

COMMENTS

A Journey into Cyberspace and Its Effect on the Right to Development

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The Internet has the potential to be an instrumental tool in reporting human rights violations, enforcing the law, and implementing human rights protections. The nature of the Internet is such that it promotes anonymity, thereby allowing the release of information. While there are many obstacles that limit the use of the Internet, the potential is there for the Internet to assist in alleviating human rights abuses globally. This Comment focuses on the right to development, and how the Internet can support and enforce this right. Specifically, the Internet has opened channels for freedom of expression, a fundamental right to obtain any sort of development. Globalization of the world's marketplace has expanded as the Internet has grown. Globalization has brought economic resources to some countries, and the result, economic success, has become a means for development. Lastly, international organizations, such as the U.N. and USAID, as well as nongovernmental organizations and multinational entities can play a significant role in bringing needed resources to developing countries to implement modern technology, which in return will have an impact on the promotion of human rights.

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I. INTRODUCTION

The Internet is the foundation to prevent violations of human rights throughout the world.¹ This Comment illustrates how the Internet has the potential to be the great democratizer, leveling the playing field of knowledge and access to ideas; however, there are

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1. See LIBERATING CYBERSPACE: CIVIL LIBERTIES, HUMAN RIGHTS AND THE INTERNET 1 (Liberty ed., 1999).

great obstacles that limit the Internet's effects.² The opportunity to partake in the communications revolution is open only to those with access.³ I briefly touch on the limitations on the use and availability of the Internet. Next I focus on the intersection in which the Internet provides a forum for advancing human rights, in particular the right to development. While the right to development is a relatively new right, it may be a fundamental right that is a precondition to all other rights.⁴ The effects of globalization on human rights and Internet access are also discussed. I argue that freedom of information and open government are imperative in order to utilize one's right to development. Furthermore, the Internet may be used to shift our world's culture from that of combat to one of enforcement.⁵ Lastly, international organizations (international governmental and nongovernmental organizations as well as multinational entities) are asserted to be institutions which facilitate the access of developing countries to the realm of cyberspace, which promotes the right to development.

II. THE COMMUNICATIONS REVOLUTION

Technological advances can claim responsibility for both economic and social development throughout the world, and have allowed many countries to realize significant growth.⁶ Advances in technology are crucial for development. The gap between developed and developing countries may be lessened by providing worldwide access to information.⁷ Electronic international libraries require very

2. *See id.*

3. *See id.*

4. *See* B.G. Ramcharan, *Reforming the United Nations to Secure Human Rights*, 4 *TRANSNAT'L L. & CONTEMP. PROBS.* 503, 504 (1995).

5. *See* Mohammed Bedjaoui, *The Right to Development*, in *INTERNATIONAL HUMAN RIGHTS IN CONTEXT: LAW, POLITICS, MORALS* 1117, 1117 (Steiner & Alston eds., 1996).

6. Jennifer Meyers, *Human Rights and Development: Using Advanced Technology to Promote Human Rights in Sub-Saharan Africa*, 30 *CASE W. RES. J. INT'L L.* 343, 343 (1998).

7. Samuel W. Bettwy, *Broadening Access to International Law Resources Through New Technology*, 89 *AM. SOC'Y INT'L L. PROC.* 1, 3 (1995). While this Comment is concerned with information as an aid to development, it is important to illustrate another way information may be viewed. Information is both a means for development and a commodity in the development process. While the communications revolution has facilitated development through the exchange of information, the purpose of information exchange is not solely as a facilitator. As a facilitator, the Internet allows information to be available for people to see models of development in other countries and communities. For example, information on the Internet allows justices to see court decisions, rationale, and analysis in foreign jurisdictions. Now, information is not only a facilitator, but also a good, like any other commodity. The purchase and sale of data over the Internet is a large-scale business. Information is not merely an aid to development; it is actually a development process itself. The information sector is a process similar to the energy sector or the

little space and finance compared to a regular library, and thus facilitate efficient access to information.⁸ But, computer technology is expanding so quickly that the developing world could instead fall even further behind.⁹ Those without computers and modems are left completely in the rear, trailing those with access.¹⁰ This certainly includes many of the developing nations.¹¹ The world can be seen as starkly divided between those with the technology to obtain and use information and those without.¹² The Internet is by no means global.¹³ While the developed nations make large gains from the immediate flow of information allowed over the Internet, developing nations continue without this valuable resource and remain lagging behind in the technology and communications realm.¹⁴

Transboundary communications are no longer under traditional state controls.¹⁵ Global networks are too dense to police from any central location.¹⁶ Before the communications revolution, national executives were the main contact with the foreign world.¹⁷ Diplomats spoke as the sole representatives of both governments and the people.¹⁸ Now, nearly any individual can, by use of private mail, telephone lines, or the Internet, establish direct international connections without the direct involvement of governments.¹⁹

State power is also undermined domestically by the communications revolution because transboundary associations are forming that are opposed to the state, thereby causing authoritarian rules to be more difficult to maintain.²⁰ These groups associate due to common interests, not proximity of living or working spaces. Similar international interest groups and nongovernmental organizations will strengthen domestic human rights groups at the international level.²¹

farming sector. Energy and farming are facilitators of development, but they are each a commodity to be traded on their own.

8. *See id.*

9. *See id.*

10. *See id.*

11. *See id.*

12. *See id.*

13. *See Myers, supra note 6, at 344.*

14. *See id.*

15. *See Peter J. Spiro, New Players on the International Stage, 2 HOFSTRA L. & POL'Y SYMP. 19, 21 (1997).*

16. *See id.*

17. *See id.*

18. *See id.*

19. *See id.*

20. "For example, during the Cold War era, Xerox machines were among the most tightly controlled commodities in East Bloc countries." *Id.*

21. *See id.*

Associations are created over the Internet based on nonnational entities, such as social, cultural, and economic groups, which are enhanced by cross-boundary contact.²² As communications technology has advanced, it has become increasingly difficult for the state to control these international contacts.²³ As Jean-Marie Guehenno observes, "in the age of networks, the relationship of citizens to the body politic is in competition with the infinity of connections they establish outside it."²⁴ State action and control is limited when nonnational identity associations form based on other similarities.²⁵

The Internet provides a forum in which a culture of enforcing human rights could supplant the current culture of combat.²⁶ An understanding of enforcement must recognize an authoritative influence towards discouraging or preventing normatively unacceptable behavior.²⁷ A "culture of enforcement" consists of beliefs, values, norms, sanctions, symbols, rituals, and feelings.²⁸ A culture of enforcement does not rest on physical force alone, rather it sustains many nonmilitary initiatives over a long period of time to encourage compliance.²⁹ A "culture of combat" is evident in a context where one country or bloc uses collective violence to enforce norms on another country or bloc.³⁰ The culture of combat selects norms and interprets them in essentially whatever manner it unilaterally deems appropriate to advance its interests.³¹ A culture of enforcement can decay into a culture of combat if "the enforcing agent does not genuinely represent all members of the community on whom the norms are to be enforced, if the norms to be enforced have not been established by the community, if disputes over the meaning of norms are not settled impartially, if the enforcement mechanism itself denies

22. See *id.*; see also JEAN-MARIE GUEHENNO, *THE END OF THE NATION-STATE* (1995).

23. See Spiro, *supra* note 15, at 21. Managing international contracts is progressively more difficult with the onset of the communications revolution. It is easiest for the state to control international contacts in print. The state may prevent the information from coming into the country by stopping it at the borders. It is more difficult for the state to block information via satellite broadcasting. Blocking this sort of broadcasting is effectuated through the jamming of radio waves. The Internet is the most difficult to manage, but it is done by restricting use of international channels.

24. GUEHENNO, *supra* note 22, at 19.

25. See Spiro, *supra* note 15, at 21.

26. See Ramcharan, *supra* note 5, at 504.

27. See Robert C. Johansen, *Reforming the United Nations to Eliminate War*, 4 *TRANSNAT'L L. & CONTEMP. PROBS.* 455, 460 (1994).

28. See *id.*

29. See *id.* at 461.

30. See *id.*

31. See *id.*

equal respect for human lives at stake in the operations, or if a pattern of enforcement develops in which the norms are applied to some but not to all members of the community.”³² Professor Robert Johansen suggests that perhaps the existing international balance of power struggle (as each nation competes for superior power over others), with its inherent instability, is the most fundamental security problem in the world.³³ He believes the United Nations (U.N.) system has great potential in creating a more balanced global power structure.³⁴ He asserts this multinational political system could enable a global movement from a “culture of combat” to a “culture of enforcement.”³⁵ But Professor Johansen cautions that before this can take place, a “culture of rights” must triumph over human insecurity.³⁶ While the United Nations is a main player in the vindication of a culture of rights, peoples themselves, their communities, their States, their governments, and their institutions are the true forces in changing cultural concepts of enforcing human rights.³⁷

III. GOVERNMENTAL LIMITS ON THE INTERNET

Despite international assistance in development, a nation will develop only so far as its government will permit. Once a nation’s citizens are connected to the Internet, communities that encourage the monitoring and enforcement of regional human rights issues will flourish. This paradigm assumes that citizens, once given a computer, a modem, and a telephone line, will be free to explore the web, regardless of governmental objection.

Recent governmental limits on the use of the Internet in China illustrate how limits are made and their effectiveness. The Chinese government has made efforts to simultaneously promote and regulate the exchange of information over the Internet.³⁸ China’s restrictions on Internet access of its citizens have left the general population behind in gaining access to information.³⁹ In 1996, the Chinese government began to tighten control over the use of the Internet.⁴⁰

32. *Id.*

33. *See id.* at 458.

34. *See id.*

35. *See Ramcharan, supra note 5, at 504.*

36. *See id.*

37. *See id.* at 505.

38. John H. Taylor, III, *The Internet in China: Embarking on the “Information Superhighway” with One Hand on the Wheel and the Other Hand on the Plug*, 15 DICK. J. INT’L L. 621, 630 (1997).

39. *See id.*

40. *See id.* at 633.

Early that year, China began requiring all of the nation's computer information networks to register with the government and use only the international channels provided by China's Ministry of Posts and Telecommunications.⁴¹ While these acts restrict the information accessible over the Internet, the government must recognize there are several ways to circumvent the blocks.⁴² It is not surprising that China's Internet censorship has not yet become a domestic political issue, since China is in a rudimentary stage of Internet connectivity, and only a very small percentage of the population has access to the Internet.⁴³ With the immense growth of the Internet in China, particularly among students, China's activist voices are likely to be heard in the near future.⁴⁴ Although China has banned several Web sites run by Chinese dissidents and human rights organizations, their message are likely to penetrate China's restrictive regulations.⁴⁵ China's computer-savvy and politically-minded students are likely to have the knowledge and motivation to gain access to uncensored news and voice their concerns.⁴⁶ Once China becomes "wired" for Internet access, the Chinese will be just as equipped to explore the electronic frontier as people anywhere else in the world.⁴⁷ Only their government's rules, regulations, and censorship will limit the Chinese.⁴⁸ Consequently, the Internet may be the catalyst for great social change in Chinese society. The Internet in China will not reach its potential for economic stimulation, however, under the current scheme of regulation. On the other hand, irrespective of governmental attempts at regulation, the Internet will provide channels of communication for political dialogue.⁴⁹ By connecting to the Internet, and thus, the rest of the world, China is likely to experience changes ranging from expansion of human rights to the development of more global economic powers.

Communications technology has advanced and continues to advance for the benefit of opening pathways of communications.

41. *See id.*

42. *See id.* at 633, 638. The regulations "ban organizations and individuals from activities violating state security or secrets laws, and ban pornography and political content" (quoting Liedong Zheng, *China Issues New Rules to Regulate Links to the Internet*, CINET-L, Newsl. (China News Dig.), Feb. 16, 1996, No. 61, at P1 <<http://www.cnd.org/CNDservices.html>>).

43. *See id.* at 639.

44. *See id.* at 640.

45. *See id.* (citing Joseph Kahn et al., *Chinese Firewall: Beijing Seeks to Build Customized Internet with a Muzzle on It*, WALL ST. J. EUR., Feb. 1, 1996, at 1).

46. *See id.*

47. *See id.* at 641.

48. *See id.* at 642.

49. *See id.*

While governments may limit these channels of communication, technological advances are persistent in reopening these paths. The Internet has opened channels for freedom of expression and information exchange, important elements in facilitating development. Information exchanges promote, monitor, and enforce human rights, including the right to develop.

IV. THE RIGHT TO DEVELOPMENT

Human rights as relating to development and the right to develop are relatively new concepts, beginning with the U.N. World Conference on Human Rights, held in Teheran in 1968.⁵⁰ The list of internationally recognized human rights is flexible and illustrative, permitting the focus on particular human rights to change with the times.⁵¹ British sociologist T.H. Marshall characterized the eighteenth century as a century of civil rights, the nineteenth century as that of political rights, and the twentieth as that of social rights.⁵² Similarly, commentators have put forward claims for a new category known as the “third generation” of rights which includes the right to development.⁵³

The right to development was first recognized by the U.N. Commission on Human Rights in 1977 and preserved by the General Assembly in the 1986 Declaration on the Right to Development.⁵⁴ The U.N. has been instrumental in recognizing and defining a right to development as seen through the Universal Declaration of Human Rights and subsequent U.N. documents.⁵⁵ A right to development is a human right that is blind to technological, educational, and economic boundaries, thus reaching developing countries.⁵⁶ The right to development encircles an individual’s right to development of the personality, as well as his economic and social rights, or as Mohammed Bedjaoui states, “the right to develop is nothing other

50. See HENRY J. STEINER & PHILIP ALSTON, INTERNATIONAL HUMAN RIGHTS IN CONTEXT: LAW, POLITICS, MORALS, *supra* note 4, at 1110. Concerns surrounding the right to development such as impact on the environment, aid and policies of international financial organizations, and the distinction between development of a state and development of its people are of contemporary interest. This Comment evaluates the right to development as a human right affecting both individuals and the state and does not discuss these matters.

51. *See id.*

52. *See id.* (citing T.H. MARSHALL, CITIZENSHIP AND SOCIAL CLASS 14 (1950)).

53. *See id.*

54. *See id.*

55. *See Myers, supra* note 6, at 345, 348.

56. *See id.* at 348.

than the right to an equitable share in the economic and social well-being of the world.”⁵⁷

Article 1 of the United Nations Charter declares the purpose and principles of the U.N. to be “promoting and encouraging respect for human rights and . . . fundamental freedoms for all.”⁵⁸ More specifically, article 55 states that for international economic and social cooperation, “the U.N. shall promote higher standards of living, full employment, and conditions of economic and social progress, *and development*.”⁵⁹ Article 56 requires all member states to pledge “to take joint and separate action in cooperation with the organization for the achievement of the purposes set forth in article 55.”⁶⁰

The Universal Declaration of Human Rights (UDHR) also provides that development is a human right. Article 28 of the Declaration, for example, states “[e]veryone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.”⁶¹ Article 29 provides: “Everyone has duties to the community in which alone the free and full development of his personality is possible.”⁶² Article 22 of the UDHR states in pertinent part:

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international cooperation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.⁶³

These articles concentrate on the rights of the individual as opposed to the rights of a nation as a whole, and compare the right to development with the right to self-determination.⁶⁴ Self-determination has been an issue since the days of the bourgeois revolutions in eighteenth- and nineteenth-century Europe to the post-war national liberation struggles of the people of the developing

57. See *id.* (citing Jan Berting, *Technological Impacts on Human Rights: Models of Development, Science and Technology, and Human Rights*, in *THE IMPACT OF THE TECHNOLOGY ON HUMAN RIGHTS: GLOBAL CASE-STUDIES* 13, 33 (C.G. Weeramantry ed., 1993)); see also BEDJAOUI, *supra* note 4, at 1117.

58. U.N. CHARTER art. 1, para. 1.

59. *Id.* art. 55 (emphasis added).

60. *Id.* art. 56.

61. UNIVERSAL DECLARATION OF HUMAN RIGHTS, G.A. Res. 217 A, U.N. GAOR, 3d. Sess., Supp. No. 13, at 75, U.N. Doc. A/810, art. 28 (1948) [hereinafter UDHR].

62. *Id.* art. 29; see also DECLARATION ON THE RIGHT TO DEVELOPMENT, General Assembly Res. 41/128 (1986).

63. UDHR, *supra* note 61, art. 22.

64. See Myers, *supra* note 6, at 348 (citing ISSA G. SHIVJI, *THE CONCEPT OF HUMAN RIGHTS IN AFRICA* 23 (1989)).

world.⁶⁵ In contrast, contemporary demands from the developing world with respect to international trade, aid, and assistance have spawned the right to development in what has come to be known as the demand for the new international economic order.⁶⁶ Consequently, the right to development is viewed by some as a new right, which has not yet achieved full legitimacy within the international community.⁶⁷ However, others suggest that despite the “newness” of the right to development, it is generally a recognized right within the international arena, and is likely to gather force and be seen as a legitimate right that should be respected.⁶⁸

Mohammed Bedjaoui argues that the right to development is a fundamental right, a “core right” from which all other rights stem.⁶⁹ It is a pre-condition of liberty and justice.⁷⁰ In short, it is the right to an “equitable share in the economic and social well-being of the world.”⁷¹ He argues that a “right to development” flows from the right of self-determination which is similar in nature.⁷² He states that there is little sense in recognizing self-determination as a superior and inviolable principle if one does not recognize at the same time a “right to development” for the people that have achieved a right to self-determination.⁷³ The notion is that this right to development can only be an “inherent” and “built-in” right that forms an inseparable part of the right to self-determination. He states, “This makes the right to development much more a right of the state or of the people, than a right of the individual, and it seems to me that is better that way.”⁷⁴

Amartya Sen explains the extensive interconnections between the enjoyment of political rights and the appreciation of economic needs.⁷⁵ The interdependence of the two forms of rights, civil and political on the one hand, and economic, social, and cultural rights on the other, may play an important role in advancing the right to development. Political rights can have a major role in providing incentives and information toward the solution of economic

65. *See id.*

66. *See id.*

67. *See id.*

68. *See id.*

69. *See* BEDJAOUI, *supra* note 4, at 1117.

70. *See id.*

71. *Id.*

72. *See id.* at 1118.

73. *See id.*

74. *Id.*

75. *See* Amartya Sen, *Freedom and Needs*, in INTERNATIONAL HUMAN RIGHTS IN CONTEXT: LAW, POLITICS, MORALS, *supra* note 4, at 1128.

hardship.⁷⁶ Sen argues that economic needs are met through open public debates and discussions, and the guaranteeing of those debates and those discussions requires and insistence on political rights.⁷⁷ Whether, and how, a government responds to intense need and suffering may well depend on how much pressure is put on it, and whether or not pressure is placed on it will depend on the exercise of political rights (such as voting, criticizing, protesting, and so on).⁷⁸

In Sen's most recent publication, he argues that development is not merely a right; rather, it should be seen as a freedom.⁷⁹ A "right" to development is associated with economic growth (identifying development with the growth of the gross national product, a rise in personal income, or with industrialization), technological advance, or social modernization.⁸⁰ Focusing on economic, technological, or social growth of a nation can be a useful means to expand freedoms enjoyed by society, but freedoms also depend on social and economic arrangements (such as educational facilities and health care) and civil and political rights (for example the right to vote, protest, or participate in public debate or scrutiny).⁸¹ Sen notes that freedom is the overarching objective of development.⁸² Development promotes human freedom. Concentrating on the means that play a role in the process of advancing freedom guides attention away from the goal, namely freedom, and emphasizes the particular means to the detriment of the goal. Thus, the importance of development is overshadowed by the results, for example, a rise in gross national product. However, concentrating on freedom, the ultimate objective, directs attention to the purpose that makes development important, not the means that play a role in the greater process of advancing human freedom.⁸³

Political liberty and civil freedoms are elements of human freedom, and their denial is disabling to the individual.⁸⁴ They are also important, established rights that do not have to be justified in terms of their effect on the economy.⁸⁵ Sen notes that those who enjoy favorable economic circumstances but are denied their civil and

76. *See id.*

77. *See id.*

78. *See id.* at 1130.

79. *See generally* AMARTYA SEN, DEVELOPMENT AS FREEDOM (Sen ed., 1999).

80. *See id.* at 3.

81. *See id.*

82. *See id.*

83. *See id.*

84. *See id.* at 17.

85. *See id.* at 16.

political liberty are still deprived of important freedoms in leading their lives, as they are denied the opportunity to take part in crucial decisions regarding public affairs.⁸⁶ These deprivations should be seen as repressive even though they do not suppress economic well-being.⁸⁷ Since civil and political rights are constitutive elements of the right to develop, it should be noted that these basic, or foundational, freedoms are accepted rights.⁸⁸ Sen argues that the right to development should be separated from economic, technological, and social elements, and views the right to develop as a freedom that should be available to all.⁸⁹

The Western “liberal” ideal is that rights belong to the individual, as compared to the more “socialist” position, which emphasizes rights of the community over that of the individual.⁹⁰ According to Western liberal theory, individuals hold certain rights that originated prior to organized society.⁹¹ Other theorists argue that an individual holds these rights only after the state has granted them to the individual.⁹² The latter position is criticized as merely repeating the will of the ruling class.⁹³ The UDHR delineates what are considered inherent individual rights, not rights conferred to the individual from the state.⁹⁴ Some human rights are considered community rights (such as the right to self-determination) and others are considered individual rights (such as the right to development); therefore, both the community and the individual are the subjects of human rights, irrespective of the will of the state.⁹⁵

The right to develop and other human rights may be difficult to enforce. Nations differ on their concept of human rights, as well as on their human rights assistance throughout the world.⁹⁶ Of particular significance is the disparity between views of the Western world and

86. *See id.*

87. *See id.*

88. *See id.* at 17. The UDHR, the ICCPR, and the International convention on Economic, Social and Cultural Rights constitute the International Bill of Rights. *See* UDHR, *supra* note 61; INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, G.A. Res. 2200, U.N. GAOR, 21st Sess., Supp. No. 16, at 49, U.N. Doc. A/6316 (1966) (effective 1975) [hereinafter ICCPR]; INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, U.N. GAOR, 10th Sess., Supp. No. 6A, at 5, U.N. Doc. A/2905 (1975).

89. *See* SEN, *supra* note 79, at 3.

90. *See* Myers, *supra* note 6, at 346.

91. *See id.*

92. *See id.*

93. *See id.*

94. *See id.*

95. *See id.*

96. *See id.* at 347.

those found in the developing world.⁹⁷ Most nations differ in views based upon their own particular cultural heritage, legal tradition, political and economic circumstances, and ideology.⁹⁸ While Western democratic nations favor political and civil rights, developing states generally prefer to honor economic and social rights as paramount.⁹⁹ But this suggests that notions of human rights are culturally bound, and perhaps categorizing the right to development within the traditional framework of primary and secondary rights may inhibit the acceptance and enforcement of the right.¹⁰⁰ To summarize, rights are neither granted by government, nor by culture, but rather, they are inherent in the individual and the community.

V. GLOBALIZATION, HUMAN RIGHTS, AND THE INTERNET

An examination of the right to development concept and its implications cannot avoid consideration of the effects of the globalization of the economy and its impact on freedom of expression. Richard Falk draws a distinction between globalization from above and globalization from below.¹⁰¹ These two have interrelated tendencies.¹⁰² Globalization from above entails the restructuring of the world economy on a regional and global scale through transnational corporations and financial markets.¹⁰³ Globalization from below involves the rise of transnational social forces concerned with environmental protection, human rights, and peace and human security.¹⁰⁴ Globalization from below is where individuals interact and shape their collective life.¹⁰⁵ Globalization from above results in fragmentation of states and people into autonomous networks to promote collective economic, social, and cultural interests.¹⁰⁶

97. *See id.*

98. *See id.*

99. *See id.* at 348 (citing Louis B. Sohn & Margaret E. Galey, *New Aspects of the International Protection of Human Rights*, TWENTY-FIFTH REPORT OF THE COMMISSION TO STUDY THE ORGANIZATION OF PEACE 9 (1997)).

100. *See id.*

101. *See* Julie Mertus, *From Legal Transplants to Transformative Justice: Human Rights and the Promise of Transnational Civil Society*, 14 AM. U. INT'L L. REV. 1335, 1341 (1999); *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 47, 50-51 (Wolfgang Danspeckgruber ed., 1997).

102. *See* Mertus, *supra* note 101, at 1341.

103. *See id.*

104. *See id.*

105. *See id.* at 1342.

106. *See id.* at 1343.

The communications revolution has influenced the shape of community. Community consists of identity groups that are bound by language, culture, and kinship.¹⁰⁷ The globalization process has strengthened identity groups in the areas of language and culture.¹⁰⁸ New demands are being asserted creating new rights to language, culture, and association throughout society as a whole.¹⁰⁹ Each identity group potentially threatens the human rights of other identity groups by asserting its own personalized agenda.¹¹⁰ Globalization may be leading us to a more homogenous world in which diplomatic languages are spoken, similar systems of representation are asserted, and a popular stand for democratic society is asserted as a right.¹¹¹ At the same time, there is a corresponding breakdown of association along more conventional lines, such as common interests and personal goals.¹¹² Nonetheless, the women's movement, rights of children, and access to Web sites that inform as well as encourage new membership are all issues that need to be addressed by society as technology advances.

The voluntary associations of the communications revolution include such entities as nongovernmental advocacy organizations, humanitarian service organizations, unions, religious groups, civic and neighborhood associations, political and social movements, information and news media, educational associations, and certain forms of economic organizations.¹¹³ These groups form networks for particular political, social, and cultural purposes.¹¹⁴ The interstate

107. *See id.*

108. *See id.*

109. *See id.*

110. *See id.*

111. *See id.*

112. *See id.* at 1338.

113. *See* Mertus, *supra* note 101, at 1338 (citing BENJAMIN R. BARBER, *JIHAD VS. MCWORLD* 285 (1995)) (noting that while Hegel and his followers define civil society as that which is apart from the State, many modern theorists see civil society as the space "mediating between private markets and . . . government"); *see also* ROBERT L. HEILBRONER, *BEYOND THE VEIL OF ECONOMICS: ESSAYS IN WORLDLY PHILOSOPHY* 32 (1988) (proposing that economic processes are a prerequisite for civil society); DAVID HELD, *MODELS OF DEMOCRACY* 341 (2d ed. 1996) (arguing that democratic civil society is incompatible with unrestricted private ownership); Michael Walzer, *A Better Vision: The Idea of Civil Society: A Path to Social Reconstruction*, in *DISSENT* 293, 300 (1996) (presenting the more nuanced view that civil society may encompass certain economic institutions, such as worker organizations and consumer cooperatives, that function in private markets but have their origins outside the market).

114. *See* Mertus, *supra* note 101, at 1338 (citing Ronnie Lipschutz, *Reconstructing World Politics: The Emergence of Global Civil Society*, 21 *MILLENNIUM J. INT'L STUD.* 389, 398 (1992) (emphasizing that the concept of civil society refers to something broader than social networks).

aspect of such associations makes them transnational, while their voluntary, nonstate identity aspects make them part of civil society.¹¹⁵

Legal associations play a central role in the development of civil society by advancing mechanisms that permit the independent existence of nongovernmental entities and by supporting the development of institutions that foster their growth.¹¹⁶ Civil society cannot flourish where there are inadequate legal assurances that allow nongovernmental organizations (NGOs) to operate autonomously from government.¹¹⁷ A strong civil society also demands legal oversight of state power and the accountability of state actors.¹¹⁸ Legal associations provide an important medium for the development of ideas about the role of law in society, such as the parameters of civil freedoms and entitlements, the shape of legal constraints on the exercise of public authority, and the definition of public commitments.¹¹⁹

Improved public access to government information is one of the greatest promises of the global information infrastructure.¹²⁰ As the Internet unveils court decisions, legislative enactments, and rules of administrative agencies, the rule of law is strengthened.¹²¹ By posting new laws on the Internet, citizens are given access to the law as it is being made, rather than relying on the media or the government itself to disseminate information, and compliance is more likely when the public knows the law.¹²² International governmental organizations have addressed the issues of availability of information and violations of accessibility in several documents. The Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for

115. Cf. Gordon A. Christenson, *Federal Courts and World Civil Society*, 6 J. TRANSNAT'L L. & POL'Y 405, 412 (1997) (discussing the interaction of transnational individuals and groups apart from State systems). See generally ERNEST GELLNER, *CONDITIONS OF LIBERTY: CIVIL SOCIETY AND ITS RIVALS* (1994) (discussing the origin and development of thinking about civil society).

116. See Mertus, *supra* note 102, at 1338; see also Richard H. Fallon, Jr., *The "Rule of Law" as a Concept in Constitutional Discourse*, 97 COLUM. L. REV. 1 (1997) (discussing the various definitions of "rule of law"); John Reitz, *Constitutionalism and the Rule of Law: Theoretical Perspectives*, in *DEMOCRATIC THEORY AND POST-COMMUNIST CHANGE* 111 (Robert D. Grey ed., 1997).

117. See Mertus, *supra* note 101, at 1339.

118. See *id.*; see also DAVID HELD, *MODELS OF DEMOCRACY* (2d ed. 1996) (discussing the accountability of State actors in civil society); Mertus, *supra* note 102, at 1339.

119. See Mertus, *supra* note 101, at 1339; see also Luis Roniger, *The Comparative Study of Clientelism and the Changing Nature of Civil Society in the Contemporary World*, in *DEMOCRACY, CLIENTELISM, AND CIVIL SOCIETY* 6 (Luis Roniger & Ayse Gunes-Ayata eds., 1994).

120. See Henry H. Perritt, Jr. & Christopher J. Lhulier, *Focus on Cyberlaw: Information Access Rights Based on International Human Rights Law*, 45 BUFF. L. REV. 899, 899 (1997).

121. See *id.*

122. See *id.*

the Benefit of Mankind proclaims that the U.N. will work toward the equalization and unification of technology in member states.¹²³ The International Covenant on Civil and Political Rights (ICCPR),¹²⁴ The European Convention on Human Rights (European Convention),¹²⁵ and The Universal Declaration of Human Rights (UDHR)¹²⁶ all refer to the right “to receive information and ideas.”

The exercise of the rights provided for in article 19 of the ICCPR carries with it special duties and responsibilities.¹²⁷ It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary for respect of the rights or reputations of others, for the protection of national security, public order, public health, or morals.¹²⁸

Globalization has facilitated cross-border relations. These relations, in turn, require more accessibility to information, and the Internet has been the forum used to further this information exchange. Thus, the global marketplace has fostered the development and growth of a world-wide forum, the Internet, which is instrumental in

123. Proclaimed by General Assembly resolution 3384 (XXX) of Nov. 8, 1975, *reprinted in* EDMUND JAN OSMACZYK, *THE ENCYCLOPEDIA OF THE UNITED NATIONS AND INTERNATIONAL RELATIONS* 801, 802 (Taylor & Francis eds., 1990). Also available online at <<http://diana.law.yale.edu/diana/db/81098-4.html>>.

124. *See* ICCPR, *supra* note 88, art. 19 states:

Everyone shall have the right to hold opinions without interference. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

Id.

125. *See* EUROPEAN CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, Nov. 4, 1950, 213 U.N.T.S. 222 [hereinafter EUROPEAN CONVENTION]. Article 10 of the European Convention reads:

(1) everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

(2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Id.

126. *See* UDHR, *supra* note 61, art. 19.

127. *See* ICCPR, *supra* note 88, art. 19, para. 3. These special duties and responsibilities entail an affirmative action in seeking or imparting information. *Id.*

128. *See id.*

availing information pertaining to human rights to all with Internet access.

VI. FREEDOM OF INFORMATION AND OPEN GOVERNMENT

The Committee of Ministers of the Council of Europe adopted a Declaration on the Freedom of Expression and Information in 1982, declaring as its goal, among other things was, "the pursuit of an open information policy in the public sector, including access to information, in order to enhance the individual's understanding of, and his ability to discuss freely political, social, economic, and cultural matters."¹²⁹ Moreover, the Declaration committed itself to a diversity of channels and sources, thus permitting the transmission of diverse ideas and opinions.¹³⁰ The Declaration also opposed access restrictions on intermediaries.¹³¹ Lastly, it attempted to ensure that new information and communication techniques and services, where available, would be effectively used to broaden the scope of freedom of expression and information.¹³² The Declaration specifically references article 10 of the European Convention and article 19 of the Universal Declaration of Human Rights, which articulate principles of freedom of expression.¹³³

Freedom of information policies have also been adopted in the new constitutions of former communist countries in Central and Eastern Europe. According to the Constitution of the Russian Federation:

- (1) The basic rights and liberties in conformity with the commonly recognized principles and norms of the international law shall be recognized and guaranteed in the Russian Federation and under this Constitution.
- (2) The basic rights and liberties of the human being shall be inalienable and shall belong to everyone from birth.
- (3) The exercise of rights and liberties of a human being and citizen may not violate the rights and liberties of other persons.¹³⁴

According to article 18, the rights and liberties of man and citizen determine the meaning, content, and application of the laws, and the

129. DECLARATION ON THE FREEDOM OF EXPRESSION AND INFORMATION, Comm. of Ministers, 70th Sess. (Apr. 29, 1982), A/Res./41/128, art. II(c).

130. *Id.* art. II(d).

131. *Id.* art. II(e).

132. *See id.* art. III(e).

133. *Id.* para. 2.; *see also* EUROPEAN CONVENTION, *supra* note 125, art. 10; UDHR, *supra* note 61, art. 19.

134. RUSS. FED'N CONST. art. 17, *reprinted in* CONSTITUTIONS OF THE COUNTRIES OF THE WORLD (Albert P. Blaustein & Gisbert H. Flanz eds., 1994).

activities of the legislative and executive branches and local self-government, and are secured by the judiciary.¹³⁵ Such a provision is fundamentally important because it structures the branches of government in such a way that their action and interaction must conform to fundamental notions of human rights. Even if the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights grant a right to access and disseminate government information, that right is not necessarily directly enforceable in a national court of the country which has allegedly violated the human rights provision.¹³⁶ When a treaty-based obligation is directly enforceable in national courts, the treaty is said to have “direct effect.”¹³⁷ While direct effect of a treaty is a matter to be determined by the drafters and signatories of the treaty, the traditional theory of international law separates “municipal” law from international law.¹³⁸ While international law is a system of rights and duties between states, municipal law addresses rights and duties of individuals.¹³⁹ Giving a treaty direct effect causes international law to reach into the internal (municipal) law of sovereign states.¹⁴⁰ A broad example of direct effect of a treaty is the European Union, in which everyone accepts that community law, though based on the Treaty of Rome and its progeny, has direct effect upon the legal orders of member states.¹⁴¹ The basic problem being articulated here is that while each covenant described above grants broad protections of human rights, if a country does not make the relevant treaty directly effective, the individual has not means to enforce the protected right.

In advancing the freedom of information and open government doctrine that is rooted in international human rights treaties, we must examine direct effect. In Russia, both the European Convention and the International Covenant on Civil and Political Rights have direct

135. *Id.* art. 18.

136. See EUROPEAN CONVENTION, *supra* note 125, art. 10(1); see also ICCPR, *supra* note 88, art. 19(2).

137. See Joel P. Trachtman, *The International Economic Law Revolution*, 17 U. PA. J. INT’L ECON. L. 33, 41-42 (1996) (explaining direct effect and contrasting public and private international law).

138. See *id.* at 43.

139. See *id.* at 42.

140. See generally John H. Jackson, *Status of Treaties in Domestic Legal Systems: A Policy Analysis*, 86 AM. J. INT’L L. 310 (1992).

141. See David J. Gerber, *The Transformation of European Community Competition Law?*, 35 HARV. INT’L L.J. 97, 142 (1994); see also J.H. Weiler & Ulrich R. Heltem, *The Autonomy of the Community Legal Order—Through the Looking Glass*, 37 HARV. INT’L L.J. 411, 412 (1996).

effect and can be applied directly to the constitutional court.¹⁴² Most Western European countries provide for some degree of direct effect on the provisions of the European Convention, although not usually decisions of the European Court of Human Rights (ECHR).¹⁴³ The issue of direct effect is still unresolved for the former communist countries, which are now members of the Council of Europe.¹⁴⁴ Each country's parliament and constitutional court has the power to determine whether the human rights treaties have direct effect.¹⁴⁵ It is argued that they have this power with respect to freedom of information and open government because of the centrality of those norms to democratic political systems.¹⁴⁶ In the case where the international human rights treaties do not have direct effect, claims of violations of rights of access to government information based on the European Convention can always be brought in the ECHR against any nation that is a party to the Convention.¹⁴⁷ The result could be an ECHR decision that might obligate a parliament to enact appropriate freedom of information legislation.¹⁴⁸ In cases involving states that are not members of the European Community, the ECHR should look to the norms of the European Convention and the ICCPR in favor of freedom of information and open government in interpreting national law when freedom of information is at stake.¹⁴⁹

It is possible to advance open government and freedom of information in former communist countries vis-à-vis membership in the Council of Europe, NATO, and the European Union, and through United States support.¹⁵⁰ It is important that freedom of information and open government become the norm in all participating countries.¹⁵¹ Article 19 of the International Convention on Civil and Political Rights recognizes the right to receive information, subject to an exception for public order.¹⁵² Human rights organizations, including the Council of Europe, must flesh out the details of basic

142. See Perritt & Lhulier, *supra* note 127, at 926.

143. See *id.*

144. See *id.*; see also GENERAL FRAMEWORK AGREEMENT FOR PEACE IN BOSNIA AND HERZEGOVINA, Dec. 14, 1995, annex 6, 35 I.L.M. 75, 130 annex 6, art. 1. This Agreement also recognizes the rights and freedoms enumerated in other human rights agreements. *Id.* art. 1 & appendix; BOSN. & HERZ. CONST. Art. II(A)(2).

145. See *id.*

146. See *id.*

147. See *id.*

148. See *id.*

149. See *id.*

150. See *id.* at 927.

151. See *id.*

152. See *id.*; see also ICCPR, *supra* note 88, art. 19.

freedom of expression rights.¹⁵³ Freedom of expression should include the right to have access to basic governmental documents, including legislation and judicial decisions, and this knowledge must be made available to the public.¹⁵⁴

It is essential that the Council of Europe, the United Nations, and the international community (including the United States and private entities) recognize the potential of the Internet as a form of technological freedom to encourage open government in all parts of the world.¹⁵⁵ Once the basic legal framework is in place, agency costs will be reduced and there will be improved practical public access and dissemination of government information.¹⁵⁶

VII. INTERNATIONAL ORGANIZATIONS

International organizations, such as the U.N., can have enormous effects on changing developing countries.¹⁵⁷ These organizations monitor human rights violations, assist in technological areas, and disseminate information regarding the state of human rights.¹⁵⁸ However, the U.N. Commission on Human Rights should examine the prospects of large-scale development through technology.¹⁵⁹ The Commission is considered to be the “principal and most important political organ of the U.N. concerned principally with human rights.”¹⁶⁰ In addition, the U.N. needs aid in implementation from other smaller and more efficient organizations since the U.N.’s size and structure could result in slow action.¹⁶¹ The U.N. could provide educators and monetary resources, thereby assisting in the development of underdeveloped countries.¹⁶²

International development agencies, primarily those from the politically and economically developed countries, could also

153. See Perritt & Lhulier, *supra* note 127, at 927.

154. *See id.*

155. *See id.*

156. Agencies can display their information on a web page, including links to government documents, without the necessity for costly processing of ad hoc requests. *See id.*

157. See Myers, *supra* note 6, at 366.

158. *See id.*

159. *See id.*

160. *Id.*

161. *See id.*

162. For example, the Internet Society, considered by many to be the “governing body of the Internet,” held workshops aimed at educating persons from around the world, including many of the developing countries, on how to set up and maintain Internet connections in their own countries. See Peter Judge, *Superhighway Robbery? Life at the Thin End of the Net*, THE GUARDIAN, July 7, 1994, available in LEXIS, Textline Library (stating that the Internet connects more than 150 countries, but those without it “all number among the world’s poorer countries”). U.N. agencies covered the costs for some of the participants. *See id.*

contribute to the growth of the Internet and the right to development in less advantaged countries.¹⁶³ For example, the United States Agency for International Development (USAID) recognizes the importance of telecommunications.¹⁶⁴ Telecommunications, health, and education are important on its agenda.¹⁶⁵ Unfortunately, barriers to the Internet provision such as money, education, and government red tape have caused agencies, such as USAID, to leave regions like sub-Saharan Africa and provide services elsewhere.¹⁶⁶ These agencies could significantly benefit such regions, but they need to work with other groups, including nongovernmental organizations and private enterprises so that the agencies would not have to bear the entire economic and time burdens.¹⁶⁷

An example of an international organization that has taken its responsibility seriously is the World Bank. It has been instrumental in encouraging development in lesser-developed nations.¹⁶⁸ In 1972, the World Bank established a special Science and Technology Unit to monitor the development of various countries throughout the world.¹⁶⁹ The World Bank is mostly known as a vital source of funds for developing nations.¹⁷⁰

VIII. NONGOVERNMENTAL ORGANIZATIONS

Nongovernmental organizations (NGOs) are capable of large-scale assistance to developing nations. NGOs monitor human rights affairs and provide technical and educational aid to developing nations.¹⁷¹ NGOs have become indispensable to the human rights movement through monitoring, investigating, and reporting on delinquent states, lobbying national governments and intergovernmental organizations, mobilizing interest groups, and educating the public.¹⁷² These organizations aim to promote the basic rights recognized in the Universal Declaration of Human Rights,

163. See Myers, *supra* note 6, at 366.

164. See *id.*

165. See *id.* at 367.

166. See *id.*

167. See *id.*

168. See generally The World Bank, World Development Report 1995: Workers in an Integrating World (1995).

169. See Myers, *supra* note 6, at 367.

170. See *id.*

171. See *id.*

172. See *id.* (citing H. Abdel-Rahman, *Notes on Some Important Issues, in PLANNING AND POPULARIZING SCIENCE AND TECHNOLOGY IN DEVELOPING COUNTRIES, PROCEEDINGS OF THE PANELS OF SPECIALISTS OF THE UNITED NATIONS ADVISORY COMMITTEE ON SCIENCE AND TECHNOLOGY FOR DEVELOPMENT* 25, 25 (M. Anandkrishnan ed., 1985)).

although they are often Western-based organizations that generally focus on civil and political rights. Their work can supplement that of government organizations and they can work with those governments to bring about change.¹⁷³ However, NGOs generally are not able to deter poor government practices, although they can lobby governments.¹⁷⁴

A problem with NGO effectiveness is that there is a divergence of focus between western NGOs, which tend to focus on political rights, and NGOs originating in the developing world, which tend to focus on economic and social rights. Regardless of these differences, NGOs alone, however, cannot combat the violations of human rights that occur, nor can they alone provide for significant development within the country without assistance from governmental or intergovernmental organizations.¹⁷⁵

Even NGOs whose objective is not human rights monitoring have assisted nations by creating means for international communication.¹⁷⁶ Since Internet connections are difficult and expensive to create and maintain, many nonprofit organizations have implemented temporary alternative solutions to provide access to the rest of the world.¹⁷⁷ The African Regional Center for Computing (ARCC) is a nonprofit center organized to promote computing in Africa, with an emphasis on Kenya.¹⁷⁸ This organization has also created ARCCNET, a network based in Nairobi with gateways to the Internet in Boston and Washington.¹⁷⁹ It provides free service to its users unless they send messages through an international connection.¹⁸⁰ The center hopes to ultimately obtain a direct connection to the Internet, but in the meantime, the gateway service provides a readily affordable alternative to traditional Internet access.¹⁸¹

Other nongovernmental organizations have entered the information arena to decrease the gap between developed nations and the developing world, usually with an objective to facilitate low cost

173. *See id.*

174. *See id.* at 368.

175. *See id.*

176. Myers, *supra* note 6, at 366.

177. *See id.* (citing Robin Lubbock, *Faced with Daunting Challenges, Scholars in Africa Strive for Access*, CHRON. OF HIGHER EDUC., June 9, 1995, at A22).

178. *See id.*

179. *See id.*

180. *See id.*

181. *See id.*

intra-regional and international communication links for the independent media of southern Africa.¹⁸²

NGOs can also contribute to the dissemination of information because they themselves have access to the Internet.¹⁸³ Unfortunately, often poor infrastructure curtails the efforts of these groups.¹⁸⁴ Telephone lines are of low quality and the support system cannot handle the transmittal speed and size of information required by Internet technology.¹⁸⁵ Consequently, as an initial step to introduce the Internet, NGOs need the assistance of private sector investment that would enable growth and perhaps improve the quality of the telephone lines in developing countries.¹⁸⁶

IX. CONCLUSION

The Internet is a medium used to communicate directly, instantly, and anonymously with others. The nature of the Internet's service is one that is conducive to dialogue. With dialogue comes a release of information within and among cultural groups. This dialogue facilitates the disclosure of human rights violations, the investigation into laws and policies of a country, intervention in the case of human rights violations, and it allows for enforcement of human rights.

Ultimately, at a grass roots level, it is the people who will define development. The Internet allows for true democracy and a great equalization of power. Via freedom of expression, freedom of association, and other human rights, the people will be able to communicate their needs, desires, and goals, and communities will coalesce. While growth may begin at a local level, it will be conveyed on a global level. The Internet allows for prioritization and definition of development. The Internet is a fundamentally important medium to promote Amartya Sen's goal of freedom, specifically the development of individuals and communities.

182. *See id.* at 367.

183. *See id.* at 369.

184. *See id.*

185. *See id.*

186. *See id.*