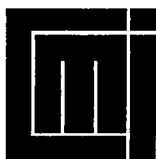


Human Rights and Development

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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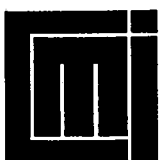
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Preface

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).

