

MEETING THE CHALLENGES: RENEWING THE PROGRESS OF ECONOMIC AND SOCIAL RIGHTS

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“Human rights most urgently need asserting and defending...where they are most denied,” David Beetham concluded in his 1995 study of the future for economic and social rights.¹ The extension and fulfillment of economic and social rights are currently in danger of marginalization because of both global and domestic challenges.

The 50th anniversary of the *Universal Declaration of Human Rights* offers the opportunity not only to review progress in fulfilling its promotion of “social progress and better standards of life,” but to examine challenges which currently undermine the enjoyment of that promise. This brief comment highlights two such challenges, one in the international theatre, the other much closer to home.

The global challenge

The *Universal Declaration* set broad sights for the quality of economic and social life in the post-war world, which are elaborated and given legal force by the *Covenant on Economic, Social and Cultural Rights*, taken together with a series of International Labour Organization Conventions (both preceding and succeeding the *Declaration*) and succeeding agreements, such as the *Convention on the Rights of the Child*. In 1995, the United Nations estimated that there were no fewer than 81 formal agreements which address such issues as poverty eradication, employment generation and social integration.²

The global conferences held under U.N. leadership in the 1980s and 1990s renewed and made more comprehensive a *vision* of sustainable human development.³ To the outline established by the *Universal Declaration* and the elaborations contained in the initial Covenants, new dimensions were extended. Additional detailed work was done

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¹D. Beetham, “What Future for Economic and Social Rights?”, in D. Beetham, ed., *Politics and Human Rights* (Oxford: The Clarendon Press, 1995).

²P. Teagle & J. W. Foster, *U.N. Futures, U.N. Reform and the Social Agenda* (Ottawa: United Nations Association of Canada, forthcoming).

³*Ibid.* These conferences included:

1992: U.N. Conference on Environment and Development, Rio de Janeiro

1993: U.N. Conference on Human Rights, Vienna

1994: U.N. Conference on Population, Cairo

1995: World Summit on Social Development, Copenhagen

1995: Fourth World Conference on Women, Beijing

1996: U.N. Conference on Human Settlements, Istanbul

to address concerns related to environmental, women's and children's rights. Work continues in such salient areas as the rights of indigenous peoples and child labour. The World Summit on Social Development (Copenhagen, 1995) and the fourth World Conference on Women (Beijing, 1995) were, in many respects, the culmination of this process.

At the same time, the United Nations itself suffered a prolonged resource crisis, primarily at the hands of the U.S. Senate, and focused its attention on its own structural reform issues, resolution of which had become significantly overdue. As a result, while the *vision* was enhanced, little was achieved in terms of strengthening monitoring and evaluatory mechanisms. The recent major report of the Secretary-General on renewal of the United Nations provides evidence of a will and direction for consolidating human rights bodies and staff support and for greater coordination of the economic and social arms of the United Nations.⁴ However, to accomplish even this modest foundation, the provision of adequate resources and political support by member governments is instrumental.

The threat to normative transcendence

One of the motivating demands of non-governmental bodies at the Copenhagen Summit was the vision that the great multilateral organizations of economic management – the World Bank, the International Monetary Fund and the World Trade Organization – would be brought more thoroughly under the normative and policy framework of the United Nations. The desire to apply a full human rights framework (including a strong gender component) to the evaluation of the activities of the World Bank or the WTO and to such issues as debt relief or structural adjustment was key not only to repairing existing damage but to preventing the future implementation of macro-economic policies injurious to poorer people and the environment.⁵

However, even as these viewpoints were put forth at Copenhagen, the institutional ground was shifting. The World Bank since has expanded its developmental role by entering fields where U.N. agencies have been operational. The International Monetary Fund now decrees economic "reform" packages for populous Asian nations in which devaluation and mass unemployment are central instruments. The WTO has developed a mandate and sanctions related to trade and investment which have considerable actual and potential impacts on democratic sovereignty, health, the environment and employment. The proposed *Multilateral Agreement on Investment* would radically

⁴Secretary General K. A. Annan, *Renewing the United Nations: A Programme for Reform* (New York: United Nations, 1997) [hereinafter K. Annan, *Renewing the United Nations*].

⁵J. Disney, "Creating An Enabling Environment" (September, 1997) 1:5 *Social Development Review* (Montreal: International Council on Social Welfare, 1997).

increase the rights of investors and augment the power of secret and corporate-influenced adjudicatory bodies.⁶

Proponents of United Nations renewal recognized the dangers posed by processes which advance the sway of organizations dominated by and dedicated to economic power while the abilities of the more representative and transparent organs of the U.N. are starved or blocked. In 1994, Childers and Urquhart called for proposals to bring the WTO inside the U.N. system and to bring equitable governance to the monetary fund under policy guidelines established by the U.N. General Assembly. To address some of the challenges represented by these changes, the Commission on Global Governance proposed a World Conference on Governance for 1998, with decisions to be in effect by the year 2000.⁷

The Commission on Global Governance also suggested, in 1995, the creation of an Economic Security Council as a new and highly placed organ of the United Nations. This body's mandate would include the provision of "a long-term strategic policy framework in order to promote stable, balanced and sustainable development" which would secure "consistency between the policy goals of the major international organizations, particularly the Bretton Woods bodies and the World Trade Organization."⁸

Unfortunately, the leadership required to bring these sorts of renewal proposals to fruition has not yet appeared. The Secretary-General's proposals for reform, while they clear important ground within the U.N. structure, are rather timid and undeveloped at the level of U.N. relations with the large multilateral economic bodies. At that level, the Secretary-General's situation is defined by the presence or absence of initiative and support from national governments. While Trade Ministries and Finance Departments are engaged in the elaboration of investment protections and privileges for corporations in trade, Foreign Affairs Ministries and heads of government appear to be doing very little to assure the transcendence of the United Nations as the leading expression of world governance.

This normative crisis is reinforced by the qualities of the *procedures* used in such bodies as the World Trade Organization. While the World Bank has taken energetic

⁶For an overall treatment of the implications of these changes, see E. Childers & B. Urquhart, "Renewing the United Nations System" (1994:1) *Development Dialogue* (Upsalla: Dag Hammarskjold Foundation, 1994) and *Our Global Neighborhood: The Report of the Commission on Global Governance* (Oxford: Oxford University Press, 1995) [hereinafter *Our Global Neighbourhood*]. More recent commentaries can be found in: N. Bullard, "Investment: New Rules will Favour Foreign Investors" 2/97 (November, 1997) *Focus Files* (Bankok: Focus on the Global South, 1997); R. Gwyn, "IMF: World Ruler Bears Watching" *The [Saskatoon] Star-Phoenix* (30 December, 1997) A4; and G. Dyer, "Asian Crisis: The Money Pit and the Pendulum" *The [Toronto] Globe and Mail* (January 17, 1998) D4.

⁷*Our Global Neighborhood*, *supra* note 6 at 351.

⁸*Our Global Neighborhood*, *supra* note 6 at 341-3.

steps to open dialogue and engagement, in both policy and operations, with civil society bodies at multilateral and national levels, the International Monetary Fund remains a highly protected and privileged decision-making body. The World Trade Organization was designed with procedures intentionally closed and opaque to non-governmental and civil society actors. The attempt to relate core labour rights, in a substantive way, to the WTO failed at the 1996 Singapore conference. Such regional bodies as the APEC forum have demonstrated an attitude to human rights and public accountability which can only be termed “hostile”.⁹

The U.N. Covenant Committee on Economic Social and Cultural Rights now has a little over a decade’s experience. The Committee has established important procedural ground and has brought greater attention to detailed reporting and the elucidation of key rights questions. However, the Committee meets briefly rather than continuously and, today, can bring only extremely limited resources to its monumental task. Further, important work remains to be done to fill out the structure serving the *Covenant*. Design work has been done by the Chair, Philip Alston, and others on an Optional Protocol which would provide a complaint procedure open to individuals. Professor Virginia Leary has pointed out that there is much to be learned, not least with respect to the “mobilization of shame,” from the ongoing experience of the International Labour Organization in its improvement of complaint procedures and encouragement of the implementation of rights.¹⁰

The issue of *resources* inevitably arises, often as an excuse for inaction or retreat on economic and social rights. While commentators like David Beetham and David Matas illustrate that many basic economic and social rights can be implemented at little or no direct cost, many critics and opponents raise arguments about the supposedly monumental cost of assuring basic rights to all. Beetham addresses this directly by documenting that the cost of providing basic needs – including health care, shelter, clean water and education – is huge but not impossible.¹¹ Marek Thee emphasizes the resource potential of true demilitarization of international relations.¹²

That resources can be mobilized rapidly and on a monumental scale has been illustrated dramatically in recent times. Multilateral economic organizations receive priority consideration and can command monumental resources to bail out failed banks

⁹The recent confrontation between pepper-spray-wielding police and students at the Vancouver APEC Summit gave Canadians a graphic illustration of these attitudes.

¹⁰V. A. Leary, “Justiciability and Beyond, Complaint Procedures and the Right to Health” (December, 1995) 55 *The Review* (Geneva: International Commission of Jurists, 1995) at 113, 122.

¹¹D. Beetham & D. Matas, “Economic, Social and Cultural Rights and the Role of Lawyers: North American Perspectives” (December, 1995) 55 *The Review*, (Geneva: International Commission of Jurists, 1995).

¹²M. Thee, “The Philosophical-Existential Issues of the Human Rights Project: Challenges for the 21st Century”, in B. Andreassen & T. Swinehard, eds., *Human Rights in Developing Countries: Yearbook, 1993* (Copenhagen: Nordic Human Rights Publications, 1993).

and tottering governments, as was amply illustrated by the generation of economic survival packages for Indonesia and South Korea in 1998. Meanwhile, the fulfillment of basic needs and rights is postponed, often to meet the terms of these same bail out packages. Even funding for the modest costs of instruments for monitoring, evaluating and enhancing government implementation of key social, economic and labour rights is threatened by the financial crisis within the United Nations itself.

A reform agenda

Following on the central U.N. renewal proposals of the mid-1990s, it can be argued that the success of economic and social rights at the international level requires the implementation of broad reform by the United Nations *and* the great economic multilaterals. Four steps are instrumental:

- *strengthening global sovereignty and democracy* – A global Parliamentary Assembly should be created, which would be related to the General Assembly and which, initially, would comprise representatives of existing parliaments. Soon thereafter, representation should be based on direct election. At the same time, a Forum of Civil Society, representative of civil society and non-governmental organizations should be set up. This body should be related either to the General Assembly or to a strengthened Economic and Social Council.¹³
- *strengthening the normative framework* – There is a need and an opportunity for the U.N. to convene debates and discussions in which the primary critiques of dominant macro-economic policies can be examined in detail and where policy consensus on equitable and sustainable approaches can be developed. One significant particular step, suggested by Ambassador Juan Somavia, leader of the Copenhagen Summit process, would be the negotiation of an international Covenant for the Eradication of Poverty. While this would be an essential and practical way of advancing governmental commitment, Somavia has also suggested that, to commemorate the five-year review of the Summit in the year 2000, the U.N. should hold a General Assembly of “initiatives” in which key actors “from all sectors of society” would participate freely.¹⁴
- *applying the global framework* – If the work of the past 40 years on a global rights framework is to have any meaning for everyday life, it must be recognized and respected by the multilateral economic organizations and given transcendent legal force. The ongoing and often gradual work of making rights justiciable must be pursued. New instrumentalities like an optional protocol for the *Covenant on*

¹³K. Annan, *Renewing the United Nations*, *supra* note 4 at 31.

¹⁴R. Max, “Advancing the Social Agenda: Two Years After Copenhagen” (September, 1997) 1:5 *Social Development Review* (Montreal: International Council on Social Welfare, 1997).

Economic, Social and Cultural Rights are also important. Further, structures must be established and resources committed which permit review of policies and proposals with an eye to protection of rights, enhancement of the environment and prevention of harm. For example, a review of the implications of WTO policies and decisions on issues like biological patenting and national environmental regulation to protect health should be undertaken by global bodies with predominant environmental and social expertise. Such a review should be conducted in the light of agreed international health and environmental priorities and with power to overturn or “refer back” the trade-based policies which threaten those priorities. Finally, the creation of a U.N. Covenant on the Eradication of Poverty and an ongoing, continuously meeting, monitoring and evaluative body, with a mandate to review national plans and their implementation, might add useful catalytic energy to a vital but often marginalized theatre of human endeavour.

- *enhancing and integrating research* – The Secretary-General recognizes the importance of research to effective social and economic policy-making and appreciates the particular role the United Nations can play in drawing together representatives from UNCTAD, the WTO and other multilateral organizations to build a more comprehensive and representative consensus on global economic and sustainable development issues. The importance of participation by civil society and non-governmental organizations in this process is also increasingly recognized.¹⁵

Governmental responsibility

Parliamentarians have often adopted a cynical view of the United Nations. Governments have resorted to a generalized deference to “globalization” to explain their inaction on key issues of democratic global governance. A reform agenda of the type outlined here will only begin to take shape if at least a few national leaders make it their own priority and if energy and support are given to international representatives to move forward with what are, in essence, world constitution-building tasks. To leave the ground to investment rights advocates and the defenders of corporate privilege in trade would be tragic. When, in preparation for Copenhagen, some elements of the Canadian government gave consideration to the proposals for a Tobin tax and other global financing instruments, there was a tiny glimmer of the sort of imagination which is necessary. The brief flame from that candle was snuffed out; more such flames must be lit.¹⁶

¹⁵K. Annan, *Renewing the United Nations*, *supra* note 4 at 29ff.

¹⁶For an examination of the Tobin Tax and comparable initiatives see A. C. Michalos, *Good Taxes: The Case for Taxing Foreign Currency Exchange and other Financial Transactions* (Toronto: Dundurn Press, 1997).

The challenge at home

While delegates met in Copenhagen to push forward a vision of social and economic rights for the twenty-first century, the Canadian Parliament was considering the 1995 *Budget Implementation Act*, a statute that destroyed the national framework for many of those rights in Canada. Representatives of women, labour, students, the handicapped and the poor lambasted Canadian delegation leader, Lloyd Axworthy, in Copenhagen as the groups they represented began to understand the street-level implications of the off-loading of federal responsibility that the Act implemented. For the non-governmental delegates at Copenhagen, Canada's attack on universality and national standards for welfare was the symbolic center of a broader subversion of economic and social guarantees. That subversion included, among other things, reduction of unemployment insurance coverage, reduction in resources for universal medicare and cut-backs to funding for women's centres.

The Act removed almost all of the national standards that had been in place under the Canada Assistance Plan, removed the use of the federal spending power to enforce respect for those standards and undermined Canadians' sense of entitlement. From a national commitment to universality, Canada moved toward a much-reduced focus on the "deserving" poor and, in particular, children. The retreat from federal spending commitments led to a cascading of responsibility to provincial and municipal bodies, which led, in turn, to what Shelagh Day described as a frightening situation of "irresponsibility and incoherence." In place of its former national standards, the citizenry now can look only to the possibility of minimal agreements among premiers or social services ministers who meet, occasionally, behind closed doors. The result so far, says Day, is "feeble, weak and frankly silly."¹⁷

Paul Martin's strangling of effective federal commitment to the welfare of all Canadians has motivated a number of Canadian rights-seeking groups to press for a review of Canada's performance at the Covenant Committee on Economic, Social and Cultural Rights. That pressure has created a simultaneous strategic campaign by the Canadian government to delay, if not to avoid completely, such a review. In November, Committee Chair, Philip Alston, told Canada, in equivalent terms, to "put up" and indicated that his report would be reviewed by the Committee in either the summer or fall of 1998. Bruce Porter, of the Charter Committee on Poverty Issues, believes that the Canadian delay strategy is based on the government's embarrassment over soaring

¹⁷S. Day, "The Politics of Debt, Deference and Devolution" (Address at the College of Law, University of Saskatchewan, October, 1997) [unpublished]. The Federal-Provincial-Territorial Council on Social Policy Renewal was created by the First Ministers' Meeting in June, 1996. It should be noted that while Day and former NAPO head Lynn Toupin are decidedly critical of Federal lack of leadership, other voices of concern, like that of Sherri Torjman of the Caledon Institute, offer more hope for both the Child Benefit programme and collaborative federalism. Evaluators of experience in other fields such as, for example, the federal-provincial environmental evolution, do not encourage optimism. See S. Torjman, "The New Handshake Federalism" in *Caledon Commentary* (Ottawa: Caledon Institute of Social Policy, September 1997).

rates of child poverty.¹⁸ The Canadian report to the Committee ends in September, 1994 and avoids consideration of the changes made by the *Budget Implementation Act* of 1995 and their effects.¹⁹ However, equity-seeking groups continue to submit evidence that details the effects of the *Budget Implementation Act* and, in particular, the termination of the Canada Assistance Plan. These same groups continue, as well, to pursue issues, including homelessness, income discrimination in housing and the poverty of many single mothers, on which they have pressed the government in the past.²⁰

In recent months, a renewed discussion on “Canada’s Social Union” has emerged among both Ottawa-based policy groups and “national unity addicts.” Social union commentators tend to agree that Canada is missing some essential pieces of government in its attempts to get out of the difficulties created by the current state of federalism. Margaret Biggs examines the cases of Australia and Germany in a search for instruments which might bring federal, provincial and territorial actors into coordination on a more consistent basis. Kathy O’Hara also recognizes the need for increased transparency and the involvement of civil society, although her deference to polling as distinct from deeper involvement of civil society organizations and the voluntary sector is disturbing.²¹

At the same time, however, there is remarkably little attention being paid, in published papers, to Canada’s international social and economic commitments.²² In a rare exception, Senator Erminie Joy Cohen, in her recent “Sounding the Alarm: Poverty in Canada,” recognized that Federal implementation of our *Covenant* commitments has been questioned severely by the Covenant Committee and that Canada, as a wealthy nation, should be doing much better.²³ For their part, Federal officials have admitted that, given the complexities involved in understanding the impacts of Canada Assistance Plan termination on the most obviously affected groups – for example, the

¹⁸M. Philp, “Hurry to hearing UN tells Canada”, *The [Toronto] Globe and Mail* (November 27, 1997) A3.

¹⁹Department of Canadian Heritage, *The International Covenant on Economic, Social and Cultural Rights: Third Report of Canada* (Ottawa: Minister of Public Works and Government Services, 1997).

²⁰For a summary of the Committee’s concerns about Canada, see Committee on Economic, Social and Cultural Rights, *Report on the Eighth and Ninth Sessions*, UN ESCOR, 1994, Supp. No. 3, UN Doc. E/1994/23 E/C.12/1993/19 [hereinafter UN ESCOR 1994].

²¹ See, for example, *Building Blocks for Canada’s New Social Union* (Working Paper No. F 02) by M. Biggs (Ottawa: CPRN Inc., 1996) and K. O’Hara, “Securing the Social Union: Next Steps” *Reflexion*, No. 2 (Ottawa: CPRN, Inc., November, 1997).

²²See Biggs, *supra* note 21 and O’Hara, *supra* note 21.

²³The Honourable E. J. Cohen, Senator & A. Petten, *Sounding the Alarm: Poverty in Canada* (Ottawa: s.n., 1997) at 41-42.

indigenous and disabled – little thought has been devoted to the implications as they relate to Canada's international commitments.²⁴

Canada has an historic dilemma which is embodied in its evolving federal structure. Much of the core subject matter of the international social agenda falls either partially or completely under provincial jurisdiction. The retreat from use of the Federal spending power to enforce, nationally, the standards that implement our international commitments threatens Canada's ability to live up to those commitments. On the one hand, we have decades of experience, as a nation, with participation as a member of the International Labour Organization and the provinces themselves were involved in ratification of the *Covenant on Economic, Social and Economic Rights*. On the other hand, Queen's University Professor Christine Elwell has suggested that we are on a trend toward the further balkanization of Canadian social and environmental policy. That balkanization creates a "vacuum of state responsibility" which threatens the effective rule of law with respect to human rights and, particularly, economic, social and cultural rights.²⁵

Elwell points out, however, that the Canadian state must exercise "due diligence" with regard to our human rights commitments and that the move from the Canada Assistance Plan to the Canadian Health and Social Transfer involved a retreat from the Federal responsibility to guarantee at least four of its fundamental commitments under Article 11 of the *Covenant*. As NAPO and allied social organizations put it:

...on April 1, 1996, Canada transformed from a country in which the right to adequate financial assistance for persons in need was a legal requirement, enforceable in court by individuals affected, to one in which there is no federal legislation recognizing this right or providing the means of enforcing it.²⁶

The Martin/Chretien retreat has led Canada to break its international commitments in a way that neither "collaborative federalism" nor recent initiatives on child poverty can offset.

As Canada prepares to face the Covenant Committee in 1998, it is highly unlikely that the judgment it will receive will vary much from the assessment made by the Committee in 1994. At that time, the Committee expressed concern over the persistence of poverty in this country, given Canada's relative wealth and "the

²⁴Telephone interviews with officials of the Federal Department of Human Resources Development and of Justice, February, 1997.

²⁵C. Elwell, "World Social Policy Conferences as Rule-Making and a Decentralized Canadian Federation" (Winter, 1997) 4:3 *Canadian Foreign Policy* (Ottawa: Norman Patterson School of International Affairs, 1997).

²⁶B. Porter, submission on behalf of the National Anti-Poverty Organization, the Charter Committee on Poverty Issues, the National Action Committee on the Status of Women and the Canadian Association of Foodbanks to P. Alston, Chairperson - Committee on Economic, Social and Cultural Rights, 27 November 1996.

obligation arising out of Article 2 of the *Covenant* to apply the maximum of available resources to the progressive realization of the rights recognized in the treaty.” The Committee concluded: “There seems to have been no measurable progress in alleviating poverty over the past decade, nor in alleviating the severity of poverty among a number of particularly vulnerable groups.”²⁷ To that judgement, in 1998, may be added a further concern that Canada’s Federal commitment to ensure standards for the enjoyment of rights across the nation has been weakened dramatically.

Conclusion

This commentary assumes that there remains a fundamental and universal validity in the vision of human economic, social and cultural rights which has been elaborated continuously from the *Universal Declaration* through to the World Summit and the Beijing Women’s Conference. There is a fundamental and complex relationship between the progressive implementation and enjoyment of these rights and the effects of contemporary global macro-economic and development policies which unites the fundamental interests of world citizens, be they in Canada or Thailand. Organizational development to protect and enhance the rights and privileges of investors and traders has progressed rapidly in recent years. However, there has been little equivalent progress in the development of international structures of democratic governance and accountability such as might begin to assure that economic policy serves the enjoyment of fundamental economic and social human rights.

The situation within Canada continues to give reason for alarm. This is true because the instruments by which respect for these rights might be encouraged or enforced across Canada – and by which individuals and groups experiencing injury might seek recourse – have not simply deteriorated but have been weakened by intention. The challenge of implementing structures of governance adequate to the fulfillment of the vision of universal social, economic and cultural rights remains more urgent today than it was in 1976 or even in the re-emergent world of 1948.

²⁷UN ESCOR 1994, *supra* note 20 at 30.