

THE PRINCIPLE OF NON-DISCRIMINATION IN INTERNATIONAL LAW

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UN CHARTER ADOPTED BY PEOPLES OF THE WORLD

We should consider our dialogue in the larger frame of the Universal Declaration of Human Rights. It is as members of the human family that we are “entitled to a social and international order” in which the rights and freedom proclaimed by this Declaration can be fully realized. This is a necessity of the human condition that cuts across political boundaries and territorial limits.

It is a reality imprinted in the Charter of the United Nations when it declares that “**We, the peoples** of the United Nations . . . do establish an international organization to be known as the United Nations.” It reaffirms “faith in fundamental human rights, in the dignity and worth of the human person” and the hope that we shall “live together in peace with one another as good neighbors”. (Emphasis added.)

It is the sense of the UN Charter — which is now the Constitution of the International Community — that it was adopted by the Peoples of the World as represented by their Governments. It solemnly affirms in its preamble that in their behalf “our respective Governments . . . have agreed to the present Charter.”

Accordingly, the UN Charter must be read and interpreted from the viewpoint of the Peoples of the World as expression of their interests. In this light, the Charter gives supremacy to the obligations that it mandates in Article 103 that:

In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.

Among such obligations embodied in the Principles of the United Nations is “To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples”. (UN Charter, Article 1(2).) Under Articles 55 and 56 of the UN Charter, Members of the UN pledge themselves to promote “universal respect for, and observance of human rights and fundamental freedoms **for all without distinction as to race, sex, language or religion**”. (Emphasis added.)

PRINCIPLE OF NON-DISCRIMINATION

In focus here is the principle of non-discrimination as the key element of the obligation to observe human rights and fundamental freedom. Non-discrimination becomes the core obligation

under the International Covenant on Civil and Political Rights (ICCPR), Article 2(1), which provides that:

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, **without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.** (Emphasis added.)

In its General Comment No. 04 of 30 July 1981, the Human Rights Committee under the ICCPR observes that “prevention of discrimination . . . requires not only measures of protection but also affirmative action designed to ensure the positive enjoyment of rights.” Moreover, under the principle of *lex specialis*, meaning in special cases, the international community has developed a special regime of *lex specialis vis-à-vis* the general multilateral conventions on human rights, such as the ICCPR.

One such special case is recognized by the ICCPR itself, which may pertain to the peculiarity of the Tibetans’ religious, cultural and linguistic identity. In Article 27 of the Covenant, it is provided that:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion or to use their own language.

ILO INDIGENOUS AND TRIBAL PEOPLES CONVENTION

Thus, principles embodied in the Indigenous and Tribal Peoples Convention adopted by the International Labor Organization may well be relevant to the case of the Tibetans. They may be considered as “indigenous peoples” under the Convention “on account of their descent from the population which inhabited the country . . . who retain some or all of their own social, economic, cultural, and political institutions.” Among their relevant rights under the Convention are the right to:

(a) “Retain their own customs and institutions if not incompatible with fundamental rights defined by the national legal systems and with internationally recognized human rights” (Article 8(2));

(b) Recognition and protection of their “social, cultural, religious and spiritual values and practices” (Art. 5(a)); and

(c) Due regard to their customs and customary laws in applying the national laws to them (Art. 8(1).)

ACTION BY INDIGENOUS PEOPLES AND HUMAN RIGHTS NGOS

Let me end this brief remark by a synthesis that I make from the General Comment of the ICCPR Human Rights Committee. The international obligations on human rights and fundamental freedoms are not confined to abstract respect of human rights. In addition, these obligations continue to be a challenge “to ensure the enjoyment of these rights to all individuals . . . [in terms of] specific activities.” (General Comment No. 03 of 29 July 1981.) It is a challenge addressed to a sustained and resolute international and regional cooperation. This universal cooperation can be forged among the forces of the indigenous peoples themselves, and among the international NGOs on human rights, all over the world.

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