

Globalizing Social Rights

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If we look at globalization as a project, i.e. as a deliberate and value-driven process, rather than as an immanent phenomenon, then at least two distinct forms of globalization can be seen at work today: one economic, the other social. It is of course the former that has been the focus of attention in the discourse on globalization, especially in the context of public policy. A major concern here has been the influence of globalization in curtailing the policy autonomy of national governments and in driving policy in a direction that weakens systems of social protection (Mishra 1999; Boyer and Drache 1996). The debate around this issue, however important, is not the concern of this paper. Its main purpose is to focus attention on the other, i.e. the social, form of globalization, which has received far less attention so far in the literature. This paper will examine its development and progress to date and suggest some ways in which it might be advanced more effectively. The relation between economic and social globalization will also be considered briefly in the course of this exploration.

What is 'social' globalization ?

By social globalization we mean international initiatives and developments aimed at establishing social rights - the right of every individual to a basic minimum level of living commensurate with human dignity and a sense of inclusion in the community - worldwide. Whereas economic globalization essentially seeks to extend the scope of market forces across nations and to draw nations closer into the network of a global economy, social globalization aims at the extension of social rights, as an aspect of human rights, worldwide. The former entails the deregulation of economic life and, in principle, the increasing commodification of life-chances. The latter stands for virtually the opposite, i.e. the regulation of economic life and the decommodification of life-chances. If the former is concerned with economic growth, with its promise of higher living standards for individuals, the latter is aimed at raising the social, i.e. collective, standard of living. Although in this sense the economic and the social principles seem to be in conflict in fact they have a great deal of complementarity. Human communities need to combine the economic and social components in a balanced and harmonious way so that each supports the other,

recognizes and respects the need for both elements in a viable social order. Market, efficiency, innovation and productivity need to be balanced with a reasonable level of social security and a sense of community which includes a measure of equity and the sharing of society's resources. An important aspect of complementarity between the two is the potential for social investment, e.g. in education, health, housing and income support, to contribute to the development and conservation of human capital and thus to economic growth.

Directly or indirectly, economic globalization is guided by the values and assumptions of what is referred to as neo-liberal economics in the national and the 'Washington consensus' in the international context. The key features of this approach are well-known. Essentially it seeks to make economic values - free trade, market orientation, quest for profit and the like - as the preeminent societal value. Social globalization, on the other hand, finds its roots in a different set of ideals and values which may be described as a form of global humanism. It is based on the recognition of the essential unity of humankind. Ontologically human beings are seen as equals - as having essentially similar needs - and by virtue of their equality as humans also entitled to the fulfillment of these basic needs. It should be noted, however, that the idea of global social rights is not based on the notion of a 'borderless world' in which people are free to move across national borders, just as money and capital are under the regime of economic globalization, and enjoy the same social rights everywhere. Nor is it a call for worldwide redistribution of resources in order to provide for equal social rights for all. It is a more modest and limited form of globalization, premised on a world comprised of sovereign nation states. It is aimed at the institutionalization of a set of universal norms, i.e. human rights, within each nation state.

The United Nation's (UN) Declaration of Human Rights, which includes in its scope social rights, may be seen as a proclamation of this humanist ideal (Steiner and Alston 1996:1156-60). The International Labour Organisation (ILO), which grew out of the League of Nations after WWI and is now a part of the UN, represents an early institutionalization of the aim of establishing humane conditions of life and labour for workers throughout the world. More particularly, however, two major covenants of the UN, viz. The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), have established the framework for the advancement of human rights world wide. Other covenants, some of which are concerned with the rights of particular groups, e.g. women, and children, have been added to these (Robertson and Merrills 1996: Chs. 2, 3, 8). It is however the ICESCR, the general covenant concerned with economic, social and cultural rights, that is the focus of this paper (1).

The ICESCR and its ratification and implementation by nation states is of course only one form in which social protection is being advanced worldwide. If we extend the notion of social globalization beyond 'social rights' per se to include international action concerned with social problems and issues within a global perspective then a plethora of activities can be subsumed under social globalization. The UN itself has been holding summits or world conferences on issues such as population, environment, women, and social development. These fora have been important in focusing attention on specific issues in their global dimension and in stimulating

international commitment and action (Falk 1999:102, 163-4; Deacon 1997:87-9; O'Brien 2000:81-2). Specialized agencies of the UN such as United Nations International Children's Emergency Fund (UNICEF), World Health Organization (WHO), Food and Agricultural Organization (FAO), and the ILO - the latter in a class by itself as a tripartite organization concerned with workers' rights - as well as United Nations Development Programme (UNDP), United Nations Research Institute for Social Development (UNRISD) and others are also engaged in global action and /or research in their respective areas of competence. Moreover, inter-governmental organizations (IGOs) concerned with economic issues such as the International Monetary Fund (IMF) and the International Bank for Reconstruction and Development or World Bank(WB) are becoming more aware of the need for social safety nets for people adversely affected by their policies e.g. structural adjustment programs (Deacon 1997:61-70; O'Brien 2000:178). Concern for the social implications of economic policies on the part of the economic IGOs is a relatively recent yet not insignificant development. Efforts have also been made through the World Trade Organization (WTO), albeit unsuccessfully thus far, to include a social clause which would enshrine a set of workers' rights in member states (O'Brien 2000: 82-92). Moreover, a growing body of non-governmental organizations (NGOs) and social movements have become increasingly active in the broad area of social globalization (Falk 1999; O'Brien 2000; Weiss and Gordenker 1996).

Nonetheless it is important to distinguish between the project of globalizing social rights per se, i.e. establishing the principle of entitlement to a set of social standards worldwide, from various philanthropic, humanitarian, and developmental action at the international level in which most NGOs are involved. True, these spheres of action and the actors involved overlap and the role of NGOs as advocates for social development is important. However it is the advancement of social rights per se that is the subject matter of this paper. Our focus of attention will therefore be the pursuit of social rights as human rights under the auspices of the UN.

Social rights as human rights

The Universal Declaration of Human Rights by the UN in 1948 included in its purview not only the traditional civil and political rights but also economic and social rights. The acclamation of social rights as a part of human rights was a new and significant departure. It owed a great deal to the traumatic experiences of the Great Depression, the rise of fascism, and the hugely destructive war that followed. It also owed to the contribution of socialist and communist philosophies which emphasized substantive rights, in short social justice, in contrast with the liberal conception of human rights as essentially procedural rights (Steiner & Alston 1996:256-60).

The events of the inter-war years leading to WWII had made it clear that a liberal social order based on civil and political liberties, could not be sustained in the absence of a measure of economic security and social justice. In 1941, President Roosevelt designated 'freedom from want' as one of the four freedoms that should characterize the post-war world order. This vision was further spelled out in his 1944 State of the Union address. It was a remarkable statement,

especially coming from the President of the United States(US), in its listing of a comprehensive set of social rights which, in his words, constituted 'so to speak, a second bill of rights under which a new basis of security and prosperity can be established for all' (Steiner & Alston 1996: 259). In Britain the philosophy underlying the Beveridge Report - the blueprint for the British welfare state - which called for a comprehensive system of social security reflected broadly a similar approach and concern (Pierson 1991: Ch 4). The implication was that right to a basic minimum standard of life - income, education, medical care and shelter - was to be the hallmark of citizenship of the modern democratic state. This idea was to receive an elegant theoretical expression in the work of the British sociologist T.H. Marshall who argued that civil, political, and social rights together formed the substance of the rights of citizenship in the modern democratic society (Marshall 1950; Mishra 1981: Ch 2). In other words, the emergence of social rights was to be seen as one aspect of the transition from a traditional to a modern social order.

In light of the attitude of the US governments later it is remarkable that American delegation to the UN, led by Eleanor Roosevelt, gave strong support to social rights during the drafting of the Universal Declaration in 1947. From the very outset however there were ideological and philosophical differences over the nature of these rights, differences that were exacerbated with the beginning of the Cold War. Put simply, Western nations backed civil and political rights, albeit the reality of the colonial situation belied the rhetoric of rights and liberties, but expressed considerable misgivings about including social rights within the scope of human rights. On the other hand socialist countries championed social rights as the most relevant substantive rights of the people in contrast with the formal 'bourgeois' rights of freedom. The emerging nations of the Third World though somewhat ambivalent also lent support to social rights (Patman 2000:4). Although initially a single covenant or treaty was intended to cover both sets of rights, eventually two separate covenants were drafted. The rationale behind the decision, a result apparently of the insistence of Western powers, was the fundamental difference between the nature of the two sets of rights. The traditional human rights - essentially concerned with civil and political liberties for the individual - could be guaranteed immediately as they mainly required forbearance on the part of the state. They could be implemented through judicial procedures and compliance with the laws could be monitored easily. Social rights, on the other hand, involved substantive rights to such things as income, education, health care and shelter. Granting of these rights required the mobilization and deployment of substantial material resources. These rights could therefore be implemented only gradually, especially by the many developing countries. In the one case the state was primarily required to exercise forbearance - the rights in question were 'negative' - in the other case it had to engage in 'positive' action of mobilizing resources, organizing social services and the like (Steiner & Alston 1996:120, 260-1). The language of implementation employed in the two covenants reflects this difference. In the case of the ICCPR the states parties, i.e. states ratifying the covenant, undertake to 'respect' and to 'ensure'' the rights concerned to all. The obligation to ensure that all individuals enjoy the rights granted under the Covenant is more or less immediate (Craven 1999:107; Nowak 1999:83-6).

In the case of the ICESCR the language is different. Here the ratifying states are instead required to 'undertake steps,' to the 'maximum of available resources' and with a view to 'achieving progressively' the full realization of the stipulated rights (Craven 1999:107). Not surprisingly, therefore, social rights are often referred to as 'programmatic' or 'collective' rights as distinct from the justiciable individual rights of the ICCPR. The implementation and monitoring procedures of the two Covenants continue to reflect this underlying distinction. Thus the ICCPR provides for an Optional Protocol which allows individuals who are denied the stipulated rights to petition the treaty body which then takes up the matter with the state party concerned. This procedure is not available under the ICESCR. The difference between the two sets of rights, notably regarding their justiciability, and its significance continues to be a matter of contention and debate (Nowak 1999:83; Craven 1999). Despite affirmation on the part of the UN about the parity of these rights and indeed the indivisibility of human rights as a whole human rights continue to be equated with civil and political rights thus marginalizing social rights (Hunt 2000).

The ICESCR: Implementation and Monitoring

The drafting of the two Covenants was a slow and contentious process and it was not until 1966 that they were finally adopted by the UN. It took another ten years for the Covenants to receive the minimum of 35 ratifications to come into force. By 1999 some three-quarters (141 out of 185) of the member states of the UN had ratified the ICESCR. However it was not until the late 1980s that a satisfactory system of supervising compliance with the Covenant was put in place (Craven 1999:101, 113). Thus it is only just over a decade that the system has been in operation, not a long time span in the context of the slow moving operations of the UN.

An expert committee (henceforth Committee) appointed by the Economic and Social Council (ECOSOC) of the UN oversees compliance with the Covenant. Ratifying states are expected to provide a preliminary report followed by regular reports at 5-yearly intervals. After a report is received state representatives are invited to meet the Committee and answer questions. Subsequently the Committee provides its response in the form of observations, comments and recommendations. This completes the cycle until the next report is due. The tradition of upholding civil and political rights of individuals has been very much a legal and constitutional one and the process of implementation of the UN Covenants tends to be seen largely in judicial terms. Thus ratification creates a legal obligation on the states parties to comply with the provisions of the treaty including that of regular reporting. Yet the process of supervision and monitoring by the Committee is not meant to be a judicial or even a quasi-judicial one but that of a 'constructive dialogue' with the state parties. The Committee's observations and recommendations are opinions rather than judgments with no sanctions or other measures available for enforcement of the Covenant. Thus despite legal obligation to comply the system is in effect voluntary. The Committee has to rely on the cooperation and goodwill of states parties to produce an adequate report on time, to engage in a 'constructive dialogue', and to respond to the Committee's observations and recommendations - in short to take the ratification of the Covenant and commitment to social rights seriously (Craven 1999).

The record has so far been somewhat mixed. In 1998, for example, reports were overdue from 97 states and as of 1996, 17 had not reported at all in the last ten years (Craven 1999:114). Not surprisingly, the latter included many Third World countries, some involved in civil wars, others headed by dictatorial regimes with little regard for human rights. The Committee has tried to address the problem by reviewing the state of social rights in a country even in the absence of a report. Reports and submissions can be made by concerned organizations and individuals, including specialized agencies of the UN, and more particularly the NGOs. The latter may provide written submissions as well as make oral presentations to the Committee when it is in session. It is largely due to the interest and participation of the NGOs in the process that the Committee has been able to develop its work of monitoring beyond its rather limited brief of waiting for and commenting on reports provided by the states (Craven 1999). However NGOs' involvement in the ICESCR remains quite limited especially when compared with their active participation in the defense of civil and political rights in conjunction with the ICCPR. As one commentator notes, the Covenant still awaits its 'Amnesty International' to spearhead the monitoring of social rights violations worldwide (Baehr 1999:39). Nonetheless interest on the part of domestic NGOs in the international monitoring of social rights in their country has been growing, in part fueled by the apparent inability of domestic political process, in the context of economic globalization, to protect social rights. 'Parallel' reports and other submissions by NGOs on the social rights situation in a reporting country are becoming a rich source of additional information for the Committee.

Other methods used by the Committee to monitor compliance include fact-finding visits (with the consent of the state concerned) in connection with allegations of social rights violations, and representation to governments about reports of serious violation of Covenant rights. For example in 1994 the Committee took up the case of the forcible eviction of a large number of families from their homes in Philippines with the government (Craven 1999:115-6). This quasi-judicial, watchdog role of the Committee in connection with the violation of rights is a relatively recent development and has considerable potential for strengthening the system of monitoring. It allows the more 'justiciable' aspects of the Covenant, concerned chiefly with 'negative' rights, to be invoked for the protection of these rights (2).

More recently, the Committee has proposed an Optional Protocol to provide for a complaint procedure under the Covenant (a similar procedure has been in existence under the ICCPR since 1976). Any individual or a group claiming to be a victim of a violation of rights would be able to make a written representation to the Committee and if admissible the Committee would take the case up with the state concerned. It is expected to strengthen the system of supervision and monitoring in a number of ways. First, by providing the opportunity for complaints the Protocol could enhance the visibility and salience of the Covenant. Secondly, dealing with complaints would help build up a body of 'case law' for the interpretation of the ICESCR. This is important in that unlike the ICCPR the ICESCR has not had the benefit of a tradition of jurisprudence concerned with the interpretation of the law on rights. Third, the Protocol could help to clarify and establish, both for the Committee as well as the states, the precise

implications of the provisions of the Covenant. However it remains to be seen whether the Optional Protocol will receive the UN's approval and if so whether it will receive many ratifications (Craven 1999:118). Other recent initiatives include a special Forum to be held during the session of the UN's human rights sub-commission to consider ways of promoting and protecting social rights. In addition to seeking input from NGOs and governments, international agencies such as the IMF, WB, ILO, UNICEF, UNDP will also be invited to participate (Weissbrodt, Gomez & Thiele 2000:806-7).

Progress of Social Rights: An Assessment

How effective has the ICESCR been in furthering social rights ? What are the main problems it has faced in achieving its objectives and how successful has it been in overcoming them ? Let us begin with the question of objectives. Principally there are four: first that of articulating the norms themselves; second that of securing ratifications; third that of implementation; and fourth that of monitoring and enforcement. The treaty system has been quite successful in meeting the first and second of the objectives. On the crucial third and fourth ones however progress has been far more limited.

1) *Articulating the norms.* Clearly one of the main objectives of the Covenant is to spell out in some detail the nature of social rights as universal norms - an aspect of human rights. The Covenant attempts to do this in a comprehensive manner striking a reasonable balance between generality and specificity (Steiner & Alston 1996:1175-81). Moreover by means of 'General Comments', it has sought to elaborate and interpret in some detail the nature of particular social rights, e.g. those related to housing (Steiner & Alston 1996:316-20). To some extent the problem of precise definition and delineation of the rights is bound up with the third and fourth objectives and will be discussed below. But overall it is fair to say that the Covenant provides an adequate general framework in terms of which specific social rights can be elaborated, e.g. via General Comments.

2) *Securing ratification.* As mentioned above some three-quarters of the nation states in the world today have ratified the Convention and to that extent committed themselves to securing these rights to their people. Considering that ratification is entirely voluntary the number of ratifications is impressive. However the US, the leader of the Western world and now the remaining super-power, has yet to ratify. Despite some effort for ratification on the part of Democratic Presidents, notably Jimmy Carter and Bill Clinton, there has been very little progress. The US Congress has been reluctant to accept any curtailment of national sovereignty. An additional concern has been that ratification of external treaties might empower the executive branch of the government at the expense of the legislative. Indeed it was not until 1992 that the US ratified the ICCPR and then with reservations. Republicans in particular remain strongly opposed to the idea that social rights are a part of human rights (Steiner & Alston 1996: 267-8, 750-71).

3) *Implementation of the Covenant.* This brings us to the heart of the matter. Here the major limitation is the voluntary nature of the process. Although ratification creates a legal obligation to comply with the Covenant this obligation is more nominal than real. The UN treaty system does not envisage the application of sanctions of any kind for non-compliance or any other

mechanism for the enforcement of treaty obligations. An instructive contrast here is with the procedure under European Commission on Human Rights, albeit applicable to civil and political rights only thus far, which ensures far more effective compliance. The Commission, whose membership is drawn from all ratifying states, considers and reports on cases of violations to a Committee of government ministers for further action. There is also a European Court of Human Rights which considers appeals against the Commission's decisions and also makes authoritative decisions on human rights issues. The Court also refers its decisions to the Committee of ministers for action (Robertson & Merrills 1996: Ch 4).

The UN system of rights, by contrast, depends entirely on the goodwill and volition of the states themselves for enforcement. If there is a constraint on the states to comply it is largely a *moral* one. It is important to bear in mind that the UN is not and was not meant to be a system of world government. Despite the language of the UN Charter ('We the Peoples of the United Nations'..) it is an assembly of sovereign nation states which seeks to pursue common goals and objectives largely through inter-state bargaining and consent. Thus in the case of human rights the Declaration, for all its gravitas, merely sets out a "common standard of achievement for all peoples and all nations". The Covenants spell these out in some detail as guidelines for nations to follow. The voluntarism underlying the system results in a huge gap between promise and performance, between rhetoric and reality. As one commentator puts it, a set of 'ambitious norms demanding deep change in state behaviour' is coupled with 'a fragile institution of doubtful effectiveness in applying them' (Steiner 2000:25). Thus ratification becomes a 'costless' way for many nation states for 'siding with the angels' (ibid.,19). In this sense, then, the progress of social globalization remains limited - more symbolic than real.

Apart from voluntary compliance and the absence of sanctions, one of the difficulties of implementation revolves around the flexibility and indeterminacy of the Covenant itself. As noted earlier, since social rights are substantive rights the ICESCR recognizes that the large majority of nations can implement these rights in full only gradually and in line with their economic development. However since no benchmarks have been established to link levels of economic development with social standards whether and to what extent states are complying with the Covenant remains unclear.

In the case of rich nations resource constraints cannot normally be considered a valid reason for not granting social rights to the full. However even here there are problems. For example, would a government facing a large budget deficit and growing debt burden justified in claiming resource constraint and cutting back on social rights? (3). This raises the question of the relation between social rights and economic policy, spending priorities and other aspects of the social policy. There are other problematic issues such as the definition of adequate living standards. For example in Canada around 50% of female single-parents live in poverty (i.e. have an income less than Statistics Canada's 'low income cut off', widely regarded as the poverty line in Canada) and have done so for a long time (Ross 2000: 67, Table 4.3). This seems *prima facie* a clear violation of the social rights of these women. However what constitutes 'poverty' is a contested and contentious issue. Canadian governments - federal and provincial - do not

accept the 'low income cut off' level as an indicator of deprivation. Thus social assistance rates in Canada are far below this national standard of low-income as well as the poverty measure used widely in international and comparative research, viz. 50% of the average household income. The Committee has criticized the social rights situation in several advanced industrial nations, including Canada, on account of homelessness, poverty, denial of social security benefits and the like (UN 1998). But the critique appears ad hoc and lacking in clearly specified standards, e.g. the definition of a poverty line living below which would constitute a denial of social rights (4).

In sum if social rights are about a minimal level of living, commensurate with economic development, that is a matter of entitlement for all human beings then this social standard needs to be specified far more concretely than has been done so far. No doubt the problem of voluntary compliance with standards would remain. Nonetheless both the Committee and the states parties need to be clear about the nature of standards to be met.

4) *Monitoring social rights*. The monitoring process of the ICESCR consists mainly of reviewing periodic reports from the states parties and providing feedback by way of comments and recommendations. There is not much evidence to suggest that the Committee's recommendations are acted upon. The influence, if any, is likely to be indirect. In any case there is little by way of a follow up in between reports. As mentioned earlier reports are often overdue. But if they were filed on time the Committee system could not cope with the workload. It is seriously underresourced in terms of staffing, and technical and secretarial support. The Committee members are honorary or quasi-honorary participants with other occupations. They meet only three times a year over a three-week period. The appointments are largely political, based on UN member states' recommendation and include state officials. Appointees are not necessarily the best people qualified for the job. A recent report on the monitoring system has dealt in a comprehensive manner with these and other issues drawing attention chiefly to the various limitations within which the Committee operates (Scheinin 1999; Leckie 2000).

The Committee has developed ways of monitoring other than periodic review of reports, notably following up on NGO representations on violation of rights. Overall NGO participation is considered of particular importance in strengthening the monitoring system (Steiner & Alston 1996:269; Brett 1999). The proposed Optional Protocol, if approved by the UN, would likely encourage this and could make a substantive impact on the development of the monitoring system (see p. 6 above).

Our brief review of the effectiveness of the ICESCR raises three main issues. First, the voluntary nature of the system. This is a major limitation in that no sanctions or other instruments are available for securing compliance with the Covenant. Second, a further limitation on effective monitoring is the nature of the Committee system and the resource constraints within which it operates. Thirdly, the Committee has yet to address effectively a problem which cuts across the objectives of standard setting, implementation and monitoring, viz. specifying the nature of the social rights especially in relation to the resource capacity of the state party. Of the

three issues, the first raises the question of the sovereignty of nation states within the UN system. To what extent it should and might be curtailed to promote human rights globally ? And where does cultural relativism and the so-called 'Western' nature of human rights fit into this ? Has the Westphalian model outlived its usefulness and if so what should replace it ? This in turn raises the larger ideological and political question of global governance in a shrinking world. These issues cannot be explored here although we shall refer to them at the end of this paper. The second problem is connected with the possibility of reforming the Committee structure and providing adequate resources. The latter may be difficult connected as it is with the larger problem of financing the UN and increasing its resources. Reforms, e.g. to make the Committee more of an 'expert' body and one that could act more independently of the states, remain feasible provided they can garner the necessary support within the UN. The third issue is that of specifying the nature of social rights in the global context. This is a problem to whose solution the treaty system could make a major contribution. Essentially it is a 'technical' rather than a political or bureaucratic problem and thus amenable to solution by the Committee. We therefore discuss this issue in some detail and suggest lines along which a solution might be sought.

Economic Development and Social Standards

A distinctive feature of the ICESCR, unlike the ICCPR on which it is largely modeled, is that its implementation involves a consideration of a nation's material resources. Although the rights specified in the Covenant are couched in general terms and claim universal validity their realization is subject to the different economic capacity of nation states. This important caveat recognizes the reality of a world made up of nation states with extremely disparate levels of economic development. For example Tanzania with a per capita income of \$580 [based on Purchasing Power Parity (PPP)] and a large rural population can hardly be expected to implement and provide the same level of health care, education, housing and income support as say a rich nation like Canada with a per capita income of \$22,480 (38 times that of Tanzania) and largely an urban population (UNDP 1999: 134-7, 197-200, Tables 1 & 16). Indeed this is what is acknowledged in the stipulation that states are expected to achieve the rights enumerated in the Covenant 'progressively' and to the 'maximum of available resources'. However the Committee seems to have made no serious attempt so far to spell out the precise nature of these stipulations, a task essential for standard setting and implementation of these rights worldwide.

The Committee has tried to address the problem by specifying the 'core obligations' or duties of state parties under the Covenant. Thus in a General Comment it states that a 'minimum of core obligations to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party' (Steiner & Alston 1996: 285). This means, for example, that 'a state party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, prima facie, failing to discharge its obligations under the Covenant' (ibid.). It observes finally that 'If the Covenant were to be read in such a way as not to establish such a minimum core obligation, it would be largely deprived of its *raison d'être*' (ibid.).

What strikes one here is the Committee's view that there is a minimal or 'core' obligation arising out of the Covenant that can be specified clearly and at the same time its virtual inability to do this in any objective, i.e. practical or operational manner. Thus the meaning of 'essential' primary health care or 'basic' shelter and housing or 'most basic' forms of education remains unclear. How are state parties to interpret these phrases? Indeed how would Committee members themselves arrive at a practical - not to say judicial or justiciable - assessment of these highly subjective criteria? The ambiguity is compounded by the qualifying statement that any assessment of whether a state has discharged its minimum core obligations 'must also take account of resource constraints applying within the country concerned' (Steiner & Alston 1996:285).

In fact the Committee seems to have been applying such criteria in an ad hoc and commonsensical manner. For example, commenting on Hong Kong's report it draws attention to the high per capita income of the colony on the one hand and its poorly developed and inadequate system of social security on the other. It is highly critical of Hong Kong's record on social protection and points out among other things that some 11% of its population was living in 'absolute poverty' (UN 1996: para.11). Its many recommendations for improving social rights include the adoption of a universal and comprehensive retirement protection scheme (*ibid.*, para.39). It is quite clear that in the Committee's view Hong Kong is not making the effort to implement social rights 'to the maximum of available resources'. On the other hand in the case of a country such as Cameroon the Committee fully recognizes various constraints, e.g. cost of external debt servicing and effect of structural adjustment program in the context of underdevelopment, which are impeding progress (UN 1999).

Although the Committee itself has not tried to formulate the criteria for assessing available resources scholars concerned with the question have come up with a variety of suggestions and proposals. These include taking into account the spending priorities of a state, e.g. the ratio of military expenditure to social expenditure, and comparing its level of social spending with the average of a similar group of countries. The use of quantitative indicators more generally in assessing state compliance has also received some attention. However an expert seminar held on the question concluded that indicators were unlikely to be helpful until the content of the various rights and obligations was clarified (Gomez 1995: 164-5; Robertson 1994).

The upshot is that these deliberations have not led to a resolution of or even a concerted attack on the problem thus far. As Robertson comments the stipulation that states must devote the 'maximum of...available resources' to realizing social rights 'has little more definition today than when it was first written' and its use 'as a measuring tool for state compliance ...(remains).. problematic' (Robertson 1994:694). Indeed Robertson bemoans the 'failure of human rights advocates and authoritative bodies to articulate standards of state performance' that might give 'definition and usefulness' to the stipulation (*ibid.*).

What is surprising is that a less ambitious but more practical approach to the problem of standard-setting, i.e. linking the development of social rights to the economic capacity of nation states, seems not to have been considered. Economic capacity can be measured by per capita national income, arguably the most basic indicator of a country's economic resources. This could be the baseline measure. True it would not tell us what is the "maximum" of available resources for social spending at a given point in time for a particular country. But surely it is more important in this case to follow the spirit rather than the letter of the law, especially in view of the fact that the Covenant is not legally enforceable. However if necessary, such factors as the level of military spending, the extent of indebtedness of a country, effect of structural adjustment programs and other constraints can also be taken into account in considering compliance. But economic capacity is only one-half of the equation. The other half is social standards. How can the two be linked ? Here we have the benefit of a great deal of empirical data and research relevant to this problem in the work of agencies of the UN, e.g. UNDP, UNRISD, UNICEF as well as other ad hoc bodies such as the UN's Summit on Social Development.

An international meeting, following on from this Summit, defines 'basic social services' in the less developed countries (LDCs) as comprising 'basic education and primary health care, including reproductive health and population programmes, nutrition programmes and safe drinking water and sanitation' together with the institutional capacity for delivering the services (Lewis 1999:549). For high income countries, on the other hand, comprehensive programs of income maintenance, medical care, education and housing, may be seen as constituting the 'basic social services'. To this we could add the extent of poverty in the population as a broad indicator of the level of living and deprivation. Here again agencies such as the UNDP, WB, Luxembourg Income Study and others constitute a rich source of data relevant to both rich and poor nations. Thus basic social services plus the level of deprivation (poverty) in a country could provide the core indicators of social standards, and hence social rights, in relation to economic capacity of nations.

What follows is a tentative approach to linking economic capacity and social standards. Using per capita income as the indicator of economic capacity countries could be classified into the following categories: very low(1), low(2), lower-middle(3), upper-middle(4), high(5), and very high(6). Using recent UNDP statistics of per capita income (PPP) the groupings could be as follows(5).

Very low	\$1,500 or less
Low	1,500 - 2,999
Lower middle	3,000 - 5,999
Upper middle	6,000 - 8,999
High	9,000 - 14,999
Very high	15,000 or more

Next we need to formulate the basic attainable standards for each of these categories. We do this for categories 1 and 6 only, the two endpoints of the scale, as examples. For category 6 nations the basic or core social rights for all citizens would be those of adequate income, medical care, affordable housing and access to quality education. Criteria such as 'adequacy', 'affordable' and 'quality' can again be spelled out in some detail and quantified as far as possible. The right to income can usually be assured through a set of programs, e.g. retirement/old age pensions, child benefits/allowances, unemployment benefits, and social assistance. The adequacy of income protection can be tested through a 'proxy' indicator, e.g. poverty. Poverty measures of course vary widely since they are a statement of how high or low we consider the acceptable minimum standard to be. Increasingly researchers tend to use half of average household income as the measure of poverty in developed economies. By this standard, in the early 1990s, the poverty population among 18 rich nations (our category 6) of the Organization for Economic Co-operation and Development (OECD) averaged 9%, with the US at the top end at 19% and Luxembourg at the bottom at 5.4% (UNDP 1999: 149, Table 5). Considering that even the advanced welfare states of Europe have some poverty by this relative standard we may consider a slightly lower level of income, e.g. 40% of average income, as the entitlement or guaranteed income standard in these rich nations. By this criteria there should be no poverty at all in category 6 countries. The other three components of the basic social standard, viz. health care, education and housing can also be spelled out along the lines of universality of access to quality health care and education and affordable housing of a reasonable standard for all. The relevant standards in each case could again be spelled out in some detail. Finally, as at present, the cost of social provision is likely to be in the range of 20-30% of the Gross Domestic Product (GDP) in these countries (6).

Basic social standards in category 1 nations are also about adequate living standards in terms of income, health care, education and shelter albeit in the context of underdevelopment and resource constraint. Social rights would therefore translate into the right to sufficient and nutritious food, safe drinking water, sanitation, primary health care, and free elementary education for all children to say the age of 14, and at least a 'roof over head' for every family (7). Nutritional needs can be secured through a free or subsidized ration of food available to all households. Other needs can be met through basic services underwritten but not necessarily provided by the state leaving scope for a substantial role for NGOs, community groups and other non-state bodies. The poverty measure in these countries would of course have to be different. For example a minimum income equivalent of \$ 1.00 a day per capita, used commonly by international agencies as a measure of poverty, could constitute the floor (UNDP 1999). Since social rights in these countries have to be seen in a developmental perspective targets may need to be set for the growth of and access to the various services. Social spending of between 5-10% of the GDP might be considered as necessary in these countries (8).

The disparity in the basic social standards of the two groups of countries is not meant to imply 'double standards' i.e. that people in poorer nations do not deserve the level of income, health care and education available to the denizens of rich nations. Clearly the Universal Declaration on human rights does not mean to stratify rights in this way. However the de facto stratification of

social standards is a recognition 1) that social rights differ in important respects from civil and political rights and consequently their universality has to be conditional and 2) that until such time that we have a truly global economy, a global government and global citizenship the nation state continues to be the community of fate for its population and defines their living standards and citizenship.

The ICESCR is essentially about the wherewithal for survival with dignity as a member of a national community albeit in the context of the human family. In other words, the specificity of social standards within the framework of a universal concept of rights reflects the current stage in the evolution of social globalization. Just as within each of the six categories of nations there are and will likely continue to be large disparities of income, wealth and status among citizens so would large disparities in living standards between these category of nations. The point is that social rights are not about reducing inequality per se but rather about ensuring that a minimum of basic resources and opportunities are available to all to ensure a life of human dignity and social inclusion. In the present state of the world this cannot be a *global* standard. The principles are universal but their concrete expression has to be specific.

It is important to keep in mind that the ICESCR does envisage international cooperation in helping low income countries fulfill their social rights obligations (Steiner & Alston 1996: 1175, Art.2; 1178, Art. 11). While it does not lay a duty or obligation on rich countries to assist poor countries, not to speak of suggesting any form of international taxation, something along the lines of a moral obligation is implicit. Clearly this raises not only the question of levels of overseas development assistance and other forms of humanitarian assistance but also those of indebtedness, structural adjustment programs and other aspects of global governance which affect the capacity of low income countries for social development.

The basic social standards outlined above refer to category 1 and 6 countries only. Similar standards of income, health care, education and housing as well as poverty need to be formulated for category 2-5 nations thus providing a ladder of social development spanning the entire spectrum of economic development. Within such a framework the key phrases of the ICESCR regarding the obligations of states parties, e.g. 'undertaking steps', 'progressively', and to the 'maximum of available resources' can receive a concrete expression. It could thus provide state parties as well as the Committee with reasonably specific benchmarks regarding social development norms and for assessing how far nation states may be from achieving these. This is not to suggest that it would be easy to achieve consensus on the formulation of social standards geared to economic development. Yet a great deal of expertise and data are now available to facilitate the task. In any case it seems that the Covenant and the UN treaty system could make a substantial contribution to global social rights by developing an authoritative conception of social rights in relation to the economic capacity of nations.

True, even if the problem of setting standards is solved in some such manner as suggested above the problem of voluntary or non-binding nature of compliance with the Covenant will remain. As at present, nation states can chose not to comply no matter how unambiguous the

standards. No doubt, a quarter century of voluntarism has shown the limitations of the Covenant system. And although steps are being taken to enhance the progress of social rights, none of the current initiatives broaches the subject of mandatory compliance with treaty obligations. In this context we have to note that another UN agency, viz. the ILO has been in existence since before WWII and has relied on the voluntary method for the advancement of workers' rights. It has made valuable contribution to advancing workers' rights worldwide by way of norm setting, education, research and advocacy. It has also contributed, indirectly, to the development of social rights. On the other hand it cannot be claimed that the ILO has been effective in establishing workers' rights internationally (Samson & Schindler 1999; O'Brien 2000: 102-6). The limited progress of social globalization, associated with voluntarism, is in sharp contrast to economic globalization which has made rapid strides in recent decades.

Economic vs. Social Globalization

How do these two forms of globalization and the processes involved in their advance differ? And what are the implications? Let us begin with economic globalization. First, it involves the deregulation of the economy. Put simply, all that governments need to do is to dismantle those controls and regulations which restrict freedom of cross-border investment and trade and the convertibility of the currency. In other words, the action required of the state is largely 'negative'. Moreover once the controls and restrictions are removed then the market forces can be expected to take over and in a certain sense the process of globalization of the economy is completed (9). True nation-states must decide to de-regulate and to open up their economies. But once governments decide to globalize the process can be implemented relatively swiftly albeit strong opposition on the part of vested interests and others can slow down the process.

Secondly, economic globalization is not simply a matter of choice on the part of nations. Refusal to globalize might involve substantial economic costs while there may be strong economic incentives for seeking closer integration into the global economy. In any case maintaining a closed economy may not be an option. For many LDCs, transitional economies of central and eastern Europe, and emergent economies of Asia and Latin America opening up of the economy has not been a matter of choice. Economic difficulties, including balance of payments problems, and the need for foreign assistance has often meant being subjected to structural adjustment programs and various conditionalities which require deregulation and the opening up of the economy. Thus directly or indirectly, and to a greater or lesser degree, the policy autonomy of many of these countries has been curtailed with international financial institutions such as the IMF and WB shaping their economic and social policies (McMichael 1996; Michie & Grieve Smith 1999; George 1988).

Thirdly, the process of globalization, e.g. implementation of and compliance with the rules of free trade, liberalization of capital accounts and the like, is usually policed effectively by institutions such as the WTO, IMF and OECD. The rules concerned are spelled out clearly and often in great detail. And they are backed up by direct or indirect economic sanctions. In short

there is a strong element of mandatory compliance (McMichael 1996; Cavanagh 1994; Michie & Grieve Smith 1999).

Fourthly economic globalization is driven by powerful business interests - domestic and international - such as transnational corporations and financial institutions. They have a stake in the process and ensure its progress.

In sum, economic globalization as a process shows the following characteristics. First, essentially it requires the opening up of the national economy to permit freer cross-border flow of finance, trade and investment. The action required on the part of the state is largely ‘negative’ and can be accomplished within a short time. Second, although nation states are nominally free not to globalize there are often strong economic incentives to do so. They may also be under pressure from powerful trading partners, e.g. the US, to open up their economies. Compulsion to globalize may result from structural adjustment loans, IMF bail outs and the like. Third, monitoring economic globalization and securing compliance with the process is relatively easy. Direct or indirect sanctions are available for enforcing rules, e.g. through the WTO for trade-related measures or through the IMF for non-compliance with loan conditionalities. Fourth, powerful economic interests such as transnational corporations and financial institutions act as a strong driving force, nationally and internationally, for globalization.

Social globalization differs on all four points. First, globalization of social rights primarily requires ‘positive’ action on the part of governments, e.g. mobilization and redistribution of resources and the organization of a variety of services. And although most rich OECD countries have a substantial body of social provision in place compliance may require additional spending or new services or other adjustments in social policy. In the case of the LDCs the process is likely to be slow and long drawn as they are unlikely to be able to meet social rights obligations within a short time. Thus social globalization lacks the deregulatory simplicity and ‘one-off’ character of economic globalization. Second, there are no material incentives whatsoever for social globalization. The rewards, if any, are ideological and normative. Thus ratification of human rights treaties remains popular as it has visibility and confers the badge of virtue on nation-states immediately. On the other hand there are no accolades for conscientious implementation and reporting. Neither are there any costs involved with non-compliance. If there is, so to speak, no carrot neither is there a stick involved in the process. With no compulsion or pressure from external sources, other than from the UN Committee, for compliance much depends on the effectiveness of domestic pressure groups and social movements and the commitment of governments themselves to social rights. Third, the monitoring of social globalization and securing compliance with the ICESCR is difficult for two main reasons: the diffuse nature of the obligations under the Covenant, and the absence of sanctions available to the UN Committee. As we have argued above, however, there is at least scope for developing clear benchmarks for social obligations in relation to economic capacity. Fourth, there is no counterpart to transnationals and global financial institutions in the arena of social globalization. True as far as civil and political rights are concerned global NGOs, such as Amnesty International and International Commission of Jurists, act as influential advocates. But in the case of social rights

there are no comparable NGOs involved. Most relevant NGOs, e.g. Oxfam, tend to be oriented towards need or welfare rather than rights. Globalization of social rights does find support from a variety of actors, e.g. sympathetic governments, sections of the UN bureaucracy, the ILO, professionals, academics and other members of the 'epistemic community' concerned with social rights (Deacon 1997: Chs.3,6). But what is missing so far is a global social movement that could act as a strong advocate for social rights worldwide. These are some of the basic differences between the two forms of globalization. They help us understand the relatively modest progress of social globalization thus far.

Concluding Remarks

The incorporation of social rights within the corpus of human rights in the Universal Declaration must be considered a landmark development. It puts social rights at par with the traditional liberal rights - individual civil and political liberties - and demands, at least in a normative and moral sense, that all nations honour their commitment to these substantive rights of human beings. The machinery of a Covenant, its ratification, reporting on its implementation by nation states and the supervision of the whole process by a UN Committee represent a measure of progress in the institutionalization of social rights worldwide. Although the system of ratification and implementation of the Covenants remains voluntary, a global social charter of sorts has been drawn up which, through the ratification process subjects the social policy of nation states to international norm-setting and monitoring. At least at this largely symbolic level nation states have voluntarily agreed to surrender some of their sovereignty and to be accountable to the international community. In so far as this entails the loss of policy autonomy it works in a direction almost the opposite of that resulting from economic globalization, i.e. nation states are constrained to develop and consolidate, rather than curtail, social rights.

In the national context, the provision of public services such as education, health care, housing and income support is rarely seen in terms of promoting human rights. However the idea of a national minimum standard of living as a right of citizenship has been an important underpinning of the welfare state in industrialized democracies since WWII. Over the last two decades the upsurge of neo liberal political economy and economic globalization has put the idea of social citizenship very much on the defensive. In the context of a competitive global economy social protection measures are being seen as impediments to flexibility and adaptation. It is therefore particularly significant that at a time of the ascendancy of neoliberalism and economic globalization the UN's commitment to social rights as human rights has not only not weakened but has rather been strengthened. Despite the inherent limitations of the UN Covenant, based as it is on the Westphalian premise of state sovereignty and the notion of furthering social rights through dialogue and persuasion, the idea of social rights as a component of basic human rights has made some progress.

In fact the framework of human rights becomes particularly significant for social protection in the context of economic globalization. For the general thrust of the latter is towards the curtailment of the social state. The logic of globalization implies that systems of social protection, beyond a

minimal safety net, are unaffordable and dysfunctional in a competitive global economy. Nation states are under pressure to deregulate and to retrench social protection (Mishra 1999). Against this current, driven by strong national and global actors, the entrenchment of social rights within a universal charter of fundamental human rights puts the former - at least in terms of values and social norms - beyond the pale of commerce and economics. Just as economic imperatives cannot be allowed to override civil and political rights (since there are other values and imperatives) so they cannot be permitted to override social rights - rights to which people are entitled by virtue of their humanness. This, above all, is the outstanding normative significance of social globalization. Arguably, the human rights framework therefore provides a stronger legitimacy than the notion of citizenship rights to the idea of a basic minimum standard of life as an entitlement.

The public domain, which is a repository of a variety of important functions and values for the national community, must therefore include in its purview the development and protection of social rights. As NGOs and global social movements increasingly challenge economic globalization, with its implied human deficit, they are also beginning to see the potential of UN's charter of social rights as a unique vehicle for promoting the idea of social justice as an integral part of the constitution of human communities. Despite important differences between the largely 'negative' rights of civil and political liberties and the largely 'positive' rights of social standards the notion that the latter form an integral part of human rights has been gaining acceptance. Moreover the speed and intensity of economic globalization and the constraints which it is imposing on the social policy of nations has provided a fresh impetus to take social globalization seriously. Its further development and progress will of course depend on a variety of factors: the role of the NGOs and global social movements in not only challenging economic globalization but in taking a proactive stand on the globalization of social rights; greater awareness on the part of domestic NGOs of the potential of the ICESCR for putting pressure on governments to comply; the strengthening and reform of the UN treaty monitoring system and the progress of 'cosmopolitan democracy' more generally (10).

Finally, the importance of the problem addressed in this paper in some detail, viz. the specification of social standards in relation to economic development, should not be underestimated for the establishment of social rights worldwide.

In conclusion, we must note however that the potential of the Covenant for advancing human rights remains underutilised. Some reasons for this have been suggested in this paper. However it is an issue that remains underresearched and merits further study. Economic globalization has justifiably claimed the centre stage for a long time. It is time to pay more attention to social globalization.

Notes

1. Although the title of the Covenant includes economic and cultural rights, in fact the rights enumerated are very largely those that would be considered social rights, i.e. the right to an adequate standard of living including work, income, education, health care and housing.

2. 'Justiciability' refers to a rule being susceptible to judicial or quasi-judicial determination. 'Negative' rights, which forbid certain forms of action or behaviour, seem to have a stronger base of justiciability than 'positive' rights which may be less precise and conditional, e.g. resource-dependent. In the case of housing, for example, right to protection from unlawful eviction would be an example of the former, right to adequate housing of the latter.

3. Canada's budget of 1995 is a case in point. It slashed social spending heavily and introduced changes in social programmes which can be seen as curtailing social rights. This drastic course of action was justified almost entirely by the need to reduce the burgeoning deficit, a reasoning the UN Committee did not accept. In its concluding observations on Canada's report the Committee wrote that in addressing the budget deficit by reducing social expenditure the government had failed to pay 'sufficient attention to the adverse consequences' for Canadians in general and 'vulnerable groups in particular' (UN 1998: 2). It went on to criticize Canadian governments (federal and provincial) for such measures as retrenchment of unemployment insurance benefits, abolition of the Canada Assistance Plan, and the sharp reduction in social assistance rates in a number of provinces (UN 1998).

4. In response to the Committee's observations about poverty in Canada both federal and provincial governments reject 'relative' measures of poverty, such as the 'low income cut off,' as inappropriate in favour of 'absolute' or subsistence measures (Canada 1997). The Committee concludes by admitting that in the 'absence of an official poverty line' it is 'difficult to hold the federal, provincial and territorial governments accountable to their obligations under the Covenant' (UN 1998:2).

5. The six-fold classification of countries is meant to strike a balance between too few categories, which would fail to do justice to important differences in economic capacity, and too many which would be redundant. Clearly this is meant to be a provisional and illustrative classification which may need revision in light of further exploration of the problem. The same is true of the choice of income cut offs for the six groups. Examples

of countries which belong to these six categories are as follows: (1) Nepal, Nigeria, Tanzania (2) India, Nicaragua, Sri Lanka (3) China, Jamaica, Philippines (4) Brazil, Hungary, Mexico (5) Greece, Korea, Uruguay (6) Canada, Japan, UK.

6. In 1990 for example social expenditure in OECD countries (excluding Iceland, Switzerland and Turkey) averaged at 22% of GDP, ranging from 33% in Sweden to 11.5% in Japan (OECD 1994: 59-61, Tables 1b and 1c). The comprehensive welfare states of Western Europe tend to spend around 25% or more of their GDP on social welfare. However these gross expenditure figures should be treated with some caution. Net spending, e.g. after

deducting taxes on transfers, in big spending welfare states tends to be lower. In any case publicly guaranteed living standards can be assured in a variety of ways, including mandated private provision of benefits and services, which would mean different levels of public spending.

7. For example in Nepal, a category 1 country, 29% of the population was without access to safe water, 90% to health services and 84% to sanitation. For India, a category 2 country, the corresponding percentages were 19, 25 and 71 (UNDP 1999:147, Table 4). The figures are from a comparative international series with a wide time frame (1981-92 for health services and 1990s for the other two) and refer to the most recent available data.

8. For example in the mid-1990s, public spending on health and education as a percentage of GDP was 4.3% in Nepal, 4.1% in India, and 4.8% in Sri Lanka (UNDP 1999: 189-90, Table 13). Estimates of other forms of spending including consumer subsidies, anti-poverty programmes and the like are hard to come by.

9. However total globalization is an ideal type concept. In practice liberalization of trade, finance and investment is rarely complete. Many restrictions, barriers and limitations, e.g. export subsidies, non-tariff barriers to imports, domestic content rules etc. remain. Moreover a time frame may also be involved in the process, e.g. for the implementation of trade liberalization under WTO rules. And in this sense globalization can also be seen as a continuum with scope for further development. Nonetheless substantial economic liberalization can be achieved within a short time, e.g. in the area of finance.

10. For an elaboration of the idea of cosmopolitan democracy see Held (1995: Ch 12). For a less radical agenda for the reform of global governance see Commission on Global Governance (1995).

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