Comments to the OHCHR on UN resolution A/HRC/21/3: "Promoting human rights and fundamental freedoms through a better understanding of traditional values of humankind"

The UN began with a set of principles that expressed a desire to extend protection to people of all countries and regions, equitably and without bias. The Human Rights Council was created within the UN system to "help build a world in larger freedom…guided by the principles of universality, impartiality, objectivity, non-selectivity, transparency, and accountability" (High Commissioner Navi Pillay's address at the 13th session of the HRC). These foundational objectives have not changed, but it could be argued that the emphasis has shifted in some cases. Instead of the concepts of freedom, dignity, and universal and inherent rights, specific political or cultural points of view sometimes animate the discussion. The result is contention, as some groups advocate for rights that others find objectionable.

UN resolution A/HRC/21/3 will refocus attention on basic principles set forth in the Charter, the Universal Declaration of Human Rights, Vienna Declaration and Programme of Action and other instruments, especially concerning the universality of human rights. I want to address concerns about the proposal, because although it was passed, it engendered controversy. My contention is that criticism of the resolution stemmed from two sources: issues with semantics, and a more basic philosophical conflict. Both the semantic problem and the philosophical problem can be overcome.

In its framework, the resolution suggests a strategy. It is **pragmatic, not dogmatic**, in its approach, and can be applied across a broad spectrum of belief.

The proposal states that:

First, human rights are universal. This comes from the Vienna Declaration, is reiterated by the authors of the document, and is not counterintuitive, as anyone knows who has discovered important and fundamental beliefs held in common with a person from a different culture. The universality of rights is clearly evident in the consensus enjoyed by Human Rights Council resolutions endorsed by diverse cultures.

Second, human rights must be applied equally and fairly. The Human Rights Council exists for this purpose. This is not controversial.

Third, differences in national, regional, historical, cultural and religious sensibilities must be respected. Again, this is not contested.

Fourth, the resolution reaffirms" that all cultures and civilizations in their traditions, customs, religions and beliefs share a common set of values that belong to humankind in its entirety". Here, some begin to get a little uneasy, especially when they see religion make an appearance. The text follows with the assertion that these values "have made an important contribution to the development of human rights norms and standards". At this juncture, some are clearly uncomfortable. If traditions, religion, and so on, are problematic topics for some people, then they will certainly be reluctant to attribute to

them any importance in rights recognition.

Fifth, the resolution, following on the assertion that traditional values underpin human rights, asks the UN to discuss how a better understanding of these values could help promote and protect rights. Until the discussions actually take place, it's only possible to speculate as to how that would work, but one outcome that could be predicted from the study of values <u>common to humankind</u> is enhanced <u>unity of purpose</u>. Another might be a view of human rights that is less contentious, and that finds a better fit in a situation of cultural and political diversity.

The semantic problem:

The goal is to better understand traditional values that are universal; that is, that are recognized as valuable by humankind over time. They will be values that all actors recognize as being good things, valuable things. They will not be particular practices, or even specific customs or beliefs. Again, values are not practices, customs, or beliefs. I propose that values are the understanding and then the promotion of what is good. They may give rise to practices, customs, and beliefs, and these may become codified and appear in some cultures as traditions or even as laws. Certain cultures may endorse traditional practices that actually violate rights, and to members of that culture, the practices have a value connotation, but those practices and localized beliefs about them are <u>not universal</u>. Humankind does not endorse them. The point I want to make is that if practices, customs, or beliefs are bad, then they did not derive from values as understood in this resolution, because values are inherently good. And if they are not acceptable to the humankind as a whole, over time, then they are not universal.

"Traditional" needs to be understood as something that has stood the test of time. It should not be confused with "primitive", which can, sometimes unfairly, have a negative connotation. "Traditional" can also connote "unsophisticated" or "archaic". In the context of values, which we have said are by definition good things, traditional values have endured because they reflect something enduring in the nature of people. They are unchanging because they are immune to the influence of dynamic political or social power structures. They belong to the people, as evidenced by their longevity.

The philosophical problem:

Success in rights promotion depends on unity of purpose, but the challenge is to find common ground. In practice, progress stalls in the face of a dilemma: protecting one group's rights may deprive another group of their rights, if the two groups cannot agree on a common set of principles. An approach that reasserts the universal nature of human rights removes, theoretically at least, this obstacle. If rights are universal, they should resonate with all people.

Before promoting and protecting human rights, the logical prerequisite is to define these rights. Hasn't the UN been doing that all along? Yes, they have, but for the sake of discussion let's propose that the process could be retooled to make it more efficient.

Perhaps a starting point is to go back to a very basic and very general statement: we assert that all people have a right to what is good for them, and also a right to be protected from what is bad for them. In this view we see two possibilities: 1. rights derive from things that are always and everywhere true, so X is always good and Y is always bad; or 2. rights are a moving target, based on convention, and changing as societies evolve, so societies themselves determine whether X is now good and Y is now bad.

The first way of defining rights, that rights are always and everywhere true, satisfies the requirement that all people be seen as equal in dignity and rights. In this view, rights are objectively valid, and therefore equally applicable to all societies. The second position makes equality in rights-recognition more difficult. It is not true, and not likely ever to be true, that all societies will evolve equally and simultaneously. For rights to be justly determined, that is, to reflect the beliefs of all societies, the assumption must be that we are all eventually to converge culturally and philosophically, which, if it is true, does not appear to be happening any time soon. While we are all waiting to become more alike, we will need to designate a group to define rights that will then apply to all of us. Realistically, this task will fall to the group holding the most power. Others may be heard, but those with power tend to be heard more, and to be able to implement. And when the power group's choices contradict the beliefs of others as to what comprise rights, we may substitute for "implement" the word "impose".

So we return to the first position, that rights have objective validity, making them true for everyone. To say that rights have objective validity will protect the greatest number of people, whether they are or powerful or not. It is the most efficient way to enshrine equality.

But again, while this view avoids the imposition of belief by the powerful upon the powerless or less powerful, it still begs the question of who may define what rights are. Are they handed down from a deity during a moment in time where the supernatural intersects the natural? A religious person may not be at all uncomfortable with this attribution, but a secular humanist, agnostic, or atheist must reject it.

It is possible that some concerns stem from a perceived resemblance of the traditional values analysis to natural law philosophy. But any resemblance, real or not, may not really matter. Let's look at that idea more closely.

Natural law rests on the notion that truth, justice, and by extension, rights, are objective and universal. It is seen as being an expression of human nature and material reality. Natural law is also associated with religion. It is true that St. Thomas Aquinas espoused natural law philosophy, popes have praised it, and religious people tend to respond positively to it.

But while a religious person would tend to believe that the source of natural law is ultimately divine in origin, I want to make the point that a secularist could utilize the concept of universality and apply it to a search for rights that, because of their

universality, are perceived as true by the greatest numbers of diverse societies. In other words, it is legitimate to co-opt a strategy associated with a certain philosophy without embracing every aspect of that philosophy. In some settings, this would border on hypocrisy, but in a diverse deliberative body such as the UN, it is a practical approach.

Objections have been raised to the idea that traditional values could ever be useful in an analysis of rights, especially in more secular societies, but the analysis need not be a religion- or a culture-specific exercise. It is important to note that the analysis could as easily be sociological, anthropological, or statistical. These latter approaches conform to the information gathering and reporting employed by the OHCHR. If certain values are held by a historical majority of persons, they will necessarily cut across all cultures and belief systems, and this will be captured in an anthropological/sociological analysis supported by statistics.

So does the document under consideration rely on natural law? Or does it suggest a way to utilize a sociological or an anthropological analysis? Is the conflict between an objectivist view and a subjectivist one? Is the resolution overly friendly to religion? The point is that it doesn't matter. It is a strategy. It is legitimate to dissect out the useful methodology suggested in this resolution and to apply it. Conflict and partisanship will necessarily diminish in the face of a renewed focus on recognition of universal rights.

Pragmatism can, and should prevail.

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