

# FROM INDIVIDUAL TO COLLECTIVE RIGHTS, TO THE RIGHTS OF MANKIND:

## THE HISTORICAL EVOLUTION OF THE SUBJECT OF HUMAN RIGHTS

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A glance at history shows that the progressive development of human rights has been considerably conditioned by the evolution of social relations, and the forms in which these relations were institutionalized. It was not in abstract that newly recognised human rights came to be defined, but in the context of the modern state and that of an industrial and technological civilization; in the context of the bitter experience of two World Wars and the social and political evolution after 1945. This evolution has been characterized by a process of decolonialisation, by a growing sense of solidarity among mankind, and by a widespread awareness of the delicate ecological balance of our one and only Earth which is limited in its natural resources.

The remarkable thing about the evolution of human rights is that it appears to have followed in a given direction. In fact, we notice the widening of the concept of human rights which had originated in the eighteenth century. Throughout the whole development of human rights, a certain quality has come gradually in evidence, due to a progression in which continuity is much more marked than discontinuity. This can be seen in the conceptual evolution of the *subject* of human rights. In what follows, I intend to show that throughout the last two centuries, particularly since the beginning of this century, there has been a continuity in the progressive widening of the subject of human rights from the *individual* to a *collectivity* and now to *mankind* as a whole. As we shall see, this conceptual evolution has been the result of different historical currents during which the antecedent achievements in the field of human rights have been reinterpreted in the light of new ethical demands.

### **I. Individual Rights**

Over the past two hundred years, the modern concept of human rights

has proved to be one of the most creative and enduring forces in the struggle for human dignity and freedom. Although the idea of the inalienable rights of the human person was already developed by philosophers and politicians during the late seventeenth and early eighteenth century, it was in the latter part of the eighteenth century that great steps were made in the Western history of human rights.<sup>1</sup> Human consciousness was awakened from its slumber to the awareness that rights belong to all human persons, irrespective of one's social class and position.

One of the early modern stages in the human rights movement was the English Bill of 1687 in which the rights of English Barons and citizens against the crown were defined. In the first American Declaration of Rights in 1776, a qualitative step was taken with respect to earlier achievements in human rights; it is not that individual rights were guaranteed, but that the power of the sovereign state as a whole was curtailed. In addition, rights were not only guaranteed for a particular group of people, but for everyone.<sup>2</sup> In fact, the Virginian Declaration of Rights, dated 12th June 1776, read:

.... all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.<sup>3</sup>

In Europe, the revolutionary ideas of the late eighteenth century opened up a new range of possibilities for changing the nature and structure of the political process. In 1789, shortly after the great revolution in France, and fifteen years after the Virginian Declaration of Rights, the French National Assembly promulgated, as a document prefixed to the constitution, its 'Declaration of the Rights of Man and of Citizens' – a declaration firmly rooted, in language and in sentiments, in the American Declarations and in the political and philosophical tradition that shaped them. The French Declaration opened with the following article: "Men are born, and always continue to be free and equal in respect of rights. Civil distinctions, therefore, can be founded only on public utility."<sup>4</sup>

1. For a philosophical and historical overview of the development of the pre-modern concept of human rights, see A.KOSENBAUN, (ed.), *The Philosophy of Human Rights* (Aldwych Press, London 1980) 10-22; J.M. AUBERT, *Loi de Dieu, lois des hommes*, (Le mystère chrétien: théologie morale, 7; Tournai 1964) 98-122; and *id.*, *Le Droit Romain dans l'oeuvre de Saint Thomas*, (Bibliothèque Thomiste 30; Paris 1955) 89-108.

2. W. HUBER, "Human Rights – A Concept and its History", in *Concilium* 124 (1979) 5.

3. F.E. Dowrick, *Human Rights: Problems, Perspectives and Texts* (Westmead; Saxon House 1979) 155.

4. "Les hommes naissent et demeurent libres et égaux en droits. Les distinctions sociales ne

The American and French declarations were doing something startlingly new. They claimed 'liberty' and not 'liberties' for their citizens, and began to assert general not specific rights. According to E. Kamenka, these declarations proclaimed for the first time in history that the constitution of society was not divinely ordained, and that the affairs of state were not the special and particular prerogative of the king and his governors. They converted men from subjects to citizens.<sup>5</sup>

These declarations mark the beginning of the modern history of the human rights movement. The civil and political rights acquired during the eighteenth century are generally known as 'the first generation' of human rights; they are mainly rights asserting **freedom from** certain restrictions and oppression. They required the prohibition of interference by the state in the freedom of the individual. This achievement, which recognized every individual as the subject of rights, was the initial stage for further acquisitions and developments.

The historical context of the nineteenth century was completely different from that of the eighteenth century. The social and economic effects of the industrial revolution began to emerge. The discrepancy between the theoretical aspect of the Liberal Constitutions which claimed freedom for everyone and the actual freedom enjoyed by the people, particularly by those in the lowest stratum of society, became more apparent. Liberalism accumulated the wealth and strengthened the power of a few capitalists, while creating social and economic slavery by making a large section of society dependent on the owners of the tools of production. The Marxist analysis of society had awakened human consciousness to the realization that the political and civil rights gained in the earlier century were in actual fact without any positive result unless redeemed by social and economic rights.

Marx rejected the eighteenth century statements on the rights of man saying they were a bourgeois illusion which simply reinforced the position of the élite, and did nothing to support the masses in their struggle.<sup>6</sup> The eighteenth century constitutions abolished feudal property, only to favour bourgeois property.<sup>7</sup> He maintained that the Constitutions of the United

peuvent être fondées que sur l'utilité commune." Article 1 of the "Declaration of the Human Rights of Man and of the Citizen, 1789", in F.D. DOWRICK, *op.cit.*, app. G, p. 153.

5. E. KAMENKA, "The Anatomy of an Idea", in E. KAMENKA & A. ERH-SOON TAY, eds., *Human Rights* (London 1976) 9.

6. R. O'GRADY, *Bread and Freedom. Understanding and Acting on Human Rights* (World Council of Churches; Geneva 1979) 10.

7. K. MARX, "The Eighteenth Brunaire of Louise Bonaparte", in L.S. FEUER, ed., *Marx AND Engels. Basic Writings* (Doubleday; London 1975) 300. Engels also held this opinion. Cf. F. ENGELS, "On Historical Materialism", *Ibid.*, p. 98ff.

States (and especially that of France), continued the same divisive pattern and social inequality. He distinguished the political state of the citizen with its common interest in a universal world from the civil society of the bourgeoisie and their private interests in the world of trade and industry.<sup>8</sup> But in the liberal constitutions which had come into being through political revolution, the citizen was the bourgeoisie, and the so-called “*rights of man*, the *droits de l’homme* as distinct from the *droits du citoyen*, (were) nothing but the rights of a *member of civil society*, that is, the right of egoistic man, of man separated from other man and from the community”.<sup>9</sup> The liberal theories split man into two: a private part and a public part. The public part has the right that the other part be private. These rights, Marx believed, implied the separation of man from man, while his own conception of revolutionary emancipation envisaged the union of man with man – a union that was social rather than legal and political.<sup>10</sup>

Marx’s criticism of the American and French constitutions was therefore the main vehicle for the first expansion of the human rights contained in the nucleus of the eighteenth century achievements. It led to the emergence of a new set of human rights of a different nature from the ‘negative’ rights of the earlier century. By the end of the nineteenth century, the political and civil rights gained during the eighteenth century were enriched by social and economic rights. This evolutionary development marks the ‘second generation’ of human rights whose basic characteristic is **freedom to** certain things. But it was the individual human person who remained the subject of both the first and the second generations of human rights.

During the twentieth century, different historical circumstances have contributed to the further development and evolution of human rights. Undoubtedly, the most important historical events of this century were the two World Wars. Within a span of almost thirty years, the brotherhood of mankind was twice shattered by hatred, violence and destruction. The horror of the two wars induced various countries to take another important step which was a breakthrough in the historical evolution of human rights. As a result of the bitter experience of the two World Wars, there was a widespread conviction that the individual’s political, civil, social, economic and cultural rights needed the protection and safeguard of an international

8. E. KAMENKA, *op.cit.*, p. 62.

9. K. MARX, “On the Jewish Question”, in *Karl Marx and Fredrich Engels: Collected Works*, vol. III (Lawrence & Wishart; London 1975) 162.

10. K.R. MINOGUE. “Natural Rights, Ideology and the Game of Life”, in *Human Rights*, p. 13.

organisation.<sup>11</sup> This international concern led to the establishment of the United Nations Organisation (UNO) with its main purpose, as declared in the first article of its Charter, to maintain peace and security, to achieve international cooperation, and to promote and encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion. The first step taken by the UNO was the proclamation of the Universal Declaration of Human Rights, in its General Assembly on the 10th December 1948.

Both the Liberal and the Marxist traditions played a very important role in the formation of the Universal Declaration of Human Rights. The civil and political rights are recognized in articles 2 and 21. Articles 23 and 27 deal with the second cornerstone of the Declaration, namely, the social, economic and cultural rights – the rights to which everyone is entitled as a member of society. Accordingly, after the Second World War both aspects of human rights emerged on the international level. Still, as T.C. Van Boven remarks, the main focus of the Declaration is the individual human person: “It is... undeniable that the general orientation and outlook of the Universal Declaration of Human Rights is towards the individual person.... Most provisions of the Universal Declaration begin with the words ‘everyone has the right’ ”.<sup>12</sup>

## II. Collective Rights

After 1948, new and more vital issues emerged. During a span of almost twenty years, a salient change occurred on the international scene of the human rights movement. Towards the end of the 1950s and the early 1960s, another historical phenomenon contributed this time not to the protection of individual human rights, but to the extension of the subject of rights from the individual to the collectivity. For it was realized that it is not only the individual, but also a group or a race of people who could be exploited by another group or country. Rights of groups were recognized internationally for the first time in the General Assembly of the United Nations in 1966. These collective rights are termed the ‘third generation’ of human rights: these are the rights to **solidarity**.<sup>13</sup>

11. S. MACBRIDGE, “The Universal Declaration of Human Rights – 30 Years after”, in A.D. FALCON, ed., *Understanding Human Rights* (Cahill Press; Dublin 1980) 7-20.

12. T.C. VAN BOVEN, “Distinguishing Criteria of Human Rights”, in K. VASAK, ed. *The International Dimensions of Human Rights*, vol. I, (Greenwood Press; Westport) 54.

13. K. VASAK “Pour les droits de l’homme de solidarité”, in *Leçon inaugurale pour la dixième session d’enseignement de l’Institut International des Droits de l’Homme* (Strasbourg, 2-27 juillet 1979, par. 10, p. 3) distinguished the three generations of human rights as corresponding successively to each of the elements of the motto of the French revolution:

It is important from the outset to clarify the meaning of a 'group'. T.C. Van Boven defines a 'group' as a collectivity of persons which has special and distinct characteristics and/or which finds itself in specific situations or particular conditions. These special and distinct characteristics may be racial, ethnological, linguistic or religious. The specific situations or conditions could be determined by political, economic or cultural factors. A group ranges from an entire people to a small minority.<sup>14</sup>

Though the recognition of collective rights in international law belongs to recent history, their roots can be traced back to the eighteenth and the nineteenth centuries. In the following paragraphs, I intend to explain the three major factors which paved the way for the emergence of collective rights on the international level. Special attention will be paid to the relevant events of this century. One of these factors was the trade-unions' struggle for their freedom of association, and for their right to bargain collectively. The legislation about unions, for instance the Trade-Union Act in 1971 in England, which effectively legalized trade unions, was a move in this direction. This enabled the workers to bargain not individually, but collectively, for better wages, shorter working-hours and better working conditions.<sup>15</sup>

During the first half of this century, before the Universal Declaration of Human Rights was proclaimed, the International Labour Organisation (ILO) made important efforts to promote and protect freedom of association, even in the case of trade unions. Decisions on this subject, adopted by the International Labour Conference in 1947, were taken to request the ILO to proceed with its efforts to prepare one or several international conventions providing for the implementation of the principles proclaimed by the Conference. On 9th July 1948, the General Conference of the ILO adopted the 'Freedom of Association and Protection of the Rights to Organize Convention', under which State Parties guaranteed, among other things, the workers' and employers' right

liberté, égalité, fraternité. The third generation is the generation of human rights predicted on brotherhood ('fraternité'), in the sense of solidarity. Cf. PH. ALSTON, "A Third Generation of Solidarity Rights: Progressive Development or Obfuscation of International Human Law?", in *Netherlands International Law Review* 29 (1982) 307-322; S.P. MARKS, "Emerging Human Rights: A New Generation for the 1980s?", in *Rutgers Law Review* 33 (1981) 435-52; A. HOLLEAUX, "Les lois de la 'troisième génération' des droits de l'homme", in *Revue française d'administration publique* 15 (1980) 45-73; J. RIVERO, "Le problème des 'nouveaux' droits de l'homme", (Unpublished paper read during the Tenth Study Session of the International Institute of Human Rights).

14. T.C. VAN BOVEN, "Distinguishing Criteria of Human Rights", in *The International Dimension of Human Rights*, p. 55.

15. A.F. STWIMTHAL, "Trade Unions", in *Encyclopedia Britannica*, vol. XVIII, (Helen Hemingway, Benton Press; Chicago/London/Toronto) 563-570.

to establish organisations. The Convention also stated that public authorities have no right to interfere or restrict the workers' or employers' right to form associations.<sup>16</sup> On the 1st of July 1949, the General Conference of the ILO adopted the 'Right to Organize and Collective Bargaining Convention', requiring State Parties to provide protection for workers against acts of anti-union discrimination.<sup>17</sup> State Parties further undertook to establish appropriate machinery to ensure respect for the right to organize, and to take measures to encourage and promote voluntary collective negotiations between employers or employee's organizations.<sup>18</sup>

It is interesting to note that in the legal language used in the international discussions on trade unions, though there is an explicit reference to the rights of the individual to form and join trade unions, there is no such reference to the collective rights of trade unions, or to the rights of the group as such. Article 23(4) of the Universal Declaration of Human Rights is a case in point.<sup>19</sup> However, the explicit recognition of trade-union rights on the national level was a move in the direction of the emergence of collective rights in the international Covenants of 1966.

The second historical factor was the struggle of minority-groups for their own rights. Under the traditional international law, a sovereign state had discretionary power in the treatment of its nationals. When, however, the treatment meted out by a state to its own citizens, particularly to religious or ethnic minorities, was so arbitrary and so persistently abusive and cruel that it shocked the conscience of mankind, other states sometimes took it upon themselves to threaten or even to use force in order to come to the rescue of the oppressed minority. A major example of such 'humanitarian intervention' was the action, including military action, agreed on in 1827 by Great Britain, France and Russia against the Ottoman Empire in favour of the Greeks. Similar interventions were undertaken by several European powers to end massacres of Christians in Syria (1860), to bring relief to the persecuted population of Crete (1866-68), and in the last third of the nineteenth century, to end the persecution by Turkey of Christian populations in various Balkan countries under Turkish sovereignty.<sup>20</sup>

A limited protection of minority-groups on the international level was achieved after the First World War. In some of the peace treaties, in the

16. *Human Rights. A Compilation of International Instruments* (United Nations; New York 1983) 114-6.

17. I. BRAWNLIE, *Basic Documents of Human Rights* (Clarendon Press; Oxford 1981) 196-9.

18. *The United Nations and Human Rights* (United Nations; New York) 87-8.

19. Art. 23(4) reads: "Everyone has the right to form and to join trade unions for the protection of his interests."

20. E. SCHWELB, "Human Rights", in *The New Encyclopaedia Britannica*. vol. III, p.1184.

special so-called minorities treaties, and in declarations made after World War I, a number of states of Central and Eastern Europe and one state in the Middle East (Iraq), were made to accept a series of obligations towards their racial, linguistic and religious minorities: all of their nationals were to be equal before the law and were to enjoy the same civil and political rights without distinction as to race, language or religion. In 1947, a Sub-Commission on the 'Prevention of Discrimination and Protection of Minorities' was established. It concerned itself with the protection of ethnic, religious and linguistic minorities. Between 1947 and 1962, the Sub-Commission considered studies and reports dealing with many aspects of this question, and drew up texts which it recommended for adoption by the Commission on Human Rights, the Economic and Social Council, and the General Assembly. It also formulated articles which it recommended for incorporation in the Universal Declaration of Human Rights and the International Convention on Human Rights.

In 1948, the General Assembly of the United Nations decided that it would not include a specific provision on the question of minorities in the Declaration of Human Rights. At the same time, it adopted a resolution in which it stated that "the United Nations cannot remain indifferent to the fate of minorities", adding that "it is difficult to adopt a uniform solution of this complex and delicate question, which has special aspects in each state in which it arises". In 1953, the Economic and Social Council, at the suggestion of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities, recommend that "in the preparation of any international treaties, decisions of international organs, or other acts which establish new states, or new boundary lines between states, special attention should be paid to the protection of any minority which may be created thereby".<sup>21</sup>

Although in the first half of this century the rights of minorities were firmly established in various countries, still the main conditions behind the protection of minority-groups was always the individual. It is the individual who has the right to belong to his ethnic, religious or linguistic group; no mention was made of the group's right to exist. Minority-groups were for the first time considered as subjects of rights in the International Covenants of 1966. However, discussions on the rights of the individual to belong to a minority-group and the concern of the UNO for minorities were other salient factors which furthered the conceptual development of the subject of human rights on the international level.

21. *The United Nations and Human Rights*, pp. 111-7. See *The International Protection Of Minorities*, Report No. 41 in the series of *Minority Group Rights*.



The period of decolonialisation, as a result of the growing awareness of the peoples' right to self-determination, was another important factor behind the emergence of collective rights in international law. Although the will to self-assertion on the part of various national groups can be traced back to the early nineteenth century,<sup>22</sup> the greatest achievements in the field of the rights to self-determination occurred during the twentieth century, particularly because of the UNO, which has adopted this principle as one of its objectives since its foundation. In the first article of the Charter, it is clearly stated that one of its purposes is "to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples".<sup>23</sup> Article 55 of the Charter was adopted "with a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples". Still, the Universal Declaration of Human Rights does not refer to the right of self-determination, but in a general sense proclaimed the right of everyone to "liberty".<sup>24</sup>

In December 1952, the General Assembly of the UNO recognized that "the right of people and nations to self-determination is a prerequisite to the full enjoyment of all fundamental human rights", and that "every member of the United Nations, in conformity with the Charter, should respect the maintenance of the right of self-determination in other states".<sup>25</sup> Then, on the 14th December 1960, the General Assembly solemnly proclaimed the necessity of bringing to a speedy and unconditional end, colonialism in all its forms and manifestations. It adopted a Declaration on the Granting of Independence to Colonial Countries and Peoples.<sup>26</sup> In 1961, the General Assembly set up the 'Special Committee on the situation with regard to the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples', and required it to

22. P. PEETERS, "The Rights of Nations to Autodetermination", in *World Justice* 3 (1961) 147-183.

23. *Charter of the United Nations and Statutes of the International Court of Justice*, p. 3. Art. 55 of the Charter also declares that the United Nations aims to create those "conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of people". *Ibid.*, p. 20.

24. *United Nations Action in the Field of Human Rights* (New York 1983) 16.

25. *Ibid.*, pp. 16-18.

26. General Assembly Resolution 1514 (XV) of 14th December 1966. See also *Human Rights. A compilation of International Instruments* (New York 1984) 20-1; *United Nations and Decolonialisation* (New York 1984) 4 and K.J. PARTSCH, "Fundamental Principles of Human Rights: Self-Determination, Equality and Non-Discrimination", in *The International Dimension of Human Rights*, pp. 65-6.

examine the application of the Declaration and to make proposals and recommendations on the progress and extent of its implementation.<sup>27</sup>

The process of decolonisation which followed during the sixties as a result of these discussions within the UNO was certainly a major factor in bringing about the international acceptance of collective rights.<sup>28</sup> Many states participating in the discussions within the United Nations, were mainly concerned with the values reflecting their struggle against colonialism. These values were not included in the Universal Declaration of 1948, and accordingly not did not make part of the accepted human rights ideology. These states insisted that the two other instruments of the International Bill of Human Rights, namely the two Covenants, one dealing with Economic, Social and Cultural Rights, the other with Civil and Political Rights, should include the right of all peoples to self-determination as well as to economic self-determination, that is, to sovereignty over their resources. The Third World States were not deeply interested in individual rights, and not even in socio-economic rights. Their real interest was in the economic development of their society as a whole. They wanted to give priority to the collective rights, that is, rights of the "people", against outsiders, rather than to the rights of the individual against his own government.

The first reaction of the Western States was one of resistance, since they argued that both Covenants speak about rights of a "people", not of any individual, surely not – like human rights generally – rights of individuals against their own society. They also argued that the content of the norms as proposed by the Third World countries was highly uncertain and controversial.<sup>29</sup> Their arguments did not prevail, for collective rights now head both Covenants. In fact, the first part of article one of both International Covenants on Human Rights sets out a collective right, that is, the right of all people to self-determination. By virtue of this right, all people "freely determine their political status and freely pursue their economic, social and cultural development".<sup>30</sup> The right to self-deter-

27. *The United Nations and Human Rights*, pp. 31-3. See J.D. HAROLD, *Self-Determination within the Community of Nations* (A.W. Sijthoff; Leyden 1967); A. RIGO-SWEDA, *The Evolution of the Right of Self-Determination. A Study of the United Nations Practice* (Leyden 1973) and T. VEITER, "Federalism and the Right of Peoples to their Native Soil and their Right to Self-Determination", in *World Justice* 9 (1967) 22-47.

28. F. LATTANZI, "L'émergence de l'homme et des peuple dans le droit international contemporain", in *Droits de l'homme et droits des peuples* (Tipografia della Balda; San Marino 1983) 146. See also Y. DINSTEIN, "Collective Human Rights of Peoples and Minorities", in *International and Comparative Law Quarterly* 25 (1976) 102-120.

29. L. HENKIN, *The Rights of Man Today* (Stevens & Sons; London 1978) 9, 111-2.

30. "Official Documents: Human Rights Covenants", in *The American Journal of International Law* 61 (1967) 861, 871. A. CASSESE in "The Self-Determination of Peoples" *The International Bill of Human Rights. The Covenant on Civil and Political Rights*, (L.

mination, being without doubt the right of an entire people or of an ethnic group, clearly constitutes a collective right which does not concern individuals separately, but the whole group.<sup>31</sup> The second paragraph of the same article deals with the economic counterpart of this right, that is, the question of permanent sovereignty over natural resources. It reads:

All people may, for their own needs, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.<sup>32</sup>

Apart from the right of self-determination of peoples, the International Covenants also recognize the collective rights of trade unions and of ethnic groups. Article 8(b) of the 'International Convention on Economic, Social and Cultural Rights', speaks of "the rights of trade unions to establish national federations or confederations and the rights of the latter to form or join international trade-union organizations".<sup>33</sup> Article 1(c) then refers to "the right of trade unions to function freely subject to no limitations other than those prescribed by law, and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others. Article 27 of the International Covenant on Civil and Political Rights deals with the right of minorities to maintain their own identity: "In those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language".<sup>34</sup>

The International Bill of Human Rights, implicitly promulgated for the first time in the Charter of the UNO at the San Francisco Conference in 1945, took almost twenty years until it was finally completed. What we have said in the foregoing paragraphs shows that, over a span of eighteen years, important developments were made regarding the subject of human rights on the international scene. H. Golsong remarks that the Universal Declaration of 1948 brought an important renovation in international relations, for the rights of each individual were recognized and did not

HENKIN, ed.). (Columbia University Press; New York 1981) 92-113 explains in detail the content of art. 1 of the International Covenant on Civil and Political Rights.

31. I. SZABO, "Historical Foundations of Human Rights and Subsequent Developments", in *The International Dimensions of Human Rights*, p. 20.

32. "Official Documents: Human Rights Covenants", p. 861, 871.

33. *Ibid.*, p. 863.

34. *Ibid.*, p. 864. For further details about this article, see L:B. SOHN, "The Rights of Minorities", in (L. HENKIN, ed.), *The International Bill of Human Rights. The Covenants on Civil and Political Rights* (Random House Inc.; New York 1981) 270-289.

depend any longer for their realization on the actions of the state. But, the International Covenants, he continues, are another landmark for they raised the "collective entity" called "people", "state", or "trade union" to the international level.<sup>35</sup>

The International Conference on Human Rights, held in Teheran in May 1968 adopted a collectivistic approach to human rights.<sup>36</sup> In fact, the Proclamation of Teheran repeatedly refers to the gross and massive denials of the human rights of groups, particularly within the policy of apartheid and other policies and practices of social discrimination as a result of colonialism. Discrimination was also practised on the grounds of race, religion, belief or expression of opinion.<sup>37</sup> Moreover, the Proclamation refers to the widening gap between the economically developed and developing countries as an impediment to the realization of human rights in the international community.<sup>38</sup> Whereas, therefore, the Universal Declaration of Human Rights makes the individual the central figure in a variety of social relationships, the Proclamation of Teheran focuses very much on the group as the main victim of denials of human rights. This is a most striking development in two decades from the individualistic to the collectivistic approach to human rights; a development which can also be seen in the Helsinki Act of 1975.<sup>39</sup>

The shift from individual to collective rights is also reflected in the Universal Declaration of the Rights of Peoples, adopted in Algiers on the 4th July 1976 at a conference of jurists, politicians, sociologists and environmentalists.<sup>40</sup> At the Human Rights Commission of the United Nations, during the proceedings of a subcommittee chaired by M. Martinez Cobo, Professor A. Cassese said that this declaration completes the instruments pertaining to the United Nations which are important insofar as

35. H. GOLSONG, "Evolution de la conception des droits collectifs dans la politique internationale", in *Les droits de l'homme; droits collectifs ou droits individuels* (R. Pichon et R. Durand-Auzias; Paris 1980) 139.

36. T.C. VAN BOVEN, *op.cit.*, p. 57.

37. "The Proclamation of Teheran", in *Human Rights. A Compilation of International Instruments*, art. 7, 8, 9, 10, 11 (United Nations; New York 1983) 18-9.

38. *Ibid.*, art. 12, 14, 15, p. 19.

39. F.E. DOWRICH, *op.cit.*, p. 198. Section VIII of the Final Act of Helsinki reads: "The participating states will respect the equal rights of peoples and their rights 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 states....".

40. For an explanation of the main features of the Universal Declaration of the Right of Peoples, see F. RIGAUX, "The Algiers Declaration of the Rights of Peoples", in A. Cassese, ed., *UN Law/Fundamental Rights* (Sijthoff & Noordhoff; Alphen aan den Rijn 1979) 211-223, and R. FALK, "The Algiers Declaration of the Right of Peoples and the Struggle for Human Rights", in *Ibid.*, pp. 225-235.

they must satisfy all the states and are, therefore, based upon compromise solutions.<sup>41</sup>

### III. The Rights of Mankind

Many recent conventions, charters, documents, agreements and treaties of the United Nations, some of which deal with global issues, while others with regional problems, are showing another interesting development in the historical evolution of the subject of human rights: mankind as a whole is now emerging as a new subject of rights in international law. W. Hubner remarks that “the entry of the concept of human rights into international law was a remarkable feature of this century. But the present process of development of international law beyond the law of nations to a law of mankind is beyond doubt the most important breakthrough”.<sup>42</sup> The emergence of the notion of collective rights of mankind is to be considered as a further development of the ‘third generation’ of human rights. In other words, the rights of mankind are a further extension of solidarity rights whose distinctive feature is the fact that solidarity among mankind as a whole is a prerequisite to their realization.<sup>43</sup>

Accordingly, the international law itself as a major concept is undergoing a slow evolution from the level of being predominantly an intergovernmental law to the level of an objective law of fundamental character for the whole of mankind.<sup>44</sup> Through the UNO, rights are being extended “from the *individual* or a *present group* to the *species* as such, existing in time”.<sup>45</sup> The twentieth-century conventions or agreements of the United Nations specifically speak of ‘mankind’ rather than ‘species’ as such. But according to S. Holt, “although there is little explicit reference to ‘mankind’ as an entity existing in time, international lawyers have interpreted the intent as to regard ‘mankind’ as a species, rather than as a present population”.<sup>46</sup>

Evidently, the explanation of ‘mankind’ in terms of ‘species’ gives a wider dimension to the concept of the subject of human rights: ‘mankind’ then comes to denote both the present and future generations. This

41. L. BIMBI, “The Universal Declaration of the Rights of Peoples”, in *IDOC Bulletin* 47 (1976) 2-3. See *Universal Declaration of the Rights of Peoples* (Paris 1977); *Il Risveglio dei Popoli* (Bologna 1980); P. DE SENARCLENS, “Droits de l’homme, droits des peuples”, in *Droits de l’homme et droits des peuples*, pp. 127-132.

42. W. HUBER, *op.cit.*, p. 1.

43. PH. ALSTON, *op.cit.*, p. 307.

44. W.H. BALELJIAN, “Evolving Concepts of International Law”, in P. TRAPPE, ed., *Contemporary Concepts of Law*, vol. I, Part 3 (Franz Steiner Verlag; Wiesbaden 1983) 589.

45. S. HOLT, “Towards Ensuring the Rights of Future Generations: Scientific Aspects”, (Unpublished paper presented to the UNESCO in September 1982), p. 2.

46. *Ibid.*, p. 7.

remarkable development in international law extends the subject of human rights from a *specific group* to *mankind as a whole*, or the *human species*. Human rights could thus be defined as those rights to which every person, irrespective of whether he/she actually exists now or will exist in the future, can have a just claim, by the very reason of being a person or because he/she is a member of the human species. Human rights belong to all people, everywhere, at all times. Whereas the Universal Declaration of 1948 has 'internationalized' human rights, that is, it considered every individual, regardless of race, sex, nation or age, and irrespective of where the human person existed, as a subject of basic needs for the fulfillment of his own human dignity, the recent agreements of the United Nations are 'transgenerationalizing' human rights, rendering rights applicable to all members of the human species, existing in time.

Though the specific rights suggested for inclusion in the 'third generation' have varied according to the source of proposal, the following rights have received support: the right to development; the right to be different; the right to peace; the right to a healthy and balanced environment; and the right to benefit from the common heritage of mankind.<sup>47</sup> The emerging collective rights of mankind include all these solidarity rights.

#### A. The 'Common Heritage of Mankind' Principle in International Law

One of the concepts recently introduced in the international legal system is the 'common heritage of mankind' principle which is featuring as an important ethical norm in the emergence of the third generation of human rights. It is therefore important to explain the basic features of this principle.

The first international discussions about the common heritage principle initiated with the attempt to reform the traditional regulations of the Law of the Sea. For many centuries the rules of the Law of the Sea had been based on the freedom of navigation for transportation and fishing purposes. After the Second World War, the scientific and technological revolution opened the way to the exploration and even exploitation of the vast underwater and sea-bed resources. These new possibilities created fear among the developing countries that the technologically advanced nations would soon expose the sea-bed and ocean floor with its tremendous resources to competitive national appropriation. The erosion of the old law of the sea by modern technology has therefore necessitated a change in the traditional regulation of the sea.<sup>48</sup>

47. P.H. ALSTON, *op.cit.*, p. 307-8.

48. A. PARDO, "Ocean Space and Mankind", in *Third World Quarterly* 6 (1984) 564-566.

The growing awareness to these problems led many industrial coastal states and also many of the newly independent countries to work for a comprehensive attempt to deal with the issue. Members of the United Nations Conference on the Law of the Sea (UNCLOS) also felt the need to articulate guidelines for the use of the sea-bed. In July 1966, President L. Johnson warned that the sea-bed, "the legacy of all human beings", should be protected from unfettered harvesting.<sup>49</sup> With this in mind A. Pardo, the representative of Malta to the United Nations, announced on 1st November 1967, that "the sea-bed and the ocean floor are the *common heritage of mankind* and should be used and exploited for peaceful purposes and for the benefit of mankind as a whole".<sup>50</sup> The Maltese proposal that the United Nations should take action on the seabed issue and pass a declarataion that the sea-bed and the ocean floor are the 'common heritage of mankind' formed the beginning of a new era not only in the law of the sea but also the whole international legal system.<sup>51</sup> Pardo explained his purpose in introducing this novel concept as that

to provide a solid basis for future worldwide cooperation.... through the acceptance by the international community of a new principle of international law, (namely) that the sea-bed and the ocean floor and their subsoil have a special status as a common heritage of mankind and as such should be reserved exclusively for peaceful purposes and administered by an international authority for the benefit of all people.<sup>52</sup>

From 1967 onwards, the UNO has been able to play a central role in the Law of the Sea debate. The General Assembly was the first to provide the stage, where the demands of every nation, whether an industrialized or developing country, a land-locked or coastal state, a large or small nation, could be heard. Every year, the problems concerning the Law of the Sea were the subject of lengthy and heated discussions. Resolutions were

See also, R.L. SIMON, "Troubled Waters: Global Justice and Ocean Resources", in T. REAGAN, ed., *Earthbound - New Introductory Essays in Environmental Ethics* (Randon Press; New York 1984) 179-213.

49. M.V. WHITE, "The Common Heritage of Mankind: An Assessment", in *Case Western Reserve Journal of International Law* 4 (1982) 516.

50. A. PARDO, "First Statement to the First Committee of the General Assembly, November 1, 1967", in *The Common Heritage. Selected Papers on Ocean and World Order: 1967-1974* (Malta University Press; Malta 1975) 41 (italics mine). For further details about Pardo's contribution in the discussion on the Law of the Sea, see the "Introduction" written by A. MANN BORGESSE, pp. I-XXIII, and J.H. GLAZER, "The Maltese Initiative Within the United Nations - A Blue Planet Blueprint For Trans-national Space", in *Ecology Law Quarterly* 4 (1974) 279-318.

51. N.SYBESMA-KNOL, "The 'Common Heritage of Mankind', Ten Years Later: Developments in the Law of the Sea", in *Studia Diplomatica* 30 (1977) 672.

52. A. PARDO, "Whose is the Bed of the Sea?" in *Proceedings of the American Society of International Law* 216 (1968) 225-226.

adopted, stressing the common interest of mankind in the sea-bed and ocean floor and the preservation of their resources. None of the resolutions between 1967-1970 refers explicitly to the concept of 'the common heritage of mankind' as such. Other expressions were used such as: 'the common interest of mankind', 'the benefit of mankind', and 'interest of mankind as a whole'.<sup>53</sup> The first resolution that mentions the term is the "Declaration of Principles governing the Sea-Bed and Ocean Floor, and the Subsoil thereof, beyond the Limits of National Jurisdiction" of December, 17, 1970. It solemnly declares that "the sea-bed and ocean floor and the subsoil thereof, beyond the limits of national jurisdiction, as well as the resources of the area, are the common heritage of mankind".<sup>54</sup>

Before discussing the central implications of the 'common heritage of mankind' principle, it is important to explain the terms used. The word *common* usually refers to a thing which belongs to everyone, or which is shared in respect to title, use or enjoyment, without apportionment or division into individual parts. So, all human beings who constitute mankind may share in whatever belongs to mankind. The word *heritage* suggests property or interest which are reserved to a person(s) by reason of birth, something handed down from one's ancestors or the past. Now, if this heritage is common to all members of the human species, everybody, no matter whether one is living in the North or South, now or in the future, has the right to share in it. In defining *mankind*, it is necessary to make a distinction between mankind and man. Mankind refers to the collective group, whereas man refers to individual men and women. Thus, human rights are those which individuals are entitled to by virtue of their membership in the human race, whereas the rights of mankind relate to the collective entity.<sup>55</sup> The use of the phrase 'common heritage of mankind' implies that the ownership of the sea-bed and its resources beyond the national jurisdiction belong to mankind as a whole.<sup>56</sup> In fact, article 137 (2) of the United Nations Convention on the Law of the Sea declares that "all rights in the resources of the Area are vested in mankind as a whole".<sup>57</sup> It is interesting to note that instead of 'all states', 'mankind' had been named as the beneficiary. S. Gorove regards the introduction of the term 'mankind'

53. N. SYBESMA-KNOL, *op.cit.*, p. 673.

54. Resolution 2749 (XXV), *Resolutions adopted by the General Assembly during its Twenty-Fifty Session, Supplement No. 28 (A/8028)*, (15 Sept-17 Dec 1970), (United Nations; New York 1971) 24-27.

55. R.P. ARNOLD, "The Common Heritage of Mankind as a Legal Concept", in *The International Lawyer* 9 (1975) 153-158.

56. E. PEPIN, "L'humanité et le droit des gens", in *Annuaire de droit maritime et aérien*, Tome VII (1983) 11-16.

57. Article 137 (2), *The Law of the Sea. United Nations Convention on the Law of the Sea* (United Nations; New York 1983) 42.



in international law treaties as a step permitting mankind as a whole to become the subject of international law.<sup>58</sup>

The concept of the 'common heritage of mankind' has evolved partly by analogy and partly by extension of the concept of social ownership as embodied, notably, in the Yugoslav Constitution.<sup>59</sup> The main elements implied in the common heritage principle concerning resources beyond the national jurisdiction are: (a) non-appropriation by any individual or state, i.e. the right to use these resources, but not to own them; (b) the international management on behalf of the interest of mankind as a whole (including future generations); (c) special regard to the needs of the poorer members; (d) exclusively peaceful purposes.<sup>60</sup> Management includes environmental protection, preservation of resources for future generations, and equitable sharing of benefits among all nations. This implies the creation of an independent jurisdiction, to regulate, supervise and control all the activities.<sup>61</sup>

The concept of 'common heritage of mankind' has also revolutionized the traditional concepts of property. Traditionally, there were two legal terms expressing the principles regulating the use and ownership of property: *res nullius* and *res communis*. The concept of *res nullius* originated in the Roman laws concerning the acquisition of property. An object that is *res nullius* is the property of nobody, but is susceptible to appropriation. The concept of *res communis*, also originating in Roman law, is distinguished from *res nullius* by two characteristics: (1) things are

58. S. GOROVE, "The Concept of 'Common Heritage of Mankind': a Political, Moral or Legal Innovation?", in *San Diego Law Review* 9 (1972) 393.

59. P. SERRACINO-INGLOTT, "The Rights of Future Generations: Some Socio-Philosophical Considerations", in *Melita Theologica* 33 (1982) 7-8. See also J. DJORDJEVIC, "The Social Property of Mankind", in E. MANN BORGESE, ed., *Pacem in Maribus* (New York 1972) 166-182.

60. A. PARDO, "First Statement to the First Committee of the General Assembly, November 1, 1967", in *The Common Heritage. Selected Papers on Oceans and World Order: 1967-1974*, pp. 40-41. For a more detailed information about the basic principles implied in the common heritage of mankind principle, see S. KOTZ, "The Common Heritage of Mankind: Resource Management of the International Sea-bed", in *Ecology Law Review* 6 (1976) 65-107; R. WOLFRUM, "The Principle of the Common Heritage of Mankind", in *Zeitschrift für Ausländisches Öffentliches Recht und Völkerrecht* 43 (1983) 312-337; P.L. SAFFO, "The Common Heritage of Mankind: Has the General Assembly Created a Law to Govern Sea-bed Mining?", in *Tulane Law Review* 5 (1978) 492-520; L. BRADLEY & B. BRENNEN, "The Common Heritage Principle in International Law", in *Columbia Transnational Law* 21 (1982) 305-337; R.J. DUPUY, "The Notion of the Common Heritage of Mankind Applied to the Sea-bed", in *Annals of Air and Space Law* 8 (1983) 347-355, and A. PARDO & C.Q. CHRISTOL, "The Common Interest: Tension Between the Whole and the Parts", in R.J. Mc DONALD & D.M. JOHNSTON, eds., *The Structure and Process of International Law* (Martinus Nijhoff Pub.; The Hague/Boston/Lancaster 1983) 644-550.

61. A.C. KISS, *La notion de patrimoine commun de l'humanité* (Martinus Nijhoff Pub.; The Hague/Boston/London 1984) 128-133; 229-231.

owned in common and accordingly they may not be appropriated; and (2) the right to their use belongs equally to all people. The concept of *res communis* was introduced in the Law of the Sea to correct the anarchical principles implied in the concept of *res nullius*.

The sea was traditionally considered as *res communis*. However, with modern technology, the liberal philosophy implied in the principle of *res communis* was manifested in the indiscriminate and competitive exploitation of resources. It is obvious that the practical consequences of this principle are that the technologically advanced states would benefit most. While these states would not be able to assert sovereignty over the sea-bed resources, they alone could effectively exploit them. Accordingly, neither the principle of *res nullius* nor that of *res communis* could ensure equal access to these resources for all mankind. The common heritage principle was evolved in order to check these anarchical and *laissez-faire* attitudes by safeguarding the interests of all mankind, namely both the present and future generations.<sup>62</sup> The element of sharing implied in the concept of the common heritage principle, shows a growing sense of solidarity among the human species. It also indicates our contemporary awareness that every generation is just one link in a long chain of generations which collectively form mankind as a whole.<sup>63</sup>

#### B. 'Mankind' includes Future Generations

The increasing references in international documents to 'mankind' rather than to the individual or the group are a clear indication of the new direction towards which the 'third generation' of human rights is now moving. These documents claim that mankind as a whole has the right to share the natural and cultural heritage of the earth, to enjoy an environment of such a quality that permits a life of dignity and well-being, to be protected from the effects of atomic radiation, and to benefit from the scientific and technological progress.

It is important to note that a great number of documents which employ the term 'mankind', make also explicit reference to the present and the future generations. This is very revealing, and indicates clearly that the term 'mankind' means more than just the present population, and hence more than a present collectivity. The interchanging usage of 'mankind' and 'present and future generations' suggests that they are synonymous, and justifies the interpretation which international lawyers are giving to

62. *Ibid.*, p. 123.

63. *Ibid.*, p. 113.

'mankind'. If 'mankind' includes both present and all future generations, it therefore refers to the whole human species.

In the following paragraphs, I intend to examine some documents of the United Nations where 'mankind' and 'present and future generations' are used synonymously in the same context. For instance, principles 5 and 18 of the "Stockholm Declaration on Human Environment" (1972) explicitly speak about the rights of mankind to share the non-renewable resources of the earth, and the right to enjoy an environment unspoiled by the careless use of scientific and technological progress:

The nonrenewable resources of the earth must be employed in such a way as to guard against the danger of their future exhaustion and to ensure that benefits from such employment are *shared by mankind*.<sup>64</sup> (i.e. present and future generations.)

The Stockholm Declaration also states that "science and technology, as part of their contribution to economic and social development, must be applied to the identification, avoidance and control of environmental risk and the solution of environmental problems and for the *common good of mankind*".<sup>65</sup>

Principles 1 and 2 of the same Declaration, instead of speaking of 'mankind', speak of the present and future generations. Since mankind as a whole has a right to share the non-renewable resources of the earth (principle 5), the natural resources must be protected and conserved for the present and future generations (principle 2). The present and future generations (principle 1) or mankind as a whole (principle 18) have the right to an adequate environment. The substitution of 'mankind' by 'present and future generations' in these principles of the Stockholm Declaration is clear evidence that 'mankind' includes more than the generation existing now. Principles 1 and 2 read as follows:

Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment *for the present and future generations*.<sup>66</sup> (i.e. mankind)

The natural resources of the earth, including the air, water, land, flora and fauna, and especially representative samples of natural ecosystems, must be safeguarded for the benefit of *present and future generations* through careful planning or management, as appropriate."<sup>67</sup>

64. Principle 5 of the "Stockholm Declaration of Principles", in *In Defence of the Earth* (Nairobi 1981) 44. (italics mine)

65. Principle 18, *Ibid.*, p. 46. (italics mine)

66. Principle 1, *Ibid.*, p. 44. (italics mine)

67. Principle 2, *Ibid.*, p. 44. (italics mine)

The United Nations General Assembly (UNGA) Resolution of November 1980 proclaiming the “Historical Responsibility of States for the Preservation of Nature for the Present and Future Generations”, has also used ‘mankind’ and ‘future generations’ interchangeably to convey the same meaning. In the Preamble of this Resolution, the General Assembly, conscious of the disastrous consequences which a war involving the use of nuclear power and other weapons of mass destruction would have on man and his environment, urges nations to create conditions which would banish war from the life of ‘mankind’.<sup>68</sup> The precise meaning of ‘mankind’ is then given in articles 1 and 3. The General Assembly “proclaims the historical responsibility of states for the preservation of nature for *present and future generations*”,<sup>69</sup> and calls upon states “in the interest of present and future generations to demonstrate due concern and take the measures, including legislative measures, necessary for preserving nature, and also to promote international cooperation in this field”.<sup>70</sup>

ON 12th December 1979, the UNGA reached an “Agreement Governing the Activities of States on the Moon and Other Celestial Bodies”. Article 11(1) declares that “the moon and its natural resources are the *common heritage of mankind*”.<sup>71</sup> Again, article 4(1) defines the meaning of ‘mankind’ as follows:

The exploration of the moon shall be the province of *all mankind* and shall be carried out for the benefit and in the interest of all countries, irrespective of their degree of economic or scientific development. Due regard shall be paid to the interest of *present and future generations* as well as to the need to promote higher standards of living and conditions of economic and social progress and development in accordance with the Charter of the United Nations.<sup>72</sup>

68. Preamble, par. 2 & 6 of Resolution 38/8: “Historical Responsibility for the Preservation of Nature for Present and Future Generations”, in *Resolutions and Decisions adopted by the General Assembly during its Twenty-Fifth Session, Supplement No. 48 (A/35/48)*, (16 Sept-17 Dec, 15 and 16 Jan, 2-6 March and 11 May 1981), (United Nations; New York 1981) p. 15. (italics mine)

69. Article 1, *Ibid.*, p. 15. (italics mine)

70. Article 3, *Ibid.*, p. 15. (italics mine)

71. Article 11 (1) of the “Agreement Governing the Activities of States on the Moon and Other Celestial Bodies”, in *Resolutions and Decisions adopted by the General Assembly during its Thirty-Fourth Session, Supplement No. 46(A/34/46)*, (18 Sept 1979-7 Jan 1980), (New York 1980) 79 (italics mine)

72. *Ibid.*, p. 78 (italics mine) There is an important evolution in the *Agreement Governing the Activities of States on the Moon and Other Celestial Bodies*, adopted on the 5th December 1979, when compared with the *Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and other Celestial Bodies*, adopted on the 19th December 1966. The Treaty of 1966 refers to mankind in art. 1. *The United Nations Treaties On Outer Space* (New York 1984), while the Agreement of 1979 specifically explains ‘mankind’ in terms of the present and future generations. Cf. A. C. KISS, *op.cit.*, pp. 151-164.

The UNGA “Resolution on the Effects of Atomic Radiation” (1961) and the “Convention on Environmental Modifications” (1977) are two other instances which continue to add weight to the interpretation of the term ‘mankind’ in a wide sense. In both instances, ‘mankind’ refers both to the present and future generations. On the 27th October 1961, the UNGA, “fearful that the prolonged exposure of *mankind* to increasing levels of radio-active fall-out would constitute a growing threat to *this and future generations*”,<sup>73</sup> declares that “both concern for the *future of mankind* and the fundamental principles of international law impose a responsibility on all states concerning actions which might have biological consequences for the *existing and future generations* of peoples of other states, by increasing the level of radio-active fall-out”.<sup>74</sup>

In the preamble of the “Convention on Environmental Modifications”, the State-Parties express their deep concern that the progress in science and technology has new possibilities to modify the environment. They declare that techniques of modifying the environment should be used only for peaceful purposes, to ameliorate man’s relations with nature and to protect and improve the environment for the *present and future generations*. In order to eliminate danger to *mankind*, they prohibit the modification of the environment by techniques used for military and hostile purposes.<sup>75</sup>

The UNESCO 1979 “Convention on the Conservation of Migratory Species of Wild Animals” is another document which substitutes ‘mankind’ by ‘present and future generations’. In this Convention, the State-Parties declared that, “recognizing that the faunae, in their numberless species, constitute an irreplaceable element in the natural system of the earth, they must be conserved for the benefit of *mankind*”.<sup>76</sup> Then, the preamble goes on to say that “.... each generation of men holds the resources of the earth for *future generations* and has an obligation to ensure that this legacy is conserved and, where utilized, is used wisely....”.<sup>77</sup>

73. Resolution 1629 (XVI): “Report of the United Nations Scientific Committees on the Effects of Atomic Radiation”, in *Resolution adopted by the General Assembly during its Sixteenth Session, Supplement No. 17 (A/5100)*, Vol. 1, (New York 1962) p. 9 (italics mine). See also Resolution 34/12: “Effects of Atomic Radiation”, in *Resolutions adopted on the Reports of the Special Political Committee, Supplement No. 47 (A/34/322)*, (United Nations; New York 1979) 71-2.

74. *Ibid.*

75. “Convention sur l’interdiction d’utiliser des techniques de modification de l’environnement à des fins militaires ou toutes autre fins hostiles”, in A.C. KISS, ed., *Recueil de traités multilatéraux relatifs à la protection de l’environnement* (Paris 1978) 496.

76. Preamble 1 of the “Convention sur la conservation des espèces migratrices appartenant à la faune sauvage”, in *Recueil de traités multilatéraux relatifs à la protection de l’environnement*, p. 516 (italics mine).

77. Preamble 2, *Ibid.*, p. 516 (italics mine).

On the 16th November 1972 the General Conference of UNESCO adopted a recommendation concerning the cultural and natural heritage on the national level. In its preamble, it considers the serious dangers arising from the new phenomena in our epoch which threaten our cultural and natural heritage: a heritage which constitutes an essential element of the *present and future culture*.<sup>78</sup> The General Conference also declares that those countries which have a natural and cultural heritage, have an obligation to safeguard the *common heritage of mankind* and to transmit it to *future generations*.<sup>79</sup>

These cases in which 'mankind' and 'present and future generations' are used interchangeably, give us a clue of how to understand other statements which speak of 'mankind' without any direct reference to the present and future generations. For instance, in the preamble of the Atlantic Treaty (1959), the State-Parties "recognizing that it is in the interest of *all mankind* that Antarctica shall continue *forever* to be used exclusively for peaceful purposes and shall not become the scene or object of international discord", express their conviction "that the establishment of a firm foundation for the continuation and development of ...cooperation on the basis of freedom of scientific investigation in Antarctica as applied during the International Geographical Year accords with the interests of science and the progress of *all mankind*".<sup>80</sup> By article IV, 1 (b), the contracting parties renounced the territorial sovereignty in Antarctica which any country might claim to have as a result of its own activities or those of its nationals.<sup>81</sup> A.C. Kiss interprets these articles of the Antarctic Treaty as containing an implicit reference to the 'common heritage of mankind' principle.<sup>82</sup> Antarctica belongs to no particular country but to mankind as a whole, that is, to present and future generations.

At its twenty-ninth session, 1974, the General Assembly of the United Nations considered briefly a draft declaration on the use of scientific and technological progress in the interest of peace and for the benefit of mankind. At its thirtieth session, in 1975, it considered a revised draft declaration and the amendments thereto. By the Resolution 3384 (XXX) of the 10th November 1975, the General Assembly proclaimed the "Declaration on the Use of Scientific and Technological Progress in the

78. Preamble, par. 3 of the "Recommendation concernant la protection, sur le plan national, du patrimoine culturel et naturel", in *Convention et recommandation de l'Unesco relatives à la protection du patrimoine culturel* (Paris 1983) 173.

79. Preamble, par. 5, *Ibid.*, p. 173.

80. "The Antarctic Treaty", in *Status of Multilateral Arms Regulation and Disarmament Agreement* (New York 1982) 12 (italics mine).

81. *Ibid.*, p. 13. See also W.N. BONNER & D.W. WALTON, eds., *Antarctica*, (Oxford 1985).

82. A.C. KISS, *La notion de patrimoine commun de L'humanité*, p. 142.

Interest of Peace and for the Benefit of Mankind”.<sup>83</sup> The declaration states that

all States shall refrain from any acts involving the use of scientific and technological achievements for the purposes of violating the sovereignty and territorial integrity of other states, interfering in their affairs, waging aggressive wars, suppressing national liberation movements or pursuing a policy of racial discrimination. Such acts are not only a flagrant violation of the Charter of the United Nations and the principles of international law, but constitute an inadmissible distortion of the purposes that should guide scientific and technological development for the benefit of *mankind*<sup>84</sup> (i.e. the present and future generations).

Certainly, the recent emergence of the concept of the rights of mankind on the international scene is to a great extent the result of the growing sense of solidarity among mankind and the widespread phenomenon of ecological awakening. The above-quoted documents of the UNO indicate that mankind, rather than the individual or a particular group, was the focal attention in questions connected with the biosphere. Human consciousness has become more sensitive than ever before to the fact that we inhabit only *one* earth, with only *one* environment for *one* human family. We now view ourselves as belonging to one family of humankind, existing throughout the world and throughout all time.

Even the way we are understanding the nature of human action has undergone an important change. Previously, human activity was thought to have effects only on those close in time and space to that activity. Now, we have become aware that human activity has effects on the human species far into the future. Modern science and technology have given us an unprecedented power to influence the lives of those who will live in the future. The new moral sensitivity to unborn generations, who are powerless to defend themselves from the risks to which they can be exposed, is the main reason behind the extension of collective rights from a particular group

83. *United Nations Activities in the Field of Human Rights*, p. 254.

84. Article 4 of the “Declaration on the Use of Scientific and Technological Progress in the Interest of Peace and for the Benefit of Mankind”, in *Human Rights. A Compilation of International Instruments*, pp. 140-1 (italics mine). The same interpretation could be attributed to the world ‘mankind’ employed in the following documents: “Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies”, in *Statutes of Multilateral Arms Regulations and Disarmament Agreement*, p. 32; Resolution 2260 (XXII) of the “Report on the Peaceful Use of Outer Space”, in *Resolutions adopted by the General Assembly during its Twenty-Second Session, Supplement No. 16 (A/6716)*, (19 Sept-19 Dec), Vol. I (New York 1967) 11-12, and Preamble, par. 6 of the “Convention concernant la protection du patrimoine mondial culturel et naturel”, in *Conventions et recommandations de l’Unesco relatives à la protection du patrimoine culturel*, p. 82-3.

or people to mankind as a whole. Though this latest development in the 'third generation' of human rights is still in its initial stage, it offers a new challenge to the existing international legal system. These new directions in the human rights movement, as well as the growing ethical awareness of our responsibilities to those yet to be born would perhaps eventually demand a modification of the Declaration of Human Rights, or even the promulgation of a new one that aims to protect the whole community of mankind.