reports submitted by States parties and engaging in a dialogue with those States about adequate performance of their respective treaty obligations. At UN level - other than at the level of the European Convention - none of these institutions possesses formal powers of enforcement.

The question, therefore, remains how to justify individual or inter-state countermeasures to human rights violations, or - as it has been - metaphorically - put how "to find a solution between the Charybdis of 'softening' human rights treaties into mere caricatures of legal obligations and the Skylla of disorder and over-politicization" (Simma, p. 208).

Multilateral treaties for the protection of human rights, like other international legal instruments, embody correlative rights and duties between the contracting parties. Consequently, each party has a duty to fulfil its obligations vis-à-vis all other parties. Vice versa, each party has the right to demand compliance from every other party and, if necessary, enforce such compliance with countermeasures. The nature of obligations arising from human rights treaties, however, indicates that the reciprocal non-application of such obligations will not be permissable. Although obligations from human rights treaties have an effect *erga omnes*, it is widely accepted that, different from general international law (i.e. Art.60 of the Vienna Convention on the Law of Treaties), the suspension or termination of the treaty is not an acceptable remedy against its breach by one or more parties. A sociological *quid pro quo* cannot be accepted (so rightly Simma, p.209).

It should, therefore, be stressed that specific mechanisms of supervision and control as well as complaint procedures to States and individuals contained in the treaty in question, have to enjoy priority over any attempts at enforcing human rights obligations on the inter-State level.

However, I would agree with the basic assumption that *in absentia* of any specific enforcement mechanisms contained in such treaties, recourse to enforcement processes of general international law is called for if all other remedies are exhausted. In cases representing a threat to peace, a breach of peace or an act of aggression, the UN Security Council can and should consider taking non-military or military action under Chapter VII of the Charter. Such enforcement "measures should, however, be applied only against most severe human rights violations on a widespread scale, carried out as a matter of State policy and, in all cases, established by impartial and convincing evidence" (Ramcharan, 'State Responsibility for Violations of Human Rights Treaties', in E.Brown and B.Cheng (eds), Contemporary Problems of International Law. Essays in Honour of Georg Schwarzenberger on his Eightieth Birthday (1988) 249; similarly Simma, p. 209). There should always be a substantive consensus on the content of the human rights provision breached.

To give an example: the discussion of reprisals directed against violations of art. 9 or 12 of the International Covenant on Economic, Social and Cultural Rights, stipulating the right of the individual to social security or to health, does not seem very useful, while it would be called for to apply inter-State countermeasures against consistent and reliably proven practices of torture or massive cases of enforced disappearances. Such measures should in any case be subject to a collective decision by competent organs.

In practice, few cases of true enforcement have been executed. One of the first important decisions in this context was Security Council Resolution 418 (1978), in which the Council - in view of the massive human rights violations of the apartheid-regime -

decided an arms embargo against South Africa, albeit couching its human rights considerations in the vestige of a threat to international peace and security constituted by an extended sale of arms to SA.

As far as international enforcement of human rights obligations under general international law - for instance based on customary law - is concerned, the same observations can be made. As far as there is acceptance of the existence of general human rights law creating obligations for all States (see above considerations), the obligations have effects *erga omnes*. In this case, the procedures established by the United Nations, in particular in the context of the Commission on Human Rights, ECOSOC or the General Assembly, are the legitimate fora to deal with violations of such obligations. As a last resort, similar to breaches of treaty obligations, recourse to enforcement action by the Security Council can be considered.

I fail to see the potential danger underlying this assessment, as some non-aligned countries try to suggest: there seems to be little danger of "excessive human rights vigilantism" but rather a remarkable lack of vigour on the part of States and the international community to take up and counter human rights violations in other countries in a forceful way.

2. Some political considerations

In his opening address to the 1993 World Conference on Human Rights at Vienna, UN Secretary-General Boutros-Ghali has warned of a dual danger underlying the human rights debate: the danger of a "cynical approach according to which the international dimension of human rights is nothing more than an ideological cover for the *realpolitik* of States; and the danger of a naive approach according to which human rights would be the expression of universally shared values towards which all the members of the international community would naturally aspire".

Boutros-Ghali has suggested what he called "the three imperatives of the Vienna convention"

- the imperative of universality
- the imperative of guarantees, and
- the imperative of democratization.

I believe that this suggestion represents a formula which could serve as a valuable basis to bridge the aspirations of all individuals whose human rights are at stake and those of governments aiming at the preservation of their peoples' cultural heritage, between necessary international protection against arbitrary violations of human rights and a dangerous cultural relativism based upon the unjustified use of the principle of non-intervention.

a. Universality - as has been discussed - is categorically recognized by Art.55 of the Charter, and reinforced by the 1948 Declaration - which is called "Universal", not "International". Part I Art.5 of the Vienna Declaration and Programme of Action (VDPA) reaffirms that "all human rights are universal, indivisible and interdependent and interrelated". However, the concept of universality must be interpreted in the same way by all. It, therefore, must not be a concept that is decreed, nor the expression of the ideological domination of one group of States over the rest of the world. I would agree with the UN Secretary-General that "the political notion of universality rather implies that human rights are a product of history giving the various peoples and nations a reflection of themselves that they recognize as their own". Which must not imply any form of human rights relativism.

By its nature and composition, the UN General Assembly is the only global organ equipped to express this idea of universality. As indicated, the GA has produced an impressive record of human rights standard setting in the past 50 years. The areas of protection have become increasingly precise: punishment for and suppression of genocide, abolition of slavery, efforts to combat torture and to eliminate all forms of discrimination based on race, sex, religion or belief, only to name a few. The subjects of these rights have been clearly defined: rights of peoples, protection of refugees, stateless persons, women, children, disabled persons, persons with mental illness, prisoners, or victims of enforced disappearance.

The set of procedures and implementation instruments resulting from this standard setting is regarded to be common property: It is at the disposal of all States and peoples of all cultures, it has established the right of each government to make use of these procedures, but it also has created the legal and political duty of every government to accept the rules imposed by them.

In substance, while a general, abstract concept of human rights, born of a liberal tradition, prevailed initially, it is accepted today that civil and political as well as economic, social and cultural rights enjoy the same level of acceptance. The ongoing discussion about the right to development, albeit far from resolved, indicates that the strive for new areas of the concept of universality is continuing. The VDPA reaffirmed that the right to development is "a universal and inalienable right and an integral part of fundamental human rights". It could be regarded as the "roof human right" containing all civil and political, economic, social and cultural rights.

b. Guarantees - Not only in the interest of the victims of human rights violations, but of regional and often international stability threatened by those violations, the international community cannot accept that the declarations, covenants, charters,

conventions and treaties it has drafted, remain dead letter. Effective mechanisms and procedures to guarantee and protect them and, if necessary, to provide sanctions are indispensable. The UN Secretary-General, in his address to the Vienna Conference expressed his view "that human rights do away with the distinction traditionally drawn between the internal and the international order. Human rights give rise to a new legal permeability. They should thus not be considered either from the viewpoint of absolute sovereignty or from the viewpoint of political intervention". This clearly means that human rights call for cooperation and coordination of States and international organizations.

There can be no doubt that the State is and should remain the first and best guarantor of human rights. However, in cases where States prove to be unable to perform this task, i.e. when they violate the human rights principles themselves, the international community must take over from those States. This view which has been confirmed on numerous occasions by the Security Council, the General Assembly and, before all, the UN Commission on Human Rights, entails no unlegal infringement with the princple of sovereignty. Whereever a State uses sovereignty as its ultimate argument to cover human rights violations of gross dimensions, it has forgone the moral right to imply that principle.

In exercising its responsibility, the international community must, of course, be guided by the interests of the victims of human rights violations. International action - unrealistic as this might seem at times - should not be driven by political interests extraneous to human rights, or it will face the allegation of interventionism - an often used term of political propaganda by States being human rights tormentors.

As has already been referred to, at the administrative level the number of procedures guaranteeing human rights has been increasing for years, both within the UN as well as in specialized agencies like ILO or UNESCO. It should be stressed that the UN High Commissioner for Human Rights and the UN Centre for Human Rights must be accorded a special place. This is similarly true to regional organizations like the Council for Europe, the OSCE or the Inter-American Court.

The current efforts by the UN to establish a permanent international criminal court show the way into an important and new direction.

c. Democratization - the UN Secretary-General's third imperative - both within States and within the community of States, is the only realistic way of guaranteeing human rights in the longer perspective of development. The protection of human rights cannot be seperated from the process of democratization which has proved to be the best framework for allowing the free exercise of all individual rights. This must not be interpreted as the export of one and only one form of political system. It certainly does not imply that human rights policy becomes - as suggested by the title of this panel - a "new form of colonialism". Democracy can and will find its own articulation in different cultural environments, but it

certainly has a universal dimension. Recent developments, for instance in Asia, have confirmed that there can be no sustainable development without allowing a parallel, if slow process of democratization: economic development without an accompanying process of democratic reform will ultimately lead to greater inequity and, eventually, social unrest.

3. Conclusions

Every State has the strict obligation to protect human rights in its own territory. Only on a subsidiary basis, the international community has the obligation to safeguard these rights whereever the State in question fails to do so. Although general enforcement measures legally are available, the reality of international relations suggests that the implementation of human rights obligations is, as a rule, left to the implementation mechanisms provided for in the treaties whenever the State violating human rights is party to it. The most promising avenue to do so is through extensive cooperation and dialogue between the competent organs with the States in question, both by confidential or public procedures.

As many human rights treaties only have a limited number of parties, a network of bilateral and multilateral mechanisms for dialogue and cooperation outside those treaty bodies has been established over the past decades. The most important multilateral forum to guarantee the protection and promotion of human rights in a practice-oriented manner and the forum suited best to deal with human rights violations in specific countries is the UN Commission for Human Rights.

The very fact that human rights action always is equivalent with an interference into the internal affairs of the State in which those violations occur, utmost sensitivity is called for. In practice, this implies a high degree of confidentiality in the first phase of interaction with the government concerned. The famous 1503-procedure offers such as framework as do cooperative approaches in the Human Rights Commission itself.

In the best case scenario, these procedures will lead to solutions identified with the consent and active support by the government in question. A very promising precedent in this regard was established during the 52nd UN Commission on Human Rights. In view of the serious human rights situation in Colombia, the Colombian government - after long negotiations - agreed to accept a Chairman's Statement calling, *inter alia*, for the establishment of an office of the High Commissioner for Human Rights in Bogota. This office will have the mandate

- to assist the Colombian authorities in developing policies and programmes for the promotion and protection of human rights, and

- to observe violations of human rights in the country, making analytical reports to the High Commissioner.

Accordingly, the High Commissioner was requested "to report to the 53rd Session of the Commission ...on the activities carried out by his office in implementing this mandate". The High Commissioner was thus entrusted with tasks normally carried out by Special Rapporteurs of Commission on Human Rights.

The agreement represents an important case of preventive human rights action. In tackling one of the most difficult human rights situations in that part of the world in close cooperation with the government concerned, the UN Commission on Human Rights has set what could become an important precedent for similar situations. By developing an innovative element of preventive field operation - going beyond the traditional procedures at hand - the Commission might have paved the way for a new constructive, alternative concept of human rights protection.

The very fact that we can speak today of field operations and offices of the UN High Commissioner would have been unrealistic only three years ago. The institution of the High Commissioner - only created two years ago - is not a "secret weapon" against human rights violations. But he carries a mandate allowing him a wide scope of action. To make this action more effective, more political and financial support by as many States as possible is called for. Inasmuch as the concept for preventive action has gained more and more acceptance in principle, it's persuasive power seems to be still rather when it comes to providing the necessary financial ressources. It is an often used argument that preventive action is cheaper than curative action like humanitarian aid. It might help to realize that all expenses for human rights activities on the global level amount to less than what IFOR - the International Force in Former Yugoslavia - requires for a single day - a striking comparison.

It must not be highlighted that this new cooperative concept implies voluntary action by the government involved, often unrealistic in view of domestic and international pressure. It will, therefore, remain necessary to make use of the traditional procedures available in dealing with human rights violators. Resolutions adopted by the UN Commission on Human Rights mandating so-called thematic rapporteurs, a Special Country Rapporteur and/or - as the most severe measure - condemning the State involved will be necessary in order to put international pressure on governments unwilling to change their human rights policy.

As a general rule, I would strongly suggest a cooperative approach in all cases until it becomes clear without uncertainty that dialogue - at bilateral and/or at multilateral level - does not bear substantive results. In such cases, the international community has the obligation to interfere, even against the will of the State concerned, if necessary and as a very last resort, by enforcement action. This however requires that the political will of the

international community can be obtained, a task which proves all too often to be the sqaring of the famous circle.

The driving force of human rights policy, both by individual States as well as by the international community, is and must remain the conviction that the disastrous experiences in recent history entailing unprecedented suffering of countless human beings in many countries around the globe, must not be repeated. In order to ensure the universal respect for human rights which has been reaffirmed by the Vienna Declaration and Programme of Action in 1993, effective ways for early action must be used and strengthened to prevent such situations from developing into "hot" conflicts like those in Rwanda or Burundi.

In view of the 50th birthday of the Universal Declaration for Human Rights it might be appropriate to ask, if the transformation of the UN Commission on Human Rights into some sort of permanent body is not warranted. This would allow the international community to shoulder its responsibility of dealing with urgent questions of human rights violations, not only during the limited six-week-period of its annual session, but whenever circumstances demand action.