austerity measures in the short-term has led to political unrest and increased social costs in the adjusting states.

The present writer undertook this research recognizing that IMF stand-by arrangements will remain a key feature of future sovereign debt renegotiations. Debtor states, too, acknowledge in practice the need to institute economic reforms within the context of these arrangements. However, the impact of economic adjustment particularly upon the marginalized sectors in most heavily indebted developing members of the IMF, and the unfavorable international market conditions affecting the capacity of these states to service their growing external debts, among other factors, warrant a more liberal interpretation of stand-by arrangement provisions.

This writer has endeavoured to demonstrate how an equitable approach to economic adjustment within the context of IMF stand-by arrangements may be achieved. Firstly, the use of compliance with the provisions of the stand-by arrangements as a formal condition for the continued enforceability of private loan agreements or restructuring arrangements should either be avoided or construed liberally by international creditors to prevent costly interruptions of financial flow to debtor states. Secondly, the application of the international law principle of state of necessity provides debtor states with a basis to undertake unilateral measures affecting debt service obligations in response to extreme economic crisis. It should be emphasized, however, that this legal remedy must be availed of temporarily within the context of an economic development plan aimed at alleviating the plight of debtor staes. Finally, an evolving principle of a human right to development contains useful standards which may facilitate the negotiations of stand-by arrangements and ensure political sustainability of adjustment programs. Recognition of the last two principles by the governing body of the IMF is crucial in the organization's goal of encouraging debtor states to undertake the much-needed reforms to revitalize their economies and improve their balance of payments position.

The Fund's conservative view of its role in the management of the present debt crisis left debtor states with the impression of the organization as a mere broker for the international creditors. It can be argued that a more activist role by the IMF consistent with its mandate is urgently needed. In this regard the IMF could begin by undertaking a comprehensive review of its stand-by arrangement policies in order to make then reflective of the economic conditions of the debtor states and thereby transform the arrangement into a positive instrument of cooperation in the adjustment process of these states.

HUMAN RIGHTS IN THE PHILIPPINES IDEAL AND REALITIES

NOEL OSTREA*

INTRODUCTION

Off with the fetters
that chafe and restrain!
Off with the chain!

Richard Hovey
Vagabondia

What are human rights?

Such is the difficult question faced by those who would enter into this new and complex field of study. Although there is general unanimity on the subject of human rights, hardly anyone can begin to describe what it is. It is a vast unexplored wasteland, a New World to conquer, rich in tradition, rooted deeply in the heritage of man and man's dawning recognition of who he is. Throughout the centuries, many have tried and failed to define human rights. The then-fledgling Constitution of the Thirteen United States of America, on 4 July 1776 stated:

> We hold these truths to be self-evident:
>
> That all men are created equal;
>
> That they are endowed by their Creator with certain inalienable rights;
>
> That among these are life, liberty and the pursuit of happiness;

Accordingly, certain "inalienable rights" are held to be "self-evident. "The Institute of International Law, on 12 October 1929, at its session in New York, adopted the following Preamble to its declaration of the "Rights of Man":

* Associate, Tanjuatco, Oreta, Tanjuatco, Berenguer and Corpuz; LL.B., Ateneo de Manila School of Law (1989); Editor-in-Chief, El Ponente (1988-89).

> [T]he Declarations of Rights inscribed in a great many constitutions and notably in the American and French constitutions at the end of the eighteenth century, enacted laws not only for the citizen, but for the human being; That, moreover, a certain number of treaties explicitly provided for the recognition of the rights of man.

Barely a month after the United States had become embroiled in the Second World War following the Japanese bombing of Pearl Harbor, then-US President Franklin D. Roosevelt delivered the following message to the US Congress which came to be known as the "Four Freedoms":

> In the future days, which we seek to make secure, we look forward to a world founded upon four essential human freedoms.The first is freedom of speech and expression -- everywhere in the world.
>
> The second is freedom of every person to worship God in his own way -- everywhere in the world.
>
> The third is freedom from want -- which, translated into world terms, means economic understandings which will secure every nation a healthy peacetime life for its inhabitants -- everywhere in the world.
>
> The fourth is freedom from fear -- which translated into world terms, means a world-wide reduction of armaments to such a point and in such a thorough fashion that no nation will be in a position to commit an act of physical aggression against any neighbor -- anywhere in the world.

The great Professor Hersch Lauterpacht, a noted jurist in the field of International Law, was moved to write a draft bill of the Rights of Man in 1945. In the "Whereas" clauses of its preamble, he spoke of "the equality of man, the dignity of man, the sanctity of human personality and its right and duty to develop in freedom to all attainable perfection."

Finally, the attempt to define the indefinable was taken to its greatest heights in the Universal Declaration of Human Rights, adopted and proclaimed by the United Nations on 10 December 1948. It set forth the following:

> Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world. Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind . . . ,
>
> Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law . . . ,
>
> Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women . . . ,

The person most responsible for the draft of the Universal Declaration of Human Rights was Rene Cassin, the winner of the Nobel Peace Prize. He is considered to be the true father of human rights.[1] He compared the human rights structure in the United Nations to a triptych of which one of the panels, the central panel, is the Declaration, while the two side panels are formed by the various conventions and covenants, on the one hand, and the implementation measures, on the other. Of the three panels, the latter is the most imperfect and the least developed.[2] In fact, reference now is made to an international bill of human rights consisting of the following:

1. The Universal Declaration of Human Rights;
2. The International Covenant on Economic, Social and Cultural Rights;
3. The International Covenant on Civil and Political Rights; and
4. The Optional Protocol to the International Covenant on Civil and Political Rights.

This is the "second panel."

Both Covenants, and the Optional Protocol, were adopted and opened for signature and ratification or accession by the General Assembly on 19 December 1966. The International Covenant on Economic, Social and Cultural Rights entered into force on 03 January 1976. The International Covenant on Civil and Political Rights and the Optional Protocol thereto entered into force simultaneously on 23 March 1976. And, as of January 1987, the International Covenant on Economic, Social and Cultural Rights has been ratified or acceded to by forty-six States, the International Covenant on Civil and Political Rights by forty-four States, and the Optional Protocol by sixteen States.[3]

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[1] Szabo, *Historical Foundations of Human Rights and Subsequent Developments*, in THE INTERNATIONAL DIMENSIONS OF HUMAN RIGHTS 23 (Vasak, ed. 1982).

[2] *Id.*

[3] UN OFFICE OF PUBLIC INFORMATION, THE UN AND HUMAN RIGHTS 28 (1978).

For a clearer understanding of the term "human rights", it might be worthwhile to study the origins of the term.

I. Historical Underpinnings

For some authors, the origins of human rights go back to Greek antiquity. They consider that human rights spring from natural law. The classic example, taken from Greek literature, is that of Antigone. According to Sophocles, when Creon reproaches Antigone for having buried her brother despite her being forbidden to do so, Antigone replies that she had acted in accordance with the *unwritten and unfailing laws of heaven.*[4] [Emphasis ours.] For its part, Roman law postulated the existence of a natural law, which, according to Ulpian, is the law which nature teaches to all living things.[5]

The most traditional conception of human rights asserts that, at the time when men passed from the primitive state to the social state, they concluded a contract between themselves, a "social contract," the existence of which was first posited long before Rosseau. By this contract, they renounced part of their natural rights which they had enjoyed in their free state, while preserving certain basic rights: the right to life, freedom and equality. This theory of the social contract is likewise founded on the school of natural law.[6]

Hence, there seems to be general agreement that the underpinnings of human rights can be found in natural law. After all, isn't this what is meant when "fundamental freedoms" and "inalienable rights" are spoken of?

II. Types Of Human Rights

Under the international bill on human rights, human rights can be classified into political rights and civil rights *vis-a-vis* economic and social rights. Political and civil rights may be distinguished from the latter in that the former defend the citizen against arbitrary action on the part of the state, while economic and social rights are based on positive state action.[7]

For instance, the proposition that: "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment" is an absolute right

[4] The Complete Plays of Sophocles 127 (R. Claverhouse Jebb trans.; M Hadas ed. 1982 ed.), 127.

[5] Szabo, *supra* note 1, at 12.

[6] *Id*, at 14.

[7] *Id.*

intended to be and which should be universally enforced today. This is found in Article 7 of the International Covenant of Civil and Political Rights. On the other hand, Article 7 of the International Covenant on Economic, Social and Cultural Rights imposes upon every country the duty to grant its citizens periodic holidays with pay and remuneration for public holidays. This rests at present upon the discretion of each government.[8]

In distinguishing between both classes of human rights, it may be said therefore that the former carries great moral significance, while the latter is dependent upon the resources of each country.

It is this breadth which makes the concept of "human rights" so difficult to flesh out. The concept is very much the product of history and human civilization. It is therefore subject to evolution and change. At first, the concept of human rights was a political one such as that found in the English Magna Carta or the American Bill of Rights. In these basic constitutions, human rights constituted a sphere of freedom of the human person from the State. A good example of this is the time-honored principle of the inviolability of one's dwelling, now expressed as a right against unreasonable searches and seizures, as follows:

> The king was powerful; he was clothed with majesty; his will was the law, but, with few exceptions, the humblest citizen or subject might shut the door of defend his intrusion into that privacy which was regarded as sacred as any of the kingly prerogatives. The poorest and most humble citizen or subject may, in his cottage, no matter how frail or humble it is, bid defiance to all the powers of the state; the wind, the storm and the sunshine alike may enter through its weather-beaten parts, but the king may not enter against the owner's will; none of his forces dare to cross the threshold of even the humblest tenement without its owner's consent.[9]

After these political or civil rights came the rights which situated man within his social milieu as one who takes part in the political structuring of society, rather than as an individual in opposition to the State. This is accomplished through the exercise of political rights. Finally, as a more recent phenomenon, there is now the idea of economic, social, and cultural rights, to be exercised through or by means of the State, which is now seen as the promoter

[8] Essays on Human Rights: Contemporary Issues and Jewish Perspective 8 (D. Sidorsky ed. 1979).

[9] *United States vs. Arceo,* 3 Phil. 381 at 384 (1904).

and protector of economic and social well-being,[10] such as:

> Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of employment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.[11]

Moreover, a further classification may be made, that of individual rights *vis-a-vis* collective rights. The general orientation of the international bill on human rights is towards the individual person.[12] In fact, many of the documents upon which this concept of human rights is based, such as the United Nations Charter, are increasingly cited in order to support the view that individuals, and not states are becoming recognized subjects of international law.[13] This, however, is not to lose sight of the fact that certain groups are victims of gross and large-scale violations of human rights. Minorities, boat people, stateless persons, and victims of war or calamity such as the peoples of Vietnam or Ethiopia are well-known examples of this sort of mass injustice. The latest and most recent examples of the peoples of Iraq, Kuwait and Israel have engraved themselves upon modern man's collective memories.

It is interesting to note that the very first article of both International Covenants on Human Rights sets out a collective right, i.e. the right of all people to self- determination. By virtue of this right, all peoples "freely determine their political status and freely pursue their economic, social and cultural development."

The second paragraph of the same article deals with the economic counterpart of this right, the free disposition of natural resources. In this line of thinking, the right of self-determination is considered the most fundamental of all human rights. As a further illustration, Article I of the Declaration on the Granting of Independence to Colonial Countries and Peoples, states unequivocally that "the subjection of peoples to alien subjugation, domination and exploitation

[10] Szabo, *supra* note 1, at 49.

[11] Universal Declaration of Human Rights U.N.G.A. Res. 217A (III 1948), 10 December 1948, Art. 25 (1).[hereinafter Universal Declaration of Human Rights]

[12] Szabo, *supra* note 1, at 54.

[13] I. CRUZ, INTERNATIONAL LAW 42-43. (1984). Other documents cited to support this view are the Universal Declaration of Human Rights, the Treaty of Versailles, the Genocide Convention, the Hague Convention of 1930 and the Convention Relating to the Status of Stateless Persons.

constitutes a denial of fundamental human rights."[14]

It would seem therefore that upon three cardinal principles the concept of human rights rests.

a) the principle of self-determination.

b) the equality of all human beings before the law.

c) the principle of non-discrimination, which is a corollary to the first.

If equality before the law is understood as the principle according to which equal facts should be treated equally and unequal facts may be treated in accordance with the special circumstances of the case, the principle of non-discrimination prohibits a differentiation with regard to some distinctions of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.[15]

III. HUMAN RIGHTS PROVISIONS IN THE 1987 PHILIPPINE CONSTITUTION

It is the desire of the Universal Declaration of Human Rights to proclaim a common standard of achievement for all peoples and all nations, that every individual and every organ of society might strive to promote respect for these rights and freedoms and secure their universal and effective recognition and observance. To this end, in the Philippines, Article 7 of the International Covenant of Civil and Political Rights dealing with torture is re- enacted and given life in the following sections of Article III of our 1987 Constitution, which provide for the following:

> No torture, force, violence, threat, intimidation or any other means which vitiates the free will shall be used against him [referring to a person under investigation]. Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited. (Section 12, Paragraph (2)).

Also, in accordance with Article 6, Paragraph 2 of the International Covenant on Civil and Political Rights which deals with the death penalty:

[14] GA Resolution 1514 (XV) of 14 December 1960.

[15] Szabo, *supra* note 1, at 61.

> Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. Neither shall [the] death penalty be imposed, unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it. Any death penalty already imposed shall be reduced to *reclusion perpetua* (Section 19, paragraph (1)).

It is clear that these provisions bear a strong Martial Law stamp. Section 12, paragraph (2), in prohibiting secret detention places and other similarly offensive forms of detention arose out of the Filipino's experience with safehouses. Here, persons whose ideas were opposed to the Marcos regime were held, cut-off and isolated from their loved ones, and their relatives denied even the merest reassurance provided by the knowledge of where they were detained. In fact, to strengthen this provision, paragraph (4) of the same article provides for "penal and civil sanctions for violations of this section as well as compensation to and rehabilitation of victims of torture or similar practices, and their families."

In contrast to the common abhorrence felt for secret detention places, tedious and taxing debate accompanied the passage of the provision outlawing the death penalty.[16] On the one hand, proponents for its abolition pointed to, among others, the trauma it inflicts not just upon the convict but also upon his family; the lack of convincing evidence regarding its deterrent effect; and the fact that life is too precious to be placed at the discretion of a human judge.[17] On the other hand, opponents of the proposal maintained for their part that the deterrent effect of the death penalty was real, although difficult to quantify, as in the case of executed drug traffickers. In the end, only a Bernas amendment allowing its reinstatement for heinous crimes allowed the passage of the provision.

With its passage, the debate has raged rather than abated. In the case of *People v. Munoz*,[18] involving accused persons convicted of murder with neither attendant aggravating nor mitigating circumstances, the Supreme Court was faced with the dilemma of how to apply the mandate of the Constitution. On the one hand, a literal interpretation of the provision would equalize the position of those who commit murder with aggravating circumstances and those who commit murder with neither aggravating nor mitigating circumstances, leading to an inequality in the application of the law. On the other hand, an attempt to reconcile the three-fold rule with the non-imposition of the death penalty would lead to the novel proposal to divide the indivisible penalty of *reclusion perpetua* into two periods. In the end, the Supreme Court found its way clear to express the more

[16] J. BERNAS, S.J., THE CONSTITUTION OF THE PHILIPPINES: A COMMENTARY 442 (1987).

[17] *Id.*

[18] 170 SCRA 107, 1989.

literal view and to allow the inequality of treatment for murderers, although it was sufficiently nonplussed to express both a majority and a minority opinion.

Now, there is a great outcry for the reimposition of the death penalty, in light of several callous crimes which have too-often darkened the landscape of the Filipino's recent collective memory. Beebom Castanos and Cochise Bernabe, the Vizcondes, Maureen Hultman, and CP Lopez are only the most celebrated crosses that light the way to Golgotha. Again, it seems that the thirst for blood can only be stemmed by an equally ravenous hunger for the lives of the unlawful dregs of our society: the drug pushers, the addicts, the murderers, the rapists and perhaps even the putschists. One wonders, however, why, despite the fact that the history of the death penalty is as long as the story of Man, its alleged deterrent effect has failed to check the spillover of violent crimes from the past to the present.

In any case, the fact is that there is indeed a change in world thinking which is moving toward the abolition of the death penalty. As of today, over 40% of the countries of the world have moved for the total or partial abolition of the death penalty.[19] It is certain however, that this is not the last word to be heard in this debate.

It is really in the testing ground of municipal law that these human rights stand or fall. In the Philippine Constitution, there is found:

> 1. Section 11, Article II, which declares it to be a State principle and policy to value the dignity of every person and guarantee full respect for human rights. This is the basic proscription in favor of human rights which is implemented by the other two areas of our Constitution, and

[19] The modern abolitionist movement is usually said to have begun in Europe with the publication of Cesare Beccaria's ON CRIMES AND PUNISHMENTS IN ITALY in 1764. The book contained the first sustained, systematic critique of the death penalty.

In 1786 Grand Duke Leopold of Tuscany promulgated a penal code, based on Beccaria's ideas, which completely eliminated the death penalty. In 1846 the US territory (later state) of Michigan became he first jurisdiction in the world permanently to abolish the death penalty for murder. And in 1863 Venezuela became the first country permanently to abolish the death penalty for all offenses. Others followed over the next decades.

Since World War II, as the movement for human rights has grown, so the momentum for abolition has gathered. During the past decade, on average, at least one country a year has eliminated the death penalty for ordinary crimes or for all crimes, and today over 40 per cent - nearly half - of all countries in the world have abolished the death penalty in law or practice. (Amnesty International, *When the State Kills*, AI Publications, 1989, 40.)

is self-explanatory.

2. Article III, or the Philippine Bill of Rights, which is the table of the guarantees of the individual person against the pervasive powers of the State; and

3. Sections 17 - 19 of Article XIII, the subsection on Human Rights establishing the Human Rights Commission.

As conceived, the Commission on Human Rights, is an independent body[20] composed of five commissioners[21] which is essentially investigative in character[22] designed to enforce and protect human rights. However, the creation of this body was marked by some debate, Commissioner Rodrigo then being of the opinion that this body would be useless, since it is, in his words, a "toothless tiger."[23] The indivisible individual freedoms in the Constitution's Bill of Rights basically comprise the Filipino's ideas of human rights. Two of these provisions were earlier discussed. Additionally, other provisions are as follows:

1. Section 11, which provides for free access to the courts and now, quasi-judicial bodies;

2. Section 12, paragraph (1) which provides an accused with a right to be silent and to have competent and independent counsel, a right which cannot be waived except in writing and in the presence of counsel;

3. Section 13, which provides for a right to bail which shall not be impaired even when the privilege of the writ of habeas corpus is suspended;

4. Section 14, paragraph (2), which provides for a constitutional presumption of innocence;

5. Section 17, which is the proscription against self-incrimination;

6. Section 18, which prohibits detention solely on the ground of political belief; and

7. Sections 20 and 22, which are the proscriptions against double

[20] PHIL. CONST., Art. XIII, Sec.17 (1).

[21] PHIL. CONST., Art. XIII, Sec. 17 (2).

[22] PHIL. CONST., Art. XIII, Sec. 18 (1).

[23] IV RECORD, PROCEEDINGS OF THE 1986 CONSTITUTIONAL COMMISSION 26 - 28.

jeopardy and the enactment of an *ex post facto* law or a bill of attainder.

It has been stated that these and other rights exist because, in a democracy, the preservation and enhancement of the dignity and worth of the human personality is the central core, as well as the cardinal article of faith, of civilization. The inviolable character of man as an individual must be "protected to the largest possible extent in his thoughts and in his beliefs as the citadel of his person."[24]

Otherwise stated, the Bill of Rights is designed to preserve the ideals of liberty, equality, and security "against the assaults of opportunism, the expediency of the passing hour, the erosion of small encroachments, and the scorn and derision of those who have no patience with general principles."

In the pithy language of Mr. Justice Robert Jackson, the purpose of the Bill of Rights is to withdraw "certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials, and *to establish them as legal principles to be applied by the courts.* One's rights to life, liberty and poverty, to free speech, or free press, freedom of worship and assembly, and other fundamental rights may not be submitted to a vote; they depend on the outcome of no elections." Laski proclaimed that "the happiness of the individual, not the well-being of the State, was the criterion by which its behavior was to be judged. His interests, not its power, set the limits to the authority it was entitled to exercise."[25]

Moreover, while the Bill of Rights also protects property rights, the primacy of human rights over property rights is recognized. Because these freedoms are "delicate and vulnerable, as well as supremely precious in our society" and the "threat of sanctions may deter their exercise almost as potently as the actual application of sanctions," they "need breathing space to survive," permitting government regulation only "with narrow specificity."[26] Property and property rights can be lost through prescription; but human rights are imprescriptible. If human rights are extinguished by the passage of time, then the Bill of Rights is a useless attempt to limit the power of government and ceases to be an efficacious shield against the tyranny of officials, of majorities, of the influential and

[24] *Philippine Blooming Mills Employees Organizations v. Philippine Blooming Mills, Co., Inc.,* 51 SCRA 189 at 200 (1973), further citing *American Com v. Douds,* 339 US 282, 421 (1949).

[25] *Id.* at 201.

[26] *Id.* at 202, *further citing* NAACP v. Button (Jan. 14, 1968), 371, US 415, 433, 9 L.Ed. 2d 405, 418.

powerful, and of oligarchs -- political, economic or otherwise.[27]

V. Supreme Court Decisions Involving Human Rights

In the light of well-known standards of constitutional law, neither of these concepts would be either alien or objectionable. What is worthy of further scrutiny are certain recent decisions of the Philippine Supreme Court that appear to degrade the international standard of justice and human rights to which all aspire.

In the celebrated case of *Marcos v. Manglapus*,[28] the Supreme Court had to determine whether or not an inherent right to return to one's country exists. Among other arguments cited by the petitioners were:

> Everyone has the right to leave any country, including his own, and to return to his country.[29]
>
> No one shall be arbitrarily deprived of the right to enter his own country.[30]

In clarifying the issue, the Court said:

> The right to return to one's country is not among the rights specifically guaranteed in the Bill of Rights, which treats only of the liberty of abode and the right to travel, but it is our well-considered view that the right to return may be considered, as a generally accepted principle of international law and, under our Constitution, is part of the law of the land [citing Art. II, Section 2 of the Constitution]. However, it is distinct and separate from the right to travel and enjoys a different protection under the International Covenant of Civil and Political Rights, i.e. against being "arbitrarily deprived" thereof.[31]

Eventually, the Court ruled that the President's powers are not limited to those found in the Constitution. In fact, the President bears the duty to preserve and defend the Constitution. Hence, her discretion to deny the return of Mr.

[27] *Id.*

[28] 177 SCRA 668 (1989).

[29] Universal Declaration of Human Rights, Art. 131 (2).

[30] International Covenant on Civil and Political Rights (U.N.G.A. Res. 2200, 99 U.N.T.S. 171, 1967), Art. 12 (4).

[31] *Marcos vs. Manglapus*, 174 SCRA at 687-88.

Marcos is a matter appropriately addressed to her residual unstated powers. Also, upon a review of the exercise of her discretion, the Court further found factual bases for the President's decision.

As regards unreasonable searches and seizures, the case of *Guazon v. de Villa* is most *apropos*.[32] In this case, the military and police, on twelve occasions between March and November 1987, conducted area target zonings or saturation drives in critical Metro Manila areas pinpointed as places where subversives might be hiding. The petitioners, all taxpayers and community leaders, alleged that the saturation drives follow a common pattern of human rights abuses, where, in the dead of night, police and military units, without having a specific house in mind and any search warrant or warrant of arrest, cordon an area, rudely rousing the residents, ordering them out of their houses to be strip-searched while the houses are entered, searched, and in the process damaged. [33]

At first blush, the Supreme Court appeared to be heading for a decision in affirmation of human rights. After tracing the history of the right against unreasonable searches and seizures, however,[34] it was held by the Supreme Court that, although there was no impediment to securing search warrants or warrants of arrest, and while admitting the high probability that some violations were actually committed, the Supreme Court limited itself to granting a temporary restraining order (TRO), while dismissing the more substantive aspects of the petition on the ground that the petitioners were not the proper parties to bring the action, their properties not having suffered and their rights not having been violated.

In fact the Court stated that "[i]t is not police action *per se* which should be prohibited. Rather, it is the procedure used or the methods which offend even the hardened sensibilities."[35]

[32] 181 SCRA 623 (1990).

[33] *Id.* at 629-630

[34] In *Roan v. Gonzales* (145 SCRA 687, 690-691 [1986]), the Court stated:

"One of the most precious rights of the citizen in a free society is the right to be left alone in the privacy of his own house. That right has ancient roots, dating back through the mists of history to the mighty English Kings in their fortresses of power. Even then, the lowly subject had his own castle where he was monarch of all he surveyed. This was his humble cottage from which he could bar his sovereign lord and all the forces of the Crown.

"That right has endured through the ages albeit only in a few libertarian regimes. Their number, regrettably, continues to dwindle against the onslaught of authoritarianism. We are among the fortunate few, able again to enjoy this right after the ordeal of the past despotism. We must cherish and protect it all the more now because it is like a prodigal son returning." (*Id.*at 632).

[35] *Id.* at 634.

In ruling in this manner, it appears the Court ruled the way it did due to an insufficiency of evidence. As the Court complained:

> Herein lies the problem of the Court. We can only guess the truth. Everything before us consists of allegations. According to the petitioners, more than 3,407 persons were arrested in the saturation drives covered by the petition. No estimates are given for the drives in Block 34, Dagat-dagatan, Navotas; Apelo Cruz Compound, Pasig; and Sun Valley Drive near the Manila International Airport area. Not one of the several thousand persons treated in the illegal and inhuman manner described by the petitioners appears as a petitioner or has come before a trial court to present the kind of evidence admissible in courts of justice. Moreover, there must have been tens of thousands of nearby residents who were inconvenienced in addition to the several thousand allegedly arrested. None of those arrested has apparently been charged and none of those affected has apparently complained.[36]

In fact, it was further stated:

> The Court believes it highly probable that some violations were actually committed. This is so inspite of the alleged pleas of barangay officials for the thousands of residents "to submit themselves voluntarily for character and personal verification." We cannot imagine police actions of the magnitude described in the petitions and admitted by the respondents, being undertaken without some undisciplined soldiers and policemen committing certain abuses. x x x[37]

Immediately after this, however, the Court went on to say:

> However, the remedy is not to stop all police actions, *including the essential and legitimate ones*. We see nothing wrong in police making their presence visibly felt in troubled areas. Police cannot respond to riots or violent demonstrations if they do not move in sufficient numbers. A show of force is sometimes necessary *as long as the rights of the people are protected and not violated*. A blanket prohibition such as that sought by the petitioners would limit all police actions to one on one confrontations where search warrants and warrants of arrests against specific individuals are easily procured. Anarchy may reign if the military and the police decide to sit down in their offices because all concerted drives where a show of force is present are totally prohibited.[38]

[36] *Id.*, at 636.

[37] *Id.*, at 637.

Hence, it was ruled:

> The remedy is not an original action for prohibition brought through a taxpayer's suit. Where not one victim complains and not one violator is properly charged, *the problem is not initially for the Supreme Court. It is basically one for the executive departments and for trial courts*. Well meaning citizens with only second hand knowledge of the events cannot keep on indiscriminately tossing problems of the executive, the military, and the police to the Supreme Court as if we are the repository of all remedies for all evils. The rules of constitutional litigation have been evolved for an orderly procedure in the vindication of rights. They should be followed.[39] x x x

Justice Cruz, however, cogently noted, after citing Section 2, Article II the following:

> The provision is intended to protect the individual from official (and officious) intrusions, no matter now humble his abode and however lowly his station in life. x x x
>
> Saturation drives are not among the accepted instances when a search or an arrest may be made without a warrant. They come under the concept of fishing expeditions stigmatized by law and doctrine. x x x
>
> I urge my brethren to accept that those drives are *per se* unconstitutional. x x x *I submit that this Court should declare categorically and emphatically that these saturation drives are violative of human rights and individual liberty and should be stopped immediately* (Emphasis supplied).[40]

For its part, the Universal Declaration of Human Rights provides in Article 12 that:

> No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

[38] *Id.*

[39] *Id.* at 638.

[40] *Id.* at 642. Justice Sarmiento joined Justice Cruz in his dissent.

A practically identical provision can also be found in Article 17 of the International Covenant on Civil and Political Rights.

In disposing of a taxpayer/lawyer's petition questioning the legality of checkpoints set up pursuant to Letter of Instruction 02/87 of the Philippine General Headquarters, Armed Forces of the Philippines, the Supreme Court followed a similar vein of reasoning. In *Valmonte v. de Villa*,[41] Justice Padilla, speaking for the Court, stated:

> The constitutional right against unreasonable searches and seizures is a personal right invocable only by those whose rights have been infringed, or threatened to be infringed. What constitutes a reasonable or unreasonable search and seizure in any particular case is purely a judicial question, determinable from a consideration of the circumstances involved x x x. Petitioner Valmonte's general allegation to the effect that he had been stopped and searched without a search warrant x x x without stating the details of the incidents which amount to a violation of his right against unlawful search and seizure, is not sufficient to enable the Court to determine whether there was a violation of Valmonte's right against unlawful search and seizure. x x x Where, for example, the officer merely draws aside the curtain of a vacant vehicle which is parked on the public fair grounds, or simply looks into a vehicle, or flashes a light therein, these do not constitute unreasonable search.[42]

Once more, Justice Cruz and Justice Sarmiento registered their dissent. Justice Cruz again spoke eloquently as follows:

> The sweeping statements in the majority opinion are as dangerous as the checkpoints it would sustain and fraught with serious threats to individual liberty. The bland declaration that individual rights must yield to the demands of national security ignores the fact that the Bill of Rights was intended precisely to limit the authority of the State even if asserted on the ground of national security. What is worse is that the searches and seizures are peremptorily pronounced to be reasonable even without proof of probable cause and much less the required warrant. x x x [E]very individual may be stopped and searched at random and at any time simply because he excites the suspicion, caprice, hostility or malice of the officers manning the checkpoints, on

[41] 178 SCRA 211 (1989).

[42] *Id.* at 215-16.

> pain of arrest or worse, even being shot to death, if he resists.[43]

And then comes the caveat!

> Unless we are vigilant of our rights, we may find ourselves back to the dark era of the truncheon and the barbed wire, with the Court itself a captive of its own complaisance and sitting at the death-bed of liberty.[44]

Finally, on 9 July 1990, the Supreme Court, in what is perhaps the most controversial of its "human rights cases" to date, *Umil v. Ramos* [45], examined and rejected eight consolidated petitions involving eleven persons detained without warrant and without a preliminary investigation having first been conducted. In each case, the Supreme Court concluded, after a inquiry into every phase and aspect of each petitioner's detention, that each person on whose behalf a petition for habeas corpus was filed had either "freshly committed or were actually committing an offense, when apprehended".[46] In all these cases, the military seemed possessed of either superhuman powers or just incredible luck.

Let us pinpoint some of the more "unusual" circumstances. For instance, it was alleged by the military that military surveillance of the house of Renato Constantino led to the arrest of the following: Renato Constantino, Wilfredo Buenaobra and Amelia Roque. In each case, when questioned after their arrest, presumably at CIS Headquarters, Camp Crame, Quezon City, without any indication that independent counsel was present, each of the petitioners made damaging voluntary admissions. Renato Constantino, although he refused to give a written statement, admitted that he was a staff member of the National United Front Commission (NUFC) and a ranking member of the International Department of the Communist Party of the Philippines (CPP).[47] Wilfredo Buenaobra, when accosted, "readily admitted" that he was a regular member of the CPP/NPA and that he went to the place to deliver letters to "Ka Mong", referring to Renato Constantino, and other members of the rebel group (Ibid.). For her part, Amelia Roque admitted that various voluminous documents relating to the NUFC/CPP, including computer diskettes, various arms, rounds of live ammunition and a

[43] *Id.* at 217-18.

[44] *Id.* at 218.

[45] 187 SCRA 311 (1990).

[46] *Id.* at 316.

[47] *Id.* at 321.

grenade, belonged to her.[48]

While we have no desire to negate the fruits of actual, legal and painstaking police work, one cannot help but wonder at the unequal circumstances under which the "admissions" were elicited.

Additionally, in *Espiritu v. Lim*, G.R. No. 85727, the arrest of Deogracias Espiritu was most irregular, to say the least.

According to Espiritu, at around 5 o'clock in the morning of 23 November 1988, while he was sleeping in his home located at 363 Valencia St., Sta. Mesa, Manila, he was awakened by his sister Maria Paz Lalic who told him that a group of persons wanted to hire his jeepney. When he went down to talk to them, he was immediately put under arrest. When he asked for the warrant of arrest, the men, headed by Col. Ricardo Reyes, bodily lifted him and placed him in their owner-type jeepney. He demanded that his sister, Maria Paz Lalic, be allowed to accompany him, but the men did not accede to his request and hurriedly sped away.[49]

He was brought to Police Station No. 8 of the Western Police District at Blumentritt, Manila where he was interrogated and detained. Then, at about 9 o'clock of the same morning, he was brought before General Lim, a respondent herein.[50] These factual findings were neither disproven nor refuted. Instead, the arresting officers of the Western Police District sought to justify their conduct on the ground that Espiritu had previously given them the slip.

The Supreme Court subsequently upheld the validity of Espiritu's arrest as a valid warrantless arrest. This, despite the fact that about twelve hours had elapsed from the afternoon of 22 November 1990, the time when the crime of Inciting to Sedition was allegedly committed, to the subsequent arrest of Espiritu at 5:00 a.m. on 23 November 1991.

Neither this point, however, nor the alleged crime committed suffice to justify the barbarous and arbitrary conduct of the police in their arrest of Espiritu.

In the final analysis, the evidence presented to the Supreme Court must have convinced it that due process was indeed observed in all these cases,

[48] *Id.* at 322.

[49] *Id.* at 328.

[50] *Id.* at 329.

however cursorily. Nonetheless, in condoning rather than condemning these and other instances of questionable conduct, the Honorable Court sent the wrong signal to law enforcers. Otherwise stated, it might be wrongly inferred henceforth that those with might who err on the side of right, are right. Precisely, it is this writer's opinion that, in this penumbra of State rights and individual rights, Philippine courts, including the highest court in the land, must not only be circumspect but perhaps even skeptical of circumstances such as these.

CONCLUSION

Human rights are played out on a broad field of concerns, from the boat people of Vietnam to the starving people of Ethiopia, from the tortured detainee to the invasion of Kuwait.[51] Perhaps the essential question that remains is no longer the panoply of issues, but rather, the depth of one's involvement. A call has gone out to all lovers of freedom; how shall it be answered?

And why should one get involved? In a country like the Philippines, aren't these concerns too trivial or too abstract?

Perhaps Justice Cruz, yet again, can state it best.

> The danger to our free institutions lies not only in those who openly defy the authority of the government and violate its laws. The greater menace is in those who, in the name of democracy, destroy the very things it stands for -- as in this case -- and so undermine democracy itself.
>
> Where liberty is debased into a cruel illusion, all of us are degraded and diminished. Liberty is indivisible; it belongs to every one. We should realize that when the bell tolls the death of liberty for one of us, "it tolls for thee" and for all of us.[52]

[51] World intervention in the Iraqi invasion of Kuwait may be justified on the grounds of "humanitarian intervention", a generally accepted principle of *International Law See* R. LILLICH AND F. NERMANN, INTERNATIONAL HUMAN RIGHTS: PROBLEMS OF LAW AND POLICY 493 (1979).

[52] 181 SCRA 623 at 643 (1990).