

FIVE QUESTIONS FOR THE HUMAN RIGHTS FIELD*

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... I will be only mentioning five questions for which I do not know the answers: ... five questions with no answers, or perhaps the beginning of an answer to each. And I could have added more. I thought upon this, but I decided to limit myself to those five, which Scott Malcolmson, who has recently joined my office, has helped me put together. ...

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1. Non-state terrorism

The question that was touched upon by many speakers [during the symposium on the OHCHR] is that Mary Robinson¹ used to refer as “the T question”, non-state terrorism.

One could hardly have imagined two years ago that one would be grateful for the predictability of state terrorism, which was relatively comprehensible. One could hardly have imagined how bewildered, how impotent, we were to feel since September 2001, in dealing with this new and horrific form of international criminality. Its crimes have taken forms that are unrecognizably contrary to state terror because state terror, so to speak, can be contained. Non-state terrorism is not containable in the same way. And certainly not through some of the means that are being used to contain it. I will come back to this point later.

If you look at recent acts of non-state terrorism, people

1. UN High Commissioner for Human Rights, 1997-2002.

have tended to reach for very broad explanations, none of which is highly convincing. Faced with an act of state terror, we look to the particular state. With non-state terrorism, we have tended to look much more broadly, to the hierarchy of global power or to the predicament of those parts of our world that are the most miserable. We also tend to look at the situation in the occupied territories in Israel. We have put all these explanations together and yet we are unable to clarify the genesis and the rationale for such forms of terror.

In other words, non-state terrorism is, indeed, not wholly new. In a way, it could be taken as a category into which states can put their opponents and do what they please with the explanation that these are non-state terrorists and, therefore, outside the reach of law. The risks of such abuse are widespread as Mary Robinson and I have reported to the counter-terrorist committee of the Security Council, to which I will be submitting a paper on this subject, based on an opportunistic understanding of the novelty of a group like Al Qaeda.

Nonetheless, non-state terrorism cannot be set to fit easily into Human Rights categories. For instance, large-scale politically motivated killings of civilians meant to instill terror are currently described as aiming at or threatening or undermining human rights. I was even approached by a leading supporter of our office and of the human rights cause, who told me that I should not use the expression “serious violation of human rights” when referring to terrorist acts, because only states could deny human rights.

Now while I appreciate the reasoning for such careful wording, and there are indeed strong reasons to do so, I also believe most people would find such language curious, if not evasive. And I believe that any government intent on repelling such attacks will not be impressed by such conceptual precision.

These are real problems. As human rights defenders, when faced with something new, we must find new responses that are credible to states, but also to human rights activists and to the people outside these two circles – that is to say, the vast majority, who may look to us for guidance. And we must be cautious, yes, but we must be quick and forceful.

2. Limits of growth of rights and rights treaties

The second question is what are the limits of growth of human rights? There can only be so many categories of human rights to be found in the world. Perhaps we are deluding ourselves, particularly in the mechanism of the Human Rights Commission.

I suspect, obviously, there are still other categories or areas to be discovered. In other words, the expansion of rights, more precisely and more humbly, the expansion of rights categories has made the past 25 years an exhilarating time. ...

I think this has been true above all of women rights. It is very true of development rights, to which perhaps we have not paid sufficient attention here, but which will continue to be an issue of contention in the mechanisms of the Human Rights Commission, as I could witness in the meeting of the Working Group on the Right for Development, that held its fourth session in Geneva recently. ...

I attended the inauguration of our new president in Brasilia, on the 1st January and must tell you that I felt proud of being a Brazilian when I heard him state in his inauguration speech to Parliament, that he felt ashamed (he used the word “*vergonha*”, which is fairly strong), and that all Brazilians should feel ashamed as long as other Brazilians suffered from hunger and from the denial of the fundamental economical and social rights, like access to health, access to education and to employment.

On the following morning, he granted me an audience. We spent quite a while discussing this pretty anachronistic separation between civil and political rights and economical and social rights. He said that, paradoxically, in Brazil we had regained most civil and political rights (most, I must underline), before we were able to focus on economical and social rights – where, perhaps, logically, it should have been the other way round.

Yet there is a limit to the expansion of these different types or categories of rights, as there is a limit also to the proliferation of treaties and mechanisms and special procedures.

Japan interestingly at this meeting of the Working Group

on the Right to Development, to which I referred earlier, went as far as suggesting that the right for development was being misused and might lead to, as Japan put it, a futile rerun of the New International Economic Order concept of the 60's and the 70's, i.e. that we were basically wasting our time.

I would suggest that that is not so and that, on the contrary, we have gone far beyond the NIEO's pretty futile debates of the 60's and 70's, which were clearly linked to the days of the Cold War. And if we are deluding ourselves, it is not by trying to address fundamental questions, such as the right to development, but perhaps by diverting our attention to other issues that are somewhat marginal.

I am in full agreement ... that we should engage even more than my predecessors and in these first few months I have in fact engaged the heads of international financial institutions, and indeed the new director-general of the World Trade Organization. It is particularly in these areas that some of the fundamental obstacles to the realization of those rights are to be found, in addition to the need for reforms at the national level, which I think we developing countries should implement. And I am saying this because we all know what is blocking access to cheap drugs to fight HIV/Aids. We all know what it is and where it is being blocked, and it is in Geneva, at the WTO. ...

3. Religion

Let me move on to the third question: Can the human rights milieu come to better terms with religion?

While freedom of religion is of course recognized as a human right, safeguarded by international treaties, freedom of worship is probably the oldest human right of all. And in the course of time it has set a pattern for the concept of group rights as it has set the patterns for super-national and transnational rights. ...

Nonetheless, one has long had the sense in human rights circles that freedom of worship was a vestige as well as precursor. One had a sense that although religious life typically aims far beyond everyday life, it is simultaneously one of the historically richest and most local of human activities.

There is an uneasy fit with the mainstream of human rights thinking. Religion is, for example, an often too aggressive entrance formative to fit comfortably within the category of cultural diversity.

I have been wrestling with these notions in recent weeks and have yet not found any satisfactory answer.

Over the past decades, it seems that we in the human rights world have to recognize an increase in the force of religious feeling, not a decrease. If we premise our approach to religion on the idea that faith will in due course either disappear or become politically insignificant, I think we will be courting failure and fooling ourselves.

Do we advocate freedom of religion or freedom of extreme forms of religion, such as fundamentalism?

The distinction is not a simple one to draw: Christians, Jews and Muslims and possibly other religions (although I have looked for forms of extremism in Buddhism, I have failed to find them) have had their different forms of extremism. When does the advocacy of freedom of worship or indeed of cultural diversity cross the line to advocacy of something that wants or intends to restrict those more general rights for which we fight?

4. The self-interest of states

Let me now move to a fourth question: Can we improve our understanding of the self-interest of states? As states have come to integrate a concern for human rights into their practices (which is undoubtedly true), they have also been learning to manipulate human rights to serve their own purposes.

The dangers here are great. In the end, however, either states will find human rights useful, or, better still, central for their national interest, or human rights will have a somewhat limited and hollow future.

The human rights discourse often seems to yearn for the eventual disappearance of states in favor of universal human rights – or this is at least the somewhat simplistic vision that some people have of human rights rhetoric. By analogy with religion, world government is the scatology of human rights. But in our field, as in theology, the end of time is still far away, we might as well speak of this frankly.

Human rights cannot advance far without states, and we must come to grips with the self-interest of states if human rights are to be successfully mainstreamed. This is not a counsel of despair; rather I think we will be much more successful at advancing rights if we think tangibly about specific states, at specific times, and target our intervention with this in mind. And we must always try to articulate human rights in terms of opportunities as well as obligations. ...

5. Practical results in human rights

Finally, the question of practical results. This question relates to the other four. Our impact must be on lives as they are lived. I state this plainly because this is something which can be plainly seen, as I have in the course of the 34 years that I have spent serving this organization, fortunately not in New York or Geneva only, but mostly in the field.

When we deal with human rights, we are dealing with everyday power. We oppose, yes, many forms of power, we oppose abuses of power, but, inevitably, we also use power. I can think of tactical reasons to pretend otherwise, it is quite possible to do so, but I see no reason to believe otherwise.

As High Commissioner, I am trying to emphasize ... how the presence of the OHCHR in the field can affect the situation on the ground. ... This has been the bulk of my own experience. "How can I make this work now?" is the very difficult question I am trying to answer. How can I merge the highest level of sophistication, which I believe we have, and legal consistency, which I do not think we have, with the daily lives of people who desperately need our help and do not have time to wait? They almost certainly do not need workshops, although this one is definitely useful, because we are in a crisis.

I am saying this because I have noticed that many activities of what I can now call my office in the field are focused towards bringing people together, organizing seminars, organizing workshops. They may be all useful in the short term, but I do not think they have a real longer term impact on the lives of those who need us. And there will be a significant change in the use of our resources in that respect.

Now, if our rules and our debates cannot protect the weak, then what value do they have, what values do meetings such as this have? I do not of course mean to suggest that working for the advancements of human rights is merely an exercise of power, because the human rights movement is not about winning or losing. It is an open project. I can never afford to declare victory, neither can you. On the contrary, we need to renew our commitments to this struggle, and certainly we cannot announce the end of anything. If there is anything we can announce, it is just the very beginning.

I have heard it said that the so-called human rights discourse has become worn out and that the human rights vogue is already passed. I find this ridiculous, as you would. I imagine it might be true if we were ever to believe that we have all the answers. My belief is that we have many of the right questions and the beginning of some of the answers. I have raised old ones and rephrased some. I have not provided you, deliberately, with any answers. I wish I could.

But I thought that by raising these five fundamental questions and leaving them with you, I might in the end receive some clues, some indications from you, that would make me want to continue in this job at the end of the day. I do not think we should be timid, in any way, and this is certainly not a timid audience. This is not a time for smugness nor for cynicism. And let me repeat what I said earlier, that I count on you.