

BRIEF NOTES ON THE UNIVERSAL DECLARATION AND THE GENERATIONS OF HUMAN RIGHTS

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In recent legal literature on human rights, a commonly accepted approach has been to classify such rights in terms of generations. Scholars often divide and ascribe human rights to their corresponding generation. In this practice, first generation rights are comprised of civil and political rights and freedoms, second generation rights include economic, social, and cultural rights, and third generation rights implicate such diffused rights as more recently identified in international human rights law, such as the right to peace, development, a safe and healthy environment, or use of natural resources. This classification is technically based in existing international legal instruments adopted within the framework of the United Nations since the Universal Declaration of Human Rights of 1948. On the one hand first and second generation rights are dealt with respectively in the two international Covenants of 1966. Whereas on the other hand, third generation rights are reflected in different specific instruments, mainly General Assembly declarations, as their emergence in international law is recent and uncertainties in their identification have prevented the adoption of a comprehensive legal instrument dealing with their protection.

I do not discredit the fact that there may be merit in the above-mentioned classification. This is due to the fact that defining human rights with a 'generations' approach reflects the progressive identification of human rights while demonstrating the need for distinct measures of implementation. However, it remains questionable whether a 'generations' approach is desirable for an accurate understanding of the nature and essence of fundamental human rights. I humbly submit that in this area of law, it is misleading.

First, it is important to note that the term 'generation' is manifestly inaccurate when describing categories of human rights. It implies a succession of existences whereby, when a new generation comes to life, the previ-

ous one becomes outdated. In this scheme, the older generation is progressively set aside in favour of the new generation, which will eventually replace it. It is, or at least should be, self-evident, however, that in the field of human rights, when a so-called new generation emerges, the new rights identified must be regarded in addition to those previously identified and protected for a prior 'generation'. This results in a succession of rights from the first generation to the second along with the emergence of additional rights which begin at, or are prior to, the birth of the second generation.

The main concern with the 'generations' approach is not merely one of terminology. It is the fear of abuse which may lead, and has indeed sometimes led, to affirming positions according to which new rights, in particular collective rights, are given, and setting aside or deleting former generations' rights, or at least granting priority over them.

Secondly, although a 'generations' approach would appear *prima facie* as a proper classification from a historical perspective a closer consideration reveals that such an approach is historically inaccurate. This inaccuracy is due to an incorrect reading of the Universal Declaration of Human Rights. The Declaration, as maintained by authoritative jurists, cannot merely be regarded as the first disaggregated list of rights, split into distinct groups of rights which come into existence when its protection progressively develops in the domestic and international framework. Rather, the Universal Declaration must be viewed as a coherent document where all the enumerated rights are indivisible, interrelated, and interdependent. As proclaimed in the first consideration of its preamble, the Universal Declaration represents a legal expression and specification of the recognition of the inherent human dignity, as the foundation of freedom, justice, and peace in the world. In this context, the rights of the so-called first and second generations are expressly and simultaneously listed in the document, while so-called third generation rights, although not expressly described, may largely, perhaps entirely, find their recognition under the general provision in Article 28. This Article states that: 'everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized'.

Furthermore, a reference to 'generations' appears to overlook the notion that human rights, as described in the Universal Declaration, are not established by law, but are inherent in all human beings and, as such, should be recognized and protected under the law. The opening consideration of the Declaration intentionally refers to the 'recognition...of the equal and inalienable rights of all members of the human family', thus presup-

posing that these rights do not draw their existence from the law, but rather pre-exist their legal identification and protection. There is an intimate contradiction in referring to 'generations' of rights, while at the same time maintaining that human rights are inherent to human beings as such, i.e. that everyone is entitled to them by the mere fact of his or her birth. A reference to generations would imply that human rights may vary according to the generation to which they belong, and thus the entitlement to them may also differ. Such a reference would misconstrue the essence of the entitlement to human rights and the protection that may be accorded under the law. While the first does not change, the latter may be, and is undeniably subject to variation, as the extent to which human rights are recognized and afforded protection depends on the applicable law at a certain point in time and space.

In light of the foregoing considerations, it appears more appropriate to abandon a reference to 'generations' of rights and rather deal with them as different and subsequent phases or stages in the progressive legal recognition of human rights and in the degree of protection afforded to them under domestic and international law.

Turning now to the interrelation between groups of rights as mentioned above, I will not dwell on the interplay between civil and political rights on the one hand, and economic, social and cultural rights on the other. Their interdependence has been largely explored by social and legal doctrines, and is clearly established under the Universal Declaration. It is also widely accepted that the distinction between the two groups of rights cannot simply rely on a time consideration which would place their recognition in a temporal sequence, although it is true that the initial declarations of human rights adopted in the eighteenth century, the 1776 American Declaration and the 1789 French Declaration, only referred to the first group. Nor can it be explained in political doctrine terms by maintaining, as was usual during the Cold War, that the first group of rights was consonant with the western tradition and liberal thinking while the second group better reflected the eastern socialist approach. Rather, the reason for splitting the rights enshrined in the Universal Declaration into two groups as set forth in the two Covenants of 1966 is to be found in the need for distinct mechanisms of implementation. While States were immediately prepared to undertake the task of respecting and ensuring civil and political rights to all individuals, this was not the case with regard to economic, social and cultural rights. With respect to the latter category, States felt that the full realization of economic, social, and cultural rights would have to be realized only pro-

gressively and also through international assistance and cooperation. Thus, in reality there is no distinct conceptual or ideological approach behind the separation of the two categories of rights: both continue to constitute a single set of rights as in the Universal Declaration, however, they were separated based on the obligations surrounding their implementation.

The analysis of the interrelation between the two abovementioned categories of rights taken together and the third category consisting of diffused rights, improperly called third generation rights, raises more difficult issues. First, can these rights be appropriately regarded as inherent rights of human beings, thus as individual rights? Secondly, can any mechanism of enforcement of these rights be envisaged, which would be available to individuals or groups of individuals? Finally, can any remedy be provided to individuals for their violation?

As to the first question, there is no doubt that, in light of their diffused nature, the rights at issue present a collective dimension, which appears to prevail over their individual features. There is also always a danger in the field of human rights, in recognizing collective rights. The danger is that individual rights are diluted to make them dependent on the superior interest of the society. If it goes without saying that individual rights must harmonize with the collective interest, they should not be given a subordinate role that would nullify their essence and their inherent nature. The act of harmonization may not cross the threshold of sacrificing individual rights entirely for a collective interest or right, which would deserve protection only as far as it is the result of a consideration of the individual rights of all the members belonging to the group. In the case of most diffused rights at issue, and without prejudice to the identification of smaller groups, the membership belongs to all human beings, as the group is represented by all mankind, or, as the Universal Declaration describes it, by the 'human family'. Thus, the harmonization process should lean towards making the collective interest functional to ensuring individual rights.

In order to avoid the risk of diluting individual rights beyond an unreasonable point, one may wonder whether a prudent approach should be followed in characterizing these diffused rights as human rights comparable with the rights set forth in the Universal Declaration and the Covenants, as well as in the legal instruments that describe them in more detail. As a matter of fact, the rights of the so-called third generation may be regarded more as means to ensure the respect for and the enjoyment of individual human rights than as human rights themselves. Peace, a safe and healthy environment, development, and an equitable distribution of resources are

definitely necessary conditions for the enjoyment of all individual human rights and freedoms, but it may be doubted whether it is correct to define them as additional human rights, inherent in human nature. There may be merit in regarding them as prerequisites for ensuring the rights which can be immediately associated with human nature. However, should such an approach be followed, the emphasis would inevitably be put on the duty of the society, in particular of, but not limited to the international community, to ensure the existence of these prerequisites so that individual human rights may be exercised by those entitled.

This approach is not incompatible with the identification of possible mechanisms and procedures whereby individuals may seek measures capable of enforcing the maintenance of peace, the preservation of the environment, the adoption of policies of development, or an equitable distribution of resources. It is not necessary, for this purpose, to define these situations as the object of human rights, their relationships with individual rights being sufficient to justify mechanisms and procedures of this nature. The provision of the remedy, which is a necessary consequence of the violation of human rights, makes such a definition even more problematic, since in most cases, and with the possible exception of some instances concerning the preservation of the environment, it would be difficult to identify appropriate and specific remedies for an alleged violation of the obligation to ensure these conditions for the enjoyment of individual rights, which would not coincide with the remedy available for the latter.

The consideration of the so-called third generation rights as conditions for ensuring the enjoyment of individual rights rather than as additional rights themselves, and the emphasis put on the obligation to implement such conditions, raises the issue of the definition of the scope of this obligation. The latter is clearly related to the implementation of the Universal Declaration and to the meaning that has to be given to the term 'universal'. This term is generally understood as indicative of the recognition of human rights as inherent to all human beings without distinction of any kind, including the status of the country or territory to which a person belongs. Article 2 of the Universal Declaration itself points to this understanding, and there is no doubt that the term 'universal' implies that everyone is entitled to the rights proclaimed therein.

However, one must question whether universality should be regarded only as a concept having a horizontal dimension, which would entail the applicability of the Declaration to everyone, everywhere, in any specific point in time. Or rather, should universality also be given a vertical dimen-

sion, which would imply the recognition of the rights of future generations, thus entailing an obligation to ensure the preservation of the conditions for their enjoyment as well?

I advocate for this dual dimensional approach, maintaining that the second dimension also forms part of the concept of universality. If it is accepted that human rights are inherent to human beings, they cannot only belong to current members of society but must also correspond to members of future generations of civilization, and the Universal Declaration must be regarded as also aimed at protecting these future generations in anticipation of their existence on Earth. It goes without saying that the duty of ensuring respect for and enjoyment of the rights will only become tangible when the persons entitled to such rights are born. However, the obligations related to maintaining and preserving the conditions which are essential for allowing both the enjoyment of the rights and the effective discharge of the duty to ensure them must be understood as having a vertical, or diachronic, meaning and dimension, and thus apply, at any point in time, not only with respect to the then present individuals, but also to the future members of the human family.

One may further argue that these obligations impose a special responsibility for any present generation, a responsibility that brings us back to the implementation of what are improperly characterized as the rights of the third generation. The disregard of these obligations goes clearly against the Universal Declaration and should be regarded as a violation thereof, without the need for creating new categories of rights. Rather, the emphasis should be put on the responsibilities that existing human rights carry with them in their universal dimension understood in the vertical dimension as maintained above, including the criminalization of their violations when the relevant conduct or omission is intentional. In this perspective, the notion of crimes against humanity should not be limited to systematic or widespread denial of fundamental human rights against existing human beings, but may also refer to such denial when it will affect future generations. In conclusion, it is not now, nor has it ever been appropriate to refer to human rights in a 'generations' approach. It is more beneficial to the progressive identification of human rights to expand the definition of universality as dual dimensional while categorizing the so-called third generation rights as conditions for ensuring the enjoyment of individual rights rather than as additional rights in their own right.