

Human Rights and Comparative Politics

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Abstract

The study of human rights and democracy has received a great deal of attention over recent decades. The concepts involved are still poorly understood, although there is a broad measure of agreement that they should be associated with such classic freedoms as freedom of expression and association; and there has been still less agreement about the attempts that have been made to measure democracy or human rights on a broadly cross-national basis. After a preliminary discussion, the dissertation seeks to answer the following questions: (i) Can human rights be measured? (ii) Still more so, can they be measured on a cross-national basis? (iii) Can countries be ranked on the basis of their human rights performance? (iv) What variables might be employed in a comparative analysis of this kind? (v) Is there agreement about the ranking of countries that emerges from inquiries of this kind? The dissertation examines these questions in a variety of settings and seeks, in conclusion, to establish their value within the context of comparative politics.

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This thesis is dedicated to my mother, the memory of my father, and the memory of the betrayed people who died for their basic human rights in one of the most savage wars of mankind, the Algerian War (November 1954-March 1962).

Table of contents

Abstract	ii
Acknowledgement	iii
Dedication	v
Table of contents	vi
List of tables	x
List of histograms	xi
List of diagram	xii
 Introduction:	 1
 Part One: The philosophy of human rights	 5
 <u>Chapter One:</u> Human rights: Historical background	 6
I: A historical setting	7
1-1: The origins of human rights	8
II: Definitions of human rights	18
III: Contents of human rights	23
3-1: Practicability	25
3-2: Genuinely universal	28
3-3: Paramount importance	29
 <u>Chapter Two:</u> Human rights between East and West:	
A comparison	33
I: Civil and political rights	36
1-1: Freedom of expression	37
1-2: Freedom of movement	41
II: Economic, social and cultural rights	43
2-1: The right to work	45
2-2: The right to health care	48
III: Changes and developments	53
 <u>Chapter Three:</u> A new order and a 'third generation' of human rights	 63
I: What are these rights?	64
1-1: The right to self-determination	65
1-2: The right to development	68
1-3: The right to a healthy and ecologically balanced environment	72
1-4: The right to peace	76

1-5: The right to the common heritage of mankind	78
II: Are they human rights?	79
III: The third generation of human rights on a cross-national basis	83
III: Universalism, relativism and human rights	86
Part Two: Case studies	90
Introduction:	91
<u>Chapter Four: Amnesty International</u>	94
i: The origin and structure of Amnesty	95
1-1: The origin of Amnesty	95
1-2: The structure	99
1-2-1: The section and groups	99
1-2-2: The International Council	101
1-2-3: The International Executive Committee	102
1-2-4: The International Secretariat	103
1-2-4-1: The General-Secretary Office	104
1-2-4-2: Research Department:	105
1-2-4-3: Campaign and Membership	106
1-2-4-4: Press and Publications	106
1-2-4-5: Administration Department	107
II: Amnesty International: the mandate	107
2-1: To free prisoners of conscience	107
2-2: The death penalty	112
2-3: A prompt and fair trial	115
III: Case Studies	117
3-1: China	118
3-2: Nicaragua	127
3-3: The Middle East	132
IV: Amnesty International and comparative politics	134
<u>Chapter Five: The Human Rights Committee</u>	144
Section 1: What is the Human Rights Committee?	145
1-1: The Committee	146
1-2: The Sessions	150
1-3: Decisions of the Committee	154
II: The work of the Committee	155
2-1: The states reports	156
2-2: Individual communications	161
2-3: Derogation	163

III: Case studies	165
3-1: The USSR	166
3-2: Chile	173
IV: The Committee's work and the comparative study of human rights	177

<u>Chapter Six</u> : Quantitative approaches to the comparative study of human rights: The work of Charles Humana	182
I: Philosophical foundations of the inquiries	184
1-1: The first inquiry	184
1-2: The questions	185
1-3: The second inquiry	188
II: The strategy and assessment	191
2-1: The method	191
2-2: The system of weighting	197
2-3: the world average	201
III: Types of assessment	204
3-1: Assessment under the questionnaire (The cases of South Africa and Israel)	204
3-2: Summary forms	208
IV: Humana's work in comparative perspective	209

<u>Chapter Seven</u> : Comparative measures of human rights and democracy	216
I: Dahl's measurement of democracy	218
1-1: Definition of democracy	218
1-2: Conditions of polyarchy	221
1-2-1: Historical sequences	221
1-2-2: The socio-economic order	223
1-2-3: The level of socio-economic development	224
1-2-4: Equalities and inequalities	226
1-2-5: Subcultural pluralism	227
1-2-6: Domination by foreign power	228
1-2-7: Beliefs of political activists	229
1-3: The measurement of democracy	231
1-3-1: The variables	232
II: Bollen's measurement of political democracy	246
2-1: Political democracy index	248
2-1-1: Popular sovereignty	248
2-1-1-1: Fairness of elections	249
2-1-1-2: Executive selection	251
2-1-1-3: Legislature selection	252

2-1-2: Political liberties	253
2-1-2-1: Freedom of the press	254
2-1-2-2: Freedom of group opposition	255
2-1-2-3: Governments sanctions	256
III: Comparison, critics and assessment	260

<u>Chapter Eight: Freedom House</u>	269
I: Freedom House: Historical setting	271
II: Dimensions of freedom	274
2-1: Political rights	276
2-2: Civil liberties	281
III: The methods and the ranking	285
3-1: The methods	285
3-2: The ranking	288
IV: Case studies	292
4-1: The United States of America	293
4-2: Czechoslovakia	295
4-3: Ethiopia	297
V: The Survey's assessment	300

Part Three: Conclusion	311
-------------------------------	------------

<u>Chapter Nine: Human rights and comparative politics</u>	312
I: Case studies: an assessment	314
1-1: Inadequate definitions and data	314
1-1-1: Inadequate definitions	314
1-1-2: Inadequate data	316
1-2: Approaches	318
1-2-1: Independence of variables	318
1-2-2: Ranking and non-ranking approach	321
1-2-3: weighting	323
1-2-4: Longitudinal assessment	325
II: Is the comparative study of human rights on a cross-national basis possible?	327
III: Recommendations for future research	335

Bibliography	341
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List of tables

<u>Table (2) 1:</u> The ratio of doctors and hospital beds to the population in the former USSR, the USA and the UK	50
<u>Table (2) 2:</u> Comparison of some communist and non-communist countries on selected social indicators	52-3
<u>Table (7) 1:</u> Selected countries ranked by opportunities to participate in national elections and to Oppose the Government, circa 1969	236-7
<u>Table (7) 2:</u> Variables used as indicators of opportunities for opposition	243-4
Table (7) 3: Bollen's ranking of countries according to their degree of political democracy for the years 1960 and 1965	258-9
<u>Table (7) 4:</u> Comparison between Dahl's and Bollen's ranking of selected countries	261
<u>Table (8) 1:</u> Percentages of the 'free', 'partly free' and the 'not free' people in the world for selected years	301

List of Histograms

Histogram (6) 1: The percentage of human rights in selected countries	196
Histogram (6) 2: percentages of human rights after the system of weighting	200
Histogram (6) 3: Percentages of human rights in South Africa and Israel for the years 1983 and 1986	205

List of diagrams

Diagram (4) 1: The Structure of Amnesty International	196
Diagram (4) 2: The structure of the International Secretariat	200

Introduction

Human rights is a central concept in political science, yet it is still poorly understood. It is a concept very much contested not only between East and West but also between developed and developing countries. It has received unprecedented attention over the past four decades since the adoption by the United Nations of the first international document on this subject, the Universal Declaration of Human Rights, in 1948. Since that time an even greater number of individuals and institutions have been concerned with the issue. Different political leaders, for instance Jimmy Carter in the United States, have championed human rights, and made them the basis upon which foreign policy should be determined.

Since the 1960s organizations which are concerned with this issue have been mushrooming, though still overwhelmingly concentrated in the west. More political scientists have been concerned with human rights and related issues, and have tried to develop different criteria upon which countries' performances may be judged.

In this respect the present work tries to assess the extent to which different inquiries have successfully dealt with the subject. This will make it possible to pinpoint the difficulties that may arise whenever one is to undertake such an exercise. This dissertation contains three parts.

The definition and content of human rights are not yet universally agreed upon; differences in political ideologies, religions and the variety of historical events have made it difficult to secure general agreement on such issues. Furthermore, the United Nations

has increased its list of what can be considered as human rights in the light of the different circumstances that the world has experienced. Thus, the first part of this dissertation deals with the issues of definition and content. And in order to best cover the significant issues that are involved, this part has been divided into three chapters.

The first chapter discusses the concept of human rights in general. It reviews the literature available from the Greek philosophers up to the adoption of the Universal Declaration of Human Rights in 1948, and the Covenant that followed in 1966. This includes, further, the different philosophies and religions, that have had some impact on the shaping of human rights as they are known today.

The second chapter develops the question of rival conception of human rights. I will particularly stress the contestation between East and West. It is generally agreed that these two groups of states have had two completely different understandings of what human rights are or cover. This clash really added a new dimension to the human rights which were already known. Furthermore, such a clash made an agreed definition even more difficult to attain. It should be pointed out, however, that the discrepancy between these rival interpretations has become narrower since the mid and late 1980s, after the different reform programmes introduced in the former Communist countries, and after the collapse of communist rule in the former USSR itself and Eastern Europe.

The third chapter investigates the 'new rights' which have emerged after many of Third World countries achieved independence and the changes that the world experienced over the

last two decades. These rights are usually referred to as the 'third generation' or 'rights of solidarity'.

After this preliminary discussion, part two of the dissertation examines at length some of the work that monitors human rights or that has attempted to measure human rights and democracy on a cross-national basis. In this connection the case studies chosen are thought to provide the best possible picture of the difficulties and the limits of any exercise aimed at measuring human rights and democracy on the one hand, and the obstacles one faces when human rights are examined. Thus this parts comprises:

Amnesty International, which is examined in chapter four, is one of the most respected non-governmental organizations. Although it adopts a very narrow definition of human rights, its findings are nonetheless very authoritative. I will discuss the organization and its work, and the extent to which it succeeds in carrying out its work. Some of the issues that could not be found in the literature were raised directly with the staff at the British Section of Amnesty in London.

The fifth chapter examines the work of the UN Human Rights Committee. It is a body set up in 1976 under the provisions of article 18 of the International Covenant on Civil and Political Rights, which tries to help countries to enhance their human rights records by providing expertise and advice. Its work offers a basis of comparison between countries and their efforts to take into account the Committee's remarks and bring their laws within the bounds of the provisions of the International Covenant on Civil and Political rights. I have had first hand experience of the work of the Committee not only by interviewing Professor R. Higgins, a member of this Committee, but by watching the Committee at work during several

sessions in July 1991 in Geneva.

Chapter six examines the work of Charles Humana, a British academic, who developed a methodology whereby human rights can, at least in principle, be measured. His work has become a matter of public controversy after the publication of the Human Freedom Index by the United Nations Development Program in June 1991. The chapters examines his work thoroughly, to conclude whether such an exercise is in itself possible.

Chapter seven concentrates on two studies which have attempted to measure democracy: this includes the work of both Robert Dahl and Kenneth Bollen. The cross-national study of democracy is bound to create some controversy concerning the variables chosen and the methods applied.

In chapter eight a lengthy discussion will focus on the work of another independent organization which is concerned with human freedoms: Freedom House in New York. The chapter scrutinizes the Survey it publishes and the different ranking of countries that the Survey contains.

The dissertation concludes in part three with a discussion of the extent to which political scientists and the organizations considered have successfully conceptualized the problem of human rights, and whether the task of comparing human rights on a cross-national basis is possible. It also indicates some of the elements that might form part of the agenda of the comparative study of human rights in the future.

Part one
The Philosophy of human rights

Chapter one:

Human rights: a historical background 6

Chapter two:

Human rights in the East and West. A comparison 33

Chapter three:

A new order and a third generation of human rights 63

Chapter one

Human rights: A historical background

The idea of human rights as it is known to us today is a product of a process that has been evolving over the centuries. Actually it can be traced back as far as the Greek and the Roman philosophers. Different religions, cultures, philosophies and circumstances have made a significant contribution towards the understanding and the broadening of such a concept.¹ This made the definition as well as the origins of the idea quite a wide issue upon which consensus and agreement among scholars has yet to be reached.

In this chapter an attempt will be made to clarify different issues surrounding the concept of human rights. Having said that does not automatically mean that there will be no disagreements on the issue after this work. Nonetheless, the aim is to show the reader that many scholars have tried to define human rights and their content on the one hand, and their origins and universal character on the other. Furthermore, I shall look at the philosophies that have had a strong impact on the nature of those human rights that are known to us.

Considering these facts the approach in this chapter will be historical; mainly to review the literature available on the subject and highlight the disagreements among scholars. In the course of doing so, the concept of human rights, as will be seen later, keeps "stretching" to include different rights that were not known to men

1-"In international politics, differences of culture, national traditions, and political interest must be counted for their impact on the conception of human rights." A. S. Rosenbaum, ed., The Philosophy of Human Rights. International Perspectives. (London: Aldwych, 1980) p. 7

at a certain point in their development. Therefore, it is proposed that human rights should be looked at as an evolutionary process that keeps changing.

I: A historical setting

The concept of human rights is relatively new in today's politics. However, the idea itself goes back as far as the creation of man,² although most scholars trace it back to the Greek and Roman philosophers. Burns Weston argues that:

Most students of human rights trace the historical origins of the concept to ancient Greece and Rome, where it was closely tied to the premodern natural law doctrine of Greek stoicism.³

The crux of the matter is not to state which of the theories is true and which is not, as much as to state that some forms of human rights were known to man very early in his development. Greek philosophers spoke of many freedoms that are essential today, and Roman cities witnessed some practices which are at the heart of today's idea of human rights. However, they were not as sophisticated as they are now and manifest some shortcomings in several respects.⁴

2-Molsin and Johanes. "The philosophy of the Universal Declaration of Human Rights." *Human Rights Quarterly*, (6) 1984 pp. 311-12. They state that: "For Paine the rights of man can be traced back to the creation of man itself."

3-B. H. Weston, "Human Rights." *Human Rights Quarterly*, (6) 1984 p. 258.

4-Freedom of movement, for instance, was known to both Greeks and Romans. Maurice Cranston argues that:"The Greeks themselves were free to travel, and they did travel. The Romans also allowed the free movement of people, and were more tolerant of immigration than had been the Greek states. At the time of the empire persons of foreign extraction made up almost ninety percent of the population of Rome itself." What are human rights? (New York: Taplinger, 1973) p. 33. However, these doctrines found slavery and serfdom to

1-1: The Origins of human rights

It is difficult to come to a general agreement concerning the origins of human rights.⁵ Some see this concept as a new version of natural right, and therefore, natural right is the source for human rights.⁶ In other words, the concept clearly specifies that human rights find their source in nature, rights held by humans by the mere fact of being human.⁷ However, this statement still does not solve the problem of the origins.

If nature, or the fact of being a human was the source of human rights, one would state that the more fundamental problem of the universality of the concept, cannot be addressed. The fact that

be legitimate.

5-"Philosophers within one nation, much less in multicultural world society, have never agreed on where rights come from and what are rights properly speaking." D. P. Forsythe, Human Rights and World Politics 2nd ed., rev. (Lincoln: University of Nebraska Press, 1989) p. 160. Furthermore, Gewirth, states that: "...Kant, Kierkegaard, Nietzsche, Mill and Marx, who hold, respectively, that the criteria for having rights consist in or are determined by reason, religion, power, utility and economic class or history." A. Gewirth, Human Rights. Essays on Justification and Application (Chicago: The University of Chicago Press, 1982) p. 42.

6-B. H. Weston, 91984) op. cit. p. 257. See also R. J. Vincent, Human Rights in International Relations (Cambridge: Cambridge University Press, 1986) p. 32 when he states that: "Human rights are taken by some writers to be simply the contemporary expression of natural rights, corresponding to natural duties in the classical rendering of the law of nature."

7-J. Donnelly, The Concept of Human Rights (London: Croom Helm, 1985) "The very term "human rights" points clearly to their source: humanity, human nature, being a person or human person." p. 27. See also L. J. Macfarlane, The Theory and Practice of Human Rights (London: Maurice Temple Smith, 1985) p. 5. "The concept of human rights emerged out of the much earlier conception of natural right, which initially was no more than a derivative element in the medieval Christian doctrine of Natural Law. Natural rights were the moral expectations men had to others should behave towards in accordance with the requirements of Natural Law."

human rights are considered as part of the historical development of mankind clearly jeopardizes this understanding. At this stage, I shall limit myself to the sources of human rights.

The concept of human rights as it is understood today can be traced back to the emergence of capitalist markets in Western Europe. Donnelly asks "why there were no human rights in traditional non-Western and Western societies"? He believes that:

Because prior to the creation of capitalist market economies and modern states, the problems that human rights seek to address, the particular violations of human dignity that they seek to prevent, either did not exist or ???? widely perceived to be central social problems.⁸

To just limit the origin of human rights to seventeenth-century Europe and the philosophies that have evolved since would leave out of consideration some of the very important influences on human rights, i.e., religions.⁹ Christianity, Judaism and Islam, the major religions in the world, have some aspects of human rights in them.¹⁰

8-J. Donnelly, Universal Human Rights in Theory and Practice (Ithaca: Cornell University Press, 1989) p. 64. Moreover, Page argues that: "More accurate in Condorcet's observation that the notion of human rights was absent from the legal conceptions of the Romans and Greeks; this seems to hold equally of the Jewish, Chinese, and all other ancient civilizations that have since come to light." Page, "The roots and origins of human rights." In A. H. Henkin, ed., Human Dignity. The Internationalization of Human Rights (New York: Aspen Institute for Humanistic Studies, 1979) pp.1-2.

9-J. Kaplan, "Les Origines Juives des Droits de L'homme." *Revue des Sciences Morales et Politiques*, 144 (1) 1989 p. 18. " Le Président René Cassin qui est à l'origine de la Declaration Universelle des Droits de L'homme a appelé au cours d'une conférence intitulée < les droits des religions vis-à-vis des droits de l'homme > "

10-" Les dix commandements ont été le premier code morale issu d'une religion." Ibid.,

" <Ne commets point d'homicide> n'est pas reconnaître le droit à la vie" Ibid., p. 19. See also J. Rozier, "Sources Catholiques des Droits de L'homme." *Revue*

These, however are much criticised as not being rights but "mere duties". Donnelly, for instance, stresses that there are no human rights, as they are now understood, in Islam.¹¹ Most of the "rights" proclaimed in Islam, or even in the ten commandment, prove to be duties in their origins. The right to life, and of freedom of expression, are mere duties not to kill and to speak the truth.

Rather than arguing much about these positions, what matters more in this chapter is to show that religions have played a significant role in the shaping of the concept of human rights, although these 'rights' were did not satisfy many who advocate that what religions brought were only duties. They nonetheless have helped to secure some of the "rights" and the human dignity that human rights seek to secure.

Moreover, if one takes into account the fact that a right involves a duty, or they are two sides of the same coin,¹² then one would conclude that what religions really brought were rights. What one's duty is can be somebody's right, and vice versa.

des Sciences Morales et Politiques, 144 (1) 1989 pp. 53-4. "Pour employer une autre image, on peut dire que l'arbre genealogique des droits de l'homme comporte plusieurs racines et que le Catholicisme et l'une d'entre elles." Moreover, M. Arkoun, "Origines Islamiques des Droits de L'homme." *Revue des Sciences Morales et Politiques*, 144 (1) 1989 p. 25. "Il s'agit de montrer que l'Islam en tant que religion est non seulement ouvert a la proclamation et a la defence des droits de l'homme, mais le Coran, Parole de Dieu, a defini ces droits au debut du VII siecle, bient avant les revolutions de l'occident."

11-J. Donnelly, (1989) op. cit. p. 51. "These alleged human rights, however prove to be only duties to rulers and individuals not held by anyone."

12-"Rights and duties are two facets of the same picture. Whoever demands a right to liberty has to respect a similar right in others which circumscribes his right to personal liberty very considerably." J. Donnelly, (1985) op. cit. p. 77. Moreover, S. I. Benn and R. S. Peters argue that; "Rights and duties are different names for the same normative relation, according to the point of view from which it is regarded." Quoted from R. J. Vincent, (1986) op. cit. p. 9.

However, the concept of human rights started to develop very quickly in seventeenth-century Europe following the creation of capitalist markets and the emergence of different liberal philosophies. These societies have witnessed a change in their structures and thus a system was needed to curtail the injustices that began to develop and to protect human dignity.

Different philosophies and events have played a major role in the shaping of human rights. The Magna Carta (1215) and the English, French and American Revolutions undoubtedly laid down the foundations for the emergence of such a concept. Moreover, the slogans the French Revolution proclaimed of "Liberté, Egalité, Fraternité" are seen as the starting point to the whole philosophy of human rights, and each concept represents one generation of human rights.¹³ The American Declaration of Independence on July 4th, 1776, stressed that:

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 those are life, liberty and the pursuit of happiness.¹⁴

Nonetheless, apart from religions, the rapid changes brought about with the industrial revolution and the capitalist market, different philosophies, based mainly on natural law theory, have emerged to safeguard the human dignity. A new social order was needed.

The natural theory was developed by John Locke, who is seen as the source of the doctrine of human rights. He stressed that men

13-D. P. Forsythe, (1989) op. cit. p. 6. "It is traditional to group these rights into three categories, paralleling the French Revolution and its slogan of liberty, equality and fraternity."

14-B. H. Weston, (1984) op. cit. p. 260.

have natural rights to life, liberty and property. Men, in Locke's society, are rational and capable of action. In other words, they pursue happiness and look for self-preservation. Such natural rights are enjoyed by everybody and because they find their origin in nature entail the respect by others.

However, when men entered a civil society, the need for a new structure for society was to be created. Humans in Locke's view are sociable. Thus, man entered into a "social contract" with the state. Weston argues that:

Humankind surrendered to the state only the right to enforce these natural rights, not the rights themselves; and that the state's failure to secure these reserved rights (the state itself being under social contract to safeguard the interests of its members) gives rise to a right to responsible popular revolution.¹⁵

Thus, Locke used his individualistic theory to challenge the divine right of the kings, and to argue the supremacy of the parliament. The idea behind that social contract is that the two parties should fulfil what they have agreed upon. Each party has taken some obligations that should be respected. However, when the state fails to protect these natural rights of men, then a popular, responsible revolution is legitimized.

However, if man has a natural right to do anything, then it follows that nobody has the duty or the responsibility of respecting others' natural rights. This point was made by Hobbes. He argued that:

But that the right of all men to all things, is in effect no better than if no man had right to do anything. For

15-Ibid., 258. Furthermore, Morsink argues that: "Since these rights are derived from the authority of nature and not from the authority of the state, the state cannot take them away except for the purpose of securing these same rights." op. cit. p. 317.

there is a little use of benefit of the right of man hath, when another as strong or stronger than himself, hath right to the same.¹⁶

Obviously, although they both derive from Natural Law, the two theories differ. Locke sees men as sociable and rational; their rights are effective and everybody in society respects them. Hobbes, however, sees society as a jungle and whoever is the strongest dictates his will. Because by nature man tends to transfer some of power of the others to himself, and therefore, whenever two interests are in conflict one always tends to resist such a transfer.¹⁷ His model was an irrational individual, with the strongest keeping the rest in order. In effect, he was advocating total monarchy or statism.

Both Hobbes's absolute theory and Locke's limited one find their roots in the theory of Natural Rights. Their main concern was the individual. This individualism was associated with natural right philosophy, so were all the declarations that were proclaimed in the eighteenth century.

However, the natural right theory was not immune from criticism, and was even rejected as a source for human rights.

16-C. B. MacPherson, "Natural Rights in Hobbes and Locke." In D. D. Raphael, ed., Political Theory and the Rights of Man (London: Macmillan, 1967) p. 3. Donnelly states that: "In Hobbesian state of nature, rights would be rarely respected (and then only out of self-interest of the duty-bearer), and enforcement would be only through self-help." J. Donnelly, (1989) op. cit. p. 12.

17-"Hobbes believed that outside civil society, with no legal system prevailing, it is right for each person to do whatever he will do. In a sense each person has a natural right to do anything, to act however or possesses whatever he can, with no limits." T. R. Machan, Human Rights and Human Liberties. A Radical Reconsideration of the America Political Tradition (Chicago: Nelson Hall, 1975). p. 19.

Philosophers such as Burke, Bentham and Marx, among others, represented the objection to it. Bentham, for instance, argues that:

Right...is the child of law, from real law come real right, but from imaginary laws, from "law of nature", come imaginary rights...Natural Rights is simple nonsense; natural and imprescriptible rights (an American phrase) rhetorical nonsense, nonsense upon stilts.¹⁸

Moreover, the criticism of socialist thinkers such as Engels and Marx is particularly important. Undoubtedly the clash between the two main doctrines had a great impact on the understanding of human rights and their codification in international instruments by the United Nations. Rosenbaum rightly argues that:

The main contribution to human rights theory in the nineteenth century, and practically to the idea of freedom and equality, must be appraised with respect to the clash between (liberal) individualism and (socialist) collectivism. Whereas the liberal critique was largely directed toward social change within capitalist framework, the Marxist critique advocated the abolition of capitalism in favour of economic collectivism.¹⁹

I shall not go far in highlighting the differences between the two

18-B. H. Weston, (1984) op. cit. p. 261. Further, "Green found the doctrine of natural rights unacceptable for three reasons: it assumed that individuals brought into society rights that did not derive from society; it asserted that these rights could be held against society; and it detached rights from the duties individuals owed their society." M. Freeden, Rights (Milton Keynes: Open University Press, 1991) p. 20. Moreover, R. J. Vincent argues that: "Both Hegel and Burke had the "same fear that the doctrine of absolute freedom would lead to the destruction of the social order." However, "Hegel did not deny that there were rights of individuals to life, liberty and property. Indeed they formed the basis for man's participation in civil society. But this was not civil society in Locke's sense. Hegel meant by it the system of needs that were met by the exchange in the market- and this was a society into which men entered as men, and not as members of a particular society." R. J. Vincent, (1986) op. cit. p. 29.

19-A. S. Rosenbaum, ed., (1980) op. cit. p. 20.

approaches, as this will be dealt with in a more detailed fashion in the next chapter. However, the point that needs to be stressed is that such a clash has added a new dimension to the understanding of human rights.

Socialists stressed the need to suppress a number of individual rights to achieve higher rights for mankind as a whole. To Marx, individual rights were nothing but abstract, bourgeois rights.²⁰ The unit of analysis should be moved from the individual to the collectivity or the community.

According to the Marxist view, what people really want are concrete rights, which can only be achieved under socialism. In the dialectical changes of society, socialism is a further step forward in the development of mankind, a superior stage to capitalism. Such a transformation will eventually lead to a classless society: communism. Therefore, a new structure for the society is needed and a break away from the actual socio-economic conditions is of paramount importance for this transformation. The abolition of private property, collective ownership of the means of production and the centrally planned economy, in the Marxist view, are able to safeguard such ideals that human rights try to protect. By removing class conflict, there will be no other obstacles for the development of mankind. In such a classless society, with the socio-economic conditions, the issue of human rights can no longer be addressed.²¹

20-"Human rights were nothing but those of bourgeois ??????, the member of civil society, i.e., egoistic man, man separated from other men and the community." M. Freeden, (1991) op. cit. p. 21. Wyzanski Jr. argues: "What he [Marx] did recognize was that most of the political and civil rights are meaningless unless one has an economic and educational foundation adequate to take advantage of them." C. E. Wyzanski Jr., "The Philosophical Background of the Doctrine of Human Rights." In A. H. Henkin, ed., (1979) op. cit. p. 12.

21-"To Marx, any talk of rights possessed by people equally, inalienably,

The individual will enjoy rights as a member of the society or the collective.

There is no doubt about the impact of Marxist thought on the issue of human rights. The adoption of such an ideology by different countries in the twentieth century has opened up the debate, once more, about what human rights really are. This can well be understood in the debates that preceded the adoption of the first international instrument on human rights, the Universal Declaration of Human Rights.

Pollis and Schwab remind us that:

On December 10, 1948 the General Assembly of the United Nations, by a vote of 48 in favour, none against, and eight abstentions (including the Soviet Union, South Africa and Saudi Arabia), adopted and proclaimed the Universal Declaration of Human Rights.²²

The Universal Declaration, adopted after the Second World War and the atrocities witnessed,²³ set a new common standard for achievement that societies would bear in mind and try to safeguard the rights proclaimed in it.

absolutely, and universally would have to await the communist epoch when all persons will have reached a common nature, total equality and perfection. Until then people are in a state of incompleteness and imperfection, incapable of justifying equal human rights." T. R. Mochan (1975) op. cit. p. 41.

22-A. Pollis, and P. Schwab, eds., Human Rights. Cultural and Ideological Perspectives. (New York: Praeger, 1979) p. 4.

23-The preamble of the Universal Declaration states that: "...disregard and contempt for human rights have resulted in barbarous acts which outraged the conscience of mankind..." In addition, Diemer argues that: "Its [the Universal Declaration of Human Rights] background is, on the one hand, the "barbarous acts" experienced in the recent past, i.e., the Second World War with its outrages against millions of victims and the other hand, the aspirations from the advent in the world in which human beings shall enjoy freedom. It is decided against the enemy who has prevented this from being achieved, or does not wish it to be achieved." UNESCO, Philosophical Foundations of Human Rights (Paris, 1966). p. 97.

Unlike the previous declarations, the Universal Declaration included provisions for economic, social and cultural rights. If one looks at the articles of the Declaration, it can be seen that the first twenty one articles deal with civil and political rights, and articles 22 to 29 deal with economic, social and cultural ones.

Such an inclusion undoubtedly reflected the views of those who believed in these latter, more "concrete" rights. There were long debates in the United Nations' Third Committee to agree on the final draft of the Declaration. The delegate of the USSR, for instance, Lazreg notes:

considered that the draft did not satisfy the three conditions which were indispensable to the completion of the Declaration, namely; a guarantee of basic freedoms for all, with due regard to the sovereignty of states; a guarantee that human rights could be exercised with due regard to the particular economic, social and national circumstances prevailing in each country; and a definition of the duties of the citizens to their country, their people and their state.²⁴

It should be pointed out that Saudi Arabia abstained as well from the vote on the adoption of the final draft of the Declaration. As pointed out, Saudi Arabia, which is among countries which believe in the supremacy of Islam, believes that the provisions of the Declaration have been practiced by them for over fourteen centuries. They also argue that the Declaration seeks to apply a western model in a very different social and cultural environment.²⁵

24-M. Lazreg, "Human rights, state ideology. A historical perspective." In A. Pollis, and P. Schwab, eds., (1979) op. cit. p. 36.

25-"They [the Saoudis] took the Declaration to be a competing document claiming universality, when, in fact, its contents were limited to the particularistic goal of applying a western mode of social, political, and economic practice onto a culturally and philosophically different world." Ibid.,

However, when it came to the adoption of a legal binding instrument for human rights, it was soon realized that a single instrument could not be achieved. Two different Covenants came into being eighteen years later (1966), one on Civil and Political Rights, the other on Social, Economic and Cultural rights. They both came into force a decade later (1976) after thirty five states had ratified each of them.

Moreover, different human rights international instruments have been adopted since that time, making the issue of human rights encompass more than these two sets of rights.

II: Definition of human rights

After the historical setting to the development of the concept of human rights, a definition of the concept should be attempted. One may argue that a definition should have been the starting point of the discussion, yet it was important to point out that the concept of human rights kept changing and undoubtedly influenced its definition. I shall try to give different definitions attempted by scholars, and will develop those definitions further in the sections that follow.

Maurice Cranston, amongst others, argues that:

Human rights is a twentieth-century name for what has been traditionally known as natural right.²⁶

If one agrees with this statement, one is left with another task of

p. 34.

26-M. Cranston, Human Rights To-day (London: Ampersand, 1962) p. 7. See also J. Donnelly, "Human Rights as Natural Rights" *Human Rights Quarterly*, (6) 1986 p. 391. "The term human rights is generally taken to mean what Locke and his successors meant by natural rights; namely, rights (entitlements) held simply by virtue of being a person (human being).

defining what is meant by natural rights? All that the statement states is that the concept of human rights is relatively new, and was not known to men at a previous certain point. This still leaves the need to explain what human rights really mean. It helps to show the origin of the concept, which was discussed earlier, but this does not tell us anything about the content. The word "right" in this concept is not clear. What made the situation more difficult is Donnelly's definition. He states that:

Human rights are those held simply by virtue of being a person. To have a human right one need not be or do anything special, other than to be born a human being.²⁷

Donnelly suggests that human rights are those entitlements one has by the mere fact of being human. Nonetheless, this is not always the case for two reasons:

First, not every right held by a human being is a human right. Donnelly himself acknowledges this fact.²⁸

Second, it seems that the definition above excludes any action. A right is a claim. If one has/had not done anything, there would not have been any human rights as they are known today. They are claims as well which presuppose a way for implementing these claims and protecting these rights.²⁹ In this sense, Andrew Levine concludes that:

A human right, then, is a claim advanced within the 'human community', which is possessed by virtue of

27-J. Donnelly,(1985) op.cit. p. 8.

28-"Not all the right held by human being are 'human rights', for example, contractual and constitutional rights are held by humans but are not 'human rights'." Ibid.,

29-"In its original sense, a right is a claim advanced by an individual or group enforceable by law." A. Levine , "Human Rights and Freedom". In A. S. Rosenbaum, ed., (1980) op. cit. p. 137.

being human, and advanced to all other humans.³⁰

Having established the fact that a right, as a human right, is a claim in itself, the concept as a whole has become clearer. It should be pointed out that the two main criticisms of Donnelly's definition could have been avoided had he included the two characteristics in his definition. He was aware of the fact that a right is a claim. He states that:

The word 'right' encompasses at least two concepts of great political and moral significance. On the one hand, 'right' refers to *moral righteousness*, as in 'it is just not the right thing to do!' On the other hand 'right' may refer to *entitlement*, as in the claim 'I have a right to...' This second sense of entitlement distinguishes rights, as human or otherwise.³¹

Such a distinction between these two kinds of rights helps to identify where human rights stand. In this division, Donnelly suggests that human rights are rights in the political sense of the concept. They are entitlements for everybody. The sentence "I have the right" is certainly stronger than the moral version of, for instance, "what you did was right". Rights in the moral sense, according to him, cannot be seen as human rights in this distinction. Let us try to imagine a situation where someone has just helped a hungry man by giving him enough money to buy his food, or donated his blood to save a dying patient at a hospital bed. From a moral point of view, what the person did was "right", nonetheless, does the hungry man or the dying person have the "right" to the person's money or blood?

From a moral viewpoint, the hungry man had a moral right to

30-Ibid.,

31-J. Donnelly (1985) op. cit. p. 3.

the person's money. Nonetheless, the claim is even stronger in the case of the patient. One may argue that depriving the patient from that blood is actually killing him, or deliberately letting the person die.

Having dealt with Donnelly's division of rights and his classification of human rights as political ones, I now turn to the division attempted by Cranston, who claims that they are moral rights.

Cranston distinguishes two types of rights: legal and moral rights.³² Within the category of legal rights, he identifies five types: (a) general positive rights, (b) traditional right and liberties, (c) nominal "legal" rights, positive rights, (d) liberties, and immunities of a limited class of person and (e) positive rights, liberties, and immunities of a single person. To him, none of the above types of rights can be said to constitute human rights since they are limited in scope; either they deal with a person and a privileged group or with people under a given jurisdiction. In the second type, i.e., moral rights, the types identified are: (a) moral rights of one person only, (b) moral rights of anyone in a particular situation, and (c) moral rights of all people in all situations. Since the definition is that they are rights by the mere fact of being human, it is no surprise to see that human rights in Cranston's division fall within the last category, i.e., the moral rights of all people in all situations.³³ Cranston argues that:

32-M. Cranston, "Human Rights. Real and Supposed". In D. D. Raphael, ed. (1967) op. cit. pp. 47-9.

33-Cranston states that: "The place which human rights occupy in my classification is readily understood. Human rights are a form of moral rights, and they differ from other moral rights in being the rights of all people at all times and in all situations." Ibid., p. 49.

Because these rights are universal we should naturally expect them to be few in number; and we should expect them to be highly generalized in their formulation.³⁴

The two scholars differ in **positioning** human rights. The former sees them as political, the latter as moral. If one takes the second classification, which seems fairly adequate, more questions need to be asked. If human rights are the moral rights of all people in all situations, then are they rights in the sense of claims or entitlements, or are they duties and obligations? If they are moral, as Cranston suggests, how can one speak about the universality of morals? It is common knowledge that religions, circumstances and traditions play a significant role in the shaping of the morals and the conduct of people in a particular country. Universality based on morals is accordingly a difficult proposition to argue convincingly.

Professor Raphael also distinguishes two types of rights; of recipience and of action, and concludes that human rights are rights of recipience.³⁵ To him, a human right is a positive right: it must mean receiving something, and is a right in relation to others.

However, all these definitions and classifications do not so far speak about the implementation and protection of human rights. Freeden sees that:

...a human right is a conceptual device, expressed in linguistic form, that assigns priority to certain human or social attributes regarded as essential to the adequate functioning of human being; that is intended to serve as a protective capsule for those attributes; and that appeals for a deliberate action to ensure such a protection.³⁶

34-Ibid.,

35-D. D. Raphael, "Human Rights Old and New" In D. D. Raphael, ed., (1967) op. cit. pp. 56-9.

36-M. Freeden (1991) op. cit. p. 7.

Once again this definition does not satisfy the questions asked at the beginning of this chapter. Here one is faced with a question of choice and priorities as a protective measure towards the proper functioning of a human being. This definition seems to suggest more questions than it provides answers. Although it provides the reader with a new element in the definition of human rights, it opens up the possibility that human rights are not rights enjoyed by everybody by the mere fact of being human. The choice among "certain human or social attributes" is a vague one, and does not automatically lead to the same demands. This definition suggests that human rights depend on the circumstances and the choices made and the priorities assigned at one particular period of time in a given country.

What is quite clear from the discussion above is that there is no precise and universally agreed definition of the concept of human rights. In a multicultural world, with the differences in beliefs, traditions and in economic conditions, what seems to be a human right for someone does not seem to be so for someone else.³⁷ This can be best understood by considering the content of human rights.

III: Contents of human rights

It was suggested elsewhere in this chapter that the most fruitful approach to human rights is an historical one and that rights should be regarded as an evolutionary process. Different philosophies and

37-"Again some more recent human rights theorists have argued that they must be defined in terms of some *desired ideal* of what human communities should be. Here again in the ideal terms of which the rights are to be defined emerges from human desires, preference, or choice and cannot be identified as true or correct.... For as long as their source is a desire or choice without a standard of right and wrong, these rights are not objective but arbitrary, even if widely accepted." T. R. Mochan, (1975) op. cit. p. 42.

circumstances have added new rights to the original list which most scholars refer to as the "first generation" of human rights, i.e., civil and political rights. Economic, social and cultural rights, which have come to be known as the "second generation", have emerged out of the writings of socialist thinkers such as Saint-Simon, Marx and Engels. For the time being I shall limit myself to these two types of rights only. It must be borne in mind that there is another category or generation of human rights, which will be the focus of the third chapter.

Whether human rights should include both generations or just the first is a question that has created a lot of controversy.³⁸ Scholars, including Maurice Cranston, have argued that the second generation cannot possibly be accepted as human rights. Furthermore, the inclusion of such rights will hinder the protection of what really human rights are.³⁹ There can be no definitive conclusion as to whether or not economic, social and cultural rights are human rights. However, what has made the situation more difficult is the issue of universality of human rights itself. Moreover, the enjoyment of such rights depends very much on how wealthy a country is. In other words, the enjoyment of the second generation of human rights depends on the wealth of a country, and how able it is to provide for such 'rights'.

38-"Philosophers generally agree that civil and political rights must be counted as human rights. However, there is a basic controversy about whether socioeconomic rights, or, as they sometimes called, welfare rights, are to account as human rights." A. S. Rosenbaum, ed., 1980. p. 30.

39-M. Cranston (1973) op. cit. p. 65. "The traditional human rights are political and civil rights such as the right to life, liberty, and a fair trial. What are now being put forward as universal human rights are economic and social rights... The philosophical objection is that the circulation of a confused notion of human rights hinders the effective protection of what are correctly seen as human rights." See also M. Cranston, in D. D. Raphael, ed., (1967) op. cit. p. 43.

Such claims assign civil and political rights to the category of human rights whereas economic, social and cultural rights do not qualify. The latter's scope is narrower since they deal with nationals of a particular state only. In other words, they are not human rights, but citizen rights. People have to qualify to enjoy them. Cranston argues that:

If we may continue to call these social and economic rights which Babeuf and Tom Paine were claiming the *droits du citoyen*, it may help to make clear that these *droits du citoyen* (in a rather special sense) belong to a logical category which is distinct from that of the *droits de l'homme*, or natural rights, or human rights traditionally (and, as I maintain correctly) understood as 'political and civil rights'.⁴⁰

Apart from this objection on the inclusion of the second generation into the category of human rights, Cranston has developed a three-fold test upon which human rights authenticity is judged. According to him, a right has to be tested against these three characteristics if one is to judge whether the right in question is a human right or not. These tests are:⁴¹

1-Practicability

This test stands against what can be done. In other words, Cranston sees that it is absurd to claim something as a right, if it cannot actually be exercised. This analysis leads one to the material question, discussed above, concerning how wealthy a country is. It is practically impossible for these "rights" to be secured for everybody, in less prosperous societies.

Securing civil and political rights can be done by simply

40-M. Cranston, " Human Rights. A Reply to Professor Raphael" In D. D. Raphael, ed., (1967) op. cit. p. 98.

41-M. Cranston (1963) op. cit. pp. 40-42.

establishing judicial guarantees which eventually would safeguard these rights. The rights to life, freedom of movement and of thought, for instance, depend on governments' will, whereas economic, social and cultural ones are for a category of people only and depend very much on the material conditions of every country. The provision of article 24 of the Universal Declaration of Human Rights,⁴² for instance, suggests that such rights are only limited to working people. These rights do not embrace the population as a whole and therefore cannot be considered as human rights. Apart from the fact that their achievement is dependent on the material resources of the country, one would argue further that these rights are enjoyed by somebody as a member of a society, i.e., only nationals, or peoples within one category such as workers, have such a right, and this enjoyment does not extend to everybody beyond the borders of the state.

One would go along with Cranston in his first test. Obviously, he had made a significant impact on judging the authenticity of human rights. However, his first test is clearly inadequate for two reasons based on a close scrutiny of the Universal Declaration.

First, Article 22 of the Universal Declaration reads as follows:

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international cooperation and in accordance with the organization and resources of each state, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

One sees from the above article that the Declaration has taken

42-Article 24 Of The U. D. H. R. reads as follow: "Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay."

into account that such rights have to be in "accordance with the organization and resources of each state", which seems to be one disagreement upon which Cranston had based his judgement. Furthermore, the Declaration had called for international co-operation within this field and had stressed that these rights were undoubtedly significant and inadequate for the dignity of the human person.

Second, Paragraphs (1) and (2) of Article 21 of the Declaration,⁴³ although a political right in their content, seem to be very limited in their scope.

It is common knowledge that taking part in the government is a political right, nonetheless, this right has the peculiarity of being limited. Every civil and political right included in the Declaration addresses "everyone", however, the right in article 21 addresses "everyone ... in his country". This is to suggest that a person has to qualify to enjoy such a right. This right is a right of a citizen. It would be absurd to think that a person from an African country, for instance, had the right to take part in the government of Japan or Sweden. This is practically impossible.

Macfarlane rightly argues that:

Practicability is an issue with all human rights, not just economic and social rights, since resources are always required either for their realization or protection.⁴⁴

Because civil and political rights need only the will of governments, and economic, social and cultural rights need material

43-Paragraph (1) and (2) of Article 21 of the Declaration read as follows:

(1)=Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

(2)=Everyone has the right of equal access to public service in his country.

44-L. J. Macfarlane (1985) op. cit. p. 10.

resources for their implementation, they have come to be known as negative and positive rights respectively. One objects to such a division and, as Macfarlane has suggested above, both sets need resources for their implementation.

It goes without saying, as pointed out earlier, that the enjoyment of social and economic rights depends on the resources of a country. However, the enjoyment of civil and political rights requires qualified judges, the training of the police and the military forces, for which resources are needed. Such programmes require the positive action of government and therefore make civil and political rights positive as well.

It would perhaps make more sense to imagine the practicability of social, economic and cultural rights in the long run, bearing in mind the resources of each state, and the international co-operation the Universal Declaration sought, rather than seeing nationals from one state taking part in the government of another.

2-Genuinely universal

The second test Cranston suggests is that the right should be genuinely universal. This test overlaps with the previous one in many instances; however, I shall try to avoid repeating points that have already been considered.

Human rights are rights for everybody wherever they are. Any right which excludes any people, or suggests any qualification to enjoy it, cannot be possibly considered a human right. Furthermore, if one takes Tom Paine's suggestion that "there could be no rights without duties",⁴⁵ "to impose on men a "duty which they cannot perform", Cranston argues, "is as absurd in its way, though perhaps

45-M. Cranston, "Human Rights. A Reply to Professor Raphael." In D. D. Raphael, ed., (1967) op. cit. p. 96.

not cruel, as bestowing on them a "right" which they cannot possibly enjoy."⁴⁶

This test undoubtedly disqualifies social, economic and cultural rights from the category of human rights for the reason discussed earlier. They are meant for specific categories of people. Furthermore, they impose a burden on states which cannot be overcome under the special circumstances which each country experiences.

The right to take part in the government is restricted to the people of one country only as is the case with social, economic and cultural rights. Furthermore, it is limited only to a particular people within the country. Depending on the constitution of countries, a people may be restricted from enjoying such a right for different reasons such as age or health.

If one has to speak of a right being genuinely universal, one has to define what is meant by that first. Genuinely universal, as one understands it, means that a right should be enjoyed by everyone, everywhere, regardless of sex, race, religion,...etc. This, it follows, confirms that not only the right to life and liberty, for instance, are universal but that different economic rights are as well. The right to food, subsistence, shelter and medical care are indeed universal. They are needed by everybody wherever they are to preserve the right to life itself and protect the dignity of the human person.

3-Paramount importance

This is the third and last test and the one which raises most difficulties. It would be very difficult, if not impossible, to judge whether one set of rights is of paramount importance, or more important than the other. Furthermore, even within the same set of

⁴⁶-Ibid.,

rights, if a more pragmatic approach is taken, it can be said that some rights are more important than others. Within civil and political rights, for instance, the right to life and freedom from torture and other cruel and inhuman treatment are clearly of paramount importance, more important than the denial of freedom of speech or of movement. Charles Humana, for instance, in his second attempt (1986) to measure human rights on a cross-national basis, selected seven rights, among his list of forty, which he thought were of paramount importance. His work will be explored further in chapter six. This would result, it seems, in the fact that not all civil and political rights are human rights if the test is to be applied. The aim behind this test, and others, is to make a selection of what could be considered as human rights. Whichever "right" fails to pass cannot be considered as such.

Now, I turn to contrast the two sets of rights. The rights are weighted to achieve their importance. Nonetheless, this is very much a matter of who the person is and where he happens to be. The importance of something can be very much stretched and flexible. It may mean different things to different people. It goes without saying that the prevention of murder, or equality before the law, are more important than, for instance, holidays with pay. Nonetheless, the degrees of importance may vary from one country to another, and that does not always lead to the conclusion that civil and political rights are more important than economic, social and cultural rights.⁴⁷ To the poor, the underfed and the ill, undoubtedly food,

47-Dominguez argues that: "At the top of the hierarchy, I would place concern for any identifiable government action that reduces a people's right to life and health. Attention would be focused not only on political massacres, arbitrary action by the government, but also on governments whose identifiable actions aggravate famines and epidemics." J. I. Dominguez,

shelter and medical care are more important than freedom of movement or expression.⁴⁸ The former set of rights in this case will not only enhance the human personality, but may preserve the right to life itself.

It can be asserted that although such tests are important, nonetheless they do not offer a clear cut distinction between the two sets of rights.⁴⁹ The example given above will further confirm this claim. It seems that Cranston has based his tests on the "right to holidays with pay", which he mentioned as the example in his tests to prove their validity. For a test to be successful it has to include the different rights included in the Declaration.

Therefore, in the light of the above discussion, one may conclude that agreement among scholars has yet to be reached on what human rights are, and where they come from. Some scholars, among them Cranston, have taken them to mean just civil and political rights. Others have selected a comprehensive set of rights which includes both sets. "Fouad Ajami", Richard Falk states, "emphasizes four sets of concerns that embody the maximum feasible consensus at the time":⁵⁰

"Assessing Human Rights Conditions." In J. I. Dominguez, et al. Enhancing Global Human Rights (New York: McGraw-hill, 1979) p. 23.

48-Isaiah Berlin stresses that: "It is true that to offer political rights, or safeguards against intervention by the state to men who are halfnaked, illiterate, underfed and diseased is to mock their condition; they need medical help or education before they can understand, or make use of, any increase in their freedom." Huang, M. "Human Rights In a Revolutionary Society. The case of China." In A. Pollis, and P. Schwab, eds., (1979) op. cit. p. 61.

49-This conclusion is also reached by Professor Raphael who states that: "I agree with Mr. Cranston that there are appropriate tests, but they do not in fact draw a clear line between the earlier and the later concepts of human rights." D. D. Raphael, "Human Rights: Old and New." In D. D. Raphael, ed., (1967) op. cit. p. 63.

50-R. Falk, "Comparative Protection of Human Rights in Capitalist and

- 1-The right to survive; hence the concern with the war system and nuclear weaponry.
- 2-The right not to be subject to torture.
- 3-The condemnation of Apartheid; it is accepted that other societies violate social equality but that South Africa's blatant, officially sanctioned and codified racism is practically intolerable.
- 4-The right to food.

If one looks at Ajami's selection of rights, one sees that it includes different rights that are not included in the Universal Declaration. While the right to food, not to be subjected to torture, and the right to survive are familiar ones, it is not the case for the condemnation of apartheid. It should be pointed out that the right to survive, in the sense that it is concerned with the war system and nuclear weaponry, can be understood to mean the right to peace. This right, and to some extent, the condemnation of apartheid, are rights of the third generation, which will be discussed in more detail in chapter three.

The differences in this perception undoubtedly have a significant impact on the policies taken by different countries, and how they provide for what they think are human rights. This, in turn, will influence what can be labelled as a violation of such a right, the differences in standards and the criteria upon which such standards are achieved. The traditional clash between the liberal and socialist viewpoints is the best example, and it will be discussed further in the next chapter.

Socialist Third World Countries." *Universal Human Rights* , Vol, 1 No 2 April-June 1979. p.22.

Chapter Two

Human rights East and West: A comparison

In the previous chapter, it was suggested that the clash between the capitalist and the Marxist ideologies had added a new dimension to our understanding of human rights. I shall develop this dimension further in what follows.

In their criticism of capitalist societies, communist theorists regarded individual rights as abstract and argued that people should be concerned not with the form of human rights, but with their content. While world opinion condemned the communist countries' record on human rights, their spokesmen claimed that human rights were better provided for under their systems. And this was the crux of the difference between the two ideologies

However, it should be pointed out from the beginning that the former communist countries have witnessed dramatic changes, which resulted in the end of communist rule in some of them (Poland and Czechoslovakia), and the total disappearance of others at the other end of the spectrum (East Germany and what was formerly the Soviet Union). Therefore, the discussion will follow a historical sequence: the first part will deal with these countries before the changes took place, and in later parts it will to consider the changes that have taken place in regard to human rights.

It is generally agreed upon that East and West have different perceptions of human rights. Their dispute can be summarized under three headings. First, while capitalists believe in the supremacy of the individual, communists focus on the community or group rights instead. In their view, the individual will eventually benefit from

these group rights, as his rights will be better provided for within the community. Second, communists give priority to what they regarded as the content of human rights, i.e., economic, social and cultural rights, whereas in capitalist countries the stress is on the traditional civil and political rights of the individual. Finally, in terms of the international supervision of human rights practices, while some Western countries call for international mechanisms for the monitoring of human rights records, communist countries on the other hand traditionally saw this practice as interference in their internal affairs and therefore, stressed the importance of states' sovereignty.¹

Up to less than a decade ago, this was the general practice. Because of such priorities and commitments from both sides, each progressed very well on the priorities undertaken. Communist countries in general, at least up to the 1970s, achieved significant advances in the fields of social and economic rights. The provision of jobs, housing, medical care and education, among others, were the pride of communist countries and the indicators upon which they

1-In China, for instance, Edwards et al argue that: "any inquiry into the Chinese rights situation by a foreign government or international organization is regarded as intervention in Chinese domestic affairs and, consequently, a violation of international law." R. R. Edwards, et al. Human Rights in Contemporary China (New York, Colombia University Press, 1985) pp. 52-3. Vincent states that: "The Soviet view of the tract of domestic jurisdiction that is protected by the principle of non-intervention is, as we have seen much wider than that of the West, and includes the question of human rights agreements. Thus any western mention of implementation is, in the Soviet view, an intervention in domestic affairs." R. J. Vincent, Human Rights in International Relations (Cambridge, Cambridge University Press, 1986) p. 73. Moreover, "International action in this field [human rights] should be limited, according to them [Socialist countries] to massive and flagrant violations of human rights, individual cases being matters within the exclusive domestic jurisdiction." S. P. Marks, "The Peace-Human Rights-Development Dialectic." *Bulletin of Peace Proposals*, 11 (4) 1980 p. 339.

compared themselves with the West². However, they ignored or failed to secure the traditional ones. Furthermore, they have always resisted international monitoring systems and did not cooperate with international or regional bodies.

Therefore, when one talks about civil and political rights, the first impression that comes into one's mind was that the situation is at its worst in the former communist countries; people were very oppressed, jails were full and a climate of distrust dominated the political scene. Everybody feared their neighbour and had to do what they were told, whereas in the West, everybody was free to do whatever they liked, and are entitled to say whatever they thought.

Nonetheless, the situation has been changing gradually since the mid 1980s, not only in the former Soviet Union, but in the majority of the former Eastern bloc. Since Gorbachev was elected General Secretary of the Communist Party of the Soviet Union in March 1985, dramatic changes, among which policies towards human rights, have taken place that were unimaginable even a decade ago.

Among these changes and reforms, I shall concentrate on those concerned with human rights. In general, there has been a steady shift towards the traditional set of rights that were earlier ignored, and some of the welfare rights have suffered.³

2-"The Soviet Government rejected interference in Soviet domestic affairs and asserted the superiority of Soviet socio-economic rights to those in capitalist countries, with their high rates of inflation and unemployment in the late 1970s." Anthony Marcham, "Human Rights in the Region", in Eastern Europe and the Commonwealth of Independent States 1992 (London: Europa Publications, 1992) p.26.

3-In the Soviet Union, for example, White reports that: "At the other end of the spectrum an increasing number lived in poverty: at least 70 million, or a quarter of the total population, according to an estimate published in *Izvestiya* in late 1990... Another social category that was rapidly increasing in the early 1990s was the unemployed: acknowledged for the first time in the

However, before going in depth into the discussion of the changes in Eastern Europe, a comparative study of human rights between East and West may be appropriate. I shall concentrate on the priorities assigned to the two sets of rights by each party to stress the differences between them. In the course of so doing, the reader should bear in mind that covering every aspect of the two sets of rights in countries in both the Western and Eastern worlds is beyond the scope of this study. Thus, I shall limit myself to some aspects of each set and apply them to a few countries where appropriate. Hence, freedom of movement and of expression, as samples for civil and political rights are the subject of the first section. In the second, I look at economic and social rights and how they are provided for in different countries. I look particularly to the rights to work and to medical care. The chapter concludes with an account of the recent developments that have occurred in the countries of Eastern Europe. The improvement that has taken place in different aspects of civil and political rights, and how economic and social rights have been affected, is of particular interest.

I: Civil and political rights

1990 plan report, the figure given (about 2 million) was understood to be a considerable underestimate." S. White, Gorbachev and After (Cambridge: Cambridge University Press, 1991) p. 134. It should be pointed out further that the fall in growth rates meant that the performance of Communist countries deteriorated from the 1970s onwards. Furthermore, Marcham reports that: "In many areas of the economy production was falling. For instance, the output of petroleum, the USSR primary source of energy, declined by almost 10% between 1988 and 1990... Between December 1990 and March 1991 the price of cooking oil and eggs have trebled in the state stores of Moscow, where, according to the traditional communist claim, prices never rose." A. Marcham, (1992) op. cit. p.28.

Civil and political rights lie at the heart of human rights. Some take them as the principal measurement to judge whether a government respects human rights or not. Because of their commitment to the content of human rights, communist countries have generally tended to ignore this category of rights. Moreover, since the traditional perception of human rights encompasses only this dimension, communist countries have always been criticized for not securing such rights.

In the following, I shall look at two aspects of the question; how were they provided for in communist countries? And are they absolute in the West or not? The aspects considered are:

1-1: Freedom of expression

Freedom of expression means freedom of speech, to hold any opinion and express it freely without any interference from anybody. It has been the subject of article 19 of both the Universal Declaration on Human Rights and the Covenant on Civil and Political Rights. The former states that:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinion without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.⁴

It is seen as one of the most important rights. Freedom of expression may enhance the state apparatus in making the right decision that concerns every citizen in a given country. It is one form

4-I. Brownlie, ed., Basic Documents in International Law 1st edition, (Oxford: Clarendon, 1967) p. 135.

of democracy by which civilized governments are ruled or ought to be ruled. By securing this right, a government brings its citizens into political life, makes them more active in political matters, and helps them to feel that they have a say in the running of their country. Thus different constitutions, in different countries, indeed claim to provide for this right.

However, one should not limit oneself to what the provisions of constitutions are, the practices should be scrutinized as well. Moreover, even if freedom of expression is secured by the constitution, one does not have to take it as value free; everyone can say whatever they like. Freedom of expression is generally restricted either by laws, in matters of states' security, or moral obstacles, not to do any harm to anybody. In other words, one person's freedom finishes when another's begins.

In the former USSR, for instance, article 50 of the 1977 constitution stated that;

In accordance with the interests of people and in order to strengthen and develop the socialist system, citizens of the USSR are guaranteed freedom of speech, of the press, and of assembly, meetings, street processions and demonstrations. Exercise of these political freedoms is ensured by putting public buildings, streets and squares at the disposal of the working people and their organizations, by broad dissemination of information, and by the opportunity to use the press, television, and radio.⁵

If one looks at the texts, one will find that freedom of speech is secured. As a matter of fact, the article quoted above proves that. However, there is a gap between what is printed and what is really happening in reality. In the former USSR, freedom of speech was

5-F. E. Dowrick, ed., Human Rights. Problems, Perspectives and Texts (Aldershot: Gower, 1979) p. 207.

connected with the interests of the people, on the one hand, and the strength and development of the communist system on the other. This implies that any speech which does not satisfy these conditions may be punished by law. Furthermore, it was linked to the means of communication controlled by the state apparatus such as the press, television and radio.

One must also bear in mind the formerly leading role of the Communist Party of the Soviet Union, and the *nomemklatura* system through which certain posts had to be approved by the Party. Furthermore, one must allow for the heavy system of censorship under which all information had to be subject to a very close scrutiny, which controlled what could be said.

Under such circumstances, how could it be possible to speak about freedom of speech? How could the Soviet citizen use such means, i.e., the press, television and the radio, which were controlled by the state, to express his opinion if he was criticizing the system? The Soviet writer Anatolii Kuznetsov explained when he left his country that:

Life is like some constant unbroken theatrical production. You never say out loud what you really think, only what you ought to say... Insofar as we have to live in that theater, every person has a sort of collection of phrases which he speaks and says publicly, and a corresponding collection of actions. For a normal human being, it is extremely difficult to lead such a double life.⁶

The question of dissidents was the major issue to arise when the human rights situation in the communist states was discussed. Generally, they were leading figures in their societies and whatever

6-A. Dallin, and G. W. Breslauer, Political Terror in the Communist Systems (Stanford/California: Stanford University Press, 1970) pp.126-7.

happened to them became publicly known. Milne argues that:

It is the duty of the communist citizen loyally to follow the directives of the Communist Party in all political matters. To challenge the political leadership of the Party is to proclaim oneself an enemy of Communism. That is what the dissidents have done, which is why they are in trouble.⁷

Dissidents in the former USSR, because of their position, faced different charges varying from exile and labour camps to psychiatric hospitals. The latter was the notorious treatment reserved to them.

The situation in China did not differ much from what is already seen in the former Soviet Union. The right to freedom of expression is, formally speaking, secured by the constitution. Article 28 states that:

Citizens enjoy freedom of speech, correspondence, the press, assembly, association, procession, demonstration and freedom to strike, and enjoy freedom to believe in religion and freedom not to believe in religion and to propagate atheism.⁸

Yugoslavia, to some extent, represented the exception to communist countries. In comparison to other countries in Eastern Europe, one may argue that the situation there was slightly better.⁹ This was perhaps due to the fact that it had more contact with the

7-A. J. M. Milne, "The idea of human rights: a critical inquiry." In F. E. Dowrick, ed., (1979) op. cit. p.35.

8-F. E. Dowrick, ed., (1979) op. cit. p. 211

9-"One simple measure of the difference between Yugoslavia and the Communist regimes was to compare the newspapers. The Belgrade daily *Politika*, was no longer entirely taken up with success stories about production in Yugoslavia and reports of strikes and slumps in the Western world. It has begun to carry again informative surveys of international politics, advertisements from the main Belgrade stores, serial imported from abroad and a Walt Disney comic strip." D. Wilson, Tito's Yugoslavia (Cambridge: Cambridge University Press, 1979) p. 76.

West. Different Western newspapers, for instance, could be easily found in Yugoslavia; and movement across international borders was largely unrestricted.

However, having said that does not automatically mean that in this country citizens were free to express themselves. There were some restrictions on the matter; the political leadership, for instance, could not be criticised. Different trials and harassment took place such as in the case of Milovan Djilas and the Praxis group.

It is widely known that in Western countries this right is secured. Everybody is free to hold an opinion and express it. The practice, if one goes deeper in the question however, shows that the difference may not be as absolute as is generally believed.

1-2: Freedom of movement

Along with the former USSR, communist countries were criticised because they did not provide for this right.

Article 13 of the Universal Declaration of Human Rights states that:

- (1) Everyone has the right to freedom of movement and residence within the borders of each state.
- (2) Everyone has the right to leave any country, including his own, and to return to his country.¹⁰

The general practice in the former USSR was that there was no freedom of movement since the Soviet Constitution did not recognize it as a right, in contrast with the provisions of both the Universal Declaration and especially the Covenant on Civil and Political Rights. Thus, it was one of the major issues on which Soviet policy was

10-I. Brownlie, ed., (1967) op. cit. p. 135.

criticized.

However, although it is not recognized as a right, practice has shown that a substantial number of people, mainly Soviet Jews, Soviet Americans, and Soviet Germans have been granted exit visas to emigrate.¹¹

The situation in China did not differ much. The country's constitution does not guarantee freedom of movement. Edwards et al. argue that:

Freedom of movement of the individual within China is restricted by the policy of banning any move from the place of registration, except on assignment.¹²

Furthermore, foreigners visiting these countries did not easily obtain entry visas. They had to be subjected to a very intensive administrative process. There were some variations among them such as in the case the case of the former Yugoslavia. There has been a relaxation of its borders, tourists could go to Yugoslavia without the need for any formal or diplomatic invitation. Yugoslav citizens could travel abroad, especially workers who have been sent to Germany because of unemployment prevailing in the country.

The attitude of the Yugoslav government could be ascribed to the economic situation in the country. Yugoslavia had one of the worst economic performances among the communist countries; an increasing level of unemployment and a very high level of inflation. Thus, there was a tendency towards tourism and sending its workers abroad as a source of hard currency.

11-G. Edwards, "Human Rights and Basket III Issues: areas of change and continuity." *International Affairs*, Volume 61, 1985. Table 1, p. 634.

12-R. R. Edwards, et al. (1986) op. cit. p. 55. Moreover, according to a Chinese commentator, the 1982 "Constitution provides guarantees where possible and where it is not possible it does not guarantee freedom (for example, it does not guarantee freedom to change one's residence)." Ibid., p.56.

These attitudes of communist countries towards civil and political rights were not very different, such as freedom of assembly, of religion etc.... However, the point that needs to be stressed here is that it would be a mistake to conclude that in the West, these human rights are provided for ideally.¹³ Capital punishment, for instance, exists in the United States; not only this, in common with the former communist countries, it is inflicted on minors as well. According to the Novosti Press Agency:

The United States is in fact the only capitalist state where death penalties are given to minors. There are only six states in the US where death penalties cannot be used against criminals under 18 of age. In 31 of the states which practice capital punishment, the age limit is still lower or is not specified at all. Both black and white citizen from the poorest sections of society are as a rule sentenced to death if their supposed victim is white.¹⁴

II: Economic, social and cultural rights

What should be mentioned from the beginning is that these rights are not generally accepted as rights that every government has to secure. They are not as equal as the rights discussed above.

If these rights are looked at closely within the communist thinking and practice, indeed a lot of

13-According to Novosti Press Agency, in the United Kingdom, for instance, "Citizens' freedom of movement was restricted during the strike. (miners' general strike, March 19, 1984, March 13, 1985) Police would often stop people on the road to investigate them back or arrest them. In the first 27 weeks of the strike, 164,508 alleged participants in pickets were denied entry into the county of Nottingham alone." Novosti Press Agency, Human Rights in the Capitalist World (Moscow: Publishing House, 1987) p. 39.

14-Ibid., p. 56.

communist countries have done very well in this area to challenge capitalist ones. They have been concerned with the enhancement of the standards of living of their population; providing jobs and housing, free education and medical care. Up to two decades ago a lot of people regarded the achievements of communist states in these areas as impressive.¹⁵

Some argued that the concern of communist countries with this set of rights could be ascribed to the lack of the legitimacy of the systems. It was an attempt to gain popular support. Tokes argues that:

Because of the Eastern European regimes' chronic difficulties in gaining genuine popular support on ideological grounds these processes have compelled the communist party-states to shift the foundations of their legitimacy from political- ideological justification of domination to economic performance and satisfaction of popular expectations for increasing living standards, accelerated delivery of social services and other tangible material benefits.¹⁶

Whatever arguments have been used to support or reject the tendency of communist states to stress these kinds of rights, it should be borne in mind that the communist countries achieved very high levels in many of these areas.

In the following sections I shall focus on some aspects of social and economic rights and how they are provided for in these countries, with some comparison with capitalist ones. These aspects

15-Indeed one would argue, according to statistics up to the 1970s, that Communist countries have really achieved very high levels of literacy, provision of jobs, cheap housing (the rent did not increase since 1928), medical care, and free education.

16-R. L. Tokes, ed., Opposition in Eastern Europe (London: Macmillan, 1979) p. 3.

are:

2-1: The Right to work

Article 23 (1) of the Universal Declaration states that:

Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and protection against unemployment.¹⁷

In general terms, this right has been secured in the communist countries -with some exceptions. In these countries in general, he who did not work, did not eat. Work was not only a right but a duty. Hence, they tried to secure this right through their constitutions and legal codes.

In the former USSR, for instance, this right was secured by article 40 of the Constitution which promised everyone a job, in contrast with western countries where unemployment was very common.¹⁸ Unemployment has been seen as one of the major sources of social problems such as delinquency, prostitution and different kinds of crimes. By securing this right, communist governments were trying to avoid the emergence of these phenomena on the one hand, and making everybody help in the development of the society on the other. According to the U. N. Economic and Social Council's report on the world social situation in 1985:

17-I. Brownlie, ed., (1967) op. cit. p. 136.

18-According to the Novosti Press Agency: "In the developed capitalist countries, when their economies are experiencing a degree of recovery, there are 28 million people who are fully unemployed. According to official data; 8.5 million Americans, 3.2 British, 2.3 French, and 2.2 millions resident of the Federal Republic of Germany." Novosti Press Agency, The Concern for Human Rights. Real and False (Moscow: Publishing House, 1986) pp. 28-9.

If in the socialist countries guaranteed employment is a basic principle, the citizens having the right and the duty to participate in society through work.¹⁹

The right to work in the communist countries was linked with the different social values; "it is a duty", "an honour". Thus, it had to be fulfilled by everybody in the society who was able to do so. Szymanski argues that:

Not only a job is considered to be a worker's right but, also working is considered to be a social duty. Soviet law stipulates that no one can live from rents, speculation, profit or black marketing, as such activities are considered to be living off the labour of another - social parasitism.²⁰

Moreover, the law punished people who did not work. Article 209 of the Russian Soviet Federation Socialist Republics (R.S.F.S.R.) criminal code, as interpreted by the presidium of the R.S.F.S.R. Supreme Soviet in 1975, provided for "social parasites". Macfarlane notes that:

persons living 'on unearned income with avoidance of socially useful work for more than four month in succession or for periods adding up to one year', along with systematic vagrants and beggars, to be punished by imprisonment or corrective labour for up to one year.²¹

In China, the situation was not different from what was seen in the former USSR, because different constitutions have stressed the importance of this right. Article 10 of the 1982 Constitution stated

19-Ibid., p.30.

20-A. Szymanski, Human Rights in the Soviet Union (London: Zed Books, 1984) p. 139.

21-L. J. Macfarlane, The Theory and Practice of Human Rights (London: Maurice Temple Smith, 1985) p.113.

that:

Work is a matter of honour for every citizen...able to work.²²

The security of jobs in the communist states was one of the basic targets to their policies. This does not mean in any case that unemployment did not exist in these countries. China, for instance, suffered from unemployment and made it publicly known that there were shortages in work places.

Nevertheless, the situation, similar to that of the former USSR, could be considered to be better than cases in the U.S.A. or in the U.K.²³ There is equality between men and women in recruitment for jobs on the one hand and in equality of pay on the other. Whereas, in the West, women are still fighting for that equality, receiving lower income than men.²⁴

However, when one says that unemployment did not exist in the former communist countries, one must not understand it as such. It may, and indeed did exist, under different forms such as "disguised unemployment" or "underemployment". It means that if the capacity of a company is 60,000 workers for instance, it may employ a higher number than that to absorb the unemployed work force since its aim was not to make profits. Furthermore, there was no competition

22-R. R. Edwards, et al. (1986) op. cit. p. 68. Article 27 of the 1975 Constitution stated as well that: "...Citizens have the right to work and education...." F. E. Dowrick, ed., (1979) op. cit. p. 210.

23-"In Capitalist states no guarantee of a job can be given as the demand for jobs in the private sector will be determined by market forces." L. J. Macfarlane, (1985) op. cit p. 113.

24-...However, as was brought out during a recent court hearing, women are paid 32 per cent less than men against the background of the widespread sex segregation of the work force....According to the May 19, 1984 issue of the *San Francisco Examiner* 49 000 000 American females are regularly victims of wage discrimination. Novosti Press Agency, (1987) op. cit. pp. 39-40.

among companies since they were all owned by the state.

In Yugoslavia, however, unemployment was a very heavy burden on the government's shoulders. It had not been able to cope with the different economic problems, if not crisis, the country has been facing over the years. Yugoslavia was one of the countries which realized the lowest economic growth among the communist states. Therefore, it would not be a surprise to see thousands of jobless citizens.

In general, there were some variations among them in providing jobs for their citizens, but, what was generally achieved was the right of workers to participate in the management of their companies. Article 8 of the 1977 Soviet Constitution speaks about the "right of workers to participate in decision making process of their collective". This was widely followed in Yugoslavia through a system known as "self-management."

2-2: The right to health care

One measure upon which one can judge how developed a country is through the ratio of doctors and hospital beds to the population, life expectancy and the percentage of infant mortality. Health care received special attention in the former communist countries, and in general these countries have made significant leaps forward in the area of health. A comparison between western and communist countries in the area of medical care could have been absurd five or six decades ago.

Both the Universal Declaration and the Covenant on Social Rights have provisions concerning the right to health care. The former, for

instance, states in article 25 (1) that:

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.²⁵

To say that in the capitalist world this right is not provided for would be wrong, nonetheless, the quality of health protection depends very much on how much the person is able to pay.

In the former USSR, for instance, this right was secured through the 1977 Constitution from which article 42 stated that:

Citizens of the USSR have the right to health protection. This right is secured by free, qualified medical care provided by the state health institutions; by extension of the network of therapeutic and health-building institutions; by the development and improvement of safety and hygiene in industry; by carrying out broad prophylactic measures; by measures to improve the environment; by special care for the health of rising generation, including prohibition of child labour, excluding the work done by children as part of the school curriculum; and by developing research to prevent and reduce the incidence of disease and ensure citizens a long and active life.²⁶

When the communists came to power in 1917, levels of disease and life expectancy were low (life expectancy, for example, was just 30 years in 1900, compared to 47 in the U.S.) and infant mortality was very high.

25-I. Brownlie, ed., (1967) op. cit p. 136. Article 12 (1) of the I.C.E.S.C.R. reads as follow: The State Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health." Ibid., p. 144.

26-F. E. Dowrick, ed., (1979) op. cit p. 206.

There have been enormous efforts and huge investment by the former Soviet Union (for instance, it was the first country to introduce free medical services) to bring about different changes and to improve medical services together with different aspects of the daily life. According to Szymanski:

In the 1969-78 period, the USSR increased the share of GNP spent on health, as well as its spending per capita. In 1969 2.3% of its GNP was spent on health (and 13.6% on military activities); in 1978 2.4% was spent on health (and 12.2% on military activities). This corresponded to a 59% increase in *absolute* resources allocated to health.²⁷

The efforts resulted in tremendous changes in the Soviet society, and indeed did challenge the most developed capitalist countries when it came to the ratio of qualified doctors per population or the availability of hospital beds as indicated in the table below, which is based on 1977 statistics:²⁸

Table (2) 1: The ratio of doctors and hospital beds to the population in the former USSR, the USA and the UK.

Country	Doctors per 10,000 population.	Hospital beds per 10,000
U.S.S.R.	121.3	34.6
U.S.A.	17.6	63.0
U.K.	15.3	89.4

Furthermore, in a more recent publication (1986), the Novosti Press Agency in Moscow stated that:

According to the World Health Organization the optimal proportion is 280 doctors for 100,000 of the population. In the U.S.S.R. this proportion has been exceeded -there

27-A. Szymanski (1984) op. cit. p. 136.

28-Ibid.,

are 412 doctors for every 100,000 of the population. The U.S.A. has 233, the Federal Republic of Germany 299, France 208 and Great Britain 183.²⁹

If one does not argue about the quality of medical care, then there is no doubt that the former USSR had higher standards compared to western countries. Only the former West Germany exceeded the optimal proportion of doctors put forward by the World Health Organization. Moreover, what matters more is that in the communist countries treatment was free and available for all,³⁰ whereas in the U.S., for instance, according to official data, the cost of medical services went up by 43% between 1981 and 1984.³¹

Medical care in China improved substantially after the communists consolidated power. There had been many kinds of diseases which threatened the society, and an urge to develop this

29-Novosti Press Agency, (1986) op. cit. p. 34.

30-It should be born in mind that the top party or army officials are privileged in the USSR. Macfarlane points to the existence of special top level facilities for elite members of Soviet society. He stated that: "What is objectionable about the Soviet set-up is less that the top people secure the best service than that the existence and nature of the privileged service is not allowed to be mentioned precisely because it conflicts with the elite-promoted image of an egalitarian society." L. J. Macfarlane (1985) op. cit. p. 124.

31-Novosti Press Agency,(1986) op. cit. p. 35. Moreover Macfarlane sees that: "It would be wrong, however, to think that the maintenance of a high standard of health for a people is simply a matter of economic resources. The United States of America provides a shameful example of the working in a rich society of J. T. Hart's "Inverse Care Law". That Law states "The availability of good medical care tends to vary inversely with the need for it in the population served. This operates more completely where medical care is most exposed to market forces and less so where it is reduced." The bottom black neighborhood area in Detroit, for example, had in the early seventies an infant mortality rate as high as San Salvador and over three times the United States average, while in Los Angeles slums centered on Wall's the effective rates of physicians to population was one to three thousands, compared with national average of one to six hundred." L. J. Macfarlane (1985) op. cit. p. 122.

system. China is a huge country and by far the most populous which made the task very difficult for the government. There was the privileged city and the deprived countryside. The situation persuaded Mao that the system as a whole, including medical education, must be reformed. He stated:

Tell the Ministry of Public Health that it only works from 15% of the entire population. Furthermore, this 15% is made up of privileged. The broad ranks of peasants cannot obtain medical treatment and also do not receive medicine...Medical education must be reformed. It is basically useless to study so much...Three years is enough. The important thing is that they study while practicing.(We should)...devote greater amount of men and materials to solving the urgent problems of masses.³²

To finish with the social and economic rights, and how they were provided for in the communist states, the table provided by White et al, gives general information about some indicators on social welfare and offers the possibility of a comparison between the communist and the western countries examined.

Table (2) 2: Comparison of some communist countries and non-communist countries on selected social indicators.

1	2	3	4	5	6	7
UK	43	18.2	9	75	3256	112
USA	60	25.7	10	75	3645	257
India	n.a.	n.a.	99	58	2238	58
USSR	78	43.3	25	69	3399	177
China	n.a.	13.6	32	69	2630	18
GDR	66	31.9	9	73	3814	79

32-A. Pollis, and P. Schwab, eds., Human Rights, Cultural and Ideological Perspectives (New York: Praeger, 1979) pp. 77-8.

Keys to the above table:

- 1= Countries.
- 2= Housing units completed per 10,000 population, 1988.
- 3= Doctors per 10,000 population, c.1987.
- 4= Infant mortality rate per 1000 births, 1988.
- 5= Life expectancy at birth, 1987.
- 6= Daily calorie supply, 1986.
- 7= Students in education per 10,000 population 1988.

Source: S. White, et al, communist and Post-communist Political Systems, 3 rd edition, (London: Macmillan Education, 1990) p. 327

What should be born in mind when one makes such comparisons and says for instance, that communist countries were ahead of capitalist ones in terms of economic and social rights, one is speaking about an overall distinction between communist countries on the one hand and capitalist ones on the other. One may find some countries which are capitalist and provide better social and economic rights than socialist ones as in the cases of the United Kingdom, for instance, and Yugoslavia.

Section three: Changes and new developments:

However, and as pointed out earlier, although communist countries had always taken pride in their achievements and claimed that human rights were best provided for in their countries, the changes brought about in these countries suggested the opposite. The East has shifted more towards the West, and civil and political rights have been given greater attention.³³

The reader should bear in mind that the discussion that follows

33-A. Trehub, "Human Rights in the Soviet Union: Recent Development." Radio Free Europe, Radio Liberty Research Bulletin, 32nd year, no 8 (3473) February 24, 1988. p. 5.

will not be limited only to the aspects of human rights discussed earlier. It will accordingly be on general aspects that have been affected by the changes in the former Eastern Europe with direct implication for human rights. Perhaps the most significant of all the improvements in terms of traditional rights was the reforms of electoral laws that were introduced. Such reforms have led to some of these countries experiencing their first genuine elections where citizens had to choose between more candidates than the number of seats available for contestation. This in turn has led to non-communists being elected to government, while some countries saw the end of communist rule. The former Soviet Union, for instance, saw the first genuine elections in March 1989 to the Congress of People's Deputies where even senior communist Party and Government officials failed to secure election.³⁴

Similar elections took place in Hungary, Czechoslovakia and Poland. In Poland, for instance, general elections were held in June 1989, and Solidarity, the once banned trade union, was free to contest and emerged as the victor in these elections. Solidarity won 99 of the 100 seats contested in the upper house of parliament. However, since the Polish Law reserved two-thirds of the lower house to the Communist Party and other groups, Solidarity was only allowed to contest the remaining one-third of the seats, all of which it won.³⁵ Such elections have put an end to a forty year power monopoly by the Communist Party.³⁶ Likewise, the Communist

34-The Guardian. Monday, April 10, 1989.

35-M. K. Addo, "Are Human Rights Passé in East-West Relations?" *Coexistence* Vol. 27. 1990. p. 90

36-"Poland's, new Prime Minister, Mr. Tadeusz Mazowiecki, yesterday declared an end to more than 40 years of communist rule." *The Guardian*. Wednesday, September 13, 1989. "Hungary," Racz argues, "passed as important milestone in the Spring of 1990. The elections which brought the democratic forces into

government in Prague saw the end of communist rule as well in December 1989, and a non-communist being elected to the post of president.

However, apart from the reforms in electoral laws, different changes have had a strong impact on human rights. The observance of law and reforms in the criminal laws of some these countries is a very significant step forward to curtail the general practices that communist countries were notorious for. In China, for instance, one of the major steps taken by the new Chinese leadership was its concern with the prisoners that were subjected to civil prosecution. Thousands of people were imprisoned under different charges, mainly what was known as "rightists" or "counter-revolutionaries". In June 1979, there were reportedly some 11,000 persons who had been detained since 1957.³⁷ Their cases had been dealt with, and more criticism has been voiced against Mao and his policy of creating a state of "lawlessness" and "feudal fascism".

Within this framework the Ministry of Justice was restored in 1979, and the judges and the police were given strict orders not to use torture or threats to extort confessions. Furthermore, many law departments in Chinese universities have been opening again. Copper et al state that:

By 1981 there were 6,800 lawyers in China of whom all but 5000 were employed full-time. Law departments in the universities began to reopen and army officers began to receive judicial training. A mass legal education campaign was launched and legal research

power completed an unprecedented peaceful systematic change from Marxist-Leninist one-party rule to a plural system of governance." Baranbas Racz, "Political Pluralism in Hungary: The 1990 Elections." *Soviet Studies*, Vol. 43 Number 1, 1991.

37-S. C. Leng, "Criminal Justice in Post-Mao China: Some Preliminary Observations." In *China Quarterly*, No. 87, September, 1981. p. 442.

was encouraged by the government, including the publication of several law journals.³⁸

However, the situation has not changed much. Different reports by specialized agencies, such as Amnesty International, suggest that there is still a great deal of human rights violations. The Chinese perception of human rights remains the same; there is a heavy emphasis on economic and social rights, especially the right to subsistence and the principle of non-intervention since the issue of human rights is held to be an internal matter.³⁹

In the former Soviet Union, in expressing his views about Perestroika and democracy, Gorbachev, a lawyer by training, stressed the importance of law as a major condition for his policy to succeed. He said that:

There can be no observance of law without democracy. At the same time, democracy cannot exist and develop without the rule of the law, because law is designed to protect society from abuses of powers and guarantee citizens and their organisations and work collectives their rights and freedoms.⁴⁰

Therefore, there was a commitment on the part of the new Soviet leadership to put an end to the practices the country had

38-J. F. Copper, et al, Human Rights in Post-Mao China (Boulder: Westview, 1985) p. 46.

39-It should be pointed out that China has published the White Paper on Human Rights in which it explains its position on the issue. It is an attempt by the Chinese leadership to explain the priorities taken and how China sees the issue. It stresses further its traditional stand. An interview with Zhu Muzhi, Director of the Information Office of the State Council, provides further information. *Beijing Review*, Vol. 34, no. 45, November 11-17, 1991.

40-M. Gorbachev, Perestroika (London: Collins, 1987) p.105. Moreover, White reports that: "Legislation on the courts, introduced in 1989, established for the first time the principle of presumption of innocence of the accused." S. White, Gorbachev and After 1992 edition, (Cambridge: Cambridge University Press, 1992) p. 43

been experiencing. The most significant of all, perhaps, was the recognition that there were some shortcomings within the Soviet laws. Veniamin Yakovlev, for instance, the Deputy Head of Public Commission on Humanitarian Questions and Human Rights, told a press conference on 4 February, 1988 in Venice that:

The RSFSR criminal code is being reviewed and that the infamous article 70 may be eliminated or changed.⁴¹

Indeed, the new Fundamentals of Criminal Law, 1991, ended article 70 and the concept of 'anti Soviet agitation and propaganda'. Furthermore, the Soviet leader did in fact recognise that there had been ill treatment of dissidents and he acknowledged that there had been an extensive use of psychiatric hospitals to punish dissidents. In 1987, he publicly stated that such practices would no longer be carried out in the Soviet Union.⁴²

Although the exact number of political prisoners in the communist countries was never publicly known, nonetheless, the general impression one gets is that it has decreased considerably.⁴³ The notorious use of psychiatric hospitals to deal with political dissidents has decreased dramatically, if not been entirely abolished. Eighteen psychiatric hospitals which were formerly under police

41-A. Trehub, A. op. cit. p. 4.

42-"Psychiatric measures should not be used against political or religious dissidents, and all those interned should be released." The Times. Monday, September 12th, 1988.

43-"It has been reported that of nearly 600 political prisoners in the Soviet Union in 1985, more than half had been released in 1988." P. R. Baehr, "Human Rights: A Change in Performance." In R. J. Hill, and J. Zielonka, eds., Restructuring Eastern Europe (Aldershot, Hants: Elgar, 1990) p. 190. The cases of people who were detained in China have been reconsidered, and different reports of the specialized agencies suggest that there has been improvement on this front.

control were transferred to the Ministry of Health in January 1988.⁴⁴

As for freedom of movement, this right is enjoyed more than ever before in these countries. In the former Soviet Union, for instance, although it is not still recognized as a right, the number of people to whom exit visas were granted suggests that there has been a relaxation on the part of the Soviet government.⁴⁵

In Hungary, Poland and Czechoslovakia citizens have the right to travel abroad. Although, these countries saw the relaxation of their border controls, nonetheless, this right is quite limited by the need to provide the necessary hard currency. Now, many citizens of the communist countries, such as the Chinese for instance, are in the West for study or different training programmes.

Freedom of expression has considerably increased. Things which were unthinkable a decade ago have become daily practice. Banned materials have found their ways to libraries and book shops' shelves. Newspapers are no longer concerned with the achievements of the socialist society, but are more concerned with current national and international issues, and tackle different aspects that they were

44-Ibid., p. 192. Furthermore, the "World Psychiatric Association decided in October 1989 to readmit the Soviet organization, along with those of Czechoslovakia and Bulgaria. In 1983 the Soviet Psychiatrists Association resigned from the World Psychiatric Association rather than face expulsion as a result of a report on the use of mental hospitals to imprison dissidents." Ibid., 45-The practice of the Soviet government suggests that there was a leniency towards the attribution of exit visas. The number of the Soviet Jews to whom exit visas was granted was increasing. According to The Guardian, in June 1989 alone, permission was granted to about 4000 Soviet Jews to emigrate. This figure alone exceeds that of the whole of 1988 put together. The Guardian July 15, 1989. In describing the situation in the Soviet Union, White states that: "some, unable to bear these difficulties any further, applied to emigrate: only 8,000 had emigrated in 1986, according to official figures, but 235,000 left in 1989, and more than twice as many left in 1990." S. White, (1991) op. cit. p. 133.

not allowed to tackle before. More critical pieces appear in the press. Censorship has diminished.⁴⁶ This has been the result of the adoption in 1990 of the USSR law "on the press and other news media".⁴⁷

In the former Soviet Union for example, an official in the *Krasnopresensky* constituency describing the turnout in the March 1989 elections said that "interest was much greater than normal," he added "I doubt whether the 99 per cent turnout figures of the past were genuine."⁴⁸ The famous secret speech of Nikita Khrushchev to the 20 th Congress of the Communist Party in 1956 in which Stalin's atrocities were condemned was published in the Soviet Press in 1989. The new situation there could perhaps not be better summarized than by Korotich, former editor of the magazine *Ogonyok*, when he states that:

For decades there were no problems of history, no planes crashed, no ships sank. Now, it is time for people calmly to read the papers and accept them as positive version of the truth.⁴⁹

46-"The law does not allow censorship of news or interference in the activity of the news media by officials of state and public agencies. At the same time, it forbids the use of news media to divulge information that constitute a state secret or some other secrets specially protected by law." Current Digest of the Soviet Press Vol., XLII, no., 31, 1990.

47-Current Digest of the Soviet Press Vol., XLII, no. 31, 1990. "The press is now a multiparty press- it will be in the hands of public and cooperative organizations." Current Digest of the Soviet Press Vol., XLII, no. 23, 1990. Furthermore it saw the end of news monopoly. According to the Current Digest of the Soviet Press "Gorbachev decree lets local Soviet open station, allocate airtime channels, state media to be free of party bias; no party group can have airtime monopoly." Vol., XLII, no. 28, 1990.

48-The Guardian. Monday, March 27, 1989.

49-"On the eve of last summer's extraordinary party conference in Moscow, investigators approached Ogonyek saying they had arrested a group of corrupt leaders in Uzbekistan who had named four people in Moscow involved with them. "If you want to investigate a member of the Supreme Soviet or the Party Central Committee, the same bodies have to give permission to do so. It's

The death penalty, although still carried out, was reduced greatly, and steps were taken to restore freedom of conscience for the first time since 1917.⁵⁰

Up to now, the reader may have realized that no mention whatsoever has been made of the former "East Germany". Perhaps, the most significant change is what happened in this country. The demolition of the Berlin Wall was not only a step towards the relaxation of the borders of "East Germany" and its eventual union with the former "West Germany". It was as well a significant step towards an East-West rapprochement. Now, the citizens of what was once "East Germany" are enjoying the civil and political rights that the rest of the "East European countries" are trying to achieve.

It should be pointed out, however, that the discussion is general. There are still some countries in which dramatic changes, or at least some changes, have yet to take place. Little information is available about countries such as Bulgaria and Romania. Nor are there any

impossible. The Soviet Attorney General sent letters to the Supreme Soviet and the Central Committee, but no answer-silence! so I took the risk and published the article anyway illegally. I admit, saying that some of the Conference delegates were thieves and criminals, and our Attorney gave me the files on them."

The article produced a furore at the Conference. I gave all the files to Gorbachev, saying "if I'm guilty, I'm ready for anything. If not, punish them. I want an open investigation. And in six months, they'd all been charged! Five years ago, it could have been me who was charged." Ibid., Moreover, "[T]he media began to discuss social problems, such as drug abuse and child pornography, the very existence of which had been denied previously." Anthony Marcham, (1992) op. cit. p.27.

50-"A great step forward is taken with respect to individual freedoms. Granted provisions regarding the rights to emigrate and freedom of conscience, for example, have been drawn up within the framework of the Helsinki process." Current Digest of the Soviet Press Vol., XLII, no., 27, 1990.

signs, as yet, from Cuba to suggest that the Castro regime is to embark in a series of reforms along with the rest.

The East's shift towards the West's perception of human rights may be better seen in the next part of this dissertation. Different political scientists, non-governmental organization and bodies which monitor human rights have tended to condemn, or give lower scores to the former Eastern countries, mainly because the criteria used are those of civil and political rights. In this respect see the ranking of Charles Humana, Dahl, Bollen in the next part, as well as those of Freedom House before these changes took place.

However, in the late 1980s there was a shift in these countries' policies. More attention was given to individual rights, as the ranking by Freedom House of countries like Hungary, Czechoslovakia and Yugoslavia testifies (see chapter eight), more cooperation took place with international monitoring bodies, and less use was made of national sovereignty as an excuse to their non-compliance of obligations (see chapter five on the Human Rights Committee).⁵¹ Nonetheless, these countries are unable to provide materially what they used to. The last decade has witnessed an increase in civil and political rights, conversely, economic and social rights have decreased sharply.

However, one sees that this chapter was concerned with the differences between these two ideologies in terms of human rights. I have tried to avoid the inclusion of the Third World on different grounds. Mainly, because the majority of such countries are newly independent and did not have a strong impact on the shaping of the

51-It should be pointed out further in the case of the former Soviet Union, for instance, that "Deputy Foreign Minister says compliance with international human rights standards is a Soviet priority." Current Digest of the Soviet Press Vol., XLII, no. 27, 1990.

idea of human rights. Then, because they themselves have no homogeneous vision. They have either adopted one or the other ideology. Moreover, it is quite difficult to channel this vision under just one approach. As was clearly pointed out in the previous chapter, Muslim countries, for instance, believe that human rights are best provided for under Islam. The teaching of the Koran, some fourteen centuries ago, has within it the aspects that human rights try to protect. Moreover, since the majority of Third World countries are totalitarian, their policies are not really based on a given ideology, as much as on the vision of the leader.

Nonetheless, in the early 1970s there has been a new voice of the Third World in the North- South dialogue in which these countries tried to enter the debate on human rights. At the same time, with the different changes that have been occurring around the world, different new aspects have emerged and claim themselves as human rights. I shall discuss this point in the next chapter.

Chapter Three

A New order and a third generation of human rights

It has been suggested in the previous chapters that human rights may be divided into three distinct categories on the basis of the slogans put forward by the French Revolution in 1789. The first refers to civil and political rights, and the second to economic, social and cultural rights. The 'third generation', is the result of many Third World countries achieving independence and the challenges that the world has witnessed over the past three decades, is usually referred to as rights of solidarity.¹

It should be pointed out from the beginning that a clear-cut definition of what the Third World means is yet to be achieved. This, in turn, makes a homogeneous stand towards the question of human rights difficult, if not impossible to achieve. Nonetheless, since the majority are newly independent countries suffering from poverty, illiteracy and neo-colonialism coupled with their role within the United Nations, they have tended to press the debate on human rights to embrace different new aspects apart from ones already acknowledged.² They felt that they did not have any say in the

1-K. Vasak, "A 30-Year Struggle. The Sustained Efforts to Give Force of Law to the Universal Declaration of Human Rights." *The UNESCO Courier*, November 1979 p. 29. "The international community is now embarking upon a third generation of human rights which may be called 'rights of solidarity'".

2-"After 1965, however, the situation has changed. The principal reason was the large increase in Afro-Asian members of the United Nations and the increase in the membership of the Commission on Human Rights. The enlargement of the Commission was intended to encourage the participation of new members who were particularly concerned with such problems as racial discrimination and apartheid, colonialism and underdevelopment." A. H. Robertson and J. G. Merrilles, Human rights in the World 3rd edition,

formulation of human rights, and that the time has come for them to express their concern.

In this chapter, I shall attempt to address these 'new generation' rights and consider how valid they are. The reader should bear in mind, however, that the discussion will be brief, mainly to highlight the fact that new elements have emerged in the human rights debate. A deep reflection on the subject is certainly beyond the scope of this dissertation. Furthermore, the rights that have emerged are not only a result of many Third World countries achieving independence, but a result of many threats to mankind as well.

Therefore, this chapter begins with a discussion of these new 'new rights', and then moves on to discuss their authenticity. In other words, are they generally accepted as human rights? And finally, can they be measured and applied on a cross-national basis?

I: What are these rights?

Karel Vasak identifies the 'third generation' of human rights to include four rights. He argues that:

Such rights include the right to development, the right to a healthy and ecologically balanced environment, the right to peace, and the right to ownership of the common heritage of mankind.³

(Manchester: Manchester University Press, 1992) p.74

3- Ibid., See also R. J. Vincent, Human Rights in International Relations (Cambridge: Cambridge University Press, 1986) p.82. "The third generation was composed of 'rights of solidarity', including the right to development, the right to a healthy and ecologically balanced environment, the right to peace and the right to ownership of the common heritage of mankind." It should be pointed out further that, although these 'new rights' are generally agreed upon, there are some other 'rights' that can be included in this 'third generation'. Alston reports that: "In the framework of the 'Armand Hammer Conference', proposals for a third international human rights covenant

The rights included in the above list could be divided into two broad categories: the first includes the right to development and to the ownership of the common heritage of mankind; the second includes the right to a healthy and ecologically balanced environment and to the right peace. The former category could be identified with the demands of Third World countries, given their historical circumstances. The latter are of a general character and of a genuine importance to everybody and to every country no matter what its level of development may be. It is perhaps not by chance that the first three 'rights' (development, peace and environment) in the quotation above have been the subject of articles 22, 23 and 24 respectively of the African Charter on Human and Peoples' Rights of 1981.

However, before going in depth into the analysis of the above rights, it may perhaps be appropriate to discuss, at least briefly, a significant right associated with Third World countries: the right to self-determination as well as their constant search for a better deal in the international economic system usually referred to as the New International Economic Order.

1-1: The right to self-determination

This right was the subject of the first articles in both Covenant

featuring a range of "third generation of solidarity rights" have been strongly advocated. This group of rights has been said to include: the right to development, the right to peace, the right to a healthy environment, the right to communicate, the right to be different, the right to benefit from the common heritage of mankind, and the right to humanitarian assistance." Philip Alston, "Conjuring up New Human Rights. A Proposal for Quality Control", in *American Journal of International Law*, (78) 1984 pp.610-1.

and article 20 of the African Charter. It is of a different nature from those considered in the previous chapters. Jenks argues that:

The right to self-determination is of a wholly different nature from civil liberties in that it cannot be made effective by legal process, and also from economic and social rights in that it is not a guiding principle of national policy to be made effective progressively by legislation and administration.⁴

However, the applicability of this right is also different. It could be applied not only to countries which are under foreign domination, but to different peoples within independent states such as, for instance, the Kurds in Turkey and Iraq. Nonetheless, for present purposes, reference will be made only to how Third World countries are concerned since they see self-determination as a form of decolonisation.

With the majority of these countries achieving their independence and entering the debate on human rights, the stress has grown within the United Nations on different situations where people are still suffering external domination. The denial of human rights in a number of countries is mainly due, among other things, to such people being denied the right to self-determination and racist policies such as apartheid.⁵ This linkage between self-determination and colonial moves was stressed further at Algiers in 1976, and particularly in United Nations Resolution 32/1977. Principle "e" of this Resolution reads:

In approaching human rights questions within the United Nations system, the international community should accord, or continue to accord, priority to the

4- J. A. Joyes, The New Politics of Human Rights (London: Macmillan, 1978) p.156.

5-See the Preamble of the Declaration of Teheran, Yearbook of the United Nations 1968 (New York: Office of Public Information, 1971) pp.538-40

search for solutions to the mass and flagrant violations of human rights of peoples and persons affected by situations such as those resulting from *apartheid*, from all forms of racial discrimination, from colonialism, from foreign domination and occupation and threats against sovereignty, national unity and territorial integrity, as well as to recognize the fundamental rights of peoples to self-determination and every nation to the exercise of sovereignty and national resources.⁶

There is no doubt about the influence of foreign domination on the observance of human rights. Being subjected to such a domination hinders, if it does not eliminate, any chances the people might have in choosing their form of government. Therefore, this right is a prerequisite for any attempt to observe human rights. The reader should bear in mind, however, that self-determination or independence does not automatically lead to a better human rights record. It offers, at least in principle, a favourable environment in which individuals or peoples can freely choose their political status and economic policies. So a call on colonial powers to take every step to ensure that peoples are free to pursue their choices. It should be stated further that self-determination and sovereignty do not mean political freedom or independence only, but the economic aspects of the right as well.⁷ All peoples may freely dispose of their national wealth and resources in order to enhance their human dignity.

Apart from the denials of human rights being linked to the issues of self-determination and armed conflict in accordance with

6-S. P. Marks, "Emerging Human Rights. A New Generation for the 1980s." *Rutgers Law Review*, 33 (2) 1981 p.440.

7-Resolution 2581 (XXI) of 25 November, 1966 "Reaffirms the inalienable right of all countries to exercise permanent sovereignty over their natural resources." Yearbook of the United Nations 1968 (New York: Office of Public Information, 1968) p.334.

resolution 32/130 of February 16, 1977,⁸ Third World countries further stress the interdependence and indivisibility of civil and political rights on the one hand, and economic, social and cultural rights on the other. Moreover, they called for the question to be looked at on a more global level. Thus, the New International Economic Order is of paramount importance to the effective promotion of human rights and to decrease the gap between developed and developing countries.⁹

1-2: The right to development

After a full discussion within the United Nations (it was first proclaimed by the Commission on Human Rights in 1977), and other international bodies that are concerned with the development of Third World countries and the best ways whereby it could be achieved (these include, for instance, the UNDP and the UNCTAD), the General Assembly of the United Nations eventually adopted on 4 December, 1986 Resolution 41/128 in which it confirmed the right to development as an inalienable human right.¹⁰ The first article reads:

The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to,

8-Yearbook of the United Nations 1977 (New York: Office of Public Information, 1980) pp.734-5.

9-"It [the group of non-aligned developing countries] has been pressing vigorously for concerted new measures to redress the existing inequalities between the richer and poorer nations, and for this purpose adopted as its slogan the concept of a "new international economic order" ...It has been claimed that the establishment of the new economic order is a pre-condition of respect for human rights in many countries." A. H. Robertson, and J. G. Merrilles (1992) op. cit. pp.256-7.

10-Yearbook of the United Nations 1986 (New York: Office of Public Information, 1990) p.717.

and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.¹¹

Because of historical reasons, mainly being subjected to foreign domination and the increase in the gap between the developed and developing countries, Third World states have stressed that the denial of human rights is mainly due to these reasons.¹² Although they stress the indivisibility of human rights as suggested earlier, they nonetheless believe that civil and political rights depend on economic and social rights. Thus, it is imperative for them to provide for economic and social rights before civil and political rights can be realized.¹³

This has polarized the debate on human rights between what has come to be known as the North and South. The South refers to developing countries, and the North to developed ones -the Eastern bloc did not enter the debate because it claimed it was not responsible for the situation in Third World states. Most of the criticism Third World states are subjected to is that they fail to

11-Ibid.,

12-Mr Kaba M'baye, Senegal, a former President of the United Nations Commission on Human Rights, "recognizes that in many African countries governments are struggling to combat famine, illness and ignorance tend to overlook the classic liberties....He deduces a "right to development" as a necessary corollary of other fundamental rights recognized in international texts." A. H. Robertson and J.G. Merrilles (1992) op. cit. p.13.

13-"A great majority of the Third World countries affirm that the solving of the essential problems of food, health, housing, clothing and education holds priority over the question of 'formal' rights, which are an unknown factor and are practically without interest to the ignorant and hungry masses which inhabit many of these countries." H. Grosepiell, "The Evolving Concept of Human Rights: Western, Socialist and Third World Approaches," in B. G. Ramcharan, ed., Human Rights: Thirty Years After the Universal Declaration Of Human Rights (The Hague: Martinus Nijhoff, 1979) p.64.

provide for the freedoms most treasured in the West, which in turns, fails, according to Third World viewpoint, to take account of their internal situations. This has led to a two-way argument: the North argues that the South uses underdevelopment as a pretext for not providing for civil and political rights, while the South insists that the North's stress on civil and political rights hampers the indivisibility of rights and hinders the chances of any help to improve their situation.

No one would disagree that human rights do not function in a vacuum. The political, economic, social and cultural context, or situation in which they develop, are key factors in their explanation.¹⁴ Given the appalling conditions and problems that Third World countries face, it would be difficult to imagine a proper respect for human rights. However, Third World states, in general, have tended to overstretch the importance of economic and social rights to the total observance of human rights. Certainly one understands the priorities and tendencies on the part of these governments to provide for these rights, but abuses of human rights that some of these countries have been experiencing have nothing to do with whether economic and social rights are provided for or not. The fact that country A, for instance, sets its sight on providing social and economic rights does not explain torture, detention without trial and large -scale killing. It would be absurd to try to justify these acts in terms of economic circumstances. The argument is not whether development policies generate respect for human rights or not,¹⁵ as

14-"It is an undeniable fact that human rights do not function in isolation. They cannot be fully and properly assessed without taking into account the political, economic, social and cultural context of particular situation." T. Van Boven, "Human Rights and Development. The UN Experience," in D. P. Forsythe, ed., Human Rights and Development (London: Macmillan, 1989) p.127.

much as it is for an urgent international cooperation in the field of human rights. Third World countries are suffering from malnutrition, and starvation in some cases, whereas the developed world suffers overproduction. This example and others suggest that an overall concern is needed.¹⁶

However, development in this context means not only economic growth, but human development itself. The International Commission of Jurists defined it as "the right of all people all over the world and of every citizen to enjoy human rights".¹⁷ The human person, in this view, is the centre of development.

This right is linked with different rights, particularly the right to self-determination and full sovereignty over natural wealth and resources.¹⁸ It is linked further to different new rights such as the rights to peace, to healthy and ecologically balanced environment. The United Nations has stressed the need for a sustainable development: in other words, development policies should take into account their effects on the environment and the needs of the future generations. I shall return to this point later.

15-"For the past two decades 'development' has been the main item on the political agenda of Third World societies. But development policies do not necessarily result in better implementation of either civil/political or economic rights." R. E. Howard, Human Rights , Development and Foreign Policy," in *ibid.*, p.213.

16-"The achievement of the right to development requires a concentrated national and international effort to eliminate economic deprivation, hunger and disease in all parts of the world without discrimination." United Nations Yearbook 1986 op. cit. p.721.

17-Quoted from R. E. Howard (1989) op. cit. p.215.

18-" Keba M'baye sees it [the right to development] as the natural consequence of the right to self-determination and the rights of all peoples to freely dispose of their national wealth, and resources -rights which are proclaimed in both the UN Covenants." A. J. Robertson and J. G. Merrills (1992) op. cit. p.13.

1-3: The right to a healthy and ecologically balanced environment

Perhaps one of, if not the most challenging threats to mankind is the achievement of a healthy and sound environment. There has been growing awareness of the fact that there has been a population explosion coupled with an increase in the use of resources and its different effects on climate change. The increase in the already high levels of water and air pollution and the steady decrease of forests are in fact alarming signals to the international community. Moreover, the arms race and the huge stocks of weapons of mass destruction add to these difficulties.

Willy Brandt, in the 'Brandt Report', stressed that "the quality of life is meaningless without health, which depends on proper nutrition and a healthy environment."¹⁹ Such a healthy environment is not only the responsibility of each state but of the international community as well. In this context, the United Nations' Social and Economic Council adopted a resolution on 30 July, 1968 in which it

took note of the continuing impairment of the quality of the human environment caused by such factors as air and water pollution, erosion and the forms of soil deterioration, secondary effects of biocides, wastes and noise. Concerned with the consequent effect thereof on the condition of man, his physical and mental well being, his dignity and his enjoyment of basic human rights in developing as well as developed countries, the Council was convinced of the urgent need for intensified national and international action to meet the situation.²⁰

19-W. Brandt, North-South Dialogue. A Programme for Survival (London: Pan Books, 1980) p.16.

Each epoch has had its challenges; this amongst others to ensure a successful transition from the age of wasteful consumerism to that of a sustainable world in which human beings enjoy a sound environment. The United Nations and other organizations have recognized the difficulties towards which the planet is heading. The United Nations Conference on Human Environment held in Stockholm in 1972, the Brundtland Report and the Earth Summit which took place in June 1992 in Rio are examples of the importance of the issue. The Stockholm Conference played a significant role not only in increasing the popular awareness of the dangers that mankind faced, but marked the date when when 'the right to a healthy environment' was recognized in the work of the United Nations. The Conference's Secretary-General stated that: "the Conference was launching a new liberation movement to free men from the threat of their thralldom to environment perils of their own making."²¹ Principle I of the Declaration reads:

20-Yearbook of the United Nations 1968 op. cit. p.473. Furthermore, the environment was the subject of a report published on 26 May, 1969 by the then Secretary General U Thant entitled "Man and his Environment", the introduction of which stated that: "For the first time in the history of humanity a crisis of world wide scope has come into existence, including both the developed as well as developing countries -concerning the relation of man to his environment. Threatening signs were visible long ago: the demographic explosion, the inadequate integration of powerful technology with the requirement of environment, the destruction of cultivated lands, the unplanned development of urban areas, the diminishing of open spaces and the ever growing danger of the extension of many forms of animal and plant life. There is no doubt that if this process continues- future life on earth will be threatened." E. J. Osmanczyk, Encyclopedia of the United Nations and International Agreements (Philadelphia/ London: Taylor and Francis, 1985) p.610.

21-Yearbook of the United Nations 1972 (New York: Office of Public Information, 1975) p. 319.

Man had the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permitted a life of dignity and well-being, and he bore a solemn responsibility to protect and improve the environment for present and future generations.²²

The right to a healthy environment is of a general character on the one hand, and as a result of the special circumstances of every country on the other. It is of a general character in a way that everybody in every country may be affected by it. A need for urgent and coordinated action at the local, regional and international levels is of paramount importance. The effects of the environment may be as devastating as the results of wars and armed conflicts.²³ It is also a result of the special circumstances that a particular country, whether developed or developing, may be experiencing. Environmental problems are a result of both underdevelopment and development.²⁴ The advanced levels of technology developed countries have achieved certainly did not come at a low cost. The intolerably high levels of air and water pollution, the increase in the

22-Ibid.,

23-"Activities in this category [environment] remain a limbo. The grounds for concerted action seem clearest when the causation is clear. If country X impairs health, destroys life, or harms the environment in country Y and Z, or more widely, in a region, the oceans, or the globe as a whole, then it is obviously at fault. If evidence mounts that cancer arises from increased radiation and a particular government engages in radiation-producing activities, then it is 'ecological aggression'." R. Falk, "Responding to Severe Violations," in J. I. Dominguez et al., Enhancing Global Human Rights (New York: McGraw-hill, 1979) p.243.

24-"The United Nations Conference on Human Environment "affirmed, among other things, that in developing countries most environmental problems were caused by under-development, whereas in the industrialized countries they were generally related to industrialization and technological development." Yearbook of the United Nations 1972 op. cit. p.319.

number of cars, factories and technological accidents undoubtedly led to more damage. Developing countries in general lack the means whereby to tackle these problems. Thus, it should be looked at from a general viewpoint. Developed countries ought to help in the transfer of environmentally sound technology and update the infrastructure of Third World countries to meet these new challenges.

It should be borne in mind that the problems of environment and ecology should not be looked at in isolation of other factors. They are very much linked to issues of development and the arms race. A development activity may have disastrous effects on the country or the region if the environment is not taken into account.²⁵ Such measures have been adopted, but there is still a need for international unified ones as some countries have tended to set lower standards to attract investment and create jobs.²⁶ It is further linked to the issue of the arms race as the use of these weapons could have fatal consequences on the environment and mankind in general.

It is therefore not a surprise to see the great deal of attention this issue has received both at the regional²⁷ and the international level. Moreover, such importance has led some to suggest that it should be given still more weight. Richard Falk, for instance, argues that:

Environmentalists and NGOs can build a greater

25-"Environmental impact assessment should be undertaken whenever investments or development activities may have adverse environmental consequences whether with national territory concerned, for the environment of neighbouring countries or for the global commons.' W. Brandt (1980) op. cit. p.115.

26-Ibid., p.114.

27-"An interparliamentary conference on the environment held in Bonn in 1971 resolved that mankind has a right to a healthy environment." S. P. Marks (1981) op. cit. p.443

understanding of environmental rights as a key sector of human rights and generate pressures to translate this understanding into a revised Universal Declaration of Human Rights and a new Covenant on Environmental and Ecological Rights.²⁸

1-4: The right to peace

Peace is the most fertile ground in which respect for and realization of human rights and fundamental freedoms can grow. Most human rights violations occur during times of war. They are a threat to the basic right of life, without which other rights are meaningless.

However, what one has to bear in mind is that the right to peace does not only involve refraining from wars -although a very important factor- but it also involves the solving of many other serious problems such as poverty and hunger.²⁹ In his introduction to the Medium-Term Plan of the UNESCO, the Director-General stated:

Peace is more than simply a matter of refraining from war; there can be no lasting peace if individuals are deprived of their rights and liberties, if people are oppressed by other peoples, if populations are beset by poverty and suffering from malnutrition or sickness.³⁰

28-R. Falk (1979) op. cit. p.244.

29-Brandt argues that: "This not only raises the traditional questions of peace and war, but how to overcome world hunger, mass misery and alarming disparities between the living conditions of rich and poor." W. Brandt (1980) op. cit. p.13.

30-S. P. Marks, "The Peace-Human Rights-Development Dialectic." *Bulletin for Peace Proposals*, 11 (4) 1980 p. 341. Moreover, Brandt argues that: "While hunger rules peace cannot prevail. He who wants to ban war must also ban poverty. Morally it makes no difference whether a human being is killed in war or is condemned to starve to death because of the indifference of others." W. Brandt (1980) op. cit. p.16.

Although there is an apparent danger to the right to peace, because of the violations of human rights discussed in the quotation above, wars, however, remain the most significant ones. The right to peace was first suggested in this connection by the Commission on Human Rights in February 1977. Nonetheless, some steps were taken before that in the area of disarmament.³¹

After the Second World War, the world embarked on a rapid and massive arms race, encouraged in that by the peak of the Cold War in the 1950s. Weapons of mass destruction became the biggest threat to the existence of mankind. The creation of troublesome areas around the world has meant that this industry has grown more than ever before. Different issues such as national security and territorial integrity have come to play significant roles in the decisions made.

In a word, it is the right to everybody to take part in the efforts aimed at peace: the individual by refusing to be part of any military activities, and the states by committing themselves to the non-use of force or external aggression and to the peaceful settlement of international affairs. Different steps were taken to ensure the right to peace.³² The Non-Proliferation Treaty signed in 1968, for instance, and the consideration by the "Commission of Human Rights in March 1971 whether *conscientious objection to military service* should be declared officially a human right",³³ are examples of such efforts. Further on 15 December, 1978 the General Assembly adopted

31-"A basic instrument of the maintenance of peace is the elimination of the threat inherent in the arms race, as well as efforts towards general and complete disarmament." E. J. Osmanczyk (1985) op. cit. p.610.

32-"The General Conference of the Agency for the Prohibition of Nuclear Weapons in Latin America proclaimed the right to peace as a human right in a resolution adopted on April 27, 1979." S. P. Marks (1981) op. cit. p.446.

33-J. A. Joyce (1979) op. cit. p.233.

Resolution 33/73 in which it "reaffirmed the rights of individuals, states and all mankind to life in peace." Principle 1 of the Resolution reads:

Every nation and every human being, regardless of race, conscience, language or sex, has the inherent right to life in peace. Respect of that right, as well as for the other human rights, is in the common interest of all mankind and an indispensable condition of advancement of all nations, large and small, in all fields.³⁴

There is a close link between the right to peace and different aspects apart from disarmament. To ensure a long lasting peace, people should have their civil and political liberties and their social and economic needs met. Military expenditure, both in developed and developing countries could certainly overcome many of the problems that planet earth is facing today. Diseases, inadequate housing and environmental problems could be more readily tackled if resources were channelled towards them.

1-5: The right to the common heritage of mankind

This right was suggested to be part of the third generation of human rights. It was first applied to the sea-bed in a declaration by the United Nations' General Assembly on 17 December 1970 which proclaimed that: "the sea-bed beyond the limits of national jurisdiction is part of the common heritage of mankind."³⁵ Its scope has widened to include different areas such as the oceans, space, the Antarctic and different cultural monuments.

34-E. J. Osmanczyk (1985) op. cit. p.610

35-S. P. Marks (1981) op. cit. p.447.

II: Are they human rights?

Having identified the rights of the third generation or the rights of solidarity, the most fundamental question remains: can they be accepted as human rights? In other words, how valid is it to include them in the category of human rights?

There is little doubt that the emergence of such right has added to the already controversial question of what human rights really are. It was pointed out in the first chapter that economic, social and cultural rights were not accepted, at least by some scholars, to be human rights, and the stress has always been on the traditional set of rights. The inclusion of such new rights has added to these difficulties.

It was suggested in the first chapter that our approach to human rights would be evolutionary and dynamic. While the two sets of rights discussed above were the product of the French, American and Russian revolutions, the rights of solidarity are prompted by the experience of Third World countries and the new challenges mankind is facing. In a word, these new challenges have certainly opened the debate on the possibility of considering additional human rights. Thus the scope of these rights is different, and their achievement requires the efforts of everybody. In this respect, Karel Vasak, in his inaugural lecture to the Tenth Session of the International Institute of Human Rights, Strasbourg, July 1979, stated that they:

are [the third generation of human rights] new in the aspirations they express, are new from the point of view of human rights in that they seek to infuse the human dimension into areas where it has all too often been missing, having been left to the State or States...[T]hey are new in that they may be invoked

against the State and demanded of it; but above all (and herein lies their essential characteristic) they can be realized only through the concentrated efforts of all actors on the social sense: the individual, the state, public and private bodies and the international community.³⁶

Not only these rights are new, in terms that they address new dimensions, but their reference is very vague as well. The beneficiaries of these rights and upon which the claims can be made are quite difficult to determine. While civil and political rights deal with the integrity of the person, not to be tortured and to participate, to name just a few; social and economic rights refer to the satisfaction of goods and needs, the rights of solidarity refer to something vague and sometimes ambiguous. This is especially true when it comes to the right to the common heritage of mankind. Moreover, it seems that with Third World countries entering the debate on human rights, these rights more or less benefit them. One bears in mind that the rights to a clean environment and to peace are for the best of mankind, nonetheless, they -rights of solidarity- seem to represent the rights of Third World countries on the developed world. Self-determination, in the sense of independence, and development are a call on colonial powers to end their domination and to take steps forwards developing this part of the world. Likewise the rights to a healthy and ecologically balanced environment and to peace, although they are for the good of the planet, are a call on the developed world, which has the technology and the know how to deal with environmental problems and help Third World countries overcoming them.

However, can one say that a person is denied human rights if that

36-Ibid., p.441.

person is denied the right to development or is living in an imbalanced environment, in the same sense that one is tortured, or denied the right to take part in the government?

As far as the author is aware, only the right to development has been recognized as an inalienable human right by the United Nations in 1986. There is enough ground upon which one may argue that the right to peace and the right to a healthy and ecologically balanced environment could be considered as such. The United Nations is aware of the importance of these factors and many steps were taken, as discussed above, to reduce the threats to the environment and of wars and set standards for achievement. If the reader recalls the definition of human rights Jack Donnelly suggested in the first chapter, that "they are rights one has by the mere fact of being a human being", and the conclusion Maurice Cranston reached that they are "the moral rights of all people in all situations," then it becomes apparent that the rights to peace and to a healthy environment fall within this category.³⁷ From a moral point of view, it makes little, if any, difference if a human being is killed or being exposed to radiation or other diseases that may result from an unhealthy environment. Life itself is at stake under such circumstances. However, who is to blame remains the most difficult question to answer.

As far as the first two generations are concerned, governments are responsible for the denial of such rights. Although it depends on how wealthy a country is, in the case of economic and social rights, still the task is much easier to determine how far these rights are

37-"If advocates of the "new human rights" assert that we have a moral right to peace, to the environment, and so on, then many will be inclined to agree." P. Alston (1984) op. cit. p.259.

violated. In the case of the 'third generation', however, the task is difficult, if not impossible. A need for international cooperation is urgent and the relationship between these rights is greater. Van Boven reminds us that:

It is absolute ??????? that in an era of explosive population growth, exhaustion of natural resources, immense stockpiling of weapons of mass destruction and so-called conventional weapons, international cooperation in such areas as disarmament, development, ecology and human rights is a *sine-qua non* for survival.³⁸

In this respect the United Nations has been organizing different programmes to respond to the challenges of the major current issues. The 29th Graduate Study Programme held in Geneva, July 1991 under the title "United Nations: International Response to Global Issues", which the author attended, discussed development, disarmament, environment and human rights as the major issues and their interdependence.

Undoubtedly, the rights of the 'third generation' have created more ambiguity surrounding the concept of human rights and widened its scope. It goes without saying that from a moral point of view they can be claimed as human rights, but they are too vague in scope and application. Stephen Marks stresses that:

It is frequently said that the rights of the new generation are too vague to be justifiable and are no more than slogans, at best for advancing laudable goals of the UN, at worst useful for the propaganda of certain countries.³⁹

Whether they are slogans for propaganda, or to advance the

38-T. Van Boven (1989) op. cit. pp.133-4.

39-S. P. Marks (1981) op. cit. p.451.

debate within the United Nations, one cannot deny their challenges and their threats to the human person. Mankind is faced more than ever before with the prospect of self-extinction. The time has come for human rights to be looked at from a global point of view, and efforts should be joined together to face up to these challenges. That is what the rights of the 'third generation' try to address.⁴⁰

III: The third generation of human rights on a cross-national basis

One might suggest that the comparative study of human rights might include these rights. If one is to select a list of variables in terms of which a comprehensive study of human rights is to be attempted, it has to include rights from the 'third generation', or may face some arbitrary exclusions.

However, before trying to conduct such a comparison, it would perhaps be appropriate to consider the quantification of these rights. Can one measure such rights? How does one apply these measures on a cross-national basis? Moreover, have they been used, especially in connection with the case studies undertaken in the next part of this dissertation, in the comparative study of human rights?

The rights of the 'third generation' are relatively easy to quantify. An exception must be made for the right to the common heritage of mankind, and to a lesser extent the right to development. There are

40-It was pointed out earlier that apart from the right to development, other 'rights' are just moral claims. There is enough ground to push the debate within the United Nations to take further steps in securing these 'rights', however, as Philip Alston puts it: "Until the process of law-making has taken place, "new human rights" must remain in the realm of speculation." Philip Alston (1984) op. cit. p.259

scientific methods whereby one can obtain precise statistics about the levels of air and water pollution. This will lead to the setting up of minimum standards of achievement below which no country is permitted to fall. It leaves no room for argument that historical and religious reasons, for instance, as is the case with the previous set of rights, play a significant role in determining this right. It does not take a lot to convince anybody that particular levels of pollution are intolerable and that the health of the people is at stake.

Therefore, in principle, it makes a comparative study of human rights on a cross-national basis quite an easy task. Whichever country is less polluted, the healthier and ecologically more balanced its environment is, the better its human rights are. Nevertheless, the question is not as simple as might be seen for several reasons. First, some countries may set lower standards than others to attract investment. As long as the minimum standard is achieved, they would not look far beyond that. Second, environmental problems that industrialised countries face are simply due to the levels of technology they reached, developing countries simply do not have the means to decrease the danger. Further, protection of the environment requires a well-informed population aware that every action has its consequences on the environment. This awareness is yet to reach the agenda of many Third World countries where poverty, illiteracy and hunger still prevail. Finally, and perhaps the most important of all, pollution of some countries may not be the fault of their own. It may be a result of natural disasters, or the actions of its neighbours. Switzerland provides the best example, where pollution is caused by neighbouring countries. Moreover, rivers crossing different countries add to this problem.

Given these circumstances, although it is plausible to imagine a

ranking of countries on such grounds, it is doubtful if it could yield genuine and convincing results. Why should country A, for instance, be ranked below Y or Z at a time when the latter had high levels of pollution for reasons beyond their control? Further, a country lacking the technology to recycle and preserve the environment is bound to be near the bottom of the ladder.

One would apply the same measures to the right to peace as it is understood to focus only on the arms race and disarmament. Is it fair to suggest that the more a country produces arms, the less it observes human rights? There is no doubt about the relationship between armament and the right to peace, nonetheless, this would leave many of Third World countries outside the scope of comparison, and therefore they would benefit from such an exercise.

It goes without saying that every country violates human rights in terms of polluting the environment and producing arms. Nevertheless, in the case of the latter, only a handful of countries are capable of producing weapons of mass destruction. On what scale can one judge these countries? Furthermore, would not every country produce the same weapons if it had the means? While the most important question remains: is there enough information on this delicate issue to carry out a valid comparative study?

The aim of the foregoing discussion is not to deny how important such issues are in terms of human rights. Whether they are inalienable human rights or not is still a debatable question. What is certain is that they constitute very significant moral claims to be considered as such. However, applying them on a cross-national basis poses a lot of difficulties. How to obtain a ranking of countries? And upon what basis should the placing of these countries take place?

It relatively easy to compare countries on the dimensions discussed above. The right to the common heritage of mankind poses some problems. However, these 'rights' have yet to be combined and used to compare countries in terms of human rights. As far as the present author is aware, some of these have indeed been used, explicitly or implicitly, in different attempts to quantify human rights on a cross-national basis. I shall particularly look at this in connection with the different attempts discussed in the next part of this dissertation.

IV: Universalism, relativism and human rights

As pointed out in the above discussion, it has been the general practice among scholars of human rights to group them into three competing perceptions: those of western, socialist and third world countries. Each perception is associated with one of the three generations of human rights. The western perception is associated with civil and political rights as is referred to as the first generation; the second generation includes economic, social and cultural rights and is associated with the socialist idea of human rights, and the third generation is associated with the perception of third world countries. It is usually argued that the idea of human rights is derived from the western liberal democratic heritage which have little, if any, relevance to other parts of the world. Others suggest that human rights should applicable anywhere regardless of place or time.

There are two major competing schools of thought in the ongoing debate on human rights: universalist and relativist.⁴¹ The former

41-For a careful discussion see Douglas Lee Donoho, 'Relativism Versus

emphasizes the Universality of human rights and their applicability everywhere.

There is an emerging widespread consensus regarding definitions of human rights. This can be partly explained by the finding of anthropologists who suggested that some values can travel cross-culturally. Some practices such as torture and killings are condemned almost everywhere. Moreover, the Universal Declaration of Human Rights (1948) has come to be accepted universally, and the rights it embodied should be respected. Furthermore, the fact that the two International Covenants (1966) have been ratified by a growing number of countries suggests that the universality of human rights is an actuality. The preambles to these documents cite 'the inherent dignity and of the equal and inalienable rights of all members of the human family' as the basis for human rights. In addition to these, the 'socialist' concept of human rights, discussed in the second chapter, had begun, even before the end of communist rule, to incorporate much of the 'liberal' definition. They have come to accept the western perception of human rights and steps have been taken to ensure the respect of many of the civil and political rights formerly denied. This undoubtedly led to a greater consensus on human rights and a more universal view.

However, relativist theorists (Renteln, 1990) argue that human rights are a social and historical phenomenon and therefore cannot

Universalism in Human Rights: The Search for Meaningful Standards', *Stanford Journal of International Law*, Vol. 27, No2, 1991 pp.345-91; Alison D. Renteln, International Human Rights. Universalism versus Relativism (Newbury Park: Sage, 1990); Jack Donnelly, 'Cultural Relativism and Human Rights' *Human Rights Quarterly*; and Bogdan Denitch, After the Flood: World Politics and Democracy in the Wake of Communism (Hanover and London: Wesleyan University Press, 1992) pp.94-8.

be explained outside their specific environment. If one recalls Cranston's test to judge the authenticity of human rights, he stressed that they should be universal, and concluded that 'human rights are moral rights of all people in every situation',⁴² then the universality stand can no longer stand. Morality is a practice that can be accepted, explained and justified in a given culture or society, which does not necessarily mean acceptance in another. Ruth Benedict, an American anthropologist, rightly concluded after observing the diversity of customs that 'morality differs in every society and is a convenient term for socially approved habits.'⁴³ Anthropologists have long shown that some practices which cannot be accepted in some societies are followed in others. The diversity of cultural and political traditions between societies results in a diversity of values and positions vis-a-vis particular social practices. It goes without saying that some of the practices carried out in an Islamic state, for example, might be seen as barbaric in another country. However, they be accepted in the society in which they occur. 'Relativists suggest that the specific content depends upon the cultural, political and social characteristics of each country'.⁴⁴ Moreover, the wording of the International Covenant on Economic, Social and Cultural Rights, as a matter of fact, suggests the relativist idea of human rights. The Covenant addresses states party to it with reference to their national economy, which may influence the extent to which they would guarantee the rights recognised in the Covenant. Moreover, the fact that the International Covenant on Civil and Political Rights had provided, in article 4, for the states party to the Covenant to 'take

42-Maurice Cranston, 'Human Rights Real and Supposed' in D. D. Raphael (ed.) Political Theory and the Rights of Man, (London: Macmillan, 1967) pp.47-9.

43-A. D. Renteln, (1990) op.cit. p.66

44-D. L. Donoho, (1991) op. cit. p.368

measures derogating from their obligations' is another argument in favour of the relativity of human rights.

In any case it is very difficult to take either side of the debate, as each approach has its strong arguments. What is clear however, is that most, if not, all, countries in the third world have come to take the relativist approach to human rights, sometimes it must be acknowledged as an excuse to violate these rights. The difficult economic and social conditions of these countries have a bearing on their economic records. One may sympathise with these countries that because of practical difficulties some of the human rights are not provided for, however, poverty does not justify torture or extra-judicial killings. On the other hand, by arguing that mankind is one and taking the universalist approach one is bound to overlook the social, economic, religious and cultural factors which shape the conduct and morals of peoples in a given society.

Human rights, as we have seen, involve disputes about their proper uses and contents. It is an 'essentially contested concept'.⁴⁵ It is commonly used, for rhetorical and legitimization purposes, but still poorly understood. It can mean different things to different people, although it is very much associated with particular freedoms and needs. It does not describe something in particular, but refers to certain norms and values. In the next part of this dissertation, I shall conceive of the concept of human rights in normative terms. However, even though there are some values shared by different cultures, the approach leans more towards relativism than universalism.

45-For a general discussion on this see William E. Connolly, The Terms of Political Discourse, second edition, (Oxford: Martin Robertson, 1983) pp.9-45.

Part two
Case studies

Introduction:	91
 Chapter four:	
Amnesty International	94
 Chapter five:	
The Human Rights Committee	144
 Chapter six:	
Quantitative approaches to the comparative study of human rights: the work of Charles Humana	182
 Chapter seven:	
Comparative measures of human rights and democracy	216
 Chapter eight:	
Freedom House and the comparative Survey of Freedom	269

Introduction to part two

After a general discussion of the definitions and development of human rights, this part deals with some of the attempts that have been made to measure human rights, freedom and democracy on a cross-national basis. It should be pointed out at the beginning that two of these case studies have refrained from such a directly comparative exercise: Amnesty International and the United Nations Human Rights Committee. For them this phenomenon cannot be measured and they accordingly abstain from any attempt to do so. Amnesty's role is to publicise cases and pressurise governments to treat their citizens fairly. The Human Rights Committee, on the other hand, deals only with the states party to the Covenant on Civil and Political Rights, under which the Committee was established. These states have accepted the rights of the Committee to examine their reports on compliance with the provisions of the Covenant, and to seek expert advice whenever it is needed.

Others, despite difficulties which will be discussed at a later stage, have developed frameworks within which the measurement and therefore ranking of countries in terms of human rights, democracy and freedom on a cross-national national, and sometimes continuous, basis can be achieved. These include the work of Charles Humana, Robert Dahl, Kenneth Bollen, and Freedom House, each of which will be discussed in the second part of this dissertation.

The choice of these particular case studies has been made on several grounds: first of all they serve the purpose of this work -to assess the different attempts to measure human rights. Secondly, they are among the leading authorities on the subject: for instance,

Amnesty's reputation for impartiality is second to none, and Humana had, before his recent death, become an international authority on human rights whose work was adopted for its own purposes by the United Nations Development Program. Thirdly, they have different approaches to the subject: while some produce tables of rankings, others just publicise cases or help countries to comply with internationally binding documents. This in turn, enables to establish the most effective way in which the human rights situation in the world can be improved. Fourthly, the availability of information and especially primary material, and access to people involved with these case studies such as Professor Rosalyn Higgins, a member of the Human Rights Committee at the London School of Economics and Political science or the Director of the British Section of Amnesty International, dictated the selection of these cases rather than others.

Within these case studies I look at a number of countries: different countries in each case study. One may object to this and prefer the inclusion of the same countries in each case to assess the extent of differences, if any, within these case studies when dealing with the same country. This is a plausible option, however, the choice of different countries in each case study has been made for practical reasons. First, some countries, the United States of America to name just one, have not ratified the International Covenant on Civil and Political Rights and therefore cannot be included when looking at the work of the Human Rights Committee. Moreover, the first (1983) and the second (1986) edition of Charles Humana's study dealt with only 75 and 89 countries respectively, and the choice of countries can only be taken from the countries he considered. Thirdly, the countries in question were chosen to redress the shortcomings from

which any individual case study may suffer.

By taking these case studies and the different countries included in each, the aim is to demonstrate the limits attendant upon any exercise seeking to measure human rights on a cross-national basis. The differences in the approaches taken in the case studies help to establish the most effective way to achieve an overall improvement in the realisation of human rights, and finally, to draw attention to the lessons that can be learned from each of the case studies for future research on the comparative study of human rights.

Chapter Four

Amnesty International

In this chapter an attempt will be made to evaluate the work of Amnesty International and how useful it is in comparative politics. In other words, does Amnesty International offer a broad basis upon which it is possible to compare political systems in terms of human rights on a cross-national basis? And if it does not, how can one make the best use of the information provided by Amnesty International to compare political systems?

To answer these questions this chapter will be divided into four main sections. The first section deals with the origins of Amnesty International as well as its structure, with a view to determining whether the organization is really independent as it claims. Then, I discuss the mandate or the basis upon which its work is carried out, pointing out the difficulties that may arise whenever an issue is raised depending on the political culture and circumstances of each country. This is done in order to help the reader to better understand if the work of Amnesty is widely applicable. This will be seen in the third section when the case studies are considered. China, Nicaragua and the Middle East are examples of countries where it is difficult to apply Amnesty International criteria. In other words, they offer a real challenge to the work of Amnesty. The chapter concludes with an overview of the discussion from the perspective of comparative politics and the difficulties that will face the comparativist in conducting research and how the best possible use can be made of Amnesty's work.

I: The origins and structure of Amnesty International

1-1: The origins of Amnesty International

Amnesty International is a worldwide, non-governmental organization aiming to defend human rights. It was awarded the Nobel Prize in 1977, for its work in this field. Amnesty International arose under the original name of "Appeal for amnesty 1961" in 1961.¹ The idea originated from a prominent lawyer named Peter Benenson, who was very active in this cause. People were imprisoned, tortured or even killed because of the very simple reason that they held different opinions from those of the state, at a time when there was not a treaty which curtailed or prohibited governments from carrying out such barbarous acts.² It was an incident that took place in Portugal, during the days of Salazar's dictatorship, that inspired Benenson to launch his appeal. Two students were arrested and sentenced to seven years' imprisonment solely for raising their glasses for freedom. Such incidents were, and indeed are, very common in many countries. Benenson protested outside the Portuguese Embassy in London, and decided to launch a campaign which aimed at pointing out the injustices occurring in the world. With the help of friends, "Appeal for amnesty 1961" was

1-Power suggests that "1961 seemed a good year to launch his effort. It was the centenary of the freeing of the slaves in the United States and the Serfs in Russia." J. Power, Amnesty International. The Human Rights Story (Oxford: Pergamon, 1983) p. 10.

2-"When Amnesty International was launched in 1961, apart from the Geneva conventions that apply in time of war, there was not a single universal treaty obliging states to give fair trials to their citizens or prohibiting torture or protecting the very right of life." Amnesty International Report 1986 (London: Amnesty International, 1986) p. 1.

launched, after an article was published in the Sunday newspaper "The Observer" in May, 1961 entitled "the forgotten prisoners". In this article Benenson highlighted the cases of eight people from different countries who had been imprisoned because of their political opinions. It was an amazing idea that worked; a prisoner could be released by writing letters and applying pressure on the government involved. In part, this tactic was chosen because of the British traditions in which Amnesty was born.

The civil protest of Benenson was in part of a certain British judicial tradition, where a long and consolidated practice of individual rights had received a definitive acceptance by the collective consciousness of the people.³

Nevertheless, what began as a one year campaign, based on moral values, to put an end to such practices and publicize them whenever they existed, soon developed into an organization after the general international concern and attention it received. Soon different Amnesty International sections had spread throughout Europe, beginning in what was then West Germany. Moreover, after only eight weeks since its official birth, delegates from Western Europe and North America⁴ met in Luxembourg to decide about the future of their movement. They realised that the movement should not be limited to a one year campaign but had to develop into a permanent movement, bringing injustices to the attention of people and working on behalf of those wrongly imprisoned. Moreover, it had to change its name to Amnesty International⁵ in order to reflect

3-Speciale La STAMPA Anno 122 Suppl. redaz. de LA STAMPA n. 196, 8 Settembre 1988.

4-This includes Britain, France, Belgium, Ireland, Switzerland and the United States of America.

5-"The appeal quickly attracted international support and within a few short

its new status. By the end of that year, there were Amnesty sections in different countries with their headquarters in London.

The organization passed through different crises and tensions in the mid 1960s which could have had fatal consequences for its future. For example, the black African leader Nelson Mandela was imprisoned in 1962 and adopted by Amnesty as a "prisoner of conscience". However, two years later, when he was charged with sabotage, Amnesty decided not to adopt him as a "prisoner of conscience" in order to safeguard this term. He advocated violence and, according to Amnesty standards, did not have the right of adoption. However, it had to make sure that he would have a fair trial.

The discovery of the involvement of the British government in helping the organization financially could have killed the movement. Peter Benenson became very suspicious of his friends, thinking they were part of British Intelligence who were infiltrating the organization.⁶ This had negative effects on the work of Amnesty as its leadership split. At the same time there was tension in the relations between Amnesty and the Foreign Office over Amnesty's report on a former British colony, Aden.

This led to a meeting in Denmark in March 1967, in which the executive accepted the resignation of Peter Benenson, although he did not attend because of his involvement in the arrangement between Amnesty and the British government. The post of president which had been occupied by Benenson was abolished, and the new

months the ground work was laid for a permanent organization that eventually became known as Amnesty International." Amnesty International 1961-1976. A Chronology (London: Amnesty International, 1976) p.2.

6-J. Power (1983) op cit. pp. 16-17.

post of Director-General (later changed to Secretary-General) was created.⁷

Nevertheless, the organization survived these challenges and grew and expanded over the years, especially in the mid 1970s due largely to the protest associated with the Vietnam War. The ill-treatment reported in different countries made thousands of people believe in the goals of Amnesty and they joined its campaign. This, in turn, led to the expansion of the fields or countries investigated, such as China or Nicaragua, where the first missions and reports were carried out in the mid 1970s.⁸

What began as a small movement became an organization of more than 700,000 members, subscribers and supporters in almost every country. This number increased over time because of the efforts made by the organization in raising peoples' consciousness about their rights. The International Rock Tour "Human Rights Now!" which began on 2 September, 1988 in London, which comprised different countries in the four corners of the world, was instrumental in raising many peoples' consciousness and won them over to Amnesty's side. At each concert, the text of the Universal Declaration of Human Rights was read and distributed. Moreover, Amnesty International has established sections and local groups throughout the world. In May 1991, for instance, Amnesty was authorized to open an office in Moscow.⁹ Different groups are working on behalf of prisoners from different ideological and geographical backgrounds. Amnesty does not recognise any boundaries while carrying out its

7-Ibid., p. 17.

8-Interview of the author with Marie Staunton, Director of the British section, Amnesty International, London. Monday, 24 April 1989.

9-David W. Benn, From Glasnost to Freedom of Expression. Russian Openness and International Relations (New York: The Royal Institute of International Affairs, 1992) p.30.

work.¹⁰

Amnesty International has developed into a complex organization which continues its battle against human rights violations. This complexity can be seen in the organization's structure.

1-2: The structure of Amnesty

Diagram (4) 1 provides a concise summary of Amnesty's structure. It consists of the following:

1-2-1: Amnesty International's sections and groups

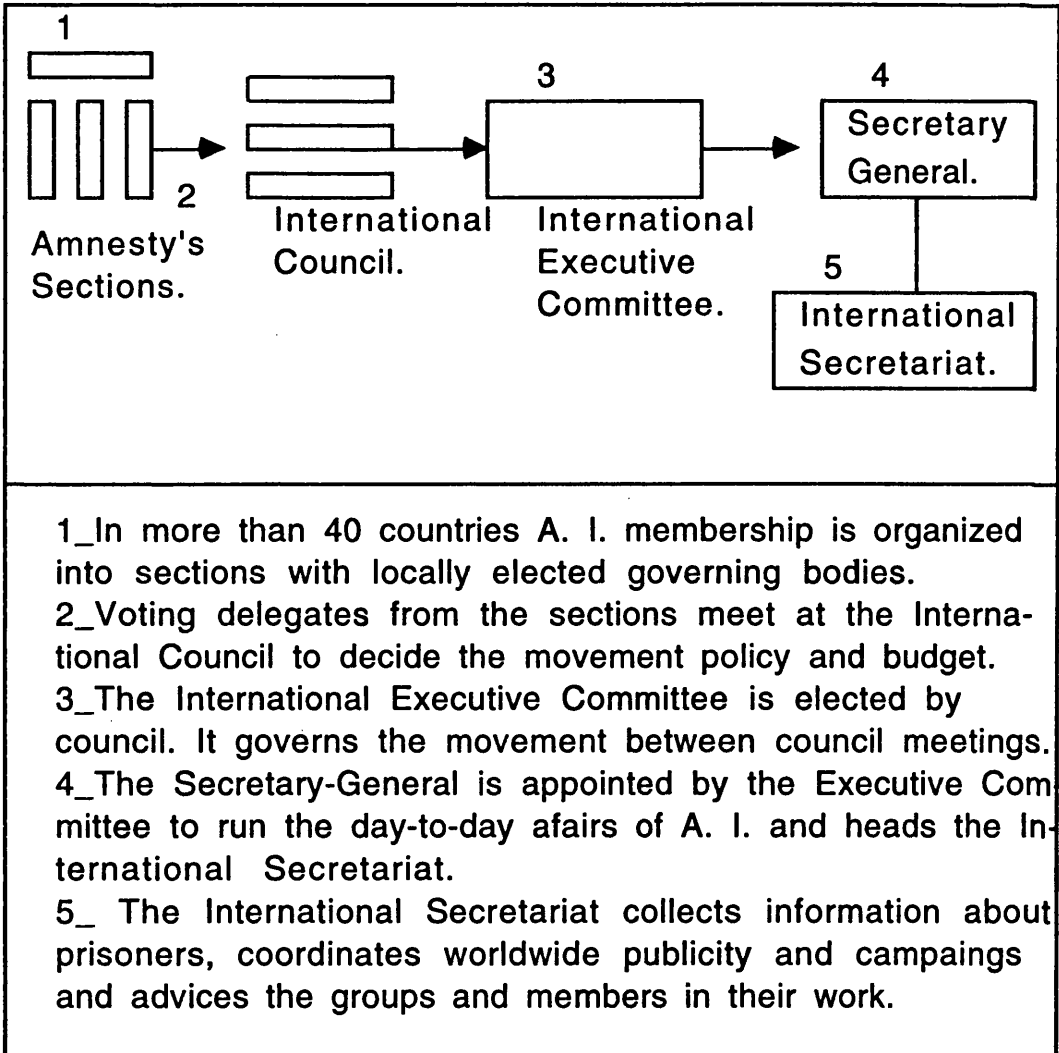
At the bottom of the structural hierarchy of the organization are Amnesty International's sections and groups which are recognized by the International Executive Committee. However, it should be pointed out that there are some local groups even in countries where there are no sections. These groups can be set up by applying for further information from either the Amnesty International section or from the International Secretariat in London. There are more than 6000 Amnesty groups in more than 70 countries.¹¹ They usually consist of 10 to 15 members whose main task is to work on behalf of

10-"Amnesty International accordingly recognizes no restrictions or frontiers" when working for the release of individual prisoners. It rejects charges that such action is 'interference in the international affairs' of that state in question, just as it rejects an attempted justification of torture and other forms of ill-treatment on the grounds of governmental expediency." M. Garling, The Human Rights Handbook: A Guide To British and American International Human Rights Organizations (London: Macmillan, 1979) p. 8.

11-Amnesty International, Amnesty International Report 1992 (London: Amnesty International, 1992)

individual prisoners. Their organizations differ from one group to another in a manner which they think will achieve better results, as long as the statutes and the goals of Amnesty International are observed.

Diagram (4) 1: The structure of Amnesty International



Source, Amnesty International Handbook, 6th edition, Amnesty International Publications, 1983, London. P.23.

Sections, however, as we have seen, now exist in more than 70 countries. They are of great importance to the work of Amnesty. They publicize its goals, increase peoples' awareness and engage in fund-raising. Their size depends on the country in which they operate. They might have a central headquarters and different

regional offices, or just a few members.¹² In carrying out their work, sections can appoint either one person or a group to act as country coordinators or coordination groups. Their main task is to coordinate efforts of the work in one specific country or one special part of the world. In other words, they play a key role between the Research Department in the International Secretariat, London, and different sections throughout the world to produce high quality and accurate reports about the countries that are chosen for investigation. Coordination is viewed as one of the major tasks of Amnesty's work. Nevertheless, it should be pointed out that these sections and groups are not allowed to work on behalf of prisoners in their own countries. In this way, Amnesty attempts to make its work more "objective".¹³ Moreover, professional groups such as doctors and lawyers may help these sections in working on behalf of different individual cases. Furthermore, these sections send delegates to the International Council.

1.2.2: The International Council

The International Council used to meet every year. However, from 1983 onwards it decided to meet every two years. About two to three hundred delegates or representatives of all the national sections attend the International Council, which is a democratically elected governing body and the only body which has the authority to

12-"All sections have an executive committee or national board elected by the members. It is responsible, either directly or through an office, for coordinating and administering the activities of the Amnesty International members and groups in that country or territory." Ibid., p. 25.

13-"These groups of private individuals work on behalf of up to three political prisoners- always selected from contrasting backgrounds and never from the group's own country." M. Garling (1979) op.cit. p. 9.

decide the movement's future policy. The International Council reviews the activities of the past two years, sets the plans for what is to be done for the next ones and approves the budget. Moreover, it elects eight members, including a treasurer, to the International Executive Committee.

1-2-3: The International Executive Committee

This Committee consists of nine elected persons, seven representing different Amnesty sections or countries, a treasurer, and a further member representing the staff of the International Secretariat. Apart from the latter who is only eligible for two years, all the others are eligible for two years renewable up to three mandates.

The Committee is the main governing body between two council meetings. It meets four or five times a year.¹⁴ It is responsible for implementing decisions taken by the International Council, and for discussing missions, publications and how to approach governments. Among its members, it elects its senior staff. Therefore, elections have been seen as one of the major tools through which Amnesty tries to safeguard its independence and impartiality.¹⁵ Moreover, since the mid 1960s, all Amnesty finances are carefully controlled and scrutinized to avoid any governmental involvement.¹⁶ Its

14-"The International Executive Committee normally meets four times a year" Amnesty International Handbook (1983) op. cit. p. 26. See also J. Power (1983) op. cit. p. 24 when he states that:"It meets as often as necessary, usually four or five times."

15-Interview source, note 8 above. A sample of these elections could be seen in those who hold the post of General-Secretary. Up to 1981 there were: Irish, German, Swede, Chilean.

16-"No government donations can be accepted by any part of the movement,

budget is controlled either by the International Council or the International Executive Committee, and the treasurer is responsible for its expenditure. The records are always kept and are available for public inquiry.

The International Executive Committee can set up international specialist advisory committees to help it in carrying out its work, such as the financial control committee or the medical advisory board.

1-2-4: The International Secretariat

This is the headquarters of the movement based in London. It began in Peter Benenson's office and developed into a complex secretariat with more than 250 paid staff from more than 40 countries. There has been a lot of argument about moving it from London to a neutral country. Benenson, even after he retired, still believed that the Secretariat should not be based in London. However, because of the wide range of activities that London offers, the Secretariat, it was thought, should remain there.

Although it seems that much of the work is carried out by the local groups throughout the world, nonetheless, it is the International Secretariat which makes the crucial decisions and keeps the international sections and local groups up to date when gathering information, and gives directives to them. The International Secretariat is divided into different departments, which are

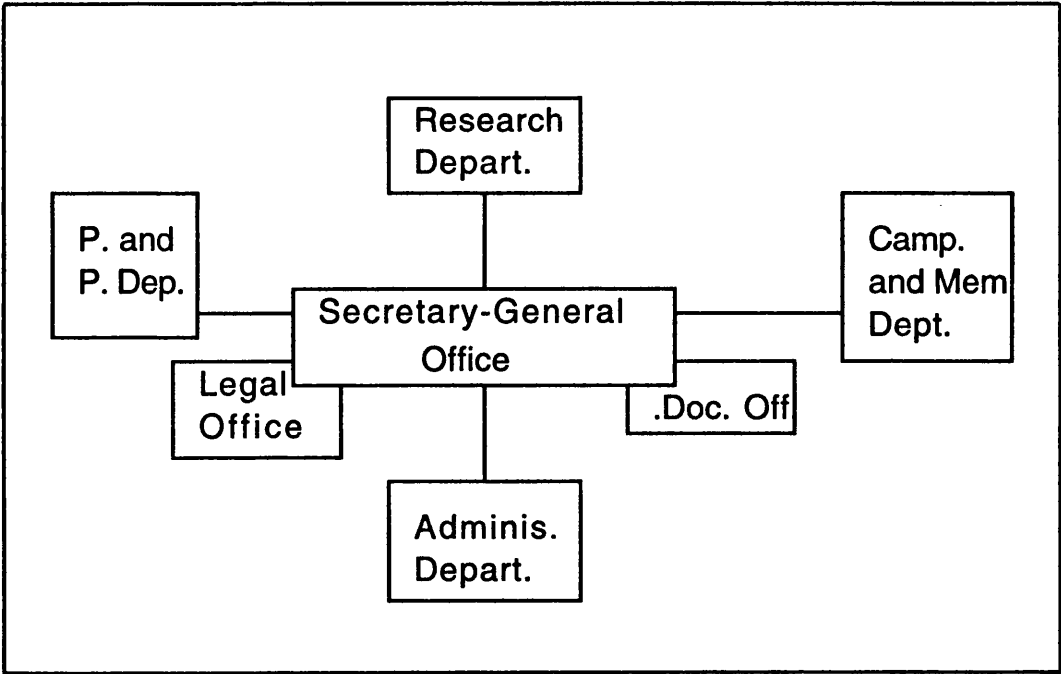
nor can government money be sought for international budget...The International Executive Committee must be notified for all the donations to sections that amount to more than five percent of their annual income." Amnesty International Handbook (1983) op. cit. p. 34.

highlighted in the following table. Then, the roles performed by them will be briefly discussed.

1-2-4-1: Secretary-General Office

The Secretary-General and his deputy are responsible for the everyday activities of the organization. They are involved in making public statements, and give guidance on how to approach governments. The Secretary-General implements decisions of both the International Council and the International Executive Committee, and heads the International Secretariat. His office is involved in coordinating different departments within the Secretariat. In doing so, it benefits from the help of two specialized units: the legal office and the documentation centre.

Diagram (4) 2: The structure of the International Secretariat



The Structure of the International Secretariat.

Source: Amnesty International Handbook, op. cit. p.28.

Legal Office: This gives advice about international human rights standards and different legal questions,¹⁷ whether they concern Amnesty's statute or the interpretation of the standards that the organization tries to safeguard.

The Documentation Centre: is the main point where all the information is kept. All Amnesty's work is based upon different information gathered about prisoners or countries, so that it can act on their behalf or confront governments with their findings. All information whether produced by the Secretariat itself or different sections and other organizations is kept in this centre. Different information is supplied whenever it is needed in the form of archives, video-tapes, or library references.

1-2-4-2: Research Department

Research is crucial to the whole work of Amnesty. The Research Department, therefore, plays a significant role in enhancing the quality of the work produced since it is involved from the first act of collecting information to its publication. Great care is taken in analyzing and verifying the information obtained to distinguish between facts and allegations. All information presented about torture, ill-treatment and capital punishment is, according to Amnesty, accurate.¹⁸ From the information available it decides who can be named and adopted as a "prisoner of conscience", then passes it to different sections to work on the person's behalf with the relevant instructions and guidance. The Research Department is divided into five sections or divisions (on a geographical base) and

¹⁷-Ibid., p. 29.

¹⁸-Interview source, note 8 above.

each division covers a different part of the world. These include Africa, Asia, the Americas, Europe and the Middle East. Each division is analysed through annual reports produced by Amnesty. This allows each division to work on a particular geographic area to produce more specialized and accurate accounts. The Research Department also has a wide-ranging network of contacts, as well as making proposals about the distribution of relief and helping prisoners and their families.

1-2-4-3: Campaign and Membership

This department has the task of liaising with different Amnesty International sections, groups and members worldwide to coordinate their actions or to ask for urgent action whenever it is needed. Moreover, it has the task of seeking support and increasing Amnesty's membership in other parts of the world, apart from western countries where its membership is overwhelmingly concentrated.

1-2-4-4: Press and Publications Department

This Department is responsible for Amnesty's relations with the press and the distribution of Amnesty International's Newsletter. It is in constant contact with different Amnesty sections to assist them in their efforts to publicize the work of the movement. Although the official languages of the movement are English, French and Spanish, this department is responsible for translating publications and leaflets into different languages when the former ones are not

spoken.

1-2-4-5: Administration Department

This department has the task of managing the office and the financial procedures. It is responsible for training new personnel, and arranging travel when a mission is to be carried out.

The preceding structural explanation of Amnesty International's hierarchy is necessary to understand the work of this organization and the extent of its impartiality. The subject of the following section will be Amnesty International's mandate.

II: Amnesty International: The mandate

This section focuses on Amnesty International's mandate. In other words, on the basis upon which the organization operates in carrying out its work. One has to understand the mandate in order to better understand Amnesty International's work. Furthermore, this is necessary background to issues which will be raised later in this chapter.

Amnesty has limited itself to certain aspects of human rights violations worldwide, and works within these set limits. These aspects are as follows:

2-1: To free prisoners of conscience

In the early 1960s, when Peter Benenson wrote his article entitled "the forgotten prisoners", he stated that:

Open your newspaper any day of the week, and you

will find a report from somewhere in the world of someone being imprisoned, tortured or executed because his opinions or religion are unacceptable to his government.¹⁹

Nevertheless, even today, more than three decades since Benenson wrote his article, the same abuses and kinds of reports are to be found daily. Moreover, such practices are likely to continue in the light of the different political, social and economic circumstances of different countries.

Amnesty, nonetheless, is trying to decrease this practice by demanding the unconditional release of all the prisoners it has characterized as "prisoners of conscience."

It should be pointed out from the beginning that there is not a generally agreed definition of "prisoners of conscience". Although Amnesty tries to define it, there remains some ambiguity. According to Amnesty International, "a prisoner of conscience" is someone who has been imprisoned because of holding opinions contrary to those of the state, providing that he/she did not advocate violence.

However, whether a person has advocated violence or not in expressing his/her thoughts is not the only determinant factor to judge whether a person should be considered "a prisoner of conscience". It is well understood that Amnesty tries to protect this concept by isolating it from any violent or criminal behaviour, so it can work on behalf of any person whenever it hears of anyone being imprisoned. If a person has advocated violence, he/she will be considered as "law breaker" or "criminal" by his/her government, and therefore, there will be no room for Amnesty to act since the

19-L. A. Sobel, Political Prisoners. A World Report. Facts on the File (New York: Amnesty International, 1978) pp. 1-2. See also F. E. Dowrick, ed., Human Rights, problems and perspectives and texts (Aldershot: Gower, 1979) p. 125.

person is convicted and sentenced because of his violent acts. It is a question of heads you lose, tails I win on the part of these governments. One faces a situation where hundreds of people are jailed or tortured solely for expressing their views, whereas their governments claim that they did so because they are trouble makers, and different organizations, among them Amnesty, close their eyes in order to safeguard their image as respectable organizations which do not support "terrorist acts". However the minimum Amnesty claims that it will make sure that everybody has a fair trial. Nelson Mandela is an example par excellence of a prisoner who was not considered as a "prisoner of conscience" because he was convicted of sabotage in 1964. At the same time the Universal Declaration of Human Rights, which Amnesty seeks to implement, does recognize the use of violence as a last resort.²⁰

Therefore, a prisoner of conscience, according to Amnesty International, is characterized by the non-use of violence and imprisoned because of his/her opinions. But is the definition adequate and can one rely on Amnesty's literature? In other words, are "prisoners of conscience" defined in this way only in Amnesty's publications? The answer of course is no. This term has been used to describe some people being captured, tortured by mistake, or because of their family ties with a genuine "prisoner of

20-Among its purposes "Amnesty International seeks observance throughout the world of the United Nations Universal Declaration of Human Rights and the UN Standard Minimum Rules for the Treatment of Prisoners." See Amnesty's Charter in its various publications. However, according to the preamble of the Universal declaration of Human Rights, C. Desmond reminds us that the Declaration "recognizes that if human rights are not protected by law, then men will be compelled, as a last resort to rebel against repression and tyranny." C. Desmond, Persecution East and West, Human Rights, Political Prisoners and Amnesty (Harmondsworth: Penguin, 1983) p. 48.

conscience."Although Amnesty insists on not adopting or considering people imprisoned by mistake as "prisoners of conscience",²¹ a very convincing example of that could be found in one of Amnesty's publications itself, which states that:

In El Salvador, two married couples and their young children are staying in a friend's house while she is away, when uniformed members of the security forces burst in, demanding to know where the friend is. They tortured the adults in front of the children, then beat the screaming children-one aged five-before taking all to San Salvador's central barracks. Some days later the children are found in a juvenile reform center. The adults have "disappeared", they became prisoners of conscience.²²

In this case, there is no indication of the political or ideological beliefs of the two adults. Nobody knows whether their opinions are opposed to the state or not, or even whether they have any political opinions at all. If one knows a wanted or a "suspicious" person then it does not follow that one shares their opinions. If the owner of the house, in the case above, could be classified as a "prisoner of conscience", this does not mean in any case that their friends would be. All it says is that they were at the wrong place at the wrong time and considered by Amnesty as "prisoners of conscience". In this example, their conscience has nothing to do with their being imprisoned.

In line with this analysis, the adoption of anybody imprisoned solely because of his ideas without any use of violence could give rise to different violations of human rights through the widespread advocacy of racist ideas. An Amnesty spokesman has said that:

They would adopt as a prisoner of conscience a person

21-Interview source, note 8 above

22-C. Desmond (1983), op. cit. p. 47.

imprisoned for expressing racist views, provided only he/she had not advocated violence.²³

This could be a real threat to some other aspects of human rights in today's world, especially in a European context, after the reemergence of extreme right wing groups in Western Europe. What would have been the fate of hundreds of thousands of people in France, especially from North Africa, for instance, if a man like J. M. lePen, leader of the National Front, notorious because his racist ideas, had won the presidential elections in France? Let us assume that he was imprisoned at a time because of his racist ideas -although it is highly unlikely to happen in a country like France where freedom of expression is guaranteed. Further, he was adopted by Amnesty as a prisoner of conscience, since he fitted the standards and was then freed. As President he would have deported almost every immigrant worker under his famous slogan "La France pour les Français." Then the question to be asked here is, what would have been the position of Amnesty International in regard of such violations? Once again, one can find that there is an antagonism between the provisions of the Universal Declaration of Human Rights and the other international instruments that Amnesty tries to implement on the one hand, and its work in practice on the other.

Not only is the term "prisoner of conscience" ambiguous and the criteria by which it is defined not clear cut or widely acceptable, but some political considerations could be involved in making such a judgement. Anybody who is in a psychiatric hospital in the West can be considered as just mad, but a similar patient in the former Soviet Union could have been considered as a "prisoner of conscience",²⁴

23-Ibid., p. 50.

24-Interview source, note 8 above. The Director of the British Section assured

regardless of the norms of the society or its laws²⁵ and the historical, economic situation of the country.

Moreover, Amnesty seeks "the unconditional release of all prisoners of conscience" by publicizing their cases and working on their behalf,²⁶ and it proclaimed 1977 "a prisoner of conscience year."²⁷ Nonetheless, such an unconditional release is considerably difficult to be achieved world wide since it depends on the will of governments themselves.

2-2: The death penalty

The death penalty is the very first violation of human rights, and all other rights depend on the right to life. It would be absurd to speaking about the rights of the people, regardless if they were

the author that there have been some standards widely accepted, developed by the World Psychiatric Association. And it is these standards that Amnesty takes into consideration when dealing with cases.

25—"Under the Soviet law if you are said to have committed a crime and if at the same time that there is a reason to believe that you were not or are not in your right senses or were not at the same time of committing it, then your psychiatric examination must be ordered." F. E. Dowrick ed., (1979). op. cit. p. 130.

26-A petition signed by more than one million people who called for the release of all prisoners of conscience held in any country, presented on 8 December, 1983, by Amnesty International to General Assembly President Jorge E. Illueca and United Nations Secretary-General Javier Perez de Cuellar, stated that: "Thousands of men and women are in prison throughout the world solely because of their political or religious beliefs. Others are held because of their colour or ethnic origin. These are prisoners of conscience-none has used or advocated violence.

None of these people should be in prison. The fact that they have been arrested and punished because of their beliefs or origins is an affront to humanity. They should be freed unconditionally." U.N. Chronicle Feb. 1984, Vol. xxi, Number 2. p.53.

27-L. A. Sobel (1978) op. cit. p.1.

economic, social or political, if the right to life is threatened. Therefore, Amnesty International is totally opposed to it. Thomas Hammarberg, a former director of the British Section, stated that:

Amnesty International is committed by its statute to oppose by all appropriate means the imposition and infiltration of the death penalty, on the ground that it violates the right to life and that it is the most cruel, inhuman and degrading of all forms of punishment.²⁸

However, if Amnesty International does not believe in capital punishment and works for its total abolition, it does not offer an alternative that would be applicable. Some argue, among them Amnesty International, that the death penalty is a barbaric act and one of the most cruel punishment, however, others see that imposing it is sometimes the only punishment that meets the crime committed. Moreover, there is no genuine alternative punishment to it that satisfy both parties, i.e., Amnesty International on the one hand insists that the death penalty should no longer be carried out, and on the other hand society demands that the crime committed receives the appropriate punishment. This issue has been raised with Amnesty ²⁹ and the organisation thinks that the outcome will very much depend on the situation and the country itself, though life imprisonment is a viable alternative. However, if the alternative does depend on the country itself, the abolition or implementation of the death penalty depends as well on the situation of the country and its particularities whether inspired from its beliefs, because of the political instability and the general situation in which the sentence is imposed to be a threat to the others. To emphasise its total abolition

28-Amnesty International Report, The Death Penalty (London: Amnesty International, 1979) p.1.

29-Interview source, note 8 above.

represents Amnesty's viewpoint, but does not necessarily represent the views of different countries. Some leaders believe in its cruelty and their desire to abolish it, nonetheless it is recognised to be a necessity in some instances. Amnesty states that:

Colonel Qaddafi called for the death penalty to be abolished and replaced with life imprisonment. In 1985 he expressed his personal opposition to the death penalty as a cruel punishment but that it should be used in certain cases.³⁰

To believe that life imprisonment is a genuine alternative to the death penalty is to create some controversies about the situation of the people imprisoned. Moreover, people sentenced to life imprisonment might benefit from the general amnesties whenever presidential elections are won or a human rights day is celebrated.

There is much controversy about the use of the death penalty. A lot of errors can happen, and many people can be wrongly convicted. Some countries do implement the death penalty because of their internal situations, others because of their traditions and beliefs, as will be seen later in the case studies.

Nevertheless, one should be objective in determining whether the death penalty is a violation of human rights or not. In other words, do countries which have abolished it have better human rights records than those which have not? Moreover, should it be abolished in the first place or not?

Some think, among them Amnesty International, that the abolition of the death penalty is a very significant step in observing human rights. However, it would be better if it remained for some cases. It is absurd that capital punishment is carried out in some

30 - Amnesty International Journal of the British Section of Amnesty International No. 33, June/July 1988. p. 3.

countries such as China, to name just one, for a wide range of offenses which do not deserve this sentence, but that it should remain in some cases as a warning for others to decrease the rate of crimes above all. It should not be carried out as mass killings such as in Iran or as rally killings in China. A mass killer does not deserve less than capital punishment for the crimes he/she committed regardless of whether Amnesty thinks that his/her country does not observe human rights. The right of the collective should come before the right of a person in this case. How important is his life compared to the lives of the collective? And to some extent this is the reason behind different opinions advocating the use of the death penalty.

2-3: A prompt and fair trial

It should be pointed out from the beginning that Amnesty International seeks a fair and prompt trial for all political prisoners, which in one way or another relates to the major area of freeing "prisoners of conscience."

Amnesty International distinguishes between a "prisoner of conscience" as discussed earlier and a political prisoner. The latter is someone who has been imprisoned because of his beliefs and opinions while advocating violence.³¹ If a person has advocated violence, Amnesty would not have the credibility to ask for his release,³² but only for fair a trial. The question is how can this fairness be achieved?

Amnesty believes that a prisoner should have a solicitor and be tried in public. It relies on the expertise of its representative through

31-Interview source, note 8 above.

32-Ibid.

missions. Missions are frequently sent to different countries to observe trials. They are always public since Amnesty does not believe in clandestine missions. The delegates are forbidden from talking to the press, and urged to declare themselves to the authorities and the judges in the courtroom.³³ Such practices have proved very successful in ensuring fair trials.

Nevertheless, the differences between the criminal codes and their ambiguity make the task very difficult to state whether a trial was fair or not. A person convicted under article 70 of the R.S.F.S.R. criminal code,³⁴ for instance, could be considered to have had a fair trial from the former Soviet point of view, but not from Amnesty's. Then, the question to be asked is: "What are the main criteria upon which one might suggest that the trial was fair or not?"

There are acceptable general principles of fairness that can be applied generally, e.g., presumption of innocence, equality before the law and the right to a defence lawyer, upon which one can judge whether a trial was fair or not. However, what is fair is what can find its justification in the general opinion which believes in that practice, which, in turn, finds its acceptance rooted in the social system as a

33-"Amnesty International does not send secret missions to trials and therefore a trial observer will be expected to declare his or her presence to the court and inform both prosecution and defense of Amnesty International's interest." Amnesty International, Journal of the British Section, op. cit. p. 13.

34-Article 70, section 1 of the criminal code of the R.S.F.S.R. stated (until 1991) that: "Agitation and propaganda carried out with the purpose of subverting or weakening the Soviet regime or in order to commit particularly dangerous crimes against the State, the dissemination for the said purposes of slanderous inventions declamatory to the Soviet political or social system or production or harboring for the said purposes and literature of similar content, are punishable by imprisonment for a period of from six months to seven years and with exile from two to five years, or without exile, or by exile from two to five years." D. Lane, State and Politics in the U.S.S.R (Oxford: Basil Blackwell, 1985) p. 273.

whole. In other words, what is fair is what finds its acceptance and response from the public in a particular area in a given period of time. And, given the diversity of societies and cultures, what could be considered as fair in one country, cannot perhaps be considered as such from another point of view or in another country.

III: Case studies

The choice of countries that are included as case studies has not been an easy task. The countries chosen should be from a different political and ideological background than that in which Amnesty International has developed. Although Amnesty claims to be independent and does not support any political or economic system, nonetheless, the choice of countries should help us to gain a better understanding of the work of this organization in a different context. First of all the choice of a Communist country should be unavoidable, because it has a different perception and priorities in terms of human rights than those which Amnesty tries to defend. In this context, the former U.S.S.R. could have been the most natural choice since it is the leading country in experiencing "communism", and a great deal of literature, especially Amnesty's publications, are available on its record. However, as pointed out in the previous sections, Amnesty International tries to implement the provisions of the Universal Declaration of Human Rights, and its work is based especially on pointing out the gulf between what countries commit themselves to do, and what they then do in reality. Garling states that:

By approaching governments from the angle of their own prior commitments, Amnesty International has a

moral leverage through which to press for the release of individuals or the redress of particular injustices.³⁵

Since the former U.S.S.R. ratified the two International Covenants, China could offer, to some extent, the same characteristics but did not ratify either of the instruments. It is thus not legally bound to observe their provisions. Moreover, it has its own perception of human rights, and it is the most populous country in the world, which make its inclusion in this study desirable in itself.

The second country chosen is Nicaragua. the choice was made for political reasons, and most notably for the instability of the political system. Nicaragua has experienced a great deal of human rights violations under the dynasty of the Somoza family, and it would be interesting to see how the revolutionary government under president Daniel Ortega has tried to cope with the pressure.

The last case study will focus on the backward countries in the Middle East. These countries provide a unique environment in which Amnesty International works. The influence of Islam, especially on the death penalty, is of paramount importance and how a compromise between Amnesty's and Islam's view on the matter is reached will be discussed.

3-1: China

First of all, it should be pointed out that it is difficult, if not impossible, to have a clear picture of the human rights situation in China, at least till the late 1970s. It was only after the death of Chairman Mao and the relaxation of Chinese politics through "the Beijing Spring", that Amnesty International produced its first full

35-M. Garling (1979) op.cit. p. 8.

report.

China was generally agreed to have had one of the worst records of human rights violations, especially during the decade of "the Cultural Revolution", about which little information was available at the time.³⁶ The difficulties in assessing the human rights situation in China are practical. It is the most populous country in the world, and yet the flow of information is almost non-existent -though there has been some improvement in the 1980s as will be seen later. The diversity of the country and the issues to be analysed as well as the strict control on freedom of movement and granting visas to foreigners add to these difficulties. Moreover, China has its own perception of human rights and does not believe in international standards. To apply Amnesty International's standards to China was therefore to invite discord. Roberta Cohen argues that:

Its [the Chinese] official conception of human rights markedly diverges from that of the West. Specifically it does not accept "western human rights standards"... China's own concept of human rights sharply differs from those in the Universal Declaration of Human Rights... its authorities have had to give precedence to food, shelter, health care and education over the other rights.³⁷

Nevertheless, the situation in China began to change after the

36-According to Fang Lizhi, the Chinese Sakharov, "[T]he true record of human rights in China has been hidden: the Chinese authorities have blocked any communication about it. Some have been misled into believing that China has been free of human rights violations." Fang Lizhi, "China is a World Problem", *Index on Censorship* Vol 21 No 8 September 1992 p.2. However, the Chinese authorities acknowledged, in 1981, that "[A] total of 729,511 were framed and persecuted... of whom 34,800 were persecuted to death." A Great Trial in Chinese History (Beijing: New World Press, 1981) p.20

37-R. Cohen, "The Peoples Republic of China. The human rights exception" *Human Rights Quarterly* 9 (1987) p. 464.

death of Mao. The dark years of the Cultural Revolution have been highlighted and different figures about the people who suffered have been offered. Thousands of people were granted retrials.³⁸ Moreover, there was a moment of relatively free expression during the "Beijing Spring", which unfortunately did not last for long.

What should be mentioned in this period is that the Chinese adopted two different constitutions (1978 and 1982) and more significantly changes occurred in the judicial apparatus. The adoption of a new criminal code in 1979, which came into effect on 1st January, 1980 was seen as a significant step forward by the Chinese leadership in the building of a "socialist democracy". This criminal code was intended to increase the protection of citizens from persecution and arbitrary detention, in order to put an end to the years of "lawlessness" that had characterized the Cultural Revolution.³⁹ However, the question to be asked here is not whether the Chinese had developed measures to respect their citizens' rights, but how far did they go to respect the measures themselves? In other words, is there a gap between the official commitment of the

38-James Seymour, "China" In J. Donnelly, and R. E. Howard, eds., International Handbook of Human Rights (New York: Greenwood, 1987) states that: "By the end of 1981, 1.2 million criminal cases of Mao's era had been reviewed, and 326,000 people were granted retrials" p. 80. See also, Amnesty International report, Political Imprisonment In the People's Republic of China (London: Amnesty International, 1978) : "since 1977 the Chinese official press has published a number of cases where violations of human rights committed in the People's Republic of China (P.R.C.) during the past ten years have been redressed" (p. ix).

39-Amnesty International Report China: Violations of Human Rights. Prisoners of Conscience and the Death Penalty in the People's Republic of China (London: Amnesty International, 1984) states that: "Since 1979 the People's Republic of China has adopted a number of laws in an effort both to build up a legal system and to put an end to the "lawlessness" which had prevailed during the Cultural Revolution." p. 6.

Chinese government, i.e. the constitution and the criminal law, and what is happening in reality? Did the old practices continue despite of the adoption of the new measures?

According to official policy and the official statements by the Chinese government, the question of human rights does not arise in the country. A Foreign Ministry spokesman questioned by foreign journalists in Beijing reportedly said that:

The question of political prisoners and human rights violations did not arise in China as its constitution granted citizens the right to speak, to meet, to demonstrate and to publish.⁴⁰

However, one should not only limit oneself to official statements or laws, but to what is happening in reality. Different international reports, especially those by Amnesty International, suggest that in China "*plus ça change, plus c'est la meme chose*",⁴¹ at least as far as the judicial system is concerned, which remains a major weakness in observing the rights of the Chinese people. The bloody events that Tienanmen Square witnessed in the first week of June 1989,⁴² prove the Foreign Ministry spokesman wrong and show that China has a long way to go to secure such rights.

Equality of all the citizens before the law is stressed by the Constitution adopted in 1982,⁴³ nonetheless, such rules do not exist

40-Amnesty International Report (1986) p. 215.

41-Fang Lizhi states that: 'According to incomplete statistics, there are at least 976 labour reform camps in China. It is hard to know exactly how many people are in them, but we do know that the inmates of certain camps in Xinjiang Province number between 50,000 and 80,000.' Fang Lizhi, (1992) op. cit. p.2

42-According to Amnesty International "[A]t least 1,000 people were killed and thousands injured in the capital, Beijing, in early June [1989] when troops fired into crowds of unarmed protesters and bystanders to suppress pro-democracy protests.' Amnesty International, Amnesty International Report 1990 (London: Amnesty International, 1990) p.65.

43-China: Violations of Human Rights (1984) op. cit. p. 76.

in the practices of the judicial system since political considerations are always taken into account when dealing with individual cases.

According to Jonathan Power,

Political considerations have always been taken into account in the treatment of offenders, and this trend has been marked since the Cultural Revolution.⁴⁴

This, of course, was inspired by Maoist teaching when the C P C Chairman declared that the concept of the people varied in different periods of time, and therefore, everyone could be subject to the dictatorship of the proletariat depending on the circumstances of that period of time.⁴⁵ Those who are subject to the dictatorship are deprived of their political and civil rights and therefore considered as having a "bad political background" or "bad class origin". Such labels are carefully scrutinized when investigations are going on. If a person had committed an offence, then the judgement would very much depend on his/her background. Thus, in its report on political imprisonment in the People's Republic of China (1978), Amnesty stated that:

...all cases are treated in the light of political considerations. For instance, petty offenders who have committed minor theft or engaged in speculation may be merely criticized if they have good political or good work records, and good class backgrounds.... On the other hand, the same offence may be punished severely if the offender's social and political background is "bad", in which case his or her "crimes" will be considered to be of a political nature.⁴⁶

This practice, of course, opposes the norms of a fair and prompt trial that Amnesty stresses. The role of the judiciary is clearly

44-J. Power, (1983) op. cit. p. 77.

45-Political Imprisonment in The P.R.C. (1978) op. cit. p. 9.

46-Ibid., p. 13.

defined, but it is heavily under the influence of the Chinese Communist Party. Although the Chinese Criminal Code stresses that nobody should be detained without any charges after 72 hours of detention, the evidence suggests that this rule is not respected.⁴⁷ Perhaps the most publicized case, as far as the French speaking world is concerned, is that of Li Shuang, the Chinese fiancée of Emmanuel Bellefroid, a French diplomat in Beijing. She was arrested on 9 September 1981 without any charges being prepared against her, and her parents were not allowed to visit her. Two months later she was sentenced to two years of reeducation.⁴⁸

A person in detention is asked to write daily reports about his past activities that might help the court to convict him. It is a compulsory act and if someone fails to do so then they are charged with non-cooperation with the authorities. It is like a "theatrical place" where everybody knows exactly what to say, and the judgement was sometimes decided before the trial took place.⁴⁹ The court's judgement depends very much on the defendant's confessions, and because of the official policy which stresses that: "confession deserves leniency, resistance deserves severity" or "leniency is given to those who confess their crimes and severe punishment is given to those who refuse to do so",⁵⁰ some people do

47-"A Japanese journalist, Tadashi Ito, reported in 1977 that some Japanese lawyers who visited China in 1975 and attended the court proceedings of a man charged with embezzlement learned that three months had passed between his arrest and his prosecution." Ibid., p. 46. Moreover, "[T]here is no presumption of innocence in Chinese law and trials are often a mere formality, with the verdict decided before the trial.: Amnesty International Report (1990) op. cit. p.67

48-For a detailed description of the events see: Le Monde 7, Octobre, 1981. Trente-huitieme Année, No. 11411. Le Monde 12, October, 1981. Trente-huitieme Année, No. 11468.

49-Political Imprisonment in China (1978) op. cit. p. 55.

confess their "crimes", or are presumed to be guilty, even if they did not commit them "to secure lenient treatment".⁵¹

Such an emphasis on the defendant's confession has led to the use of torture and coercion to extract confession. Although such a practice is totally prohibited by law, it is still a common practice in China's prisons and camps. In its 1988 Report, Amnesty International states that:

The use of torture is prohibited by law. Despite an official drive which began in 1985 to publicize torture and punish responsible officials, cases of torture by police were reported from various parts of China.⁵²

The adoption of a new criminal code which was intended to improve the human rights situation in China has not curtailed these abuses. Moreover, it has made things worse in some areas. There are still a lot of people illegally detained. Their number has increased over the years. According to Amnesty International during the first half of 1986, "the number of cases (of illegal detention) nearly doubled over the same period last year, to 949, in which more than 140 were reported to have been tortured,"⁵³ let alone people detained during the last events in Tienanmen Square solely for expressing their views, and their legitimate demands for peaceful self-expression.

However, perhaps the most significant measure is that the new

50-Ibid., pp. 47-54.

51-Amnesty International Report (1986) states that: "At the beginning of the trial Xu Wenli, unsuccessfully asked for the presiding judge to be withdrawn on the grounds that the judge had presumed him guilty, having asked him to acknowledge his guilt on several occasions before the trial 'to secure more lenient treatment'." p. 215.

52-Amnesty International Report (1988) p. 155.

53-Amnesty International Report (1987) p. 224.

criminal code failed to abolish the death penalty. There is no suggestion here that such a practice should be abolished in China, as Amnesty requires. Nonetheless, a comparison between the two periods (before and after 1980) suggests that the situation has worsened; not only in terms of the number of cases punishable by the death penalty, but also the speed of sentencing after the judgement as well. Moreover, different courts, apart from the Supreme People's Court, can pass death sentences without referring to the Supreme People's Court.⁵⁴

However, the death penalty is not always carried out in China. A person sentenced to death can have his sentence suspended for two years to judge how willing he is to be reeducated. According to the New China News Agency, 6 July 1979:

If a criminal shows real signs of repentance and performs meritorious service, his sentence may be commuted to life imprisonment or to a term of not less than 15 years and no more than 20 years.⁵⁵

The extensive use of the death penalty is to be explained by the particularities of China itself. The social and economic situation in which China is living has, undoubtedly, influenced its position towards capital punishment. If not, how can one explain the use of the death penalty for crimes which do not deserve such a severe punishment? James Seymour states that:

54-China: Violations of Human Rights (1984) op. cit. states that: "However, since 1981 the number of offenses carrying the death penalty has doubled... Legislation has been adopted on several occasions since 1982 not only to increase the number of offenses punishable by death, but also to speed up proceedings in death penalty cases... a decree was adopted which ended the review of all death sentences by the Supreme People's court." p.53. See also Amnesty International Report : "In order to speed up the procedure for execution, it also became possible for the Provincial High Courts to approve death sentences without referring them to the People's Court." p. 217.

55-China: Violations of Human Rights (1984) op. cit. pp. 63-4.

Most subjected to capital punishment were often accused of internationally recognised crimes, but often the offenses of economic crimes which could result only in a short prison term in the West.⁵⁶

Unlike Amnesty International's position, the Chinese officials do stress the importance of the death penalty "to safeguard social order". It is used as a warning in order to decrease the number of criminal cases.⁵⁷ Nevertheless, despite these measures, China still has a long way to go in observing human rights, not just to international standards, but even to accommodate its practices with its own laws and constitution. The recent events that shook the country may persuade the government to think about new measures and to cope with the demands of the population. The shortcomings of the Chinese government in securing economic and social rights could have an influence on its position. It may perhaps become more flexible in relation to civil and political rights.

56-James Seymour, in Donnelly, J. and Howard, R.E. eds., (1987) op. cit. p. 84. See also Amnesty International Report (1986) which states that: "Six people were sentenced to death in April (1985) in Xian, the capital of Shaanxi province, for holding "dance and sex parties" at home. Three of them were executed by firing-squad immediately after sentencing by the Xian Intermediate People's Court." pp. 218-9.

57-The New China News Agency reported, on 18 November 1983, that "criminal cases recorded an overall drop of 46.7 per cent nationwide from August to September, with a 38.7 per cent decrease in major cases. In October, there were 11.5 per cent fewer criminal cases than in September, while major cases dropped a further 28.5 per cent. Crime rates in September and October were the lowest in recent years." China: Violations of Human Rights (1984) op.cit. p. 80. Furthermore, on 2 November 1983 a spokesman of the Chinese Foreign Ministry is reported to have acknowledged the receipt of the letter and to have said: "criminals must receive the punishment they deserve according to the law. This is a normal measure and routine work to maintain the public security of a country. It is the internal affair of the country." Ibid., p. 56.

3-2: Nicaragua

As indicated earlier, Nicaragua was chosen mainly for political reasons.⁵⁸ The instability that the country has been experiencing makes the task of evaluating its human rights performance very difficult. Catherine Gander argues that:

It is difficult to provide a relatively durable evaluation of human rights in a country undergoing revolutionary transformation. Economic, political and social relations change very quickly, in comparison to more "stable" systems that have evolved gradually over a century or two.⁵⁹

Nevertheless, an attempt will be made to compare the two periods that Nicaragua has witnessed, i.e., before 1979, during the years of the reign of the Somoza family, and after July 1979, when President Anastasio Somoza Debayle fled the country to the United States and the revolutionary government assumed power.

It is generally agreed that the worst violations of human rights that occurred in Nicaragua were under the Somoza dynasty. Ironically enough, the country was not under international scrutiny until the late 1970s.⁶⁰ Amnesty International, for instance, sent its first mission to Nicaragua in May 1976. This question was raised

58-For a general discussion on Nicaragua see T. Walker, Nicaragua, The Land of Sandino 2nd edition, revised (Boulder and London: Westview, 1986)

59-Catherine Gander, "Nicaragua" In J. Donnelly, and R. E. Howard, eds., (1987) op. cit. p. 253.

60-"Although it was a matter of public knowledge that the Somoza dynasty had consistently violated the human rights of the Nicaraguan people since its inception, for many years the situation in Nicaragua was not the object of much public scrutiny at the international level. In 1978 and 1979 things began to change." Q. C. Medina, The Battle of Human Rights. Gross, Systematic Violations and the Inter-American System (The Netherlands, Martinus Nijhoff, 1988). p. 288.

with Amnesty and the delay was ascribed to practical difficulties, i.e., the Research Department in the International Secretariat did not expand enough, at the time, to cover different countries.⁶¹

However, one further explanation for this delay is the fact that the Sandinista National Liberation Front (F.S.L.N.), which took the task of organizing resistance to the Somoza's government, had Marxist-Leninist tendencies.⁶² The fear of "communism" widespread in Latin America led to public opinion turning a blind eye, and the Somoza government was labelled corrupt rather than one that abused human rights. In the mid 1970s, however, the situation dramatically changed. Human rights violations by the National Guard reached their peak and such practices had to be denounced. The indiscriminate bombing of civilians, and the disappearance of peasants from the northern part of the country were very common. Amnesty International reported in 1979 that after the bombing of the civilian population from the air:

The Red Cross reported that some 5,000 people had died, 10,000 were injured, 25,000 had lost their homes and 57,000 are believed to have fled into exile in neighbouring Honduras and Costa Rica.⁶³

Such violations happened under the rules of a state of

61-Interview source, note 8 above.

62-There does not seem to be agreement about the creation of the F.S.L.N. For instance, Amnesty International states that: "The F.S.L.N. was founded by students in 1958 as a revolutionary Marxist-Leninist group directed to the overthrow of the government. It takes its name from the guerilla, Cesar Augusto Sandino, who fought against the United States of America from 1927 to 1933." Amnesty International. The Republic of Nicaragua. An Amnesty International Report including the findings of a mission to Nicaragua 10-15 May, 1976 p. 6. See as well, Q. C. Medina (1988), op. cit. p. 228, when she states that: "The Sandinista National Liberation Front(F.S.L.N.) had been created in 1959, and had waged war against the Somozas ever since."

63-Amnesty International Report (1979) p. 69.

emergency or martial law, which had been in force in Nicaragua since 1974. Many of these violations, according to the Nicaraguan government, occurred in the northern and western states where the guerrilla forces were concentrated. Wholesale killings and disappearances of peasants and farmers occurred because they were supposed to have links with, or supported the guerrillas. However, this does not in any way mean that the abuses were concentrated in this area only; they covered the country as a whole. Republican Congressman Ronald V. Dellums inserted in the congressional record on 24 March 1976 a report on political imprisonment in Nicaragua in which he stated that:

The arrests have occurred throughout the Republic, but especially in the Northern and Western states. It is important to clarify that a very large number of people have been detained in spite of having no connection with the guerrillas in these zones.⁶⁴

At this point, there is no need for an in-depth discussion of other aspects of human rights violations such as torture or ill-treatment of prisoners. This does not mean that such violations did not occur, but what would torturing a prisoner mean compared to the barbaric act of killing the people indiscriminately? A government which deliberately kills its own people has little respect, if any, for other rights.

After the flight of Anastasio Somoza Debayle and the accession to power of the revolutionary government, a fundamental law was issued on 20 July 1979, which replaced the 1974 Constitution. According to Amnesty International:

Article 6 of the fundamental law gives full recognition to the human rights established in the Universal

64- cited in L. A. Sobel (1978) op. cit. p. 194.

Declaration of Human Rights, the United Nations Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights.⁶⁵

Moreover, the death penalty was abolished. These measures have been taken to show the goodwill of the new government in observing human rights. Nonetheless, martial law was restored again, which suspended almost all the constitutional guarantees. Furthermore, thousands of people were being held in police custody, most of them former member of the National Guard or members of the Somoza's government. There was ill-treatment and even killings of the prisoners despite the official policy of the government. On 28 July 1979, ten days after the revolutionary government came to power, the Interior Minister stated that:

Immediate steps would be taken to prevent misconduct by the Sandinista forces, declaring that no prisoner would be ill-treated and that neither the death penalty nor torture would exist after the revolution.⁶⁶

The trials of the Guardsmen continued, especially under Tribunales Especiales de Justicia (Special Courts) which lasted for fourteen months (Dec. 1979 to Feb.1981).⁶⁷ The sentences they received depended on where they were stationed. Those who served in the rural northeast part of the country received the maximum prison sentence. Moreover, it should be pointed out that the country was unstable at the time. The Contras' military opposition backed by the United States had undoubtedly made things worse in Nicaragua. Such threats led to the announcement of martial laws in the country, which are discussed in the International Covenant on Civil and

65-Amnesty International Report (1980) p. 154.

66-Ibid., p. 155.

67-Amnesty International Report (1981) pp. 170-1.

Political Rights.⁶⁸ Different attacks by the Contras were the origin of the continuity of the state of emergency in Nicaragua. Human rights abuses under Ortega were, to some extent, linked to the economic and political situation of the country. Part of the information received about human rights abuses suggested that they were, in fact, carried out by the forces opposed to the revolutionary government. Catherine Gander rightly argues that:

Economic, military and ideological facts must be considered in an analysis of human rights in Nicaragua... The war created exceptional circumstances in Nicaragua.⁶⁹

The exceptional circumstances that the country was experiencing made it very difficult to evaluate the human rights situation; and even more difficult to apply Amnesty's standards. Apart from the abolition of the death penalty, it is quite difficult to apply the rest of the criteria and base a judgement on them. Any relatively new government having to deal with those responsible for past violations, improving the standard of living, and above all, facing the military threats of the Contras, might reasonably have neglected human rights in an attempt to carry the country through a very difficult period until stable institutions are achieved. These were translated during the elections of 1984 which gave Nicaragua a president, a vice-president and a National Assembly.⁷⁰ Although the situation

68-L. A. Malone, "Human Rights in the Middle East" , a review article, in the Middle East Journal 38 (4) 1984. p. 735 states that: "The International Covenant on Civil and Political Rights speaks only for a "public emergency which threatens the life of the nation" and the existence of which is officially proclaimed."

69-Catherine Gander In J. Donnelly, and R. E. Howard eds., (1987) op. cit. pp. 260-1.

70-T. Walker, (1986) op. cit. p.119

has relatively improved compared to the Somozas' days,⁷¹ still a lot remains to be done.

It should be pointed out at the end of this section that elections were in held in Nicaragua in February 1990, which marked the defeat of president Daniel Ortega by Violeta Chamorro who represented a coalition of different political parties, and assumed power in April.

3-3: The Middle East

This case has been included in the study because of the religious issues involved. Middle Eastern countries are almost exclusively Muslim, which in some senses provide a real challenge to Amnesty's work . The emphasis here will be upon Saudi Arabia since it is one country where Muslim laws inspired from the 'Quran' are applied. However, different countries will be mentioned whenever appropriate.

The information available about human rights in Middle Eastern countries is quite scarce. Amnesty's reports, which are supposed to give brief descriptions of different countries, fail to do so in some of these countries. Saudi Arabia, for instance, was not included in the 1979 and 1981 Reports: not because there were no human rights

71-Amnesty International reported that: "On 14 March [1989]the National Assembly passed a decree pardoning 1,894 prisoners who had been convicted by the Special Courts between 1979 and 1981 for crimes allegedly committed by them as members of the National Guard under the previous government of Anastasio Somoza Debayle." Amnesty International Report 1990. p.177. Furthermore, a second report on Nicaragua was published in which Amnesty acknowledged that, in general, progress has been made. For further details see Amnesty International, Nicaragua: the Human Rights record 1986-1989 (London: Amnesty International, 1989)

violations, but because of the lack of information.

For the purposes of this chapter, no investigation of the different aspects of human rights in these countries will be attempted. The survival of the governments depends largely on a heavy oppressive apparatus and state police. Freedom of expression is almost non-existent, and censorship of the press and imprisonment on political grounds are very common. Nonetheless, what constitutes an exception is the death penalty which is widely applied in the Middle East, particularly in Saudi Arabia. Amnesty International in its Report stated that in Saudi Arabia:

Justice is administered according to a fundamentalist interpretation of the Shari'a, Islamic law, based on the Quran and the Sunna, the way of life and the pronouncement of the Prophet.⁷²

Islamic law insists on the use of the death penalty as a punishment for certain offenses. Moreover, Islamic law also stresses the imposition of flogging and amputation, which would be unacceptable in a Western society.

Such practices are carried out in Saudi Arabia. Amputation, for instance, is the penalty for repeated theft. Amnesty International has expressed its concern about such practices and has worked towards the abolition of the death penalty. On 11 December 1981, it wrote to the Saudian Minister of Interior urging him "to give consideration to the question of the death penalty in Saudi Arabia and the possibility of restricting and eventually abolishing it."⁷³

Despite Amnesty's efforts, the death penalty in Saudi Arabia cannot be abolished as long as its laws are based upon the 'Quran'. To judge the record of human rights by the country's use of the death

72-Amnesty International Report (1980) p. 351.

73-Amnesty International Report (1982) p. 344.

penalty would be unfair, at least to those imposing it for religious reasons. In other words, a comparison can never be fair when it is based upon "arbitrary standards". Islamic countries do represent in this area a real challenge to the work of Amnesty International. The latter believes that the death penalty will be abolished eventually, since there are some schools of Muslim jurisprudence which are in favour of its abolition.⁷⁴ However, such a claim does not have any foundation. The 'Quran' is clear about the question and leaves no room for jurisprudence. What would be cruel in the United Kingdom for instance, might not be considered as such in another country depending on the political culture of the country. The amputation of the hand for repeated theft is widely accepted in a country where Islamic law is fully implemented, e. g., Saudi Arabia, where such practice, in their views, is not a violation of human rights.⁷⁵ Therefore, the role of political culture, and the circumstances in which the abuses occur, have a significant role in determining whether a country respects human rights or not.

IV: Amnesty International and comparative politics

In terms of comparison, the work of Amnesty International does not offer a ranking of different countries of the world, and indeed quite deliberately refrains from such a comparative judgement. They acknowledge the fact that no comparison is attempted,⁷⁶ but offer a

74-Interview source, note 8 above.

75-In an interview conducted at Exeter University -England- students from Saudi Arabia assured the author that such a practice is accepted since it derives from the teaching of Islam, a strong belief which had been carried out for centuries.

76-In the 1978 report, Thomas Hammerberg, a former director of the British section, Amnesty International, said that:"We are not publicizing any list of

broad range of evidence, and relatively clear reports - depending on the country under scrutiny- upon which an independent observer may make a judgement.

However, having dealt with the basis that Amnesty offers and the obstacles that it faces in carrying out its work, it becomes apparent that it is quite difficult to use Amnesty's standards as basis upon which a cross-national comparison is attempted.

First of all, as it has already been pointed out, Amnesty International seeks to implement the provisions of the Universal Declaration of Human Rights. However, a close look at this Declaration shows that it contains two sets of rights; civil and political on the one hand, and economic, social and cultural on the other. Amnesty focuses only on some aspects of the former, thus making it and its work vulnerable and appear hostile to a lot of countries around the world. In an attempt to justify this, Thomas Hammarberg, a former director of the British Section, states that:

Amnesty International is not a do gooder for all possible causes; it has a restricted mandate. It works for the release of prisoners of conscience and against torture and executions, but it is not involved in work against unemployment, starvation and other social diseases. Our platform is the Universal Declaration of Human Rights adopted thirty years ago by the nations of the world. Within that frame Amnesty International concentrates its resources on particular civil and political rights...This is not because we ignore the importance of all rights, but because we recognise that we can only achieve concrete results within set limits.⁷⁷

Nevertheless, this is still unacceptable to different governments

the worst violators, any,"ranking list", Amnesty International does not work this way." Amnesty International Report (1978) p. 1.

77-Ibid.,

which do not believe in the set of rights that Amnesty works upon. Although Amnesty insists on "achieving concrete results within set limits", its arguments are not entirely satisfactory. Why does it concentrate upon political and civil rights, for instance, bearing in mind that countries which have ratified the Covenant on Social, Economic and Cultural Rights outnumber those that have ratified the Covenant on Civil and Political Rights,⁷⁸ let alone countries which did not ratify them? How can it apply different criteria to a country which rejects them, and expect to conduct useful comparison and achieve fruitful results?

Amnesty as an organization 'born' in the West, has been in one way or another influenced by the philosophy and the norms in which it has developed, although it claims that it is independent from any government or ideology. Cosmos Desmond rightly argues that:

We have defined as fundamental human rights those rights which can be accorded to people in our society without posing any threat to our socio-political system. It is we who have decided how societies should be judged and since our society is taken as the norm, it is not surprising that we measure up to it better than other societies. The West may be worse than other countries in some respects, but we have decided that those respects are not the important ones. The most important aspect, we have decided, is whether a country recognized human rights as we have defined them. We have decided, for example, that individual freedom is so important that some people must be left free to exploit other people.⁷⁹

From this East-West antagonism it becomes quite difficult, if not

78-"By the end of 1987, 92 states were parties to the U.N.'s International Covenant on Economic, Social and Cultural rights, 87 to the International Covenant on Civil and Political Rights and 39 to its Optional Protocol." Amnesty International Report(1988) p. 15

79-C. Desmond, (1984) op. cit. p. 24.

impossible, to compare different kinds of political systems on the basis that Amnesty offers. To conduct a comparison in terms of political prisoners, for instance, between a totalitarian or a military regime and a liberal democratic one would be misleading, and will not lead to useful results.

Secondly, what makes it difficult to compare according to Amnesty's work is that it does not take into account the political culture of the country under investigation, and its level of development and modernization as well as of its level of political participation.⁸⁰ In its annual reports, Amnesty offers pictures of almost every country in the world, conducted on the basis previously discussed (section 2).

Human rights abuses are social phenomena, which are influenced by and influence the political and social environment in which they occur and therefore, should be taken and analyzed within that context. What could be considered as a major violation in the United Kingdom, for instance, is not automatically considered as such elsewhere; not forgetting the role of the religion in influencing the practices and behaviours of the people. Let us try to make a comparison between the United Kingdom for instance, and an Islamic country such as Saudi Arabia or Iran in the light of Amnesty's work over the past ten years, especially in terms of the death penalty. Although Amnesty opposes it, and works for its abolition, it cannot be widely applicable. In the United Kingdom, for instance, it was

80- Gander argues that: "A country's progress in human rights is directly related to its level of political participation. Nations in which the majority of the population is excluded from any degree of power are more apt to transgress rights than those where people take an active part in decision making and can fight for their rights." Catherine Gander, In J. Donnelly and R. E. Howard eds., (1987) op. cit. p. 264.

abolished in the mid 1970s, whereas in Iran or Saudi Arabia, to name just a few, the death penalty is still carried out and will never be abolished, as long as their laws are inspired by the 'Quran'. Muslim laws still dominate the internal laws of these countries, so this practice will remain as violation of basic human rights in the eyes of Amnesty. On the other hand those which have abolished it are seen as having taken a very significant step forward in improving their standards of human rights.

Amnesty takes different countries at the same level of development, or deals with them equally. Here, the emphasis is not on economic development and the standard of living, but it is on the political dimension. The backwardness or the development of any political system does, in one way or another and relatively, influence the human rights situation. Countries such as the United Kingdom or the United States which have experienced democratic practices for a very long period of time cannot be compared to a country which achieved its "independence" two or three decades ago. There are pressures on every government, but the scale and the way in which governments respond to these pressures vary considerably from one country to another. In a democratic developed country, the system is able to adapt to almost every new situation, and the succession of different governments is guaranteed smoothly through democratic means. It would be absurd to imagine a coup d'etat in the United States or in the United Kingdom, whereas a government in a backward country could not cope with the pressures and may collapse, which in turn, affects its human rights record. In its 1978 report, Amnesty acknowledged that:

We do realize that there is a link between general politics and the rights we try to defend; changes of

government often result in arrests or releases. But this fact does not make us change our approach. We simply take facts into account without hiding some of them or emphasizing others, according to regime or ideology.⁸¹

However, it would be misleading to take the facts into account without answering the question of what has led to these facts. Different political systems, and especially the change of the political structure, or of the government mainly in the Third World do have a great effect on the human rights situation in other countries. The facts, of course, are important in conducting a comparison, but they are misleading if they are not understood within the social and political environment in which they have come into being. Thus, investigators must bear in mind the particularities of each country, how developed it is, and to what extent it is able to cope with the pressure from the people. Moreover, in which way will the government respond?

Furthermore, it should be pointed out that the variety of political systems around the world makes the comparison very difficult. It is generally agreed on that emergency rule and martial law have been frequently imposed by military regimes in Africa, Asia and Latin America. As a matter of fact, the steps taken by the military in assuming power are generally: first, to suspend the constitution, dissolve the civilian government and parliament; second, to disband the political party or parties and finally to kill those who "oppose" the new government. In countries which lack stability or legitimacy-

81-Amnesty International Report (1978) p. 2. Moreover, Peter Benenson wrote: "Again we can understand that there are situations, particularly in newly emerged states, where it is difficult to govern in the face of sustained criticism. But this fact alone does entitle the government to keep its critics permanently imprisoned." Quoted from C. Desmond (1984) op. cit. p. 41.

in a sense that governments did not come to power through democratic means such as elections reflecting the will of the people-, protection of human rights will almost always take a secondary place in their political agenda. Furthermore, they will claim that the situation obliges them to "sacrifice" this issue for more important ones such as national unity and economic development. Peter Benenson rightly argues:

Let us all recognize that there are situation when the security of the state is threatened, in which the governments feel obliged to arrest their opponents.⁸²

This can be a satisfactory answer by some governments, that the abuses had happened because of "the general interest" under different ideals. However, there might be some situations where there are genuine calls to justify suspending some political rights and civil liberties e.g., war situation or natural disaster, but not, as is the case in many Third World countries, when a government loses an election or creates a state of emergency.

The above discussion was a brief survey of the difficulties that face a comparativist in an attempt to make a comparison based on the principles already set by Amnesty. The particularities of every country on the one hand, and the difficulties that face Amnesty in carrying out its work properly on the other, make the task difficult. One cannot imagine a comparison being carried out without facts, statistics and supporting arguments that make the comparison meaningful and the results convincing. However, it is not always the case in the work of Amnesty, since it is dealing with one of the most sensitive issues in today's politics. No government, to varying degrees, wants its "dirty linen" to be washed in public. Thus,

82-Ibid.,

different steps are taken to curtail the flow of information by censorship of the press, limiting the movement and contacts of foreigners in their countries and refusing to grant entry visas. Amnesty have acknowledged this many times in different reports.⁸³ Such obstacles and how to overcome them are of great importance to Amnesty's findings. After all, investigators will base their judgements upon the accuracy of the information it gives. The 1978 Report stated that: "the effectiveness of Amnesty International depends upon the accuracy and the availability of its information."⁸⁴ However, many statistics are neither available nor accurate in the work of Amnesty, and are given depending on the country and how flexible the flow of information is. Furthermore, Amnesty reports only about the cases known to it. But this proportion, no matter how big or small it is, is not representative of the situation in the country as a whole. In its 1990 Report, Amnesty stresses this fact when dealing with China:

The death penalty continued to be used extensively. During 1989 Amnesty International recorded 282 death sentences and 273 executions. The true totals were thought to be much higher.⁸⁵

The lack of information concerning different categories of people imprisoned, combined with the relatively available information about those who have been granted freedom, still does not give a

83-In China for instance, "the lack of detailed information on political imprisonment in the P.R.C. is due to various factors including the size and the diversity of the country... the restrictions of movement and the lack of free access to information." Amnesty International, Political Imprisonment in the P.R.C.(1978) op. cit. p. xii. See as well Amnesty International Report (1988) when it states that: "refusing to grant visas to foreign observers also makes the task of monitoring human rights harder." p. 4.

84-Amnesty International Report (1978) p. 7.

85-Amnesty International Report (1990) op. cit. p. 68.

clear picture even within the borders of the same country. A government which imprisons, tortures and sentences people to death would not publicize its acts since they are not the kind of actions to be proud of. Thus, the cases known to the outside world are still a proportion, and no one knows in terms of percentages how much it represents of the real figures. Whereas, the figures concerning people who were granted freedom are publicized to show the goodwill of the government and its wish to gain respect and praise from the international community.

Having said that, it does not automatically follow that the work of Amnesty is "useless" or misleading. The point that was intended to be stressed is that there are tremendous difficulties if one has to compare countries on the basis given by Amnesty on a cross-national level, or even between a sample of countries, or even just two. The segments of the society that are to be studied are carefully chosen. In this case, they are already set by Amnesty. Moreover, if the death penalty is considered a major violation of human rights, it should be considered as such in all the countries that the comparativist has chosen as a field to his research. Dogan and Pelassy rightly point out that:

Once the comparativist has decided which part of the political system or sector of the society he wishes to study, he has another decision to make. He has to choose the countries to be included in his analysis.⁸⁶

The significance of a comparison and the validity of the results achieved will depend basically on the countries chosen. To conduct a comparison on such a basis, for instance between a Muslim,

86-M. Dogan, and D. Pelassy, How to Compare Nations: Strategies in comparative politics (New Jersey: Chatham House, 1984) p. 105.

underdeveloped country in which a new government has emerged such as Iran, with the United Kingdom or Sweden would be of little significance since the beliefs, the economic, social and political environment are totally different. Such circumstances may, in many instances, explain the differences in governments' attitudes towards what some see as violations of human rights.

Chapter Five

The Human Rights Committee

The question of human rights, as we have seen, is one of the most significant issues in contemporary world politics. There is no single agreement on its definition, let alone measurement. Many attempts have been made, both by organizations such as Amnesty International, as pointed out in the previous chapter, and by individuals, as will be discussed in the next chapter, to define and measure human rights on a cross-national basis. Such attempts fall short in terms of their applicability to different countries; not only because they derive from one specific philosophy or culture, which makes them unacceptable in some parts of the world, but because they are arbitrary measures. Such situations make the task of comparing and agreeing on specific standards very difficult, if not impossible.

Nevertheless, one may think of a body which has 'revolutionized' the issue and which has completely a different approach to human rights and aims at promoting them. It is the Human Rights Committee¹ (hereafter referred to as the Committee), which was set up under the provision of article 28 of the International Covenant on Civil and Political Rights (hereafter referred to as the Covenant).² Theoretically speaking, it is not biased: there has been

1-For a full discussion of the Human Rights Committee see Dominic McGoldrick, The Human Rights Committee. Its Role in the Development of the International Covenant of Civil and Political Rights (Oxford: Clarendon, 1991) pp.44-202, E. Decaux, "La Mise en vigueur du pacte international relatifs aux droits civils et politiques", *Revue generale de droit international public*, Vol. 84, 1980 pp.487-534, A. H. Robertson and J. G. Merrills, Human Rights in the World 3rd edition, (Manchester: Manchester University Press, 1992) pp.37-72.

2-In an address to an NGO conference in Geneva on 10 December 1983, to

an agreement on a single measure as a basis on which to judge human rights performance. That is, the states freely decided to ratify the Covenant which, as a result, gave power to the Committee and, conversely, made the states party responsible to the Committee through a system of communication.

In order to shed light on the different aspects of the Committee's work, it seemed appropriate to divide this chapter into the following main sections: The first concentrates on the Human Rights Committee. Then its work. The third section deals with two cases: the former Soviet Union and Chile to monitor the work of the Committee, and the chapter concludes with a general assessment of its work.

I: What is the Human Rights Committee?

The central purpose of this section is to answer the above question in this preliminary discussion. For instance, how did the Committee come into being? How are people elected to it? Is the geographical distribution really respected in elections of the Committee? For how long are the Committee's members elected? How many times a year does it hold sessions? For how long? Is there enough time for the Committee to carry out its work properly? How many cases does it have to deal with a year? And how impartial are the Committee's members?

mark the 35th anniversary of the Universal Declaration on Human Rights, Eric Soy, Former Director-General of the United Nations Office in Geneva, stated that: "The adoption of the International Covenant on Human Rights led to the establishment of the very important procedure of requiring states parties to submit regular reports to a committee... This obligation and this procedure have, in my view, revolutionized international relations." *The Review. International Commission of Jurists*, No,32, June, 1984 p.45.

These are some preliminary questions one attempts to clarify. The purpose of this section is to give the reader a clear idea about the body with which one is dealing, and some critical reflection whenever appropriate.

1-1: The Committee:

Article 28 of the Covenant states that:

1-There shall be established a Human Rights Committee (hereafter referred to in the present Covenant as the Committee). It shall consist of eighteen members and shall carry out the functions hereinafter provided.

2-The Committee shall be composed of nationals of the states parties to the present Covenant who shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.

3-The members of the Committee shall be elected and shall serve in their personal capacity.³

The Covenant came into force on 23 March 1976 after thirty five states have ratified it. The Committee was established in 1977 with different functions in respect to the provisions of the Covenant and its Optional Protocol. Its term of office began on 1 January 1977 in accordance with the provisional rules of procedure.⁴

It is composed of eighteen members, nationals of the states party to the Covenant, elected for a period of four years⁵, with half

3-Ian Brownlie, ed., Basic Documents in International Law 2nd edition (Oxford: Oxford University Press, 1972) p.172.

4-Rule 12 states that: "The term of office of the Committee elected at the first election shall begin on 1 January 1977. The term of office of members of the Committee elected at subsequent elections shall begin on the day after the date of expiry of the term of office of the members of the Committee whom they replace."

the membership renewed every two years. Article 29 (3) allows the renomination of Committee members. Each state may include more than one candidate, but membership of the Committee should not exceed one member per state. According to Article 31 of the Covenant:

1-The Committee may not include more than one national of the same state.

2-In the election of the committee, consideration shall be given to the equitable geographical distribution of membership and the representation of different forms of civilization and the principal legal systems.⁶

The first striking feature at the first elections was that, although the Committee was set up under the provisions of a Covenant which does not generally adhere to what was the Eastern block orthodoxy, it was surprising to find that the number of countries from the former communist countries was the highest at the time (1976) compared with Western Europe, Africa, Asia or Latin America. However, out of the ten communist countries, four members only were elected to the Committee compared with five members elected from Western Europe out of the original seven.⁷ This discrepancy has led some writers, especially Jhabvala, to suggest at a later stage that the membership of the Committee should be reduced for some countries and increased for others for a strict geographical

5-Article 5 of the Covenant.

6-I. Brownlie, ed.,(1972) op. cit. p.173.

7-F. Jhabvala, "The practice of the Covenant's Human Rights Committee, 1976-1982: Review of State Party Reports". *Human Rights Quarterly*, (6) 1984 p. 83. Furthermore, Decaux states: "Le comite elu en 1976 traduit un certain desequilibre:

Europe Occidentale: 5 sieges pour 7 Etats Parties.Europe de l'Est, 4 sieges pour 10 Etats Parties. Amerique Latine, 3 sieges pour 7 Etats Parties. Afrique,3 sieges pour 8 Etats Parties, and Asie 3 sieges pour 6 Etats Parties." E. Decaux, (1980) op. cit. p. 496.

distribution.⁸ Nonetheless, the provision of the article above provided for the geographical distribution of the Committee's membership and not for proportional representation. There has been representation of different forms of civilization and of the principal legal systems within the Committee which, as Jhabvala himself acknowledges,⁹ puts the Committee beyond criticism or suggestions of any change in its membership. These members are of high moral character and recognized competence in the human rights area. Members with legal professions have been the dominant feature of the Committee. They serve in their personal capacity and do not represent the views of their governments. In order to achieve this impartiality, each member has to give a solemn declaration according to Rule 16 of the Provisional Rules of Procedure.¹⁰ Such qualities and requirements make the views of the Committee's members homogeneous. Nonetheless, there are still some sharp disagreements among the members on the way they assess matters brought before them. Such disagreements are based on the background of the member making the comments, which, in many cases, represent the views of his/her own government. A conspicuous example of that was during the discussion of the second periodic report of the former Soviet Union in 1984. Mr Tomuschut (West Germany) said that the "dialogue between the Soviet delegation and the members of the Committee was less than positive". On the other hand, Mr Graefrath (East Germany) "congratulated the Soviet delegation... [and] regretted

6-F. Jhabvala, (1984) op. cit. p.83.

9-Ibid.,

10-Rule 16 states: "Before assuming his duties, each member of the Committee shall give the following solemn declaration undertaking in open Committee: "I shall solemnly undertake to discharge my duties as a member of the Human Rights Committee impartially and conscientiously."

that the dialogue had been hampered by politically motivated statements."¹¹ Moreover, there might be some provocative comments by Committee's members. Mr Bouzidi (Tunisia), when discussing the Report of Iran, said:

...what was the Iranian government doing to promote the right of Palestinian and Lebanese peoples to self-determination? Why had the Iranian government not accepted the cease-fire by Iraq, so that Iraq could go and fight the Israelis? Why had Iranian troops not come to the aid of the Palestinian and Lebanese peoples now that the Iraqi army had withdrawn from Iran?¹²

These kind of statements put the impartiality of the Committee in jeopardy. When dealing the Soviet report, one may think that the views of the Committee may differ, but not sharply. There is a standard upon which the experts make their comments, i.e., the Covenant compared with the codes and practices of the country under scrutiny. Although one objects to these disagreements between the experts, it could well be understood, in the the case of the Soviet Union, that the remarks made by the experts from both East and West Germany were based on their backgrounds and the views of their governments (mainly the former East Germany) as well as their own interpretation of the Covenant. However, from the second example, there is a clear understanding that there is a direct attack on the Iranian government. In other words, a statement such as "...so that Iraq could go and fight the Israelis" does not seem relevant at all. The expert seems to forget that Iraq did not fight the Israelis before entering the war against Iran, apart during the conflict between Israel and the Arabs, the latter group including

11-F. Jhabvala, "The Soviet-bloc's view of the implementation of Human Rights Accords". *Human Rights Quarterly*, (7) 1985. p.480.

12-U.N.Doc. CCPR/C/1/ Add. 58. Par.35 (365th meeting, Thursday, July, 15th, 1982.)

Iraq. The point to be stressed here is that the Committee is not an arena for war propaganda. It is meant to promote and help countries to enhance their human rights records, not to tell Iran to accept a cease-fire so that Iraq could enter into a new war. One member of the Committee assured the author that the Committee had known such practices, but things have changed for the better, and reports are now judged unequivocally by all members regardless of the country's report being discussed. To borrow her words: "the experts are experts more than ever before"¹³.

1-2: Sessions:

Rule 12 of the Provisional Rules of Procedure provides that:

1.The Committee shall normally hold two regular sessions each year.

2.Regular sessions of the Committee shall be convened at dates decided by the Committee and the Secretary-General of the United Nations (hereinafter referred to as "the Secretary-General"), taking into account the calendar of conferences as approved by the General-Secretary.

This does not mean that the Committee cannot hold other special sessions; Rule 3 of the Provisional Rules of Procedure provides for this.¹⁴ However, since 1978 the Committee has held three sessions a

13-Interview of the author with Professor R. Higgins, Professor of International Law at the London School of Economics and Political Science, a member of the Human Rights Committee.

14-Rule 3 states that:

1. Special sessions of the Committee shall normally be convened by decision of the Committee. When the Committee is not in session, the Chairman may convene special sessions in consultation with the other officers of the Committee.

The Chairman of the Committee shall also convene special sessions:

year. Given the amount of work with which the Committee has to deal, it was felt that two sessions were not enough. Even with a new session, the Committee is still unable to cope with the work it has to do. Three sessions a year of three weeks each had been the practice of the Committee, while the number of countries becoming parties to the Covenant kept increasing every year, and the Committee found itself with more work to do in the same period of time. The problem is that it is quite difficult, if not impossible, for the Committee to carry out its work properly and effectively within this short period of time. This is especially the case if one bears in mind that some countries are notorious in delaying their reports, adding to the Committee's already overburdened workload. Furthermore, additional information is requested from countries whenever it is appropriate at the time of the discussion of the initial reports, as well as other reports every five years.

There is no doubt that the Committee could be more effective if it had more time to deal with reports, or if it had more resources to recruit personnel to undertake preparation for the sessions. A member of the Committee agrees that there is a lack of time and an adequate balance between time and amount of work is needed.¹⁵ Nonetheless, the Committee has followed a strategy that saves time for the experts to deal with the most important aspects. Thus, a working group is to meet one week before every session to look at

a) At the request of a majority of the members of the Committee;

b) At the request of a State Party to the Covenant.

2. Special sessions shall be convened as soon as possible at a date fixed by the chairman with the Secretary-General and with other officers of the Committee, taking into account the calendar of conferences approved by the General Assembly.

¹⁵-Interview, see note 11 above.

the different reports, especially those that appear after the initial ones. These latter are usually shorter, so the discussion within the Committee can concentrate upon "problem areas", to see if the country in question has made efforts to take into account the Committee's views. Further, it has the task of looking at personal communications and deciding on their admissibility. In doing so the working group is helped by a Special Rapporteur, who deals with the same question between sessions.

This "focus discussion", carried out by the committee after having been scrutinized by the working group, saves the Committee a lot of time, but it is still unable to cope with the increased pressure placed upon it every year. Given the fact that the experts are doing this in their personal capacities, having other professional arrangements which may sometimes make them unable to attend the Committee's proceedings, little time is available to study different reports.

It would seem that more time should be made available, or that these experts should become full time staff paid for their membership of the Committee,¹⁶ so that the Committee can more easily and effectively carry out its work. However, these are not ideal solutions; for the amount of time to be increased is not necessarily convenient for the experts themselves. As mentioned earlier, they have other professional engagements and may not be able to adjust to the new requirements. Making them full time staff would require a new budget which the United Nations is unable to secure due to its limited financial resources.

16-A. H. Robertson, sees that: "There is a strong case for making membership on the committee a salaried occupation to which members could devote all their time." in L. Henkin, ed., The International Bill of Rights. The Covenant on Civil and Political Rights (New York: Columbia University Press, 1981) p. 339.

A great deal of research is carried out whenever a country's report is to be scrutinized. The researchers focus not only on states' reports and their laws, but different sources are used such as non-governmental organizations, newspapers, the State Department country reports etc.. which are certainly time consuming. It might be appropriate, in these circumstances, for a small unit to be permanently created under the auspices of the Committee. Its main task would be the preparation of the Committee's work and following developments in different countries.

Finally, concerning places where the committee holds its sessions, Rule 5 of the provisional Rules of Procedure reads as follow:

Sessions of the Committee shall normally be held at the Headquarters of the United Nations or at the United Nations Office at Geneva. Another place for a session may be designated by the Committee in consultation with the Secretary-General.

Although the provision of this rule specifies that another place may be designated, to the best of the author's knowledge, except for the fourteenth session held in Bonn (in the former West Germany), the practice has always been to meet either New York or Geneva. Although, normally one the spring session is held at the headquarters in New York and the summer and autumn session in Geneva, for economic constraints, however, the Committee was forced to hold most of its sessions in Geneva¹⁷. It may be suggested that holding sessions where United Nations offices already exist, or at the

17-Dr. John Pace, Chief, Research studies and Prevention of Discrimination, at the Centre for Human Rights, the United Nations Office in Geneva explained that although many countries, especially those which do not have diplomatic representation in Geneva, wish the sessions to be held in New York, however, it is less costly to hold sessions in Geneva where the Centre for Human Rights exists and where all the information and archives are held.

headquarters of any Regional Organization, would be helpful in publicizing the work of the Committee. Holding a session in a Third World country such as Kenya or Ethiopia would be a good opportunity to raise the awareness of the people, not only in these countries, but in the region as a whole regarding their rights and how their governments should treat them. With the media coverage of the Committee's activities, more people would be aware of the rights that other peoples enjoy and that their governments can be held accountable to this body in the event of any abuse of human rights. The Committee's members, aware of this fact, stress the importance of holding sessions in countries others than those in which they are usually held, but because of financial limitations they felt bound to hold them in New York and especially in Geneva. They would thus welcome any invitation from governments to hold sessions in their countries.¹⁸

3-1: Decisions of the Committee:

After the study of any country's report the Committee makes general comments about the overall situation. Decisions in the Committee are taken by majority vote but the practice is first to look for a consensus.¹⁹ It was pointed out earlier in the chapter that the

¹⁸-Interview, see note 11 above.

¹⁹-Rule 51* states that:"Except as otherwise provided in the Covenant or elsewhere in these rules, decisions of the Committee shall be by a majority of the members present."

*The Committee decided, at its first session, that in a footnote to rule 51 of the Provisional Rules of procedure attention should be drawn to the following:

1-The members of the Committee generally expressed the view that its method of work normally should allow for attempts to reach decision by consensus before voting, provided that such attempts did not unduly delay the work of the Committee.

Committee suffers from a lack of time. Moreover, whenever a consensus is sought, a great amount of time is required to attain it.

Although the footnote to Rule 51 (see below) specifies that the proposal can be put to a vote at the request of any member, the process is, nevertheless, time consuming. It should save more time if any matter is resolved by ballot voting. However, the system of voting itself is not beyond criticism. It might be the most appropriate way to deal with any proposal, although in the case of the Committee this is not always true. If one looks at Rule 50 which states that: "each member of the Committee shall have one vote", bearing in mind that the Committee comprises eighteen experts, the question arises regarding what would happen if the votes were divided into two groups of nine each. This situation did in fact occur during one of the Committee's sessions, one member of the Committee assured the author.²⁰ One would be very much in favour of a number that could not be divided evenly into two to ensure a majority within the Committee, or that the vote of the Chairman should be taken into account whenever the votes were equally divided.

II: The work of the Committee:

The Committee performs two roles: an investigatory and a conciliatory one. Its role as an investigatory body can be seen from the provisions of article 40 of the Covenant where the reports of the states' party are discussed, and also under article 3 of the Optional Protocol to the International Covenant on Civil and political Rights

2-bearing in mind paragraph 1 above, the Chairman at any meeting may, at the request of any member shall, put the proposal to a vote."

20-Interview, see note 11 above.

(hereafter the Protocol). The conciliatory role can be understood in the case of interstate complaints as provided for in articles 41 to 44 of the Covenant.

In what follows a more detailed analysis of each of the roles of the Committee will attempted to better understand its work as a whole.

2-1: The study of states' reports:

The main task of the Committee is the study of the compulsory reports covering every right set forth in the Covenant states Party have undertaken to submit under the provision of article 40.²¹ These reports should include the measures adopted by the states

21-Article 40 states that:

1-The State Parties to the Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of these rights:

(a) Within one year of the entry into force of the present Covenant for the States Parties concerned.

(b) Thereafter whenever the Committee so requests.

2-All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit them to the Committee for consideration. Reports shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant.

3-The Secretary-General of the United Nations may, after consultation with the Committee, transmit to the specialized agencies concerned copies of such parts of the reports as may fall within their field of competence.

4-The Committee shall study the reports submitted by the States Parties to the present Covenant. It shall transmit its reports, and such general comments as it may consider appropriate, to the States Parties. The Committee may also transmit to the Economic and Social Council these comments along with the copies of the reports it has received from States Parties to the present Covenant.

5- The States Parties to the present Covenant may submit to the Committee observations or any comments that may be made in accordance with Paragraph 4 of this Article.

Partly to bring their internal laws in conformity with the provisions of the Covenant and also the difficulties, if any, affecting the implementation of the Covenant. Because of the inadequacy and the general character of many of the initial reports, the Committee has developed some general guidelines about the form and content of the reports²² in order to help the states to fulfill their obligations and facilitate the Committee's work when examining them.²³

Nevertheless, although different countries have willingly ratified this Covenant, whereby the investigatory body was set up, there has been resistance from these states party themselves to the work of the Committee. Some states believe that human rights practices are within their internal jurisdiction and therefore should not be subject to international scrutiny. Others thought that such practices represented a diminution of their national sovereignty.²⁴ These reservations soon began to emerge when states party were reluctant to send their representatives to the Committee, or delayed sending their reports.²⁵ In spite of these difficulties, the Committee, on the whole, has been able to carry out its work satisfactorily.

22-These guidelines were adopted at the second session (44th meeting) in August 1977. Doc. A/32/44 Apx. IV.

23-For a better explanation of the General Guidelines, see U.N. Doc. CCPR 1/Add.1. Yearbook of the Human Rights Committee 1977-1978, Vol. 2 Documents of the first to the fifth session including of the Committee to the General Assembly. p. 248.

24-The views of Afro-Asian states was that: "The time has not yet come when the states which had recently gained their independence could give up their sovereignty with complete confidence." F. Jhabvala, (1984) op. cit. p. 86.

25-U.N. Document A/33/40. Paragraph, 33 states that: "At the third session, the Committee was informed that 18 states had so far submitted their initial reports to the Committee, that 20 other States Parties which should have submitted their initial reports in 1977 had not yet done so, and 6 States Parties were due to submit their initial reports in 1978." Moreover, the worst case of a delayed submission was by Zaire. Its report due in 1978, was submitted nine years later. Doc. CCPR/c/4/add.10.

There has been a further debate about how the Committee ought to operate. Does it limit itself to the reports submitted by the states party only, or does it have to go far beyond that to include reports by the media, or non-government organizations? Some representatives expressed the views that the Committee should restrict its activities to the literal provision of article 40. The representative of Chile, for instance, said that:

Consideration of the report of Chile should be confined to the terms of article 40 of the Covenant and it was inadmissible that allegations should have been made on the basis of information obtained from sources other than those provided in the Covenant.²⁶

Moreover, another question needed to be resolved concerning the role of the Committee in relation to the study of states' reports. Does the Committee have to make general comments? Is it empowered to conclude whether a country has satisfied its obligations or not? The role of the Committee has become one of studying reports and making general recommendations whenever it feels it is appropriate, and to assist states party in fulfilling their obligations and encouraging them to promote human rights by the way of work which follows.

Once a state's report is received -which is supposed to be prepared according to the general guidelines²⁷- it is discussed in the presence of a representative of the state concerned. This is to engage in a friendly dialogue between the experts and the delegation, which will explain different points and/or answer some of the questions

26-U.N. Document, A/34/40. Par. 107.

27-According to Rule 70 of the Human Rights Committee's Rules of procedures, if in the opinion of the Committee a state report does not contain sufficient information, the Committee may require that state to furnish more.

that the Committee's members may ask. It also takes notes of the different questions that the Committee may require some clarification. Professor R. Higgins, a member of this Committee, describes its work as follows:

But the total context is one of encouragement rather than condemnation, if that is at all possible. Each delegation will be warmly welcomed, and an attempt will be made to put them at their ease....It is explained that the Committee's role is not to attack or condemn, or to engage in any sort of political campaign against the state concerned. Rather it is to engage in a constructive and friendly dialogue, to see if the Committee can assist the government concerned in making progress in the realization of human rights in its territory...The Committee much prefers to know that there are problems and shortcomings, and try to assist in rectifying these, than to be told that the Covenant is fully implemented and that absolutely no problems exist in respect of human rights.²⁸

According to this opinion, the Committee is to encourage rather than condemn the practices of human rights. Different claims that the Covenant is fully implemented in some countries is a general practice such as those made by the Soviet representatives.²⁹ Such claims are not usually true, since the practices of the states fell below what they in fact committed themselves to. Thus, a self recognition of the shortcomings in the progress of implementing the Covenant is a significant factor to the Committee in helping countries where the changes are needed. The experts, as Professor Higgins puts it:

do not grade the countries, either issuing blanket condemnation or giving a clear bill of health. Nor do we

28-R. Higgins, "Encouraging human rights." *L.S.E. Quarterly*, Autumn 1988. p. 256.

29-The Soviet representative, Mr D.V. Bykov, claimed that with the development of socialism "the nationality question had been resolved once and for all." Another Soviet representative, Mr K. F. Gustenko, claimed that "there were no political prisoners in the USSR" F. Jhabvala, (1985) op. cit. p. 479.

put them on a league table in which they be compared to other countries.³⁰

The purpose of this is to make countries feel that no matter what their human rights record is, the Committee is not going to condemn them or make any comparison with others which have better records. On the contrary, it deals with each country on its own, and tries to pinpoint the shortcomings and the different means by which countries may overcome them.

Up till now the process has been conducted on the basis of friendly dialogue. It is a comprehensive way whereby cooperation with the Committee is maintained. Nevertheless, it would be more appropriate to make some comparisons during the Committee's sessions that would be beneficial for different countries.³¹ That is, the Committee will not criticise the country under scrutiny, if it feels some shortcomings by referring to different experiences in other states party; at the same time it encourages countries which have

30-R. Higgins, (1988) op. cit. p. 257.

31-This is not to suggest that the Committee should grade countries, or as "legal commentators have suggested that we [the Committee's members] should be more ready to condemn, to issue hostile criticism, to differentiate the "good" countries from the bad countries"(R. Higgins, (1988) op. cit. p. 257.) But, the point that needs to be stressed is that breaking on how to bring to the attention of different countries experiences that have been followed in any of the state party and which may be genuine in the respect and promotion of human rights. The example that can be stated in this respect is the Italian one after the introduction of the Interministerial Committee on Human Rights. Sir Vincent Evans (U.K., former Committee member) said that: "The Interministerial Committee on Human Rights, which included not only government representatives but also representatives of private organisations and scholars was an admirable mechanism, that had helped to produce one of the best reports the Committee had yet received." U.N. Doc. CCPR/3. p. 37. The experience of Italy, for instance, is a genuine one which should be brought to the attention of different states which may follow the same path or develop other measures which would be more suitable for their conditions.

done well to do more in the promotion of human rights.

There has been some resistance to the work of the Committee; some states, for instance, have resisted sending reports or providing additional information. There are still some difficulties in the reporting system or the steps taken by the states towards the enjoyment of human rights. This covers specific areas when there is of antagonism between the provisions of the Covenant and national laws. Nonetheless, the Committee has been successful in many instances. This will be discussed in the next section when dealing with the particular case studies.

2-2 Individual communications

Apart from dealing with states' reports as discussed above, the investigatory role of the Committee consists of dealing with individual communications under the Protocol. Article 6 of this Protocol states that:

A State Party to the Covenant that becomes a party to the present Protocol recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by the State Party of any of the rights set forth in the Covenant. No communication shall be received by the Committee if it concerns a state party to the Covenant which is not party to the present Protocol.³²

This procedure has further revolutionized the approach to the issue of human rights. The fact that an individual can make complaints against his/her own state is a very significant step forward towards the full implementation of human rights. However,

32-I. Brownlie, ed., (1972) op. cit. pp. 181-2.

there are some conditions that are to be taken into account when sending these communications. They must be sent by the person concerned, or by another on his/her behalf-stating the kind of the relationship- and that the matter had exhausted all domestic remedies, so that the Committee would consider whether they were admissible or not. If a communication was admissible, it would be forwarded to the state party concerned for clarification within six months.³³

This again will depend on the publicity given by the state having ratified this Protocol. In other words, how many people, or what is the percentage of the population who know that their government has ratified this Protocol? How many of them would know that they can complain to the Committee when their rights under the Covenant are, in their view, abused? Governments have willingly ratified both the Covenant and the Protocol knowing the new responsibilities they would have to undertake. Nonetheless, there might be some hypocrisy on the part of some governments to give shining example and argue that human rights are observed since they have ratified these instruments. What is the meaning of a country like Zaire, for instance, ratifying this Protocol? There is little, if any, significance for the simple Zairian citizen who is underfed, lacks adequate housing, and is often illiterate, that he can complain against his/her

33-Article 4 of the Protocol states that:

1-Subject to the provisions of article 3, the Committee shall bring any communications submitted to it under the present Protocol to the attention of the State Party to the present Protocol alleged to be violating any provision of the Covenant.

2-Within six months, the receiving states shall submit to the Committee written explanations, or statements clarifying the matter and the remedy, if any, that may have been taken by that state.

Ibid., p 182.

government. How can one expect illiterate people in the Third World to be aware of their rights under the Protocol? In the best of cases where people are indeed aware of this possibility, a fundamental question cannot be avoided: what would happen to the letters, if any, they send to the Committee? In other words, how many communications does the Committee receive from the original number of communications sent? It is quite impossible to answer this question since the original number of communications sent is never known. Furthermore, people living under oppressive regimes would certainly abstain from such exercise fearing their governments' response. Nevertheless, the point that needs to be stressed in this context is that the process of controlling private mail in the majority of Third World countries, for instance, is a daily event, let alone 'official' mail. One may safely conclude that hundreds of these communications never reach the Committee, and that the number of people who do send these communications is never known.

Finally, the last task of the Committee is to deal with interstate disputes. The provision of article 41 provides for the way whereby the Committee works. The Committee receives communications from a state party which recognized the competence of the Committee to do so, against another state party which failed to take the necessary steps towards observing the provisions of the Covenant. However, surprising as it might seem, to the best of the author's knowledge the Committee has never dealt with such disputes.³⁴

2-3: Derogation:

34-R. Higgins, (1988) *op. cit.* p.254.

Article 4 of the Covenant provides for the right to derogation in emergency, would be appropriate to see what effect it has on the work of the Committee in general.

Article 4 of the Covenant allows states party to derogate from the provisions of the Covenant by suspending some guaranteed aspects of human rights in times of public emergency that threaten the life of the nation. Although the article provides for rights that should not be derogated from, and the suspension should strictly be in accordance with the exigencies required by the new situations, states' practices have often been open to criticism. It is generally agreed that the worst abuses occur during times of public emergency that make states invulnerable to scrutiny, since what happened finds its logical explanation in the newly emerged situation. However, the questions to be asked here are: what constitutes a threat to the nation? Is there a real threat and a genuine case where a state of emergency should be declared? For how long does the situation last?

Since there is derogation in public emergency, states have often used it to justify their actions. Although the Covenant provides for the states party to notify the Committee of the new situation and the rights that are to be suspended, "States Parties to the Covenant have tended to provide only delayed and inadequate notices of derogation, or sometimes, none at all."³⁵

In some cases, states of emergency have been declared when there is no real threat to the nation, unless the term 'threat to the nation' means to the privileged group in power. In other words, states of emergency have been declared because there is a danger that may bring down a government, or governments themselves

35-J. F. Hartman, "Working Paper for the Committee of Experts on the article 4 Derogation provision" *Human Rights Quarterly*, (7) 1985 p. 99.

have created these states of emergency to ensure that their powers are unchallenged. These is especially true in Africa and Latin America, where states of emergency have been declared after the numerous coups d'etat that these countries witnessed. Moreover, long lasting states of emergency are another problem, where the reasons behind the declaration of the state of emergency are no longer applicable.

There are several further difficulties, in connection with derogation, that may arise when dealing with the work of the Committee. These are due to the different interpretations of the term "threat to the nation". What constitutes a threat in an underdeveloped country is not automatically one in a developed one. In the former, it is generally linked to the selfishness of the people in power and how to ensure their long standing in power. As with the study of states' reports, overcoming these difficulties depends very much on the cooperation of governments, i.e., to assist the Committee by providing the up to date information concerning the state of emergency, and seeking advice and help whenever the governments are in doubt. By joining efforts both governments and the Committee, especially governments, have shown their willingness to promote and respect human rights, which is the main aim of the Committee.

III: Case studies:

This section deals with some particular cases in the light of the Committee's work. The choice of case studies was difficult to make, since there are a lot of countries that could possibly be considered. In this choice Western developed countries were avoided since they do

not lead the reader to understand fully the Committee's work and how successful it has been. On the other hand, they have the organizational and judicial organs whereby they implement the Covenant. However, by taking different countries such as the former U.S.S.R., a leading example of communist practice up to 1991, one sees that the Committee operates in a different environment, since the priorities in the former Soviet Union were not those which the Committee has tried to safeguard. Moreover, I shall discuss the changes that took place in that country after the introduction of *Perestroika*. The other example that will be highlighted is that of Chile, a country notorious for its human rights violations especially after the 1973 military coup, and which has experienced extended periods of states of siege.

3-1: The U.S.S.R.:

The U.S.S.R. ratified the Covenant on 16 October 1973 and therefore was among the first thirty five countries for which the Covenant entered into effect almost three years later. What seems to be surprising about the Soviet Union, as already pointed out earlier, is that the provisions of the Covenant are not in line with Soviet orthodoxy. Nonetheless, the Soviet Union made itself accountable to the Committee. However, what should be pointed out at this stage is that ratifying an international agreement does not automatically mean that the state which has done so, observes it. Therefore, the Soviet case should be scrutinized to find out to what extent, if any, the Committee was successful in bringing about changes in the Soviet jurisdiction concerning human rights.

Extensive changes in Soviet policies were clearly taking place in the Soviet Union after Gorbachev came to power. In other words, improvements, if any, in the sphere of human rights could not be solely attributed to the Committee, but to the different policies introduced by the new General Secretary. Moreover, a genuine assessment of the Soviet experience would be ideal, but could not be achieved. This is due to the fact that changes were taking place so rapidly in the former Soviet Union and what can be satisfactory today would be out of date in a short period of time.³⁶

A close look at the different reports submitted to the Committee reveals that there was a shift in the Soviet government's attitude towards the Committee in the course of a decade: from a hostile position to a more accommodatory, self-critical one.³⁷ This can be seen as a very significant step forward towards the improvement of the human rights situation. The claims that the Covenant is fully implemented in any country are not in the interests of the country

36-Mr. Yakovlev (the representative of the Union of Soviet Socialist Republics) said that: "changes were taking place so rapidly in the Soviet Union that the report was already somewhat out of date, and he would therefore provide some additional information in his introduction." U.N. Doc. CCPR/ C/ SR 928 par. 5.

37-The defensive position of the Soviet government can be seen during the discussion of the Soviet initial report in 1978 claiming that everything was fine. Mr. Sudarikov, the Soviet representative, said that his country's report (CCPR/C/1/Add. 22) clearly showed that all the provisions of the International Covenant on Civil and Political Rights were fully respected in the Soviet law." CCPR/C/1/Add. 22, 108, Meeting, Tuesday, Oct. 24, 1978. par. 2. He stressed further that "due to a high level of development of Soviet legislation, the ratification by the Soviet Union of the International Covenants on human rights in 1973, and their entry into force in 1976 did not entail any essential changes of, or supplements to, Soviet legislation." U.N. Document A/33/40. Par. 411. However, this position changed, Mr.Yakovlev (U.S.S.R.) said that: "A matter of major concern to his government was the lack of effective machinery for the full realisation of civil and political rights." U.N. Doc. CCPR/C/SR. 928 Par. 8.

concerned given the role of the Committee. Mr.Sadi, a Committee member, stated that:

...the Committee was not a tribunal with the power to condemn but rather a body responsible for constructive criticism that would help countries to fulfill their obligations under the Covenant.³⁸

The Soviet Union, as well as other East European countries, did not at first cooperate with the Committee. There had always been claims that the Covenant is fully implemented, and that there are different interpretations of human rights depending on the socio-political system. Jhabvala states that:

During the Committee's discussion of the Soviet Union's report, Committee member Bernhard Graefrath, an East German national, noted that it would be improper for the Committee to define human rights according to the standards of one model social system since different countries have "different conceptions" of "public order and morality" as well as approaches to freedom of expression.³⁹

Thus, the initial Soviet report was full of claims that the Covenant was fully implemented in the Soviet Union, and that the Soviet peoples, according to the representative of their government, "were proud of their achievements in human rights and had nothing to hide from world public opinion in that field."⁴⁰ Soviet laws and constitution, it was agreed, guaranteed the rights set forth in the Covenant. However, there is a big difference between different provisions of the laws and the constitution and the practices. Although the Soviet constitution guaranteed freedom of movement, for instance, how easy was it for a Soviet citizen to travel abroad?

38-U.N.Doc. CCPR/C/1/Add. 25 and 40. 130th Meeting, April 12, 1979. par. 44.

39-F. Jhabvala, (1985) p. 478.

40-U.N.Doc. CCPR/C/1/ Add. 22. 112th Meeting. Thursday, Oct. 26th, 1978. par. 3.

From a Soviet point of view, this right was fully guaranteed, and anything that questions this fact was just a myth. Mr.Sudarikov, the Soviet representative, said that:

The situation with respect to freedom of movement was clearly set forth in the Soviet media and by Soviet official bodies. The assertions that millions of persons wanting to leave the Soviet Union was a myth: that was not the case and never had been. The decreasing number of persons who did, however, could request exit visas from the Ministry of Interior.⁴¹

Nonetheless, such a statement is of questionable validity. There must have been some exaggeration on the part of the Soviet government as well as from the Western media. However, what is the percentage of the people who obtained their visas as compared with the total of people asking for one? Moreover, what is the percentage of people who asked for visas from the original number wanting to leave the Soviet Union but who never asked for an exit visa for various reasons? The answer to these questions is not an easy one, if not impossible. But they show that there are some restrictions upon this right, which make freedom of movement not as obvious a right as the Soviet Constitution stated.

The defensive attitude of the Soviet government could be seen as well in the case of self-determination and the secession of the Republics. Members of the Committee questioned the possibility of any Republic wishing to secede from the Soviet Union, and how easy it might be for them to do so. In his response, the Soviet representative stated that:

...in the first place it should be realized that it was absolutely inconceivable that a republic would want to secede, since there was an unshakeable bond uniting all

41-Ibid., par. 33.

the peoples and nations of the state, and they attribute their well-being to the fact that they formed part of the Soviet Union. Nonetheless, the right to secede did exist and could be exercised.⁴²

What could be understood from the answer above, and others by the Soviet representative, is that they are very politicized, very much embodied within the Soviet attitude of defending their achievements. The answer could have been more fruitful if it had been limited to the question put forward by the Committee's members, i.e., that the right to secede exists and how it can be exercised, giving examples, if any, of any attempts to secede from the Union.

In this context one has to ask oneself a question about the "unshakeable bond uniting the peoples and nations of the state", which were often no more than a heavy coercive state machinery ready to interfere whenever a movement aiming at secession emerged. This was especially true, at least, in the events that the Baltic Republics have witnessed since 1989.

Having said that did not automatically mean that the Soviet's record was the worse. As with any country, there were some shortcomings in its human rights record. Nonetheless, the Soviet Union showed its willingness to cooperate with the Committee, not only by ratifying the Covenant which made it accountable to this body, but by submitting its different reports and sending representatives of very high calibre to discuss the matter with the Committee's members.

Moreover, there were some improvements in the Soviet performance after the mid 1980s. At this stage one cannot talk about

⁴²-Ibid., par. 8.

any improvement without reference to the policies introduced by Gorbachev.⁴³ Perestroika was a new policy which represented the thinking of the new leadership on the internal as well as the external situation of the former U.S.S.R. Many changes took place there, among those in the sphere of human rights.

The willingness of the Soviet government to carry its cooperation with the Committee and its commitment to improve its human rights record could be seen from the shift in its attitudes; stating the difficulties that the country faced, as well as sending its third periodic report ahead of schedule.⁴⁴ With the different changes that took place, undoubtedly, the former Soviet Union was making significant steps forward towards the full implementation of human rights. Moreover, more attention was paid to international human rights standards.⁴⁵

According to the Soviet representative, the Soviet government had realized that there had been some shortcomings in the area of human rights and different draft laws had been adopted or were

43-Mr.Fador, a Committee member, "said that since the Committee had received the second periodic report of the U.S.S.R., tremendous changes had taken place in Soviet society in the framework of the new policy Perestroika. The positive effects of that policy where human rights were concerned deserved acknowledgement, as did the informative and concise report of the U.S.S.R. (CCPR/C/52/Add. 2) and its useful supplement (CCPR/C/52/Add. 6). The Soviet representative's introduction had been extremely helpful in outlining the most recent developments in the human rights situation in his country. "U.N. Doc. CCPR/C/SR. 928. par. 21.

44-The Chairman recalled "the third periodic report, due in November 1988, had been received ahead of scheduled." U.N. Doc. CCPR/C/SR. 928. par. 2.

45-Mr.Yakovlev, the Soviet representative, said that "a teaching course on international human rights standards was to be organised in Moscow in November/December, 1989 by the Centre for Human Rights, with the participation of three members of the Committee, Mrs Higgins, Ms Chanet and Mr Procar, whose presence could be most welcome. The programme included a visit to the Ministry of Justice." U.N. Doc. CCPR/C/SR. 928. par. 13.

waiting to be approved to put an end to that situation.⁴⁶ Perhaps the most important measure to be taken was in the judicial field. Mr. Yakovlev told the Committee that:

Important measures had also been taken in the field of judicial reform. It was realized that without a suitable legal system and independent courts governed solely by the law and protected against interference there could be no effective machinery to guarantee the enjoyment by citizens of their rights and freedoms.⁴⁷

Moreover, there have been some changes in different aspects of human rights, mainly freedom of movement, of conscience, expression and ill-treatment in psychiatric hospitals, which have mainly been the subject of the 931st meeting.⁴⁸

Different shortcomings were acknowledged and remedies were in prospect. Mr. Pocar, a Committee member, stated that:

...after having examined the summary records of the meetings devoted to the consideration of the second periodic report of the U.S.S.R. (CCPR/C/28Add.3), he wished to emphasize that distinct progress had been made, precisely in areas that had caused the Committee concern, namely, freedom of conscience, the treatment

46-The Soviet representative told the Committee that: "A great deal of legislation with direct bearing on human rights was being enacted." U.N. Doc. CCPR/C/SR. 928 par. 6.

Moreover, Mr Yakovlev, answering the questions put forward to him by the Committee's members said that: "Regarding freedom of religion, he acknowledged that the legislation in force was not yet perfect. However, there were no limitations in practice, which evolved more rapidly than legislation, and it might be said that religion has its place in society." Ibid., par. 18.

47-U.N. Doc. CCPR/C/SR. 928. par. 9. Moreover, Yuri Bandura, argues that: "What we need are not just "good" laws, we also need mechanisms supporting effective legislation oriented towards the all-around well-being of the individuals. We need a system of control to monitor observance of human rights, commitments as strict as that monitoring the observance of arms limitation agreements. "Human Rights: The View From Geneva." *Moscow News*, No. 9, 1989. p. 6.

48-For a detailed analysis see U.N. Doc. CCPR/C/SR. 931.

of persons interned in psychiatric institutions, freedom of movement and freedom of political activity.⁴⁹

To sum up, there were many changes taking place in the former Soviet Union which had some effect on the human rights situation. Although Gorbachev's policies were very significant, one should not neglect the role of the Committee. The discussion of the different reports submitted by the Soviet Union, and different shortcomings highlighted by the Committee's members, undoubtedly helped the Soviet government improve its standards. Satisfaction was noticed on the part of the Committee's members with the third Soviet report,⁵⁰ and with promises from the Soviet delegation to work on the improvement of their record.⁵¹

3-2: Chile:

The Covenant came into force on 23 March, 1976 in Chile, after the latter ratified it on 10 February 1972. Nonetheless, substantial changes took place in the period between the ratification of the Covenant and its entry into force, which should be pointed out for a better understanding of the attitudes of both the Chilean government and the Committee's members.

In the fall of 1973, the democratically elected government of

49-U.N.Doc.CCPR/C/SR. 931. par. 54.

50-Mrs Higgins, for instance, observed that: "the third periodic report of the U.S.S.R. and the discussion to which it had just given rise were exemplary. She congratulated Mr Yakovlev and his colleagues on their competence and thanked them for having accepted the suggestions of the Committee on a number of points." U.N.Doc. CCPR/C/SR. 931. par. 73.

51-Mr Yakovlev said that: "The discussion had been extremely enriching for the Soviet delegation which had acquired considerable knowledge that would be useful in the future." Ibid., par. 86.

Chile was overthrown by a military coup d'etat, suspending all the constitutional guarantees although the Chilean representatives stated the opposite.⁵² Following the coup a state of siege was imposed, all political parties were dissolved and major human rights abuses began to take place.

The initial Chilean report, due in 1977, was submitted and discussed in 1979. In the discussion, the Committee's members did not limit themselves to the information and the claims contained in the report submitted by the government, but went beyond that to use the information contained in a report by the *ad hoc* working group. This had led to some tensions between the Committee's members and the Chilean government's representatives.

The Chilean report claimed that the situation in the country was in accordance with the provisions of the Covenant, and that human rights in general were fully respected.⁵³ Also "the government of Chile had also informed the Secretary-General which rights had been restricted, thus complying with its obligation under the Covenant".⁵⁴

In what follows, I shall not engage in a detailed scrutiny of the Chilean report, but examine the improvement, if any, that may have taken place since the discussion of the initial one. The latter give rise to many controversies. The Committee's members, although

52-Mr. Claredon, the Chilean representative, states that: "On September 11th, 1973, the same day that the armed forces had assumed power, legislative decree No. 1 had declared that the government Junta guaranteed the full effectiveness of the powers of the judiciary and respect for the constitution and laws." U.N. Doc. CCPR/C/1/Add. 25 and 40. 127th. meeting, par. 18.

53-Mr Dieye, Chilean representative, "pointed out that civil and political rights, and human rights in general were respected only when there was an independent judicial power. That was especially important in the case of Chile, a country with a very old democratic tradition in which the independence of the magistracy had always been unquestioned." Ibid., par. 34.

54-Ibid., par. 23.

maintaining a friendly dialogue, heavily criticized the report showing that it was insufficient,⁵⁵ that it did not give a clear picture of the human rights situation and especially that it contradicted the findings of the *ad hoc* working group. Mr. Hanga, for instance, in his remarks stated that:

...there were conflicts between the facts established by the working group and the statement in the report submitted by Chile.⁵⁶

Given these facts, a new report was requested by the Committee, which was eventually submitted. A close look at the reports that have followed the initial one shows that there was a shift in the Chilean government's attitude towards the Committee as well as an improvement in the human rights situation in the country. At the discussion of its third periodic report, the Chairman of the committee said that:

Members who had been present when the second report of Chile had been examined would recall the spirit of co-operation and understanding shown by the delegation of Chile in its dialogue with the Committee.⁵⁷

What can be pointed out at the beginning is that Chile had adopted a new constitution in 1980, which, according to its

55- Decaux, argues that: "Le Committe ne s'est pas contente' d'enregistrer les rapports des Etats parties. En demandant un nouveau rapport au Chili, il a souligne' l'insuffisance des informations fourni." E. Decaux, (1980) op. cit. p. 529.

56-U.N. Doc. CCPR/C/1/Add. 25 and 40.128th meeting, par. 10. Moreover, Mr Koulishev, a Committee member, said that: "It was not difficult to compare the report submitted by the government of Chile with the report of the *ad hoc* working group. Anyone examining the former could not forget the working group's findings on the increase in detention for political reasons or for reasons of national security and the growing number of cases of intimidation torture and missing persons." Ibid., par. 30.

57-U.N. Doc.CCPR/C/SR. 942 par. 2.

representative, "marked the beginning of a transition towards full democracy",⁵⁸ and some improvement in the field of human rights was clearly noticeable. Perhaps the most significant of all was the plebiscite held in October 1988, with the lifting of the state of emergency in August 1988.

Since the lifting of the state of emergency many rights have been restored, mainly freedom of assembly and of opinion. The position of the Chilean government has become more flexible, willing to cooperate with the Committee on various issues. Such a position, undoubtedly, helped Chile improve its human rights record. Mr. El-Shafei, a Committee member, summarizing the improvement in Chile, observed:

The third periodic report of Chile, although short was informative, particularly regarding developments which had taken place since the submission of the previous report. The most notable of those developments had been the plebiscite on the presidency, held in October 1988; the promulgation of a number of acts designed to restore a democratic, pluralist regime; publication in the Diario Oficial of the text of the Covenant; the lifting of the states of emergency in force since 1973; the publication of the Convention for the Prevention and Punishment of Torture; the closing of detention centers run by the State Security Police; and, finally, the conclusion of an agreement with the International Committee of the Red Cross (ICRC) permitting that body access to detainees.⁵⁹

Having said that does not mean in any way that human rights in Chile are fully respected. There are still some shortcomings in different aspects which have been brought out to the attention of the Chilean representative. What matters most in this regard is that

58-Ibid., par. 4.

59-Ibid., par. 18.

there have been improvements in this field since the initial report and the Chilean government has shown some cooperation with the Committee. Given the adoption of the constitution and laws and the restoration of different rights, one would expect the human rights situation to improve further in this country.

IV: The Committee's work and the comparative study of human rights

Although the Committee does not engage in any comparison or ranking of countries, nonetheless, its work can lead to such a conclusion. In addition to the different difficulties that face the Committee in carrying out its work properly, discussed above, one may stress two other which are of the same importance. First, it was found that some misunderstanding had taken place during the discussion of some reports due to difficulties in the translation. Again problems of a conceptual nature arise whenever a study of human rights is attempted. During the discussion of Madagascar's report, for instance, the representative of that government said:

The question which had arisen with respect to imprisonment for debt appeared to be the result of misunderstanding. He explained that the French expression "contrainte par corps" used in Article 68 of the Decree No 59.121 (section 7 of the report) did not in fact refer to persons "imprisoned for debt", as the English translation suggested. As used in Madagascar, it meant simply that persons sentenced to pay a fine could, in a lieu of payment, serve a prison term.⁶⁰

Therefore, one would be very much in favour of the presence of an expert from the state concerned during the translation of the

60-U.N. Doc. CCPR/C/1/Add. 14. 87th meeting, par. 24.

report to avoid any misunderstanding that might otherwise occur. The second, pointed out earlier, is that the Committee lacks enough time to sustain the workload put upon it. This is made worse by the fact that some questions are raised by more than one member of the Committee,⁶¹ at the time, when Committee members should abstain from raising any question already mentioned by one of their colleagues.

The Committee's work is very sensitive and may face a lot of difficulties especially in the Third World. "The selfish reluctance of the ruling classes or groups", Bandura argues, "to give up their long lasting privileges"⁶² is very significant in generating opposition to the work of the Committee. The Committee, as opposed to the different analyses dealt with in this dissertation, has set itself a standard of achievement in the Covenant. Countries have freely ratified it, knowing the responsibilities they should assume. The scope of the human rights is larger, i.e., does not limit itself to some aspects of human rights but to the civil and political rights set.

Some difficulties had been posed by the fact that the Committee works within one single set of rights, avoiding the economic and cultural ones. The formulation of the Covenant was undertaken within a dominant Western orientation, which makes it quite distant from the realities in the Third World. The realization of the Covenant does require a minimum level of development and of state welfare. This is especially true in the case of Madagascar and Mali, to name just two. The representative of the former publicly pointed out that:

61-During the discussion of the Iranian report, Mr. Khosroshachi, the government's representative, said that: "The question of the Bahai's had been raised by no less than five members, which seemed a waste of time when one would have sufficed." U.N. Doc. CCPR/C/1/Add. 58. 368th meeting par. 53.

62-Y. Bandura, op. cit. p. 6.

The promotion of civil and political rights in his country had been hampered by the lack of judicial facilities, the sharp rise in crime and the worsening of the economic situation as the result of the world economic crisis.⁶³

There is no doubt about the importance of economic and cultural rights if the Covenant is to be fully implemented. The more people are educated, the higher their awareness is about their rights, and the more likely they are to put pressure on their government to comply with the international standards. Sir Vincent Evans, a former Committee member, questioned "whether serious attention was being paid in Madagascar to prison conditions and the rehabilitation of prisoners."⁶⁴ Although along with the Covenant's provisions, one would have done better to make inquiries about the living situation of the people in Madagascar let alone prisoners' condition. How can someone expect improvement in prison conditions in a poor, deprived country like Madagascar?

Members of the Committee had often stressed the importance of economic and social factors for civil and political rights [Mr. Hanga argues,] unless there had been economic and social basis, the civil and political rights set out in the Covenant are practically meaningless.⁶⁵

63-U.N. Doc. A/33/40. Par. 260. Moreover, in the discussion of the report of Mali, "the view was expressed that the report could not be judged in absolute terms or on the same basis as a report from a developed country; that although the Committee must adopt an objective approach in seeking assertions whether a state party was safeguarding the rights set forth in the Covenant, it should bear in mind that civil and political rights on the one hand and economic, social and cultural rights on the other, were interdependent, that the economic circumstances of a Sahelian country like Mali could not be overlooked when considering its report; and that it was particularly important to understand the background and the conditions prevailing the country concerned." F. Jhabvala, (1984) op. cit. p. 103.

64-U.N. Doc. CCPR/C/1/Add. 14. 84th Meeting par. 31.

65-U.N. Doc. CCPR/C/1/Add. 14. 83rd Meeting par. 25.

Therefore, one would have hoped to see the Human Rights Committee dealing not only with the states' report under the Covenant on Civil and Political Rights, but also under the Covenant on Economic, Social and Cultural Rights. This is particularly relevant since another Committee was set up for the purpose of studying reports under the latter Covenant.⁶⁶ This question was put to a Committee member who assured the author that it was better for the Committee to work within the existing set of rights, and that it was in the interest of the states themselves if the rights were monitored by two different bodies. Moreover, it was easier for the Committee members also to deal with the different questions that were within their field of competence.⁶⁷

In the light of what has been said one can see the importance of the work that the Committee does. It is a body which provides different information in great detail about what is happening in different countries that have ratified the Covenant. It is difficult to argue that the work of the Committee is motivated by political considerations. The differences between countries do exist in terms of their understanding of the Covenant, and the different stages of development that had they experienced. Nonetheless, the Committee does not apply arbitrary measures which would make its work hostile in some parts of the world. The stress has always been, as far

66-"The Committee on Economic, Social and Cultural Rights will replace the sessional working group of governmental experts of ECOSOC which has been dealing with the reporting obligations of States Parties to the Covenant on Economic, Social and cultural rights." J. L. G. Del Prado, "United Nations Conventions on Human Rights: The Practice of the Human Rights Committee and the Committee on the Elimination of Racial Discrimination in dealing with reporting obligations of States Parties". *Human Rights Quarterly*, 7 (1985) p. 494.

67-Interview, see note 11 above.

as the Committee's work is concerned, not upon comparing countries in terms of their observance of human rights, but on helping them to improve their standards. This can be very significant to the states themselves knowing that they would not be condemned but offered help whenever they request so. This will not only improve the human rights record in general, but at the same time offer a researcher fertile ground upon which a comparative study of human rights, based on the Committee's work, can be conducted. This study can either be an over-time assessment of one particular country to monitor the improvements, if any, with respect to the provisions of the Covenant, or, it can be a comparison between states party to the Covenant to compare whether they made any progress in the rights provided in this Covenant. Such comparisons are plausible and would certainly help to detect whether progress has been made or not and which country has been more compliant with the Covenant it pledged itself to respect.

Chapter Six

Quantitative Approaches to the Comparative Study of Human Rights: The work of Charles Humana

The measurement of human rights is a very complex issue. As with many other concepts in the social sciences, difficulties arise not only at the level of data but at the conceptual level as well. In order to measure human freedoms, one needs a basis to one's analysis, which consists of a definition of the concept, and also consists of the different variables which are considered to be relevant to the subject upon which the measurement and comparison can be obtained.

In the discussion that follows, I shall look at the work undertaken by Charles Humana more closely than has been attempted before.¹ Humana carried out two exercises of this kind in 1983 and 1986, both of which will be discussed in this chapter. (It should be added, that a third edition of Humana's work was published in 1992.² This will be discussed briefly in the conclusion). In particular, I look at the validity of these attempts at quantitative measures for human rights. Thus, I shall try to answer some critical questions that may influence the outcome of his results by giving examples whenever appropriate. The most important of these is the objectivity of the questions and the accuracy of the answers. In other words, what are the philosophical foundations or

1-The quantitative work of Charles Humana has not really been taken very seriously by the human rights community. However, it became a matter of public controversy in 1991 when it was taken by an independent body: the UN Development Program, which published the "Human Development Report" based on Humana's work.

2-C. Humana, World Human Rights Guide (Oxford: Oxford University Press, 1992)

the background to the questionnaire? Is his work applicable to different cultures? Is the study biased, in this case, influenced by the Western culture to which the author belongs? Finally, what are the main difficulties, if any, in applying Humana's inquiries on a cross-national basis?

In order to answer these questions, and for a better understanding of Humana's attempts to measure human rights, this chapter begins with the philosophical foundations of his study. In the second part, the methodology he employs is analyzed. The third section focuses on the two different types of assessment of countries employed in the study. Two striking examples are highlighted in this connection; Israel and South Africa. The strengths and weaknesses of applying this study in comparative perspective are also examined.

However, before doing that it was thought appropriate to stress that, contrary to what Humana states in his introduction that: "the United Nations organization, though it adopted the human rights treaties, does not issue periodic reports on the extent to which the member states honour them."³ The UN Human Rights Committee does indeed report to the UN General Assembly on its monitoring of compliance with the International Covenant on Civil and Political Rights and with the Optional Protocol, and has published reports throughout the 1980s. This was discussed in some depth in chapter five. Furthermore, before going into the study of Humana's work, his definition of the concept of human rights should be quoted. He defines them as:

In simplest terms they are laws and practices that have evolved over the centuries to protect ordinary people, minorities, groups and races from oppressive

3-C. Humana, The Economist World Human Rights Guide (London: Hodder and Stoughton, 1986) p. 1.

rulers and governments.⁴

I: Philosophical foundations of the study

To understand the philosophical foundations of any study is to be able to predict, to some extent, the outcome of that particular study. When dealing with a sensitive issue like human rights, and trying to develop a set of criteria upon which the ranking of different countries may be based, one has to be careful in selecting the variables. The selection of variables is very much influenced by the culture of any researcher. Humana selects the ones he thinks are appropriate, or should be considered as such, and these variables influence the outcome of the study. This first section accordingly analyses the foundations of Humana's study, which will enable the reader to better understand the conclusions and the rankings of different countries that are the outcome of his inquiries.

It should be borne in mind, as already pointed out in this chapter, that Humana undertook two inquiries of this kind; these will be examined in order to determine the extent of changes between the two studies or if any occurred at all.

1-1: The first inquiry

Humana's first inquiry, published in 1983, was based on a sample size of 107 countries evaluated in two different ways. When there was cooperation with the compiler and data were available, countries were assessed through questions. When information was scarce or suspect, however, countries were assessed in different,

4-C. Humana, World Human Rights Guide (London: Hutchinson, 1983). p. 7.

more summary ways. I am particularly interested in the first category, which contains 75 countries.⁵ This group offers the reader opportunities to follow the methodology employed to obtain the results, and to pinpoint the shortcomings, if any. I shall look at the questions and examine their applicability on a cross-national basis.

1-1-1: The questions

A close look at the range of the questions used by Humana reveals that some of them are of questionable validity. In other words, they do not derive from the usual sources of human rights agreements.⁶ This is not to say that what derives from the usual sources is always accepted (as we have seen in the previous chapter not every country ratified the international documents that Humana's study is based upon), but at least it rests upon a fair and widely acceptable foundation. However, in this inquiry some of the questions are arbitrarily selected and are culture bound, representing the values of western liberal thought. Problematic questions such as: drink and the purchase of alcohol, or the number of police and military and weapons normally carried out by civil police, do not relate to the subject. Moreover, they may favour the ranking of some countries and disfavour others. The questions related to drinking and purchasing alcohol may very well fit in a tourist guide, rather than a serious attempt to measure human rights. Some countries in the world, i.e., Islamic ones, prohibit this practice,

5-Ibid., pp.24-5

6-"This Guide is not similarly bound by what is acceptable to all and is therefore free to extend its inquiry with explicit questions about divorce and abortion, about compulsory military service and maximum sentences for standard offenses." Ibid., p. 8.

and are therefore culturally different from the rest of the world in this respect. The same applies to the remaining questions. One should look, for instance, at the causes of the higher number of police and military and what roles these two institutions perform in their respective countries.

Humana seems to believe that the higher the proportion of police and military personnel to the number of citizens in a country, the worse the country concerned is in human rights. A country such as Syria, to name just one, is seen to be behind many countries on Humana's scale. This phenomenon can be explained, at least from a Syrian point of view, by the fact that Syria neighbours Israel and there is a constant threat from the latter to its territory. So, the question to be asked here is about the role of these institutions. The comparatively high number of the Syrian military and police can find a reasonable explanation in terms of national security. Therefore, it does not seem in any way that the high number of police and military is a violation of human rights, or that a country's record can be judged upon such a variable. These two institutions may be, and indeed are in some countries, agencies in the hands of governments whereby torture and coercion are carried out, but this has nothing to do with their number. Another question is about the weapons normally carried out by the police. In Algeria, for instance, they carry sidearms, while in Papua New Guinea they carry batons only. Given this information, one sees in Humana's scores that the former is behind the latter. Once again one should not ask oneself what kind of weapons are normally carried by the police, but how likely or how often they use them? If in a country police carry pistols or sidearms, this does not automatically mean that they use them against citizens.

Perhaps gun control may also be a reason why police need weapons. In the U.S. they are armed, however, citizens are allowed to own firearms.

In addition to some of the questions not pertaining closely to human rights, Humana's survey also suffers from a degree of repetition. The issue of military service, for instance, is the subject of two different questions in the study. Although one does not oppose the inclusion of "freedom from military service" as a variable - because it might be seen as a means of war propaganda- but one does object to the inclusion of another question relating to "maximum punishment for refusing military service".

It is a general practice in some countries that citizens are free from military service,⁷ and if they are free, there will be no punishment whatsoever for refusing it. The opposite could be said about countries where military service is compulsory and, if someone refuses it, he will be punished accordingly depending on the country. Faced with this situation, one sees that there is a tendency in the part of the compiler to favour countries which have no compulsory military service.

Finally, the questions employed by Humana and which have some legal basis derive mainly from the International Covenant on Civil and Political Rights. This Covenant, although ratified by different countries in the Third World and in the former Eastern Europe, nonetheless represents the traditional perception of human rights, associated with Western liberal thinking. David Banks rightly argues that:

Each of Humana's forty variables reflects a different
facet of human freedoms. But some are strongly

7-To name just a few this category includes: Canada, Japan, Senegal and Papua New Guinea.

associated and some are quite difficult to assess.⁸

Humana, nonetheless, undertook a second inquiry to measure human rights. He may have done so to overcome the difficulties and contradictions found in his first inquiry; a close analysis of his second study will help to establish the extent to which he has been able to do so.

1-2: The second inquiry

Raymond Gastil argues that:

Charles Humana's World Human Rights Guide, a comprehensive attempt to review the state of human rights, is now in its second edition. Humana's selection of forty questions of detailed country by country examination is buttressed by citation of the international human rights documents that support each.⁹

Humana sought to avoid arbitrary questions, and in this inquiry all the questions used in the questionnaire were based upon different articles in international agreements. However, this does not mean that the questionnaire is immune from criticism or that it can be relied upon as an objective measure of comparative human rights.

A critical look at the questionnaire reveals that 57.5 per cent of the questions are drawn from the Universal Declaration of Human Rights, 35 per cent from the International Covenant on Civil and Political Rights, and only 7.5 per cent from the International

8-D. Banks, "Patterns of oppression: A statistical analysis of human rights." In *the 1985 proceedings of the Social Statistics Section of the American Statistical Association*, Vol. 4 p.156.

9-R. D. Gastil, Freedom in the World . Political Rights And Civil Liberties 1986-1987 (New York: Greenwood, 1987) p. 87.

Covenant on Economic, Social and Cultural Rights. Such a distinction greatly influences the outcome of the inquiry. Although Humana drew his questions from legal documents that countries had agreed upon, the result of the questionnaire would have been different if the distribution of the questions had been in favour of Economic, Social and Cultural Rights. Civil and Political Rights had little significance -in practice- in the Eastern bloc because of the priorities they had at this time adopted, and in most countries in the Third World because of historical and practical reasons: historical reasons, such as poverty and illiteracy and the commitment of governments to overcome these problems, and practical reasons, such as the form of their governments (usually military dictatorships). Thus, a questionnaire based on civil and political rights will, without any doubt, favour western countries.

Although the questionnaire is based on international instruments, nonetheless, it fails to overcome the fact that these rights represent the values of the liberal democracies. Moreover, some of the rights in the questionnaire are only indirectly supported by international instruments. Humana derives the right to be free from Capital Punishment, for instance, from article 6 of the International Covenant on Civil and Political Rights.¹⁰ However, the provisions of this article do not prohibit the imposition of the death

10-Paragraphs 2 and 5 of article 6 of the International Covenant of Civil and Political Rights state that:

2) In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.

5) Sentence of death shall not be imposed for crimes committed by persons below eighteen of age and shall not be carried out on pregnant women.

penalty. It stresses rather that it should only be imposed in "most serious crimes in accordance with the law", and that it "should not be imposed for crimes committed by persons below the age of eighteen and shall not be carried out on pregnant women". If the provisions of this article permit the death penalty -albeit in very rare cases- why should Humana class countries which have failed to abolish it below those which have done so? Moreover, the term "most serious crimes in accordance with the law at the time" is a very vague and complex one. What is considered as a most serious crime under Iranian or Saudi Arabian laws does not mean anything in another society with a different culture. Adultery, for instance, is a very serious crime under Islamic law and is punishable by the death penalty, whereas the sentence, if any, is less severe in most other countries. Moreover, what one has to bear in mind is the crimes committed during times of emergencies. Experience has shown in many countries in the Third World that some of the worst human rights abuses have occurred during states of emergency. The point that needs to be stressed here is that the Covenant does not prohibit the use of the death penalty in principle, and some of the violations are within the law at the time they are carried out.

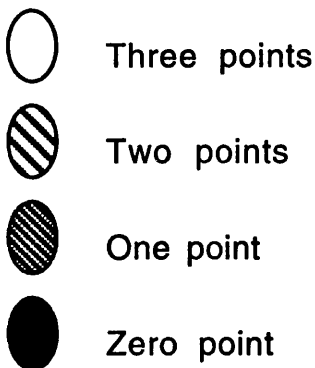
To sum up, the example discussed above shows the internal contradiction of Humana's attempt to measure human rights on a cross-national basis. In the first inquiry, some of the questions were irrelevant to the subject, and in the second, although based on international agreements, they tended to be western and culture-bound. Upon these two sets of questionnaires, Humana tried to develop a strategy whereby human rights are measured internationally; this will be discussed in the section below.

II: The strategy of assessment

Humana has developed a comprehensive method whereby he assesses countries' human rights performances. The strategies he follows are very similar in the two inquiries, with the latter differing in the system of weighting as will be seen later.

2-1: The method

The method used is quite simple. Humana proposes a scale of four points from zero (0) to three (3). The score that each country receives depends on the kind of answers to each of the forty questions. Each question receives a score depending on the severity of the government's action towards that particular issue. This can be seen from the illustration shown below:¹¹



For the purpose of this study, I shall refer to these categories as: top, upper middle, lower middle, and bottom respectively.

Depending on the scores of each of the forty questions that

11-C. Humana (1983) op. cit. p.9.

Humana employs, a country's human rights situation is determined.

The scores and countries' rankings will depend on the kind of questions themselves. As pointed out earlier, the questions are influenced by western values, so it will be no surprise to see Western countries enjoying leading positions compared to the rest of the world. Moreover, the scores given to any question depend very much on the availability of data and the cooperation of governments around the world. So, the sources of information are a very important factor in dealing with this issue. Humana states that

the accuracy and objectivity of the answers to the questionnaire have been considered of paramount importance. In most instances information has come from the most authoritative sources and is the latest available at the time of compilation.¹²

However, one has to bear in mind that one is dealing with the human rights issue, a very sensitive question in contemporary politics, and even "the most authoritative sources" do not necessarily have accurate and objective data and information. Governments, especially in the Third World and indeed in the former communist countries, tend to conceal facts relating to different aspects of social and political life, let alone questions related to human rights. Some feel that they are not accountable since the matter is of internal competence. Moreover, the accuracy of data available from a developing country like Ethiopia or Niger cannot be as accurate as those of a developed country like the United States or Germany.

Such reservations should have been considered by Humana in making his compilation. To highlight the fact, I shall give the example of Algeria¹³ as far as military service is concerned. As mentioned

¹²-Ibid.,

¹³-Ibid., p.33.

earlier in this chapter, there are two questions related to this area. Although one objected to the second one, I shall deal with both of them here to highlight that some of the answers are misleading and therefore influence, positively or negatively, the ranking of countries.

Concerning the question related to "freedom from military service", in Algeria citizens are not free from obligations of this kind. Everyone has to spend a period of time engaged in this way. The answer in Humana's inquiry was that everybody has to do six months' military service and thus Algeria was ranked lower middle. It would be of some interest to know the source of this information. The period required for military service in Algeria was for two years -at the time of the compilation- which was decreased to eighteen months in January 1990. Thus, according to the system of scoring, Algeria should have been ranked at the bottom and not lower middle. The same measure could apply to the question dealing with maximum punishment for refusing such service. Humana states that the maximum punishment is one year's imprisonment. However, if the period required for compulsory military service was two years, how could the punishment for refusing it be just one year in prison? The punishment for refusing it is much more severe when it is related to some civil liberties, such as movement outside the country or the acquisition of a passport and application for jobs. In these cases confirmation of a citizen's status vis-a-vis military service is a necessary prerequisite. Thus, Algeria, instead of being in the upper middle category, should have been in the bottom one.

Another contradictory area of the comparison is the question of the death penalty. In some instances, where the answers were similar, the scores given to the countries concerned were different in

1983. This category includes two countries in Western Europe. The answers to the question on the death penalty for France and Italy were respectively: recently abolished, and, abolished in 1944. The answers show that both countries do not carry out this kind of punishment any more. Nonetheless, the ranking of the two countries differs. France was ranked at the top, whereas Italy was ranked upper middle.¹⁴ The two countries should have been in the same category, i.e., at the top, following his line of argument. The scores, however, were corrected in 1986.

His strategy of ranking or giving scores to each country depends on the relative position of the state. But, the decisive question to be asked here is how can someone assess the position of a country concerning the death penalty? I believe that this question should not have been assessed on a four point scale as Humana did. What is the attitude of governments which have been ranked at the upper middle or lower middle?¹⁵ As far as the death penalty is concerned, there is nothing in between; whether the state carries out the death penalty and is to be ranked at the bottom, or does not, and be ranked top. The crux of the matter is not whether the death penalty is an established violation of the right to life or not, but the way by which Humana had tried to assess it. If the state carries out the death penalty, the damage is done. There is nothing relative that gives any room for argument as is the case with other rights. Algeria for instance, has been ranked bottom middle, but, it should have gone down to bottom.

Finally, the results or the scores of the different questions are

14-Compare the scores of the two countries in *ibid.*, pp.187 and 199.

15-*Ibid.*, p.33 (Algeria), p.41 (Marocco), p. 63 (Zimbabwe), p. 193 (Greece). See also, C. Humana (1986) *op. cit.* p. 12 (Algeria), p. 64 (Columbia).

turned into percentages. Each country that was assessed through this questionnaire was given a percentage which indicated its position compared to other countries and to the world average. I shall be discussing the world average at a later stage. What matters here is, how he achieved his percentages in both inquiries. In the second study there is a clear indication of how the figures are turned into percentages using a system of weighting. However, there is no indication to this effect in the first one. Humana fails to show how countries are ranked this way: how a particular country is ranked above or below another country. It would have been very helpful had Humana explained how these percentages were calculated, and how he established the basis on which the performance of countries was to be compared.

I have tried one possible and logical way to achieve his percentages, but it turned out to be slightly unsuccessful. In his first study, there are fifty questions. The first forty are the ones which receive scores, the remaining ten are divided into two categories: the first five "are given simply as an indication of the severity or otherwise of the penal code,"¹⁶ whereas the last five are compulsory documents for citizens.

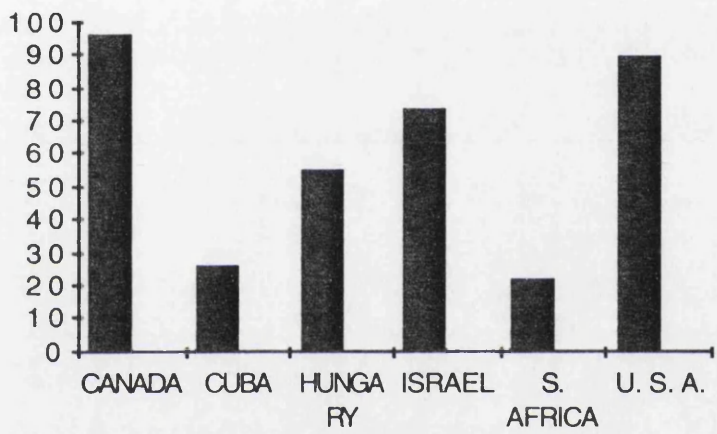
The percentages are reached by adding the scores of each question multiplied by one hundred (100) and the result is divided by one hundred and twenty (120), which is the maximum possible score for the forty questions. I have tried this method on two countries; Algeria and Sweden. The results were slightly different: in the case of Algeria, for instance, the finding was 62.5 per cent, and therefore its percentage should have been 63. In the case of Sweden, however, the finding matched the number Humana proposed.

16-C. Humana (1983) op. cit. 27.

Probably this is the method since the difference between the actual percentages and the findings is just slight. But, it is possible that the rest of the questionnaire might have some influence on the final percentage.

By applying his percentages for the year 1986 to different countries, one reaches the situation in the histogram below representing some countries around the world.

Histogram (6) 1: The percentage of human rights in selected countries



This is the position and the ranking of selected countries as far as human rights are concerned according to Humana. One can easily make a comparison from this histogram and decide for himself/herself which country complies with Humana's scale better than the others. Nonetheless, these results are questionable, not only because the questions are not acceptable to all, but because the questions themselves are sometimes misleading. In this context Algeria provides the best example. Its score should have dropped since Humana gave some answers scores higher than his system warranted.

2-2: The system of weighting

Humana introduced a system of weighting in his second exercise. Although he did introduce weight in his first study, Humana considered using it.¹⁷ Through the introduction of this system, some rights apparently become more equal than others. Among the range of the forty questions employed in the inquiry, he chose seven weighted ones. This weighting system means giving each of these seven questions three times the weight of each of the remaining thirty three. Here, a crucial question cannot be avoided: Where is the willingness to "avoid the impression of arbitrary selection on the part of the compiler"? The questions that Humana weights are freedom from:

- Serfdom, slavery, forced or child labor.
- Extrajudicial killings or "disappearances".
- Torture or coercion by the state.
- Compulsory work permits or conscription of labor.
- Capital punishment by the state.
- Court sentences of corporal punishment.
- Indefinite detention without trial.

Certainly the rights mentioned above are very important. In terms of human rights some rights are more important than others, and, indeed, some may depend on the others. It would be absurd to talk about human rights when the basic right, i.e., the right to life, is

17-"A system of weighting each of the questions was considered. In human rights terms some are undoubtedly more important than others -but would there be a general agreement on the exact order of the fifty questions?...It was therefore decided that the overall picture offered by the range of the fifty questions would be enough to inform the reader adequately, and would avoid the impression of an arbitrary selection on the part of the compiler." Ibid., p. 11.

violated. The reason behind this system of weighting is the endurance and the pain to which the individual is subject. Humana argues that:

An individual screaming while subjected to torture or locked for years in an unlit cell because of his or her opinions is enduring a degree of physical or mental suffering greater than the denial of a vote or of having his or her newspaper censored.¹⁸

Nevertheless, every right should be considered as equal as the others.¹⁹ One cannot talk about a state as not violating human rights if it does not carry out the death penalty or the rights mentioned above. Professor Yoram Dinstein, a prominent international lawyer from Tel Aviv University, in a talk at the Department of Law and Financial Studies (Glasgow University) about "Human Rights in Israel", stressed this point. He said:

Each state should be credited for honoring and respecting any aspect of human rights, and should be blamed for failing to do so."[He continued:] "In Israel the state does not carry out the death penalty, but at the same time some practices of demolishing Palestinians' houses are witnessed. There is no way to suggest that the state is observing human rights since the right to life is respected, which is above all."²⁰

Thus, according to this system of weighting, the percentage that each country receives is calculated as follow:

$$\frac{(33 \times 3) + (7 \times 3) \times 3}{162} \times 100$$

18-C. Humana(1986), op. cit. pp.3-4.
19-J. Donnelly and R. E. Howard argue that: "Although no rights can be enjoyed unless one is alive, the right to life has no moral priority; it may be a prerequisite to enjoying other rights, but does not make it a "higher" right." "Assessing National Human Rights Performance. A Theoretical Framework." *Human Rights Quarterly*, (8) 1986 p. 215.
20-Professor Yoram Dinstein, talk at the Department of Law and Financial Studies (Glasgow University) on "Human Rights in Israel" 9 February 1990.

Thirty three refers to the number of the non-weighted questions multiplied by three, which is the maximum score for each question. From this formula the highest possible number accounting can obtain be ninety nine. Seven, is the number of the questions that are weighted by being multiplied by three, and the result is multiplied again by up three -these rights are more important than the others according to Humana. The maximum score for this section would be sixty three. Converting these scores into percentages is achieved by adding the two sets of results, multiplied by one hundred and the overall is divided by one hundred and sixty two, which is the maximum score for the forty questions after weighting.

One concludes that, not only is the choice of questions of debatable validity, but there is also a discrepancy within the questions themselves. Or, how does one explain the fact that the maximum a weighted right receives equals the maximum score of three non weighted questions put together? Thus, according to the methodology suggested by Humana, if a country performs well in the weighted rights, it will have a big advantage over others which did not observe human rights in general. These particular weighted ones, moreover, are widely enjoyed in all Western countries. They constitute a necessity, whereas they are a luxury in most, if not all Third World countries.

Let us try to imagine a situation where two countries A and B were subjected to the questionnaire, and see their ranking position using this system of weighting. Country A scored the maximum points for the first twenty questions, and none for the second twenty. On the other hand, Country B did exactly the opposite, i.e., scored none for the first twenty, and the maximum for the second twenty.

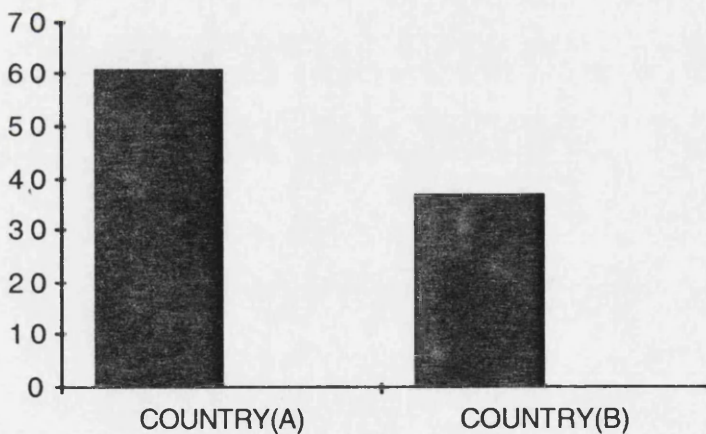
Needless to say, according to the questionnaire, the weighted rights are within the first twenty. Normally, they should be at the same level within the ranking table, since both received maximum points for twenty questions and none for the other twenty. However, one sees that country A is well ahead of country B, thanks to this system of weighting, as follows:

Country A:
$$\frac{(13 \times 3) + (7 \times 3) \times 3}{162} \times 100$$
$$\frac{39 + 63 = 102 \times 100}{162} = 62.96\%$$

Country B:
$$\frac{(20 \times 3) + (7 \times 0) \times 3}{162} \times 100$$
$$\frac{60 + 0 = 60 \times 100}{162} = 37.03\%$$

To see the discrepancy between the the two countries, these percentages shown above will be highlighted in this histogram.

Histogram (6) 2: Percentages of human rights after the system of weighting



This histogram shows the inequalities between the two countries. This inequality that I shall refer to as "spurious lead" would not have existed if Humana had not introduced his system of weighting. Although he intended to highlight some rights of genuine

importance, applying them world wide would be exalting some against the others. Any weighting of this kind, however plausible, introduces an element of arbitrariness into the entire exercise.

2-3: The world average

In his assessment of human rights situations, Humana has developed a minimum standard of achievement referred to as the world average. Of course the world average in the first inquiry differs from that in the second.²¹ In other words, countries scoring above this percentage may be regarded as better than those below it. In his comprehensive table of countries assessed, the ranking position of each country is determined relative to this world average.²²

In his first inquiry, the world average was 64 per cent. Surprisingly it was a very high average as Humana himself conceded. He gave two main explanations for this phenomenon, stating that:

The first is the earlier reference to regional, religious or social distinctions which establish certain areas of tolerance in different groups of countries. The second,.....is that the efficiency of a state usually falls short of controlling all aspects of life.²³

Nonetheless, there might be another possible explanation to this and it is not less important than the two mentioned above; it is the size of the sample. Humana established a world average for human rights taken from the seventy five countries assessed through his questionnaire. So, it does not reflect a comprehensive overview of

21-In the first inquiry the world average was 64 per cent, whereas, in the second it dropped to 55 per cent.

22-C. Humana (1983) op. cit. pp.24-5. and C. Humana (1987) op. cit. pp.XIV-XV.

23-C. Humana (1983) op. cit. p.11.

human rights in the world. If the study had included more countries, the world average would have fallen to just fifty or slightly over. This is why, perhaps one thinks, the world average in the second inquiry was 55 per cent, since the study included eighty nine countries; fourteen new ones had been added. It is perhaps safe to assume that, if further inquiries are carried out which include more countries, the world average will, with little doubt, fall again. The reason is that countries missing in the inquiries are usually from the Third World, where abuses and human rights violations are a relatively common practice.

There is no explanation to why the world average was 64 and 55 per cent in 1983 and 1986, respectively. In other words, why did he establish these percentages and not others? The explanations given above help illustrate the 1983 average attained its level and dropped in 1986, but they did not tell us why 64 per cent, for instance, was the outcome in the first instance.

I tried to figure out how Humana achieved his world average. The only possible way was to add the score of each country, and the result was divided by the number of countries assessed. I tested this hypothesis on the two inquiries. In the first one, the findings were slightly over the number Humana gave. According to this strategy, the world average should have been 65 per cent rather than 64 per cent. This is because the test resulted in 64.6 per cent, and this figure is nearer to 65 than to 64. However, in the second inquiry, the gap between the findings and the figure given by Humana invites the reader to be suspicious whether the strategy followed is the appropriate one. I have added the score received by every country, and divided the result by 89 -which is the number of countries

assessed under the questionnaire. The world average reported by Humana was 55 per cent, but the actual finding was 61.8 per cent. Thus, the world average should have been 62 per cent, if the second inquiry does not suggest that the strategy followed in obtaining the world average is different from the one thought was. It would have been appropriate if Humana had explained how his results were achieved.

Even if one agrees with Humana on the establishment of 64 and 55 as percentages, one does not agree with the system as a whole. Human rights, in this view, are a kind of test a government has to take: if it achieves the minimum requirement it passes, and if it does not it fails. Professor Yoram Dinstein observed that:

Human rights are not a balance between credit and debit. If a government does not violate one right it should be credited for it and if it does it should be debited for it. At the end if the credited side is higher than the debited one, we cannot say that the country is observing human rights.²⁴

The same reasoning could be applied to this world average. Countries which have reached this average might be thought to be more observant of human rights than those which received lower averages. One believes, on the contrary, that every government violates human rights in one way or another, and that the enhancement and enjoyment of human rights is a continuous process. It does not mean in any case that countries like the United States, France, Sweden and Norway which scored high -far beyond the world average- are not questionable in terms of their performance. This world average makes them less vulnerable to scrutiny at a time when they should work harder towards improving the standards

24-Professor Yoram Dinstein, note 20 above.

already achieved. Therefore, one thinks that the world average should have been omitted from the two inquiries, because it is not fully representative on the one hand, and because it invites comparison between countries' scores and a spurious global norm, on the other.

III: Types of assessment

This section examines the different types of countries considered in the two inquiries. As a matter of fact, Humana has selected two types of assessment: countries assessed under the questionnaire and others assessed in more summary form, both of which will be analyzed below.

3-1: Assessment under the questionnaire (The cases of Israel and South Africa)

Seventy five and eighty nine countries respectively were assessed through the questionnaires in the two inquiries. The kind of questions that constitute the questionnaire and the method developed to rank countries were discussed in some detail. The focus here will be particularly on two countries which pose a lot of difficulties: South Africa and Israel. It is generally agreed that, relatively, some of the worst human rights violations occur in these countries. For some historical reasons these two countries have become very peculiar, and whatever strategy is followed to assess human rights in them will have its shortcomings. Humana has applied two different strategies; one for each country. For the former,

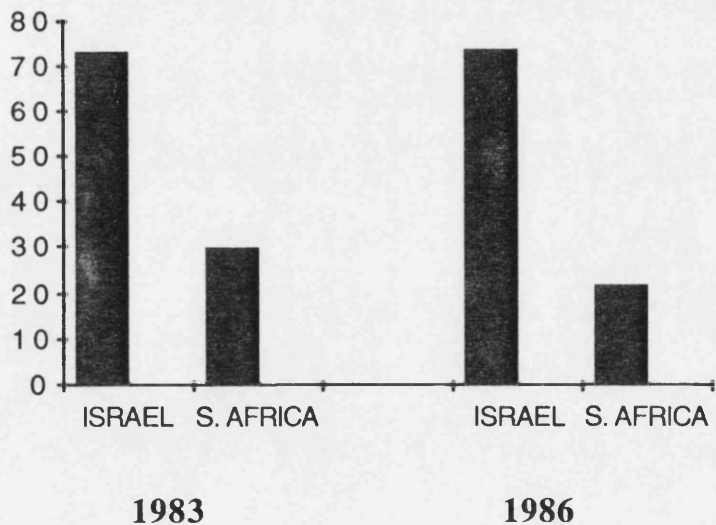
the compiler asked:

How does one, for example, apply a single questionnaire to South Africa with its bewildering contradictions of human rights for its white citizens and the denial of most of the non-white two-thirds of the population who do not qualify, because of their colour for citizenship? As the Guide accepts the premise that in the field of human rights mankind is one, the only honest treatment of South Africa is to apply the questionnaire to the least favoured of the population. And this approach has been followed.²⁵

Whereas, as far as Israel is concerned in Humana's study, another approach has been followed. The justification was that:

These [The Occupied Territories] are administered by a separate military government, and law enforcement and breaches of human rights are much more repressive than in the liberal state of Israel. For the purpose of this Guide Israel has been assessed without the Occupied Territories.²⁶

Histogram (6) 3: Human rights in South Africa and Israel



This histogram, a result of Humana's inquiries, shows the differences between two countries with notorious records violating

25-C. Humana (1983) op.cit. p.11.

26-Ibid., p.12.

human rights. Nonetheless, after the elimination of the Occupied Territories for Israel, it is clear that the latter is ranked much higher than South Africa. Had it not been for this discriminatory strategy, these countries would have had the same scores, i.e., well below the world average. If "in the field of human rights mankind is one" -as Humana has suggested- why is it then that Israel is assessed without the Occupied Territories? Why were the Occupied Territories assessed by themselves in the second inquiry? Who is responsible for the violations that the Occupied Territories witness daily? The answer is obvious: the Israeli government. These are practices by a state against individuals; if they are positive acts it should be credited, and if they are not, the state concerned should be blamed. Looking back to the definition of human rights that Humana suggests in his introduction, one sees that they are "laws and practices.... to protect ordinary people, groups and races, from oppressive rulers and governments". Since they were not considered, where do the Palestinian people in the Occupied Territories fit, if they do not belong in these categories? Moreover, where are the laws to protect them against abuses and by which standards should we judge the oppressor? Therefore, what is the purpose of a guide which assesses Israel without the Occupied Territories?

Conversely, why does the questionnaire in South Africa apply to the blacks only, "the least favoured of the population"? The standard of 30 per cent in South Africa does not reflect the real situation in the country as far as the white citizens are concerned. If one was to apply the same questionnaire, using the same techniques, that Humana suggested, to white citizens only in South Africa, the outcome of the inquiry would be completely different from the one

Humana achieved. The same could apply to Israel; the high percentage, really, is not representative for the unprivileged Arabs. If mankind is one, then one questionnaire only should be applied to different groups or segment in the society. Although one accepts that the questionnaire in both cases was applied to the majority of the population, one would be in favour of applying the questionnaire to all the population within the jurisdiction of the state; or applying the questionnaire to the two segments of the society, adding the results, dividing this figure by two to produce a clearer picture.

The important question that should be asked in this instance is why were the Occupied Territories independently assessed in the second inquiry? The Occupied Territories as such do not qualify as a state since there is no legitimate sovereign government enjoying acceptance within the international community. Power in these territories is concentrated in a military authority, which is responsible for what is happening. It would be absurd, then, to examine the Occupied Territories as independent from Israel, with the latter's performance not influenced by the abuses in the Occupied Territories. Otherwise the result would be to hide facts or mislead readers to believe that Israel performs well and observes a wide range of human rights. The situation in this area is very difficult; the Arabs do not recognize the state of Israel, while the latter claims sovereignty over some areas through military authorities. Therefore, it is quite difficult to find an accommodation that would satisfy both parties. Nonetheless, in the area of human rights where human beings are supposed to be equal, the same treatment should be applied to both of them. Thus, Israel's performance should have been lower than what Humana proposed.

3-2: The summary forms

Countries where information was scarce were assessed in both studies in a more summary form. In other words, the questionnaire was not applied to them, but the compiler tried to give a general picture about the situation in each of the countries considered. After that, he divided the countries into three different categories: 'Bad', 'Poor' and 'Fair'. These categories are comparatively acceptable, but did not mean anything in terms of percentages in the first inquiry. In the second inquiry, he tried to define his categories further by giving them percentages. Thus, 'Bad' is the category where the percentage is forty per cent or lower, 'Poor' is between forty one and seventy five per cent, and 'Fair' is over seventy five per cent.²⁷

These are the categories and the percentages representing each. Humana felt that the categories were vague in terms of significance, and tried in his second inquiry to make them more understandable. Nonetheless, the matter is not clear, especially in the lower and the middle categories. There is a gap of 40 per cent, and another of 34 per cent in both categories respectively, which poses a lot of difficulties. In other words, how is it that the two countries are ranked in the same category with one scoring 73 per cent and the other just 41 per cent? Since both of them have scored between forty one and seventy five per cent, they are both in the 'Poor' category according to Humana. But, if one looks at the score of each, if any, one sees the discrepancy between them.

It would have been more appropriate, surely, if these countries had been ranked in different categories or clusters of six or seven: to

27-C. Humana (1986) op. cit. p.4.

narrow the gap between different categories and make the comparison more meaningful. One does bear in mind that this depends on the information available to the compiler, and the availability of just one source of information may play a crucial role in the positioning of any country. However, if this cannot be done, and the compiler felt that countries should be ranked in just three categories, it would perhaps make more sense if these categories did not have these high percentages. The reason behind this strategy is the lack of information concerning the attitudes of governments towards their citizens. In the area of human rights, governments try to hide or falsify facts related to abuses in human rights. That is not the kind of publicity that governments will normally seek. So, the assumption is that, when there is no cooperation with human rights organisations, the country's record must be quite bad. Therefore, one is very surprised to see some countries, assessed through summary forms, in the middle category -'Poor'- indicating that they scored a percentage between 70 and 75 per cent..

IV: Humana's work in comparative perspective

Before going in depth into the assessment of Humana's inquiries, it is important to consider his third study. As pointed out earlier, it was published in 1992. I shall discuss this edition briefly, mainly to point out the new elements, where they exist, that this study contains.

This edition includes 104 countries, 15 more than were previously included. Countries, in this edition, were assessed through a questionnaire, and none in the more summary way. One may say

that, in principle at least, more information became available to the compiler. However, the strategy followed was the same in his second survey (1986). Forty questions were used, all of them based on international instruments (23 on the Universal Declaration, 14 on the Covenant on Civil and Political Rights and 3 on the Covenant on Economic, Social and Cultural Rights), and a system of weighting was followed (the same rights which were weighted in the second survey were used in this edition). However the world average in this edition, contrary to the presumption made earlier that the more countries are included the lower the world average would be, has gone up to 64 per cent compared with 55 per cent in 1986. This could be explained by the wave of change that the former communist countries have experienced since the publication of Humana's second inquiry in 1986. Countries in Eastern Europe such as Czechoslovakia, Poland and Romania which did not reach the world average in both former studies, in 1992 scored 97, 83 and 82 per cent respectively. This shows that the world human rights situation, according to Humana, has improved and therefore the world average should be higher to be truly representative. The publication of the world map is another new feature in this edition. This map is similar to the ones published by Freedom House (see chapter eight), where respect for human rights in any country is readily apparent. While black means human rights are violated, white respected, grey means that most human rights are respected.

Humana had tried to develop a comprehensive strategy whereby one could measure the human rights performance of every country. It has been suggested elsewhere in this chapter that the criteria he develops are not necessarily acceptable as a basis of comparison on a cross-national basis. He himself acknowledges the fact when he says

that:

One of the purposes of this Guide is to make possible comparison between countries. Such comparisons, by the distinctive nature of each society, can be only approximations, and objections to such an exercise can be predicted and understood.²⁸

To start with, Humana defined human rights as "laws and practices". However, in his application of the questionnaire he scarcely takes into account the practices. One acknowledges that the laws are necessary, in some instances, to establish standards and to obtain reparation, nonetheless, the practices have tended, for different reasons, not to take into account the provisions of the laws. What is the meaning of freedom of movement in a country where the acquisition of a passport is very difficult? In Algeria, for instance, "Algerians are free to travel within Algeria and outside, although travelling abroad is made difficult by strict currency controls."²⁹ This may be the case; but if citizens do not have any access to foreign currency, what does freedom to travel mean to them?

In his definition of the term, there is a reference to time when he says: "They[human rights] are laws and practices that have evolved over the centuries". This in turn poses some difficulties in comparison. The development of the laws differs from one country to another. The evolution over the centuries did not follow the same course in different countries. In this context the age of the nation has some significance. One cannot possibly apply the same standards to countries which have existed for centuries such as the United Kingdom, France or the United States to the majority of Third World

28-C.Humana (1983) op. cit. p.9.

29-Freedom House, Freedom in the World 1989-1990. Political Rights and Civil Liberties (New York: Freedom House, 1990) p. 30.

countries which have existed for only a few decades.³⁰ Clearly it is difficult to achieve high standards of human rights in countries with a long tradition of arbitrary and authoritarian rule and oppression. Human rights, as they are enjoyed in today's West, are the product of a continuous process that has been progressing over the centuries; and, relatively, the same process is taking place in the underdeveloped world. It is difficult to apply standards developed in the West, and thought to be the best, to describe situations in different countries in the world. Dogan and Pelassy argue:

Is it possible to analyse, with concepts formulated in Europe, in a completely different context what is now happening in Burma or Zaire? What is a "nation" or "a social class" in Sub-Sahara Africa? Are not the words we are using surreptitiously leading us to misinterpretation?³¹

To achieve valid results when comparing human rights one cannot to be ethnocentric. In other words, the establishment of a set of variables and a minimum standards of achievement -referred to as the world average in the inquiries- and try to apply them on a cross-national basis will not solve anything. It will, on the contrary create a lot of controversies.

Thus, when attempting to measure human rights, a clear definition of the concept has to be provided as well as the different variables upon which judgement is to be based. A small set of variables can give, relatively, a clear picture of the situation in any

30-R. J. Goldstein, "The limitations of using quantitative data in analysing human rights abuses". *Human Rights Quarterly* (8) 1986.p 612 .He states that: "Yet sociologist Rhoda Howard and others have made compelling arguments that in effect measuring all countries by the same definitional standards is grossly unfair to developing nations."

31-M. Dogan, and D. Pelassy, How To Compare Nations: Strategies in Comparative Politics.(New Jersey: Chatham House, 1984) p.22.

country. Nonetheless, these variables should not be in contradiction with the political system of any country.³²

It is quite difficult to reach an accommodation as far as this area is concerned. What constitutes a human right in one country may not be quite so fundamental in the other. What has to be taken into account are the social and economic conditions as well as the cultural factors whenever human rights are discussed. They do not develop in a vacuum. They influence, and are influenced by the environment in which they exist. Different attitudes can be understood by looking at the political culture of the society itself.

To understand the economic factors better, Algeria provides an example par excellence. The country witnessed the worst human rights violations since independence when government troops indiscriminately massacred its citizens in October 1988. Since that time, it moved from a one party system to multi-party "democracy". Algerians currently enjoy different forms of freedom that did not exist before: freedom of expression, independent newspapers, associations etc,. In both instances (before and after October 1988) it was due to economic factors. Protests against unemployment, corruption and the failure of the economic system led to these demonstrations ending in bloodshed. The inability of the government to provide materially what it did previously, and to manage the increasing demands of the people, led to these reforms as a strategy to gain legitimacy. The question that one wants to ask here is, would these violations of human rights, and the flexibility in the part of the government have existed, if it was not for the failure of the economic

32-A secret ballot affords one the opportunity to reject the single party on offer. However, in his second work, Humana states that Czechoslovakia is a one-party communist state, and uses a question about multiparty elections by secret and universal ballot. C. Humana (1986) op. cit. p.72.

system?

Therefore, many factors are involved when human rights are discussed. However, it should be made clear that Humana's inquiries are not without value. They are above all comprehensive inquiries; he tries to develop a strategy by which one can measure human rights, in principle, on a global basis. As already mentioned, however, they are heavily influenced by Western thinking, which find little, if any, significance in different parts of the world.

Among the purposes of these guides is to make possible comparison between countries in terms of human rights. Nevertheless, one does believe that it is not enough to have concepts and statistics to conduct a meaningful comparison. The latter concept, as defined by LaPalombara, is "to look for similarities and differences in phenomena in order to understand, explain and predict them"³³ or, as Sartori puts it "to compare is to control."³⁴ The question that needs to be answered in this respect is: how could one look for similarities and differences or how can one be in control?

This question may be answered in terms of the strategy that should be followed when making the comparison. To make the best possible use of Humana's inquiries, one needs to select the countries one is going to study. The adoption of the method is a very significant step in the process of comparisons. The cross-national approach that Humana followed in his inquiries led to disagreements on the range of the questions asked on the methods of assessment. The inclusion of different countries, with their differences in cultures

33-J. Lapalombara, Politics Within Nations (New Jersey: Prenticehall, 1974) p.7.

34-P.G. Lewis, et al. eds., The Practice of Comparative Politics. A Reader (Milton Keynes: Longman and Open University Press, 1973) p.239.

and backgrounds, further added to the difficulties one encounters in measuring human rights. It would have been more helpful had Humana restricted the application of his strategies to countries from the Western world. If the concepts concerned are not judged and valued within the same context, the result of any inquiry would not be very convincing. Human rights are a social phenomenon that influence, and are influenced, by the environment in which they occur, as well as the culture of the actors involved whether in violating or assessing them. Therefore, one would not be surprised to find a completely different picture had the inquiries been carried out by a scholar from the former Eastern Europe or the Third World. The argument and variables he would use would, undoubtedly, differ from those seen in Humana's inquiries.

Chapter Seven

Comparative Measures of Human Rights and Democracy

In this chapter I shall investigate different attempts made by political scientists to measure democracy, especially on a crossnational basis. I have concentrated on these quantitative measures of democracy in this work, solely because the definition of democracy and its measurement extends into the field of human rights. In other words, different variables used for measuring degrees of democracy have been used in different attempts to measure human rights and civil liberties. One such attempt is Humana's approach, as pointed out in the previous chapter; another is that of Freedom House, as will be seen in the next chapter.

Apart from this, among the elements included in the definition of democracy, or seen as crucial factors or preconditions of it, many are supported by the provisions of legal international agreements such as the Universal Declaration of Human Rights and the Covenants that followed. These include, to name just a few: the right to free speech, assembly, association and of the press. Such inclusion and association of many human rights with political rights suggests, further, that when a country is democratic it is observing human rights, since the definition of democracy includes aspects of human rights such as freedom of expression.

To some extent, the definition of democracy is based upon the existence or absence of human rights. Having said that, it does not mean that a democratic system observes human rights, and that the

violations of human rights occur only when a system is undemocratic. I shall deal with this at a later stage. Nonetheless, what is evident is that, among the variables used in defining democracy, several are used in measuring human rights.

Given the diversity of political systems and their different attitudes towards observing human rights, some questions on this aspect cannot be avoided. The most significant of all are: Do democratic countries observe human rights? Can one safely conclude that countries where human rights exist are democratic? What are the variables used in measuring the degrees of democracy that are not used in the measurement of human rights?

In order to answer these questions and others, and for the purpose of this study, I have concentrated on two main studies which have tried to measure democracy: those by Robert Dahl and Kenneth Bollen. However, having said that, it does not automatically follow that different definitions and conditions are ignored. I shall highlight them whenever appropriate. This chapter first of all considers Dahl's study. I shall look at the definition he gives and the conditions upon which he judges whether a system is democratic or not. Then, I shall turn to the study undertaken by Bollen. The third part of the chapter contains a comparative analysis of the two inquiries. In other words, it highlights the characteristics shared by the two scholars in measuring the degrees of democratization. The chapter concludes with some critical reflections about the shortcomings of the two inquiries discussed and a general assessment.

I: Dahl's measurement of democracy

It should be noted at the outset that Robert Dahl believes no political system in the contemporary world is fully democratic. He suggests, rather, calling a system which is near to satisfying the criteria of democracy, a "polyarchy."¹ In this study I shall use these terms interchangeably.

Thus, I shall look at the variables used in defining and measuring democracy and consider their shortcomings, as well as considering their general acceptance. However, before doing that, one should first identify a democratic system. This may be done by employing a definition of the concept which includes the different conditions that may favour it. Dealing with this issue will enable the reader to understand why emphasis has been placed on some variables and not on others.

1-1: Definition of democracy

What should be borne in mind is that there have been many definitions of the term democracy since its evolution over the centuries. What concern us, in this respect, is the definition used by Dahl. As suggested above, he believes that no system in today's world is democratic. Nonetheless, he suggests that: "democratic theory is concerned with the processes by which ordinary citizens exert a relatively high degree of control over leaders."²

1-..."since (in my view) no large system in the real world is democratized, I prefer to call real world systems that are closest to the upper right corner polyarchies... Polyarchies, then, may be thought of as relatively (but incompletely) democratized regimes, or, to put it in another way, polyarchies are regimes that have been substantially popularized and liberalized." R. Dahl, Polyarchy (New Haven: Yale University Press, 1971) p. 8.

This suggests that, where citizens have a relatively high degree of control over their leaders, that country is democratic. In other words, governments are not in office to exert authority over their citizens, but to be responsive to the demands formulated by them. Dahl observes that:

The key characteristic of democracy is the continuing responsiveness of the government to the preferences of its citizens considered as political equals.³

Such a distinctive characteristic of democracy leaves the door wide open to debate and offers grounds for questioning the statement itself. The questions that need to be clarified in this respect are: what kind of responsiveness of governments exist in relation to the preferences of their citizens? And how far do governments go in responding to these preferences?

Dahl offers three requirements favouring democracy, and therefore makes his statement valid, i.e., when government is responsive to its citizens, and they are considered as political equals. The conditions are:⁴

- 1-To formulate their preferences.
- 2-To signify their preferences to their fellow citizens and the government by individual and collective action.
- 3-To have their preferences weighted equally in the conduct of the government, that is, weighted with no discrimination because of the content or source of preference.

If one scrutinizes these requirements (which will be the basis for

2-R. Dahl, A Preface To Democratic Theory (Chicago: The University of Chicago Press, 1956, p. 3.

3-R. Dahl (1971) op. cit. p. 1.

4-Ibid., p. 3.

his measurement of democracy, as will be seen at a later stage in the chapter), the right to vote, freedom to form and join organisations and freedom of expression would be at the centre of democracy. They are ordinary channels whereby citizens can make their voices heard, and government can take the appropriate decisions.⁵

Although one does agree that if a system works this way it would be democratic since the government is always under constant pressure from its citizens, however, in practice it is difficult to be achieved. In other words, they exert a kind of control that would make the government responsive to the different demands forwarded to it. This may appear to be a utopian society where everything works perfectly. What one has to bear in mind is that although these characteristics are vital to a democratic system, they are insufficient. This is especially true of some systems which are democratic but do not have all these kinds of rights. The United States is an example par excellence. There is no doubt that the U.S.A. is considered among the most democratic countries in the world, and one would suspect that the different requirements that Dahl proposed for democracy were met within the American system. However, in the process described above, freedom to form or join organisations is not well established. This is a fact when it comes to organisations of a communist character. The same objection to these organizations was, until recently, found in the former West Germany.

To better understand democracy, how it works and how it is measured, a close look at the conditions that favour democracy may

5-"In so far as democracy is concerned with the issue of rule and control or decision-making it is perforce concerned with freedom and liberty; and at least to the extent that no one is excluded from a share in decision-making some rudimentary notion of equality is implicit." K. Graham, The Battle For Democracy. Conflicts Consensus and the Individual (Brighton: Wheatsheaf, 1986) p. 13.

enable the reader to understand the choice of variables used in the measurement.

1-2: Conditions of polyarchy

The previous section showed that whatever requirements or dimensions of democracy are put forward they are insufficient and democracy may actually involve different dimensions other than the right of every citizen to participate

The measurement of democracy depends on its existence in the first place. One cannot possibly think of measuring this phenomenon unless it exists. Then the variables are looked for to conclude whether the system is democratic or not. In this respect, it was thought that the inclusion of the conditions favouring polyarchy proposed by Dahl would be of paramount importance to observe whether the variables used have any connection with these conditions. Democratic political systems do not exist as such, but there are some conditions which favour their emergence. These conditions, according to Dahl, can be summarized as follows:

1-2-1: Historical sequences

Historical events that countries experienced may play a crucial role in determining whether a country moves towards polyarchy or not. According to Dahl, countries where competition precedes inclusiveness are more favourable to polyarchy than others where the process is the other way around.

One would be inclined to agree with Dahl about the importance

of the historical factor, and the perspective from which he sees this point. Obviously competition has to precede inclusiveness if the system is to develop smoothly into a polyarchy. Little by little, more and more citizens are included in the system. However, if one takes this for granted many questions arise that need to be clarified.

Applying this condition would mean omitting many countries from the political map. Historical sequences could be applicable to different countries which have existed for centuries, which have experienced different periods of transformation and social change. In this respect, what would someone say about different countries in the Third World, especially in Asia and Africa, which are the creation of foreign domination? How would one account for Tunisia or Zimbabwe, for instance, countries which have achieved independence recently whether competition preceded inclusiveness or the other way around?

The terms by which one judges countries, in the case of historical sequences, have to be different. I am not suggesting that countries in today's Africa should be compared to nineteenth century Europe as some do.⁶ This is methodologically difficult, if not impossible. What needs to be stressed here is that the development in the majority, if not all, the Third World countries did not follow a smooth path, but was disturbed by different foreign domination.

6-"She [Rhoda Howard] concluded that "human rights studies should compare countries "at similar levels of social evolution or development, and must take into account different cultural traditions." Africa of the 1980s, therefore, should be compared to nineteenth century Europe, which was marked by "massive violations of what we would now consider elementary human rights." R. J. Goldsmith, "The Limitations of using quantitative data in studying human rights abuses." *Human Rights Quarterly* (8) 1986 p. 612.

1-2-2: The socio-economic order

In societies where access to violence and economic sanctions is monopolized, the chances for polyarchy, in Dahl's view, are lower. Both economic sanctions and violence are two important tools whereby one group, segment or class influences the decisions of others. In a society where these powers are concentrated in the hands of the government, the chances that it will tolerate the emergence of opposition are very weak indeed. The government has free access to these tools to curtail the opposition when it is unable to cope with its increasing demands.

They are two ways by which governments respond to the continuing demands of their citizens. The first includes positive response when the institutions are adaptable to the new situations, i.e., the feedback of the government in terms of laws and decrees which would meet the increasing demands of the citizens. The second is the use of violence and economic sanctions.

Here again, one has to be very careful in taking this condition for granted. What one should bear in mind is that equal access amongst government and opposition to violence and economic sanctions may be a very good condition favouring democracy, but seeing it from another angle it would be an outcome of democracy as well. Would it be safe to assume that if access to violence and socioeconomic sanctions was neutralized, a country would become democratic? On the other hand, would not this concentration in the hands of the government lead to democracy?

As for the type of economy, Dahl believes that if it is agrarian, the free farmers type is more favourable than the traditional

peasant, whereas decentralized direction in a commercial industry would favour polyarchy rather than centralized direction.

Here one can see that Dahl's vision of democracy goes hand in hand with the type of the economy. That is, a competitive politics requires a competitive economy.⁷

What matters more, is not the type of economy, whether it is centralized or decentralized -although one may disagree on the grounds that a centralized direction means hierarchy which is incompatible with democracy- but the attitude of the people and their backgrounds. Someone who learned that tolerance and compromise are vital in any process is highly unlikely to use violence or economic sanctions.

The concentration of violence in the hands of the government, although a condition unfavourable to polyarchy, according to Dahl, might be seen as a path to it. In every country in the world, legitimized access to violence and to economic sanctions are monopolized in the hands of governments. The point to be made here is that, 'legitimized access', in the Weberian sense, is the determining factor in favouring polyarchy. Moreover, the concentration of these powers in the hands of government, and their steady use against opposition groups may lead to uprisings and disturbances that would end in the transformation of the system towards polyarchy.

1-2-3: The level of socio-economic development

Dahl observes that when the GNP per capita is high (over or

7- This is also the view taken by N. Bobbio, The Future of Democracy. A Defence of the Rules of the Game Translated by Roger Griffin.(Cambridge: Polity Press, 1987) p. 26

about \$700-800), at the time of writing (1971), it favours polyarchy, and when it is low it does not.

This is the variable that was, to some extent, ignored by the different attempts to measure human rights. Having said that I am not implying that the higher the level of socio-economic development, the higher the respect for human rights. Nonetheless, this factor should be taken into account when dealing with the issues of human rights and democracy. It is borne in mind that this high level of socio-economic development is very much related to the richness of the country itself, whether in raw materials or in the weather favouring agriculture, whereas the treatment of the citizens such as granting them freedom of speech, assembly, etc.... depends on the goodwill of the government.

The higher the level of socio-economic development in a country, the more opportunities are available to the citizen to learn, to travel, and to communicate. Such development enables the citizen to become aware of what others enjoy in different countries. Neubauer rightly argues that:

It is quite clear, one may say obvious, that extremely poor, traditional societies characterized by illiterate, rural population in which intergroup communication is barely developed and national identification and national institutions barely extant, will have considerable difficulty in establishing and maintaining political equality.⁸

What needs to be stressed here is that the role of the socio-economic development in a country is so crucial it cannot be neglected, and to some extent, should be considered as the driving force for any changes that may occur in political systems. Many

8-D. E. Neubauer, "Some Conditions for Democracy" *American Political Science Review* (61) 1967 pp. 1008-9.

social phenomena, including political ones, find their explanations in the economy. To a certain extent, experience has shown that when a country is prosperous, the system tends to be stable and more democratic.⁹ This is not to say that, when a country is rich, it is democratic, since there are many examples that refute this hypothesis such as Libya, South Africa and all the Gulf states.

1-2-4: Equalities and Inequalities

Extreme inequalities, according to Dahl, in a country do not favour polyarchy. By contrast, the lower the level of inequality, the higher the chances for polyarchy to develop according to Dahl.

Inequalities in this context are seen mainly from an economic point of view. The allocation of wealth, income and social status to a particular group within the society would privilege them with more influence. The accumulation of these economic resources in the hands of a handful of citizens may be turned into political resources which can influence, at a later stage, the kind of the political system. In such a situation, polyarchy is unthinkable. The system that would develop is one which would safeguard the privileges already realised by this handful of citizens. However, what type of society would decrease inequalities and therefore favour polyarchy?

Dahl argues that industrial societies would. He states that:

If industrial societies do not eliminate inequalities they significantly reduce them. As average income rises with advancing technology and growing productivity, more and more advantages hitherto abrogated to small elite come within reach of an

9-"The data show rather conclusively that: the higher the socio-economic level of a country, the more likely it is to have a competitive political regime."
R. Dahl (1971) op. cit. p. 64.

expanding proportion of the population... In loose language, then, one might say that as a country approaches high levels of industrialization, extreme inequalities in important political resources decline.¹⁰

Here, two questions ought to be answered. The first would be: if inequalities do not favour democracy, do equalities inevitably lead to it? Then, if extreme inequalities decline in a country when it approaches high levels of industrialization, does this imply that an agricultural country, or one without high levels of industrialization cannot decrease these inequalities and therefore cannot become democratic?

To answer these questions two countries come to mind, to name just a few: the former U.S.S.R., a country with high levels of industrialization and low inequalities, but still considered to be far from being democratic; on the other hand India, a poor agricultural country with a relatively high level of democracy.

1-2-5: Subcultural Pluralism

Subcultural pluralism is one of the most significant dangers that any political system may face. A country with deep divisions is vulnerable to violence and instability, which in turn may put the system in jeopardy. Dahl rightly argues that:

There are conflicts, that a competitive political system does not manage easily and perhaps cannot handle at all. Any dispute in which a large section of the population of a country feels that its way of life or its highest values are severely menaced by another segment of the population creates a crisis in a competitive system.¹¹

10-Ibid., p. 86.

11-Ibid., p. 105.

Having said that, it does not necessarily mean that a country with different segments cannot be democratic. Many are considered as such while having these divisions, Belgium and Canada to name just a few.

Generally speaking, in countries with such peculiarities, loyalty is to the group or the segment rather than to the country, and this therefore makes the country's political system very fragile in coping with different changes and demands.

Although one agrees with Dahl that this condition does not favour polyarchy, what should be borne in mind is that: when the persons who constitute the segments in a society have reached a degree of compromise and tolerance and learned that the interests of the country should come first, then this condition will not be as important as it may be thought to be. There are many grounds for optimism in saying that a kind of democracy may succeed in such countries. Consociational democracy is a system for countries with subcultural divisions, where some conditions have to be met to ensure the success of the political system. Any imbalance or shortcomings in these conditions would put the system in jeopardy. If this were not the case, then one would ask why two countries like Lebanon and Switzerland, with subcultural divisions, had totally different outcomes of their systems?

1-2-6: Domination by a foreign power

A country dominated by a foreign power is influenced, depending on the extent of that domination, by the policies and structures in the dominant country. That is to say, the people are not

really free to choose the type of political system whereby they want to be governed. This in turn will very much affect the chances of polyarchy. Such a variable is used by Raymond Gastil in the Comparative Surveys of Freedom that Freedom House produces, as will be pointed in a later chapter.

There is no doubt about the domination of a foreign power in any country and how it affects its political system. However, taking this variable into account, although convincing in principle, would leave a group of countries outside consideration. In other words, foreign domination cannot be clearly identified when it comes to countries in the developed world.

This in turn would lead us to more issues in need of clarification, such as what is meant by foreign domination and in what forms this foreign domination may be said to exist.

Foreign domination involves more figures than was traditionally thought, i.e., military occupation of territories other than those of the dominant states. Dahl believes that, among other factors, if the foreign domination is strong and persistent, it disfavors polyarchy, and if it is weak or temporary it favors it. In this case, one cannot avoid asking questions about the kind of foreign domination in countries such as the U.S.A. or the U.K.?

1-2-7: Beliefs of political activists

The beliefs of political activists together with the level of socio-economic development are the most significant conditions favoring democracy. That is not to say that the others are not significant, however, they are not as important as these two. This reasoning can

be understood from the following:

The level of socio-economic development is very important not only for the stability of a country, but for its development as well. The higher this level in a country, the more chances a citizen has for a better life, and the more resources the government has to respond to the demands of its citizens. The higher this level, the more responsive a government is to social and economic rights. As Dahl suggests:

Looking more closely we see that the claim to primary social rights can be justified on one or both of the two grounds. They may be necessary simply in order to make it possible for citizens to exercise their primary political rights, or like the primary political rights they may be directly necessary in order to satisfy the criteria of democratic process.¹²

To some extent the stability of the system is kept since the need for material goods is met by the country. It may reasonably be objected that a higher level of socio-economic development does not automatically lead to democracy and the stability of the system. The answer to this challenge would be to agree with it. Although it is a very significant factor, it is not sufficient. It would make more sense if it were coupled with the beliefs of political activists.

Among the criteria under the beliefs of political activists, Dahl sees that what favours polyarchy are: "its [polyarchy] institutions are legitimate and it is effective in solving major problems". However, these are not conditions favouring polyarchy, but favouring its continuity. Political activists cannot believe in the legitimacy of the institutions of such a system unless they have already experienced it,

12-R. Dahl, "The Moscow Discourse", *Government and Opposition* (15) 1980 p. 14.

at least for a period of time, and realized that it is effective in solving major problems.

Depending on the extent to which the seven conditions discussed above are fulfilled, a country can be judged on whether it is democratically governed. As one may see these conditions are very complex, and there is no answer to a country being considered democratic if just some conditions are present.

Dahl applied these conditions to some countries on deciles from 1 to 10 to determine whether they were democratic. The scores that each answer receives will range from 1 to 10 depending on whether the condition in question is provided for or not. The ideal situation would be when all the answers received a score of 10 each. Such a country does not exist, and is not likely to. However the closer the score is to 10, the more democratic a country is compared with the others which received less.

What Dahl has told us up till now is the conditions that favour polyarchy and therefore be able to identify a democratic regime, he did not say anything in terms of comparison between countries in terms of degree of democracy. The conditions given above are not of general acceptability. Some of them impose on the researcher a narrowing of scope or comparison. What one needs at this stage is a discussion of the measurement of democracy as conceived by Dahl. This will be the focus of the following.

1-3: The measurement of democracy

Up to this point, it seems that Dahl had asked more questions than actually provided answers. Dahl himself was quite reluctant to engage in any kind of quantitative analysis of democracy since the

data that would support his conditions for polyarchy are difficult, if not impossible, to come by. Data concerning the level of socio-economic development or equalities and inequalities are comparatively easily obtainable and more convincing than the other variables which are difficult to quantify. However, in his appendix an attempt to measure democracy was carried out. I shall look at it more closely to assess the validity of the measures used as well as the reliability of the data, which are the sole basis for the whole operation.

It should be pointed out that the attempt to measure democracy was carried out by Dahl and two associates, Norling and Williams.¹³ There are two dimensions upon which the classification of countries was undertaken: classification of countries according to the eligibility to participate by Norling and the their ranking according to the degree of opportunity for public contestation by Williams. These two dimensions, however, were discussed in the book itself.

Moreover, the variables used in the measurement of democracy are quite different from the conditions that would favour democracy. One would assume that the variables used would be the conditions themselves, since they can determine whether a system is democratic or not. In other words, if the conditions exist one can safely assume that a system is more democratic compared to those in which such conditions are not met. These variables are discussed in what follows.

1-3-1: The variables

13-R. Dahl (1971) op. cit. p. 231.

It should be borne in mind that definition of the concept under study influences the choices of variables used in the measurement. At the centre of Dahl's definition of democracy are elections: in other words, participation and the opportunity for opposition. This, of course, depends on a variety of the variables chosen which should be met to determine the degree of democratization in any country. Then the question that needs to be answered is: do the variables used by Dahl and associates to measure polyarchy correspond to the theoretical definition of the concept given earlier? One cannot answer this question unless an attempt is made to consider the variables used, which are:

- 1- Freedom of group opposition,
- 2-Interest articulation by associational groups,
- 3-Freedom of the press,
- 4-Representative character of current regime*,
- 5-Current electoral system,
- 6-Interest articulation by political parties,
- 7-Party system: quantitative,
- 8-Constitutional status of present regime,
- 9-Interest aggregation by legislature,
- 10-Horizontal power distribution,
- 11-Current status of legislature.

In an attempt to measure polyarchy in terms of variables for which data were available, Dahl and his associates sought to take these variables from Banks and Textor's *A Cross-Polity Survey*, which aimed at quantifying 115 countries on 57 characteristics as of about 1960-62.¹⁴ The choice of these variables was carefully undertaken to correspond to the theoretical definition Dahl gave to democracy. In other words, these variables are closely linked to the term that needs to be measured, and applied to different countries would lead to a kind of ranking of countries according to their degree

14-Ibid., p. 235.

of democratization.

As pointed out earlier, the data were for the years 1960-62, but updated as to 1968, before the classification of countries was attempted. This led to one of the variables above (Representative character of the current regime) being dropped as redundant. A look at the different categories considered under this variable will help explain the reason behind this operation. The categories are: polyarchic, limited polyarchic, pseudo polyarchic and non polyarchic.¹⁵

A close look at the variables chosen reveals that they are quite difficult to assess, and scores received by each country are not available to scrutiny. One can just conclude that the scores vary from 1 to 6 depending upon the categories that resulted in the breakdown of each variable.¹⁶ This would lead to countries receiving the highest point for any variable if the answer corresponds to the first categories.¹⁷ This poses a problem as far as one variable is concerned. The party system-quantitative variable contains "multiparty" as the first category, and "two party" as the second. The two kinds of political system can both actually be democratic since they allow opposition to the government and offer opportunities to participate. It would have been more appropriate had these distinctions not been introduced. Nonetheless, and according to this

15-A. S. Banks and R. B. Textor A Cross-Polity Survey (Cambridge MA : MIT Press, 1963) p. 85.

16-The variable considering the degree of freedom of the press contains four categories, the constitutional status of the current regime variable contains three categories whereas the party system-quantitative variable contains six categories. R. Dahl, (1971) op. cit. pp.238-9. See also A. S. Banks, and R. B. Textor, op. cit. pp. 67-97.

17- For a better understanding of the breakdown of the variables chosen to different categories, see R. Dahl (1971) op. cit. pp.238-40.

hypothesis, countries within these two categories should receive the highest scores.

To determine whether this hypothesis is true or false is quite difficult, if not impossible. This is especially true bearing in mind that the updated data upon which they based their ranking are not available. Nonetheless, whether it is true or false, more issues need to be clarified, among which are: how can someone assess, for instance, freedom of the press? Does this mean freedom from government ownership and should the press be privately owned? Dahl found that in 40 countries freedom of the press was complete.¹⁸ The question that needs to be answered in this respect is: to what extent can one say that freedom of the press is complete? There is a kind of censorship on every press, however, the degree of such censorship or control varies from one country to another. This in turn will make a press freer in a particular country compared with another.

Furthermore, the breakdown of the variables "interest articulation by associational groups", "interest articulation by political parties" and "interest articulation by legislature" resulted in the following categories: "significant", "moderate", "limited" and "negligible". Dahl and associates, in particular for the updating they have undertaken, do not provide the reader with a set of criteria upon which he can judge for himself. In other words, there is no clear cut threshold, at least for the author, between the different categories. When does moderate finish and limited begin? This would perhaps suggest that some of the variables are based on judgemental rather than hard data. It is left to the judgement of the scholar, based on the information gathered and his background or previous

18-R. Dahl, (1971) op. cit. p. 238.

knowledge of any country, to decide what the country's score should be.

Before going into the different points in the scale represented by countries, two points of caution should be made. The first is that Dahl treats every variable equally compared with others. In other words, he does not introduce a system of weighting that would favour one variable as against others. Since the classification is based on the opportunities to participate and to oppose from the greatest to the least, the highest score is given to the variables that provide the greatest opportunity and so forth. These in turn would represent the scores received by every country. The second point of caution is that I shall not display all the countries, but only a few of them which are of a particular interest. The countries are placed on a scale from 1 to 31, with some values missing.¹⁹

Table (7)1: Selected Countries Ranked by Opportunities to Participate in National Elections and to Oppose the Government, Circa 1969.

Opportunities for political opposition		Elections not held		percent of population eligible to vote		Unascertained uncertain *	
<u>Scale types</u>		<u>under 20%</u>		<u>20-90%</u>	<u>over 90%</u>		
Greatest opportunity	1			Swit.	Belg. Denm. Swed.		
	3 b			Chile USA			
	6			France Lebanon		Turkey	
	11			Bolivia (France)			
	14		Sth Africa			Mexico	

19- It should be pointed out that the initial scale was of 31, but since no countries were found on scales 2 and 21, it was decided that the perfect scale would be of 29. R. Dahl, (1971) op. cit. p. 241.

23	Indonesia	Algeria
		Tunisia
27	Syria	Senegal
		Sov. Uni.
29		Albania
		Bulgaria`
30	Cuba	

Least
Opportunity 31 Nigeria

* Includes countries where a constitutional government or elections have been suspended or nullified at least once since 1960, the constitution has been suspended, a state of siege declared, or massive violence has occurred.

Source: Based on R. Dahl (1971) op. cit. pp 232-4.

The table above suggests that Dahl, as pointed out earlier, reserves the term political democracy to just popular sovereignty. The study has emphasized the electoral processes by which citizens can exert some kind of control over their leaders. The assessment of whether such a component alone is valid and leads to meaningful conclusions will be dealt with at a later stage of the chapter. Nonetheless, what matters in this respect is that the ranking of some countries seems to be of debatable validity. The most obvious one is that of France. In this table, France appears twice; in point 6 along with Turkey and Lebanon, and in point 11 with Bolivia, well behind some Third World countries such as Colombia, Venezuela and Costa Rica. This may perhaps suggest that there is a kind of ambiguity in the system of ranking as a whole, or a bias in the treatment of the data available.²⁰ It might further support the claim that the

20-R. D. Gastil, Freedom in the World. Political Rights and Civil Liberties (New York: Freedom House Publications in association with G. K. Hall, 1978). p. 248. He argues that: "...France was placed in the same category as Bolivia in both 1962 and 1968. Since intuitively he saw an error, Dahl took France out of this category and placed it much higher. In this case the "data" used as well as the final aggregation seem to have been at fault."

judgement and the personal knowledge about any country will influence either positively or negatively the scores and the rankings of countries. There is a prejudice about the safeguarding of different rights and liberties in every country. It may seem that France was severely judged as far as variables are concerned. Dahl, rightly, argues that:

one does not have to be biased in favour of France to conclude that France was badly misplaced.²¹

This is to suggest that there is no exact scale, or a better scale that can be devised, for judging or weighting different social phenomena. A country with a history of safeguarding such rights and liberties, for which the outcome of the inquiry would not match the general impression, would be judged severely compared to others. Dahl concluded that:

Its [France] dual location will perhaps serve as a visible warning against taking the ranking in table A-1 [table above] as if it had been engraved in stone by the hand of god. Doubtless, there are other errors. Nonetheless, the ranking, I believe, is useful.²²

One is not questioning the usefulness of the ranking, however, some countries do not seem appropriately ranked. The ranking of these countries was based on the opportunities to participate in national elections and to oppose the government. This is to suggest, once again, that the study focuses on elections, and how great the opportunities are for citizens to oppose the government at these times. Nonetheless, one can clearly see that some countries that share the same characteristics were placed at different points. The table above shows that Peru, Ghana, Syria and Nigeria, for instance, are

21-Ibid., p. 243.

22-Ibid., p. 244.

countries where no elections were held. One would expect to see these countries at the same point in the scale, however, they were at 20, 26, 27, and 31 respectively. Regardless of the different variables discussed above, if one takes this table into account, one will safely ask the question about the discrepancy in the ranking of these countries. If no elections were held, how will one know about the opportunities available to adult citizens to participate in national elections and to oppose the government? Furthermore, there is no indication in terms of the adult population eligible to vote about these countries in the first column. The fact that no elections were held in any country does not mean that adult citizens are not eligible to vote.

To follow the same line of argument concerning the adult citizens eligible to vote, one might suggest that there is a reservation on the classification in the table above worth mentioning. The third column includes countries where the percentage of adult population eligible to vote is between 20 and 90 per cent. Although it is a base upon which one can distinguish political systems, it would have been more fruitful had Dahl and associates provided detailed information about these countries and what the actual percentages were (it is worth mentioning that Dahl does give some information concerning what he called "special cases" about Chile, Switzerland and the United States in his list of polyarchies).

Moreover, it can be argued that countries with the highest percentage of adult citizens eligible to vote, more opportunities to participate and to oppose are available. One bears in mind that the minimum age for eligibility to vote varies from one country to another, and therefore may influence the percentage. Nonetheless,

the point that needs to be clarified here is: is South Africa, for instance, more democratic than Tunisia or Nicaragua?

The answer to this question is obvious. The ranking of countries was in a hierarchical way; from the top down to the bottom. The nearer the country is to the top, the greater the opportunities to participate in national elections and to oppose government are available, and therefore the greater its degree of democracy. One would question this ranking if South Africa, a country where just under 20 per cent of adult citizens are eligible to vote, is ranked well above countries like Tunisia and Nicaragua, where over 90 per cent of adult citizens are eligible to vote.²³

It is borne in mind that countries with very high percentages of adult citizens who are eligible to vote are not necessarily "democratic", since different factors are involved in the percentage being high. Some countries see voting not only as a right, but as a duty. Moreover, some go further in taking actions against any citizen who abstains from voting. In addition to this, the ranking was based not only on the elections and the percentage of adults eligible to vote, but on different variables as well that would make such a process meaningful. Nonetheless, the question that cannot be avoided is: how democratic is a system where more than 80 per cent of the adult citizens are not eligible to vote? What would freedom of the press, of group opposition mean, and whether the electoral system is competitive or not in such a country? Elections are one form of expression. They are channels whereby a citizen can express his

23-"...percent of adult population eligible to vote. This indicator is basic to the concept of "democrateness". The variation between nations on this measure indicates the percentage of population which excluded from the suffrage for whatever reasons (sex, race, residence, literacy, etc..." D. E. Neubauer (1967) op. cit. p. 1005.

choice and preference: choice of candidates and policies in a multiparty elections, and "freedom" to agree or disagree when choice exists. What would freedom of group opposition lead to, if the majority of the citizens, who support this opposition, have not the right to bring it into office? Any system where the majority of the citizens is not eligible to vote is undemocratic regardless of the other variables that may exist. Therefore, one concludes that South Africa, in this ranking, should have been at the bottom of the scale, i.e., where the least opportunity to participate and to oppose.

Moreover, one would question the placing of countries in the right-hand column of the table. According to Dahl, they are:

...countries where a constitutional government or elections have been superseded or nullified at least once since 1960, the constitution has been suspended, a state of siege declared, or massive civil violence occurred.²⁴

One is not surprised to see how high the number of such countries is, however, this number should have been higher. The majority of Third World countries have experienced such practices. Nonetheless, how can one account for countries like Algeria or Nigeria, for instance, which should have been included within the category of countries in the right column? Algeria had a coup d'etat in 1965 following which the 1964 Constitution was suspended, and the National Assembly, elected in 1963, was dissolved. Nigeria also experienced coups d'etat (January and July 1966) as well as a massive civil war (the Biafra War). These events would not make them any different from those in the right-hand column. This raises the issue of whether the data were updated. One has no doubt that

24-R. Dahl (1971) op. cit. p. 234.

they were, since the authors state that, nonetheless, the placing of these countries in the "wrong" column makes the system of ranking doubtful.

Coups d'etat are an illegal and yet the most common way by which leaders in the Third World seize power. It is against this background that such countries should be ranked. Ironically enough, countries in which the succession to power did not follow the same smooth and normal path have been ranked well above others which are stable, bearing in mind that the most significant, if not the only, dimension in Dahl's definition of democracy is popular sovereignty as understood in the electoral process.

In an attempt to clarify further the ranking, Dahl proposed a detailed table of different variables and categories used in the ranking of countries as well as the number and percentages of countries representing each category, and went on to provide a list of polyarchies and near polyarchies. His cut-off line was point 8 on the scale represented in table 1. The list of countries which Dahl calls fully inclusive polyarchies contains 29 countries, with three of them considered to be special cases for electoral restrictions as mentioned earlier.²⁵

In order to conclude whether his list is meaningful and was achieved according to the data given, it was thought that a look at the variable used might yield useful conclusions. Since the primary objective is to measure democracy and distinguish between polyarchies and non polyarchies, it was decided to use only the number of countries in the categories that matter to this study. In other words, I shall just select the number of countries in the highest category, which means that the system is democratic. To overcome

25-For a full list of these countries see R. Dahl, (1971) op. cit. p. 248.

the problem of one variable: "Party system: Quantitative", I decided that the scores received by the two categories: Multiparty and Two Party will be considered as one- by adding them and dividing the result by two. This has resulted in the following table:²⁶

Table (7) 2: Variables Used as Indicators of Opportunities for Opposition

No.	var.	variables description and categories.
	13	<u>Degree of freedom of the press:</u>
40		1-Complete (no censorship or governmental control either on domestic press or foreign correspondent.)
	26	<u>Constitutional status of current regime:</u>
53		1-Constitutional (government conducted with reference to recognized constitutional norms.)
	29	<u>Current electoral system:</u>
47		1-competitive (no party ban, or ban on extremist or extraconstitutional parties only.)
	30	<u>Degree of freedom of group opposition:</u>
41		1-Autonomous groups free to enter politics and able to oppose government (save for extremist groups, where banned.)
	33	<u>Interest articulation by associational groups:</u>
19		1- Significant.
	37	<u>Interest articulation by political parties:</u>
17		1-Significant.
	40	<u>Interest articulation by legislature:</u>
12		1-Significant.
	41*	<u>Party system: Quantitative:</u>
25		1-Multiparty (coalition or minority party government normally mandatory if

26-Based on R. Dahl (1971) op. cit. pp. 238-40. I am only interested in the first categories of each variable. however, for variable 41 (Party system :Quantitative), I took the two categories, and the score taken is the average of the categories taken.

		parliament system.)
12		2-Two party or effectively two-party (reasonable expectation of party rotation.)
	48	<u>Horizontal power distribution:</u>
32		1- significant (effective allocation of power to functionally autonomous legislative, executive, and judicial organs.)
	50	<u>Current status of legislature:</u>
28		1-Fully effective (performs normal legislative function as reasonably "coequal" branch of national government.)

Source: Based on Dahl (1971) op. cit. pp 238-40

From the above table, one sees that the number of "polyarchies" varies from one category to another depending on the severity of the government in curtailing or respecting these variables. To establish a number of polyarchies, it was decided to add the number of countries in these categories and divide the result by ten, which is the original number of the variables employed. Then the score in turn is compared with the number of polyarchies provided by Dahl to determine whether or not the process is genuine. The result achieved, after this operation, shows that there are 30.7 polyarchies in the world according to the data used by Dahl. This number is higher than the one given by Dahl.²⁷ This number may be compared with another list by Rustow; the numbers at least match, although the basis of consideration differs.²⁸ The inclusion of two more countries within Dahl's list of polyarchies will make the number of such countries correspond to the one achieved after close scrutiny of

27-Ibid.,

28-D. A. Rustow, A World of Nations: Problems of Political Modernization (Washington D.C.: Brookings, 1967). Table 5, pp. 290-1. See also R. Dahl (1971) op. cit. p. 249.

the variables used. Some have criticised Dahl for not placing Ceylon, for instance, within the column of democratic countries.²⁹

Dahl does provide some answers about not including some countries included in Rastow's list in his final list of polyarchies. However, it seems plausible to add to his list two countries from his list of near polyarchies. These two countries could perhaps be Colombia and Venezuela, which come at point 9 on his scale, along with others (Ecuador, Guatemala, and Honduras), but with no restrictions, and are included in his list of near polyarchies.³⁰

If one recalls the discussion earlier, Dahl's list of polyarchies was based on a cut off point in scale type 8. One would question this cut-off point since it had no reasonable explanation upon which one can judge its validity. One would rather suggest that the clear cut should be scale type 9, and therefore all countries, up to this scale type, in column four should be classified as polyarchies. These countries, in addition to the three special cases of electoral restrictions, total 31 countries, which corresponds to the average countries included in the different categories of the variables used to measure this phenomenon.

Finally, this study does not, to some extent, confirm the general assumption that Western countries are more democratic than the rest of the world. The example of France, discussed above, is one par excellence, if one takes it as ranked on scale 11, well below some Third World countries such as Costa Rica, India or Columbia.³¹

29-"..., the reluctance of Dahl and associates to place Ceylon in the democratic column was not founded on comparative evidence. In fact, in 1968 Ceylon (Sri Lanka) was one of the very few underdeveloped nations to have changed the party in power by democratic processes since independence, a change that did not occur in India until 1977." R. D. Gastil (1978) op. cit. pp. 24-6.

30-R. Dahl, (1971) op. cit. p.248.

II: Bollen's measurement of political democracy

Among the other scholars who have dealt with the measurement of political democracy, I shall look in particular at the work undertaken by Kenneth Bollen. I shall closely scrutinize his attempt to find out more about his proposed index upon which democracy can be measured. The purpose is to shed light on the fact that the issues discussed have raised many controversies, and to have a better conclusion about the phenomenon being measured once a comparison between the two attempts is obtained. However, before going into the index of democracy that Bollen proposes and determining how valid it is, a definition of the concept should be given. Bollen states that "validity concerns whether one is really measuring a concept."³² Therefore, he defines political democracy as follows:

31-"Dahl suggests that eight developing countries meet the criteria of "polyarchy", or "rule by the many"(Colombia, Costa Rica, India, Jamaica, Philippines, Sri Lanka, Trinidad and Tobago, and Venezuela). According to Dahl, these countries hold fair, competitive elections, they allow their citizens access to alternative sources of information, they permit people to organize themselves to express policy preferences." A. A. Goldsmith, "Democracy, political stability and economic growth in developing countries. Some evidence on Olson's theory of distributional coalitions", *Comparative Political Studies*, Vol. 18, No. 4, January 1984. p. 520.

32-K. A. Bollen, "Political Rights and Political Liberties in Nations: An Evaluation of Human Rights Measures, 1950 to 1984", *Human Rights Quarterly*(8) 1986 p. 587. Moreover, he sees that:"A theoretical definition of political democracy is a prerequisite to evaluating the validity of past indices and choosing indices for a revised index. The theoretical definition is necessary to establish a standard by which the indicators may be evaluated." K. A. Bollen, "Issues in the Comparative Measurement of Political Democracy", *American Sociological Review* (45) 1980 p. 377.

It is these differences in the political power held by the elite, relative to the nonelite, that helps identify how democratic a nation is. I define political democracy as to the extent to which the political power of the elite is minimized and that of the nonelite is maximized.³³

This definition of political democracy suggests also, that the electoral process is at the centre of it. Like Dahl, Bollen stresses the importance of the electoral process in the definition of political democracy, although Dahl attributes more conditions to the elections themselves.

Bollen sees political democracy as a balance between two powers; the elite and the nonelite. For democracy to obtain, the power of the former must be minimized and of the latter maximized.

The only way by which such a situation could be achieved is by elections and the manner in which they are conducted. That is, such a situation can materialise if elections are carried out and if the requirements or conditions necessary for bias-free elections are met. Political democracy in this way involves two main dimensions: popular sovereignty and political liberties,³⁴ which constitute the basis for Bollen's index of political democracy.

A close look at the two dimensions proposed by Bollen reveals that an aspect of human rights, represented in political liberties, is a major component in the study and measurement of political democracy. The inclusion of this dimension will undoubtedly influence the ratings of countries, if any, when the measurement of

33-Ibid., p. 372.

34-K. A. Bollen, "Political Development and the Timing of Development", *American Sociological Review*, Vol. 46 (1979) pp. 578-80 and K. A. Bollen, (1980) pp. 375-6.

their political democracy is attempted. Political liberties are strongly associated with the western developed world, which have little significance in the Third World or the former East European countries. Therefore, it would not be a surprise if the outcome of this study confirms the general assumption that western countries are more democratic than the rest of the world.

In the following section, I shall go in depth into Bollen's index of political democracy to understand the basis upon which his ranking of countries is achieved and to question the validity of his results.

2-1: Political democracy index

Bollen suggests an index for political democracy that fits his definition given above. He believes that the two dimensions [popular sovereignty and civil liberties] will enable the reader to understand how that balance is kept and therefore measure the degree of democratization of countries.

2-1-1: Popular sovereignty

The first dimension Bollen considers is popular sovereignty. This is understood within the context of the electoral process. In other words, the scrutiny of the electoral process would reveal how much power the nonelite have over the elite. This is to suggest that democracy is concerned with the issue of rule, control or decision-making.³⁵ How are elections conducted? The selection to the key posts such as the executive and legislative bodies are at the centre of the process. Bollen suggests three indicators to the this dimension,

35-K. Graham (1986) op. cit. p. 13.

which are: fairness of elections, executive selection and legislative selection. I shall examine them in what follows.

2-1-1-1: Fairness of elections

Among the first variables one looks at when distinguishing democratic countries are elections and how fair they are. Elections and their fairness have been the centre of attention of those who dealt with the issue of democracy, such as Dahl. This indicator in Bollen's attempt is measured on a four point scale, to determine whether elections are free from corruption and coercion or not. He observes that:

The scoring of this variable is based on whether or not alternative choices exist, and on whether or not the elections are administered by a nonpartisan administration. Also considered are whether or not the elections are rigged and if the results of the elections are binding on all parties.³⁶

He differs from Dahl in that the latter stresses the importance of each individual possessing the same information and with each vote being weighted equally. To determine whether elections are free from corruption and coercion is not an easy task. First of all, one has to determine what is meant by corruption. Moreover, if the criteria discussed above are met, could one safely conclude that elections are fair?

Even in a situation where these conditions are met, elections cannot be free from corruption, since it has many aspects apart from its traditional meaning, i.e., the suspicious conduct of elections and the falsification of the results. Would not it be a kind of corruption if

36-K. A. Bollen (1980) op. cit. p. 376.

one party had a monopoly over the mass media or the most significant ones, such as television? In such a case, it would have more opportunities to transmit its message and programme than other parties. There is no doubt that such a system would be "democratic" since it offered alternative choices. However, such a choice would be merely a facade for the sake of international prestige. Moreover, it is quite difficult, if not impossible, to compare the degrees of corruption across elections or countries. This would very much depend on the availability of the data and the flow of information, as well as the background of the judge who will analyze the data. Data concerning the majority of the Third World countries, if not all of them, are difficult to come by. Moreover, when available they are highly unreliable.³⁷

The inclusion of alternative choices in elections suggests that all the one party states are excluded from the measurement of political democracy. Elections, as traditionally known, do not exist in these countries. The greatest choice that might exist is between two candidates from the same political party up to the parliamentary level. In such way, and according to the definition forwarded above these countries would score very low on the four point scale proposed by Bollen.

37-"Many developing countries manipulate data to suit their self-image... There is a prohibition against collection and publication of data in some developing countries. There is at least two countries where the publications of national statistics is considered a punishable criminal offense: Guinea and Kampuchea." G. T. Kurian, The New Book of World Rankings (New York: Facts on File Publication, 1984) p. XII. Moreover, the fact that many developing countries manipulate data to suit their self-image, conversely means the data reported in the West are highly exaggerated and do not represent the real situation.

2-1-1-2-Executive selection

This variable would answer a very significant question which is: how has the chief executive of a country come to power? This is to determine whether the country is democratic or not. Obviously, in a country where the chief executive has assumed power through elections, which is the most common way, the country is safely considered more democratic as compared to one where the chief executive has come to power through a different means.

One cannot agree more with Bollen on this point. However, some peculiar cases make this variable questionable. Most countries in the world have their chief executives elected, including those considered to be undemocratic. Although there were no alternative choices, nonetheless many one party states have seen their chief executives actually elected to their posts. The meaning of elections in this context would be that the highest organ of the party would select one candidate before having a popular referendum. Moreover, two examples of countries have had chief executives nominated for life because of the services rendered to their countries, Bourguiba in Tunisia and Tito in the former Yugoslavia. In other countries, Egypt for instance, the chief executives have been nominated by their predecessors. This is especially true for Sadat who was nominated vice president, and assumed the responsibility of chief executive after the death of Nasser. It is also the case of the present president who was nominated by Sadat. Moreover, the final case would be monarchs. The king in certain monarchies such as Saudi Arabia, Jordan or Morocco is the chief executive, who was not elected but assumed this responsibility by inheritance.

It was pointed out that Bollen focuses on whether the chief

executive was elected or not. Nonetheless, there are many ways, apart from coups d'etat, whereby many chief executives in the world today have come into assuming their responsibilities. Bollen does not distinguish between these kinds of processes. He does not offer the reader a scale upon which the differentiation between systems apart from being elected or not. The score as well is not given. One has only to assume that when the chief executive is elected, the country receives the highest mark, whereas the score is nought when the chief executive is not elected. Even if this assumption is true, it would be unfair to place different countries in the nought category. Obviously, there is a difference between a chief executive who came through selection at the highest organ of the party, for instance, and one who came through a coup d'etat, or one who was directly elected by the population at large.

2-1-1-3: Legislative selection

This variable is measured on the basis of whether this body is elected or not, and whether it is effective in determining policies. Nonetheless, one has to define what is meant by elected. Does it, for instance, mean that it just be elected from candidates representing different political parties or just one, as is the case in one party states in the communist and developing countries? Surely one will agree that the legislative body of country like Algeria was elected, since it was there by the will of the people. The latter had a choice of candidates from the same party to fill the vacant seats in the Parliament or in the National Assembly. Moreover, what is meant by national policies, and how can one determine whether this body was

effective or not in determining them?

It seems quite difficult to know what exactly national policies are. This depends very much on the circumstances of the country itself, and the view point from which the matter is seen. What would be a national policy for the dilemma facing some of the Third World countries? To have a market economy, open its borders to international investment and enter the international economy? This would mean more opportunities for jobs, the availability of goods, at the same time the widening of the gap between rich and poor and the dependency of that country even as far as its political decision-making is concerned.

Under the dimension of popular sovereignty, Bollen failed to stress the importance of the independence of the judiciary. The variables discussed above are of paramount importance to the proper working of a democratic system, nonetheless, the independence of the judiciary is at the centre of democracy as well. After all, the legitimacy of the political system as a whole is based on the idea of justice in general.

However, these variables cannot work properly unless coupled with more requirements of the most efficient democratic system. This is the other dimension that Bollen proposes, which will be discussed in the following.

2-1-2-Political Liberties

Bollen suggests that:

Political liberties exist to the extent that the people of a country have the freedom to express any political opinions in any media and the freedom to form and

participate in any political group.³⁸

Being defined as above, they are of paramount importance to political democracy. One can not possibly think of fulfilling the requirements for popular sovereignty without making these political liberties generally available. Moreover, one would add that, political liberties are the other side of the same coin, represented by political democracy.³⁹ As such these two dimensions are interdependent: popular sovereignty needs political liberties to work properly, and the latter will undoubtedly lead to the former. In the following, I shall look at the indicators suggested by Bollen which form political liberties.

2-1-2-1: Freedom of the press

The press is the most common channel whereby people become aware of what is happening around them. In countries where freedom of the press is guaranteed, people tend to be more conscious of their rights and the shortcomings of their elected representatives, and those who exert power on their behalf. There is a constant pressure from the press on the people in office which tends to curtail their powers on the one hand, and increase those of the nonelite on the other. It is not a surprise therefore for it to be known as the fourth power, in addition to the three traditional ones: executive,

38-K. A. Bollen (1986) op. cit p. 568.

39-"Our paper tested whether two theoretically distinct dimensions of political democracy are empirically distinct. We concluded that they are not... Such a definition precludes a faithful representation of the theoretical structure we sought to model: popular sovereignty and political liberties as distinct but correlated aspects of political democracy." K. A. Bollen, and B. D. Grandjean, "Issues of theory, Issues of fact. Reply to Farnell" *American Sociological Review* (48) 1983. pp, 138-9.

legislature and the judiciary.

Bollen measures this indicator on a nine-point scale.⁴⁰ This is attained by looking at the degrees of control exercised over the press. This control may have different aspects such as censorship and interference with the daily work of the media.

One does not wish to repeat the same criticism of Dahl on this variable. Both scholars stress its importance for the proper working of a democratic system. Nonetheless, the scale upon which they judge differ. It would have been more useful and easier had Bollen included his nine-point scale in the appendix to enable the reader to better understand the variety of controls exercised on the press and how he weighted them.

2-1-2-2: Freedom of group opposition

One of the ways by which the power of the elite is decreased, and that of the nonelite is increased, is through group opposition. A democratic system is judged on, among other factors, the degree to which opposition groups are allowed to emerge. Bollen used a four point scale for this factor.⁴¹

A society in which everybody agrees on everything does not exist and is not likely to. An opposition to the elite would work better if citizens organised themselves into political parties or pressure groups, to better challenge the elite and curtail their powers. To the extent to which these opposition groups are allowed to emerge and exert their normal activities, a system is judged on its degree of democracy. Therefore, the higher the levels of tolerance of

40-K. A. Bollen (1980) op. cit. p. 375.

41-Ibid.,

group opposition, the higher the degree of political democracy.

Nonetheless, the extent to which opposition groups could emerge depends very much on the character of the opposition group itself on the one hand and on how institutionalized a country is on the other.

How institutionalized a country is, means how able the institutions of a country are to cope, adapt and be flexible whenever situations change: in other words, how fragile are its institutions? I shall return to this point after the consideration of the following factor.

2-1-2-3: Government sanctions

Bollen agrees with Dahl on the inclusion of this factor when measuring political democracy. However, one would have preferred not to see the inclusion of the second factor, i.e., freedom of group opposition in the measurement, although a very significant indicator, government sanctions overlaps with it.

Government sanctions refer to different actions, whether violent, economic or "legal", by the government towards the limitation and curtailing of activities of one group or political party. Therefore, if government sanctions are very high in one country, it would be absurd to think of freedom of group opposition in the said country.

Moreover, it seems that the indicators represented under the dimension of political liberties are quite difficult to assess in their full meaning. Most of the data concerning these aspects are reported by the media or the international, regional specialized agencies. A practice by a country with long tradition of depriving its citizens of these rights would certainly not attract the same attention that

would be given to another which was known to be 'moderate' or generally protective of these rights.

To go back to the point made earlier, both government sanctions and freedom of group opposition depend very much on how institutionalized a country is.⁴² There are different pressures on every government. However, the response to these pressures differs from one country to another. There is a limit for the extent of tolerance in every country. A country with inflexible institutions, which are unable to adapt, would be very much more vulnerable to the use of sanctions compared to others with flexible ones.

Bollen's index of political democracy, as seen earlier, is composed of six variables. When these variables are present, i.e., when a country safeguards these rights, the country's percentage of democratization is high. He tested his index against different attempts to measure democracy, and concluded that it was the most valid. According to him, it was the only index which offered the reader the ground upon which the comparison of political democracy on a cross-national basis can be conducted, and for which adequate data are available. Bollen observes that:

A number of these measures are limited to certain types of countries. For instance, Adelman and Morris (1971) and Coleman (1960) consider only LDCs...[Less Developed Countries] If the researcher wishes to restrict his/her attention to countries of particular

42-"The political institutions of developing societies tend to be weaker than those of developed societies in terms of variables such as adaptability to varying types of challenges, organizational complexity, autonomy from other social groupings, and consensus on basic operating procedures. As a result, the political institutions typically found in developing countries are comparatively inefficient and unreliable. They perform their principal functions poorly (including importantly the maintenance of public order), and they do so at great cost." C. R. Beitz, "Democracy in Developing Countries." In R. D. Gastil (1978) op. cit. p. 155.

type (e.g., LDCs), then one or more of these indices may be suitable. But if the generality of hypothesis of comparison of different countries in different regions or at different level of development is sought, then these indices will not do. In summary, a comparison of POLDEM [Political Democracy Index] with nine other measures shows that it is the only index that reports an estimate of reliability... In addition, POLDEM is available for a greater number of countries than are the others.⁴³

Since the intention is to measure political democracy on a cross-national basis, there is no doubt about how important Bollen's index is in carrying out such an exercise. All the attempts with which Bollen compared his work had taken the segmentation approach, i.e., limited themselves to a particular region or types of countries, or excluded some type of countries. However, this is not to say that if Bollen's index of political democracy is the only approach which would enable the researcher to conduct a comparison on a cross-national basis, that he has to take it. There are some shortcomings, which would be highlighted once the assessment of the attempts is carried out in the next section.

Bollen proposes a ranking for different countries on their percentages of political democracy for the years 1960 and 1965. The scores received by each country are displayed in the following table:

Table (7) 3: Bollen's ranking of countries according to their degree of political democracy for the years 1960 and 1965

Standard country code as listed by Russet et al (A.P.S.R.)	country	Political Democracy	
		1960	1965
002	USA	94.4	94.6

43-K. A. Bollen (1980) op. cit. p. 380.

145	Bolivia	36.2	59.8
100	Colombia	71.4	69.7
010	Venezuela	73.4	72.5
211	Belgium	99.9	99.7
220	France	90.8	89.7
560	South Africa	58.9	64.7
780	Sri Lanka	85.9	94.0
265	East Germany	22.1	23.8
365	The Soviet Union	18.2	20.4
670	Saudi Arabia	09.7	12.0

Source: Based on K. Bollen (1980) op. cit. pp. 387-8.

As suggested elsewhere in the chapter, it would have made a big difference had Bollen included a system of scoring and how countries are assessed on each variable. As seen in the detailed scrutiny of the indicators used to measure the two dimensions of political democracy, the scholar's scale for some variables was four points (freedom of group opposition), nine points for others (freedom of the press), and gave no indication on the scale upon which some variables are measured. This of course poses a problem when cross checking the results and how his percentages and ranking, in the table above, are achieved.

This ranking confirms the general assumption that Western countries are more democratic than the rest of the world, as well as that some countries in the Third World can be democratic as in the case of Venezuela, Colombia and Sri Lanka. Nonetheless, what seems to be difficult to understand, once again, is the case of South Africa. Bollen's index of political democracy was based on two dimensions: popular sovereignty and political liberties, which are not particularly enjoyed in this country. Dahl stresses that less than 20 per cent of the adult citizens is eligible to vote, which would make popular sovereignty a meaningless dimension on Bollen's index. Moreover,

the use of force and violence, seen as part of the government sanctions, are daily events in this country which would, further, weaken the claim for the enjoyment of any political liberties. Therefore, if the two dimensions of political democracy appear to be absent in South Africa, how would someone explain its relatively high ranking in this table?

This would perhaps suggest that the standards applied are not for all the citizens, but for the white minority, which would make the country relatively appear more democratic than it should have been. At the same time one would question the dimensions of democracy, and the validity of the variable used would they lead to any peculiar cases.

III: Comparison, critics and assessment

Both Dahl and Bollen measure the same phenomenon. Their definition of political democracy is quite similar. In other words, they are concerned with the distribution of power between the elite and the nonelite. They both emphasize popular sovereignty as exercised through the electoral process, and Bollen stresses the need for political liberties.

If one goes deeper into the analyses of Dahl's measurement of democracy, one finds that political liberties are another implicit dimension within his theory. Among the variables or conditions Dahl puts to the study of the electoral process, and therefore popular sovereignty, are:

Countries hold fair, competitive elections, they allow their citizens access to alternative sources of information, and they permit people to organize

themselves to express policy preferences.⁴⁴

As suggested elsewhere in the chapter, it would be absurd to think about popular sovereignty without political liberties. If people had no access to alternative information and no right to organize, fairness of elections would be meaningless. Political rights are another way by which citizens can exert some control over their elected representatives and without them popular sovereignty would not be effective.

So, once agreed that the two dimensions are at the centre of their analysis, the results obtained suggest further that, the two scholars are measuring the same thing and coming to similar conclusions. This can be seen in the following table representing the ranking of different countries from each of the two studies:

Table (7) 4: Comparison between Dahl's and Bollen's ranking of selected countries

Countries	Dahl's ranking: From the greatest to least opportunity	Percentages in Bollen study	
		1965	1960
Belgium	Scale 1	99.9	99.7
USA	Scale 3	94.4	94.6
France	Scales 6 and 11	90.8	89.7
South Africa	Scale 14	58.9	64.7
Bolivia	Scale 11	36.2	59.8
Saudi Arabia	Scale 31	09.7	12.0
Costa Rica	Scale 8	90.1	91.3

Source: Based on K. Bollen (1980) op. cit. pp.387-8 and R. Dahl (1971) op. cit. pp.232-4.

As suggested elsewhere, they see political democracy from the

44-A. A. Goldsmith (1984) op. cit. p. 520.

same viewpoint and their results are quite similar. Nonetheless, a word of caution should be entered at this stage as regards the validity of these results. If one looks closely at the table above, one's first impression would be that the results are similar. However, if the cases of France, Bolivia and Costa Rica are seriously taken into consideration, one would realize that there must be some differences between the methods or the variables used that would put the general approach in question.

In Dahl's table, France appeared twice, on points 6 and 11, on a scale of 29 points. This had left everybody suspicious whether that approach was valid or not. What interests us more in this respect is France as appearing in point 11, alongside Bolivia and behind some Third World countries such as Venezuela and Costa Rica. Dahl believes that this placing was doubtful, and took it to point 6 on the scale to make it more democratic than Bolivia. To this point one could not agree more with Dahl. However, after the study undertaken by Bollen, one side of the results obtained confirms the ranking position of France. The periods covered by the two studies are relatively similar and therefore would lead, if the phenomenon dealt with is the same, to similar results. If one looks at the percentage scored by Costa Rica and France, one realizes the difference was 1.6 in favour of the former in 1960, and 0.2 in favour of the latter in 1965. To simplify the matter, I decided to draw an overall percentage for the period studied; by adding the two percentages and dividing the results by two. This has led to 90.3 and 90.7 per cent being the averages for France and Costa Rica respectively. That would confirm the ranking of France at point 11 behind Costa Rica. On the other hand, the score received by Bolivia in Bollen's study would weaken the claim that France and Bolivia should be at the same point in the

scale. The table above reveals that the average percentage of Bolivia is 43 per cent, which is less than half the one scored by France. This in turn, would leave no room for suggesting that these countries should be regarded as equally democratic.

The point that needs to be stressed is that, although there is ground for argument that France was in a peculiar place in Dahl's study, there are some doubts about it, however, the comparison with Bollen's study confirms, to some extent, this peculiarity. The objection to the ranking of France was because it was ranked at the same point as Bolivia, not because it was ranked below some Third World countries such as Costa Rica. The percentages given by Bollen would support this claim. Furthermore, Costa Rica, in another study undertaken by Kurian, is rated above the United States of America on an index of democracy.⁴⁵

Whatever shortcomings occur, in any study, the most straightforward points to be looked at are the variables and methods used to reach the conclusions. Most significant of all is to ask this question: do the variables used confirm the theoretical definition given to the concept. In this case, at the centre of the definition of the concept of democracy is the degree of control exerted by citizens over their leaders, and how high this degree is. The most

45-"The index of democratization is based on two empirical political variables: (1) the share of smaller parties and independents of the votes cast in parliamentary and/ or presidential elections (competition) and the degree of electoral participation (participation)... The index of democratization is calculated by multiplying the percentages of the competition and participation and by dividing the results by 100.

Country.	Index of Democ.	Competition.	Participation.
Denmark.	40.3	66.8	60.4
Costa Rica.	18.6	52.2	35.6
United States.	17.6	47.0	37.4

T. G. Kurian (1984) op. cit. p. 104.

straightforward way whereby this degree is located is through elections. To this point, one concludes that the variables used confirm the definition of the concept. Against this background one asks, is this definition acceptable to all? Does not political democracy embrace more dimensions than the above discussed?

The definition of political democracy, and therefore of the variables employed in measuring it, incorporates liberal values that are difficult to apply in real life to different countries. Like Dahl, Bollen observes that his index would enable the researcher to "compare different countries in different regions or at different stages of development". Would not this be practically difficult and leading to unconvincing conclusions? If the aim is to make a comparison on a cross-national basis, then Bollen's index will enable the researcher to do so. However, if the goal is the consistency and reliability of the results, then this index will be doubtful. How can someone compare, for instance, two countries at different stages of development in terms of political democracy? The term development, in this connection, is not limited only to economic, but to political development as well. Therefore, different variables should be taken into account when dealing with the issue of political democracy.

As suggested earlier, the level of socio-economic development helps the system to develop into a democracy. A country at an advanced stage of development would offer more opportunities to its citizens, as compared to a poor country at a lower stage of development. Among the opportunities the former can offer is education, which could not be possibly available to every citizen in the deprived areas of the undeveloped world.

It is important to stress the crucial role education plays in raising the awareness and consciousness of the people. Democracy requires democratic behaviour. What would democracy mean to an illiterate individual? How can the mob organize an opposition to face its own government in a peaceful way? What would elections mean for them, or freedom to choose between candidates at an election? Furthermore, apart from the classical meaning of education, it also means the inclusion of the people in the daily life of the government and be part of the decision-making process, and to bridge the gap between the government on the one hand and the people on the other. Mr. Loubenchenko, the Soviet representative to the United Nations' Human Rights Committee, rightly argues that:

It was also essential to educate the people who, for many years, had taken no direct part in the political decision-making. There was a danger that, without adequate preparation, the direct exercise of democratic rights might harm democracy instead of enhancing it.⁴⁶

Apart from the level of literacy being high in the advanced countries, one would add as well that the population is urbanized, and the systems of communications are more developed. The latter is one way by which people tend to know more about what is happening in their country and abroad quickly in contrast with the remote areas in an underdeveloped country. If democracy involves alternative sources of information, how would it be accounted for in a country where just one source of information is difficult to come by?

What has been considered in the studies above, is the fact that the two scholars have attempted to measure democracy as they

46-U.N. Doc. CCPR/C/SR. 928. 31 October 1989 par. 57.

perceive it, with the variables they think refer to their definitions, and applying them on a cross-national basis. The phenomenon they studied is as it is perceived in their own countries, and therefore the outcome will favour the ranking of countries sharing the same characteristics as theirs. Likewise different studies which dealt with the observance of human rights were culture bound. Nonetheless, the question that should be asked here is that: are there not any other definitions of democracy parallel to those given above, as is the case with human rights? The definition of democracy proposed by both Dahl and Bollen suggests that it does not exist beyond the Western developed world and a handful of Third World countries, nonetheless, the term is widely applied to describe different countries either in the Third World or Eastern Europe in which the variables required are not provided for. Would not it then suggest that democracy may exist in another form? And if so, is it safe to call it democracy?

Marxist regimes, as they are and according to the definitions, are not democratic. There are no civil or political liberties. However, from a Marxist perspective, a Communist country is the ultimate democratic system. Marx observed in his Communist Manifesto (1848) that:

The first step in the revolution by the working class, is to raise the proletariat to the position of ruling class, to win the battle for democracy.⁴⁷

This system would eventually develop into a democracy because it represents the majority of the people, and even with just one party, a system can be still called democratic. This may perhaps

47-C. B. Macpherson, The Real World of Democracy (Oxford: Oxford University Press, 1972) p. 15.

suggest that democracy in this respect is taken in the broader sense of the term, which differs from the one seen earlier. It is taken to mean equality and social justice, which only an egalitarian regime can provide.

Furthermore, Macpherson believes that a Communist country can as well be labelled democratic even in the narrow sense of the term, providing that some conditions are met. He argues that:

...a one party state can in principle be democratic even in the narrow sense provided (1) that there is full intra-party democracy, (2) that the party membership is open, and (3) that the price of participation in the party is not a greater degree activity than the average person can reasonably be expected to contribute.⁴⁸

It is quite difficult, if not impossible, to state whether these provisions are available within a one party state or not. However, what matters is that, even if systems differ from the ones referred to by Dahl and Bollen, they can still be called democratic. This in turn suggests that democracy exists, or may exist, in different forms not necessarily the one dealt with by the two scholars, although such understanding is the most common and widespread. The same thing could probably be said about Third World countries which have followed the same political system as in the Communist world. To the extent that the conditions are provided for, the degree of democratization is measured.

Finally, what should be borne in mind is that, democracy is regarded in the articles as the perfect system that everybody has to adopt. Another view might be that it is a necessity in some countries or regions in the world, but a luxury in most, if not all, Third World countries that they cannot afford to adopt. From this point of view

48-Ibid., p. 21.

democracy is not the ideal system in many Third World countries given their present circumstances; another, more authoritarian form of government, would perhaps be better equipped to deal with daily events and to prepare for an eventual transition to democracy.⁴⁹

What one needs to stress is that practical conditions in many Third World countries will hinder any development of a system towards democracy, and will therefore disadvantage them if they are dealt with in the same way as the developed world. Moreover, what seems to be difficult to overcome is the problem of operationalization of the concepts dealt with on a cross-national basis. Some of the variables used in the measurement of political democracy do not have the same meaning in different countries ranked by the two scholars considered, or by others.

⁴⁹-Huntington, for instance, argues that the process of political change includes two stages. One is the creation of authoritative political institutions; the other, the growth of political participation. The sequence of these components processes matters. Huntington holds that the more important process in developing societies is the creation of political institutions which is undermined by the premature expansion of opportunities for political participation. It is necessary to have strong, widely accepted, and efficient political institutions before people can be permitted to participate in politics; otherwise he claims governments will be unstable and inefficient." C. R. Beitz, *op. cit.* p. 155.

Chapter Eight

Freedom House and the Comparative Study of Human Rights

In this chapter, I examine closely the work of Freedom House as an attempt to monitor and measure freedom on a cross-national basis through the Comparative Survey of Freedom. It should be pointed out at the beginning that the analysis will focus only on independent states, and on the dimensions of freedom as they are considered in the Survey. It will accordingly take no direct account of dependent territories or of the differences in relationships between freedom and different social and economic systems.

The Comparative Survey of Freedom has been published every year from 1973 to date. It was published twice a year for the first two years.¹ It is the only attempt, so far as is known, to measure freedom on a cross-national and continuous basis. At least in principle, it must therefore represent a leading source of information for a researcher concerned with comparing political systems in terms of their degrees of freedom. Not only is the Survey published regularly, it also takes account of current developments and highlights gains and losses in freedom during each of the periods that it reviews. This in turn enables the researcher to carry out an analysis through a given period of time to compare development and pinpoint losses and gains in freedom in the countries that are being considered.

1- The Survey, sponsored by Freedom House, -an independent New York based organisation- published semi-yearly in 1973 and 1974, then yearly ever since in a bi-monthly publication called *Freedom at Issue*, and in an annual volume Freedom in the World since 1978.

However, it does not necessarily follow that the Survey's findings should be taken as authoritative, and that discussion must be limited to its ranking of countries and the results it provides. On the contrary, one has to go far beyond that and question the validity of the results themselves. Why, for instance, should country A have been ranked above B? Any ranking of this kind obviously depends on the variables used in the study; and the scrutiny of the variables should in turn help to establish whether the Survey is a valid comparative measure. Equally, the sponsoring organisation itself, Freedom House, must be examined, in order to determine its degree of independence as a non-governmental organisation.

Ideological and financial independence are the key elements in any discussion of this kind. How did Freedom House come into being? Who are the people associated with it? How is it financed? Where do the data come from? Does it carry out its own research like, for instance, Amnesty International?

These questions will be considered in the first section. In the next section I shall then turn to discuss freedom as it is understood by Freedom House. I shall look at both the dimensions that are employed by the Survey and scrutinize the variables included in each. In addition, I will discuss the method and the ranking of countries. The variables used and the method whereby countries are ranked are crucial to an understanding of the Survey and its shortcomings, and are necessary to any discussion of the adequacy, over time, of any assessment based on it. Following this, I shall apply the Survey in a more detailed fashion to a small number of countries considered as case studies. The chapter concludes with a general assessment of the Survey and whether the task it seeks to undertake, to measure freedom on a cross-national basis, is in itself a

feasible one.

I: Freedom House: the historical setting

A historical dimension to a discussion of Freedom House, although to some extent descriptive, is a necessary preliminary to the discussion that follows. The Comparative Survey of Freedom is published under the auspices of Freedom House, which makes its study vital to the proper understanding of the Survey and the results obtained. Although little information is available about the historical background of Freedom House itself,² nonetheless an attempt will be made to look closely at the birth of this organization and the launching of the Survey. It is only against a background of this kind that one can properly understand the criticisms to which the Survey has been subjected.

In Freedom in the World 1989-90, Freedom House defined itself as follows:

Freedom House is an independent nonprofit organization based in New York that monitors political rights and civil liberties around the world. Established in 1941, Freedom House believes that effective advocacy of civil rights at home and human rights abroad must be grounded in fundamental democratic values and principles.³

2 - In a personal communication (April 1991), James Finn, the Editorial Director, assured the author that "...we are now in the process of composing the Fiftieth Year Annual Report and are doing some research of our own about the beginnings of Freedom House."

3 - Freedom House, Freedom in the World. Political Rights and Civil Liberties 1989-1990 (New York: Freedom House, 1990). p. 1. Moreover, "Freedom House was founded forty six years ago when a group of civic minded citizens - including Eleanor Roosevelt, Wendell L. Wilkie, William Allen White, Herbert Agar, George Field and others_ decided that there should be an organization

As a non-governmental organization which monitors civil rights and political liberties, Freedom House, from the outset, seems to have been linked with official American policy. Although it defended human rights in general, it was very much directed at defending and encouraging liberal elements in American society,⁴ and attacking communist and fascist regimes. Although its ostensible purpose is to enhance global freedom by pointing to shortcomings and abuses whenever they occur, it is nonetheless in practice very much concerned to defend American interests and the American model of freedom. This is especially true when one looks at the members of the board of trustees and their posts within the American government. This fact confirms the claim that this is an organization very much linked to the American view of freedom. Any list of the members of the board of trustees, at least since 1979, which are readily available for analysis, are people who either hold or have held different influential political posts within the American administrations⁵. Further, it is perhaps worth mentioning the

that not only criticized and rejected totalitarian systems such as fascism and communism but actively supported democratic principles and the freedom they ensure. This remains the driving purpose of Freedom House." *Freedom At Issue*, January-February 1988 p. 3. Furthermore, "Freedom House, which was created in 1941 as a private, tax-exempt defender of U. S. interest in a world at war." H. M. Scoble, and L. S. Wiseberg, "Problems of Comparative Research in Human rights." In V. P. Nanda, et al. eds, Global Human Rights: Public Policies, Comparative Measures, and NGO Strategies (Boulder: Westview, 1981) p. 152.

4-J. W. Richman, (President of Freedom House) said: "Thus, a principal mission of Freedom House will continue to be the encouragement of the "liberal" element of our society." *Freedom At Issue*, January-February 1989 106 p. 3.

5-Wiseberg states that : "For instance, the 1979 board of trustees included a significant number of individuals who are readily identified as having held high government positions past and present." In Nanda, V. P. et al. eds, (1981) op. cit. p. 161.

connection between the president of the board of trustees and the launching of the Survey.⁶

On this basis, one may reasonably argue that the activities of Freedom House reflect particular interests and biases. However, there is another vital aspect which is worth investigating to determine the impartiality of any organization, which is its funding. It goes without saying that if any non-governmental organization receives or accepts substantial sums of money from any government, this will potentially jeopardize its impartiality and the objectivity of its judgements. Amnesty International, for instance, deliberately excludes any funding of this kind. Official funding may lead to the organization being manipulated by the funding government, and undermining the efforts of such an organization. In the case of Freedom House, one can argue that it is financially independent of any government. Although information on this matter is scarce, the organization claims that:

Freedom House receives funding from private individuals, corporations, labor unions, and foundations for all its activities. It especially wants to express its gratitude to the Pew Charitable Trusts for its support for the survey project over the many years.⁷

However, if it is independent from any government, this does not automatically mean that it is independent and impartial in its

6"Leo Cherne was president of the board of trustees of Freedom House at the time the survey was commissioned and first designated. Cherne has long been a key member of the International Rescue Committee, which despite its pre world War II origins, has for two decades devoted its attention almost exclusively to political refugees from repressive left wing regimes." V. P. Nanda et al. eds,(1981) op. cit. p. 161.

7-Freedom House (1990) op. cit. p. 1.

judgements. Even if it is sponsored by corporations and individuals, serious questions arise concerning the nature of the sponsors and the amount of money received.

Although there is a file about every country that is considered in the Survey, and area experts are consulted whenever they are needed, however, Freedom House does not undertake its own research. Scoble and Wisberg argue that:

Freedom House itself is not a research organization. It does not directly gather the raw data employed in its ranking of nations; instead it relies on observations obtained by others, primarily scholars and journalists, mostly Western, among whom Americans predominate.⁸

Such reliance on what is reported by journalists and scholars makes Freedom House very vulnerable to seeing matters from the point of view that is implicit in its sources of information. Experience has shown in many cases that what is reported in the news does not actually represent the facts. The limitation of foreign journalists to specific areas of one country makes the task very difficult to provide a full and unbiased picture of what is happening. Some of the facts reported are merely based on guesses and personal judgement rather than hard evidence.

II: Dimensions of Freedom

This section will focus on the dimensions of freedom upon which countries are ranked. This may make it easier to understand the basis of Freedom House's work and to see the shortcomings in the compilation of the Survey.

8-Ibid, p. 155.

The dimensions of freedom selected clearly relate to the manner in which freedom itself is conceptualised. It may therefore be appropriate to consider the definition of freedom, as proposed by Freedom House, to see whether the dimensions studied correspond to the definition or not. Freedom House defines freedom as follows:

In the Survey freedom is defined in terms of those political rights that allow people to participate freely and effectively in choosing leaders or in voting directly in legislature, and those civil liberties that guarantee freedoms such as speech, privacy, and fair trial ... nor does it include welfare interests, as in the rhetorical extensions "freedom from fear" or "freedom from want." In this definition independence may contribute to political freedom, but an independent state is not thereby free.⁹

This definition of freedom suggests that the Survey focuses only on civil liberties and political rights as dimensions of freedom. It takes the view that they are universal and as such that everybody should enjoy them. Welfare rights, or social and economic rights, are not included. Moreover, independence is not a primary indicator upon which the degree of freedom is judged. Although one can agree with the Survey that independence does not automatically mean freedom, as defined above, it is nonetheless a very significant component of it. Moreover, certain economic rights are of paramount importance to the proper working and the enjoyment of civil rights and political liberties as they are defined in the Survey. In addition to this, as will be seen later, some indicators used to measure degrees of freedom around the world are taken from the two exceptions, i.e., welfare interests and independence.

9-R. D. Gastil, Freedom in the World. Political Rights and Civil Liberties 1979 (New York: Freedom House in cooperation with G. K. Hall, 1979) pp. 4-5.

To shed more light on the definition of freedom, it may be appropriate to scrutinize its two dimensions, and thus better understand the ranking of countries at a later stage. The dimensions, as identified by Freedom House, are political rights, and civil liberties.

2-1: Political rights

The initial Survey observes that:

When a country's standing in *political rights* is analyzed, attention is first directed to general elections. We want to know how recently there has been an election, and whether there was any competition. We want to know if there is a one-party system. A one-party system allows the least chance of opposition, while more than one party allows the most. In an election we want to know the percentage of voting for a particular party or candidate for head of state. If contested, a vote with over 90% for one side is probably meaningless, while majorities over 70% seem suspicious. We also want to know how often the same results occur, and whether parties or leaders have replaced one another by democratic process. We are also interested in whether there is a regional or local elected government. Unless the country is very small, the more secondary elections there are, and the more power the winners gain by election, the more democratic we assume the society. In all elections we want to know what percentage of the people participate, and how exclusions are created.¹⁰

If one looks closely at the conditions above, one can assume that the country is free when they are satisfied; that is, people have a say directly or indirectly in the running of their government. In other

10-R. D. Gastil, "The New Criteria of Freedom" *Freedom At Issue*, January-February 1973 p. 20.

words, the wish of the people is respected regarding the kind of government under which they want to live. However, some requirements for this dimension seem to be vague and difficult to assess. This is readily apparent when looking at the general elections and how recently one has taken place. "Recently" in this context is quite a flexible concept. What can be considered recent in this year's Survey, for instance, may not be considered as such in five or six years. If this is the case, how can one place France, where general elections are held every five years, as compared to different countries in the western world where they are usually held every four years, such as the U.K. and the U.S.A., to name just two? If one takes this indicator into account to judge the degree of freedom in two countries, the U.S.A. and France for instance, for a hypothetical period of twenty years, one sees that the former has held six elections, whereas the latter only five. However, would it be fair that France scored less on this indicator? Therefore, some clarification of what is meant by 'recently' would be helpful, bearing in mind that the concept refers to a period of time.

Elections obviously involve competition, and the existence of more than one party offers more competition. Nonetheless, the competition that a two-party system offers differs from that of a multiparty system. While limited numbers of political parties imposed in some countries perhaps helps to explain the percentage of the people who participate in elections, at the same time it offers a basis for understanding how exclusions are created -two phenomena in which the Survey has a particular interest. Although one may argue that there might be competition even within a one party system, it clearly offers the fewest opportunities for choice. Does a

two party system like the one in the U.S.A., for instance, offer the same chances to people as a system of the kind that exists in Nigeria?¹¹ In Nigeria the law prohibits the existence of more than a certain number of parties; people have no choice but to affiliate to one of these parties to compete, or not to participate at all if no party really represents their views. However, in theory there is competition whenever elections are held. Nonetheless, the questions to be asked here is: would the situation change if more political parties were allowed to emerge on the political scene?

What, for instance, would be the score of the U.S.A. on this variable compared to the score of Nigeria if elections are held in that country in 1992? This might reflect the percentage of people who participated and the reasons for exclusions. It is difficult to agree with the Survey on the inclusion of this variable on different grounds, mainly because such an index does not really reflect the degree of freedom enjoyed in any country. The percentage of people who participate in elections and how exclusions are created can be interpreted in different ways. If the percentage in country A is higher than in country B, it does not automatically follow that the former is freer than the latter. There is a significant difference between the United States and, for example, European turnouts attributable solely to registration procedures.¹² The minimum age of

11-In an attempt to return to civilian rule in Nigeria in 1993, the military government has introduced a multi-party system. The law has limited the number of political parties to just two. For further details see A. A. Akinola, "Manufacturing the Two-Party System in Nigeria." *Journal of Commonwealth and Comparative Politics*, Vol. XXVIII, No. 3, November 1990 pp.309-27.

12-In the United States, Powell argues that: "...turnout is advantaged about 5% by political attitudes, but disadvantaged 13% by registration laws." Further, he argues that in the United States "perhaps two-thirds of eligible citizens are registered." G. B. Powell Jr., "American Voter Turnout in Comparative Perspective." *American Political Science Review*, 80 (1) 1976. pp.17-24.

voting differs from one country to another, as does the measuring of the vote; some countries see voting not only as a right but as a duty, and in some, such as Australia, it is compulsory.

However, what should be pointed out at this stage is the fact that, although the Comparative Survey is, in theory, a way to monitor the state of freedom around the world on a continuous basis, the criteria it employs have been changing.¹³ Thus, the fifth Survey (1975) concluded its description of the political rights dimension by stating:

We are also interested to a lesser degree in the existence of local or regional self-government, of freedom from military participation, or of foreign pressures on the system.¹⁴

It seems clear that two additional aspects were included in the political rights dimension; freedom from military participation, or foreign pressure on the system. The Survey does not offer any explanation of what is meant by these variables and how systems should be judged upon them until two years later (1977), when it stressed that:

Foreign control is defined for this purpose rather narrowly, emphasizing the extent to which the government and people of a state are free to publicly criticize a hypothetically dominating state, or how much the government is allowed to diverge from dominating state's position in international consultations and organizations.¹⁵

13-R. D. Gastil states that: "The approach and purposes of the Survey have not changed, but the ratings and criteria of judgement have been continually revised." Freedom in the World. Political Rights and Civil Liberties 1978 (New York: Freedom House in cooperation with G. K. Hall, 1978) p. 4.

14-R. D. Gastil, "Comparative Survey of Freedom V" *Freedom At Issue*, January-February 1975 p. 3.

15-R. D. Gastil, "Comparative Survey of Freedom VII" *Freedom At Issue*, January-February 1977 p. 6.

In addition to these variables, the Survey seems to have added another variable, a recent shift in power, when discussing political rights.¹⁶ However, what is meant by a recent shift in power should be clarified. This should be done not only in terms of time, but power itself should be defined. Does it mean the leader or the chief authority or the political party in power?

A shift in power, if any, where elections are conducted in the ideal way does not really depend on how free the country is. If the power is meant to be the chief authority, then the shift in power depends very much on the country's constitution. A shift in power is bound to take place in a country like the United States where the constitution prohibits the president to rule for more than two mandates, as compared with another which does not. If, on the other hand, power meant political party, the Survey seems to forget the achievements and popularity that the party in power might enjoy. It may well be argued that there has not been any shift in power over a period of time without affecting its degree of freedom. The majority of the people may be satisfied with the records of those exerting power on their behalf. In this connection, Sweden provides the best example, where the Social Democratic Party enjoyed a period of virtually continuous rule (up to 1991) without any suggestion that the country was less than a model democracy.

If one looks at the different Surveys that Freedom House has conducted, one sees that new variables emerge in the discussion of

16-R. D. Gastil states that: "An empirical test of democracy is the extent to which there has been a shift in power through the operation of the electoral system." Freedom in the World. Political Rights and Civil Liberties 1986-87 (New York: Greenwood, 1987) p. 15.

political rights. The quotation above from the initial Survey differs in the variables included from the list in the later Surveys. In the mid 1980s, one sees that new variables have been included to determine the score of every country on political rights. These include: whether a major group is denied reasonable self-determination and whether there is any informal consensus.¹⁷

Having dealt with one dimension in the Survey's definition of freedom, I turn now to a critical scrutiny of the other dimension to see if more variables were added to the initial definition of civil liberties.

2-2: Civil liberties

The initial Survey of Freedom defined civil liberties as follows:

We are interested first of all in freedom of the press. Is the press critical? Does it support persons who might replace those in power? Alternative systems? Is it independently controlled? Or privately owned? Beyond the press, we want to know how much government control there is over television and radio. Unfortunately, even in countries where the press is relatively independent and untrammelled, the often more popular radio and television systems are frequently under government control. Although this control may be carefully hedged about with legal restrictions, only in a few states with long and continuous democratic traditions of democratic abstinence, such as in Great Britain, are we reassured by legal guarantees of impartiality, particularly for

17-R. D. Gastil states that: "We want to ask whether as with the Kurds in Turkey, there is an important group that is denied a reasonable degree of self-determination... Finally, we ask whether there is an informal consensus underlying the political system such that even those important segments of society formally out of power still have an important input into the political process." Freedom in the World. Political Rights and Civil Liberties 1984-85 (New York: Greenwood, 1985) p. 7.

free judiciary. It also seems reasonable to consider freedom from harsh and unusual punishments and torture. Another evidence of civil liberties is offered by a defined and restricted sphere of government attention.¹⁸

Before considering these criteria more closely it may be worth pointing out that civil liberties in this dimension include four variables, which are: free press, independence of the judiciary, freedom from cruel and inhuman punishment, and a restricted sphere of government. Whether civil liberties include only the four items mentioned above or not is not the point at issue. What matters more is the number of items the Survey considers in the ranking of countries upon this dimension, and whether more have been added since the initial Survey. This will undoubtedly help to establish whether a diachronic analysis on this dimension is possible or not, since the addition of one new item may influence the ranking of different countries if they score well on the added items. However, before looking at the later Surveys, a scrutiny of the quotation above should be attempted.

The Survey puts a heavy emphasis on the press and how free it is. As with different attempts that measure democracy, freedom of the press is very much at the heart of the definition of freedom. Different requirements are used in the Survey to determine whether the press is free or not, such as whether it is privately owned, critical of government or supports persons who may replace those in power.

The standards upon which to decide whether a press is free or not are not clearly set out in the Survey. The Survey seems to

18-R. D. Gastil (1973) op. cit. p. 20.

suggest that if the press is privately owned and independently controlled, it is therefore free. However, a press owned by the government may also be critical of the system and may favour different alternative policies. The degree of control over the press in general is hard to determine. The Survey does not offer any boundaries as to where this control can be located. On a more global level, censorship and the unbalanced flow of information are significant features of both developed and developing countries, including communist states. Censorship on the part of the majority, if not all, of Third World countries and communist states, and the unbalanced flow of information between the developed and developing world, make the press very much manipulated, and the people in these countries may often hear only what their own government wants them to hear. The manipulation of the news by a few international news agencies makes this flow of information just one way, and feedback is almost non-existent.

Although one can agree with the Survey on the importance of the variables used to judge this dimension, it is difficult to accept its contention that they can determine whether civil liberties are provided for in one country or not.

However, in the seventh Survey (1977), and in addition to the items considered above, the civil rights discussion concluded with the following:

In addition to these four, we consider two types of supporting or subsidiary freedoms. First are those from totalitarianism: economic independence of the media from government, and freedom of individuals to move about, choose among educational systems and occupations, obtain private property, operate in the market freely, or organize and join private organizations of choice. These latter freedoms include

freedom of religion as well as freedom to organize and join unions.¹⁹

As is clear from this quotation, one sees that by 1977 the civil liberties dimension included more items than it did in the initial Survey. Furthermore, some of the items discussed in this dimension really depend on the socio-economic level of the country. In other words, social and economic rights are very much at the centre of this dimension and may influence the ranking of countries,²⁰ a circumstance which at this time the Survey tended to ignore. It did acknowledge their importance at a later stage, however, and unsuccessfully tried to justify its position as follows:

Civil rights are also affected by the presence or absence of nongovernmental, environmental inadequacies, such as illiteracy and debilitating poverty... Questions of illiteracy and poverty bring us back, of course, to the positive rights which we argued above should be outside our concern. Yet they must be taken into account in so far as they affect a population's ability to express opinion or vote effectively.²¹

It is clearly stated that economic and social rights, such as illiteracy, poverty and the social and economic welfare of large sections of the population, may affect the state of human rights in any country. However, the Survey leaves unexplained how important they are and how they can be judged. Are they, for instance, just complementary to the other rights? Are they scored on the same

19-R. D. Gastil (1977) op. cit. p. 8.

20-"The final point on the civil liberties checklist is freedom from extreme government indifference or corruption. When governments do not care about the social and economic welfare of large sectors of the population, the human rights of the people suffer". Freedom House (1990) op. cit. p. 20.

21-R. D. Gastil (1977) op. cit. p. 8.

basis as the other rights? How can one, for instance, state that it is just for economic and social reasons that a country's score was low?

No ready answer to these questions is available as the Survey has not attempted to provide one. It simply gathered the information concerning the two dimensions of freedom, added different items to the initial list, and tried to draw a ranking of countries depending on their scores on the two dimensions discussed above. The methods used and the ranking of countries are discussed in what follows.

III: The method and the ranking

It should be pointed out at the beginning that the scores for both dimensions range from 1 to 7, with 1 being the most free and 7 the least. Then, depending on the score received by each country, the final ranking is attempted; which can be either "free", "not free", or "partly free". In terms of categories, the "free" category is either 1 or 2, the "not free" is 6 or 7, whereas the "partly free" category is somewhere in between.

Before going in depth into these categories, and how the boundaries between them are drawn, it may be appropriate to clarify the method used.

3-1: The method

On first sight the method used by Freedom House in ranking countries appears simple. However, this impression begins to fade when one gets deeper into the analysis of different surveys.

The basis of the Survey's method in ranking countries is to

assign each item on the two dimensions (political rights and civil liberties) a "high", "medium", "low" or "very low" score compared to the check list. This checklist, it may be noted in passing, remained unpublished until the mid 1980s.²² Nonetheless, although the four different categories may help to assign a country to one category or another, in borderline cases the boundaries between them are left unexplained. The method itself seems to be doubtful for several reasons.

Firstly, the checklist for the two dimensions, and the exact number of items included in each, was not made available, at least for the first ten Surveys. This would have enabled the reader to check and recompute the standards upon which the Survey drew its conclusions.

Secondly, it seems that the number of items on the checklist has increased, or changed since the initial Survey. Although it was not made available, the addition of different items to the lists of the two dimensions automatically means the addition of a number of items to the checklist.

Thirdly, the seventh Comparative Survey of Freedom (1977) states that:

This year a number of changes of this kind occurred because of the introduction of a new and more adequate checklist for comparative examination.²³

The quotation above confirms further the discontinuity of the method and the results achieved. The self-confession concerning the

22- H. M. Scoble, and L. S. Wiseberg, "Problems of Comparative Research in Human rights," in Nanda, V. P. et al. eds., (1981) op. cit. p. 156. A well detailed checklist for both political rights and civil liberties can be found in R. D. Gastil (1987) op. cit. pp. 9-10.

23-R. D. Gastil (1977) op. cit. p. 8.

introduction of " a more adequate check list" confirms this claim. This means that the old checklist, used in the six previous Surveys prior to 1977, was inadequate and therefore the results obtained from it were misleading or did not represent the actual situation.

Finally, not only were the number of items on each list changed, but the actual strategy itself seems to have changed. The strategy followed was to assign each item on each dimension a "high", "medium", "low" or "very low" rating, and the number of items was 11 for political rights and 14 for civil liberties according to the checklist that was published in 1987. However, the 1990 Survey states that:

The team assigned initial ratings to countries by awarding from zero to two points per check list item, depending on the degree of compliance with the standard. The highest possible score for political rights is eighteen points, based on up to two points for each of the nine questions. The highest possible score for civil liberties is twenty six points based on up to two points for each of the thirteen questions.²⁴

Faced with these comments one questions the consistency of the Comparative Survey as a genuine attempt to measure freedom on a cross-national basis. The constant changes in the basis of the ranking suggests that the process as a whole is subjective, depending very much on the judgement of the people involved in the Survey, otherwise how can one account for the Survey's statement that:

In addition, we sometimes decide that we have been regarding an issue from the wrong point of view.²⁵

24-Freedom House (1990) op. cit. p. 21.

25-R. D. Gastil (1977) op. cit. p. 8. A very interesting case of this example is the one of South Africa. Although it was assigned (5) and (6) for political rights and civil liberties respectively for the years 1980 and 1982, nonetheless, it was first ranked partly free (1980) and not free in (1982) "due to reevaluation by the author".

Since the method that had been followed in the ranking of countries was already set, one would assume that it was the only way that issues could be considered. The availability of one more piece of information may change the ratings of a country, however, being "regarded from the wrong point of view" is quite unclear and may suggest further that it is up to the Survey to exercise a necessarily arbitrary judgement.

3-2: The ranking

The countries investigated in the Comparative Survey of Freedom are placed in one of the three categories: "free", "partly free", and "non free". The placing of countries in such categories depends very much on how well they score on both dimensions of freedom. It is worth noting that these categories cannot be defined exactly, but they are of a comparative significance in determining whether state A, for instance, falls within the same category as state B, below it or above it.²⁶

As suggested earlier the ranking is based on two dimensions, therefore some questions ought to be clarified in order to understand why state A, for instance, is ranked below state B, when it has scored

26-R. D. Gastil, "Comparative Survey of Freedom." *Freedom At Issue*, January-February 1989 p. 48 "No point of these scales can be exactly defined. They are constructed comparatively and judged in that way, rather than against absolute standards. Their purpose is to give an idea of how the freedoms of one state stack up against those of another." See also R. D. Gastil "Comparative Survey of Freedom." *Freedom At Issue*, January-February 1988 p. 20. "It is necessary to look at patterns of answers, and ask whether, in terms of democracy, country A belongs with countries with similar ratings or belongs above or below that level."

the same points for both civil liberties and political rights. Are the dimensions (that is, political rights and civil liberties) treated separately or not? Is more weight put on one dimension than the other? Do dimensions influence one another? And how is the rating achieved?

The first Survey seemed to have taken each dimension separately and given it a score ranging from 1 to 7 to determine the degree of freedom of the countries concerned. It stresses that its judgements are not based on quantitative techniques; nonetheless, at a later stage, when its results differ, it uses this technique to obtain the average status of freedom.²⁷ Moreover, its strategy of ranking countries seems to have changed over the years. This will be looked at closely at a later stage in this section. However, what does matter at this point is that the Survey has ignored one problem in its ranking of countries at least up to the sixth Survey (1976). Up to that year, a relatively simple procedure was used to determine where countries were placed "free", "not free", and "partly free". However, it is not always the case, and it is not always as simple as it seems. The borderline cases are not easily ranked, i.e., countries which can qualify to be ranked for more than one category, which were pinpointed for the first time in the sixth Survey (1976).²⁸ Although

27-R. D. Gastil (1978) op. cit. p. 22. "It must be remembered, however, that the ratings are not arithmetical units, but merely categories on arbitrary scales. When the ratings for political rights and civil liberties differ, the cumulative judgement is decided by averaging."

28-"Borderline cases are more difficult, and the final category is not predictable simply from the numbers. Thus, while a (7) and (5) state, for instance Chile, is bound to be not free in our ratings, one marked (6) and (5) may or may not be. In making this judgement we must consider how a state stacks up against other partly free or not free states overall, and consider where it would fall in a finer analysis within the still rather broad ranges of categories (6) and (5)." R. D. Gastil "Comparative Survey of Freedom." *Freedom*

recognized as difficult, no attempt was made, at the time, to explain how the placing of such countries might be in these categories. The Survey eventually realized the need to clarify this point, and in an attempt to help the reader understand its judgements and explain these borderline cases stated that:

...Although political rights are given slightly more weight in borderline cases, such cases are generally decided by a judgement of the position of a state within the numerical categories. For example, (6) and (5) may lead either to a rating of "not free" or "partly free", depending on whether the (5) and (6) are a high (5) or low (5), or a high (6) or low (6).²⁹

In an attempt to clarify the borderline cases and explain the methodology of ranking them, the Survey made things more complicated and created some ambiguity surrounding the process as a whole. As suggested earlier, the first six Surveys seem to have dealt with political rights and civil liberties separately, whereas in 1977, it seems to have linked them together by placing more emphasis on the civil rights dimension,³⁰ and a year later (1978), as seen in the previous quotation, the weight was put on political rights.

The question that should be answered now is what might be meant by "low" and "high" in this connection. How did the Survey achieve such results? Upon what basis did it make its judgement? If

At Issue, January-February 1976 p. 16.

29-R. D. Gastil (1978) op. cit. p. 22. A very clear example of these borderline cases can be found in the 1980 survey. Countries such as Yugoslavia, Hungary, Ivory Coast and Liberia have all scored (6) for political rights and (5) for civil liberties, nonetheless, the first two were ranked within the not free category, whereas the two last were ranked partly free. R. D. Gastil (1980) op. cit. pp. 17-9.

30-"In general a low civil rights score will reduce political rights- although not vice versa. An election without a right to express opinion publicly is hardly free." R. D. Gastil (1977) op. cit. p.6.

one recalls the argument concerning the ranking of countries, one sees that they are comparative in nature. In other words, they are not made against absolute standards, but just to determine how state A should rank against state B. Nonetheless, if there are no clear-cut thresholds among the categories, how can one speak about a sharp distinction within the units making the final ranking in the categories? If the Survey can make a distinction between "low (6)" and "high (6)" for instance, to determine whether a country should be classified "not free" or "partly free", this will automatically lead to an exact distinction between the categories and a sharp drawing of boundaries, and therefore, borderline cases will be easily assigned. The placing of borderline cases, as described above, suggests that the four-fold method, assigning each item in the category a "high", "medium", "low" or "very low" rating, has been followed. Nonetheless, if the method has changed, how has the placing of countries been affected?

The change of method has indeed led to a change in the ranking of countries in the Comparative Survey of Freedom. In 1989, the Survey seemed to have abandoned the three categories by which it ranked countries for a new one. The basis remained the same: a list for both civil and political rights ranging from 1 to 7 each is produced. However, instead of a categorization into three, the Survey placed different countries on a 13 point scale, ranging from 2 to 14 to determine their freedom, with 2 being the least possible score a country could obtain (i.e., 1 point for each of the two dimensions), whereas 14 was the highest (representing 7 for each). Along this scale, the nearer a country is to the 2, the freer. This new method and ranking has resolved many of the ambiguities that surrounded

his earlier Surveys.

IV: Case studies

This section focuses on some particular countries, or group of countries, in an attempt to scrutinize the Survey more closely, and to monitor the trends either in gains or losses of freedom in the countries selected.

The choice of countries cannot be an easy task. However, since the Survey judges different countries by the same standard,³¹ therefore, it was thought appropriate to include one country from each of the three worlds. In other words, the sample will include one Western country, another from the Third World, and one from the former "Eastern bloc". The inclusion of these countries should help the reader understand the difficulties that may arise whenever one tries to compare countries at different stages of development, and with different traditions by the same standards. Thus, this section will follow the Survey's accounts for the United States of America, Czechoslovakia and Ethiopia.

The first impression one gets before going into the following cases is that the attempt to compare such countries is absurd. One is inclined to agree with this reaction. To the layman, let alone the specialist reader, when a comparison is made between the United States and Ethiopia in terms of freedom, democracy or human rights, taking into account whatever variables, it is likely to be of very limited validity. However, it was included to show that the Survey has assumed the very delicate, if not the impossible, task of

31-"The Survey attempts to judge all places by a single standard, and to point out the importance of democracy and freedom." Freedom House (1990) op. cit . p. 1.

measuring freedom on a cross-national basis regardless of the differences that may exist between countries.

4-1: The United States of America

Founded over two centuries ago, the United States is often regarded as the most democratic and free country in the world. The freedoms it enjoys are the envy of millions of people elsewhere in the world. Having said that does not automatically mean that in the U. S. everything is perfect, nor that every other country should seek to achieve the American standard.

The case of the U.S. was included in this study for two main reasons. First, because it is the model upon which the Survey was based, which makes it a logical choice in any attempt to determine its shortcomings. Secondly, to enable the reader to understand the reasons behind the American people enjoying such freedoms.

Having been taken as the model upon which freedoms are measured on a cross-national basis, it is not a surprise therefore to see that there has been no change in either dimensions. In other words, a close look at the Surveys since 1973 reveal that the U.S. has scored 1 each on both dimensions for the series of Surveys in question, making it among the freest countries classified. It would be absurd to expect otherwise. Nonetheless, one should bear in mind that these achievements did not exist in a vacuum. They are the result of social progress over the centuries. In addition to that, economic conditions helped such a process. According to Freedom House, the current system of government began functioning in 1789,³² which suggests that there are established traditions and

institutions by which the country is governed, and through which demands and pressures are channelled. Moreover, the way whereby conflicts are resolved is already established to leave no room for violence or instability. These traditions are coupled with the fact that the U.S. is one of the richest countries in the world, which makes social and economic conditions available for the granting of such freedoms.³³ These traditions, or even social and economic conditions, simply do not exist in the majority of Third World countries, which have existed only for few decades. Many African states, for instance, achieved their independence in the late 1950s or early 1960s.

Many, if not all, the freedoms discussed in the Survey are now taken for granted by Americans (one uses the term Americans to restrict oneself to the case study, though the argument is equally applicable to all Westerners), and become part of their daily life. But they are a dream for the people in the Third World. Such a fact makes the aspirations of these people very different. The people in the Third World are longing for civil and political rights, whereas those in the developed world are interested in different issues which curtail their personal freedoms. In assessing freedom in the world in 1990, Freedom House stated that:

Environmentally, many parts of the U.S. have serious problems. Unacceptably high levels of air, water and ground pollution threaten inhabitants with higher disease rates, and may lead to reductions in personal freedoms in the 1990s such as restrictions on the use of automobiles and water supplies.³⁴

32-Ibid., p. 259.

33-Freedom House argues for instance that: "women won the right to vote in 1919 as a result of a social and economic changes during world war I." Ibid., p. 262.

34-Ibid.,

Issues such as the environment are simply not a concern to the people in a poor country like Chad, Sudan or Ethiopia. What matters more to them is when and where does the next meal come from.

4-2: Czechoslovakia

A former communist country which has been affected by the wave of political reforms in Eastern Europe is the second case. It was included because it represents a country in transition from the "not free" to the "partly free" category, and perhaps to the "free" in the next decade. I shall further assess the chances that freedom in the former Czechoslovakia may prevail.

Up to late 1989, the former Czechoslovakia has always figured among the non free countries in the Surveys. If it were not for the Soviet invasion in 1968, the former Czechoslovakia might have well been in the "partly free", if not the "free" category following Dubcek's reforms. Civil and political rights under the hard line communists who followed him were non-existent. However, the situation has been changing gradually. As with the majority of communist countries, in late 1989 the communist government in Prague announced that it did not intend to retain the monopoly of power and that non communists might be included in the cabinet. Such an announcement led to a non-communist being elected to the post of president: Vaclav Havel, a former political prisoner. With him in office, the country saw the end of communist rule. and the establishment of a wide range of Western-style political liberties. This led Freedom House to reconsider the ranking of Czechoslovakia,

as in the case of other communist countries such as the former Yugoslavia and Hungary in the mid 1980s, which was moved for the first time to the "partly free" category in an updated Survey on 28 December, 1989.

Such a change in ranking was expected since the country has moved towards the observance of the freedoms with which the Survey is concerned. Moreover, in the light of such a transformation, it seems reasonable to expect the trend to continue and the former Czechoslovakia to end up in the "free" category, if the experience is not hampered by unexpected events.

As suggested above, the former Czechoslovakia has entered a new era, however, such an evolution is at a vulnerable stage. Although one is optimistic about the fact that more changes will take place, nonetheless, caution is required when one bears in mind that the country lacks recent democratic traditions.³⁵ Marek Boguszak et al. argue that:

These are people who, in 41 years of Communist rule, were severely discouraged from taking any interest in public affairs, and most learned to live entirely private lives.³⁶

Although the people of the former Czechoslovakia have opted for an alternative to communist rule, nonetheless, the latter has made a huge impact on their lives in general. For over four decades such freedoms and practices were not known to the people. Neither the new ruling elite or the people as a whole had previously any real say

35-"Despite the democratic changes that began in November, Czechs in 1989 did not have the mechanisms to democratically change their government. Until November political detention marked the worst crackdown on dissent in a decade." Ibid., p. 86.

36-M. Boguszak, et al., "Czechoslovakia Ready for Democracy" The Washington Post 2 July, 1990.

in the running of their country. In other words, one should be warned against the euphoria of a quick transition to democracy. For the time being there is no doubt that Czechoslovakia is heading that way, which earned the country a ranking position among the "partly free" countries in the Survey. However, more conditions are to be created to remove the possibility of any threat to this evolution.

The case of the former Czechoslovakia, as in different former communist countries, shows that the government has now become more flexible towards the kinds of liberties with which the Survey is concerned. The changes that have taken place in these countries, among them Czechoslovakia, make them closer to the viewpoint from which freedom is seen in the Survey. It suggests, therefore, that the more the country's acceptance of the standard and its resemblance to the model, the freer it is.

4-3: Ethiopia

The first impressions that come into one's mind when the name of Ethiopia is pronounced are: famine, disease, illiteracy and civil war. It is one of the poorest countries in the world, where politics is characterized by massive violation of human rights, continuous killing by both government and rebel forces, and the political system itself is very corrupt. Perhaps the most publicised case of today's Ethiopia is famine, which has been threatening the country especially since the mid 1980s.

Given such circumstances, it is hardly a surprise to see that Ethiopia has always figured in the "not free" category. According the Surveys that have been examined, the best standard the country

achieved was in 1975; (6-), (5?) for political rights and civil liberties respectively, which arguably could have earned it a ranking among the "partly free".³⁷ However the situation has worsened ever since, and the reluctance of the Survey to reduce Ethiopia's rating can perhaps be ascribed as well to the fact that it witnessed a coup d'etat against Emperor Haile Selassie which brought Lt. Col. Mengistu to power in 1974.

Living under a military government with a constant threat of famine and a massive and costly civil war in the north, added to that the unpopularity and vulnerability of Mengistu's regime to any coup d'etat,³⁸ (this actually happened in 1991) it is quite difficult to imagine the people of Ethiopia enjoying the freedoms discussed above. There are some objective circumstances which act as obstacles towards the achievement of a democratic society in Ethiopia. Above all, Ethiopia lacks the economic and social conditions that would favour such a transition. Moreover, the country lacks democratic traditions. Giorgis, a former commissioner of relief and rehabilitation in Ethiopia and a member of the Central Committee of the Workers' Party of Ethiopia, stresses that:

In 1974 there was a popular revolution and a military coup. In the absence of any tradition of democracy and political organizations operating freely in the country,

37-"We have been especially reluctant to reduce the ratings of Ethiopia and Malaysia. In the midst of a reforming revolution, Ethiopia appears to have been diverted from its progress earlier this year toward constitutionalism. Most tragic was the all-too-familiar evocation of a vague nationalist ideology of Ethiopia Tikden, whose principles no one is to be allowed to question. In its name, the oligarchical parliament was dismissed as out of step, and executions have taken place," R. D. Gastil (1975) op. cit. pp. 5-6.

38-"In May [1989] a coup attempt launched by key military figures wanting a negotiated end to the the northern wars was snuffed out. According to one of the coup's planners, 680 officers have been arrested or executed since the attempt." Freedom House (1990) op. cit. p. 100.

the military had to take power, and Mengistu was a member of the armed forces.³⁹

In addition to the economic and political conditions that prevail in the country, it is worth mentioning corruption and the heavy reliance on the secret police to crack down on any attempt or organisation aimed against the regime. The war in the north made the situation very difficult.

Under such conditions it would be absurd to think about changing the present leadership in a constitutional way, let alone granting civil and political rights. The only way, under the present circumstances, whereby a new government will come to office is through a military coup, which may perhaps lead the country towards constitutionalism. However, experience has shown that military regimes rarely evolve in this manner.

In this case one is not trying to suggest that the economic conditions Ethiopia is experiencing makes it impossible for it to be free. Other examples, from the Survey itself, suggest that a country, although poor, can be ranked free: India is the best example. However, what need to be stressed in this respect is that a combination of factors, among them economic ones, may make it very difficult for these freedoms to be enjoyed.

It is generally agreed upon that India has a tradition upon which its democracy is based, a factor that does not exist in Ethiopia.⁴⁰ The latter has not experienced a democratic government, and the people did not have first-hand experience in the running of their affairs. A

39-Freedom House, Ethiopia: the politics of famine Focus on issues No. 10. (New York: Freedom House, 1990). p. 12.

40-In contrast with Ethiopia, India has had a long history with democratic practices. The National Congress Party, for instance, is one of the eldest parties in the world.

shift from an emperor to a military dictator obviously did not help the development of any democratic traditions or institutions.

The aim behind these cases is an attempt to show the reader that it is impossible and absurd to compare different countries, with different circumstances, by the same standards. The reader would have understood by now that freedom as conceived in the Survey may be fully applicable to a handful of Western developed countries. Although they may be wanted everywhere, and should be enjoyed by every human being, special circumstances make them impossible and may harm, rather than enhance, the slow transition of a country towards democracy if they are introduced prematurely.

V: The Survey's assessment

In assessing the Comparative Survey of Freedom, two vital questions will be answered to help the reader evaluate the validity of the ranking. First, is it possible and useful to measure freedom on a cross-national basis? Second, is the model, applied by Freedom House, universally applicable? Having answered these questions, the reader will be able to judge whether the ranking and percentages of countries as given by Freedom House are persuasive, and whether an assessment over time of one or more countries is possible. I shall try to highlight what can be considered as shortcomings in the Survey, and the discussion will accordingly emphasise defects to an extent that would not be true of a dispassionate assessment of the Survey as whole.

To begin with, the question of a longitudinal assessment should be attempted for both categories and countries. For the categories,

for instance, it may be helpful to consider the following table:

Table 8 (1): Percentages of the "free", "partly free" and the "not free" people in the world for selected years:

Years	Free	Partly Free	Not Free
Jan. 73	32%	21%	47%
Jan. 75	35%	23%	42%
Jan. 78	35.70%	21.40%	42.90%
Jan. 80	37.00%	21.30%	41.70%
Jan. 81	35.90%	21.60%	42.50%
Jan. 82	35.86%	20.14%	44.00%

Source: Based on *Freedom At Issue* (1988) op. cit. p. 21. For the purpose of this study, I have selected only the percentages of each category.

If one is interested, for instance, in trends in the proportion of people worldwide that are "free" or "not free", then it is time-series statistics of this kind that must be employed. But how reliable are those provided by the Comparative Survey of Freedom?

The Survey in this area is very weak and unreliable. It was pointed out earlier that it kept adding different items to both its dimensions of freedom, which would make the results obtained on the basis of the initial list different from the ones on the new lists. This in turn explains why the categories are not successful in representing the gains and losses of freedom around the world. The changes in the items considered in measuring freedom in the world will go hand in hand with the changes in the percentages themselves. Moreover, the non publication of the original checklist, and the introduction of a new and more adequate one, will confirm further the claim that an analysis over time of the gains and losses of

freedom, based on the Survey, is a meaningless exercise. One has to know, for a start, the initial checklist and its shortcomings. In other words, why was there a need for a new and more adequate checklist? This makes it still difficult to argue that there is continuity between the findings of the Surveys.

One might argue, for instance, that although it appears that 32% and 37% respectively represent the percentages of the free people in the world for the years 1973 and 1980, nonetheless, one should not necessarily see this difference as a global gain of freedom. These percentages represented two quite different situations. The items, and therefore the checklist, upon which the former percentage was obtained differed from the basis upon which the latter one was conducted. Even if one looks beyond that, it is clear that the actual technique whereby the scores of countries and these percentages are obtained has changed, which makes analysis over time quite an impossible task.⁴¹ Furthermore, the emphasis changed from civil to political rights in 1979, which suggests that there was a cut-off between the results or categories achieved before and after this date. A country which had been ranked "partly free" could have well been ranked "not free" compared to one which had received the same score if it was not for this emphasis or weight. Two examples highlight this case: South Africa and the Soviet Union, although their total for the two dimensions was 11 each. Nonetheless, South Africa was classified "partly free" since it received 6 and 5 for civil and

41-"To be sure hundreds of millions classified as free were just marginally so, and almost as many classified as partly free, could with slight shift of arbitrary category boundaries, have been considered not free." Gastil (1978) op. cit. p. 4. In addition to the fact that the Survey sometimes decides that a matter has been seen from the wrong point of view, as pointed out earlier, one can only assume that there has been a shuffle within the categories depending on the changes of the attitude towards any country.

political rights respectively; whereas, the Soviet Union received 5 and 6 for the two dimensions respectively and was classified "not free".⁴²

This situation leads one to ask more questions about the system of weighting. Even taking into account the interdependence of the two dimensions, nonetheless, a system of weighting should not be introduced as a means to distinguish certain categories. The inconsistency of the Survey in the weighting of its dimensions adds to these difficulties.

Turning now to the question of the applicability of the model developed by Freedom House in all countries of the world, ethnocentrism is at the heart of it. The impression that one gets from going through different Surveys is that they not only offer the Western, and particularly the American, model of freedom as the ultimate goal, but they are a tool whereby different countries outside this sphere are attacked. The 1981 Survey states that:

On the most general strategic level we need to identify the most powerful organised, international threat to freedom. Today this is the communist movement, and particularly that part of it backed by the Soviet Union. Its absorption of countries is hard to reverse, and its commitment to allowing democratic process and law to control ideology is minimal.⁴³

One does not have to be biased towards the Western model in

42-Freedom House (1990) op. cit. p. 23.

43-R. D. Gastil (1981) op. cit. p. 10. He further states that: "For societies to survive, their people must believe in the reality of their freedoms. The struggle to realize principles in practices must be unrelenting in every country. For the world wide struggle for freedom to succeed, people in both not free and free states must believe that what used to be called the "free world", defined as the world outside the communist orbit, offers better future than the communist world and its copiests." Ibid., p. 11.

general to accept that it offers better opportunities and more freedom compared with other systems. Nonetheless, the Survey has departed from its original goal of monitoring freedom in countries around the world to become a propaganda tool and a means of attacking countries which do not resemble this model. Moreover, it intervenes in the internal affairs of countries as to advise them how to conduct their international relations. In a letter (2 January 1990) to Vaclav Havel of the former President of the former Czechoslovakia, Bruce McCollm, Director of Freedom House wrote:

...Mr Castro condemns the movement toward democracy throughout the world. Therefore, on behalf of Freedom House, an organization which has supported the struggle for freedom and democracy throughout the world for nearly 50 years, I would like to ask you to reappraise your current relationship with Havana with a view of terminating your government's representation of Castro's regime in the United States.⁴⁴

The ethnocentrism of the Survey is seen in how countries are ranked. There surely is a distinction between what people want in different countries. What the Survey seems to be convinced of is that everybody, wherever they may live, would want the freedoms it is concerned with if they had the chance to choose. Nonetheless, it is not always the case. The priorities that are selected depend very much upon the circumstances of the countries themselves. One is not denying how valuable civil and political rights are to the enjoyment of freedom; nevertheless, the enjoyment of the basic needs as well are of paramount importance and may affect freedom itself. In the majority of Third World countries, if the people had the right to express themselves, enhancing their social and economic situation

44- The Washington Post Tuesday, 9 January, 1990.

would almost certainly be at the top of their list of demands. Experience has shown, at least in the case of Algeria to name just one, that when the freedoms the Survey is concerned with were granted in the late 1980s, many people stressed that freedom for them meant a shelter or a job. What would be the situation of a country governed by a chief executive who assumed power through a coup d'etat, who worked for the benefit of his people and whose people agreed with the way he managed the affairs of the state? What would have been the situation of a country where a coup d'etat had just occurred and the majority of the people agreed with it? The Survey seems to have set a standard, which was thought to be the best, and countries are judged on whether or not they approach it, leaving out of consideration the particularities of each country.

The Survey gives the impression that a great deal is known about different countries through the gathering of the information upon which it made its judgements. However, what it not considered is how these phenomena are viewed in a different context. Does it really matter for people in Ethiopia if they are denied the right to free speech and assembly? Probably such an issue does matter, however, not as much as many other, more basic, issues such as food.

The granting of such freedoms is a long process, and depends not only on the will of governments, but on how prepared the people are to accept these ideas and practices. These freedoms may be the ultimate goal themselves, and many people may envy Westerners for these freedoms.⁴⁵ However, such enjoyment is a result of an

45-"Essentially our model is that of Western constitutional democracy, and we are asking to what extent the countries of the world accord with this model. To many readers this has seemed a paternalistic or ethnocentric viewpoint, but we believe that the freedoms attained by Western democracies are desired by people everywhere." Gastil (1975) op. cit. p. 3.

evolution over the years, if not centuries. Many Third World countries lack the institutions and the appropriate channels through which such a change may take place. Economic conditions may also make it difficult for them to enjoy these freedoms. In other words, there are some practical obstacles that many countries face in the Third World in achieving a high level of freedoms.

Political rights and civil liberties need a material base in order to work properly. It would be absurd to talk about a people enjoying civil and political liberties at a time when the very same people are illiterate. How does it affect the status of a group of people living in remote rural areas, illiterate, and with virtually no access to the mass media, if the chief executive is elected or not? There are still many areas in different countries in the Third World newspapers or television programmes cannot reach. These people are not free because they cannot be free. Freedom, as understood in the Survey, requires a citizen in the model of J. S. Mill, someone who is active, informed and knows his duties and rights. At the same time, it also requires institutions already set to channel different demands, and a government which respects the "rules of the game". Unfortunately, all these are rarely encountered in the majority of Third World countries.

The Survey, in fact, is highly ethnocentric and difficult to apply on a cross-national basis. It represents the American model of freedom, which hinders the chances of countries such as Ghana, China, Ethiopia or Nigeria, with their traditions of totalitarian rule. Each of these has its own circumstances which may lead to such freedoms being denied, or provided in a different form.

The point that needs to be stressed here further is that although

the Survey may be successful in assigning countries to the different categories seen above, except perhaps for the borderline cases, it fails nonetheless to account for the social and economic circumstances as well as traditions of different countries. As pointed out earlier, both Ethiopia and the former Czechoslovakia had special circumstances; for the former it does not have "any tradition of democracy and political organization", and for the latter "Czechs in 1989 did not have the mechanisms to change their governments". Such statements are undoubtedly crucial to the understanding of why the ranking of these countries, as well as others, has been that way.

The Survey has simply selected a set of variables that corresponded to his theoretical definition of freedom, and tried to apply them on a cross-national basis. The ranking for each year may be appropriate, nonetheless, the question that needs to be asked here is: do the variables or the concepts used in this Survey have the same meaning in the different countries under consideration?

In the light of the foregoing it is of paramount importance to stress one of the variables that the Survey uses in its checklist for civil liberties; corruption. It is perhaps the key factor in the explanation of the bad ranking of Third World countries. It is usually suggested that the denial of freedoms is under different slogans such as economic development or national unity, but it is very much as well because of the corrupted official exerting power on behalf of their people. The enjoyment of civil and political rights is a threat to those "illegitimate" governments and the privileges they enjoy because of their positions.

Another point of interest is freedom from foreign control. This control may influence the degree of freedom in any country being subjected to it. Nonetheless, the question that needs to be answered

here is, what harm has a country done in being subjected to such a control, to see its score reduced? It should be the other way around. No country in the world can live by itself. There should be contact and interdependence between them. Such interdependence varies, of course, between them to the point of domination or control. Until the Survey realizes that the dominant state should have points deducted from its score, one cannot see how such a Survey can be taken seriously. What is the difference between a chief executive of a country in Black Africa, Nigeria for instance, who assumed power through a coup d'etat, and one in Latin or Central America who came to power through corrupt elections financed by the U.S. or was simply put in office by the Americans, as in Panama?

The constant interference in the internal affairs of Third World countries endangers the transition, if any, toward democracy and therefore the enjoyment of these freedoms that might exist in these countries. It might be seen from another point of view that such an interference is the only way whereby citizens in these countries will be free. Freedom House stated that:

The Survey attempts to judge all places by a single standard, and to point out the importance of democracy and freedom.⁴⁶

There is no doubt about the importance of democracy and freedom, nonetheless judging all countries by the same standard will not lead to convincing results because of the reasons discussed above. Differences in the level of economic development, social conditions, political awareness and the degree of development of institutions make the task difficult, and may disadvantage Third

46-Freedom House (1990) op. cit. p. 19.

World countries compared to developed world.

The Survey has been subjected to extensive criticism either for its methods or for being ethnocentric. Thomas Quigley, for instance, stresses that:

Mr Gastil says his definition of freedom would not be "extended rhetorically" as the expression "freedom from fear". But until he has shown some sensitivity to such fundamental freedoms as the right to self-determination, equality, health, education, work, and adequate standard of living, maintenance of one's culture, and protection from arbitrary arrest, detention, or torture, he is not qualified to speak for more than the tiny minority of which white, male Americans are today's paradigm.⁴⁷

However, although the quotation above confirms the Survey's cultural bias it seems clear that the Survey has been improved as a result of the criticisms it has been subjected to over the years. If one scrutinizes closely the different aspects of the Survey, one sees that they kept increasing over the years. Some of the aspects that were lacking in the initial Survey, which were pointed out in the above quotation, have been considered in different surveys at a later date. Self-determination, equality and freedom from arbitrary arrest, detention, or torture have been considered in the measurement of

47-T. E. Quigley, " 'Miss Freedom' Awards Are, at Best, Irrelevant." *Worldview*, November 1974. p. 39. Further, Blaser Art, "Assessing Human Rights: N.G.O contribution." in Nanda et al eds, (1981) op. cit. p. 272 states that: "Goulet in criticizing the Freedom House's Comparative Survey of Freedom, labels it a reductionist approach that "measure, and that very inadequately, a few dimensions of western style political freedom." Furthermore, in reviewing Gastil's book Freedom in the World 1978 Larz Schoultz concluded by:"...requesting that subsequent volumes an effort [should] be made to mute their overbearing ethnocentricity and to employ someone to rationalize what can only be labelled an idiotic methodology." *Universal Human Rights*, (2) 1980 p. 94.

freedom. This suggests that the Survey, although quite ethnocentric, is open to criticism and may learn from it. Nevertheless, it still falls short of expectations in that many aspects which are of direct relevance to freedom are ignored. Social and economic conditions are crucial to the enjoyment of freedom. Therefore, since these conditions differ, the standard upon which countries are judged should not be the same. This is perhaps the reason behind the contradictory character and ambiguity in many aspects of the Survey, and its attempt to undertake a major task of measuring freedom on a cross-national basis.

Having said that does not automatically mean that the Survey is useless. It does provide a means of measuring at least part of the phenomenon with which it is concerned; and its shortcomings have been steadily reduced. Thus, for instance, the new ranking of countries on a 13 point scale:⁴⁸ and different aspects have been added to both dimensions to make them as comprehensive as possible. Still, however, a lot has to be done to make the Survey's approach relatively acceptable to all. Experience has shown that the Survey has taken into consideration some of the constructive criticism, which leaves the author optimistic about the possibilities that further criticism may help to bring about still further improvements.

48-The reader should be warned here that, although as pointed out earlier in the text, the Survey introduced a new ranking whereby countries are placed on a 13 points scale (*Freedom at Issue*, Jan/Feb. 1989 p. 54), there was no mention of its traditional categories "free", "partly free". and "non free", and countries are judged by their closeness to the top. However in 1990, without any explanation, it seemed to have gone back to its old strategy of putting each country in one of the three categories.

Chapter nine:

Human rights and comparative politics	312
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Chapter Nine

Human rights and comparative politics

In the first part of this dissertation a lengthy discussion focused on the definition and the content of human rights. It is a concept vigorously contested between East and West on the one hand, and developed and developing countries on the other. The clash between liberal and socialist ideas, and the emergence of many Third world countries on the international political scene, strengthened such vigorous contestation. This made agreement on a widely acceptable definition of the concept very difficult, not to say impossible. The discussion, then, moved to consider the operationalisation of this concept by looking at some of the attempts to measure or conceptualize the phenomenon on a cross-national basis. Non-governmental organisations such as Amnesty International and Freedom House, political scientists such as Dahl, Bollen and Humana, or international bodies such the UN Human Rights Committee, have been concerned with the issue of human rights and political democracy. Some of these have developed different criteria upon which they measure the phenomenon and therefore rank countries. Others have just been concerned with monitoring the situation in countries around the world and helping governments improve their records.

The discussion that follows examines and assesses the extent to which these exercises have successfully conceptualised the problem of human rights, and particularly whether the task itself, to compare human rights on a cross-national basis, is a feasible one. It seeks to evaluate the case studies, and asks whether they have been

successful in resolving the problems relating to comparative political analysis on the conceptual, data and operational levels.¹ The interpretation of human rights, as discussed in the first part, has a long history, is influenced by various factors, and therefore varies between individuals, political scholars/researchers and regimes. Quantification of human rights, however, is a more recent exercise when different organisations and scholars took an interest in the subject, gathered information and engaged in systematic quantification and measurement which resulted in a ranking of countries. If "the very variety of human rights", Horn argues, "makes it difficult to fit them into a single structure balanced measurement"², how did the case studies undertaken in this dissertation attempt to measure the phenomenon? Thus, the discussion begins with an overall assessment and comparison between the different inquiries undertaken in this study. I shall particularly look at the definitions employed and their operationalisation through the approaches and the variables selected. This analysis should help to provide a better understanding of the strengths and weaknesses of each study as an attempt to measure human rights on a cross-national basis. Then, I shall discuss whether or not a comparative study of human rights, in the light of the different studies discussed earlier and the diversity of political systems, is a plausible one. The discussion concludes with a number of recommendations for future research.

1- For further details see Bahry, D. "Crossing Borders: The Practice of Comparative Research", in Manheim J. B. and Rich, R. C. Empirical Political Analysis (London: Longman, 1986)

2-Horn, R. V. Statistical Indicators for Economic and Social Sciences (Cambridge: Cambridge University Press, 1993), p. 180

I: The case studies: A comparison

It has been suggested earlier that a clear-cut definition of the content of human rights has yet to be achieved. The United Nations, which is considered by many to be the authority on the subject, has steadily increased the items on its list of human rights. The 'third generation' of human rights, and particularly the right to development recognized as an inalienable human right in 1986, are the best example of this broadening of a concept that was originally conceived more narrowly. Nevertheless, the inquiries undertaken in this study have limited their scope in general to some aspects of the subject. The rights of solidarity, and economic, social and cultural rights, to some extent, have not really been taken seriously by the scholars and organisations involved with the issue of human rights.

1-1: Inadequate definitions and data

1-1-1: Inadequate definitions

One might suggest that international conventions, signed by the majority of countries, provide a strong base upon which human rights can be defined and measured. However, one must bear in mind the fact that a comprehensive list of human rights, based on United Nations documents, is extremely lengthy, which in turn makes coverage of every aspect a near impossible task. In the case studies undertaken in this dissertation, the choice of variables upon which measurements were based was necessarily an arbitrarily one. Indeed, apart from Charles Humana's second study (1986) and the

work of the Human Rights Committee, the inquiries suffer a kind of personal arbitrariness.

The Human Rights Committee's definition is based on the provisions of the International Covenant of Civil and Political Rights and its Optional Protocol. It applies them to states which have already committed themselves to fulfill these obligations by ratifying such a document. Humana's second study (1986) is based exclusively on the Universal Declaration and the two Covenants. This makes it more balanced since it is drawn from the main documents of human rights. His first study (1983), however, suffers from arbitrary selection since some of the aspects considered are not really supported by international instruments.

Amnesty International seems to have understood that covering different aspects of human rights would not lead to fruitful results, and has therefore opted for a narrow definition. There are, of course, some advantages to this strategy, especially the fact that comparatively more accurate information is available on the chosen aspects chosen. However, this narrow definition also has its shortcomings. Amnesty has based its annual reports on a few aspects of human rights that it has arbitrarily selected, and has tried to give a picture of human rights in different countries in the world. It is difficult to accept the contention that one is talking about the state of human rights in a given country when the aspects chosen for consideration are so few. To make generalizations on the basis of a few variables is not likely to lead a researcher to convincing conclusions whenever a comparison is undertaken.

There is no doubt about how significant are some of the issues with which Amnesty is concerned, such as 'prisoners of conscience', to the whole debate of human rights. Amnesty is the leading

organisation in the issue of 'prisoners of conscience', and its findings are authoritative and of genuine importance to anybody who is concerned with this particular question. However, this is just one issue among many.

Freedom House, Dahl and Bollen have exclusively reserved their definitions to refer to political rights and civil liberties, and attempt to construct a ranking of countries upon these aspects. Perhaps the unbalanced dialogue on the issue of human rights and democracy has led to these different assumptions. The fact that most scholars and organisations involved with these issues are based in the West has meant that they have tended to look at matters on the basis of their own perceptions. The definitions adopted for the study of human rights and democracy confirm this claim. They are usually drawn from a range of civil and political rights, that are most treasured in the West. Thus, if one looks at the definitions employed on a cross-national basis, one sees that they are unsatisfactory or ethnocentric in many instances, representing what the scholar or the organisation thought to be the norm.

1-1-2: Inadequate data

Dahl's, Humana's and Freedom House's studies suffer from a lack of information and personal judgements. If one recalls the peculiar positions of France (Dahl ranked it twice on points 6 and 11 on a 29 points scale), one sees that the actual strategy whereby such a ranking is achieved is questionable, or perhaps a better strategy could be developed. If it was not for personal judgement, one assumes that France would not have been moved upwards on the

scale. Perhaps the judgements themselves could be harsher when one is dealing with a country with long traditions of democracy and respect for human rights. When the answers do not quite correspond to the prior knowledge of that country, its final ranking will be significantly lowered.

Humana's studies were divided according to the strategies followed. It was obvious that a number of countries were assessed through summary forms because of lack of information and data. However, even the countries analyzed under the questionnaire, the recorded data were doubtful in many cases. One would add, further, that Freedom House also still cannot overcome this problem. It has been pointed out earlier in this thesis that, while some countries have received the same scores, their final rankings have been different. Moreover, even within one country which has received the same score over different years, its final ranking has differed from year to year. This suggests that the approach as a whole in these studies needs to be looked at more carefully and can perhaps be considered as the weakest point of the measurement. There has been a selection of variables and a choice of the aspects one looks at against a set of criteria. In principle, whenever the results are similar, the final ranking of countries should be the same. This is not actually the case, particularly in Humana's and Freedom House's inquiries.

Furthermore, it seems that there is some inconsistency on the part of Freedom House. Different items have been added to the initial list, the strategy followed to obtain the final ranking has changed and those involved with the Survey have intervened repeatedly to reevaluate the ranking position of certain countries.

Moreover, statistics can be quite misleading if one is to rely upon them exclusively. It is perhaps appropriate to see these facts within their proper context. If one is to rely on the number of 'prisoners of conscience' Amnesty publishes, one has to be careful in dealing with them. The interpretation of such figures is vital in attaining a clear picture. When one says, for instance, that there are 10,000 'prisoners of conscience' in countries A and B respectively, one ought not automatically conclude that the two countries violate human rights to the same extent. The question that needs to be asked is what is this number as a percentage of the total population? It may be a high percentage of the population in countries such as Kuwait or Luxemburg, but it might be insignificant in countries like China or India. Thus, quantification can suffer from different interpretations which made a general agreement difficult to reach.

Moreover, the scarcity of data and its unreliability add to the existing difficult issue of comparing human rights on a cross-national basis. It has always been claimed that the former communist countries had better records than liberal democracies in providing for economic and social rights. However, the collapse of communism in these countries and the unprecedented flow of information that has followed about their domestic records suggest that these claims are of little validity. In addition, some of the human rights abuses which were denied for decades have been confirmed by the successor governments in this part of the world.

1-2: Approaches

1-2-1: Independence of variables

Such an arbitrary definition and selection of the variables has led, in the inquiries, to the issue being looked at separately from the environment in which it evolves and develops. The Human Rights Committee represents an exception in this area. It is perhaps worth stating again that such practices, either respecting or violating human rights, develop in accordance with the realities of a given society. They are influenced by the environment in which they occur. However, if one looks, for instance, at the different annual reports Amnesty publishes, one is faced with a situation where some facts and statistics are reported about almost every country in the world without deep reflection on what exactly is happening in any particular one. Furthermore, if one looks at time-series statistics on the treatment of a particular government of 'prisoners of conscience', for example, will that lead to satisfactory conclusions?

Amnesty reports on the aspects on which it has particular interests, nonetheless, such aspects need to be explained in more detail. Why, for instance, has the number of 'prisoners of conscience' suddenly increased for one year or two in one particular country? There is no satisfactory explanation of this matter in its annual reports. The space reserved to every country is too small to enable a clearer picture to be established. This, in turn makes a comparison very difficult.

On the other hand, Amnesty does publish country reports. These are more informative, since the focus is just on the chosen country. More details are available and different explanations are provided which may influence the government's treatment of its citizens. However, these reports are still limited in number; they do not cover every country and could be out of date after their publication

because of the changes that the country in question may have witnessed.

Dahl and Bollen, similarly, have concentrated their efforts on civil and political rights and these factors are looked at with little reference to the actual circumstances in which they evolve. In this respect, it is perhaps appropriate to stress that, although Dahl did not take into account the conditions that favour polyarchy in his measurement, he made a significant point by stressing them. Thus, polyarchy did not exist as such, but some conditions have to be met first for such a system to work properly. If one goes deeply into the conditions discussed by Dahl, one sees that they are of paramount importance to the understanding of why some countries are more democratic than others. Conditions such as historical sequences or the level of economic development, for instance, play a significant role in favouring a democratic system.³ However, when Dahl proceeded to the measurement of polyarchy, his judgements were based only on the opportunities to participate and to oppose. In the total absence of the seven conditions that favour polyarchy in terms of Dahl's discussion, one must assume that a system is not democratic and therefore that opportunities to participate and to oppose are non-existent.

Both Charles Humana and Freedom House do not give satisfactory explanations as to why some countries and not others violate human rights. They both develop their own criteria upon which they measure countries' performances and therefore construct a ranking. Nevertheless, they take these variables independently from what is happening in reality. Freedom House highlights gains

3-R. Dahl, Polyarchy (New Haven and London: Yale University Press, 1971); S. M. Lipset, Political Man (London: Heinemann, 1959)

and losses in freedom around the world, thus updating its Survey; however, the explanation of these changes is very limited. The same thing could be said about the work of Charles Humana, especially his first study in 1983.

The UN Human Rights Committee, on the contrary, takes into consideration the circumstances of every state party to the Covenant whenever their reports are considered. This makes its work more significant towards improving their standards. The Committee does accept that some conditions may hamper the observance of human rights and may make it very difficult for some countries, especially in the Third World, to bring their laws into accordance with the provisions of the Covenant.

Perhaps the best example of this effect is the right to derogation, under article 4 of the Covenant, in time of public emergency which makes human rights more vulnerable to violations. The article stresses that the rights to be derogated from should be in accordance with the demands of the new situation, and that the Committee should be notified of these measures. This, in turn, enables the Committee to take into account the circumstances of the country concerned and the environment in which the rights have evolved.

One would suggest further that one aspect Amnesty is concerned with is difficult to satisfy: the death penalty. As pointed out in the chapter four, many Muslim countries carry out this sentence, at best, for religious reasons. Thus, it is difficult to be abolished since the laws are inspired , in some instances, by the 'Koran'.

1-2-2: Ranking and non-ranking approaches

Although the main aim of all the the studies undertaken, among others, is the improvement of human rights around the world, their approach is quite different. While the Human Rights Committee tries to help states parties to the Covenant enhance their human rights standards by providing assistance whenever needed, Amnesty publicizes abuses and pressurises governments to treat their citizens fairly. Dahl, Bollen, Humana and Freedom House, at the other end of the spectrum, have engaged in a a systematic comparison and ranking of countries on different scales. However, they differ in theyways whereby this ranking is achieved.

It seems that the approach undertaken by the Human Rights Committee, and the one taken by Amnesty to some extent, would be likely to achieve more useful results. Both of them do not engage in any sort of ranking. Amnesty puts different pressures on governments which in many instances succeeded in securing fair trials or freeing some 'prisoners of conscience'. However, in the long run, the practice in the country concerned seemed to persist. The Committee's approach, on the other hand, is completely different. It is a body which works under the auspices of an international organisation of which almost every country is a member. It approaches governments from an angle on which they have agreed. It engages in friendly dialogues aimed at helping, not condemning, the practices of the state concerned. Although it is a long process, it has tended to achieve an overall improvement in the long run.

Any ranking of countries in terms of human rights and political democracy is bound to to be controversial, and could be difficult to accept in many parts of the world. Controversies seem inevitable not only with regard to the variables chosen, which can be ethnocentric as discussed earlier, but also regarding the strategies adopted, the

information and the data gathered and the personal assumptions of those involved in the studies themselves.

1-2-3: Weighting

Bollen and Dahl do not engage in any kind of weighting in the measurement of political democracy. They deal with the different aspects independently to conclude whether the aspect in question is respected or not. Although it is relatively the most acceptable strategy whereby every right should be considered equally compared with others, it is very difficult to come to a clear-cut conclusions on the boundaries of the variables they measured. Variables such as 'freedom of the press' to name just one, are very difficult to assess. Bollen, for example, assesses it on a nine-point scale based on a judgemental source, while the breakdown of this variable in Dahl's study resulted in four categories, which may suggest that it is assessed on a four-point scale. The point that needs to be stressed here is which countries received nine points on Bollen's scale and which countries had complete freedom of the press according to Dahl? By which means can one decide such a point? The aim of the these questions is not to directly compare the tow scales in these two separate excercise, but to stress the need for clarification of when does one category end and another begin.

Both Humana (1986 and 1992) and Freedom House in their efforts to quantify human rights and freedom have opted for a system of weighting in their final ranking of countries. This system of weighting if generally misleading and should be disregarded if these studies are to be considered more seriously. To be fair to them,

both studies have introduced such a system at a later stage since their initial ones: Humana in his second and third editions, and Freedom House in the late 1970s.

A system of weighting inevitably gives more importance to some rights than others. It can be understood, in principle, that some rights could be more valuable than others, nonetheless, the denial of the latter does not mean that they do not constitute a serious violation. That is what Humana did in his 1986 and 1992 studies, which influenced the ranking of some countries and made his studies vulnerable to criticism. However, what Freedom House has done seems to be more confusing. If one takes the 1977 and the 1978 Surveys, one sees that the weight has changed from one dimension to another. This may suggest that the system and the approach as a whole are at fault.

In any inquiry where a system of weighting is employed, the results and the final ranking are open to question. Once again an arbitrary selection of the variables or dimensions to weight is left completely to the discretion of those involved in the studies. This not only biases the results and the ranking in general, but is a significant weakness in any study based upon this kind of exercise. It only takes a country to take advantage of the weighted rights to see its position ahead of others which did not.

Moreover, and perhaps the most important point in the studies which engage in the measurement of human rights and democracy, is the ranking of a peculiar country: South Africa. It is very difficult to accept the contention of Dahl, Bollen and Freedom House that South Africa is more democratic and free than the majority of Third World countries and some former communist countries. Humana, on the

other hand, ranked it very low on his studies.

Any study that considers South Africa to be more democratic than many other parts of the world is questionable, unless the application of the variables was to the whites only. In any country where 80 per cent of the adult population was not eligible to vote (people were denied the right to participate in elections, and indeed to oppose the government), how can one suggest that the country in question is democratic or free? South Africa was classified among the democratic countries in Dahl's and Bollen's studies. Freedom House, on the other hand, has classified South Africa either in the 'partly free' or 'not free' categories. However, the former classification does not seem to be really appropriate in some cases given its comparative nature.

1-2-4: Longitudinal assessment

Finally, the nature of the studies themselves is of paramount importance to any over time assessment or comparison of countries in terms of human rights and democracy. The studies carried out by Dahl and Bollen are significant, but are narrow in scope. The strategy they followed may perhaps be limited to some countries, however, the data need to be updated to take into account different changes that have taken place over the past two decades since the studies were carried out. Humana's studies are more recent, and enable the reader to make comparison between the three inquiries and pinpoint the gains and losses in human rights in countries that need to be studied. However, these studies are, once again, limited in time and do not provide the reader with some information concerning the periods of time that a researcher wishes to cover.

However, the Human Rights Committee, Amnesty International and Freedom House offer more grounds upon which to carry out an over-time comparison. Although the Committee discusses a state's report every five years after consideration of the initial one, this practice, however, enables any improvement in the field of human rights to be monitored. One is able to conclude, after considering different reports of a given state, whether the state in question has taken the necessary steps towards bringing its laws within the provisions of the Covenant. This in turn helps one to conduct a comparison between two or a number of states to find out about the attitudes of these states towards improving their human rights records.

Freedom House and Amnesty, however, offer a year-to-year picture of almost every country in the world. This makes an over-time assessment more plausible and easier to execute. In this respect, Freedom House is more successful and straightforward than Amnesty. The latter describes the situation in country A for year 1, then describes it for year 2, and so forth. It is left to the reader to conclude whether the state in question has improved or not over the years. It implicitly states that, since the number of 'prisoners of conscience', for instance, has increased or decreased, but the actual conclusions, either better or worse records, are not particularly clear.

Freedom House, on the other hand, offers a clear picture to that end. Its annual reports contain not only global gains and losses in freedom around the world, but also countries' annual positions. It is readily apparent when one takes different successive reports and tries to monitor the state of freedom in countries like India or Brazil, for instance, one can easily see the trends for these countries, since

they are clearly highlighted by the organisation. This makes a comparative study of freedom relatively easier than if one takes, for instance, Amnesty's reports.

Having dealt with the different studies to monitor human rights and democracy, especially those which have engaged in measurement and ranking on a cross-national basis, the question that needs to be asked here is: is a comparative study of human rights on a cross-national basis possible? This will be dealt with in the following section.

II: Is a comparative study of human rights on a cross-national basis possible?

In the light of the case studies dealt with above and the diversity of political systems in the world, total comparability of human rights, at any rate, is very difficult, if not impossible. A variety of problems may face a researcher if he is to engage in such an exercise.

Human rights, as already suggested earlier, mean different things to different people. It is very difficult to achieve a consensus on what a list of human right should consist of. Although some might suggest that such a consensus was achieved and resulted in the Universal Declaration, it is not the case for various reasons. First, the majority of Third World countries did not participate in the drafting of this document. Second, many 'rights' have emerged since the adoption of this document in 1948. Third, and perhaps the most significant, within this consensus there were priorities of rights championed by different governments. This makes a comparative

study of human rights on a cross-national basis a very difficult exercise, even on the basis of the Declaration. In this connection one cannot avoid asking these question: what is the basis upon which one is to conduct such a study? And what is the definition one should employ in the comparative study of human rights?

The most basic problem is of a conceptual nature. Concepts alien to particular societies are the source of the difficulties surrounding the process as a whole. In many instances, problems are viewed from one angle: the viewpoint from which the scholar sees the phenomenon in their own societies. What can be considered as a human right in a given country might not be automatically considered as such in a different country. This difference in perception, in turn, leads to a completely different understanding of what a violation is, and thus to an overall misplacing of countries' positions if a ranking is undertaken.

If one conducts a comparative study of human rights on a cross-national basis, one needs measures which refer to the same concept in the different countries upon which the study focuses. The use of civil and political rights, while reference is made to human rights, in a country such as Chad or China is simply difficult to accept. Concepts such as 'multiparty elections' and 'freedom of associations', for instance, simply do not "travel" ver well⁴, they restrict a researcher to study countries with multiparty systems, which hold election and guarantee freedom of associations. Such qualifications, as we have

⁴-For a comparative study to be valid, research should measure the same concept from one culture to another. For further discussion of the idea that concepts should be able to travel see Giovanni Sartori 'Concept Misinformation in Comparative Politics', *American Political Science Review*, 54 (1971) pp. 1033-53; and more generally G. Sartori (ed.) Social Sciences Concepts (Beverly Hills: Sage, 1984).

seen in the case studies, automatically eliminate more countries than they include. Furthermore, the difficulties in translations is an added burden, especially when one finds no precise meaning for a concept in another language. Thus, the very idea itself may connote two different phenomena.⁵

The second fundamental problem concerns the data and information. A comparison without data on the subject hardly makes sense. To conclude whether a given country is good or bad, or whether it stands above or below another state, one needs data to support the arguments and make conclusions more convincing. However, when it comes to human rights, data are generally scarce and difficult to come by. It is an issue where governments are often unforthcoming about their records, or deliberately misleading in the records they report.⁶ So, there is a tendency to hide or falsify the facts concerning the ways whereby citizens were treated. Nobody knows the exact number of those imprisoned during the Cultural Revolution in China, for instance, or those tortured in Latin America during the reign of military government. What is reported in the press or by non-governmental organisations, at best, does not

5-In this respect, Professor Donoho argues that: "further, abstract rights may legitimately mean and require different things in diverse cultural settings. Each country's cultural and political heritage, as well as the vagaries of language itself, fundamentally shape the meaning of abstract rights, such as political participation, due process, and equal protection." Douglas Donoho, "Relativism Versus Universalism in Human Rights: The Search for Meaningful Standards" *Stanford Journal of International Law*, Volume 27, No.2, 1991 p, 369.

6-Data concerning the state of human rights is generally scarce. Governments, especially in the Third World and the former communist countries, are notorious for not cooperating with the specialised agencies. Moreover, the response was that human rights were fully respected. Different Amnesty's reports and the reports by the Human Rights Committee, after the reforms in the former communist countries suggest that efforts were made to hide facts.

represent the actual situation and at worst, is based on mere guesses. Furthermore, what makes the situation even worse is that some countries are closed societies with virtually no contact with the outside world. Data concerning their GNP or level of literacy are hard to obtain, let alone those concerned with human rights.

Moreover, having established the fact that different perceptions of human rights may lead to a different understanding of what a violation is may pose a problem of different nature. Although some data may be available on different countries, they may not represent a 'violation' in the country in which they occur⁷. Amputation of an arm might not only be seen as a violation of human rights, protected by different provisions of international instruments, but as cruel and inhuman punishment as well. However, it is not seen as such in some countries. Under Islamic law, for instance, amputation of an arm is the punishment for repeated theft. The point that needs to be stressed in this context is, in principle, this penalty does not represent a violation of human rights in an Islamic society where the teaching of Islam is fully implemented. The practice is there and will remain. However, would data on such an aspect yield convincing results?

Moreover, the availability of data may pose some problems. Would one treat the same data obtained for Japan or Sweden in the same manner one does with those obtained from Zaire or Ethiopia? The accuracy of such information, not only on human rights, but data in general, is of a very debatable character. Those provided by a

7-'Even if data were available', Bahry points out, 'many countries use slightly different definitions in representing data, and thus their own publications may offer us information that is not entirely compared from one country to another.' D. L. Bahry (1986) op. cit. p. 232.

developed country are bound to be more accurate than those by a developing country.

In addition to the concept and data difficulty, and especially as a result of data the scope of the study is more or less limited or imposed. The reports published by non-governmental organisations, for instance, are based on the information available. In the total absence of information on one country, the country may not figure in the study. This actually happened in the early 1980s with Amnesty International when its reports did not include Saudi Arabia. The Human Rights Committee makes any comparison based exclusively on states party to the Covenant. Therefore, any attempt to measure human rights on a cross-national basis would automatically be based upon the information provided by these organisations which might not cover some of the countries one is interested in, or does not provide over time data if a longitudinal assessment is sought.

Although concepts and data are crucial, they are not, however, the only problems one faces in engaging in total comparability of human rights. The diversity of political systems in today's world adds to these difficulties. This diversity consists not only in the type of political system and institutions, but on the level of economic development as well.

Liberal democracies are those systems under which most human rights are observed. They the systems, as far as the case studies are concerned, where people are most clearly free and enjoy many of the freedoms and rights. However, it is not the only kind of political system that prevails in today's world. In addition to it, one may find, for instance, one-party states, communist regimes and military governments, which have different influences on the human rights situation.

Respect or abuses of human rights depends, to a great extent, on the form of the political system. A close look at what kind of a system is prevailing in a particular country tells how the citizens are treated. Military governments, for instance, may be said to be based on a heavy military apparatus and a coercive system ready to smash every movement aimed at changing the situation. Yet, this system has frequently been a feature of many Third World countries. Changes in government in these countries scarcely follow a smooth path. Under such a system it is difficult to argue about the observance of human rights. Power is assumed by a military junta and a division of powers of the traditional kind is not generally observed.

Respect for human rights is based on, among other things, the independence of the judiciary and competitive elections to the executive and legislature, as well as a free and independent press to ensure freedom of expression. These are hardly met in the majority of Third World countries and what remains of the communist states. Furthermore, the lack of institutions able to adapt to different situations adds to these difficulties. In such countries it is difficult to anticipate respect for human rights on the same scale as in liberal democracies.

It is perhaps worth stressing that the ultimate goal would eventually be total respect for human rights, but such a process may take a long time. The fact that most Third World countries are newly independent adds to these difficulties. The form of government they may choose, or might be imposed on them, may perhaps be better equipped, at the time, to deal with any problem than another form of government would be.

Moreover, the level of economic development may play a significant role in enhancing observance of human rights. It is not only up to governments to grant such rights, but it is also up to the people to claim them. The pressures people put on their governments may have a significant impact on the changes in ways whereby they are treated. However, for people to pressurize their governments, they must be aware of their rights. In this context, education and communications are vital for such an awareness. However, many people are unaware of what their rights are. The level of illiteracy is very high in the majority of poor countries, and many rural areas are still out of reach of television or newspapers. In such an environment, one wonders what human rights would mean to these people. In addition to these, one would suggest further, the level of poverty that prevails in developing countries, and the social and economic problems, such as hunger and disease, that they have to put up with. At best, human rights to them would mean the enhancement of their living conditions.

The type of political system and the level of economic development may play significant roles in determining the attitudes of governments towards their citizens. The way in which they respond to the pressures of their citizens could be ascribed, further, to the institutions being able to adapt to different situations. This would lead to a peaceful response to such pressures. However, there is a limit to what institutions in the Third World can cope with and adapt to. If demands and pressures exceed what the institutions can cope with, this will often lead to the use of violence as a way to respond to such pressures.

It is against this background that one has to look at human

rights on a cross-national basis. The level attained by liberal democracies may be ascribed to a process which has evolved over centuries. Such a process is, to some extent, taking place in the rest of the world.

However, if cross-national comparison is very difficult and might raise problematic questions, it does not automatically follow that one has to abandon the idea entirely. One may decide to take a narrow approach to the issue of human rights and conduct a cross-national comparison. Once again, such an approach will not give a general picture of every country undertaken in the study. However, it suggests that, at least in principle, some rights can fairly be compared on a cross-national basis without any serious challenge in terms of bias. In this connection freedom of conscience can perhaps be the starting point for such a universal comparison. The freedom to practise any faith cannot be said to be a culturally biased concept, and it does not really depend on how wealthy a country is, as with all social and economic rights. Furthermore, the collapse of many communist countries, which as a matter of fact curtailed such rights, is an added factor for such an argument.

Furthermore, what seems to be a better approach to the study is a 'segmented' one⁸. In other words, one has to choose a number of countries one wishes to investigate before engaging in any kind of comparison. One way of conducting such an exercise is through 'a most-similar-systems design'⁹. This choice, undoubtedly, would

8-M. Dogan, and D. Pellasy, How to Compare Nations: Strategies in Comparative Politics (New Jersey: Chatham House, 1984) pp.101-5.

9-D. L. Bahry (1986) op. cit. p. 229; Hans Daalder, 'The Development of the Study of Comparative Politics', in Hans Keman, (ed.) Comparative Politics. New directions in theory and methods, (Amsterdam: VU University Press, 1993) p. 49; M. Dogan and D. Pellasy, How to Compare Nations. Strategies in Comparative Politics 2nd edn, (New Jersey: Chatham House 1990) pp.132-43,

avoid many of the difficulties discussed above. Moreover, it offers a basis upon which a large, if not the total aspects of human rights can be compared. Liberal democracies, for instance, taken as a whole can offer fertile ground upon which such an exercise can be carried out. This has been made more plausible, and therefore might avoid 'Galton's problem'¹⁰, by the fact that many former communist countries saw the end of communist rule, and became ready to accept the western notion of human rights. The differences that have existed between them over the years have become less significant. This, in turn, has enlarged the scope of countries if any comparative study of this kind is to be carried out.

Another way of measuring human rights is through the use of the opposite strategy referred to as the 'most-different-design'¹¹. Selecting relatively different countries for comparison, one may come to conclusions which suggest shared characteristics of the countries studied. This might suggest that the differences that might exist between countries are not the only explanations to their different attitudes, but other possible explanations may be revealed.

III: Recommendations for future research

The study of human rights has received an unprecedented attention over the past two decades. More political scientists and different organisations have focussed their attention on it, and tried to develop frameworks through which this issue can be examined.¹²

10-..'[The] 'Galton problem' is to say: few cases, many variables, which make it difficult to arrive at conclusions of a causal nature'. H. Daalder (1993) op. cit. p. 49

11- D. L. Bahry (1986) op. cit. p. 230; Hans Daalder, (1993) op. cit. p. 49; M. Dogan and D. Pellasy, (1990) pp.132-43,

Yet, the conceptualisation of human rights on a cross-national basis is far from being adequate. Moreover, the reliance on the quantification of human rights is in itself a doubtful strategy. The methodology whereby different percentages and ranking were achieved, at least in the case studies discussed above, is of questionable validity which may jeopardize any classification.

However, many of the difficulties encountered may be overcome, or at least reduced, in future work if fuller attention is given to the following:

(i) Whenever human rights are dealt with, they should be taken within the environment in which they are studied and the cultures of the actors involved in it. Scholars as well as organisations should not only limit themselves to 'what', but go further to ask 'why'. Questions on the state of human rights in Canada and Nicaragua, for instance, are significantly different from questions on the state of human rights in Nicaragua compared with Canada. If one takes just the 'what', the conclusion will be that Canada observes human rights better than Nicaragua and thus may offer arbitrary conclusions. However, if future work concentrates more on the 'why', it will not only identify the reasons behind such violations, if any, but will make the first steps towards an overall improvement. It is the view of the present author that the aim behind any comparative study of human rights is not only to identify which is good and which is bad, but also to offer solutions to problems that may exist. Conclusions of this kind can only be achieved by looking for 'why'. Economic, military and political factors may be very significant in answering

12-In addition to the studies discussed in this dissertation see for instance J. Donnelly, and R. E. Howard, "Assessing National Human Rights: A Theoretical Framework" *Human Rights Quarterly* (10) 1988: 214-48.

these questions.

(ii) A more balanced view of the issue of human rights should be sought. The dialogue on human rights is still unbalanced and concentrated overwhelmingly in the West¹³. Different traditions, as discussed earlier, may have a significant impact on the study and measurement of human rights and how they are seen from a different perspective. The study of non-Western societies by scholars based mainly in the West leads, sometimes, to arbitrary judgement without deep knowledge of the day-to-day needs of these people and their aspirations. More concern should be given to scholars from the Third World to carry out studies on their own countries and others. The criteria they would use in measuring human rights may differ from those encountered in the studies undertaken hitherto. ¹⁴ The 'dialogue' would, undoubtedly improve the understanding of those involved with the issue of human rights in the different parts of the world. Furthermore, it may uncover the different peculiarities and priorities that some countries may have. Thus, this global

13-'...the scoring pattern... suggests that socialist (pre-Glasnost) and less developed countries did not accept the idealised Western view of human rights and allot them a lesser role in their systems, as compared perhaps with religious and political goals. This seems to support an ethnocentric view of human rights, rather than the assumption of a universally valid standard.' Horn, R. V. (1993) op. cit. p. 183.

14-Dominguez states that: "A rather different alternative formulation has been presented by Argentina's Bariloche Institute. The Bariloche group identified a neumber of *needs* without satisfaction of which human beings are in one way or another impaired to become ill. The needs, it is claimed, are universal... The Bariloche Institute's authors have argued that human being tend to satisfy needs along a hierarchical scale, though the hierarchy of needs may be different from f the hierarchy of aspirations. This assumption of hierarchies led those authors to concentrate on four basic needs: food, health care, housing and education. The Bariloche Institue's work, therefore, stresses a set of values quite different from those emphasized by Freedom House." J. I. Dominguez et al, Enhancing Global Human Rights (New York: McGraw-Hill, 1979) p 32.

balance can be achieved through:

(a) The United Nations, not only by organizing different study programmes, but through to help the establishment of research centres. The 29th Graduate Study Programme (Geneva, 8-25 July, 1991), for instance, attended by the present author, provides a good example of a more balanced discussion of the issue. It was a significant initiative whereby graduates from different parts of the world, with their differences in religions, traditions, cultures and levels of economic developments, gathered to discuss current international issues. Human rights was on the agenda. It is the kind of opportunity where one finds out about the interests and priorities of others, the different issues that need to be looked at more closely and the obstacles that a country may have to overcome. At the same time, the United Nations Organisation lays down the principles and the international agreements it sought to implement.

(b) Apart from the United Nations, this balanced view may be achieved through different regional organisations. The works of the Arab League and the Organisation of the African Unity, for instance, with their counterparts in Europe and America should be taken more seriously. Each of these organisations works within its region, thus, is more closely linked to the problems and the understanding of the concept in the relevant cultural traditions of the regions.

(iii) The study of human rights and democracy ought to adopt a more global approach. In other words, abuse of human rights should not be made the responsibility of the state concerned only, but should be taken on a more global level. This would give more weight to foreign domination, as a variable, and perhaps to a change in the way some variables are judged. Moreover, this may suggest, further,

a change in the variables upon which any scholar may wish to undertake a comparative study of human rights and democracy.

Foreign domination was considered, in some inquiries dealt with previously, as a variable which influences the level of enjoyment of freedom and democracy. In fact, in some instances, when one considers the level of freedom in a particular country, one is not really dealing with the country in question, but rather with the dominant one. Kampuchea provides a good example, where one is in fact considering Vietnam. The same thing could be applied to Finland when it was under Soviet domination. Thus future work should be concerned with condemning not only the country which violates human rights, but others which might be involved as well. Every government violates human rights in one way or another. A global view of human rights would answer some of these questions. In the view of the present author, a government which violates human rights in Africa, for instance, is as guilty as that which supplied the equipment to do so. It is a difficult matter to establish since interests take priority over principles, nonetheless, future work should not only be concerned with the violators only, but with those who help also.

By the same token, from a moral point view, it makes little, if any difference, if a human being is sentenced to death or left to starve. In future research particular attention should be paid to different new variables that can perhaps be introduced in any scale for measuring human rights. The destruction of food for commercial reasons by some governments is perhaps a starting point to the development of such new criteria.

Furthermore, although many Third World countries are still

concerned with political rights and civil liberties, which are mostly in the West (iv) the study of human rights should move to cover more issues in liberal democracies. Issues such as women's rights, refugees, and the rights of indigenous people, such as those in Australia, are very much at the centre of human rights and are too significant to be left ignored.

Finally, given the changes that have been taking place over the past decade, the greatest threat to mankind is the new challenges it faces. The time has come when the rights of (v) 'the third generation' should be considered more seriously by those involved in the issue of human rights. Future work should concentrate on this new set of rights, and the best possible ways to generate respect for them, which may be the basis for an overall respect for human rights.

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