



SERIES GOVERNANCE AND CITIZENSHIP

Law and Global Governance

PROPOSAL PAPERS FOR THE XXIST CENTURY - CHARLES LEOPOLD MAYER EDITIONS

Proposal papers for the 21th century

The proposal papers are a collection of short books on each decisive area of our future, which assemble those proposals that appear the most capable of bringing about the changes and transformations needed for the construction of a more just and sustainable 20th century. They aim to inspire debate over these issues at both local and global levels.

The term 'globalisation' corresponds to major transformations that represent both opportunities for progress and risks of aggravating social disparities and ecological imbalances. It is important that those with political and economic power do not alone have control over these transformations as, trapped within their own short-term logic, they can only lead us to a permanent global crisis, all too apparent since the September 11th attacks on the United States.

This is why the Alliance for a Responsible, Plural and United World (see appendix) initiated, in 2000-2001, a process of assembling and pinpointing proposals from different movements and organisations, different actors in society and regions around the world. This process began with electronic forums, followed by a series of international workshops and meetings, and resulted in some sixty proposal texts, presented at the World Citizen Assembly held in Lille (France) in December 2001.

These texts, some of which have been completed and updated, are now in the process of being published by a network of associative and institutional publishers in 6 languages (English, Spanish, Portuguese, French, Arabic and Chinese) in 7 countries (Peru, Brazil, Zimbabwe, France, Lebanon, India, China). These publishers work together in order to adapt the texts to their different cultural and geopolitical contexts. The aim is that the proposal papers stimulate the largest possible debate in each of these regions of the world and that they reach their target publics whether they be decision-makers, journalists, young people or social movements.

Presentation of the Paper

« Law and Global Governance »

**Discussion paper for the World Social Forum
Porto Alegre
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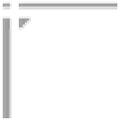
The purpose of this paper is to propose some themes to be debated about the future effects, problems and perspectives of the recent experiences centering around issues of international law (the International Tribunals for Rwanda and former Yugoslavia and the “Pinochet” and “Milosevic” cases, among others). Particular emphasis is put on the sphere of civil and political rights within the framework of the Universal Declaration of Human Rights (UDHR). In this paper we have not taken into account questions dealing with economic, social and cultural rights, although we refer to them on various occasions.

We have tried to touch upon themes of concern for international organizations, associations, non governmental organizations, institutions and local groups that fight for the dissemination, defense and entrenchment of those rights.

We propose 5 central themes that could be some of the key challenges in the future:

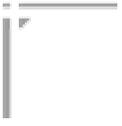
1. Directions and challenges in the creation of an international criminal law: impunity, amnesties and reconciliations in the light of recent experiences.
2. International organizations, institutional actors and conflict situations: issues in legitimizing an international community.
3. Peace, war, violence: the need to evaluate and understand the context of the actions and legitimacy of international institutions.
4. Immigrants, refugees and exiles: the right to asylum in the international context - between emergencies and State policies.
5. Dilemmas and means of protection and guarantees: collectivities, individuals and categories of persons as legal subjects as defined by the UDHR.

Each theme is hereafter presented with brief suggestions to guide the debates, and to show that it is possible in each case to distinguish concrete cases and specific debates. Wherever possible, we have also tried to link each situation or topic to the relevant articles of the UDHR. This paper obviously does not attempt to cover all the issues and questions that may arise.



Law and Global Governance

Paper coordinated by Carlos Liberona



1. Paths and obstacles in drawing up an *international criminal law*

Impunity from prosecution, amnesties and reconciliations in the light of recent experiences

Current cases and experiences in the fight against impunity

From a legal perspective, significant progress has recently been made in the fight against impunity. Various events have constituted important positive change in the fight against impunity and the systematic violation of human rights. At the same time, a multitude of new problems have arisen throughout this process. These new problems deal, amongst others, with :

- the political and legal viability of the claim to justice
- the use of increasingly specific legal and political means to rule out prescription
- the relevance and justification of amnesties,
- extradition,
- refusing to give recognition to military tribunals and to the defense of "acting under superior orders".

Exchange of ideas and lessons to be learnt

A basic assumption is that all those who have fought, shared and cooperated in the recent progress in the fight for human rights, may gain from comparing their experiences. It should be taken into account that they hold legal and political points of view and objectives that may be similar, but that may also be different. Therefore one of the methodological challenges will be to reconstruct and elucidate the first initiatives and the stages that have contributed or are currently contributing to the formation of national and international legal procedures that are politically and legally justified to be used in the prosecution of criminals who have not yet been brought to justice. At the same time, a main task will be to learn from the comparative analysis of the various experiences related to technical and procedural aspects (collecting information, testimonies and archives, taking instructions and framing a legal argument). This exchange of experiences will allow us to draft strategies and to determine what have been the most important factors for action, drawing from the various situations.

Conclusions and means of overcoming crisis

In all those struggles, the aspiration for real justice goes hand in hand with the process of democratization and political participation. Those two aspects are key factors which can contribute to consolidate recognized and legitimate mechanisms of political mediation in order to overcome the regime of impunity and the tragic dimension of the crises.

It is important to emphasize that this should not be done only in the legal and judicial spheres. The exercise of rights is mainly the consequence of a political will, both of those who govern as well as those who are governed.

In this context, the legal definitions of impunity do not include all aforementioned political and symbolic dimensions. Fighting against injustice cannot merely rely on the letter of the law. The latter is indispensable, but so are other aspects such as recovering the past, remembering and mourning.

2. International organizations, institutional actors and conflict situations

Issues in legitimizing an international community

The international community as subject of international law

Who constitutes the international community as subject of international law ? and who is politically recognized as an actor or as an authority to act on its behalf in cases of conflict or gross human rights violations? The existence and diversity of increasingly more complex types of conflicts (linked to the transformation of war) and the disagreements between States which do not cooperate in the implementation of guarantees, pose an infinite number of practical problems to the objective of protecting and disseminating the "recognition and universal and effective application" of the principles stated in the UDHR.

The ambiguous dividing line between the law and the logics of power

The struggle for the creation of instances of reconciliation (South Africa, Chile, Cambodia) or "convivencia" (living together) (Kosovo, Lebanon) that help overcome the logic of conflict, does not always constitute a lasting and stable solution to the persistent hatred between communities or between members of the same society. In addition, the existence of institutions and political systems that function with mechanisms of exclusion of the Other (mainly of women and national, cultural, religious minorities) poses the problem of the justification for intervention by the international community. What should those interventions be based on and how should they be implemented?

3. Peace, war, violence

The need to evaluate and understand the context of the actions and *legitimacy of international institutions*

Legitimacy and “new world order”

As part of the issue of determining the basis, role and recognition of a supranational body having authority to make decisions, the UN is currently facing a crisis of legitimacy, mainly linked to the disappearance of the blocs that were established during the Cold War. In that context, the UN played the role of crystallizing international problems in the game of the balance of power. Today, the crisis of legitimacy connected with the emergence of a “new world order” which crystallized during the Gulf war, questions the very existence of international bodies. However, the challenge continues to be the legitimacy of action and representativity of a certain non arbitrary order, breaking with the logics of State powers and interests. Of relevance in this type of problem is the possible relationship between the logic of international conflicts, UN missions and the evaluation of the work of human rights commissions.

Paradoxically, the progress made in terms of sanctioning crimes against humanity through the procedures established under international law - unthinkable until recently - is accompanied by a hardening of national policies in penal matters, which favours a return to repressive policies. This reality calls for an exchange of experiences and reflections about the concepts that govern the legal categories of conflict, war and violence.

Crisis of the systems of political representation

This crisis of legitimacy of the international institutions is deepened by the growing delegitimization of the systems of political representation. The legitimacy of those who elaborate and discuss law is thus being seriously undermined. The crisis faced by political parties, leaders, political institutions, including in countries which have historically pioneered contemporary democratic systems, presents us with the challenge of creating new systems and mechanisms of representation and citizens' participation.

4. Immigrants, refugees and exiles:

The *right to asylum* in the international context - between emergencies and State policies

Immigrants, refugees: central figures of the 20th century

The right to asylum, as well as the right to freedom of movement are two fundamental pillars of this branch of the law. They have sustained, in legal, political and cultural terms, the majority of the large issues that have shaped what international law today stands for, even apart from the importance that the economic and social dimension of migration has acquired at the end of the 20th century. These facts have determined in concrete terms a large part of the political history of the 20th century and constitute a central issue, both theoretic and practical, within the framework of the law based on the pre-eminence of the national fact.

Specific problems of refugees and migrants

What are the legal definitions of asylum today and what are the procedures to get access to it? How to obtain refugee status? What distinguishes a refugee from an immigrant? What are the rights of an immigrant beyond his or her national boundaries? The difficulty in dealing with the refugee problem lies in the ramification of issues, which means that the right to seek asylum is often hindered by purely political imperatives.

The legal situation of immigration is very diverse: it oscillates between promotion and prohibition. The problems of international management of migration flows, as well as the legal difficulties encountered by those who are forced to emigrate, could be some points for reflection.

5. Dilemmas and means of *protection* and *guarantees*

Collectivities, individuals and categories of persons according to the UDHR

Historical context of the UDHR

According to René Cassin, the historical movement leading up to the writing of the Declaration was the decision to affirm the need for a set of legal norms and standards governing the relationships between States which would guarantee the protection of the human being, the latter being universally recognized by the Declaration in terms of *equality* and *dignity*. This starting point provided the defense and promotion of the rights comprised in the UDHR with a framework for action with political objectives: the pre-eminence of law over and above politics and State interests. It was necessary therefore to determine within a new theoretical framework who were the individual victims of violations, as well as the types and categories of persons most exposed to those violations. In the post-war context, the Declaration was also inserted in international relations marked by the colonial model, a model governed by the difference in people's status and importance. By contrast, the Declaration explicitly opened the doors for the universality of human rights.

Theoretical problems and effective guarantees

Today the need to consider new rights and the concern to protect certain categories of people raises the issue of identifying those new categories in the midst of very intensive processes of technological, demographic and economic change. According to what criteria are the rights of certain 'people' protected and affirmed? Who are the people exposed to characteristic (sexual or racial) discrimination or cultural discrimination? How to recognize aspirations to nationality? In this field various challenges arise: What are the possible ways to protect the specific rights of certain categories of people without violating the universal principles of the UDHR?

Finally, may also arise the problem of the new technologies of biological manipulation, including those that produce uncertainty regarding the traditional and legal definition of body and person. In this field, the challenge is how to make some conventions or legal innovations compatible with the fundamental principles of the UDHR.

The Alliance for a Responsible, Plural and United World

Working together towards the challenges of the 21th century

Ever since the late eighties of the 20th century, numerous initiatives have been put forward from different regions of the world and extremely diverse contexts. Different social actors were thus put in motion with the aim of organising a vast worldwide process seeking to explore values, proposals and regulations capable of overcoming the modern challenges humanity is faced with.

A large number of thematic, collegial and continental meetings were organised in the early nineties, a process which led, in 1993, to the drafting of the *Platform for a Responsible and United World*.

Regional groups were set up, international professional networks and thematic networks on the fundamental issues of our era were developed: the Alliance was created. It is financially and technically supported by the Charles Léopold Mayer Foundation for the progress of Humankind (FPH), among others.

The Alliance is focussed on inventing new forms of collective action on both a local and global scale, with the aim of shaping together the future of an increasingly complex and interdependent world.

The challenge of the Alliance is to actively support unity in diversity by asserting our societies' capability to understand and appreciate the complexity of situations, the interdependence of problems and the diversity and legitimacy of geo-cultural, social and professional perspectives.

The Alliance, as a space of discussion, reflection and proposals, is built around three main orientations:

Local groups aiming to bring people of a community, a region, a country or a continent together by looking at the realities and issues of their own societies. This is the **geo-cultural approach**. It reflects the diversity of places and cultures.

Groups of socio-professional actors wishing to provoke dialogue and mobilisation within a given social sector or profession (youth, peasants, scientists, local representatives, etc.). This is the **collegial approach**. It reflects the diversity of social and professional milieus, their concerns and responsibilities towards society and the challenges of today's world.

Thematic workshops seeking to create reflection groups centred around the major issues of our common future (sustainable water management, regional integration and globalisation, financial markets, art and society, etc.). This is the **thematic approach**. It reflects the diverse challenges humanity is faced with in the 21st

century. Thematic workshops are organised into four areas: Values and Culture, Economy and Society, Governance and Citizenship, Humanity and the Biosphere.

Seeking both to draw on the richness of materials and experiences gathered by these reflection groups whilst networking with other citizen dynamics with a similar focus, the Alliance fixed itself the objective of obtaining collectively developed, concrete proposals. The following meetings were thus organised:

- **international meetings**, for each thematic workshop and each college,
- **synchronized continental assemblies** (Africa, Americas, Asia, Europe) and a regional meeting in the Arab world (Lebanon) in June 2001.
- a **Citizen World Assembly**, held in December 2001 in Lille, France, bringing 400 participants together from around the world.

These meetings together contributed to the drafting of some sixty *Proposal Papers for the 20th century* and a *Charter of Human Responsibilities*, published in several languages in different countries.

The Alliance has been involved in a process of disseminating and developing these outcomes since the beginning of 2002. Networks are expanding, branching out and their work themes are becoming increasingly transversal. They also strengthen links with other approaches aiming to create an alternative globalisation.

For further information, please visit the **alliance website** at www.alliance21.org, where the history of the Alliance, the challenges it is engaged in and the workshops and discussion forums being held can be viewed in three languages (French, English and Spanish).

E-mail: info@alliance21.org

The proposal papers on the internet

Whether in their provisional or definitive form, all the proposal papers and their corresponding translations can be accessed on the website of the Alliance for a Responsible, Plural and United World, at:

<http://www.alliance21.org/fr/proposals>

Themes available:

Values, education, cultures, art and the sciences

Teachers and education – Education to an active and responsible citizenship – The alliance and the media – Art and cultural identity in building a united world – Women – Youth action and proposals for social change – An intercultural cultural diversity in the era of globalisation – Proposals of the inter-religious college – War, genocide, ...restoring humanity in human beings faced by extreme situations – Thinking through university reform – Social control of the scientific production system – Information society, knowledge society: benefiting from change – time and sustainable development

Economy and society

Transformations in the field of work – The trade-union movement at the dawn of the 21st century – Exclusion and Precariousness – Companies and solidarity – How can enterprises exercise their responsibility – Corporate responsibility – Production, technology and investment – Ethical consumption – Fiscal policy, tax, distribution of national income and social welfare – Social finance – Escaping the financial maze: Finance for the common good – Social money as a lever for the new economic paradigm – Debt and adjustment – Fair trade – From the WTO's setback at Seattle ... to the conditions for global governance – Food security and international trade negotiations – Completely sustainable development: an alternative to neo-liberal globalisation – Economic policies, ideologies and geo-cultural dimension – Women and economy – Economy of solidarity – Health and its challenges in the 21st century – The challenges of Artisan fishery in the 21st century – agriculture and sustainable development – People's right to feed themselves and achieve food sovereignty – Food security

Governance and citizenship

Principles of governance in the 21st century – Territories, places for creating relationships: for communities of shared relations – Thinking the city of tomorrow: the words of their inhabitants – Urban violence – Peasant farmers confronting the challenges of the 21st century – Social leaders in the 21st century: challenges and proposals – Local authorities or local co-ordination – State and development – Food, nutrition and public policies – From the conversion of arm industries to the search for security – The military and the construction of peace – Re-modelling global governance to the meet the challenges of the 21st century

Relations between humanity and the biosphere

Environmental education: 6 proposals for citizens' action – Proposals relating to the question of water supply – Save our soils to sustain our societies – Forests of the world – Energy efficiency – Industrial ecology: agenda for the long-term evolution of the industrial system – Civil society and GMO's: what international strategies? – Refusing the privatisation of life and proposing alternatives

Partner publishers

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