

DEVELOPING JURISPRUDENCE ON THE RIGHTS OF YOUTH: REVIEW OF PROBLEMS AND PROSPECTS: NORTH-SOUTH

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I.	HISTORICAL SOURCES OF YOUTH RIGHTS	677
II.	NORTH-SOUTH NEGOTIATIONS ON YOUTH RIGHTS	678
III.	CURRENT PROBLEMS REGARDING NORTH-SOUTH NEGOTIATIONS ON YOUTH RIGHTS	682
IV.	PROPOSALS FOR THE FUTURE.....	685

I. HISTORICAL SOURCES OF YOUTH RIGHTS

Whatever civilization one analyses in history, one invariably finds generational conflicts of youth rebelling against the various systems (legal, political, economic, and/or socio-cultural) established by their adult generation. While the majority of youth tend to conform to the rules granted by their elders, the minority of youth (who may be called forerunner youth) often challenge societal laws and standards. If the former are often integrated into the existing orders, the latter act to transform those orders. In terms of what is today called North-South relations, it is interesting to note that the evolution and growth of what I term the international law of youth rights can be traced to actions in both the North and the South.

In 1158, in what is now Italy, the Holy Roman Emperor, Frederick Barbarossa made a formal grant of rights and privileges to what he described a student class. The rights of students to education, freedom of thought, speech, association, assembly, and travel were thus recognized and spread throughout the universities in the Middle Ages. Yet, major demands for youth rights were also made in the South. For example, in 1918, when a group of Argentine students drafted and demanded a

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University Reform Programme, they set in motion a far-reaching movement that would subsequently affect the rights of students at universities throughout the world. That reform advocated greater student participation in the administration of the university and a grass roots orientation against the aristocratic traditions of the past.

The university became a legally autonomous republic and the base for student opposition against laws and policies of corrupt political regimes. The Cordoba Student Charter, as it was called, affirmed that students had not only the legal right to participate in the administration of the university, but also to participate in political processes for the democratization of society. The legal principle of university autonomy, student participation in university administration (*co-gobierno*) and the rights and responsibilities of young people to reform society spread throughout the world and are not unrelated to the current actions of youth to transform the political, economic, and socio-cultural landscapes of the contemporary world (North and South). And on May 4, 1919, student demonstrators adopted a manifesto in China which signaled protests: 1) against foreign intervention; and 2) for modernization. That manifesto and protest also spread throughout the world to encourage students to unite for political action. It is worth noting that these important sources of the international law of youth rights (especially regarding student political participation) actually came in the second decade of the twentieth century from what is now termed the developing world of the South.

The political, economic and social rights of youth were further elaborated after World Wars I and II. The subject of international law consisted of not only States, *but individuals* (including students, youth, young workers, girls, and young women), and *non-governmental organizations* (such as student unions, youth organizations, trade union youth associations, young women groups, etc.). After the First World War, international/intergovernmental institutions (such as the ILO and the League of Nations) became subjects of international law, as did, after the Second World War, the United Nations, UNESCO, WHO etc. Indeed, both the League of Nations system (1919-1940) and the United Nations system (1945-1995) have played important roles in codifying major international instruments and standards which have provided the basis of the international law of youth rights.

II. NORTH-SOUTH NEGOTIATIONS ON YOUTH RIGHTS

During the period of the League of Nations system (1919-1940), such negotiations led to the adoption of eleven international conventions by the International Labour Conference on such questions to promote and

protect the rights of young workers regarding minimum age for employment, medical examination, conditions of work, and employment and training. The League's Assembly adopted one major convention to protect the rights of girls and young women: the Slavery Convention of 1926, and appointed a Rapporteur in 1933 to prepare and submit a report on *The Traffic of Girls and Young Women in the Far East*. The Assembly also adopted several resolutions setting standards on "The Instruction of Children and Youth in the Existence and Aims of the League of Nations" and on "The Protection of Children and Young People."

With the birth of the United Nations and its system of affiliated agencies and organizations in 1945, the international law of youth rights took on a more far-flung and diverse nature. The General Assembly has adopted ten different categories of resolutions concerned with youth rights and responsibilities, including a Declaration on the Promotion Among Youth of the Ideals of Peace, Mutual Respect and Understanding between Young People (1965), and two international Guidelines on youth: one on Further Planning and Suitable Follow Up in the Field of Youth (1985) and one on Prevention of Juvenile Delinquency (1990). At its Fiftieth session in 1995, the Assembly adopted a United Nations world Programme of Action for Youth to the Year 2000 and Beyond, containing specific targets for action in ten issue areas: education, employment, hunger and poverty, health, environment, drug abuse, juvenile delinquency, leisure-time, girls, and young women, and full and effective participation. While there was no specific section on the issue of youth and human rights or youth rights and responsibilities, the delegates of Member-States of the European Union proposed and the delegates of the G-77 agreed to the insertion of the latter two sections in the Programme of Action in 1995, as well as a sentence on youth and human rights and fundamental freedoms in the United Nations Declaration of Intent on Youth: Problems and Potentials which serves as a preamble to the Programme of Action.

During the Cold War, and in particular since 1985, the United Nations International Youth Year, the topic of youth rights and responsibilities was often used as an ideological football between West and East blocs in international negotiations. Every time a country of the East (often led by Romania) proposed action on this topic, many Western countries resisted new international instruments on youth rights, preferring operational activities to enhance youth participation in development projects as a concrete expression of such youth rights. Yet, even during that period, it was often countries in the developing regions of the South that proposed international action in this field. In that regard, it should be recalled that representatives of Costa Rica (a nation which became Chairman of the G-77 at United Nations Headquarters, New York in

January, 1996), Guinea, Indonesia, Lebanon, Romania, and Rwanda submitted in 1982 a draft declaration on the rights and responsibilities of youth to the Advisory Committee for International Youth Year. That document was distributed to Member-States of the United Nations for comments. Of the seventeen States that replied, five agreed. The Governments of Rwanda and Pakistan expressed general support of the draft declaration, and the Government of Thailand supported, in particular, the provisions of the draft declaration that did not appear in the Universal Declaration of Human Rights and the Declaration on the Rights of the Child. The Government of France, while noting that the Universal Declaration of Human Rights already covered the substance of the matter, nevertheless recognized the necessity of having an instrument that would adapt the Universal Declaration to the specific case of youth. It expressed the view, however that the draft declaration was not satisfactory as it stood, and indicated that, at an appropriate time, it would propose a revised or a new text

Unfortunately, most of the other states of the North were not supportive, and the idea of a declaration on the rights and responsibilities of youth was shelved. However, again from the South, the idea was further discussed: the United Nations Economic and Social Commission for Western Asia Preparatory Meeting for International Youth Year in Baghdad, Iraq on October 13, 1983, adopted a regional plan for youth which concluded with a call to the United Nations to take the necessary measure to expedite the issuance of the International Declaration of the Rights of Youth before the advent of the International Youth Year. While there was subsequent action taken by the General Assembly on the topic of youth at the international level on, there has been no specific instrument adopted by the General Assembly on this issue. In retrospect (1985-1995), that draft declaration remains the only comprehensive instrument specifically devoted to the rights and responsibilities of youth, and it is interesting to note that most of the co-sponsors and supporters of the idea ten years ago were states of the South!

However, in 1985, International Youth Year, the issue of youth rights and responsibilities took on added importance. For, in 1985, the Commission on Human Rights requested its Sub-Commission to pay due attention to the role of youth in the field of human rights, and the Sub-Commission, the same year, requested Mr. Dimitru Mazilu, one of its members and a Romanian national, to prepare a report analyzing the efforts and measures for securing the implementation and enjoyment by youth of human rights, particularly, the right to life, education, and work, and requested the Secretary General to provide him with all necessary assistance for the completion of his task. This report was to be submitted

to the Sub-Commission in 1986. Mr. Mazilu had been nominated by Romania to serve as a member of the Sub-Commission for a three-year term, due to expire on December 31, 1986. But, in his new role, as an official of the United Nations (a special rapporteur), he was entitled to continue his task in 1986. However, the Sub-Commission did not meet in 1986, but in 1987. No report was received from Mr. Mazilu, nor was he present. The Government of Romania sent a letter to the United Nations with information that that Mr. Mazilu suffered a heart attack and could not attend that session. In reality, Mr. Mazilu had been under house arrest in Romania because he had insisted to include in his report a section about the violation of youth rights in Eastern Europe. The Government thought it best to place him under house arrest, but to insist that it was a health matter. Yet, the United Nations received two post marked letters from him in 1987 stating that he was able and willing to come to Geneva and deliver his report. The Commission on Human Rights, through the Economic and Social Council, requested an advisory opinion from the International Court of Justice in The Hague on this case of the *United Nations vs. the Government of Romania*. In brief, the legal issue was whether a special rapporteur of the United Nations enjoyed privileges and immunities under the Convention on the Privileges and Immunities of the United Nations. The Court ruled on December 15, 1989, in favour of the United Nations and against Romania — insisting on the applicability of this Convention in the case of Mr. Mazilu as a special rapporteur of the Sub-Commission. Mr. Mazilu returned to Geneva in 1990, and submitted two reports (in 1990 and 1992) to the Sub-Commission.

At the forty-eighth session of the United Nations Commission for Human Rights in 1992, the representative of the Netherlands introduced a draft amendment to draft resolution V, sponsored by Austria, France, the Netherlands, and Portugal, which consisted in replacing, by a new paragraph, operative paragraph four which read: "Invites Mr. Mazilu to consult governmental and non-governmental organizations in order to elaborate further and to complete his work on the draft charter of the rights and freedoms of youth throughout the world, with a view to submitting the final version to the Sub-Commission on Prevention of Discrimination of Minorities, at its forty-fourth session, for its consideration of follow-up to this draft charter." The Commission adopted that amendment, without a vote, and adopted resolution 1992/49 Human Rights and Youth, as amended on March 3, 1992. Unfortunately, and by some strange coincidence, neither that resolution nor the one subsequently adopted by the ECOSOC made reference that amendment concerning a charter on the rights and freedoms of youth. Yet, Mr. Mazilu submitted his final report to the Sub-Commission in August, 1992, and included a final chapter

entitled Charter on the Rights and Freedoms of Youth. However, it contained only general remarks on the topic, but no draft international instrument on youth rights as first proposed in 1982 by several states from the South. His report was discussed and eventually shelved. The issue of youth rights was taken off the agenda of the Sub-Commission after nearly twenty-five years being a separate item of debate.

This case revealed several important points: 1) the controversial nature of the matter for Communist countries in Eastern Europe, and in several developing countries in the South, 2) the unwillingness of the majority of other countries (many in the North) to defend the rights of youth on a global basis — at least in such a way (via a special rapporteur). Declarations or resolutions on paper were one matter, but an investigative United Nations rapporteur on human rights and youth was simply too much for many countries in 1992. Indeed, the majority did not even favour a general declaration or charter on the rights and freedoms of youth. Now that the Cold War has ended, perhaps its time to take a fresh look at this question, and propose renewed action.

III. CURRENT PROBLEMS REGARDING NORTH-SOUTH NEGOTIATIONS ON YOUTH RIGHTS

There are several basic problems confronting current negotiations:

- 1) legal confusion regarding the definitions of children and youth;
- 2) an anti-youth lobby which often uses the argument of the age of majority as a dividing line between children and adults — thereby subsuming the concept of youth;
- 3) the proliferation and fragmentation of international instruments and standards on youth and the consequent multiple reporting requirements for Governments;
- 4) the concept of parental rights vs. youth rights on the issue of reproductive health needs of adolescents; and
- 5) continued violations of youth rights around the world — in legal, political, economic, and socio-cultural ways in both the North and South.

The General Assembly of the United Nations agreed to the following definition of youth in 1985 for International Youth Year: a chronological definition of who is young, as compared with who is a child or who is an adult, varies with nation and culture. However, for statistical purposes, the United Nations defines those persons between the ages of fifteen to twenty-four years of age as youth, without prejudice to other definitions by Member-States. Yet, when the Convention on the Rights of the Child was adopted by the General Assembly in 1989, it defined the

child in Article I as a child means every human being below the age of eighteen, unless under the law applicable to the child, majority is obtained earlier. The definition of youth age at fifteen to twenty-four and indeed as the concept of that age group seemed to get lost in the process.

Yet, young people gradually assume increasing responsibilities well before the age of majority in many countries (age eighteen). Since youth are obviously more independent than children, they are likely to face legal problems when trying to make their way in life. This problem can be seen in such issues as parental authority, schooling obligations, adolescent health entitlements, employment rights, unemployment benefits, status in law, military service, management of property, etc. However, for political reasons, young people are deprived of such legal protection, including guaranteed freedoms of association and assembly, as well as specific opportunities to participate in national development efforts, particularly in the developing countries. While 141 countries (seventy-seven percent of the total 185) reported to the United Nations in 1995 of having formulated national youth policies, only fifty-four (twenty-eight percent) indicated they had implemented a national youth service or programme of action involving youth in national development. National action is certainly required to implement international standards on youth rights and responsibilities.

Thus, it is no accident that at the international level, there are conventions to protect the rights of women, children, families, migrant workers, and refugees, etc., and a special rapporteur to protect the rights of disabled persons, but no convention or charter of a general nature to promote and protect the rights of youth (legal, political, economic, and socio-cultural). There are, on the other hand, many diverse international standards and instruments on specific rights and responsibilities of youth adopted by the United Nations General Assembly, International Labour Conference, UNESCO General Conference, World Health Assembly, etc., but no international instrument of a cross-sectoral nature on youth rights. This has led to multiple reporting requirements for governments and a fragmentation of international standards on youth rights.

There has also been continued confusion and disagreements in recent North-South negotiations on the question of the reproductive health needs of adolescents. That was perhaps the biggest controversy at the International Conference on Population and Development (ICPD) at Cairo, September 5-13, 1994. Delegates of the Holy See and G-77 argued successfully to maintain the words in paragraph 7.45 "recognizing the rights, duties, and responsibilities of parents and other persons legally responsible for adolescents to provide, in a manner consistent with the evolving capacities of adolescents, appropriate direction and guidance in

sexual and reproductive health.” For many of the delegates from the North (where sex education classes are permitted in schools and abortion rights for young girls without parental consent exist) such words on the rights of parents were against national legislation in a number of countries. Further, in both the negotiations between delegates from the North and South on the Beijing Declaration and Platform of Action and on the United Nations Declaration and Programme of Action for Youth to the Year 2000 and Beyond, the same issue resurfaced, but with different results: In Beijing, the term parents’ rights was again used in paragraphs 95-118 regarding the rights of young people “to acquire knowledge about their health, especially information on sexual and reproductive health issues, and on sexually transmitted diseases, including HIV/AIDS, taking into account the rights of the child and responsibilities of parents.”

However, in the North-South negotiations in 1995, on the Draft United Nations World Programme of Action for Youth to the Year 2000 and Beyond, agreement was reached on the section on youth and promotion of health services, including sexual and reproductive health using language which did *not* refer to the issues of either the rights or responsibilities of parents in that regard. The agreement was achieved for many reasons, among them was the definition of youth as persons aged fifteen to twenty-four was approved in paragraph nine of the Programme of Action. Thus, while it was believed acceptable to refer to such parental rights and responsibilities in the ICPD Programme of Action regarding legal responsibility for adolescents, and while it was again cited in the Beijing Platform of Action regarding the specific needs of adolescents, it was not mentioned in the corresponding section of the World Programme of Action for Youth because the youth age group extended well beyond the normal age of majority in many countries and beyond the legal responsibility or control of parents. This represented a major advance in both the definition of youth and its rights and responsibilities.

Finally, despite the lip service of governments in both the North and South to youth rights and responsibilities, there has continued to be blatant violations of those rights and responsibilities. For example, in terms of the economic rights of youth, unemployment rates for youth (aged fifteen-twenty-four) in the North are very high. In 1992, Canada (which ranked first in a UNDP human development index list) had a youth unemployment rate of 17.8 percent, Australia 19.5 percent, Finland 23.5 percent, Ireland 19.5 percent, Spain 34.4 percent, and Italy 32.7 percent. While criticism is often aimed at governments in the South for violations of the rights of youth (especially freedom of association, speech, movement, participation, etc.), the topic of youth unemployment is a major problem around the world in both the North and the South. The International

Labour Organization (ILO) has recently reported that comparable unemployment rates in 1994 for Indonesia were: 13.7 percent young women and 11.9 percent young men as compared to 2.2 percent and 1.6 percent for their adult counterparts. And ILO cited similar problems in the countries in transition in Eastern Europe (ie. Poland: 34.5 percent young women and 27.3 percent young men as compared to 14.5 percent and 11.3 percent for their adult counterparts). More than legal standards are needed for such youth in poverty. Obviously, action is needed to better link educational programmes to training, apprenticeships and jobs. National youth service programmes can be an excellent way to mobilize such people, resources, and action. Yet, only fifty-four of 185 Member-States of the United Nations (twenty-nine percent) have indicated that such programmes have been launched.

IV. PROPOSALS FOR THE FUTURE

A number of Governments as well as non-governmental youth organizations have called for a United Nations Charter of Youth Rights and Responsibilities, as well as a special rapporteur and a network of national youth correspondents to monitor such a charter. The idea was proposed by the First United Nations World Youth Assembly in 1970 at United Nations Headquarters, New York, in honour of the twenty-fifth anniversary of the United Nations Charter. It was again recommended by the World Youth Forum of the United Nations System at its first session in 1991 at Vienna, Austria, and by youth delegates to the United Nations General Assembly in 1992 and 1995, and to the United Nations World Conference on Human Rights at Vienna in 1993. Despite the fact that the Special Rapporteur on Human Rights and Youth of the Sub-Commission described such a Charter in his final report in 1992, the only draft text of such an instrument was prepared by the Governments of Costa Rica, Guinea, Indonesia, Romania, and Rwanda in 1982. At the European level, a Youth Rights Charter was drafted by the Youth Forum of the European Union in 1992 to serve as a model for legislation it sought to be adopted by the European Parliament. The 1982 text had only general principles in eight draft articles, while the 1992 text had specific rights set forth in thirty-six draft articles. The former illustrates the concerns of governments, while the latter reflects the needs of youth. There should be a renewed effort to bring such representatives together to update and complete such a draft at the United Nations. However, such work was last discussed at the Commission for Human Rights in 1992 and shelved by the ECOSOC. Perhaps the time has come for an initiative to take the matter off the shelf.

Previous attempts to elaborate such a charter at the United Nations failed primarily because there was:

- a) insufficient research undertaken and time spent investigating the needs for and content of such a charter;
- b) the evidence of an international law of youth rights was not clearly articulated;
- c) the multiple reporting requirements of governments on existing international instruments and standards were not exposed;
- d) the political will of most Member-States of the United Nations was not adequate for adopting such an instrument during the Cold War; and
- e) the existence of such international instruments as the Convention on the Rights of the Child seem to bury, confuse, and or subordinate the issue of youth rights to those of the child.

The time would seem appropriate for further work and adoption of this charter by the United Nations General Assembly through the Commission for Human Rights. The drafts of both 1982 and 1992 should be reviewed and used as models. The outline for such a charter could include sections on: the definition of youth (with references to past definitions of children, adolescents, and juveniles); the specific groups of youth (urban youth, rural youth, students, trade union youth, young women, disabled youth, refugee youth, etc.); cross-sectoral rights of youth (participation, development, and peace); sectoral rights of youth (education, health, employment, etc.); responsibilities of youth (self, family, society, etc.); and monitoring the Charter (national youth correspondents designated by national youth non-governmental organizations, role of United Nations regional commissions, and a Special Rapporteur on Youth Rights appointed by the Secretary-General and assisted by an advisory group of representatives of youth NGOs in consultative status with the United Nations and of youth-serving agencies and organizations of the United Nations system). Such a system was set up by the General Assembly to monitor the implementation of the United Nations Standard Rules for the Equalization of Opportunities for Disabled Persons. The second session of the World Youth Forum of the United Nations System, November 25-29 November 1996 at Vienna, Austria, adopted recommendations for such a United Nations Youth Rights Charter and Special Rapporteur on Youth Rights. There would seem to be a unique opportunity for such an initiative to improve the global promotion and protection of the rights and responsibilities of youth. These are some important measures which could be taken to strengthen the development of the jurisprudence and implementation of the international law of youth rights and to better clarify some problems associated with the international law of the rights of the

child which have tended to confuse the rights and responsibilities of these two age groups.