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Reform, Revolution, or Retrenchment? International Human Rights in the Post- Cold War Era

Brenda Cossman*

As Europe East and West struggles to come in from the cold, international human rights must confront the implications of profound social, economic, and political change. It is a moment of both opportunity and challenge. The end of the Cold War may signal a renewed possibility for the cooperation so essential for the realization of the normative vision of international human rights. Notwithstanding such hopes, I would argue that fundamental changes in the relationship between East and West may undermine important dimensions of the discourse of international human rights. Moreover, the focus of attention on the changes in the East may have devastating effects on the relationship between North and South, and on the conception of human rights law emerging from developing countries. As the Wall is dismantled in Europe, new walls may only be going up elsewhere.

I. RIGHTS DISCOURSE AND DEMOCRATIC POSSIBILITIES

The end of the Cold War may bring renewed international commitment to human rights. From its beginnings, international human rights law has been limited by problems of enforcement. As one commentator has written, "[i]nternational remedial paths remain fragile, often illusory."¹ It has relied primarily on international cooperation, moral suasion and condemnation to ensure compliance. More-

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1. Henry J. Steiner, *Political Participation as a Human Right*, 1 HARV. HUM. RTS. Y.B. 77, 81 (1988). See generally Torkel Opsahl, *Instruments of Implementation of Human Rights*, 10 HUM. RTS. L.J. 13 (1989); GUIDE TO INTERNATIONAL HUMAN RIGHTS PRACTICE (Hurst Hannum ed. 1984); Louis Sohn, *Human Rights: Their Implementation and Supervision by the United Nations*, 2 HUMAN RIGHTS IN INTERNATIONAL LAW: LEGAL AND POLICY ISSUES 369 (Theodor Meron ed. 1984); Robertson, *The Implementation System: International Measures in THE INTERNATIONAL BILL OF RIGHTS: THE COVENANT ON CIVIL AND POLITICAL RIGHTS* 332 (Louis Henkin ed. 1981); J.S. Watson, *Legal Theory, Efficacy and Validity in the Development of Human Rights Norms in International Law*, 1979 U. ILL. L.F. 609; Richard B. Bilder, *Rethinking International Human Rights: Some Basic Questions*, 1969 WIS. L. REV. 171.

over, this cooperation was often elusive in the Cold War world, where deep political and ideological divides constrained the sanctioning of human rights abuses by the international community. In a polarized world, the discourse on human rights was often no more than a rhetorical device in a political game of legitimation and delegitimation which coexisted with superpowers turning a blind eye to the human rights abuses in their own sphere of influence.

Yet, despite the weakness of the enforcement machinery and the history of non-cooperation, there remains a strong commitment to the discourse of human rights principles. As Philip Alston wrote in 1988,

It is now widely accepted that the characterization of a specific goal as a human right elevates it above the rank and file of competing social goals, gives it a degree of immunity from challenge and generally endows it with an aura of timelessness, absoluteness and universal validity.²

Human rights is a powerful political discourse—indeed, it is often the only discourse in which disadvantaged groups may claim a voice and legitimately make universal claims.³ International, national and grassroots organizations continue to make human rights the discourse of choice in their struggles. Despite its institutional limitations, the discourse provides an important source of political inspiration and energy through which people can be educated and mobilized.⁴

In a world no longer divided along the East/West axis, this political discourse may have heightened possibilities. A world no longer divided may better lend itself to the international cooperation so essential to the realization of the vision of international human rights. On the international level, we are witnessing the emergence of a renewed commitment to the United Nations as a forum for the resolution of

2. Philip Alston, *Making Space for New Human Rights: The Case of the Right to Development*, 1 HARV. HUM. RTS. Y.B. 3 (1988).

3. See Patricia J. Williams, *Alchemical Notes: Reconstructing Ideals from Deconstructed Rights*, 22 HARV. C.R.-C.L. L. REV. 401 (1987); Elizabeth M. Schneider, *The Dialectics of Rights and Politics: Perspectives from the Women's Movement*, 61 N.Y.U. L. REV. 589 (1986).

4. See Clarence J. Dias & James C.N. Paul, *Developing Legal Resources for Participatory Organizations of The Rural Poor*, 1985 THIRD WORLD LEGAL STUD. 19 (1985); James C.N. Paul & Clarence J. Dias, *Generating and Sharing Knowledge of Law for People-Centered Development*, 1987 THIRD WORLD LEGAL STUD. 17; Clarence J. Dias & James C.N. Paul, *Developing the Human Right to Food as a Legal Resource for the Rural Poor: Some Strategies for NGOs*, in THE RIGHT TO FOOD 203 (P. Alston & K. Tomasevski eds. 1984); Edel Guiza, *A Philippine Experience on Legal Resources Development by the Rural Poor*, 1987 THIRD WORLD LEGAL STUD. 93; Anisur Rahman, *The Roles and Significance of Participatory Organizations of the Rural Poor in Alternative Strategies of Development*, 1987 THIRD WORLD LEGAL STUD. 1.

international conflict.⁵ Such international cooperation could assume many forms in the area of human rights. The mechanisms for enforcing and monitoring compliance with international human rights norms could be improved within both Charter-⁶ and Convention-based procedures.⁷ States which have not already done so could ratify article 41 of the International Covenant on Civil and Political Rights (ICCPR), which provides for interstate complaints to the Human Rights Committee,⁸ as well as the Optional Protocol of the Covenant, which allows the Committee to hear complaints from individuals.⁹ Much room exists for strengthening the procedures and remedies in the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), and the Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW).¹⁰ For ex-

5. For a discussion of the role of the U.N. in the areas of peace, environment, and economic development in the aftermath of the Cold War, see Lister, *The Role of International Organizations in the 1990s and Beyond*, 1990 INT'L RELATIONS 101.

6. The Charter of the United Nations sets out the general human rights mandate of the U.N. and empowers several subsidiary bodies to implement this mandate. Most notably, the General Assembly is directed to initiate studies and make recommendations to promote human rights, and the Economic and Social Council [ECOSOC] is directed to make recommendations in the promotion of human rights. See U.N. CHARTER arts. 1, 13, 55, 56, 62, 64, 68. See generally Tom J. Farer, *The United Nations and Human Rights: More Than a Whimper Less Than a Roar*, 9 HUM. RTS. Q. 550 (1987); UNITED NATIONS, *THE UNITED NATIONS AND HUMAN RIGHTS* (1984). In addition to the mandate for fact finding and making recommendations, ECOSOC in 1970 adopted the Procedure for Dealing with Communications Relating to Violations of Human Rights and Fundamental Freedoms, June 19, 1970, E.S.C. Res. 1503 (XLVIII), 48 UN ECOSOC, UN Doc. E/RES/1503 (XLVIII) (1970) (hereinafter Procedure 1503). Procedure 1503 empowers the Human Rights Commission and its Subcommittee on Prevention of Discrimination and Protection of Minorities to receive complaints which "reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms." *Id.* at 1. See generally M.E. Tardu, *The United Nations Response to Gross Violations of Human Rights: The 1503 Procedure*, 20 SANTA CLARA L.R. 559 (1980).

7. The International Bill of Rights, comprised of the Universal Declaration of Human Rights and two Covenants, the International Covenant on Civil and Political Rights and the International Covenant on Social, Economic and Cultural Rights, imposes a system of periodic reporting on member states. Universal Declaration of Human Rights, G.A. Res. 217A(III), 3 UN GAOR 71, UN Doc. A/810 (1948) (Universal Declaration), International Covenant on Civil and Political Rights, G.A. Res. 2200 A, 21 UN GAOR, Supp. (No. 16) 52, UN Doc. A/16316 (1966), International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A, 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc A/16316 (1966) (ICESCR).

8. The Declaration regarding article 41 of the ICCPR entered into force March 28, 1979, with 10 ratifications. As of January 1, 1989, the interstate complaints procedure had been ratified by 23 countries. Neither the United States nor the countries of Eastern Europe, with the exception of Hungary, had ratified the Declaration.

9. The Optional Protocol of the ICCPR entered into force March 23, 1976. As of January 1, 1989, 43 countries had ratified it. Neither the U.S. nor the countries of Eastern Europe, again with the recent exception of Hungary, had ratified it.

10. The International Convention on the Elimination of All Forms of Racial Discrimination, G.A. Resolution 2106A (XX), 20 UN GAOR, Supp. (No. 4) 47, UN Doc A/6014 (1965), Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 34/180, 34 U.N. GAOR Supp. (No. 46) 193, UN Doc. A/Res 134/180 (1980), entered into force September 3, 1981. For a discussion of the weak enforcement machinery under CEDAW, see

ample, many more states could ratify the Declaration regarding article 14 of CERD, allowing the Committee on the Elimination of All Forms of Racial Discrimination to receive communications from individuals.¹¹ A provision similar to article 14 could be added to CEDAW.¹²

Even short of precipitating formal changes in the enforcement machinery of international instruments, the end of the Cold War may open other and perhaps more significant opportunities for human rights. Improved international cooperation may facilitate the work of the various agencies, committees, and working groups engaged in monitoring compliance with human rights obligations. Until now, the operations of these groups and institutions have been severely limited by the deep and often hostile political and ideological differences of their members.

There is some indication that such cooperation is already emerging within the United Nations human rights forums. For example, the forty-first Session of the U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities in August 1989 was reportedly marked by "a new spirit of cooperation between Sub-Commission members from the United States and the Soviet Union,"¹³ the 1989 Session of the U.N. Commission on Human Rights was reportedly "marked by a slight decrease in ideological polarization as

Burrows, *International Law and Human Rights: The Case of Women's Rights*, in HUMAN RIGHTS: FROM RHETORIC TO REALITY 80, (T. Campbell, D. Goldberg, S. McLean & T. Mullen eds. 1986); Margaret E. Galey, *International Enforcement of Women's Rights*, 6 HUM. RTS. Q. 463 (1984). For a comprehensive bibliography regarding CEDAW, see Rebecca J. Cook, *Bibliography: The International Right to Nondiscrimination on the Basis of Sex*, 14 YALE J. INT'L L. 161 (1989).

11. The Declaration regarding article 14 of CERD entered into force December 3, 1982. As of January 1, 1989, only 12 countries had ratified the Declaration. Neither the U.S. nor the countries of Eastern Europe have ratified this Declaration.

12. See THEODOR MERON, HUMAN RIGHTS LAW-MAKING IN THE UNITED NATIONS 81-82 (1986); Laura Reanda, *Human Rights and Women's Rights: The United Nations Approach*, 3(2) HUM. RTS. Q. 11, 22-23 (1981).

13. Robin M. Maher & David Weissbrodt, *The 41st Session of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities*, 12 HUM. RTS. Q. 290, 297 (1990). Maher and Weissbrodt note that U.S. and USSR representatives co-sponsored three resolutions on the right to fair trial, the prevention of taking hostages, and the elimination of racial discrimination, and they co-authored a working paper on revised procedures for dealing with human rights violations under Procedure 1503. *Id.* at 297-98. This increased cooperation can be seen as evidence of a transition in the Soviet approach to the enforcement of international human rights. The Soviets have long resisted an international role in the enforcement of human rights, based on the principle of non-intervention in domestic affairs. See Richard N. Dean, *Beyond Helsinki: The Soviet View of Human Rights in International Law*, 21 VA. J. INT'L L. 55, 77-83 (1980); Jhabvala, *The Soviet Bloc's View of the Implementation of Human Rights Accords*, 7 HUM. RTS. Q. 461 (1985). More recently, however, the Soviets appear to have recognized a role for international enforcement. For example, in September 1988, Soviet Foreign Minister Schevardnadze, speaking to the U.N. General Assembly, called international control in areas from arms control to human rights "an imperative of our time." See Opsahl, *supra* note 1, at 20.

compared with previous sessions,"¹⁴ and the 1990 Session of the U.N. Commission on Human Rights reportedly "witnessed a radical shift in the positions of Eastern European Countries."¹⁵

The changing international climate may also enlarge the role regional organizations play in human rights enforcement. Non-binding regional standards such as those contained in the Helsinki Final Act of the Conference on Security and Cooperation in Europe¹⁶ may acquire new importance in the wake of the CSCE's emergence as a key vehicle for shaping the post-Cold War Europe. Despite their focus on security issues, recent meetings of the CSCE have directed considerable attention to human rights. Indeed, the Concluding Document of the Follow-Up of the CSCE in January 1989 has been described as signifying "great progress as regards human rights."¹⁷ Under the new conditions of cooperation, non-binding human rights standards such as those promulgated by the CSCE might be as effective as, if not more so than, binding instruments lacking cooperative context.

II. HUMAN RIGHTS IN TRANSITION

The transcendence of oppositions in the post-Cold War era may open possibilities for international human rights in democratic struggles. Yet, the failure to transcend the oppositions of political philosophy may limit these possibilities. The collapse of the Communist bloc has been accompanied by a radical shift to the right in the political orientation of the countries of Eastern Europe, and the post-Cold War political climate may be less one of transcendence than it is of retrenchment.

14. Brody & Weissbrodt, *Major Developments at the 1989 Session of the U.N. Commission on Human Rights*, 11 HUM. RTS. Q. 586, 611 (1989).

15. Reed Brody, Penny Parker & David Weissbrodt, *Major Developments in 1990 at the U.N. Commission on Human Rights*, 12 HUM. RTS. Q. 559, 560 (1990). At the 1990 Session, Bulgaria and Hungary voted for scrutiny of China, Cuba, and Iraq (although the USSR voted against the first two resolutions and did not participate in the vote on the third, it proposed measures to increase and strengthen the role of the Human Rights Commission. *Id.* at 560). See also Brody & Weissbrodt, *supra* note 14, at 611.

16. The Final Act of the Conference on Security and Cooperation in Europe of 1975 (CSCE) was signed in Helsinki on August 1, 1975 by 35 countries, including the countries of Eastern and Western Europe, as well as the U.S. and Canada.

17. Hannes Treter, *Human Rights in the Concluding Document of the Vienna Follow-Up Meeting of the Conference on Security and Co-operation in Europe of January 15, 1989: An Introduction*, 10 HUM. RTS. L.J. 257, 259 (1989). For the text of the Concluding Document, see 10 HUM. RTS. L.J. 270 (1989). These proceedings can be seen as further evidence of the transition in the Soviet approach to the enforcement of human rights. Treter reports that the socialist countries' understanding of human rights and the concomitant focus on the basic principle of non-interference in internal affairs have "receded into the background (with the exception of Romania) and ha[ve] apparently been replaced by the recognition of international responsibility for human rights." Treter, *supra*, at 259. See also *id.* at 261-62.

Most current international human rights norms emerged in the aftermath of World War II, a product of the competing political ideologies of that period. The three generations of human rights correspond to three different political visions: civil and political rights associated with Western liberal democracies; social and economic rights associated with Eastern socialist states; and development rights associated with post-colonial, developing countries.¹⁸ The very division of the International Bill of Rights into two Covenants—one dealing with civil and political rights, the other dealing with social, economic, and cultural rights—was in large part due to the political and ideological divisions of the post-war world.¹⁹ It took almost two decades from the adoption of the Universal Declaration to the adoption of the Covenants to accommodate fundamental differences between liberal and socialist conceptions of individual rights, and of the individual's

18. Stephen Marks argues that the discourse of contemporary international human rights can be seen as the product of three different revolutionary movements: "first, the 'bourgeois' revolutions, particularly in France and America, in the last quarter of the eighteenth century; second, the socialist, anti-exploitation revolutions of the first two decades of this century; and third, the anticolonialist revolutions that began immediately after the Second World War and culminated in the independence of many nations around 1960." Stephen P. Marks, *Emerging Human Rights: A New Generation for the 1980s?*, 33 RUTGERS L. REV. 435, 440 (1981). See generally Jerome J. Shestack, *The Jurisprudence of Human Rights*, in 1 HUMAN RIGHTS IN INTERNATIONAL LAW 69 (Theodor Meron ed. 1984). Address by Kasel Vasak, Inaugural Lecture to the Tenth Study Session of the International Institute of Human Rights, in Strasbourg (July 2–27, 1979). Alston noted that "[p]erhaps the most important . . . characteristic of international human rights law is its philosophical complexity . . . [which] is the product of an ambivalent relationship to an already discordant heritage of philosophical theories of rights." Alston, *supra* note 2, at 28.

19. The official justification for the division of the Convention into two legal instruments was the allegedly fundamental difference between the two categories of rights and the different mechanisms required for their implementation. V. Voitto Saario & Rosemary Higgins Cass, *The United Nations and the International Protection of Human Rights: A Legal Analysis and Interpretation*, 7 CAL. W. INT'L L.J. 591, 595–97 (1977). Humphrey has noted that it is technically possible to include both categories of rights in the same instrument with different implementation systems, and that the decision to have two covenants was motivated primarily by the political and ideological divisions within the U.N. Humphrey, *The International Law of Human Rights in the Middle of the Twentieth Century*, in THE PRESENT STATE OF INTERNATIONAL LAW (M. Box ed. 1973). Some states—most notably the U.S.—have never accepted the validity of a covenant on social and economic rights. They argued that social and economic claims were appropriately construed as interests or aspirations, not as rights. The division of the Convention into two legal instruments allowed states to ratify one Covenant without the other. See OSCAR SCHACHTER, *INTERNATIONAL LAW IN THEORY AND PRACTICE: GENERAL COURSE IN PUBLIC INTERNATIONAL LAW* (1985); David M. Trubek, *Economic, Social, and Cultural Rights in the Third World: Human Rights Law and Human Needs Programs*, in 1 HUMAN RIGHTS IN INTERNATIONAL LAW: LEGAL AND POLICY ISSUES 205 (Theodor Meron ed. 1984); David P. Forsythe, *Socioeconomic Human Rights: The United Nations, the United States, and Beyond*, 4 HUM. RTS. Q. 433 (1982). For the argument that social and economic rights are not rights, see MAURICE WILLIAM CRANSTON, *WHAT ARE HUMAN RIGHTS?* (1973). See also E.W. Vierdag, *The Legal Nature of the Rights Granted by the International Covenant on Economic, Social and Cultural Rights*, 9 NETH. Y.B. INT'L L. 69 (1978).

relation to society.²⁰ While the international community has recognized the indivisibility of all human rights on several occasions,²¹ contemporary international human rights discourse remains the product of a precarious balance of ideological differences.

As the East embraces laissez-faire economics, what will become of the social and economic rights the East has historically advocated? A trend away from social and economic rights towards civil and political rights is becoming increasingly visible throughout Eastern Europe.²² Although it is important to recognize the progress that has been made within the United Nations system in advancing social and economic rights,²³ we must consider the real possibility of a backslide on recent commitments. The countries of East and West may now agree on the priority of civil and political rights over social and economic rights. Indeed, they may even agree that the latter are not appropriately understood as rights, but only as aspirations. Paradoxically, the possibility for heightened cooperation in the promotion of human rights may be a product of the narrowing of the discourse itself.

Even within the realm of civil and political rights, we must further ask whether some rights will be more equal than others. Will all civil and political rights be given equal significance, or will the shifting ideological balance privilege individualistic, libertarian rights of freedom from state intervention over collective, egalitarian rights, such as the freedom from discrimination? Two examples, although far from conclusive, are illustrative of the political mood of Eastern Europe, and suggest reason to be concerned about the future of human rights.

20. For a discussion of the fundamental differences in conceptions of the human rights, see Bloed & van Hoof, *Some Aspects of the Socialist View of Human Rights*, in *ESSAYS ON HUMAN RIGHTS IN THE HELSINKI PROCESS* (A. Bloed & P. van Dijk eds. 1985); Farrokh Jhabvala, *supra* note 13; Lane, *Human Rights Under State Socialism*, 32 *POL. STUD.* 349 (1984); Sinha, *Human Rights: A Non-Western Viewpoint*, 67 *ARCHIV FÜR RECHTS- UND SOZIALPHILOSOPHIE* 76 (1981); Dean, *supra* note 13, at 55; Przetacznik, *The Socialist Concept of Human Rights*, 13 *REVUE BELGE DU DROIT INTERNATIONAL* 238 (1977).

21. Proclamation of Teheran, adopted by the International Conference on Human Rights in 1968, and confirmed by the General Assembly on January 13, 1969, UN Doc. A/Res/2416 (XXIII) to A/Res/2450 (XXIII), recognizing that the full realization of civil and political rights is impossible without the enjoyment of economic, social, and cultural rights. *See also* the General Assembly Resolution in 1977, "Alternative Approaches and Ways and Means Within the United Nations System for Improving the Effective Enjoyment of Human Rights and Fundamental Freedoms," Feb. 24, 1978, A/Res/32/130, para. 1(a) at 2 (recognizing that human rights are indivisible and interdependent).

22. In recent meetings of the CSCE, the countries of Eastern Europe have not insisted on the inclusion of social and economic rights in exchange for the recognition of civil and political rights. *See* Tretter, *supra* note 17, at 259. The Concluding Document of the Vienna meeting did not refer to the indivisibility of human rights at all. *Id.* at 262.

23. For a discussion of the recent developments on social and economic rights, see Philip Alston, *Out of the Abyss: The Challenges Confronting the New U.N. Committee on Economic, Social and Cultural Rights*, 9 *HUM. RTS. Q.* 332 (1987); Philip Alston & Bruno Simma, *First Session of the UN Committee on Economic, Social and Cultural Rights*, 81 *AM. J. INT'L L.* 747 (1987).

The first example is the attack on ethnic minorities throughout Eastern Europe. Nationalist movements unleashed by political liberalization have engaged in widespread ethnic violence. In Romania, extremist groups are fueling hatred against ethnic Hungarians, Germans, Gypsies, and Jews. In the Soviet Union, violence erupted between Armenians and Azeris, Uzbeks and Meskhetian Turks, Georgians and Abkhazians. In Bulgaria, nationalism has been directed against the Turkish minority. In Yugoslavia, tensions between the six national republics, as well as the eighteen other nationalities, are threatening to tear the country apart.²⁴ Throughout Eastern Europe and the Soviet Union, anti-Semitism is experiencing a tragic revival.²⁵

The second example is the assault on women's rights. Women are experiencing a disproportionate impact of the inflation and unemployment that accompany the transition to free-market economies in Eastern Europe. Most East European women are in the workforce.²⁶ However, they are at high risk of losing their job security and their maternity benefits, as well as other benefits.²⁷ With rising unemploy-

24. *Quarrels Divide Ethnic Groups*, The Globe and Mail, Dec. 11, 1990, at B20, col. 6; Borrell, *The Bills Come Due: After a Year of Freedom, Eastern Europe Realizes That Toppling Statues of Stalin and Lenin is Easier Than Erecting Stable Democracies and Free Markets*, TIME, Dec. 3, 1990; Neier, *Watching Rights*, THE NATION, Sept. 17, 1990, at 263, col. 1; *The Dark Side of Nationalism*, editorial, The Globe and Mail, Mar. 31, 1990, at D6, col. 1; Deak, *Uncovering Eastern Europe's Dark History*, 10 SAIS REV. 51 (1990); Jonathan Eyal, *Eastern Europe: What About the Minorities?*, 45(12) WORLD TODAY 205-08 (Dec. 1989); Robert D. Kaplan, *Europe's Third World: Poverty and Ethnic Strife in Southeastern Europe Will Give Russia a Headache for Years to Come*, ATLANTIC MONTHLY, Jul. 1989, at 16, col. 6.

25. Anti-Semitic incidents have been reported throughout Eastern Europe and the Soviet Union. In East Germany, members of the miniscule Jewish communities in the southern cities of Leipzig, Dresden, and Erfurt speak of vicious anonymous phone calls. In the Soviet Union, Jewish cemeteries and synagogues in Moscow and Leningrad have been desecrated, and rumors of pogroms are being spread by members of extremist groups, such as Pamiat', which blames Jews for the Communist regime. In Hungary, references to the predominance of Jews in the regime of dictator Matyas Rakosi in the 1950s are heard. In Romania, where the desecration of synagogues and cemeteries has been the most widespread, Jews are frequently accused of collaborating with the regime of Nicolae Ceausescu. For discussion of these developments, see Bierman, *New Openness, Old Hatred: Anti-Semitism Stalks Eastern Europe*, MACLEAN'S, Apr. 16, 1990, at 26, col. 1; Wilson-Smith, *The Jews: Anti-Semitism is on the Rise in the Soviet Union and Eastern Europe*, MACLEAN'S, Apr. 16, 1990, at 22, col. 4; Talbott, *Freedom's Ugly Underside: Anti-Semitism in Eastern Europe*, TIME, Nov. 27, 1989, at 53.

26. In 1980, women constituted one-half of the labor force in Eastern Europe. Molyneux, *Women and Perestroika*, 1983 NEW LEFT REV. 23, 27 (1990).

27. In Hungary, for example, over 80% of women work in the labor force. A woman is entitled to receive 24-week maternity leave with full pay, followed by a three-year leave at partial salary, and her position guaranteed upon return. Zsuzsa Ferge, a sociologist at Eorvos Lorand University in Budapest stated in a recent interview: "No market economy is going to guarantee a job after a three-year absence." *Democratic Revolution Brings Few Advantages to Many*, Globe and Mail, Nov. 26, 1990, at A13. In Poland, where women constituted 46% of the labor force, this right has already been rescinded. The transition to a market economy is expected to produce high unemployment, and women are expected to be disproportionately affected. According to some estimates, 80% of those already laid off are women. Brennan S. Bishop, *From Women's Rights to Feminist Politics: The Developing Struggle for Women's Liberation in Poland*, 42

ment, women are the first to be laid off and thereby forced to return to the sphere of domestic labor. Moreover, social pressure is mounting on women to return to the home voluntarily. Further, divorce and abortion rights are under attack in many Eastern European countries. In Poland, where the anti-abortion movement has been the strongest, a woman now must visit three doctors and a psychologist before she can have an abortion at a publicly funded hospital.²⁸ Last November, a bill which proposed banning abortion passed the Polish Senate.²⁹

Such discrimination, harassment, and violence directed against women and minorities constitute a clear violation of international human rights standards.³⁰ The attack on the rights of ethnic minorities has been identified as a serious problem at both the international and regional level. For example, in 1988, the U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities, after many years of sidestepping this divisive issue, decided to consider the protection of racial, ethnic, religious, and linguistic minorities.³¹ Similarly, increased attention has been directed toward the rights of minorities within the CSCE, which has been called upon to meet the

MONTHLY REV. 13, 21 (1990). In Belgrade human rights activist Sonja Licht observes: "Already there is a tendency to think that the women must be sent home If you have to choose who is going to lose a job, then of course, you would choose women first, because, after all, they are mothers anyway." *Democratic Revolution Brings Few Advantages, supra*. See also *Challenge in the East: The Emerging Democracies Offer a Chance for Women to Share Real, Rather Than Cosmetic, Power*, TIME 130 (Special Issue, Fall, 1990). While reports of the impact of Perestroika on women's employment in the Soviet Union is conflicting, many Soviet commentators have argued that economic restructuring will require that women give up their jobs, and return to the sphere of the family. See Molyneux, *supra* note 26. As Molyneux notes, "A convenient link between increasing the population and raising productivity is thereby established. Predictably, the group of Russian patriots associated with Pamyat welcomes 'modernization' as a 'way to raise production standards and free women from involuntary emancipation and return her to the family where she fills the role of mother, keeper of the hearth and bulwark of the nation.'" *Id.* at 38-39.

28. Waclav Dec, head of obstetrics and gynecology at the Medical Academy in Lodz, has stated of these amendments: "These rules serve no medical purpose. It is another attempt to humiliate women. These psychologists are generally Church people who try to persuade women not to have abortions." Stephen Engelberg, *Anti-Abortion Bill Prompts Poles to Debate the Church's Influence*, N.Y. Times, Nov. 6, 1990, at A1, col. 1.

29. The lower house postponed the vote on the bill until after the presidential election. *Id.* A similar battle is developing in the Croatian republic of Yugoslavia where the Catholic Church is also a strong political influence. In Serbia, married couples with no children are being threatened with punitive taxes. See also *Democratic Revolution Brings Few Advantages to Many, supra* note 27.

30. The Universal Declaration, ICCPR, and the ICESCR specifically recognize the right to non-discrimination on the basis of national origin, religion, and language; CERD specifically prohibits discrimination on the basis of national or ethnic origin. ICERD art. 4 further requires that states adopt measures to eradicate hatred and incitement, and to prohibit racist organizations. See also ICCPR art. 27. The U.N. Charter, the Universal Declaration, the ICCPR, and the ICESCR each recognize the right to freedom on the basis of sex. Universal Declaration, art. 2; ICCPR art. 26, ICESCR, arts 2(2), 3. The CEDAW specifically prohibits such discrimination in the employment and family context. CEDAW, *supra* note 10.

31. Maher & Weissbrodt, *supra* note 13, at 312.

challenges of the anti-Semitism and ethnic hatred that is sweeping across Eastern Europe. At its recent meetings, the CSCE has directed increased attention to develop protections for the rights of ethnic minorities.³² While some observers still argue that international instruments are inadequate for the protection of ethnic minorities,³³ some official efforts are being made to offset the rising intolerance toward ethnic minorities. There is at least some evidence that the states of Eastern Europe are resisting the assault on the rights of ethnic minorities by adopting official measures to protect them. The same, however, cannot be said of women's rights. On the contrary, official state discourse often encourages discrimination against women.³⁴ It may be that women's rights, tied as they are to social and economic rights, will be first among the victims of retrenchment in human rights discourse.

III. RIGHTS DISCOURSE AND DEVELOPMENT

The heightened possibilities for cooperation in the promotion and substantive realization of international human rights presumes a world less divided. Yet, it is not at all clear that the end of the Cold War does signify the emergence of a world order that is in fact less divided. It may only signify a realignment of these divisions. As the divide between East and West disappears, the divide between North and South may only deepen.

Rights discourse has assumed a prominent role in the political, economic and ideological struggles of the developing world to create

32. At a recent Helsinki-sponsored Conference on the Human Dimension, held in Copenhagen in June 1990, the 35 members of the CSCE adopted a resolution that included the need to guarantee political pluralism, the protection of minorities, and the importance of confronting anti-Semitism and racism. See Korey, *The CSCE and Human Rights: A New Chapter for Helsinki*, 73 THE NEW LEADER 11, 13 (1990); *Protection of Minorities Crucial*, Human Rights Organization Says, *Globe and Mail*, June 8, 1990, at A14. This concern was echoed at the Paris meeting in November 1990.

33. Eyal, *supra* note 24; see also T.H. BAGLEY, GENERAL PRINCIPLES AND PROBLEMS IN THE INTERNATIONAL PROTECTION OF MINORITIES (1950); UNITED NATIONS, DEFINITION AND CLASSIFICATION OF MINORITIES, UN Public. Sales No. 1950. XIV.3; F. CAPORTORTI, STUDY ON THE RIGHTS OF PERSONS BELONGING TO ETHNIC, RELIGIOUS AND LINGUISTIC MINORITIES, UN Public. Sales No. E.78.XIV.1, at 5-16 (1979). While considerable efforts were made by the Sub-Committee on Prevention of Discrimination and Protection of Minorities, and in turn, by the U.N. General Assembly, to deal with the issue of the protection of ethnic minorities, the proceedings did not progress beyond a mere definition of ethnic minorities, as well as the principle that such minorities ought to receive special rights. After the adoption of article 27 of the ICCPR, similar problems were encountered in interpreting the concepts of "minorities," "ethnic minorities," and "culture." See generally *id.*

34. As Molyneux has noted, the call for women to return to the home in the Soviet Union "is not exclusively a neo-conservative and nationalist position: Gorbachev, too, has referred to the 'purely womanly mission,' investing domesticity and motherhood with an aura of the sacred and natural." Molyneux, *supra* note 26, at 38.

a New International Economic Order. The relationship between rights and development has been recognized by the U.N. General Assembly in its recognition of the right to development as an inalienable human right.³⁵ However, this relationship between rights discourse and development has been controversial, with little support for this third generation human right forthcoming from the West. The United States is the only country to have voted against the Declaration on the Right to Development, and many other Western countries abstained from the vote.³⁶ The Working Group on the Right to Development was plagued by these political and ideological divisions.³⁷ For example, on the issue of the subjects of the right to development both socialist and developing countries were of the opinion that development should be a right of individuals, peoples and States. Developed countries, on the other hand, tended to take the position that development is only a right of individuals.³⁸ The debate reflected a deeper tension in the very conception of rights between individual and collective rights, a tension that also underlies the debate regarding social and economic rights.³⁹ In the end, the working group achieved what Alston described as "a relatively artificial consensus" that locked the parties into a "set of very carefully negotiated compromise positions from which

35. Declaration on the Right to Development, G.A. Res. 41/128, Annex, 41 U.N. GAOR Supp. (No. 53) at 186, U.N. Doc. A/41/53 (1986). For a general discussion of the right to development, see Alston, *supra* note 2; Kiwanuka, *Developing Rights: The UN Declaration on the Right to Development*, 35 INT'L L. REV. 257 (1988); Turk, *The Human Rights to Development*, in RESTRUCTURING THE INTERNATIONAL ECONOMIC ORDER: THE ROLE OF LAW AND LAWYERS (P. Van Dijk ed. 1987); Philip Alston, *Third Generation of Solidarity Rights: Progressive Development or Obscuration of International Human Rights Law*, 29 NETH. INT'L L. REV. 307 (1982); K. de Vey Mestdagh, *The Right to Development: From Evolving Principle to "Legal" Right*, in DEVELOPMENT, HUMAN RIGHTS AND THE RULE OF LAW 143 (1981); Marks, *supra* note 18.

36. Denmark, Finland, the Federal Republic of Germany, Iceland, Israel, Japan, Sweden, and the United Kingdom all abstained from the vote on the Declaration. Declaration on the Right to Development, *supra* note 35.

37. The Working Group of Government Experts on the Right to Development was established pursuant to the Commission on Human Rights, Res. 36, para. 10, in COMMISSION ON HUMAN RIGHTS, REPORT ON THE THIRTY-SEVENTH SESSION 37, U.N. ESCOR Supp. (No. 5) at 237, U.N. Doc. E/1981/25 (1981).

38. Kiwanuka, *supra* note 35, at 260-67. However, as Kiwanuka notes, some developed countries, notably Canada and Australia, adopted a compromise position. Despite their reluctance to recognize the collective dimension of rights, they voted in favor of the Declaration.

39. For a review of these arguments in relation to the right to development, see generally Alston, *supra* note 2. For arguments that human rights in general and the right to development in particular, are individual not collective rights, see Jack Donnelly, *In Search of the Unicorn: The Jurisprudence and Politics of the Rights to Development*, 15 CAL. W. INT'L L.J. 473 (1985); Jack Donnelly, *Human Rights as Natural Rights*, 4 HUM. RTS. Q. 391 (1982). For arguments that the right to development is both an individual and collective right, see Bejaoui, *Some Unorthodox Reflections on the Right to Development*, in INTERNATIONAL LAW OF DEVELOPMENT: COMPARATIVE PERSPECTIVES 87 (Francis Snyder & Peter Slinn eds. 1987).

there can be no creative escape."⁴⁰ As a result, the working group has made very little progress since the adoption of the declaration.⁴¹

Furthermore, the right to development is seen to embrace both the first and second generation of rights, that is, it is based on the realization of both civil and political rights, and social and economic rights. While the right builds on the emerging international recognition of the indivisibility of these two categories of rights, it is at the same time plagued by the controversy regarding social and economic rights.

A fundamental question that must be considered is to what extent the transformation in Eastern Europe, and the concomitant realignment of political, economic and ideological interests between East and West, will affect this precarious consensus on the right to development. Will the developing world lose the support it had garnered from the Communist bloc in support of the solidarity rights in general and the right to development in particular? As the East becomes West, in economic and political orientation, what will become of these emerging rights? An evaporating commitment to collective rights, to social and economic rights, to the indivisibility of rights, and to the positive duties implied by these rights may only further undermine the tenuous international support for the third generation of solidarity rights. Moreover, to the countries of the South, the right to development represents a synthesis of all human rights, a holistic vision of the relationship between rights and development which informs their approach to all human rights. The loss of support for the right to development may thereby signify a growing divide in the human rights visions of North and South more generally. Indeed, the 1990 Session of the U.N. Commission on Human Rights is reported to have been "marked by a growing North-South division, both on substantive issues and on the future of the Commission itself."⁴²

The implications of the basis of support for the right to development are not only symbolic. The realization of the right to development has been seen to require a fundamental restructuring of the international instruments of the international economic order, such as GATT, IMF, the World Bank, as well as bilateral treaties for the promotion and protection of foreign investment, and bilateral development assistance.⁴³ However, the realignment of political, economic and ideological interests in the developed world may well represent an insur-

40. Alston, *supra* note 2, at 23.

41. *Id.*

42. Brody, Parker & Weissbrodt, *supra* note 15, at 587.

43. See Turk, *supra* note 35; Khan, *International Law of Development at Edinburgh: Methodology, Content and Salient Issues*, 1986 THIRD WORLD LEGAL STUD. 15; Paul *International Development Agencies, Human Rights and Humane Development Projects*, 14 ALTERNATIVES 77 (1989).

mountable obstacle to these initiatives. The transition in political orientation in Eastern Europe in many respects reflects the deeper economic transition from socialist planned economics to capitalist relations of production—a transition which requires extensive financial assistance.⁴⁴ This economic transition may directly undermine the traditional alliance between Eastern Europe and the developing countries. Not only are the countries of Eastern Europe adopting economic policies that are directly antithetical to the economic changes contemplated by the NIEO, but these countries are also now in direct competition with developing countries for both bilateral and multilateral development assistance, debt alleviation, and capital investment from the West. Indeed, international development assistance is already being rerouted from the developing world to Eastern Europe and the Soviet Union.⁴⁵

IV. CONCLUSION

The post-Cold War international order opens windows of opportunity for stronger enforcement mechanisms, more non-binding standards, and increased international and regional cooperation for the promotion of international human rights. However, it is essential that the discourse of international human rights is not itself compromised in the efforts to achieve these ends. The real challenge facing international human rights in this era lies in resisting the homogenization of human rights as civil and political rights. While regional organizations, such as the CSCE, are well-positioned to assume a prominent role in fostering new international cooperation, they cannot be expected to take the lead in promoting social and economic rights. The reorientation of human rights promotion and economic development along the East-West axis may only serve to deepen the divide between North and South. A renewed commitment to the existing discourse and fora for international human rights is required to ensure that the political changes in Eastern Europe bring about a real increase in

44. For a general discussion of the financial requirements of the economic transition of Eastern Europe, see Amy Deen & David A. Westbrook, *Return to Europe: Integrating Eastern European Economies into the European Market Through Alliance with the European Community*, 31 HARV. INT'L L.J. 660 (1990).

45. The chairman of a disaster committee of six international relief agencies, including the League of the Red Cross and Red Crescent Societies, Oxfam and the World Council of Churches, recently announced their groups' concerns that millions of people will face starvation in Africa because of the emerging policy of the West of shifting aid to Eastern Europe and the Soviet Union. See *Millions May Die In Africa, Agencies Say*, *The Globe and Mail*, Jan. 5, 1991, at A1.

democratic space within which rights claims can be made, rather than simply a rise in conservative ideologies within which rights claims will go largely unheard. But there may also be possibility in paradox. Perhaps the depoliticized East-West dialogue offers a possibility of political space for more substantive and less rhetorical debate on the essential meaning of human dignity.