

**PARAGRAPH 3, PART II OF THE VIENNA
DECLARATION AND PROGRAMME OF ACTION
1993 : A REFLECTION OF THE APPROACH OF
THE UNIVERSALIST OR THE CULTURAL
RELATIVIST?**

The United Nations Conference on Human Rights held in Vienna last year¹ saw a confrontation between the universalists and cultural relativists over one of the most hotly debated issues at the Conference, the universality of human rights.

The final outcome of the Conference with respect to the pertinent issue is paragraph 3 of Part II of the Vienna Declaration and Programme of Action 1993² which embodies the following:

All human rights are universal, indivisible and interdependent and inter-related. The international community must treat human rights globally in a fair and equal manner, on the same footing, with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of states, regardless of their political, economic and cultural backgrounds, to promote and protect all human rights and fundamental freedoms. (emphasis added)

What is the scope and meaning of the said paragraph? If one were to read the provision as a whole, one would have to give particular attention to the first and third sentence of the same as emphasised above. Whilst the former appears to espouse the belief of the universalist in the universal nature of human rights norms, the latter seems to uphold the view of the cultural relativist that human rights are subject to culture³ and its diversity. Are the two complementary or contradictory to one another?

¹The Conference was the first world gathering in the name of human rights in 25 years, the last one in Teheran, and also the first in the post-Cold War and was attended by almost 2,100 delegates from 171 states. See generally UN Chronicle, September 1993, Vol XXX, No 3, p 54-61.

²A two-part Vienna Declaration consisting of 16 preambular paragraphs and 39 operative paragraphs and a six-part Programme of Action was adopted by way of consensus by the United Nations Conference in Human Rights in Vienna. *Ibid*, p 56.

³As to the meaning of culture, Janusz Synonides, Director, Human Rights and Peace Division, UNESCO, Paris, France observes that:

This Article seeks to evaluate both the universalist⁴ and cultural relativist⁵ approaches to human rights and assess the impact of one on the other by describing the basic ideas underlying

The term 'culture' may be used both in a wide and in a restricted sense, that is, as admitted in specialized literature: small 'c'-culture day-to-day social relations, the sum total of human activities, the totality of knowledge and practice, everything which makes man different from nature; and capital 'C'-culture linked with creative activities of cultural elites, the highest intellectual achievements of human beings, music, literature, art and architecture. In practice, the division between these two anthropological definitions can cause problems because the same object or activity can be seen by some as belonging to culture with a small 'c' and by others as belonging to culture with a capital 'C'.

See J Symonides, "Cultural Rights" in Collection of Lectures: Text and Summaries: 24th Study Session, Strasbourg, 2-30 July 1993, International Institute of Human Rights, p 1. For the purposes of this paper, a broad understanding of culture is adopted so as to encompass "national and regional particularities and various historical, cultural and religious backgrounds", terms used in paragraph 3, Part II of the Vienna Declaration and Programme of Action. In other words, culture in this context refers to a way of life.

The universalist is closely linked with the Western intellectual tradition namely Western liberal thought. M E Winston, in the course of his lecture entitled "Philosophical Conceptions of Human Right, Strasbourg, 2-30 July 1993, describes three forms of Western liberals: "Hard" liberals who believe that human rights norms are postulates of pure reason necessarily being accepted by all rational beings and that the belief is not only true, they are certain and definitely not in doubt, "Wet" liberals who are impressed by the diversity of culture and assert that the Western culture is one particular culture group that cannot be exported to other cultures and human rights must accept and tolerate these differences, and "Soft and Dry" liberals whose commitment in universality is not so hard as "Hard Liberals" but not as soft as "Wet Liberals" since they believe there are certain norms which are standards of universal application.

I focus my discussion on "Hard Liberals" because they represent the governments of Western nations that insist that human rights apply across the board to every nation, whatever their state of development and however different their cultures.

The cultural relativist are mainly non-Western nations in particular the governments of Asia and African countries that resist the imposition of international human rights norms. This tendency is very much evident in the Bangkok (Governmental) Declaration of Human Rights, adopted by Asian States in 1993 and also in the Tunis Declaration of Human Rights, adopted by African States in 1992. These Declaration respectively provide:

(We) recognised that while human rights are universal in nature, they must be considered in the context of a dynamic and evolving process of international norm-setting, bearing in mind the significance of national and regional particularities and various historical, cultural and religious backgrounds. (Item 8, Bangkok Declaration)

The observance and promotion of human rights are undeniably a global concern and an objective to the realisation of which all States, without exception, are called upon to contribute. However, no ready-made model can be prescribed at the universal level since the historical and cultural realities of each nation and the traditions, standards and value of each people cannot be disregarded. (Item 5, Tunis Declaration)

See Vitit Muntarbhorn, "The Universality of Standards: Part I: Course and Annexes", a paper presented at the 24th Study Session of the International Institute of Human Rights, Strasbourg, 2-30 July, 1993, p 2.

ing each approach. In addition this Article explores the possibility of fitting in cultural plurality⁶ within the universalistic notion of human rights and vice versa.

I. DEFINITION AND ORIGIN

To start with, the issue of definition and origin of human rights is not trivial.

The universalist assumes that the basic rights entitled to universal protection are best reflected by the United Nations Charter⁷ and the International Bill of Rights comprising the Universal Declaration of Human Rights,⁸ the International Covenant on Civil and Political Rights⁹ and the International Covenant on Economic, Social and Cultural Rights.¹⁰

The universalist claims that these institutionalized rights trace their philosophical ancestry to the moral theories of natural law¹¹ of the ancient Greeks and Stoics followed by the doctrine of the "rights of man" seen through the writings of several influential thinkers of the European Enlightenment, namely Locke, Montesquieu, Grotius, Rousseau and Kant. The social contract theory of the

⁶For the purposes of this Paper, I refer sporadically to certain facets of the non-occidental cultures, namely the Chinese, Hindu, African tradition and Islam.

⁷Article 55 of the Charter calls for the promotion of e) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex language or religion whilst Article 56 states "All members pledge themselves to take joint and separate action in cooperation with the Organisation for the achievement of the purposes set forth in Article 55".

⁸GA Res 217A, UN Doc A/810, p 71 (1948).

⁹GA Res 2200, 21 UN GAOR, Supp (No 16) 52, UN Doc A/6316 (1966).

¹⁰GA Res 2200, 21 UN GAOR, Supp (No 16) 49, UN Doc A/6316 (1966).

¹¹The universalist draws upon the natural law theories to support the proposition that certain rights are so basic and fundamental that they are universal.

R. Harries observes that

...What is protected by the concept of natural law is the conviction that human beings are moral beings, that irrespective of any religions that they have the capacity to recognise moral truths, and whatever differences of culture and religion may divide us it is possible for people of differing backgrounds to engage in moral discourse with one another on the basis of at least some common assumption.

R Harries, "Human Rights and Theological Perspectives" in R Blackburn and J Taylor (Ed) *Human Rights For the 1990s: Legal, Political and Ethical Issues*, (Mansell: London 1991), p 6.

state, the democratic theory of government, and the idea of man as an autonomous being possessed of inalienable rights, form the basic premises of the universalist notion of rights.¹²

The cultural relativists reject the claim of the universalist that the doctrine of human rights is a Western discovery, describing such a claim as being ethnocentric. To the relativist, notions of man, his nature and his dignity can also be traced to non-Occidental cultures.¹³

The Chinese tradition with its idea of self regulation and self-discipline proclaims that the guarantees which every man has the right to enjoy are based on the integration of man in different groups to which he belongs.

The Hindu tradition with its central concept of Dharma insist upon the integration of man into the cosmos, in the core of relations hierarchial in nature envisaging in universal harmony. Here rights of man are granted depending on the position each one occupies in a society and the universe.

The African tradition affirms that man must live alongside other men in peace and harmony with the living and the dead, with the natural environment and the spirit.

In Islam men are created in the image of God and that human rights and freedoms are not attributed to Nature but are the gifts of God ("rationality by itself without the light of revelation from God can neither be a sure guide in the affairs of mankind nor provide spiritual nourishment to the human soul") in accordance with Islam. This accords to them an added measure of veneration, prestige and sanctity, lends them qualities of completeness and universality, and renders them inalienable and irrevocable.¹⁴

¹²M E Winston, "Philosophical Conceptions of Human Rights" in the *Collection of Lectures: Text and Summaries: 24th Study Session, Strasbourg 2-30 July 1993*, International Institute of Human Rights, p 3-4.

¹³See generally Y Khushalani, "Human rights in Asia and Africa", (1983) *Human Rights Law Journal* p 403, some of the working documents for the Round-Table Meeting on Human Rights, Oxford, 11-19 November 1965 which are reproduced in *International Social Science Journal*, Paris, Unesco, Vol XVII no 1, 1966, and A Pollis and P Schwab, "Human Rights: A Western Construct with Limited Applicability", in A Pollis and P Schwab (eds) *Human Rights : Cultural and Ideological Perspectives*, (New York: Praeger, 1979).

¹⁴A Aziz Said, "Human Rights in Islamic Perspectives", in A Pollis and R Schwab, *ibid* p 86. See also the Preamble of the Universal Islamic Declaration of Human Right of 19 September 1981.

The cultural relativist further argues that the universalist notion of human rights is merely a secular concept of the Judeo-Christian tradition that tends to disregard the religious underpinnings of the theory of the inalienable rights of man, that God is the source of human rights. Instead the universalist deduces fundamental rights either from empirical facts or from the exercise of reason. Empirical theories stems from the "nature of man" or from "facts of human condition" or "man's objective needs" to seek some essential elements which are required for human survival and human flourishing.¹⁵

Interestingly, cultural relativists also argue that human rights norms propounded by the universalist are merely projection of the Western philosophical and political tradition and therefore cannot be effectively applied in non-Western societies. This view is parallel with postmodernist criticism of the universalist's conception of human rights that argues:

...the ideology of universal human rights is really only an expression of a particular cultural ethos, that of the North Atlantic bourgeoisie intellectual community, particularly white, male, self-appointed spokesmen of that community. In promulgating the doctrine of human rights, the proponents of this ideology have confounded the local with the universal by attempting to portray their doctrine as applying to all societies, in all historical time, in a genderless way, when in fact, the doctrine is shot through with the particular concerns and perspectives of the cultural milieu of white, male intellectuals living comfortably in more developed countries in the latter half of the twentieth century. The particularity and ethnocentrism of the doctrine is masked by talk of "human nature" and "species characteristics" the conceptions of which reflect the peculiar perspective of the authors. The attempt to ground the doctrine of human rights on a universal conception of human nature or to provide an objective basis, purportedly outside of the stream of history, is a sham and an illusion, and reflects the attempt to endow the doctrine with an authority and universality which it does not and cannot possess. Since it is impossible to escape one's own historical vantage point, one's own ethnicity, gender, and class, any attempt to reaffirm

¹⁵S Saleem Faruqi, "Human Rights in Legal and Political Philosophy", (1992) XXI INSAF: Journal of the Malaysian Bar, p 4.

the universality of rights by claiming them to be universal moral truths is only a tired repetition of the same old European cultural arrogance that brought the world colonialism, imperialism, and the ongoing domination by the North of the South.¹⁶

With this background in mind, let us look more closely at the universalist and cultural approaches to human dignity with respect to the following four important aspects.

II. INDIVIDUAL VS COMMUNITY

The universalist tends to place greater emphasis on the rights of the individual as opposed to those of the community. In his view, the individual is an autonomous and atomistic entity possessed of inalienable rights above and prior to the community.¹⁷ These inalienable rights in turn act as a safeguard or "political trumps" for the individual against the idea of a common good.¹⁸ Thus individual rights take priority over interests of the community.

In this respect, the universalist is always on guard against the collective dimension of human rights such as group or peoples rights.¹⁹

¹⁶See M E Winston, "Philosophical Conceptions of Human Rights", *Collection of Lectures: Text and Summaries: 24th Study Session of the International Institute of Human Rights: 2-30 July 1994: Strasbourg, France*. p 21-22.

¹⁷A Pollis and P Schwab, *supra* n 13, p 8.

¹⁸The often cited phrase by Dworkin states:

Individual rights are political trumps held by individuals. Individuals have rights when, for some reason, a collective good is not a sufficient justification for denying them what they wish, as individuals to have or do, or not a sufficient justification for imposing some loss or injury upon them.

R Dworkin, *Taking Rights Seriously*, (Cambridge; Harvard University Press, 1978), p xi.

¹⁹Yoram Dinstein draws a distinction between individual and collective rights granted directly to human beings in that individual human rights such as freedom of expression are afforded to every single human being personally whilst collective human rights are bestowed upon human beings communally or in other words in conjunction with one another or as a group - a people or a minority though the nature of collective human rights require that they shall be exercised jointly rather than severally.

With respect to the difference between individual and collective rights in the event of their violation, he adds :

When human rights are involved, the individual is the measure of all things. The fact that a State strictly observes a given individual human right in 99 out of 100 cases does not contribute a valid justification for the violation of such a right in the hundredth instance. From the viewpoint of John Doe, whose bad luck it is to be that hundredth instance, the statistical breakdown is irrelevant, and it is immaterial that his is an a typical case. Conversely, where collective human rights are concerned, it is the overall picture that counts. The crux of the issue is the deprivation of rights, not of this or that individual, but of the whole group communally.

The universalist recalls that the principal oppressors throughout history have themselves been not only collectivities in the form of States and public authorities but also collectivities within the State. Therefore the single objective theory of human rights law has always been "to protect weak individuals from the oppression of powerful groups, by giving them 'inalienable rights' which 'inhere' in them as individuals".²⁰ In sum, on the premise that human rights are, by definition the rights which international law bestows upon individuals by virtue of the fact alone that they are human individuals, they cannot of their nature belong to abstract collectivities.²¹

In this regard, Paul Sieghart sees the notion of ascribing rights to group or peoples as to present dangers to the individual as it undermines the very idea of human rights:

My single concern is that there should be no possibility of confusion between the rights of peoples on the one hand, and the 'human' rights of individuals on the other; and above all that there should never be any possibility of the former ranking at the same paramount level as the latter. If a whole people is oppressed, it is entitled to our fullest support in its legitimate struggle against its oppressors. But neither during the struggle, nor after its successful outcome, does the collectivity of that people have any right to abridge or deny any of the individual human rights and fundamental freedoms of its members- or, I dare say it, even of its oppressors- in the name of the struggle, or for any other cause, however grandly named. In short, in any hierarchy of rights, the rights of peoples (or any other collectivities) must always be subsidiary to the paramount human rights and freedoms of the individuals that compose them.²²

On the other hand, cultural relativists recognise rights as belonging to the community rather than to the individual. The individual, in the eyes of the relativist, is an integral part of a larger group. In this relation, the relativist claims that it is the interests of the

Y Dinstein, "Collective Human Rights of Peoples and Minorities", (1976) 25 *International and Comparative Law Quarterly*, p 102-103.

²⁰P Sieghart, "International Human Rights Law : Some Current Problems" in R Blackburn and J. Taylor, *Human Rights For the 1990s : Legal, Political and Ethical Issues*, (London: Mansell), 1991, p 38.

²¹*Ibid* p 39.

²²*Ibid* p 41.

community which should prevail over individual rights. In this way, the rights of the individual are to be sacrificed for the greater good of the community. In sum, human dignity is ensured, not through individual rights but through membership in a society.²³

The emphasis on the rights of the community as opposed to the rights of the individual can be traced to the non-Occidental cultures.²⁴

The Chinese tradition holds that human life is predominantly social, in the family or the community as the basis of human relations.

The Hindu tradition maintains that freedom lies in belonging to a group because the group can claim rights, the individual has no identity in the societal sense.

The African tradition emphasises the community and view individual rights within the context of the community. It is within the group that the individual finds security.

Islam rejects the individualistic philosophy of "doing one's own thing" as the meaning of life or aim of the community. The aim of freedom is human creativity but freedom is defined as belonging to the community.²⁵

In this respect, the cultural relativist tends to favour rights given on the basis of group. This tendency is reflected in the African Charter on Human and Peoples' Rights which includes group rights otherwise known as peoples' rights, namely the right of peoples to existence, to freely dispose of their wealth and natural resources, to their economic, social and cultural development, to national and international peace and security and the right to a general satisfactory environment favourable to their environment.²⁶

²³N Kim, "Straddling the fence between Western Imperialism and Unethical Absolutism", (1993) 25 *Columbia Human Rights Law Review*, p 58.

²⁴See generally Y Khushalani, the working documents of the Round Table Meeting on Human Rights at Oxford, United Kingdom, 11-19 November, 1965 and A Pollis and P Schwab, *supra* n 13.

²⁵A Aziz Said, *supra* n 14, p 93.

²⁶*Human Rights in International Law: Basic Texts*, (Council of Europe Press, 1992), p 342., see articles 19-24 of the African Charter on Human and Peoples' Rights.

III. CIVIL AND POLITICAL RIGHTS VS ECONOMIC, SOCIAL AND CULTURAL RIGHTS

The universalist tends to stress civil and political to the detriment of economic, social and cultural rights. The universalist inclines to deny that economic, social and cultural rights belong to the category of human rights, arguing that they cannot be regarded as "rights" in the proper sense. Bilder supports this preposition when he states:

If we include as human rights claims to economic, social and cultural benefits that clearly cannot be achieved by most present societies, which are difficult to practically embody within a framework of legal rights and sanctions, we may tend to raise unrealistic popular expectations and to move the entire human rights idea to the level of utopian aspiration, to which governments need feel little present obligation. Where obviously trivial or highly specialized claims are included, the dignity and status of the human rights concept are depreciated.²⁷

On another level, the universalist draws upon the close link between development and respect for civil and political rights.

The universalist claims that although the achievement of civil and political rights requires without a doubt certain minimal economic conditions, these conditions themselves are not adequate to justify denial of such rights.²⁸ Moreover, the universalist warns, denial of freedom and liberty symbolised by fear and repression perpetuates poverty through encouraging corruption, waste of limited resources and economically inefficient resources. This viewpoint finds succinct expression in the following preposition:

²⁷R. Bilder, "Rethinking International Human Rights : Some Basic Questions" (1969) 11 *Human Rights Journal*, p 562.

²⁸Bilder observes:

Expectations and standards must necessarily take into account different levels of political, economic and social development. But it is less clear why at least higher degrees of recognition of most civil and political rights need await the full achievement of such an infrastructure, or why a variety of improvements on a broad human rights front cannot go hand-in-hand...experience suggests that it is only through meaningful popular participation in the political process that broad human rights demands in the economic, social and cultural areas can hope to achieve practical recognition.

Ibid p 567.

The argument that people can have bread now and freedom later is a false dichotomy. There is a danger that the people will end up having neither food nor freedom.²⁹

The cultural relativist, conversely, emphasises economic, social and cultural rights to the neglect of civil and political rights. To the relativists, basic necessities of life, such as food, shelter and clothing form the cornerstone of the notion of human rights and that any process of growth which does not lead to their fulfilment is a violation of the idea of development.

On another level, the cultural relativist has the tendency to give preference to economic, social and cultural rights with the implication that there must be economic development first, and only then will political rights and freedom follow or in other words "give them rice but not the right to ask for the rice or to comment on its quality".³⁰ In the context of non-Western nations, in particular, developing countries, Pollis and Schwab indicate a link between the notion of human dignity comprising economic rights and the colonial experience of economic exploitation:

Economic development is the primary objective, for it is only through this that economic rights can be attained, and these provide for human dignity by freeing individuals from exploitation and dependence.³¹

IV. RIGHTS VS DUTIES

The universalist tends to attach greater importance to rights as opposed to duties of the individual.³² Human rights are generally

²⁹Clarence Dias of the International Centre for Law and Development speaking at the Bangkok regional meeting on human rights, 1993, *Terra Viva* (No. 1-No. 13), independant publication of IPS-Inter Press Service published daily during the UN World Conference on Human Rights at Austria Centre in Vienna.

³⁰V Muntarhorn, *supra* note 5, p 8.

³¹*Supra* n 13, p 14.

³²A perusal of the international and regional instruments indicates a lack of provisions embodying the notion of duties with the exception of the following :

- i. Article 29 of the Universal Declaration of Human Rights which declares:
Everyone has duties to the community in which alone the free and full development of his personality is possible.
- ii The 5th paragraph of both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights which provides:

defined by the universalist as universal moral rights which all persons possess inherently and equally because they are human beings.³³

Jack Donnelly defines rights as an entitlement of a person:

Having a right places one in a protected position. To violate someone's right is not merely to fail to do what is right but also to commit a special and important personal offence against the right holder by failing to give him his due, that to which he is entitled. To violate a right goes well beyond merely falling short of some high moral standard.

... As the natural rights of persons, they are seen as logically and morally to take precedence over the rights of the state and society, which are viewed as major contributors to the realization of these rights but also the greatest potential violators of basic human rights.³⁴

In this way, the universalist tends to disfavour the notion of duties since it connotes a moral obligation on the individual by a person in authority and this obligation in turn means involuntariness on the part of that individual. Thus norms formulated in the sense of right such as "Right to Life" is preferred to those cast in the form of duties such as "Thou shall not kill".

As to whether talk of rights as opposed to duties is compatible with Christianity, Richard Harries observes

...it is not certain that the Christian faith is committed to a duty-based, rather than a goal-based, right-based, or value-based moral philosophy. It is true that the common starting point for Christian action is doing the will of our heavenly Father. But this will is for the well-being and flourishing of his creatures. How we decide what

Realising that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognised in the present Covenant.

iii. Article 32(1) of the American Convention on Human Rights merely states:

Every person has responsibilities to his family, his community and mankind.

The notion of duties is absent in the European Convention on Human Rights.

The African Charter is the first human rights instrument that enumerates in detail the duties of the individual. See the 6th paragraph of its Preamble, articles 27, 28 and 29 of the said Charter.

³³M E Winston, *supra* n 16, p 6.

³⁴J Donnelly, "Human Rights and Human Dignity: An Analytic Critique of Non-Western Conceptions of Human Rights", (1982) *American Political Science Review* p 304-306.

will make for their well-being and flourishing is illuminated by the biblical revelation. But in moral reflection on this, the notions of right, good and value, as well as duty, all have a place. Indeed, if Christianity is committed to the idea of the worth of each individual person (as opposed to any collective goal) it would seem to favour the move being made in certain towards a right-based moral philosophy.³⁵

The cultural relativist, on the other hand, asserts that human dignity can also be defined in the sense of excelling in the fulfilment of one's duty or obligation, most evident in the non-Occidental cultures.

The Chinese tradition regards the fulfilment of duty to one's neighbour, rather than the claiming of rights as fundamental.

The Hindu tradition is based on the idea of duties that each ought to fulfil his duty which is proper to him since duties vary depending on age, sex and social condition.

The African tradition embraces the notion of duties as reflected in the African Charter on Human and Peoples' Rights.

The sixth paragraph of the Preamble of the Charter states:

considering that the enjoyment of rights and freedoms also implies the performance of duties on the part of everyone.³⁶

The African Charter embodies three articles on individual duties, namely towards the family, the society, the State, the international community and other legally recognised communities.³⁷

In Islam, human rights exist in relation to human obligations. Individuals have certain obligations towards God, fellow humans, and nature, all of which are prescribed by the Shariah. When individuals fulfil these obligations they acquire certain rights and freedoms which are again determined by the Shariah. Individuals who do not fulfil these obligations possess no rights, and any claims of freedom lack justification.³⁸

³⁵R. Harries, *supra* n 11, p 7.

³⁶*Human Rights in International Law: Basic Texts*, *supra* n 25, p 342.

³⁷See articles 27, 28 and 29 of the African Charter on Human and Peoples' Rights.

³⁸A. Aziz Said, *supra* n 14, p 92.

V. DEMOCRACY AND HUMAN RIGHTS

The universalist underlines the intimate link between democratic values and human rights norms, in particular, civil and political rights. A society, according to the universalist, is democratic if it has both civil and political rights of its people. In other words, democracy, with its idea of consent and participation, must not only permit its people to elect freely who will govern them but also guarantee freedoms of expression and other liberties, which make possible for its people to have a voice in the discussions by which they are governed. The universalist concludes that without democracy, rights are meaningless and without rights, democracy is an exercise in futility.³⁹

Democracy in its absolute sense as expounded by the universalist does not sit too well with the cultural relativist. The relativist argues that absolute democracy does not always guarantee the well-being and prosperity of the society. Instead democracy with unlimited freedom is thought to bring with it instability, and economic destruction and damage the well-being of the community in the name of individual rights. In sum, the aim of democracy, in the eyes of the cultural relativist, is not the pursuit of the intellectual purity of democracy but political stability, resolute government, social justice and economic freedom.⁴⁰

³⁹The link between human rights and democracy is reflected in the Preamble of the European Convention For the Protection of Human Rights and Fundamental Freedoms where the Contracting Parties, *inter alia*, reaffirms "...their profound belief in those Fundamental Freedoms which are the foundations of justice and peace in the world and are best maintained on the one hand by an effective political democracy and on the other by a common understanding and observance of the Human Rights upon which they depend".

See J G Merrills, *The Development of International Law by the European Court of Human Rights*, (Manchester University Press), 1988, p 113.

⁴⁰Pollis and Schwab observe that the notion of democracy in the Third World helps to facilitate the adoption of decrees limiting freedoms of the individual:

Democratic government is perceived as an institutional framework through which the goals of the state are to be achieved, and if it fails or becomes an impediment it can be dispensed with impunity. Individual political rights, so revered in the West, at most take second place to the necessity of establishing the new group-the State-and to the priority of economic rights that necessitate economic modernization.

A Pollis and P Schwab, *supra* n 13, p 10.

V. APPRAISAL

Evidently there is a considerable friction between the approach of the universalist and the cultural relativist as to what constitutes the essence of human dignity, bearing in mind that the recognition of the dignity and worth of the human person is the basis of any talk about human rights.⁴¹ To that extent, one can maintain that paragraph 3 of Part II of the Vienna Declaration is a contradiction in itself.

Nonetheless if one were to come up with a meaningful and viable conception of human rights under the said paragraph, one must interpret the said paragraph in a manner that reconciles the positions of both the universalist and the cultural relativist. In other words, an elaboration of the said paragraph must define an equilibrium between the universalist notion of human rights and the cultural relativist's interpretation of the same.

One must, first of all, admit that although there is no perceptual unity and common understanding of human rights, the pursuit of human dignity is indeed universal. As such, one must seek to find human values, which are common to all mankind, taking into account that the idea of human values is a wider concept than that of human rights. A lowest common denominator with respect to these values could be found in the various cultures: respect for human life and human dignity, tolerance, importance of the criteria applicable to individual and group relations in social life, observance and safeguarding of those criteria, to name a few.⁴² One can, for example, identify certain traits of human rights as perceived by the universalist which come close to Islam: prohibition of torture, affirmation of freedom of conscience and of worship and equality of all human beings.

Secondly, one must recognise that the universalist and cultural relativist version of human rights are able to enrich one another from certain of their respective characteristics.

⁴¹See R Harries, *supra* n 11, p 1-2.

⁴²See some of the working documents for the Round Table Meeting on Human Rights at Oxford, United Kingdom, *supra* n 13.

The cultural relativist approach could be enlightened by the idea of justice based more on equality than on determination of one's status whilst the universalist approach could be supplemented by spiritual elements which emphasise the harmony between man and his environment, living and cosmic. This spiritual vision of the human being is formulated as follows:⁴³

The spiritual traditions...contain a very profound view of the human being. They attempt to answer, in different ways, the five fundamental questions about the human being, about you and me. Who am I? Where am I from? Why am I on earth? How do I live here? Where do I go from here?

It is worth observing that mystics from different traditions have given almost identical answers to these questions. I am a child of God, I am God's vicegerent, I am God's steward. Since I am from God, my origin is spiritual though I assume a physical form and become part of the material world for a brief period. It follows that I am here on earth to do God's will. To do God's will, is to live by all those eternal, universal values, principles and laws which have been transmitted to humankind through the prophets, the sages and the saints since the advent of man on earth. After our sojourn, we, who are just tenants on the earth, will have to return to God and will have to account for our deeds in this mortal life.

Of course, this concept of the human being has deeper, wider, political, economic and sociological implications which a mystical notion of man will not bring forth. The status of man as the vicegerent of God, for instance, elevates him to the loftiest height imaginable. The human being is the bearer of God's trust. He has been specially endowed with power and authority, with reason and conscience to carry out this sacred responsibility and yet he is not the centre of the Universe. For he serves God. He is both master and slave at the same time. He is great and yet he is small. He is unique (because of his responsibility to the rest of creation) and yet he is ordinary (because he has so much in common with the rest of creation). It is this paradoxical conception of the human being which explains his role on earth. It is this that makes the spiritual view of man so different from the secular vision of the human being, so vividly reflected in the Universal Declaration of Human Rights.

⁴³C Muzaffar, "Towards a Spiritual Vision of the Human Being", a paper presented at the Seminar on the *Human Being: Perspectives From Spiritual Traditions*, 4-5 November 1989, Kuala Lumpur, organised by Persatuan Aliran Kesedaran Negara, p 2-3.

Thus, the universalist might be inspired to find benefit in certain spiritual proclamations such as the sacred and inviolable character of human life and the sacredness of the human body, including that of a deceased person.

Thirdly, one must ask the question: What is the proper balance between the good of the community and the right of the individual to exercise free will? On the one hand, undue emphasis on the rights of the individual tends to portray the individual as the victim of the community and the ideal community as the servant of the individual. On the other, over-emphasis on the interests of the community means the State determines and protects individual rights and impliedly the State is entitled to curtail these rights as dictated by interests of the State.

Benjamin Barber offers an interesting answer to this problem by examining the link between rights and democracy in America and the impact of lack of social responsibility on the community:

The precarious balance between individual and community which rights properly understood can mediate is upset, and rights are introduced on only one side of the scales, leaving the community hard pressed to advance the public good. Legal philosophers like to say that rights are trumps, which is a poignant way of underscoring the crucial subjugation of democratic government to the liberties of citizens. But there is also a sense in which, as Rousseau once wrote, citizens are trumps: 'There can be no patriotism without liberty,' Rousseau observed, 'no liberty without virtue, no virtue without citizens; create citizens and you will have everything you need; without them you will have nothing but debased slaves from the rulers of the state on downwards.'

Rights, after all, belong to individuals as citizens, and citizens belong to communities that therefore also have rights. There is no reason not to use the power of rights as legitimizers of claims in order to advance public good...⁴⁴

Thus he concludes that rights conferred on a citizen of democracy entail not only individual liberty but also responsibilities to the community at large.

⁴⁴B R Barber, "Rights and Democracy", *Dialogue*, Number 95, 1/ 92, p 6-7.

Shad Saleem Faruqi refers to the line drawn between freedom and responsibility in the Asian traditions which put the accent on religion, culture race, family and community:

We draw a line between liberty and licence. We do not deem it to be a matter of constitutional principle that there should be a right to desecrate our national flag, to blaspheme our religions and to walk freely into shops to buy murderous weapons. We view a free-wheeling sexual life-style, drug-taking and alcohol addiction with revulsion. With us pornography is not a part of free speech; abortion on demand is not part of personal liberty; and homosexuality is not part of freedom of choice. We acknowledge that rights and responsibilities must go hand in hand and that freedom is not an end in itself.⁴⁵

In addition the emergence of the third generation of solidarity rights (civil and political rights being the first, and economic, social and cultural rights the second) reflects a closer move towards a collective dimension of human rights.

Fourthly, one must constantly be aware of the danger of a conception of human rights which does not consider anything but the guarantee of individual civil and political rights by the State or one that only sees the State as a debtor of economic, social and cultural rights. In the light of paragraph 3 of Part II of the Vienna Declaration and Programme of Action which declares that all human rights are "indivisible and interdependent and inter-related", there is no longer a justification of a trade-off between an abundance of one group of rights to the neglect of the other.

Finally, a question arises as to whether one must avail oneself of rights and duties in equal measure to ensure human dignity.

Donnelly argues that the notion of human dignity based on the concept of duty, as found especially in Islam and the Chinese tradition, is bound to fail.

With respect to the Chinese tradition, he observes :

One wonders how the Chinese managed to claim rights without the language to make such claims. Likewise, the assertion that basic human rights were enjoyed seems implausible. Did the Chinese have these rights, exercise them, assert them, or only enjoy them? One

⁴⁵Saleem Faruqi, *supra* 15, p 10.

suspects the latter...Simply because acts that we would say involved violations of human rights were not considered as permissible does not necessarily entail that people were viewed as having human rights.

...
Undeniably there were elaborate duties imposed on rulers. Obligation, though, is only one side of a right-based relationship. In itself, it does not even suggest, let alone establish, the existence of rights on the part of those interests one is obliged to act.⁴⁶

Whereas Islam, according to Donnelly, is devoid of any conception of human rights since "what really matters is duty rather than rights, and whatever rights that do exist are a consequence of one's status or actions, and not one's nature."⁴⁷

However, Shad Saleem Faruqi is of the view that the idea of human dignity which stresses on duties and not rights is not defective since duties in one presupposes rights in others and duties exist not for their own sake but to protect the rights of fellow creatures and to promote their well-being.⁴⁸ Thus one's duty not to murder presupposes the right of other human beings to life.

Interestingly, Aleksandr Solzhenitsyn draws a link between the lack of duties and the decline of moral life of the West. He elaborates:

There is technical progress, but this is not the same thing as the progress of humanity as such. In every civilization this process is very complex. In Western civilizations-which used to be called Western-Christian but now might better be called Western Pagan-along with the development of intellectual life and science, there has been a loss of serious moral basis of society. During these 300 years of Western civilization, there has been a sweeping away of duties and an expansion of rights. But we have two lungs. You can't breathe with just one lung and not with the other. We must avail ourselves of rights and duties in equal measure. And if this is not established by law, if the law does not oblige us to do that, then we have to control ourselves. When Western society was established, it was based on the idea that each individual limited his own behaviour.

⁴⁶J Donnelly, *supra* 32, p 308-309.

⁴⁷*Ibid* p 307.

⁴⁸Saleem Faruqi, *supra* n 15, p 10.

Everyone understood what he could do and what he could not do. The law itself did not restrain people. Since then, the only thing we have been developing is rights, rights and rights, at the expense of duty.⁴⁹

Nonetheless the formulation of duties is not without any difficulties. One must consider whether the notion of human rights is a consequence or antecedent of duties. One must also identify the classification of existing duties and determine to whom these duties are owed. Furthermore one must ponder as to whether the notion of duties embrace the duty of the individual towards his own society so as to include the duty to preserve order, health and morality. More importantly, one must figure out how best to translate the concept of duties into a legal one and to implement and enforce duties of the individual.

Thus only with the interpretation which takes into account the factors as elaborated above, can one say that Paragraph 3 of Part II of the Vienna Declaration and Programme of Action provides a basis for a global ethics.

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⁴⁹*Time*, July 24, 1989, p 64.

