The Place of Conflicts, Revolutions and Wars in the Evolution of the Concept of Human Rights.

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Abstract

This paper deals essentially with the historical evolution of the concept of human rights and the progressive and pragmatic development of human rights precepts, crystallizing into the present body of human rights law. Our focus is on the place of conflict, revolution and war in this seemingly endless evolution of the concepts of human rights.

Keywords: Human rights, Conflicts, Revolution, Bill of Rights and United Nations.

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1.0. Introduction

Human rights have existed since antiquity and are considered as a necessary requirement for the continued existence of any stable society. In pre-historic society, there was no form of social stratification as everyone was equal; ownership of anything and everything was common. In this form of existence, there was hardly any need for law.

However, with greater domestication and pastoralism, the era of communalism soon gave way to feudalism which brought with it social stratification in which the king owned all of the land and gave it to his leading nobles in return for their loyalty and military service.[1]

The nobles in turn held land that peasants were then allowed to farm in exchange for peasant labour and a portion of their produce. This type of system cannot escape resistance as even from a prehistoric perspective, man has always resisted oppression and

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tyranny, as exemplified in the revolt of the peasants and the rebellion of the oligarchs against the tyranny and arbitrary rule of the suzerain in England, which led to the Constitutional War of 1688, the American War of Independence of 1775, the French revolution of 1789, the first and second World Wars, the Iranian revolution of 1979 and the Arab Spring in the Middle East. The seismic effects of these confrontations is the enactment of legislation that conceded more rights to the subjects, grants or declaration of independence and the internationalization of human rights amongst many other gains.

In this paper, the concept of human rights is defined from both the natural law conception and positive law philosophy and the role of conflicts, revolutions and wars in the evolution of the concept of human rights is examined in a historical context.

The current crisis in the Middle East and the Islamic world is also reviewed to determine whether the fall of tyrannical rulers concomitantly translates to a better life for the citizens with greater respect for human rights and fundamental freedoms or a backlash for civilization.

Recommendations are made that the United Nation Security Council be restructured in such a way to allow all continents to have a permanent member with veto power on the council.

1.1.What is Human Right?

It is no mean task attempting a definition of human right that will be acceptable to all and sundry. It is like the tale of the four blind men that went to an elephant with a view of touching of it and telling what it looked like. Of course, each blind man's description was dependent on which part of the body of the elephant each touched. This led Hohfeld to assert that most problems with which law is faced arise out of imprecise use of terms. He particularly singled out the word right, which he said was capable, by a process of permutation and combination, of being analyzed into sixty-four different meanings.[2]

The definitions of human right over the years have always being shaped by many factors. These include the various schools of thoughts such as the natural law school and the positive law school, the religious inclination of the proponents and the prevailing ideological and philosophical foundation represented by the proponents. One issue that is however not enmeshed in controversy is the fact that human rights have

existed since antiquity and have been considered as necessary requirements for the continued existence of any stable society.[3]

From both the biological and physiological make-up of man, it is obviously natural that he will assert the humanity in him. For instance, as a homo erectus standing on two, he is naturally entitled to move about; thus the right to freedom of movement and association. The mouth is to enable him to talk; thus freedom of expression.

To properly situate this aspect of the paper, it is apt to start with a definition of the word "right" which according to Dowrick encompasses the "Wider concept of claims i.e. wants, desires, aspiration people have and express - whether those of a code of morality or ethical theory, or those of political system or political theory, or those of a legal system.''[4]

From the Dowrick's perspective, rights seem to be encapsulated in claims, which could include wants, desires and aspiration. It could be ethical, moral and or legal. Black's Law Dictionary on the other hand defines right as:

> That which is proper under law, morality, or ethics; (2) Something that is due to a person by just claim, legal guarantee, or moral principle; (3) A power, privilege, or immunity secured to a person by law; (4) A legally enforceable claim, that another will do or will not do a given act.[5]

One common denominator of the Black's Law Dictionary's definition of right is the proprietary of the interest, claim, guarantee, power, privilege or immunity, which is focused on ethics, morality or law. It is therefore clear to make a distinction from the onset that not all rights enjoy the recognition and protection of law.

The Natural law conception regards human right as those confirmed by God or discernable by human reason and that man-made laws must conform to this natural law. The proponents, such as Thomas Hobbes, John Locke, Aristotle, Aquinas etc. believed that rights are common to mankind as human beings irrespective of creed, sex race etc. Thus rights are said to be inalienable with divine content and appertain to the individual.[6] In short they are divine, God-given and sacrosanct. This philosophy gained much currency and relevance during the 17th and 18th century and continues to shape contemporary human right discourse. Cranston defined Human Rights as: Something of which no one may be deprived without a great affront to justice. There are certain deeds, which should never be done, certain freedom,

which should never be invaded, some things, which are supreme.[7]

This definition by Cranston lacks exactitude and clarity as human rights here are tied to justice and freedom; two elements that are subjective. Most writers tend to view human right from the narrow prism of natural law as if the rights are inherent and inborn. Falling into this old trap is Micheline Ishay who defined human rights as: rights held by individuals simply because they are part of the human species. They are rights shared equally by everyone regardless of sex, race, nationality and economic background.[8]

This definition can only consistently hold sway in a just and egalitarian society where the rule of law is the norm and not the exception. The definition also tends to be limited to first generation rights thus excludes economic, social, and cultural rights. The prevailing politico-economic regime of at any given time obviously catalytically impacts on human rights. Happily, Ishay made an adjustment when she admitted that conflicting political traditions have elaborated different components of human rights or differed over which elements had priority.[9]

No wonder Jeremy Bentham was very vituperative when he described natural rights as a bastard brood of monsters. To him there are no such things as natural rights. He went further: "Natural rights are simple nonsense; natural and imprescriptibly rights. Rhetorical non-sense, non-sense upon stilts. But, this rhetoric nonsense ends in the old strain of mischievous nonsense.[10]

Bentham is a positive law protagonist. This school regards human rights as that which have become part of a positive legal system and derive either from the will of the state or the command of the sovereign. Kelsen, the leader of the Vienna School of pure theory of law, while agreeing with his fellow positivists that law and moral should be separated, nevertheless also maintained that law is a depsychologised command of the ground norm.[11]

According to Roscoe Pound, who was of the school of sociological jurisprudence, law as a whole is an attempt to satisfy, to reconcile, to harmonise, to adjust these overlapping and often conflicting claims and demands, either through securing them directly and immediately, or through securing certain individual interest, or through delimitation or compromises of individual interest, so as to give effect to the greatest total of interest or to the interest that weigh most in the

civilization of his time, with the least sacrifice to the overall scheme of interest.[12]

Therefore, right is a child of law and is backed up with effective legislation or in extant laws. This influenced Osita Ezeto to define human right as: Demands or claims which an individual or groups make on societies, some of which are protected by law and have become part of lex lata while others remain aspirations to be attained in the future.[13]

Eze's definition borrows deep into the theory of social contract as reflected in the work of Hugo Grotius (1583 – 16451). According to Grotius, for men to be free and enjoy freedom they need to voluntarily submit to a social contract with the sovereign. Furthermore, Eze recognizes that some rights are mere rhetorical statements, aspirations or mere ideological grandstanding not carrying the force of law. Such rights are merely declaratory in character. That some rights are not justiciable does not make them less of rights. To Gasiokwu, there is no inconsistency in a command being legal and yet not enforceable; after all, enforcement is not a prerequisite or criterion of legal character or norm.[14] We agree with him in as much as most international human rights instruments are legal instruments but are not justiciable.

Another example is the Fundamental Objectives and Directive Principles of state policy in Chapter II of the 1999 Constitution of the Federal Republic of Nigeria(CFRN).Even though it is the duty and responsibility of all organs of government, all authorities and person to conform to, observe and apply the provisions, yet they are not justiciable.[15] Many reasons have been adduced justifying the inclusion of precepts in the 1999 Constitution that are not, legally speaking binding. Sometimes these are referred to as 'political questions' as the duties and obligation they imposed are political in nature. Their observance depends on the political will of the executive, the strength of the economy, and legislative action.[16] Though not enforceable, they are nevertheless fundamental in the governance of a country.

If some rights are God-given, natural and/or pertain to man because of his humanity and could be claimed or protected or enforced if recognized by law, and some are mere political questions, then we are yet to agree on or to have an acceptable definition of the term human right. A definition that embraces an aggregate of the various views of human rights will suffice. Jawitsch a Soviet scholar, realizing this

lacuna, therefore defined a right as: A legally sanctioned measure of a person's possible conduct that guarantees him independence, freedom of choice, and the enjoyment of material and spiritual blessings on the basis of the existing relation of production and exchange.[17]

This definition, which hinges the existence of right on the basis of the relation of production and exchange, amounts to extremism and is discriminative. Equality is one of the main essences of human rights. The summation made by Gasiokwu of the various views to our mind is most appealing and acceptable. He defined human rights as: …claims made on society by individuals and groups which claims have found expression in objective law either at national level and international levels, and serve as the standard for measuring the conditions of human existence below which no human being should enjoy.[18]

This definition recognizes the distinction between "human" and "peoples" rights and the multifarious levels of human rights instruments, which are the bases for the existence of human rights.

2.0.HISTORY OF THE EVOLUTION OF THE CONCEPT OF HUMAN RIGHT AND THE PLACE OF CONFLICTS, REVOLUTION AND WARS.

2.1.HISTORICAL PERSPECTIVE.

The origin of the concept now known as human rights is deeply rooted in antiquity and is as old as the domestication and formation of primitive society. Originally in the pre-historic society, there was no form of social class or stratification as everybody was equal and as such there was no need for the protection of anybody. What resulted then was open communalism.

Ownership of anything and everything was common. In this form of existence therefore, there was hardly any need for law. This state of societal formation, a state of ecstasy or Eldorado was not to last forever as it progressively petals away giving rise to the emergence of a new societal formation – which was feudalistic in nature.

2.1.1. Feudalism and Slavery.

The origin of feudalism can be traced to the gradual and progressive shift from the age of communalism to the 'era of greed' when more

physically endowed men began to appropriate and acquire their own property and engage in pastoral activities which soon extended to agricultural activities with increasing demand for labour and sometimes forced labour, for that matter. This was the beginning of slavery and slave–owning society.

Slavery in any form is most barbaric and inhuman. It debases humanity and the dignity of the person. The slave, though biologically a human being was merely a property that could be leased, loaned and sold. He had no rights. And this extended to his offspring.

Early writings and religious texts, including the Bible, appear to recognize slavery.[19] Aristotle defined a slave as "a living possession" and a natural component of society in which the domination – submission relationship persist.[20]

The burgeoning population of slaves brought along with it the problem of disobedience and unrest as the slave, quite often and at great pain, attempted to resist the inhuman and degrading treatment being meted out to him. According to Gasiokwu: ''The exploitative practices of the privileged classes of the slave–owning society, provoked from the very beginning an adequate reaction of the oppressed masses in the form of slave rebellions, some of which, like that of Spartacus, were even successful. Such revolt opened the endless series of protests against oppression and the struggles for freedom and dignity, which marked the whole history of mankind.''[21]

With the industrial revolution, the need for slaves dwindled as such slavery became less attractive and even expensive. This saw concerted efforts at the abrogation of slavery in Europe and the New World. However, we must point out that various forms of slavery still exist today.[22]

This form of politico-economic exploitation could not last forever. It soon resulted in revolts and agitation for the rights of man. These agitations reflect philosophical and legal theories as propounded by earlier scholars. The works of these scholars are reflections of the schools they belong to; prominent among them were the natural law school and the positive law school.

The earliest naturalists were St. Augustine and St. Thomas Aquinas. However, the work of Aquinas had a greater impact on subsequent postulations in this regard. Aquinas saw law as part of the divine scheme. He differentiated between eternal law, natural law and mundane law.

According to him, God created man so that he might strive towards perfection within the limits of mortality. Reason, to him dictates that man had to be free and that God cannot alter the state of affairs, because that would contradict his own nature, which is also bound by reason.[23]

Natural law emphasized the duties imposed by the almighty God on every human society. Thus, natural rights became the moral expectation men had that others would behave towards them in accordance with the requirement of natural law. The rights were considered natural because every human being is born with and entitled to them.[24] Others belonging to this school include Thomas Hobbes and John Locke. Making his own contribution to the postulation of the natural law theory, Quashigah said: Human rights are conceptualized as the new manifestation of the natural law concepts of the ancient and Middle Ages. Natural law had always envisaged the external natural law, conceived as principle of a right law or as patently correct solution or concrete legal question. It is reported as the law that emanates from God or accords to reason and therefore does not change. It is the law which the monarch or parliament is bound not to infringe.[25]

Hugo Grotius and John Locke further expanded the frontier of the natural law theory by introducing into the discourse the concept of social contract. Locke, in particular, was of the view that in the state of liberty man's property was insecure as there were neither established laws nor impartial judges to execute natural law; therefore it was necessary to surrender to the sovereign, by way of a social contract, the power to preserve order and enforce the law of nature.[26]

Religious sentiments and bias were clearly discernable in the works of these earlier jurists, philosophers or scholars as the case may be. For instance, Thomas Hobbe's view of the supremacy of the right to life was lifted from the biblical injunction of "thou shall not kill." John Locke's justification of the right to property and Jean-Jacques Rousseau's organic view of the social contract were obviously influenced by the biblical injunction "thou shall not steal and thou shall not covet thy neighbour's property.[27]

2.1.2. Emergence of Municipal States.

With feudalism giving way to the emergence of municipal states, it became imperative that man-made laws be given more pre-eminence.

Unfortunately, the increasing abuse of power by the sovereign fired the revolutionary zeal and candour of the citizen thus leading to greater demand for the rights of the individual. This was clearly exemplified by the revolts of peasants, against the oppressive tendencies of the overlord on the one hand, and the rebellion of the oligarchy against tyranny and arbitrary rule of the suzerains on the other hand. These rebellions and uprising led to the proclamation in England by the king of the *Magna Carta Libertatum* (*Magna Carta*for short) in 1215. The Magna Carta contained 63 clauses and it granted to "all free men of the kingdom, all the liberties" contained in the document.

This law to some extend limited the power and privileges of the sovereigns thus granting immunities and rights to the subject. This marked the beginning of constitutional monarchy.[28]

This revolutionary bug spread rapidly to Poland and other parts of Europe between 12th to the 16th century. Judicial activism played a significant and commendable role in the formulation of human rights principles in England. Worthy of note is the bold and pioneering effort of Chief Justice Coke (1552-1633). Justice Coke advocated what one may see in this era as civil disobedience when he encouraged the subject to avoid Acts of Parliament which were against common rights and reason.[29]

The tyranny of the sovereigns sadly led to the civil war of 1688 – 1689 in England. The era was tagged "the constitutional revolution" or the Glorious Revolution. This is not in any way surprising as after the war there was proclamation of laws that sought to protect the individuals from abuses and arbitrariness and the need for a more stable and secured government that would guaranteed citizen' right. The revolution established the supremacy of parliament over the crown, setting Britain on the path of constitutional monarchy. This indeed was a quantum leap as parliament gained more power over taxation, over the royal succession, over appointments and over the rights of the crown to wage war independently.[30] Regrettably, the Glorious Revolution also stoked the fire of slavery as to the non-white inhabitants of the British Empire, the Glorious Revolution represented not the broadening of freedom but the expansion of servitude.[31]Some of these laws included the Habeas Corpus Act of 1679, the Bill of Rights Act 1689 and, the Toleration Act 1689 (granting many Protestants groups freedom of worship).

The Bill of Rights was an act declaring the rights and liberties of the subjects and settling the succession of the crown. The Bill laid down limits on the powers of the monarch and set out the rights of parliament, free election and freedom of speech in parliament to the effect that "the freedom of speech and debate of proceedings in parliament ought not to be impeached or questioned in any court or place out of parliament, prohibition of cruel and unusual punishment and also re-established the rights of protestants to have arms for their defence.''

The Habeas Corpus Act 1679 was a response to abusive detention of persons without legal authority and public pressure on parliament and it was intended for the better securing of the liberty of the subjects, and for the prevention of imprisonment beyond the seas.

Two years later, the Act of Settlement was passed, recognizing the independence of the judiciary. This particular Act was quite significant, more so because without securing independence for the judiciary, all the progress recorded in the promotion of human rights would have been in vain, as the king and parliament, to some extent, could have ignore any ruling of the courts and parliament could also limit the rights of citizen to enforce those rights. One could also say and rightly too, that this was also a plus for the much-cherished doctrine of the separation of powers.

Regrettably, these Acts were not applicable to the oversea territories under British colonial rule. However, this refusal to apply the Acts to the Colony, as far as the formulation of human rights principle, was concerned, was a blessing in disguise.

2.1.3.The American Revolution

While these gains were been recorded in England the reverse was the case in the Colonial Possessions and Europe. In America, the tyranny and arbitrariness of the crown continued. Oppressive taxes were imposed and the flight to America by the emigrant to escape the burden of feudalism in England appeared to be a wasted venture. The revolution in England became the elixir they needed. Richard Holmes traced the root causes of the American War of independence to: "…. the deterioration of relationship between Britain and her American colonies – which eventually led to the war of independence stemmed from a logical British attempts to make the colonies contribute more

to the cost of their own defense. It was also partly the result of the desire of some successful merchants in the colonies to break free of controls imposed by the British political miscalculation that saw foreign policy oscillate between harshness and surrender.[32] Michelline Ishay therefore observes that: The colonists rebelled. The English revolution of the 1640s provided a worthwhile example of resistance for them to emulate. Fighting for independence from England, they recalled the British Levellers' struggle for the rights to life, to property, to manhood suffrage, and the right to rebel against tyrannical authorities and to establish republican institutions. With the ratification of the Declaration of independence in1776, they were soon able to celebrate their new human rights achievement.[33]

This declaration was preceded by a congress of thirteen British colonies in America, convened in 1774. In subsequent sitting, the Congress declared its opposition to all the coercive Acts saying "they are not to be obeyed, as the Act along with other measures was intended to undermine self-rule and self-determination". The colonists asserted their rights including rights to live, liberty and property.[34]

At the congress, war was officially declared against England. On 7th June 1776, a formal resolution calling for America to declare its independence from Britain was presented to Congress. The success of this revolutionary struggle was what led eventually to the declaration of independence on 4th July, 1776 by the "Representatives of the United State of America (USA).

To further elucidate on the historical significance of these events, it is necessary, to set out part of the preamble to the Declaration of Independence: ''we hold these Truths to be self evident, that all men are created equal, that they are endowed by their Creator with certain inalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed. That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or abolish it, and to institute a new Government, laying its foundation on such principles and organizing its powers in such from, as to them shall seem most likely to affect their Safety and Happiness.''[35]

The Declaration of Independence summarized the colonists' grievances in the following eternal words: The history of the present

King of Great Britain is a history of repeated injuries and usurpation, all having in direct object the establishment of an absolute Tyranny over these States.

To justify these assertions, seventeen facts in proof of the allegations were submitted for a just world not for adjudication but as a vindication of the revolutions. The Declaration of Independence concluded with these immortal words**.** We, therefore, the representatives of the United States of America, in General Congress, Assembled, appealing to the Supreme Judge of the world for rectitude of our intentions, do, in the Name, and by Authority of the good People of the Colonies, solemnly publish and declare, That these United Colonies are, and of Right ought to be Free and Independent States; that they are Absolved from all Allegiance to the British Crown, and that all political connections between them and the state of Great Britain, is and ought to be totally dissolved.[36]

This declaration was later followed in September 1787 with the signing of the US Constitution. Subsequent amendments of the constitution expanded the scope of the Bill of Rights which offered specific protection of individual liberties and justice and placed restriction on the powers of government.[37]

One of the saddest commentaries on the America's Constitutional history and an indelible stain on claim to been the leader of the free world and the bastion of democracy, was the non-recognition of blacks as American citizens even after 80 years of the declaration of independence; of which Charter boldly proclaimed that "ALL MEN were created equal, that they are endowed by their creator with setting in- alienable rights." In the case of Dred Scott v.Sandford (1887) the Supreme Court ruled that Americans of African descent, whether free or slaved were not American Citizens and could not sue in Federal Court. The court further ruled that the US Congress lacked power to ban slavery in the US territories. As a matter of law, blacks were properties and the Fifth Amendment forbade Congress from taking away properties from individuals without just compensation.[38]

More outrageous decisions were arrived at in years that followed that gave life to America's cherished value of freedom and liberty notwithstanding the Thirteenth Amendment to the US Constitution in 1865 which brought slavery to an end. In 1868, the Thirteenth Amendment was reinforced with the Fourteenth Amendment which

provided that "no state shall deprive anyone of either due process of law or the equal protection of law". The fifteenth amendment of 1870 prohibited states from denying anyone the right to vote due to race.[39]

In 1896, in the case of Plessy v Ferguson[40] the US Supreme Court narrowed down the interpretation and scope of the Fourteenth Amendment when in a majority decision of 8-1, the court ruled per Justice Henry Billings Brown that;

"the object of the (fourteenth) Amendment was undoubtedly to enforce the equality of the two races before the law, but in the nature of things, it could not have been intended to abolish distinction upon color, or to endorse social, as distinguish from political equality… if one race be inferior to the other socially, the Constitution of the United States cannot put them on the same plane."[41]

Gladly, through sustained judicial activism, particularly of the U.S. Supreme Court, these bars have falling even though cases of discrimination and selective application of the law still abound.

This revolution greatly influenced the French people. Highly motivated by the happenings in America and, with the practical experience acquired by the French soldiers who fought on the side of the American revolutionaries, the fire of revolution was stoked up in France. The returning soldiers joined forces with the hordes of hungry peasants and angry bourgeois and stormed the streets of Paris. This movement was under the aegis of Third Estates General, which constituted itself as the National Assembly. On July 14 1789, the movement stormed the Bastille (Prison) and released the prisoners, many of whom were victims of political persecution. Soon after, on 26th August 1789, the Constituent Assembly drafted the declaration of the Rights of Man and of the Citizens, one of the most important human rights documents of the 18th century affirming the principles of the new state based on the rule of universal law, equal individual citizenship, and collective sovereignty of the people. This indeed was a new world and as expected, "Liberty, equality and fraternity" would be new universal norm. The French revolution was influenced by enlightenment ideas, especially the concept of popular sovereignty and inalienable rights.[42]

Both the American Declaration of Independence and the French declaration are typically a reflection of the natural law thinking prevalent at that time as it extolled and elevated the inalienable rights

of man over and above all other consideration. Note that after the Bolshevik revolution of 1917, and having witnessed deprivation and abuse of power under many years of Tsar Monarchy, the new Marxist government in Russia on 15th Nov. 1917 passed the Declaration of Rights of Peoples of Russia Act which, inter-alia provided for equality of Russia's nationalities. The argument of the Russian revolution as stated in the declaration was the resolve through the following principles:

1. The equality and sovereignty of the Peoples of Russia.
2. The rights of People of Russia to free self- determination even to the point of separation and the formation of an independent state.
   The abolition of any and all national religious privileges and disabilities.
3. The free development of national minorities and ethnographic groups inhabiting the territories of Russia.[43]

The year 1918 saw the promulgation of the first Soviet Constitution. That constitution guaranteed civil and political right to the proletariat. As Marxism and socialism were at the formative stages about this time, there were a lot of progressive changes in Soviet Law thus consistently altering and changing their concept of human rights.

2.1.4.The First and Second World Wars.

The First and Second World War would forever change the course of human history and, by extension, human rights.

The First World War was documented to have killed 17 million people, traumatized a generation, overturned old empires and changed the world political orders.[44]

The War which officially began on 28th July 1914 ended on 1tth November 1918 leaving in its wake human catastrophes and desolation. Hardly any continent was spared.

One of the fall outs of the war was the negotiation and subsequent signing of the Treaty of Versailles which was negotiated between the victorious allied powers and Germany on 28thJune 1919. It is now moot to state that Germany hardly made any input to the terms of the treaty. Of particular interest to this paper is Part 1 of the Treaty which created the Covenant of the League of Nations into which Germany was not admitted until 1926.[45]

Under the Covenant, members resolved for peaceful settlement of

disputes that might arise between them either through arbitration or judicial settlement or through enquiry by the council. The members further agreed in no case to resort to war until after the award by the arbitrators or the judicial decision, or the report by the council.

What may be liberally construed as a Bill of Rights in the Covenant is Article 22 where members agreed to secure and maintain fair and human condition of labour for men and women and children, just treatment of native inhabitants of territories under their control, freedom of communication and to take steps in matters of international concern for the prevention and control of diseases.

The global peace anticipated under the Treaty of Versailles was not to last, as two decades later, the Second World War began, sparked by Adolf Hitler's invasion of Poland in1939.[46]It engulfed virtually every part of the world even though it was between the Axis powers comprising mainly of Germany, Italy and Japan and the Allied powers made up of France, Great Britain, the United States, the France and China. It is indeed believed to be the bloodiest war ever fought as over 70,000,000 deaths occurred.

Barely, two years into the war, the leaders of the Allied powers began to envisage a post- war world in which men in all lands could live out their lives in freedom, and from fear and want. Thus began the history of the establishment of the United Nations.

After a lot of work, the United Nation finally came into existence on the 24th October 1945. This was a turning point for mankind. The true significance of the signing of the Charter was captured by President Truman of the United States when, while addressing the final session said:

> "The Charter of the United Nation which you have just signed is a solid structure upon which we can build a better world. History will honour you for it…… with this Charter; the world can begin to look forward to the time when all worthy human beings may be permitted to live decently as free people.[47]

The collective expectation of all the signatories to the Charter is well amplified in the preamble which states: "WE THE PEOPLE OF UNITED NATIONS DETERMINED"To save succeeding generations from the scourge of war, which twice in our life time has brought untold sorrow to mankind and to reaffirm faith in fundamental rights, in the dignity and worth of the human person, in the equal rights of men and women and of nation large and small…?

From any canon of interpretation, it is obvious that recognition, respect and promotion of human rights and fundamental freedom is the main concern of the Charter. This can be deduced from Article 55 of the Charter which provides that the United Nations shall promote universal respect for and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language and religion.

These efforts concomitantly paid off on December 10th 1948 when the UN adopted and proclaimed the Universal Declaration of Human Rights. The reason for the adoption of the Declaration is well captured in the preamble thereto. It traces the cause of most wars fought to the disregard of and contempt for human rights. It is also intended?? to prevent recourse to rebellion against tyranny and oppression through the protection of human rights, to promote the development of friendly relations between nations and to promote social progress and better standard of life in greater freedom.[48]

The Declaration also contains thirty articles dealing with rights to life, liberty, security of persons, prohibition of torture, inhuman treatment and slavery, equality of persons before the law, fair hearing, freedom of thought and religions etc. This Declaration is the first compendium of international human rights instrument. While the Declaration is not directly binding on United Nation Members, it strengthens their obligations under the Charter by making them more precise.[49] Its significance cannot be understated and we are in agreement with Mrs. Roosevelt when she described the Declaration as the basic principle to serve as a common standard for all nation. It well becomes the Magna Carta of all mankind.[50]

The effects of the Declaration on human rights and constitutionalism[51] are profound and probably exceed the expectations of the founding fathers of the United Nations. This was aptly summarized in the work of Robertson and Merrills when they observed:

> In the world outside the United Nations the influence of the universal Declaration has been no less profound. It has inspired more than forty states constitutions together with regional human right treaties of Europe, Africa and the Americas. And examples of legislation quoting or reproducing provisions of the declaration can be found in all continents thus the impact of the universal declaration has probably exceeded its authors most sanguine expectations, while it's constant and wide-spread recognition means that the principles it contained can now be regarded as part of customary law.
>
> This surely marks a watershed.

In 1966 two international human rights covenants on Economic, Social and Cultural Rights and another on Civil and Political Rights were adopted by the United Nations. These covenants entered into force in 1976. Unlike the Declaration of 1948, these two latter covenants are legally binding, as optional protocols were adopted setting forth machineries and modalities for implementation and enforcement.

2.1.5. RECENT CRISES INTERVENTIONISM AND HUMAN RIGHTS

The doctrine of state sovereignty is very well recognized under the UN Charter [52]and is well articulated in Article 2, as follows:

(1)The Organization is based on the principle of the sovereign equality of all Members.

4(4) All Members shall refrain in their international relations from the threats or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations.

This provision forms the very basis of the principle on the prohibition of the use of force in international relations[53]. It has gained currency as a customary norm[54] and both the International Court of Justice (ICJ) and the International Law Commission (ILC) consider the principle to be a norm of *jus cogens.*[55]

What is 'territorial integrity or political independence of any state' as used in Article 2(4) of the U.N Charter has come under judicial scrutiny. In the *Corfu Channel Case*[56] the ICJ ruled on the phrase "territorial integrity or political independence of any state". The court regarded the "the alleged right of intervention as the manifestation of a policy of force, such as has, in the past, given right to the most serious abuses and as such cannot, whatever be the present defects in international organization, find a place in international law".[57]

This principle of non-intervention was further reiterated by the ICJ in 1986, in the *Nicaragua Case*[58], when the court stated that the principle of non-intervention involves the right of every sovereign state to conduct its affairs without outside interference; though examples of trespass against the principle are not infrequent, the court considers that it is part and parcel of the customary international law. International law requires political integrity to be respected[59].

Another interpretation and application of Article 2 of the Charter and the phrase 'or in any other manner inconsistent with the purpose of the United Nations' means and should be so understood that the use of force is illegal, if it is not in line with the purpose of the UN, as outlined in Article1 of the UN Charter[60]To add more bite to Article 2(4) of the UN Charter, States further agreed in Article 2:7 of the Charter that:

> Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the members to submit such matters to settlement under the present Charter, but this principle shall not prejudice the application of enforcement measures under Chapter VII.

Article 2:7 appears self contradictory as it is capable of being also used as a sword in intervening in matters within the domestic jurisdiction of a state if read together with Chapter VII of the Charter; and this happened frequently as noted by the ICJ in the *Nicaragua Case*.[61]

Against this background, we seek to revisit more recent crises with the view of determining if, like the crises examined earlier, they impacted positively on the regime of human rights in the affected country. The United Nation Security Council has repeatedly invoked relevant articles of the U.N. Charter, particularly Chapter VII, to intervene militarily in the domestic affairs of other nations quite often ending up with regime changes. After cessation of the hostilities, can we with any justification say that human rights are more respected and protected in those countries than was the case beforehand?
A few situational analyses will suffice.

THE IRANIAN REVOLUTION

Iran, formerly called Persia was the world's oldest empire dating back 2,500 years.[62] From 1941 to 1979 was ruled by Mohammed Reza Palhaayi known globally as Shah of Iran.

The Shah recorded modest achievements during his 38 years reign relying on petro-dollars.

His was a constitutional Monarchy which is antithetical to democracy and the right to self determination. He recorded profound economic growth.

According to the Iran Chamber Society, despite economic growth there was much opposition to Mohammad Reza Shah, and to how he used the secret police, the Savak, to control the country.[63] He apparently lost face and faith with his western allies.[64]

In January 1979, events unfolded rapidly resulting in the Shah's last departure from Iran on 16th January 1979. The Iranian Revolution had begun. On February 1st, Ayatollah Khomeini returned to Iran. A referendum was conducted and with its success, the new Islamic Republic of Iran was declared with a new constitution.[65]

According to accounts on Al-Monitor[66],

Iran made commendable strides in many areas since the 1979 Islamic Revolution. From 1980 to 2012 Iran's Human Development Index (HDI) value increased by 67%, a rate of growth that was twice the global average. As of 2012, Iran HDI value sat at 0.742, which put the country into the higher human development category. Access to electricity and piped water in rural areas, life expectancy, infant mortality and access to health care have all markedly improved. The literacy rate which stood at 36% in 1976 and at just 25% for females stand at 99% for males and females aged 15-24.

By every global standard, this is commendable. What has however remained a dark stain on the revolution is the storming of the American Embassy in Tehran on the 4th November 1979 by Iranian Islamic students and the taking of 66 people, the majority of whom were Americans, hostage. These hostages were held in captivity until they were released on 20th January 1981 after protracted negotiations.

Furthermore, the country needs to improve her human rights records in other areas as exemplified in the handling of the Green Movement protest, a fall out from the disputed election of 2009.

RWANDA GENOCIDE

In 1994, the events unfolding in Rwanda shocked the whole world. From April to July 1994, the Hutus murdered over 800,000 people of the mainly Tutsi ethnic group

Begun by Hutu nationalists in Kigali, the killing spread through the country with a never-before-seen type of barbarism and brutality. Neighbours betrayed trust earned long ago to slaughter each other.

What was happening in Rwanda, was genocidal as it had never before pricked the conscience of the civilized world

The United Nations, particular the Security Council never lived up to its much hyped police-man role notwithstanding the enormous power invested in the Council by Chapter VII of the U.N Charter. Article 39 in particular empowers the Security Council to determine the existence of any threat to the peace, breach of the peace or act of aggression which may threaten the peace of the world. The Security Council is at liberty to deploy the mechanism of either Article 41 or Article 42 to prevent the escalation of such crises.

Rather than adopt the necessary measures to bring the situation in Rwanda under control, by a Security Council vote in April 1994, the then existing U.N. peace keeping operation (UNAMIR) was withdrawn.

According to a report, ''as reports of the genocide spread, the Security Council voted in mid-May to supply robust force, including more than 5,000 troops. By the time that force arrived in full, however the genocide had been over for months.''[67] Was this show of shame and reckless display of apathy by the U.N Security Council premised on the consideration that the events were taking place in Africa; more so considering the speed with which the same organ waded into similar situations happening in the former Yugoslavia about the same time?

The former U.N Secretary General Boutros Boutros-Ghali captured the mind of most people when he said that "the failure of Rwanda is ten times greater than the failure of Yugoslavia because in Yugoslavia, the international community was interested, was involved. In Rwanda, nobody was interested."

THE CRISIS IN LIBYA

What began in an otherwise little known town of Sidi Bouzid ,[68] Tunisia by an exasperated and frustrated 26-year old fruit seller Mohamed Bouazizi who set himself ablaze, soon sparked public protest all over Tunisia.[69] Like a Harmattan bush fire stoked by a furious hurricane, the protest spread to quite a number of Middle East countries including Egypt, Libya, Syria, Yemen, Algeria, Morocco, Jordan, Kuwait and Oman and, became known as the Arab Spring. The term "Arab Spring" is itself a western-imposed term conjured up by people who appeared to have little understanding of the complexities and realities in the region.[70]

Numerous factors fuelled the uprising. [71]Historically these factors

are notorious and recondite. They include dictatorship resting its origin on absolutely monarchy,[72] human rights violations, corruption, economic decline, unemployment, extreme poverty and a number of demographic structural factors such as large percentage of educated but dissatisfied youth within the population.[73]

From Tunisia, like a tsunami, the Arab Spring moved to Libya, stoked by the arrest of human right activist Fethi Tarbel who was at the forefront of the campaign for the release of political prisoners in Libya. On the 16th of February 2011, in reaction to the arrest of Fethi Tarbel, rioting broke out in Benghazi.[74] What started out as a mere protest soon assumed the stature of armed rebellion. By February 24th, anti-Libya government militias took control of Misrata, after evicting forces loyal to Gadaffi.[75]

The narrative of the event leading to the invasion of Libya by NATO is well chronicled by the International Coalition for the Responsibility to Protect (ICRtoP) even though their account is jaundiced with expected prejudices.[76] According to ICRtoP,

> "The Libya leader expressed clear intent to continue committing massive human rights violation by announcing to Benghazi residents that his force would show no mercy" to rebels. …Faced with Gaddafi's imminent intention to massacre the city's population, it was clear that tough international action in response to the Libyan government manifest failure to uphold its responsibility to protect was needed to halt on-going crimes and prevent a blood-bath.[77]

The rebels with the support of their western collaborators continued to make progress while Gaddafi used maximum force against the rebels to the consternation of their backers. [78]Barely ten days of the commencement of hostility in Libya, in lightning speed, on 26th February 2011, had the UNSC adopted Resolution 1970 imposing tough measures on the Libyan regime. Part of the resolutions reads as follows:-

The Security Council,

Deploring the gross and systematic violation of human rights, including the repression of peaceful demonstration, expressing deep concern at the death of civilians, and rejecting unequivocally the incitement to hostility and violence against the civilian population made from the highest level of the Libyan government,…

Considering that the wide spread and systematic attacks currently taking place in the Libyan Arab Jamahiriya against the civilian population may amount to a crime against humanity,……..

In paragraph 4 of Resolution 1970, the UNSC resolved to refer the situation in Libya[79] since February 15th 2011 to the Prosecutor of the International Criminal Court (ICC).

Paragraph 9 of the Resolution placed arms embargo on Libya in addition to a travel ban on key functionaries of the Libyan government.[80]

It was factually incorrect for the UNSC to have described the protest as peaceful demonstrations.[81] To say the least, the protest was anything but peaceful.[82] Barely within a week,[83] had the rebels through the western styled peaceful demonstration taken full control of Benghazi and major cities en route Tripoli at a great human cost.[84]

The referral of the Libyan case to the ICC[85] left most international law scholars in complete shock including this research's author. [86] Libya is not a signatory to the Rome Statute. Treaty provision on crimes against humanity of which Libya stood accused is provided for in Article 5: 1(d) and 7 of the Statute. As stated, Libya is not a state party to the Rome statute and, in line with article 34 of Vienna Convention on the Law of Treaties, a treaty does not create either obligation or rights for a third state without its consent. Therefore it cannot, within any stretch of the imagination or interpretation, be said that Libya's obligation emanates from the provision of the Rome statute.

The resolution was against the general rules on obligations that emanates from a treaty.[87]Treaties give obligations and rights to member states; despite this fact, Article 13(b) of the Rome Statute grants the Court jurisdiction over a situation that is referred to it by the Security Council under Chapter VII where the state is not a party to the Statute.[88]This provision of the treaty seems to overtake and violate the generally accepted obligations from treaties.[89] This provision goes against the principle of sovereignty and legality principle[90] that there can be no crime unless there is law that binds that particular person.[91]This in effect means that a state has the right to be bound by instruments it has ratified save for customary international law and jus cogens principle. The ICC Statute in its entirety has not gained the status of customary international law. Therefore its jurisdiction legally should be limited only to state parties.[92]The events continued by UNSC issuing Resolution 1973.

Hardly had the ink dried on Resolution 1970, than the UNSC adopted Resolution 1973 on 17th March 2011 expressing her readiness to ensure the protection of civilians and civilian populated areas and the rapid unimpeded passage of humanitarian assistance and the safety of humanitarian personnel. Paragraph 6 of Res. 1973 placed a ban on all the flights in the air space of Libya Arab Jamahiriya in order to help protect civilians. [93]The Resolution also authorised all member States, acting nationally or through regional organisation or arrangements, to take all necessary measures to enforce compliance with the ban of flights imposed by paragraph 6.

Some member states such as the USA[94] reacted by expressing their willingness to cooperate and send their troop to Libya as the President stated that "United States military efforts are discrete and focused on employing unique U.S. military capabilities to set the conditions for our European allies and Arab partners to carry out the measures authorized by the U.N. Security Council Resolution."[95] They were to intervene as group of nations. Accordingly, a coalition of states which included fifteen NATO countries, took part in implementing the no-fly zone over Libya mandated by Res. 1973. [96]The coalition successfully provided logistics and aerial support for the National Transition Council forces in Benghazi and Misrata and then later in Libya's capital Tripoli, Sirte and other loyalist strongholds in Libya[97].

OBSERVATIONS AND CONCLUSION

Whereas resorting to the use of force may be necessary to maintain or restore international peace and security, it is our view that from a community reading of Article 31 to 42 of the UN Charter the use of force ought to be a last resort as when deployed arbitrarily, it can create a worse humanitarian crisis as seen from the Libyan situation.

It is worth noting that the new principle of the Responsibility to Protect (R2P) which has incorporated military intervention in its mandate also dictates that military intervention should be a last resort and should be meant to eliminate great violation of human rights and suffering.

Furthermore, humanitarian intervention for the sake of protection against gross human rights violation should always adhere to the rules of international humanitarian law as contained in the general convention, the protocols and international humanitarian and customary law should

be the guiding principle in humanitarian intervention. The principles enshrined in the convention include the principle of distinction, neutrality humanity proportionality and necessity.

The United Nation Security Council as presently constituted with five permanent members with veto powers is inequitable, unfair and unjust as it does not represent geographical spread or the current balance of power. The deployment and the frequent abuse of the veto power is, to our mind, a threat to international peace.

In most part of Africa and other developing nations, scant attention is given to effecting the realisation of human rights. As a matter of fact, while civil and political rights are given pride of place by being made fundamental and immutable, economic and social cultural rights are unfortunately delegated to the background and often are not even justiciable. This is not only regrettable but lamentable as the widening gulf between the rich and the poor is the main cause of global friction.

The importance of the economic and social cultural rights cannot be over-emphasised. Therefore, the Indian Supreme Court held that;[98]

In fact directive principles of state policy are fundamental in governance of the country and there is no sphere of public life where delay can defeat justice with more telling effects than the one in which the common man seeks the realisation of his aspirations…

The Indian Constitution is founded on the bed-rock of the balance between Parts III and IV. To give absolute primacy to one over the other is to disturb the harmony of the Constitution.

The notion of freedom and liberty are globally recognised and promoted is most welcomed but to do so as to the detriments of groups and people's rights is an invitation to anarchy and social disequilibrium. In the concurring judgement, Bhaguatiis worried about the danger of relegating economic and social rights to the marginal notes of a constitution when he stated:"Fundamental rights and directive principles cannot be fitted in two distinct and strictly defined categories. Broadly stated, Fundamental Rights represents civil and political rights while Directive Principles embody social and economic rights. Both are clearly parts of a broad spectrum of Human Rights.[99]

His reasoning cannot be faulted as even the universal Declaration of Human Rights also has provision for economic and social rights in Articles 22 to 29 in order to ensure socio-economic justice. Both the civil and political rights as well as the economic and social rights

ought to be given equal attention, particularly in developing countries, in order to narrow the gap between the rich and the poor, otherwise as precious and valuable as fundamental rights may be, they would have no meaning for the poor, downtrodden and economically disadvantaged classes of people who are the ready pool for recruitment into insurgent forces and other destabilising cadres. To those groups of people who are living in almost sub-human existence in conditions of abject poverty and to whom life is one long unbroken story of want and destitution, the notion of individual freedom and liberty… would sound as empty words…….[100]

CONCLUSION

Revolts, revolutions and wars with all their debilitating and dire consequences historically have served as catalysts for galvanising the moral conscience of the world towards ensuring that such scourges would no longer visit humanity. This, in turn, resulted in greater attention to issues of human rights and freedom. These combined efforts have seen human rights being elevated from mere issues of domestic concern to matters of international concern. As such, the individual now is rightly a subject of international law. Quantum leaps have been taken in this regard.

But is the world any safer now than the pre-internalisation of human rights era? We dare answer in the negative as no continent is spared flash-point of conflicts. A few examples will suffice.[101]

i. The endless violence in Syria triggered off by the Arab spring has spilled over into Lebanon, Jordan, Turkey and beyond thus creating untold humanitarian suffering
ii. The Israel/Palestinian crisis continues to benumb the mind more so with the end not too soon in sight.
iii. Iran failing to reach agreement with world powers on limiting its nuclear program, continue to attract sanction from the west consequently impacting on the economy.
iv. What started as protest against government economic policy in Ukraine was hijacked by Russian-backed separatists with Crimea being annexed to Russia. We hope the recent cease- fire deal will work out.
v. Recently confrontation broke out between the Chinese navy and

Japan with jets from the two nations engaging in dog fights over the disputed Senkaku/Diaoyu Island.

vi. The Boko Haram insurgency in Nigeria has claimed over 15,000 lives to date. Currently the insurgents control about 17 Local Government Areas in the North East part of Nigeria.
This was a ready excuse for the government to shift the dates of the general elections in Nigeria.

vii. As the U.S reduces her troops in Afghanistan, Taliban militants in the mountainous Pashtun-dominated areas continue to make the country ungovernable.

viii. North Korea and South Korea do not see eye to eye as exemplified by the South Korean sinking of a North Korean vessel, a retaliatory measure against North Korea who sank a South Korean ship earlier.
The list is endless.

One of the causes of these conflicts is the way minorities are treated everywhere, be they ethnic, religious, sexual or linguistic minorities. There is therefore an urgent need to ensure that all human beings are treated equally without discrimination.

Most wars have been waged over land, religion, flags, ethnicity and resources. Therefore, to get rid of wars, we must get to the root of their triggers. There is a need to respect freedom of thought, conscience and religion of all and sundry even if they are negligible minorities.

The right to self-determination which include the right to freely dispose of the wealth and natural resources in the interest of the people, the right to economic, social and cultural development with due regard to their freedom and identity and the equal enjoyment of the common heritage of mankind.[102]

Democracy, although a necessary element for the realisation of good governance, cannot on its own ensure the protection of human rights. Protection of human rights needs the establishment of a free, just and fair world where a life in Nigeria is as important as a life in U.S.

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