



**Economic and Social
Council**

Distr.
GENERAL

E/CN.4/Sub.2/2005/40
11 July 2005

ENGLISH
Original: ENGLISH/FRENCH

COMMISSION ON HUMAN RIGHTS
Sub-Commission on the Promotion and
Protection of Human Rights
Fifty-seventh session
Item 6 of the provisional agenda

SPECIFIC HUMAN RIGHTS ISSUES

**Working paper on human rights and non-State actors submitted by
Gáspár Biró and Antoanella-Iulia Motoc**

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Introduction

1. In its decision 2005/114, the Sub-Commission on the Promotion and Protection of Human Rights decided to request Gáspár Bíró and Antoanella-Iulia Motoc to prepare a working paper on human rights and non-State actors, in order to approach in a systematic way the question of accountability under international human rights law, and to submit it to the Sub-Commission at its fifty-seventh session.

2. The aim of this working paper is to provide a brief overview of the most characteristic views expressed so far on the subject of non-State actors in the literature on international relations, and to ask a number of questions that are relevant and still to be clarified before proceeding further with the issue of accountability. Therefore, the emphasis at this stage will be on responsibility.

3. The authors are aware that the following overview of scholarship is necessarily incomplete and has been selected based on their knowledge and preferences. Therefore, they look forward to any proposals, suggestions or corrections regarding the matter.

4. Given the complexity of the question of non-State actors, the authors believe that a step-by-step approach is necessary to answer the issue of accountability. The universality and indivisibility of human rights is beyond question. It would be obvious to say that States, non-State actors and individuals have a general obligation to respect human rights and implement international human rights instruments accordingly, that is in good faith and depending on specific contexts and capabilities. While on the theoretical level, as well as from a moral standpoint, this is a sustainable statement, the events of past decades have demonstrated that in practice it poses numerous, sometimes insurmountable difficulties.

5. According to Part I, paragraph 5, of the Vienna Declaration and Programme of Action, “All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.”

6. In Part I, paragraph 2, it states:

“All peoples have the right of self-determination. By virtue of that right they freely determine their political status, and freely pursue their economic, social and cultural development.

“Taking into account the particular situation of peoples under colonial or other forms of alien domination or foreign occupation, the World Conference on Human Rights recognizes the right of peoples to take any legitimate action, in accordance with the Charter of the United Nations, to realize their inalienable right of self-determination. The World Conference on Human Rights considers the denial of the right of self-determination as a violation of human rights and underlines the importance of the effective realization of this right.”

7. One of the possible classifications of actors in international relations is the distinction between formally constituted actors and informal actors. The former are those that come into existence and act according to predetermined rules (including customary international law). The latter do not need a procedure or constitution, but their actions must - for practical reasons - be in conformity with certain rules, either international written or unwritten rules, or the actor's own norms. In both cases, the recognition as an actor and, *mutatis mutandis*, the issue of legitimacy appear to depend on: (a) the reaction and behaviour of established actors; and (b) the rules and norms of the existing international order.

8. Under these conditions States can be regarded as formally constituted actors, while peoples under colonial or other forms of alien domination or foreign occupation can be seen as informal actors. In the latter case, legitimacy is recognized by the Vienna Declaration and Programme of Action, once their actions are in accordance with the Charter of the United Nations, i.e. the principles and the goals of the Organization.

9. Regardless of whether this position is accepted or debated, it points to the core of accountability. Shall we take as obvious the assumption that formally constituted actors (States, international intergovernmental and non-governmental organizations, multinational companies and other well-structured entities based and acting on a foundation document) ought to address the issue of accountability themselves, while informal actors must abide by and be held responsible, if such is the case, by the international community merely on the basis of the present structure and norms of the international system?

10. The answers to this two-part question can be yes-yes, yes-no, and no-no. Meanwhile, in the case of formal actors, is it sufficient that States "ought to address the issue of accountability themselves"? What about the follow-up? Is there a need for further action by the international community besides those already undertaken, for example by the United Nations? As regards informal actors, the assertion that they be "held responsible by the international community" implies action by the international community. What type of action (or actions), and under what conditions?

I. DEFINITIONS

11. In his introduction to his 1984 classic *Paix et guerre entre les nations*, entitled "La société internationale", Raymond Aron made a distinction between transnational, international and supranational phenomena and was of the opinion that the inter-State system had primacy: "In the study of relations, it seemed to me and it seems still today essential to place the inter-State system at the forefront. This primacy of the inter-State system excludes a priori the causal predominance of the economic system."¹

12. In this world view States are the most important, if not the sole actors in international relations. In the 1990s the approach has gradually changed. Two French authors emphasized in 1992 the increasing role of the individual:

"All these trends, which clearly undermine the very concept of sovereignty, doubly favour the emancipation of the individual on the international scene. Firstly, State diplomacy is confronted by the disposition of international networks, in which individual action supplants the international order. Whether networks of companies scattered

throughout the world, of advocates, or of market-oriented, ideological or ethnic groups, international relations increasingly comprise individual relations. (...) The State no longer possesses a monopoly of international social interaction, notwithstanding its pretensions. This revenge of the actor on the system makes the international order more fluid.”²

13. The individual, perceived as an actor in international relations, does not need a definition. Relevant is her or his role and responsibility. One of the authors quoted above examined in 1995 the role of the individual in armed conflicts, with repercussions for international relations, stating that:

“Every crisis of institutions leads, in this instance as in others, to the resurgence of the individual, freed of the roles assigned to him and the assistance lavished on him.” (...) where peace no longer prevails, confrontation involves individuals much more completely: the classic distinction between civilians and military personnel no longer has any meaning, neither does the increasingly unreal distinction between civil and inter-State warfare.”

14. The same author concludes that: “It is difficult to establish a priori whether the partial reappropriation of warfare by the individual will lend itself or not to easier regulation. (...) The learning of solidarity is born of everyday experience, as readily admitted by most humanitarian organizations. Nevertheless, some element of choice is left to States, since these, under certain conditions, are called upon to redefine their relationships with non-governmental organizations (NGOs), the function of which is thus reassessed, and which are above all induced to construct a new role in managing the common assets of humanity, that is the material and spiritual goods for which each has a responsibility in the survival of humanity as a whole.”³

15. A handbook on international relations provided the following explanation for the term “actors”:

“Any entity which plays an identifiable role in international relations ... The term is now widely used by both scholars and practitioners in international relations as it is a way of avoiding the obvious limitations of the word State. Although it lacks precision it does possess scope and flexibility. Its use also conveys the variety of personalities, organizations and institutions that play a role at present ... More precise distinctions between actors can be made by introducing additional criteria. Such criteria might include the tasks performed by actors and the constituency affected by this task performance. Such commentators suggest that actors should be judged according to their degree of autonomy rather than the legalistic concept of sovereignty.”⁴

16. One of the most wide-ranging definitions proposed in recent years is as follows:

“Our definition of non-State actors therefore includes organizations:

- largely or entirely autonomous from central government funding and control, emanating from civil society, or from [a] market economy, or from political impulses beyond State control and direction;

- operating as or participating in networks which extend across the boundaries of two or more States - thus engaging in ‘transnational’ relations, linking political systems, economies, societies, etc.;
- acting in ways which affect political outcomes, either within one or more States or within international institutions - either purposefully or semi-purposefully, either as their primary objective or as one part of their activities.”⁵

17. The authors of this definition are aware that such a wide ranging approach raises a number of questions:

“We are aware of the dangers of such an encompassing approach, which ‘lumps’ together actors motivated by instrumental, mainly economic aims (corporations, mafias), actors promoting principled ideas (churches, advocacy groups), experts motivated by professional values and commitment to rational analysis (think-tanks, epistemic communities), actors reflecting a shared ethnic origin (diasporas). By adopting a broad scope, however, we hope to give the general reader a sense of the diversity and complexity of non-State activity across a border, which now constitutes an international society - even a partial global society - within the framework provided by the established society of States.”⁶

18. Some sources regard the term “non-State” political actors as “confusing”, since, on the one hand, they squeeze into “a single category actors that have very different structures, different resources, and different ways of influencing politics”, and on the other, “imply that States are dominant and other actors are secondary ... There is also ambiguity, because it is unclear whether intergovernmental organizations are regarded as inter-State or non-State organizations”.⁷

19. According to another proposal, non-State actors are “all transnationally active groups other than States, such as organizations whose members are States and non-governmental organizations whose members are individuals and private groups from more than one State.” These include: “international organizations, multinational corporations, religious and ethno-political movements, and terrorist groups that challenge the supremacy of States by either transcending or subverting States’ sovereign control over their destinies.”⁸

II. SELF-DEFINITIONS AND PROGRAMMES OF ACTION

20. All actors in international relations possess a self-definition indicating the main elements of their identity based on which they place themselves on the stage, prioritize the objectives pursued, and identify with a certain category or categories of actors or goals while distancing themselves from others. The names of States sometimes contain elements of self-identification, but it is in any case constitutions and official documents of State organs that provide the most important details. Formally constituted non-State actors have founding documents, charters, etc. aimed also at determining their nature and identity.

21. While self-definition is a stable and lasting element of actors' identity, particular programmes of action, whether political or otherwise, defining strategies and/or tactics, and occasional statements taking a position on certain issues of international relevance are more dynamic and may change according to developments, processes, personal influences, etc. Relationships among actors are determined in the first place by their self-identification, i.e. their identity. Certain categories of non-State, in particular informal, actors have greater autonomy as regards self-identification and programmes of action. But as mentioned, even informal actors have to take into account to a certain extent international norms and customs, and the practice of other actors.

22. In most cases, recognizing responsibility and assuming certain duties specific to the field of action is an element of actors' identity. Among actors, States assume the largest number of international obligations. Sovereignty goes hand-in-hand with responsibility.

23. At this stage, it is difficult to conceive that formally constituted non-State actors, and even some categories of informal actors reject the unilateral assumption of the obligations relevant to their field of action. There may be debate around what type of obligations applies to them and to what extent, but the idea of responsibility for their actions cannot be dismissed. Even in cases when the activities of certain non-State actors imply the use of force, as in the case of national liberation movements, it is the general view that they are bound, among others, by the rules of humanitarian law. As a technical matter, however, a non-State actor can be any actor on the international stage other than a sovereign State.

24. There are, of course, exceptions. If we accept that organized criminal groups with transnational ramifications, or mercenaries used to prevent the realization of the right of peoples to self-determination are to be considered also as non-State actors in international relations, it is hard to imagine that such actors would freely undertake, for example, obligations to respect human rights. In such cases, however, the international community, as well as particular States, is entitled to hold them responsible for crimes, violations of rights and abuses.

25. In general terms, it was noted that:

“While States have remained the predominant actors in international law, the position has changed in the last century, and international organizations, individuals and companies have also acquired some degree of international legal personality; but when one tries to define the precise extent of the legal personality which they have acquired, one enters a very controversial area of international law. The problem of including new actors in the international legal system is reflected in the very concept of legal personality, the central issues of which have been primarily related to the capacity to bring claims arising from the violation of international law, to conclude valid international agreements, and to enjoy privileges and immunities from national jurisdictions.”⁹

III. A POSSIBLE TYPOLOGY

26. Beyond the mentioned alternative of formally constituted and informal actors, a further possibility is to distinguish between: (a) political actors and (b) other actors in international relations. One proposal is to classify “all actors in global politics from a country” as follows:

- Government departments and bureaucracies
- Legitimate transnational actors:
 - transnational companies
 - political parties
 - NGOs
- International organizations
- Non-legitimate transnational actors:
 - criminals
 - guerrillas and liberation movements.¹⁰

27. The author of this proposal notes that:

“legitimacy in using violence is increased in four ways: (1) when a group appears to have widespread support within their constituency; (2) when political channels have been closed to them; (3) when the target government is exceptionally oppressive, and (4) when the violence is aimed at ‘military targets’ without civilian victims.” He also notes that groups employing violence “are often called terrorists to express disapproval, guerrillas by those who are more neutral, or liberation movements by their supporters”.¹¹

28. What is “political” in this field? It may be defined as a complex of actions, perceptions or plans oriented towards or in relation to: (i) control of people, territories and resources; or (ii) the preservation and/or redistribution of power, privileges and influence within the present international system of nation-States, all constructed on the assumption that the world is divided between (potential or real) friends, allies and enemies.

29. The *differentia specifica* of the “political” vis-à-vis the largest sense of the “international” is that in the sphere of international politics all means and methods possible can be employed, including force, with the caveat that political actors enter into this arena (or are there and want to remain) in a conscious way (this can be called political will), and know that by employing certain means, others could respond by similar means. If one actor employs force or violence to achieve its political aims, sooner or later others will also employ force against it. If one wishes to cooperate with others peacefully and in a mutually beneficial way, such cooperation may take place, if it is advantageous for other parties.

30. States are certainly political actors, but they also have non-political aims and roles. Political non-State actors’ endeavours affect one or more States’ sovereignty, or aim at effecting changes in the power structure of the international system.

31. The minimal requirements for an entity to be considered a State (nation-State or territorial State) are: the existence of a territory with internationally recognized borders, one single sovereign power controlling the territory, and a population whose members are citizens of

the State. All other political actors lacking even one of these characteristics can be considered non-State political actors. In this sense intergovernmental international organizations can be considered non-State political actors.

IV. THE NON-STATE ELEMENT

Internal authorization of sub-State treaty-making

32. In most cases where a sovereign State does not authorize its political subdivision to make treaties, that sub-State actor will not negotiate and conclude treaties independently. In India, for example, sub-State actors have no capacity to conclude international agreements and there is little practice of them doing so. A State that is unwilling to authorize a sub-State actor to pursue independent treaty-making may, however, be willing to conclude a treaty on its behalf.

33. In other cases, sovereign States authorize their sub-State components to enter into treaties directly and in their own name. Frequently, this authorization will only apply to a single agreement. Increasingly, however, States have formalized the treaty-making authority of certain sub-State components through domestic laws. In most cases, this sub-State entity authorization remains subject to a residual level of State supervision.¹²

Individuals

34. The individual is accountable for violations of international human rights that constitute crimes. As Antonio Cassese wrote:

“In international criminal law the general principle applies that no one may be accountable for an act he has not performed, or in the commission of which he has not participated, or for an omission that cannot be attributed to him. The [International Criminal Court for the Former Yugoslavia] Appeals Chambers set these fundamental principles in *Tadic* (Appeal). The principle lies in two notions. First, nobody may be held accountable for criminal offenses perpetrated by other persons ... Second, a person may only be held criminally liable if he is somehow culpable for any breach of criminal rules ... As a consequence, objective criminal liability is ruled out. An exception was provided in articles 9 and 10 of the Statute of the International Military Tribunals. Thus, mere membership in a criminal organization was regarded as criminal, whether or not participation in that organization was voluntary. The Tribunal reduced the notion of criminal organization to that of ‘criminal conspiracy’. Furthermore, other Tribunals upheld the principle of personal responsibility laid down by the International Military Tribunals. Thus in *Krupp and the others*, where 12 accused were officials in the Krupp industrial enterprises who occupied high positions in the political, financial and economic life of Germany.”¹³

V. INTERNATIONAL ORGANIZATIONS

35. International organizations vary in their sizes, objectives, memberships and other characteristics that determine their nature. It is meaningless to further the study without having a clear understanding of the organizations that are currently operating. It may be difficult to list literally all international organizations. As no exhaustive list of this kind exists, such an effort

would certainly serve as a sound basis for the future work. Even though the International Law Commission has provisionally adopted draft articles 1 and 2 on responsibility of international organizations, on the scope of the articles and the definition of “international organization”, such a basic categorization would still help the Commission as well as States in discussing in future some specific aspects of responsibilities.

36. Secondly, it was a practical approach not to have included the issue of civil liability in the scope of responsibilities in draft article 3. As some Commission members have pointed out, it may be true that in certain cases, the issue of civil liability of international organizations may arise depending on the nature of the activities they conduct; it is also true that most activities of international organizations which result in inflicting damage on others may not be prohibited by international law. In this regard, there is a certain validity in giving more attention to the issue of liability (if not civil liability per se) rather than responsibility. Nonetheless, considering the approach which the Commission has taken in examining the issue of State responsibility, and bearing in mind its valuable outcome on that subject, it may be wise to follow the precedent of State responsibility and try to find as much of an analogy as possible. The approach which the Special Rapporteur of the Commission has taken in drafting the first three articles certainly is in accordance with this way of thinking. The issue of liability can always be revisited when necessary.

37. In the Commentary on article 3, the Special Rapporteur stated that rules of organizations cannot be categorically transposed to internal law of a State. Rules of an international organization would include issues such as internal decision-making processes, structure of the organization, as well as relations between the Member States that compose its membership. Some of those rules undoubtedly dictate relations between States, thus becoming a part of international law. For example, the Charter of the United Nations is clearly a rule of the Organization, while at the same time it is international law prescribing the rights and obligations of Member States. This shows that it would be too simplistic an approach to draw a mere analogy between a State and an international organization, in particular between the status of the internal law of a State and the rules of an organization. In this regard, the Special Rapporteur rightly pointed out the complex nature of the rules of international organizations. The decision not to use the relevant draft article on State responsibility as a model and not to replace the word “State” with “international organization”, as well as the term “internal law” with “rules of the organization”, is an appropriate one.

38. At first glance the question of the responsibilities of international organizations in the sphere of fundamental rights seems paradoxical. Traditionally, international organizations were considered as institutions entrusted with the promotion and protection, and not as violators, of human rights.¹⁴ This is doubtless the consequence of the transformation of the United Nations from a traditional intergovernmental organization into an organization with governance functions. The first independent expert to have confronted such a situation was the independent expert on Somalia. In his 1994 report (E/CN.4/1994/77/Add.1, para. 25), he refers to human rights violations committed by United Nations personnel with ONUSOM II and to the Amnesty International report on the subject, but considered that it is for the Secretary-General and his Special Representative to find remedies. The same reluctance to take into consideration human rights violations committed in the context of peacekeeping operations is also apparent on the part of special rapporteurs. Several reports by non-governmental organizations record human

rights violations (police brutality by the International Security Force in Kosovo (KFOR), destruction of houses, arbitrary arrests in Kosovo), not reported by the Special Rapporteur.¹⁵

39. The European Union (EU) is the paradigmatic example of a supranational phenomenon. In the treaty context, however, the EU has not traditionally played a direct role in making treaties. Rather, its component communities - the European Community (EC) and the European Atomic Energy Community (Euratom) - have traditionally performed such functions. The EC only has the power to join treaties the subject matter of which falls within the competence accorded to it by its member States. Member States may challenge whether the EC is acting within the scope of its authority in concluding a particular treaty. For example, a number of Member States contested the ability of the EC to join the European Convention on Human Rights before the European Court of Justice. The Court concluded that the EC did not yet have competence over the enforcement of human rights and prevented it from joining the treaty.¹⁶

VI. NON-GOVERNMENTAL ORGANIZATIONS

40. Local and international non-governmental organizations are the main partners of human rights bodies. NGOs are registered, pay taxes and must respect all the laws of their country of registration. Nevertheless, most NGOs operate in an international environment. The construction of a legal and juridical framework for NGOs must take account of both the national legislation applicable and international law (see E/CN.4/1994/48).

VII. OTHER NON-STATE ACTORS

41. One of the most significant questions relates to the competence *rationae personae* embodied in the mandates of special rapporteurs. In organic terms, without discussing cooperation by the special mechanisms with other actors for the protection of human rights, the already sui generis relationship that they maintain with non-State actors is complicated by the establishment of mandates whose competence *rationae personae* expires with the mandate. This is a pragmatic approach towards human rights violators. Responsibility is based on the degree to which the mechanisms have an impact on human rights. In his first report to the Commission on Human Rights, the Special Rapporteur on the Sudan indicated that he will take into consideration human rights violations committed by parties other than the Sudanese Government. Subsequently other rapporteurs have considered human rights violations by non-State actors and have made recommendations in that regard. At the same time they have always been careful to follow Commission resolutions, given the importance of “effective control” for recognition under international public law.¹⁷

VIII. CONTEMPORARY CRISIS OF THE NATION-STATES

42. The rise of non-State participants and networks is a product of the complex phenomenon known as globalization. Richard Falk has drawn a distinction between globalization from above and globalization from below to identify “two interrelated tendencies: the restructuring of the world economy on a regional and global scale through the agency of the transnational corporation and financial markets from above, and the rise of transnational social forces concerned with environmental protection, human rights, and peace and human security from below”. The impact of globalization from below is created by transnational civil societies, “the

thin and uneven public sphere that can coalesce at the global level where individuals interact for common purposes and shape collective life”.¹⁸ Additionally, globalization represents four interrelated and seemingly contradictory dimensions.

43. First, globalization recognizes a rising interdependence at the world level, where the activities of people in a specific area have repercussions that go beyond local, regional, or national borders; human rights problems in an interdependent world increasingly cross State borders. This interdependence of markets causes reverberating cross-border explosions when markets go bad, subsequently resulting in mass migration and widespread threats to economic and social rights. Therefore, in order to remedy these situations, human rights advocates must find new ways to gather information and conduct transborder advocacy.¹⁹

44. Second, globalization results in the disintegration of States and peoples into autonomous groups and areas. As a result, as a continued existence tactic in the increasingly interconnected world, economic, social and cultural networks form to endorse their own collective benefits. Identity groups also make new demands for their own rights to culture, language, and association.

45. Third, globalization somewhat results in the homogenization of the world, wherein instead of differences among territorial units which were mutually exclusive, there is now a uniformity. This process of unification has two branches. The first, which has remarkable implications for human rights advocates, was described as “a growing element of global consciousness in the way the members of global civil society act”. Participants in civil societies are progressively agreeing on such norms as diplomatic languages and systems of representation and democratic governance. The domination of liberal norms in international politics dislocates the anarchical social construction of the world and enables emerging social construction based on a more cooperative, problem-solving civil society.²⁰

IX. TRANSNATIONAL CORPORATIONS

46. “The United Nations, in its life of 48 years, has faced several challenges as promoter of human rights in the international arena. One such challenge has been to ensure that even non-State actors such as transnational corporations (TNCs) respect human rights, at least within their respective spheres of activity. The United Nations, in a way, was alive to this when it constituted a Commission on Transnational Corporations in the mid-70s. Though the vision of the Commission to draft an agreeable code for TNCs failed to materialize due to various reasons, the United Nations continued to pursue the issue of social responsibility of TNCs in different forms and forums. The approval of the Norms on Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights by the Sub-Commission on the Promotion and Protection of Human Rights in August 2003 represents a new vigor on the part of the United Nations in regulating corporate human rights abuses. This development, together with the launch of the Global Compact, clearly reflects the necessity as well as urgency on the part of the United Nations to revive its relevance in a new world order in which States no longer enjoy the monopoly as violators of human rights.”²¹

X. ISSUES FOR FURTHER CLARIFICATION

Actors and political actors

47. At first glance it appears justifiable to state that political actors' responsibility for the observance of human rights is higher than that of other actors, because they exercise power over and/or control certain territories and populations, or may do that in the future. The situation in practice, however, points to a number of difficulties. There is at present a good number of international political actors who clearly do not have the chance in the short or middle term (say, 4 to 10 years, that is, the average of one or two national election periods) to achieve power, or participate in power-sharing schemes, regardless of the legitimacy of their claims. There are also a number of failed States, or States threatening to slip into that situation.

48. At the same time, a significant number of non-State non-political actors in fact do influence power structures, globally, regionally or locally. It would be hard to argue from a moral standpoint that their responsibility is "lower" than that of political actors. It is not necessary to share egalitarian ideologies to arrive at this conclusion.

Non-State or transnational actors?

49. This is a question regarding terminology. As mentioned above, some scholars prefer the term "transnational actors" instead of "non-State" actors, for the latter implies, in their interpretation, the primacy of States in international relations. Should the Sub-Commission agree to change the terminology to "transnational" instead of "non-State", the decision would have an impact on answering the previous questions, that is, to consider that all actors in international relations theoretically and morally have the same degree of responsibility in human rights matters.

Freely assumed and/or internationally assigned responsibilities

50. The question is the following: Would it be sufficient to accept the self-definition of non-State actors in order to establish particular responsibilities, or is it also necessary, in parallel with such acceptance, to elaborate general rules on accountability, beyond already existing standards, including soft-law-type regulations? As mentioned, a large number of non-State actors unilaterally accept certain responsibilities. A mere acceptance or taking note could be followed by an encouragement by the international community of these actors to be more articulate regarding the responsibilities already accepted, and eventually to proceed with an enlargement, for example, of their implementation in daily practice. The elaboration of more general rules aimed exclusively at non-State actors is a more difficult exercise, but perhaps should not be excluded from the outset.

Those who benefit and the losers

51. Morally, it would be justifiable to state that those entities, whether States or non-State actors, who benefit from the present international order (that is, the order of nation-States) and globalization are bound to respect human rights in any circumstances and are to be held accountable for non-observance of human rights in their daily practices. But what does "benefit" mean? Experience shows that on the international stage, in most cases in the long term, there are

no net benefits and net losses. According to the neo-realist viewpoint, the international structure, a result of the unequal distribution of power, resources and other imbalances, rewards and penalizes structure-conforming or structure-deviant behaviour. That is, the political has absolute primacy. Those who consider themselves losers sometimes feel that they have no other choice than to employ any means to make their complaints heard.

52. The United Nations Millennium Declaration in the section on Values and principles states the following:

“5. We believe that the central challenge we face today is to ensure that globalization becomes a positive force for the people of the world. For while globalization offers great opportunities, at present its benefits are very unevenly shared, while its costs are unevenly distributed. We recognize that developing countries and countries with economies in transition face special difficulties in responding to this central challenge. Thus, only through broad and sustained efforts to create a shared future, based upon our common humanity in all its diversity, can globalization be made fully inclusive and equitable. These efforts must include policies and measures, at the global level, which correspond to the needs of developing countries and economies in transition and are formulated and implemented with their effective participation.”

Notes

¹ Raymond Aron, *Paix et guerre entre les nations*, Paris, Calman-Lévy, 1984.

² Bertrand Badie and Marie-Claude Smouts, *Le retournement du monde: sociologie de la scène internationale*, Paris, Presses de la fondation nationale de sciences politiques, Dalloz, pp. 239-240.

³ Bertrand Badie, 1995, pp. 241-246.

⁴ Graham Evans and Jeffery Newnham, *Dictionary of International Relations*, London, Penguin Books, 1998.

⁵ Daphné Josselin and William Wallace, *Non-State Actors in World Politics: A Framework*, New York, Palgrave, 2001, pp. 3-4.

⁶ Ibid.

⁷ Peter Willets, Transnational Actors and International Organizations in Global Politics, in *The Globalization of World Politics. An Introduction to International Relations*, John Baylis and Steve Smith (eds.), Oxford, Oxford University Press, 2001, pp. 357-358.

⁸ Charles W. Kegley, Jr. and Eugene R. Wittkopf, *World Politics. Trend and Transformation* (8th edition), Boston, New York, Bedford/St. Martin's, 2001, p. 16.

⁹ Peter Malanczuk, *Akehurst's Modern Introduction to International Law* (7th revised edition), London-New York, Routledge, 2003, p. 91.

¹⁰ Willets, op. cit., p. 359.

¹¹ Ibid., pp. 367-368.

¹² Duncan B. Hollis, "Why State Consent Still Matters - Non-State Actors, Treaties, and the Changing Sources of International Law", *Berkeley Journal of International Law*, vol. 23.

¹³ A. Cassese, *International Criminal Law*, Oxford University Press, 2004, pp. 136-138.

¹⁴ A. Reinisch, Securing the Accountability of International Organizations, *Global Governance*, vol. 7, 2001.

¹⁵ I. Motoc, "Les Rapporteurs spéciaux étatiques: entre héros et pions", in E. Decaux (ed.), *Les Nations Unies et les droits de l'homme*, Paris, Pedone (forthcoming).

¹⁶ Hollis, op. cit.

¹⁷ Motoc, op. cit.

¹⁸ Richard Falk, The Nuclear Weapons Advisory Opinion and the New Jurisprudence of Global Civil Society, *Transnational Law and Contemporary Problems*, vol. 7 (1997), pp. 333, 335; see also Richard Falk, The Right to Self-Determination Under International Law: The Coherence of Doctrine Versus the Incoherence of Experience, in *Self-Determination and Self-Administration: A Sourcebook*, pp. 47, 50-51, Wolfgang Danspeckgruber (ed.) 1997.

¹⁹ Julie Mertus, From Legal Transplants to Transformative Justice: Human Rights and the Promise of Transnational Civil Society, *American University International Law Review*, vol. 14, No. 5.

²⁰ Ibid.

²¹ Surya Deva, United Nations Human Rights Norms for Transnational Corporations and Other Business Enterprises: An Imperfect Step in the Right Direction? *International Law Students Association (ILSA) Journal of International and Comparative Law*, vol. 10 (spring 2004).

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