

# Human Rights and Rights of Peoples

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## I. Introduction

This paper pencils in a sketch and does not endeavour to draw a comprehensive picture. It draws attention to the evolution of concepts of rights of men and women and of rights of peoples as they evolved during the life time of the United Nations. The membership of the Organization progressively increased over the years and created new contexts and new impulses but did not change the essential notion of human dignity and the ensuing human values. The universality, the indivisibility and the interdependence of all human rights is the leading theme that runs through the wide spectrum of United Nations' efforts to promote and to protect human rights and peoples' rights. It is the notion and principle of *inclusion* as opposed to the practice of exclusion which is the basic thrust of this paper and which is to be regarded as a core idea of United Nations' approaches to human rights.

Another principal notion of this paper is that of *responsibility*. In the United Nations Charter all Members have pledged themselves to take joint and separate action in cooperation with the Organization for the achievement of the promotion of universal respect for, and observance of, human rights and fundamental freedoms for all.<sup>1</sup>

As Members of the Organization and on the basis of this Charter commitment, States can be held accountable for their policies and practices regarding the realization of human rights. In addition, as principal subjects of international law, States are bound by the implications of State responsibility which arise in cases where States fail to comply with their obligations pursuant to treaties or general international law. With the recognition of individuals as emerging subjects of international law, perpetrators of serious violations of international humanitarian law and human rights law carry international criminal responsibility. The United Nations is now in the process of establishing mechanisms to enforce international

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1 UN Charter, Articles 56 and 55c.

criminal responsibility of individual persons. This paper underscores this development and, in addition, expresses the wish that all necessary measures be taken, as a requirement of justice, to provide reparation to victims of gross violations of human rights. It is an imperative demand of justice to sustain and enforce the criminal responsibility of persons who gravely offend the laws of humanity and to afford reparation to those who have suffered personal injury.

## II. The Concepts: an Evolutionary Process

### A. The UN Charter

In the history of the United Nations human rights have always been projected as an essential ingredient of a vision for a new world order. In the Preamble of the Charter of the United Nations the 'Peoples of the United Nations' expressed their determination 'to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small'. In the same spirit, the Purposes of the United Nations list the promotion and encouragement of respect for human rights and fundamental freedoms alongside other major goals of the Organization, notably the maintenance of international peace and security, the development of friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, as well as the attainment of international cooperation in solving international problems of an economic, social, cultural, or humanitarian character.<sup>2</sup>

The framers of the UN Charter, in their efforts to devise a blueprint for a new world order, were keenly aware that the maintenance of international peace and security, the creation of conditions for economic and social progress and development, and the promotion and encouragement of respect for human rights are closely inter-linked and are equally important objectives. No true and genuine peace can be achieved without respect for human rights; economic progress and development which is not directed at respect for human rights in the sense of political freedom and social justice does not constitute true and genuine development. The same perspective transpired in the 'Four Freedoms' message of 6 January 1941 in which President Roosevelt conveyed to the US Congress, and to the world at large, his vision for a global order based on justice and peace. He outlined freedom of speech, freedom of belief, freedom from want and freedom from fear as a 'definite basis for a kind of a world attainable in our time and generation'.<sup>3</sup> In his vision, Roosevelt combined individual rights with collective freedoms and he situated human rights in the context of economic and social security and as a

2 UN Charter, Article 1

3 Eide, 'The Four Freedoms and Human Rights in the New International Order', in A. Eide, J. Helgesen (eds), *The Future of Human Rights Protection in a Changing World: Essays in Honour of Torkel Opsahl* (1991) 1-8.

political safeguard against aggressive policies and practices. The same vision and the same philosophy found an echo in the preambles of the Universal Declaration of Human Rights and of the International Covenants on Human Rights.

## **B. The International Bill of Human Rights**

The Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, adopted respectively in 1948 and 1966 by the UN General Assembly and forming together the International Bill of Human Rights, are meant to serve as the comprehensive normative framework for human dignity in the world at large and in national societies. Supervisory mechanisms promote compliance by States of the standards enunciated by these instruments, on the basis of the premise that States can be held accountable for the manner in which they implement these instruments.

## **C. Review and Appraisal Operations**

There is an obvious need to assess periodically progress made, difficulties encountered and to orient, and possibly, re-orient the United Nations human rights programme. Two major review and appraisal operations have taken place, involving the whole membership of the United Nations, with the aim of taking stock and setting out guidelines for the future. The first such operation was held in 1968 in Teheran, some 20 years after the adoption of the Universal Declaration of Human Rights, at a time when the character and composition of the membership had drastically changed as a result of the new independence of a large number of African, Asian and Caribbean States. This first International Conference on Human Rights at Teheran was followed 25 years later by the World Conference on Human Rights, held in Vienna in 1993 after the years of the Cold War had come to an end and new approaches and strategies commended themselves. Both international conferences offered human rights perspectives which deserve some further attention.

## **D. Proclamation of Teheran**

At Teheran, in 1968, Western nations which had initially a predominant influence on the framing of the International Bill of Human Rights, began to realize that the initiative had shifted from the classical 'individual rights' focus to a more structural and political approach which was favoured and pursued by the new majority in the United Nations. The main product of the conference, the 'Proclamation of

Teheran',<sup>4</sup> differed markedly from its forebears – the texts constituting the International Bill of Human Rights. The Proclamation of Teheran was innovative in relating human rights to global concerns which reflected in particular the realities of the developing countries and their postulates for change. Thus, the prevailing perspective of the Proclamation of Teheran related to racism and racial discrimination, apartheid, denial of the right of self-determination, armed conflicts, the gap between the rich and the poor, problems of illiteracy, patterns of the inferior status of women and the gross and massive violations of human rights which result from such practices and conditions.

Much to the confusion and frustration of those who were used to viewing human rights within the neat confines of legal instruments and procedures, human rights were thrown in the whirlpool of the world's massive and urgent problems, affecting the lives and the well-being of millions of people. In retrospect, the perspective set out in the Proclamation of Teheran and followed up in other policy documents added new dimensions to the human rights debate, enabled actors at national and international levels to perceive major world issues in human rights terms, and gave new impetus to the aspirations of many people. At the same time this analysis did little to solve those major issues and to operationalize the link between human rights and major global issues. Analytical strength did not find a response in operational strategies.

### **E. New International Economic Order**

On the basis of the same line of thinking awareness grew in the seventies that, in spite of all the efforts by the UN and related agencies to achieve peace, freedom and justice, and in spite of the progressive development of international human rights law, the prevailing international structures operated to the advantage of the powerful and to the detriment of the weak, resulting in the latter's increasing dependency and impoverishment. This led to the call for a New International Economic Order formulated and proclaimed by the UN in 1974.<sup>5</sup> And a few years later the UN General Assembly stated that

the realization of the new international economic order is an essential element for the effective promotion of human rights and fundamental freedoms and should be accorded priority.<sup>6</sup>

When it became evident that the structural changes which were called for by a new international economic order were not going to materialize, the claims advanced by

4 United Nations, *Human Rights – A Compilation of International Instruments*, Vol. 1 (First Part) (1993) 51-54.

5 Declaration on the Establishment of a New International Economic Order, adopted by G.A. Res. 3201 (S-VI) of 1 May 1974; Charter of Economic Rights and Duties of States, adopted by G.A. Res. 3281 (XXIX) of 12 December 1974.

6 G.A. Res. 32/130 of 16 December 1977.

developing countries became less vocal. Moreover, the new international economic order did not only suffer from the unwillingness on the part of the wealthy countries to work towards a radical change in the economic structures of the world, but also from the inherent deficiency that the call for equity and justice among nations was not accompanied by a parallel call for more equity and justice *within* nations, thus contributing to a new social order and a new human or humanitarian order. In fact, the basic standards for the new social and human order already existed, embodied in the International Bill of Human Rights.

## F. A New World Order?

The vision of a New World Order which was so much in the mind of President Roosevelt was advanced once again by another president of the United States in a State of the Union Address to the US Congress in January 1991, in the middle of the war in the Gulf. President Bush stated that:

What is at stake is more than one small country; it is a big idea: a new world order – where diverse nations are drawn together in common cause, to achieve the universal aspirations of mankind: peace, security, freedom, and the rule of law. Such is a world worthy of our struggle and worthy of our children's future.<sup>7</sup>

These high-sounding words reflected the mood of the time and marked the period immediately following the end of the Cold War. In the same euphoric spirit, the Heads of State or Government of the States participating in the Conference on Security and Cooperation in Europe declared in November 1990 in the 'historic' Charter of Paris that 'the era of confrontation and division in Europe has ended'. They stated:

Ours is a time for fulfilling the hopes and expectations our peoples have cherished for decades: steadfast commitment to democracy based on human rights and fundamental freedoms; prosperity through economic liberty and social justice; and equal security for all our countries.<sup>8</sup>

It was this euphoric spirit which heralded the values of peace, human rights, pluralistic democracy, the rule of law, good governance and popular participation as essential ingredients of a new world order. Against this background the initiative was taken to convene 'at a high level' a World Conference in 1993.<sup>9</sup> It was expected that such a World Conference would strengthen United Nations capacity to enforce human rights and create means and methods of preventing violations of human rights.

7 See Eide, *supra* note 3, at 1.

8 Conference on Security and Cooperation in Europe, Charter of Paris for a New Europe (21 November 1990), text reproduced in 11 *HRLJ* (1990) 379-389.

9 G.A. Res. 45/155 of 18 December 1990.

However, this optimism soon dissipated as a result of the dramas that occurred in various places of the world, most notably in the former Yugoslavia. Deep-rooted antagonisms, dividing people along national, ethnic and religious lines, found expression in the most brutal and inhuman actions. Radical sentiments of nationalism and ethno-centrism reemerged. Efforts by the international community to control and counteract these developments and to stop man's inhumanity to man proved to be largely fruitless, and United Nations monitoring procedures were simply inadequate as a means of coping with massive violations of international humanitarian law.

### G. The Vienna World Conference

In this changed political climate scepticism was the order of the day and the level of expectations of a positive outcome emerging from this second major human rights gathering was quite low. The idea that the world organization could become an effective instrument for creating and upholding a new world order no longer captured the imagination of the main actors. It is no surprise that under these circumstances the Vienna World Conference did not produce major break-throughs and open up new perspectives, but it did have the merit of reaffirming and consolidating already existing achievements and of giving new impulses in favour of the rights of vulnerable groups. The Vienna Document highlights the rights of indigenous people,<sup>10</sup> migrant workers, children, disabled persons, asylum seekers and displaced persons, and the document is particularly forceful as regards human rights of women. As was correctly stated by an informed observer:

... women's human rights was perhaps the only area in which the World Conference can be said to have met the challenge of defining a forward-looking agenda twenty-five years after the last world conference on human rights.<sup>11</sup>

A well organized strategy by women's rights activists managed to bring women's human rights into the 'mainstream' of UN human rights activities. Vienna was particularly promising from the perspective of women's human rights.

10 Much to the dissatisfaction of indigenous organizations and groups the Vienna document uses the wording 'indigenous *people*' instead of the term 'indigenous *peoples*' (Declaration, para. 20; Programme of Action, paras. 28-32).

11 Sullivan, 'Women's Human Rights and the 1993 World Conference on Human Rights', 88 *AJIL* (1994) 152-167, at 152.

### III. The Rights; an Integrated Process

#### A. From Exclusion to Inclusion

Although the United Nations Charter does not spell out what rights are included in the concept of human rights and fundamental freedoms – it was generally understood at San Francisco that the content of human rights should be defined in the International Bill of Human Rights – the Charter is very explicit that these rights and freedoms are to be enjoyed by ‘all without distinction as to race, sex, language, or religion’. In other words, the Charter aims at bringing all human beings, irrespective of their origin or status, within the purview and range of human rights promotion. The Charter concept of human rights, further elaborated in other human rights instruments, is one of inclusion as opposed to the age-old practices of excluding human beings and even reducing them to the status of non-persons.

The history of human rights has always been characterized by the rights of the privileged, the haves, the literate, the well-to-do. Access to resources, to (higher) education, to health services, to suffrage, to public office was secured for them, in particular in so far as the beneficiaries were males. This was the status of human rights within the domestic order of many countries. In spite of a process of democratization and socialization the prevailing pattern of human rights is still marked by this historical process.<sup>12</sup>

At world level the same dual pattern of exclusion and privileged status was predominant. The rights relating to political participation, economic and social security, and cultural development were largely enjoyed by white males. Other persons: women, Afro-Asians, indigenous peoples, fell mainly outside the attributes and the benefits of the ‘inherent dignity and of the equal and inalienable rights of the members of the human family’.<sup>13</sup> This pattern corresponded to an international constellation when the community of nations was European-centred and civilization was equated with western values, the western way of life and technology.<sup>14</sup> The emergence of the perception that human rights are all-inclusive, covering all members of the human family ‘without distinction as to race, sex, language, or religion’ had its parallel in the ascent of a world community composed of nations large and small and based on the Charter principle of equal rights and self-determination of peoples.

12 Van Boven, ‘The Déclaration des Droits de l’Homme et du Citoyen of 1789 and its Influence on the Constitutions’, in E.H. Hondius, G.J.W. Steenhoff (eds), *Netherlands Reports to the Thirteenth International Congress of Comparative Law* (1990) 363-373.

13 Universal Declaration of Human Rights, preamble para. 1.

14 B.V.A. Röling, *International Law in an Expanded World* (1960). Chapters III, IV, V.

## B. Practices of Exclusion Persist

While the inclusive nature of human rights became firmly anchored in United Nations instruments and was also re-affirmed in the Vienna Declaration adopted by the World Conference on Human Rights in June 1993, actual practices of exclusion continued to persist in many societies. For a long time the racist policy and practice of *apartheid* was the prototype of an exclusivist society based on white domination and a misguided doctrine of racial superiority. The *apartheid* policy and practice was so fundamentally in opposition to basic human rights values that it prompted the United Nations to utilize a vast arsenal of techniques, ranging from sanctions to declaring *apartheid* a crime against humanity, so as to combat this phenomenon and to help South Africa to overcome this evil and move towards a democratic society. Moreover, exclusivist policies and practices re-emerged in an alarming and brutal fashion, amounting in intensity and in size to genocide, gross and massive violations of international humanitarian law and to what became known as the practice of 'ethnic cleansing'. In response, the Security Council created International Criminal Tribunals for the former Yugoslavia and for Rwanda and thus insisted on the legal enforcement of international humanitarian law and bringing to trial the perpetrators of inhuman acts and practices.<sup>15</sup>

In the same vein, religious intolerance fosters exclusion and violence, in particular against persons who do not conform to the precepts of religious leaders, and causes fear, indoctrination and much suffering. This current trend obviously defeats the basic purposes of the UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief and violates the inclusive nature and the very concept of human rights. The United Nations and its membership have great difficulties in coming to grips with this delicate issue which increasingly poses a serious threat to the defence of human rights and even constitutes 'a real threat to the security of nations'.<sup>16</sup>

## C. Universality, Indivisibility and Interdependence

The inclusive nature of human rights not only implies that, as a matter of principle, all human beings without discrimination are entitled to the enjoyment of human rights and fundamental freedoms; the concept of inclusion also extends to the scope of the rights involved. The Universal Declaration of Human Rights, proclaimed as a common standard of achievement for all peoples and all nations, brought within its scope civil, political, economic, social and cultural rights and stated that everyone is entitled to a social and humanitarian order in which the rights and freedoms set forth

15 The International Criminal Tribunals for the Former Yugoslavia and for Rwanda were established respectively by SC Res. 827 (1993) of 25 May 1993 and 955 (1994) of 8 November 1994.

16 See Resolution AFRM/4 adopted by the Regional Meeting for Africa of the World Conference on Human Rights, Tunis, 2-6 November 1992 (UN Doc. A/CONF.157/PC/57).

in the Declaration can be fully realized.<sup>17</sup> When the International Covenants on Human Rights were drawn up, the view prevailed that civil and political rights on the one hand and economic, social and cultural rights were to be included in two separate but parallel instruments. Nevertheless, in order to stress the interrelationship between the two categories of human rights, the preambles of both covenants recognized in similar terms that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone can enjoy their economic, social and cultural rights, as well as their civil and political rights. In 1968 the International Conference on Human Rights explicitly reaffirmed in the Proclamation of Teheran the same interrelationship by highlighting the indivisibility of human rights and fundamental freedoms and by stating that the full realization of civil and political rights without the enjoyment of economic, social and cultural rights is impossible.<sup>18</sup>

The World Conference on Human Rights, held in 1993, once again stressed in the Vienna Declaration the same theme:

all human rights are universal, indivisible and interdependent and interrelated.

In a similar spirit the World Conference reaffirmed the right to development,

as a universal and inalienable right and an integral part of fundamental human rights.<sup>19</sup>

In this context the World Conference stated interestingly that

while development facilitates the enjoyment of all human rights, the lack of development may not be invoked to justify the abridgement of internationally recognized human rights.<sup>20</sup>

This statement is essentially correct but it conveys a dual notion of human rights. With 'all human rights' the whole range of human rights is obviously included but it appears from the context of the statement that the term 'internationally recognized human rights' basically relates to civil and political rights only.

In terms of policy and practice the concept and principle of indivisibility is based more on theory than on reality. While violations of civil and political rights figure prominently on the agendas of many human rights bodies, economic, social and cultural rights suffer from a lack of political interest, a lack of expertise, a lack of resources and a lack of commitment. A major country like the United States of America has still not ratified the International Covenant on Economic, Social and Cultural Rights, and human rights documents adopted in the framework of the Organization on Security and Cooperation in Europe go into great detail in spelling out civil and political rights, but are virtually silent on economic, social and cultural

17 Universal Declaration of Human Rights, Article 28.

18 Proclamation of Teheran, Article 13.

19 Vienna Declaration, paras. 5 and 10.

20 Ibidem, para. 10.

rights. Political freedom and democracy are in human rights discourse and practice more highly rated than social justice and social democracy. But social history teaches us that political democracy without a safety net for the vulnerable and the weak curtails and impairs the principle of social justice and does not meet the standards and the scope of the International Bill of Human Rights.<sup>21</sup>

#### **D. Groups and Peoples; Self-determination**

Most human rights instruments, notably the Universal Declaration and the International Covenants, take the individual as the principal beneficiary of rights. Only the last three articles of the Universal Declaration relate the individual person to a social and international order, refer to everyone's duties to the community and define admissible limitations to individual rights and freedoms. Proposals to include clauses on the right of peoples to self-determination and on the rights of minorities did not commend themselves to the drafters of the Declaration. At the time, experiences stemming from World War II were still fresh in the mind, in particular brutal practices of totalitarianism, patterns of strict obedience, and autocratic duties imposed by fascist rulers. These recollections made the drafters of the Universal Declaration reluctant to give any prominence to collective rights, including peoples' rights, as well as to the notion of duties. Only later, when the International Covenants were being drawn up, did strong pressure from non-Western countries result in the adoption of a text on the right of all peoples to self-determination, which now figures as Article 1 in both International Covenants.

It is noteworthy that the right of peoples to self-determination has political implications as an entitlement to the free determination of political status, but it also has other dimensions insofar as it encompasses the right to freely pursue economic, social and cultural development, as well the right of all peoples to freely dispose, for their own ends, of their natural wealth and resources. Most importantly, the same Article of the International Covenants states in categorical terms: 'In no case may a people be deprived of its own means of subsistence.'<sup>22</sup> In other words, the very existence and subsistence of peoples, to be understood in political, economic and cultural terms, is an integral aspect of the right to self-determination.

The right of peoples to self-determination was recently reaffirmed in the Vienna Declaration adopted by the World Conference on Human Rights where it still carries the flavour of the days of colonialism and the thrust of the 1960 Declaration of the Granting of Independence to Colonial Countries and Peoples.<sup>23</sup> In this respect three observations should be made. First, self-determination is not only a matter of free determination of political status but also of free pursuit of economic, social and

21 See also I. Martin, *The New World Order: Opportunity or Threat for Human Rights*; A lecture by the Edward A. Smith Visiting Fellow presented by the Harvard Law School Human Rights Program (1993).

22 Article 1, para. 2 (last sentence) of both International Covenants.

23 Vienna Declaration, para. 2.

cultural development. Second, in political terms the right to self-determination carries, in addition to international aspects, domestic implications as reflected in Article 21(3) of the Universal Declaration of Human Rights: 'the will of the people shall be the basis of the authority of government.' Third, the promotion and protection of peoples' rights has to be pursued primarily within existing State structures. As the UN Secretary-General quite rightly stated:

... if every ethnic, religious or linguistic group claimed statehood, there would be no limit to fragmentation, and peace, security and economic well-being for all would become even more difficult to achieve.<sup>24</sup>

When we focus on the internal dimensions of the right to self-determination, this view is based on the principles of representative government and of commitment to human rights with a special sensitivity to the rights of peoples, groups and minorities. The legitimacy of government stands or falls by its respect for these principles.

The notion of peoples' rights is controversial and contentious in the minds of politicians and diplomats who defend the interests of governments and States. Likewise, many legal experts do not feel at ease with this notion. They question the legal nature of peoples' rights. A prominent lawyer who throughout his life made thoughtful and significant contributions to the theory and practice of human rights, commented on the notion of the rights of people in the following terms:

... abstract concepts have in the past only too often presented great dangers to the enjoyment by individuals of their human rights and fundamental freedoms. Some of the worst violations of those rights have been perpetrated in the service of some inspiring abstractions, such as 'the one true faith', 'the nation', 'the state' (including, as a recent example, 'das Reich'), 'the economy' (including 'a strong dollar or pound'), and indeed 'the masses'. A 'people' is no less an abstraction than any of these: it cannot in reality consist of anything more than the individuals who compose it. If any of the individual rights and freedoms protected by modern international human rights law ever came to be regarded as subservient to the rights of a 'people' – there would be a very real risk that legitimacy might be claimed on such a ground for grave violations of the human rights of individuals.<sup>25</sup>

No doubt, such warnings and criticisms have to be taken seriously. It is true that in the name of doctrinal conceptions, including the pretended or presumed rights and interests of collectivities, the rights of individual persons who refuse to conform to collective patterns of behaviour are being sacrificed. Quite correctly UNESCO has not only given a great deal of attention to the rights of peoples but has also explicitly recognized *the right to be different*.<sup>26</sup> Indeed, human rights should never

24 *An Agenda for Peace*; Preventive diplomacy, peace-making and peace-keeping, Report of UN Secretary-General, dated 17 June 1992 (UN Doc. A/47/277-S/24111), para. 17.

25 P. Sieghart, *The International Law of Human Rights* (1983), at 368.

26 Declaration on Race and Racial Prejudice, adopted and proclaimed by the General Conference of UNESCO, on 27 November 1978 (Article 1, para. 2).

be subordinated to abstract notions and doctrinal conceptions. Experiences and practices in many parts of the world have dramatically revealed what happens when a misconceived doctrine of national security prevails over human values and human beings are degraded to the status of non-persons. The *apartheid* policy operated in a similar manner. Policies directed against what was considered as the threat of communism, or, conversely, policies that sought at all costs to uphold the socialist system, made a mockery of individual human rights. The unbridled operation of the market economy may have detrimental effects on the social rights and the well-being of the weak and vulnerable sectors of society. But these perversions of justice cannot be equated with unavoidable consequences of the notion of peoples' rights. Careful examination of human rights documents which constitute sources of peoples' rights, notably the International Covenants on Human Rights, the Declaration on the Right to Development, and the African Charter on Human and Peoples' Rights, present a different image of peoples' rights. The notion of peoples' rights itself is not destructive of individual human rights; rather, it places peoples' rights and human rights in a positive and dialectical relationship as mutually supportive and complementary concepts. Both peoples' rights and human rights represent human aspirations and goals and they inherently reflect the quest for justice.

#### **IV. Shaping Responsibility; Actors, Perpetrators and Victims**

##### **A. Duty to Cooperate, Responsibility of States and State Responsibility**

The international system for the promotion and protection of human rights, elaborated by the United Nations, is based on the premise that States as Members of the United Nations and as Parties to international human rights treaties have undertaken to respect, to ensure and to fulfil the norms set out in international instruments. It may be expected that States comply with these obligations in good faith and that they be held responsible in case of failure to comply. In such cases the question of State responsibility arises.<sup>27</sup>

The United Nations have developed over the years a series of mechanisms of a supervisory nature whose task it is to monitor the performance of States as regards their compliance with international human rights standards. It is the duty of States to cooperate constructively with these supervisory mechanisms. Whenever States violate these human rights standards, they can be held accountable and the question of State responsibility arises. A distinction can be made between on the one hand the responsibility of States to comply with international obligations and to cooperate

27 See T. Meron, *Human Rights and Humanitarian Norms as Customary Law* (1989), in particular Chapter III on 'Responsibility of States for Violations of Human Rights and Humanitarian Norms' (at 136 ff); and M.T. Kamminga, *Inter-State Accountability for Violations of Human Rights* (1992).

with international mechanisms and procedures and, on the other hand the issue of State responsibility which arises in international law from an internationally wrongful act of the State. In other words, the duty to cooperate and to comply flows from the State's position as a responsible member of the international community and from its membership of the United Nations, but the issue of State responsibility is related to particular cases where the State violates international law and thus can be held accountable.

The regular supervisory procedures provided for in a good number of human right treaties, are basically aimed at assisting States in their compliance with international standards they have undertaken.<sup>28</sup> Treaty bodies carry on a critical dialogue with the States parties to the respective treaties and it is generally assumed that States cooperate in good faith. The World Conference on Human Rights has recommended in its Programme of Action that work on the improvement of the functioning of the treaty bodies, in particular their monitoring tasks, be continued.<sup>29</sup>

The treaty bodies lack, however, the capacity to deal expeditiously with massive and systematic violations of human rights where the issue of State responsibility has to be addressed in a clear fashion. For this purpose the UN General Assembly and the UN Commission on Human Rights have developed a whole series of country and thematic mechanisms that carry out a systematic gathering of information, exercise fact-finding functions and receive allegations about violations of human rights from a variety of relevant sources, notably non-governmental organizations. States are held accountable and they have to respond before the political fora of the United Nations.<sup>30</sup> These procedures, functioning as part of a political process in connection with consistent and gross violations of human rights, are not dependent on the consent of States immediately involved inasmuch as these procedures are Charter based and find their justification in the responsibility of States under general international law.

A different picture presents itself in the case of complaints by persons who claim to be victims of violations of human rights. Although it may often happen that such individual complaints are representative of a large and consistent pattern of gross violations of human rights, they are treated on their individual merits as part of optional communication procedures provided for in human rights treaties.<sup>31</sup> Here, the express acceptance of such a procedure by a State party is required before the State party can be addressed under the procedure. Only when this condition is met as well as the other admissibility requirements, may the treaty body express itself on the question of State responsibility in the particular case. The basis lies here in treaty obligations whereas in situations where a consistent pattern of gross

28 See P. Alston, *The Purposes of Reporting, Manual on Human Rights Reporting*, United Nations (1991) 13-16.

29 Vienna Programme of Action, para. 89.

30 Kamminga, *supra* note 27, at 87-111.

31 T. Zwart, *The Admissibility of Human Rights Petitions* (1994).

violations of human rights exists the basis for establishing State responsibility flows from general international law and notably the relevant UN Charter provisions.<sup>32</sup>

It is evident that reliance on State responsibility for the purpose of redressing human rights violations fails to have any effect if acts or omissions which cause such violations cannot be attributed to a State but to non-State entities. As an Organization composed of States and based on State cooperation, the United Nations obviously faces the problem that non-State entities cannot be taken to task on the basis of State responsibility. While in such instances the principle of State responsibility does not work, persons acting as agents of non-State entities can be held criminally accountable before courts of national and international jurisdiction, if they have perpetrated serious violations of international humanitarian law.

## **B. International Criminal Responsibility**

Not only from the perspective of rendering justice in cases of serious criminal behaviour by agents of non-State actors, but also for the sake of supplementing State responsibility with criminal responsibility of State officials, is it noteworthy that the UN has now made significant steps in the direction of establishing international criminal jurisdiction in order to bring to trial persons responsible for the commission of crimes under international law, notably genocide and other gross violations of human rights. The Nuremberg Judgment affirmed that crimes are committed by men, and not by abstract entities. The recent establishment by the Security Council of the International Criminal Tribunal for the Former Yugoslavia<sup>33</sup> and of the International Tribunal for Rwanda<sup>34</sup> may be considered as a breakthrough with regard to the enforcement of international humanitarian law. The eventual setting up of a permanent international criminal court could constitute a further step in the same direction, but for the time being these developments are more illustrative of a broadly felt wish to affirm principles of international criminal responsibility than a will to translate these concerns into effective tools.

It would be a source of continuing conflict and violence to attach international criminal responsibility to groups, peoples or other collectivities, as if whole groups could be blamed for the serious misconduct of their leaders and other individuals. Therefore, the following statement in the first annual report of the International Criminal Tribunal for the Former Yugoslavia merits due attention:

... If responsibility for the appalling crimes perpetrated in the former Yugoslavia is not attributed to individuals, then whole ethnic and religious groups will be held accountable for these crimes and branded as criminal. In other words, 'collective responsibility' – a primitive and archaic concept – will gain the upper hand; eventually whole groups will be

32 O. Schachter, *International Law in Theory and Practice* (1991), Chapter XV 'International Human Rights', at 341.

33 SC Res. 827 (1993) of 25 May 1993.

34 SC Res. 955 (1994) of 8 November 1994.

held guilty of massacres, torture, rape, ethnic cleansing, the wanton destruction of cities and villages. The history [...] clearly shows that clinging to feelings of 'collective responsibility' easily degenerates into resentment, hatred and frustration and inevitably leads to further violence and new crimes.<sup>35</sup>

In the history of the United Nations there is a notable trend from standard-setting towards implementation and from non-conflictual monitoring towards enquiry into violations of human rights involving State responsibility. State practices and State responsibility are usually the central focus. Recent developments now hint in the direction of focusing not only on States and on State practices but also on individual persons and criminal acts committed by them. These developments are in line with the recognition of individuals as emerging subjects of international law.

### C. Reparations to Victims

The new focus on individuals and their criminal responsibility should also highlight the other side of the coin, namely the victims of serious violations of international humanitarian law and human rights law. In activities of the United Nations as well as in inter-State and intra-State relations the plight of the victims has been largely overlooked. The recognition of the individual as an emerging subject of international law not only implies that the individual as a victim of human rights violations be given the right to make use of international complaints procedures but also that he or she can seek and be granted redress and reparation for damage suffered.

International human rights instruments make numerous references to the right of victims to reparation and human rights bodies, in particular the Human Rights Committee, the Committee on the Elimination of Racial Discrimination and the Committee against Torture, have repeatedly recognized the victim's right to compensation, to protective and support services, to rehabilitation and counselling, and to the assurance that violations do not reoccur.<sup>36</sup> In addition to providing reparation to individuals, adequate provisions should also be made for groups of victims to bring collective claims and to obtain collective reparation. In this connection groups entitled to collective reparation include victims of apartheid; victims of slave trade and of contemporary forms of slavery; indigenous peoples; victims of armed conflict, in particular women forced to engage in prostitution in wartime; victims as a result of violence against women, victims of forced removals and evictions; victims of environmental damage.<sup>37</sup>

It is obvious that gross violations of human rights and fundamental freedoms, particularly when committed on a massive scale, can by their nature and their scope

35 UN Doc. A/49/32-S/1994/1007, para. 16.

36 Study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms; Final Report submitted by Theo van Boven, Special Rapporteur, UN Doc. E/CN.4/Sub.2/1993/8, paras. 50-92.

37 *Ibid.*, paras. 16-25.

hardly be repaired. In such instances any remedy or redress granted stands in no proportional relationship to the grave injury inflicted upon the victims. It is nevertheless an imperative demand of justice that the responsibility of the perpetrators be clearly established and the rights of victims be sustained to the fullest possible extent. The tasks to be performed in this respect are part and parcel of the 'pledge to take joint and separate action in cooperation with the Organization'. The issue of impunity is receiving increased attention in the UN fora<sup>38</sup> and the establishment of international criminal jurisdiction, as now envisaged, is considered to be one of the means to counteract patterns and practices of impunity. In a similar fashion the issue of reparation to victims should be addressed more consistently and more thoroughly both in the United Nations and other international organizations, as well as at the national level. Among the means recommended is the proposal that the United Nations draw up and adopt, during the current Decade of International Law, a set of principles and guidelines that would give further substance and weight to the right to reparation for victims of gross violations of human rights.<sup>39</sup>

## V. Concluding Remarks

Since its establishment fifty years ago the United Nations has gone a long way in efforts to shape principles of justice and international law. Human rights have been a substantial element of those efforts. These efforts cannot be described as a success story but the normative value of the work accomplished is considerable. The United Nations was meant to be a centre for harmonizing the actions of nations but the Organization also served as a platform and as a catalyst to give content to the rights and aspirations of peoples and individuals. One of the fathers of the United Nations, Franklin D. Roosevelt, who did not live to see the birth of his ideal but who played an essential role in conceiving and laying down the basis of the Organization, regarded his vision outlined in the message of the 'Four Freedoms' as a definite basis for a kind of world attainable in our time and generation. Now, by the end of the century and at the threshold of a new millennium, the survivors in the former Yugoslavia, in Rwanda and in many other places of the world can only testify that the Rooseveltian vision which is echoed in the International Bill of Human Rights, is a far cry from reality. This shocking reality should, however, not disrupt the determination that such human disasters must be prevented with more vigour. Provided that nations, peoples and individuals are prepared to invest the best of their efforts in the Organization and to defend the principles and purposes it is envisaged to uphold, the United Nations can make a difference.

38 See Human Rights Commission Resolution 1993/43 of 5 March 1993, requesting Sub-Commission members Messrs Guissé and Joinet to prepare a study on the impunity of perpetrators of violations of human rights.

39 Note 36, para. 136 containing conclusions and recommendations (nr. 4).