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The Right to Life and Certain of its Implication for the Afro-Asian World

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I am very glad to be here and participate in this conference which is the continuation of an important effort that started under the leadership of Prof. Murad Wahba in the ninteeneights. This is why I wish to thank Prof. Balasubramanian and Prof. Joshi for organizing this conference and inviting us.

The organizers of the conference asked me to speak on an issue of human rights. I am thankful to them. Because human rights are one of the burning issues all over the world and of course in Asian and African countries. Poverty and social injustice, flagrant violations of the right to life are problems we see every day. In the previous conferences of the Afro-Asian Philosophy Association I have spoken on such problems.

This time I thought that it will be opportune to focus on the right to life philosophically and on the occasion of the establishment of an International Commission Against Death Penalty two weeks ago, to take a look at the situation in our Asian and African countries. Then we could also discuss what we, philosophers and other intellectuals, who care for the protection of human rights, can do in this respect.

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What is the right to life? What does it in fact demand? Consequently what does it necessitate for practice in order to be protected in general and more specifically in the Afro-Asian World?

The term ‘right’ in the context of ‘the right to life’, as well as when it qualifies any other basic right, expresses a demand concerning a treatment due to everyone by everyone –i.e. it expresses a demand concerning how individuals should be treated and treat all other individuals.

According to a widespread conception, the right to life demands to avoid touching in any way the biological or physical integrity of the individual. This way of understanding the right to life is important. Yet is it sufficient to constitute, in the present conditions of our world, the content of the right to life? Does not hunger too threaten the physical integrity of a person?

If we look at the main international human rights instruments –such as the *Universal Declaration of Human Rights*, the *UN Convention on Civil and Political Rights*, the *European Convention of Human Rights* and the *Charter of Fundamental Rights of the European Union*–, we see that in connection with the right to life they mention death penalty, torture and inhuman treatment and punishment, personal security, slavery and servitude, medical-scientific experiments etc.; and in the *Charter of the Fundamental Rights* (2000) we also see that “the prohibition of eugenic practices, in particular those aiming at the selection of persons”, “the prohibition on making the human body and its parts as such a source of financial gain” and “the prohibition of the reproductive cloning of human beings” are also mentioned. And though many articles of this charter repeat the articles of previous human rights instruments –including their problematic articles–, article 2, related explicitly to the right to life, brings the very important new demand that “No one shall be condemned to the death penalty or executed” and thus gives an end to the compromises of the previous instruments. This is a very important step in the history of human rights.

One of the problems to be discussed in connection with the right to life is the question whether premeditated killing or attacking someone in order to kill him or her, is only a crime, or, more than crime a violation of the right to life.

If we approve the claim, often put forward by certain state representatives in political fora, that a given crime is a violation of human rights only if it is committed by a state official, while if committed by a civilian it is only a plain crime, it is easy to reply: every killing is not a violation of the right to life. On the other hand, if we consider human rights first of all as ethical principles –and not only as law–, every killing is a violation of the right to life. Another question: Are terrorist killings violations of the right to life? According to the former assumption are not, while according to the latter they are. Still they are different from someone's killing his wife or husband for any reason.

As you see at this point we are faced with the problem of criterion. Thus it appears necessary to discuss what can be the criterion that makes a murder violation of the right to life, taking into account also the questions mentioned above, and to justify any proposed criterion by value knowledge. In order to decide whether a concrete, single act is a violation of the right to life or of any other human right, it is necessary to possess the knowledge of the conceptual content of that right, which in turn presupposes clear knowledge of the content of the concept of human rights, i.e. to possess these criteria which are deduced from each other.

Every premeditated killing is much more than touching the physical and mental integrity of a person; it is to annihilate him or her. And t h a t person will not come to the world once again.

In the international instruments, as well as in the old and new debates related to the right to life understood as “to avoid touching the physical and mental integrity of a person”, we find the issues of death penalty, torture, inhuman treatment and punishment, as well as problems of medical ethics and bioethics such as euthanasia, organ donation, abortion, interference with the gens etc.

What calls our attention in these debates, is that both those who are in favour and those who are against, defend their claims not on the ground of value knowledge, but by using different value judgements on the same issue. As for the international instruments on these issues:

a) The only important instrument which explicitly considers death penalty as violation of the right to life is, as I mentioned earlier, the *Fundamental Rights Charter* of the European Union. While in article 6 of the *Covenant on Civil and Political Rights* it is expressed that under certain conditions death penalty will not be considered as violation of this article of the Covenant.

Still when we read this article together with article 7 of the same *Covenant*, which states that “No one shall be subjected to torture or to inhuman or degrading treatment or punishment”, we are shocked by an inconsistency: article 6 does not prohibit death penalty, but article 7 prohibits inhuman punishment. Death penalty, isn't it an inhuman punishment?

Now, when we look at premeditated killing from the view-point of human rights as ethical principles and consider every such killing as violation of the right to life, the following and similar questions have to be raised and answered: To punish someone who has killed and consequently violated the right to life of someone else by death penalty, is it not to answer a violation of a human right by committing another violation of that right? To approve such a punishment given by a judge, in the name of a whole nation is it not to approve the principle

demanding “an eye to an eye and a tooth to a tooth”? Is it not to consider legitimate blood feud and assume that the human-legal institution we call the State is a revenge instance?

If we reject, as an implication of the right to life, to sentence to death someone who has violated the right to life of others, it is necessary to consider, as another implication of this right, the need to take the appropriate steps and precautions so that individuals do not kill other individuals. Such precautions might start from establishing in our countries the system of periodical check-ups of all citizens –including also psychiatric check-up– and go until increasing the quality of education –including the quality of the education of ethics and human rights.

b) Euthanasia is also an issue often discussed in connection with the right to life. The discussion is usually made in connection with legal problems. Its ethical aspect is to be seen only in certain films. The prevailing tendency in this respect is to leave the decision to individual countries.

If we leave aside passive euthanasia and understand from active euthanasia: to help someone who is ill and suffers unbearably and for whom, according to the medical knowledge of the time, there is no hope to survive, is euthanasia a violation of the right to life, as those who are against euthanasia claim or not?

Here I wish to give you two examples which can secure us a clue in looking at the issue of euthanasia: The first one is a case that a medical doctor has faced: this doctor has started doing the necessary to someone whose heart had stopped and when, after three hours her efforts had no visible result, those around her and even the relatives of the patient asked her to give up. Yet this doctor continued her efforts to make the heart of the patient function, because she was seeing a very slight reflex somewhere at his eyebrow and ear. Thanks to her

efforts during four hours, that patient returned to life and lived for more 15 years.

The second example is a case that I witnessed in a hospital during the illness of my mother. In the next room of the room of my mother was hospitalized a young girl –19 years old. Cancer had affected most of her organs. Analgesics had no influence anymore and she wished so much to live! An evening that I went to the hospital the young girl was not in her room. She had undergone an appendicitis operation, which if not performed, she would have died that day. Next day, when I went to the hospital in the evening, the young girl was not in her room again. But this time she had left for ever the room. When later I asked the doctors why they had made the appendicitis operation one day ago, they answered that their job was to help people live.

There is no doubt that the job of a doctor is to help his patients continue to live. I nevertheless think it would be useful to reflect on the difference of these two cases.

Euthanasia does not look like an issue on which law can be developed –because every human being, even when he is ill, is unique. I think that law can only put forward certain general conditions for deciding whether euthanasia may be applied to a patient who wishes to die. Still each case has to be evaluated in itself.

c) Giving and taking organs for transplantation from living persons is also an issue of debate, i.e. whether the physical integrity of the donor is touched or not.

When we look at the regulations related to the issue of giving and taking organs, we are faced with a threefold ethical relation: between the donor and the

recipient, and between the doctor and each of them. The main conditions mentioned in these regulations are “informed consent” of the donor and prohibition of making his organs a source of financial gain. If these and such conditions are fulfilled, does taking from someone an organ for transplantation violate the right to life of the donor or not? Taking an organ under these conditions: is it a human rights problem or only an ethical problem?

There is no doubt that the person whose organ is taken loses something. But is this a violation of right to life? I think that it is not possible to give a general answer to this question. In certain cases may be and in other cases is not a violation of the right to life. If the organ taken from a donor is taken without taking into consideration the results that this will bear for him, there is an ethical problem. If in addition this threatens his life, in this case there is a violation of right to life. The specificity of these problems necessitates that a doctor who does not wish to violate the right to life has to evaluate each single case, as a whole, on the ground of ethical value knowledge and professional knowledge. This means that the problems faced in this connection are ethical problems. But if they are not dealt with ethical value knowledge and sufficient professional knowledge it is possible to lead to violations of the right to life.

d) One of the issues debated also in connection with the right to life is abortion. This is an old debate. Abortion is in fact an ethical problem which those who are against put in connection with the right to life.

In the first article of the *Universal Declaration of Human Rights*, in which the conception of human rights underlying the *Declaration* is worded, states that “all human beings are born equal in dignity and rights”. This wording makes us think that there it is assumed that human beings have this right from the moment they are born. In fact the proposal made during the preparation of the

Declaration, that the protection of the right to life should start from protecting the fetus was not accepted, yet for pragmatic reasons. Of course, this should not hinder the discussion of this issue, yet in the light of ethical value knowledge.

If we take into account that human rights bring demands for each human being, it is possible to raise the following questions:

Does the fetus have an existence independent from the person who naturally bears it? Is fetus a human being or a potential human being?

Here also we are faced with an ethical problem and not a human rights problem: the problem of a person's relation with herself. And as all ethical problems, this too makes necessary to evaluate each case for itself.

e) Another right that is discussed in connection with the right to life in the human rights instruments, is the right called "personal security". It is considered to be a right different from the right to social security mentioned in the 22nd article of the *Universal Declaration* and which is understood as "the right of being protected against intensive interferences from the State or from non-State actors"¹. Others put this right in connection with article 9 of the *Universal Declaration*, which states that "No one shall be subjected to arbitrary arrest, detention or exile".

There is no doubt that the demand to protect individuals against violent interferences is implications of the right to life: human beings should not be killed, should not be disabled. Yet we have to ask: only these and such treatments threaten the physical and mental integrity of a person? Hunger does not threaten it? AIDS do not threaten it? Has not the Tsernobil accident damaged the life of those who were living there?

I think that all demands to protect individuals against everything that hinders, threatens and annihilates their life are among the implications of the right to life.

There is still a difference of kind between the former and latter threats. This means that we have to understand the right to life not only as a negative right, but also as a positive right and to define the right of personal security in a way that distinguishes it from the right to social security.

To secure to everyone the minimum conditions necessary for the subsistence of his/her physical existence is also an implication of the right to life. To fight against poverty and securing these minimum conditions for subsistence are among the duties of the State in every country, as well as among the duties of humanity.

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The right to life also implies the abolition of death penalty, which still exist and is applied also in many African and Asian countries. To do it is not objectively difficult, while to fight against it in the minds is.

I wish now to focus on this issue. Let us first take a look at the 26 Asian and African countries that have totally abolished death penalty –in law and practice: They are Angola, Armenia, Azerbaijan, Bhutan, Burundi, Cambodia, Cyprus, Djibouti, Georgia, Guinea-Bissau, Kyrgyzstan, Mauritius, Mozambique, Namibia, Nepal, Philippines, Rwanda, Sao Tomé and Príncipe, Senegal, Seychelles, South Africa, Timor-Leste, Togo, Turkey, Turkmenistan and Uzbekistan.

Israel and Kazakhstan have abolished death penalty only for ordinary crimes.

The following 28 countries in Africa and Asia retain the death penalty, but they have not executed anybody for the past 10 years: Algeria, Benin, Brunei, Burkina Faso, Cameroon, Central African Republic, Republic of Congo, Eritrea, Gabon, Gambia, Ghana, Kenya, Laos, Liberia, Madagascar, Malawi, Mali, Mauritania, Morocco, Myanmar, Niger, South Korea, Sri Lanka, Swaziland, Tajikistan, Tanzania, Tunisia, and Zambia.

The following 42 Asian and African countries retain the death penalty: Afghanistan, Bahrain, Bangladesh, Botswana, Chad, China (including Taiwan), Comoros, Democratic Republic of Congo, Egypt, Ethiopia, India, Indonesia, Iran, Iraq, Japan, Jordan, Kuwait, Lebanon, Lesotho, Libya, Malaysia, Mongolia, Nigeria, North Korea, Oman, Pakistan, Palestinian Authority, Qatar, Saint Kitts and Nevis, Saudi Arabia, Sierra, Leona, Singapore, Somalia, Sudan, Thailand, Trinidad and Tobago, Uganda, United Arab Emirates, Vietnam, Yemen and Zimbabwe.

Perhaps you have learned from the press that on 7 October 2010, an International Commission Against Death Penalty was officially established. The idea came from Spain and the countries that supported its establishment are the following: Argentina, Dominic Republic, France, Italy, Kazakhstan, Mexico, Mongolia, Philippines, Portugal, South Africa, Spain, Switzerland and Turkey,

It is noteworthy that among these countries are also countries, in whose law there is still death penalty. This is an indirect expression of the will to abolish this penalty.

I wish to read the objective of establishing this commission, as stated in the Declaration we issued on 7 October 2010. They are:

- To obtain the universal abolition of the death penalty: In this perspective, promote the abolition of the death penalty in legislation in those countries carefully considered, particularly in the legislation of the countries that apply a de facto moratorium on the use of the death penalty.
- To promote the establishment of a moratorium on the use and the imposition of the death penalty in all regions of the world, allowing the most widespread and effective implementation of a universal moratorium on the horizon of 2015, with a view to its total abolition.
- To solicit the stop of executions especially in the cases where International Law prohibits or restricts explicitly its application.

I think that we, philosophers of the Asian and African countries, can collaborate in finding the ways to act for abolishing the death penalty in the countries in which still exists and until this happens to collaborate for a moratorium on the death penalty for those who are already sentenced to death. To do this, and hopefully achieve it, is an issue of the relation of each of us with himself or herself, it is not only protecting the right to life of human beings, who are not angels, no doubt. If we are against killing, we have also to be against deciding to kill others by Law, i.e. we have to be against killing unconditionally. If we think that killing is a crime, we should avoid committing this crime by Law.

Note

¹ See: Lars Adam Rehof, "Article 3", *The Universal Declaration of Human Rights. A Commentary*, ed. by Asbjørn Eide, Gudmunder Alfredson, Göran Melander, Lars Adam Rehof and Alan Rosas, with the collaboration of Teresa Swinehart, Scandinavian University Press, Oslo 1992, p. 263-264.