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SOLIDARITY RIGHTS: PROGRESSIVE EVOLUTION OF INTERNATIONAL HUMAN RIGHTS LAW?

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The international human rights movement has matured rapidly over the past thirty years. This maturation was enhanced by the United Nations Charter and the Universal Declaration of Human Rights.¹ These documents attest to the cardinal place of human rights in the normative context of international law.² The Charter provided the foundation for the protection of human rights;³ the Universal Declaration enunciated the various freedoms which states are expected to honor.

Although the Universal Declaration and the Charter provided an important foundation, many important human rights were not binding upon states until the passage of the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social, and Cultural Rights.⁴ These 1966 covenants and the Universal Declaration form what has been termed the International Bill of Rights.⁵ Adoption of

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1. G.A. Res. 217, U.N. Doc. A1810 at 71 (1948).

2. See Kunz, *The United Nations Declaration of Human Rights*, 43 AM. J. INT'L L. 316 (1949); Schwelb, *The Influence of the Universal Declaration on International and National Law*, 1959 AM. SOC. INT'L L. PROC. 217; I. BROWNIE, BASIC DOCUMENTS ON HUMAN RIGHTS 132 (2d ed. 1981); 5 M. WHITEMAN, DIGEST OF INTERNATIONAL LAW 237 (2d ed. 1981).

3. The U.N. Charter contains several provisions that affirm the commitment of member states to the promotion of human rights. For example, the preamble to the Charter states that one of the basic aims of the United Nations is to "reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women. . . ." Articles 1, 55, 56, 62, 68, and 76 also provide for the encouragement of human rights and liberties.

4. International Covenant on Economic, Social, and Cultural Rights, *adopted* Dec. 16, 1966, G.A. Res. 2200A, 21 U.N. GAOR, Supp. (No. 16) 49; U.N. Doc. A/6316 (1966) (entered into force Jan. 3, 1976); International Covenant on Civil and Political Rights, *adopted* Dec. 16, 1966, G.A. Res. 2200A, 21 U.N. GAOR, Supp. (No. 16) 49, U.N. Doc. A/6316 (1966) (entered into force Mar. 23, 1976); Optional Protocol to the International Covenant on Civil and Political Rights, *adopted* Dec. 16, 1966, G.A. Res. 2200A, 21 U.N. GAOR, Supp. (No. 16) 49, U.N. Doc. A/6316 (1966) (entered into force Mar. 23, 1976).

5. See Humphrey, *The International Bill of Rights: Scope and Implementation*, 17

the International Bill of Rights transformed the first two "generations" of human rights from a realm of idealism to one of legal reality.

First generation rights are civil and political; second generation rights are economic, social, and cultural. After the international covenants were passed to secure the rights of the first two generations, it became clear that still more protections were needed. The third generation rights—also known as solidarity rights—evolved to satisfy this need. This article will describe the nature of solidarity rights and will analyze the likelihood of their effective implementation and protection within the context of the contemporary international legal order.

I. HISTORY AND NATURE OF SOLIDARITY RIGHTS

Decolonization of Western territorial possessions following World War II resulted in the emergence of many new independent nations. A great number of these countries had large populations, but lacked both the technology and natural resources to meet the needs of their citizens. It soon became apparent that unless drastic changes occurred, most of these nations would be unable to provide a decent standard of living to their citizens in the foreseeable future.⁶ These circumstances caused a shift in international focus from concern with an East-West confrontation to concern with a North-South confrontation.

The international community responded to these circumstances and concerns by calling for the establishment of a New International Economic Order.⁷ It became manifest to human

WM. & MARY L. REV. 527 (1976). Among the first to use this phrase was President Truman. See 13 DEP'T ST. BULL. No. 314 at 5 (July 1, 1945).

6. See *infra* note 7 and accompanying text. See also McCulloch, *Economic Policy in the United Nations: A New International Economic Order?*, in 6 CARNEGIE-ROCHESTER CONFERENCE SERIES ON PUBLIC POLICY (K. Brunner & A. Meltzer eds. 1977); Johnson, *Commodities: Less Developed Countries' Demands and Developed Countries' Responses*, in THE NEW INTERNATIONAL ECONOMIC ORDER: THE NORTH-SOUTH DEBATE 240 (J. Bhagwati ed. 1977).

7. See UNESCO Report of Experts Meeting on *Human Rights, Human Needs and the Establishment of a New International Economic Order*, 55-78/CONF. 630/COL. 2 (Paris, Dec. 29, 1978).

The phrase New International Economic Order (NIEO) in the phraseology of international relations is an ubiquitous acronym. The worldwide economic crisis of the early 1970's created great enthusiasm, particularly on the part of the less developed countries (LDCs), to call for a process of *restitution* for past colonial misdoings by the Western

rights advocates that economic progress would be greatly undercut if individuals in underdeveloped territories could not take advantage of existing international human rights. International concern in the human rights field was, therefore, directed towards the development of former colonial populations. This was the genesis of the concept of a right to development.⁸

The notion of a right to development was accompanied by the realization that the protection of the earth's natural resources is of transnational concern. The finite supply of the earth's natural resources made it clear that conservation measures must be implemented by the international community. This concept of environmental conservation is a part of the philosophy that international cooperation is necessary to ensure a livable world. A livable world requires the maintenance of peace

industrialized nations. These concerns culminated in the convening of the Sixth Special Session of the General Assembly of the United Nations in 1974. The conferences of the Sixth Special Session concluded by the adoption of two important resolutions:

(1) the Declaration of the Establishment of a New Economic Order (G.A. Res.

A/Res. 3201 (S-VI) 9 May 1974), and

(2) the Program of Action (G.A. A/Res. 3202 (S-VI) 9 May 1974).

In the NIEO Declaration, U.N. members proclaimed their purpose to work urgently for creating a new international economic order, based on sovereign equality of all states, and also called for independence and cooperation between all nations irrespective of their economic levels or different social systems. The aim of this drive was to redress existing injustices and accelerate future economic and social development. In the Program of Action attention was directed towards urgent measures to be taken to assist the less developed countries. It is to be noted that the United States, Japan, and several members of the European Economic Community expressed strong reservations, but both measures were adopted without a vote.

An important consequence of this action was the adoption in the same year of the Charter of Economic Rights and Duties of States by the U.N. General Assembly. G.A. Res. A/Res. 3323 (XXIX), Dec. 17, 1974. This was adopted by a roll-call vote of 120 in favor to six against with ten abstentions. The Charter calls for attaining higher standards of living for all peoples of the world, for social progress and for cooperation in the fields of economics, science, trade, and the environment, and for the establishment of economic independence of developing countries. See Brunner, *The New International Economic Order: A Chapter in a Protracted Confrontation*, 20 ORBIS 103 (1976); Bhagwati & Srinivas, *Trade and Development*, in *INTERNATIONAL ECONOMIC POLICY: AN ASSESSMENT OF THEORY AND EVIDENCE* (R. Dornbusch & J. Frenkel eds. 1979); Bauer, *Western Guilt and Third World Poverty*, 61 COMMENTARY 31-38 (Jan. 1976); *THE NEW INTERNATIONAL ECONOMIC ORDER: THE NORTH-SOUTH DEBATE* (J.N. Bhagwati ed. 1977). See also UNCTAD, *An Integrated Programme for Commodities: Specific Proposals for Decision and Action*, Report by the Secretary-General of UNCTAD, TD/B/C.1/193 (1975); Nye, *UNCTAD Poor Nations' Pressure Group*, in *THE ANATOMY OF INFLUENCE* 334 (R. Cox & H. Jacobson eds. 1974).

8. SS-80/CONF. 806/COL. 8 (Mexico City, 1980).

as well as the conservation of the environment. Attainment of a livable world in this sense requires international cooperation through solidarity of all peoples.

In order to guarantee these solidarity rights, the international legal community must develop practical and realistic procedures for vindication of these rights. Existing judicial processes are obviously inadequate to secure the enforcement of solidarity rights. One alternative may be to develop a political means to solve controversies which could arise under third generation rights.

The first acknowledgment of solidarity rights in an international instrument occurred in 1977 when the United Nations Human Rights Commission adopted a resolution accepting "The Right to Development" as a major goal of the world community.⁹ The resolution envisages full development of all people by providing the necessary economic means through national and international efforts. This resolution implies that international progress in human rights is dependent upon the achievement of economic viability by all peoples. The right to development, then, is intimately connected with such other previously recognized rights as the right to life, the right to self-determination, and the right to participate in scientific progress and learning.

The redistribution of wealth envisioned by the resolution is inextricably intertwined with problematic economic and social questions. Examination of such matters began as early as 1968, when members of the United Nations Commission on Human Rights became convinced that many goals of the Universal Declaration could not be realized without international progress on economic and social fronts, despite the existence of traditional juridic rights. Accordingly, the Commission passed a resolution requesting the Secretary General to prepare studies on issues relating to economic and social rights contained within the Universal Declaration.¹⁰

In the period from 1968 to 1977, the Human Rights Commission adopted several resolutions pertaining to these rights. These resolutions laid the foundation for the ultimate accept-

9. U.N. Commission on Human Rights, Res. 4 (XXXIII), 1977.

10. E.S.C. Res. 11, 44 U.N. ESCOR Supp. (No. 4) at 155, U.N. Doc. E/44/5 (1968).

ance of the Right to Development in the 1977 resolution.¹¹

The 1977 resolution was incorporated into the Declaration on Race and Racial Prejudice which was adopted by the General Conference of UNESCO in 1978.¹² Article III declares in pertinent part:

Any distinction, exclusion, restriction or preference based on race, colour, ethnic or national origin or religious intolerance motivated by racist considerations, which destroys or compromises the sovereign equality of States and rights of peoples to self-determination or limits in an arbitrary or discriminatory manner *the right of every human being or group to full development* is incompatible with the requirements of an international order which is just and guarantees respect for human rights; the right to full development implies equal access to the means of personal and collective advancement and fulfillment in a climate of respect for the values of civilizations and cultures, both national and world-wide.¹³

The next major development occurred when the United Nations Commission on Human Rights adopted a resolution requesting that a study be conducted on "the international dimensions of the right to development as a human right in relation with other human rights based on international cooperation . . . taking into account the requirements of the New International Economic Order and the fundamental human needs."¹⁴ The resolution recommended to the Economic and Social Council that the Secre-

11. See E.S.C. Res. 14, 46 U.N. ESCOR Human Rights Commission (25th session) at 188, U.N. Doc. E/4621 (1969). See also E.S.C. Res. 5, 52 U.N. ESCOR Supp. (No. 7) at 54, U.N. Doc. E/5113 (1972); E.S.C. Res. 17, 50 U.N. ESCOR Supp. (No. 4) at 93, U.N. Doc. E/4949 (1971); E.S.C. Res. 11, 48 U.N. ESCOR Supp. (No. 5) at 83, U.N. Doc. E/4816 (1970).

12. E.S.C. Res. 11, 44 U.N. ESCOR Supp. (No. 4) at 135, U.N. Doc. E/4475 (1978).

13. *Id.* at art. 3 (emphasis added). There is considerable literature emphasizing different aspects of development. See THE INTERNATIONAL LAW OF DEVELOPMENT: BASIC DOCUMENTS (A. Mutharika ed. 1978); W. LONTIEF, THE FUTURE OF THE WORLD ECONOMY: A UNITED NATIONS STUDY (1977); L. REYNOLDS, IMAGE AND REALITY IN ECONOMIC DEVELOPMENT (1977); T. MORGAN, ECONOMIC DEVELOPMENT: CONCEPT AND STRATEGY (1975); I. ADELMAN & C. MORRIS, ECONOMIC GROWTH AND SOCIAL EQUITY IN DEVELOPING COUNTRIES (1973); R. McNAMARA, ONE HUNDRED COUNTRIES, TWO BILLION PEOPLE: THE DIMENSIONS OF DEVELOPMENT (1973).

14. U.N. Human Rights Commission, Human Rights Bulletin, 33rd session, No. 17, Res. 4 at 16 (1977).

tary-General undertake this study in cooperation with UNESCO and other specialized agencies.¹⁵

In 1978 UNESCO convened a meeting of experts in Paris as a result of this resolution. The Final Report¹⁶ of this meeting documented the strong link between human rights, human needs, and the New International Economic Order. Its determination included the following:

At present, when an effective praxis of development is becoming essential, some analysts consider that such rights as 'the right to development' and 'the right to peace,' and others, should be treated as a unique category including but not limited to civil and political rights and economic, social and cultural rights. This new category could come under the heading 'solidarity rights.' This evolution, linking human needs, human rights, and the New International Economic Order, was the focus of the meetings.¹⁷

The Final Report noted that solidarity rights could be described as the human rights of the third generation:

According to traditional classification of human rights, civil and political rights may be considered as belonging to a first generation of rights which are internationally protected, and social, economic and cultural rights belong to a second generation. It could be argued that solidarity rights, relating to such all-embracing objectives as development, environment and peace, belong to a third generation of human rights for which appropriate analytical tools and machinery for implementation have yet to be elaborated.¹⁸

The Final Report acknowledged the existing human rights which are necessary to properly involve all peoples in developing the New International Economic Order. The Report went beyond

15. *Id.*

16. UNESCO Report on *Human Rights, Human Needs and the Establishment of a New International Economic Order*, UNESCO Doc. SS-78/CONF. 630/COL. 2 (P. O'Brien, Rapporteur) (Paris, Dec. 29, 1978) [hereinafter cited as UNESCO Paris Report].

17. *Id.* at 3.

18. *Id.* at 1.

the acknowledgment of existing human rights, however, and suggested that recognition of four new international human rights was essential. Those rights are the Right to Development, the Right to Peace, the Right to a Healthy Environment, and the Right to the Common Heritage of Mankind.¹⁹ These new rights have the concept of solidarity as a common basis. In its conclusion, the Final Report explained the concept of solidarity rights as contrasted with the rights of the first two generations:

The evolution of human rights has always been linked to the requirements of people and societies. What may be called the 'first' and 'second' generations of human rights, namely civil and political rights and economic, social and cultural rights, reflect the pre-occupations with the situation of the individual and his place in society, whether viewed from the political or economic angles. Human rights of the first generation are rights as freedoms (with which the State cannot interfere) and those of the second generation are rights as claims (against the State). For both first and second generation rights there is the underlying notion of a certain conflict, in that clashes of interest between individuals and groups may be intimately associated with violations of rights. Third generation rights . . . are predicated essentially on the notion of solidarity among people. Such rights, in that they reflect a particularly human conception of community life, can as a result, be achieved only through the joint efforts of all those representing the social interests involved.²⁰

Subsequent to the 1977 resolution on the Right to Development and the 1978 UNESCO meeting, the matter of solidarity rights was once again taken up by UNESCO.²¹ After the Final Report was completed by a committee of experts,²² an international conference was convened in Mexico City which specifically

19. *See generally id.*

20. *Id.* at 90.

21. UNESCO Paris Report, *supra* note 16.

22. The experts came from different countries. The present author was among them and presented an original study on one of the new rights proposed, namely the "right to be different." *See UNESCO Paris Report, supra* note 16.

discussed "New Human Rights."²³ This conference expanded the list of solidarity rights to include the Right to Development, the Right to be Different, the Right to Communicate, the Right to Peace, the Right to a Healthy Environment, and the Right to the Common Heritage of Mankind.

A. The Right to Development

The Right to Development is an individual and collective right that requires international participation and solidarity. Originally, the concept of development was closely linked to the notion of economic growth. Today, however, the concept of development has become more directed at the notion of individual development which was first defined in Article III of the Declaration on Race and Racial Prejudice.²⁴ Thus, the Mexico Final Report characterized this right as the basis and ultimate goal of the new international order, with economic growth as only one aspect of this new order.

The Right to Development is centered primarily on the importance of the human dimension in fields controlled by states. Some state resolutions and declarations have indirectly recognized the Right to Development within state borders, but recognition of this right in the international order has not been widespread. The Mexico Final Report states that this limited recognition results primarily from the absence of objective universal criteria for development. The evolution of this right must therefore be encouraged through the development of regional standards.²⁵

B. The Right to be Different

The creation of the Right to be Different signifies an international concern for the dignity of peoples and the fundamental need to respect the differences among them. The Right to be Different addresses injustice, injury, and denial of dignity

23. UNESCO Colloquium on the New Human Rights, UNESCO Doc. SS-80/CONF. 806/COL. 7 (1980).

24. E.S.C. Res. 11, 44 U.N. ESCOR Supp. (No. 4) at 155, U.N. Doc. E/4475 (1978).

25. See UNESCO, Final Report: Mexico Report, SS-80/CONF. 806/COL. 7, at 22 (Limited Distribution) [hereinafter cited as UNESCO Mexico Report]. See also Campinos, *The Right to Development*, UNESCO Doc. SS-80/CONF. 806/8.

throughout the world. This right attempts to protect people from discrimination, neglect, and indoctrination, and in this way attempts to preserve the differences among people.

The new right was enunciated because it was believed that there were still areas within the international legal order that required protection. Existing human rights, including the rights enumerated in the International Bill of Rights, do not sufficiently protect human dignity and the value of people. Thus, the Right to be Different transcends the traditional realm of human rights.

Fundamental to the Right to be Different is the recognition that there is a need for social and psychological change. This is not a human right that can be implemented through international and domestic laws relating only to the protection of minorities. Rather, it is a unique human right that requires a change in peoples' basic attitudes. Both dominant and inferior groups must accept and respect differences between them and realize that all ideologies are of equal merit. All groups within a society must recognize that everyone has an intrinsic right to his or her own values and principles as long as those values and principles are not forced on others.²⁶

C. *The Right to Communicate*

The Right to Communicate centers on the notion that all peoples have the right to *receive* objective, impartial information. Dominant political groups often present information so that it is favorable to them; such a modification of information causes it to lose its efficacy. The restriction of uncensored and objective information results in an inability of people to adapt in times of crisis. In contrast, the Right to Communicate recognizes the right of all people to receive uncensored, objective information.

The Right to Communicate addresses one of the most sensitive areas of international relations. Many states fear that irresponsible speech and political instability may result from allowing information to flow freely. In its present formulation, however, the Right to Communicate is limited to the right of

26. See UNESCO Mexico Report, *supra* note 25, at 11. See also Hassan, The Right to Be Different, UNESCO Doc. SS-80/CONF. 806/9 (1980).

people to receive objective information.²⁷ Such a right should not threaten the stability of states.

D. The Right to Peace

The Mexico Final Report defines the Right to Peace as the right to a just, lasting, and constructive peace as established by the United Nations Charter. Inherent in this right is the right to a secure home, community, and nation as well as the freedom from the fear of invasion.

The Right to Peace is not merely associated with the avoidance of war, but is also concerned with poverty, exploitation, and domination. The ultimate goal of this right is to establish and maintain world peace. This requires a joint effort by all peoples and nations to peaceably settle differences and to reform the separatist attitude that presently divides the world. It is both a collective and an individual right that attempts to unify the international order. It is collective in the sense that nations must attempt to use peaceful processes in dealing with other nations and it is individual because it imposes a duty on each person to strive for peace.²⁸

E. The Right to a Healthy Environment

The Right to a Healthy Environment requires both individuals and states to maintain and protect the environment, and also requires that all people be granted free and equal access to enjoyment of the environment. Respect for the environment is vital in order to achieve these goals and to protect the environment for future generations. Each individual and state has a duty to preserve as well as a right to benefit from a healthy environment.²⁹

27. See UNESCO Mexico Report, *supra* note 25, at 4. See also Paillet, The Right to Communicate, UNESCO Doc. SS-80/CONF. 806/10 (1980).

28. See UNESCO Mexico Report, *supra* note 25, at 18. See also Alston, The Right to Peace, UNESCO Doc. SS-80/CONF. 806/7 (1980).

29. See UNESCO Mexico Report, *supra* note 25, at 14. See also, Komarek, The Right to a Healthy Environment, UNESCO Doc. SS-80/CONF. 806/11 (1980).

F. Right to the Common Heritage of Mankind

The Mexico Final Report conceives that states, individuals, and public and private entities will participate to achieve the common heritage of mankind. This right acknowledges the solidarity among peoples and the common heritage of mankind that is presupposed in the other five "new" rights. Although the right extends the notion of solidarity, the common heritage of mankind was previously recognized in some limited contexts such as space exploration and the utilization of the seabed.

The Right to the Common Heritage of Mankind recognizes resources as indivisible—they are not the property of a single nation. Resources must be used for common, peaceful purposes and nations must submit to equitable regulation of the exploitation of resources and to the distribution of profits derived. In this way, mankind is defined as an international community rather than a collection of states. This collective implies an integration of states and nations, and the possession of reciprocal rights and duties among peoples.³⁰

The Conference concluded that these rights, although in some respects overlapping with previously recognized rights, were both novel and conceptually complex. The complexity of these rights and the difficulty of their implementation was one theme of the Conference.³¹ Although transnational acceptance is not yet complete, and problems of implementation have yet to be solved, substantial progress has occurred. It is recognized that a long time may pass before third generation rights will have achieved the same status enjoyed by the first two generations of rights. Yet the requisite normative foundation of these rights has been laid,³² and international awareness of these rights is

30. See UNESCO Mexico Report, *supra* note 25, at 25. See also Gros Espiell, The Right to the Common Heritage of Mankind, UNESCO Doc. SS-80/CONF. 806/5.

31. UNESCO Colloquium on the New Human Rights, *supra* note 23.

32. An important international seminar was held at the New York Headquarters of the United Nations in August, 1981 to discuss "relations that exist between human rights, peace and development." The first conclusion and recommendation adopted by consensus was:

(1) The Seminar agrees that human rights, peace and development are interrelated and interdependent and that the fostering of one promotes the enhancement of the others. The absence of peace, or the achievement of development by a people, can never exempt a State from its obligation to ensure respect for the human rights of its nationals and of the persons residing in its territory.

already fairly advanced.

The *raison d'être* of these rights is their underlying philosophy. These rights truly belong to all peoples, and their exercise is not limited to claims against states. Implementation of third generation rights can only be achieved through transnational co-operation: efforts must be coordinated among individuals, states, and public and private institutions. This concept of *international solidarity* among the peoples of the world makes the present movement unique.

The transnational cooperation needed to effectively implement these third generation rights faces frustration, however, by international political reality. The concept of solidarity requires a reevaluation of some of the fundamental practices of international law. The Final Report of the 1978 Conference states:

From the remains of the mercantilist form of international law, whose development followed the *de facto* colonial expansion of the most industrialized States, *a form of international law must be devised bearing the stamp of concerted endeavour, co-operation and mutual understanding.* It is necessary, above all, to discard a body of outdated international law which fosters nostalgia for a world dominated by States that have reached a higher level of economic development than others, and to replace it with a body of *egalitarian international law*.³³

Although modern international law is a product of a few colonial European powers, contemporary developments have occurred through the consent of a great many nations, many of which were the colonies of these European states. As a result, although international law originally reflected the mercantile bias of their makers, many laws established in this century are more egalitarian.³⁴ Therefore, international law is in many respects essentially different from what it was in the last century.³⁵ Further efforts are needed, however, to devise a fully

33 U.N. BULL. HUM. RTS 57 (July-Sept. 1981).

33. UNESCO Paris Report, *supra* note 16.

34. For an examination of this trend see M. McDUGAL, H. LASSWELL & L. CHEN, *HUMAN RIGHTS AND WORLD PUBLIC ORDER* (1980). See also the authorities cited *supra* note 13.

35. This is particularly true in the field of human rights. For example, in 1912 Op-

egalitarian international law based on cooperation and mutual understanding.

II. IMPLEMENTATION

In view of the fact that international law is slow to develop, the prospect of a quick and complete implementation of solidarity rights is not bright. This is especially true because successful implementation of these rights will require a reorientation of traditional attitudes regarding international relationships. The magnitude of this endeavor, however, should not discourage attempts to implement third generation rights.

In the past, the philosophy of human rights implementation directed that states should fulfill their obligations to those who lived within their territorial jurisdictions. In contrast, solidarity rights seek an international consensus and mutual understanding in order to ensure achievement of common goals which directly fulfill basic needs of humanity. Each of the third generation rights presents unique difficulties of implementation.

A. *The Right to Development*

Fiercely conflicting views in various state declarations and resolutions will make implementation of the Right to Development difficult. Even though individual states have their own le-

penheim wrote:

Several writers maintain that the Law of Nations guarantees to every individual at home and abroad the so-called rights of mankind, without regarding whether an individual be stateless or not, or whether he be a subject of a member State of the Family of Nations or not. Such rights are said to comprise the right of existence, the right to protection of honour, life, health, liberty, and property, the right to practice any religion one likes, the right to emigration, and the like. But such rights do not in fact enjoy any guarantee whatever from the Law of Nations, and they cannot enjoy such guarantee, since the Law of Nations is a law between States, and since individuals cannot be subjects of this law.

L. OPPENHEIM, *INTERNATIONAL LAW* § 292 (2d ed. 1912).

These views have changed over the years. In the 1955 edition of Oppenheim's treatise, the following is written:

The individuals belonging to a State can, and do, come in various ways in contact with foreign States in time of peace as well as of war. Moreover, apart from being nationals of their States, individuals are the ultimate objects of International Law—as they are, indeed, of all law. These are the reasons why the individual is often the object of international regulation and protection.

L. OPPENHEIM, *INTERNATIONAL LAW* § 288 (8th ed. 1955).

gal mechanisms of rights implementation, solidarity is essential for domestic and international implementation of the Right to Development. Implementation of this right requires a viable process in the international order.³⁶ Creation of such an international implementation process may be an indirect effect of the effort to enforce the Right to Development.

B. The Right to be Different

The Mexico Report acknowledges that the Right to be Different will be extremely difficult to implement. Unlike constitutional protections that are aimed at protecting minorities from discrimination, this right can be properly implemented only if the less dominant groups are sufficiently encouraged to preserve their historical identities.³⁷ Utilization of vast sociocultural awareness programs by states is needed to achieve implementation of this right.

C. The Right to Communicate

The Right to Communicate requires an objective means of communication that does not presently exist in the international order. Many countries that control the media are unwilling to relinquish their power to censor information. The Right to Communicate is the right to receive objective information.³⁸ Implementation of this fundamental human right requires that information be relayed, regardless of its nature, so long as it is objective.

D. The Right to Peace

The Right to Peace cannot be implemented until people recognize existing economic and other inequalities among people that are inconsistent with maintaining world peace. The arms build-up, military growth of states, and the conditions placed on economic aid to developing countries all act to counter the purpose of the Right to Peace.³⁹ The Right to Peace will be properly implemented only when there is transnational recognition that

36. See *supra* note 25.

37. See *supra* note 26.

38. See *supra* note 27.

39. See *supra* note 28.

differences must be settled by peaceful negotiations. It is unlikely that this right will be fully achieved in the foreseeable future.

E. The Right to a Healthy Environment

States must provide the machinery needed to safeguard the environment. States will be involved on local, national, and international levels to protect the environment and preserve common resources (e.g. outer space and the high seas) for proper utilization. Although environmental conservation has long been of transnational concern, protection of the environment has been conducted on a state by state basis. Developed countries tend to disregard transnational consequences when resolving their domestic environmental problems. Much more progress on the international level is needed to implement the Right to a Healthy Environment.⁴⁰

F. The Right to the Common Heritage of Mankind

Since the states are responsible for the distribution of world resources, international law must be reformed in order to eliminate the political barriers which obstruct implementation of the Right to the Common Heritage of Mankind. Dominant nations cannot be allowed to control the benefits of common resources without regard for inferior nations. These benefits must be distributed equally to all nations.⁴¹ The Right to a Common Heritage will be fully realized only when these political problems are eliminated.

Humanity will be adversely affected unless these rights are realized. Third generation rights will not have any content unless their implementation is achieved through a transnational effort. These rights recognize the common destiny of humanity and require each individual to cooperatively contribute to the development of the international community.

40. See UNESCO Mexico Report, *supra* note 25, at 14. See also Komarek, The Right to a Healthy Environment, UNESCO Doc. SS-80/CONF. 806/11.

41. See *supra* note 30.

III. POLITICAL CONSIDERATIONS

Third generation rights, as conceived at the Paris and Mexico City UNESCO conferences, are not intended to alter the present international political order. The framers of these rights looked beyond the varied political orientations of states, and focused instead upon satisfying the basic human needs of all peoples.

Although solidarity rights are not intended to change the political order, many states will nonetheless be disinclined to implement them. This reluctance will continue to impede the realization of these rights.⁴² In order to overcome this reluctance to achieve the goals of solidarity rights, a universal social and psychological change must take place without visibly interfering in the international order. Every individual must accord equal recognition and respect to others; this is the foundational principle of solidarity rights.

It may seem idealistic to suggest that universal implementation of these rights can overcome the inertia of distinctive cultural and political societies. The increasing economic interdependence among separate states, however, has been a powerful force for cohesion. This economic interdependence is based in part upon the scarcity of resources and on the reliance of developing countries on monetary assistance from the developed countries.⁴³ Cohesiveness has resulted in increased communication and the partial dissolution of political barriers dividing states.⁴⁴

42. Although in rhetorical terms no state will actually oppose peace, the unprecedented increase in armaments, coupled with no concrete progress in disarmament and arms limitation talks glaringly shows the great danger to international peace present at all times in recent memory.

43. See Nye, *Independence and Interdependence*, 22 FOREIGN POLICY 129 (Spring 1976); See also A New United Nations Structure for Global Economic Cooperation: Report of the Group of Experts on the Structure of the United Nations System, U.N. Doc. E/AC/62/9 (May 1975); Multinational Corporation in World Development, U.N. Doc. ST/ECA/190 (1973); The Impact of Multinational Corporations on the Development Process and on International Relations: Report of the Secretary General to the Economic and Social Council, U.N. Doc. E/5500 (June 1974); Report of the Group of Eminent Persons to Study the Role of Multinational Corporation, U.N. Doc. E/5500/Add. 1 (Part I).

44. See generally *supra* note 43.

IV. ENFORCEMENT

Unlike first and second generation rights, which states enforce for their citizens, third generation rights have transnational application, and therefore will require transnational enforcement. Violations of these rights may occur both within and outside of a citizen's state. It is arguable that even if transnational agreements could be implemented to fully cover the scope of such violations, enforcement of those agreements would be difficult.

Although some third generation rights (e.g., the Right to a Clean and Healthy Environment) may be enforceable under traditional judicial systems,⁴⁵ these systems are inadequate to enforce other third generation rights⁴⁶ (e.g., the Right to be Different). The difficulty encountered in enforcing solidarity rights raises the question whether these new protections are appropriately termed "rights."

Even though solidarity rights are not generally enforceable through the same methods used to enforce other rights, third generation protections are rights. The legal enforcement of a norm does not control that norm's validity.⁴⁷ Moreover, the fact that a norm does not lend itself to traditional enforcement methodology is not to say that it cannot be enforced. Third generation rights simply require different methods of enforcement. These methods may be social or political; non-legal enforcement methods have been used to support human rights in the past.⁴⁸

45. See UNESCO Mexico Report, *supra* note 25; Report of the United Nations Conference on the Human Environment, 27 U.N. GAOR, U.N. Doc. A/CONF. 48/14 (1972); Problems of the Human Environment, 47 U.N. ESCOR Annex (Agenda Item 10), UN Doc. E/4667 (1969); M. NICHOLSON, *THE ENVIRONMENTAL REVOLUTION: A GUIDE FOR THE NEW MASTERS ON THE EARTH* (1970); McDougal & Schneider, *The Protection of the Environment and World Public Order: Some Recent Developments*, 45 MISS. L. J. 1085 (1974); Strong, *One Year After Stockholm: An Ecological Approach to Management*, 51 FOREIGN AFF. 690 (1973).

46. Some states, however, may contend that their existence is threatened by the "presence" of dominant countries within their borders. This concern of the developing countries is a phenomenon in international relations which must be resolved satisfactorily, if this new generation of human rights is to succeed. See UNESCO Mexico Report, *supra* note 25.

47. For a thorough analysis of this point, see H. HART, *CONCEPT OF LAW* ch. 10 (1961).

48. M. Ganji, *The Widening Gap: A Study of Realization of Economic, Social and Cultural Rights*, 30 U.N. ESCOR (Agenda Item 7), UN Doc. E/CN. 4/1128-53 (1974). See also the enforcement measures of the International Covenant on Economic, Social and

The Final Act of the Helsinki Conference on Security and Cooperation⁴⁹ is an example of an effective international agreement without specific human rights enforcement mechanisms.⁵⁰ Although the Final Act is not a treaty with binding obligations,⁵¹ its political significance is undeniable. Many scholars similarly contend that both human rights and international law have derived much support from the various provisions of the Final Act.⁵² The support derived from the Final Act reinforces the proposition that traditional legal enforcement is not necessary to define a protection as a "right."⁵³

Ultimate political or social acceptance of protections, and a commitment by states to encourage or preserve them, should be sufficient to recognize the status of those protections as "rights." Although enforcement of newer protections will follow a path quite different from the paths with which lawyers have become familiar, sufficient worldwide acceptance of third generation ideas will give credibility to these protections as rights.

Having settled the issue of third generation protections as rights, some may question whether there is a need for these rights. An historical analysis will help answer this question.

Cultural Rights, 21 U.N. GAOR Supp. (No. 16), U.N. Doc. A/6316 (1966).

49. Conference on Security and Cooperation in Europe: Final Act, 14 INT'L LEGAL MATERIALS 1292 (1975).

50. See generally Bishop, *Introduction, Symposium: Human Rights and the Helsinki Accord—A Five-Year Road to Madrid*, 13 VAND. J. TRANSNAT'L L. 249 (1980); Kiss & Dominick, *The International Legal Significance of the Human Rights Provisions of the Helsinki Final Act*, 13 VAND. J. TRANSNAT'L L. 293 (1980); Chalidze, *The Humanitarian Provisions of the Helsinki Accord: A Critique of Their Significance*, 13 VAND. J. TRANSNAT'L L. 434 (1980); Robertson, *The Helsinki Agreement and Human Rights*, 53 NOTRE DAME LAW. 34 (1977); Russell, *The Helsinki Declaration: Brobdingmag of Lilliput?*, 70 AM. J. INT'L L. 242 (1976).

51. Bishop, *Introduction, Symposium: Human Rights and the Helsinki Accord—A Five-Year Road to Madrid*, 13 VAND. J. TRANSNAT'L L. 249, 249-50 (1980); Kiss & Dominick, *The International Legal Significance of the Human Rights Provisions of the Helsinki Final Act*, 13 VAND. J. TRANSNAT'L L. 293, 297 (1980); Chalidze, *The Humanitarian Provisions of the Helsinki Accord: A Critique of Their Significance*, 13 VAND. J. TRANSNAT'L L. 434, 434-35 (1980); Robertson, *The Helsinki Agreement and Human Rights*, 53 NOTRE DAME LAW. 34, 34-35 (1977); Russell, *The Helsinki Declaration: Brobdingmag or Lilliput?*, 70 AM. J. INT'L L. 242, 246-48 (1976).

52. Osakwe, *Contemporary Soviet Doctrine on the Sources of General International Law*, 73 AM. SOC'Y INT'L L. PROC. 310, 322 (1979).

53. Chalidze states that the humanitarian provisions of the Helsinki Final Act are historic "by virtue of not so much their content as the strong public response they have elicited." Chalidze, *supra* note 50, at 429.

The development of human rights norms is a dynamic process by which these norms develop to meet specific needs within their historical context.⁵⁴ History demonstrates that human rights sought in any given era are a response to the particular needs of that time. During the era of Locke and Rousseau, for example, the major concern involved the struggle of the people against the ruling elites. Accordingly, the major writings identified rights in the political domain. Rousseau maintained that the foremost rights of the individual were freedom and liberty based on inherent notions of the dignity of mankind.⁵⁵ Although Locke agreed with Rousseau that liberty was the primary objective of civilized society, he believed that this right was derived from a political association of individuals established by consent.⁵⁶ Thomas Paine also thought that the essential rights for human existence were those of a civil nature. He believed that these rights were derived from natural law:

[Of the kind of rights which appertain to man in light of his existence] are intellectual rights of acting as an individual for his own comfort and happiness which are not injurious to the natural rights of another. Every civil right has for its foundation some natural right preexisting in the individual but to the enjoyment of which his individual power is not, in all cases, sufficiently competent.⁵⁷

The voices of such people resulted in massive political changes. Thus, the eighteenth century was witness to the crea-

54. On this matter, Holmes stated:

The life of the law has not been logic: it has been experience. The felt necessities of time, the prevalent moral and political theories, intuitions of public policy, avowed or unconscious, even the prejudices which judges share with their fellowmen, have had a good deal more to do than the syllogism in determining the rules by which men should be governed. The law embodies the story of a nation's development through many centuries, and it cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics.

O. HOLMES, *THE COMMON LAW* 1 (M. Howe ed. 1963).

As a consequence of World War II, the 1948 Genocide Convention was among the first international texts to emerge after the formation of the United Nations.

55. See generally J.J. ROUSSEAU, *DU CONTRAT SOCIAL* (1762).

56. See generally LOCKE, *THE SECOND TREATISE OF GOVERNMENT* (T. Peardon ed. 1952).

57. T. PAINE, *The Right of Man* in *SELECTED WORKS OF TOM PAINE & CITIZEN TOM PAINE* 121 (H. Fast ed. 1945).

tion of two of the foremost democracies of the post-middle ages. Through revolution, the United States of America and France established governments which expanded the dimensions of representative government. Both nations enshrined civil and political rights in fundamental documents. The words of the American Declaration of Independence proclaimed these rights: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness."⁵⁸ The American Revolution was fought for the realization of political dignity for the people of the new nation. Thirteen years later, the French similarly proclaimed their rights in the Declaration of the Rights and Duties of Man:

The French people, convinced that ignorance and scorn of man's natural rights are the sole causes of the world's evil, have resolved to expose in a solemn declaration, these sacred and inalienable rights, so that all citizens being able to compare continually government acts with the goals of all social institutions, will never allow themselves to be oppressed or brutalized by tyranny; so that the people will have always the bases of liberty and liberty before their eyes; the magistrate the ruler of his duties, the legislator the object of his mission. . . .

Article One—The goal of society is happiness for all—The government is instituted to guarantee the enjoyment of these natural and invaluable rights.

Article Two—These rights are equality, liberty, security, property. . . .⁵⁹

The American and French Revolutions laid the necessary groundwork for the eventual internationalization of these fundamental rights. However, it was not until after the jolt of two world wars that these rights achieved the status of international norms. These civil and political norms became the human rights of the first generation.

Although civil and political rights have a long history, they achieved international legal acceptance only upon the formation

58. The Declaration of Independence, preamble (U.S. 1776).

59. The Declaration of the Rights of Man (1789).

of the United Nations and the passage of the International Bill of Rights.⁶⁰ Acceptance of first generation rights quickly led to enforcement on both the regional⁶¹ and international levels.⁶² Similarly, second generation rights did not achieve international acceptance for two decades after the adoption of the Universal Declaration.⁶³

Unlike the rights of the first generation, the success of second generation rights cannot be accurately evaluated. Although second generation rights are politically and legally accepted, useful criteria to accurately measure the success in practice of these rights cannot be easily developed.⁶⁴

60. See generally *supra* note 5.

61. For European developments see The European Convention for the Protection of Human Rights and Fundamental Freedoms, together with its Protocols, *reprinted in* I. BROWNLIE, *BASIC DOCUMENTS ON HUMAN RIGHTS* 242-65 (2d ed. 1981). See generally JACOBS, *THE EUROPEAN CONVENTION ON HUMAN RIGHTS* (1975); CASTBERG, *THE EUROPEAN CONVENTION ON HUMAN RIGHTS* (1974); FAWCETT, *THE APPLICATION OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS* (1969).

Similar developments in Latin America took place when, in 1960, an Inter-American Commission on Human Rights was set up as an appendage of the Organization of American States. See generally SCHREIBER, *THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS* (1970); Gros Espiell, *Le Système Interaméricain Comme Régime de Protection Internationale des Droits De L'Homme*, in 145 *HAGUE RECUEIL* 1 (1975 II); Cabranes, *Human Rights and Non-Intervention in the Inter-American System*, 65 *MICH. L. REV.* 1147 (1967). The American Convention on Human Rights, signed in 1969, provides for a Commission and a Court. See 9 *INT. LEGAL MATERIALS* 101 (1970).

62. See, e.g., Covenant on Civil and Political Rights, G.A. Res. 2200A, 21 *U.N. GAOR Supp.* (No. 16) at 59, *U.N. Doc. A/6316* (1966) (including Optional Protocol). See generally Sohn & Buergenthal, *INTERNATIONAL PROTECTION OF HUMAN RIGHTS* (1973).

63. See *infra* note 67. See generally Sohn & Buergenthal, *supra* note 62. International legal acceptance of any human right, therefore, can realistically only come if the right has already become familiar in transnational political and sociological contexts.

64. Perhaps all of the problems which the Universal Declaration and the International Covenant on Economic, Social and Cultural Rights aimed to specifically remedy might not have been so far correctly perceived to be effectively attended to. Indeed in 1969, the U.N. Human Rights Commission had specifically asked a Special Rapporteur to submit to the Commission at its twenty-seventh session:

a comprehensive report, together with his conclusions and recommendations, including the question of the role of the Commission in this respect, on the realization, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth or other status, of economic, social and cultural rights set forth in the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights, taking particular account of the special problems of the developing countries in this regard.

Resolution 14 (XXV) of 13 March 1969, of the U.N. Human Rights Commission.

In June 1969, the Economic and Social Council confirmed this mission of the U.N.

Critics of solidarity rights have contended that it is unjustified to begin a third generation of rights when the first two generations of rights are not yet realized. This argument points out that even though the first two generations are legally recognized by international treaties, compliance with these treaties is less than complete. Although it is true that the first two generations of rights are not fully realized, this fact alone fails to prove the argument's validity. History demonstrates that the first two generations of rights were implemented gradually. Realization of many of these rights did not occur until many years after their inception. The genesis and development of third generation rights will also occur slowly, and therefore should not await full effective implementation of the earlier set of rights.

The development of human rights is a dynamic process which addresses infringements of human rights as they occur. Just as second generation rights evolved as a response to events of the Second World War, third generation rights are a response to the growing sense of deprivation felt by the peoples of third world nations. The international community should embrace third generation rights with the same vigor that characterized its acceptance of the rights of the first two generations. Problems of enforcement should not be allowed to halt efforts to implement these rights.

The Optional Protocol in the International Covenant on Civil and Political Rights describes an enforcement mechanism

Human Rights Commission and indeed asked the Members of the U.N. and of the specialized agencies, to give full co-operation to the work of the Special Rapporteur. Resolution 1421 (XLVI) of June 1969 of the Economic and Social Council. Subsequent events in this matter proved the magnitude of the undertaking, namely, to find out whether over one hundred and sixty odd countries were in the process of complying with the professed aims and standards of the international community in respect to economic, social, and cultural matters.

For related developments in monitoring the compliance of the various countries to the standards of the Universal Declaration and the International Covenant on Economic, Social and Cultural Rights, as well as of the efforts of the Special Rapporteur to study the problems, especially of the developing countries in pursuance of the resolution 14 (XXV) of 13 March 1969, of the Human Rights Commission, see particularly the resolutions of the U.N. Commission on Human Rights mentioned in note 10 *supra*; also see the Economic and Social Council Resolutions 1502 (XLVIII) of 27 May 1970 and 1595 (L) of 21 May 1971; General Assembly Resolutions 2542 (XXIV), containing the Declaration on Social Progress and Development, and 2543 (XXIV); Economic and Social Council Resolution 1689 (LII) 2 June 1972; Economic and Social Council Resolutions 1421 (XLVI) and 1502 (XLVIII).

akin to the procedures used in the adjudicative processes of domestic legal systems.⁶⁵ The International Covenant on Economic, Social and Cultural Rights, however, adopts a distinctive approach⁶⁶ inasmuch as it deals with rights that are difficult to enforce through domestic adjudicative processes. The latter Covenant calls for policy-oriented initiatives by state governments, and the use of a transnational reporting system. The reporting system allows states and international agencies to monitor the fulfillment of the enumerated rights.

Examination of the enforcement techniques of the first two generations of rights leads to the following conclusions:

- 1) The creation of international human rights law is a dynamic process; each set of rights has developed to address the needs of its historical context.
- 2) Enforcement of human rights may occur through a variety of methods; traditional judicial enforcement techniques are not necessary to validate the attainment of human rights.⁶⁷

V. CONCLUSION

Difficulties surround both the implementation and enforcement of this new generation of human rights. Efforts to determine the definition and scope of these rights must overcome certain preconceptions of the nature of international law and human rights. The absence of methods of traditional judicial enforcement is another obstacle impeding the attainment of third generation rights.

These problems aside, transnational concerns—pollution,

65. See generally J. CAREY, U.N. PROTECTION OF CIVIL AND POLITICAL RIGHTS (1971). For enforcement procedures see the International Covenant on Civil and Political Rights, adopted Dec. 16, 1966, G.A. Res. 2200A, 21 U.N. GAOR, Supp. (No. 16) 49, U.N. Doc. A/6316 (1966) Pt. IV and the Optional Protocol to the International Covenant on Civil and Political Rights, adopted Dec. 16, 1966, G.A. Res. 2200A, 21 U.N. GAOR, Supp. (No. 16) 49, U.N. Doc. A/6316 (1966).

66. See generally M. Ganji, The Realization of Economic, Social and Cultural Rights: Problems, Policies, Progress, U.N. Doc. E/CN.4/1108/Rev. 1 and 30 U.N. ESCOR (Provisional Agenda Item 7), U.N. Doc. E/CN.4/1131/Rev. 1 (1975) for enforcement measures of the International Covenant on Economic, Social, and Cultural Rights, adopted Dec. 16, 1966, G.A. Res. 2200A, 21 U.N. GAOR, Supp. (No. 16) 49, U.N. Doc. A/6316 (1966).

67. See generally Hassan, *supra* note 26.

the potential for war, dwindling resources, and the difficulties faced by all states that seek to preserve their cultures—should act as catalysts to the process of attainment of third generation rights. Although some of the components of this new generation of human rights may be defined in a variety of ways, the broad constructs developed at UNESCO Conferences in Paris and Mexico City provide the essential outlines of the rights. The historical development of international human rights norms demonstrates that although solidarity rights may now appear to be but a lofty ideal,⁶⁸ with effort they may become a part of the reality of the continuing development of human rights.

68. The attainment of the right to peace, however, is not capable of being realized in this author's opinion, whether by adopting the traditional approach of dispute resolution, or the more current one advocated above.