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UNITED NATIONS AND HUMAN RIGHTS

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In June of 1993 the United Nations held its second World Conference on Human Rights. The following are some thoughts regarding the way human rights are examined within the UN.

Let us begin with the obvious: some concepts are readily understood and probably accepted by most UN Members. If one speaks of “instincts” one could probably draw up a list of what is understood by “instinctive behaviour” or “reflex action”. While this is common to all animals, in many mammals instinctive behaviour is overlaid by learned patterns. And here one would begin to discover differences regarding those “learned patterns”. Most of us have some idea as to what we mean by the survival instinct, common to most animals. This leads us to the question of security; in other words, the instinct to survive triggers the search for security.

Almost all animals appear to be concerned about their security, i.e., their survival. But only some, like beavers or human beings, can do something about it. The sources of insecurity are their *habitat* —the terrain, the elements, the availability of food and water, etc.— and other animals. Beavers can build dams in streams or rivers to ensure a safe environment but they cannot save their skins from hunters.

For human beings, nature also poses security threats, as natural disasters constantly and painfully remind us. But the greatest insecurity comes from fellow human beings. Like persons, countries are subjected to constant threats: military, economic and political. The key to security is the respect for the rights of others. In the words of Benito Juárez, “Among individuals, as among nations, respect for the rights of others is peace.” And peace is the ultimate expression of security: to be secure is to live (and to develop) in peace.

Whether international, regional or subregional, security is indissolubly linked to peace. In this sense, the United Nations Charter is somewhat redundant when it speaks of “international peace and security”. Today, its Chapter VII (Action with respect to threats to the peace, breaches of the peace, and acts of aggression) is being interpreted in a much broader sense than its drafters probably intended in 1945.

Whose security is it, anyway? Are we talking about the Nation-State, the government of a Nation-State or the individuals who happen to inhabit the territory of a given State, or all three? In a country where there have been no elections for years, the holding of elections can pose a threat to the permanence, i.e. security, of its government. In countries that have periodic elections, these are a source of security, i.e. stability, etc. Again, “peace and stability,” another redundant phrase.

Today we are told that haphazard economic growth gives rise to insecurity; but it was not so when the Industrial Revolution began. How many governments fell because of that haphazard economic growth? Individuals, yes, many were affected. The health of coal miners is an obvious example. Now we are told that “sustainable growth”, i.e. environment-friendly economic growth, is the right way to do things. The right way for whom? For the inhabitants of a certain region or for the inhabitants of another, rather distant region?

Regional security in Europe, as certified in Paris in November of 1990, is often given as a model for the rest of the world. Cynics would say that the way to achieve security is this: grow industrially for almost two hundred years, pollute your rivers, destroy your environment, export your people en masse to other regions, carve yourself overseas empires and drain those colonies, wage many wars, including a couple of world wars with millions of victims, and then get vast sums of money to rebuild; rule the waves and the airwaves, sell your manufactured products dear and buy commodities cheap, and, yes, stockpile the greatest concentration of weapons —nuclear, conventional and other— the world has ever seen.

Security, as stated in the 1985 United Nations Study Concepts of Security, “is a condition in which States consider that there is no danger of military attack, political pressure or economic coercion, so that they are able to pursue freely their own development and progress” (A/40/533). Countries the world over have been subjected to political pressure, economic coercion and military attack. Those are obvious security concerns. A less obvious concern is to be derived from the changing perception of the role of the Nation-State.

Some countries are today placing greater emphasis on the preservation and enhancement of individual rights. A few have gone as far as to call for “humanitarian intervention” in order to protect human beings from their own national authorities. These are all ideas that seek to modify a five- or six-hundred-year old order based on the Nation-State. In theory, these ideas are derived from noble sentiments. But the United Nations is based on the Nation-State and the maintenance of international security (i.e. the sum total of national securities) is what it is all about. And yet, at the same time, many of the UN's shortcomings can be traced to the Nation-State.

The Charter embodies a fundamental tension between the individual human being and the Nation-State. On the one hand, it urges the peoples of the world to defend and promote a series of universal principles. On the other hand, it recognizes and even broadens many of the rights which Nation-States have been arrogating to themselves for centuries.

For almost two hundred years the inhabitants of the world have based their professional careers and even their lives on the shared notion that, in one way or another, nations are distinct and therefore differ from one another. Perhaps this trend would have overwhelmed us by now had it not been for the recurrence of military conflicts, especially the two tragic and sobering world wars in this century.

Caused by certain manifestations of exaggerated and threatening nationalisms, they gave rise, paradoxically, to a vigorous crusade for universal human values and international solidarity. The UN was itself the product of this renewed internationalism, inspired by shared human goals which, for a moment, seemed to bury perceived national differences. The UN founders, however, were unable to take the international organization that one final leg of the way: a world authority. That is the step that we still have to take. The United Nations, it is ironic to note, was to fall victim to the very threats it was supposed to deter: the pursuit of parochial interests by the Nation-State.

The history of the UN is, in a sense, the history of the conflict between nationalism and internationalism. Its saddest chapters have been the work of nationalists; its best pages have been written when its Members have recognized their common dreams and aspirations.

And the Charter is an example of that inherent contradiction: humanity's high aims are proclaimed in its Preamble, while in one provision after another the rights and prerogatives of States are preserved intact. Critics of the Organization invoke those provisions; its defenders allude more often to the Preamble. The debates at the UN have frequently reflected that dichotomy which on occasion has resulted in tension and friction between the participants.

Cases of widespread or massive human rights violations are a legitimate subject for debate in international fora. Why some cases are ignored or papered over by the multilateral human rights machinery is a question which needs to be addressed.

Another question is who will decide when to intervene “for humanitarian reasons”. The huge military response to Iraq's invasion of Kuwait was sanctioned by the UN Security Council. But, one thing is to force Iraq out of Kuwait and quite another is to force Saddam Hussein out of Iraq. The first was the public, official reason for the Gulf War; the second was its undeclared or unspoken objective. But the results have been mixed. On the one hand, Iraq is out of Kuwait; on the other, Saddam Hussein is still the head of Iraq's government, a diminished government to be sure, but a government still in power.

The Iraqi case poses some interesting questions regarding the so-called right (some have even described it as a duty) to intervene for humanitarian purposes. The people of Iraq were to be saved from their own ruler, but the ruler has been saved —or has saved himself— while his people have not been spared.

Examples abound of military action taken in response to a non-military threat to one's own security. Countries have used force in order to ensure a supply of water or foodstuffs, to preserve navigation rights or to gain access to the sea. But, can human rights violations in another country be construed as a threat to one's own security and thus find justification for intervention under present International Law?

What is there about the idea of humanitarian intervention that makes so many advocates of human rights so uneasy? One source of concern is, Who decides when to intervene and where? The immediate answer is: the Security Council. Yes, let the new and improved Security Council decide. But the Council, far from being “new and improved” is rather outdated, its composition certainly does not represent (or reflect) the present international order. Moreover, in recent years, and specifically in the Gulf War (which is often cited as an example of the “new” Council), it did not act in conformity with the UN Charter. In the first place, when the UN is asked to embark on military action, the pertinent decision has to be taken “by an affirmative vote of nine members [of the Council] including the concurring votes of the permanent members” (Art.27, para.3). And yet, decisions were approved in spite of the fact that one permanent member abstained. Secondly, one should remember that the Council supposedly must act, not on behalf of its members alone, but on behalf of the UN Members in general.

And for what so-called humanitarian reasons should the Council decide to intervene? In cases where atrocities are being committed? Well, it has yet to act decisively in the prolonged agony of Bosnia-Herzegovina. In cases where a government is behaving in a way that is flagrantly contrary to shared human values? Well, there is no clearer example of institutionalized discrimination than South Africa's *apartheid* regime, and yet the Council has never contemplated an intervention.

Examples of double standards abound. Here's one: after almost a century of colonial presence in Hong Kong, the British authorities decided, on the eve of withdrawing, that the colony was in need of certain democratic improvements. What took them so long to realize this?

Here's another example: the foundations of today's human rights are often traced to the eighteenth century. Indeed, the American and the French Revolutions are the source of many of those rights. And yet the person who, in the United States' Declaration of Independence, wrote that "All men are created equal" was himself a slave owner. And what about the right to self-determination and the right of a people to choose freely their government? Well, a few decades after pronouncing the three magic words —*liberté, égalité et fraternité*— that same people embarked, together with some other Europeans, on the colonization of Africa. What are we to make of these contradictions and double standards?

But it is to the sixteenth century that we must trace the beginnings of this so-called right to intervene for humanitarian reasons. Faced with a large population of Indians, the Spanish Crown struggled to find a justification for its invasion and conquest of America.

And the Catholic Monarchs found intellectuals who were ready to justify that conquest in spiritual and legal terms. And the Kouchners of the early 1500s turned to the writings of Spanish jurists, especially Francisco de Vitoria. He was among the founders of International Law and the laws of war and his treatises planted the seeds of today's so-called right of humanitarian intervention. Vitoria wrote that conquest was difficult to justify, but that it was permitted if it was carried out in order to protect the innocent from cannibalism and human sacrifice. War was justified if it was fought to spread the faith. Moreover, war was not justified except as defense against aggression or to right a very great wrong.

In the process of spreading the faith and protecting the innocent from cannibalism and human sacrifice, the Spaniards literally decimated the Indian population of America. In Mexico alone, the 25 million inhabitants in 1500 were reduced to two million by 1700. Humanitarian intervention can certainly have its drawbacks.

No one would advocate the turning of a blind eye to human suffering. And here we again encounter the question of instinct. Survival is pursued instinctively whereas helping your neighbor is part of those "learned patterns" of behaviour. We all have our dose of compassion and there is a good samaritan somewhere in all of us. And yet as Nation-States we are hard put to act in a selfless, compassionate manner. On the other hand, no one would dare to try and justify a repressive, undemocratic regime. Nor can the leaders of such regimes seek refuge in the theory espoused by some characters in the musical "West Side Story", to wit, "I'm depraved on account of I'm deprived". The problem is indeed complex. But we shall not begin to resolve it as long as there are those who preach while following a double standard and those who are preached to and attempt to defend themselves by invoking other standards.