

BRIDGING THE CULTURAL CHASM: CULTURAL RELATIVISM AND THE FUTURE OF INTERNATIONAL LAW

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INTRODUCTION

The perennial human aspiration for a universal normative order has preoccupied legal philosophers throughout history. From the Roman Stoics with their universal cosmopolis of “Reason,” through the spiritual universalism of Medieval Scholasticism to the optimistic liberalism of Enlightenment intellectuals and modern internationalists, contemplating the unity of mankind has remained an exhilarating ambition.¹

The stability and complexion of a world order is intertwined with the normative evolution of international law. To this end, international lawyers must address critical questions about the “limits of universalism,” especially in light of pervasive international conflict, widespread human rights abuse and, arguably, depreciation of the rule of law during this century.² Universal aspirations have been stifled by the rise of statism, nationalism and ideological confrontation. Also, detracting from the positive development of future world order has been the theory of cultural relativism and the detrimental implications it suggests for international law. In its essence, cultural relativism inspires the image of a “cultural chasm” in which irreconcilable cultural differences preclude the pervasive realization of substantive international law and morality—a situation that even suggests that international legal discourse may be futile. Thus, at the close of the 20th century, cultural relativism is compelling Western-derived international law to undergo considerable reappraisal and perhaps even substantial transformation.

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1. See generally C. MURPHY, *THE SEARCH FOR WORLD ORDER* (1985).

2. See, e.g., A. CARTY, *THE DECAY OF INTERNATIONAL LAW?* (1986).

The problem of cultural relativism is rooted in large part from the influx of more than 100 new, non-Western States into the international legal system since 1960. With the creation of these sovereign States has come not only national attitudes of suspicion and deep resentment toward the formerly colonial West, but also new, fundamental challenges to the legal system that had legitimized an array of international iniquities. In a real sense, then, the dynamics of international politics have become caught up in the forces of autonomy, nationalism, and pluralism which have come to challenge the presumed universality of progress as defined in a Western sense. Modern international law, in concatenation, has become entangled in the constantly changing circumstances of a dynamic world.

The problem for the future of international law is couched in the chasm between Western and non-Western notions of law and morality. The former are inextricably wedded to Christianity and the concept of the modern State, and they appear inherently foreign to indigenous mores of non-Western societies. International law represents the application of ideas flowing from the legal, political, and historical experience of the West—an experience that non-Western societies have not shared and cannot be expected to accept *in toto*. If a universal international law is to be truly realized in the future, this cultural chasm must be bridged by mutually compatible legal mores.

Culture, like law, is a complex concept. It embraces the values, aspirations, languages, and ideology of a society. As a concept, culture is historically and sociologically specific. Culture brings with it a special significance that requires special appreciation. Any serious appraisal of the future international legal order must take into account the plurality of cultures in the world.

Law and culture merge along an assortment of international spheres: in individual human rights and self-determination, in defining cultural autonomy and in protecting cultural heritage, in dispute settlement and adjudication, in the use of force and in international environmental and development law. Accounting for culture's influence in these legal spheres will be critical if international law is to secure a more self-confident—and indeed effective—role in global affairs. It will require an interdisciplinary investigation into such disparate realms as anthropology, moral philosophy, linguistics, and psychology.

This article provides a conceptual analysis of cultural relativism,

including an examination of its various dimensions. The purpose here is to flesh out problems associated with the nature of cultural relativism. Next, the relationship between culture and international law is explored within the context of the "cultural chasm." Finally, an assessment is made of the future roles that culture and international law must play in a world of pervasive modernization. From this analysis, the authors hope some modest insights will be supplied for gauging both the limits of universalism and the limits imposed by cultural relativism in shaping future international law.

I. DIMENSIONS OF CULTURAL RELATIVISM

A. *General Perspectives*

The major progenitors of cultural relativism are to be found among modern anthropologists. Two major propositions are suggested as the basis for cultural relativism. First, it is an indisputable empirical fact that "the diversity of cultures can be endlessly documented."³ From this fact of diversity is extrapolated the second premise that all principles for evaluating and judging behavior are relative to the culture in which a person is raised. As one scholar put it, "it is a corollary that standards, no matter in what aspect of behavior, range in different cultures from the positive to the negative pole."⁴ In sum, a group derives its norms and values entirely from the cultural content in which that group is situated.

There is the concomitant contention that cultural practices and institutions, however inefficient or impractical, develop randomly. This reflects a somewhat irrationalist conception of culture.⁵ Cultures operate according to different but equally valid patterns of social logic. For example, Western notions of economic efficiency and material aggrandizement, which cultural relativists contend are morally no more valid for organizing a society than any other patterns, may not enjoy as a high priority in other cultures.⁶

Also advocated is the "selectivity of cultures," in which each culture creates and determines its own unique pattern of society.⁷ Some cultures ignore spheres of life that other cultures consider

3. R. BENEDICT, *PATTERNS OF CULTURE* 45 (1934). See also Benedict, *Anthropology and the Abnormal*, 10 *J. OF GEN. PSYCHOLOGY* 59-82 (1934).

4. *Id.*

5. See E. HATCH, *THEORIES OF MAN AND CULTURE* 86-91 (1973). See also G. MURDOCK, *CULTURE AND SOCIETY* 144, 149 (1965), who contends that certain cultural patterns may be more desirable on purely practical grounds.

6. R. BENEDICT, *supra* note 3, at 36.

7. *Id.*

fundamental to social existence, but none can be considered more valid and authentic than any other.⁸ Anthropology, like science, can impose “no preferential weighting” to objects of inquiry.⁹ The implication is that in observation of another culture, one must suspend ethical judgment and remain morally neutral, regardless of whether the observer is an anthropologist, diplomat or international lawyer.

Other influential proponents of cultural relativism have subscribed to the same linkage between the anthropological fact of cultural diversity and the proposition that no absolute values exist since “evaluations are relative to the cultural background out of which they arise.”¹⁰ Western dominance in the world remains a function of its technology—not a superiority in religion, art, politics, social organization, or law.¹¹ Thus, tolerance entails an essential component of cultural relativism: “The very core of cultural relativism is the social discipline that comes of respect for differences—of mutual respect. Emphasis on the worth of many ways of life, not one, is an affirmation of the values of each culture.”¹² Thus, tolerance becomes elevated to the status of a universal value that should be reciprocated cross-culturally. The contention that cultural relativism should promote tolerance cross-culturally is echoed by other scholars. As Elvin Hatch observed of cultural relativism, “It contains a more or less implicit value judgment in its call for tolerance: it asserts that we ought to respect other ways of life.”¹³

Perhaps the most explicit and controversial exposition on the relationship between cultural relativism and international law has been advanced by Adda Bozeman.¹⁴ She asserts that profound differences between Western legal theories and structures and those of Africa, China, India and Islam must preclude attainment of a universalistic legal system of predominantly Western orientation. To support this conclusion, many of the standard arguments for

8. *Id.* at 23-24. For a critique of Benedict on this point, see Williams, *Anthropology for the Common Man*, 49 AMER. ANTHROPOLOGIST 84-90 (1947).

9. R. BENEDICT, *supra* note 3, at 3.

10. M. HERSKOVITS, CULTURAL RELATIVISM: PERSPECTIVES IN CULTURAL PLURALISM 14-15 (1972).

11. *Id.* at 156-58.

12. *Id.* at 33.

13. E. HATCH, CULTURE AND MORALITY: THE RELATIVITY OF VALUES IN ANTHROPOLOGY 64-65, 81 (1983).

14. A. BOZEMAN, THE FUTURE OF LAW IN A MULTICULTURAL WORLD (1971), [hereinafter FUTURE OF LAW]. See also Bozeman, *American Policy and the Illusion of Congruence Values*, STRATEGIC REV. 11-23 (1987); A. BOZEMAN, CONFLICT IN AFRICA: CONCEPTS AND REALITIES (1976).

cultural relativism are incorporated so as to demonstrate the inefficacy of Western international law in fashioning a universal order. Some cultures have adopted radically different conceptions of time, suggesting that a variety of valid ways exists in which to perceive and construct reality.¹⁵ In order to fully understand a culture, one must be a product of that culture. A culture produces its own unique mode of thought that acts as a schematic guide for conceptual thinking. Acculturation determines that a person be culture-bound and “to think in traditionally preferred grooves, to congregate around certain constant, change-resistant themes, and to rebut, whether intentionally or unconsciously, contrary ideas intruding from without.”¹⁶ Phenomena consequently will be interpreted in accordance with the prevailing mode of thought in a culture.¹⁷ Therefore, “a given country’s conduct and organization of its foreign relations is an organic aspect of the lifestyle that informs its inner order.”¹⁸ Examination of the inner order of many non-Occidental cultures reveals diverse patterns that are anathema to Western values in which suspicion of the West is rife, conflict is the norm, peace is an alien concept,¹⁹ personalism predominates,²⁰ the group enjoys primacy while the individual is a role-player,²¹ and a wide variety of associations and loyalties serve to preclude any genuine allegiance to an international legal order.²²

A major thesis of cultural relativism is that many cultures stand in relation to each other in varying degrees of mutual unintelligibility. A culture germinates concepts through its own way of thinking, and these concepts are then articulated through a culture’s own language. In addition, cross-cultural equivalents for certain moral, legal and political concepts may not exist. The variety of languages in the world further obfuscates international legal discourse. Even if one culture were to borrow a concept from another culture, that concept’s meaning would be filtered through the first culture’s unique linguistic-conceptual structure. By implication, legal accords would be imperiled by a state of intractable ambiguity since “ideas are not transferrable in their authenticity.”²³ That is, “a society

15. FUTURE OF LAW, *supra* note 14, at xiv and 161-162.

16. *Id.* at 14.

17. *Id.* at 10-11.

18. *Id.* at 168.

19. *Id.* at 169.

20. *Id.* at 167.

21. *Id.* at 162.

22. *Id.* at 164.

23. *Id.* at 14.

will reinterpret the cultural traits that it borrows in accordance with the order and demand made by its own mind system.”²⁴ As a consequence, arriving at a universal meaning in an international legal text containing moral and political values is futile since all political and legal principles are determined and informed “by substratal cultural forces.”²⁵ Hence, the notion of transcultural human rights becomes just that—merely a notion which can hardly convey its normative effectiveness and meaning through an international legal text.²⁶

Cultural relativists generally highlight the primacy of culture for defining an individual’s world view by asserting that one’s self-conception of the human person and of political order and rationality are determined principally by cultural forces. Consequently, a transcultural normative-legal order can never adequately represent the diverse reality of our multicultural world. Bozeman contends that Afro-Asian cultures have and will reject Occidental values of constitutionalism and international law.²⁷ In the future pragmatism—not principles laden with Western values—and *ad hoc* mediation—not international law—must be the forces governing international relations.²⁸ The need for tolerance among cultures still remains critical. There must be “open recognition that the world society consists of diverse political and diplomatic systems, each an outgrowth of culturally and regionally valid modes of conducting international relations.”²⁹ From this thesis, the conclusion emerges that the viability of international law is obstructed and dissipated by the profound differences between cultures. These multidimensional cultural differences deflect and short-circuit attempts to make Western-derived norms any more than that—Western norms.

B. Ethical Relativism

Cultural relativism takes on several philosophical dimensions. The international lawyer must venture into the realm of moral phi-

24. *Id.* at 27.

25. *Id.* at 29.

26. *Id.* at 163.

27. *Id.* at 170.

28. *Id.* at 170. Bozeman insists that political and cultural realities preclude a Western model of international law comprised of the following components: the differentiation between law and policy, ideology and morality; the preference for peace and with a distinction between war and peace; “the coexistence of independent, territorially delimited states” and “the assumption that states through their governments are capable of undertaking voluntary and binding obligations in their mutual relations.” *Id.* at 181.

29. *Id.* at 186.

losophy and explore doctrines of ethical relativism in order to observe the actual legal implications of cultural relativism. As a philosophical complement to cultural relativism, ethical relativism is composed of three dimensions: descriptive relativism, metaethical relativism, and normative relativism.³⁰

Descriptive relativism asserts that a diversity of values and ethical principles is espoused by individuals and cultures. This form of relativism postulates that even if agreement existed on the nature of some appraised act, fundamentally incompatible ethical valuations would arise from the perceptions of that phenomenon. Such ethical disagreement may be rooted in cultural differences where the process of enculturation serves as the primary determinant of an individual's ethical views.

One might recognize the fact of descriptive relativism, but still maintain that some moral system was objectively superior to all others. This type of ethnocentrism is rejected by *metaethical relativism*, which asserts that there can be no absolute moral truth.³¹

Metaethical relativism may be realized by subscribing to emotivism³² as the foundation of all moral belief, or as a result of the insufficiency of language to secure moral unanimity,³³ or simply through the belief that no universal logical method exists by which to reach moral certitude.³⁴ In addition to subjective emotivism, a moral conception of right and wrong could be culturally determined such that "morally good" becomes synonymous with "customary,"³⁵ and the rightness of an act is justified only in reference to culture.

The implications of metaethical relativism for international lawyers are serious and extensive. Natural law with its reliance on *a priori* standards would be undermined, and international law would be governed completely by legal positivism. Since it would be im-

30. Notable works on relativism include D. WONG, *MORAL RELATIVITY* (1984); *ETHICAL RELATIVISM* (J. Ladd ed. 1973); and *RELATIVISM: COGNITIVE AND MORAL* (M. Krausz and J. Meiland eds. 1982).

31. Brandt, *Ethical Relativism* in *THE ENCYCLOPEDIA OF PHILOSOPHY* 76 (P. Edwards ed., 1967).

32. According to Alasdair MacIntyre in *AFTER VIRTUE* 11-12 (1981), emotivism "is the doctrine that all evaluative judgments and more specifically all moral judgments are nothing but expressions of preference, expressions of attitude or feeling, insofar as they are moral or evaluative in character. . . and agreement in moral judgment is not to be secured by any rational method for there are none." See also A. AYER, *LANGUAGE, TRUTH AND LOGIC* (1946) and C. STEVENSON, *ETHICS AND LANGUAGE* (1944).

33. See text *infra* at notes 39-45.

34. Brandt, *supra* note 31, at 76.

35. *Id.* at 75.

possible to discover moral truth, international law would become relegated to the status of “legal emotivism;” in such a condition, each law would merely embody reflections of emotional-cultural preferences and prejudices of the governmental actors involved, rather than contribute substantially to the codification of objective moral and rational standards for guiding State conduct in international affairs.

A third dimension, *normative relativism*, stipulates that “something is wrong or blameworthy if some person or group—variously defined—thinks it is wrong or blameworthy.”³⁶ A normative relativist would posit that various perspectives of human rights are equally valid and morally correct since the measure of correctness rests with the persons who hold those views within the culture.

C. *Epistemological Relativism*

Related to ethical relativism is *epistemological relativism*. This approach maintains that ideas, concepts and categories used to understand reality are relative. Thus, every system of thought rests on *a priori* assumptions about reality that are culturally derived. Even science is not culture-free; it, too, is grounded in *a priori* assumptions of a mechanistic conception of the universe.³⁷ Systems of scientific and moral belief are mental constructs, the internal logic of which is determined by cultural norms and beliefs. Hence, epistemological relativism concludes that there cannot be a single monocultural logic. Rather, there exists a multiplicity of logics, each endowed with its own particular mode of causality. Judgments about the nature of reality are conventional and mere products of a particular culture. While epistemological constructs may be assessed by other criteria like efficiency, pragmatic relevance or predictive ability, the validity of a culture’s own internal logic lies beyond criticism.

The implications here for the moral philosopher and the international lawyer are profound. A rational unanimity of minds is elusive since reason itself cannot be reduced to one uniform construct and since there exists no one true logical method; there can be no absolute moral truth because different cultures will operate according to different social and moral logics; “truth” and “falsity” become

36. *Id.* at 76. For a critique of normative relativism as it relates to cultural relativism and human rights, see Teson, *International Human Rights and Cultural Relativism*, 26 VA. J. OF INT’L L. 883, at 888-94 (1985).

37. E. HATCH, *supra* note 13, at 5.

meaningless concepts for evaluating normative statements; different cultures will produce disparate political and legal logics, and courts and other political structures will function according to different rationales. Relatedly, the methodologies employed for arriving at legal conclusions will be different.³⁸ For the epistemological relativist, law remains specifically wedded to its own cultural logic and normative rationale. The lack of a world monoculture in effect precludes the operative possibility of ever attaining a transcultural law among nations.

D. Linguistic Relativism

International law furnishes a significant form of cross-cultural communication since it functions as a conduit for worldwide moral-legal discourse. International law brings together culturally and linguistically diverse groups of people to produce a uniform corpus of law. Ideally, this corpus of law should be endowed with a universal meaning that can be fashioned into a “common legal language.” That some semblance of universal meaning is attainable remains pivotal for ensuring that national actors are able to engage in international moral discourse with reasonable expectations that specified rights and duties can be distilled into law and that textual precision of that law can be articulated. Yet, linguistic relativism, as it is intimately related to cultural relativism, can exert disturbing effects on the process of international legal discourse.

Linguistic relativity embraces the thesis “that the structure of a language orients its speakers to certain features of the world and leads them to ignore others, and to picture reality one way rather than another.”³⁹ According to this view, language itself is infused with particular cultural slants of reality. There consequently exists a symbiotic relationship between culture and language wherein cultural forces shape a language, which simultaneously serves to shape and articulate a culture’s content.

Accordingly, language can be characterized as a “self-contained, creative symbolic organization, which not only refers to experience largely acquired without its help but actually defines experience for

38. Therefore, *methodological relativism*, the view that different cultures will possess different procedures for research and development, is related to epistemological relativism.

39. E. HATCH *supra* note 13, at 7 quoting M. HERSKOVITS, *supra* note 10, at 84-85, who “remarked that if it is true that “we can never touch the raw stuff of reality,” as the philosophers say, then it is “enculturation”—the acquisition of cultural ideas, categories of thought, frames of reference, and the like—“which screens our perceptions and cognition, [and] becomes our essential guide in the efforts we make to meet reality.”

us by reason of its formal completeness and because of our unconscious projection of its implicit expectations into the field of experience.”⁴⁰ Meanings are “not so much discovered in experience as imposed upon it, because of the tyrannical hold that linguistic form has upon our orientation of the world.”⁴¹ Cross-cultural legal consensus, by inference, may become elusive and lost in the nebulous web of a myriad of languages, each one of which is endowed with its own particular expressions for interpreting experience. The likelihood of radical linguistic relativity portends that not only is indeterminacy inherent in communication, but that such ambiguity actually defines it.

Cross-cultural linguistic indeterminacy suggests that international legal terms may have very disparate meanings in various languages. Indeterminacy can be demonstrated in the very act of speech during legal discourse. It resides in the simple act of translation when a precise uniform meaning is difficult to render. Deeper indeterminacies lie in the symbiotic relationship between culture and language, especially when the real meaning of a language is accessible only to those who are members of that culture.⁴² Finally, an international legal precept may be unintelligible to inhabitants of a culture where no word for a certain legal concept exists because the concept itself is alien to that cultural repertoire.

Linguistic relativity remains problematic for international law. It encumbers attempts to transform the plethora of cultural languages and dialects into an intelligible universal legal discourse. The situation is not merely a theoretical predicament: the linguistic dissonance in the United Nations General Assembly is strikingly reminiscent of the Biblical image of the “Tower of Babel.” In that

40. Sapir, *Conceptual Categories in Primitive Languages*, 74 *SCIENCE* 578 (1931). “The Sapir-Whorf hypothesis” stipulates that: (1) Languages embody “integrated fashions of speaking” or “background linguistic systems,” consisting of prescribed modes of expressing thought and experience; (2) A native speaker has a distinctive “conceptual system” for “organizing experience,” and (3) a distinctive “world view” concerning the universe and his relations to it; (4) The background linguistic system partially determines the associated conceptual system, and (5) partially determines the associated world view; (6) Reality consists of a “kaleidoscopic flux of impressions;” (7) The “facts” said to be perceived are a function of the language in which they are expressed, and (8) the “nature of the universe” is a function of the language in which it is stated; (9) Grammar does not reflect reality, but varies arbitrarily with language; (10) Logic does not reflect reality, but varies arbitrarily with language.” Black, *Linguistic Relativity: The Views of B.L. Whorf*, in M. BLACK, *MODELS AND METAPHORS: STUDIES IN LANGUAGE AND PHILOSOPHY* 245-46 (1962); Also, see generally B.L. WHORF, *COLLECTED PAPERS ON METALINGUISTICS* (1952).

41. Sapir, *supra* note 40, at 578.

42. See Hoijer, *The Relation of Language to Culture*, in *ANTHROPOLOGY TODAY* 554-73 (A. Kroeber ed. 1953).

chamber, international law at times appears to degenerate into a cultural and ideological plaything. International legal discourse is allowed to regress into a mere “language game,” and linguistically diverse participants are fragmented into culturally-enclosed groups. Linguistic relativity in its extreme portends that this chasm between different cultures is insurmountable, that acquisition of a “common language” for international legal discourse is unattainable.

International lawyers undoubtedly will have to seriously examine the linguistic niceties and nuances of transcultural communication to discover what relevant indeterminacies exist in communicating legal precepts across cultures. Students of international law will have to refine their understanding of the relationship between law and language,⁴³ between the nature and limits of cross-cultural moral-legal discourse,⁴⁴ between the impact of international legal language in altering indigenous linguistic and conceptual patterns, and between the limits and opportunities for achieving some semblance of “communicative rationality” in a linguistically diverse world.⁴⁵ Given that language is a fundamental ingredient of communication, future international law will have to consider conscientiously how best to translate general legal norms into meaningful, culturally-specific legal precepts.

E. Historical Relativism

Still another particular dimension of cultural relativism is historical relativism, which asserts “that our understanding of human behavior and social affairs generally is relative to our cultural perspective.”⁴⁶ Individuals in various cultures live under disparate environmental conditions, mental constructs and conceptions of progress, among many other differences. Values themselves are historically relative to the culture from which they came. Even if an evolutionary approach to development were adopted—that is, one where all humankind was conceived to be evolving in the same fundamental direction, toward the same goals—it would be misguided to assume that other cultures in different stages of development

43. Williams, *Language and the Law*, 61 LAW QUARTERLY REV., 180, at 187-88 (1945).

44. See Havan & Smith, *Can Philosophical Meaning Cross Linguistic Barriers?*, 3 INT'L J. OF INTERCULTURAL REL. 119-210 (1979).

45. On communicative rationality, see J. HABERMAS, *THE THEORY OF COMMUNICATIVE ACTION, I: REASON AND RATIONALIZATION OF SOCIETY*, (Thomas McCarthy, trans. 1984).

46. E. HATCH, *supra* note 13, at 10.

would necessarily be receptive to those same values. Thus, cultural distinctions in the current of history are viewed as preventing cultures from assimilating each other's values. Each culture's historical experience is unique. Historical relativism purportedly impedes international legal development as different cultural experiences conflict, thus exacerbating trends of ethnocentrism, rather than promoting patterns of transcultural cooperation.

II. CULTURAL RELATIVISM AND HUMAN AND CULTURAL RIGHTS

A. *Human Rights*

The proliferation of independent non-Western States since World War II has complicated the human rights debate. African, Islamic, Indian and East Asian perspectives, *inter alia*, have all proffered variations of human rights. The Western model of human rights has tended to emphasize the inherent moral qualities of the individual. This emphasis on moral autonomy has been traditionally upheld in contradistinction to the claims of the community. Even so, elements of Western conservatism and communitarianism have often criticized such a rights-based construct of the individual.⁴⁷ Some critics of liberalism contend that Western individualism promotes an implausible conception of the individual as a being completely abstracted from his cultural milieu and an unrealistic view of a civil society that is constituted primarily for individual ends.⁴⁸ At the other extreme, cultural relativism insists that man is a completely culturally-situated being. Any attempts to define man independent of his cultural context only divorces the individual from his concrete social life and the communal belief system, attachments, duties and obligations of the particular culture which have been ingrained into him.

It is well known that other cultures have assigned greater political, social and legal primacy to the community. Chinese, African and Islamic human rights traditions illustrate the diversity of perspectives that future international law must take into account in the debate that evolves over human rights and culture.

The violent crackdown in June 1989 in China well illustrates the volatile political tension that demands for individual human rights

47. See, e.g., Wallach, *Liberals, Communitarians, and the Tasks of Political Theory*, 15 POL. THEORY 581 (1987).

48. For example, see C. TAYLOR, *ATOMISM IN PHILOSOPHY AND THE HUMAN SCIENCES: PHILOSOPHICAL PAPERS-2* 187 (1985).

can inject into traditionally communalistic societies. While traditional China has never conceived of the individual as being detached from his social role, Chinese communism has submerged the individual even deeper into a subordinate position in society. Despite the overbearance of communism, deeply etched in the cultural memory of China is an enduring Confucian tradition of human dignity, social morals, and communal obligations that enjoy primacy over individual rights.⁴⁹ Social harmony has remained the preponderant goal in Chinese tradition, reflecting an organic conception of law, the purpose of which is to reinforce harmonic relations rather than exult adversarial claims in arbitration.⁵⁰ East Asian societies traditionally have been group-oriented: "For the Japanese, no less the Koreans and Chinese, emancipation is through the group, not outside it."⁵¹ Thus, politics has come to be viewed as a consensual practice rather than as an individualistic, adversarial enterprise.⁵²

Looking to the African tradition, the same general emphasis on the community over the individual is evidenced. The imperative of social harmony remains paramount and the individual's identity is fixed exclusively in terms of social roles, especially kinship relationships.⁵³ The Banjul Charter on Human and People's Rights⁵⁴ extensively treats both individual *and* group rights. As one commentator has observed, African "emphasis on the group, and on duties . . . has society organized to meet basic human needs, rather than

49. C. Lo, *Human Rights in the Chinese Tradition*, in J. HUMAN RIGHTS: COMMENTS AND INTERPRETATIONS 187 (J. Maritain 1949). Other discussions on Chinese human rights include Wilson, *Rights in the People's Republic of China*, in HUMAN RIGHTS IN EAST ASIA: A CULTURAL PERSPECTIVE 109 (J. Hsiung ed. 1986); S. Leng, *Human Rights in Chinese Political Culture*, in THE MORAL IMPERATIVES OF HUMAN RIGHTS: A WORLD SURVEY 81 (K. Thompson ed. 1980).

50. R. VINCENT, HUMAN RIGHTS AND INTERNATIONAL RELATIONS 41, n.16 (1986).

51. J. Hsiung, *supra* note 49, at 11; on Japan, see Burks, *Japan: The Bellwether of East Asian Human Rights*, in J. Hsiung, *supra* note 49, at 31; Inagaki, *Some Aspects of Human Rights in Japan*, in PHILOSOPHICAL FOUNDATIONS OF HUMAN RIGHTS 179 (P. Ricoeur ed. 1986) [hereinafter Ricoeur].

52. J. Hsiung, *supra* note 49, at vii.

53. On human rights in Africa, see generally: Legesse, *Human Rights in African Political Culture*, in K. Thompson, *supra* note 49, at 123; R. HOWARD, HUMAN RIGHTS IN COMMONWEALTH AFRICA 17-23 (1986); *Evaluating Human Rights in Africa*, 6 HUMAN RIGHTS Q. 164 (1984); Okere, *The Protection of Human Rights in Africa and the African Charter of Human and Peoples Rights: A Comparative Analysis with the European and American Systems*, 6 HUMAN RIGHTS Q., 141 (1984); Marasinghe, *Traditional Conceptions of Human Rights in Africa*, in HUMAN RIGHTS AND DEVELOPMENT IN AFRICA (C. Welch and R. Meltzer, eds. 1984); Mojekwu, *International Human Rights: The African Perspective*, in INTERNATIONAL HUMAN RIGHTS: CONTEMPORARY ISSUES 85 (J. Nelson and V. Green eds. 1980).

54. See C. Welch and R. Meltzer, *supra* note 53, at Appendix One, The African Charter on Human and People's Rights, at 317.

being the means for the promotion of individual 'acquisitiveness.'"⁵⁵ The point here is plain: different cultures put different normative weight on the place of individual human rights in their societies.

A significant trend abetting the case for human rights has been the extensive secularization of most national regimes. The de-emphasis of theocratic governing principles has permitted human rights to assume a more visible and pervasive role in defining and clarifying the relationship of the individual to the State. To appreciate this point, one only needs to examine the Islamic tradition, with its elegant yet complex theocratic doctrines of social and political organization, and how it profoundly complicates human rights theory. Islam posits duty over right, the primacy of the community, and the attainment of spiritual ends as superseding the legal protection of any inherent human qualities.⁵⁶ Theocracies, like communism, generally conflict with international human rights law because they are organized juridically according to a comprehensive vision of the good society. Differences between the West and Islam are readily evident in the behavior of the contemporary Iranian regime. For example, when a U.N. delegation was recently sent to investigate allegations of atrocious human rights violations in Iranian prisons, President Rafsanjani imposed a press blackout so that the people of Iran would not know of the visit and hence not go out of their way to inform U.N. representatives of human rights practices in Iran.⁵⁷

Islamic law remains one of only a few legal traditions where relative unanimity exists concerning the metaphysical foundation of "rights" and "duties." This situation is ironic because, at a time when Western human rights seem to present the greatest opportunity for universalization in the future, their metaphysical origins as

55. R. VINCENT, *supra* note 50, at 40. Vincent contends that "the tendency of African thought is to turn the western list [of human rights] upside down. Collective rights are first in importance, second come economic and social rights, and third civil and political rights." *Id.*

56. On Islamic conceptions of human rights see generally: Nasr, *The Concept and Reality of Freedom in Islam and Islamic Civilization*, in THE PHILOSOPHY OF HUMAN RIGHTS 95 (A. Rosenbaum ed. 1980); Sinaceur, *Islamic Tradition and Human Rights*, in Ricoeur, *supra* note 51, at 193; Zakaria, *Human Rights in the Arab World: the Islamic Context*, in Ricoeur, *supra* note 51, at 227; Piscatori, *Human Rights in Islamic Political Culture*, in K. Thompson, *supra* note 49, at 139; Malik, *The Concept of Human Rights in Islamic Jurisprudence*, 3 HUMAN RIGHTS Q. 56-67 (1981); Coulson, *The State and Individual in Islamic Law*, 6 INT'L AND COMP. L. Q. 49 (1957); Khadduri, *Human Rights in Islam*, 243 ANNALS AMER. ACAD. OF POL. AND SOC. SCI. 77 (1946); Hassan, *On Human Rights and the Qur'anic Perspective*, 19 A J. ECUMENICAL STUD., 51 (1982).

57. Anderson and Van Atta, *Iranian Prison Horror*, Wash. Post, Jan. 14, 1990, at B7.

rooted the Western religious natural rights tradition have been subject to severe philosophical skepticism.

International law must confront in the future, as it has in the past, three contentious non-Western claims concerning the relationship of culture to human rights. First, non-Westerners will contend that the Eurocentric liberal political model—with its emphasis on the moral autonomy of the individual and civil and political rights—is not a necessary prerequisite for the application of human rights. Second, even if a culture does not share a conception identical to Western-style rights, non-Westerners will insist that their cultures possess authentic traditions of human dignity which promote the same general ends as human rights, or operate with a human rights tradition that is no less valid. Thus, a society might exclude a legal mechanism fundamental to Western notions of human rights, yet still claim that it possesses an authentic human rights system.⁵⁸ Third, the tensions between the community and the individual will remain polemical factors. This will be especially true not only as economic and social inequalities increase in developing countries, but also in countries with resurgent fundamentalist religious movements. Even so, the West is not exempt from this tension, particularly in States where radical individualism contributes to marginalizing communal cultural traditions. Nonetheless, the innovative factor of human rights has been that its injection into various cultures has produced precisely this tension between the individual and his community and between State violators of human rights and the larger international community. To the extent that these tensions produce just reforms in human rights behavior, future international law is likely to be strengthened and enhanced. To the extent that these tensions lead to greater strains and more aberrations in human rights behavior, future international law is likely to be weakened and undercut.

B. Cultural Rights

A fundamental precept of cultural relativism assumes the equality of cultures. All cultures are equal, therefore human rights practices of all cultures must be equally tolerated. The human rights

58. For direct challenges to this contention, see Donnelly, *Human Rights and Human Dignity: An Analytic Critique of Non-Western Conceptions of Human Rights*, 76 *AMER. POL. SCI. REV.* 303 (1982) and Howard, *Is There an African Conception of Human Rights?*, in *FOREIGN POLICY AND HUMAN RIGHTS: ISSUES AND AND RESPONSES* (R. Vincent ed. 1986).

movement has rejected this notion of radical cultural pluralism. Bridging the cultural chasm has necessitated fashioning transcultural standards of individual rights. These have taken the form of individual claims against the State. Bridging the cultural chasm in international law should not imply bridging world cultures solely according to universal standards of individual rights. That process must also entail fostering mutual respect among cultures. In this way, the cultural chasm becomes bridged through transmission—through a mutual recognition of “otherness”—with an understanding that there exist dimensions of each other’s culture that are cherished and worthy of respect and perpetuation. International law should be utilized to promote tolerance and cultural diversity as long as it is consistent with international human rights law.

The proposition that all cultures possess equally valid patterns in regard to every custom without qualification should be rejected in order to preserve the possibility of universal human rights. Yet, there are specific aspects of culture that are equally valid and worthy of respect across all cultures. There is a legitimate range of custom that is compatible with standards of individual rights and can be incorporated into international law in the form of “cultural rights.” International law should strive to produce norms that promote specific dimensions of cultural diversity that are embodied in general principles of “equal cultural protection.” Cultural rights refer to the individual as a member of a community as opposed to individual rights which abstract individuals from their cultural setting. Cultural rights aim to protect the cultural community from discrimination by the State or a majority within the State, including a dominant cultural group and from international actors like other States, international organizations and multinational corporations. Cultural rights include rights to autonomy and protection of cultural heritage and cultural resources. Such cultural rights should especially aim to protect custom and practices that sustain a particular culture’s unique identity, for example, its linguistic and religious traditions, types of communal solidarity, and conceptions of economic equity and ecology. Simply put, disruption of these specific cultural patterns by States, economic entities or supranational organizations should require a legal and moral justification subject to a constitutional due process consistent with international law. Embodied in international law must be a qualified notion of cultural autonomy that protects basic cultural practices from political domination and extends even to legitimizing claims of self-determi-

nation. In this respect, when a cultural unit has operated historically as a "self-conscious politically coherent community," it may be eligible for various forms of self-government.⁵⁹

Cultures must be allowed to resist forces of global homogenization generated by supranational, statist, economic and technological forces. Granted, compromise between cultures is necessary, especially within multicultural States. Yet, unless international law recognizes and upholds this important mandate of cultural diversity, many indigenous and minority cultures will be eradicated or coercively assimilated. A qualified cultural relativity must therefore be promoted as a universal value by future international law. In an age of accelerating multifaceted global interdependence, however, this challenge seems likely to become increasingly more difficult.

1. *The Cultural Heritage*

Cultural heritage "includes the intellectual, artistic, social, and historical record of the human species" and embraces "both physical objects which we create or produce and the non-physical, as represented by knowledge and social practices."⁶⁰ Seventeen countries have constitutional provisions for conserving cultural heritage.⁶¹ The cultural heritage of ethnic and racial groups is vulnerable from two primary sources. First, the influx of economic, technological, mass communication, and other factors into a State may threaten its cultural identity. A culture should be able to regulate such foreign influx as it sees fit in order to preserve and protect its cultural heritage. Certainly, such a right can be abused by political and economic elites with the former curtailing foreign influences for political reasons while the latter may desire such restrictions to avoid foreign competition.

Second, continued tension in many multicultural States will make the cultural heritage of minorities particularly vulnerable. Recently, Bulgarians were demonstrating for Western-style human rights while at the same time insisting on preventing one million

59. W. OFUATEY-KODJOE, *THE PRINCIPLE OF SELF-DETERMINATION IN INTERNATIONAL LAW* 156 (1977).

60. E. BROWN WEISS, *IN FAIRNESS TO FUTURE GENERATIONS: INTERNATIONAL LAW, COMMON PATRIMONY, AND INTERGENERATIONAL EQUITY* 257 (1989). See the Convention Concerning the Protection of the World Cultural and Natural Heritage, Nov. 16, 1972, 27 U.S.T. 37, T.I.A.S. No. 8226. See also Convention for the Protection of Cultural Property in the Event of Armed Conflict, May 14, 1954, 249 U.N.T.S. 240 (1956).

61. For excerpts of those provisions, see Appendix C, Constitutional Provisions Protecting Cultural Heritage in E. BROWN WEISS, *supra* note 60, at 329-343.

ethnic Turks from practicing Islam or using Islamic names.⁶² This oddity demonstrates the need to protect certain minority customs and practices from state interference. Protection of cultural heritage would extend to a culture's familial, intellectual, artistic, social, religious and linguistic traditions. Monuments and other like physical structures would be protected and considered as "cultural property." It would entail relative control over education and other social services. Like any legal principle, the protection of cultural heritage is not an absolute right, but one that must be bounded by practical considerations in an era of extensive international interaction and tendencies toward state centralization. Yet, the promotion of such a cultural right might encourage compromise and conservation when, left unrestrained by such a law, an international or state actor would have been insensitive to the cultural heritage of a less powerful State or minority.

2. *Cultural Resources: International Development and Ecology*

Every culture does not subscribe to certain Western notions of economic development, the normative relationship between equity and efficiency and methods of resource extraction. Economic development practices have all too often resulted in the denial of indigenous peoples' access to resources and land historically under their auspices while discouraging traditional land use techniques. Unless resources of traditional and rural cultures—namely, their particular conceptions of property, land use and ecological values—are respected by municipal law, they will become obsolete in the face of burgeoning State centralization of political and economic forces. This process will require rethinking of the relationship between territorial sovereignty and cultural identity,⁶³ the priorities between economic and ecological rights of groups, and a definition of "cultural property."⁶⁴ It will require serious reconsideration of territorial jurisdiction, economic extraction and development and eminent domain. Some cultures, if given the opportunity, might reject the notion that participation in Western-style economic markets represents a public good for all who exchange or produce in them. A

62. Harden, *Eastern Bloc Revolt Sets Region on Divergent Political Paths: Ethnic, Cultural Claims Shaping Future*, Wash. Post, Feb. 9, 1990, at A1, A22.

63. See Korsmo, *Nordic Security and the Saami Minority: Territorial Rights in Northern Fennoscandia*, 10 HUMAN RIGHTS Q. 507 (1988).

64. See the Convention Concerning the Protection of the World Cultural and Natural Heritage, *supra* note 60.

balance must be maintained that insures that indigenous peoples maintain control over economic resources crucial for the perpetuation of their culture while enjoying the benefits of economic development.⁶⁵

Many traditional cultures possess different understandings of ecology and man's relationship to nature while operating according to unique principles of ecological management. These traditional cultures possess knowledge of ecology that would be beneficial to mankind and should be protected for both cultural and scientific reasons.⁶⁶ For example, the destruction of the Amazon rain forest through Western-style means of extraction has displaced invaluable indigenous land use and forestry techniques. Establishment of respect for cultural resources will require that traditional and minority cultures be given some modicum of control or input over the State's resource extraction policy, as well as rights to land, water, and other natural resources, preservation of the biological diversity and even title to land they have historically occupied. Methods of land use and ecological conservation are fundamental elements of many traditional and rural cultures, and they should be respected accordingly in both municipal and future international law.

C. *Perspectives on Human Rights in a Diverse World*

Future international law must walk the delicate line between cultural tradition and universalistic moral imperatives. One plausible position might be to adopt a weak cultural relativism that would "recognize a comprehensive set of *prima facie* universal rights, but allow occasional and strictly limited local variations and exceptions."⁶⁷ That view would hold that "culture may be an *important* source of the validity of a moral rule. Universality is initially presumed, but the relativity of human nature, communities, and rights serves as a check on potential excesses of universalism."⁶⁸ As Jack Donnelly conceives it, positing such a middle ground between "radical cultural relativism" and "radical universalism" would permit human rights to be classified into three hierarchical levels of relativity: *substance*, *interpretation* and *form*.⁶⁹ Differences in sub-

65. E. BROWN WEISS, *supra* note 60, at 271.

66. *Id.* at 257-86.

67. See J. DONNELLY, *UNIVERSAL HUMAN RIGHTS IN THEORY AND PRACTICE* 110 (1989).

68. *Id.*

69. *Id.* at 116-17.

stance are total differences in kind. For example, freedom of speech in the West is a guaranteed right, but in some other cultures, it may be viewed as a hollow formality without substantive legal and moral basis. Differences in form would consist of variations in the secondary rules that accompany implementation of a right. To illustrate this point, “whether free legal assistance is required by the right to equal protection of the laws is best viewed as largely beyond the legitimate reach of universal standards.”⁷⁰ While agreement on the necessity of a right could be established, its essential meaning might be subject to a variety of interpretations about the essential attributes of that right in its application. For instance, whether the right of political participation should be granted according to race, sex, income or some other criterion might become a point of contention.⁷¹ The range of interpretations is logically limited by the substance of the right, which is its essential meaning. Such a weak cultural relativism would permit variations in form only, much like that which characterizes differences among many Western democracies which share similar interpretations and substantial meanings of rights, but differ on the forms rights should take.

Another approach that Eurocentric international law must confront is the insistence by non-Westerners that their cultures possess standards of human dignity and human rights that are equally valid. According to this view, Westerners often assume that human rights in tandem with the concomitant legal structure supply the only legitimate means for organizing political-legal relationships. There are, however, other ways that promote human welfare, albeit without the emphasis on individualism that earmarks much of Western culture.⁷² Hence, a plurality of perspectives exist that are united by the common denominator of respect for human dignity. Even so, human dignity as a concept cannot necessarily insure that the inherent value of the individual will be really protected by adequate legal mechanisms.

Non-Western societies may also affirm that they possess authentic traditions of human rights that are essentially comparable to those in the West.⁷³ Thus, Eurocentric views of rights appear to

70. *Id.* at 8.

71. *Id.*

72. See Murphy, *Objections to Western Conceptions of Human Rights*, 9 HOFSTRA L. REV. 433, 445 (1981).

73. See Marasinghe, *supra* note 53 and Tyagi, *Third World Response to Human Rights*, 21 INDIAN J. OF INT'L L. 119 (1981).

offer only a narrow conception of the possible interpretations of human rights. From this perspective, human rights can be located in the legal-social mores of various civilized societies, including Islamic and Hindu, as well as those in traditional Asian and African cultures.⁷⁴ Put tersely, non-Western cultures possess notions of “respect for the dignity of the individual, absence of arbitrariness, [and] availability of remedies against despotic rule.”⁷⁵

Objections to this multicultural characterization of human rights have been lodged on grounds that “the concept of human rights is an artifact of modern western civilization.”⁷⁶ In this regard, “most non-Western cultural and political traditions lack not only the practice of human rights but the very concept.”⁷⁷ Human rights exist only in those societies that have operating standards of law expressively constituted in terms of rights. For example, some would argue that Islamic legal doctrine is bereft of legal mechanisms essential for human rights enforcement in conventional Western political systems.⁷⁸ Islamic legal doctrine permits preventive detention, the death penalty, a judiciary subordinate to the sovereign ruler, and the lack of a juridical mechanism for appeals.⁷⁹ The point here is that non-Western “human rights” systems may lack legal mechanisms deemed necessary for protecting the individual against arbitrary State action. Such a situation exaggerates the role of the community at the expense of the individual. Universalist possibilities nevertheless do exist in this pluralistic approach. Adherents to the proposition that human rights stem from multicultural origins do not necessarily deny universal human rights, only that such rights cannot be conceived and applied from the Western perspective. Nor is the position of weak cultural relativism necessarily incompatible with the pluralistic approach, for such a position could be composed from a variety of perspectives.

The chasm between weak cultural relativism and the plurality of human rights/human dignity perspectives can be narrowed by applying an “empirical approach” to universal human rights. Cross-cultural reconciliation of divergent views concerning human rights might be possible once the Western insistence of superiority in its

74. Marasinghe, *supra* note 53, at 43.

75. Manglapus, *Human Rights are not a Western Discovery*, 21(10) *WORLDVIEW* 4, at 5 (1978).

76. Donnelly, *supra* note 58, at 303.

77. *Id.*

78. Coulson, *supra* note 56, at 52.

79. *Id.*

human rights tradition is abandoned.⁸⁰ Accordingly, the cause of human rights can be better advanced if one accepts the operative presupposition that there are different conceptions of rights and dignity which inevitably conflict. It has been suggested that one possible option for U.S. human rights policy might be to “accept cultural diversity and moral disunity as conditions of international politics for the immediate future, and a worldwide search for new precepts of international morality.”⁸¹ It thus becomes imperative that competing ideals are brought into conflict. Here, cultures stand in dialogical relation to each other, engaged in cultural interaction and moral synthesis.

This empirical approach is less ambitious; it neither assumes an *a priori* objective conception of the human person nor recognizes the philosophical difficulty of demonstrating such absolute values. The empirical approach relies more on the experiences of intercultural dialogue and practice. In a cross-cultural sense, Western ideals of human rights exist more as a hypothesis about the nature of man and society. If Western ideals do in fact represent objective criteria for human dignity, then their adoption cross-culturally will be empirically confirmed. Such an approach implies that historical relativism has become an indelible fact of the world and that cultures are locked in different processes of evolution and development, searching for a “homeomorphic equivalent” that functions cross-culturally.⁸² Additionally, human morality might be postulated as a function of certain biological imperatives of the species⁸³ or derived from the development of certain minimum standards of human decency that exist cross-culturally.⁸⁴

Abandonment of *a priori* standards would entail the surrender by scholars to particularism as an investigative starting point in hope that some cross-cultural consensus might emerge. That cultural diversity exists means that human rights universalists can no longer rely on traditional sources for justification.⁸⁵ Reference to divine

80. HUMAN RIGHTS: CULTURAL AND IDEOLOGICAL PERSPECTIVES 14-16 (A. Pollis and P. Schwab eds. 1980).

81. Thompson, *Implications for American Foreign Policy*, in K. Thompson, *supra* note 49, at 241.

82. Panikar, *Is the Notion of Human Rights a Western Concept?*, 120 *DIAGENES* 75, 78-79 (1982).

83. See B. MOORE, *REFLECTIONS ON THE CAUSES OF HUMAN MISERY AND UPON CERTAIN PROPOSALS TO ELIMINATE THEM* (1972).

84. For a philosophical inquiry into a minimum standard of morality, see generally S. HAMPSHIRE, *INNOCENCE AND EXPERIENCE* (1989).

85. Renteln, *A Cross-Cultural Approach to Validating Human Rights*, in *HUMAN RIGHTS: THEORY AND MEASUREMENT* 7, 9 (D. Cingranelli ed. 1988).

authority and natural law is rendered out of vogue; intuitionism is made philosophically suspect; and, the ratification of international human rights documents does not necessarily reflect the beliefs of non-Western peoples, but rather could be more indicative of the political calculations of elites.⁸⁶

For some commentators, the central question turns not on whether different cultures have the same narrow conception of rights. Rather, it asks this: Do cultures address issues of human dignity in similar general conceptual frameworks? The erection of universal moral standards depends on demonstrating the acceptability of a moral value or principle by all cultures. In A.D. Renteln's words, "The reality of universality depends on marshalling cross-cultural data."⁸⁷ The key imperative for the international lawyer will lie in discovering whether and where different cultural systems overlap in the form of common moral denominators that reflect universally shared moral principles or "cross-cultural universals."⁸⁸ The fact that cultures generally accept limits on arbitrary killing and violence indicates a universal moral principle which may attain specificity in the form of a particular human right located in international human rights documents.⁸⁹ Thus, human rights are rooted more in reality rather than in "naturalistic abstractions."⁹⁰ Bridging the cultural chasm requires focusing attention on where there is moral agreement. Although relativism may only be assumed, it can only be disproved by empirical data which demonstrate that, in fact, there is *not* a diversity of cultural practices on a specific mode of behavior. For international law in the future, the accomplishments made in spanning the gulfs separating diverse human rights systems may well indicate just how successful international law is in generally bridging the chasm of cultural relativism.

III. USE OF FORCE

War and violence have continuously destabilized the international system, often dashing the hopes of idealistic internationalists that law rather than power politics can be the foundation for world order. One has only to look at the calamity of World War I after

86. *Id.* at 10.

87. *Id.* at 30.

88. See Renteln, *Relativism and the Search for Human Rights*, 90 AM. ANTHROPOLOGIST 56, 64 (1988).

89. *Id.*

90. Renteln, *supra* note 85, at 31

the Hague Conventions, the failure of the League of Nations to prevent the outbreak of World War II, the plethora of conflicts since 1945, and the emergence of terrorism as an odious form of international violence. In fact, 90 percent of the approximately 100 million deaths recorded in the 471 wars since 1700 A.D. in which 1,000 or more people died have occurred after 1900.⁹¹ The exclusive focus on the nation-state as the fundamental unit of analysis when assessing the problem of law and warfare is a fallacy.⁹² The role of culture can not be ignored in both its impact on determining conceptions of warfare and in the extent to which many conflicts are ethnic and racial in character and many States are multicultural.

The extent to which cultural factors create distinct imperatives for warfare while determining types of aggressive behavior lies beyond the scope of this inquiry. Nonetheless, the degree to which the use of force is a product of cultural factors has to be examined by the international lawyer. Certainly, war can be seen in part as a product of technological, demographic, ecological and economic conditions unique to particular cultures⁹³ Warfare of primitive tribes like the Yanomamo of Brazil is a perpetual theme of social life and rooted in disputes over women and their abduction.⁹⁴ Different cultural conceptions of the just war produce diverse views of the role of violence in solving political problems. Some religions and social belief systems entail duties to commit violence and participate in warfare. The Islamic concept of jihad (or "holy war") justified violence under Iran's Khomeini regime and promoted violent hostility to vestiges of anything non-Muslim.⁹⁵ Much of the developing world has been ravaged with ethnic conflict that has been essentially violence between cultures. As non-Western countries have become independent from colonialism, they have had to face the dilemmas of intra-State multicultural ethnic strife. Finally, violence is being justified in order to preserve the cultural heritage. Certain segments of the Afrikaner right-wing in South Africa have pronounced a willingness to take up arms in order to protect

91. CONFLICT AND PEACEMAKING IN MULTIETHNIC SOCIETIES xi 11 (J. Montville ed., 1990).

92. See Ra'anani, *The Nation-State Fallacy*, in Montville, *supra* note 91, at 5.

93. See M. HARRIS, *COWS, PIGS AND WITCHES: THE ORIGINS OF CULTURES* 79-80 (1974).

94. See E. HATCH, *supra* note 13, at 89. Also see generally, N. CHAGNON, *YANOMAMO: THE FIERCE PEOPLE* (1977).

95. See Talegani, *Jihad and Shahadat*, in *JIHAD AND SHAHADAT: THE STRUGGLE AND MARTYRDOM IN ISLAM* 47-80 (M. Abedi and G. Legenhausen, eds. 1986).

Afrikaner culture.⁹⁶ As ideological tension wanes, cultural factors are likely to become more salient features of international conflict. The trend is evidenced today in the ethnic and cultural animosities besieging Eastern Europe and the Soviet Union, as well as tribal rivalries that have disrupted much of the African continent.

IV. GLOBAL INTEGRATION: CULTURE, MODERNIZATION AND CONSTITUTIONALISM

A. Culture

As the 21st century approaches, unprecedented integrative forces are shaping the world. Products of modernization are internationally transforming the physical and mental landscape of mankind: global trade and capital flows know no cultural or national barriers; mass communications are evolving into a global information network throughout which cultures intermingle like never before, and neither political ideas nor social mores can remain unknown for long; technological innovation occurs at an astounding pace; and as communism collapses worldwide, tendencies toward liberal democracy proliferate. For good or ill, no culture today is an island unto itself.

It is within this context of accelerating global integration that the relationship between culture and international law needs to be reexamined. While Western notions of human rights represent attempts to inject a standard of rationality into the cultural equation, it is necessary to recognize that culture remains a product of nature. Though tempting, resort to a reductionist dichotomy by dividing a culture into rational and irrational parts is simplistic and fails to capture the rich heritage of a civil society—its religion, art, social organization and other elements that constitute a unique cultural system in a unique time and place.

Culture and world order are not dichotomous concepts. World order is not an ahistorical, acultural construct and international law is not an acontextual medium. Rather, both merge from a combination of cultural sources, each one contributing in some way or another. Thus, an international legal order is not an abstract construct, but is really a synthesis of universal imperatives and rich cultural traditions. The condition of international law actually mir-

96. Kraft, *Afrikaners See Signs of Doom Under New Policy*, L.A. Times, Nov. 11, 1989, at A12, A13: Some Afrikaners "say they are prepared and morally obliged to take up arms to protect the purity of Afrikaner culture from the "heathen masses." *Id.*

rors the kind of cultural traditions preponderant in international relations. International law reflects in its content (or lack thereof) and in its adherence to (or rejection of) just how successful diverse cultures are in promoting global peace and equity, or war and injustice. International law will have to move beyond the simplistic dichotomy of cultural autonomy and legal/moral/political universalism. None alone captures the rich diversity of human experience. International law thus becomes the product of many cultures and, in turn, contributes to the content of many cultures.

The nation-state has made a profound impact upon the notion of culture. Statism has been superimposed upon an array of diverse cultures. It has energized peoples around nationalistic themes, created new allegiances, obligations and benefits and imposed political and economic institutional imperatives upon traditional societies. Within the modern State, the rise of secularism has fostered the legitimation of power based on the secular mandates of welfare, defense, and righting perceived territorial wrongs.⁹⁷ And, since States are international actors, their governments have introduced a sense of “internationalistic consciousness” upon their peoples. This has produced both beneficial and deleterious effects upon the concept of culture. As the experience of Africa amply attests, the nation-state itself is frequently a multicultural unit. If a cultural relativist must insist on tolerance between cultures, the appropriate place to start would be with those many oppressive multicultural States. For tolerance to be authentic, it must be institutionalized to some degree—a process that would require erecting juridical structures containing liberal equal protection guarantees. Given the attitude of the cultural relativist, that would indeed be a satisfying irony.

Homogeneity within cultures is disintegrating. Cultural relativism implicitly presumes that culture is a static entity operating through a homogeneous value system. Instead, the experience of this century illustrates that culture is much more dynamic and heterogeneous. Cross-cultural pollination has stimulated this process where ideas, values and technology have penetrated many cultures. The result has been a blurring of cultural boundaries.⁹⁸ An emerging global culture is on the horizon, one with which future interna-

97. See Dunn, *Identity, Modernity, and the Claim to Know Better*, in *PHILOSOPHY IN HISTORY: ESSAYS ON THE HISTORIOGRAPHY OF PHILOSOPHY* 163 (R. Roty, J. Schneewind & Q. Skinner eds. 1986).

98. See R. VINCENT, *supra* note 50, at 54.

Joynner and Dettling: Bridging the Cultural Chasm: Cultural Relativism and the Future of International Law will have to become adapted and adjusted.

B. Modernization

Culture has been transformed by modernization, which has served as a catalyst for an emerging global culture. Forces of modernization have profoundly affected the political, economic and legal development of many non-Western nations. The rise of global and regional markets have shifted loyalties and refocused industrial energies. Goods, services and various forms of relief are today distributed world-wide. Mass communications and travel have allowed cultures to interact extensively, engendering an interesting paradox: At no time in history does the notion of "humankind" retain a more substantive identity, though conversely, never before has man been made so aware of the variety of cultural differences. In this regard, international law has facilitated an inter-cultural learning process by expediting cross-cultural interaction.

If modernization has exerted a fundamental impact in diminishing the significance of culture as the primary purveyor of moral values, it has also had pernicious effects on the cultural heritage of many groups. The "cult of modernization" has been indifferent and at times even outright hostile to local variations in cultural identity. Granted, the tension between universal and local morality remains a necessary force in a world earmarked by extensive integration. And, the content of one's culture is bound to change through interaction with other cultures. Yet, the pervasive modernization process has exhibited a distinct lack of sensitivity to those dimensions of culture that lie directly outside the sphere of individual moral considerations. Indigenous peoples have had little say in their own cultural and economic development while their cultural heritage is being either eradicated or haphazardly assimilated. Economic inequities and ecological devastation have made indigenous peoples victims of the modernization process.⁹⁹ Certainly, an insidious form of modernization is the marginalization of cultural groups who do not seem to be contributing in a "progressive" sense to the predominant technological and economic factors of production that are seen as integral for future development. Those who fail to be perceived as participants in "progress" will become even more marginalized in the future, as they and their culture become in-

99. See Brokke, *Conflicting Pressures Shape the Future of Brazil Indians*, N.Y. Times, Feb. 25, 1990, at E5, col. 1.

creasingly invisible to the modern eye. Further, since modernization has become such a dominant transcultural imperative, cultures will probably become distinguished less by their indigenous cultural pattern and more by their consignment to the “developed” or “undeveloped” cluster of states. This denotes an unfortunate trend that signals the need for international law to be used to preserve and protect certain cultural differences.

C. Constitutionalism and Human Rights Treaties

It is remarkable how constitutionalism has transformed culture. Constitutionalism, the adherence to constitutional principles and government, is pervasive worldwide as it provides an organizing legal framework for many civil societies. Much of the political debate in national societies today revolves around rights-based discourse. While certainly debate swirls around which rights to prioritize, debate over the language of rights is also rife. A common universal rights framework is emerging as different cultures engage in an international dialogue over the nature of the “good” society. This is evinced by the fact that many non-Western nations have actively participated in the creation of international human rights agreements. Even if the West has traditionally emphasized civil and political rights, the rise of welfare statism represents a partial incorporation of many social and economic considerations that have characterized non-Western human rights theory. Contrary to advocates of cultural relativism, many States have embraced the rights-based approach while implementing constitutional structures. This process has injected values of individual autonomy and liberal tolerance into many non-Western cultures. Moreover, only a very superficial analysis of non-Western politics can attribute the failure to abide by human rights standards and constitutional provisions to factors that are exclusively culture-bound.

V. THE REALITY AND RELEVANCE OF INTERNATIONAL LAW

A. General Observations

Human beings strive collectively because they desire to live individually. For social existence to occur, there must be social order. To provide social order there must be regularity and predictability in the conduct of that society’s members. So it is with international law. International law is a human product, born out of necessity to deal with the global interrelationship of national governments. The

conduct of States is aimed at translating national interests into tangible goals and foreign policies, a process that remains largely limited to a State's basic needs within the international society. To the extent that law reflects a society's values, international law has evolved increasingly to assimilate the multicultural values of international society.

Cultural relativism generally asserts that international law suffers where shared beliefs and values are displaced by diversity. The proposition is that relations between societies with different cultural traditions escape effective regulation by a common corpus of law because international law is grounded in Western values not shared by other influential cultures.

Cultural relativists assert that diverse cultures with their widely variant concepts of law in non-Western societies preclude the possibility of ever establishing a worldwide legal system. They argue that conflict resolution should be focused on culturally diverse subsystems, rather than upon idealistic attempts to concoct solutions couched in legal concepts purportedly held in common by all peoples.

It is true that the character and content of classical international law mirrors the ideological parochialism and cultural homogeneity of its European originators. It is also true that developing countries have deep-rooted resentment against vestiges of imperialism and colonialism. They strongly advocate immediate self-determination of dependent territories, the abolition of unequal treaties, sovereign right of exploitation and protection of natural resources, and establishment of global common areas as part of the "common heritage of mankind." The new States, with all their different cultural niceties and nuances have not rejected or repudiated Eurocentric international law in the main. Instead, these States have opted to work within that legal framework in order to change facets of the international legal system to better suit their particular national interests.

Cultural relativism in its multifaceted dimensions may present impediments or obstacles to the universal embodiment of international law. This realization, however, does not necessarily mean that international law is fatally flawed, or irreparably damaged, or fundamentally inefficient. The proof is in the pudding. The plain fact is that international law works for all States and disparate cultures because its basic premises are accepted and operationalized in their international relations with one another. The fact that govern-

ments of States coexist, collaborate, cooperate, and communicate clearly suggests that certain common rules operate successfully to guide their conduct. Necessity for maintenance of public order creates the need for law, which must constantly be in process of development to keep pace with and adapt to changing circumstances. International law is not static; it is dynamic.

B. *Human Rights*

The international law of human rights is that law which concerns protection of the individual and groups against violations by governments of their internationally guaranteed rights. International human rights law has its intellectual roots in several traditional legal doctrines—for example, humanitarian intervention, state responsibility for injury to aliens, protection of minorities, and international humanitarian law. That law and practice supplied the conceptual and institutional underpinnings for contemporary international human rights law. The fundamental premises of that law are the recognition that all individuals have special rights in common as human beings and that these rights are protected and promoted by international law.¹⁰⁰

Since World War II human rights law has proliferated, largely because of the perceived need to safeguard the minimal rights of the individual. The major impetus for realizing this need came in the gross violations of human rights perpetrated during the Holocaust by Hitler's Germany. The primary institutional vehicle for the formulation and expression of human rights has been the United Nations. Interestingly enough, the newly independent non-Western States have been in the vanguard of creating this corpus of new international law, notwithstanding intrinsic disparities in culture and conflicts in societal values. This near uniform willingness to promote a common body of human rights law in the face of stark cultural diversity may be largely explained by the fact that many of these developing States did so in reaction to the perceived socio-economic injustices that had been thrust upon them in the 19th and early 20th centuries by European colonialism.

The core of international human rights law is contained in the so-called International Bill of Human Rights, which consists of the

100. See generally L. SOHN & T. BUERGENTHAL, INTERNATIONAL PROTECTION OF HUMAN RIGHTS (1973); and Sohn, *The New International Law: Protection of the Rights of Individuals Rather than States*, 32 AM. U. L. REV. 1 (1982).

Universal Declaration of Human Rights,¹⁰¹ the two International Covenants on Human Rights,¹⁰² and the Optional Protocol to the Covenant on Civil and Political Rights.¹⁰³ It is perhaps ironic that during the past two decades most non-Western States have rushed to embrace, through ratification, the legal norms embodied in these documents, while the West in general and the United States in particular have been far more reluctant to do so.

The Universal Declaration, though a General Assembly resolution and not a legally binding treaty instrument, has nonetheless acquired since its adoption in 1948 a distinct moral status and special legal importance. The Universal Declaration was adopted without opposition by a vote of 48 to 0, and supplied the core catalogue of human rights fundamental to contemporary international law.¹⁰⁴ The Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights were opened for signature in 1966 and entered into force a decade later. Today more than 85 States are parties to both these agreements, including at least 58 developing States.¹⁰⁵ The Optional Protocol has attracted only modest international support, but counts among its parties at least 29 non-Western developing countries.¹⁰⁶

In addition to the International Bill of Human Rights, the United Nations has promulgated several treaties dealing with specific kinds of human rights violations. Non-Western developing States have often taken the lead in sponsoring and promoting these agreements. The Genocide Convention,¹⁰⁷ adopted in 1948, has been ratified by more than 95 States, among them 70 non-Western

101. G.A. Res. 217 A (III), adopted Dec. 10, 1948. 3 U.N. G.A.O.R. (A/810) at 71.

102. International Covenant on Economic, Social and Cultural Rights, *done* at New York, Dec. 16, 1966, *entered into force* Jan. 3, 1976. 993 U.N.T.S. 3; International Covenant on Civil and Political Rights, *done* at New York Dec. 19, 1966, *entered into force* March 23, 1976. 999 U.N.T.S. 171.

103. Optional Protocol to the 1966 International Covenant on Civil and Political Rights, *done* at New York Dec. 16, 1966, *entered into force* March 23, 1976. 999 U.N.T.S. 302.

104. Eight members, however, abstained, namely Saudi Arabia, Union of South Africa, Soviet Union, Ukraine, Byelorussia, Czechoslovakia, Poland and Yugoslavia.

105. In late 1989, 92 States (63 non-Western) were parties to the Covenant on Economic and Social Rights and 87 States (58 non-Western) were parties to the Covenant on Civil and Political Rights. M. BOWMAN AND D. HARRIS, MULTILATERAL TREATIES: INDEX AND CURRENT STATUS 303-05 (1984) [hereinafter BOWMAN AND HARRIS]; M. BOWMAN AND D. HARRIS, SIXTH CUMULATIVE SUPPLEMENT, 101-02 (1989) [hereinafter BOWMAN AND HARRIS SUPPL.].

106. BOWMAN AND HARRIS, *id.* at 305; BOWMAN AND HARRIS SUPPL., *id.*, at 102. The total number of parties to the Optional Protocol in 1989 was 43. *Id.*

107. Convention on the Prevention and Punishment of the Crime of Genocide, *done* at New York Dec. 9, 1948, *entered into force* Jan. 12, 1951. 78 U.N.T.S. 277.

developing countries.¹⁰⁸ More than 125 States are now party to the International Convention on the Elimination of All Forms of Racial Discrimination.¹⁰⁹ Of these, at least 95 are non-Western developing States.¹¹⁰ The International Convention on the Suppression and Punishment of the Crime of Apartheid,¹¹¹ adopted and opened for signature by the U.N. General Assembly on November 30, 1973, now counts as parties 88 States, 79 of which qualify as non-European developing countries.¹¹² By 1990, some 96 nations had become party to the Convention on the Elimination of All Forms of Discrimination against Women.¹¹³ At least 67 of these are developing countries.¹¹⁴ Finally, one can look to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment,¹¹⁵ which was opened for signature in December 1984. In only five years this Convention has attracted ratifications from 40 States, including 20 countries from the non-Western developing world.¹¹⁶

Taken in composite, these international human rights agreements bridge extensive gaps in the law of nations. Importantly, cultural distinctions have not automatically precluded many non-Western States from becoming party to them. That so many newly independent governments have seen fit to accept legal obligations to protect these diverse human rights amply attests to their strategy to work within the Eurocentric international legal system to fashion rules and principles that promote their fundamental national interests.

Formal agreements by States to human rights documents, however, does not mean that those legal principles and rules for conduct will necessarily be respected and obeyed by governments. The public record and domestic practice of States regrettably demonstrates otherwise. It is also significant that non-Western countries

108. BOWMAN AND HARRIS, *supra* note 105, at 146-47; BOWMAN AND HARRIS SUPPL., *supra* note 105, at 74.

109. *Done* at New York, March 7, 1966, *entered into force* Jan. 4, 1969. 1660 U.N.T.S. 195.

110. BOWMAN AND HARRIS, *supra* note 105, at 299-300; BOWMAN AND HARRIS SUPPL., *supra* note 105, at 100.

111. *Done* at New York, Nov. 30, 1973, *entered into force* July 18, 1976. 1015 U.N.T.S. 243.

112. BOWMAN AND HARRIS, *supra* note 105, at 385-86; BOWMAN AND HARRIS SUPPL., *supra* note 105, at 120.

113. *Done* at New York Dec. 18, 1979, *entered into force* Sept. 3, 1981. *Reprinted in* 19 I.L.M. 33 (1980).

114. BOWMAN AND HARRIS, *supra* note 105, at 448-49. BOWMAN AND HARRIS SUPPL., *supra* note 105, at 142-43.

115. *Done* at New York Dec. 10, 1984, *entered into force* June 26, 1987. U.N. Doc. A/RES/39/46, *reprinted in* 24 I.L.M. 535 (1985)

116. BOWMAN AND HARRIS SUPPL., *supra* note 105, at 17.

have been among the most egregious violators of human rights norms. One only needs to be reminded of the genocide in Cambodia during 1975-79, the widespread tribal atrocities in Uganda under Idi Amin, the pervasive killings in the Central African Empire under "Emperor" Jean-Bedel Bokassa and the thousands of Iranians executed under "revolutionary justice" during the Ayatollah Khomeini's regime.

The fact still remains that many non-Western developing States have formally acknowledged their support in principle for fundamental human rights derived in substantial part from the Western liberal experience. This pervasive international agreement on the nature and importance of human rights, irrespective of these States' cultural backgrounds and disparate value systems, attests further to the acceptance and commonality of international law in principle, if not in wholesale practice.

Yet, this inadequacy and ineffectiveness of international law should not be attributable to cultural relativism. Rather, the weakness of international law can be traced to the preeminent feature common to the nation-State system—the desire by each State to maintain its sovereign independence regardless of costs. The failures of international law rest not on the mutually conflictive cultural values of peoples or States. Those failures instead should be blamed on the clash of national interests and conflicting foreign policy objectives of sovereign States, particularly when governments are unwilling to subordinate their national interests to the higher common interests of a peaceful world order.

C. The Use of Force

Cultural relativism, to the extent that it affects the development of international law, is made secondary to nationalism in the domestic sphere and power as the most salient operational ingredients in the international system. The overwhelming desire of all States is to survive internationally in sovereign independence. This preeminent interest produces inescapable behavioral consequences, leading to the willingness by States to accept international law so as to promote international order. Overriding concern with one's own situation in the international system leaves little opportunity for cultural eccentricities that might disrupt international stability and jeopardize sovereign independence.

There is no doubt that the culture of a State influences and can skew decision-makers' perceptions of international events. Cultural

biases and value judgments can put undue emphasis on certain actions, while shading or obscuring the relative importance of others. That, however, misses the critical point for international law. Even with marked distinctions in cultural composition, societal mores, historical experience, religious convictions and value systems, the governments of developing States have rushed to embrace the legal tenets developed from the European experience for curbing violence in international relations. One needs only to look at which States have become party to several multilateral conventions negotiated to regulate the use of force in the international community.

Classical international law not only permitted the lawful right of States to go to war, but also considered this ability a necessary condition of sovereign statehood. International law traditionally did not prohibit international conflict. It viewed transnational violence as a normal function of sovereign States.

In this century, however, States have wholly reconsidered the role of force in international relations and have moved through international legal instruments to curtail its use. In this regard, the premier international instrument for regulating the use of force is the Charter of the United Nations.¹¹⁷ Article 2(4) of that instrument specifically addresses the prohibition on resort to force as it mandates that: "All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations." Do non-Western developing countries support in principle upholding this formal renunciation of the threat or use of force? Clearly they do. In early 1990 the United Nations could count 159 members, of which more than 70 parties are newly independent developing States admitted after 1960. Moreover, another 40 members of the United Nations also qualify as developing States, though their ratification of the Charter antedated 1960.¹¹⁸

Eurocentric international law in the 20th century has also sought to regulate the conduct of States engaged in war. This has been accomplished through the progressive development of rules governing the rights and duties of States in times of war, a process facilitated through the promulgation of several important multilat-

117. Charter of the United Nations, 59 Stat., 1031 T.S. 993, 3 Bevans 1153.

118. U.S. DEP'T OF STATE, TREATIES IN FORCE: A LIST OF TREATIES AND OTHER INTERNATIONAL AGREEMENTS OF THE UNITED STATES IN FORCE ON JANUARY 1, 1989, 381-382 (1989) [hereinafter TREATIES IN FORCE].

eral treaty instruments.

Regarding the laws of war, many non-Western developing States have formally committed themselves to be bound legally by prominent international treaty instruments. A survey of those multilateral treaties reveals that the 1907 Hague Convention Respecting the Laws and Customs of War on Lands (Convention IV)¹¹⁹ counts as parties 43 States, of which 17 are non-Western developing States.¹²⁰ At least 100 non-Western States are party to the 1925 Protocol on the Use in War of Poison Gases¹²¹ and in the case of each of the four Geneva Conventions of 1949,¹²² more than 130 non-Western States have become acceding parties.¹²³

It is important to realize that non-European States themselves have also pursued serious attempts to formulate international law concerning the use of force that is tailored to their national aspirations. These creative efforts have been undertaken through conventional means traditionally accepted under international law. In 1977, the Diplomatic Conference on Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts adopted by consensus two instruments: The Protocol Additional to the Geneva Conventions of 12 August 1949, Relating to the Protection of Victims of International Armed Conflicts (Protocol I)¹²⁴ and the Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Victims of Non-International Armed Conflicts (Protocol II).¹²⁵ Both Protocols entered into force in December 1978. While the United States and most Western States have refrained from ratifying these protocols, more than 65 developing States have become parties.¹²⁶

119. *Done* at the Hague Oct. 18, 1907, *entered into force* Jan. 26, 1910. 36 Stat. 2277, T.S. 539, 1 Bevans 631.

120. TREATIES IN FORCE, *supra* note 118, at 363-64.

121. Protocol for the Prohibition in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, *done* at Geneva June 17, 1925, *entered into force* Feb. 8, 1928. 26 U.S.T., 571, T.I.A.S. 8061, 94 L.N.T.S. 65. In 1989, there were 135 parties to the 1925 Protocol. TREATIES IN FORCE, *supra* note 118, at 311-12.

122. Convention I, Protection of Armed Forces in the Field, *done* 12 August 1949, 6 U.S.T. 3114, T.I.A.S. No. 3362, 75 U.N.T.S. 31; Convention II, Protection of Armed Forces at Sea, *done* 12 August 1949, 6 U.S.T. 3217, T.I.A.S. No. 3363, 75 U.N.T.S. 85; Convention III, Protection of Prisoners of War, *done* 12 August 1949, 6 U.S.T. 3316, T.I.A.S. No. 3364, 75 U.N.T.S. 135; Convention IV, Protection of Civilians in Time of War, *done* 12 August 1949, 6 U.S.T. 3516, T.I.A.S. No. 3365, 75 U.N.T.S. 287.

123. TREATIES IN FORCE, *supra* note 118, at 360. In 1989 there were a total of 157 parties to the 1949 Geneva Conventions.

124. *Done* at Geneva, June 8, 1977, *entered into force* Dec. 7, 1978, 1125 U.N.T.S. 3.

125. *Done* at Geneva, June 8, 1977, *entered into force* Dec. 7, 1978, 1125 U.N.T.S. 609.

126. BOWMAN AND HARRIS, *supra* note 105, at 419; BOWMAN AND HARRIS SUPPL.,

Non-Western developing States have similarly assumed active roles in affirming their legal obligations to special treaties prohibiting the use of certain weapons. Of the 107 parties to the 1975 Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxic Weapons and on Their Destruction,¹²⁷ at least 80 are non-Western developing States.¹²⁸ The 1977 Convention on the Prohibition of Military and Other Hostile Use of Environmental Modification Techniques¹²⁹ today counts at least 55 parties, of which 33 are non-Western developing countries.¹³⁰ Finally, among the 139 States that are today parties to the 1970 Nuclear Non-Proliferation Treaty,¹³¹ 111 are non-Western countries.

The demonstrated record of non-Western State practice in the international law pertaining to armed conflict appears obvious. Irrespective of the varied content of cultures, or their different historical backgrounds, or metaethical variations in values, or interpretive nuances in linguistic distinctions, or cultural heritage, the plain fact is that non-Western developing States are responsibly participating in the formulation and conduct of international law curtailing the use of force in their international relations. It is not culture that motivates their willingness to subscribe to these largely Western-sponsored tenets of international law. Rather, it is national interest. That is a salient point that must not be lost as international law progresses in its substantive development in the future.

VI. CULTURAL RELATIVISM: AN ASSESSMENT

Contemporary analysis of international law remains principally grounded in the specific historical experience and national interests of a dominant Eurocentric society. This poses a significant challenge to international law which strives to attain a cosmopolitan, global perspective of modern interstate relationships.

There is scant doubt that the composition of international society underwent profound transformation in the 1960's and 1970's as

supra note 105, at 132.

127. *Done* at Washington and Moscow April 10 1973, *entered into force* March 26, 1975. 26 U.S.T. 583, T.I.A.S. 8062, 1015 U.N.T.S. 163.

128. TREATIES IN FORCE, *supra* note 118, at 284-85.

129. *Done* at Geneva May 18, 1977, *entered into force* Oct. 5, 1978. 31 U.S.T. 333, T.I.A.S. 9614.

130. TREATIES IN FORCE, *supra* note 118 at 301-02.

131. *Done* at Washington, London, and Moscow, July 1, 1968, *entered into force* March 5, 1970. 21 U.S.T. 483, T.I.A.S. 6839, 729 U.N.T.S. 161.

manifold new States with radically non-Western cultures were accepted into the system of sovereign actors. However, the assertion that non-Western societies do not and can not share values ingrained in modern international law misses the mark. Such a construction fails to appreciate the degree to which non-Western societies have indeed become Westernized, especially in handling their foreign relations. Non-Western governments acknowledge the existence of international law, they accept most of its fundamental tenets, and they apply it expediently to enhance their interests, as do all States. Though international law largely has Western roots, that legal system is taught and practiced throughout the world. Core concepts such as sovereignty, statehood, national self-determination, dispute settlement, and international cooperation through supranational organizations have been enthusiastically embraced by non-Western societies. Interestingly enough, other fundamental principles of international law—for example, diplomatic immunity, treaty-making and placing limits on warfare—were also practiced in non-Western societies prior to the rise of Eurocentric international law in the 17th century.

Cultural relativism aims to expose the sensitivities, parochialism, and ethnocentrism of Western international legal tradition in the global context. The claims to universality long asserted by Western international law appear to be increasingly vulnerable to the traditions of other civilizations that are able to assert themselves in the modern world.

But the core values of international law are not the monopoly of any civilization. All cultures share some basic values and traditions as they are derived from biological evolution and sociological experience. It remains a truism that imperfect societies are liable to produce imperfect solutions for their imperfections. It is that way with modern international law. Legal remedies are born of the same social experience that produced those problems.

To suggest that cultural relativism may be useful for appreciating the directions in which international law is headed does not necessarily make one naive or idealistic. On the contrary, it is imperative to realize that forging future international law in an increasingly interdependent world must unavoidably turn to the ideas, consciousness and mores of different cultures as they become more involved in international dealings.

The conventional view of world politics and the international legal order that guides it is derived principally from pluralism and

relativism. The international system is comprised of constant collisions between particular interests of presumed sovereign, autonomous States. A tension exists between universal aspirations of international law and divisive claims of pluralistic relativism. To posit the assumption that culture exerts a global impact upon international law is to place into question the value and vitality of Eurocentric law—something that even the bloc of newly independent developing States has not been enthusiastic about doing.

The assertion that human societies differ so greatly throughout the world that no moral values or practices are universal is simply not so. It is true that there exists a broad diversity of linguistic, religious, and other cultural manifestations. But the anthropological evidence indicates that certain moral similarities earmark practically every society. All societies generally honor the dead in ceremonial fashion and have adopted rules for regulating sexual conduct, just as they have fixed punishments for behavior deviant from that which the society has proscribed. Most societies express sacred beliefs in supernatural forces and beings to explain man's presence here on earth and the passage to an afterlife. Cultures in many ways may be unique. They may also be in many ways strikingly similar.

Has cultural relativism produced a crisis of confidence in international law? Clearly the answer is no. The viability of international law is plainly evidenced by the fact that so many newly independent developing States have committed themselves to multilateral lawmaking treaties and participation in the present international legal system. One must examine the actual practice of these States, not merely listen to their rhetoric.

In every society, the character and causes of conflict generally depend upon the motives of its members. That is, it is critical to understand the national aims, objectives, and aspirations of States to fully appreciate why they resort to the use of force. Although cultural distinctions remain as obvious hallmarks from Western societies, the legal attitudes of the newly independent States toward violence and the use of force in international relations have come to mirror in large part those historically developed in Eurocentric law.

Regardless of cultural foundation, all States hold certain long-term goals in common as national interests. Chief among these are survival and security of the polity. Other important interests are also held by all States, among which would be included the desire to maintain independence, economic prosperity, international repu-

tation, national prestige, ideological aspirations, and stable, peaceful international conditions. The relative weight of other national interests obviously varies with the particular international circumstances and situation in which a State finds itself.

Cultural relativism is too narrow, too facile, and too contrived. While there are undoubtedly manifold cultural differences between and among the 200 or so sovereign polities known as States, often even more profound cultural distinctions may exist within certain States. One thinks in 1990 of the ethnic turmoil in the Baltic States and Moslem republics of the Soviet Union in particular, as well as between the white minority Afrikaners and the majority of tribal blacks in South Africa.

International law can not simply be cast aside as an ideological relic that the West has imposed upon other States, and which the latter are rejecting as inimical or alien to their interests. International law exists in fact for a very fundamental reason: There is a real need for such a legal system to serve as the guide and common denominator for relations among States. There is no world of mutually exclusive regional systems or cultural subsystems. Minimum standards for international cooperation are required for transnational activities, whether they concern arms control and disarmament, diplomats and consular relations, the process of treaty-making, conservation of natural resources, protection of the global environment, protection of refugees, control of illicit trade in narcotics, facilitation of international civil transportation, promotion of international trade and commerce, or regulation of activities in, on and under the world's oceans.

The principal task of future international law will be to build a new system of public world order with an ideological base broad enough to derive support from and encompass the main social and economic systems. There must be a symbiosis between positive international law and cultural change.

CONCLUSION

In the final analysis, cultural relativism is theoretically flawed and practically misguided. The assertion that values and beliefs undergirding Western morality and law are unique and not widely shared, and are therefore foreign to non-Western societies, plainly errs. It exaggerates the degree of moral and legal heterogeneity in modern international society.

International law becomes indispensable precisely because it is

comprehensible and used in spite of cultural differences. In essence, the medium becomes the message. States make international law, States break international law, States enforce international law. International law becomes a conduit through which States can express differences and similarities of interests plainly, in fairly exact, universal language. International law furnishes a bridge that both transcends and nurtures cultural differences, not a wedge that exacerbates them. International law furnishes governments with the institutionalized opportunity for fashioning universal principles of right, duty and tolerance, and for producing a more just and peaceful world order.

In sum, modern cultures contribute greatly to, but do not detract much from, the overall formulation of contemporary international law. That is the main lesson to be gleaned from the cultural relativism hypothesis. For international law in the future, that lesson serves constantly as a reminder that general world law must remain sensitive to particular peoples' needs. Only by recognizing this tenet can international law attain the status of truly being a law for all nations.