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Sovereignty, Human Rights, and Self-Determination: The Meaning of International Law

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Father Robert Araujo

Abstract

This Essay contends that popular sovereignty and the other rights enumerated in the Universal Declaration of Human Rights (UDHR) are inextricably linked. When popular sovereignty is criticized, what will become of the other rights? The principal goal of this Essay, then, is to examine the concept of sovereignty as it relates to the practice and protection of human rights issues grounded in international law. This examination should reveal the existence of more than one kind of sovereignty: that of the State and that of the people (the nation or nations). This Essay's goal is to demonstrate that a State is not the sole possessor of sovereignty under international and domestic law. To be properly understood within the framework of international law, sovereignty is a compound doctrine that is best understood by examining the relationship between the sovereignty of a State and the sovereignty of peoples, i.e., the sovereignty of nations. While a sovereignty-exercising State can be a totalitarian regime, it can also be a democratic one in which the sovereignty of the people confers and controls the sovereignty of the State. And, these people exercise their sovereignty in the implementation of their basic human rights. Unfortunately, as this Essay shall demonstrate, the sovereignty of peoples is being challenged in a particular exercise of "human rights" that disregards and compromises the role of families in rearing their children—a subject with which the UDHR, the International Covenant on Civil and Political Rights, and the International Covenant on Economic Social, and Cultural Rights are concerned.

ESSAYS

SOVEREIGNTY, HUMAN RIGHTS, AND SELF-DETERMINATION: THE MEANING OF INTERNATIONAL LAW

*Father Robert Araujo**

Genuine cultural diversity demands more than the mere preservation of colourful artistic facets. A nation's right to its own culture presupposes the safeguard and the opportunity to exercise the nation's right to freely shape its life according to its own traditions, conditioned only by the full respect of human rights, and not by the overbearing and high-handed stances of other States.¹

Fifty years after the Universal Declaration state sovereignty remains the main pillar of the international system. It also remains the case that human rights are best protected not by international treaty but by the constitutions of democratic states. International human rights monitoring, in states that have collapsed or in states with authoritarian governments, is a poor substitute for the human rights protection that comes when the people themselves can elect a government they trust.²

INTRODUCTION

During the past several years, there has been much celebration surrounding the Fiftieth Anniversary of the *Universal Declaration of Human Rights* ("UDHR").³ The UDHR was generated during a time in which many people of good will not only acknowledged the great sins committed by some against others in

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1. Joseph Cassar, *The Rights of Nations*, Global Research Monograph Series, Center for Global Education, St. John's University, New York, No. 004, Nov. 1997, at 31. Dr. Cassar served as the Permanent Representative of Malta to the United Nations from 1993 to 1997.

2. Michael Ignatieff, *Human Rights: The Midlife Crisis*, N.Y. REV. OF BOOKS, May 20, 1999, at 62.

3. See, e.g., Hilary Charlesworth, *The Mid-Life Crisis of the Universal Declaration of Human Rights*, 55 WASH. & LEE L. REV. 781 (1998).

the name of racial, ethnic, and other “purities” but also decided to take steps within international law to ensure that the sins of the Holocaust were never to be repeated.⁴ As Professor Mary Ann Glendon has pointed out, the UDHR “is the single most important reference point for cross-cultural discussion of human freedom and dignity in the world today.”⁵ Notwithstanding the important anniversary of an important international declaration, it is clear from the occurrences since the issuance of the UDHR that the freedom and dignity to be accorded all have been denied to many individuals.⁶ Sadly and tragically, the Nuremberg trials did not bring an end to the assaults on these fundamental human dignities that continue to the present day.⁷

Although the UDHR is not an international legal instrument per se, it supplied the essential provisions and sentiments found in the principal international human rights conventions such as: the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984; the Convention on the Prevention and Punishment of the Crime of Genocide of 1948; the International Covenant on Economic, Social, and Cultural Rights of 1966 (“ICESCR”); the International Covenant on Civil and Political Rights of 1966 (“ICCPR”); and

4. Johannes Morsink argues that the Universal Declaration of Human Rights (“UDHR”) “was meant to be used as an educational text to tell people about all the inherent rights they already have.” See JOHANNES MORSINK, *THE UNIVERSAL DECLARATION OF HUMAN RIGHTS: ORIGINS, DRAFTING, AND INTENT* 325 (1999) [hereinafter *ORIGINS*].

5. Mary Ann Glendon, *Propter Honoris Respectum: Knowing the Universal Declaration of Human Rights*, 73 *NOTRE DAME L. REV.* 1153 (1998).

6. Prof. Oscar Schacter observes:

[R]espect for the dignity and worth of all persons, and for their individual choices leads, broadly speaking, to a strong emphasis on the will and consent of the governed Indeed, nothing is so clearly violative of the dignity of persons as treatment that demeans or humiliates them. This includes not only attacks on personal beliefs and ways of life but also attacks on the groups and communities with which individuals are affiliated Our emphasis on respect for individuals and their choices also implies proper regard for the responsibility of individuals.

See Oscar Schacter, *Human Dignity As A Normative Concept*, 77 *AM. J. INT’L L.* 848, 850 (1983); see also MICHAEL PERRY, *THE IDEA OF HUMAN RIGHTS: FOUR INQUIRIES* 5, 51 (1998) (developing the thesis that each and every human being is a sacred entity who is inviolable and an end in himself).

7. While the illustrations of Pol Pot’s Cambodian, South Africa’s Apartheid regime, the ongoing Balkan hostilities, and the religious persecutions occurring in the East come quickly to mind, some of the western democracies have also had their sad experience with deprivation of these basic human dignities.

the International Convention on the Elimination of All Forms of Racial Discrimination of 1966.⁸ While the UDHR was not drafted as a legal document creating binding legal obligations, it is generally regarded that the UDHR was to be implemented by treaty obligations contained in covenants such as those just enumerated that do have legal force.⁹

Under these subsequent covenants, States have the primary duty of enforcing the international principles and legal norms designed to protect universal human dignities. Ironically, States have often been the perpetrators responsible for violating these norms identifying and addressing human rights. Those States that have ratified these conventions have acknowledged their duties to obey these norms. Yet, as sovereigns, some have also pursued actions conflicting with human rights norms, and they have justified their actions on the grounds of exercising their State sovereignty. An illustration of this last point would be the promulgation of the Nuremberg Laws by the Third Reich. As a result of pursuits such as these, critics of State sovereignty have become more vocal in their condemnation by arguing that traditional notions of sovereignty cannot insulate States from their obligations to abide by the fundamental norms protecting universal human dignities.¹⁰ This sentiment has been asserted by Michael Ignatieff in his summation that the recent NATO campaign against Yugoslavia “depends for its legitimacy on what fifty years of human rights has done to our moral instincts, weakening the presumption in favor of state sovereignty, strengthening the presumption in favor of intervention when massacre and deportation become state policy.”¹¹ The challenge to traditional notions of State sovereignty has been argued by others else-

8. Johannes Morsink has recently concluded research on the UDHR in which he suggests:

A convention is far more difficult to write because it is far more detailed than a declaration of general principles. It needs to be done by experts in international law and takes a long time to write A declaration, on the other hand, is by comparison a relatively simple matter. The parties need to agree on the principles to be proclaimed and then proclaim them.

ORIGINS, *supra* note 4, at 15.

9. IAN BROWNLIE, *BASIC DOCUMENTS ON HUMAN RIGHTS*, 113 (3d ed. 1992); *see also* IAN BROWNLIE, *PRINCIPLES OF INTERNATIONAL LAW* 574-75 (5th ed. 1998) [hereinafter BROWNLIE, *PRINCIPLES*].

10. *See* Louis Henkin, *That “S” Word: Sovereignty, and Globalization, and Human Rights, Et Cetera*, 68 *FORD. L. REV.* 1, 4-5 (1999).

11. Ignatieff, *supra* note 2.

where.¹²

While the exercise of State sovereignty has led to the unwarranted and unjustifiable deprivation of human dignity to millions of innocent victims, it would be imprudent to conclude that State sovereignty must be curtailed in order to protect such basic human rights as those identified in the ICCPR and the ICESCR.¹³ Arguably, sovereignty as a legal concept in domestic and international law has more than one dimension.¹⁴ If this contention has merit, then it would be wise to investigate whether the exercise of State sovereignty can be, or is compatible with, the protection of these basic rights. It is the contention of this author that sovereignty, which is exercised by people in their exercise of self-determination, is also a matter that needs to be protected as an important human right. It is this kind of sovereignty—popular sovereignty—which is essential in the protection of other human rights.¹⁵ Should popular sovereignty be subjected to attack, the integrity of other rights identified in the UDHR will also be subject to attack. It will be contended in this

12. See, e.g., Johan D. van der Vyver, *Sovereignty and Human Rights in Constitutional and International Law*, 5 *EMORY INT'L L. REV.* 321 (1991); Claudio Grossman & Daniel Bradlow, *Are We Being Propelled Towards A People-Centered Transnational Legal Order?*, 9 *AM. U. J. INT'L L. & POL'Y* 1 (1993); Fali Nariman, *International Human Rights and Sovereignty of States: Role and Responsibility of Lawyers*, 21 *FORDHAM INT'L L.J.* 541 (1997); Henkin, *supra* note 10.

13. What is meant by "basic" or "fundamental" human rights? Prof. Meron notes: One cannot deny that the quality labels are a useful indication of the importance attached to particular rights. They strengthen the case against violation of such rights. Hierarchical terms constitute a warning sign that the international community will not accept any breach of those rights. Historically, the notions of "basic rights of the human person" and "fundamental rights" have helped establish the *erga omnes* principle, which is so crucial to ensuring respect for human rights . . . [But] caution should be . . . exercised in resorting to hierarchical terminology. Too liberal an invocation of superior rights such as "fundamental" and "basic rights," as well as *jus cogens*, may adversely affect the credibility of human rights as a legal discipline.

See Theodor Meron, *On A Hierarchy Of International Human Rights*, 80 *AM. J. INT'L L.* 1, 22 (1986).

14. See Henkin, *supra* note 10, at 7.

15. As was noted by the U.S. Supreme Court, "[S]overeignty is vested in the people, and that sovereignty confers on the people the right to choose freely their representatives to the National Government." *Term Limits v. Thornton*, 514 U.S. 779 (1995); see also Article 20 of the African Charter on Human and Peoples' Rights, which states in part, "All peoples shall have the right to existence. They shall have the unquestionable and inalienable and unquestionable right to self-determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen."

Essay that popular sovereignty and the other rights enumerated in the UDHR are inextricably linked. When popular sovereignty is criticized, what will become of the other rights?

The principal goal of this Essay, then, is to examine the concept of sovereignty as it relates to the practice and protection of human rights issues grounded in international law. This examination should reveal the existence of more than one kind of sovereignty: that of the State and that of the people [the nation or nations]¹⁶. This Essay's goal is to demonstrate that a State is not the sole possessor of sovereignty under international and domes-

16. For background on the meaning of nation/nations—the “gens” [a people], see THE OXFORD ENGLISH DICTIONARY (2d ed.) which offers as one definition of “nation” the following:

[A]n extensive aggregate of persons, so closely associated with each other by descent, language, or history, as to form a distinct race or people, usually organized as a separate political state and occupying a definite territory. In early examples the racial ideal is usually stronger than the political; in recent use the notion of political unity and independence is more prominent.

This same source defines the nation-state as “a sovereign state the members of which are also united by those ties such as language, common descent, etc., which constitute a nation.” *Id.* Prof. Oscar Schachter has indicated that, in spite of its deficiencies, “[t]he nation-state . . . represents for most peoples the primary source of identity and protection.” See Oscar Schachter, *In Defense of International Rules on the Use of Force*, 53 U. CHI. L. REV. 113, 144 (1986). His Holiness, Pope John Paul II, in his October 5, 1995 Address to the Fiftieth General Assembly of the United Nations, raised concern about the need to protect the rights not only of individuals but of nations as well. As he stated in his address:

By virtue of sharing in the same human nature, people automatically feel that they are members of one great family, as is in fact the case. But as a result of the concrete historical conditioning of this same nature, they are necessarily bound in a more intense way to particular human groups, beginning with the family and going on to the various groups to which they belong and up to the whole of their ethnic and cultural group, which is called, not by accident, a “nation”, from the Latin word “*nasci*”: “to be born.” This term, enriched with another one, “*patria*” (fatherland/motherland), evokes the reality of the family. The human condition thus finds itself between these two poles—universality and particularity—with a vital tension between them; an inevitable tension, but singularly fruitful if they are lived in a calm and balanced way.

His Holiness, Pope John Paul II, Address to the Fiftieth General Assembly of the United Nations Organization (Oct. 5, 1995). For an important and interesting discussion of how the use of force may be used by outside powers to remove sovereignty from “a gang of ruling thugs” and to invest it in “the people,” see Anthony D’Amato, *The Invasion of Panama Was a Lawful Response to Tyranny*, 84 AM. J. INT’L L. 516 (1990). However, Prof. Crawford offers caution when he said, “No-one can regret the fall of a Noriega, or for that matter a Pol Pot. But there are serious problems with the idea that democracy can be installed by the unilateral assertion of external force.” See James Crawford, *Democracy and International Law*, 64 BRIT. YR. INT’L L. 113, 126 (1993).

tic law.¹⁷ To be properly understood within the framework of international law,¹⁸ sovereignty is a compound doctrine that is best understood by examining the relationship between the sovereignty of a State and the sovereignty of peoples, i.e., the sovereignty of nations.¹⁹ While a sovereignty-exercising State can be a totalitarian regime, it can also be a democratic one in which the sovereignty of the people confers and controls the sovereignty of the State.²⁰ And, these people exercise their sovereignty in the

17. In a symposium on the UDHR sponsored by United Nations Educational, Scientific and Cultural Organization ("UNESCO") in 1949, Don Salvador de Madariaga stated:

[T]he relations between the citizen and the nation do not exhaust the problem set by the existence of these two forms of human life: nation and man The point of view of the nation should be borne in mind, both on grounds of theoretical justice and of practical politics. *A nation has a right to exist* [T]he nation is the best setting for most human beings to rise up the slope of culture. It is the depository of tradition, the "cup" in which the subconscious life of a community is held and accumulated; the setting of individual experiences. This function it is which gives the nation its *raison d'être*.

Don Salvador de Madariaga, *Rights of Man or Human Relations?*, in *HUMAN RIGHTS: COMMENTS AND INTERPRETATIONS* 52 (UNESCO staff eds., 1949) [hereinafter *HUMAN RIGHTS: COMMENTS AND INTERPRETATIONS*].

18. Article 38, Statute of the International Court of Justice states in part that the sources of international law include "international custom, as evidence of a general practice accepted as law" and "the general principles of law recognized by civilized nations."

19. Prof. Ian Brownlie has noted that "the heterogeneous terminology which has been used over the years—the references to 'nationalities', 'peoples', 'minorities', and 'indigenous populations'— involves essentially the same idea." See Ian Brownlie, *The Rights of Peoples in Modern International Law*, in *THE RIGHTS OF PEOPLES* 5 (J. Crawford ed., 1998). Prof. James Crawford has pointed out that,

Self-determination is plainly a collective rather than an individual right, although obviously enough individuals are to be involved in the exercise of the right, and a majority of them at least will benefit directly from the sense of retaining or achieving a measure of self-government in accordance with their wishes or preferences. Secondly, self-determination is plainly to be thought of as a right of "peoples" rather than governments.

James Crawford, *The Rights of Peoples: 'Peoples' or 'Governments'?*, in *THE RIGHTS OF PEOPLES* 59 (J. Crawford ed., 1998); see also Gerry Simpson, *The Diffusion of Sovereignty: Self-Determination in the Post-Colonial Age*, 32 *STAN. J. INT'L L.* 255 (1996).

20. See, e.g., ALB. CONST. (1998 draft) art. 2.1 (sovereignty belongs to the people); AUS. CONST. (1929) art. 1 (law emanates from the people); BRAZ. CONST. (1988) art. 1 (all power emanates from the people); FIN. CONST. (1919) § 2 (sovereign power belongs to the people); ITALY CONST. (1947) art. 1.2 (sovereignty belongs to the people); NEPAL CONST. (1990) art. 3 (sovereignty of Nepal is vested in the people); PORT. CONST. (1976) art. 3.1 ("Sovereignty, single and indivisible, rests with the people"); SPAIN CONST. art. 1.2 ("National sovereignty belongs to the Spanish people from whom emanate the powers of the state"); SWED. CONST. (1975) art. 1.1 ("All public power in Sweden proceeds from the people"); P.R.C. - TAIWAN CONST. (1947) art. 2 ("The sover-

implementation of their basic human rights.²¹ Unfortunately, as this Essay shall demonstrate, the sovereignty of peoples is being challenged in a particular exercise of "human rights" that disregards and compromises the role of families in rearing their children—a subject with which the UDHR, the ICCPR, and the ICESCR are concerned.

The United Nations has a role in protecting this fundamental right of self-determination and popular sovereignty. As the Charter of the United Nations declares, one of the primary purposes of the organization is "[t]o develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples"²² An illustration of the United Nations promoting this purpose occurred on December 14, 1960 when the General Assembly adopted the Declaration on the Granting of Independence to Colonial Countries and Peoples thereby recognizing the sovereignty of a subjugated people

eighty of the Republic of China shall reside in the whole body of citizens"); ZAMBIA CONST. (1991) pmb1 ("[T]he people of Zambia . . . shall govern [them]selves as a united and indivisible Sovereign State").

21. See International Covenant on Civil and Political Rights ("ICCPR"), pmb1, art. I; see also Final Act of the Conference on Security and Cooperation in Europe, Helsinki, Aug. 1, 1975, (a) *Declaration on Principles Guiding Relations between Participating States*, I. *Sovereign Equality, Respect for the Rights Inherent in Sovereignty*, which states in pertinent part:

The participating States shall respect each other's sovereign equality and individuality as well as all the rights inherent in and encompassed by its sovereignty, including in particular the right of every State to juridical equality, to territorial integrity and to freedom and political independence. They will also respect each other's right freely to choose and develop its political, social, economic and cultural systems as well as its right to determine its laws and regulations.

For outside Europe, see also *Term Limits v. Thornton*, 514 U.S. 779 (1995), describing the U.S. perspective.

22. U.N. CHARTER art. 1.2. In attempting to define for international law the meaning of the term "peoples," the Permanent Court of International Justice in the *Greco-Bulgarian Communities* case defined the term to mean "a group of people living on a delimited territory, possessing distinct religious, racial, linguistic, or other cultural attributes and desiring to preserve its special characteristics." 1930 P.C.I.J. (ser. B) No. 17, at 21. As Prof. Wolfrum has pointed out, "This definition may seem to be rather superficial, but a better one has not been found." See THE CHARTER OF THE UNITED NATIONS: A COMMENTARY 64 (Bruno Simma ed., 1995) [hereinafter, CHARTER COMMENTARY]. Furthermore, as Pope John Paul II has noted:

Every nation . . . has also the right to shape its life according to its own traditions, excluding, of course, every abuse of basic human rights and in particular the oppression of minorities. Every nation has the right to build its future by providing an appropriate education for the younger generation.

See Pope John Paul II, *supra* note 16.

against a colonial power.²³ In this declaration, the approving United Nations (“U.N.”) members stated that “all peoples have an inalienable right to complete freedom, the *exercise of their sovereignty*, and the integrity of their national territory.” (emphasis added).²⁴

Even though exercises of sovereignty can be the source of violation of fundamental human rights,²⁵ they can also be equivalent to expressions of fundamental human rights.²⁶ Therefore, in some instances sovereignty and its exercise can be crucial to the protection of human rights because it can be an expression of how individuals and the communities that they form put into practice those elements of self-determination that are constitutive of human rights.²⁷

23. GA Res. 1514, 15th Sess. (1960).

24. *Id.* These principles were reiterated in GA Res. 52/119 (1997), where approving United Nations (“U.N.”) members reiterated that “by virtue of the principle of equal rights and self-determination of peoples . . . all peoples have the right, freely and without external interference to determine their political status and to pursue their economic, social and cultural development” and that “it is the concern solely of peoples to determine methods and to establish institutions regarding the electoral process”

25. *See, e.g.*, Article 4 of the Wannsee Protocol of Jan. 20, 1942, The Avalon Project at the Yale Law School, *Wannsee Protocol of January 20, 1942*, at <http://www.yale.edu/lawweb/avalon/imt/wannsee.htm>, in which officials of the Third Reich concluded that, “In the course of the final solution plans, the Nuremberg Laws should provide a certain foundation, in which a prerequisite for the absolute solution of the problem is also the solution to the problem of mixed marriages and persons of mixed blood.”

26. *See, e.g.*, GA Res. 41/128 (1986), Declaration on the Right to Development, where approving members of the U.N. indicated that since “the human person is the central subject of development and should be the active participant and beneficiary of the right to development,” Article 2.1, “[a]ll human beings have a responsibility for development, individually and collectively, taking into account the need for full respect for their human rights and fundamental freedoms as well as their duties to the community” Article 2.2. Article 5 of this GA Res. also acknowledged the “fundamental right of peoples to self-determination.” In the previous decade, those States attending the Helsinki Conference similarly agreed that the security of Europe relied on the principle of self-determination. Principle VIII of the Final Act states in part:

The participating States will respect the equal rights of peoples and their right to self-determination By virtue of the principle of equal rights and self-determination of peoples, all peoples always have the right, in full freedom, to determine, when and as they wish, their internal and external political status, without external interference, and to pursue as they wish their political, economic, social and cultural development.

Id.

27. As Quincy Wright noted shortly after the completion of the UDHR:

The universal maintenance of human rights may create conditions in which these relations between groups may become one of co-operation and the expectation of peace. The rules of international law, which have defined the relations of State to State, must develop to meet this new situation. The rights

When criticism is made of sovereignty in this day and age, it does not seem to take account of those sovereignties that rest in the nation, that is, the people themselves. If, indeed, some people are interested in the protection of human rights, they must also take account of the fact that the right of political, cultural, and social self-determination is inextricably related to people exercising sovereignty.²⁸ Efforts made to curtail this kind of sovereignty would deleteriously affect the exercise and protection of a wide variety of human rights. A sovereign nation is a community of people who exercise shared values concerning human dignities that shape and direct the particulars of their communitarian self-determination.²⁹ Consequently, an attack on the legally acknowledged rights of families paves the way for the erosion of basic human rights in other areas mentioned by the UDHR.

It is the contention of this Essay that attacks on the sovereignty of a people [or nation] is in direct conflict with the desire to protect fundamental human dignity that comprises the core of international human rights law.³⁰ Any undermining of the

of States must be considered relative to the rights of individuals. Both the State and the individual must be considered as subjects of world law and the sovereignty of the State must be regarded not as absolute, but as a competence defined by that law. Such development, however, implies that the world community is sufficiently organised and sufficiently powerful to assure the security of States under law.

Quincy Wright, *Relationship Between Different Categories of Human Rights*, in HUMAN RIGHTS: COMMENTS AND INTERPRETATIONS 149 (UNESCO staff eds., 1949).

28. For a recent development in this area, see Seth Faison, *Taiwan President Implies His Island Is Sovereign State*, N.Y. TIMES, Jul. 13, 1999, at A1.

29. The Memorandum and Questionnaire Circulated by UNESCO on the Theoretical Bases of the Rights of Man, in HUMAN RIGHTS: COMMENTS AND INTERPRETATIONS, 251 (UNESCO staff eds., 1949). The memorandum stated that:

[A]fter the first half of the nineteenth century, the principle of religious freedom has been scarcely questioned in the Western democracies, and the right of the individual to the franchise has been progressively rendered more general. Similarly, the principle of the right of national groups to self-determination was much extended.

Id.

30. After UNESCO conducted its enquiry on the theoretical bases of human rights, its Committee of Experts drafted a statement entitled, "The Grounds of An International Declaration of Human Rights." HUMAN RIGHTS: COMMENTS AND INTERPRETATIONS, *supra* note 29, at 258, app. II, in which the Committee of Experts stated:

These rights must no longer be confined to a few. They are claims which all men and women may legitimately make, in their search, not only to fulfill themselves at their best, but to be so placed in life that they are capable, at their best, of becoming in the highest sense citizens of the various communities to which they belong and of the world community, and in those communi-

sovereignty of a people constitutes a threat to the most basic of international human rights that would include the concept of self-determination as understood in the context of the major human rights covenants.³¹

In the presentation of this thesis, Part I of this Essay will examine the traditional principle of sovereignty that recognizes not only the interests of the State but also of the nation. Part II will investigate the concept of self-determination and its relation to the sovereignty of peoples or nations and the recognition and protection of fundamental international human rights. Part III will then specify and examine some contemporary challenges to the sovereignty of peoples by looking at incursions into the family, the "natural and fundamental group unit of society" as acknowledged by the UDHR,³² the ICCPR,³³ and the ICESCR.³⁴ Finally, Part IV will demonstrate why these incursions to the family pose a danger to other basic international human rights and the dignity of the human person.

I. THE CONCEPT OF SOVEREIGNTY IN INTERNATIONAL LAW

While exercises of sovereignty exist in the earliest histories of war and diplomatic exchanges,³⁵ the works of Gentili, de Vattel, Puffendorf, and others provide insight about sovereignty and

ties of seeking to respect the rights of others, just as they are resolute to protect their own.

Id. at 260.

31. As was further noted by UNESCO in the 1947 Memorandum and Questionnaire, *supra* note 29:

The world of man is at a critical stage in its political, social and economic evolution. If it is to proceed further on the path towards unity, it must develop a common set of ideas and principles. One of those is a common formulation of the rights of man. This common formulation must by some means reconcile the various divergent or opposing formulations now in existence. It must further be sufficiently definite to have real significance both as an inspiration and as a guide to practice, but also sufficiently general and flexible to apply to all men, and to be capable of modification to suit peoples at different stages of social and political development while yet retaining significance for them and their aspirations.

Id. at 255.

32. Article 16.3.

33. Article 23.1.

34. Article 10.1.

35. For example, the Prophet Micah talks about the sovereignty of Jerusalem, *Micah* 4:8; the Prophet Daniel begins his prophecy with an earthly sovereign—Nebuchadnezzar—overcoming the sovereignty of God's people; however, Daniel ultimately recognizes that it is God's sovereignty which prevails over all its human forms, *Daniel*

still have an impact on international law to this day. In the 1612 edition of *DE IURE BELLI LIBRI TRES*, Alberico Gentili observed that in ancient times the Roman people—or at least Rome's citizens—conferred their sovereignty to the Emperor, but “they did so in order that they might be governed like men, not sold like cattle.”³⁶ Like Hobbes³⁷ and Locke,³⁸ de Vattel acknowledged that societies unite together and combine their forces in order to procure their mutual welfare and security.³⁹ Both the individual and the nation to which one belongs, in de Vattel's view, rely on their “mutual assistance.”⁴⁰ Samuel Puffendorf also identified two types of sovereignty: private, which belongs to the individual and exercised as such, and public, which is exercised by people “for the use of civil society.”⁴¹

In his classic Twentieth Century study of public international law, Prof. Brierly contended that the doctrine of sovereignty familiar to the present day was formulated from the Reformation period onward.⁴² Although in its modern development, sovereignty was considered to be an absolute power above the law,⁴³ it was viewed as such because of the difficulty in locating

4:34. The expansive territorial sovereignty of King Solomon ranging from the kingdoms of the Euphrates to the borders of Egypt is described in 1 *Kings* 4:21.

36. GENTILI, *DE IURE BELLI LIBRI TRES* 371 (Oxford, 1933).

37. THOMAS HOBBS, *LEVIATHAN* 223 ch. XVII (Penguin Books, 1985) (1651).

38. JOHN LOCKE, *SECOND TREATISE OF GOVERNMENT*, 52, ch. VIII, § 95 (Hackett, 1980) (1698).

39. E. DE VATTEL, *THE LAW OF NATIONS OR THE PRINCIPLES OF NATURAL LAW: APPLIED TO THE CONDUCT AND TO THE AFFAIRS OF NATIONS AND OF SOVEREIGNS*, 3 (trans., Oceana Publications, 1964). Like Hobbes and Locke, Vattel also argued that “liberty and independence belong to man by his very nature, and . . . they can not be taken from him without his consent.” *Id.* As he noted later, “States are composed of men, their policies are determined by men, and these men are subject to the natural law under whatever capacity they act.” *Id.* at 4.

40. *Id.* at 6. The governments that people form—be they republics or monarchies—exercise sovereignty on behalf of their subjects. *Id.* at 7. But in exercising their powers, governments must carefully preserve the lives of its individual members—“for the loss of any one of its members would weaken it and in so far attack its corporate existence.” *Id.* at 14. Even though these members may confer their sovereignty on a Senate or one individual, their sovereignty is delegated for “the common good of all the citizens” *Id.* at 20. Ultimately, for de Vattel, “the welfare of the people is the supreme law [*salus populi suprema lex*].” *Id.* at 28.

41. SAMUEL PUFENDORF, *ELEMENTUM JURISPRUDENTIAE UNIVERSALIS LIBRI DUO* 57 (Oceana Publications, 1964).

42. J.L. BRIERLY, *THE LAW OF NATIONS: AN INTRODUCTION TO THE INTERNATIONAL LAW OF PEACE* 7 (6th ed. 1963).

43. *Id.* at 45.

this power in any particular person, group, or institution.⁴⁴ In his recent treatise revision, Prof. Ian Brownlie notes that “sovereignty and equality of states represents the basic constitutional doctrine of the law of nations.”⁴⁵ He further indicates that this basic doctrine is contextualized by three corollaries: (1) jurisdiction exercised by States over territories and permanent populations; (2) the duty not to intervene in the exclusive jurisdiction of other States; and (3) the dependence of obligations which emerge from the sources of international law.⁴⁶ From the Brownlie perspective it would seem that sovereignty is a tricky balance between one State exercising its jurisdiction or authority and parallel exercises by other States. Conflicts between or amongst these exercises may result.

Article 2 of the Charter of the United Nations attempts to bring some order or resolution to such potential conflicts by giving prominence to “the principle of the sovereign equality of all its Members.”⁴⁷ While Prof. Brownlie indicates that these “equal” members of the United Nations enjoy the “reserved domain” of Article 2.7 guaranteeing them from outside interference in “matters which are essentially within the domestic jurisdiction of any state,” this protection is relative and would not protect the State from infractions of international law such as those dealing with self-determination and the protection of fundamental rights of individuals.⁴⁸

A number of illustrations demonstrating this last point

44. *Id.* at 15.

45. BROWNLIE, *PRINCIPLES supra* note 9, at 289. A similar point was made much earlier by William Blackstone in 1765 when he described the “law of nations” as the inability of any state to claim a superiority over another or to dictate to another. *I COMMENTARIES ON THE LAWS OF ENGLAND* 43 (Facsimile ed., U. of Chicago Press, 1979) (1765).

46. BROWNLIE, *PRINCIPLES, supra* note 9, at 15.

47. U.N. CHARTER art. 2.1. As Prof. Bleckman has noted, there are ambiguities surrounding the meaning of the Members “sovereign equality”— it could mean that sovereign states conceptually enjoy equality amongst themselves, but it could also mean that sovereigns, while they may not actually possess equality in their dealings with one another, are equal within the operations of the United Nations, i.e., the U.N. is “based on the principles of the equality and sovereignty of the member states.” *See CHARTER COMMENTARY, supra* note 22, at 79.

48. CHARTER COMMENTARY, *supra* note 22, at 293-97. In its decision in *Barcelona Traction*, the International Court of Justice suggested something about the meaning of “basic human rights” when it identified “protection from slavery and racial discrimination” amongst them. 1970 I.C.J. 32. Prof. Meron has pointed out that while there may be problems with “hierarchical” designation of human rights, there may well be the

come to mind. In the context of the work of the International Military Tribunal ("IMT") [the Nuremberg Tribunal], officials of the German Third Reich defended their actions on the grounds of the maxims "*nulla poena sine lege*" and no application of ex post facto laws⁴⁹ because they were "acting under orders" and "legitimate exercises of sovereign authority."⁵⁰ However, the IMT concluded that these defenses were insufficient or inappropriate because their deeds constituted violations of existing international law and the prosecutions continued. Even though fifty years have elapsed since the Nuremberg prosecutions began and human wisdom has become increasingly conscious of the prohibitions against violating fundamental human rights, Slobodan Milosevic's indictment by the ICTY provides a further reminder of the fundamental nature of international law and the legal obligations not to harm, amongst others, innocent civilians.⁵¹

At this point there is need to take stock of the reality of the sovereignty of the State that is implemented by its officials whose actions constitute those of the State. Regardless of whether or not the state is a democratic institution, a totalitarian regime, or something in between these political antipodes, international law acknowledges and respects the sovereignty of States to take certain actions that cannot be challenged by other States, international organizations such as the United Nations, or non-government organizations. Yet, even with the recognition of this principle, it is equally clear that those persons who exercise the sovereignty of the State cannot do so with impunity. As one of the most highly qualified publicists has stated, responsibility can be imposed on States that cannot protect themselves with the defense of sovereign immunity if the matter is not "within the

growth of an *opinio juris* establishing the *erga omnes* principle "which is so crucial to ensuring respect for human rights." Meron, *supra* note 13, at 22.

49. See Avalon Project, *supra* note 25, Nuremberg Trial Proceedings, Vol. 1, Motion Adopted by All Defense Counsel, Nov. 19, 1945.

50. See generally, Mark Osiel, *Obedying Orders: Atrocity, Military Discipline, and the Law of War*, 86 CALIF. L. REV. 939 (1998).

51. See Justice Louise Arbour, Prosecutor, International Criminal Tribunal for the Former Yugoslavia, Statement at The Hague (May 27, 1999). In her statement, the Prosecutor stated in part that, "there is a credible basis to believe that these accused are criminally responsible for the deportation of 740,000 Kosovo Albanians from Kosovo, and for the murder of over 340 identified Kosovo Albanians. The victims were entitled to expect protection from each one of the accused." *Id.*

area of discretion which international law designates as sovereignty."⁵² Moreover, the "reserved domain" protection afforded by Article 2.7 of the Charter of the United Nations does not insulate a State from its obligations to safeguard human rights established under the Charter.⁵³ These Charter "rights" are generally referred to in Article 1.3 under the stated purpose of "promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion."⁵⁴ As noted earlier, these "human rights" were elaborated in the UDHR, the ICCPR, and the ICESCR.⁵⁵ In addition, the many States that are parties to the Fourth Geneva Convention of 1949 have additional human rights obligations and are responsible "for the treatment accorded to [protected persons] by its agents, irrespective of any individual responsibility which may be incurred."⁵⁶

In accepting the limitations which international law imposes on State sovereignty, it is vital to take account of whether limitations on sovereignty can place limitations on the peoples or nations—as distinct from the State? The preliminary answer is "yes." But this answer must contain the realization that the State and the nation or people are not necessarily one and the same. In examining and identifying the limits that can be placed on State sovereignty, it is essential to understand the division between the sovereignty of the people and the sovereignty of the State to which the people are members or subjects.⁵⁷ This latter distinction begins to emerge from an understanding of State constitutional law as it exists in the world today.⁵⁸

A wide spectrum of national Constitutions indicates that sovereignty belongs to the people or to those who are citizens of

52. BROWNLIE, *PRINCIPLES*, *supra* note 9, at 557.

53. *Id.*

54. U.N. CHARTER art. 1.3.

55. *See supra* note 8 and accompanying text.

56. 1949 Geneva Convention IV, Article 29.

57. As Prof. Reisman has argued, "International law still protects sovereignty, but—not surprisingly—it is the people's sovereignty rather than the sovereign's sovereignty." Michael Reisman, *Sovereignty and Human Rights in Contemporary International Law*, 84 AM. J. INT'L L. 866, 869 (1990).

58. The following recitation of national constitutional provisions, *infra* note 60, demonstrates distinctions between State and national or people sovereignty without getting into detailed interpretation of the constitutional texts or an examination of how these texts are actually implemented by the organs of the States.

the territorial State.⁵⁹ In essence, many of the national constitutions indicate that while “the state” or “government” has sovereign power, it is the people or the citizenry as a community that possesses and exercises the ultimate sovereignty. Many of these same national constitutions make a connection or demonstrate some relationship between the sovereignty of the people and the protection of “human dignity” or universal human rights and related values.⁶⁰ A few of these Constitutions specifically link their

59. See, e.g., ALB. CONST. (1998 Draft) art. 2 (“Sovereignty in the Republic of Albania belongs to the people”); AUS. CONST. art. 1 (“[L]aw emanates from the people”); BRAZ. CONST. art. 1 (“All power emanates from the people, who exercise it by means of elected representatives”); CROAT. CONST. art. 1 (“Power in the Republic of Croatia is derived from the people and belongs to the people as a community of free and equal citizens.”); FIN. CONST. § 2 (“Sovereign power in Finland shall belong to the people”); IR. CONST. art. 6 (“All powers of government . . . derive, under God, from the people, whose right it is to designate the rulers of the State, and, in final appeal, to decide all questions of national policy, according to the requirements of the common good.”); ITALY CONST. art. 1(2) (“Sovereignty belongs to the people who exercise it in the manner and within the limits laid down by this Constitution”); JAPAN CONST. pmbl. (“Government is a sacred trust of the people, authority for which is derived from the people”); NEPAL CONST. pmbl. (“We are convinced that the source of sovereign authority of the independent and sovereign Nepal is inherent in the people”); art. 3 (“The sovereignty of Nepal is vested in the Nepalese people and shall be exercised in accordance with the provisions of this Constitution.”); POL. CONST. art. 4 (“Supreme power in the Republic of Poland shall be vested in the Nation”); pmbl. (defining “Nation” as “the Polish Nation—all citizens of the Republic”); PORT. CONST. art. 3 (“Sovereignty, single and indivisible, rests with the people.”); RUSS. CONST. art. 3(1) (“The multinational people of the Russian Federation shall be the vehicle of sovereignty and the only source of power in the Russian Federation.”); SPAIN CONST. art. 1(2) (“National sovereignty belongs to the Spanish people from whom emanate the powers of the state.”); SWED. CONST. art. 1(1) (“All public power in Sweden proceeds from the people.”); TAIWAN CONST., art. 2 (“The sovereignty of the Republic of China shall reside in the whole body of citizens.”); U.S. CONST. pmbl. (“We, the People of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution”); ZAMB. CONST. pmbl. (“We, the people of Zambia . . . shall govern ourselves as a united and indivisible Sovereign State”). Of course, some of the Constitutional representations about the sovereignty of “the people” should not be accepted without some skepticism. An illustration may help: in a lengthy Preamble, the Chinese Constitution states that, “the Chinese people took state power into their own hands and became masters of the country.” P.R.C. CONST. pmbl. In addition, Article 2(1) declares that, “All power in the People’s Republic of China belongs to the people.” P.R.C. CONST. art. 2(1). Article 2(2) quickly adds that, “The organs through which the people exercise state power are the National People’s Congress and the local people’s congresses at different levels.” P.R.C. CONST. art. 2(2).

60. See, e.g., ALB. CONST. pmbl. (“We, the people of Albania . . . with the aim of respecting universal human values . . . with belief that human dignity and personhood should be protected”); BRAZ. CONST. art. 4 (“The international relations of the

textual discussion of human rights with the UDHR, the ICCPR, the ICESCR, and other treaties that address the recognition and protection of human rights⁶¹—rights that are well defined and widely recognized by diverse cultures.⁶²

With this in mind, an important issue begins to emerge: what is the relationship between the sovereignty of people and the recognition and protection of fundamental human rights as identified by the UDHR, the ICCPR, and the ICESCR? A response to this query might be found in an examination of the subject of the self-determination of peoples. It is the contention of this Essay that the self-determination of peoples is the link that brings together in an inextricable bond popular sovereignty and basic human rights. At this stage in the discussion, I shall suggest that it is self-determination as recognized by the Charter of the United Nations and other important international legal texts, which serve as the guarantors of basic human rights, that is the subject of international interest and protection.

II. *SELF-DETERMINATION, POPULAR SOVEREIGNTY, AND HUMAN RIGHTS*

The concept of “self-determination” benefits from a preferred status in the world of international law.⁶³ It is a notion

federative Republic of Brazil are governed by the . . . prevalence of human rights . . . self determination of peoples . . . equality among the states . . .”); BOSN & HERZ. CONST. pmb. (“Inspired by the Universal Declaration of Human Rights, the International Covenants on Civil and Political Rights and on Economic, Social, and Cultural Rights, and . . . other human rights instruments . . .”); SWED. CONST. Chapter 2—Fundamental Rights and Freedoms; SPAIN CONST. art. 10:

(1) The dignity of the person, the inviolable rights, which are inherent, the free development of the personality, respect for the law and the rights of others, are the foundation of political order and social peace. (2) the norms relative to basic rights and liberties . . . shall be interpreted in conformity with the Universal Declaration of Human Rights . . . ;

Id.

61. *See, e.g.*, BOSN. & HERZ. CONST. pmb., which ascribes inspiration to the UDHR, the ICCPR, the International Covenant on Economic, Social, and Cultural Rights (“ICESCR”), and the Declaration on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities; SPAIN CONST. art. 10, which states in pertinent part, “The norms relative to basic rights and liberties which are recognized by the Constitution shall be interpreted in conformity with the Universal Declaration of Human Rights”

62. As of this writing, 144 States are parties to the ICCPR and 142 are parties to the ICESCR.

63. For some helpful background discussion about “self-determination” as a right

that brings together the interests of the individual and relates them to the interests of the group.⁶⁴ The interests of both the individual and the group concentrate on the ability to exercise their selections about how they wish to live their lives and to be free from the interference and imposition of others.⁶⁵ Prof. Brownlie has been quick to note the overlap of interests between the individual and the identifiable group.⁶⁶ A similar theme appears in the purposes of the United Nations as identified in the Charter when the founders of the U.N. agreed that the organization was to encourage friendly relations amongst nations “based on respect for the principle of equal rights and self-determination of peoples.”⁶⁷

The significance of the principle of “self-determination” and its potential legal status surfaced in the *Barcelona Traction Case* when Judge Ammoun said in his separate opinion:

Thus, among these principles there is the right of self-determination—demanded for centuries by the nations which successively acquired their independence in the two Americas, beginning with the 13 Confederate States in North America, and in Central and Eastern Europe; many times proclaimed since the First World War; enshrined finally in the Charter of the United Nations, added to and clarified by the General Assembly’s resolution of 16 December 1952 on the right of self-determination and the historic Declaration by the Assem-

encompassing the practice of self-government, see Hurst Hannum, *Rethinking Self-Determination*, 34 VA. J. INT’L L. 1 (1993).

64. For a current and careful examination of “self-determination” as principle and right, see ANTONIO CASSESE, *SELF-DETERMINATION OF PEOPLES: A LEGAL REAPPRAISAL* (Cambridge, 1995) [hereinafter CASSESE, *SELF-DETERMINATION OF PEOPLES*].

65. See Thomas Franck, *The Emerging Right to Democratic Governance*, 86 AM. J. INT’L L. 46 (1992).

66. See BROWNLIE, *PRINCIPLES*, *supra* note 9, at 599, where the author states that, “[i]t is not necessarily the case that there is a divorce between the legal and human rights of groups, on the one hand, and individuals, on the other.”

67. U.N. CHARTER art. 1.2. It would seem that the right of self-determination might be a precondition to all other individual human rights according to Prof. Wolfrum. See CHARTER COMMENTARY, *supra* note 22, at 62. The principle of “equal rights and self-determination of peoples” is reiterated in Article 55 of the Charter of the United Nations, which begins Chapter IX, International Economic and Social Cooperation. Moreover, in GA Resolution 637A (VII) of December 16, 1952, the U.N. membership generally recommended that, “the States Members of the United Nations shall uphold the principle of self-determination of all peoples and nations.” Interestingly, a distinction—be it intentional or mistaken—was made in this resolution between “nations” and “peoples.” See *supra* note 16 and accompanying text, where I suggest these two terms may be used interchangeably.

bly on 14 December 1960 on the Granting of Independence to Colonial Countries and Peoples, the consequences of which have not yet fully unfolded. The international lawmaking nature of these declarations and resolutions cannot be denied, having regard to the fact that they reflect well-nigh universal public feeling Notwithstanding this uninterrupted sequence of precedents in the life of nations, Western writers, with some few exceptions, persist in refusing to concede to this right—though referred to as a '*droit*' in the French text of the Charter, and in the resolutions and declarations of the General Assembly—the attributes of an imperative juridical norm. The partisans of this doctrine seem to look back nostalgically to the era when it was still possible with impunity, and without infringing 'European public law', to deny the right of self-determination to peoples seeking to free themselves from the yoke of the States which had subjected and colonized them Against the defenders of the last bastions of traditional law, there thus stand arrayed, once again, with the support of a Western minority, the serried ranks of the jurists, thinkers and men of action of the Latin American and Afro-Asian countries, as well as of the socialist countries. For all of them self-determination is now definitely part of positive international law. As is known, furthermore, a majority of States, through their representatives at the 1969 Vienna Conference on the Law of Treaties, pronounced in favour of a solution to the problem of *jus cogens* capable of giving definitive sanction to the principles of the Charter, regarded by them as imperative juridical norms. It thus seemed appropriate that those principles—not excepting those deriving originally from the spirit of the American or French Revolutions—the religious inspiration of which is not unknown, should be solemnly reaffirmed⁶⁸

By the late 1990s, the legal status of the principle of self-determi-

68. *Barcelona Traction (Belg. v. Spain)* 1970 I.C.J. 3, 311-12 (Feb. 5) (separate opinion of Judge Ammoun). Prof. Cassese has cautioned against too widespread a use of Judge Ammoun's separate opinion. As he has said to this opinion and related perspectives, "These views cannot be held to reflect State practice, although they are highly indicative of the new trends emerging in the international community and may contribute, and have indeed contributed, to the evolution of State practice." CASSESE, *SELF-DETERMINATION OF PEOPLES*, *supra* note 64, at 136. Cassese further suggests that at the time *Barcelona Traction* was decided in 1970, Western States still had great investments in colonial domains; therefore, they "opposed the provision on self-determination either on account of their colonial interests, or out of fear that the paragraph relating to the free disposition of natural resources imperiled foreign investments and enterprises in developing countries." *Id.* at 50.

nation as an exercise of freedom and human rights no longer appears to be in doubt.⁶⁹

Thus, it would be useful to develop a core understanding of self-determination before any further investigation is pursued. Again, in turning to Prof. Brownlie, one definition of self-determination surfaces in the examination of rights. It is, for him, "the right of cohesive national groups ('peoples') to choose for themselves a form of political organization and their relation to other groups."⁷⁰

In a constitutional realm, a number of States have provided a context for the concept of "self-determination." For example, the Croatian Constitution of 1990 speaks of "the generally accepted principles in the modern world and the inalienable, indivisible, nontransferable, and inexpendable right of the Croatian nation to self-determination and state sovereignty, including the inviolable right to secession and association."⁷¹ The French Constitution of 1958 speaks of "government of the people, by the people, and for the people."⁷² In the 1949 German Constitu-

69. See BROWNLIE, PRINCIPLES, *supra* note 9, at 600-01, where this renowned publicist states,

"The present position is that self-determination is a legal principle, and the United Nations organs do not permit Article 2, paragraph 7, to impede discussion and decision when the principle is in issue. Its precise ramifications in other contexts are not yet worked out, and it is difficult to do justice to the problems in a small compass. The subject has three aspects. First, the principle informs and complements other general principles of international law, viz., of state sovereignty, the equality of states, and the equality of peoples within a state. Thus, self-determination is employed in conjunction with the principle of non-intervention in relation to the use of force and otherwise. Secondly, the concept of self-determination has been applied in the different context of economic self-determination. Lastly, the principle appears to have corollaries which may include [territorial sovereignty, considerations involving statehood and its recognition, legitimacy of certain liberation movements, and establishment of new sovereign territories]."

Id.

70. BROWNLIE, PRINCIPLES, *supra* note 9, at 599. Brownlie continues by stating that, "The choice may be independence as a state, association with other groups in a federal state, or autonomy or assimilation in a unitary (non-federal) state." *Id.* As Prof. Cassese has pointed out, "there is no self-determination without democratic decision-making." CASSESE, SELF-DETERMINATION OF PEOPLES, *supra* note 64, at 54.

71. CROATIAN CONST. pmbl.

72. FRENCH CONST. art. 2. This language from the 1958 French Constitution might be read in the context of Abraham Lincoln's Gettysburg Address, in which the President concluded his remarks by saying:

The world will little note nor long remember what we say here, but it can never forget what they did here. It is for us the living rather to be dedicated

tion, the people declare that they “have achieved the unity and freedom of Germany in free self-determination.”⁷³

While various nations—i.e., groups of peoples—have made a claim to “self-determination,” what does this term mean? In 1975, the International Court of Justice shed some insight in an advisory opinion concerning the region of the Western Sahara.⁷⁴ In noting the possible application of Article 1.2 of the Charter of the United Nations, the Court acknowledged that GA Resolution 1514 (XV) enunciated the “principle of self-determination as a right of peoples” and the application of this right “for the purpose of bringing all colonial situations to a speedy end.”⁷⁵ In its commentary on the Charter and General Assembly resolutions, the Court noted that the right of self-determination “requires a free and genuine expression of the will of the peoples concerned” with the exercise or attempted exercise of this right.⁷⁶ On several occasions, the Court offered a basic definition of this right as “the freely expressed will of peoples”⁷⁷ or “the free expression of the wishes of the people.”⁷⁸

A variety of legal sources offer some helpful contexts to better understand the nature of the will or wishes that are expressed, or wish to be expressed, by peoples as they relate to the exercise and defense of human rights. For example, the 14 December 1960 Resolution of the General Assembly acknowledged that colonialism inhibits “the social, cultural and economic development of dependent peoples.” Moreover, the General Assembly recognized that alien subjugation interferes with the “in-

here to the unfinished work, which they who fought here have thus far so nobly advanced. It is rather for us to be here dedicated to the great task remaining before us . . . that we here highly resolve that these dead shall not have died in vain, that this nation under God shall have a new birth of freedom, and that *government of the people, by the people, for the people* shall not perish from the earth.”

Abraham Lincoln, Gettysburg Address, Nov. 19, 1963 (emphasis added).

73. GRUNDGESETZ [GG] [Constitution] pmb1. (F.R.G.).

74. Advisory Opinion, Western Sahara, 1975 I.C.J. 12.

75. *Id.* at 31.

76. *Id.* at 32.

77. *Id.* at 33.

78. *Id.* at 35. Prof. Cassese argues that this discussion from *Western Sahara* offers a principle with a “very loose standard”—as he says, “the principle sets out a general and fundamental standard of behaviour: governments must not decide the life and future of peoples at their discretion. Peoples must be enabled freely to express their wishes in matters concerning their conditions.” CASSESE, SELF-DETERMINATION OF PEOPLES, *supra* note 64, at 128.

alienable right [of peoples] to complete freedom, the exercise of their sovereignty and the integrity of their national territory.”⁷⁹ This “inalienable right” includes the ability to “freely determine their political status and freely pursue their economic, social and cultural development.”⁸⁰

In 1986, the General Assembly again reiterated many of these points in its Declaration on the Right of Development.⁸¹ By recalling the right of peoples to self-determination [which includes “the right freely to determine their political status and to pursue their economic, social and cultural development”], the General Assembly asserted that:

States shall take resolute steps to eliminate the massive and flagrant violations of the human rights of peoples and human beings affected by situations such as those resulting from apartheid, all forms of racism and racial discrimination, colonialism, foreign domination and occupation, aggression, foreign interference and threats against national sovereignty, national unity and territorial integrity, threats of war and refusal to recognize the fundamental right of peoples to self-determination.⁸²

With the passage of time, the General Assembly had further occasion to restate this 1986 position in a 1997 resolution addressing the respect for principles of national sovereignty and non-interference in the internal affairs of States in their electoral processes.⁸³ Surely, this sustained effort on the part of many States to reinforce the international legal principle of self-determination and its connection to human rights and popular sovereignty intensifies and fortifies the claim about the vital role that popular sovereignty plays in protecting and enhancing fundamental international human rights. While skeptics of this thesis can assert that U.N. General Assembly resolutions do not necessarily generate principles of international law,⁸⁴ it must be recognized that these resolutions can and do, on occasion, mirror un-

79. G.A. Res. 1514 (XV), U.N. GAOR (1960).

80. Prof. Brownlie implies that this Declaration “regards the principle of self-determination as a part of the obligations stemming from the Charter [of the United Nations], and is not a ‘recommendation’, but is in the form of an authoritative interpretation of the Charter.” BROWNLIE, PRINCIPLES, *supra* note 9, at 600.

81. G.A. Res. 41/128, U.N. GAOR (1986).

82. *Id.* art. 5.

83. G.A. Res. 52/119, U.N. GAOR (1997).

84. See BROWNLIE, PRINCIPLES, *supra* note 9, at 14-15.

disputed principles of international law.⁸⁵

As noted in earlier discussion, the Charter of the United Nations addresses the principle of self-determination of peoples.⁸⁶ In the nascent years of the United Nations, the General Assembly promulgated and adopted the UDHR, which, as previously mentioned, is not a legal text per se but prepared the way for several authoritative normative texts that generate legal obligations.⁸⁷ Two of the UDHR's most notable progeny are the ICCPR and the ICESCR. Both of these international legal instruments state at the outset in their common Article 1 that, "[a]ll peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."⁸⁸ Common Article 1 brings together popular sovereignty, human rights, and self-determination in a legal synthesis.

As normative texts that generate legal obligations for over 140 State parties,⁸⁹ the ICCPR and the ICESCR have served as the basis for ongoing recognition about the legal status of self-determination in the realm of international law.⁹⁰ Even though

85. *Id.*

86. *See supra* note 22 and accompanying text.

87. *See supra* note 9 and accompanying text.

88. ICCPR art. 1.1; ICESCR art. 1.1; *see also supra* note 79 and accompanying text. Article 21.3 of the Universal Declaration of Human Rights would appear to offer a basis of support for common Article 1 of the ICCPR and the ICESCR where it was stated that, "[t]he will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures." One commentator has observed that Article 21 of the UDHR:

[I]s more basic than the legal rights described [earlier] because it gives people the human right to help codify the moral principles of the other legal human rights into their own domestic systems. Most of what a government does is to write laws, which is why one early version of Article 21 speaks of everyone's "right to take an effective part directly or through his representative in the formation of law."

ORIGINS, *supra* note 4, at 69. Matthew Craven has noted that since the ICESCR shares this common article with ICCPR and since the latter covenant has been understood to protect civil and political rights, the same provision in the ICESCR would protect rights to economic self-determination. *See* MATTHEW CRAVEN, *THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL, AND CULTURAL RIGHTS: A PERSPECTIVE ON ITS DEVELOPMENT* 24-25 (1995); *see also* CASSESE, *SELF-DETERMINATION OF PEOPLES*, *supra* note 64, at 66.

89. Not every State party to one of these conventions is automatically a party to the other. Each convention requires independent ratification.

90. As of July 1999 the ICCPR had 144 State parties. *See* United Nations High Commissioner for Human Rights, *International Covenant on Civil and Political Rights*, at http://www.unhchr.ch/html/menu3/b/a_ccpr.htm. The ICESCR had 141 State par-

specific applications of Common Article 1 may present special challenges to existing government mechanisms found in particular States, the idea of “self-determination” has been given both political as well as social, economic, and cultural contexts. While their respective second articles are different, each covenant acknowledges State responsibility to “respect,” “ensure,” “achieve,” or “guarantee” the rights specified in the applicable covenant.⁹¹

Although the ICCPR acknowledges that some restrictions on protecting rights may exist during times of “public emergency,”⁹² certain rights [e.g., the right to life; freedom from torture, slavery, and imprisonment for debt; recognition as a person before the law; and, freedom of thought, religion, and conscience] are non-derogable.⁹³ Under the ICESCR, no State, group, or person has the “right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized [by the ICESCR].”⁹⁴ The ICCPR echoes this same provision.⁹⁵

ties. See United Nations High Commissioner for Human Rights, *International Covenant on Economic, Social, and Cultural Rights*, at http://www.unhchr.ch/html/menu3/b/a_ceschr.htm. It appears that no State made a reservation or offered a declaration that would restrict the meaning of the term “self-determination” with the exception of India’s declaration that “the words ‘the right of self-determination’ . . . apply only to the peoples under foreign domination and that these words do not apply to sovereign independent States or to a section of a people or nation—which is the essence of national integrity.” France, Germany, and the Netherlands responded with objections to the Indian declaration. *Id.*; see also Robert McCorquodale, *Negotiating Sovereignty: The Practice of the United Kingdom in Regard to the Right of Self-Determination*, 1995 BRIT. YR. INT’L L. 281 (1995).

91. For example, Article 2 of the ICCPR states that “[e]ach State Party . . . undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant [E]ach State party . . . undertakes to take the necessary steps . . . to give effect to the rights recognized in the present Covenant.” Article 2 of the ICESCR states that “[e]ach State Party. . . undertakes to take steps . . . with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means The State Parties . . . undertake to guarantee that the rights enunciated . . . will be exercised without discrimination”

92. ICCPR art. 4.1. For an important discussion of this issue, see JAIME ORAA, *HUMAN RIGHTS IN STATES OF EMERGENCY IN INTERNATIONAL LAW* (1992) (addressing violations of basic human rights in times of emergency and derogation under both treaty and customary law; notwithstanding derogation provisions and provisions of customary law, there remain obligations concerning the protection of basic rights).

93. ICCPR art. 4.3. For a useful discussion about whether certain human rights are derogable, see Rosalyn Higgins, *Derogations Under Human Rights Treaties*, 1976 BRIT. YR. INT’L L. 281 (1976).

94. ICESCR art. 5.1.

95. ICCPR art. 5.1.

Since most of the States in the world today have become parties to the ICCPR and the ICESCR, they also have obligations to respect the fundamental precepts of human rights that are defined by the political and social processes enhanced and protected by the popular sovereignty of the people and in the exercise of the people's self-determination. If this is indeed the case, any external organ or agency would be prohibited from imposing its view on a people who have given particulars to their rights as defined by these two important conventions in the exercise of their own sovereignty and through their own self-determination. Yet, as the next section will demonstrate, groups external to the people and to individual persons have taken steps that interfere with the rights of peoples that are based on legitimate exercises of popular sovereignty and self-determination—exercises which, as Prof. Crawford has noted, are continuing or on-going.⁹⁶ The case study under investigation that illustrates these incursions emerges from the recent Cairo+5 Conference sponsored by the United Nations.

III. *INCURSIONS INTO HUMAN RIGHTS, POPULAR SOVEREIGNTY, AND SELF-DETERMINATION*

At this stage in human history—given the knowledge acquired about colonial domination by one people over another, by the genocide committed during the middle and at the end of the Twentieth Century, by the other acts of one person or group denying others the dignities of human existence—it may come as a surprise that the denial of fundamental human rights, popular sovereignty, and self-determination is going on in unexpected places. Yet, evidence from very recent times presents a case that such astonishing occurrences are taking place. The source of the assault on these rights recognized by indisputable provisions of international law [the popular sovereignty and exercise of self-determination which have given these rights reality] is a kind of neo-colonial or totalitarian authority. This imposition comes from official U.N. organs and influential Non-Government Organizations ["NGOs"] and interferes with the legitimate exercise of popular sovereignty and self-determination by

96. See James Crawford, *Democracy and International Law*, 1993 BRIT. YR. INT'L L. 113, 116 (1993) ("[S]elf-determination is a continuing matter, not a once-for-all constitution of the State.").

peoples thereby contravening the most basic of international legal norms.⁹⁷

This section will illustrate this point by focusing on challenges to the rights of families and their members recognized and protected under international law. Examples of these rights include the internationally recognized rights of parents to educate their children in the ways they see fit and proper and in accordance with the parent's moral and religious convictions.⁹⁸ One particular conviction is the parental promotion of abstinence from sexual relations until the child enters adulthood and

97. In 1947, the American Anthropological Association submitted to the Commission on Human Rights of the United Nations a "Statement On Human Rights." In it, the Association's Executive Board noted that there were two important facets regarding the proposed Universal Declaration: the first concerned "the respect for the personality of the individual as such, and his right to its fullest development as a member of his society." The second pertained to "equally important" "respect for cultures of differing human groups." See Executive Board of the American Anthropological Association, *Statement on Human Rights*, 49 AM. ANTHROPOLOGIST 539 (1947). The Executive Board in its Statement pointed out that:

These are two facets of the same problem, since it is a truism that groups are composed of individuals, and human beings do not function outside the societies of which they form a part. The problem is thus to formulate a statement of human rights that will do more than just phrase respect for the individual as an individual. It must also take into full account the individual as a member of the social group of which he is a part, whose sanctioned modes of life shape his behavior, and with whose fate his own is thus inextricably bound. Because of the great numbers of societies that are in intimate contact in the modern world, and because of the diversity of their ways of life, the primary task confronting those who would draw up a Declaration on the Rights of Man is thus, in essence, to resolve the following problem: How can the proposed Declaration be applicable to all human beings, and not be a statement of rights conceived only in terms of the values prevalent in countries of Western Europe and America?

Id. The Executive Board went on to say:

"[I]f the essence of the Declaration is to be, as it must, a statement in which the right of the individual to develop his personality to the fullest is to be stressed, then this must be based on a recognition of the fact that the personality of the individual can develop only in terms of the culture of his society.

Id. at 540. The Board concluded its observations by stating:

The rights of Man in the Twentieth Century cannot be circumscribed by the standards of any single culture, or be dictated by the aspirations of any single people Worldwide standards of freedom and justice, based on the principle that man is free only when he lives as his society defines freedom, that his rights are those he recognizes as a member of his society, must be basic.

Id. at 543.

98. See UDHR art. 26.3; ICCPR art. 13.3; ICESCR art. 13.3; American Convention on Human Rights art. 12.4; Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights of 1988 art. 13.4.

marriage. The challenges to these rights question the history, the traditions, the culture, and the matters of greatest importance to families, communities, and nations that are protected under international legal instruments.⁹⁹ The significance of these rights increases when one takes account of the fact that these traditional influences of family life are where children learn the importance of virtue, civility, respect and love for others, compassion, selflessness, and cooperation, to mention but a few of the important lessons essential to a flourishing human existence. When parental and family rights recognized by multi-national and regional treaties, as well as the UDHR, are interfered with, other rights concerning traditions, religion, customs, and culture cherished by many throughout the world are also open to challenge and even eradication.

International human rights law strongly supports and protects belief in and practice of religious faith.¹⁰⁰ Yet, the Committee on the Rights of the Child ["CRC"] and the Committee on the Elimination of Discrimination Against Women ["CEDAW"] have been critical of "harmful traditions and beliefs" and "prejudices" that emerge from religious traditions.¹⁰¹ Moreover, these same Committees have advanced the argument that children should have the right of privacy that can insulate them from the benefits that parents and elders wish to pass on to them about a civil, responsible, and loving married life.¹⁰² It appears the CRC assumes that the child is an equal partner in the family because it is presupposed that the child has attained the same stage in human development and needs no parental instruction

99. See African Charter on Human and Peoples' Rights art. 17.3 (noting that the State has the duty to protect and promote the morals and traditional values recognized by the community).

100. See UDHR art. 18; ICCPR art. 18.1, 18.3; American Declaration of the Rights and Duties of Man art. III; American Convention on Human Rights art. 12; African Charter on Human and Peoples' Rights art. 8.

101. See the Eighth session report of the Committee on the Rights of the Child ("CRC") such as CRC/C/38, Feb. 20, 1995, ¶ 287, and the Seventh session report CRC/C/34, Nov. 8, 1994, ¶ 195; and various reports of the Committee on the Elimination of all Forms of Discrimination Against Women ("CEDAW") beginning with A/53/38 (Part I) May 14, 1998, ¶¶ 108 (Croatia); 282, 289-2990 (Indonesia); 331, 351 (Dominican Republic); A/52/38/Rev.1, Aug. 12, 1997, ¶¶ 10 (general); 75 (Namibia); 157 (Israel); A/50/38, May 31, 1995, ¶¶ 341 (Uganda); 460 (Norway); A/49/38, Apr. 12 1994, ¶¶ 41 (general); 130 (Libyan Arab Jamahiriya); 635 (New Zealand); 686 (Senegal).

102. See, e.g., individual State reports of the CRC including CRC/C/15/Add.90, (Japan) ¶¶ 15-36.

on life and how it is to be lived. These assumptions and presuppositions are plainly wrong and without factual basis. In other areas, CEDAW has argued in its reports about the existence of evidence showing that “church-related organizations adversely influence the Government’s policies concerning women and thereby impede full implementation of the Convention [on the Elimination of All Forms of Discrimination Against Women].”¹⁰³ This same Committee has advocated the need for the State to provide “sex education and practical family planning” to children regardless of the type and content of education parents wish for their offspring.¹⁰⁴ Although the core international legal instruments protect the rights of culture, families, religious belief, and other matters essential to human rights, the work of “experts” associated with the United Nations and NGOs have, as has been pointed out, eroded these rights through the programs and approaches they have urged on governments and U.N. bodies.

To illustrate and verify my contention, I shall use the recent developments of the 1994 International Conference on Population and Development [“ICPD”] and the Cairo+5 meetings, which were convened in March and June of 1999. As will be demonstrated, the Cairo+5 developments reflect views of influential NGOs and “experts” assigned to U.N. Committees rather than perspectives of member States. Moreover, it is the interests of the citizens of the member States rather than those of the experts and NGOs that are subject to the protection of these key international legal instruments. Additionally, these recent developments of Cairo+5 have threatened fundamental principles of human rights law, which emphasize the family, as understood and implemented by the legitimate exercise of popular sovereignty. Indeed, aspects of Cairo+5 constituted an unwarranted assault on the principle of self-determination, which is at the root of the basic universal human rights as articulated by international law [especially the ICCPR and the ICESCR].

In explaining these points, I shall first identify some basic

103. Eighteenth Session Report of CEDAW, A/53/38 (Part I), May 14, 1998, ¶ 108 (Croatia).

104. *See, e.g.*, Eighteenth Session Report of CEDAW, A/53/38 (Part I), ¶¶ 148, 160-161 (Zimbabwe); 349 (Dominican Republic); Sixteenth and Seventeenth Sessional Report of CEDAW, A/52/38/Rev. 1, Aug. 12, 1997, ¶ 236 (Venezuela); Fifteenth Session Report of CEDAW, A/51/38, May 9, 1996, ¶ 260 (Hungary).

principles that constitute the delicate compromise of the ICPD of 1994. In this context, I shall elucidate the basic human rights involving the family that are protected under international law. Second, I shall demonstrate how Cairo+5 undermined fundamental human rights protections involving family issues. In doing this two-prong investigation, I shall establish the foundation of my further thesis. The additional thesis is that such attacks on this particular human rights issue, the family, set a precedent for further attacks on other human rights as will be explained in Part V. These additional challenges would also adversely affect the exercise of popular sovereignty that is essential to defining these rights and on self-determination, which is the basic guarantor of these rights.

A. *Fundamental Principles of the ICPD*

The 1994 Conference stated in the Preamble of the Programme of Action for the ICPD:

While the International Conference on Population and Development *does not create any new international human rights, it affirms the application of universally recognized human rights standards to all aspects of population programmes.* It also represents the last opportunity in the twentieth century for the international community to collectively address the critical challenges and interrelationships between population and development. The Programme of Action will require the establishment of common ground, *with full respect for the various religious and ethical values and cultural backgrounds.* The impact of this Conference will be measured by the strength of the specific commitments made here and the consequent actions to fulfil them, as part of a new global partnership among all the world's countries and peoples, based on a sense of shared but differentiated responsibility for each other and for our planetary home.¹⁰⁵

With these intentions in mind, the ICPD—while imperfect in itself—grasped the need to examine the interrelationship of population, poverty, patterns of production and consumption, and environmental issues; moreover, it was understood that consideration of one would be incomplete without considering them al-

105. International Conference on Population and Development ("ICPD") Programme of Action pmb1. 1.15. [hereinafter Programme] (emphasis added).

together in the same conference.¹⁰⁶

Although the ICPD noted that some countries had made “substantial progress in expanding access to reproductive health care [e.g., increased use of contraception] and lowering birth rates,”¹⁰⁷ the Conference was careful to note that it did not exist to create “any new international human rights” [whatever they might be].¹⁰⁸ It was, however, the task of the Conference to establish a common ground that would fully respect the religious and ethical values and cultural backgrounds throughout the world.¹⁰⁹

To accomplish these goals, the Conference specified a group of principles that would guide its deliberations. At the outset, the Conference acknowledged that implementation of recommendations that would be contained in the 1994 Programme of Action would be the sovereign right of each country.¹¹⁰ Thus, the ICPD recognized and respected in 1994 that popular sovereignty and the principle of subsidiarity underpin the democratic concept of self-determination. The Conference also conceded that implementation of these recommendations—not legal obligations—was to be done in a manner that was consistent with “national laws and development priorities, with full respect for the various religious and ethical values and cultural backgrounds of its people, and in conformity with universally recognized international human rights.”¹¹¹

Amongst other relevant general principles that were to guide the deliberations of the ICPD were the following. First, there was a fundamental recognition that “[e]veryone has the right to life, liberty and security of person.”¹¹² Another impor-

106. *Id.* at 1.5.

107. *Id.* at 1.8.

108. *See supra* note 105 and accompanying text.

109. *Id.*

110. Programme, *supra* note 105, ch. II, princs., pmb.

111. *Id.* The phrase “with due respect for” is repeated throughout subsequent documents produced in the 1999 conference. The change from the “full respect” of the 1994 formulation to that of the 1999 “due respect” language may have some impact, either intentional or not, on what is needed to ensure that actions are taken “with full respect for the various religious and ethical values and cultural backgrounds of its people.”

112. *Id.* chap. II, princ. 1. This principle also states that “[e]veryone is entitled to all the rights and freedoms set forth in the Universal Declaration of Human Rights.” The guarantee of the “right to life” quoted in this principle would seem to run counter to the view that a woman with an “unwanted pregnancy” could terminate the child

tant principle was that “[h]uman beings are at the centre of concerns for sustainable development People are the most important and valuable resource of any nation They have the right to an adequate standard of living for themselves and their families, including adequate food, clothing, housing, water and sanitation.”¹¹³ Perhaps having in mind that certain cultures consume a disproportional share of the world’s natural resources, the drafters of the Principles indicated that “States should reduce and eliminate unsustainable patterns of production and consumption and promote appropriate policies, including population related policies, in order to meet the needs of [current and future generations].”¹¹⁴ Yet, the drafters of the Principles also noted that there were other equally important tasks facing the human family, therefore, “[a]ll states and all people” should cooperate in eradicating poverty, providing the highest attainable standards of physical and mental health, and ensuring that all have access to education directed at the full

without running afoul of the guarantees acknowledging the “right to life.” It seems that the justification for this position is that the fetus is not a child—not a human being—therefore the right to life does not extend to the fetus. But this view runs counter to the concerns of individuals who have concern about prenatal sex selection practices that are used to abort female fetuses. *See, e.g.*, Carol Bellamy, Statement at the Fourth World Conference on Women (Sept. 5, 1995) (“It is estimated that there are some 100 million fewer women alive today than could be expected through the natural pattern of birth and survival in infancy. Deep prejudices against girls mean that many are never born because of pre-natal sex selection”); Prime Minister Gro Harlem Brundtland, Closing Address at the Fourth World Conference on Women (Sept. 15, 1995) (“We are familiar with the terrible discrimination against girls, even before birth. What has obscurely been described as ‘pre-natal sex selection,’ and the fatal neglect of infant girls, are tragic testimonies.”) In a follow up to the Fourth World Conference on Women, the Secretary General of the United Nations in 1997 reiterated these concerns regarding the status of the unborn female child and the legal mechanisms available to protect her under international law. His analysis of the importance of gender in the enjoyment of human rights began with the resolution concerning the rights of the child. States and international and non-governmental organizations have been urged to take into account the rights and particular needs of girls, especially in education, health, and nutrition. States have also been urged to eliminate negative cultural practices and attitudes against girls and to eliminate all forms of discrimination against girls and the root causes of son preference, which resulted in harmful and unethical practices, to include legislation protecting girls from violence, including female infanticide and pre-natal sex selection. Of course, if the unborn female child is protected under international law, so is the unborn male child.

113. Programme, *supra* note 105, ch. II, princ. 2. The phrase that “[h]uman beings are at the centre of concern” appears in several international texts. *See, e.g.*, Rio Declaration on Environment and Development, Principle 1 (1992); Platform for Action, United Nations Fourth World Conference on Women, ¶ 246 (Sept. 15, 1995).

114. Programme, *supra* note 105, ch. II, princ. 6.

development of human resources and human dignity and potential.¹¹⁵

While these last several principles also suggested points about “family planning” and “reproductive health-care,” there is no doubt that the highest levels of protection were to be given to families, parents, children, and their relationships with one another. By way of illustration, Principle 9 declared that:

The family is the basic unit of society and as such, should be strengthened. It is entitled to receive comprehensive protection and support. In different cultural, political and social systems, various forms of the family exist. Marriage must be entered into with the free consent of the intending spouses, and husband and wife should be equal partners.¹¹⁶

This particular emphasis on the role and protection of the family, the spousal relationship, and the parent-child relationship has received prominent attention [using identical or similar language] in other international legal and policy texts.¹¹⁷ Both States and families shared the “highest possible priority” to protect the welfare of children.¹¹⁸ In noting the importance of education, responsibility for the best interests of children in this regard “lies in the first place with parents.”¹¹⁹ Again, the significance of education and the priority role of parents in the education of their children is reiterated elsewhere and protected in the fundamental human rights documents since and including the UDHR.¹²⁰

As will be discussed shortly, the Cairo+5 conference tended to deviate from these principles. However, before moving into an examination of how the 1999 Conference did this, a review of the 1994 Programme of Action regarding the important relationship between children and their parents and the sanctity of the family is in order. It should also be remembered that while some provisions of the Programme of Action had to recognize the strong tradition of international law that is designed to protect families and their children, other elements might have been

115. *Id.* princ. 7-8, 10.

116. *Id.* princ. 9.

117. *See infra* note 206 and accompanying text.

118. Programme, *supra* note 105, ch. II, princ. 11.

119. *Id.* princ. 10.

120. UDHR art. 26.3.

the harbinger of Cairo+5's disregard for key elements of international law.

B. *The ICPD Programme of Action*

Although the 1994 Programme of Action did address concerns about improvement of health and access to basic medical care,¹²¹ universal educational opportunities,¹²² general economic reforms, and eradication of poverty, it also presented some bold departures from [or simply ignored] established international law. In Subsection E of the 1994 Programme of Action, it was quickly noted that “[t]he reproductive health needs of adolescents as a group have been largely ignored to date by existing reproductive health services.”¹²³ It was assumed in the Programme that the “reproductive health needs”¹²⁴ of adolescents mandated that information be made available that would assist them to “attain a level of maturity required to make responsible decisions.”¹²⁵ The fact that some parents in the education of their children may have consciously and freely chosen not to inform their offspring about “reproductive health matters” [e.g., extra-marital sexual activity and how to obtain contraception] is neither recognized nor considered. The Programme of Action further stated that “[i]n many societies, adolescents face pressures to engage in sexual activity.”¹²⁶ While “[r]ecognizing the rights, duties and responsibilities of parents,” the Programme of Action hastened to add that, “countries must ensure that the programmes and attitudes of health-care providers do not restrict the *access of adolescents to appropriate services and information they need.*”¹²⁷

It would appear that the interests and instructions of parents to their children about the need to abstain from sexual promiscuity—concerns that are protected under international law—were neglected if not ignored. Instead, the focus of concern was

121. Programme, *supra* note 105, ch. II, princ. 8. (“[U]niversal access to health-care services” apart from “reproductive health care”).

122. *Id.* princ. 10.

123. Programme, *supra* note 105, subsec. E, sec. 7.41.

124. The phrase “reproductive health needs” might also be a device that lays a foundation for later arguing that the “needs” of adolescents may subsequently be transformed into “rights.”

125. Programme, *supra* note 105, subsec. E, sec. 7.41.

126. *Id.* sec. 7.42.

127. *Id.* sec. 7.45 (emphasis added).

on the ability of children to be sexually active without considering whether their parents had consented and regardless of the protection of the family interests. As the Programme elaborates, "these services [most likely contraception and access to abortion] must safeguard the *rights* of adolescents to *privacy, confidentiality, respect, and informed consent, respecting cultural values and religious beliefs*. In this context, countries should, where appropriate, *remove legal, regulatory and social barriers to reproductive health information and care for adolescents.*"¹²⁸ If there is ambiguity about the meaning of the services and information to be given to adolescents regardless of parental instruction or wishes, the Programme resolves it by stating: "Countries . . . should *protect and promote the rights* of adolescents to reproductive health education, information, and care and *greatly reduce the number of adolescent pregnancies.*"¹²⁹ The information and services promoted by the Programme do not address how to avoid sexual activity and how to remain chaste but, rather, how to avoid pregnancy or how to deal with pregnancy once it has occurred. Sexual activity on the part of the adolescent, regardless of parental instruction, begins to receive its status as a "human right."

Meanwhile, the rights of parents along with their responsibilities in educating their children begin to disappear, and the role of the government organizations and NGOs to "meet the special needs of adolescents" begins to emerge.¹³⁰ This latter role includes "support mechanisms for the education and counselling of adolescents in the areas of gender relations [something which had been traditionally called good manners and respect for the other under the Golden Rule¹³¹] and equality, violence against adolescents, responsible sexual behaviour, responsible family-planning practice, family life, reproductive health, sexually transmitted diseases, HIV infection, and AIDS prevention."¹³² Interestingly, the authors of the Programme of Action did not forget about parents entirely, for their capacity in education was brought back into view. However, their role was

128. *Id.* (emphasis added).

129. *Id.* sec. 7.46 (emphasis added).

130. *Id.* sec. 7.47.

131. See *Leviticus* 19:18; *Tobit* 4:14; *Matthew* 7:12; *Luke* 6:27-31; *James* 2:8. For an interesting philosophical examination of the "Golden Rule" found in sacred scripture, see Marcus Singer, *The Golden Rule*, 38 PHIL. 293 (1963).

132. Programme, *supra* note 105, subsec. E, sec. 7.47.

subject to their own “training” and “education” having as their objective “improving the interaction of parents and children to enable parents to comply better with their educational *duties* to support the process of maturation of their children, particularly in the areas of sexual behaviour and reproductive health.”¹³³

The departure from important elements of international law regarding children, education, parents, and the role of the family was continued during the 1999 ICPD proceedings including the March, 1999 meeting at the Hague and the Special Session of the General Assembly held at New York from June 30 to July 2, 1999.¹³⁴

C. *The Hague and New York—1999, Cairo+5*

When the 1999 work of the ICPD concluded at the General Assembly Special Session in July, the Report of the Ad Hoc Committee of the Whole of the Twenty-first Special Session of the General Assembly again confirmed the need for development that included eradication of poverty, sustained economic growth, sustainable patterns of consumption and production, and food security.¹³⁵ While the Preamble briefly addressed universal access to primary health care,¹³⁶ it disproportionately concentrated on “universal access to reproductive health services, including family planning and sexual health.”¹³⁷

Although the Preamble spoke of the sovereign right of each country—taking account of the various religious and cultural backgrounds of its people¹³⁸—it exuberantly reiterated the 1994 Programme of Action passage that “reproductive rights embrace certain human rights that are already recognized in national laws, international human rights documents, and other consensus documents.”¹³⁹ This text did not specify which national laws,

133. *Id.* sec. 7.48 (emphasis added).

134. *See* G.A. Res. 52/188, U.N. GAOR, U.N. Doc. A/RES/52/188 (1998). Throughout the 1990's, the CRC and the CEDAW have presented similar views in their respective reports criticizing traditional family-oriented practices of member States. *See supra* notes 101-103 and accompanying texts.

135. *Report of the Ad Hoc Committee of the Whole of the Twenty-first Special Session of the General Assembly*, U.N. GAOR, pmb., no. 1, U.N. Doc. A/S-21/5/Add.1 (1999) [hereinafter *Report of the Ad Hoc Committee*].

136. *Id.* pmb., nos. 6, 10.

137. *Id.* pmb., nos. 1, 6, 8-10.

138. *Id.* pmb., no. 5.

139. *Id.* pmb., no. 3.

international human rights documents, and other consensus documents identify “reproductive rights” that “embrace certain human rights.” However, the drafters may have had in mind the 1993 Vienna Programme of Action, the CEDAW, and the 1995 Beijing Platform for Action.¹⁴⁰ Only one of these three texts, CEDAW, is an international legal instrument. However, CEDAW and the 1993 Vienna Programme of Action do not address “reproductive rights” as do the Beijing documents. Notwithstanding the discussion of “reproductive rights” in the Beijing documents, they were accompanied by reservations made by States challenging interpretations, which suggest that “reproductive rights” are “human rights.”¹⁴¹ It is important to note that neither the ICCPR nor the ICESCR acknowledges the existence of “reproductive rights.”

Since the Preamble noted that “[a]dolescents remain particularly vulnerable to reproductive and sexual risks,”¹⁴² I have chosen this particular issue from the 1999 Cairo+5 efforts to illustrate the measurable drift from established principles of human rights law and the dangers that such drift poses to other established principles of international law. In particular, my examination focuses on the restrictive modification of the role of the family and the rights and duties to educate their children in the ways that the family, particularly the parents, deem appropriate.¹⁴³

On June 29, 1999, the Commission on Population and Development [“Commission”], which acted as the preparatory committee for the Twenty-first Special Session of the General Assembly, agreed to forward the Proposals for Key Actions for Further Implementation of the Programme of Action of the ICPD.¹⁴⁴

140. *Id.* pmb., no. 4. The drafters stated:

The International Conference on Population and Development and its implementation must be seen as being closely related to the outcome and coordinated follow-up to the other major United Nations conferences held in the 1990's. Progress in the implementation of the Programme of Action should be supportive of and consistent with the integrated follow-up to all major United Nations conferences and summits.

Id.

141. *See, e.g.*, reservations of Argentina, Dominican Republic, Guatemala, the Holy See, Honduras, Iran, Malta, Mauritania, Peru, and Venezuela.

142. *Report of the Ad Hoc Committee, supra* note 135, pmb., no. 10.

143. *See* UDHR, Article 26.3; ICESCR, Article 13.3; ICCPR, Article 18.4.

144. U.N. Doc. A/S-21/Add.2, ch. V (1999). The Proposals appeared in U.N. Doc. A/S-21/2/Add.2 (1999).

Under this text, which was presented to the Twenty-first Special Session of the General Assembly on June 29, 1999, the Commission stated in its discussion in Part E, Population, Development and Education, that “[g]overnments, in particular developing countries . . . should: . . . (a) *bis* Include sex education in school curricula in order to further implement the Programme of Action in terms of promoting responsible sexual behaviour and protecting adolescents from early pregnancy, unsafe abortion and sexually transmitted diseases, including HIV/AIDS.”¹⁴⁵ A footnote indicated that subsection (a) *bis* was “under discussion.”¹⁴⁶ Upon completion of the discussions, the reformulated section stated:

Governments, in particular of developing countries . . . should: . . . (b) Include at all levels, as appropriate, of formal and non-formal schooling, education about population and health issues, including sexual and reproductive health issues, in order to further implement the Programme of Action in terms of promoting the well-being of adolescents, enhancing gender equality and equity as well as responsible sexual behavior, protecting them from early and unwanted pregnancy, sexually transmitted diseases including HIV/AIDS, and sexual abuse, incest and violence. Ensure the active involvement and participation of parents, youth, community leaders and organizations for the sustainability, increased coverage and effectiveness of such programmes.¹⁴⁷

While the explicitness of the earlier draft had been toned down, its modification of July 1, 1999 still would give adolescents information and services that would promote premarital sex at an early age. Interestingly, parents were mentioned in the reformulation; however, their status was on par with youth and community leaders and “organizations” that would promote not their own parental views but, rather, those of the ICPD. It would be extremely difficult to interpret this text so as to ensure parents’ legal rights to provide their children with the education deemed suitable by parents.¹⁴⁸ This contention is reinforced by the discussion in the Report of the Ad Hoc Committee of the Whole when it stated that “[g]overnments . . . should: . . . (c) Engage

145. *Id.* at 9 (1999).

146. *Id.*

147. U.N. Doc. A/S-21/5/Add.1 (1999) at 8.

148. *See supra* note 143.

all relevant sectors, including non-governmental organizations, especially women's and youth organizations and professional associations . . . in ensuring that sexual and reproductive health information and services meets people's needs and respect their human rights, including their right to access to good-quality services."¹⁴⁹ The absence of parents in this particular group is conspicuous.

The absence of any provision addressing parental rights and duties is all the more apparent when "Subsection E—Adolescents" of the Report of the Ad Hoc Committee is examined. First of all, the discussion on adolescents begins with the charge that governments, "with the full involvement of young people . . . , should, as a priority, make every effort to implement the Programme of Action in regard to adolescent sexual and reproductive health."¹⁵⁰ Curiously, the texts from the Commission on Population and Development and the Report of the Ad Hoc Committee viewed "adolescent rights" in somewhat differing ways—ways that are worth considering in light of the international human rights of the adolescent that allegedly exist free from intervention by parents. To facilitate examination of these provisions, I place them side-by-side:

The Report of the Commission states:

In order to promote to the fullest extent the right of adolescents to health, [governments should] provide specific and user-friendly reproductive sexual services, including information and counselling. These services should safeguard the rights of adolescents to privacy, confidentiality and informed consent, respecting cultural values and religious beliefs.¹⁵¹

The Report of the Ad Hoc Committee states:

In order to protect and promote the right of adolescents to the enjoyment of the highest attainable standards of health, [governments should] provide appropriate, specific, user-friendly and accessible services to address effectively their reproductive and sexual health needs, including reproductive health education, information, counselling and health promotion strategies. These services should safeguard the rights of adolescents to privacy, confidentiality and informed consent, respecting their cultural values and religious beliefs and in conformity with relevant existing international agreements and conventions.¹⁵²

149. U.N. Doc. A/S-21/5/Add.1, at 12 (1999).

150. *Id.* at 17.

151. U.N. Doc. A/S-21/2/Add.2, at 19.

152. U.N. Doc. A/S-21/5/Add.1, at 17.

Like the previous discussion about sex education in school above, the Report of the Commission is more direct than the Report of the Ad Hoc Committee. Furthermore, the Commission Report is more aggressive in its promotion of "adolescent rights" in its use of the language "to the fullest extent."¹⁵³ This phrase was dropped from the final text of the Ad Hoc Committee. Both recognize that "adolescent rights" include privacy, confidentiality, and informed consent. Since the rights and duties of parents are not mentioned, it can be assumed that these "adolescent rights" exist outside of and are protected from the purview of parents. While the Report of the Ad Hoc Committee does mention that these "adolescent rights" are to conform with "relevant existing international agreements and conventions," it does not specify any particular agreement or convention.

Although both Reports generally acknowledge the "central role of families, parents and other legal guardians in educating their children and shaping their attitudes,"¹⁵⁴ they do so in the context which presumes the type of education and shaping of attitudes that can provide "sexual and reproductive health information, in a manner consistent with the evolving capacities of adolescents, so that they can fulfil their rights and responsibilities towards adolescents."¹⁵⁵ It would appear that the rights and duties of parents, families, and legal guardians are qualified: these adults cannot, as seems guaranteed under international law,¹⁵⁶ provide their children or wards with the information of their choosing. The interpretation must be consistent with the advice that "protects and promotes the rights of adolescents" so that they can, amongst other things, "make responsible and informed choices and decisions regarding their sexual and reproductive health needs, in order to, *inter alia*, reduce the number

153. See *supra* note 103. Important questions about the "rights" of children in exercising self-autonomy without parental supervision begin to surface: should the rights of the child prevail when the child takes actions that endanger the self or others; when the child refuses to get sufficient rest or nourishment; wants to engage in anti-social behavior? Where is the line to be drawn? The Committee makes no helpful contribution in this regard. Perhaps it would be best to let these important matters which remain within the legal rights of the parents or guardians stay there rather than with a small group of disinterested persons such as the Committee.

154. U.N. Doc. A/S-21/2/Add.2, at 20; U.N. Doc. A/S-21/5/Add.1, at 18.

155. U.N. Doc. A/S-21/5/Add.1, at 18.

156. See ICESCR art. 13.3; see also *infra* note 208 and accompanying text.

of adolescent pregnancies.”¹⁵⁷

Finally, the Report of the Ad Hoc Committee, in developing some of the principles presented in the Report of the Commission,¹⁵⁸ noted that health-care providers should not restrict “the access of adolescents to appropriate services and the information they need;” moreover, it stated that countries should “remove legal, regulatory and social barriers to reproductive health information and care for adolescents.”¹⁵⁹ But what might these information and services consist of and who might be involved in their identification?

The second question might be the quicker to address. The status of the roles of parents in identifying the appropriate information and services, as has been previously demonstrated, is in doubt. Nonetheless, “[a]dolescents and youths themselves” are to be fully involved “in the design and implementation of such services.”¹⁶⁰ If, in the exercise of their “adolescent rights,” youth but not their parents are primarily involved in information and services identification, to where might adolescents turn for sources of the information and services they conclude are essential to their “reproductive and sexual health?” One source could well be the International Planned Parenthood Federation (“IPPF”).

The IPPF describes itself as, “the world’s largest voluntary family planning organization” that is dedicated to “transform rights language into real improvements in the quality of people’s lives.”¹⁶¹ In the words of the IPPF’s Secretary General, Ingar Brueggemann, this “rights transformation” is designed to help those men and women who are “denied the sexual and reproductive health and rights that are basic human rights and fundamental to sustainable development.”¹⁶² As the Charter of the IPPF records, these “rights” are “grounded” and “implied” in “core human rights instruments.”¹⁶³ The IPPF explains that “there is a margin of discretion which can apply to the way in

157. U.N. Doc. A/S-21/5/Add.1, at 18.

158. U.N. Doc. A/S-21/2/Add.2, at 20.

159. U.N. Doc. A/S-21/5/Add.1, at 18.

160. *Id.*

161. *International Planned Parenthood Federation (“IPPF”) Charter on Sexual and Reproductive Rights—Vision 2000* (1996) at 4 [hereinafter *IPPF Charter*].

162. *Id.* at 5.

163. *Id.* at 9.

which these rights can be implemented and enjoyed in different settings”;¹⁶⁴ however, it also noted that “while the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind,” it is the purpose of the IPPF “to promote and protect sexual and reproductive rights and freedoms in all political, economic and cultural systems.”¹⁶⁵ In essence, regardless of what nations deem to merit protection, it is the IPPF—an organization accountable to no one but itself—that will ultimately decide.

The views of the IPPF that are of particular concern here are those which intend to grant the “reproductive health rights” to young people notwithstanding the wishes of their parents.¹⁶⁶ By way of illustration, the IPPF advocates a right of privacy such that, “All sexual and reproductive health care services, including information and counselling services, provided should be made available to all individuals and couples, *especially young people*, on a basis which respects their rights to privacy and confidentiality.”¹⁶⁷ Regardless of what families desire for their children and the views that their various traditions and beliefs contain, the IPPF contends that, “All persons [including young people] have the right to be free from restrictive interpretation of religious texts, beliefs, philosophies and customs as tools to curtail freedom of thought on sexual and reproductive health care and other issues.”¹⁶⁸ This “freedom of thought” includes not only education and information¹⁶⁹ but also the “right” to choose whether or not to marry and have a family;¹⁷⁰ whether or not to

164. *Id.*

165. *Id.* at 10-11.

166. See IPPF/Youth Manifesto, 1998; Goal 1 (young people must have confidential sex education and contraceptives, including “emergency contraceptives” aka abortifacients); Goal 2 (governments and policy makers must take support and promote the needs of youth); Goal 3 (young people must be supported by laws allowing them to act freely in the way they choose to live their lives); advocacy must be pursued that will enable young people to enjoy sexual pleasure as a valid sexual and reproductive health need; governments must be lobbied by NGOs and intergovernmental organizations to remove legal barriers to sexual and reproductive health services (including access to contraception); educational institutions should present information about “sexual rights” for young people; young people should have access to a “complete range of sexual and reproductive health services” that include conventional and “emergency” contraception, abortion, and gay/lesbian/bisexual support services.

167. *IPPF Charter*, *supra* note 161, at 16.

168. *Id.* at 17.

169. *Id.* at 18.

170. *Id.* at 19.

have children;¹⁷¹ and access to contraception and abortion.¹⁷²

To support their contentions that such matters are protected rights under International Law, the IPPF relies on a variety of texts consisting of “relevant paragraphs from recent UN conferences and other key documents” that reflect “international consensus.”¹⁷³ For example, with regard to the privacy of young people, the IPPF cannot justify its position on a legal text such as the ICCPR or the ICESCR. Rather it relies on the ICPD, ¶ 7.45. However this ICPD provision begins with previously noted language that acknowledges the duties, responsibilities, and rights of parents in rearing their children. Insofar as the right to freedom of thought of “all persons” from “restrictive interpretation of religious texts, beliefs, philosophies and customs” is concerned, the IPPF first cites Article 18 of the ICCPR that states:

Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

However, this provision from the ICCPR does not support the IPPF’s contention about restrictive interpretation of religious texts, etc. Curiously, the IPPF argues that the beliefs of health care professionals who conscientiously object to providing contraception and abortion is not protected if the health care professional cannot or will not “refer the client to health care professionals willing to provide [abortion or contraception] immediately” or “in emergency cases where lives are at risk.”¹⁷⁴ So

171. *Id.* at 20.

172. *Id.* at 23.

173. *Id.* at 35.

174. *Id.* at 17. CEDAW has reached similar conclusions in several of its reports. *See, e.g.*, A/53/38 (Part I), regarding Croatia, ¶ 109 (The Committee “is also concerned about information regarding the refusal, by some hospitals, to provide abortions on the basis of conscientious objection of doctors. The Committee considers this to be an infringement of women’s reproductive rights.”); A/52/38/Rev.1 regarding Italy, ¶ 353 (“The Committee expressed particular concern with regard to the limited availability of abortion services for women in southern Italy, as a result of the high incidence of conscientious objection among doctors and hospital personnel.”) Yet, recent developments in international law indicate that both individuals and States are protected by law from being pressured into making abortions available or performing them. *See, e.g.*, Herman von Hebel & Darryl Robinson, *Crimes Within the Jurisdiction of the Court*, in THE INTERNA-

much for the provisions of Article 18 of the ICCPR regarding the freedom of thought, conscience, and religion. The other support upon which the IPPF relies¹⁷⁵ is ¶ 5 of the Vienna Declaration and Programme of Action of 1993.¹⁷⁶ However, as noted in the previous footnote, this provision speaks only generally about human rights, and it does not identify access to contraception and abortion as human rights. The other text cited in the context of freedom of thought regarding abortion and contraception is ¶ 6 in the Statement on Therapeutic Abortion adopted by the World Medical Assembly in Oslo, Norway in 1970.¹⁷⁷ The provision quoted by the IPPF states that, "If the doctor considers that his convictions do not allow him to advise or perform an abortion, he may withdraw while ensuring the continuity of (medical) care by a qualified colleague."¹⁷⁸ This text does not state that the succeeding "qualified colleague" must be sympathetic or willing to perform an abortion. Once again, it is difficult to see how this provision justifies the contention of the IPPF. Moreover, a further fact militating against the IPPF position is that a standard adopted by the World Medical Assembly in a declaration of that organization is not a legal text that binds sover-

TIONAL CRIMINAL COURT: THE MAKING OF THE ROME STATUTE, (Roy S. Lee ed., 1999), where the question of objections to the crime of "[en]forced pregnancy" was of concern to Catholic and Arab States, at 100 n.67; Cate Steains, *Gender Issues*, in THE INTERNATIONAL CRIMINAL COURT: THE MAKING OF THE ROME STATUTE 368 (Roy S. Lee ed., 1999), wherein the author states that the language of the Statute for the International Criminal Court regarding "forced pregnancy" was "inserted as an additional measure to reassure the Catholic and Arab countries that the inclusion of forced pregnancy would not interfere in the legal right of States to regulate nationally with respect to pregnancy (anti-abortion laws)." However, notwithstanding the status of international law on these rights of States and individuals to hold anti-abortion positions, some NGOs believe that the refusal to allow and perform abortions violates international law. See *The International Criminal Court: The Beijing Platform in Action—Putting the ICC on the Beijing+5 Agenda*, The Women's Caucus for Gender Justice, 2000, at 13, where the authors present their belief that "withholding abortion from raped women should be explicitly defined as a war crime and a crime against humanity. . . ."

175. *IPPF Charter*, *supra* note 161, at 45.

176. The text cited by the IPPF states: "All human rights 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 systems to promote and protect all human rights and fundamental freedoms."

177. *IPPF Charter*, *supra* note 161, at 45.

178. *Id.*

eign peoples and States as juridical document such as the ICCPR.

In the context of the "right" to decide whether or when to have children, no juridical text is used to support the IPPF's view. While the IPPF does cite Article 10.2 of the ICESCR,¹⁷⁹ this covenant provision states that, "[s]pecial protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits." Unequivocally, this provision relied on by the IPPF does not support its position about whether to have a family and how to protect "against unplanned pregnancy."¹⁸⁰ The remaining resources upon which the IPPF relies are not legal instruments but statements from the ICPD or the Fourth World Conference on Women, Beijing, 1995.¹⁸¹

One other area in which the IPPF implies a right for young people is the right to benefit from scientific progress.¹⁸² In doing so, the IPPF cites Article 15.1 of the ICESCR, which states in relevant part that, "[t]he States Parties to the present Covenant recognize the right of everyone . . . (b) to enjoy the benefits of scientific progress and its application." Of course, scientific progress in combating disease, providing nutrition, and making universally available discoveries in general medical science would also be amongst the benefits of scientific progress. However, the IPPF dwells on contraception and abortion¹⁸³ [neither of which is mentioned in the ICESCR]; but, the ICESCR does address health care and nutrition.¹⁸⁴ Once again, the only other support proffered by the IPPF for its view that contraception and abortion constitutes scientific progress that must be made available to all persons are statements from either the ICPD or the Vienna Declaration and Programme of Action of 1993.¹⁸⁵

At this point, it is worth taking account of the method of how a group such as IPPF conveys its message of the "right" to sexual promiscuity to young people regardless of parental wishes

179. *Id.* 31.

180. *Id.* at 20.

181. *Id.* at 50-51.

182. *Id.* at 23.

183. *Id.*

184. *See* ICESCR, arts. 11 and 12.

185. *IPPF Charter*, *supra* note 161, at 57-58.

and instruction. Once the method is understood, the content of the message must also be examined.

Through the use of hard copy and internet publications, the IPPF conducts its campaign to reach directly young people without parental or other responsible adult supervision. For example, in its web site, the IPPF publicized a campaign conducted in Bulgaria to make young people aware of their sexual identity and the role of contraception. In one instance, the IPPF described the "Cool Condom" campaign in Bulgaria and stated:

Following a procession of two ostriches handing out condom leaflets in the crowded streets of Sofia, a reception was held at The Imperial nightclub where the FPA [Family Planning Association] youth group organized competitions and games with prizes of Cool Condom T-shirts, beach towels, hats and badges. Mrs. [Ingar] Brueggemann took this opportunity to congratulate the FPA for its commitment and creativity, and to wish the Cool Condom Social Marketing Project success in providing realistic and informed choices to young people in Bulgaria.¹⁸⁶

The IPPF also maintains two other publications for conveying its message to young people: "X-press"—the IPPF Newsletter for Young People and "Mezzo"—a website maintained by the IPPF for young people. The July, 1999 table of contents of "Mezzo" contained such topics as: (1) "For health professionals: How to treat us young people;" (2) "Healthy loving: the better sex guide;" (3) "Join our club: the essential guide to sexual relationships;" (4) "Which contraceptive? The Mezzo online guide to choosing the best contraceptive for you;" and, (5) "So what about you sugar? Find out your rating in our sexperts' questionnaire."¹⁸⁷

A further sampling of "Mezzo" is most instructive on how the IPPF erodes the legal right of parents and guardians from children. In the Young People's Rights, "Mezzo" advocates that,

All young people of the world regardless of sex, religion, colour, sexual orientation or mental and physical ability have the following rights as sexual beings: (1) the right to be yourself—free to make your own decisions, to express yourself, to

186. See International Planned Parenthood Federation, *'Cool Condoms' Launched in Bulgaria*, at <http://www.ippf.org/projects/socialmarketing/bulgaria/index.htm>.

187. See International Planned Parenthood Federation, *Contents*, at <http://www.ippf.org/mezzo/contents.htm>.

enjoy sex, to be safe, to choose to marry (or not to marry) and plan a family; (2) the right to know—about sex, contraceptives, STD's/HIV, and about your rights; (3) the right to protect yourself and be protected—from unplanned pregnancies, STD's/HIV and sexual abuse; (4) the right to have health care—which is confidential, affordable, of good quality and given with due respect; (5) the right to be involved—in planning programmes with and for youth, attending meetings/seminars etc. at all levels and trying to influence governments through appropriate means.¹⁸⁸

The young person's expectations from healthcare professionals include: (1) confidentiality; (2) making available "the information and services" young people "need"; (3) empowering young people to decide for themselves; and, (4) providing "services" at the time and with the time frame young people have.¹⁸⁹ "Mezzo" also counsels young people on the variety of ways of engaging in sex and the health and pregnancy risks associated with each way.¹⁹⁰

The more recent efforts by IPPF to separate young people from parental and responsible adult supervision and instruction is the new publication "X-press" described as the IPPF "newsletter written by young people, for young people about what young people are doing in the field of sexual and reproductive health."¹⁹¹ Samplings from the first issue of "X-press" include:

1. a page targeting the conservative and traditional society of Swaziland in order to: challenge "current thinking" with an "expanded approach" to sexual and reproductive health; to provide "cool" recreational facilities for young people where peer educators [ages 14-24] provide "services, counselling and discreetly give out contraceptives;" to "increase the utilisation of sexual and reproductive

188. See International Planned Parenthood Federation, *All Young People of the World Regardless of Sex, Religion, Colour, Sexual Orientation or Mental and Physical Ability Have the Following Rights as Sexual Beings*, at <http://www.ippf.org/mezzo/rights2.htm>.

189. See International Planned Parenthood Federation, *For Health Professionals, How to Treat us Young People*, at <http://www.ippf.org/mezzo/profl.htm>.

190. See International Planned Parenthood Federation, *Better Sex, Healthy Living*, at <http://www.ippf.org/mezzo/lifestyle.htm>. The ways of having sex include: kissing, mutual masturbation, oral sex, anal intercourse, and vaginal intercourse. The subtext of this material is to provide young people with sexually explicit material and ways of engaging in sexual relationships without consulting parents or guardians.

191. See International Planned Parenthood Federation, *X-Press*, at http://www.ippf.org/x-press/1_1/index.htm.

health services by young people; and, to “increase knowledge on negative socio-cultural and traditional practices and to reduce unsafe abortion.”¹⁹²

2. Another page introduced young readers to the recent Cairo +5 Conference held at the United Nations Headquarters in New York in March of 1999. This article promoted the issues of sexual and reproductive health and rights, access to “emergency contraception,” confidentiality of services, and sexuality education that concern young people and adolescents.¹⁹³ This web page of “Xpress” commented on the “notable youth participation at the UN meeting as a ‘candle in the dark.’ A Great start to a monumental movement!!!”¹⁹⁴
3. Other pages discussed IPPF-sponsored summer camps in countries having little sexual and health education to make available information on contraception, puberty, pregnancy, and human and sexual rights¹⁹⁵ where “[a] new generation of peer educators was born;”¹⁹⁶ discussions about “the first time” where views included “[i]t’s normal to have sex before marriage, as long as you are serious and take preventive measures;”¹⁹⁷ and, news about national legislation “enabling health professionals to provide sexual and reproductive health services to those under the age of consent.”¹⁹⁸

With this background in mind, it becomes evident that the international legal protection of the family and the rights of parents and guardians of children are absent from the views promoted by this NGO in its efforts to further “human rights.” In addition, the IPPF substitutes its own peculiar views about what is good for children for the instruction from parents and families. The perspectives of the IPPF on what is proper for youth are shared by

192. *See id.*

193. *See id.*

194. *Id.*

195. *See* International Planned Parenthood Federation, *Zane Kristina from the Latvian FPA Youth Group Reports on Lessons by a Latvian Lake*, at http://www.ippf.org/xpress/1_1/latvian.htm.

196. *Id.*

197. *See* International Planned Parenthood Federation, *The First Time*, at http://www.ippf.org/xpress/1_1/first.htm.

198. *See* International Planned Parenthood Federation, *The Caribbean Youth Summit*, at http://www.ippf.org/e-press/1_1/caribbean.htm.

the CRC and the CEDAW as has been previously noted.¹⁹⁹ In short, the role of traditional family values that emerge from parental concern, cultural values, and religious norms is being substituted for the new orthodoxy promoted by NGOs, such as the IPPF, and these UN organs. These latter groups pressure States to change their laws protective of parent-child relationships [the product of democratic self-determination] with aggressively autonomous laws that alienate children from the nurturing relationship with their parents.

IV. WHY INCURSIONS INTO THE RIGHTS OF THE FAMILY ENDANGER OTHER INTERNATIONAL HUMAN RIGHTS

Today the world of international human rights law is at a crossroads. On the one hand, there is the perspective that after so much struggle, all members of the human family—after generations of being oppressed by despots, oligarchs, and ruling classes—can now make their rightful claim to self-determination, the root of human rights. But on the other hand, there are new oligarchs, new ruling elites who, under the guise of “human rights” are prepared to impose regimes that erode and neutralize the exercise of self-determination.²⁰⁰ The illustration I have used to present these contrasting views of the status of human rights is the International Conference on Population and Development. This illustration and its recent developments in the Cairo +5 conference demonstrate how the fundamental human rights of all persons are threatened by the views of a new elitist perspective. If family rights can be assaulted, why not those addressed in the UDHR, the ICCPR, and the ICESCR concerning democratic self-determination, educational opportunities, guarantees to due process of law, preservation of cultures, and the free exercise of religion to mention but a few? As can be seen, the recently evolved ICPD views conflict with the rights of each

199. See *supra* note 134 and accompanying text.

200. See Further Promotion and Encouragement of Human Rights and Fundamental Freedoms, Including the Question of the Programme and Methods of Work of the Commission, Replies Received from Governments, Commission on Human Rights, E/CN.4/1996/45/Add.1, Mar. 18 1996, wherein Mexico reminded the membership of the United Nations that “any unilateral coercive measure is contrary to international law and in violation of the San Francisco [United Nations] Charter. Accordingly, the Government of Mexico . . . considers any such action reprehensible.”

person to flourish in their self-chosen communities where social customs, religious beliefs, and cultural values are protected by laws made through the exercise of political self-determination.

Much of the challenge emerges from the claim of privacy and individual, unaccountable autonomy—autonomy to determine one's "reproductive rights." Oddly, the future of the human race is not tied up in the individual's autonomy to reproduce or not. If we are autonomous to secret ourselves into cocoons of private individualism, why is it not equally true that we can also choose to come together to preserve our common future together and to ensure the survival of the race by sharing our common wisdom, energy, labor, love, compassion, and courage not just for ourselves but all our children? The future of the human race is inextricably related to how individuals-in-community plan their future and the future of succeeding generations not yet born to the common good of the human race when they exercise their right of self-determination through democratic political institutions. For it is the common good of humanity, not the self-indulgent desires of isolated individuals, which will determine the successes of our race to sustain itself and develop in accord with our human nature. If we are to be satisfied that this current generation can determine for eternity how the rest of the race is to live and develop, why is it not just as true that a past or future generation can tell us with equal impunity that those of our time were wrong in the direction we took to plan for the future of the race?

It is the community of individuals fortified by the exercise of self-determination that guarantees that human rights—rights identified in and protected by the ICCPR and the ICESCR—flourish. They flourish because it is all members of the community who decide what the future should hold, not just some. As Dr. Nafis Sadik had to acknowledge at the U.N. General Assembly for the Review and Appraisal of the Implementation of the Programme of Action of the ICPD on June 30, 1999, the ICPD is strong "because it is firmly based on universal principles: the sovereignty of nations; human rights and ethical values. Its implementation empowers the individual; nurtures the family and strengthens the nation."²⁰¹ But, if indeed this is true, why would some argue that those perspectives which seek to protect the

201. N. Sadik, Statement at ICPD+5, New York (Jun. 30, 1999).

family and the *gens* are reactionary to the fulfillment of human rights when these perspectives are promoted by the exercise of democratic self-determination?²⁰²

History has established that when one group wishes to silence, to remove, to eliminate others, human rights do not prosper, they suffer. As the ICJ stated in its advisory opinion on *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*,

The origins of the Convention show that it was the intention of the United Nations to condemn and punish genocide as "a crime under international law" involving a denial of the right of existence of entire human groups, a denial which shocks the conscience of mankind and results in great losses to humanity, and which is contrary to moral law and to the spirit and aims of the United Nations²⁰³

Today, there are forces, which under the guise of prudent planning for the future of the human race, have little interest in the views of their fellow human beings. Those who point to the extraordinary principles of the UDHR, the ICCPR, and the ICESCR protecting not only the family, the rights of parents, and the interests of the nation, but also the rights of religious and ethnic communities to preserve and protect their traditions are ridiculed for their archaic version of human rights and their disinterest in "true" liberty. Yet, it is these more traditional views that are at the heart of human rights. For the rights we claim today, in order to be inviolable, eternal, and universal must be shared by those of tomorrow. But, if those heirs are carefully selected by the present members of the race, something is inordinately wrong about the meaning of human rights.

As Judge Tanaka stated in his dissenting opinion in the *South West Africa* cases (Second Phase) of 1966,

If a law exists independently of the will of the State and, accordingly, cannot be abolished or modified even by its constitution, because it is deeply rooted in the conscience of mankind and of any reasonable man, it may be called "natural law" in contrast to "positive law." Provisions of the constitutions of some countries characterize fundamental human

202. See *supra* notes 23-24 and accompanying text.

203. *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, 1951 I.C.J. 15, 23.

rights and freedoms as “inalienable,” “sacred,” “eternal,” “inviolable,” etc. Therefore, the guarantee of fundamental human rights and freedoms possesses a super-constitutional significance. If we can introduce in the international field a category of law, namely *jus cogens*, recently examined by the International Law Commission, a kind of imperative law which constitutes the contrast to the *jus dispositivum*, capable of being changed by way of agreement between States, surely the law concerning the protection of human rights may be considered to belong to the *jus cogens*.²⁰⁴

But critics of my view may argue that Judge Tanaka makes their point that universal human rights cannot be influenced by parochial or “relativistic” national law. Their argument might follow the line that it is adherence to parochial views as codified in law that restrains rather than promotes true human rights on the international level.

The problem with this argument, however, is that it fails to take account of the fact that the peoples of many nations share the perspective of the fundamental importance of the family or the religious or ethnic community. Moreover, many states have democratically promulgated laws limiting access to abortion. It should come as no surprise that these important exercises of democracy and self-determination are also under attack.²⁰⁵ Interestingly, those who have advocated for the autonomous rights of the adolescent in matters of “reproductive health” do so from their own restricted perspective. Nowhere do international legal instruments support their contentions. To the contrary, these instruments addressing human rights repeatedly acknowledge that the family is the fundamental unit of society.²⁰⁶ Moreover,

204. South West Africa Cases, 1966 I.C.J. 6, at 298. (Tanaka, J., dissenting)

205. See, e.g., Sessional reports of the CEDAW criticizing many states on their legislative restriction on abortion: A/53/38 (Part I), ¶¶ 117 (Croatia), 159 (Zimbabwe), 337 (Dominican Republic), 408 and 426 (Mexico); A/52/38/Rev.1, ¶¶ 111 and 137 (Namibia), 140 and 148 (San Vincent and the Grenadines), 184 and 196 (Turkey), 210 (Luxembourg), 236 (Venezuela), 258 (Antigua and Barbuda), 319 (Argentina); A/51/38, ¶¶ 55 (Cyprus), 131 (Paraguay), 356 (general); A/50/38, ¶¶ 158 (Chile), 196 (Mauritius), 446 and 447 (Peru); A/49/38, ¶ 492 (Colombia).

206. See UDHR art. 16.3; ICESCR art. 10.1; ICCPR art. 23.1. See also Article 18 of the African Charter on Human and Peoples' Rights (1981) which reiterates that the “family shall be the natural unit and basis of society,” and Article 17 of the American Convention on Human Rights (1969) which states in pertinent part that, “The family is the natural and fundamental group unit of society and is entitled to protection by society and the state.”

these provisions regarding the fundamental importance of the family have been reiterated in two significant regional legal texts, the African Charter on Human and People's Rights of 1981²⁰⁷ and the American Convention on Human Rights of 1969.²⁰⁸ In a similar fashion, these legal instruments protect, as does Article 27 of the ICCPR, the rights of cultural and religious communities as well.²⁰⁹

It may have escaped the notice of some at the recent Cairo+5 discussions, but a wide variety of peoples through their representatives acknowledged this fundamental precept of international law—not “consensus documents”—concerning the fundamental importance of the family to human rights. These

207. The Charter entered into force on October 21, 1986, and it states in Article 18 that:

The family shall be the natural unit and basis of society. It shall be protected by the State, which shall take care of its physical health and moral. The State shall have the duty to assist the family which is the custodian of morals and traditional values recognized by the community.

Article 20 goes on to state that, “All peoples shall have the right to existence. They shall have the unquestionable and inalienable right to self-determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy *they have freely chosen*.” (emphasis added). The Charter also speaks not only of rights of the individual but also of duties. Article 27 states, “Every individual shall have duties towards his family and society, the State and other legally recognized communities and the international community. The rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest.” In pertinent part, Article 29 continues the duty theme by stating, “The individual shall also have the duty: 1. To preserve the harmonious development of the family and to work for cohesion and respect of the family; to respect his parents at all times, to maintain them in case of need; 2. To serve his national community by placing his physical and intellectual abilities at its service . . .”

208. The States parties agreed in Article 4 that the right to life “shall be protected by law and, in general, from the moment of conception.” Article 10.4 states that “Parents or guardians, as the case may be, have the right to provide for the religious and moral education of their children or wards that is in accord with their own convictions.” Article 17 addresses the role of the family by stating that, “The family is the natural and fundamental group unit of society and is entitled to protection by society and the state.” Finally, it is important to note that Article 29 declares that, “No provision of this Convention shall be interpreted as: (a) Permitting any State Party, group, or person to suppress the enjoyment or exercise of the rights and freedoms recognized in this Convention or to restrict them to a greater extent than is provided for . . .” Like the African Charter, the American Convention also places duties on individuals. Article 32 acknowledges that, “Every person has responsibilities to his family, his community, and mankind. The rights of each person are limited by the rights of others, by the security of all, and by the just demands of the general welfare, in a democratic society.”

209. See American Convention on Human Rights arts. 1, 12, 26; African Charter on Human and Peoples' Rights arts. 8, 10, 22, 28.

States are found in the Eastern and Western hemispheres, the Northern and the Southern hemispheres. Some of these nations have been recently liberated from totalitarian oppression, others have recently escaped the control of military juntas or other oligarchic controls. But each now exercises democratic institutions and self-determination. And, at the Cairo+5 conference, to a people they unequivocally voiced their respective concerns about the fundamental role of the family in the exercise of their participation in human rights.²¹⁰ Other peoples are still struggling with the issue of self-determination but have echoed their desire to preserve and protect the family as the fundamental unit of society.

By way of illustration, a variety of Latin countries have expressed the central role of the family in human rights. Argentina, a nation which has undergone extraordinary transformation in the last half century, argued that the true issues regarding population and development are not contraception and abortion but eradication of poverty rather than elimination of the poor.²¹¹ Another important aspect of the holistic approach to protection of human rights is the protection and promotion of the family as both the basic unit of society and a social fundamental good.²¹² Another fundamental and related component of human rights protection is the concern for the elderly, their problems, material needs, health care, and love.²¹³ The Guatemalan Delegation echoed similar concerns. As a multiethnic and multicultural society, it is primarily concerned with the protection of the family on the social, economic, and legal planes because this is where human rights are best practiced with the consent of all members of society who best operate through the

210. See, Statement of Mr. Aldo Carreras, Under-Secretary for Population, Ministry of Internal Affairs of Argentina (June 30, 1999); Statement of Her Excellency, Rossana de Hegel, Under-Secretary for External Cooperation Secretariat for Planning and Programming, Presidency of the Republic of Guatemala (July 1, 1999); Statement of His Excellency, Dr. Arpad Gogl, Minister of Health of the Republic of Hungary (June 30, 1999); Statement of His Excellency, Mr. Max J. Padilla, Minister for Family Affairs and Head of Delegation of Nicaragua (June 30, 1999); Statement of His Excellency, Dr. Jerzy Kropiwnicki, Minister, Member of the Council of Ministers of the Republic of Poland (June 30, 1999); and, Statement of His Excellency, Mr. Peter Magvasi, Minister of Labour, Social Affairs and Family of the Slovak Republic.

211. See Senor Aldo Carreras, Under-Secretary for Population, Ministry of Internal Affairs, Statement at 21st Special Session of the GA (June 30, 1999) at 2.

212. *Id.* at 3.

213. *Id.* at 4.

fundamental unit of society.²¹⁴ Another nation which has undergone dramatic transformation in the last two decades is Nicaragua. Its delegate at Cairo+5 stated that the real issues about human rights and the development of peoples must focus on education, basic health, and other social services.²¹⁵ As a poor country, Nicaragua noted that the role of the family is essential to provide the stable surroundings in which “the child by reason of his physical and mental immaturity, needs special safeguards and care . . .” for it is the family which is best suited to these tasks.²¹⁶

Countries of Eastern Europe recently liberated from the tangle of totalitarian regimes have expressed similar sentiments about the fundamental role of the family in the protection and enhancement of human rights. For example, the Hungarian delegation noted that it is concerned about population decrease; therefore, “measures to promote family cohesion and the ability of families to raise children” are most vital.²¹⁷ In addition, Hungary sees that societies need a moral renewal to address effectively the challenges of the contemporary world; consequently, priority must be given to those policies “where bringing up children wins respect, where the related costs and difficulties are mitigated by a family-friendly economic and social environment.”²¹⁸ The Polish delegation similarly repeated the need for recognizing and safeguarding the primacy of the family in the development of the human race and the evolution of human rights.²¹⁹ In the context of the Middle East, the Islamic Republic of Iran that is currently toiling toward greater self-determination of its peoples also acknowledged the need to address poverty, provide education, and protect the family.²²⁰

If indeed the core concern of human rights is the dignity

214. See Rossana de Hegel, Under-Secretary for External Cooperation, Republic of Guatemala, Statement at 21st Special Session of the GA (July 1, 1999) at 3.

215. See Max J. Padilla, Minister for Family Affairs, Republic of Nicaragua, Statement at 21st Special Session of the GA (June 30, 1999) at 1.

216. *Id.* at 3.

217. See Dr. Arpad Gogl, Minister of Health, Republic of Hungary, Statement at 21st Special Session of the GA (June 30, 1999) at 2.

218. *Id.*

219. See Dr. Jerzy Kropinwnicki, Minister, Member of the Council of Ministers, Republic of Poland, Statement at 21st Special Session of the GA (June 30, 1999).

220. See Dr. Mohammad Farhadi, Minister of Health and Medical Education, The Islamic Republic of Iran, Statement at 21st Special Session of the GA (June 30, 1999).

and worth of the human person—each and every human person—as the Preamble of the Charter of the United Nations declares, then the key issue to the preservation of human rights is, as the Delegations of Samoa and Trinidad and Tobago stated, making people count rather than counting people.²²¹

CONCLUSION

If making people count is at the center of concern for human rights, it is relevant to take stock of what is at the center of human existence. The theoretical rights to which each person is presumably entitled are exercised in reality through each person's relationship with others through shared sense of what is due each person, the *suum cuique*. But, what is due each person depends on what is due others. Rights are not things unto themselves, but are constitutive elements of human existence which frame the relationships that bring individuals together into the various communities where they live, work, play, learn, worship, deliberate, and govern. The fundamental community as recognized by the central principles of international human rights law is the family—the fundamental unit of society.²²² It is in the family that individuals begin to experience and practice their individual and communal identities. It is in the family where the due of each person begins to develop in the establishing and testing of the extent of rights and responsibilities. As a consequence, it is the family—the basic unit of society and human civilization—that must be protected if human civilization and the basic rights of people are to be protected.

However, as this Essay demonstrates, this essential component of human rights law, i.e., the critical role of the family, has been subjected to challenge. This challenge has manifested itself in departures from the basic sources of international law that define the essence of human rights. The essence of basic human rights for the world community is contained within the UDHR, the ICCPR, the ICESCR, and the corresponding principles of customary law upon which these texts are based. It is within

221. See Misa Telefoni Retzlaff, Minister of Health, Samoa, Statement at 21st Special Session of the GA (June 30, 1999) at 1; Manohar Ramsaran, Minister of Social and Community Development, Trinidad and Tobago, Statement at 21st Special Session of the GA (July 1, 1999) at 7.

222. See *supra* note 206.

these three texts and the applicable customary law that universal rights—including those involving family matters—are identified. Yet, one must pause to reflect that it is not only the role and significance of the family that are the subjects of criticism manufactured by some contemporary perspectives on international human rights. It is also the democratic principles that provide the framework for self-determination of peoples that have also come under withering scrutiny. Ironically, the criticism of both the family and the ideals of self-determination of peoples comes from the claim of human rights that emerges from the autonomous self who is severed from the community of others. As has been shown, this criticism originates from powerful NGOs and organs of the UN—none of which is the product of democracy and the exercise of self-determination. Rights are an integral part of human existence, but they do not exist in the vacuum of the autonomous person who exists in isolation from others. Like people, rights exist in relationship with one another.

It is in the family where individuals begin to explore who they are and how they relate to one another. It is also in the family where individuals begin to define what is their right—what is due each person—and what is their duty to accept and respect what is due all others. It is the family where the sense of contribution to both the self and the other takes place where an appreciation of what is each person's due becomes a norm for daily existence. It is an appreciation of this contribution that is key to the role each individual can and must play in the democratic processes that permeate the notion of self-determination of peoples.

The problems that the family and the self-determination of peoples will face are of recent origin. But, the recognition that they are closely bound and are protected under the basic instruments and customary principles of international human rights law is a source of hope for the future. With acknowledgment of this nexus, the challenges to these and to all fundamental human rights as identified in the UDHR and its progeny stand a promising chance of succeeding. The successes that are achieved will not only be for the individuals and families of today, they will also be the successes for human rights of the individuals and families of tomorrow. And, it is from the families of tomorrow that the future generations of human rights protectors who are participants in the exercise of self-determination

and popular sovereignty will come. These are the individuals who will understand well their relationship with others because they understand the strong, vital, and essential tradition that supplies the foundation for human rights and their protection.