THE HISTORICAL ORIGINS AND CONTEMPORARY EVOLUTION OF INTERNATIONAL HUMAN RIGHTS LAW

Retrospect and Prospect

This article is adapted from the first in a series of three public lectures, which was delivered at the launch of the Law Society Public and International Law Committee at the Supreme Court Auditorium, on 29 May 2008, to commemorate the 60th anniversary of the UN General Assembly Universal Declaration of Human Rights.

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I. Opening remarks

1 I am going to lay at the feet of the Attorney-General Professor Walter Woon the responsibility for everything I am going to say; he probably cannot recall, but when he was Vice Dean at my faculty, in another century, he gave me my first break in international law when he invited me to understudy Professor Sornarajah, one of our eminent international law professors. That launched my academic career in international law. I gravitated very naturally to human rights because it bears a close correlation with public law, my other major field of interest.

2 My focus for today's lecture is on the history of human rights law, and the state of this branch of law today; I will discuss some of the issues and controversies extant in the discourse. I will also locate the discussion within the Singapore context, as human rights are the common heritage of mankind and not the possession of any one country.

II. Introduction – International law and the human rights revolution

3 Human rights law marks a shift from a state-centric to a people-centric conception of international relations. Classic international law was primarily concerned with inter-relationship between States.

Sovereign States organised after the classic Westphalian model enjoyed control over persons and activities within their territorial borders[1] or "domestic jurisdiction".[2] Individuals as natural persons were not considered international legal subjects capable of holding rights and duties.[3] How a State treated its individuals within its four borders fell within its "domestic jurisdiction", beyond the purview of international regulation.

4 International human rights law is subversive in challenging this Westphalian structure of international relations.[4] Clearly, the centrality of States as sole or principal international legal subjects "no longer prevails in its unadulterated form".[5] It is challenged by the view that the individual is "the ultimate subject of international law" with fundamental freedoms and rights, which rejects the "personification of the State as being distinct from the individuals who compose it".[6] As a metaphysical corporate entity, the State is not "of a higher order than its component parts".[7]

5 Ignatieff observed that human rights law wrought a threefold "revolution".[8] In terms of the juridical revolution, there is now a substantial corpus of human rights norms and standards benefitting non-state actors, in a relatively youthful area of international law emerging out of the ashes of the Second World War. The roots of the international regulatory system for human rights promotion and protection may be traced to the 1648 Treaty of Westphalia and the League of Nations regime for the protection of minorities operating during the interwar era.[9] Human rights law is the humanitarian heart of

1 *Island of Palmas Case, Netherlands v US* (1928) 2 RIAA 829 (Permanent Court of Arbitration).

2 The Permanent Court of International Justice in *Nationality Decrees in Tunis & Morocco* (1923) PCIJ Ser B No 4 noted that "domestic jurisdiction" was not fixed but that its boundaries shifted with developments in international law.

3 Louis B Sohn, "The New International Law: Protection of the Rights of Individuals Rather Than States" (1982) 32 Am UL Rev 1.

4 Christoph Schruer, "The Waning of the Sovereign State: Towards a New Paradigm for International Law?" (1993) 4 EJIL 447; Georges Abi-Saab, "Whither the International Community" (1998) 9 EJIL 248.

5 Lord Millet, *R v Bow Street Metropolitan Stipendiary Magistrates, ex parte Pinochet Ugarte* [1999] 2 WLR 827 at 905, [1999] 2 All ER 97 at 170H–J.

6 Hersch Lauterpacht, *International Law and Human Rights* (London: Stevens, 1950) at pp 68–72.

7 Hersch Lauterpacht, *International Law and Human Rights* (London: Stevens, 1950) at pp 68–72. This stands opposed to the collectivist views of the State, *eg*, Hegelian and Communist theories. See also Rein Mullerson, "Human Rights and the Individual as a Subject of International Law: A Soviet View" (1990) 1 EJIL 33.

8 Michael Ignatieff, *Human Rights as Politics and Idolatry* (Princeton & Oxford: Princeton University Press, 2001) at p 5.

9 Li-ann Thio, *Managing Babel: The International Legal Protection of Minorities in the Twentieth Century*, International Studies on Human Rights vol 81 (Leiden/The

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international law; it is not concerned with whether ships should pass on the left or right or protecting foreign investments; rather, it relates to how the law should regard the human person: do States serve individuals or individuals serve States? The cornerstone of this edifice is the Universal Declaration of Human Rights ("UDHR"), "the mother document of the human rights revolution"[10] which the United Nations ("UN") General Assembly adopted on 10 December 1948 by 48 votes, with eight abstentions. This holds out various norms as "a common standard of achievement for all peoples and all nations"[11] and is formally non-binding, though many of its provisions have attained the status of universally binding customary international law.[12] This document sparked off the revolt against colonial rule and the civil rights revolution in relation to the right of self-determination and prohibition against racial discrimination, respectively.

6 Subsequently, UDHR norms were elaborated in the form of two binding international treaties: the International Covenant on Civil and Political Rights ("ICCPR")[13] and the International Covenant of Economic, Social and Cultural Rights ("ICESCR"),[14] both of which were adopted in 1966 and entered into force in 1976. Originally, the plan was to have a single Covenant but this became captive to Cold War politics.[15] Western liberal democracies generally championed civil-political rights while the Soviet bloc supported socio-economic rights. Collectively, these three documents constituted the "International Bill of Rights". Singapore is not party to either Covenant.

7 The past 60 years since the adoption of the UDHR has witnessed the burgeoning expansion of standard-setting in the form of treaties;[16] of the six major human rights treaties, Singapore is party only

Netherlands: Koninklijke Brill NV, 2005) at pp 20–22; Thomas Buergenthal, "The Evolving International Human Rights System" (2006) 100 AJIL 783.

10 Amy Gutmann, "Introduction" in Michael Ignatieff, *Human Rights as Politics and Idolatry* (Princeton & Oxford: Princeton University Press, 2001) at p xxii.

11 See the UDHR Preambles, GA Res 217A (III), UN Doc A/810 at 71 (1948).

12 Hurst Hannum, "The Status of the Universal Declaration of Human Rights in National and International Law" (1995–1996) 25 Ga J Int'l & Comp 287.

13 999 UNTS 3. There are currently about 160 parties to the ICCPR, which is more than 80% of all UN Members.

14 999 UNTS 3. There are currently 157 parties to the ICESCR.

15 Paul Gordon Lauren, *The Evolution of International Human Rights: Visions Seen* (University of Pennsylvania Press, 1998) at pp 225–232.

16 In addition to the two 1966 Covenants, the major human rights treaties are the Convention for the Elimination of Racial Discrimination, 660 UNTS 195 (CERD); Convention for the Elimination of All Forms of Discrimination Against Women GA Res 34/180, 34 UN GAOR Supp (No 46) at 193, UN Doc A/34/46 (1979); Convention against Torture, GA Res 39/46, annex 39 UN GAOR Supp (No 51) at 197, UN Doc A/39/51 (1984); Convention on the Rights of the Child GA Res 44/25 annex, 44 UN GAOR Supp (No 49) at 167, UN Doc A/44/49 (1989). The latest convention adopted was the Convention on the Protection and Promotion of

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to two of them – the Convention for the Elimination of All Forms of Discrimination against Women ("CEDAW")[17] and the Convention on the Rights of the Child ("CRC")[18] which Singapore acceded to in 1995. Professor Tommy Koh has called upon the Government to sign the Convention for the Elimination of Racial Discrimination[19] ("CERD"), which is a good idea.[20] However, the Government's view is that having peace and things working on the ground is more important than signing treaties; some have questioned whether signing human rights treaties makes a difference or serves as a poor cosmetic substitute for genuine human rights gains.[21]

8 Many topic-specific "soft law" instruments have also been adopted, such as the 1981 Declaration on Religious Intolerance,[22] 1992 Declaration on National, Ethnic, Religious and Linguistic Minorities,[23] 2007 Declaration on the Rights of Indigenous Peoples[24] as well as other soft law codes such as the non-binding Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights.[25]

9 Human rights may be categorised in terms of three generations of rights,[26] corresponding with the rallying cries of the French Revolution: *liberte* (civil and political rights),[27] *egalite* (socio-economic rights)[28] and *fraternite* (collective solidarity rights).[29] These are not chronological and co-exist. The 1993 Vienna Declaration states that all human rights are "universal, indivisible and interdependent and interrelated".[30] The complaint of many States is that critics only focus on one set of rights; critics of Singapore tend to focus almost exclusively on civil-political rights; this is lop-sided; no one ever criticises Singapore

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the Rights and Dignity of Persons with Disabilities, GA Res 61/106, annex I, UN GAOR 61st Sess, Supp (No 49) at 65, UN Doc A/61/49 which received its 20th ratification on 3 April 2008 and entered into force 30 days later.

17 GA Res 34/180, UN GAOR, 34th Sess, Supp (No 46), UN Doc A/34/46 at 193.

18 GA Res 44/25, annex, UN GAOR, 44th Sess, Supp (No 49), UN Doc A/44/49 (1989) at 167, *entered into force* 2 September 1990.

19 660 UNTS 195, *entered into force* 4 January 1969.

20 "Conventional Wisdom: Why has Singapore not signed UN's anti-racial discrimination treaty, CERD?" *Today* (20 April 2004).

21 Oona Hathaway, "Do Human Rights Treaties make a difference?" (2002) 111 Yale Law Journal 1935.

22 GA Res 36/55, 36 UN GAOR Supp (No 51) at 171, UN Doc A/36/684 (1981).

23 GA Res 47/135, annex, 47 UN GAOR Supp (No 49) at 210, UN Doc A/47/49 (1993).

24 GA Res 61/295, UN Doc A/RES/47/1 (2007).

25 UN Doc E/CN.4/Sub.2/2003/12/Rev.2 (2003).

26 Karel Vasek, *UNESCO Courier*, 1977 at pp 29–32.

27 UDHR Arts 2–21.

28 UDHR Arts 22–27.

29 UDHR Art 28.

30 Vienna Declaration, A/CONF.157/23 (12 July 1993) Pt 1 at para 5.

for violating the right to housing. To be holistic, the range of rights needs to be appreciated in evaluating the human rights practices of the State.

10 Most of the fundamental liberties in Pt IV of the Singapore Constitution fall within the "first" generation of civil and political rights (Arts 9–15 relate to right to life and liberty, prohibition against forced labour, due process rights, equality, freedom of movement, speech, religion). These are largely negative liberties and designed to limit the political power of the State although the Constitution phrases broad limits to these rights. For example, Art 14 authorises Parliament where considered "necessary or expedient" to restrict free speech rights to serve stipulated public goods like public order and morality. Part IV does not contain any "second-generation" socio-economic rights which embody the notion that social equality should be promoted, relating to the right to work, to health, to a minimum standard of living. As Singapore has signed some 20 International Labour Organisation ("ILO") conventions,[31] a question on these issues may arise in Parliament or some other forum, but not the courts. Part IV does not refer to "third generation" solidarity rights, which are largely a product of a third world perspective on human rights, often a confusing idea in relation to the nebulous rights to development, to peace, to a healthy environment.

11 As rights-holders, we would all like a healthy environment, but who are we to enforce this against? If the Government tortures you, then sue the Attorney-General. But if smoke-haze floats into Singapore, who is to be sued? This implicates the idea of imperfect obligations, the idea that a duty-bearer can owe a duty to an indeterminate class of beneficiaries. What is interesting is that the Singapore Government, like many other Asian States, considers the third generation right to development an inalienable right.[32] This transcends mere economic growth; the 1986 Declaration on the Right to Development relates equitable distribution and a participatory process to the development process and results sought to be attained. Critics consider this an unquantifiable state right.[33]

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31 Singapore is party to 22 ILO Conventions, several anti-slavery and trafficking conventions and has signed the Optional Protocol to the CRC on the involvement of children in Armed Conflict: Online: Singapore Treaties Database <http://www.lawnet.com.sg> (accessed 20 October 2008).

32 See Final Declaration of the Regional Meeting for Asia of the World Conference on Human Rights (Bangkok, 1993) A/CONF.157/ASRM/8; A/CONF.157/PC/59 (7 April 1993) at paras 17–18.

33 The right to development does not simply entail economic growth *per se* but contemplates a participatory mode of decision-making and equity in wealth distribution: see the 1986 Declaration on the Right to Development A/RES/41/128.

12 Human Rights Law is profusely affecting other areas of international law such as development, environment, trade and security. Issues like food security and disaster relief are recognised to have human rights dimensions. In relation to Cyclone Nargis in Myanmar, UN human rights[34] experts emphasised how international solidarity should be directed at protecting the human rights of the most vulnerable people affected by natural disasters, as they should enjoy the same rights as any other persons in relation to access to food, water, shelter, housing, medical services and sanitation.

13 "Human rights" is not an umbrella catch-all term for every good thing in the world. "Human rights" are debased, trivialised and unnecessarily politicised when every preference or desire you like is so termed.[35] Human rights are not ends in themselves, but one particular means or method of securing the end of human welfare, a goal all Governments share. Human rights are based on a normative or philosophical commitment to human dignity, the non-self evident belief that every human person is of intrinsic worth.[36] Most cultures and religions have some conception of human dignity; in the human rights context, this tends to be predicated on the notion of moral individualism.

14 Given the conceptual confusion between terms like "human rights", "human development" and "human security", it is important to note that another way to achieve human welfare is through the "human development" approach; we could think in terms of the Millennium Development Goals in relation to providing goods like food, water and education. The difference lies in this: rights are a precise instrument for expressing demands of justice. When human rights are used as a technique to achieve human welfare, the real difference with this approach lies in the notion of accountability. It is harder to hold a Government to account for failing to deliver on its programmes, through diffused democratic checks. A lawyer would perhaps assume that if a right is violated, there should be some means of recourse where a right has the positive law status of a justiciable entitlement. If you are

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34 "UN experts emphasize the obligation of the international community to assist the victims of the cyclone in Myanmar" UN Independent Expert on Human Rights and International Solidarity (Rudi Muhammed Rizki) and SG Representative on Human Rights of Internally Displaced (Walter Kalin) at <http://www.unhchr.ch/huricane/huricane.nsf/view01/E2E9910C1C4E0B56C1257449001CDACF?opendocument> (accessed 20 October 2008).

35 Stephen J Hall, "The Persistent Spectre: Natural Law, International Order and the Limits of Legal Positivism" (2001) 12(2) EJIL 269 at 301–305; see also Philip Alston, "Conjuring up new human rights: A Proposal for quality control" (1984) 78 AJIL 607.

36 Jerome Shestack, "The Philosophic Foundations of Human Rights" (1998) 20 HRQ 201.

unlawfully detained, you apply for a writ of habeas corpus. But how are violations of socio-economic rights like the right to health or housing to be measured?

15 International human rights law is meant to *complement* and *not supplant* domestic public law. It poses a challenge to state sovereignty in various ways. In the past, statehood was predicated on a Government being able to maintain effective control within its boundaries; today, state power is conditioned by standards of legitimacy drawn from complying with accepted human rights standards and good governance principles like democracy.[37] Human rights impose standards of decency and humanity in relation to how States should treat citizens and aliens, replacing "the efficacy of force by the force of ethics".[38] Thus, "the end of states and governments is to benefit, serve and protect their components, human beings; and the end of international law must also be to benefit, serve and protect human beings, not its components, states and governments".[39] This is important as States can protect, secure and abuse the human rights of individuals and groups within their jurisdiction. States may be subject to both negative obligations, such as the prohibition against torture, as well as positive obligations which bear implications for political systems and economic philosophies.

16 Take the right to water for example. What is the value of a human rights approach to water?[40] It provides a particular angle towards approaching an issue. Firstly, a human right to water obviously has close links to other well-established human rights like the right to health and the right to life; without water after three days, we expire; it is a necessity, not an option. The State has the duty to provide access to cheap drinking water. This issue came up in Malaysia, where, in response to plans to privatise water, many Malaysian non-governmental organisations ("NGOs") argued that this could constitute a human rights violation as a public good would be transformed into an economic commodity.[41] Were water privatised, this could lead to the removal of water subsidies, which means costs would rise in tandem with market forces, placing an undue burden upon the poor by removing a general social safety net.

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37 See, generally, W Michael Reisman, "Sovereignty and Human Rights in Contemporary International Law" (1990) 84 AJIL 866.

38 Jose A Lindgren Alves, "The Declaration of Human Rights in Postmodernity" (2000) 22 HRQ 478.

39 Fernando Teson, "The Kantian Theory of International Law" (1992) 92 Columbia Law Review 53.

40 Salman Salman & Siobhan McInerney-Lankford, *The Human Right to Water: LegalPolicy* (World Bank Group, 2004).

41 Charles Santiago, "Water privatization in Malaysia: Why water must not fall into private hands" Aliran Monthly vol 25 (2005) Issue 1 <http://www.aliran.com/old site/monthly/2005a/1c.html> (accessed 15 May 2008).

17 One facet of a human rights approach, championed by the World Health Organisation,[42] is to focus on the most vulnerable sector of the population. If water prices rise through privatisation, the Government might be in breach of a duty to provide water in an affordable manner, in service of public health and social equity. It has a role not merely as regulator but provider of water supplies. Secondly, human rights law tries to facilitate the measuring of whether the right to water is fulfilled by establishing certain minimal standards. For example, what is the minimal right to water? One must have sufficient water to prevent dehydration and disease. Human rights lawyers have parsed through the kinds of obligations a State has in relation to water; these entail a threefold obligation to protect, respect, and fulfil the right to water.[43] This clarifies expectations as to what the Government can and cannot do. You can multiply these kinds of problems with the right to housing – what happens when you have 100,000 people living on a football field and insufficient money to build them all houses? What does human rights law add to this?

18 The advocacy revolution is seen in the involvement of non-state actors and international civil society in promoting and protecting human rights. In times past, international law was the esoteric language of diplomats. This is reflected in the formal preamble of the 1919 League of Nations Covenant which reads: "The High Contracting Parties." In contrast, the 1945 UN Charter starts with "We the Peoples of the United Nations ...". The shift from "high contracting parties" to "peoples" reflects the popularisation of international law and foreshadows the engagement of celebrities in UN work.[44] Human rights law helped fuel the advocacy revolution by raising consciousness of our rights and the forums where we could raise these claims.

19 Domestic stakeholders engaged in advocacy work include individual citizens, civil society, Parliament, the Executive and the courts who must legislate, act and adjudicate in a manner mindful of human rights. Internationally, NGOs like Amnesty International and Human Rights Watch, for example, are engaged in the process of lobbying for human rights and filing complaints before oversight bodies. There is a problem here, insofar as human rights are meant to be universal and indivisible. What happens when an NGO, which is accountable to none,

42 <http://www.who.int/entity/water_sanitation_health/rtw1.pdf> (accessed 15 May 2008).

43 Right to Water implicit in Art 25 of the UDHR (standard of living for health and well-being) and right to health in Art 12 of the ICESCR; Committee ICESCR Comment No 15 (2002) recognised the right to water as a human right (and prerequisite to realisation of other rights) which Governments are *obliged to respect, fulfil and protect the right.*

44 Audrey Hepburn's work with UNICEF and Angelina Jolie's work as goodwill ambassador for the UN High Commissioner for Refugees.

highlights one particular problem and starts campaigning for it in a lop-sided manner? Who is going to call it to account? This runs the risk of politicising human rights through espousing universal human rights values while selectively advancing only highly particularised causes. The point worth noting is that NGOs have taken away the monopoly of international affairs from Governments.

20 Lastly, Thomas Hobbes declared that "Covenants without swords are but words"; rights require remedies. Human rights law has brought about an enforcement revolution designed to hold States to account, by subjecting what was previously hidden behind the veil of state sovereignty to international regulation. Human rights law recognises that every person has rights which may be asserted against society and the State where violated, usually in a court or some other non-judicial forum. In other words, human rights abuses are considered a matter of legitimate international concern.

21 Given the decentralised nature of the international legal system, there is no process for repealing laws, which leads to a situation where inconsistent old and new norms co-exist. In relation to the claim that human rights practices must be subject to external oversight and criticism, the defensive shield of the principle of non-intervention in internal affairs is invoked; indeed, this was a deeply embedded principle within the context of the Association for South East Asian Nation ("ASEAN") grouping of ten States and features in the 2007 ASEAN Charter.[45] Most ASEAN States tend to preserve a public silence in relation to the human rights situations in other ASEAN countries, turning a fraternal blind eye to abuses. While not apt to use the language of human rights, ASEAN did express concern about the collective human right to self-determination, such as when Vietnam invaded Cambodia; however, ASEAN held its peace when Indonesia invaded East Timor. This is primarily because ASEAN as a political body preferred to deal with such issues through quiet diplomacy.[46]

22 However, even within the ASEAN context, things are shifting. In 2002, an interesting event happened in Singapore, just after the *Jemaah Islamiyah* bomb plot had been uncovered and ethnic tensions were heightened.[47] The parents of four Muslim primary schoolgirls decided to withdraw their daughters from school because they were not allowed to wear *tudung* (Muslim headscarf) which was contrary to educational

45 Text available at <http://www.aseansec.org/ASEAN-Charter.pdf> (accessed 20 May 2008).

46 Li-ann Thio, "Implementing Human Rights in ASEAN countries: Promises to Keep and Miles to go before I sleep" (1999) 2 Yale Human Rights and Development Law Journal 1–86.

47 Thio Li-ann, "Recent Constitutional Developments; Of Shadows and Whips, Race, Rifts and Rights, Terror and Tudungs, Women and Wrongs" [2002] Sing JLS 328.

policy. Some might frame this as a religious freedom issue because, surely, the right to wear religious dress is a facet of free religious practice. But religious freedom is qualified by considerations of public order, morality or health. This is a case which could have been litigated in Singapore but it was not. What is interesting is that certain Malaysian politicians began to issue cat-calls across the Causeway and to condemn Singapore's human rights performance in relation to its Muslim minorities, departing from the non-intervention in internal affairs party line.

23 Human rights treaties set up enforcement or supervisory mechanisms which are generally weak insofar as such bodies can only make non-binding recommendations; their success tends to rest heavily on the good faith of state parties as the dominant theory is that international law resides on the basis of state consent.

24 At the international level, if a State signs a human rights treaty like the ICCPR, it has to go before the Human Rights Committee to make regular reports. It engages with this supervisory body which monitors the treaties and makes "recommendations" in this respect. So too, since Singapore has become party to CEDAW and CRC in 1995, it has had 17 years of practice where MCYS officials have been busily engaged in writing state reports which are presented before the oversight committees in New York. Aside from state reporting obligations, there are facilities for inter-state complaints mechanisms which are rarely used, as States want to avoid the role of public prosecutors. In some instances, a treaty provides for the making of individual communications,[48] which are informational rather than complaints. Certain treaty bodies have the power to investigate and make *in situ* visits, but this usually requires state consent. Like other UN members, Singapore is subject to the Universal Periodic Review mandate of the UN Human Rights Council, which draws its mandate directly from the UN Charter.[49]

25 At the regional level, there are human rights courts and other quasi-judicial bodies. In the 1940s, Australia had proposed having an international court of human rights and France proposed having an Attorney-General for human rights at the UN level, which never bore fruition.[50] Courts like the Inter-American Court of Human Rights do

48 CEDAW Optional Protocol, CERD Art 14.

49 See Paul Gordon Lauren, "'To Preserve and Build on its Achievements and to Redress its Shortcomings': The Journey from the Commission on Human Rights to the Human Rights Council" (2007) 29(2) HRQ 306.

50 Technically, the International Court of Justice is an available forum for bringing human rights claims. Its predecessor, the Permanent Court of Justice delivered a series of significant judgments in relation to minority rights, *eg*, *Minority School in Albania* Advisory Opinion No 26 (6 April 1935).

provide real remedies by issuing judgments, some of which are very creative, which are enforceable by political bodies. For example, in *Aloeboetoe v Suriname*,[51] where eight members of the maroon tribe were massacred by government officials, Suriname was found guilty of unlawful killing. What is interesting is the remedy applied, which went beyond monetary compensation. The Government was ordered to make provision for the orphaned children and the community by setting up health care facilities and schools.[52] It is interesting to study these sorts of judicial remedies as it is instructive to know other regional practices, in helping us think through what type of human rights body is suitable for the ASEAN region.

26 Because international law is a decentralised system, remedies may sometimes be obtained from national courts. National constitutional guarantees are still the first line for protecting human rights. In particular, there is a peculiar 18th century US statute called the Alien Torts Claim Act ("ACTA") which provides an unsystematic form of redress for human rights abuses for some parties. Under ACTA, aliens can sue aliens in US courts for acts contrary to the law of nations, such as piracy, torture and apartheid. For example, in an October 2007 ruling, it was held that the victims of apartheid (1948–1994) could sue not the South African Government but multi-national corporations ("MNCs") like IBM, General Motors and Hewlett Packard, in US courts, on the theory that they knowingly aided and abetted the South African Government in committing gross human rights violations. Three class action suits were brought in *Khulumani et al v Barclays et al*[53] where it was argued that MNCs "knowingly aided and abetted South African

51 *Aloeboetoe et al* Case, Reparations (American Convention on Human Rights Art 63(1)) Judgment of 10 September 1993, Inter-Am Ct HR (Ser C) No 15 (1994).

52 *Aloeboetoe et al* Case, Reparations (American Convention on Human Rights Art 63(1)) Judgment of 10 September 1993, Inter-Am Ct HR (Ser C) No 15 (1994) at para 96: "The compensation fixed for the victims' heirs includes an amount that will enable the minor children to continue their education until they reach a certain age. Nevertheless, these goals will not be met merely by granting compensatory damages; it is also essential that the children be offered a school where they can receive adequate education and basic medical attention. At the present time, this is not available in several of the Saramaka villages. Most of the children of the victims live in Gujaba, where the school and the medical dispensary have both been shut down. The court believes that, as part of the compensation due, Suriname is under the obligation to reopen the school at Gujaba and staff it with teaching and administrative personnel to enable it to function on a permanent basis as of 1994. In addition, the necessary steps shall be taken for the medical dispensary already in place there to be made operational and reopen that same year."

53 *Brief of Amici Curiae International Human Rights Organisations, TRC Commissioners, and Others in Support of the Plaintiffs* United States District Court Southern District of New York, 29 September 2004 <http://www.khulumani.net/ny-lawsuit/7-NY%20Lawsuit/223-the-significance-of-the-successful-appeal-ruling-in-the-khulumani-lawsuit.html> (accessed 15 May 2008).

military and security forces" by providing financing, material and training to government forces.[54] The lawyer had to prove this link by showing, for example, that a motor company knew its lorries sold in South Africa were used as armoured vehicles to destroy townships, or that computer technology was used to operate a race identification system. This case is currently being litigated, for claims amounting up to US$400m. This opens up the possibility to the award of compensation and even changes in corporate governance, demonstrating the impact of human rights on the conduct of business.

III. Singapore's lukewarm reception to human rights norms and institutions? A study in evolving policy

27 Despite the rapid growth and development of human rights norms and institutions, the official stance towards human rights law, compared to other aspects of international law like trade and the environment, has been somewhat reticent and lukewarm. What might be the cause for this reluctant reception? Granted, things have been *thawing* since 1995 when Singapore first acceded to three human rights treaties. In addition, the learned Attorney-General in his introductory remarks stated Singapore is not hostile to human rights. Indeed, the ASEAN Charter has explicitly affirmed human rights as a norm of good governance.[55] While ASEAN has always been committed to "social justice", human rights were not an original institutional objective.

28 Perhaps the force of certain myths and misunderstandings about human rights has bred a certain reserve towards it, in addition to the fact that certain human rights do pose a threat to authoritarian political structures. For example, Art 21(3) of the UDHR recognises that "the will of the people shall be the basis of the authority of the government". Nevertheless, the language of human rights may be one which the Government speaks more fluently abroad than at home. For example when the Government finally removed the one-third quota limiting the intake of women medical undergraduates by amending the Medical Registration Act in 2003, the Minister made no reference to relevant CEDAW standards (gender discrimination, education) even though MPs had made past reference to CEDAW. The legislative change was motivated by a policy shift informed by the fact that fewer women were leaving their jobs to marry or raise families. However, before the

54 <http://business.timesonline.co.uk/tol/business/law/article3919567.ece> (accessed 15 May 2008).

55 Paragraph 7 of the ASEAN Charter has identified a purpose of ASEAN as being: "To strengthen democracy, enhance good governance and the rule of law, and to promote and protect human rights and fundamental freedoms, with due regard to the rights and responsibilities of the Member States of ASEAN."

CEDAW Committee in 2007, this policy shift was presented as a positive human rights gain, in implementing CEDAW obligations.[56]

29 I do not know whether this was deliberate or not, whether there is a reticence towards using the word "rights" domestically. Perhaps the Government dislikes the adversarial ethos imported by rights consciousness and rights language which stands at odds with government ideology which prefers "consensus instead of contention".[57] Indeed, the Government's preference for informal dispute resolution methods rather than adversarial "winner takes all" litigation is apparent in relation to the "*tudung* controversy". Although government Ministers stated that they would abide by any judicial ruling on this alleged infringement of religious freedom whereby education policy banned the wearing of Muslim headscarves in primary schools, the preference was to resolve the issue through dialogue, which is more conducive to the preservation of social harmony.[58]

30 Are there other reasons why the Singapore Government may have demonstrated past or current reticence towards human rights? How do we appropriate human rights as a local standard for measuring government legitimacy, without diluting its claims and avoiding the making of self-serving apologies for power? One reason might be the perception that human rights make a false claim to universality; that human rights are an unrepresentative product of a particular Western liberal culture which crowds out other legitimate cultural claims. While acknowledging that claims of cultural diversity may be cynically invoked to shield dictatorial practices, Foreign Minister Wong at Vienna in 1993 noted that: "Universal recognition of the ideal of human rights can be harmful if universalism is used to deny or mask the reality of diversity."[59]

31 Another reason might be the perception that human rights are a form of hypocritical neo-colonialism, a liberal tool for the West to bludgeon the Rest, contrary to the principle of sovereign equality. It is hypocritical as every State is a human rights violator; there is no morally pristine State. It is imperialistic insofar as it marks the return of a

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56 CEDAW/C/SGP/CO/3 (10 August 2007) CEDAW Committee Concluding Comments, para 8.

57 Shared Values white paper (Cmd 1 of 1990).

58 "Muslims urged to discuss tudung issue: Legal action is not the way to resolve matter," says MP Zainul Abidin Rasheed, adding "it's better to have more dialogue" *The Straits Times* (28 January 2002) (available on Lexis, accessed 22 May 2002). For a discussion of the tudung controversy, see Thio Li-ann, "Recent Constitutional Developments: Of Shadows and Whips, Race, Rifts and Rights, Terror and Tudungs, Women and Wrongs" [2002] Sing JLS 328 at 355–369.

59 Foreign Affairs Minister Wong Kan Seng, "The Real World of Human Rights" 16 Vienna 1993, Singapore Government Press Release No (20/JUN, 09-1/93/06/16) *reproduced in* [1993] Sing JLS 605.

re-invigorated standard of civilisational superiority, reminiscent of the era where the colonial States or mandatory powers "tutored" the colonies or mandated territories into adult statehood.[60] This disquiet is manifested variously.

32 First, there are perceptions that "human rights" is a contemporary secular religion. In refusing to bow down to the humanist logic of the European Enlightenment, the Islamic community as organised through the Organisation of Islamic Conference ("OIC") States reacted by adopting the Cairo Declaration on Human Rights in Islam[61] based on Islamic values derived from sacred text, not necessarily compatible with the UDHR.[62] This is a competing universalism articulated in response to the perceived "godlessness" of the proponents of a human rights agenda.

33 Second, certain critics consider that human rights are manipulated to undermine the economic competitiveness of developing States in an era of globalisation. For example, minimum wage demands might undermine a country's economic advantage and serve only the self-seeking agenda of industrialised Western States.

34 Third, there is concern that human rights are anti-social and a noxious recipe for radical individualism where individuality becomes egoism and liberty becomes licence,[63] undermining community integrity. One might consider the differing visions of John Donne ("No man is an island, entire of itself") with that of Paul Simon ("I am a rock, I am an island") which contrasts the conception of the individual subsisting in splendid isolation with that of the situated individual.

35 Do human rights require a radical individualism? I would argue, the UDHR does not require this, although the way certain parties phrase the human rights argument, it may seem to. Human rights do not impose a uniform one size fits all solution but allows room for legitimate accommodation and differences. UDHR norms provide a primary source of global minimum human rights standards. Of course, one must pay vigilant heed to the tension between accommodation and diluting human rights standards. In response to the excessive emphasis on rights, the Interaction Council, a private group of eminent statesmen

60 David P Fidler, 'The Return of the Standard of Civilisation' (2001) 2 Chicago Journal of International Law 137.

61 5 August 1990 (Islamic Conference of Foreign Ministers).

62 See Abdullahi An-Naim, "Human Rights in the Muslim World" (1990) 3 Harvard Human Rights Journal 13.

63 Thomas M Franck, "Are Human Rights Universal?" (January–February 2001) Foreign Affairs at p 195. Over-emphasis on individual rights has fostered "a concept of self that is normatively undesirable" as it "generates a radical individualism and then a radical competition among self-seeking individuals".

including Helmut Schmidt, Jimmy Carter and Minister Mentor Lee Kuan Yew, sought to refocus attention on the responsibilities side of the human rights equation, by proposing a Universal Declaration on Human Responsibilities in 1997:

> [A]s we develop our sense of responsibility, we increase our internal freedom by fortifying our moral character. When freedom presents us with different possibilities for action, including the right to do right or wrong, a responsible moral character will ensure that the former will prevail.

36 You may have a right, but it is not always right to use a right. Responsibility informs how and when we should exercise a right. A right to free speech should not be used to incite racial hatred, for example.

37 One Singapore case which captures a sound approach towards balancing conflicting individual rights and community interests is worth mentioning: this is *PP v Koh Song Huat*,[64] the racist blogger case. Here, the learned Senior District Judge Richard Magnus clearly laid out four competing considerations. He identified two competing individual rights: the constitutional right to free expression and the non-constitutional interest in freedom from offence. He also talked in terms of the wider public interest, noting that if you blog in an indiscriminate manner and evoke ethnic tensions, this harms both an ethnic community as well as the larger national society. A holistic rather than lop-sided balancing approach needs to take all these considerations into account.

38 It is true that hyper-individualism and an insistence on "unfettered individual rights" could be described as "the antithesis of the rule of law – a society premised on individualism and self-interest".[65] There are limits to rights – this is not exceptional. The difficulty is finding out where to strike the limits and cultural norms will shape this. So let us put these myths to rest: human rights do not demand a

64 [2005] SGDC 272. "The virtual reality of cyberspace is generally unrefereed. But one cannot hide behind the anonymity of cyberspace, as each accused has done, to pen diatribes against another race or religion. The right to propagate an opinion on the Internet is not, and cannot, be an unfettered right. The right of one person's freedom of expression must always be balanced by the right of another's freedom from offence, and tampered by wider public interest considerations. It is only appropriate social behaviour, independent of any legal duty, of every Singapore citizen and resident to respect the other races in view of our multi-racial society. Each individual living here irrespective of his racial origin owes it to himself and to the country to see that nothing is said or done which might incite the people and plunge the country into racial strife and violence. These are basic ground rules. *A fortiori*, the Sedition Act statutorily delineates this redline on the ground in the subject at hand. Otherwise, the resultant harm is not only to one racial group but to the very fabric of our society."

65 *Chee Siok Chin v MHA* [2006] 1 SLR 582 at [52] and [131], *per* Rajah J.

commitment to secular absolutism or radical individualism, which disregards competing rights and the public good; but, it also resists collectivism. You cannot let rights be eroded merely by stipulating a putative social good. Rather than advocate a narcissistic individualism, the UDHR drafters struck a middle course between radical individualism and collectivism.

39 Second, the UDHR drafters were not cultural homogenisers; they were genuine universalists who appreciated the importance of cultural diversity and moral pluralism, while focusing on our common humanity, in believing that human nature is the same everywhere and that human experience demonstrated that all individuals need certain forms of protection and goods to thrive. Rene Cassin, a French Jew in exile who was the principal drafter of the UDHR and sometime adviser to de Gaulle, had lost many relatives in concentration camps. When he drafted the UDHR, he tried to emphasise the fundamental unity of human rights as a reaction against Nazi ideology, which differentiated between human beings on grounds of race and culture and then tried to solve what it called the "Jewish Problem" by attempting to exterminate what it considered inferior races.[66] It was Cassin who proposed calling the Declaration the *Universal* rather than the *International* Declaration on human rights and, to this day, the UDHR remains the only official international document with the label, "universal".

40 The third myth is that it is always Western States criticising the Rest; there have been times in history where Western nations have resisted human rights in the name of preserving their own national sovereignty. If they wish to be taken seriously, this history, which should inspire humility, needs to be remembered.

A. Legal rights and political claims

41 As far as Singapore is concerned, the dispute lies not at the level of the concept of human rights but turns on the *content* and *interpretation* of human rights and the appropriate methods of *enforcement*. Then Foreign Minister Wong Kan Seng said at the 1993 Vienna World Conference on human rights that no country had rejected the UDHR. He observed that:[67]

> Most rights are still essentially contested concepts. There may be a general consensus. But this is coupled with continuing and, at least for the present, no less important conflicts of interpretation.

66 Ian Kershaw, "The Extinction of Human Rights in Nazi Germany" in *Historical Change and Human Rights* (Olwen Hufton ed) (Basic Books, 1995) at p 217.

67 Foreign Affairs Minister Wong Kan Seng, "The Real World of Human Rights", Vienna, 16 June 1993, Singapore Government Press Release No (20/JUN, 09-1/93/06/16) *reproduced in* [1993] Sing JLS 605.

> Singaporeans, and people in many other parts of the world do not agree, for instance, that pornography is an acceptable manifestation of free expression or that homosexual relationships is just a matter of lifestyle choice. Most of us will also maintain that the right to marry is confined to those of the opposite gender.

42 A distinction is drawn between "core" *rights* and contested *claims*. Human rights clearly are not a "fill in the blank" category; to ensure a claim has the status of a right, rather than a preference, certain tests of legal validity must be satisfied. For example, someone once asked me to protect his "human right to smoke". I replied that no such right exists; a claim may reflect your desire and even be desirable but may not be a legal right. A less than rigorous approach towards identifying rights runs the risk of trivialising human rights, through such putative rights such as a right not to be killed in a war; law cannot stop a speeding bullet.

43 Activists may try to clothe politically controversial claims as legal rights and differences do exist in interpreting accepted rights. For example, a libertarian country may consider pornography part of artistic free speech; a country which respects women would consider pornography both degrading and vulgar.[68] The point is, all these controversies remain unsettled, and "human rights" rhetoric is often invoked to lend legitimacy and weight to political claims. As Hall perceptively notes, the attempt to label contentious policy preferences such as same-sex marriage[69] a "human right" is no more than a political strategy designed to insulate a morally contentious interest from public debate and to silence dissent; it seeks to "load the dice of public discourse heavily in favour of a desired outcome". In such a setting, human rights language becomes "little more than an illiberal rhetorical card".[70] This blurs the line between law and political rhetoric, and has the effect of undermining the credibility of the human rights movement by seeking to present a fractious issue, such as homosexual parenthood or renting wombs, as a legal claim to achieve a sort of rhetorical *fait accompli*, without the requisite level of consensus. It is an attempt to avoid a debate.

44 Can Singapore take human rights seriously, as a country which disavows Western liberalism and which has argued that its culture is based on a form of communitarianism? The official position, as

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68 Pornography is considered "repulsive, debasing, unacceptable" and a threat to society's "moral character": D Lim, 76 *Singapore Parliament Reports* (SPR) (20 March 2003) col 1692 at 1735.

69 "Politics, law and human rights 'fanatics': AG Walter Woon" *Today* (Singapore) (30 May 2008) at p 6.

70 Stephen J Hall, "The Persistent Spectre: Natural Law, International Order and the Limits of Legal Positivism" (2001) 12(2) EJIL 269 at 304.

expressed in the shared values white paper, states that group interests have always been weighted more heavily than individual interests,[71] declaring: "Nation above community, society above self."

45 It is fine and even desirable to have a communitarian society but a distinction must be drawn between the community and the State:[72]

> The *community* ... depends on popular norms developed through forms of consensus which are enforced through mediation and persuasion. The *state* is an imposition on society and unless humanized and democratized ... it relies on edicts, the military, coercion and sanctions. It is tension between them which has underpinned human rights. [emphasis added]

46 The community is organic while a State is part of the legal machinery which does not always represent the interests of every community group. Where the State is conflated with the community, this may destroy community, authentically understood. For example, when the Malaysian Government decided to build a dam which entailed flooding the ancestral homeland of the Penan in East Malaysia, did it safeguard the interests of the indigenous Penan?[73] Singapore is also a country where there is a strong sense of community where the idea of the Right is shaped by the idea of the Good. So too, the ASEAN 2020 vision statement does not refer to the isolated individual but a human person in community declares:

> We envision our nations being governed with the consent and greater participation of the people with its focus on the welfare and dignity of the human person and the good of the community.

47 A human rights lawyer appreciates the significance of using the word "person" as opposed to "individual"; the latter connotes individualism, the former connotes an individual situated in community. Former Attorney-General and present Chief Justice Chan Sek Keong observed that peaceful co-existence in a racially and religiously heterogeneous society requires a "set of core values that binds

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71 "In English doctrine, the rights of the individual must be the paramount consideration. We shook ourselves free from the confines of English norms which did not accord with the customs and values of Singapore ... The basic difference in our approach springs from our traditional Asian value system which places the interests of the community over and above that of the individual ... We also put communitarian interests over those of the individual, when sea-front land is acquired for reclamation by cancelling the right of individual sea-front owners to compensation for sea frontage." Speech by Prime Minister Lee Kuan Yew, Opening of the Singapore Law Academy, 31 August 1990, *reproduced in* (1990) 2 SAcLJ 155 at 156.

72 Yash Ghai, "Asian perspectives on human rights" (1993) 23 HKLJ 342.

73 See Sarawak Peoples Campaign on the Penan plight at <http://www.rimba.com/spc/spcpenanmain1.html> (accessed 15 May 2008).

together all the ethnic groups in the community".[74] The community values of a country will shape the contours or scope of a right.

48 The official Singapore position is that "a major difference between Asian and Western values is the balance each strikes between the individual and the community",[75] with Asian societies placing more emphasis on the community. This dichotomy between Asia and the West is false insofar as it assumes that the "West" is homogenous. There is internal dissonance within the West where disagreement persists over the scope of rights like free speech, or controversial matters like the death penalty and abortion. Communist collectivism, as well as radical liberalism, are both "Western" ideologies; intellectual honesty requires that we identify and critique an ideology rather than its origin, as ideas are not geographically bound. There are many Western voices and also instances when the so-called "West" and "East" overlap. For example, the US approach towards political libel set out in *New York Times v Sullivan*[76] could not be more different from the Singapore approach, as free speech is the primary right in the US Constitution, though not necessarily so in the Singapore context.[77] But when we look at Singapore case law, when it comes to matters relating to the death row phenomenon (*Jabar v PP*)[78] or the death penalty as a form of cruel, inhumane treatment (*Nguyen Tuong Van v PP*),[79] Singapore courts actually cited US decisions in support of their position. As there is some degree of selectivity at work, talking in stark binaries is unhelpful.

49 When it comes to culture and differing interpretations, we see this concern reflected in this masterfully ambiguous clause, which masks apparently irreconcilable tensions, from the 1993 Vienna Declaration:[80]

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

74 AG Chan Sek Keong, "Cultural Issues and Crime" (2000) 12 SAcLJ 1.

75 Shared Values white paper (Cmd 1 of 1991) at para 24.

76 376 US 254 (1964).

77 See *JB Jeyaretnam v Lee Kuan Yew* [1992] 2 SLR 310.

78 [1995] 1 SLR 617.

79 [2005] 1 SLR 103. For a comment, see Li-ann Thio, "The Death Penalty as Cruel and Inhuman Punishment before the Singapore High Court? Customary Human Rights Norms, Constitutional Formalism and the Supremacy of Domestic Law in *PP v Nguyen Tuong Van* (2004)" (2004) 4(2) Oxford University Commonwealth Law Journal 213.

80 Vienna Declaration and Programme of Action, A/CONF.157/23 (12 July 1993) ("Vienna Declaration").

50 While there is a place for legitimate cultural differences, there is also a danger that invoking cultural arguments, to justify restrictive laws for example, runs the danger of being an apology for a hegemonic status quo.

51 The Singapore model of law and development which merges political semi-authoritarianism with market capitalism shapes the official approach towards human rights. The right to development is deemed fundamental and economic interests are prioritised:[81]

> Human rights are best protected when they are underpinned by strong economic, cultural and social foundations. Sound national policies that promote economic growth, raising living standards and provide basic social welfare are more important than any regional mechanism.

52 To elicit foreign trade and investment, order and stability take precedence over civil and political rights. There is no point to having free speech if your rice bowl is empty. But I disagree, because if my rice bowl is empty, I would like to say, I am hungry, that this economic policy is a bad one. The right to food is complemented by the right to free speech and free press; this idea of indivisibility and mutual reinforcement[82] is one Amartya Sen develops in *Development as Freedom*.[83] There are many layers to this kind of thinking, including, what is a rights-based approach to development. While observing human rights and delivering economic goods are not mutually exclusive, the official stance is that the Government justifies itself not by abstract theories but "the more rigorous test of practical success".[84]

53 Singapore is a pretty nice country to live in. Singaporeans are generally a more results rather than rights-oriented people. The problem, however, is, can you sustain indefinite high growth rates, what

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81 Foreign Minister George Yeo, 83 *Singapore Parliament Reports* (9 April 2007), ASEAN Commission on the Promotion and Protection of the Rights of Women and Children. Wong Kan Seng: "In the early phase of a country's development, too much stress on individual rights over the rights of the community will retard progress. But as it develops, new interests emerge and a way to accommodate them must be found. The result may well be a looser, more complex and more differentiated political system. But the assumption that it will necessarily lead to a 'democracy' as some define the term is not warranted by the facts." Vienna Statement, Foreign Affairs Minister Wong Kan Seng, "The Real World of Human Rights", Vienna, 16 June 1993, Singapore Government Press Release No (20/JUN, 09-1/93/06/16) *reproduced in* [1993] Sing JLS 605.

82 "Democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing." A/CONF.157/23 (12 July 1993) at para 8.

83 Amartya Sen, *Development as Freedom* (Anchor, 2000).

84 Foreign Affairs Minister Wong Kan Seng, "The Real World of Human Rights" Vienna, 16 June 1993, Singapore Government Press Release No (20/JUN, 09-1/93/06/16) *reproduced in* [1993] Sing JLS 605.

happens when the ball drops? The Singapore Government draws performance legitimacy from successfully providing high standards of health-care, education and transportation which are important goods, and Singaporeans are largely grateful.[85] But just because things are good does not mean we have reached nirvana yet; the whole notion of history is the human struggle for a better society; human rights is intensely political and seeks the possible rather than the perfect.

54 Last, to deconstruct the myth of framing human rights controversies in terms of a "West" and "Rest" dichotomy, I offer two cases from Singapore and Malaysia to show that although both countries were at the forefront of the "Asian values" school which prioritises strong government, public order and community above rights, you will find when you dig into the details specifically, this lazy caricature falls apart. For example, when it comes to religious freedom, the Singapore model is voluntarist, based on the freedom of choice when it comes to religious profession. In *Nappalli Peter Williams v ITE*, the Court of Appeal described the model of State-Religion relations as "accommodative secularism" where religious freedom "is premised on removing restrictions to one's choice of religious beliefs".[86] In contrast, if we consider the Malaysian apostasy case of *Lina Joy v Majlis Agama Islam Wilayah*,[87] three approaches towards religious affiliation are discernible. If you are not a Malay, you can have any religion you want. If you are a non-Malay who is a Muslim, a syariah court might grant you a declaration of apostasy. But if you are Malay, if this decision is correct (and it has been contested), the very fact of being Malay means you are a Muslim. This means you have no choice in this matter. The High Court judge said: "A Malay under art 160(2) remains in the Islamic faith until his or her dying days." This would be contrary to the human rights conception of freedom of conscience and this stance has compounded the problem of *murtads* or apostates who wish to leave the Muslim faith in Malaysia, but cannot as the syariah or Islamic religious law prohibits this and makes apostates liable for fines, imprisonment or detention in faith rehabilitation centres.

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85 "Our citizens live in freedom and with dignity in an environment that is safe, healthy, clean and incorrupt. They have easy access to cultural, recreational and social amenities, good standards of education for our children and prospects for a better life for future generations. I can say without false modesty that many of our well-meaning critics cannot claim as much. We do not think that our arrangements will suit everybody. But they suit ourselves. This is the ultimate test of any political system." Foreign Affairs Minister Wong Kan Seng, "The Real World of Human Rights", Vienna, 16 June 1993, Singapore Government Press Release No (20/JUN, 09-1/93/06/16) *reproduced in* [1993] Sing JLS 605.

86 [1999] 2 SLR 569 at 576.

87 [2004] 2 MLJ 119 at 143, [58]; for a comment see Thio Li-ann, "Apostasy and Religious Freedom: Constitutional Issues Arising from the *Lina Joy* Litigation" [2006] 2 MLJ i.

IV. Human rights: Foundational questions and philosophical antecedents

55 Before you can define what a human right is, you must define what a human being is. When does human life begin? If there is a right of life, does this inhere from conception or birth? Article 4 of the American Convention on Human Rights[88] provides that, in general, the right of life starts from conception, but there is no global consensus on this issue, which remains heavily contested, 60 years after the UDHR was adopted.

56 The idea of human rights stems from a faith in the belief in the intrinsic worth of all human persons.[89] There are contrary faiths or philosophies which consider that human beings are inherently unequal. Aristotle believed that some persons were born to be slaves. William Wilberforce, a British parliamentarian who led the British anti-slavery movement, believed the contrary, drawing from his Christian faith. Such movements were the precursor to many contemporary human rights NGO movements.

57 Human rights are not grants of state but are inalienable and inhere in the human person, drawing from the idea that human beings are created *imago dei* or warrant special status by dint of their rationality. Notably, the Singapore court in *Taw Cheng Kong v PP*[90] affirmed the idea that rights were not carrot and stick privileges but inalienable entitlements. I hope this strand of natural rights philosophy will continue to be developed.

58 With the onslaught of legal positivism, where state consent was considered the source of international law,[91] natural rights theories fell into disfavour with the ascendancy of utilitarianism. Jeremy Bentham famously decried natural rights as "nonsense on stilts". However, after the genocidal cruelties of World War Two, there was a shift in thinking in the second half of the 20th century. I think that when a human person faces disaster and tragedy, he gropes for something beyond himself, in terms of a higher morality; the 20th century revival of natural rights thinking may be seen as a reaction to state absolutism, reflecting a slow move from an international *legal* order to an

88 OAS Treaty Series No 36, 1144 UNTS 123, *entered into force* 18 July 1978.

89 The discussion on the question: "are human rights ineliminably religious" is particularly illuminating: Michael J Perry, *The Idea of Human Rights: Four Inquiries* (Oxford University Press, 1998).

90 *Taw Cheng Kong v PP* [1998] 1 SLR 943 at [56].

91 "The rules of law binding upon States therefore emanate from their own free will ... Restrictions upon the independence of states cannot therefore be presumed." *The Lotus Case* (France v Turkey, PCIJ, 1927).

international *public* order based on certain fundamental values beyond the reach of state consent.

59 While the UDHR preamble recognises the "inherent dignity" of human beings, it does not tell us how to identify the components of human dignity or what theory justifies human dignity as a source of rights. So, we still have to grapple with foundational questions: how else will we know who human rights beneficiaries are, how to balance and assign priorities between competing interests and what serves human good and flourishing. We are unlikely to see this continuing debate resolved in our lifetimes.

60 Some advocate a pragmatic approach which jettisons philosophical questions, arguing that we do not need to discuss conceptions of human nature or whether human rights come from God, because we have human experience. The milk of human kindness is farcical in the light of Auschwitz, Treblinka or Dachau. Many human rights scholars would argue that the memory of horror and of human cruelty, the Holocaust itself, is the only thing we need to justify human rights. The Holocaust was the "expression of secular hubris, of human power intoxicated by the technology at its disposal and unrestrained by any sense of ethical limit".[92]

61 Human rights are meant to be an ethical restraint on government power. National socialism was antithetical to human rights. It espoused a racist nationalism, disavowing the view that all persons are equal under the law. Basically, the State was the *Volk*, the *Volk* were Germans, Jews were not Germans, Jews were not citizens, Jews were insects, Jews were exterminated – that is the logic of *Mein Kampf*. In this totalitarian system, there was no conception of the rule of law; rather Law was the Fuhrer's Will. Through this, Jews were excluded from the professions, schools, citizenship and eventually placed in concentration camps for systematic slaughter. This was a profoundly anti-humanistic ideology. Why should we care for human rights? The Holocaust is not a relic of the past; the recent examples of Srebrenica and Darfur are sobering. Human nature is capable of tenderness and kindness and also profound cruelty. While law cannot change a man's character, perhaps law can curb man's worst excesses. Human rights law is a site where conscience speaks to politics, truth to power, justice to legality.

92 Michael Ignatieff, *Human Rights as Politics and Idolatry* (Princeton & Oxford: Princeton University Press, 2001) at p 86.

V. Human rights under siege?

62 The contemporary assault on universal human rights law takes place on two fronts. First, human rights are undermined by politicising rights, by promoting one human right or by targeting one country. But you can also politicise human rights by proliferating rights; if your preferred policy choice is a right, such as a purported right to sexual pleasure, you actually trivialise human rights, undermining the core of human rights which warrants committed defence. Some argue there is a right to sleep, which I would personally love to have, as it is very desirable, but who am I going to enforce it against? The University for making me teach too much? It gets to the point of being ridiculous. So I would argue if you want human rights to go forward, what is critical is the need to preserve the consensus embodied in the UDHR, rather than fracture it to advance a political agenda.

VI. The historical origins of human rights

63 There was a time when Western nations were unenthused about human rights and applied international rights protective mechanisms designed to protect human welfare selectively to certain groups of people in certain States.

64 After World War One, the European Partition was effected at the 1919 Peace Conference at Versailles, marking the collapse of the Austro-Hungarian Empire. Poland re-emerged, as did new States like Roumania and Czechoslovakia. Hungary lost a great deal of territory in the frontier revisions and consequently many Hungarians or Magyars found themselves as insecure minorities in new or enlarged States, outside the boundaries of the Hungarian State. To pacify these new minority groups, the League of Nations undertook to underwrite a series of minority treaties which was the first systematic approach towards minority rights protection. If, for example, the Hungarian minorities in Czechoslovakia were abused, Hungary did not have to attack Czechoslovakia but could appeal to the League to obtain redress.[93] This was meant to depoliticise the issue, through third party intervention. The idea that a State should appeal to an international body to address rights abuses was first given concrete expression in these experiments of the 1920s, and this provided the international framework for contemporary human rights regimes.

93 Appeals could be made to the League Council, the Committee of Three created to receive minority petitions as well as the Permanent Court of International Justice, which delivered several significant judgments on minorities' issues: Li-ann Thio, *Managing Babel: The International Legal Protection of Minorities in the Twentieth Century*, International Studies on Human Rights vol 81 (Leiden/The Netherlands: Koninklijke Brill NV, 2005) at pp 79–87.

65 There was a refusal to generalise the minorities' treaty regimes to apply to all League Member States, despite attempts to bring this into being. There are minorities all over Europe but these treaties only applied to small Central and Eastern European States. For example, they did not extend to Germany, which had minorities, and which had lost the First World War. Neither were they applied beyond Europe. Notably, the selective imposition of these minorities' treaties provoked a great deal of disquiet on the part of treaty-bound States like Poland, Roumania and Czechoslovakia. These treaties were perceived as violations of the principle of sovereign equality of States, as well as a pejorative indicator that treaty-bound States were civilisationally inferior and required the tutelage of the League of Nations. In contrast, under the UN human rights regimes, human rights are considered to inhere in all persons regardless of their geographical location, rather than being confined to certain groups within certain countries.

66 What is often forgotten is Asia's history in relation to human rights and the failed attempts by Asian States to include rights provisions in general treaties, owing to the resistance of non-Asian States.

67 First, during the drafting of the League of Nations Covenant, there were attempts to include general rights related provisions which would apply to all Member States.[94] There was initially Anglo-American support for the inclusion of a general clause on religious liberty in the Covenant itself. Japanese delegate Baron Makino proposed including a racial equality clause in the Covenant ("equal and just treatment in every respect, making no distinction either in law or in fact, on account of race or nationality"), but this was rejected, for fear that a universal principle of racial equality would delegitimate colonial rule or the race-based immigration laws of countries like Australia[95] which had a "White Australia" policy.[96] Both clauses were eventually dropped. In the 1930s, Poland led a call to generalise the minorities' obligations to remedy the inegalitarian imposition of obligations, but this was rebuffed.[97] During these debates, the Haitian Delegate M Frangulis championed a general international guarantee of certain rights inherent in the human person, arguing that this was a return to the original principles of the League

94 Paul Gordon Lauren, *The Evolution of International Human Rights: Visions Seen* (University of Pennsylvania Press, 1998) at pp 98–104.

95 Oscar I Janowsky, *The Jews and Minority Rights (1898-1919)* (New York: Columbia University Press, 1933) at p 323. See David Lloyd George, *Truth About the Peace Treaties* vol 11 (London: Victor Gollancz, 1938) at p 1369.

96 Paul Gordon Lauren, "First Principles of Racial Equality: History and Politics and Diplomacy of the Human Rights Provisions in the United Nations Charter" (1983) 5 HRQ 1 at 14.

97 Colonel Beck, *League of Nations Official Journal* (1934) at p 2. Jacob Robinson *et al*, *Were the Minorities Treaties a Failure?* (Antin Press, 1943) at pp 178–182.

Covenant's authors who were inspired by the ideals of Kant, the French Revolution, British constitutional liberties and Mancini's principle of respect for nationalities.[98]

68 The abstract idea of "natural rights" was first made flesh on a global scale in the UN Charter, which listed promoting and encouraging respect for human rights for all without distinction as to race, sex, language or religion in its statement of purposes.[99] This is profoundly egalitarian in purport, rejecting sexist or racist ideologies.[100]

69 Although the Allied Powers characterised World War Two as a crusade against dictatorships to address human rights abuses,[101] to rally support, they were cool towards the human rights idea at Dumbarton Oaks where they met to draft a preliminary Charter of the United Nations Organisation, as considerations of *realpolitik* emerged. There was only one reference to human rights, buried in the text in the section on International Economic and Social Cooperation.[102] Indeed, the proposal of the Chinese representative, Wellington Koo, to include a racial equality clause ("The principles of equality of all states and all races shall be upheld") in the Charter was rejected, reminiscent of the treatment accorded the Japanese delegate at Versailles in 1919. China was in fact willing "to cede as much of its sovereign power as may be required".[103] To the Asiatic mindset, to be treated as civilisationally inferior was a slap in the face, and this fuelled the move to have the Charter condemn racial discrimination.

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98 Frangulis, *League of Nations Official Journal Special Supplement* 130 at pp 40–45. See Jan Herman Burger, "The Road to San Francisco: The Revival of the Human Rights Idea in the Twentieth Century" (1992) 14 HRQ 445.

99 UN Charter Art 1(3). Articles 55 and 56 related to duties to undertake single and joint efforts in conjunction with the UN to promote human rights. Previous instruments tended to use the formula "rights of man": *eg*, *Declaration on the International Rights of Man* (1929) International Law Institute, Mandelstam (1931) AJIL 204.

100 Paul Gordon Lauren, "First Principles of Racial Equality: History and Politics and Diplomacy of the Human Rights Provisions in the United Nations Charter" (1983) 5 HRQ 1.

101 The UN Declaration of 1 January 1942 stated that victory was "essential to defend life, liberty, independence and religious freedom and to preserve human rights and justice".

102 Chapter IV Section A para 1: "With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations, the Organisation would facilitate solutions of international, economic, social and other humanitarian problems and protect respect for human rights and fundamental freedoms. Responsibility for the discharge off this function should be vested in the General Assembly and, under the authority of the General Assembly, in an Economic and Social Council."

103 Susan Waltz, "Reclaiming and Rebuilding the History of the UDHR" (2002) 23(3) Third World Quarterly 437 at 440.

70 The British delegate, Sir Alexander Cardogan, opposed this for fear that the UN would engage in criticising Member States' internal policies.[104] Most of the world in 1945 was living under colonial rule and Winston Churchill was determined not to give up Britain's colonial possessions. The US was saddled with Negro problems in the South and Stalin faced criticism for the closing of Soviet society. The UK, US and USSR all raised "sovereignty" arguments to resist human rights. Ironically, China articulated similar arguments in its 1991 Beijing White Paper[105] which asserted that human rights claims constituted "a demand that sovereign states give up their state sovereignty", contrary to international law and non-intervention in internal affairs. The arguments never change, the proponents do.

71 The higher profile of human rights which is mentioned at least eight times in the eventual Charter text was due to the efforts of NGOs and the smaller and medium size States at the San Francisco Conference. The Philippines proposed an amendment declaring the need to establish "racial equality among nations"[106]and China argued that nothing in the Charter should contravene the principle of racial equality and the right to self-determination. The Latin American countries failed in their effort to have a bill of rights incorporated in the Charter text. These smaller and medium sized countries, from Egypt, India, Panama, Uruguay, Brazil, Mexico, Dominican Republic, Cuba, to Venezuela, did succeed in ensuring the incorporation of principles of non-discrimination and equality[107] in the text, making it more of a "People's Charter" than the Dumbarton Oaks statist version.[108] However, the task of drafting a human rights code was left for another day. The UN Charter did not define human rights and provided no human rights enforcement machinery. Articles 55 and 56 spoke in terms of the duty of the UN to promote respect and observation of "human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion" and the duty of Member-States to co-operate in this endeavour. Upon these provisions was launched the entire

104 Paul Gordon Lauren, *The Evolution of International Human Rights: Visions Seen* (University of Pennsylvania Press, 1998) at p 159.

105 Human Rights in China, Information Office of the State Council, Beijing, 1991.

106 Paul Gordon Lauren, "First Principles of Racial Equality: History and Politics and Diplomacy of the Human Rights Provisions in the United Nations Charter" (1983) 5 HRQ 1 at 16.

107 Paul Gordon Lauren, "First Principles of Racial Equality: History and Politics and Diplomacy of the Human Rights Provisions in the United Nations Charter" (1983) 5 HRQ 1 at 16.

108 The singular reference to human rights in this draft was deeply buried in the text in Chap IX, which addressed arrangements for international economic and social co-operation. No reference was made to race or the situation of colonial people. See Paul Gordon Lauren, *The Evolution of International Human Rights: Visions Seen* (University of Pennsylvania Press, 1998) at p 170. Notably, the UN Charter refers to "the peoples" of the UN rather than the "high contracting states".

standard-setting exercise which produced the corpus of human rights law today.

72 The Universal Declaration of Human Rights[109] came into being in an interesting fashion. The Chair of the drafting committee of the Commission on Human Rights ("CHR") was Mrs Eleanor Roosevelt, the widow of President Franklin Delano Roosevelt. She enjoyed enormous prestige and was known as an outspoken journalist in the US. When people criticise the UDHR as a western document, I would urge them to read the drafting history of this remarkable document.

73 The two great intellectual giants who influenced its drafting were a man from China and one from Lebanon: P C Chang, the Vice Chair and Charles Malik, the rapporteur. P C Chang was ambassador to Turkey and Chile, and familiar with both Islamic values and the cultures of Latin American countries. Charles Malik was a professor of existential philosophy but later became a consummate diplomat.

74 Upon their shoulders was entrusted the task of drafting a standard of human rights, a treaty as well as a binding enforcement mechanism. The first draft was produced by a Canadian, John Humphrey, who ran the CHR secretariat. He basically collected constitutional documents, and together with a 400-page commentary, left the materials in the hands of the CHR. The Commission decided it could not draft by committee and tasked Rene Cassin, a civilian lawyer, to produce a draft. Cassin gave the UDHR its interpretive matrix. The frame of the UDHR is very elegant, almost like the Napoleonic code in some parts. The drafting process took a short two years, although the document underwent very lengthy debate first through the CHR working group, then the full Commission, proceeding to the third committee of the General Assembly and finally the General Assembly itself. The UDHR contains 30 articles; Art 1 took six days to discuss. In a panic, Charles Malik, the General Assembly Chair, bought a stopwatch; over 80 committee meetings, 168 amendments were debated. He tried to limit delegates to three-minute interventions but the Soviet delegate, Alexei Pavlov, the nephew of the conditioned reflex scientist, was always given five minutes, because it was hard to get him to stop talking.[110]

75 The UDHR was a document whose provisions were discussed in very great detail. When critics argue it was a product of the Western

109 For an in-depth examination, see Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting & Intent* (University of Pennsylvania Press, 1999). The Declaration was adopted 46 to zero, with eight abstentions (South Africa, Saudi Arabia and the European Socialist countries).

110 Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House, 2002) at pp 152–163.

triumphalism, this is inaccurate as it was drafted in the aftermath of European barbarism and collectivism,[111] a warning to the world not to repeat the mistakes of idolising the nation-state as Nazi Germany had done.[112] The Declaration was "a war weary generation's reflection on European nihilism and its consequences ... when the Westphalian state was accorded unlimited sovereignty, when citizens of that state lacked normative grounds to disobey legal but immoral orders".[113] It constituted an attempt to reinvent the moral natural law heritage as the preamble speaks of recognising rather than creating rights. The members of the CHR from Asia (China, Philippines, India), Latin America (Chile, Panama, Uruguay), the Middle East (Lebanon, Iran), the US, and Europe (France, Britain) represented a broad spectrum of views. Thus, the UDHR was drafted by experts steeped in a multitude of traditions: Chinese,[114] Middle Eastern Christian, Marxist, Hindu, Latin American and Islamic. It was formulated at a time just before colonial emancipation was about to accelerate, where Western powers were doing some soul searching with respect to their racist policies abroad and at home.[115] Cast in universalistic terms, the UDHR referred to "the equal and inalienable rights of all members of the human family", being "a common standard of achievement for all peoples and all nations".[116]

76 The UDHR provisions were robustly debated; P C Chung, for example, told the US Secretariat they ought to spend three months reading up the tenets of Confucianism; Charles Malik was a fan of Thomas Aquinas so you can just imagine the nature of the debates between a Confucian humanist and Catholic natural lawyer. Despite

111 "The Holocaust laid bare what the world looked like when pure tyranny was given free rein to exploit natural human cruelty. Without the Holocaust, then, no Declaration. But because of the Holocaust, no unconditional faith in the Declaration either. The Holocaust demonstrates both the prudential necessity of human rights and their ultimate fragility." Michael Ignatieff, *Human Rights as Politics and Idolatry* (Princeton & Oxford: Princeton University Press, 2001) at p 81.

112 "Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind ... ."

113 Michael Ignatieff, *Human Rights as Politics and Idolatry* (Princeton & Oxford: Princeton University Press, 2001) at pp 4–5.

114 The influential Chinese drafter, P C Chang believed that rights were for everyone, and not just westerners. Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House, 2002) at p 221.

115 Paul Gordon Laurens, *Power and Prejudice: The Politics and Diplomacy of Racial Discrimination* (Westview Press, 2nd Ed, 1996).

116 As Mary Ann Glendon notes, the UDHR's framers did not imagine that they had discovered the entire truth about human rights in 1948, seeking it more as a milestone on a long and difficult journey: Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House, 2002) at p 231.

their respectful philosophical rivalry, they managed to find enough common ground to produce the Declaration, after broad consultation.

77 The UDHR is not an individualistic, rights-oriented document; it starts with the notion of brotherhood in Art 1[117] and ends with the idea of community in Art 29. So, the individual is important and to be valued but the individual is not a radical lone ranger; as Charles Malik said, there are no Robinson Crusoes. Of course there was a lot of cynicism directed at the Art 1 conception of brotherhood, particularly from Pavlov who was trying to be obstructionist in stating that the model of brotherhood in Art 1 was more akin to that of Cain and Abel, since there could be no brotherhood between Indonesia and the Netherlands. He was alluding to colonialism. My thesis is that in the drafting of the UDHR you will find an aversion to collectivism and a desire to focus on the individual in society. The Soviet delegate persistently intervened and insisted the individual and State were indivisible, which is consonant with national socialism. In a sense, Fascism and Marxism have certain things in common.[118]

78 Rene Cassin drafted Art 1 thus: "All men, being members of one family, are free, possess equal dignity and rights, and shall regard each other as brothers." The Indian delegate, Mrs Mehta, objected to the use of the term "man" as it was gender-biased. Thus, the current Art 1 reads "All persons" and this is traceable to the Indian intervention, with Soviet support. Clearly, a detailed exploration of the drafting process history is worthwhile, revealing that almost every debate we have today is nothing new.

79 What is also interesting is that when the draft Art 1 came before the working group, the group added the word "reason"; P C Chang added the word "conscience" which was an unfortunate translation of the Chinese word "ren" which means two-man mindedness, the idea of putting yourself in the shoes of another person and seeing things from his perspective. P C Chang was always talking about Confucianism, the golden rule and social responsibility, and one can see how each word was fought over. The word "born" also caused trouble because the Latin American States asked: do you mean conception or the actual date of birth itself? Are you talking about the physical act of being born? You are all born unequal and the only thing that makes you equal is the state structure. It is easy to see why one article took six days to discuss!

117 UDHR Art 1: "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."

118 Alan Bullock, *Hitler and Stalin: Parallel Lives* (Vintage Books, 1993).

80 Article 1 tells us man has rights, but not why. Charles Malik wanted to include a reference to God in Art 1, as did Brazil and Holland.[119] However, this was eventually omitted, bowing to Soviet atheistic objections. The UDHR was a secular document by intent, not a form of imperialism but of compromise; it is drafted in such a way that there are enough words in the formulation which allows one to find a link to God if you want to; the fact that you are endowed by nature with reason and conscience might show that man is created in God's image and, therefore, merit rights.[120] Some argue that because the UDHR reflects a spiritual crisis lacking a clear philosophical core, in allowing moral pluralism, this has actually helped it to advance in terms of cross-cultural acceptance, because no one culture can claim it for itself.

81 The UDHR is the only official human rights document which contains the description "Universal". This is justified by Art 2 which reads:

> Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, *whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.* [emphasis added]

82 This is the anti-discrimination clause, so dear to the African, Asian and Latin American countries. Egypt suggested adding the words "whether it be independent, trust, non-self-governing or under any other limitation of sovereignty". This referred to the colonies – how could a document purport to be Universal, if it omitted mention of the colonies? Because the UDHR was addressed to all humanity, it was not considered an inter-government document. The universalism was also fortified by Art 2's reference to "everyone" as beneficiaries of the UDHR's freedoms, clearly extending to colonial peoples. This "enabled the Declaration to be called Universal, instead of simply International".[121]

83 Interestingly, during the debates, Pavlov scolded the US for its treatment of Black Americans and South Africa refused to have anything to do with the UDHR because of its system of apartheid. Ultimately,

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119 Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House, 2002) at p 146.

120 Amy Gutmann, "Introduction" in Michael Ignatieff, *Human Rights as Politics and Idolatry* (Princeton & Oxford: Princeton University Press, 2001) at p xxiv (five foundations for human rights).

121 Jose A Lindgren Alves, "The Declaration of Human Rights in Postmodernity" (2000) 22 HRQ 478.

when the UDHR was adopted, it was adopted by 48 states with eight abstentions and no dissenting votes. Burma was, by roll call, the first country to vote and it voted yes.[122] It was followed by Byelorussia, which together with other members of the Soviet Bloc (Czechoslovakia, Poland Ukraine, USSR, Yugoslavia) and Saudi Arabia abstained. Despite the cynical view that many Afro-Asian States, which were still colonial entities, did not participate in drafting the UDHR,[123] undercutting its legitimacy as being unrepresentative, they had the chance to endorse it at the 1993 Vienna Human Rights Conference and did so.[124]

84 All the arguments extant in the debates concerning the drafting of the UDHR are still being played out today. I suppose as long as we have breath there are always two questions which every civilised human society will ask itself: the first is: am I my brother or sister's keeper, and the second question is: who is my neighbour? Why should we care about people beyond our borders? These are questions you will have to ask yourself and I hope that, at least, with the first of this series of three lectures, you will have learnt some interesting facts about the participation of Asian States in the whole human rights enterprise.

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122 Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House, 2002) at p 169.

123 Former Singapore Prime Minister Lee Kuan Yew noted that: "The UDHR was written up by the victorious powers at the end of World War II, which meant the US and the British primarily, as well as the French, the Russians and the Chinese. The Russians did not believe a single word of what they signed in the declaration. The Chinese were in such a mess they had to pretend they were espousing the inalienable rights and liberties of man to get American aid to fight the communists, who were threatening them in 1945. So the victors settled the UDHR and every nation that joined the UN was presumed to have subscribed to it." Sandra Burton, "Society vs the Individual" *Time* (13 June 1993) at pp 20–21.

124 The preamble of the Vienna Declaration and Programme of Action reaffirms commitment to both the UN Charter and the UDHR. Michael Ignatieff, *Human Rights as Politics and Idolatry* (Princeton & Oxford: Princeton University Press, 2001) at p 65. Michael J Perry pointed out that many Afro-Asian States were able to participate in the debates over the 1966 Covenants, later instruments that built on the UDHR. This was indicative of "significant trans-cultural agreement" with respect to the fact of human rights and agreement as to their substantive content: Michael J Perry, *The Idea of Human Rights: Four Inquiries*, (Oxford University Press, 1998) at p 72.