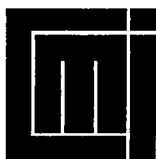


Human Rights and Development

The Discourse in the Humanities and Social Sciences

Siri Gloppen and Lise Rakner

R 1993: 3
May 1993



Report
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Bergen Norway

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The aim of this study is to review central debates on human rights within the social sciences and humanities with a view to enumerating the present state of knowledge about human rights and development. The central topics discussed in the report are: The development of human rights norms; cultural relativism versus universal human rights; human rights and economic development trade-offs; conflicts between different categories of rights, relations between human rights and political development; ethical and practical aspects of monitoring and reporting on human rights respect; election monitoring, aid conditionality and the linkage of human rights and development. The new challenges facing the field of human rights research in the post-cold war era are concerns figuring centrally in the discussions. The report contains a bibliography.

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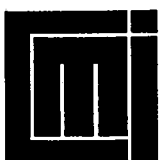
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Preface

From the perspective of human rights observance and research, the world has in many respects, never appeared more promising than today, one month before the opening of the second World Conference on Human Rights.

Human rights concerns have gained unprecedented prominence in international politics. Although there still is a considerable difference between rhetorical proclamations of human rights commitment and what is reflected in practical politics, concern for democracy and human rights is increasingly manifest in the activities of international organisations such as the United Nations, the European Community and the World Bank, as well as in the foreign policy of a growing number of countries.

From being a matter of interest mainly for academics and idealistically oriented activists, research on the relationship between various categories of human rights, between human rights and economic and political development, and research on how human rights respect may be measured and how monitoring may be conducted, is becoming increasingly relevant in the political debate. The time is ripe for "human rights and democracy", and political decision makers are turning to human rights research for tools.

In this report we have chosen to give a broad presentation of the main debates in human rights research within the fields of social science and humanities. We have given ourselves a complicated task as the field of research is both vast and voluminous. The report covers a wide range of disciplines, from most social science traditions, via history of law and philosophy to history. Naturally, we have only presented a fraction of a wide range of issues and debates. We hope, nevertheless, that our selection will illustrate the great scope of the research-area.

The report is a revised and updated version of a volume prepared in 1990 appearing in the larger study "Human rights in light of development theory" in 1990. This four volume study was conducted by the Programme of Human Rights Studies at the Chr. Michelsen Institute for the Norwegian Ministry of Development Cooperation (now merged with Ministry of Foreign Affairs). Our report was originally published in Norwegian (CMI Report R 1991: 6). This revised version has been translated into English by Tone M. Anderssen.

We would like to thank especially the following people for commenting on drafts of the report: Åshild Samnøy, Lars Gule, Bård Anders Andreassen, Bernt Hagtvet, Astri Suhrke and Arne Tostensen. Furthermore, we would like to express our gratitude to the Norwegian Ministry of Foreign Affairs for financial support.

Introduction

International politics and the role of human rights research

Human rights concerns are gaining unprecedented prominence in international politics. Although there still is a considerable difference between the human rights commitment proclaimed at the level of rhetoric and what is reflected in practical politics, concern for democracy and human rights is increasingly manifest in the activities of international organisations such as the United Nations, the European Community and the World Bank, as well as in the foreign policy of a growing number of countries. This trend is particularly visible in relation to aid policies. Many countries have made *democratization* and *good government* conditions of development aid - concepts which increasingly seem to be regarded as synonymous with human rights.

In the course of this process the role of human rights research is changing. From being a matter of interest mainly for academics and idealistically oriented activists, research on the relationship between various categories of human rights, between human rights and economic and political development, and research on how human rights respect may be measured and how monitoring may be conducted, is becoming increasingly relevant in the political debate. The time is ripe for "human rights and democracy", and political decision makers are turning to human rights research for tools.

This development, although positive from the point of view of human rights, also entails challenges and places new burdens on researchers. Accustomed to the meagre life of working in opposition, human rights researchers must take care not to be blinded by power. A critical and academically responsible human rights research is more crucial than ever before. Does political liberties increase economic growth under all conditions? Further, is democracy the best guarantee for human rights respect under all circumstances? These and similar questions need thorough investigation more than ideologically correct answers. Norms agreed to by the most powerful nations of the world are not necessarily universally valid, or even true. And while all good things may be combined in politics, empirical data and reality may turn out to be far more complicated.

The aim of this study is to review central debates on human rights within the social sciences and humanities with a view to bringing forward what we do and do not know about human rights and development.

In the first chapter we will look at the development of international human rights instruments in the postwar period, in relation to the United Nations as well as regionally in Europe, the Americas, Africa and the Islamic world.

The universal legitimacy of human rights is the theme of Chapter two. Can a set of norms so closely linked to Euro-American culture and development be universally valid? The issue is obviously relevant for the use of human rights in foreign policy. It is contested by a number of Third World politicians, and widely debated among scholars.

What is in fact the relationship between human rights and economic development? Is it, as has been commonly held by development economists, possible to increase economic growth or development in Third World countries by sacrificing certain civil and political rights, or by allowing greater inequalities? Or can democracy and respect for human rights on the contrary further economic development, as is now often argued? Is the United Nations' credo of human rights as "indivisible and interdependent" empirically correct, or do the various rights invariably conflict? Debates over human rights trade-offs have been rolling back and forth; the controversies are outlined in Chapter three.

Chapter four focuses on the same theme, discussing at some length the relationship between human rights and regime form. Are various types of regimes capable of respecting human rights? What is the relationship between democracy and human rights?

In the fifth, and last, chapter we look into the role of human rights in foreign policy. We will focus on questions related to making human rights respect a condition for development aid, and further, we discuss the expanding business of election observance. When human rights respect forms the basis of political decisions, with considerable political and economic consequences for the countries affected, the question of which standard of human rights is chosen as the point of departure, and how reliable and unbiased information may be obtained, becomes essential. A substantial part of this chapter is devoted to methodological and ethical aspects of monitoring, reporting and measuring the human rights performance of developing countries.

1. The development of international human rights instruments in the postwar period

The UN system and human rights protection

The idea of human rights goes back centuries, but commitment to human rights did not get an international political breakthrough until the founding of the United Nations (UN) in 1945.

The issue of human rights was on the agenda in the world organisation from the very beginning. The UN-charter (adopted 26 June 1945) included a number of references to human rights, and declared that promotion of human rights was to be one of the main tasks of the new organisation. Of the many planned commissions, only the UN Commission on Human Rights was explicitly mentioned in the Charter. This commitment to human rights issues, as mirrored in the UN Charter and later in the Declaration of Human Rights, should mainly be seen as a reaction to World War II and the actions of the Nazis. In spite of the different ideological and political views of the victors, their common rejection of nazi atrocities was to result in the Universal Declaration of Human Rights, adopted on 10 December 1948. The timing was of great importance, enabling the declaration to be passed unanimously. In 1948, memories of the war were still fresh and the two new super-powers were still on speaking terms. Samnøy shows how the atmosphere of cooperation cooled towards the end of the process, and how the cold war could have weakened the prospects of general agreement being reached, had the declaration not been completed at such an early stage (Samnøy 1993).

The Declaration of Human Rights was only the first part of a three-fold task. As declarations are not binding, according to international law, the set of Human Rights was to be supplemented by a) a covenant, more detailed than the Declaration, which would be legally binding for the ratifying states and b) provisions for implementation of the covenant.

In 1948 it was generally assumed that this would progress quickly, but history has shown this to have been too optimistic. Differing views on the rights resulted in the adoption of two covenants instead of one; one on civil and political rights and one devoted to social, economic and cultural rights.

Also, a political shift in the United States in the early fifties caused a significant decrease in the effort to secure international Human Rights (Cf Pratt 1986 and Mower 1979) Due to the cold war and problems related to decolonisation, the two Conventions were not approved until 1966. An additional ten years passed before a sufficient number of countries had ratified them, and thus the Conventions were not implemented until 1976. The UN's work on human rights may be divided into three phases, based on the three different tasks of the Commission. In the first two decades, the main task was to create legally binding norms from the rights set out in the Declaration. In the decade following the adoption of the Human Rights Conventions in 1966, the commission concentrated on making states acknowledge and ratify the UN-decisions. The third phase is dominated by attempts to develop a system for supervision and control of the implementation of the Human Rights. This work on enforcement-mechanisms did not begin until about 1970.

Even though different tasks have been emphasised at different stages, the phases intertwine: the efforts to make countries ratify The International Bill of Human Rights is still going on.¹ By 1992, 104 states had signed the International Covenant on Civil and Political Rights, while 106 countries had signed the International Covenant on Social, Economic and Cultural Rights.² Besides, new conventions concerning human rights are continually being created in connection with the International Bill of Human Rights. Some of the most important are the Convention Relating to the Status of Refugees of 1951, the Convention on the Elimination of All Forms of Racial Discrimination (1965), the Convention against Torture (1984), the Declaration on the Right to Development (1986) and the Convention on the Rights of the Child.³

¹ "The International Bill of Human Rights" is a collective term applied to what is regarded as the nucleus of the international instruments in the field of human rights: The Universal Declaration of Human Rights (Adopted on 10 December 1948), the International Covenant on Economic, Social and Cultural Rights (1966), the International Covenant on Civil and Political Rights (1966) and the Optional Protocol to the International Covenant on Civil and Political Rights (1966) (Lawson 1991:917). Also a fifth instrument; the Convention on the Elimination of All forms of Racial Discrimination (1965), is sometimes recognised as a part of the International Bill of Human Rights.

² The Covenants are, however, only ratified by 100 and 103 states, respectively (Amnesty International Annual Report 1992:300-304).

³ For a full list of international instruments concerned with human rights, cf. Lawson (1991:1851-1856) and Samnøy (1993).

A hierarchy of rights?

As noted, the legal status of the various documents that constitute The International Bill of Human Rights differs. While the Universal Declaration of Human Rights was not constructed as a legally binding document, the conventions are legally binding for the state parties that sign and ratify them. However, the increasingly important position, internationally, of the Declaration has caused it to attain force of law as part of customary international law. As such it is binding on all states, not only those explicitly recognising it.

As for the two conventions, there are controversies regarding their relative status. It has repeatedly been argued, especially by Western countries, that political and civil rights should be given priority over economic, social and cultural rights. The wording of the conventions has been taken to support this view: While the Convention on Civil and Political Rights orders an immediate duty on states to comply with the regulations of the convention, the states are only urged "to take steps, with a view to achieving progressively" the realisation of the social, economic and cultural rights to the maximum of the available resources within the nation, and through international assistance.⁴

This view that civil and political rights should take precedence over social and economic rights is also supported by conservative scholars who argue that only civil and political rights are rights in the proper sense, that is, precise claims that individuals may direct towards an institution (or person), which (who) will have a corresponding duty to act in accordance with the claims. The rights specified in the Covenant on Economic, Social and Cultural rights do not generally qualify as rights according to this narrow definition, where a corresponding duty is required, and what is needed for the right to be respected or fulfilled must be clearly stated. This rights definition is, however, not undisputed. Rights may also be seen to arise from unfulfilled basic needs.

Within the UN the debate on the internal status and validity of the various types of rights was "resolved" in 1977 when the General Assembly adopted resolution 32/130 where it is stated that the various categories of Human Rights are mutually interrelated and inseparable and that one category cannot take priority over another.⁵ Against this background,

⁴ Cf. International Covenant on Economic, Social and Cultural Rights, Article 2.1.

⁵ This decision is the result of a process that was started on a World Conference on Human Rights in Teheran in 1968. The Third World countries presented a common claim that the economic and social rights were to be given same legal status as the civil and political. Furthermore, the third world representatives presented a claim that the

economic, social and cultural rights and civil and political rights have equal status within the UN system. In December 1989, the General Assembly reaffirmed (resolution 44/129) "that all human rights and fundamental freedoms are indivisible and interrelated and that the promotion and protection of one category of rights should never accept or excuse states from the protection and promotion of the other" (Lawson 1991:957). Such "proclamatory solutions" cannot, however, prevent that internal conflicts between different Human Rights may in fact arise. Nor have they prevented a continued genuine political dissension on which rights are to be given priority and precedence in a situation of conflict. We will return to these questions in the third chapter of this study.

Supervision and control of the implementation of human rights

Establishing norms is just one part of the international concern for Human Rights. It was established at the outset that, in order to contribute to increased respect for Human Rights, the UN would have to act on concrete violations of rights. However, much due to the cold war it was impossible to supervise the protection of rights in many states. The political climate had a "neutralising" effect; few states wanted to get involved in the power struggle between the two super powers (Van Boven 1985:8-20).

In the 1990s, after the collapse of the Soviet Union, the international situation - and the significance of the UN - is greatly changed. The scope of the World Organisation has widened, and it now plays a more political role. With this development human rights concerns are becoming an important basis for political decision-making. As will be discussed at length in the last chapter of this study, human rights indicators are gradually becoming more relevant to the economic institutions of the UN-system, such as the UNDP and the World Bank. Election assistance and election observance are other areas where UN activities have rapidly increased in recent years, and where human rights concerns generally, and concerns for democracy in particular, play a central role. Even though the UN has carried out election observance in some forty countries over the last 45 years, its commitment has deepened significantly the last few years, as expressed by the establishment of *the Electoral Assistance Unit of the United Nations* in October 1992.

commitment to Human Rights was to be connected to the work for development.

With the political development towards a "uni-polar" world, gross violations of human rights also figure more prominently as a basis for military involvement on the part of the UN. This was highly present - at least at the level of rhetoric - during the Iraqi war in 1991, and is currently seen in relation to UN military involvement in countries such as Bosnia-Herzegovina, Cambodia, and Somalia.

However, although the process has clearly gained pace and momentum since the fall of the Berlin Wall, the role played by the UN in the implementation and observance of Human Rights changed much earlier than this. The change may be dated to 1970 and the international reactions against the *apartheid-regime* in South Africa (Van Boven 1985). Against the background of terrible violations of human rights during the Sharpeville massacre (1960), the UN Special Committee Against Apartheid proposed in 1967 that the Commission on Human Rights should look into the conditions of political prisoners in South-Africa. The Human Rights Commission then established an expert committee consisting of expert jurists, the *Ad Hoc Working Group of Experts on Southern Africa*. Later on, the Commission has also been involved in countries such as Chile, Guatemala and El Salvador.

In addition to the appointment of such "Working Groups" and "Special Rapporteurs" — experts called upon by the UN Commission of Human Rights to perform fact-finding tasks — the Commission itself has been authorised to examine, report and publicly criticise human rights violations through the so called "1235" and "1503"-procedures.⁶ Accusations of human rights violations are initially treated confidentially, in order to move the state in question to cooperate in the investigation and, if possible, improvement of the conditions. If nothing is achieved, full publicity is the implicit threat.

Each of the two covenants also makes provisions for its own body of supervision and control of the implementation of their obligations. The Human Rights Committee, authorised to supervise the implementation of the provisions included in the International Covenant on Civil and Political Rights, started its work as a monitoring organ in 1976, while the Committee on Economic, Social and Cultural Rights, authorised to monitor the implementation of the provision in the International Covenant on Social,

⁶ These procedures are named after the relevant Resolution numbers of the Economic and Social Council where the authorisation to do this has been given (Eide 1989:29).

Economic and Cultural Rights, met for the first time in March 1987 (Lawson 1991:222,773).⁷

Although this represents great improvements compared to the time before 1970, the decision to investigate certain countries is still more a result of what the member countries are able to agree on than an indication of the seriousness of the human rights violations in question. Control within the UN system is still very politicised, and human rights arguments are much used as regime criticism. In practice, the Commission on Human Rights has only reacted against violations of civil and political rights, although it is to react against all categories of rights violations. This double standard or selectivity has been strongly criticised, and it is widely agreed that it must be changed.

Another weakness in the supervision system is that although the states that have ratified the two conventions are obliged to report to the respective committees, the UN system cannot sanction states that do not fulfil their obligations. Reports that are delivered too late, or never delivered at all, is an ongoing problem (Cf. Amnesty International Report 1992:307-310). This system of self-reporting has the weakness of any such arrangement: The less a state is prepared to let the international community know about the human rights situation within its borders, the smaller the likelihood of that country handing over its annual report.

In a discussion of supervision and control of human rights, it is necessary to call attention to the work carried out by Non-Governmental Organisations (NGOs) such as Amnesty International, Minority Rights Group and the International Commission of Jurists.⁸ The scope of this report does not allow details on the voluntary organisations, their work and role. It is nevertheless important to stress the fact that voluntary organisations contribute to the development and consolidation of a human rights culture and common respect and understanding of human rights. Such an internalisation of human rights norms is vital for the protection of the rights.

⁷ Three other Convention systems also exist under the UN, supervising the implementation of various conventions (Committee on the Elimination of Racial Discrimination (CERD), Committee against Torture (CAT), Committee on the Elimination of Discrimination Against Women (CEDAW). There are also bodies responsible for supervision and control of Conventions operated by the International Labor Organisation (ILO) system and the UN Educational Scientific and Cultural Organisation (UNESCO) (Cf. Eide, 1989:30 and Lawson 1991).

⁸ For a list of NGOs concerned with human rights, and further information on their activities, consult the entries under NGOs' in the Subject Index of Lawson (1991:1896).

In order to understand the development of human rights norms during the postwar period, it is important to see this development as part of a political process where alliances within the UN are decisive for which norms are to be given status as human rights. UN-resolutions provide a reality to relate to, but at the same time, the various norms have been given unequal weight, and the general formulations that characterise many of the resolutions cover many differences. This in turn creates problems when provisions are to be made for supervision and control of their implementation.

This review of the development of the UN's work for human rights shows that the goal of international legal protection of universal human rights has yet to be reached, and that it may never be totally adequate. As long as the international community consists of independent states, the primary responsibility to secure observance of human rights will always lie with each individual state, and the UN will only have limited possibility to sanction violations. But even though the international system has many flaws and at times may seem weak, it is important to be aware of the historical dimensions. Some ten years back it would have been impossible to imagine international organs committing themselves to human rights issues within each single state, and the postwar development must thus be characterised as revolutionary. To legitimately interfere with the internal affairs of sovereign states is something entirely new within international law.

Regional human rights instruments

On the regional level, outside the UN system, several multi-lateral agreements have emerged, all of which are based on the UN Declaration of Human Rights. There are at present three regional convention systems: the European, the Inter-American and the African.

Of the regional human rights instruments, the European Convention on Human Rights (adopted in November 1950) is the more developed, in the sense that implementation of the human rights and the development of control mechanisms to a large extent has been carried out. Within this framework, we find the European Commission on Human Rights and the European Court of Human Rights in Strasbourg. The European convention only deals with civil and political rights.

The American convention on Human Rights, also known as the Pact of San Jose, was adopted by the Organisation of American States (OAS) in November 1969 and entered into force in July 1978. It is roughly comparable to the European Convention, also in that an Inter-American

Commission on Human Rights and an Inter-American Court of Human Rights are provided for, in order to oversee the implementation of its provisions. An additional protocol, the protocol of San Salvador, adding certain economic, social and cultural rights to the list, was adopted by the OAS in November 1988 (Lawson 1991:44).

In June 1981, the Organisation of African Unity (OAU) adopted the African Charter on Human and Peoples Rights as a supplement to the UN Universal Declaration on Human Rights. The African Charter, which is often cited as the Banjul Charter, entered into force in October 1986 after being ratified by a majority- of the OAU member states. The charter includes provisions for the establishment of the African Commission on Human Rights "to promote human and peoples' rights and ensure their protection in Africa".⁹ The Banjul Charter is unique in several ways: the same document deals with civil and political rights as well as with economic, social and cultural rights, it sets out obligations as well as rights of human beings, and it deals with the rights of peoples as well as of individuals (Lawson 1991:12).

In addition to these regional systems there have been initiatives by NGOs for the adoption of regional human rights instruments in Asia and the Arab world. In 1983 the regional council of Human Rights in Asia produced a "regional Declaration of Human Rights": *The Declaration of the Basic Duties of ASIAN Peoples and Governments*.¹⁰ Arab experts on Human Rights produced a *Charter on Human and People's Rights in the Arab World* in 1986, but so far no Arab state has acknowledged the document.

In the following section this proposal for an Arab Charter on Human Rights, and the African Banjul Charter, will be dealt with more thoroughly, stressing the differences between these documents and the European Convention and the International Bill of Human Rights.

The Banjul Charter

The Banjul Charter, the African declaration of human rights, expresses the intention to reflect an African understanding of human rights — a particularistic trait which separates it from the "universalistic" European

⁹ Article 30 of the African Charter on Human and Peoples Rights. Cf. Lawson 1991:13-19).

¹⁰ The Regional Council on Human Rights in Asia is an international NGO with consultative status with the UN Economic and Social Council. It was founded in 1982 and consists of civil rights leaders in five Asian and Pacific countries: Indonesia, Malaysia, the Philippines, Singapore and Thailand (Lawson 1991:1289).

and American declarations. “[The Charter] should take as pattern the African Philosophy of Law and meet the needs of Africa” (Okere 1984:145). This seems to imply that the human rights as they appear in the International Bill of Human Rights conflict in some areas with African culture and self-understanding.

What further separates the African Declaration from the European and the American, is that it includes a set of *duties* in connection with the individual rights (Art. 27-29). While the American and European declarations only refer to the duties of the state towards individuals, the Banjul declaration states that the individual has duties to his family, his local community and the state.¹¹ The references to duties are justified by communitarian philosophy, arguing that individual rights may only be realised through the local community, or through group-belonging.

A third factor, making the Banjul declaration unique, is the importance it attaches to social, economic and collective rights, focusing explicitly on the right to development. Six articles refer to the rights of “the people”, or collective rights. But even though the African declaration stresses collective rights and emphasises that human rights must be seen as rights connected to both individuals and groups, the term “people” is not defined anywhere in the declaration. Communalism is given as a special feature throughout African history, but it is not clear whether this refers to the local community or to the national state (Howard 1986:7).

Criticism against the Banjul declaration has particularly been directed at the use of collective rights (Anyang’ Nyong’o 1992, Howard 1986). Howard finds that the term “peoples” essentially refers to the national state and claims that “... rather it is an attempt to use an ideology of African communalism to justify reaffirmation of national interests ... by referring to weakly integrated nation states as peoples” (Howard 1986:7).¹² She goes on to criticise the principle of individual duties to the state. Part three of article 29 of the Banjul declaration reads as follows: “The individual has a duty not to compromise the security of the state whose national or resident he is.” In practice, Howard says, this implies individual duties toward the ruling class. Issa G. Shivji shares her views, and claims that the inclusion of articles on individual duties (to the state) incorporates the autocracy of Mobutu (Zaire) and the traditionalism of Banda (Malawi) in

¹¹ See article 29, in the first part of the declaration, chapter 2. Cf. also Gittleman (1984:152), Welsh and Melzer (1984), Peter (1990).

¹² This opinion is expressed by several of the authors in Downing and Hushner (1988) and by Jack Donnelly (1984).

the "good family" of human rights observing nations, according to the standards of the Banjul Declaration (Shivji 1989:98).

When discussing differences between the African declaration and other international norms for human rights protection, it is appropriate to ask how *African* the Banjul declaration really is. African conceptions of human rights before colonisation are only to a very small extent documented by written sources (especially as far as Sub-Saharan Africa is concerned), but social anthropologists have made significant contributions in the analysis of legal structures and their significance for the protection of human rights in these societies (Mahalu 1985).¹³ Their conclusion is that most traditional societies acknowledged certain fundamental inalienable rights. However, these cannot be interpreted in the sense of rights of the individual as opposed to political authority. Protection of human rights in traditional African societies was based on collective structures (Mahalu 1985). Social anthropologists also maintain that most African societies contained important democratic processes. Selection of leadership is one example, where the group worked together to reach a consensus; another example is the various mechanisms that protected subjects against tyrannical leaders (Mahalu 1985).

There is reason to claim that in traditional African societies, there existed conceptions of rights that implied the acknowledgement and protection of important human rights. But these conceptions are fundamentally different from the Euro-American understanding of rights. While several scholars, as already noted, have focused on the negative aspects of these differences, others maintain that "perhaps the international legal community has much to learn from societies where a philosophy of compromise predominates over moral and legal absolutism" (Schirmer 1988:94).

In the matter of supervising the implementation of human rights, there are great differences between the Banjul declaration and the American and European declarations of human rights. "African states, still jealous of their newly acquired national sovereignty have not yet come around to conceding to an international judicial body for the arbitration of human rights questions" (Okere 1984:158). In the Banjul declaration, the authority of the commission is restricted to investigation and arbitration; it has no legal force, as opposed to the European and American Commissions.¹⁴ However each state is instructed, by article 62, to present a yearly report on what

¹³ Cf. also Bello (1981) and Elias (1988).

¹⁴ For a discussion of the problems concerning "soft law" in relation to the Banjul declaration see discussion in Umozurike (1988).

measures have been taken to realise the rights and freedoms expressed in the declaration.

Despite the criticism that is voiced against different aspects of the Banjul Charter, it has had considerable political significance. The Organization of African Unity had by the end of the 1970s lost credibility both within Africa and in the international milieu due to the gross human rights violations taking place in its member states. The OAU was referred to as "the trade union of African state leaders" (Jackson & Rosberg 1985). Criticisms of the *apartheid-regime* in South Africa did not have much leverage when voiced by an organisation ignoring atrocities such as the terror of Idi Amin in Uganda (1971-1979), Bokassa's regime in the Central African Republic (1966-1979) and the massacres in Burundi (1972-73). In this perspective the adoption of an African Charter on human rights in 1981, should be seen as a positive step towards recognising the International Bill of Human Rights.

To sum up, how African is the Banjul charter? A large percentage of the African academic and political elite were educated at Western universities, and their way of thinking is often very Westernised. And the significance of traditional African conceptions of rights in the shaping of the Banjul declaration should not be exaggerated. As both Shivji and Okere have pointed out, the making of the declaration must be understood against the background of international events where the Carter administration's emphasis on human rights in its foreign policies, and the international reactions to serious violations of human rights on the African continent, were central factors. It has been argued that the African human rights rhetoric was, and still is, mainly intended for a foreign audience (Shivji 1989:94). Jack Donnelly's warning is echoing the political opposition in a number of African countries:

[W]hile recognizing the legitimate claims of self-determination and cultural relativism, we must be alert to cynical manipulations of a dying, lost or even mythical cultural past.... Arguments of cultural relativism are far too often made by economic and political elites that have long since left traditional culture behind (Donnelly 1984:441).

Does the Banjul charter challenge the universality of the International Bill of Human Rights — or is the African declaration *per se* a Western product? A more thorough analysis of this question would require thorough legal-sociological analyses of both traditional African court rulings, as well as of the legislation and practice during colonial times. We will not pursue this

question here, allowing it to serve as a reminder that a diffusion of ideas does not necessarily mean that the ideas become universal norms.

Islam and human rights¹⁵

According to traditional and fundamentalist interpretations of Islam, God is not bound by anything. The will of God is the cause of everything and the law of God the only norm. In this world view, there is no room for an autonomous individual, and human rights are at best superfluous human supplements to the law of God — *shari'a*; at worst rebellious attempts to *replace* the law of God with the work of man.

An analysis of the development of the idea of human rights shows that it is closely linked to the view of the individual which emerged in Europe and Northern America during the Renaissance and was established during Enlightenment (Cf. following chapter). The idea of human rights developed as part of the process of modernisation and *secularisation* in the Western world. The Islamic world view, with God as centre of everything, makes it difficult to deduce modern human rights without a comprehensive reinterpretation of Islam as a religious system.

When we are dealing with Islam and human rights, it is important to be aware of the difference between the "Arab" and "Islamic". The Arab world constitutes a *relatively* homogenous region when it comes to language and culture, with Islam as the crucial element, while the Islamic world reaches from the Atlantic Ocean to Indonesia, embracing a number of languages and nationalities. The Arab countries, although only one part of the Islamic world, are our main concern here. Countries with a Muslim majority have endorsed several conventions and declarations, simultaneously making several attempts to present comprehensive *Islamic* answers to the challenge of human rights. In spite of increasing fundamentalism and Islamist movements, many Muslim intellectuals, as well as sections of the Arab public opinion, show a deep awareness of human rights.

The Arab League presented a draft for a human rights convention in 1970, 10 years before the Banjul declaration, but it has not yet been ratified by any of the member countries (Aruri 1987:7). Five of nine Arab countries in Africa adhere to the African charter. This could be interpreted as evidence that there is no conflict between Arabic culture and acceptance of the UN charter and conventions. However, only 10 of the 20 members of the Arab League have ratified the two human rights conventions of 1966,

¹⁵ This section draws on Gule (1991), cf. also Gule (1992).

and it is too early to tell whether The Arab League or any of the Arab states will subscribe to the Arab human rights document.¹⁶

Lack of commitment to human rights on the state level, combined with extensive repression, has limited the development of voluntary human rights organisations. But in spite of the repression, some such organisations have emerged in the various Arab states. In addition, there are inter-Arabic organisations, such as the Arab Lawyers Union and the Arab Organisation for Human Rights. At a conference in 1986, a number of private individuals with different backgrounds, including lawyers, judges, journalists and social scientists, drafted an Arab human rights charter.

The Arab Charter of Human Rights is, analogous to the African Charter, founded on an Arab historic and cultural context. The codification is mainly inspired by the International Bill of Human Rights, but has some unique features. For example, art. 34 states that the purpose of education and culture is to develop the personality and to strengthen the belief in Arab unity. Article 2.3 provides an opening for the use of death penalty, with the precondition that the sentence is passed by an authorised court of law and that the sentenced person has the right to appeal. Article 9 codifies freedom of thought and belief, but warns of certain limitations (9.2).

The present drafts for Islamic declarations are characterised by the attempt to harmonise modern human rights with the law of God — *shari'a* - at the same time retaining the *shari'a* as the main guideline for all rights interpretations. It is, however, problematic to merge opposites such as the *shari'a* on the one hand — involving legal subordination of women and non-Muslims, and punishments such as stoning and amputation — and modern human rights on the other.

Fundamentalistically oriented Muslims will argue that the Human Rights must be changed in order to accommodate Islam, and not the other way around. But even though some Islamic positions completely reject human rights, there are, as mentioned before, Islamic intellectuals who take human rights seriously, and who argue that human rights are already present *within* Islam, or are protected by Islam. It is therefore possible to compose Islamic declarations in a modern human rights language. As will be shown in the next chapter, there are also Muslim intellectuals who claim that the human rights principles are so important that Islam ought to be reinterpreted in order to remove the differences. These are often people of higher education

¹⁶ These are figures from 1990. Since the merging of North- and South Yemen in the spring of 1990, the number will be 9 if the convention is also ratified by the common state.

and of Western orientation — and currently they represent only a small minority in the Islamic world.

There are certainly conflicts between Islam and modern human rights thinking, but the attempts by Muslims themselves to harmonise, demonstrate that human rights also appeal to Islamic peoples. Therefore, there is reason to hope that the conflict between Islam and modern human rights may in the long term be solved through a process of reinterpretation of certain elements of Islamic orthodoxy (Cf. An-Na'im 1990 and 1992).

Regional human rights or universal norms

In view of this discussion of the African Banjul declaration and various Arab and Islamic human rights initiatives, there is reason to ask: To what extent do these initiatives represent a general criticism of the concept of universal Human Rights, and specifically of the International Bill of Human Rights?

Both the African declaration and the Arabian draft use cultural and historical regional characteristics as a point of reference. By referring to culture and tradition, both documents limit somewhat the individual rights guaranteed in the International Bill of Human Rights. Also, more emphasis is given to collective rights, as well as to social, economic and cultural rights than in the "Western" document. This may be seen as criticism of the individualism that characterises human rights norms in the Western tradition. Both the Arab and the African charters are, however, based on the International Declaration of Human Rights, and acknowledge its basic rights. We have also seen that there is a growing conviction within Islamic circles that Islam will have to be reinterpreted if respect for human rights is to be incorporated.

From the point of view of the human rights movement, this represents a positive development. Especially so the African charter, which has already been ratified. These regional human rights documents acknowledge human rights to a certain extent, on the basis of their own cultures, not simply as ideas imposed from the outside. These documents are also an expression of a deepening commitment to human rights in this part of the world.

The African human rights declaration, the Arab draft, as well as more recent Islamic thought, all contain both adherence to the idea of human rights and criticism of certain features of "The International Bill of Human Rights", which is conceived as being specifically Western and "unintelligible" from the point of view of the African and Arab/Islamic culture. These documents thus challenge both *universalists* who claim that the individual human rights (and only these) are universally valid, as well

as *cultural relativists*, who argue that it is impossible to make normative standards that are viable beyond the single society/community.

The question of the universal viability of human rights will be our topic in the following chapter. It will be considered from three points of view: On the one hand there are moral philosophical arguments claiming that "Western" individual human rights are universally valid, independent of the origin of the rights. On the other hand, the social anthropologists reject any idea of universal norms. In the field of tension between the two stands, there is the "political reality" where, as this chapter has shown, there is a growing support for certain human rights norms, and disagreement about others: Rights instruments that are developed in the "non-Western" world adhere to the universal documents, but at the same time they attach importance to social, economic and cultural as well as collective rights in addition to and in competition with individual human rights.

2. The legitimacy of human rights

The universal legitimacy of human rights norms is the theme of this chapter. In the previous chapter we have seen how human rights are firmly established in several international and regional human rights instruments, and how the UN Declaration of Human Rights and human rights conventions have attained the status of common norm of the world community - The International Bill of Human Rights.

But although internationally accepted documents establish certain fundamental human rights that apply to all human beings, the content of these rights and their priority over other societal concerns, is disputed. Politically, this debate was more heated during the cold war, but the question of the universal legitimacy of human rights is in a sense even more acute in the current international situation. Until the decline of the socialist block, the international stalemate functioned as a barrier against attempts to "enforce" human rights standards as defined by one political/cultural tradition, in the world community. In the current unipolar situation, human rights are becoming powerful political instruments, standards whereby a Western dominated world community passes judgement and takes political action. This places a heavy burden of responsibility on human rights research. If it is to maintain its integrity, it is vital that researchers do not uncritically follow the political lead. The role of human rights in foreign policy will be discussed in chapter 5. For now it suffices to note that as human rights are increasingly used as normative standards in the evaluation of political regimes and as a basis for decision-making in foreign policy, the universality of the human rights norms should be placed on the agenda.

We have already noted that the universality of the International Bill of Human Rights is contested. Critics have dismissed it as a purely Western product; which other cultures have been forced to concede to. There are Muslim leaders arguing that the entire international human rights project is no more than Western chauvinism and cultural imperialism. In particular in Asia, there is growing discontent with what is seen as an attempt to impose Western values on non-Western societies. At the September 1992 summit meeting of the Non-Aligned Movement in Jakarta, the final communique, supported by more than one hundred countries, stated that "No country ... should use its power to dictate its concept of democracy and

human rights or impose conditionalities on others" (Human Rights Watch 1992/4:8).¹⁷ The crux of this criticism is also maintained by scholars. Radical cultural relativists reject any possibility of universal norms whatsoever. And within social anthropology, where cultural relativism is a fundamental scientific perspective, there are strong objections against awarding human rights the status of universal norms.

The rejection of universal rights represents an important challenge to the evaluation of human rights respect in non-Western societies. If the cultural relativistic criticism cannot be convincingly rejected, it is difficult to defend policies where the legitimacy of states and systems of government are made contingent on their human rights performance.

The aim of this chapter is to shed critical light on the objections against the universal validity of human rights, and discuss how these criticisms may be met.

Following a short introduction, outlining the history of the idea of human rights, we will show how various categories of rights are rooted in different ideological traditions. Next, a model of the legal-historical development of rights norms is presented: Why did civic rights develop in Europe? And to what extent are these preconditions for the establishment of rights applicable in non-European states? Subsequently, the philosophical validity of the norms as well as the criticisms of universal rights by cultural relativists, will be examined. The last section of this chapter attempts to bridge the gap between these two perspectives. Is it possible to justify the universal validity of human rights, given the pluralism of our time? We will argue that the most promising approaches to this problem centre upon the idea of an overlapping consensus (Rawls 1987, An Na'im 1990 and 1991, Lindholm 1992).

The emergence of the human rights idea

The human rights idea is commonly traced back to the seventeenth and eighteenth century, to the doctrines of the natural rights of man. In earlier times, individual rights, in the sense of having "*a right to something*", was not separated from "*what is right*", meaning the correct thing to do in relation to a divine or actually existing law. Man was seen as an element of a divine order. In the 16-1700s the view emerged that society was based on a contract between individuals, having both rights and duties. John

¹⁷ For a review of objections voiced by non-Western nations to what is perceived as Western human rights ideology, cf. Holleman (1987, pp. 13-27).

Locke is often considered to be the first exponent of the idea of natural individual rights, with his work *Two Treatises on Government* (1689).¹⁸ One hundred years later the idea of individual rights found expression in important political documents such as the American Declaration of Independence (1776) and the French Declaration of Human Rights (1789). The human rights concept has a long history of being used as a political slogan, and in the course of this process the content of the concept has changed. It has been expanded to cover areas which in many ways have little in common with the French and American declarations.

At the core of natural rights thinking is the idea that each individual has certain inherent rights. These rights are connected to human nature, in "the state of nature", i.e. in a (hypothetical) situation where the institutions of the state do not exist. The natural rights are, from a moral point of view, more fundamental than the existing laws of society. The laws of society are, according to this perspective, only legitimate to the extent that they respect the natural rights of citizens.

Three ideological traditions and three categories of rights

The idea of human rights is closely related to the concept of *equality*; all human beings are equal, morally speaking. As humans we are of equal value or dignity and are thus entitled to equal rights. Fundamental human rights have been claimed on the basis of three different conditions, each in its way carrying a threat to the dignity of man. In short, we may say that what is threatened is our *liberty*, our *autonomy* and the satisfaction of *fundamental needs*. Each of these concerns is related to a specific ideological tradition, in which a particular category of rights is rooted.

The *liberal tradition*, originating in Locke's social contract theory of natural rights, has primarily been concerned with securing the individual sphere of liberty. This sphere of liberty (*the suum-sphere*) is defined

¹⁸ The first thinker to make use of the concept *ius*, in the sense of individual rights, and thus to a certain extent causing the concept to be freed from the idea of a divine or public law, was probably Jean Gersen, a French academic in the fourteenth century. He distinguished between *ius*, "a facultas or power appropriate to someone and in accordance with the dictates of right reason" and *lex*, "a practical and right reason to which the movements and workings of things are directed towards their ordained ends" (Tucks 1979). However, it was only toward the end of the seventeenth century that the idea of the natural rights of man was given a central position within European philosophy. For a presentation of the tradition of natural rights, see Waldron (1984), Syse (1993).

somewhat differently by the different thinkers within this tradition, but is generally seen to include life, body, property, freedom of belief and action, and dignity. The right to property is considered to be among the fundamental natural rights and is deduced from the right to life (Cf. Nozick 1974). The liberty of the individual may be encroached upon by other individuals as well as by the state. In order to prevent infringements of these liberties, the state must be bound by the constitution and its main task should be the safeguarding of the personal and civil rights of its citizens. The liberal tradition thus speak in favour of a constitutional state, limited state authority, and respect for the *personal and civil rights* of the individual. The liberalistic idea that liberty of the individual will limit state power, has in recent years been articulated by among others Robert Nozick (1974) and Ronald Dworkin (1977).

The democratic tradition, inspired by Jean-Jaques Rousseau, is founded on another concept of the liberty of man: liberty in the sense of autonomy or self-determination. Man is autonomous only if he follows his own rules. The autonomy of the individual is realised through participation in the collective decisions of political life. According to this view, the right to political participation is of vital importance for the realisation of human dignity. The central question within the democratic tradition is: "Who governs me?", as opposed to the liberalistic tradition: "to what extent do the authorities interfere with my life?". There is a tension between the democratic demand for political rights and liberal demands for liberty rights and a stable constitutional government (Elster and Slagstad 1988).

The third concern giving rise to demands for rights is the fundamental human need for well-being. Being of equal value we all have the same rights to satisfaction of our basic material needs. This is the basis of *the socialist tradition*, and in contemporary thinking on rights and distributive justice these ideas are widespread.¹⁹ Modern contractarian theories (which also draw on the liberal and democratic traditions) elaborate on this line of thought: Cooperation in an orderly community creates an economic surplus. As all human beings in a society take part in the community that enables the production of goods and services, we all have a right to our share of the goods (Rawls 1971). The existence of a state thus furthers claims for a distribution of resources which is such that no-one is left worse off than they would be in a situation without cooperation. In other words; it provides all citizens with the rights to *social and economic welfare*.

The American Declaration of Independence and the French Declaration of Human Rights from the late 1700s, only claimed civil and political

¹⁹ See e.g. Rawls (1971), Sen (1985), Føllesdal (1992).

rights. In the human rights documents of our time, social, economic and cultural rights have been given an indisputable and, according to UN policy, equally important position. The normative status of these rights are, however, still in dispute. In the human rights debate, the possibilities of a philosophically valid justification of welfare rights, have been a central issue.

The origin and development of the human rights idea may also be addressed from a more functional perspective: under which conditions did the rights emerge, and to what extent are these general requirements for the rights norms to develop and become institutional?

The development of rights from the perspective of political science

An explanation of the historical development of rights is set forth in the stage theory developed by Richard P. Claude (1976). Based on the works of T. S. Marshall and the political sociology of Stein Rokkan, Claude designed a model for the legal-historical development of rights norms (Marshall 1954, Rokkan 1973). He starts out with four categories of rights, and demonstrates how each category may be seen as a result of certain conditions at different stages of European history.

The study of the historical emergence of rights norms has two aims. One is to give an account of the historical processes that resulted in the development of rights norms in Europe — to explain under what conditions the conceptions appeared and how they developed from a core of norms into a set of rules covering most areas of human existence. The second aim is to find out whether these are general terms that are required for the development and institutionalisation of the rights norms to take place in any society.²⁰

Claude specifies one background condition and four stages in a development process. The *precondition* is a secure and procedurally regulated legal system; i.e. a system with a certain degree of predictability, certain fundamental norms and certain procedures for settling conflicts.

In the *first stage*, fundamental personal liberties are defined. Based on a secularised and universalistic view of the legitimacy of the state, “the private” came to be separate from “the public”. The idea emerged that every single individual has a right to a sphere of liberty; a private sphere where the authorities cannot legitimately trespass. A change in the views

²⁰ For a discussion of Claude's model cf. Stokke 1988.

on legitimate authority is an ideological precondition for the limitation of political power (institutionalisation of the principle of division of power).

In the *second stage*, the civil rights are defined. This stage is characterised by demands for legal guarantees for the individual, and coincides, historically, with the emergence of the bourgeoisie and the development of a modern, capitalistic market economy. The view of the individual and the role of the authorities is changed; the individual is perceived as enterprising and active, while the authorities are seen as correspondingly passive. Their role is simply to guarantee the liberty, property and security of the citizens. The French Declaration of the Rights of Man and of the Citizen may be said to represent this stage. The contours of a liberal constitutional state are vaguely visible, where liberty is defined as "the freedom to do all that does not injure others" and where the laws are designed to prohibit actions harmful to society. Political life is conceived as a market where the acts of the individual, motivated by his own interest, indirectly will lead to the common good.

In the *third stage*, legal equality is extended to include political equality. The introduction of universal suffrage belongs here. Claude explains the institutionalisation of equal political rights as a result of an elite strategy to prevent socially based conflicts. He draws on T.H. Marshall, among others, in claiming that granting political citizenship to the lower classes cushioned the effects of a sharply divided class system (Marshall 1954).²¹ This period is characterised by the organisation of political activity in parties, voluntary organisations, trade unions, etc. The view of political life changes, from the idea of a market where the free scope of individuals brings out the common good, to an arena for intergroup negotiations.

In the *fourth stage*, the spectre of rights is expanded to include social and economic goods. The two first stages were primarily concerned with establishing negative rights, limiting the authority of the state; this stage, however, focuses on the positive obligation of the state to secure the social goods the individual may not acquire without help. Claude claims that an ideological requisite for the development of welfare rights is the realisation that everybody must share the risk of the industrial development. The welfare rights established during this stage, are more conditional than the earlier rights. Economic potential, administrative capacity and political will,

²¹ This is, however, not an uncontroversial point of view. Other authors have pointed out the importance of political mobilisation, primarily through the labour movement, and have to a greater extent explained the expansion of rights as a result of pressure from below. See e.g. Przeworski (1985) and Vester (1970).

are important preconditions for a realisation of social and economic rights. Central planning of public activities is also important at this stage.

By means of this model, the emergence of personal liberty rights, civil rights, right to political participation and social and economic welfare rights are presented as *civic rights*. If we study each stage, and the entire development process, we see that the rights of the Declaration of Human Rights of 1948, may be seen as a product of this Euro-American development. In the last two stages, the rights are extended to a gradually larger part of the population, and the effort to establish universal human rights may be seen as a natural continuation of this process.

Claude's classical model of human rights development is an ideal type in the Weberian sense, and expresses an exemplary development path, based on the history of certain countries. Such generalisations invariably imply simplifications. Nevertheless, it seems that Claude has managed to visualise and structure important elements in the Euro-American development of rights norms. His model explains rights developments as the result of internal processes. This is, however, only one part of the picture; diffusion of norms must also be taken into consideration. Conceptions of rights, as other norms of a society, are influenced by the outside world, not simply a result of internal development processes. Ideas are continually being diffused, and in our society this diffusion happens faster than ever. The diffusion aspect, which is not a part of Claude's model, is particularly important in the current development of rights in non-European countries. The explanatory model may, nevertheless, function as a basis for hypotheses on the premises that must be fulfilled for the development and institutionalisation of human rights norms.

We concluded above that the adoption of the UN Declaration of Human Rights in 1948 may be seen as the culmination of 300 years of rights development in the Euro-American cultural area, and that the International Bill of Human Rights is an expression of ideas rooted in Western culture and philosophy. With this perspective in mind, human rights may be regarded as an export of purely Western ideas. Claude's model of human rights also demonstrates how modern "universal human rights" are a product of Western historical development. At the same time it adds an interesting dimension: The establishment of legal standards is a reaction to economic and social conditions during the development of any modern society. In this perspective, the modernisation that is taking place throughout the world, is a process that will require and enable the establishment of legal standards. A relevant question is, then: Are the present economic and social conditions in non-Western countries equivalent

to the conditions in Europe during the period when the idea of rights emerged?

The application of Claude's model to the study of preconditions for rights development in other cultures will not be pursued here. What is important, for our purposes, is that it demonstrates how human rights may be seen as part of a specific historical development in Europe, and that the rights responded to problems which are today found throughout the world.

To sum up our discussion so far: Human rights are products of European philosophy of the 17th and 18th centuries, developed and articulated through Western ideological schools of thought. What was adopted by the UN as universal human rights in 1948, is closely linked to developments within European society. According to Claude, the emergence and institutionalisation of rights norms is determined by historical factors, and other cultural and historical contexts will have similar influence on the development of rights and duties. If we accept that different cultural contexts produce different concepts of rights, is it possible to maintain that certain norms are universally valid? Concretely, may The International Bill of Human Rights claim universal validity?

Is there an acceptable justification of universal human rights?

Does the historical origins of the human rights affect their universal validity? Can norms that are the products of one culture claim validity in other cultures? Do other cultures have elements that support the human rights idea?

Two ideal types or extreme positions may be used to illustrate the question of universal validity of human rights. The universalistic position, often adopted in moral philosophy, maintains that the origin of a norm is of no concern for its validity: The validity of human rights depends on a satisfactory philosophical justification. The cultural context within which they emerged and developed, is of no interest. On the opposite end of the scale, we find the cultural relativistic position. Cultural relativism is often advocated by social anthropologists, but is also supported by some philosophical traditions.²² Radical relativism argue that universal norms are an impossibility, and that a society can only be understood and assessed on the basis of its own normative standards.

²² E.g. among scholars within the Communitarian tradition in contemporary political philosophy. (Cf. Waltzer 1988, Sandel 1982, Kymlica 1989).

We will now present the most important philosophical strategies for justification of universal human rights, and then deal with the criticism presented by cultural relativism. Is it possible to find justification strategies for human rights norms that are comprehensible and acceptable to different cultural contexts? An outline of various attempts to straddle the gap between the universalistic and cultural relativistic perspectives will conclude the chapter.

A philosophical justification of human rights

The traditional position in moral philosophy is the *universalistic*, that is, the historical emergence of rights is considered irrelevant in relation to the validity of the rights. If human rights may be philosophically justified, they are also universally valid. The philosophical literature on the validity of human rights is enormous, especially since the flourishing interest for the subject in the 1970s. We will not describe the positions in detail, but only present a rough outline of the most central justification strategies.

The most common strategy is to justify the universality of human rights by resorting to the argument of *natural rights*: Human rights are universal because they protect values shared by all human beings; values rooted in a *common human nature*. There are two main opinions on what this "something" called "human nature" is, that merits claims to special protection: Firstly, rights may be derived from a conception of the *moral nature of man*, rooted in the normative premise that all men enjoy a moral freedom that "makes man human". This freedom is the origin of the human dignity that needs to be protected through basic rights (Cf. Donnelly 1985, Syse 1993). These strategies based on natural rights may justify civil and political rights, but faces problems when it comes to welfare rights.

A second possibility is to found human rights on basic human *needs*. Human rights, including rights to a basic level of welfare, may be justified as being crucial for satisfying the needs common to all human beings (cf. Føllesdal 1992, Sen 1985). A challenge facing strategies based on need, is how to make a theoretically valid transition from "is" (actual needs) to "ought" (morally binding rights) (Cf. Tranøy 1975).

A philosophical justification for human rights is also sought in *contract theory*. This strategy may be outlined as follows: For a social organisation or state to be legitimate, one must be able to imagine that every member of the society would have entered into it voluntarily. An organised society has its advantages; an economic surplus is created that would not otherwise have existed. For people to voluntarily enter into a "social contract", nobody should be worse off than they would have been without it. This

means that everybody must have their share of the surplus, implying respect and protection of personal liberties, civil and political rights, and distribution of social and economic goods that ensures the fulfilment of basic needs (cf. Rawls, 1971).

These justification strategies, whether based on natural rights or contract theory, focus on the individual as the only rights-carrying unit, and collective rights are rejected. While strategies based on natural rights end up with a small range of basic rights, and are hardly sufficient to justify the entire range of rights included in the International Bill of Human Rights, the approach based on contract theory faces the opposite problem: it tends to justify too much, and it is difficult to isolate basic values that must be protected by basic rights. This type of justifications relates rights to the ordering of society: civic rights rather than universal human rights, are justified.

Attempts have been made, however, to develop contractual justifications on a global level (C.f. Beitz 1979, 1981 and Føllesdal 1991, 1992). Given the present international economic structures and the increased global interaction and dependence, it is argued that state borders are only of limited moral significance: Political and economic decisions of one state often have effects (e.g. environmental) on the citizens of other states. As we are all part of the global society, sharing the risks and strains of economic interaction, we all have a moral claim to codetermination, rights protection and a certain share of the surplus.

The philosophical positions outlined above — natural rights and contract theories — regard the historical development of human rights norms as irrelevant to the question of validity. However, the premises underlying these arguments are disputed. Criticism have been particularly vigorous from social anthropologists.

Cultural relativism and the idea of universal rights

Cultural relativism is a widely agreed upon ideal within social anthropology. Put simply, it means that it is not legitimate to pass judgement on the social practice of other cultures. Each particular culture is the only possible basis for assessment of moral rights and norms. This argument is based on the assumption that the individual is socially created: "There is nothing in him that is not a product of interaction among individuals, groups, classes, societies" (Lefebvre 1986). Man is reduced to a carrier of socially defined rules of the specific social community.

This idea, that the individual is a reflection of his society and culture, is sharply opposed to the idea that human beings are — by nature and

independent of society — *free and equal individuals*. If man is a merely a product of environment and culture, and all moral norms are relative to the culture at issue, universal human rights cannot be justified. There are no standards by which one may measure norms cross-culturally. The practice of one culture may not be assessed on the basis of the (human rights) norms of another.

Cultural relativism is an important ideal for an empirical science attempting to understand the way of thinking and living of other cultures. The final consequence of this position is, however, that a normative evaluation of the social practice of other cultures is impossible.

Radical cultural relativism, claiming that the search for a common morality and common rights norm in itself is culturally dependent, leaves no room for understanding why there are differences. A formal objection against this radical relativism is that it faces a problem of self-reference: the argument that cultures are incomparable claims universal validity. At the same time — if this is correct — this argument (like all arguments) is contingent on its own cultural background, and may therefore not claim universal validity. An extreme cultural relativism will thus undermine its own position (C.f. Hollies & Lukes 1982, and Jarvie 1984). If everything cultural is relative, this must also apply to statements describing these differences.

Cultural relativism as an anthropological method does not, however, necessarily imply moral relativism. The range varies from “radical cultural relativists” to “contextualists”. The latter interpretation underlines that cultural relativism as a method should not paralyse the anthropologists’ ability to make ethical judgements. Cultural relativism is a guideline, rather than a dictate for scientific work; it should serve as a constant reminder that before judgement is passed on a cultural practice, the context and the conditions for human actions must be closely studied, understood and considered (Cf. Barnett 1988).

Still, the implicit premise of anthropology has generally been that it is not possible to violate rights that do not exist — that is, if they are not conceived as rights within the relevant culture (Downing et al. 1988:126).

Attempts to bridge the gap

Three elements may now serve as a framework for our discussion: Firstly, what we may call “the political reality”: The International Declaration of Human Rights of 1948 has status as common norm for all UN nations. For states to be accepted within the international community, a certain recognition of and respect for basic human rights is required. Still, regional

human rights instruments such as the African Banjul charter — while pledging allegiance to the human rights ideal — question the priority of the different rights categories, and especially so, the dominating position of individual rights. The second element is the philosophical justification of human rights as universal norms, based on what is “common to all human beings” independent of cultural context. Finally, there is the rejection by cultural relativists, of the idea that universal norms may be agreed upon, and function as a legitimate standard according to which the practice of different cultures can be assessed.

As we have seen, each of the elements have weaknesses, but neither can be dismissed. They mutually challenge one another. The widespread acceptance of human rights in the international community — their (apparent) legitimacy as a constitutive part of rights concepts in parts of the world where the cultural context is very different from their context of origin — challenges radical cultural relativism.

That there is “something” common to all men in all cultures, and that this “something” entitles man to certain rights, is an idea which increasingly seems to appeal to people throughout the world — perhaps because the world is actually becoming more uniform, as a consequence of better communications and mutual influence.

At the same time, cultural relativism effectively criticises the philosophical view of man and human nature as an unchangeable entity existing independently of society. And the fact that different cultural traditions seem to emphasise different categories of rights, to a certain extent seem to support this criticism. However, the cultural relativistic view of man raises problems of its own, claiming that the individual is nothing more than a role in society. The apparent incompatibility of these positions, combined with the increasingly important political position of human rights, have caused scholars from both quarters to search for new solutions.

As noted above, moral relativism and the rejection of human rights norms that may be cross-culturally valid, does not necessarily flow from cultural relativism as a scientific ideal. Assuming that it is in fact possible to communicate across cultures — to identify with other patterns of ideas, norms and rules — the Norwegian anthropologist Harald Tambs-Lyche concludes that the socially created person is not the totality of a human being. “The abstract individual may very well be a fiction, but the *experience that I — the subject and me — the role, my position in society, are not indistinguishable*, seems to be universal” (Tambs-Lyche 1988:114, our translation). On this basis, he deduces the following social anthropological perspective of universal human rights: The ideas inherent in human rights as they are formulated at present, with one particular

culture as their philosophical basis, can never become truly cross-cultural. The human rights norms as they exist today may, however, be seen as the Western culture's contribution to a global discussion aimed at developing customs built on mutual respect.

To formulate rights — as well as duties — towards the *subject* with whom we are communicating and who we understand across cultural barriers, is a difficult task. Norms and rules, rights and duties, are a *part* of the cultural barriers that separate us. On the other hand, we do seem to be able to *discuss*, to *communicate* the rules of the game, rights and duties, across these barriers (Tambs-Lyche 1988:115).

A parallel position is found in the works of the Arabic lawyer — and newly appointed director of Africa Watch — Abdullah Ahmed An-Na'im (An-Na'im 1990, 1992). He underscores the need for universally valid human rights, and emphasises the significance of the present international human rights norms. An-Na'im does, however, (although not as strongly as Tambs-Lyche) express doubts about the likelihood of the existing international norms attaining genuine universality.

An-Na'im advocates a reinterpetive approach, and proposes a methodology for the reform of cultural/religious traditions in general, and Islam in particular, in accordance with internationally accepted human rights norms. His strategy for promoting universal human rights is a process of internal, as well as cross-cultural discussions. The present international norms are regarded as an indispensable framework. Even though they cannot be considered universal, they nevertheless reflect and represent a certain degree of global unity which is crucial for the development of genuinely universal human rights.

Through an internal legitimation process, the human rights norms should as far as possible be justified and supported on the basis of the norms of each single culture. The internal discussion is influenced by, and in its turn influences other cultures through a parallel, cross-cultural dialogue. In time, the culturally specific view of human rights will be modified, as will the content of the global unity. The idea is that such dynamics, based on the ambiguities and controversies of each culture, possibly will result in a genuinely universal concept of human rights (An-Na'im 1990 and 1992).

While Tambs-Lyche and An-Na'im both support the idea of universal human rights norms, they do not (at least not Tambs-Lyche) see the rights expressed in current human rights documents as universal. Other positions, arguing in a similar manner that universal human rights must be based on an overlapping consensus between cultures, are more explicitly committed

to the idea of human rights as expressed in the International Bill of Human Rights.

The Norwegian philosopher Tore Lindholm — drawing on John Rawls' political theory of the idea of an overlapping consensus — argues that an acceptable justification of modern human rights must take as its basic premise the fundamental political pluralism of the present world. Modern societies are characterised by a lack of material resources and by religious, moral, economic and political pluralism — continuously causing conflicts. Rights are legitimised as protection against socially produced threats, as an answer to the circumstances of justice. Human rights norms and an apparatus for the implementation of these rights, are necessary as result of the “conditions of justice” in a pluralistic world community.

According to Lindholm, a promising example of such a justification strategy is found in the Universal Declaration of Human Rights itself (Lindholm 1992). The UN discussed — and rejected — different justifications for the rights, and settled for a listing of certain fundamental principles, summed up as follows: “All men are born free and equal in dignity and rights.” These normative statements may be supported by deeper premises in different religious, metaphysical, cultural and ideological traditions. Although the premises of the different cultures and ideologies may be reciprocally incompatible, each of them may in its own way support the fundamental values expressed in the declaration — on their own terms they may conclude that all men are born free and equal in dignity and rights. Human rights are thus justified by an “overlapping consensus” about a certain conception of the person.²³

Two sets of premises underlie this strategy: The normative premises, establishing the principle of inherent liberty and equal dignity for all human beings; and the descriptive premises, establishing that the world society has developed in a direction where inherent liberty and equal dignity for all human beings may only be realised through a widely accepted global human rights regime.

Lindholm puts forward this strategy as a “secularised heir” of the classical natural rights tradition. An heir that — by being sensitive to differences in normative traditions and levels of development and wealth — may provide cultures without rights traditions with a rationale for accepting fundamental human rights and liberties. He argues that the implicit justification strategy of the World Declaration is open to all religious, metaphysical and ideological traditions recognizing the liberty and

²³ Doubts are expressed, however, as to whether such a *minimal* approach is sufficient to justify the totality of human rights (Syse 1993).

equality of all human beings. On the other hand, it excludes, or demands normative reform of traditions that do not support the idea of liberty and equality. It is both pluralistic and critical — it is open, but not without a sting (Lindholm 1989)

Concluding remarks

Are these attempts to straddle the gap successful? They are, in some respects. A consensus is emerging on the need for human rights in the modern world. The idea of universal human rights enjoy widespread legitimacy as a solution to universal problems. These rights can no longer be justified by references to Man's Universal, Eternal and Unchangeable Nature, the way it is done within the Western philosophy of natural rights. Instead, a "consensus about consensus" is emerging: In spite of important social, religious and cultural differences, it may be possible to develop a global respect for and acknowledgement of certain basic rights — rights common to all individuals in all states by virtue of being human beings. The justification of these universal rights is, however, not in itself universal. It is sufficient that "the product" — human rights — can be justified on the basis of the fundamental "truths" within each culture.

The new conventional wisdom is thus that human rights must have a basis that is "open", "tolerant", "dialogical"; a basis that can function as an "overlapping consensus" between differing political, cultural and religious points of view. Lindholm's claim is that this overlapping consensus is already expressed in the declaration of human rights, while An-Na'im's opinion is that the declaration is an inherently Western contribution to the dialogue, which is already underway.

However, this basic insight, that political agreement on human rights requires deliberate philosophical shallowness, is not new. As early as in 1949, Jaques Maritain stated that the UN Declaration of Human Rights could not be adopted until all parties agreed not to discuss *why* all human beings have certain rights. Diverging justifications of the rights could, however, result in consensus about the contents of the rights (Maritain 1949).

Should human rights be regarded as universally valid norms? Justifications based on the idea of overlapping consensus seem to provide a sufficient normative basis for the idea of universal human rights, meaning rights that apply to all human beings in all states. The rights cannot, however, be claimed universal in the sense of "eternal" and "unchangeable". Given that it is based on an overlapping consensus, there will always be the possibility that the content of this consensus may

change. The justification is also limited in another respect. It is essential, if this strategy is to provide a valid justification for universal norms, that a cross-cultural consensus does in fact exist. And what is justified is the content of the overlapping consensus in its totality — which is not necessarily the currently prevailing interpretation of human rights in our Western culture.

This does not mean that human rights should not be used as a cross-cultural standard. On the contrary, as an object of international consensus it should be promoted. However, the conditional nature of the legitimation of universal human rights bids us to be cautious. While it is legitimate to employ human rights as universal standards, both in research and in policies of aid, to dictate a purely Western liberal concept of rights, is not necessarily legitimate.

So far, our concern has been the development of international human rights norms and the question of their universality. While these issues are important to keep in mind in the current situation where the hegemony of Western liberal ideas is considerable, and human rights figure prominently in foreign policy, there are other issues of more immediate relevance to the promotion of human rights. In the following two chapters we will consider some of the central debates: What is the relationship between human rights and economic development? Do civil and political rights hinder or promote the realisation of social and economic rights? Are democratic forms of government a sufficient condition for human rights respect — and a necessary condition? Is it possible for all societies to become democratic? A responsible strategy for promoting human rights in foreign policy must take these questions into consideration.

3. Trade-off controversies: Human rights or development?

Trade-off arguments are based on the assumption that human rights and economic growth are conflicting considerations. If developing countries are to achieve a rapid growth rate, certain political and/or economic rights must be sacrificed. Trade-off arguments also refer to conflict between different categories of rights included in the International Bill of Human Rights.

In the 1960s and -70s in particular, many analysts maintained that political authoritarianism was a necessary condition for the establishment of rationalised, effective administration and for economic growth: When the objective is economic development, civil and political rights have to yield. It was also commonly argued that economic inequality is necessary in order to promote industrialisation and growth, as economic rights hamper development.

However, as authoritarianism, particularly in Africa, increasingly became associated with economic and institutional decay, the tide turned. Since the mid-1980s, concern with the need for human rights, peaceful political contestation and "good government" has prevailed. The links between human rights, form of government and economic development are, however, far from established. The aim of this and the following chapter is to review the academic debate on these issues.

In this chapter we will start by considering the debate on the conflicting nature of human rights. Two types of trade-offs between rights and economic development will then be discussed: The sacrificing of political and civil rights in order to promote economic development, and the trade-off between development and economic, social and cultural rights, that is, when sections of the population are denied such rights as part of a development strategy.

Closely related to this debate on human rights trade-offs, are questions concerning the human rights performance of various types of regimes. These matters are only touched upon in this chapter; they will, however, be discussed at length in Chapter 4.

The contradictory nature of human rights

Tensions and contradictions between the various types of rights constituting the International Bill of Human Rights are much debated in human rights literature. The rights vary in character and function, and form the basis of different types of claims.

The metaphor of “trumps” (Dworkin 1977) is often used to describe the function of rights. In the same way that the trump outranks other cards in a card game, human rights represent a claim that is not to be overrun by other considerations — e.g. the consideration of economic growth. Problems arise when there are conflicting considerations, each of which can claim the “right of way”.

The discussion of how to balance human rights claims centre on the following two questions: Do these conflicts actually exist? And which rights should be given priority when a conflict does occur?

We will start with a classification of human rights which reflects much of the tension and contradictions discussed in the literature, and thus will be useful for our further discussions. It identifies six categories of rights: 1) *personal rights*, which include protection against interference, torture, kidnapping and arbitrary imprisonment, etc. 2) *Civil or liberal rights*, such as the right to free speech, free press, the right to assembly and organisation. 3) *Political rights*, the right to participation, the right to vote and the right to opposition. 4) *Social and economic rights*, the right to at least a minimum of vital necessities such as food, shelter and aid. 5) *Cultural or “national” rights*, including the right to express one’s own culture and language, the right to self-determination, protection of indigenous populations and their environment and the protection of minorities. 6) *“Solidarity rights”*, the right to development, to a certain social and physical environment, and the right to peace.

Negative versus positive rights

Conflicts are often seen to arise between “negative” and “positive” rights — a long standing distinction within political philosophy which is given a classical expression in Isaiah Berlin’s essay “Two concepts of Liberty” (Berlin 1969). *Negative rights* are linked to the concept of negative liberty (freedom from interference). These rights serve as a protection against interference by others — primarily the state. Negative rights correspond to the first two categories described above: personal and civil rights. Positive rights are related to the concept of positive liberty (freedom to act). Traditionally, in the philosophical debate, the primary positive right is the

right to participate in political decision making, but this category includes social and economic rights as well. Conflicts between negative and positive rights may arise in different ways. Positive rights to participation in the political process may, for instance, cause decisions that are in conflict with negative rights to protection against interference. Such conflicts have given rise to debates on which rights are the more basic, and to be given priority when conflicts occur.

Those who in recent years most vigorously have claimed the primacy of negative rights — the right to non-interference — are libertarian scholars such as Hayek (1948, 1967) and Nozick (1974). Libertarianism is an extreme variant of the liberal tradition, which has generally argued that negative rights are to be given priority — as opposed to the democratic tradition which stresses the right to political participation.

The internal tension within the Western liberal-democratic tradition, between the liberal rights to non-interference and the democratic rights to political participation, is obscured in the human rights debate. Personal, civil and political rights are merged into one single category, classified as negative rights. The idea is that negative rights are “those that do not cost anything”. There is no shortage of these rights; there is no need to withdraw rights from some people so that others may have them. Positive rights are defined, in contrast, as rights demanding substantial transferences: if the rights of some people are to be fulfilled, others must sacrifice their rights. The fact that “positive” and “negative” rights are defined in different ways within the same debate is a cause of unnecessary obscurity — and the division between “rights that cost and rights that do not cost” is disputable; negative rights, according to this definition, imply social costs for police, legal systems and electoral institutions. Still, this distinction is rather important in that it forms the basis for influential trade-off arguments: In some cases the granting of universal “negative” civil and political rights may be incompatible with the fulfilment of “positive” or “substantial” social and economic rights. And fulfilment of positive individual rights to food, medical care, shelter and education may require that negative rights are encroached upon. Or in other words: there may be a trade-off between civil and political rights and economic growth.

This latter distinction between positive and negative rights is more or less concurrent with the distinction often made between the “first and second generation” of human rights. The first generation of human rights (personal, civil and political rights) may be ascribed to the French philosophy of Enlightenment and the French and American human rights declarations from the late 1700s (see Chapter 2). These “Western” rights are not only older than the other categories, they are also often seen as the origin of

social, economic and cultural rights, termed the "second generation" of human rights.²⁴ The rights of the second generation are often referred to as the socialistic contribution to international human rights, as the Labour movement played a central part in the efforts to promote these rights (as did also a number of religious organisations).

This distinction between the first and second "generations" is paralleled in the two human rights conventions adopted by the UN in 1966: the international Convention on economic, social and cultural rights and the international Convention on civil and political rights (see Chapter 1).

A third generation of human rights has been added later: "solidarity rights" — the right to a clean environment, the right to peace and the right to development, as stated in the UN Declaration of 1986. These rights are often considered to be the Third World countries' contribution to the international norms of human rights. Third generation rights differ from the first and second generation in specifying the right to a *process*, rather than a given standard of development, and they are to a large extent perceived as the rights of *states*, in close connection with the states' right to self-determination.

The third generation of rights has been subject to much scepticism. Questions are asked as to what these rights really imply, and how "development" may be characterised as a right. Is "development" a period of time ending with the realisation of universally accepted goods? Or is "development" a synthesis of the conditions that may contribute to the realisation of such goods? Does the right to development imply the right to the *structural conditions* necessary for the realisation of one's social and economic rights?

Methodological problems of an explicit right to development are addressed by Phillip Alston who argues that even though it is important to explicate the connection between human rights and the structural factors vital for their realisation, it may be unnecessary — it may even be counterproductive — to formulate the structural factors as rights (Cf. Alston 1982 and 1984).

The right to development is defined as the right (or duty) of a state, giving rise to potential conflicts between individual human rights and the right of the state (the group) to development — a right that opens up for the use of individuals as means to promote collective development.

²⁴ It has been pointed out that it may be unfortunate to use the term "generation" about different rights categories, as if "the older generations" were decrepid and outdated and must give way to the younger.

Question regarding the tension between individual and collective rights occupy a central position in human rights literature. Individual human rights are the trump card of the individual against the state; collective rights imply that groups, or the state itself, are granted rights of equal force. The inclusion of collective or group rights among human rights instruments has been criticised. It is said to undermine the significance of human rights as protection against the state. According to critics, collective human rights is even a contradiction in terms; the concept "human rights" imply that they belong to all men as individuals, by virtue of their being human, while collective rights, by necessity, is the rights of limited groups of people, such as ethnic minorities, indigenous populations or the population of a particular state.

While some hold that group-rights are in fact a kind of privilege, and thus have nothing to do with human rights, others object that to grant certain groups — such as indigenous populations, or the populations of developing countries — special rights protection, may be necessary in order to secure their individual, universal human rights on a par with those of other citizens. But even when there is a widely recognised need to protect the vital interests of certain groups, it may be asked if these claims — which per se are legitimate — should be given status as *human rights*?²⁵

The discussions in this section, of positive and negative rights, rights generations and collective versus individual rights, point to tensions within the human rights instruments. Some conflicts are "logical": it is *a priori* possible to conclude that conflicts will arise, that they are practically inevitable: Without previous studies we may conclude that there are situations where collective rights are bound to violate individual rights, that quotas introduced to secure a minority the right to non-discrimination may conflict with individual rights to non-discrimination, and that the rights of minorities to self-determination in some cases will undermine the rights of the state to integrity and sovereignty.

Other conflicts are "empirical" in the sense that they are identified only through research; they are possible, but not common. Whether the right to political participation is incompatible with social and economic rights, belongs to the latter category which has to be established by research, and in the following discussion of trade-offs between human rights respect and economic growth, we will show the difficulty of determining which thesis is the more plausible: the thesis that development and economic growth

²⁵ An argument in favour of their inclusion in the International Bill of Human Rights, has been that these rights reflect a less individualistic view of society and thus contribute to the toning down of Western influence on human rights.

require limited civil and political rights or that development requires cooperation and participation from below.

The human rights — economic growth trade-off

The argument that developing countries, in their process of development, must sacrifice civil and political rights (e.g. the right to a free press, to assembly and elections), has figured prominently within development economy and political science, especially in the sixties and seventies. Variants of this point of view is, however, maintained up to the present day.

The trade-off argument is based on certain premises concerning the interaction between politics and economics, the main thesis being that economic growth is incompatible with political participation. Political and civil rights hamper development and should be suspended during a period of transition. In other words: Democracy is a bad solution if the objective is to speed economic development. This classical argument is aptly illustrated by the following quotation: "Every increase in freedom takes place at the cost of a slow-down of development; every acceleration of development involves less freedom" (Løventhal 1963, cited in Sørensen 1991:1).

Almond and Powell likewise maintain that economic and institutional development must precede democracy and welfare; without such a preparatory phase, there will be nothing to share (Almond and Powell 1978). B. K. Nehru, advisor of the Indian government, expresses this idea very clearly:

The only way to ensure economic growth is to increase capital investment. ... Now, capital is merely the gap between current production and current consumption. If, therefore, capital has to be generated from within the country the only immediate way of doing so is to increase the gap by reducing consumption. ... If, therefore, the objective of government is to remove poverty which is what the people desperately want, it must necessarily take measures such as increased taxation which in the immediate context, increase rather than decrease, the hardships of the people, and therefore make the government unpopular. Therein lies the dilemma of democracy in a poor country. Under a system in which lawmakers ... seek the approval of the electorate, the politician cannot afford ... to follow any policies which will not produce tangible benefits for the electorate by the time the next election comes around (Nehru 1979:57n, cited in Sørensen, 1991:8).

Nehru's argument that civil and political rights hinder growth and consequently, should not be given priority in a development process, was an important part of the reasoning behind modernisation theories in the 1950s and 60s. A major argument was that new and underdeveloped states had to choose a unilinear development strategy in order to "catch up with" the industrialised states. Economic growth through industrialisation was the "prescribed" way to development. The aim of development was to become a "mass-consuming society", in other words — the Western ideal.²⁶ However, the modernisation theorists did not conceive the trade-off between participatory rights and economic growth as being problematic. According to them, democracy and participation rights would succeed economic development.

Towards the end of the 1960s, a new school emerged within development theory, emphasising the role and structure of state agencies. Samuel P. Huntington, in his book *Political Order in Changing Societies* (1968), criticised the assumption of modernisation theorists that processes of modernisation and development were mutually reinforcing. According to Huntington, the transformation processes in the developing countries would lead to either chaos or political stability. The decisive factor was the state building and -development, which would have to precede popular participation (Huntington 1968).

The hypothesis that politically repressive regimes have a greater potential for development than democratic regimes, has been founded on a number of arguments. A widely held view — apparently supported by the economic performance of Latin American "bureaucratic-authoritarian" regimes in the 1960s, and the high growth rates of certain East Asian countries — is that a "strong" or "autonomous" state is needed at a certain stage if rapid economic development and industrialisation is to take place (cf. O'Donnell 1978, Cardoso & Falletto 1979, Lee & Lee 1992, Amsden 1985, Haggard 1991). Economic development requires a strict rule, and civil and political rights limit the autonomy of the state. This argument is usually based on one or several of the following assumptions: Firstly, it is often assumed that democratic governments manipulate the economy to generate political support in elections ('political business cycle'), and moreover, that

²⁶ The stage of mass-consumption is the fifth and last stage in Rostow's stage-theory on economic development. He assumed that all countries, whatever starting positions, would experience the same process of development culminating in the final goal, which was largely a model of the American welfare society (Rostow 1962). For a more comprehensive discussion of the trade-off argument and modernisation, see Apter (1965); Huntington (1968); LaPalombara (1963); Lipset (1959).

democratic regimes encourage trade unions, and that trade unions often behave irresponsibly by demanding increased wages, thus hampering growth. Both of these assumptions imply that a lid must be kept on popular demand-making. A third argument is that political participation creates political instability, thus discouraging foreign investment.

Extensive empirical research supports these arguments. Robert Marsh studied 98 countries during the period 1955-1970 and concludes that democracy hinders economic growth, whereas repressive regimes stimulate economic growth (March 1979:244). A study of economic growth in a number of Latin American countries has come to a similar conclusion (Cohen 1985:123).

The trade-off argument has, however, been contested — both on empirical and normative grounds. William G. Dicks found, in his empirical study of 72 countries in the period 1959-68, that — contrary to the studies referred to above — authoritarian regimes are not necessarily more effective in promoting economic growth than democratic regimes (Dick 1974:823). The argument that authoritarian regimes are stable regimes has also been rejected. One-party states and military dictatorships have on average a much shorter life expectancy than democratic regimes (Goodin 1979:4). Moreover, the argument of the “political business cycle” has been rejected on the grounds that it does not explain the stability of authoritarian regimes. Several studies have shown that authoritarian regimes also manipulate the economy in order to secure popular support (Goodin 1979).

Contrary to analyses of the development potential of some authoritarian states in Asia and (until the 1980s) in Latin America, most studies of African countries conclude that authoritarianism has had adverse consequences for economic development (cf. Ake 1991, Nyong'o 1992).²⁷ Not only do these analyses conclude that in Africa the “trade-off argument” is not substantiated, that authoritarianism, as a rule, is associated with economic stagnation and decline. It is also argued that theories of a democracy-development trade-off have had an unintended effect — the argument that repression promotes economic growth and development has been used by political leaders to legitimise their own free spending of state resources (Howard 1983).

These contradictory conclusions are partly due to the way concepts and categories are defined. One central problem is the definition of democracy as opposed to authoritarian regimes. Both the definitions themselves and the subsequent classifications are vital for the results of the analysis. After

²⁷ Berg-Schlosser's study of African regimes concludes, however, that authoritarian regimes promote growth in GNP (Berg-Schlosser 1985:143).

having "tested" the hypothesis that certain regime types promote development, on the basis of four case studies (Costa Rica, Taiwan, India and China), Georg Sørensen (1991) has concluded that the categories "authoritarian" and "democratic" must be further differentiated before valid conclusions about their development potential can be made (Sørensen 1991:188). Similarly, Haggard and Kaufmann (1989) found that more refined categories than those of "authoritarianism" and "democracy" were needed in order to differentiate between regimes and their ability to promote economic development.

Sub-division into categories is not the only procedure that poses problems, the distribution of countries into categories is also difficult. Dick (1974) makes use of the following three regime categories: Authoritarian regimes, regimes partly characterised by political competition and regimes characterised by political competition. He concludes that regimes partly characterised by political competition are the most effective in promoting economic growth. However, according to his definition, African countries such as Algeria, Ethiopia, South Africa and even Nicaragua under Somoza, are considered to be partly characterised by political competition — countries that would elsewhere be considered authoritarian.²⁸ In the next chapter the differentiation of regime types will be discussed at some length.

Another important problem in relation to the studies of human rights and development is the definition of the concept of economic growth. In 1979, the UN agreed that the main goal of development is the realisation of human potential, in harmony with society. Moreover, The International Commission of Jurists has defined development as the right of all people and all citizens all over the world to enjoy all the human rights included in the International Bill of Human Rights (Alston 1981:101). These definitions illustrate the problems of introducing non-economic indicators as criteria of development, and the limitations of the narrow definitions of economic growth used in the empirical investigations.

The investigations referred to above equate, to a great extent, development and growth in GNP. Today there appears to be a growing realisation that at least two aspects must be included in the concept of "development": Economic growth, and well-being. It is more difficult to find adequate indicators of well-being, which concerns the satisfaction of basic needs such as the need for food, medical care, shelter and education (often summed up as "redistribution"). When the redistribution aspect is

²⁸ The time aspect is another problematic element in Dick's analysis. Is the short period from 1958 to 1968 a reasonable period of time for such an analysis? How long should such a period be, before valid statements can be made?

included as an indicator of development, different conclusions are drawn. Hewlett, basing her argument mainly on Latin American conditions, finds a positive correlation between political repression and growth and a negative correlation between repression and "development" — when redistribution is taken into consideration (Hewlett 1979:471). One of her main arguments is that there are no incentives for redistribution in the Latin American capitalistic development strategy, thus excluding the majority of the population from participation and economic growth (Cf. also Diaz-Alejandro 1981, and Kaufman 1985).

So far we have seen that the "necessity" of trade-offs depends on the definition of development as well as on the definition and classification of regimes. We have also seen that attempts to test the empirical connection between regime type and economic growth, do not provide clear answers. Human rights analysts have argued that growth (in GNP) is a spurious goal of economic development, as a just distribution of resources is not included (Howard 1987). The problem is that when the definition of development is extended to include non-economic objectives, it is hard to find universal measurable criteria of development.

Equality — growth trade-offs

The question of whether a definition of economic development should include redistribution, leads us to another major problem: The assumed tension between equality and growth. Is there a trade-off between social justice and growth? Is economic development hampered by universal rights to a better standard of living? If this is so, should economic resources be concentrated on certain groups, maximising the potential for further (economic) growth? (Donnelly 1984)

Within economic development research it has been argued that in industrialised countries equality and growth are conflicting considerations as growth requires capital accumulation and investment, promoted by savings (Cf. Boulding 1968, and Johnson 1962). Economic inequalities promote growth in GNP, and according to this argument inequality is not only an unfortunate transitional phenomenon, but a necessary precondition of development. The profit is accumulated in high income groups with the greatest saving potential. Savings will benefit the poor in the form of new investments etc. — often referred to as the "trickle-down" effect of development.

The argument that growth and development require or are promoted by, unequal distribution, has led to reactions and counter-arguments by economists as well as human rights scholars. Empirically, it has been

pointed out that the assumption that the upper classes are inclined to save money ignores the propensity of high-income groups to spend their money on luxury rather than on savings and investments. Other empirical research has shown that there is no clear evidence that savings are placed within the borders of one's own country. The capital flight from Latin American and African countries show that inequality does not necessarily result in increased domestic investments. Jack Donnelly, in his comparative analysis of Brazil and South Korea, argues that inequality is not a precondition for economic growth and development; while growth rates of both countries have been high (higher in South Korea), the growth in South Korea — unlike in Brazil — has been coupled with redistribution (Donnelly 1987).

Implicit in the trade-off argumentation is the assumption that the decision to ignore or down-play certain rights is temporary and that the conditions are self-correcting. Critics argue that there is little evidence to support these assumptions. Privileged groups are not particularly willing to give up acquired economic goods. Quite to the contrary, inequalities as part of a development strategy tend to create class differences that in the long term counteract redistribution. Growth first could lead to redistribution afterwards; but this theory ignores the extremely strong resistance to post facto income distribution (Donnelly 1987:276, Howard 1983).

In addition to the empirically based objections to human rights trade-off as part of development strategies, a series of moral and ethical objections have been raised against both equality and liberty trade-offs. Is it ethically justifiable to sacrifice a whole generation for the sake of uncertain benefits sometime in the future? Objections of a more social kind point out the fatal consequences of short term trade-offs in poor parts of the world (Streeten 1980).

To sum up the discussions of "trade-offs" between human rights and economic development: The central issues are whether the downgrading of some human rights, political or economic, will promote economic growth, and whether such strategies may be justified.

Despite the amount of quantitative research carried out and some decades of historical experience, the connections between economic development, human rights respect and political systems are still unclear. The findings of various analyses seem to depend precariously on definitions, classifications and the time aspect. The conflicting evidence of authoritarian regimes' economic performance, has lead to a new focus in current research on the role of state-society interactions in development, in order to map diversities and relate them to variations in economic policies (cf. Skålnes 1993, Rakner 1992, Bratton 1992 and Hyden and Bratton 1992).

Jack Donnelly underlines the moral dilemma of the trade-off arguments when pointing out that human rights trade-offs are normative and a result of political choices. In a development process, there will always be a need to balance certain conflicting interests; but even so, the degree of human rights violation will depend on the choice of development strategy. Neither economic nor political trade-offs can be justified as political necessities. At issue here are political *choices* based on different political development models and strategies. Priorities are not absolutely necessary, and are therefore subject to moral assessment (Donnelly 1987).

This leads us to the discussion of the relation between *human rights and politics*, and specifically to the connection between regime types and violations of human rights.

Within political science, the relationship between human rights and regime types has been closely linked to the question of democracy and democratisation, and the preconditions of democracy. In Chapter four we will discuss some of the central issues of this debate, and consider the limitations of democracy in relation to human rights.

4. Human rights and regime types

Does respect for human rights require a certain kind of political organisation, or more specifically — does it require democracy? The relationship between regime type and human rights is important for the debate on development strategies and human rights.

The state has the power that may be used to prevent — or to execute — human rights violations, and the power to guarantee human rights observance. The state, or the political leaders, select economic and political strategies which in turn will influence the human rights situation, both in the short- and long-term. Recent studies have considered human rights from a state and regime perspective. Common to these studies is the assumption that the way in which power is legitimated and organised, and the relationship between rulers and citizens, account for major differences in regimes' human rights policy. This is also the point of departure in this chapter. By regime type is to be understood the set of rules, conventions and norms ruling the governmental process (Kimber, 1989:201).

We will discuss the relationship between regime types and human rights, based on three analyses with differing regime classifications and human rights definitions. The aim of such typologies is to predict rights violations that are motivated politically, by something internal to the logic of that particular type of regime (Goodin, 1992:223). Against this background, we will discuss the *limits* of democracy in relation to human rights protection and moreover, whether all communities *can* develop democratic institutions. This discussion will draw on the (growing amount of) literature on conditions for, and transition to, democracy.

Regime types and human rights violations

When studying the relationship between type of regime and human rights protection, the definition and operationalisation of the central concepts are crucial. Conclusions rely precariously on how regimes are classified and in terms of how human rights are measured.

Robert A. Dahl considers the degree of rights protection under different regimes, based on a limited set of political rights and liberties (Dahl 1992). 170 independent states are classified on the basis of four criteria: free and fair elections, freedom of expression, freedom of political organisation, and

availability of alternative sources of information.²⁹ 41 countries are classified as democratic according to all four criteria, half of which (22) are characterised as 'mature' democracies. These are mainly European or English-speaking countries.

Dahl concludes that the most comprehensive systems of political rights and liberties in the contemporary world exist in democratic countries. Subsequently, although democratic countries vary in their protection of political (not to mention other) rights, to press for democratisation is the best strategy for increased protection of human rights in non-democratic countries. Based on this, he goes on to discuss which preconditions are necessary for non-democratic countries to develop democratic institutions, a question to which we will return later in this chapter.

This typology clearly illustrates how certain human rights are among the defining characteristics of certain types of political regimes. Extensive political rights and liberties are, as Dahl himself notes, integral to democracy; "they are integral to the institutions that distinguish modern democracy from other kinds of political orders" (Dahl 1992:235).

Dahl's analysis may be criticised on two accounts. First, considering human rights only in the limited sense of political rights and liberties, is problematic both ideologically and in the sense of risking tautological conclusions.³⁰ Secondly, Dahl classifies regimes according to a uni-dimensional democratic (or polyarchal)-authoritarian distinction. Although his scale, ranging from most polyarchal to least polyarchal (omitting the USSR and Eastern Europe as special cases), goes beyond a simple democratic-nondemocratic dichotomy, it reveals limited information about the political forces internal to particular forms of regimes that influence their human rights performance and developmental potential. Further distinctions are necessary in order to bring out characteristics of regimes relevant to their human rights performance.

Juan J. Linz tries to come to terms with these problems. The operationalisation problems are discussed explicitly. But although he concludes that analyses should be based on the International Bill of Human Rights — a universal set of standards that all civilised states should

²⁹ Each of these criteria is then divided into three categories. For example: 1) Elections without significance or routine fraud or coercion, 2) Elections with some fraud or coercion, 3) No meaningful elections (Dahl 1992:237). Dahl's analysis is based on a study by Coppedge & Reinecke (1988).

³⁰ When human rights are defined as civil and political rights, operationalised as multi-party systems characterised by regular elections with broad popular participation, there is obviously a close connection between human rights respect and democratic regimes.

recognise, his own analysis considers mainly civil and political rights. Linz classifies political systems into four categories: *sultanistic, totalitarian, authoritarian and democratic* (Linz, 1992). The political system least compatible with the idea of human rights, is the *sultanistic regime*, defined as a regime of personal rulership with a political structure based on the loyalty and interests of followers, family friends or tribes. Governmental actions of such personalised regimes are not under the control of any institutional norms or commonly accepted principles, but a result of the arbitrary will of the ruler. Sultanistic regimes are political systems without any predictable rule of law, and the limited capacity and knowledge of the ruler is the only barrier against the violation of rights.

Totalitarian regimes are political systems built on a holistic ideology that also comprises the private sphere, where political participation is either forced or highly rewarded. According to Linz' definition, only Hitler's Germany and Stalin's Soviet Union may be defined as totalitarian regimes, both regimes being characterised by political terror and arbitrary use of politically organised violence against groups and individuals.

Authoritarian regimes are placed somewhere between sultanistic and totalitarian regimes; they do not pursue the utopian goals of totalitarianism, nor can they be characterised by the privatisation of the state apparatus typical of sultanistic regimes. Linz defines authoritarian regimes as political systems with limited, not responsible political pluralism. Authoritarian regimes are not accountable to the citizens, but as opposed to totalitarian regimes there is no guiding ideology, only "distinctive mentalities" and there is no extensive political mobilisation. The main difference between totalitarian and authoritarian regimes is, according to Linz, that in authoritarian regimes the private sphere of most people remain uncontrolled. Free exercise of religion is thus in many cases tolerated. Still, the main liberty granted by authoritarian regimes is the right to be politically indifferent.

Democracy is by Linz characterised as a political system guaranteeing the right to expression, information and organisation for the purpose of a free competition between leaders to validate at regular intervals, by non-violent means, the claim to rule. This definition of democracy implies that regimes claiming to be democratic, have to respect a wide range of human rights. Unlike Dahl, Linz differentiates between various types of non-democratic regimes. His typology yields more in terms of explaining the relationship between human rights and types of political regimes, but, as Linz himself points out, the distinction between forms of regimes fall far short of explaining or predicting the existing variations in human rights performance.

While distinguishing between forms of authoritarian regimes, differentiating their capacity for human rights protection, Linz leaves the "democracy" category untouched as the favoured form of regime. This is particularly dissatisfactory in light of his conclusion that democracy, despite being the form of government providing the best guarantees against human rights violations, do not protect all human rights at all times and under all conditions: Democracy offers only to a small extent protection of social and economic rights, and the rights of minorities are often threatened in democratic regimes.

Rhoda Howard and Jack Donnelly (1986) approach the question of human rights protection and regime types from a somewhat different perspective, avoiding the "democracy" category. Contrary to both Linz' and Dahl's analyses, the Donnelly/Howard analysis is based on a definition of human rights explicitly including all categories of rights included in the International Bill of Human Rights. Existing regimes are not classified on the basis of this human rights standard; rather it is an assessment of the human rights capacities of regime types in their pure or ideal form.

Donnelly and Howard distinguish, first of all, between *communitarian* and *individualistic* regimes. Individualistic regimes are sub-divided into *liberal* and *minimal* regimes, while communitarian regimes are divided into four sub-groups: *communist*, *corporatist*, *traditional* and *developmental*.

The degree of permissible inequality is the basic difference within the category of *individualistic* regimes. *Liberal* regimes have as their central value that the state should treat each individual as morally and politically equal. "Inequality is not objectionable to the liberal, but the principle of equal concern and respect does imply a floor of basic economic welfare, degrading inequalities cannot be permitted" (Donnelly & Howard, 1986:805). *The minimal state* emphasises liberty and down-play the concern for equality. The state is only required to protect the individual against violations of personal liberties. Minimal regimes, according to Donnelly and Howard, allow degrading inequalities, and are thus not in accordance with the requirements for human-rights respect.

Communitarian regimes give priority to the community, both ideologically and in practice. This often implies priority of the state over the individual. Individuals are entitled to respect only as members of the group or society, in accordance with the duties and roles ascribed to them. According to Donnelly and Howard, all forms of communitarian regimes are incompatible with the idea of human rights because they preclude individual autonomy.

In *communist* regimes the collectively defined goal of building a society based on a particular idea of the good, conflict with the civil and political

rights of individuals. Similarly, *corporatist* regimes, structured around interest-group representation, and divided into non-competitive hierarchical structures, violate basic political rights by not permitting political conflicts (such as labour conflicts). *Traditional* societies — societies based on a harmonious, organic conception of unity between individual and society — are also incompatible with respect for human rights, as defined by Donnelly and Howard, the reason being that individual goods only can be attained to the extent that the individual is a part of a larger collective — the family or the tribe. *Developmental* regimes govern by force, justifying repression as a necessary element in a strategy for economic development. Individual rights, in particular vis-a-vis the state, are set aside, thus violating the concern for basic human rights.

According to this classification only liberal democracies providing a certain level of material well-being to their citizens protect human rights adequately:

Other social systems may claim to have competing views on human rights. They do not. Rather they rest on competing views of human dignity, all of which deny both the centrality of the individual in political society and the human rights of men and women to make, and have enforced, equal and inalienable civil, political, economic and social claim on the state. Only liberalism, understood as a regime based on the political right to equal concern and respect, is a political system based on human rights (Donnelly & Howard 1986:816).

These three studies of the relationship between regime type and human rights define human rights in different ways and use different regime classifications. The first is a quantitative empirical analysis of 170 countries (Dahl 1992), the second applies a historical-comparative method (Linz 1992), while the third study is purely theoretical (Donnelly & Howard 1986). Still, their conclusions are almost identical. All find that human rights receive the best protection within the framework of a democratic regime, and that democracy is a necessary condition for an adequate human rights protection. However, the Donnelly/Howard analysis stands out on a crucial matter; it stresses that only certain types of democratic regimes observe basic rights: Both minimal and liberal regimes may be democracies, but only liberal regimes are consistent in their human rights protection. Guarantees for political rights and liberties are not sufficient. In order to respect human rights, regimes must also take steps to prevent degrading inequalities. Only liberal democracies guaranteeing a certain minimum of welfare qualify for this ideal type.

Both Linz and Dahl use a "minimal definition" of political democracy: a political system that guarantees freedom of expression and political organisation, access to alternative sources of information and free elections.³¹ When this is combined with the operationalisation of human rights as central political rights and liberties, the conclusion that democracy is the political system offering the best protection of human rights, is rather obvious. There is thus a danger of tautology posed by the analytic links between definitions of regime types and particular categories of human rights.

Donnelly and Howard escape this problem by incorporating a wider range of rights. Their problem is that *variations* of human rights violations are not considered, e.g. what types of rights violations are due to capacity problems, and which are to be seen as a result of the internal logic of the regime form. Wide definitions of the concept of human rights that include social and economic rights, often cause respect for human rights to be made identical with a "good society". Failing to meet the requirements will then no longer be classified as human rights violations, but as lack of capacity.

Does democracy spell human rights respect?

While there is often disagreement on whether capitalism is good or bad, and on the virtues of socialism, or communism, there seems to be universal consensus that democracy is good and dictatorship bad. ... Democracy, however understood, universally connotes a positive value, something to aspire to or at least to identify with. (Diamond, Linz & Lipset 1990:449)

Politically it seems as if the debate concerning which regime types are best suited to protect or promote human rights, is becoming obsolete. In the absence of strong ideological differences between East and West³² the superiority of political democracy enjoys universal acclaim. As a result, human rights are increasingly being reduced to an issue of multiparty elections.

³¹ This definition of political democracy is originally made by Schumpeter (Schumpeter 1950:269).

³² South appears to have lost its vote. As noted in Chapter 2, there is continuing resistance among third world regimes, in particular in Asia and the Islamic world, against the current trend of "universalising" and enforcing the Western interpretation of human rights.

The analyses presented above support the conclusion that democratic regimes generally are the more conducive to human rights respect, compared to more authoritarian types of regimes. Processes of democratisation generally represent a positive development from the point of view of human rights. Democratic institutions allow for upward control of the political leadership and function as information channels between the rulers and the ruled, thus furthering flexibility and political change within the existing system.

But the above discussions also indicate that all human rights are not necessarily protected in democratic regimes, and that all types of democratic regimes do not protect human rights equally well. Democratic regimes primarily protect civil and political rights; the guarantee for social and economic rights is not found in the democratic process *per se*. However, political and civil rights (democracy) are often seen to be a precondition for guarantees of economic and social security, by allowing political struggles whereby individual rights to welfare may emerge.

A number of scholars concerned with societies deeply divided by ethnic cleavages, have argued that under such circumstances democracy may amount to majoritarian dictatorship and will not offer sufficient protection for the rights of minorities. Considerable scholarly energy is devoted to finding forms of democratic regimes with better ability to protect the fundamental rights of minority populations (Lijphart, 1979, 1985; Horowitz 1986, 1990. Cf. also Eriksen 1991 and Gloppen 1993). Unless the rights of minorities are protected institutionally, through constitutional provisions or power-sharing arrangements, the interests of the majority are prone to undermine the legitimate claims of minorities. In situations where the majority demands total assimilation of minority groups (or even worse; "ethnic cleansing"), systematic human rights violations are likely to occur, also in democratic regimes (Cf. Schmidt, 1989).

Democracy as a form of government also faces charges concerning protection of the so called solidarity, or third generation rights. These include the collective right to development, peace and a clean environment. It has been argued that in political democracies the State lacks sufficient autonomy to pursue such long term collective goals. The regime depends on the support of a majority (each voting to maximise their individual self-interest) and are thus forced to be responsive to current demands in a manner which runs counter to long term collective interests. Some authoritarian regimes committed towards development seem to have performed better than democratic regimes under similar conditions. This has been ascribed to the relative autonomy of the state (Nelson 1990). In a similar fashion it is sometimes argued that protection of the environment

may be more successfully carried out by a non-democratic regime committed to this goal. However, there are a number of authoritarian regimes performing catastrophically — and far worse than most democratic regimes in terms of development. Furthermore, the situation e.g. in Eastern Europe and the former Soviet Union demonstrates — and vividly so — that non-democratic regimes by no means are particularly inclined to protect the environment!

Still — although the alternatives seem to be worse — democracy in and by itself cannot adequately protect these third generation rights. On the other hand democracies, despite their weaknesses, appear to provide the best *basis* for human rights observance. To the majority of the people on this planet, the problem is not that all forms of human rights are not fully protected by democratic regimes; their problem is rather that the governments and political systems under which they live guarantee neither personal security or political rights nor the most fundamental economic rights.

Analysing human rights from a regime perspective yields some interesting insights. But most of this research is too general. It cannot explain why a “quasi-democratic” regime such as Guatemala, with a democratic constitution, has managed to paralyse its people by the use of death squadrons, arbitrary terror and massacres. Or why, in countries such as South Korea, extensive redistribution, economic development and land reforms have been carried out within the framework of a non-democratic regime. None of the three analyses referred to above, manage to capture these variations in human rights observance in their differentiation of regime types. In order to explain the differences, factors such as stability, legitimacy and economic efficiency are introduced.

Regime stability, legitimacy and efficiency

Linz concludes that the degree of *stability* is probably more important for human rights respect than type of regime (Linz 1992). All regimes that are stable (except some totalitarian ones) are less likely to violate human rights. Systematic violations also occur in democracies, when the political situation is unstable or the integrity of the state power is threatened, e.g. by extremist ideologies questioning the legitimacy of the democratic order. In the post-war period in Europe there are a number of cases of violations of civil and political human rights in unstable democracies, and in democratic regimes under conditions of stress. At present Great Britain may serve as an example of a stable democratic regime limiting certain civil and political (democratic) rights in response to a situation where it faces violent political

means, such as terrorism: The British government has restricted the right to a free press in matters concerning the Northern Ireland conflict (Kimber 1989:218).

The degree of *stability* seems to be an extremely important factor for human rights observance, both for democratic and non-democratic regimes. The concept of stability is, however, problematic. Particularly violent and repressive regimes may attain a high degree of stability if their population is passive, in fear of state reprisals. If the human rights situation of a regime is only assessed on the basis of concrete violations, violent but stable regimes, such as Iran (1968-90) and Moi's Kenya (for most of the 1980s) will not appear to be repressive.

Perhaps even more important than stability when existing variations in human rights respect are to be explained, is the related issue of regime *legitimacy*. When a regime is weakly founded, basing its existence on violence, serious human rights violations will practically be a necessity. Repression of the majority is also to be expected when governments are based on support from a small sector of society; for instance in multi-ethnic societies, where the state is controlled by one ethnic group or a coalition of ethnic groups. When multi-cultural states contain strong ethnic conflicts threatening the integrity of the regime, human rights are often violated.

Perhaps as important as the type of regime is the success in state- and preferably nation building, or the more difficult task of creating multi-national, multi-ethnic, plural societies. Without achieving that goal even democracies are likely to violate human rights. (Linz 1992:221)

To a certain extent it seems possible for regimes to compensate for lack of legitimacy through *efficiency*, that is, the ability of a regime to deliver, both politically and economically, seems to be decisive. Hannan and Carroll (1981) found that high levels of economic development tended to promote stability — not only of democratic forms of regimes.³³ Similarly, Diamond, Lipset and Linz in their four volume study of democracy in developing countries found that “regimes that lack deep legitimacy depend more precariously on current performance and are vulnerable to collapse in periods of economic and social distress” (Diamond et al, 1990:10).

We have seen that studies based on general regime typologies, resort to explanations not related to the type of regime as such in order to account

³³ In light of the recent changes in the previous Eastern Block countries, as well as in the newly industrialising countries such as South Korea and Taiwan, a similar study conducted today would, however, probably come up with rather different findings.

for variations in the respect for human rights. This indicates that the relationship between human rights and political system is closely linked to the structural conditions of each individual country. To analyse the potential for human rights respect of various types of regimes, independent of their actual social, historical and economic context, thus yield limited insights. An alternative approach is to further differentiate democratic regime forms into sub-categories, analysing their potential for protecting different human rights in particular empirical contexts (Gloppen 1993).

The awareness of the fact that the character of civil society and of state-society relations is important for regimes' human rights records, have also resulted in concrete studies of how civil society is structured and organized, how state institutions include or exclude societal forces in the policy-making process, how pressures arise and assert themselves, or alternatively are contained or suppressed under various conditions (Rakner 1992). These add to our understanding of the relationship between human rights protection and political form.

A substantial amount of current academic research focuses on the conditions under which democracy may be developed and sustained. Yet other studies of increasing political relevance approach the question of what happens to the human rights situation in the democratisation process itself, that is, during the period of transition from authoritarian forms of rule (Andreassen 1993).

Studies of democracy in developing countries, and the *conditions* for emergence of democratic institutions, are central to the question of human rights respect and political form. The *possibility* of democracy developing in different societies has become a very important field of research in a situation where the *desirability* of democracy is generally accepted. Thus conditions for democracy is our focus in the following sections.

Conditions for democracy and respect for human rights

Although political democracy do not automatically guarantee human rights respect, it is often viewed as a precondition. Human rights are among the defining characteristics of democracy; the International Bill of Human Rights regards democratic rights as universal principles that all states have a duty to recognise. But is it possible for all countries to develop democratic institutions?

There is an extensive literature on the preconditions for democratisation. It may roughly be divided into two schools: One focusing on cultural preconditions, the other on socio-economic and structural conditions. The latter category of analysis, based on aggregated data and multi-national

analyses, concludes more or less unanimously that level of economic development appears to be the dominant explanatory variable in determining political democracy (Bollen & Jackman, 1985:42).³⁴

Most of the studies simply divide regimes into democracies and non-democracies, at most including semi-democracies. Diamond (1991) proposes a more sophisticated typology of seven regime types, differentiating between the dimensions of democracy — competition, participation and liberty. Using Freedom House's annual survey of political rights, he divides countries into the following types: 1) State hegemonic, closed; 2) State hegemonic, partially open; 3) Non-competitive, partially pluralist; 4) Semi-competitive, partially pluralist; 5) Competitive, partially illiberal; 6) Competitive, pluralist, partially institutionalised; and 6) Liberal democracy.

Diamond finds a strong relationship between economic development and democracy when cross-tabulating these regime types with per capita gross national product (GNP, 1989) for 142 countries (Diamond 1991, 1992). GNP or per capita national income are the variables most commonly used to indicate development. This is widely criticised, however, because these variables say nothing about the distribution of welfare.

When substituting GNP for the Human Development Index (HDI),³⁵ Diamond finds an even stronger relationship between democracy and development, and a more perfect step pattern of association with regime democraticness for different levels of development (Diamond 1992:100). A country's mean level of "human development" or physical quality of life, is thus a better predictor of democracy and level of political freedom than is the absolute level of income.

The relationship between democracy and level of development have been further strengthened by the collapse of the communist regimes in Eastern Europe. The ideological change resulting in a near-universalization of popular demands for political freedom, representation, participation and accountability, have removed a non-developmental barrier to democracy (Diamond 1992:102). Merely to demonstrate a covariance between level of development and democracy does, however, not establish causality. From

³⁴ A number of quantitative studies have examined the relationship between democracy and different dimensions of socio-economic development, almost all of which have found a positive relationship. (Lipset 1959, Coleman 1960; Cutright 1963; Russett 1965; Olsen 1968; Dahl 1971; Coulter 1975; Powell 1982; cf. Diamond 1992).

³⁵ A measure developed by the United Nations Development Programme (UNDP), combining a measure for per capita GNP, with nonmonetary measures of human welfare such as literacy and life expectancy.

the late 1960s, to study *change*, and establish causality, has been the concern of a number of scholars. (Bollen and Jackman, 1985, Bollen, 1979, 1883, Lipset, Seong and Torres 1991. Cf. Diamond 1992:104) They conclude more or less unanimously that the level of economic development is "the single most important predictor of political democracy when controlling for other variables" (Lipset et al. 1991:21). The quantitative evidence collected during three decades of research supports the conclusion that the more well-to-do the people of a country, on average, the more likely they will favour, achieve, and maintain a democratic system (Diamond 1992:109).

But even though the research indicates a higher probability for democracy to be established in rich than in poor countries, this does not prove that democracy is impossible in poor countries: "The evidence simply does not sustain the hypothesis that a high level of socio-economic development is either a necessary or a sufficient condition for competitive politics" (Dahl 1971:71).

The school of theories focusing on *cultural preconditions* for a democratic development do not necessarily — or usually — deny relevance of economic development. They argue, however, that economic development produces or facilitates democracy only insofar as it alters favourably crucial intervening variables such as political culture, class structures, state-society relations and civil society (Diamond 1992:127). In addition they hold that where cultural conditions are favourable, democracy may be developed and sustained even where the level of economic development is unfavourable, such as in India and Costa Rica.

Within this school some theories have argued that only when a society has moved from the traditional towards the modern society, democratic institutions may develop (Lerner 1959:49-50). Others have pointed out personal explanatory factors and the significance of political leaders for the development of democracy (Lipset 1960; Lijphart 1977). Yet others have stressed the importance of a political culture in which there is a general consensus about governmental procedures (Almond & Verba 1965:11-30).

The latter strand of thinking is re-vitalised in a currently very influential school of thought emphasising the importance of a vigorous associational life or civil society for democracy (Shah 1988, O'Donnell and Schmitter 1986, Schlemmer 1991, Rakner 1992, Tørris, forthcoming). It is argued that, at least when they are democratic in their internal procedures of governance, voluntary associations socialise their members into democratic values and beliefs and help to recruit and train new political leaders, and thus facilitate formal democratic politics (Diamond 1992:125).

A recent and noticeable work by Robert Putnam (1993) concludes that "civicness" is what matters. Based on a study of regional government in Italy over 20 years it is concluded — after dismissing initially plausible explanations such as level of economic development, levels of social and political strife, educational attainment, urbanism, and the role of the communist party — that regional government works best in regions with high levels of "civic community". That is, patterns of social co-operation based on tolerance, trust and widespread norms of active citizen participation. Disturbingly, for the prospects of democracy in developing countries, he finds that the distribution of civic community among the regions in present day Italy was already clearly evident as long ago as the 13th century.

Putnam's thesis is that economic development does not explain political development. Rather, long-established patterns of civic community explain both a region's capacity for economic growth and its capacity for democratic self-government. This is unsettling for the prospects of democracy in most countries in Asia, Africa, Latin America as well as in Eastern Europe. It suggests that political leaders in uncivic regions and countries lack the fundamental building-blocks from which a stable democracy can be built, and — at least implicitly — that civicness is almost impossible to create where it does not already exist; that social capital is far harder to accumulate than physical capital; and that patron-client relations with their cycles of dependence and norms of favour-seeking are almost impossible to eradicate (Economist, 6 February 1993).

This pessimism is echoed by Linz, finding little reason to be optimistic about the prospects for democratic governments in post-colonial states: "Consolidated, culturally homogenous, stable democracies are the greatest guarantee of respect for Human Rights, but only a limited number of states are likely to achieve that status" (Linz 1992:221).

However, as theories of socio-economic preconditions do not prove that democracy cannot be developed in poor countries, the fact that a specific kind of political culture is present in democracies does not imply that this is a necessary or sufficient condition for democratisation. These are not "natural laws" valid in all countries at all times. The studies are valuable, however, in illuminating difficulties and barriers facing Third World countries seeking to develop societies safeguarding democracy and human rights.

While there are no absolute preconditions for the development of democratic political systems, it is often maintained that the development will have to follow a certain sequence. In Chapter two we referred to Richard P. Claude's stage model for the historical emergence of rights.

Explaining under which conditions the rights emerged within the Euro-American cultural area, this model also suggests some general conditions for development and institutionalisation of rights norms. Claude argues that a stable, procedurally regulated, legal system must be present if rights are to be institutionalised, and that civil rights precede the political, social and economic rights.

Similarly Dahl argues that the attainment of some rights will precede others, or put differently, that some rights will hardly survive or exist if another set of rights is not already present. His hypothesis is that the first political right most likely will be the access to alternative sources of information. A general freedom of expression will develop from here. The next — and dangerous threshold is the right to political organisation. Only on this basis, Dahl argues, may the rights to free and fair election be attained (Dahl 1992).

In this perspective free and fair elections are the culmination of a process, not its beginning. Indeed, unless and until the other rights and liberties are firmly protected, free and fair elections cannot take place. Except in countries already close to the threshold of democracy, therefore, it is a mistake to assume that if only the leaders of a non-democracy can be persuaded to hold elections, then full democracy will follow. (Dahl 1992:248)

The advantage of the early democracies in terms of gradual development is often emphasised (Lipset 1981:475) The environment within which democratisation takes place is radically different today. Developing countries in the post-World War II area have to meet simultaneously the crises of integration, legitimation, penetration participation and distribution — demands which are liable to overwhelm the economic and institutional capacity of these states (Huntington, 1968; Binder, 1971; Diamond, 1980). But again, this does not mean that successful democratization is impossible. It does, however, imply that it is a serious mistake to think it will be easy to attain.

Concluding remarks

In this chapter we have considered the relationship between respect for human rights on the one hand, and types of regimes on the other. Although there are flaws in the human rights performance of democracies, we have argued that democratic regimes, based on institutions guaranteeing freedom

of expression, access to information, freedom of organisation and free competition for leadership, are most likely to observe human rights.

Recent developments in international politics, primarily the political changes in Eastern Europe and large parts of the Third World, have provided democracy with a unique status as a legitimate form of government. The international community is facing a new and unique situation. Currently there is no legitimate ideological alternative to democratic forms of government, and the very politicised — and paralysing — debate within the UN system on the relative status of human rights, has been blunted. This change in ideological-political climate has immensely increased the possibilities for furthering human rights claims, in particular in the form of calls for multi-party democracy, on the world scene.

In this context the requisites for democracy, and obstacles to democratization are crucial. And considerable scholarly energy has been, and is being, devoted to these questions. The general conclusions seem to be that democratisation is facilitated by socio-economic development. The most important factor in promoting democracy is, however, not economic development *per se* and certainly not mere economic growth. Rather, it is the social changes improving the physical quality and dignity of people's lives, and in particular reducing the level of absolute poverty. A policy of giving priority to basic human needs is thus more likely to promote and sustain democracy (and more humane) than more capital intensive strategies viewing basic health and literacy needs as consumption that must be deferred (Diamond, 1992). Development in this sense tends to produce or facilitate democracy by altering favourably the political culture and promoting an active civil society.

The conclusions in this chapter influence the trade-off debate presented in Chapter 3. The cross-national studies of the effects of democracy on economic development are not conclusive: still, the evidence is heavily in favour of the view that political democracy is not incompatible with development. On the contrary, it seems that political participation, liberty, accountability and pluralism are conducive to — in some cases even essential to — development. Several of the studies discussed in this chapter emphasise that although developing and sustaining democracy is very difficult in developing countries, democracy should not be ruled out as impossible in any country. Complete institutionalised democracy is less likely in very poor countries. Still, even at modest levels of economic development countries can achieve significantly democratic cultures and reductions in absolute poverty. And if social and political actors, private and public, focus on these intermediate goals, they stand a good chance of developing democracy "prematurely" (Diamond 1992). Once having arisen

for whatever unique historical reason "a political form may persist under conditions normally adverse to the *emergence* of that form" (Lipset 1959:28).

In the current political situation the study of the relationships between human rights, development and political systems are becoming a most important field of research. As will be discussed in the following chapter, concerns for democracy and human rights observance have gained increasing prominence in the foreign- and aid policies of Western countries. Hence, the questions raised in this chapter are urgent: Is it *possible* for all states to develop a political culture and institutions that guarantee respect for human rights? And, how fast and in what way may this development progress?

Comprehensive research is carried out with the objective to identify preconditions for democracy, and to investigate structural barriers to development of democratic institutions in Third World countries. The relationships are becoming clearer although several questions are still unanswered.

5. Human rights and foreign policy: Aid conditionality, election observance and the role of human rights research

The role of human rights in foreign policy is the concern of the last chapter of this study. Within this general focus three issues are addressed: First and foremost we look into questions concerning aid conditionality - that is, the allocation of development aid in response to the regimes' human rights performance. Secondly, problems related to operationalisation and assessment of human rights performance are discussed. Finally, we consider the expanding "industry" of election monitoring.

Throughout, the general concerns underlying the discussions are: what role should the international community play in advancing human rights and what should be the role of human rights research in the current international political situation. Is promotion of human rights a legitimate concern of foreign policy? And should aid policies be used as means to this end?

Regimes are increasingly judged and sanctioned according to human rights criteria. But the expanding use of human rights as a yardstick of development has been also met with criticism. In particular, objections are raised against the ways in which development aid is used as a means to promote respect for human rights.

Conditionality — making the allocation of aid dependent on human rights practice — is a political decision carrying ethical implications. Proponents of aid conditionality claim that this practice is in accordance with the moral duty to promote human rights, and a logical consequence of the obligation of states according to the International Bill of Human Rights. Critics argue that it is cultural arrogance and imperialism, that it implies illegitimate interference with the internal affairs of other states, and violates the principle of non-interference in international law. Linking aid transfers and respect for human rights also run contrary to the claim of third world countries to more predictable and automatic resource transfers from the industrialised countries.

When discussing these matters the debates reviewed in the previous chapters are highly relevant: Unless human rights can be justified as universally valid norms, it cannot be acceptable to make human rights

respect a condition for development aid. A policy of aid conditionality also presupposes a certain relationship between human rights, regime types and economic development.

In Chapter two we concluded that even though the status of human rights as universal norms is disputed, and the accusation of cultural imperialism cannot be categorically dismissed, the International Bill of Human Rights is justified as the object of an overlapping global consensus, and are included in international common law. Human rights violations may thus no longer be considered as the internal affairs of a state. Even though the principle of non-intervention retains validity and guarantees governments the space to formulate own strategies, the exercise of governmental competence has come under increasing scrutiny. Intervention by the international community is increasingly becoming legitimate. Governments are not only entitled to take account of human rights violations in their relations with other states; they have a duty to do so.

We will argue that while it is defensible to promote human rights considerations through development aid and foreign policy in general, all strategies and all human rights standards are not necessarily legitimate. Certain requirements must be met as to how this is done, and *which* human rights standard forms the basis for such policies.

Aid conditionality

Around the mid-1970s the promotion of respect for human rights became the official aim of American foreign policy. Under President Carter the American administration pursued a human rights policy where foreign aid was one of several means. The American state department began to issue annual reports on the human rights situation in countries of special interest to the USA, and aid and loans were withheld from countries that engaged in gross violations of personal rights to integrity.

In 1975 the Netherlands decided, as first country in the so called "Likeminded Group of Donors",³⁶ to include human rights criteria in their foreign aid policies. Norway followed in 1984, Denmark in 1987 and Canada in 1988.

More countries have followed. During 1990, Germany, Britain and France all stated intentions of linking aid to the observance of human

³⁶ The Group of Likeminded Countries includes, besides the Netherlands and Norway; Canada, Denmark, Finland and Sweden. The name refers to their equal stand on issues of foreign aid, and the fact that these countries are the Western industrialised states most concerned about third world initiatives.

rights, and promotion of good government, and at the Houston Summit in July 1990 the Group of Seven³⁷ declared a determination to assist peoples in achieving and sustaining economic prosperity and political freedom. The following year the Council of Ministers of the European Community (EC) adopted a declaration on "Human Rights, Democracy and Development Cooperation Policy". Development and consolidation of democracy, the rule of law and respect for human rights, are identified as major concerns for EC development cooperation, and it is explicitly stated that adverse reactions should be used to respond to gross and systematic violations of human rights. Only general statements are made, however, about the links between democracy, development and human rights. While allegiance is pledged towards the UN human rights standards, explicit criteria are largely absent (Biering 1992:52).

This is a common phenomenon. Human rights concerns, linked to "the promotion of good government", is at current a stated aim of the aid policies of a number of countries as well as of international development and lending institutions such as the UNDP and the World Bank. Criteria are, however, generally vague. And when they are made more explicit they tend to be rather controversial (cf. Barsh 1993).

If human rights considerations are to be promoted through foreign aid policies, one of the problems that need to be solved is to come up with a valid standard of human rights. We will return to this question below. Equally important, however, are questions concerning which strategies and means should be applied.

The *sanctioning* method, characterising the US foreign policy since the mid-1970s, is by Katarina Tomasevski described as a remote-control development (Tomasevski 1989:53). Foreign aid, used in this way, becomes a reward for human rights observance and if withheld, functions as punishment for human rights violations. The resulting unpredictability and lack of continuity detracts from the efficiency of the aid. Human rights objectives narrowly defined may thus block what is the primary goal of foreign aid: to contribute to better conditions for deprived and under-privileged groups. At the same time human rights are a crucial aspect of this goal. Can foreign aid policies be efficient means in the promotion of human rights objectives, and at the same time avoid conflicts with other development goals?

The Dutch Foreign Minister, Jan Pronk, has argued that human rights are best promoted through foreign aid policies striving for *structural changes*.

³⁷ The Group of Seven is a forum of the seven leading industrial countries, i.e. the USA, Japan, Canada, Britain, Germany, France and Italy.

Aid policies may be part of a general political commitment to more just social structures, improving fundamentally the conditions of poor peoples as well as for the deprived within each country. More directly, aid may be directed at the victims of rights violations and thus initiate processes contributing to freedom and right to codetermination for the poor (Pronk 1977:36).

This view enjoys widespread scholarly support.³⁸ It is maintained that to use foreign aid policy as a stimulating factor is more efficient and more in line with human rights objectives than a sanctioning policy. Aid should be used as a means to accommodate increased respect for human rights in recipient countries, and not as rewards for good performance. However, to stimulate increased realisation of human rights implies greater costs for the donor countries.

If foreign aid is to cater to human rights concerns, narrowly defined, as well as more general developmental goals, it must be granted on the basis of popular need, and not on the basis of governmental policies. This requires a bottom-up approach where projects are designed in cooperation with the local population in the areas in question, perhaps by a channelling of resources to locally based voluntary organisations (Andreassen 1991). In many cases local non-governmental organisations (NGOs) know which needs that most urgently need to be attended to, and their knowledge of the local community may secure that the aid is distributed in compliance with its purpose. It is not altogether unproblematic to depend on voluntary organisations, however. Local, as well as international NGOs vary in quality, and they should be thoroughly evaluated. In many African countries, there are hardly any local organisations, and those who do exist are often very weak. This strategy is thus both limited and complex.

Advocates of NGO strategies argue that channelling foreign aid directly to local voluntary organisations is a way to strengthen the development of a public awareness of human rights, which in turn could influence governmental policies (Andreassen 1991). This sword cuts both ways, however. External strengthening of NGO sectors when the state is weak, may also prevent a national consensus on basic rules from emerging (Cf. Tvedt 1990).

There is reason to believe that NGO strategies could function satisfactorily in regions where the human rights situation is considered to be good, and where there are few conflicts. If used in more repressive societies, such strategies must be introduced with great care. In such

³⁸ Cf. Yearbook on Human Rights 1986, 1987-88; Donnelly & Howard 1988, and Tomasevski 1989.

countries, a strategy channelling considerable economic resources to local human rights organisations might well ruin the organisations in question, as well as preclude any official contact between donor and receiving countries. Hence, NGO strategies require careful analyses of the actual situation; how the voluntary organisations and the rest of civil society function, both internally and towards the government. In countries with a high level of conflict and gross human rights violations, such strategies imply great risks and the utmost care must be taken.

A common standard of human rights

Donor countries do not agree on which categories of human rights are the more important in relation to development aid. Under Carter, the USA stressed promotion of the personal right to integrity, while under Reagan the focus was on the political right to participation. Social and economic rights have largely been neglected in American human rights policies. Other countries, such as the Netherlands and Norway, have in principle included social and economic rights on a more equal basis. A white paper from the Norwegian Parliament states that Norwegian foreign aid is to be poverty oriented, beneficiary oriented, presented as gifts, untied, 50 per cent bilaterally distributed among main cooperation countries, and that "priority is to be given to poor countries stressing the development of social justice and observance of the UN's political, civil, economical and social human rights" (Stortingsmelding nr. 36, 1984-85).

Since the late 1980s, there has been a tendency to equate concerns for human rights with support for democratisation or "promotion of good government". "Good government" comprises sound economic and social policies; officials and institutions able to design and implement right policies; and the respect for human rights and rule of law (Biering 1992:50). This form of conditionality, as is found e.g. in current EC foreign aid policies, extends to accountability, openness, transparency in decision-making, and in many cases also to the rules governing political competition and representation.

The difference between human rights standards is an important reason why making human rights respect a term for foreign aid is controversial (Tomasevski 1989:64). Adding to this is the fact that the practice of important nations is not very consistent, even on the basis of their own standards. Sanctions tend to be issued in response to human rights violations only where the interest of the donor country is not at risk. The transgressions of more prominent states tend to be overlooked: For instance, the unwillingness of major donors, such as the EC, Japan, the World Bank

and the Asian Development Bank, to condemn human rights violations in East Timor, has been ascribed to the rapidly growing economy of Indonesia; too many companies are probably looking for business in the region... (Cf. Biering 1992). Aid conditionality under these circumstances, rather than working to advance universal norms, amount to a promotion of the self-interest of donor countries — or may at least appear so for those being sanctioned.

Concrete criteria based on uniform and ideologically neutral human rights standards, is necessary if these problems are to be overcome. Merely an agreement among the great powers will not do. Therefore, although liberal democracy at the moment may be a largely uncontested political ideal, this should not be equated with respect for human rights. A legitimate human rights standard must be based on the entire International Bill of Human Rights.

Although the International Bill of Human Rights represents a form of global consensus on an abstract level, the formulations are often vague. There is considerably less consensus on the actual implementation. Simply referring to international human rights standards does not solve any problems. Conflicting views on which duties human rights places on states and other agents on the international arena, constitute a real problem, especially when social and economic rights are concerned.

A common standard of human rights must meet the following requirements: There must be an *ideologically balanced* selection of rights based on an *international consensus*. Moreover, these rights must be agreed upon on a *concrete level*, concerning e.g. the degree and scope of governmental commitment. In addition, human rights violations in general should be considered most grave when they are *systematic, extensive*, and/or are committed with active participation or passive acknowledgement by the authorities.

Some scholars argue that there is a core of rights, on which there is general consensus, also on a concrete level. David W. Gillies discerns a core of five rights, and claims that the significance of these rights is generally recognised (Gillies 1990). These are: 1) the freedom from extra-judicial killing, 2) freedom from torture, 3) freedom from arbitrary arrest and imprisonment, 4) freedom from hunger and 5) freedom from discrimination. The former three are rights that have been granted an absolute legal status in international Conventions, and violations of these rights cannot be accepted. The rights are now included in international law, and are thus binding to all states, not only to those that have ratified the conventions. The two last rights are also basic international norms carrying normative force.

The core rights should be given first priority both in the monitoring of the rights situation in developing countries and as human rights objectives for foreign aid policies. Second priority should be given to legal protection, while central civil and political rights are given third place. Civil and political rights are stressed primarily on the basis of their position in the donor countries. These democratic rights, according to Gillies, have a weaker normative basis and should thus be given less attention.

The above suggested ranking of especially important human rights is interesting as it identifies a set of core rights claimed to enjoy international support. Freedom from hunger, a central socio-economic right, is included in the core rights, thus providing them with a certain ideological balance. Social, economic and cultural rights are, beyond what is implied by the rights to non-discrimination, given little attention, although they are meant to be universally guaranteed rights.

Such *hierarchies* of rights are, however, controversial. It is at variance with official UN policy, holding that different categories of rights are incomparable, and that the rights are interdependent. Proclamations of indivisible and interdependent human rights are, in turn, criticised for covering up the actual contradictory nature of human rights considerations, and for violating the basic intuition that certain rights (e.g. the right to food) are more fundamental than others (e.g. the right to vacation with salary) (Gillies 1990).

Measuring, monitoring and reporting human rights in developing countries

Pioneering work regarding the measuring and reporting of human rights conditions, is done in relation to The Yearbook of Human Rights in Developing Countries (hereafter *the Yearbook*). The project was initiated in 1985 to investigate the human rights situation of Norway's main cooperation countries. Although American and Dutch Foreign Affairs Administrations had earlier issued annual reports on the human rights situations in their respective cooperation countries, the Norwegian project was still pioneering as it was carried out by independent scholars.³⁹ What started as an initiative by the Programme for Human Rights Studies at the

³⁹ The work was funded by the Ministry of Development Cooperation, but the Norwegian authorities are not responsible for, nor do they influence, the contents of the report. The term "Yearbook" is somewhat misleading, as the reports for financial reasons have not been issued every year.

Chr. Michelsen Institute (CMI) in Bergen, in cooperation with the Norwegian Human Rights Project in Oslo (presently Institute for Human Rights) have since been joined by human rights institutes in a number of countries — Denmark, the Netherlands, Finland, Canada and Sweden.

There are important differences between the Yearbook and the annual reports from the US State Department. While the US Country Reports comprise reports on the human rights situation of practically all countries except the USA itself, the Yearbook concentrates on a limited number of countries. The basis of the assessments also differs. The US Country Reports assess the human rights situation in the world according to the following list of rights (1988):

- 1) Respect for *personal integrity*, i.e. freedom from political assassinations, disappearances, torture and other cruel, inhuman or humiliating treatment or punishment, arbitrary arrest, imprisonment or exile, denial of a public trial and arbitrary interference in the citizen's private life, family, home or correspondence;
- 2) Respect for *civil rights*, i.e. right to free speech, free press, assembly and organisation, to free exercise of religion and travel within the country, and the rights to freely leave the country;
- 3) respect for *political rights*, i.e. the right of citizens to change their government;
- 4) the authorities' attitude to investigations of alleged human rights violations;
- 5) *discrimination* on the basis of race, sex, religion, language, social status, and
- 6) collective negotiations, laws against forced labour, minimum age for child labour and acceptable working conditions.

The reports are considered comprehensive and thorough, but are flawed by the fact that, due to the way they are collected, political considerations sometimes influence the reporting.⁴⁰ Another important objection is the fact that social and economic rights are not included.

The Yearbook, whose geographical scope is modest compared to the US Country Reports, is more ambitious in its contents.⁴¹ The reports contain

⁴⁰ US ambassadors in the respective countries have been responsible for the reporting.

⁴¹ The 1989-issue of the Yearbook reported on the human rights situation of thirteen countries, in the 1991 issue the number was 10. The countries reported on differ from year to year, rotating among the developing countries of particular interest to the countries where the various participating institutes are located.

information on 1) the governmental attitude to human rights, 2) system of government and participation rights, 3) civil liberties, 4) socio-economic rights and 5) equality, the right not to be discriminated against, and the rights of populations and minorities.

Social, economic and cultural rights are given as much attention as the civil and political rights. By focusing on social and economic rights it illuminates an area often ignored in human rights reporting, and circumvents to a certain extent the accusations of ethno-centrism often directed at such reports. The problem of determining to what extent the authorities are responsible for human rights violations have also been dealt with in a better way in the Yearbook than in most other reports — although the authorities' ability to prevent rights violations may be overestimated, human rights violations by armed opposition groups are reported and exhaustive analyses of the socio-political and economic conditions are carried out (Gillies 1990). Critics have pointed out that the social and economic rights chosen as basis for the reports are relatively vaguely defined, and that it is disputable what these rights imply when it comes to satisfaction of individual needs and state responsibility (Gillies 1990:20). This criticism is only partly valid, as a great effort is placed on operationalisation and designing of minimum standards for central, although vaguely defined social and economic rights. However, there still is a need for methods that may present a more clear and precise picture of the actual human rights situations, and of the development trends in various countries.

It has also been objected that even if the number of countries is relatively limited, it is impossible to deal properly with the historical, economic, social and political context of 13 countries within the framework set for the Yearbook (Tvedt 1990:106-107). In order to avoid becoming situation reports rather than analyses of development trends, a substantial part of the Yearbook is now devoted to more general analyses, and the number of countries further limited. The Yearbook attempts to present a nuanced and at the same time clear picture through an assessment on a broad basis. If reports on human rights situations in developing countries are to provide a basis for political action, they must include as many aspects as possible of the countries in question.

An alternative framework for reporting and evaluating human rights is presented by Rhoda E. Howard and Jack Donnelly (1988). They propose a short-list of carefully selected rights as the appropriate strategy.

A list of 10 rights, divided into four categories, is suggested: The first is *survival rights*, i.e. the rights to life, food and health care. The second is *participation rights*, guaranteeing the individual its equal position in society. This category is represented by family rights and laws against

discrimination. The third category is *protection rights*, protecting the individual against state violations; the rights to *habeas corpus*⁴² and an independent judicial system. The fourth and last category is the *authorisation rights*, granting the individual control of his own life, especially in relation to the state. This category is represented by the right to education, free press and organisation.

This selection is justified as containing estimates for almost all other rights. The list — unlike Gillies' core rights — does not imply a rights hierarchy, but takes as its premise the interdependency of the human rights. The above rights have been chosen, not because they are more important than other rights in a *moral sense*, but due to their *methodological significance*. Because of the logical, political and moral interconnection between the human rights norms, a state that observes these ten rights will most likely observe the other rights as well (Donnelly and Howard 1988). And a well-functioning short-list simplifies research on human rights as well as reporting.

Social and economic rights do not receive much attention in this short-list, and in this sense it reflects a traditional Western liberal conception of human rights. In order to avoid charges of ideological lopsidedness — and to function according to its general intentions — the strategy relies precariously on the validity of the underlying assumption that human rights are in fact interdependent. Although this reflects the politically correct view of the UN, a UN decision, as previously noted, results from compromise and political struggle, and does not in and by itself provide any guarantee of the empirical relationship between the different rights.

A common standard of human rights providing an uncontested basis for reports on the human rights situation in developing countries, and guiding the foreign policies of donor countries, appears to be a distant goal. However, it seems clear that the challenge is three-fold: We must a) find methods of reporting that present a comprehensive picture of the total human rights situation in the relevant countries, and b) analyse development trends on the basis of socio-political and economic variables, and c) reach an ideologically balanced concentration on certain basic rights.

⁴² *Habeas corpus* is originally the title of a British law from 1679, and states the right not to be imprisoned or kept in prison without a trial and conviction.

Ethical aspects of human rights reporting and assessment

Three requirements may be posed to Western democracies monitoring the human rights situation of other countries (Howard 1990): Firstly, the human rights definitions functioning as basis for the reports must comply with international standards, and cover the entire range of rights included in the International Bill of Human Rights.

Secondly, regimes reporting and assessing human rights situations in other countries must be sensitive to the views of their own population — abstract criteria that do not reflect the opinion in the electorate, might possibly prevent human rights from becoming important considerations in the foreign policy of Western democracies.

Thirdly, countries that evaluate other countries should also exercise some self-assessment and submit itself to scrutiny of its own human rights record. A problem with international human rights monitoring is that the countries responsible for reporting do not report on their own human rights situation. Donors should measure up to the standards that they use on recipient countries — and historical and existing socio-economic differences between countries should be duly considered. There is a close empirical relationship between respect for human rights and level of economic development, and wealthy donor countries should be judged more harshly than poor countries — which even with the best of intentions have no way of feeding its population.

Focus should also be placed on those human rights violations one's own country directly or indirectly may have contributed to. Obvious examples are the US policies in Latin America, and the Soviet support for Mengistus' regime in Ethiopia. In this connection it is interesting to note that the weighty security interest of great powers, and the economic interest promoted by strong internal pressure groups, may conflict with a dependable and efficient human rights policy. Human rights considerations are prone to be overrun by, or used as front for, other foreign policy interests. The varying ability of small and large countries to carry out efficient human rights policies is discussed by Jan Egeland, in his book *Impotent Superpower, Potent Small-state* (1988). His thesis is that small countries have a comparative advantage in this area.

Self-assessment, carried out in an ideologically balanced way, may reduce the self-complacent attitude so often found in Western countries that evaluate and report on the (lack of) human rights respect of other countries. In Norway's case, issues such as the rights of the Sami population, the legal protection of custody prisoners and psychiatric patients, the rights of the old, children and the disabled, and on the treatment of immigrants and asylum-seekers should be given particular attention. Without such self-

assessment, human rights reports may be conceived as, and will actually be, a kind of ideological manipulation by Western democracies striving to promote their own political and economic system.

This is particularly important at a time where the political and economic system of the West — liberal multi-party democracy — is most vigorously exported. Before drawing this study to a close, it is necessary to make some comments regarding the boost in “electoral assistance” and international election observance.

Pollwatching and human rights.

Over the last few years, with the transitions from authoritarian rule in a number of developing countries, international election observers and experts offering technical electoral assistance has become a central and visible element in world politics. What are we to conclude after a few years with boosting pollwatching-activity — or political tourism as the most critical voices choose to call it.

The proponents of international electoral observation argue that this activity is crucial where elections are controversial. (Cf. McCoy et. al. 1991) An external neutral party is required in order to assess the fairness of the electoral process. And observers have an effect in preventing the rigging of elections. They may also function as mediators in conflictual situations.

It is becoming increasingly clear, however, that pollwatching in its present form have serious shortcomings: The time perspective is usually very short — focus is almost solely on the activities of election day. The important preparatory activities — registration of voters and candidates, electoral campaigns etc., where the more important structural rigging may take place — are largely overlooked. And even the counting of votes is largely ignored by international election observers (Cf. Andreassen 1993). If the current practice of pollwatching in the sense of “sitting in on election day” is continued, the international community may risk that they declare “free and fair elections” — and thus provide regimes with legitimacy on rather shaky grounds. This is, in the long term, prone to delegitimise the activity itself.

Electoral observance, if conducted in a less haphazard manner, may however contribute to stability at crucial stages of democratisation. This requires involvement over a longer period of time, often coupled with technical electoral assistance, and it requires observers who are well prepared and who have a clear conception of their own role — lately there have been several instances (e.g. in relation to the Kenyan 1992-elections)

where observer teams seemed to conceive of themselves as “agents on the side of democracy” rather than impartial observers.

Election observance and electoral assistance is currently the “growth-industry” of the UN. Joined by observers and technical experts from a host of non-governmental organisations and semi-governmental institutions, the representatives of the UN have been present at a substantial number of elections over the past few years; in Nicaragua, Angola, Zambia, Ethiopia, Kenya and Eritrea, just to mention a few. And the demand seems to be ever-increasing. The UN established its electoral assistance unit in October 1992, and at the time of writing (May 1993) 34 requests regarding technical electoral assistance and pollwatching are waiting to be handled.

Substantial economic resources are required if these tasks are to be attended to — and even if the money for sending hundreds and thousands of international observers can be obtained, there is the question of whether this is the best way to spend resources in developing countries.

Critics have argued that placing such great attention on elections rather than other aspects of development and democratisation is to take the easy way out. Even when properly conducted, pollwatching may be said to cater more adequately for the needs of the UN and major donor countries — to accomplish visible results — than to the needs of developing countries in processes of democratization.

If these efforts are at all to be legitimate, it is crucial that elections are not seen as the culmination of democracy — at best they are a first step towards building it. There is still a lot to be established about the preconditions for the establishment of democracy in developing countries, but, on the basis of the research reviewed in the previous chapter, we know enough to issue a preliminary note of warning: while free and fair elections are vital to democracy, it should be viewed as a final step, not as the driving force of the democratisation process.

Concluding remarks — the role of human rights research

What should be the role of human rights research in the present situation where human rights concerns figure prominently in foreign policy — as reflected in the widespread practices of aid conditionality and election observance?

Human rights research has often, and not unjustly so, been regarded as a form of activism. Generally, researchers in this field have been openly and strongly committed to the ideal of human rights, considering their work as a way to promote understanding of and respect for human rights. And human rights research has generally been carried out “in opposition”.

Research has been an important part of the struggle for placing human rights issues on the political agendas, and for getting power behind human rights concerns. The link between research and activism is under such circumstances understandable, probably unavoidable and maybe even desirable.

When human rights — and currently in particular those associated with democracy and good government — are embraced by the establishment and function as base for political decision making, it is, however, extremely important that human rights researchers safeguard their scholarly integrity. Not that “democracy” and “good government” are not ideals worthy of pursuing; they are indeed, and they are closely linked to human rights. But they are not synonymous with the International Bill of Rights — in the sense of a set of norms which, seen as a whole, balances different ideological and political concerns in such a manner that it may be said to represent a global consensus.

In a situation where the Western liberal tradition (the tradition most heavily influencing human rights research) have such a tremendous backing in terms of political power, so as to more or less appease opposing strands of thinking on human rights, it is crucial — for the long term legitimacy of human rights throughout the world — that human rights researchers are not seen as merely errand boys for the West. They must remain in opposition.

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