**A new functional human rights paradigm**

All rights derive from human dignity. Codification of human rights is never definitive and never exhaustive, but constitutes an evolutionary *mode d’emploi* for the exercise of civil, cultural, economic, political and social rights. Alas, the interpretation and application of human rights is hindered by wrong priorities, sterile positivism and a regrettable tendency to focus only on individual rights while forgetting collective rights. Alas, many rights advocates show little or no interest for the social responsibilities that accompany the exercise of rights, and fail to see the necessary symbiosis of rights and obligations, notwithstanding the letter and spirit of article 29 of the Universal Declaration of Human Rights.

The time has come to change the human rights paradigm away from narrow positivism toward a broader understanding of human rights norms in the context of an emerging customary international law of human rights. Law is neither physics nor mathematics, but a dynamic human institution that day by day addresses the needs and aspirations of society, adjusting here, filling lacunae there. Every human rights lawyer knows that the spirit of the law (Montesquieu) transcends the limitations of the letter of the law, and hence codified norms should always be interpreted in the light of those general principles of law that inform all legal systems, such as good faith, proportionality and *ex injuria non oritur jus*.

I propose discarding the obsolete and artificial division of human rights into those of the falsely called first generation (civil and political), second (economic, social and cultural) and third generation (environment, peace, development) rights – with its obvious predisposition to favour civil and political rights. Instead I propose a functional paradigm that would consider rights in the light of their function within a coherent system -- not of competing rights and aspirations, but of interrelated, mutually reinforcing rights which should be applied in their interdependence and understood in the context of a coordinated strategy to serve the ultimate goal of achieving human dignity in all of its manifestations. Four categories would replace the skewed narrative of three generations of rights.

First we would recognize **enabling rights**, among which I would list the rights to food, water, shelter, development, homeland – but also the right to peace, since one cannot enjoy human rights unless there is an environment conducive to the exercise of those rights.  Article 28 of the Universal Declaration of Human Rights postulates the right of every human being “to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized”. This entails the basic necessities of life and the right to a level playing field.

Secondly I would propose a category of inherent or **immanent rights**, such as the right to equality, the right to non-arbitrariness; indeed, every right necessarily contains in itself the element of equality, the self-evident requirement that it be applied equally and equitably, that there be uniformity and predictability (what the Germans call *Rechtssicherheit*). Immanent rights also encompass the rights to life, integrity, liberty and security of person, in the light of which other rights must be interpreted and applied. There are also inherent limitations to the exercise of rights. The general principle of law prohibiting abuse of rights (*sic utere tuo ut alienum non laedas* – use your right without harming others, a principle advocated by Sir Hersh Lauterpacht as an overarching norm prohibiting the egoistic exercise of rights to achieve anti-social results or unjust enrichment) means that every right, also a human right, must be exercised in the context of other rights and not instrumentalized to destroy other rights or harm others. There is no right to intransigence as we know from Shylock in the *Merchant of Venice.* The letter of the law must never be used against the spirit of the law.

Third I would propose a category of procedural or **instrumental rights**, such as the rights to due process, access to information, freedom of expression and peaceful assembly, work, education, social security, leisure – rights that we need to achieve our potential, to complete our personalities, to engage in the pursuit of happiness.

Finally I would postulate the category of end rights or **outcome rights,**that is, the concrete exercise of human dignity, that condition of life that allows each human being to be himself or herself.  This ultimate right is the *right to our identity*, to our privacy, the right to be ourselves, to think by ourselves and express our humanity without indoctrination, without intimidation, without pressures of political correctness, without having to sell ourselves, without having to engage in self-censorship. The absence of this outcome right to identity and self-respect is reflected in much of the strife we see in the world today. It is through the consciousness and exercise of the right to our identity and the respect of the identity of others that we will enjoy the individual and collective right to peace. (see my 2013 report to the GA A/67/272, paras. 67-68)

The United Nations Human Rights Council should become the international arena where governments compete to show how best to implement human rights, how to strengthen the rule of law, how to achieve social justice, where they display best practices and give life to this new functional paradigm of human rights.  This kind of competition in human rights performance is the noblest goal and challenge for civilization.  The Council should become the preeminent forum where governments elucidate what they themselves have done and are doing to deliver on human rights, in good-faith implementation of pledges, in adherence to a daily culture of human rights characterized by generous interpretation of human rights treaties and a commitment to the inclusion of all stakeholders.  In short, the Council should be the “catwalk of human rights innovation”. What the Council must not be is a politicized arena where States use human rights as weapons to defeat their political adversaries and where human rights are undermined through “side shows”, the “flavor of the month” or “legal black holes.” The civilization model of the globalized world must not be one of positivism, legalisms and loopholes, but one of direct democracy, respect for the environment, international solidarity and human dignity.

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