



SouthViews

No. 197, 22 May 2020

www.southcentre.int

Twitter: [@South_Centre](https://twitter.com/South_Centre)

The post-Covid world needs a new social contract *By Alfred de Zayas*

The post-Covid world requires a new social contract. The United Nations Secretary-General should convene a World Conference on Post-Covid Recovery based on multilateralism and international solidarity. This entails a paradigm shift in the prevailing economic, trade and social models. Governments bear responsibility for their unwise and inequitable budgetary allocations, which prioritized military expenditures over investment in health, education and people-centered infrastructures. A new functional paradigm on human rights should discard the skewed and artificial division of rights into those of the first, second and third generations and impose new categories of enabling rights, inherent rights, procedural rights and end rights so as to ensure human dignity and development for all.

The COVID-19 pandemic is a game-changer and offers a historic opportunity to radically rethink the prevailing financial and economic system characterized by its boom-and-bust cycles, widespread unemployment, demonstrably unjust distribution of wealth and unwise allocation of national budgets, which have left societies inadequately prepared to deal effectively with disasters including pandemics, hurricanes, earthquakes and volcanic eruptions¹.

This is a propitious moment for the Members of the United Nations (UN) to take the initiative to reform the dysfunctional paradigm of globalization, which has been accompanied by extreme poverty and endemic social injustice. This is the time to replace the outdated Bretton Woods system² and to reorganize economic and trade priorities so as to achieve the Sustainable Development Goals (SDGs) and give practical meaning to the right of self-determination of all peoples and their right to development.

¹ See <https://www.un.org/press/en/2020/sgsm20029.doc.htm>; <https://news.cgtn.com/news/2020-05-15/UN-chief-says-mankind-so-unprepared-for-COVID-19-Qvi8tVla2k/index.html>; <https://reliefweb.int/report/world/secretary-generals-un-covid-19-response-and-recovery-fund-april-2020>; <https://www.un.org/sg/en/content/sg/press-encounter/2020-03-25/launch-of-global-humanitarian-response-plan-for-covid-19>.

² My 2017 report to the Human Rights Council (https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/36/40) and my 2017 report to the General Assembly (https://www.un.org/en/ga/search/view_doc.asp?symbol=A/72/187) formulate concrete proposals on how to reform the World Bank and the International Monetary Fund so that they are no longer “human rights free zones” and make their activities more compatible with the UN Charter.

This is the time for António Guterres to confer with economic advisors including Jeffrey Sachs, Joseph Stiglitz and Thomas Piketty and make concrete proposals to world leaders on how best to reform the system in conformity with the Purposes and Principles of the UN Charter, taking due account of General Assembly Resolutions 2625 and 3314³. In this context, it may be appropriate to convene a **World Conference on Post-Covid Recovery**, with a mandate to revive multilateralism, reject unilateral coercive measures and ensure the proper funding of all UN agencies and establish mechanisms to enhance their coordination and efficiency. But the conference, if it is going to have any added value, would have to go beyond cosmetic adjustments and a return to the broken *status quo ante*. It should recognize the UN Charter as the world constitution, rediscover the spirituality of the Universal Declaration of Human Rights and revive the legacy of Eleanor Roosevelt, René Cassin, Charles Malik and John Humphrey.

The paradigm shift will entail a change in national budgetary priorities, away from the arms race, war, military bases, procurement, drones and missiles. What is urgent and feasible is a gradual, step by step conversion of military-first budgets into human-security budgets. The new mantra must be “**Disarmament for Development**”. Indeed, a significant reduction in military expenditures will liberate the necessary funds to achieve the SDGs and ensure the enjoyment of all human rights by all, including and most importantly the right to health, food, water, etc. Taxpayers’ money that has been wasted in Orwellian “mass surveillance” activities, such as those revealed by Edward Snowden⁴, must be redirected to social services. In my 2014 report to the UN Human Rights Council I showed how the military establishment can be gradually converted into peacetime industries at all levels, creating many more jobs in education, healthcare, housing, environmental protection and other social services. (see https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/27/51). A World Conference on Post-Covid Recovery should take measures to abolish tax havens and ensure the payment of taxes by investors and transnational corporations without phoney registrations or “sweetheart deals”⁵.

The failures of the neo-liberal ideology, the systematic exploitation of peoples worldwide, the destruction of the environment and the constant threat posed by the arms race, stockpiling of weapons of mass destruction, research & development programs into lethal autonomous weapon systems and other aberrations have become all too evident. Surely the gravity of the COVID-19 pandemic would have been considerably less lethal if governments had implemented human-rights centered economies in which the right to life and the right to health had enjoyed priority over market speculation, the drive to make short-term profits and continue the ecocide that plagues the world today.

A new functional paradigm for human rights

Civil society in all countries should now demand from their governments **a new social contract** based on the implementation of the ten core UN human rights treaties. Admittedly, the task of standard-setting has not been completed, since codification of human rights is never definitive and never exhaustive but constitutes an evolutionary *mode d’emploi* for the exercise of civil, cultural, economic, political and social rights. Alas, the interpretation and application of human rights has been hindered by wrong priorities, sterile positivism and a regrettable tendency to focus only on individual rights while forgetting collective rights. It is all too obvious that many in

³ See the 23 Principles of International Order formulated in my 2018 report to the Human Rights Council, paragraph 14, available at https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/37/63.

⁴ Edward Snowden, *Permanent Record* (Macmillan, 2019).

⁵ My 2016 report to the General Assembly was devoted specifically to the criminalization of tax fraud and tax evasion, available at https://ap.ohchr.org/documents/dpage_e.aspx?si=A/71/286.

the “human rights industry” show little or no interest for the social responsibilities that accompany the exercise of rights, and fail to see the necessary symbiosis of rights and obligations as formulated in article 29 of the Universal Declaration of Human Rights.

The time has come to change the human rights paradigm away from narrow positivism toward a broader understanding of human rights norms in the context of an emerging customary international law of human rights. Law is neither physics nor mathematics, but a dynamic human institution that day by day addresses the needs and aspirations of society, adjusting here, filling lacunae there. Every human rights lawyer knows that the spirit of the law (Montesquieu) transcends the limitations of the letter of the law, and hence codified norms should always be interpreted in the light of those general principles of law that inform all legal systems, such as good faith, proportionality and *ex injuria non oritur jus*.

A World Conference on Post-Covid Recovery could propose discarding the obsolete and artificial division of human rights into those of the falsely called first generation (civil and political), second (economic, social and cultural) and third generation (environment, peace, development) rights – with its obvious predisposition to favour civil and political rights. This generational divide is part of a structure that perpetuates a world order that much too often appears to allow injustice.



Dr. Alfred de Zayas

I propose instead a functional paradigm that would consider rights in the light of their function within a coherent system -- not of competing rights and aspirations, but of interrelated, mutually reinforcing rights which should be applied in their interdependence and understood in the context of a coordinated strategy to serve the ultimate goal of achieving human dignity in all of its manifestations. Four categories would replace the skewed narrative of three generations of rights.

First we would recognize **enabling rights**, among which I would list the rights to health, food, water, shelter, development, homeland – but also the right to peace, since one cannot enjoy human rights unless there is an environment conducive to the exercise of those rights. Article 28 of the Universal Declaration of Human Rights postulates the right of every human being “to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized”. This entails the basic necessities of life and the right to a level playing field.

Secondly I would propose a category of inherent or **immanent rights**, such as the right to equality, the right to non-arbitrariness; indeed, every right necessarily contains in itself the element of equality, the self-evident requirement that it be applied equally and equitably, that there be uniformity and predictability (in German *Rechtssicherheit*). Immanent rights also encompass the rights to life, integrity, liberty and security of person, in the light of which other rights must be interpreted and applied. There are also inherent limitations to the exercise of rights. The general principle of law prohibiting abuse of rights (*sic utere tuo ut alienum non laedas* – use your right without harming others, a principle advocated by Sir Hersch Lauterpacht as an overarching norm prohibiting the egoistic exercise of rights to achieve anti-social results or unjust enrichment) means that every right, also a human right, must be exercised in the context of other rights and not instrumentalized to destroy other rights or harm others. There is no right to intransigence as we know from Shylock in the *Merchant of Venice*. The letter of the law must never be used against the spirit of the law.

Third I would propose a category of procedural or **instrumental rights**, such as the rights to due process, access to information, freedom of expression and peaceful assembly, work, education, social security, leisure – rights that we need to achieve our potential, to complete our personalities, to engage in the pursuit of happiness. Also in this category I would include the right to international solidarity as formulated by UN Independent Expert Virginia Dandan in her 2017 report to the Human Rights Council (see https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/35/35).

Finally I would postulate the category of end rights or **outcome rights**, that is, the concrete exercise of human dignity, that condition of life that allows each human being to be himself or herself. This ultimate right is the *right to our identity*, to our privacy, the right to be ourselves, to think by ourselves and express our humanity without indoctrination, without intimidation, without pressures of political correctness, without “mass surveillance” from governments or private enterprises, without having to sell ourselves, without having to engage in self-censorship. The absence of this outcome right to identity and self-respect is reflected in much of the strife we see in the world today. It is through the consciousness and exercise of the right to our identity and the respect of the identity of others that we will enjoy the individual and collective right to peace. (See my 2013 report to the UN General Assembly A/68/284, paras. 67-68.)

A World Conference on Post-Covid Recovery should urge all States to enhance cooperation with the UN Human Rights Treaty Bodies and with the UN Human Rights Council, and to implement the recommendations emanating from the Universal Periodic Review. The United Nations Human Rights Council should become the international arena where governments compete to show how best to implement human rights, how to strengthen the rule of law, how to achieve social justice, where they display best practices and give life to this new functional paradigm of human rights. This kind of competition in human rights performance is the noblest goal and challenge for civilization. The Council should become the preeminent forum where governments elucidate what they themselves have done and are doing to deliver on human rights, in good-faith implementation of pledges, in adherence to a daily culture of human rights characterized by generous interpretation of human rights treaties and a commitment to the inclusion of all stakeholders. What the Council must not be is a politicized arena where gladiators use human rights as weapons to defeat their political adversaries and where human rights are undermined through “side shows”, the “flavor of the month” or “legal black holes.” The civilization model of the globalized world must not be one of positivism, legalisms and loopholes, but one of ethics, direct democracy, respect for the environment, international solidarity and human dignity.

Author: Alfred de Zayas, United Nations Independent Expert on the Promotion of a Democratic and Equitable International Order (2012-2018)

*** The views contained in this article are attributable to the author and do not represent the institutional views of the South Centre or its Member States.**

SOUTHVIEWS is a service of the South Centre providing opinions and analysis of topical issues from a South perspective.

To view other articles in SouthViews, please [click here](#).

To see the previous version of SouthViews, please [click here](#).

**For more information, please contact Anna Bernardo of the South Centre:
Email bernardo@southcentre.int, or telephone +41 22 791 80 50.**

Copyright © 2020 South Centre, All rights reserved.