Human Security: A Human Rights Approach to National Security?

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ABSTRACT. This paper discusses the evolution of a more inclusive perspective of human rights encompassing not only civil and political rights but also economic, social and cultural rights. Serving as the anchor of a rights-based perspective of national security, the convergence of human security and human rights becomes more imperative with changes taking place in the local and international contexts. The study provides an overview of the development of the human rights discourse from the conclusion of the Second World War with the signing of the Universal Declaration of Human Rights (UDHR) in 1948 to the forging of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). The study also presents the diverging appreciation and enforcement of both covenants citing the case of Nepal where the perpetration of human rights violations of both state and non-state actors using arms and coercive force have exacerbated the physical as well as the social and economic insecurity of its people.

KEYWORDS. human rights • human security • national security

INTRODUCTION

> When we speak of national security, what we refer or should refer to is the security of the people, not of the governors...
>
> Jose W. Diokno, *A Nation for Our Children*

News and photos of torture and ill-treatment of Iraqi prisoners by American soldiers have finally erupted into the open. What really is at stake is whether the United States government is going to submit itself to the international rule of law and mete apt punishment to the perpetrators of the violations.

The repercussions of earlier acts of impunity of the US government and personnel have given blanket justification to similar impunities in the Asian region where many authoritarian regimes are known for their bad track record in human rights even prior to 9/11 (Forum Asia

2003). Incidentally, the terrible actions of this sole military and economic superpower are not subject to charges that could be brought before the International Criminal Court (ICC) as agreed upon by many Asian states including the Philippines, through the Bilateral Immunity Agreement (BIA) (AMICC 2004). The United States is also presently seeking from the UN Security Council another year of exemption from the jurisdiction of the ICC.

Earlier statements of US Defense Secretary Donald Rumsfeld, uncorrected by President Bush, denigrated the Geneva Conventions, which governed behavior during wartime, by saying that the conventions did not apply to today's "set of facts," suggesting that "the protocols were antiquated," simply did not "precisely apply" and were simply basic rules. This is an example of a state-centric security view in complete disregard of human security (read: fundamental freedoms) and of respect for human rights. The beheading of an American civilian, Nicholas Berg, shown to the world in video is a sad backlash to the inhumane and humiliating treatment against the Iraqi prisoners (Krane 2004).

Historical Survey of Human Rights

The end of the World War II saw the beginning of the discourse of human rights and human security. While we acknowledge that there are historical and even philosophical and ideological roots to the two ideas, we are presently concerned with the developments of both in little more than the last fifty years. There were emerging "non-traditional" security issues—whether linked to climate change, resource scarcity, declining productivity, movements of people, or transnational issues of criminality and terrorism—which were in reality "human-centered vulnerabilities" confronting the developed world (Liotta 2002). The shift from a state-centric security to a people-centered security or from institutional to human priorities was gaining momentum. In the course of shifting there is an overlapping of issues involving "state security" (where military forces have traditionally been proven as the best form of protection) and issues involving "human security" (in which instruments and agencies other than the military may prove as primary means of protection) (Liotta 2002, 474). To put it in another way:

> Over the last decade or so the definition of security has been broadened from its old focus of protecting the nation's territory from external

aggression to cover the human aspects of "freedom from fear" and "freedom from want"—the security of people. (AEPF 2004)

This paper will tackle the shift from a narrow perspective of human rights that only effectively recognize civil and political rights to a more wholistic view that expands to cover economic, social and cultural rights. It also veers away from making human rights synonymous with "universal abstractions" but rather "a set of past and on-going social practices rooted in claims and struggles of peoples against what they consider economic, social and cultural domination" (Fields 2003). These evolved views serve both as the bases and the contents of a rights-based approach to national security. The paper welcomes the drive to shift from national security to human security. Nonetheless, the same approach would be used to initially assess whether the shift to human security does indeed ensure that "respecting human rights is at the core of protecting human security" (Ogata and Cels 2003, 275).

This paper does not claim to be comprehensive, much less a final discussion on the relationship of human rights and human security. Rather, the paper offers discussions to engage the challenges posed by changing contexts. It emphasizes, however, that there is an urgency for such an interface because what is happening on the ground is witness to the attitude of suspicion, if not hostility, by those tasked with national security. This shift is imperative, maintaining the narrow view on security, such as our experience here in the Philippines, could lock us in the Cold-War mentality.

Overview of the Development of Human Rights and State Obligations

The horrendous and massive atrocities committed during the World War II, including the infamous attempt to exterminate the Jewish people, the Gypsies and homosexuals in the concentration camps of Germany's Third Reich; the rape of Nanking, China by the Japanese occupation troops; and, the bombings of Hiroshima and Nagasaki spurred the then international community headed by the nations of the victorious Allied Forces to forge on December 10, 1948 the Universal Declaration of Human Rights (UDHR).

The UDHR has drawn its validity from the historical sources of peoples' values—their faiths, beliefs and cultures as well as their struggles—to affirm a common human dignity as basis for the human rights of everyone, everywhere. Human rights then are the inherent

expressions of dignity as human beings recognized by international laws. The criticism that only a minority signed and ratified the Declaration, compared to the present membership of the United Nations and other existing nations, was answered and rendered moot and academic by the overwhelming affirmation of the UDHR, emphasizing a wholistic view of human rights, by the Second World Conference on Human Rights which produced the Vienna Declaration on Human Rights in 1993. The slogan for the 50th anniversary of the UDHR in 1998, "All human rights for all," stressed the characteristics of human rights. This should be a reminder against the danger to "relegate human rights to a purely strategic or tactical device to be used in power struggles against political or economic regimes that are being opposed on other more self-serving grounds" (Fields 2003).

We are aware that the Universal Declaration of Human Rights is a *declaration*. Although not legally binding, the UDHR is an aspirational document that has set common standards for the development of human potentialities. It has also set the stage for the establishment of state obligations.

Efforts to forge legally-binding documents based on the UDHR were subjected to the ideological divide strongly existent among the nation-states of the period. It took some thirty years to produce legally-binding covenants for the growing international community asserting civil, cultural, economic, political and social rights of persons and peoples. These are the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Together, the two covenants "constitute the bedrock of the international normative regime in relation to human rights" (Steiner and Alston 1996, 256).

It is appropriate to note that almost all of the provisions found in the UDHR are incorporated into either of the two covenants. These two international covenants are treaties, and as such, part of international law. Later, the UDHR, the ICCPR and the ICESCR were accepted as the International Bill of Rights. The Philippine Constitution has enshrined these human rights in its Bill of Rights article. Furthermore, the Philippines is state party to most of the major international human rights instruments. It established the Philippine Commission on Human Rights to monitor government compliance to its obligations and to create a human rights culture according to the international standards called the Paris Principles.

The characteristics of human rights are: universality, indivisibility, interrelatedness and interdependence. Human rights are universal because they are for everyone, everywhere. They are non-discriminatory. Indivisibility means that human rights cannot be divided nor fragmented among a country's constituents. One cannot just implement the right to adequate food for everyone, while depriving people of their civil and political rights. Violation of one right usually leads to the violation of another. For instance, not granting due process to a person could easily violate the person's right to work and health and can have repercussions to the rights of the person's child to education and food.

The state has a trinity of obligations in relation to the implementation of human rights: to respect, to protect and to fulfill (facilitate and provide). To respect means that the state refrains from interfering in the lives or properties of persons and peoples. Nonetheless, the state is obliged to protect its constituency from Third Parties who are violating persons' and peoples' rights. During times of wanton destruction by nature or by men, the state must take "appropriate measures" to facilitate assistance and to provide people, who in normal times could help themselves, their needs.

ICESCR: A Casualty of the Cold War

While most, if not all, unswervingly subscribe to the words adopted by the Second World Conference on Human Rights in Vienna that the two sets of rights are "universal, indivisible, interdependent and interrelated" (Vienna Declaration 1993), it should be remembered that the relationship of these two sets of rights "had become a casualty of the Cold War" (Steiner and Alston 1996, 257) and influenced by the de-colonization period. As a result, any positioning regarding the sets of rights, particularly in relation to economic and social rights, was perceived to be either ideologically influenced or determined. Concomitantly, it could be stated that during those years "the principle of the equality of the two sets of rights has often been more honored in the breach than in the observance" (Steiner and Alston 1996, 266). While formal consensus was maintained through lip-service given to rights,

> the shocking reality … is that States and the international community as a whole continue to tolerate all too often breaches of economic, social and cultural rights which, if they occurred in relation to civil and political

rights, would provoke expressions of horror and outrage and would lead
to concerted calls for immediate remedial action. In effect, despite the
rhetoric, violations of civil and political rights continue to be treated as
though they were far more serious, and more patently intolerable, than
massive and direct denials of economic, social and cultural rights. (Steiner
and Alston 1996, 266)

Another result was the popularization of the ICCPR and its
institutionalization in national human rights institutions, like the
orientation of the Philippine Commission on Human Rights even
after the Martial Law Period in 1987. There was a downgrading of
economic, social and cultural rights (ESCR) as at best vague and
nonjusticiable, and at worst, seen not as real rights at all. Internationally,
ESCR has become "paper rights" ceremoniously enshrined in the
ICESCR. Hence, it was imperative to retrieve and to revivify the
Covenant language—i.e., "the language of right, not merely of hope; of
undertaking and commitment by governments, not merely of aspiration
and goal" (Steiner and Alston 1996, 271 citing Henkin 1984 in Meron
1984).

LIMBURG PRINCIPLES: NATURE AND SCOPE OF STATE OBLIGATIONS

Ten years after both Covenants have been enforced in 1976, a group
of experts in international law convened in 1986 to discuss the nature
and scope of the obligations of States Parties to the ICESCR (Dankwa,
Flinterman and Leckie 1998). This group included the International
Commission of Jurists, the Maastricht Centre for Human Rights of the
University of Limburg (The Netherlands) and the Urban Morgan
Institute for Human Rights, College of Law, University of Cincinnati
(Ohio, USA). The result of the meeting was the Limburg Principles.
Thereafter, these Principles became an official United Nations
document. This is the only UN document referenced in the UN
Commission on Human Rights Resolution 1993/14 that did not
originate from any of its institutions or personnel (Limburg Principles
1987). The significance of its inclusion underscored the fact that the
Principles have been accepted and endorsed by "the most important
UN body in the human rights field."

Though not an absolute certainty, the notable absence of academic
criticism confirmed the notion that the Principles have been largely
accepted by human rights scholars. There are 103 individual principles

formed to address "the complexity of the substantive issues covered by the ICESCR," the provisions of which are often "vaguely-worded" (Martin 1997).

MAASTRICHT GUIDELINES: FOCUS ON THE "VIOLATIONS APPROACH"

Ten years after, the formulation of the Limburg Principles and its acceptance as an official UN document, another workshop was convened in 1997. This group was composed of the International Commission of Jurists, the Maastricht Center for Human Rights and the Urban Morgan Institute for Human Rights. This time the focus was "the relevance of a 'violations approach' in order to strengthen the monitoring of the CESCR" (Dankwa, Flinterman and Leckie 1998).

Much had happened in the world in the intervening ten years. Consider some of the following data given by the United Nations Development Programme, Human Development Report in 1991 (Steiner and Alston 1996, 265-266):

Poverty – Over one billion people live in absolute poverty.

Nutrition – Some 180 million children, one in three, suffer from serious malnutrition.

Health – One and a half billion people are deprived of primary health care. Nearly three million children die each year from immunizable diseases. About half a million women die each year from causes related to pregnancy and childbirth.

Education – About a billion adults cannot read or write. Well over 100 million children of primary school age are not in school.

Gender – Disparities between men and women remain wide, with female literacy still only two-thirds that of males. Girls' primary enrolment rates are a little over half that of boys', and much of women's work still remains underpaid and undervalued.

People in all developing regions share these problems, but the most urgent problems tend to differ. In Latin America, South Asia and the Arab States, poverty is reinforced by the very unequal distribution of assets.

In the face of increasing inequities and worsening impoverishment, economic, social and cultural rights have received more, although certainly not yet sufficient attention at the government levels. In 1993, the CESCR issued to the World Conference on Human Rights a statement which confirmed the massive human rights violations.

The fact that one fifth of the world's population is afflicted by poverty, hunger, disease, illiteracy and insecurity is sufficient to conclude that the economic, social and cultural rights of those persons are being denied on a massive scale. Yet there are still staunch human rights proponents—individuals, groups and governments—who completely exclude these phenomena from their concerns. Such approach to human rights is inhumane, distorted and incompatible against international standards (Steiner and Alston 1996, 266). This phenomenon has introduced restlessness, rebellions, uprisings and, eventually, "terrorism." The "vulnerabilities" of affected sectors have been transforming the sectors into "threats" which can eventually become state security concerns. This and similar situations have broadened our understanding of state security. Formerly, it focused mainly on protecting the state—its boundaries, people, institutions and values—from external attacks. At present, the changing international and national environments, including the impact of the globalization process, have contributed to the tensions, violence and conflict within countries. It must be acknowledged that the gaps between rich and poor countries—between wealthy and destitute people—have never been greater than today (Ogata and Cels 2003).

The 1994 United Nations Development Program (UNDP) Human Development Report updated the above-mentioned deteriorating situation and articulated the "shift in normative thinking about human security" (AEPF 2004). The report showed the failure of governments, particularly the state parties to the covenants, to comply with their obligations to "progressively realize" the economic, social and cultural rights of their peoples. International finance and trade institutions likewise have contributed in taking advantage of and exacerbating the "vulnerabilities" of the peoples in developing countries. The structural adjustment programs of the World Bank have thrown many countries and people into an inescapable debt trap.

To reverse this course of events, the State must primarily respond to these "vulnerabilities," an act which can be beneficial to its political, economic and social stability. Integral to this state security is human security which according to the UNDP Report,

covers the following dimensions: economic, food, health, environmental, personal, community, community and political. Above all, human security is about protecting people from severe and pervasive threats, both natural and societal, and empowering individuals and communities to develop the capabilities for making informed choices and acting on their own behalf . (AEPF 2004)

This view that the UNDP presented almost a decade ago emerged again in the definition given by the UN Commission on Human Security in 2003. It defined human security as "protecting the vital core of all human lives in ways that enhance human freedoms and human fulfillment" (Ogata and Cels 2003, 274). This means protecting vital freedoms which refer back to the inalienable fundamental rights and freedoms that are laid down in the UDHR, the International Bill of Rights and other human rights instruments. In the human rights language, "to protect" is a basic state obligation. The state is to protect its constituency from a third party's violation of human rights. In fact, in the new security discourse, the security of peoples' rights takes precedence and informs all other security concerns. It also starts with the recognition that people are the most active participants in determining their well-being.

State Obligations: Converging Human Rights and Human Security

Human security does not replace state security, but rather reinforces it. Human rights do not encompass human security, but rather the latter encompasses the former, which include access to education and to health care, governance, ensuring opportunities and choices for each person and people to achieve their full potential. Human security complements human rights. While understanding of state security has broadened, comprehension of the range of state obligations likewise widened.

The compliance of states parties which ratified one or both of the covenant(s) is being monitored by their respective mechanisms—the Human Rights Committee (HRC) for the ICCPR and the Committee for Economic, Social and Cultural Rights (CESCR) for the ICESCR. Other human rights treaties may or may not have their own monitoring bodies.

Since the texts of international human rights treaties are not always defined precisely to accommodate different legal systems, the treaty-

monitoring bodies give interpretations of the content of specific articles of the relevant treaty and the obligations of governments. These interpretations are known as General Comments, which have increasingly become authoritative interpretations of various categories of rights (Ravindran 1998, 65).

According to the ICESR, a state party to the covenant "undertakes to take steps...with a view to achieving progressively the full realization" of these rights (ICESCR 1976, see also OUNHCHR 1990). The General Comments of the UNCESCR also make more concrete the directions that the state party must consider in the implementation of human rights by the initial enumeration of the key elements of each right.

The right to adequate food, for example, has the following key elements: nutritiously adequate, safe, culturally acceptable, accessible (physically and economically), and sustainably produced (UNESC 1999). The right to water, as explained in General Comment No. 15 (UNESC 2002, see also CEDAW 1981, CRC 1990), is implemented with the following key elements: availability (sufficient water supply for personal and domestic uses; continuous water supply for personal and domestic uses; quantity of water available for each individual should correspond to World Health Organization [WHO] guidelines; some individuals and groups may require additional water due to health, climate and work conditions), quality (safe, free from microorganisms, chemical substances and radiological hazards; acceptable color, odor and taste for personal or domestic use), and accessibility (economically, physically, without discrimination and with sufficient information dissemination). The right to health has these key elements (UNESC 2000): availability (functioning public health and health care facilities; goods and services and programs in sufficient quantity including the underlying determinants of health), accessibility (without discrimination, physically, economically, and with sufficient information dissemination); acceptability (respects medical ethics and culture; sensitive to gender and life-cycle requirements; respects confidentiality and improves health status), and quality (scientifically and medically appropriate).

The assessment as to whether the state party has implemented or violated a human right is also guided by the key elements together with the consideration of inability or unwillingness of the concerned state. Thus, the statement that human rights must inform human security subsumes the explanation above regarding the key elements of human rights.

On the whole, the implementation of human rights not only helps in preventing and mitigating the impact of violent internal conflicts, but also contributes to inclusive and equitable development, and respecting human dignity and diversity.

CHALLENGES TO HUMAN RIGHTS AND HUMAN SECURITY

Since human security is people-centered, it takes into serious consideration peoples' and persons' rights in new contexts, such as globalization and internal conflict. There is a whole range of menaces other than external aggression. Citizens have to be protected from environmental pollution, transnational terrorism, massive population movements, infectious diseases such as human immunodeficiency virus/acquired immune deficiency syndrome (HIV/AIDS) and long-term conditions of oppression and deprivation.

Another aspect is the broader range of actors, with the states no longer as the sole actors. Nonstate actors, such as regional and international organizations, nongovernmental organizations (NGOs), civil society groups, transnational and multinational corporations, armed liberation groups and others with access to coercive force are involved, and impact on both human rights and human security not only within the state but also frequently on the neighboring states and the immediate region.

Between 1990 and 2001, there were 57 major armed conflicts in 45 countries (UNCHS 2003, 21). Most of these conflicts have been internal. The UN Commission on Human Security enumerates some of the key factors that cause these conflicts (UNCHS 2003, 21):

1. Competition over land and resources
2. Sudden and deep political and economic transitions
3. Growing inequality among people and communities
4. Increasing crime, corruption and illegal activities
5. Weak and unstable political regimes and institutions
6. Identity politics and historical legacies, such as colonialism

This section shall raise issues primarily pertaining to human rights in relation to the loss of human security leading to the outbreak of violent internal conflicts. Their consequences are devastating to peoples and to the environment, including the collapse of the state and its

institutions, and extensive and intensive poverty. Gross human rights violations and war crimes are committed. Prolonged internal armed conflict siphons much of the state attention and resources that the opportunities and choices needed for persons and peoples to attain their full potential are diminished or taken away. The majority of the people are deprived of their right to development.

Let us take the example of Nepal and its seven-year old Maoist insurgency. When the peace talks collapsed in November 2001, a nationwide emergency was declared. The army was ordered to put down the insurgency. The King promulgated an ordinance giving the government expanded powers of arrest and detention. The parliament subsequently adopted this ordinance as the Terrorism and Disruptive Activities Act (TADA). In October the following year, the King dissolved the parliament and appointed a new government. A ceasefire was called in 2003 and a renewed process of negotiations between the government and the Maoists took place. In May, the peace talks collapsed again. Fighting has since been going on.

In June of 2003, an international fact-finding mission was formed. Here are some of their major conclusions and recommendations:

> The dissolution of the Parliament, combined with the failure to hold elections within the six-month time frame required by the Constitution, and the formation of a government consisting of unelected ministers from out of the major political parties, has (sic) placed a profound stress on the democratic and constitutional framework of Nepal. Because the principal ministers seem to be answerable only to the King, Nepal is perilously close to slipping from a constitutional towards an absolute form of monarchy. (ICJ/ CIJL 2003)

At present, there exists no mechanism by which to determine the limit of the monarch's authority under the Constitution. The Constitution provides that actions of the monarch are non-justiciable. Therefore, a monarch carrying out an action arguably outside his constitutional authority or in clear breach of such authority cannot be legally challenged for such transgression. The government of Nepal has even sought to undermine the independent National Human Rights Commission by proposing the establishment of a parallel human rights unit directly under the supervision of the Prime Minister who is answerable only to the King.

The adoption of the TADA has effectively legitimized the widespread practice of arbitrary detention, in contravention of Articles 9 and 14 of the ICCPR. Persons detained under TADA are particularly vulnerable

to torture. Such persons are often not informed of the reason for the arrest, are not promptly taken before a court, and are held for prolonged periods without charge, whether for preventive or investigative purposes. As no state of emergency now exists in the country, TADA on its face contravenes Nepal's international legal obligations. Officials of the army, armed police forces and police engage in serious human rights violations including torture, unlawful killings and war crimes with impunity.

According to the US-based Human Rights Watch, officers at army barracks have been refusing to accept *habeas corpus* notices issued by the Nepal Supreme Court, on behalf of detainees (Human Rights Watch 2004). By failing to make torture a specific crime in its legislation, Nepal is in dereliction of a core obligation under the Convention Against Torture. Judges do not consider inquiring into a detainee's treatment or questioning how "confessions" are obtained, as component responsibility. An unknown but substantial number of persons are presently held incommunicado in unacknowledged military detention without trial. Many of them are subject to interrogation under torture. These detentions are unlawful because the military has no authority to hold persons.

Alongside with these widespread human rights violations in the civil and political spheres are the unabated violations in the economic, social and cultural lives of the *dalits*. Tens of thousands of *dalits* in Nepal suffer de facto discrimination (HRTMCC Nepal 2004). Even if there are existing legislations which prohibit all practices of caste-based segregation, these discriminatory acts exist in various forms: religious, social, cultural, occupational, educational and residential. *Dalits* in Nepal consider themselves Hindu but they are not allowed to freely worship in Hindu temples. They are not allowed to sit, work or eat together with the "higher" caste people. Religious ceremonies, events and festivals with higher caste groups are off limits to them. *Dalit* students are segregated in seat arrangements and in access to water taps.

Such "vulnerabilities" feed the on-going Maoist "threat" to the Nepalese state. A cycle of retaliations victimizes mostly the civilians as shown in an incident documented by a Nepalese human rights organization, the Informal Sector Service Center (INSEC). It condemned in May 2003 the attack of the Maoists in the SOS Children Home in Birendranagar of Surkhet District where the Maoists woke the children up and destroyed their beddings (Forum Asia 2003b). In this case, civilians have become victims and casualties of conflict between the

government and a non-state actor who both use arms and coercive force.

The Nepalese government certainly needs to shift its focus to human security to alleviate the suffering of its people and to resolve the root causes of the internal armed conflict. Human rights organizations should take note of INSEC documentation of the human rights abuses of the Maoists and government institutions and forces. Many, if not most, human rights organizations monitor mainly, if not solely, the compliance of their own government's obligations to the various treaties. There is need to review this limited mandate especially in the face of armed non-government elements and corporations who operate as quasi-state entities with access to coercive force (UNCHS 2003, 24).

A human security approach is proposed with the following five essential policies:

1. Placing human security on the security agenda
2. Strengthening humanitarian action
3. Respecting human rights and humanitarian law
4. Disarming people and fighting crime
5. Preventing conflict and respecting citizenship

From a human rights perspective, the human security agenda must ensure the overall shift from a state-centric to a people-centered security. It also requires a gender-sensitive focus on the vulnerable groups. With very few mechanisms that can be invoked to protect people in violent conflict, it is necessary to build and strengthen peoples' capabilities for conflict prevention and peace-building. There is however no one rights-based approach. Nonetheless, these approaches are similar in that they challenge many of the assumptions and established ways of thinking and working in institutions and organizations. Each also addresses power relations at all levels of society (see Theis 2004). A human rights approach ensures the acceptance and implementation of the principles of:

1. equity and non-discrimination – concentrating on the worst rights violations and paying particular attention to the most marginalized people;
2. accountability – strengthening the accountability of duty bearers for human rights at all levels. This should be achieved through a combination of direct action,

     changes in laws, policies and resource allocations, changes in institutional rules and practices and changing attitudes and behaviors;

   3. participation – supporting rights holders (e.g., children, adults and civil society institutions) to demand their rights.

In conflict situations, a rights-based approach to humanitarian actions enhances peoples' participation and empowers them to choose and organize the assistance they need. It minimizes the possibilities of humanitarian actions being used for political ends. It stresses the right to life, health, food, shelter and education. It also underscores non-discrimination policies—equality and equity, as well as the rights of vulnerable groups, such as women, children, the elderly, the disabled and refugees.

The "near total impunity" situation in Nepal cannot be taken apart from a regional situation wherein redress is not just difficult, but seems to be nowhere in sight. Victims of human rights violations and civilian casualties are bereft of a mechanism that would provide them justice. For one, Asia is the only region which does not have a regional human rights mechanism compared to that of the Americas, Africa, and the European Union. The Association of South East Asian Nations (ASEAN) has put on hold the efforts to set up an ASEAN Human Rights Mechanism. Up to the Bali Meeting of the Heads of State in October 2003, there was barely a possibility of establishing this. However, none of the earlier suggested processes made in the Third Workshop for a Regional Mechanism on Human Rights in Bangkok, May 28-29, 2003, has been realized. The anemic responses of the ASEAN Foreign Ministers to the attack against Daw Aung San Suu Kyi, staged-managed by Burma's military junta and her being held incommunicado, and the subsequent acceptance of the junta's delaying actions towards democratization eroded any statement on the promotion of fundamental freedoms in the region.

Another problem is the negative influence in Asia of the US-led campaign against global terrorism through the BIAs. These agreements, of which Nepal is a signatory, were used to debilitate the prestige of the ICC and to limit the scope of seeking justice by human rights victims through the exemption sought by the United States for their nationals (Human Rights Watch 2003). The significance of this agreements and the non-signing of the United States of the Rome Statute are all the

more pronounced in the exposure and admission of torture, inhumane and ill-treatment of Iraqi prisoners in Abu Ghraib prison in Baghdad and other human rights violations in other places. It is interesting to note that most of the countries which yielded to US carrot and stick tactics were from Asia (AMICC 2004). National, regional and international human rights mechanisms should be set up to monitor state obligations and ensure redress and reparation of the victims of human rights violations (UNCHS 2003, 29).

The "near total impunity" in Nepal could well have been covered by the "blank check to nations who are inclined to violate human rights" through the example set by the United States in its violations of the Geneva Convention in Guantanamo Bay and Abu Ghraib prisons (Gross 2003). Earlier, Rais Yatim, Malaysia's de facto "law minister" explicitly relied on the detentions at Guantanamo to justify Malaysia's detention of more than 70 suspected Islamic militants for over two years. Rais stated that Malaysia's detentions were "just like the process in Guantanamo," adding, "I put the equation with Guantanamo just to make it graphic to you that this is not simply a Malaysian style of doing things" (Yoong 2003).

> What is now being described as the "war on terrorism" dominates national and international security debates. In addition to military actions, it has increased attention to other tools to fight terrorism, such as tracking (and blocking) flows of funds, information and people…Yet these actions focus on coercive, short-term strategies aimed at stopping attacks by cutting off financial, political or military support and apprehending possible perpetrators. Equally, state-sponsored terrorism is not being addressed, while legitimate groups are being labeled as terrorist organizations to quash opposition to authoritarian government policies. And fighting terrorism is taking precedence over protecting human rights and promoting the rule of law and democratic governance. (UNCHS 2003, 23)

While human security examines human rights in relation to states and non-state actors, it must also look for ways to equally enforce the rule of law. It is imperative that "human security should be mainstreamed in the agendas of international, regional and national security organizations" (UNCHS 2003, 23).

Upholding fundamental human rights and humanitarian law in conflict situations is another gap to be closed by strengthening human rights organizations at all levels and by reconciling divided communities. The ICC should prosecute perpetrators of serious human rights

violations. And countries should set up tribunals and truth and reconciliation commissions. These institutional and rights-based efforts should be complemented by community-based strategies to promote coexistence and trust among people.

FACTORS CONTRIBUTING TO INTERNAL CONFLICTS

The flow of people

Migration of persons and peoples due to internal conflicts, as well as the impact of globalization, challenges the "foundational assumption of international human rights law, namely, that the primary, and often exclusive, responsibility for protecting and implementing 'universal' human rights lies with the state under which one is a national" (Donnelly 2002, 226). Crossing national boundaries subjects a citizen to delimitation of one's rights (economic and social) and political participation.

International human rights law leaves very much to the states the discretion to grant citizenship and benefits to foreigners. These include situations where demands of the labor market abroad vis-à-vis the growing unemployment and insufficiency of wages at home lead to the swelling of "illegal" migrants and temporary workers without rights of residence in other countries. This is prevalent because many countries like to have more workers, but not more citizens.

More complex situations could be seen in the experiences of the internally displaced persons due to internal conflict. Examples are the Acehnese seeking refuge in Malaysia, Rohingya people of Burma now residing in Bangladesh (Forum Asia 2003a), and the Burmese scattered in the borders of Thailand and India (Forum Asia 2003b). There is a need to look for an institution that would surmount state territorial limitations to ensure the upholding of all human rights for everyone, everywhere. In this case, globalization may encourage practices that foster "multiple political identities" (Donnelly 2002, 231).

Until we have established and developed institutional mechanisms to implement and protect internationally-recognized human rights, people will continuously struggle to ensure that states will have a rights-based approach to governance. An active state is even more essential for the implementation of economic and social rights. It is the right direction to obtain human security.

Market flows

There is an increased mobility of corporations escaping from the costs imposed by welfare state guarantees of economic and social goals. This, on one hand, affects the employment position of the corporation's country of origin, while providing people of the country of destination opportunities to better their economic and social conditions. But without a state or corresponding institutions that would uphold human rights, human security cannot be guaranteed. This is demonstrated by firms violating health and safety regulations and relocating dangerous production that at least partly cancels any income and investment benefits they bring. The impoverishment brought by these situations further widens the gap between the rich and the poor, contributing to the making of a violent internal conflict.

Another aspect is the movement of state responsibility to regional and international institutions or organizations. The countries in the Asian region are being asked to maintain their commitment to the agenda of liberalized trade and financial flows "regardless of actions being taken by other countries in the Economic, Social Commission in the Asia-Pacific or ESCAP region" (UNESCAP 2003). Within the context of increasing "correlatedness" of the countries' market economies, it is correct to state that "it would be futile to seek to shield individual markets from instability occurring in the bigger, more international markets" (UNESCAP 2003). Consequently, the protection of human rights is also no longer the sole concern of the state at the national level since it has also become a concern at the regional level. It emphasizes the need for victims of human rights violations to have access to needed-to-be-established regional venues to obtain redress, reparation and rehabilitation.

Flow of values and norms

According to Amartya Sen, "If the grabbing of Asian values by the champions of authoritarianism has to be effectively and fairly questioned, what is needed is not the claim—often implicit—of the superiority of what are taken as Western values, but a broader historical study of Sanskrit, Pali, Chinese, Arabic and other Asian literature" (Ravindran 1998, 46). This was meant as a rebuttal to authoritarian upholding of "Asian values" to justify the curtailment of some human rights of their constituencies and the building of a "culture of impunity" (TFDP 2003). We have seen at the first parts of this paper the negative influence of the United States' modeling on human rights norms and

values. A backlash can stir up, if not exacerbate, an already existing violent internal conflict.

Besides countering a homogenized Western "consumer culture" that has a negative impact on human rights, there is a need to incorporate in both formal and informal education curricula human rights concepts and principles. Schools and their teachers, whether in developed or developing countries, should teach mutual respect and solidarity. While recognizing that the same can perpetuate prejudice, they have the opportunities and choices to teach identity and ideals forming strong value systems, particularly tolerance and compassion. There is need to underscore again the "universalizing (indeed some would say a globalizing) mission" of human rights (UNESC, SCPPHR 1999). To point out that the universalizing mission is "evident in the assertion that the regime of rights and freedoms established through the Universal Declaration of Human Rights—and the numerous other instruments that have since been promulgated in the same spirit—extend beyond the arena of purely national concern" (UNESC, SCPPHR 1999).

HUMAN SECURITY DOES NOT ENSURE HUMAN RIGHTS

The state obligations to respect, protect and fulfill human rights affirm the dignity of each person and people, as well as create an environment for the full development of their potentials. Consequently, human rights contribute significantly to the achievement of human security which in turn secures the state. The reverse is not necessarily true—that in securing the state, human security is secured which in turn respects, protects and fulfills human rights. State-centric security, as implemented in some Asian countries, often discriminates the vulnerable sectors in the granting of human security, which is acquired through the disregard for human rights. Many human rights, particularly economic, social and cultural, still have to be justiciable. Human security has to guarantee the mechanisms whereby people, especially the vulnerable, could seek redress, reparation and rehabilitation.

A second look at the UN Commission on Human Security report, *Human Security Now*, gives cause for caution from one coming from a human rights perspective or framework. While one could easily welcome the paradigm shift from a state-centric to a people-centered security, as well as many other aspects that help advance human rights, it must be asked whether the people are recognized and accepted as persons who are endowed with human rights (UNCHS 2003, 24). The

UNCHS report states: "Putting human security on the security agenda would inspire concern for vulnerable groups during conflict and amplify support for protecting all human rights." The same chapter contains a section on "rights-based approaches." However, it must be pointed out that the section narrowly refers to using the approach in relation to humanitarian action in conflict situations. This is correct and is imperative, but should not be limited to such a situation. There is need for consistency and permeation of the rights-based approach in all situations, in war and in peace.

The report presents human security as encompassing human rights, education, health, development and national security. It even states that human security complements human rights. Does this mean that human rights are the basis for education, health, development and even for national security? If this is so, then it can be expected that the authors explicitly mention that the education, health and development components are human rights.

Chapter 6 of the report states, "Better health for human security." This shows that a compromise has been made because the approach to this section is not the human rights framework nor does it use the rights-based approach. The nearest reference is "good health is instrumental to human dignity and human security" (UNCHS 2003, 96). The global health situation has been presented wherein health has become a national security problem, but it has not been dealt with from a human rights perspective. The obligations of the state in relation to health as elaborated more concretely in the UN CESCR General Comment No. 14 have not been made as a reference point. This means taking into consideration the key elements of the right to health and its underlying determinants. Food, for example, is an underlying determinant of the right to health. Among others, this shows the interrelatedness of rights. The increase of malnutrition, as in the case of the Philippines, raises proportionately the vulnerability of people to accept violence as the only remedy to their situation (Florencio 2004). Nowhere in this chapter is the right to health mentioned at all. State accountability and obligation to make the right to health more justiciable are glaring gaps that need to be addressed. National, regional and international venues for redress, reparation and compensation must be established and made accessible to victims. Nonetheless, the section makes it very clear how health becomes a security concern of the state, especially in trans-border diseases, such as HIV/AIDS or, more recently, severe acute respiratory syndrome

(SARS). Furthermore, it has linked diseases with poverty and conflict. The resolution of the health issues is left to the state with the high possibility of being subjected to intensive lobbying of politicians not infrequently on behalf of multinational pharmaceutical companies.

Take the example of HIV/AIDS in Africa. Medicine of the generic type has been found effective. The pharmaceutical companies coming from the developed countries have initially refused to have the medicine produced. While unspoken, it is known that the financial considerations were paramount and at stake. Eventually, due to strong counterlobby of the concerned Africans and their allies, the medicine has been allowed to be manufactured. A similar incident in the Philippines was the production of a much less-expensive medicine for hypertension (Robles 2004). A Sweden-based multinational pharmaceutical company, AstraZeneca, demanded that the local company, L.R. Imperial Inc., a division of Unilab, halt the production of the said drug. Those who are already poor could have been condemned to unabated deterioration of their health, because the medicine would have been economically inaccessible had the court not lifted the temporary restraining order (TRO).

Sadly, such attitude has precedents. This was during the 1980s and 1990s, when tuberculosis ravaging the peoples of Africa, not a single international pharmaceutical company produced antituberculosis drugs (New Internationalist 2001). The pharmaceutical companies concentrated instead on research and eventually production of items whereby the rate of return was rather high, like Viagra (New Internationalist 2001).

"Health for All," promulgated at the Primary Health Care Conference at Alma-Ata in 1978 has not been realized. It was then a logical move out of enthusiasm following the earlier entry into force of the two international covenants (the ICCPR and the ICESCR) in 1976. One reason given for this failure was "weak political will" (UNCHS 2003, 107). This scenario transcended the national and international levels. An in-depth study and research into this period could draw attention to the factors contributing to "weak political will." It must be recalled that the intervening two decades saw the formulations of both the Limburg Principles and the Maastricht Guidelines in relation to state obligations. Within that period, "public systems have not been adequately developed, and private markets in health care have catered only to those with the money to pay for care" (UNCHS 2003, 107). The neglect has multiplied vulnerabilities that turned some into threats to national and multi-nation security.

The inclusion of health services in the Trade Related Intellectual Property Rights (TRIPs) in the agenda of the World Trade Organization (WTO) seems to be setting, albeit in a more intensive manner, the same situation that created the past vulnerabilities of peoples, particularly in the Third World. In one UN commission report, the commissioner has applied a human rights approach to the said subject, relating it to the aspect of health and the TRIPs Agreement. Among others, he said: "The starting point for a consideration of the operational aspects of IP systems with regard to access to drugs is that access to essential drugs is a human right." This is an implicit reference to one of the key elements of the right to health—accessibility—which is included in state obligations. States are to protect the right of poor people to access needed drugs. These public goods, which have prices charged by patent owners, can seldom be afforded by poor peoples. Other than diseases, the impunity with which developed countries extract the natural resources and indigenous knowledge related to health and healing from the developing countries with the use of capital, science, technology and coercive force negatively impact on the outlooks and actions of peoples in the latter.

Revitalizing and re-ensuring "health for all" will require the empowerment of people. Initial successes and further empowerment could mold the political commitment of those in political institutions for the progressive realization of people's right to health. Eventually, this could include enabling people to direct sustained investments and infrastructure to universal prevention and care. It would be further instructive if the same rights-based approach is done to other components of human security, particularly education and development. Internal vulnerabilities will likely dominate the security environment (Liotta 2002, 473). Dialogue, transparency and cooperation from all sectors of civil society and all levels of governance must be encouraged and built to deter any disregard or cooptation of human security by national security. Human rights must be an integral component of any strategic response to emerging problems and challenges.

While the discourse on human rights and human security is still on-going and new problems have to be resolved, the broadening of views should be welcomed. Filipino statesman Jose W. Diokno once wrote, "Human rights are more than legal concepts: they are the essence of [every person]. They are what make [each one of us] human. That is why they are called human rights: deny them and you deny [a person's] humanity" (Diokno 1987, 1-6). A human rights approach ensures that

the characteristics of rights are applied with equity and without discrimination for everyone everywhere. Modifying the proposition made at the beginning of this article, instead of "respecting human rights is at the core of human security," it should read "human rights must permeate human security." ✾

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