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**THE RELATIONSHIP BETWEEN FOREIGN DEVELOPMENT
ASSISTANCE AND HUMAN RIGHTS PERFORMANCE - A
CASE STUDY OF THE UNITED STATES OF AMERICA,
CANADA, THE NETHERLANDS AND INDONESIA**

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Fulfilment of the Requirements
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Dedicated to:

**My grandfather, parents,
brothers & sisters,
uncles, aunts, cousins,
and the one I really love.**

ABSTRACT

This dissertation examines the degree to which donor countries have attempted to suspend or discontinue foreign aid to the recipients on human rights ground.

Contemporary approaches to human rights in development are represented by both the theory of "Natural Rights" and the theory of "Cultural Relativism". Donors and most of the Western countries, advocate the former and give emphasis to civil and political rights. Whereas most of the recipient countries uphold the theory of "Cultural Relativism" and put emphasis on economic, social and cultural rights. One of the common facets of cultural relativism is the postponement of civil and political rights for the sake of economic development. The basic tenet of this position is that, if economic development has been achieved then civil and political rights will be exercised naturally. Indeed, this is the common conviction in some Third World nations where stability is regarded as the key to successful economic development. Poor treatment of human rights are therefore often a consequence of this conviction in these countries. The advocacy of prevention of abuses of these rights, through the suspension of foreign aid, emerges from this consequence. Another consequence is that, opposition to the "link between aid and human rights" grows largely in the recipient nations.

This thesis, acknowledging the complexity of the issue, sets out to assess the case study of three donor countries; the USA, Canada and the Netherlands. All were, and still are, strong advocates of "giving aid on human rights grounds". The foreign aid flow of these donor countries, each dealing independently with Indonesia as the recipient, is

assessed. The results suggest that, despite the fact that the legitimacy of cutting aid on human rights grounds is emphasized, practical moves in this direction by the USA, Canada and the Netherlands from 1980 until 1995, remain the exception rather than the rule. Though Indonesia's record on human rights has remained deplorable, Foreign Development Assistance (ODA) has continued on the ground. This thesis, finally, suggests possibilities for future improvements of human rights in the recipient countries, particularly in Indonesia, in its recommendations.

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CHAPTER ONE

INTRODUCTION

"...every nation has an obligation to respect the human rights of its citizens and... other nations and the international community have a right and responsibility to protest if states do not adhere to this obligation" (Bilder,1992:3). Given the non - existence of direct enforcement of international human rights law, however, is it right for nations to impose sanctions on others as means of obtaining greater respect for human rights?

1. Background

1.1. Definition

Foreign Development Assistance (aid) and Human Rights have been two much debated issues in the development literature, and are still very controversial. "Foreign aid is defined as encompassing all official grants and concession loans, in currency or in kind, that are broadly aimed at transferring resources from developed nations to less developed nations on development and/or income distributional grounds" (Todaro, 1989:482).

Human rights are classified into two broad groups as developed more than two decades ago:

1. Civil and Political rights. The former include rights such as freedom from slavery and servitude, discrimination, torture and inhumane punishment, and arbitrary arrest and imprisonment; freedom of speech, faith, opinion and expression; right to life, security, justice, ownership and assembly. While the latter covers the right to vote, right to nominate for public office, and right to form and join political parties.

2. Social and Economic rights such as the right to education, work, food, clothing, housing, medical care; in short, the rights ranging from the right to a modicum of economic welfare and security to the right to share to the full in the social heritage and to live the life of a civilized being according to the standards prevailing in the society (Marshall, 1964:72).

The present study uses these definitions.

1.2. Brief History of Human Rights

Throughout the history of mankind, and under traditional international law¹, despite the fact that human rights entitling certain fundamental rights and freedoms have roots in early human thinking, the concept that human rights are an appropriate subject for international regulation has never been put into practice (Bilder,1992:4). The way one government treated its own citizens has been considered its own business and not a proper concern of any other nations.

Such attitudes were broadly accepted until World War II; developments before then suggested, with limited exceptions, the rule that human rights questions were wholly internal. These exceptions included the antislavery movement in the nineteenth century and the adoption of the Slavery Convention of 1926; the concern over the treatment of Jews in Armenia in the Ottoman empire and in Russia; the inclusion in certain First World War treaties of such concepts as the protection of minorities in Eastern Europe; the League of Nations; and the establishment in 1919 of the ILO (Bilder, 1992:4).

Regard for the concept of human rights as an appropriate subject for international

regulation has emerged only since 1945, influenced by the Holocaust and other Nazi denials of human rights (Bilder,1992:5). Numerous international instruments on human rights have been adopted since then.² There was also the establishment of several United Nations (UN) organs and international bodies dealing with human rights such as the International Commission of Jurists (ICJ); the United Nation Council of Human Rights (UNCHR); and the Covenant on both the Civil and Political Rights, and Social and Economic Rights. Many national laws, regulations, and court and administrative decisions have been adopted including those of the new independent states' national constitutions such as those of Indonesia, the Philippines, and Malaysia amongst others. Nevertheless, the concept of traditional international law continues to be upheld. The notion that one country cannot dictate to other countries, pronounced widely among the LDCs, can be cited as one example.

The question of an international position on human rights experienced an unprecedented change in early 1960s. First, following the aftermath of the two previous World Wars and the heightened tensions of the Cold War, there have been regular popular debates in various international agendas and in the UN. The desire to uphold human rights, and hence to discourage the exploitation of people deprived of their rights and freedoms, has become increasingly strong (Tomasevski, 1993:173). Human rights achieved real political recognition and importance (Bilder,1992:3) in the international scene. Second, the rapid growth of the UN membership in these years included the emergence of significant numbers of new independent countries who were deeply concerned with problems like self determination, racial discrimination and, the growing emphasis of human rights, (for instance in Palestine after 1967). This resulted in these

specific human rights issues being given a prominent role in UN policies.

At the same time, there have been developments of human rights issues in the USA including: the increasing debate on human rights in the US Congress; the establishment of a State Department brief to prepare a yearly report on the status of international human rights (McNitt, 1988:89); the enactment of United States Foreign Aid Act in 1961 which made the country the first nation in the world to link human rights to aid and President Carter's decision to include human rights in United States foreign policy (Bilder,1992:6). All these development raised interest in human rights in the USA and around the world. Several Western countries include European countries such as the Netherlands, Norway, and Denmark, continued this action by including human rights notion in their foreign policies (Tomasevski,1993:85-90).

Since the late 1980s, following the dissolution of the former Soviet Union and the disintegration of the Eastern Socialist block there has been a fundamental collapse of the Cold War political stance.³ This collapse has stimulated further development on the importance of human rights in international relations.

The first of these have been, the revival of struggles for minority rights, (these rights have been largely suppressed in modern history); for the right to self determination and for the right to freely exercise either of those principles categorised as civil and political rights or social economic and cultural rights. The second of these developments has been the increasingly international supervision of human rights through the UN, the international human rights bodies and, some individual donor states.

This dynamic shift follows the fact that:

"...the net aggregate in the protection of human rights that a particular individual can achieve today is observably a function, not merely of the operation of social and decision process within any single territorial community, but of the operation of such process within a whole hierarchy of interpenetrating communities - from local, regional, and national to hemispheric and global or earth space" (McDougal, Laswell and Chen,1980:88).

In the mid 1980s, following first; several findings on the severe abuses of human rights in some LDCs, second; several studies on aid effectiveness which highlighted the negative impact of the recipient government policies, third; the adoption of the declaration on the rights to Development (1986) under which various rights (mostly economic, social and cultural) are elaborated into an universal right to participate and share in the benefits of development, and fourth; the collapse of Communism and the eagerness of European and African countries to adopt more open and democratic system governments (AIDAB,1993:2), human rights have begun to be seen as not only important but also as a fundamental requirement in the development of LDCs.

Foreign development assistance (aid) then, is perceived as not only to assist the poor countries but also to improve human rights performance and the rule of law. Countries with a poor human rights record, it is argued, should be excluded from receiving international assistance. "The USA, again, instigated a 'Democracy Initiative' as part of its aid program in 1990, and the UK announced in 1991 that it would increase aid to promote better government" (AIDAB,1993: 3). The Nordic countries, likewise, warned they would decrease or cut aid to governments with a poor human rights record.

Such a progressive move evidences the international recognition of the importance of human rights in international relations. However, despite such developments, there has been a growing debate on whether human rights were to be linked to foreign policy. On the one hand, there is opposition by the less developed countries to donors who wish to link human rights to aid and, on the other hand, there is dispute over the notion of "intervention" by one country (the donor) in another's (the recipient) human rights performances. In exploring this latest development, chapter II will briefly discuss the notion of "intervention" in international relations, whereas the different perspectives on the attempted linkage of human rights to foreign aid will be detailed in chapter IV.

1.3. The Concept of Aid

The concept of "aid" has been defined in several ways such as "foreign assistance", "development assistance", or "external assistance" over the years.⁴

Aid is generally provided through three broad group of donors: bilateral assistance, multilateral assistance and non governmental organisations (World Development Reports 1990: 128). Bilateral assistance describes the type of assistance given by any single donor country to another single recipient country in a direct way and only involving these two countries. Whereas multilateral assistance describes the type of assistance, provided by donor countries, that is channelled through international assistance organizations. Another form of aid is the type of aid provided by either single donor or international assistance organisations, and is channelled through specific NGOs

in individual countries.

The concept of bilateral assistance, used in the present study, refers to the type of assistance which involves each of the following donor countries -the United States, the Netherlands, and Canada- each dealing independently and directly with Indonesia.

Foreign aid origins or "the government-to-government" aid are traced back to the Renaissance, when Italian princes used it as a tool of foreign policy.⁵ In the contemporary sense, aid is commonly termed as Official Development Assistance (ODA). In the early half of the Nineteenth Century development aid had been developed in the form of grants and loans from colonial powers to their possessions. This role, however, was confined to the protection of the financial assets and interests of the colonizing nation abroad.

Aid expanded after the Second World War. The success of the Marshall Plan,⁶ brought optimistic visions that the idea could be tried out on the rest of the world. Specific examples of this were the flow of assistance from the US; to Africa in 1974, to the Philippines in 1988, and to Eastern Europe in 1989.

Aid, nonetheless, has gone through lot of changes in the last forty five years. At first, optimistic visions of the fast economic growth which aid would induce prompted high levels of aid flow from developed countries to the LDCs. The process of decolonization changed this rationale. Aid become conceptualized as a duty for the former colonizers (Tomasevski,1993:31). The climate of heavy disillusionment and

distrust surrounding foreign aid programmes came only after a controversial finding by the Pearson Report.⁷ Evaluations of aid, in that report, differed from the original consensus on the success of foreign aid. In particular it voiced objections, by the recipients; that political leverage was embodied in foreign assistance or that there was a propensity to transplant a philosophy or ideology in foreign aid itself (Milward, cited from Tomasevski,1993:31).⁸

In fact, according to World Development Report 1990 (p.128) foreign assistance, specifically that of bilateral assistance aid tends to be provided for several reasons, - political, strategic, commercial and humanitarian-. Todaro (1989:485) asserts that "there is no historical evidence to suggest that donor nations assist others without expecting some benefits (political, economic, military, etc) in return." Interest shown by perspective donor nations may be steps to out-manoeuvre recipients in order to gain strategic locations in case of the need to exercise military power. Besides that, they may get other returns in the forms of resources, markets, expertise and support at international fora.

The consequence of such an attitude is that the objective of aid; to promote economic and social development; can vary in its actual meaning and motives between donor and recipient countries. The term aid, thus, becomes an increasingly complex and confused term, especially when it is used to mean the resource transfer from one country to another. Some aid for example, may be military or political in nature and have nothing to do with humanitarian purposes or assisting economic development (Todaro,1989:485). This, however, is still deemed as foreign aid. Because of this,

foreign aid is better understood not in terms of its definition, but rather in its objective. In chapter III this thesis will detail specific analysis on the contradictory views of this notion.

1.4. The Linking of Aid to Human Rights

Reference has been made in the preceding sections, to the fact that the end of the Cold War has induced fundamental changes in long-standing international relations. The struggle to restore minority rights; self determination; the protection of environment; and human rights have come into vogue. As far as human rights are concerned, one can identify three development phases.

First, there was the inclusion of human rights and democracy in the provision of some donor countries' foreign policies. For example, the enactment of the United States Foreign Assistance Act in 1961,⁹ was seen as a progressive move because of that donors' commitment to link aid to human rights. Although, until the early 1990s, the merger of human rights and aid was plagued by global disagreements, the argument that development aid had been a means of donors attempting to promote human rights, was widely recognised (Tomasevski, 1993:45). This progressive move coupled with the rising suspicion that aid might help in strengthening the power of the elites to oppress the population,¹⁰ had led also several other countries, such as the 'Like-Minded Group' (the Nordic countries, the Netherlands, Denmark and Canada), to implement strict conditions in their foreign assistance. The decision of the latter, to change their policies so that human rights would explicitly represent a permanent feature of their aid

(Tomasevski,1993:3-4), accomplished a progressive development in the recognition of the importance of human rights in relations between countries.

The second phase has seen the emergence and the involvement of both the international human rights bodies and the international and national NGOs in development in LDCs. This has enabled them to bring attention to very fundamental problems at a grass roots level (Tomasevski,1993:142-143),¹¹ including the violation of peoples rights by their own governments. The participation of these human rights bodies and NGOs in advocating human rights have also been recognised internationally, as "their submission of information of governments human rights records has become an accepted practice" (Tomasevski,1993:163). For instance, Amnesty International (AI) deals primarily with rights of personal integrity, including protection against physical ill-treatment, arbitrary detention, unfair trials, and the imposition of death penalty. Other international NGOs such as the Asia Human Rights Watch (AHRW), the International Commission of Jurists (ICJ), the International Human Rights Law Group (IHRLG), Federation Internationale De l'Homme (FIDH) and several United Nations human rights organs have also played a significant role in promoting human rights in the international arena.

In the third phase, some LDCs, despite achieving rapid economic growth, have been unable to provide adequate access to either civil or political rights for their people. According to this view, in some LDCs, despite the fact that social and economic rights were adequately granted, civil and political rights have been suppressed and heavy handed repression by governments have prevailed. Singapore, Indonesia, Taiwan, China

and some LDCs, for instance, have never scrupulously exercised respect for the rights of their people; and repression by the government characterised many of their state policies (Harland,1993:10-1). Proponents of human rights in developed countries, therefore, consider that civil and political (or human) rights have not gained considerable advances in LDCs.

An outstanding work by one of the United Nations organs, that rendered considerable international impact on future concerns on human rights, was a Report issued by the Economic and Social Council (ECOSOC), in 1982. In its resolution 1982/35 of 7 May 1982, the ECOSOC expressed deep concern about "the occurrence of summary or arbitrary executions, [and] extralegal executions" including death penalties without safeguards against the abuse of capital punishment. Many countries in Africa, Latin America, and Asia include Indonesia were accused of practising such human rights abuses (Rodley, 1988:88). Following this report, several donors reacted instantly by threatening to suspend foreign aid to countries with poor human rights records. Canada, for instance, had stated that a country's human rights record is taken into account when determining the allocation of Canada's development assistance funds, and the channels Canada uses to disburse its assistance (cited in *The Indonesian Quarterly* VOL XXI, No 1,1993). Its Prime Minister states:

"The future is clear, we shall be increasingly channelling our development assistance to those countries that show respect for the fundamental rights and individual freedoms for their people. Canada will not subsidize repression and the stifling of democracy" (*The Indonesian Quarterly*, 1993 :42).

Several other countries of the Like-Minded Group and the USA have also responded in the same way as Canada.

However, despite such a reaction, there has not been yet an uniform criteria among donors to define human rights violations which justify their advocacy. According to Tomasevski (1993:122) the only applicable criteria used to identify human rights violation is that adopted by the UN, which evolved around "the concepts of gross and systematic violations, indicating both the degree of severity (gross) and the scope of violations (systematic)". Donors' advocacy, by and large, encompass the concern for major areas which include: arbitrary detention; torture; use of capital punishment; forced abortion or sterilisation of women; freedom of speech, freedom of religion, (including suppression of dissent); absence of the presumption of innocence; and delayed access to lawyers (AIDAB,1993:8).

This notion, accordingly, implies that donors advocacy is concerned primarily with countries associated with "severe and systematic" violation of civil and political rights, with little or no attention paid to social and economic rights.

In contrast to donor nations, there are three different and controversial attitudes within the LDCs toward the idea of linking human rights to foreign aid. First, there are a few LDCs such as India and Pakistan who have welcomed donor's advocacy by setting up human rights monitoring bodies or other discrete activities (AIDAB,1993:3). Secondly, there are others who, by contrast, reject attempts to link aid to human rights. Instead, they insist that when including human rights in foreign aid policies the donors should also take into account the diversity (differences in cultural values, social economic background and political stability) of the LDCs. Leaders of these countries, for example Indonesia and Malaysia, in addition argue that donors who tie human rights

to aid stress only "extraneous political motives and neglect economic, social and cultural rights" (AIDAB,1993: 3). By this reasoning the judgment of human rights by the West has been very selective, subjective and, politically biased. Third, there are groups in these LDCs including NGOs, individual activists and human rights groups who hold opposing views to those of their governments. For example, there are the political dissidents in China and the or human rights activists in the Philippines and Indonesia.¹² Such individuals and groups hold that international sanction is necessary to pressurize LDC governments to improve their human rights record. The so-called differences in implementation, according to the opponents within the LDCs, are merely arguments used by human rights abusers or governments to justify their illegal actions.

Notwithstanding these contradicting views within LDCs, the issue of rejecting the linking of human rights to aid remains strong on the part of many governments. Official statements either by individual LDCs or through multilateral resolutions, for instance the Non-Aligned Movement (NAM) (which has more than 103 member countries), the Pacific Forum and the ASEAN (which includes Indonesia and Malaysia), assert a strong rejection of the promotion of human rights as a condition in foreign aid. In the last Summit in Indonesia (16-17 June), in 1992, the NAM leaders, mostly of the LDCs, issued the Jakarta message on human rights. It contends that:

"We reaffirm that the basic human rights and fundamental freedoms are of universal validity. We welcome the growing trend towards democracy and commit ourselves to cooperate in the protection of human rights. We believe that economic and social progress facilitate the achievement of these objectives. No country, however, should use its power to dedicate its concept of democracy and human rights to impose conditions on others. In the promotion and the protection of these rights and freedoms, we emphasis the interrelatedness of the various categories, call for a balance relationship between individual and community rights, uphold the competence and responsibility of national governments in their

implementation. The Non-Aligned countries therefore shall coordinate their positions... in order to ensure that the conference address all respects of human rights on the basis of universality, indivisibility, impartiality and non-selectivity" (cited from Bando (ed) (1992:111-112).

This statement, it can be argued, represents the common view shared by most of LDCs. Specifically it reads:

- The acknowledgement of the nature of universality of human rights;
- the emphasis on development and the priority of social and economic rights;
- the refusal to accept other countries (donor) intervention and the rejection on the use of conditionalities;
- the supervision of human rights should be non selective.

The Summit further declared that, "any attempt to use human rights as a condition for extending socio-economic assistance, thus sidelining the relevance of economic, social and cultural rights, must be rejected" (Bando,1992:112).

From the discussion in this section, as far as human rights and aid are concerned, the two different perspectives outlined above identify the conflicting views hold by both the donors and the LDCs. It marks the commencement of an unavoidable confrontation on the debate and implementation of aid and human rights. This includes:

- The principle of natural rights versus the cultural relativism theory.
- The stress on civil and political rights by the West against the stress on social, economic and cultural rights by the LDCs.
- The recognition of individual rights, and of communal or society rights.¹³

- The imposition of sanctions by the West against strong resistance by recipients (Wanandi, 7th Asia Pacific Roundtable 1993:1-2).

1.5. The Intellectual Debate

Academic recognition, despite its limited acceptability, of opposing views on the link between aid and human rights is perhaps best summarised by the growing tendency to differentiate the view of donors and recipients into two separate dimensions.

In practice, developed countries (donors) generally adopt the stance which prompts the LDCs (recipients) to dedicate a high degree of attention to human rights. According to prominent figures of the developed countries, civil and political rights and social economic and cultural rights should be carried out simultaneously. A country, according to this view, should not be allowed to exercise certain rights at the expense of other rights. Being universal, human rights must be exercised not at the expense of other rights.

Whereas some LDCs, being subjected to donors subjugation, argue that economic development takes priority in their development. To pursue development, they add, there must be political stability (Kim, 1986:64-67). There will be no guarantee that the social and economic growth can be achieved, unless a country is politically stable. According to this view, "economic growth and development would eventually lead a nation to political liberalization, popular participation and democracy, and ultimately would generate the promotion of civil and political rights" (Kim, 1986:65). Accordingly, it is

social and economic rights that must be upheld, before civil and political rights. These two different views lead the two sides to adhere to two different and opposing theories on human rights, namely natural rights theory and theories of cultural relativism.

Natural rights theory takes the stance that human rights are rights that belong to human beings at all times and in all situations by virtue of being born as human beings (Donnelly, 1985:8-27). Therefore, no recognition is needed for those rights either from government or any legal system as they are universal. By this reasoning, the source of human rights actually comes simply from being a person or human being. To ask for recognition would reduce human rights and make the state the source of human rights, thereby denying their naturalness (Cranston, 1962:1-3). Hence, human rights are viewed as a matter of international concern or, in other words, their universal nature allows them, in individual countries, to be supervised by the international community.

Opponents of Natural rights theory adopt the Cultural Relativist theory. According to this theory, there is no such thing as universal rights, and the Natural Rights theory ignores the social basis of the individual's identity as a human being, because human beings are the product of a socio-cultural milieu (Polis, 1976:1-36). The implementation of human rights, hence, must be subordinated to the existence of cultural differences within each of the specific nations in the world. In the case of Indonesia (the focus of this study), the government believes that it shares an alternative vision that posits a "cultural relativistic" and developmental position on human rights. This suggests that each culture has its own standards of human rights. Societies can implement human rights only after they have achieved an optimum level of development

(Indonesia Publication/Task Force, June 1993). Recipient countries, despite their internal controversies, generally, as mentioned before, share this view. It follows that, although in principle they acknowledge that human rights are universal and of international concern yet, when it comes to the issue of implementation, the diversity of societies in the world causes the issue to be viewed from a variety of perspectives (Lubis in The Jakarta Post, May 1993).

This section has outlined several basic premises on the development of human rights and foreign aid. It enables us to conclude: that the shift in emphasis in the importance of human rights from traditional international law stemmed from both the growing concern of the failure to recognise "people's rights" and the increasingly international acceptance that human rights were universal (Tomasevski, 1993:163-164); that, the persistent violation of human rights by some LDCs has led several donor countries to adopt human rights as a condition in delivering foreign aid; that, however, there is a strong resistance, emanating from the LDCs (recipients), to attempts to link human rights to aid and finally; that as a result, there has been a growing debate on human rights and aid due to different approaches by both donor and recipient countries.

2. Objectives

2.1. The Relevance of the Study to Indonesia

Indonesia is one of the biggest but poorest countries in the world. According to Human Development Report (1990:78), it is categorised as a low income country.

Thirty million people out of the country's 180 million population still remain below the poverty line. In terms of growth production, according to WDR 1993 (1993:240), Indonesia's GDP (average annual growth) has declined from 7.2% in 1970-1980 to 5.6% in 1980-1990 whereas, in terms of external debt, there were \$73,629 million which still needed to be repaid in 1991, a net increase from only \$20,944 million in 1980 (WDR,1993:278). As a consequence there is a high rate of unemployment and people have only limited access to education, health, and housing. Not surprisingly, Indonesia's annual GNP includes 15% of Foreign Development Assistance (TAPOL, July 2nd 1993). Its main donors, as mentioned, are the OECD countries (Japan, the USA, Canada, and most of Western European countries).

In 1992, a Consultative Group on Indonesia (CGI) headed by the World Bank was set up to replace the Inter-Governmental Group on Indonesia (IGGI) which, prior to that, had served as a multilateral assistance group to the country for several decades. This group was an international group of lenders established in 1967 by the Netherlands to coordinate multilateral aid to Indonesia. Two of its members were Canada and the United States.

Ironically, the IGGI's dissolution was due to its critical stance on Indonesia's Human Rights performance and above all the failure of the Indonesian Government to take action over the Dili (East Timor) massacre (known in Indonesia as the Dili incident of November 1991). The IGGI was regarded as intervening in Indonesia's internal affairs by threatening to bring about the suspension of Foreign Aid. Following this, some NGO, either working inside or outside Indonesia, have been placed under close

government surveillance for being involved in the advocacy of human rights in Indonesia.

The country, therefore, has been subjected to international criticism and has faced the risk of ostracism from countries applying the criteria imposed by the donors. Indonesia's Human Rights performance remains one of the big concerns in the world. It is described as one of the countries where human rights are still vigorously violated and mostly denied (The New Internationalist, 1993:18-19).

Despite its poor human rights performance Indonesia strongly opposes the idea of linking this with foreign development (multilateral or bilateral) assistance. Indonesia, claims to have its own view on the implementation of human rights which is in line with its own concept of development. The view to date remains undefined. On the one hand, it is argued that the people can hardly enjoy their political rights unless their standard of living is improved. This argument goes on; economic development, which is perceived as consisting of three pillars, namely equity, growth and national stability, should be advocated first then the other rights such as civil and political rights will follow.

On the other hand, Indonesia considers the idea of the connection between aid and human rights as inadequate, unbalanced, selective, and to some extent interfering in another state's affairs. Hence, they say, respect towards the sovereignty of countries must be taken into account. Because, in Indonesia's view, though human rights are universal and of international concern, when it comes to their implementation, one must

take into account the differences in social, economic, political and cultural values of countries in the world.

The above arguments explain that Indonesia's stance on human rights strongly emphasises social and economic rights rather than civil and political rights. In other words, civil and political rights were denied in favour of economic development. This shows that in theory, Indonesia's view on human rights adheres to the relativism and trade off theories which are totally different from those of the West which are based on natural rights theory. It then enables us to argue, either in theory or in practice, that Indonesia, being a recipient country, takes the position of rejecting the idea of natural rights theory.

2.2. The Focus of the Study

The main contributors in both multilateral and bilateral assistance to Indonesia range from Japan, the largest donor, to the USA, Canada, the UK, Germany, the Netherlands and others. However, the application of human rights as a condition to aid varies widely from one donor to another. On one hand, some donor countries, such as Japan and the UK, despite condemning the abuses of human rights in LDCs, have never imposed strict regulations on recipient nations. Neither implicit nor official regulations have been made following their condemnation of developing countries' poor human rights record. Within these donor governments, the socio-economic and political interest are embodied in their foreign policies. Such interests are so significant in that they might be reluctant to engage deeply in terms of implementing sanctions or conditions.

On the other hand, there are governments who "have generally been reluctant to antagonize friendly nations by criticizing their human rights behaviour, for instance, the UK and Switzerland; they have typically been willing to raise human rights issues only with respect to either their enemies or certain politically unpopular states such as South Africa under apartheid and Israel" (Bilder,1992:13).¹⁴ Hence Tomasevski argues;

"The conventional human rights action, confined to condemning governments which violate human rights, are all bark and no bite,... The idea sounds good, but its feasibility remains doubtful. All critiques of the practices of linking human rights to aid or trade are based on documentary inconsistency when invoking human rights - economic considerations prevail" (Tomasevski, 1993:3).

Nevertheless, opposition towards preferences for giving aid to friendly but undemocratic nations, has been steadily growing over the past couple of decades. In the USA, for example, the Congress debate has succeeded in halting this long-standing preference demonstrated by previous governments.¹⁵ To a further extent, the attitude of Canada and the Netherlands in 1991 towards Indonesia exhibited similar characteristics.

Actually, the three individual donor countries mentioned above have strictly implemented their advocacy of aid and human rights. They have also changed their policies whereby human rights explicitly represent a permanent feature of their aid. Katarina Tomasevski (1993:3-4) confirms, that the USA and the so-called "Like-Minds": the Netherlands, Norway, Canada and Denmark, are the group of donors who consistently carry out such a policy. Following these considerations this thesis has set out to concentrate on assessing the policy of three main donors. These are the USA, Canada and the Netherlands. While the part of the recipient is represented, as mentioned above, by Indonesia. The reason for choosing these three donor countries in particular

is that:

- a) the three were, and still are, the main donors to Indonesia;
- b) their policies to impose human rights as a condition for aid are formally stated in "An Aid Guidelines Principle and other related government official statements";
- c) pressure by the three donors on Indonesia to improve its human rights conditions were obvious and it has forced the latter to reconsider its policies on human rights;
- d) the three donors can be closely related to Indonesia's human rights development, as their intervention have had significant impact on the overall human rights performance of Indonesia.

2.3. The Purpose of the Assessment

On the basis of objectives described above the study will set out:

- To analyze the debate on "why does the linkage of foreign assistance to human rights have to be made?"
- To analyze the theoretical debate on both foreign aid and human rights over the recent years, and the relevance of this debate to the attempted linkage of foreign aid to human rights.
- To analyze the effectiveness of both the donor's commitment to and action in promoting human rights as a condition of aid.
- To analyze the impact of the donor's intervention in the recipients human rights performance over the recent years, with specific case study of Indonesia.

3. Methodology

3.1. Theoretical Approach

The study will be analyzed through the interpretative approach which is often used in social sciences (i.e. politics, history, anthropology, economics). "This approach places subjectivity at the centre of enquiry calling into question the positivist social sciences" (Oakley and Marsden,1991:318). It relies on qualifiable variables and is suitable to address questions of power, politics and gender relations. In my opinion, this approach has the advantage that it does not primarily focus on the "correct science method" but rather remains flexible and open ended.¹⁶

3.2. Data Source

The character of this study is based on the literature and documentary research. Hence, it explores the secondary data available in the university libraries, public libraries, government libraries and interloan system. It also includes some interviews with relevant individuals (academics and politicians) and institutions (government and non-government) related to the topic's purpose.

3.3. Approach(es) of the Enquiry.

This study assesses the bilateral aid relationship between the following single countries -the USA, Canada, the Netherlands- and Indonesia. It analyses the

effectiveness of the human rights condition imposed by the three donor countries and assesses the impact of these donors pressure regarding, or intervention in, Indonesia's human rights performance over the recent years.

The study will, therefore, attempt to first, describe the theoretical debate on aid and human rights, and analyze its relevance to the present development of aid and human rights issues. This includes an analysis on the corresponding link between both donor's policies (on aid and human rights) on one side, and the flow of aid being given following their advocacy, on the other. To achieve this a compilation of the flow of the three donor countries' foreign aid during the last decade will be examined.

There is however, no theoretically accepted measurement in determining the amount of foreign aid. It is because of the difficulty in separating "what is purely development grants, loans, from those motivated by security or commercial interest" (Todaro,1989:482). The one which is commonly used by economists to identify the amount of aid flow from one country to another is assessed by adding together the amount of money volume of ODA which includes, grants, loans and technical assistance (Todaro,1989:482), either in the commercial or military assistance. The compilation of bilateral aid flow in this study follows the above method. This is aimed at, easing the identification of the flow of aid thus, assessing the relevance of donor's advocacy and commitment to apply human rights as a condition in their bilateral aid.

In the second place this study will situate the position of Indonesia over the implication of the link between aid and human rights. This will be accomplished through

a qualitative analysis of the country's legal instruments; Indonesia's performance on human rights (with emphasis on areas of donor's concern namely, civil and political rights); steps undertaken by the country to improve its human rights performance; and the relevance of donor's commitment to Indonesia's human rights performance. The analysis will stress qualitative rather than quantitative aspects. It is not the aim of this study to try to test any hypothesis which is beyond its scope. Rather, it will be primarily a critical, and in-depth analytical description of the subject from both a theoretical and a practical point of view, on the basis of the secondary data available and complementary primary data collected.

3.4. Organisation of the Thesis

The thesis will be organised in the following structure: First; the introductory chapter. This describes the historical background of attempts to link human rights to aid, the objectives of the study and the methodological approach used in this study.

Second; a review of the literature in Chapter Two, which presents a framework of thinking. This chapter examines the theoretical debates on "what aid is for". The discussion ranges from debates on the moral ground up to the current developments in theoretical debate either from modernisation theory or dependency theory. This chapter will subsequently present a discussion on human rights development. This will comprise debates on two major theories on human rights (natural and relativism theories) and critiques of them. The position of human rights in international law also will be discussed in order to assess the "legacy of intervention" in international relationships

among countries.

Third; Chapter Three, will describe the objective of both donors and recipient on aid. This includes an assessment on both the effectiveness and the profile of aid from donors to the recipient in practice.

Fourth; Chapter Four, presents a debate over the issue of aid and human rights in Indonesia. This will be followed by a description of the role of NGOs in the development process including their role in promoting human rights worldwide. The last section of this chapter highlights several experiences on the effectiveness of linking aid to human rights in some developing countries.

Fifth; Chapter Five. This chapter interprets the effectiveness of the "human rights as condition". It presents several studies on Indonesia's human rights record and how donors' intervention (the international reaction and pressure) have helped shaping Indonesia's human rights performance. A compilation of the flow of aid from the three donors (the USA, Canada and the Netherlands) from 1980-1995 to Indonesia will be presented. This is aimed, as mentioned before, at assessing the corresponding link between both donor's (the USA, Canada and the Netherlands) policies and their action in imposing strict measures on recipients with poor human rights record. Several studies on recent Indonesia's human rights development in response to donor's attempted linkage of aid and human rights will be highlighted as a means of substantiating the conclusion I will arrive at.

Finally; Chapter Six. On the basis of the above assessments, the discussion in this thesis will be concluded by presenting "findings" based on the main questions proposed; "have the donors' commitment to link aid and human rights been met? Have the recipient countries'(Indonesia) human rights performance improved with the intervention by donors?" This thesis, lastly, will make some recommendations to both donor and recipient for future actions on the attempted linkage of human rights and foreign developmental assistance.

4. Notes

1. Traditional international law must be differentiated from contemporary international law. In the former only states are subject to it, whereas under the latter even individuals are subject to it and have the right to complain to states or other governments, if their rights are violated (**Bilder,1993:21**).
2. These are, the UDHR in 1948; the Helsinki Accord on Human Rights; the Standard Minimum rules for the Treatment of the prisoners in 1957; the Declaration of Religious Intolerance in 1981; the Human Rights Committee established under the Covenant on Civil and Political Rights; and other decision and actions by United Nation organs and other International bodies (see also the appendix).
3. While there is not yet a common global phrase to define the new international relations since the end of the Cold War, the reality is that we have already begun our pursuit of a new World order (**Takeda,1993:3**).
4. Foreign aid is characterised as: (i) its objective should be non commercial from the point of view of the donor; and (ii) it should be characterised by "concessional terms"; that the interest rate and repayment period for borrowed capital should be "soften" than commercial terms (see also **Bhagawati,1972:72-73**).
5. For a description of the early history of aid see D.K Das, 1986 "**Migration of Financial Resources to Developing Countries**", Macmillan - London.
6. In late 1949 under the Marshall Plan aid was aimed, by the USA, at restructuring the war-torn economies of Western Europe, following the end of the second World War (**Todaro,1989:486**).
7. The Pearson Report named after Lester Pearson, the former Prime Minister of Canada who chaired the Commission to study the consequence of the twenty years of development assistance, asses the results, clarifies the errors and purposes the policies which might work better in the future (cited from **Mall,1969:vii**).
8. In the contemporary jargon, it is called conditionalities.
9. The enactment of this act passed by the Senate and House of Representative in the USA in Congress assembled 1 June 30, 1961. (see the United States at Large, **87th session 1961 and Reorganisation, Plans, Amendment to the Constitution, Vol 75**. United States government printing Office, Washington.
10. The experience of President Marcos of the Philippines, Duvalier of Haiti and, Pinochet of Chile in misusing international aid can be cited as examples.
11. Apart from country to country or multilateral type of aid, the UN has broadened the concept of eligibility for aid to include non governmental and, even anti-governmental actors (**Tomasevski,1993:143**).

12. Unlike the government views, in my interview with 2 human rights activists in Indonesia, Goenawan Moehamad and Mulya Lubis, they say that Indonesia's human rights record must be taken into account by donors in giving aid.

13. The concept of 'communal and society rights' will be detailed in chapter Two.

14. While exceptions can be found, examples of gross violations of human rights such as Idi Amin in Uganda; Cambodia under Pol Pot; and Indonesia under Soeharto, they have often been ignored (further exploration see **Hannum Chapter One**).

15. For example, The Senate Committee passes "Feingold Amendment on Indonesia" in 8 September 1993 called for linking military assistance to Indonesia to the improvements in the human rights situation in occupied East Timor (**the USA embassy, Wellington NZ 1994**).

16. My statement does not imply that the scientific method is unnecessary. It rather implies that the flexibility of this method allow me to asses and interpret without remain locked in cultural relativity (**Marsden and Oakley, 1991:324**).

CHAPTER TWO

THE REVIEW OF THE LITERATURE

This chapter reviews the literature of foreign development assistance, the human rights debate, and discusses the notion of intervention. First, it will present arguments on the foreign aid debate. This presentation relies, to a large extent, on the summary provided by Riddell and covers debates on moral and theoretical aspects of aid and criticisms of these debates. Second, with regard to human rights, the debate between natural rights versus cultural relativism theory will be explored and finally, this chapter will conclude by discussing the notion of intervention in international relations as a means of providing grounds for further analysis in this thesis.

1. The Foreign Aid Debates

Foreign aid debates in the literature of development range from the whole spectrum of disciplines in the social sciences to the philosophical arguments (concerning its moral or ethical dimension) and criticisms of aid itself. Most of the literature on this subject is produced and developed by writers from the developed countries, including most of the donor states. However, the impact of the view of some writers from developing countries have also been significant. The realities of the "development process" and later on "duties to help the poor" (this notion will be explained later), have provided them with much of the necessary material to build theories, irrespective of the likely impact that may result from their approach. This section will emphasis four

aspects of the subject: 1) the moral aspect; 2) criticism of the moral aspect; 3) theoretical debates; and 4) critics of aid.

1.1. The Moral Aspect

Most governments and supporters of aid have accepted, since the launching of aid from the US via its Marshall Plan, that aid should be given on some sort of moral grounds (Hogan,1988 :27). Several moral arguments have been expounded by donors though they are not necessarily compatible to each other. Some appeal to the "duty of human solidarity" and "human dignity" as in the Jeanneney and the SIDA Report, others make the appeal on the grounds of quality, needs, and helping the poor. Riddell (1987:3) classifies these different types of criteria to include: human solidarity, alleviation of misery, needs, a sense of equality and the recognition of a newly created international community.

However, from the 1970 onwards the dominant theme was "the rich have a duty to help the poor" which was influenced by the "basic needs approach", an approach coined by the ILO (International Labour Organisation) aimed at providing necessary needs (food, shelter, clothing) for a minimum standard of living (Todaro,1989:615). On the nature of a moral ground or a moral obligation which serves as the basis and the starting-point for action for most donors, six different variables can be identified:

First; the Christian Faith. This is basically derived from a theological argument with its basis in the Bible, and from writings and documents from church authorities.

For example, those within the Catholic Church, such as Thomas Aquinas in his *SUMMA THEOLOGIA* II-III, written over 700 years ago and the recent *Populorum Progressio* of the Second Vatican Council in the late 1960s which outlined, "the obligation of states to help to relieve the problems of underdevelopment which stem from a brotherhood that is once human and supernatural" (1967:Nos 43, 44 and 48)¹

Another more recent perspective was expounded by Pope John II in his widely quoted 1988 Encyclical letter - "Sollicitudo Rei Socialis" (the social consensus of the Church). It urged the developed countries not to suffocate or hamper the economies of the LDCs, rather to help to relieve the latter's economic and social burdens (Todaro,1989:80).

Second; the Human Good. According to Nigel Dower, the human good, is concerned with "accepting as fundamental the principle of promoting the human good, which, ought to be done by all those who are in position to do so" (Dower,1983:3). To do that requires an understanding of what is being human and what is needed for human well-being. From this arises a "basic moral right to life and the condition necessary for it", and it is on this basis that he argues the rationale for official aid. Once one has accepted the principal of human good, one should not discriminate between different people in different countries, and those living in affluence should be concerned and help the poor and deprived in the Third World (Riddell,1987:18).

Third; Needs. Need is basically regarded as a principle of justice, that is, "to each depending to his/her needs" (Riddell,1987:19). Among several needs-based theories

of justice expounded in the history of aid delivery one is the famous "needs=harm" theory. The core of this theory is, when one thinks of needs one should also think of harm the person will suffer if those needs were not met. Harm is actions that hinder the development of a person's "plan for life" (Miller,1976:139-1). There are two types of approaches if the life plan is to be fulfilled: essential and non essential. The former approach includes eating foods which are necessary to support the plan of life. Furthermore, one needs to know the relationship between a person's needs and his/her plan for life (Miller,1976:133). Therefore the duty to help the poor, in the Third World, is based on a comprehensive understanding of what the essential needs of the people in that part of the world are and "the obligation to provide the incumbent to those who have resources in excess of their own basic requirements" (Riddell,1987:20).

Fourth, Utilitarianism. According to Riddell (1987:21) this argument rests on the view that the ultimate justification of any action over and against all other actions is that it produces the greatest amount of happiness. An illustration of the above argument is a dollar distributed from a rich man to a poor man detracts the slightest utility compared to what it adds, and therefore it increases the sum total of utility. The "act utilitarianism", developed by Lyons, states that "an act is right, only if it produces a greater amount of happiness than any other alternative". The implication of this argument for the Third World is, more happiness will be created by providing resources, even to those whose basic needs have already been met (Lyons,1965:25-27).²

Fifth; Rawls Contractual Theory of Justice. The core of this theory states that "it accepts and recognizes that not only do people have rights to life but also that people

have rights to the resources necessary to create the conditions for a basic life, even if acquiring these resources entails the extraction of these resources acquired otherwise legitimately by others" (Riddell,1987:23). The advocate of this theory, John Rawls, an American philosopher criticises utilitarianism for falling to answer certain important questions. In contrast with the utilitarian theory, he argues, that the poor should receive the resources by right, irrespective of the effects on the happiness of those affluent whose resources are taken away from them. In this sense, following the interpretation given by Hirsh (1977:134), Rawls brought back the moral issue into both economics and politics (Maia,1993:7).

Sixth; Rights, Deserts, and Entitlement. By rights, it is meant that; if the people have the right to life they should also be provided with all those means which are indispensable to continue the right to life. In this sense it means, if Third World countries are incapable of providing the means of subsistence for all their inhabitants, while other nations can do so, then the latter have the obligation to do so. This concept has many similarities with the "needs" concept presented earlier (Riddell,1987:27).

Deserts, or justice-as-justice, argues that due to past injustices stemming from political domination and economic exploitation, the industrial countries are now in comparative affluence. As a consequence of justice, the LDCs have the right to claim resources in accordance to their respective contributions and efforts. The sense of this argument, arguably, links the obligation to help only to the degree of past transgression, and any compensation given should be proportional to the losses suffered by the LDCs in the past (Ruttan,1989:415).

Finally, entitlement argues that, due to the uneven distribution of natural resources in this world, those areas which are more favourably endowed have an obligation to help those less favourably endowed. This argument, although it might hold in certain cases, can be hardly sustained when challenged seriously (Ruttan,1989:415-6).

1.2. Critics of the Moral Aspect.

Three broad groups of critics, following Riddell, of the moral aspect can be identified: first those who question the very purpose of the essence of aid provided by government to the Third World, and who strongly reject aid delivery which is based on moral ground (1987:25). For instance the modernisation theorists. They argue that aid is needed in the Third World in order to help these countries economically. There is no any moral obligation attached to aid.

The next group, consists of economists and writers concerned with Third World development. Leading economists like Friedman, Seers, Myrdal, Lapre, Bauer, and Kraus, are part of this group. Their main criticism states that, though to help the Third World is basically a moral obligation, government aid cannot and will not achieve the objectives of development (Riddell, 1987:25).

The last group argues that moral questions; such as alleviating poverty, efforts to narrow development gaps, distribution of income and the like, are irrelevant as, according to them, there are more legitimate principles upon which governments should base their aid programs. Their arguments predominate in the official and semi-official

documents in the Reagan administration of the US. This group consists of those critics who reject the view that some nations can make moral judgements about other nations beyond their national boundaries (Riddell,1987:25-26).

Reviewing the first group of critics, several major weaknesses in their arguments can be advanced. Their criticisms try to explain justice through narrow explanations, emphasizing merely economic arguments, which are actually a distortion of (social) justice and can be understood as "to each his due". They comprise three elements: "to each according to his right, to each according to his deserts, and to each according to his needs" (Miller,1976:151-152). Furthermore, they argue that the moral obligation to provide aid rests merely upon the obligation to help or to correct the past injustices. These obligations can be based on each of the three elements above. However, the argument against the moral obligation to help can never be totally accepted as the consequence of its reductionist nature (Maia,1993:9).

The second group of critics comprises writers from the right, the left and the centre, who all admit to a common ground; the need to help the poor, but who in many ways differ as to the means of achieving this goal. For those from the right, aid seems to retard the improvement of people, because it impedes market forces acting freely, a necessary condition of the capitalist economy (Friedman, cited in Riddell, 1987:46).³ They argue that, overwhelmingly, government intervention benefits only the ruling elite in the Third World by creating and strengthening corruptors and dictators. Kraus even notes that not only government-to-government aid should be stopped but also aid channelled through multilateral agencies because "if economic growth succeeds then

poverty will take care itself" (Kraus,1983:172). In this sense according to Riddell, it implies that there is not only not a moral obligation to provide aid, but also, an extremely strong moral imperative not to provide aid (Riddell,1987:48).

The argument from the left was more extreme: foreign aid is irrelevant to the poor. What the poor actually need is to direct the development process compatible to their own interest (Lappe et.al:11-12). According to this view, the market forces cannot and will not play an essential role in development. This, it adds, is totally an unacceptable argument for them because market process is the one which constitutes the core of the problem. Intervention,⁴ is a necessary condition, but intervention in the form of foreign aid is intolerable, because, in the words of Mende, it only "lubricates the market" (Riddell,1987:52).

Writers for those of the centre, represented by Gunnar Myrdal and Dudley Seers, in 1950 and 1960, argued that aid was good for the Third Nations. Nevertheless, from 1980s onwards these two became increasingly sceptical about the usefulness of aid which led them to criticise the Brandt Report for exploiting the meaning of aid. Both maintained their original position, with regard to the moral obligation to help the poor, but only on the condition that donors should be absolutely sure that aid would be used only for elementary needs in a really poor country. They did not totally abandon aid as did those of the left, but disagreed with the Brandt Commission idea to increase aid volume, as this, in their view, would only produce more negative effects (Riddell,1987:53).

According to Streeten (1984:116-7) both groups of critics are opponents to each other concerning the role of the market and their views on the state's role. Nevertheless, both have a mutual agreement that the ruling government primarily deals with the alleviation of poverty but, conversely, also uses its influence to destroy the very objectives of development.

The last group of critics, whose position is based on perceived "self interest" can be divided into two broad groups: those who believe in the principle that government action beyond national borders should be exclusively guided by considerations of national interest, and the next, a more extreme view, that moral obligation is absent beyond national borders at all. The two ideas conclude that there is no moral obligation to help the Third World in general or poor states in particular (Riddell,1987:61).

Leading writers of "the national self interest position" point to the foreign policy orientations of some major western countries such as the US and Britain whose aid was aimed not only at restructuring the economies of LDCs but also expecting some benefits in return. Although some recent comprehensive analyses of the development show the waning of the national self interest criteria of several donors (Riddell,1987:61), it remains questionable. As we will see later in the elaboration of foreign interest in aid delivery, the above notion, to a large extent, remains undiluted.

The second argument of the national self-interest group is based on the claim that there is no international moral community in this world. Though they agree about the degree of interdependence among countries this is perceived as material fact whereas

community is a moral fact. Official aid, moreover, is to be seen more as charity rather than as a response to a moral duty (Hoffman,1981:151-2).

The different views on the national self interest criteria discussed above, leave no doubt that the real world is no more complex than the pseudo-dichotomy of either moral or national self interest criteria (Maia,1993:13). A quick look at the above shows that most governments based their actions on shared beliefs of universal values. Hence it can be argued, with the increasing decline in the economies of many of the Third World nations, it is in the interest of the developed (donor) countries to help the latter to prevent mass deterioration. If these economies are neglected, they will inevitably extend a negative effect to the industrialized countries in this increasingly interdependent world (Riddell, 1987:68).

The second type of national self interest notion is based on the assumption that the concept of sovereignty is an absolute mandate, and each state owns the rights to pursue its own interest within its own border. Two questions can be raised regarding this. First, to what extent is the concept of absolute sovereignty true, and next, do states have any obligation beyond their borders?

With regard to the first question there is little doubt that certain restrictions imposed in interest of the international community are accepted by all states, thereby limiting their degree of sovereignty. And the proliferation of transnational cooperations, international associations and cross-country grouping in today's world also indicate how relative the concept of absolute sovereignty has become.⁵

With regard to the second question, this can be argued from the view of dominant moral values which prevail and contain universal values that are not confined to national borders. More extensively, it can also be applied to the international community (Maia,1993:15). Indeed, increasing international consensus since the end of the second World War over several issues of human rights reveals clear evidence of the increasing acceptance of a common ground among nations (See Bangkok Declaration, 1993:April 2nd). The influence of international human rights organisation such as AI has been very substantial in some societies (possibly all over the world). In addition several norms and principles debated at the international level are having, and creating impact on, domestic and international moral perspectives (Maia,1993:15). This thesis, as we will see in the discussion of the notion of "intervention" bases its arguments to a large extent on the basis of the above arguments.

To conclude; whether national borders still are, or are no longer, a barrier, the question whether governments are to pursue their moral obligations towards poor nations who suffer from starvation, human rights abuses and other form of deprivation, remains debatable. Finally, the national self-interest argument, while indeed carrying some appeal, does little compared to the moral case for aid.

1.3. Historical and Theoretical Debates on Aid

The origins of economic aid can be traced back to the Renaissance, when Italian princes used it as a tool of foreign policy. Prior to World War I aid was given to colonies by their masters in the form of grants and loans, thereby assigning the funds

to the development of infrastructure for the benefit of the exploiting country. In the contemporary sense, development aid is defined as ODA⁶ (Official Development Assistance) and has remained so until this century.

1.3.1. *Historical Debates*

The historical event, in the modern era that had a major impact on aid relationships among countries was the Marshall Plan which was devised in the post-war period for the recovery of Europe (Hogan,1988:27). Foreign aid since then has become an increasingly important facet of international relations and there has been widespread acceptance that aid is an essential ingredient for accelerating development. With the success of the Marshall Plan,⁷ aid expanded, initially along two parallel but unrelated tracks. The aid schemes set up previously by the colonial powers in their overseas territories continued, while the idea of Marshall Plan was to be tried on the rest of the world (Tomasevski, 1993:30). Nevertheless, it became obvious that in the 1960s aid did not work as was hoped.

The multiplicity of donors' policies, aims and methods created a bewildering structure which kept changing overtime. So a coordination was attempted with the establishment of Organisation for Economic Cooperation and Development (OECD), whose Development Assistance Committee (DAC) remains the main organ to coordinate aid policies, to supervise donor performance, and to be the source of official information on international aid flow.⁸

Nevertheless, the 1960s was a period of transition, and aid flows diminished. The demand for a balanced trade-and-aid policy to assist the development of the underdeveloped countries reached a crisis point (Tomasevski,1993:31). The climate surrounding foreign aid programmes, following the Pearson Report,⁹ released in 1969, "is heavy with disillusion and distrust" (Mall,1969:3-4). Furthermore, aid coordination has not expanded commensurately with the growth of aid or the increased number of donors. As a consequence:

"The recipient countries started voicing doubts as to the appropriateness of aid and opposing political and commercial strings (conditionalities; to use in the contemporary jargon) attached to aid" (Tomasevski, 1993: 31).

Moreover, aid's definition and the actual meaning and motives attached to it varied from donor country to donor country as did multilateral development agency assistance. The differences in attitudes and motivations between donors and recipient countries, are therefore inevitable and make aid remain a complex and confusing term (Todaro,1989:485). "Many of these, in the contemporary sense, may be military and/or political in nature and have nothing to do with economic development" (Todaro,ibid).¹⁰

"The sustainable, equitable, poverty-alleviating and environmentally sound development remained in the realm of rhetoric. The crisis-driven reform of produced aid conditionality, the conditioning of aid in developing countries, and the crisis producing reforms prompted widespread criticism of aid" (Tomasevski,1993:32).

1.3.2. *The Theoretical Debate*

Conventional aid theory, applied to industrial economics, can be traced back to

the origins of Keynesian economic growth theory. It basically challenged the neo-classical economies which emphasised the need for state intervention in the economy. It provided the basis for arguing that intervention in the economy can help. Keynes, furthermore, argued that "economic stability and a full employment level of output occur... only in very particular circumstances... and without state intervention, unemployment will be the rule rather than the exception" (cited from Riddell,1987:86-7).

Keyne's basic idea was then developed more extensively by Harrod and Domar through the introduction of the concept of the capital output ratio and the assumption that this remains stable over a specific time period. Their contribution to aid and development debate is a dynamic model of development susceptible to policy influences (Todaro,1989:488). It was Walter Rostow, in the mid 1950s, that explicitly elaborated Keynesian growth theory. He is regarded as the link between the politics and economics of aid, because this theory was closely associated with specific political ideology.¹¹

Rostow's ideas, despite a lack of acclaim in economic circles, nevertheless exerted a strong influence over a large number of decision makers. For example with the theory of "the stages of economic growth" or the "take off into self-sustaining growth" (Rostow,1961 :39-40). In the contemporary context, this theory explains how LDCs can achieve the take off to self sustaining growth and join the community of developed nations (Riddell, 1987:87-8).

Rostow then proceeded to explain the three conditions for the take off; first, the need for a significant increase in the rate of net investment; second, the need for a high

rate of growth in one or more of the manufacturing sectors, and finally, there should be an institutionally favourable environment to transmit the impulses created by growth to the whole economy (Rostow,1961:44). He gives a critical role to economic aid when it increases the investment rate and accelerates the process of economic growth. However, in his view, aid is needed only in the period of take off, that is, between 10-15 years (Milikan and Rostow,1957:54). Despite Rostow's efforts, he fell short of elaborating his economic ideas regarding the role of aid in Third World development. This was left to Holis Chenery, and Alan Stout who argue, that aid contributes "by relieving certain specific bottlenecks inhibiting domestic growth model and development, and in filling this role it increases the efficiency of the domestic resource base" (Chenery,1966:680-681).

Their model is basically, characterized by two different kinds of gaps: first, the investment limited growth gap, in which skills and savings are in short supply; second, the trade limited growth gap, characterized by short supply of foreign exchange because of lower export earnings vis-a-vis import needs. Foreign aid, within this model, is perceived as helping to bridge the two gaps at the different stages of development, until the self-sustaining stage is achieved (Todaro,1989:488). However, both writers have been careful to avoid making any suggestion of mechanistic or automatic changes derived from their model because they lay great emphasis on the operation of domestic policies within which external flows are inserted (Riddell,1987:90-1).

By the end of the 1960s and late 1970s the growth oriented theories of the past failed to develop the optimistic view that aid can help to accelerate development

(Maia,1993:19). The situation for the poorest groups deteriorated because of the failure of the so-called trickle-down effect. Some evidence seemed to show that aid led to a widespread slow down of the development process.

In this prevailing situation, two responses were advanced: The first, emerged from disillusionment with the development strategies of the 1960s and their justification for providing aid. Its emphasised concern for the growing problems of poverty. The second, while acknowledging past failures in development, sought ways to start rebuilding it again (Riddell, 1987:94).

1.4. Critics of Aid

Aid has been criticised for various reasons. A study done by OECD/DAC for more than twenty five years of development said, "An aid agency that claimed to have no failures on its books would be either lying or admitting that it had evaded hard jobs" (OECD Report,1985:253). Criticism came from both the left and the right. First the critics of the left.

Leftist critics of foreign aid can be classified as: the *institutional pessimists* and the *structural theorists*. The former direct their criticism towards recipient governments by concluding that "the interplay of power and economic interests prevent them from utilizing the aid provided in a manner conducive to poverty alleviation in their countries". The latter while agreeing with the former, suggest that aid is part of a structural relationship between rich and poor countries which has evolved over time to

underdevelop the Third World (Riddell,1987:131).

Seers and Myrdal, among the institutional pessimists, raise two important assertions from their assessment of recipient countries: firstly, aid only benefited the corruptors in the Third World and, secondly, as the first reason prevails it is not the poverty that is to be fought but, on the contrary, aid will only sustain the masses in a state of deprivation (Seers and Myrdal,1982).

Among the structural theorists are writers like Jallee (1968), Hayter (1971 and 1981), Wood (1980) and the twin famous writers on Dependency Theory, Baran and Frank. These writers see the underdevelopment of the Third World as a result of capitalist exploitation. Aid forms a part of capitalist exploitation (Jalee) whose basic objective is to preserve the capitalist system in the Third World (Hayter). Aid then is blamed for tolerating a high level of the misappropriation of aid funds and corruption (Tomasevski, 1993:38). According to the "dependistas" aid is an instrument used in the relationship between the metropolis (donor) and the satellite (recipient), and functions only as a catalyst of the previous process of underdevelopment. Aid, therefore, is not part of solution, but rather the source of an inevitable impoverishment of the Third World (Riddell,1987:135-6).

As a solution to the aid failure, some writers suggest greater emphasis on redistribution to uphold growth strategies, while others contend a radical and fundamental restructuring of wealth is required. The more radical approach was expounded by Frank, that is, to break all relations with the centre through a proletariat

social revolution and to become self-reliant (Frank,1969:149-161).

The criticism from the right ranges from the most extreme to the less extreme *laissez-faire* theorists. Extremist rightist critics reject all form of aid, because the latter is regarded as a form of intervention channelled to recipient countries. Aid, in this view, obstructs the free operation of the market, distorts the price system and impedes private sector development (Bauer,1979:239). The next group, however, favour the type of aid that is directed at the expansion of the private sector within a framework of gradual lessening of government intervention in the economy, i.e. in the context of declining overall aid flows (Riddell,1987:157).

Economists like Friedman, Bauer, Yamey, and Kraus shared the view that "because economic development is best promoted by extending and expanding the penetration of market forces, then aid, as presently distributed and channelled, should be reduced or, better, eliminated" (Bauer,1979:239). The most justifiable assertion for this argument, it is argued, is to be the case of the Newly Industrialized Countries (NICs) of East Asia. The NICs successes were attributed to their exclusive reliance on the market and to minimal state intervention. However, a careful analysis of the economic development of those countries reveals that there have been "effective" highly interactive relationships between the public and the private sectors characterised by shared goals and commitments embodied in the development strategies and economic policies of the government (Bradford,1986:123). Evidences, somehow contrary to the expectations of the advocates of the *laissez-faire*, show the private sector simply failed to undertake investment opportunities offered to them by the state, even though they

were conducted under a protected and privileged position in the market. For example, the experience of Singapore in 1960s. The conclusion therefore suggests that, despite the success of private sector investment in Taiwan and South Korea, the claim of the *laissez-faire* theorists, that free market policies and greater reliance on the private sector leads to successful development, can be by no means interpreted as the key for the success of the NICs, because it has, indeed, failed in some of these countries.

The other recent criticism in vogue is regarding the neutralism of aid. Aid has been severely criticized for the meaning and motives attached to it (Todaro,1989:485). There are two interpretations of the motives for aid. First, aid is criticized as being a tool to exercise the donors' political interest in the Third World, known as the "security approach" (Todaro,1989:485). The other interpretation is that, aid has been used by donors as a condition to pressurize the Third World nations to meet their requirements (Alatas,1993). The two arguments carry with them the interpretation that, human rights have also been used as a motive or condition implemented by donors to prompt the developing countries to exercise the interest of the former. However, to the extent that these criticisms have been acceptable, on what ground do these criticisms rest their arguments? These questions can only be understood in terms of looking closely at two different perspectives on the debates on human rights; from the point of view of both developed and developing countries which will be argued in the next section.

2. The Human Rights Debate

Human rights theorists, as briefly illustrated in chapter One, tend to vary between

two opposing ends of the spectrum: first, those who believe in "natural rights": and second, by those who believe in "cultural relativism" (Lubis,1993:15). The next section of this chapter will concentrate on discussing the pros and cons between the natural rights versus the theory of cultural relativism as means of providing grounds for further discussion in this thesis.

2.1. The Natural Rights Theory

According to natural rights theory, human rights are rights that are inherited by all human beings, by virtue of being born as human beings, regardless of either time or place (Donnelly, 1985:8-27). This definition drew, above all, on the philosophy of John Locke and the traditions of the "Glorious Revolution of 1688", with its Act of Settlement and Compromise, non-Individual, Bill of Rights and, to a lesser extent, both the Declaration made by the thirteen states of the USA¹² in July 1776 (Kamenka,1977:1-2), and the UDHR, adopted by the UN in 1948. As stated in chapter One, they include the right to life, liberty and property. In Cranston's (1962:1-3) view the source of human rights obviously comes from being a person or human being. No recognition, therefore, is needed for those rights whether from the government or from any legal system as such rights are universal. Hence a formal recognition would inevitably reduce the genuine value of rights to legal rights, thereby denying their naturalness (Lubis,1993:16). Being natural and universal, human beings possess the rights to be independent, free and also the right to reject their "ordered hierarchies of natural and transcental plan". This means, man's natural rights could be counterposed to rights granted to him by the state where he lived, or even to reject the state and its arrangements (Kamenka,1977:7). In

this sense, human rights would become the so called "citizen rights" (Donnelly,1985:24-25).

These concepts of human rights, from the "natural rights" perspective, contain the notion that the authenticity of governments derive mainly from the authority and the consent of the governed, and that each individual, as an independent entity must be understood to possess certain rights that cannot be taken away as she or he is beholden to no human authority (Orwin and Pangle,1984:2). The Eighteenth and Nineteenth century social philosophers such as Locke, Montesquie, Rosseau and Kant, among others, developed the very idea of natural rights which shared and prevailed in the minds of many in the west (Orwin and Pangle,1984:2). Not surprisingly, Cranston argues that, the legacy of natural rights theory is enshrined in almost all human rights instruments throughout the American and European continent (Cranston,1983:33).

The right to life, liberty, property and later "the right to security and to resist oppression"¹³ are the core of the natural rights theory. From these, according to Todung Mulia Lubis (1993:17) emerged other rights such as the right to associate, the right to express ideas, the right to religion, the right to free movement and several other rights that are regarded as "civil and political rights" .

"These rights are independent of the state and, as such, are universal in character, being applicable to all human beings irrespective of other geographic location" (Lubis, 1993:17).

They, are therefore regarded as the inalienable rights of every human beings. The state is entitled to support these rights but its support should not add anything substantial

to both the authority and force of natural rights (Lubis, 1993:17). By this reasoning, as mentioned in chapter One, the proponents of contemporary natural rights argue that human rights are universal and a matter of international concern. This notion, likewise, ignores the claim by international traditional law that human rights are wholly internal, instead calling for an international supervision on the abuses of human rights throughout the world irrespective of geographical location.

2.2. Critics of the Natural Rights Theory

Critics of "natural rights" theory derive from both ends of the broad spectrum represented by the positivist, cultural relativist theory at one end and the Marxist doctrine¹⁴ at the other. Among the positivists are Burke and Jeremy Bentham. Burke strongly rejected what he termed, "metaphysic rights", within the notion of natural rights. He believes that the natural rightists have:

"Illegitimately abstracted the individual form of society, cast men adrift from the moorings of history and tradition and put irresponsibility and arbitrary authority in place of the sober judgment and serious involvement in the affairs of state that rested on the great estates of realm" (cited in Kamenka,1978:10).

Bentham while insisting that there are other rights before and outside the society, claimed that "natural rights are simply nonsense natural and imprescriptible rights, rhetorical nonsense, nonsense upon stilts" (cited in Manelly,1981:223-234). Rights, therefore, should be created and granted by constitutions or laws because, according to positivists, natural rights belong to the difficult, often vague and confused class of rights. Rights, they added, must be empirically legal, with their existence established by legal

arrangements, codes and decisions or past and existing customs and traditions (Kamenka,1978:10).

The second criticism comes from the "cultural relativism" proponents. In their view there is no such thing as universal rights. The emphasis on universality is an imposition of one culture on another and ignores the social basis of an individual's identity as a human being. For them, natural rights are merely the product of the imperialists of the west (Polis and Schwab,1976:33).

A human being is the product of some social and cultural milieu and different traditions of culture contain different ways of being human. In contrast to natural rights theory, this notion implies that, rights that belong to all human beings at all times and all places would be the rights of "desocialized and deculturized beings" (Milne,1986:4).

The American Anthropology Association¹⁵ had also stated that due to the great number of states in the modern world, and their diversity in ways of life, if the declaration of the Rights of Man is to be proposed, it must be applicable to all human beings and not conceived only in the terms of the values prevalent in the Western Europe and America (cited in Lubis, 1993:20). Julian Friedman (1980:31), a human rights writer made a similar point, that today the orientation of human rights that adheres only to Western values provokes scepticism for its parochial origins and criticism for its role in the non-Western world. So, any coming declaration on human rights should include values as they are conceived by the Third World. "The view of human rights from a cultural perspective, indeed, remains strong in some of the non Western world

include Indonesia" (Lubis,1993:20).

Other proponents of this idea, such as Shue, argue that human rights are both negative and positive. They require agents to act positively and also agents to refrain from acting in certain ways in order to prevent the violation of the rights of others (Shue,1980:51). He then offers an example with regards to the right to security which is perceived as a negative right and the right to subsistence which is seen as a positive right.

The right to security however, is not a mere negative right, it demands a positive action or other form of social guarantee from the state and the community and state at large. Another argument parallel to the above notion asserts that the right to organise and the right to freedom of speech are not simply negative rights. They require people to do something to prevent violations (Atmakusumah and Swantoro, cited in Lubis, 1993:22).

Mulia Lubis, an Indonesian human right activist, also questions Shue's claim. He says that if the two rights, the negative and positive right, as argued by Shue, are required to prevent violations of human rights, it could also be argued that such rights as the right to work or the right to equal pay are not simply positive rights. But they are rights inalienable to human beings and equivalent to the right to life, liberty, security and property (Lubis,1993:23). Because, if as Shue contends, "basic rights are an attempt to give to the powerless a veto over some of the forces that would otherwise harm them" (Shue,1980 :18), the same statement can be used to defend certain natural rights

of every human being, in other words, natural rights are important for human beings within a society (Migdal,1988 :10-41).

The third rejection of natural rights theory is from those who subscribe to Marxist doctrine. For these Marxists, human rights as perceived as "natural rights" are unacceptable. They argue that all rights are actually derived from the state and human beings are not naturally possessed of it by virtue of being born. All rights including individual rights are recognised, as allowed by the state or collectivity. In other words the state or collectivity is the repository of all rights (Mygdal,1988:10-14).

Karl Marx wrote that "the so called rights of man" are nothing but the rights of a member of civil society, that is, the rights of an egoistic man separated from other men and from the community (Marx:162).¹⁷ Hence, both the concept of liberty and the idea of human rights as defined by those of natural rights are the specific expressions of a bourgeois society (Koloowski, cited from Lubis,1993:24), which is bound to be ego-centred (Marx, in Lubis,1993:24). They must be amended and given a new economic and social content.

The above discussion leads us to conclude that the concept of human rights as described widely in the international human rights instruments owes much to eighteenth and nineteenth century philosophical thinking. The concept was later developed and came to known as "natural rights," comprising civil and political rights. The other concept that developed later, namely social, economic and cultural rights, has also been widely accepted as part of the universal human rights body. Advocates of this type of

rights comprises most of Third World leaders including left wing Third World technocrats and those of the former Soviet Union.

Recognition of these two types of rights can be seen, on one the hand, through the enactment of International Covenant of Civil and Political Rights (ICCPR) by the UN adopted on 16th December 1966. It showed the wide recognition by the international community of what was envisaged by the early Western philosophers namely, the rights to life, liberty, property, expression of ideas and so forth. On the other hand recent developments in the human rights debate, following the incorporation of the so-called concept of human rights as defined by Third World theorists, made discussions on the concept of human rights, increasingly intellectually relevant. In addition, the recognition of the International Covenant on Economic Social and Cultural Rights (ICESCR), since it was adopted on 16th December 1966, evidences the international community's recognition of the need to take into account economic, social and cultural rights in the human rights debate. This new concept however, put greater emphasis on the arguments inherent in the theory of cultural relativism in the human rights debate. The subsequent section deals with the latter theory.

2.3. The Cultural Relativism Theory

The cultural relativism theory, as explained earlier, rejects the very idea of natural rights. Instead, it advocates that the "human being is always the product of some social and cultural milieu, and different traditions of culture and civilization contain

different ways of being human" (Lubis,1993:19). Cultural relativism theory regards natural rights theory as a "desocialized and deculturised" (Milne,1986:4) kind of right and not proper for human society.

Governments of many developing countries such as the South East Asian countries and China and the former Soviet Union believe that they share an alternative vision that posits a "cultural relativistic" and developmental position on human rights. This suggests, as mentioned earlier, that each culture has its own standards of human rights. Societies can implement human rights only after they have achieved an optimum level of development (Indonesia Publication:June 1993).

Proponents of cultural relativism advocate primarily the right to develop, that is, the right to include economic, social and cultural rights. Such an emphasis was rooted, from 1919, in the priorities of the ILO and was drafted as part of Economic Social and Cultural (ESC) rights in the first decade of the UN human rights activity (Trubec,1984 :214-215).

Paradoxical to the natural rights approach, according to Christopher Tremewan, is the increasing debate on cultural relativism theory as an anticipation of, or to prevent greater intervention by the West (referred to in this work as the donor countries) in the Third World affairs. Understandably, as it grew up in opposition to the ethnocentrism of Western concepts of human rights, the cultural relativism argument had a distinctly anti-imperialist objective (Tremewan,1993:22).

Proponents of cultural relativism argued that "no country can have both economic development and non economic development (refer to civil and political rights) at the same time" (Nanda,1985:293). This argument which is labelled as the "trade-off theory" comes from the idea that if both the social economic and cultural rights and, civil and political rights are to be simultaneously exercised then they will slow the rate of economic growth and development. For this purpose the civil and political rights must be suspended if economic development is to be achieved (Rawls,1978:150-161). Indonesia, for instance, places the notion "stability" as the primary aim of economic development. It is argued that if there is no stability, there will be no development.

This argument was emphasized by other cultural relativism theorists. They argue that economic development is a prerequisite for people's enjoyment of their civil and political rights. A supporter of this notion, Bhagwati, despite recognising the existence of civil and political rights, nevertheless, rejects their implementation for "the people of developing countries" who, according to him, "are suffering from poverty want and destitution". The people will only enjoy their civil and political rights once their social economic and cultural rights (Bhagwati,1987:26), or economic development needs, have been met.

Bearing such arguments in mind, the cultural relativism proponents in principle acknowledged that human rights are universal and of international concern yet, when it comes to their implementation, it is argued that the diversity of societies in the world means the issue should be viewed from a variety of perspectives (Lubis in *The Jakarta Post*,May:1993). According to Vincent, the doctrine of cultural relativism, therefore,

although upholding the principle of universalism of human rights, puts greater emphasis on a cultural egalitarianism: each system of values can only be understood within its own context. This notion re-asserts the common-claim of Anthropology that conceptions of rights vary according to culture (Vincent,1986:86-87).

2.4. Critics of the Cultural Relativism Theory

Theoretical criticisms of cultural relativism theory are still insignificant because this theory is relatively new, and it has not yet been implemented comprehensively, specifically in the Western world.

Nevertheless, there is a confusion between what is done in various cultures, ascertained by scientific observations, and what ought to be done. Cultural relativism has attempted to demonstrate what ought not to be done on the basis of what is done. It has tried to counteract a universal prescriptive approach to human rights with particular normative observations. "The deficiency is its mistaken logic in assuming that cultural egalitarianism has egalitarian political consequences" (Tremewan,1993:23).¹⁸

The cultural relativism theory, hence, is morally indefensible. Its weaknesses "amounting to heightened cultural sensitivity and a willingness to make exceptions while upholding the universality of human rights" (Donnelly, cited in Tremewan,1993:23).

Renteln, an earlier relativist, in his study attempted to define the common basis

that might be universal among all particular cultures, found that "there is nothing inherent in the theory of relativism that prevents relativists from criticising activities and beliefs in other cultures" (Renteln,1990:77). Instead, many cultural relativist theorists have provided grounds of intellectual refuge for rulers of Third World states wishing to justify their appalling human rights abuses on the basis of cultural differences (Tremewan,1993:23).

There is a further potential danger. That is the justification for intervention on human rights issues for the sake of economic development. For many governments in the Third World, as asserted earlier, the success of economic development enables the society to enjoy its political rights. However, if we look carefully at the arguments of these Third World governments, it is obvious that they are notoriously political-oriented or have an ideological bias adopted merely to justify prevailing abuse of human rights. It is also argued that, "economic modernisation, sometimes, leads to political stability and in turn, increasing respect for human rights" (Mitchell and McCormick, 1988:478). For most of the poorest countries, nonetheless, economic development would be only favourable to those in power to use repression in order to maintain control. Taiwan, one of the new-emerged industrialized states, could be taken as example. In this country there has never any popular or general election been taken place. The people, it is argued, should support their leaders because such support is compatible with the "Confucianism concept of nation" (Harland,1993:13-14), that is to be guided by their leaders.

Not surprisingly, rejection of the trade-off theory has increased enormously. It

is argued that, if the state is to sacrifice its civil and political rights for the sake of economic development then a possible purchase of the natural rights at the cost of economic well-being is viable. This idea contains danger for the future development of human rights in such countries (Goodin in Lubis (1984), cited from *The Indonesian Quarterly*, 1993:32).

The trade-off theory has also been criticised for its inability to produce a trickle-down effect from the rich to the poor. Rather income inequality widens leading to social inequality. It is why "the trade-off theory is not only inadequate, but bankrupt" (Lubis, *ibid*).

The overall discussion in this section reveals that significant differences do exist between the "natural rights theory" and the theory of "cultural relativism". The two subscribe to two different ideological views and are rooted within their very traditional perspectives and social values. Hence, to reconcile both theories seems almost impossible. Some indeed have attempted to reconcile the so-called universalism or natural rights theory with the socio-cultural condition through the construction of international instruments. They have pointed out the already international Bill of Rights which consists of UDHR (Universal Declaration of Human Rights), the ICCPR (International Covenant on Civil and Political Rights) and the ICESCR (International Covenant on Economic Social and Cultural Rights) as good examples of that reconciliation. However, this attempt does not necessarily mean, or aim to create, one view of human rights for the future. Rather the intention is based on the prevention of "permissible killings" and other gross violations of human rights in certain cultures

(Schirmer, in Lubis, 1993:21). Based on this assumption, and recalling our conclusion on the moral and theoretical debates on aid, we could argue that: the development of "duties to help the poor and to prevent the abuse of human rights" have been, with limited acceptability, widely recognised in recent years. The fact that these two notions embrace "universal values" and have been a matter of international concern, means that national borders are no longer a fence against these humanitarian duties, and that nations do have a moral obligation to intervene in other nations' affairs to both help the poor and to prevent the abuse of human rights of the people. However, does such a conclusion possess legal ground within the international human rights instruments? The following section will deal with this issue.

3. The Notion of Intervention

The adoption of the UN Charter, on 26 June 1945, has resulted in this international instrument binding all members states of the international community to protect human rights (Starke, cited from Kamenka(ed),1978:113). Nevertheless, this statement is limited by the source of international law.

In international law practice there are two sources of international law. These are firstly, the International Treaty of Human Rights which directly created international obligations. However, treaties are binding only "with respect to the nations that have expressly agreed to become parties to them" (Bilder, 1992:9). Secondly, there is international customary law. The existence of a customary law "can be confirmed to the alleged rule, together with evidence, that states concerned have followed this practice

because they believe that they are under normative obligation to comply with that rule" (Bilder, 1992 :10). This notion, it is argued, is applicable to and binding upon all nations.

According to Bilder the international customary law implies that:

"If a particular human rights rule has become part of customary international law, this can be especially useful to practitioners seeking to advance human rights objectives, since customary law is generally binding upon all nations, without regard to whether they have expressly consented" (1992:10).

The second source, customary law, seems to support the conclusion drawn in the preceding section of this chapter, which allows nations to intervene in the affairs of others on the ground of preventing the abuse of human rights.

Despite such a convincing argument there are two broad theories and attitudes concerning the domain of human rights which address the question; does a state have complete sovereignty over its nationals to the extent that such sovereignty constitutes a reserved jurisdiction into which international law is/is not permitted to reach? These two attitudes are; the state autonomy perspective and the cosmopolitan perspective which will both be discussed in the subsequent section.

3.1. The State Autonomy Perspective

Within this view, human rights are seen as a domestic issue. This view opposes the intervention by states within the domestic affairs of other countries (Walzer, cited from Gould, 1988:307). It originated from Thomas Hobbes' classical thinking which claimed that in international relations, states possess equal rights and stand at the same

level. Sovereignty therefore, cannot be subordinated to any form of law including international law (Walzer, cited from Gould, *ibid*). According to this belief countries possess sovereignty over their boundaries, international law should be subordinated to the rights of self-determination of these countries. This idea, as mentioned in Chapter One, rests on the concept of international traditional law, that the human rights of the citizens and/or the violation of human rights within domestic jurisdiction, are not an appropriate subject for international relations. The way one government treats its own citizens is merely its own business and not a proper concern of any other nation.

3.2. The Cosmopolitan Perspective.

This view rests on the recognition that human rights are universal. Human rights, in essence, can go beyond the boundaries of nation states.

The cosmopolitanism perspective questioned the state autonomy perspective for its refusal to allow intervention by other states to prevent the abuses of human rights (Beitz in Gould,1988:334). According to Beitz (1979) and Henry Shue (1980), due to the interrelatedness and interdependence within global economic relationship, it is irrelevant to limit the principle of justice within narrow national boundaries. In other words, the two contend that political or economic intervention is needed to provide the global justice, including the prevention of the abuse of human rights (cited in Gould,1988:354-5).

3.3. Retaking the Middle Ground

Despite debates, the differences between the two above theories remain to date unresolved; "in a human rights context, international law possesses a dual quality, since it creates both the obstacle to effective human rights protection and provides the means for overcoming such obstacles" (Davidson,1993:45). By this we mean that the international law, due to its nature of universality, apart from serving as a means to protect the rights of every nation, also covers the right to protect peoples from the abuse of human rights by the sovereign states concerned.

Because the establishment of a legally binding obligation only comes into effect if states expressly consent to it by ratifying a treaty or international agreement among themselves, debate on the domain of human rights is open to wide interpretation. Whether intervention on the basis of preventing human rights abuses by other nations is agreeable or not, remains debatable. For the purpose of providing a basis for this thesis, the brief discussion that follows may be help to clear up all the previous contentious assumptions.

According to article 2 (7) of the UN Charter, any individual, organisation or state is prohibited from intervening in matters essentially within the domestic jurisdiction of any state (see Charter of the UN). This view is reinforced by the language of 1970 UN General Assembly Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the UN, which states:¹⁹

"No state or group of states has the right to intervene directly or indirectly, for any reason whatever in the internal or external affairs of any other state. Consequently... other forms of interference or attempted threats against the personality of the state or against its political, economic or cultural elements are in violation of international law".

This formula represents a state's rights in the conduct of its external relations and in the ordering of its internal affairs.

This does not mean however, that states are completely free to exercise their sovereignty "since they are subject to various limitations imposed on their activities by international law" (Davidson,1993;45). It is indeed recognised, that each state has an exclusive sovereignty within its national boundaries, however, this argument does not necessarily mean that such a state is entitled to practise the abuse of the human rights of its citizens while not allowing other countries and the international community to protest. As far as international relations are concerned this latter view reinforces the status of the human rights domain; that human rights have an universally acceptable common standard.²⁰ Furthermore, in contemporary international relations, human rights are seen as a matter of international rather than national concern. Therefore, following Davidson, "states may no longer plead that human rights are a matter essentially within their domestic jurisdiction" (1993:49). Bilder puts it more clearly:

"The international human rights law is based on the concept that every nation has an obligation to respect the human rights of its citizens and other nations and the international community have a right, and responsibility, to protest if states do not adhere to these obligations" (1993:3).

On the basis of this brief discussion and the conclusion drawn in the preceding

section, we can sum up thus: This thesis, despite agreeing that international law rejects the "legacy of intervention", holds that as far as human rights are concerned, the international community (including individuals and states) has the obligation to protest to other nations if human rights abuses take place in the latter. This protest cannot be equated with the Nineteenth century doctrine of military intervention (i.e. by using physical pressure), but rather, it recalls the moral obligation of every human being and the international community to uphold the idea that human rights are universal and a matter of international concern.

Protests by other countries also reinforces the article 1 and 55 of the Charter of the UN, which call for the greater "promotion and respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion" (see Charter of the UN). Furthermore, according to article 56 of the same document, "all members have pledged themselves to take joint and separate action in cooperation with the Organisation (the United Nations) for the achievement of the purposes set forth in article 55" (ibid). No nation can therefore claim to implement human rights on the basis of cultural differences.

Thus, protests exercised by other countries can be adopted in whatever form as long as they do not collide with or violate the international law of non-intervention. As such, protest in the form of imposing sanctions on other countries with poor human rights records cannot be seen as intervening in other states' affairs but rather, they must be seen in the context of a moral obligation to protest against the violation of human rights and hence the international human rights law.

4. Conclusion

This chapter has reviewed the literature of both foreign aid and the debates on human rights including a discussion on the notion of intervention. We have seen that both within the moral and the contemporary theoretical debates, aid is perceived as indispensable to those in need. On the basis of its "indispensable character", aid is labelled as a tool to help the poor or those who deserve it; that national boundaries accordingly, are no longer a barrier to the process of "giving and receiving aid". We have also seen that the use of aid as a condition for the improvement of human rights, has resulted in the accusation, by recipients, that donors were intervening in the recipient state's affairs, aid is seen as being a tool to pressurize but not to help.

We have also seen that the intellectual debates on the two broad theories of human rights, have apparently had no success in attempting to reconcile donors' and recipients' views. Both represent two different philosophical backgrounds and emphasize two different perspectives. As the outcome from such a debate is unviable, our discussion on the notion of intervention, whilst recognising the existence of the legacy of non-intervention in international law, accedes the legitimacy of "aid as a condition". That is, as the world becomes increasingly interdependent national boundaries are no longer a barrier against such moral and humanitarian actions. The linking of aid to human rights is seen not as an intervention in another state's affairs, but rather as a reflection of a moral responsibility and a reflection of the belief that all human beings are entitled to prevent the abuse of human rights with such prevention being based on the fundamental concept of international human rights law.

Having said that, the questions which need to be analyzed further in the subsequent chapters are; to what extent have donor countries genuinely implemented such moral and humanitarian actions? What have been their impact on the recipient's human rights performance?

5. Notes

1. Streeten, an eminent professor, in an article (1976) entitled 'It is a moral issue' wrote: "Even if we have had no share at all in the responsibility, the Christian and humanists belief in the brotherhood of man and imposes certain obligations to alleviate misery and to aid in the full development of others where we can" (**cited in Riddell, 1987:17**).

2. Another Lyons concept is the rule Utilitarianism. It conforms to a rule whose general acceptance would produce greater amount of happiness than the general acceptance of any alternative (**cited in Riddell,1987:21**).

3. This is so because it expands the role of governments and limits the role of the private sector in the economy, and ultimately prevents the rapid growth of the economy. Such a view clearly assume that rapid growth will definitely lead to poverty alleviation (**Riddell,1987:46**).

4. Riddell, unfortunately, does not clarify what sort of intervention need to be implemented in the development process, within such economic regime.

5. See **Indonesia Task Force Publications 1993** "The Bangkok Declaration April 2nd 1993.

6. The term ODA is used here as defined by the OECD. It includes financial flows from developing countries and multilateral agencies provided by official agencies -with the main objective, the promotion of economic development and welfare of developing countries- which are concessional, that is, which contain a grant element of at least 25% (**Tomasevski, 1993:40**).

7. Today, evaluations of Marshall Plan differ from the original consensus in its success. It is particularly instructive to note the currently voiced objections, such as political leverage embodied in the development aid or its propensity to transplant a philosophy and ideology in-built in the seemingly neutral promotion of economic development (**Milward, cited in Tomasevski,1993:40**).

8. Kaplan, J.J 1987. "International Aid Co-ordination: Needs and Machinery". The American Society of International Law, **Studies in Transitional Legal Policy No. 16, Washington, 1987**

9. This was named after Lester Pearson, the former prime minister of Canada who chaired the Commission, had been commissioned by the World Bank to study the consequences of twenty years of Development Assistance, assess the result, clarify the errors and propose the policies which is hoped to work better in the future (**Mall,1969:vii**).

10. This is why, the thesis will not make any further classifications on the substance of aid itself. As to neutralize the different views on aid from both donor and recipient, that definition given by Todaro is seen as the most comprehensive one in the contemporary literature of Aid (**See Todaro,1989:482**).

11. See Rostow, W.W, 1961. **The Stages of Economic Growth: A non Communist Manifesto**. Cambridge

12. The Declaration states: "we hold these truths to be self evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness. That to secure these rights, governments are instituted among Men, deriving their just powers from the consent of the governed..." (See **Kamenka,1978;2**).

13. In France, the Declaration of Des Droit Del'homme et du Citoyen (1789) the natural rights theory was enriched by two additional rights namely, the right to security and the right to resist oppression (see **Cranston,1983**).

14. For further details see T.M. Lubis, "In Search of Human Rights" (**1993:18-26**). He reiterates two additional objections to natural rights. These include, collective rights and the concept of duty. In my view, their explanation reveal most similarities of Cultural Relativism.

15. This statement was presented just before the UN Commission on Human Rights when the Commission was preparing the draft of the UDHR, June 24, 1947 (See **Lubis,1993:24**).

16. It is argued, by Satjipto Rahardjo, an Indonesian academician, that the appeal to search for human rights concept is often made in spite of the vagueness of the idea. However, the underlying reason seems clearly to be the rejection of the notion of universality of human rights (**Raharjo, Kompas 4, 1979**).

17. Karl Marx objection was not merely to list of rights which become so fashionable at the end of the eighteenth century: It was rather to the very notion of rights at all. Rights, Marx believed that, "imply separation of Man from Man,..." (cited in **Minogue,1975:162**).

18. It is argued, that one may be correct in observing that values are endogenously derived but this does not provide a basis for ranking them as equal or unequal... If the legitimacy of one state depends on reproducing itself elsewhere, the cultural relativism provides no basis for a moral critique (**Tremawan,1993:23**).

19. **General Assembly Resolution 2625 (XXV) 24 October 1970.**

20. In my discussion with prof Paul Gordon Lauren, an historian and human rights scholar, during his visit to Massey University (Jan-June 1994), he says, "the notion of the universality of human rights has been widely accepted, even by many Third World countries include Indonesia. This notion he adds, has benefitted many Third World nations in terms of giving the latter, a ground to interpret the implementation of human rights according to cultural differences" (May 23rd, 1994).

CHAPTER THREE

THE NATURE OF FOREIGN AID IN PRACTICE

Academics and most politicians believe that despite the fact that foreign aid is aimed primarily at assisting poor countries, in practice, one cannot forget the interests of both the donors and recipients in giving or accepting aid. With regard to the former, as mentioned in the previous chapter, since its inception through the Marshall Plan, aid is believed to have been given for some specific interests. "There is no historical evidence to suggest that donor nations assist others without expecting some benefits (political, economic, military, etc.) in return" (Todaro, 1989:485).

Likewise for recipient countries, apart from accepting aid because their economic conditions require them to do so, they have often accepted aid because there were specific political aspects inherent in the acceptance, which reflected the interests of those in power.

This chapter briefly analyses the nature of foreign aid in practice. First it will discuss why donor and recipient countries give and receive aid, this will be followed by an assessment of whether foreign aid has been effective or not in the development of the LDCs.

1. Interest of Donor Countries

Our discussion in the second chapter led us to an agreement that, as far as human rights are concerned, protest by donor countries at the continuing violation of human rights (in the recipient countries), expressed by suspension or discontinuation of their assistance, can by no means be regarded as an intervention in the recipient state's affairs. This statement should, however, be differentiated from the process of giving assistance to other countries. The latter involves a process of transferring resources from one country to another and which has, until recently, continued to be "marked by" disillusion and distrust in the part of the recipient.

In the transfer of resources, the interest of the supplier is unavoidable. Whether it contributes or not to the development of the recipient, specific interests of the donor are inevitably attached to aid given to recipient. In the words of Todaro (1989:485), "donor countries give aid primarily because it is in their political strategy, and/or economic self interest to do so". According to him these two broad categories: political and economic interests, dominate the idea of why donors and recipients give or accept aid (Todaro,1989:485).

The experience of some donor countries, since the inception of aid under the Marshall Plan, can provide examples of the former category. Under the Marshall Plan, in late 1940s, the USA aid was aimed not only at restructuring the war-torn economies of Western Europe, but also as a means of countering the spread of communism (Todaro,1989:486; WDR,1990:129), and to enhance regional stability in Asia or

elsewhere. An example of the latter was the massive US economic aid to Central America (i.e. El Salvador, Panama, Honduras, Nicaragua and Guatemala), between 1970s and 1980s, which was aimed at countering the spread of Communism following the successful revolution of the Cuban communist party led by Fidel Castro.

This notion has implicitly featured in the USA Foreign Aid Act 1961 section 102 which aptly states that:

*"the Congress reaffirms its conviction that the peace of the world and the security of the United States are endangered so long as international communism continues to attempt to bring under communist domination peoples now free and independent and to keep under domination peoples once free but now subject to such domination. It is, therefore, the policy of the United States to continue to make available to other free countries and peoples, upon request, assistance of such nature and in such amount as the United States deems... as may be effectively used by free countries and peoples to help them to maintain their freedom."*¹

Another example is provided by the Colombo Plan. In 1953, in support of this plan, the New Zealand foreign minister acknowledged that it was in the interest of New Zealand to give aid to help the social and political stability of the recipient. Aid programmes, therefore, while aimed at contributing to the development of the recipient also encompass the interests and expertise of the donor (Journal of Human Rights ,1953:8).²

Further examples are provided by the political and strategic motivations for aid that grew in most socialist countries, especially the former Soviet Union. The latter provided aid to Cuba, Angola, and Syria for its strategic and political objectives (Todaro,1989:486), at the same time competing with the Western world in disseminating

its ideological and expansionist policies during the Cold War. Examples of this experience are demonstrated by the former Soviet Union's attempt to implant and maintain communist influence in Cuba, and via Frelimo in Angola and Renamo in Mozambique and in Vietnam and Cambodia in South East Asia during the Cold War.

With regard to donors' economic motivation, it could be seen in the form of aid which was given to recipient: first, in the form of "loans" (tight and concessional) and second, in the form of "tied aid". In the former, it was expected that benefit would accrue to donor countries in the form of interest bearing loans. This has been practised by many donor countries since the 1950s and covered in almost all their Official Development Assistance (ODA) programmes. Evidences suggest that "interest bearing loans now constitute over 80% of all aid from developed to developing countries" (Todaro,1989:489). Another recent form of loan is that given indirectly to recipient. This kind of loan does not include "interest- bearing loans" because it is spent in the donor countries themselves. For instance, the awarding of scholarships to students from developing countries to obtain their tertiary level of education in donor countries as exemplified by New Zealand scholarship to students from Third World countries at universities in New Zealand through ODA. The recipients, nevertheless, still have to repay the money, although in concessional forms.

"Tying of aid" is applied to the exports of donor countries which are supplied with the expectation of getting returns in the form of resources, markets, expertise, and support at international diplomatic forums (Jepma,1991:33-34). "Tying aid also denotes the obligation of the recipient to purchase goods or services financed as aid in the donor

country" (Tomasevski, 1993:34).

Common arguments suggest that "tying aid" is applied because: first, some deficit donor countries are willing to overcome the "balance" of payment difficulties by avoiding the loss of real income that would follow if the aid transfer did not give rise to a matching demand for import. Second; donor countries are willing to satisfy the commercial pressure groups who wish to benefit by getting more access to recipient market for their goods. This policy has been pursued by Japan in the Maldives³ and in Fiji. The Japanese government built the infrastructure such as hospitals in these countries. Nevertheless, the host country is required to equip health materials and other facilities imported from donor concerned.

Finally, there is a combination of political and economic reasons. Tying aid, in this sense, means directing it to certain projects. Donor countries feel that the best way to secure credit for their aid in recipient countries is to finance projects which are then identified easily in the public mind with the donor country. "Because this political effect will not be secure if the aid is not linked to something as conspicuous and dramatic" (Bhagwati, in Bhagwati and Eckaus, 1970:151-153).

Given the above experiences, foreign aid can be seen to embrace mixed motives;⁴ while aimed at helping the LDCs it also encourages the tendency to extract returns from those in need. Hence, the process of transferring resources from one country to another can by no means be considered as designed only to help, it also encompasses the expectation of gaining benefits arising from such a process. The meaning of aid is,

accordingly, open to wide interpretation.

2. Interest of Recipient Countries

Foreign aid, from the point of view of LDCs, is classified into economic and political categories as well. Economic arguments (see also the theoretical debates) derive from the "two-gap" model of aid. This model contends that the LDCs accept aid because they are either, "in a shortage of domestic savings to match investment opportunities, or in a shortage of foreign exchange to finance needed imports of capital and intermediate goods" (Cheanery and Strout, 1966:680-733). Therefore, it is necessary for the LDCs to acquire foreign assistance from abroad. This theory, which was later questioned by some economists, was nonetheless accepted as a common interest applied to most of recipient countries in seeking foreign aid.

Apart from the above, LDCs seeking aid that comprises political leverage, generally refer to the argument that aid is sought only to help the existing leadership. From this connotation, then, emerges criticisms that aid is a tool to suppress the opposition, and to maintain the government's position (Todaro, 1989:490). Historically, if aid is seen in this context, one can point to the experience of the South Vietnam in 1960, Iran in 1970s, Central America in 1980s (Todaro, 1989:490), and Latin America (Chile under Pinochet government) in 1975-6 (Jones, 1987:4). The US as donor supplied these regimes with huge amounts of capital, providing them with necessary military equipment because their existence contributed a great deal to the US political, strategic, and geographical interests of those times. Likewise, it is in the interest of regimes in

power to obtain greater amounts of aid from donors as aid helps to strengthen their political power (Jones,1975:4-6).

However, arguments regarding the political interest of the recipients are insignificant compared to economic ones. Given the current state of underdevelopment and the slow pace of economic growth of most recipient countries the economic interests of the LDCs predominate as reasons for receiving foreign aid. The political argument seems minor in comparison to the economic one.

Notwithstanding the differences in accepting or receiving foreign aid, the specific interests of both donor and recipient countries are important factors in the process of transferring resources from one country to another. The question this paper asks is, is aid, given the above circumstances, effective in the development of the LDCs? The next section will take a brief look in this issue.

3. Assessing Aid Effectiveness

The two preceding sections have explored the interest of both donor and recipient with regard to aid. Despite political criticisms being directed toward the attributes, methodology and other inadequacies of aid, nonetheless in economic terms, aid has been found to be efficient in helping the economies of the LDCs.

The Brandt Commission published a Report in 1989 recognising the usefulness of Aid. Aid, it was argued, has provided a basis for the progress of development in

LDCs including, rural development, health and education. The Brandt Report, although criticising several aspects of the uneven relationship between donor and recipient countries, concluded by recommending an increase in aid volume as a "high priority for alleviating the worst deprivation in the developing world" (Brandt Report, 1981:7).

A study, conducted by Robert Cassen in 1980s, has also provided interesting results. He concluded that despite a substantial proportion of aid attaining its development objectives, more aid is still urgently needed in the poorest countries, particularly in sub-Saharan Africa (Cassen, 1986: 296-298).

The World Bank conducted a general evaluation of more than 500 projects revealing that only 14 were judged unsatisfactory or uncertain in their outcome. In 1985 similar results were published by two other banks, the Inter-American Development Bank (IADB) and the Asia Development Bank (ADB) on projects they funded (World Bank, 1985:105). Bearing in mind criticisms from Dependency theorists and some of the Third World countries, who hold that studies commissioned by aid-given bodies such as the World Bank, IADB and ADB have vested interest in pointing the successes of their projects, these empirical studies nonetheless provide insights on the use of aid in general.

The results of these studies on the efficacy of aid and its impact in LDCs, provides evidence that, despite the fact that the perspectives of both donors and recipients on aid vary extensively due to their respective interests, aid was and is, still deemed important to help those in need. This argument, arguably, reinforces the moral

arguments on why donors give aid.

To conclude, despite the consensus mentioned at outset of the chapter which considers that protest regarding poor human rights records is not a matter of intervention in other states affairs, aid is always characterised by stringent or implicit conditionalities. Despite the fact that aid is important to help the poor, the interest of the aid supplier as symbolised by the political and economic forms that aid takes cannot be ruled out.

Having understood the meaning of aid in the above sense, it is clear to us that protest exercised by donor nations, that is, to postpone or discontinue aid, in order to improve the poor human rights record of the recipient, can no longer be regarded as a condition in aid. Conditionalities on aid take place whenever it is in the interests of the donor to do so, whereas protests to other countries aimed at preventing the abuse of human rights takes place if, and only if, the exigencies to prevent the abuse of human rights require them to do so. In this sense if there is the abuse of human rights the protest takes place. The latter cannot be considered as condition on aid.

4. Notes

1. See **The US Foreign Assistance Act 1961**. US Government printing office, Washington.
2. See Ministerie Van Buitenlandse Zaken Voorlichtingsdienst Buitenland 1992. "Dutch Aid to Central and Eastern Europe?" in **Holland-Information VB02.2E92**, source: The Embassy of the Netherlands, Wellington-NZ
3. Syahudi Mohammad, a Maldivian student at Massey University told me the experience of his country in early 1990s. He said that most of hospitals built by the Japanese government in 1991 in his country, were required by the donor to be equipped with facilities imported from Japan.
4. In my discussion with Prof. Paul Gordon Lauren, date 21/5/94 he said that, while some development assistance may motivated by moral and humanitarian desires to assist the developing countries, political, economic, and military benefits cannot be avoided from such an assistance.

CHAPTER FOUR

DONORS FOREIGN AID POLICIES, THE HUMAN RIGHTS DEBATE IN INDONESIA, AND THE ROLE OF NON-GOVERNMENTAL ORGANISATIONS (NGOs)

This chapter will first; explore the foreign aid policies of the USA, Canada, and the Netherlands. It emphasises mainly the attention paid by these three countries, as donors, to the human rights records of recipients. Second; it will provide a brief description of the debate on human rights, since the latter has been linked to aid in Indonesia. Third; this chapter will explore the role of Non-Governmental Organisations in general, and on human rights in particular, and finally; give evidence of several success stories in the utility of foreign aid as a criteria to prevent the abuse of human rights in some LDCs.

1. Donor Foreign Aid Policies

1.1. The United State of America

Most donors have published their official attitudes regarding human rights. These statements, as discussed briefly in chapter One, vary greatly. Some donors concentrate their attention only on condemnation, while others, apart from condemning the recipient's poor human rights record, also provide themselves with legal grounds to justify their actions. These legal positions are enshrined in the foreign aid policies of

donor countries and are characterised in every single grant of aid to recipients.

The United States was the first country to link human rights to foreign assistance, and this has been part of its law.¹ Such a policy historically, took place in the early 1960s and continued to be practised throughout the period of 1970s by successive American governments. It emerged in the aftermath of the two World Wars, the Cold War between the West and the world communism, and the commitment of US government to promote human rights worldwide.

The first source of all US foreign aid policies is formulated in the Foreign Aid Act (FAA) 1961. This legislative framework to link human rights to aid was developed further between 1973 and 1976. This act was revised in 1974 but changes are confined only to several parts in the section of Trade Act. The inclusion of human rights as a criteria in aid can be seen in section 116 (d) of the FFA which states:

*"...the secretary of State shall transmit to the speaker of the House of Representatives and the Committee on Foreign Relations of the Senate, by January 31st of each year, a full and complete report regarding the status on internationally recognized human rights...[within the meaning of sub-section c] in countries that received assistance...[under this part], and members of the... United Nations and which are not otherwise the subject of a human rights report under this act."*²

"The Security Assistance Act (SAA) was amended twice to incorporate gross violations. No aid, according to SAA, was to be given to governments involved in gross violations of human rights" (ibid). Human rights criteria were latter introduced into legislation on exports, investment and on the most favoured nations (MFN) status (Cited from Tomasevski,1993:85). In early 1980, labour rights were included in the generalized

system of preference (GSP) and in the regulations on overseas investment. The official text on aid and human rights was the Harkin Amendment (Trade Act 1974) passed in early 1970s. The point [c] of this act states that:

"No assistance may be provided under this part to the government of any country which engages in a constant pattern of gross violations of internationally recognised human rights, including torture or cruel, inhuman or degrading treatment or punishment, prolonged detention without charges, or other flagrant denial of the right to life, liberty, and the security of person..." (Cited from Tomasevski,1993:85-91).

In the Jimmy Carter administration of the late 1970s, Carter again reiterated the emphasis on human rights in American policy. In his inauguration day speech the president held that it was the American commitment to uphold human rights around the world. He said "because we are free we can never be indifferent to the fate of freedom elsewhere... our [American] moral sense dictates a clear cut preference for those societies who share with us an abiding respect for individual human rights" (Draper,1982:32).

To support the above policies, in 1977 the secretary of state started issuing a regular annual report. This followed section 116 (d) of FAA 1961 which requires an annual report to be made every year in order to accomplish US foreign policies on linking aid to human rights. This report records "killings, torture, rape, disappearances and arbitrary detention",³ occurring in all countries receiving American aid. This compulsory report has now become institutionalized and remains a very important tool in the country's foreign policy.

However, despite the fact that linking of aid to human rights is enshrined in almost all of the US foreign aid policies, in terms of its implementation several US governments especially the Reagan and Bush administrations failed to uphold them. George Bush diminished the application of human rights criteria in general. As one writer commented, the trouble with the Carter policy was the inconsistency between what he originally said and what his successors subsequently did.⁴ For example, the support of Reagan government for the Honduran regime despite the latter having been declared a violator of human rights (CODEH,1988:6).

Such a discrepancy, though undefined, is thought to stem from the different foreign policy approaches of successive US governments. The Carter government fully committed itself to promote human rights both nationally and internationally. Whereas both Ronald Reagan and George Bush (remembering that the latter was once Vice President in the former's government), tended to intensify their campaigns in the late 1980s, with the collapse of former Soviet Union and increasing political instability in Eastern Europe and the Communist World in general. Apart from that, there seems to be a "disguised motive" which applied in both the Reagan and the Bush governments to exclude friendly nations such as El Salvador and Guatemala from strict aid conditions for political reason.

The current government of Bill Clinton seems to distance itself from the Reagan and Bush policies. Instead Clinton provides what he calls "the new direction" of aid which is aimed at "building democracy and respect for human rights, promoting and maintaining peace, encouraging economic growth and sustainable development,

addressing global problems, and meeting urgent humanitarian needs" (Shevis,1993:the US embassy Wellington).

Strict implementation of foreign policies by the Bill Clinton administration to link aid to human rights has meant the cutting of military assistance to several countries such as China and recently Indonesia. Apart from that, the government has also threatened to cut further aid to countries where abuses of civil and political, and of social and economic rights prevail. For instance, the threat was made to suspend aid to China and Indonesia in 1990 and 1993 due to mistreatment of workers, low wages and other unfulfilled welfare conditions.

To conclude this section, despite possible criticism of their implementation, the US has provided a most thorough and explicit commitment to link aid to human rights. The existing guidelines for the allocation of foreign aid allow the country to make relevant decisions to reduce or discontinue American aid to other countries.

1.2. Canada

Similar to US, whose linking of human rights to foreign aid became part of its law, "Canada was the first donor whose aid policy included assistance to governments of developing countries, requiring them to adhere to international human rights treaties and implement their human rights obligations" (Tomasevski,1993:89). The inclusion of Canada's human rights criteria in its foreign aid policy dates back to the Winegard Report, in the mid-1980s, which advocates that "respect for human rights is one of the

most important conditions for a true development process."⁵ This report recommended that human rights criteria be developed coherently as part of Canadian policy, and these be applied in a universal, consistent, and transparent manner. However, it was only in 1988 that the strategy called "Sharing Our Future" was adopted as a guide for all of Canada's international development activities (Landry,1989:5).

The concept of "Sharing Our Future" was preceded by the government's acknowledgement of the difficulty in establishing strict theoretical criteria in the field of human rights. Given the human rights questions are often intertwined with ideological or strategic issues; that current international human rights instruments are general in nature; and there is a diversity of legal systems, social values, and traditional structures in countries in which the Canadian international development assistance (CIDA) function, it is difficult to draw fixed and coherent rules in an area as controversial as human rights (CIDA,1987:50).⁶

Nevertheless, in the same document ["Sharing our Future"] point 20, out of its 42 steps to better cooperation clearly states: the "cabinet will be provided annually with information on the relevant human rights situations to facilitate the determination of appropriate channels with Canadian ODA and bilateral allocations for each country" (CIDA,1987:5). It goes further to elaborate in the next point that:

"Criteria - where there are systematic, gross and continuous violations of basic human rights, cabinet will deny or reduce government-to-government aid..."
(CIDA, ibid).

In addition, it also includes an eliminatory criterion in Canadian foreign aid

policy which encompasses situations where violations of human rights are so flagrant that they call into question Canada's ability to deliver an assistance programme to the most deserving people (CIDA,1987:5).

This statement contains a two-fold proposal; while intending to ensure that Canada's development assistance does not lend legitimacy to repressive regimes, it also ensures that victims of human rights violations are not doubly penalised by being deprived of needed help in addition to being deprived of their fundamental rights (CIDA,1988:3). Aid will still be channelled to grassroots levels -via non-governmental and multilateral organisations- who, according to CIDA, can ensure that aid goes directly to the poor in areas where it is mostly needed. However, despite providing appropriate policies and general guidelines in practice, as Tomasevski (1993:90) noted, these have not been comprehensively implemented. For instance, it applies the human rights criteria by decreasing the volume of aid to Uganda, Equatorial Guinea, El Salvador, Guatemala, and Suriname but the same approach was not applied to Zaire, Indonesia, Bangladesh and Pakistan in 1980s. In these countries the violation of human rights prevail. Such a phenomenon, though unclear in its motives, resembles the US experience of treating differently those who are, and those who are not, friends or allies.

1.3. The Netherlands

The Netherlands is one of the oldest advocates of human rights. Dutch policy on foreign aid and human rights relies, to a large extent, on the international human rights instruments to which the country is a party. Several European Community treaties in

which the country was, and still remains, an official member include; first, the European Social Charter in 1961 which sets out the social rights of every individual; second, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment concluded in 1987; and finally, the Declaration of Fundamental Rights and Freedoms adopted on April 12, 1989. These human rights instruments exclude those of the multilateral treaties (such as CCPR and CCESCR) and other bilateral diplomatic moves (Holland-Information:VB02.2E92), to which the Netherlands is a party and on which its foreign aid policy relies.

In spite of that, while working in the framework of the European Community the Netherlands government also acts independently when necessary (Holland-Information:ibid). This implies that while the country is bound within the context of European treaties, it has the right to verify policies regarding aid and human rights with regard to its bilateral relations. This was said to be the case with Indonesia in the aftermath of the Dili massacre in 1991, where Dutch unilaterally acted to suspend aid to the Indonesian government.

The criteria of human rights was first included in Dutch national foreign aid policies in 1975. It was revised and developed further in 1979, 1986 and 1991, and had an all encompassing notion of human rights based on:

- a pluralist representative democracy supported by classical human rights;
- a market economy organised, regulated and where necessary, corrected and stimulated by an active government;

- public services and a safety net for the promotion of equal opportunities and as a guarantee against poverty (Minister of Foreign Affairs,1991:59).

The Dutch government holds that there is a direct link between human rights and development. At one end, "respect for rights, the principles of a democratic state, subject to the rule of law and multiparty democracy are the basis of economic development... at the other end, development is geared to promote democracy, protecting social and economic rights and creating a society in which there are equal opportunities for all" (Holland-Information:VB03.2E92). By this reasoning, Dutch human rights policy seeks to achieve its objectives through encouraging compliance with human rights standards through both positive and negative measures. The former, it is argued, include direct and indirect measures, and indirect measures include promoting democracy and market economy, supporting government efforts in the fields of social rights and civil and political rights. Whereas negative measures include pressure exercised via diplomatic channels or confidential talks between ministers (Foreign Affairs Minister,1991:59).

The general criteria used to evaluate the human rights performance of the recipient encompass civil and political as well as economic and social rights (Tomasevski,1993:87). These aid policies therefore, enable the country to reduce or discontinue development aid on human rights grounds. This notion reflects a punitive approach which aims, according to the Foreign Affairs Ministry, to prevent human rights violations, that is, to "ensure that aid does not contribute directly to the perpetuation of repression" (Tomasevski, 1993 :87).

In spite of the fact that Dutch human rights policy does not specifically elaborate specific kinds of civil, political, economic and social rights, nonetheless, in practice (e.g. in Suriname in 1982 and Indonesia in 1991) greater emphasis has been placed on suspension or discontinuation of foreign aid depending on the recipients performance in the field of civil and political rights. With regard to social and economic rights, Dutch policy was designed not to punish but to ensure that these rights are enjoyed by the majority.

To conclude this section, the description of the three donor countries' (The USA, Canada, and the Netherlands) policies, reveals several similarities. These are; that their foreign aid policies possess clear points which contain the use of aid to prevent human rights abuses perpetrated by some recipient countries; that these donor countries, despite having an uniform attitude to promote both civil and political and social and economic rights, emphasis their concern mainly in the former; and that these policies to link human rights to aid have been adopted as part of their national body of rights (i.e. national law).

Hence, *in theory*, we may hold that; these three countries' policies to reduce or discontinue aid due to poor human rights records reflect their commitment to uphold the human rights of all human beings, without distinction as to time or geographical location. This attitude, certainly, cannot be equated with political, strategic, or economic interests in aid, nor can it be construed as an intervention into another states affairs. Rather it follows from the UN Charter, article One, which states, that one of the purposes of the United Nations is "to achieve international cooperation in solving

international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion" (see the UN Charter).

Moreover, given that the above donor countries are officially part of some international human rights agencies or organisations, their commitment to promote human rights reflect their willingness to uphold the international human rights law as well. Protest against the abuse of human rights exercised by them can by no means be considered as always based on self-interest nor as intervening in other states internal affairs. It has indeed been part of their commitment to human rights and their laws which require them to do so.

2. The Debate on Aid and Human Rights in Indonesia

Debates on the existence of human rights in Indonesia, have taken place since the period prior to the country's independence, for example, among the members of the Committee for the preparation of Indonesia's Independence (Lubis,1990: 46-83). Soekarno and Soepomo, among the founding fathers of the nation, refused to accept the inclusion of human rights provisions, because of their convictions regarding the character of Indonesian society which they considered to be a family state (*negara kekeluargaan*). Individual rights, according to the two, would only endanger the unity of the family state. (Yamin,1971:299-396).

On the other hand, other committee members like Muhammad Hatta and

Muhammad Yamin insisted that human rights should be included in the constitution as it would be of paramount importance for the new country to avoid state abuse of power and to prevent the government from being authoritarian (Yamin, 1971:299-330).

Human rights, in fact, experienced a shortfall between the period 1950 to the late 1960s under the Soekarno government. The political instability of the time, coupled with Soekarno's desire to promote the concept of "family state" and several changes in Indonesia's national Constitution, reaffirmed the uncertainty of human rights. Such a situation was accomplished by the shift of Soekarno's policy to a "Guided Democracy" which literally implied "one man rule" between the mid 1950s until late 1960s. Nevertheless, the debate over human rights has intensified since those years up to the time the new order government came to power in 1968.⁷

In the late 1980s the demand for greater political freedom in Indonesia put human rights in the forefront of discussions and intellectual debates across the country. These intensified with political dissidents, individuals, non-governmental organisations, and other opponents of the government being openly supportive of donor countries' attempts to link foreign aid to human rights. Two broad groups representing two different views in the Indonesian human rights debate then came into vogue, namely the government and those who share the non-government view.

2.1. The Government View

So far, as Mulia Lubis notes, there has never been a "legal instrument or white

book" specifically on human rights which could serve as a basis for determining Indonesia's position on human rights (Lubis:Paper Seminar on Human Rights:The Jakarta Post) vis-a-vis international human rights law.

The official view on human rights, as a response to donor attempts to link human rights to aid, is expressed only on various occasions through political statements by the head of state or the like and through the country's participation in international diplomatic and/or academic forums. President Soeharto, in 1976, in coincidence with the greater demand for political freedom, stated, "... human rights must go hand in hand with duties and basic responsibilities. Human rights alone without duties will cause disorder, while duties without rights will end up in stagnation" (CSIS,1976:44). This statement reiterates the balance of rights and duties, that is, the two should be exercised simultaneously because rights without duties, or the reverse, represent only the character of a non-Indonesian-society. The President in his speech before the UN on September 24, 1992 went further to argue his disagreement with the values of Western societies. He said:

"...it is our firm conviction that the objective of human rights is the realisation of the full potential of human beings, and human potential is not confined to the political. The fundamental rights of economic and social development, for example, cannot be separated and cannot be treated separately from the other categories of human rights. And these rights apply to nations as well as to individuals. Equally, every nation has the rights to determine its own political and economic system and to preserve its cultural identity as shaped by its own particular experience".⁸

In essence, according to Mulia Lubis, the above statement reflects that in Indonesia, despite human rights being seen as universal, nevertheless, "when it comes

to the issue of implementation, the diversity of societies in the world make it inevitable that human rights should be viewed from a variety of perspectives" (Lubis:Paper Seminar on Human Rights: The Jakarta Post).

In order to further elaborate the government position on human rights, the Foreign Affairs Ministry department of Indonesia in one of its papers holds:

*"Human beings have lived and are living in different societies organised on the basis of different ways of life, guided by different histories and experiences, and driven by the needs of their own particular political, economic and security conditions. Departing from this point of reality, there is naturally no single solution to the issue of implementation of human rights for all countries at all times... The implementation of human rights should be left to national jurisdiction, because every nation has a better understanding and awareness of its own problems..."*⁹

Statements rejecting the link of foreign aid to human rights were made clear in the Non-Aligned Movements (NAM) conference, in 1992 when Indonesia was the chairman. It was known as the Jakarta Message and printed in chapter One of this thesis. The NAM member countries, including Indonesia and other South East Asian countries, strongly oppose the idea of upholding civil and political rights, instead they emphasised their commitment to social and economic rights, rejecting any means used by donor countries to link human rights to foreign assistance.

In fact, for about 20 years from 1968 until 1988, according to Mulia Lubis, the Indonesia government treated human rights with suspicion and even rejection (Paper Seminar on Human Rights:The Jakarta Post). With its commitment to the "cultural relativism" theory and the post-war, security-approach strategies for "development", the

Government of Indonesia has argue that the very idea of human rights would only hamper development. "If economic development were to succeed, then human rights observance should be postponed until economic development is completed"(ibid). This attitude is explicitly expressed in the Basic State's Guidelines Principles (Garis-Garis Besar Haluan Negara), which places economic development above non-economic development. Economic development is identified as an attempt to increase economic growth, not to redistribute the productive assets within society (Dwipayana and Ramadhan, 1988:35-42). Although, according to Lubis, Indonesia has been able to maintain its economic growth for years, the latter was achieved at the expense of the suspension of civil and political rights (Paper Seminar on Human Rights: The Jakarta Post). Thanks to its vulnerability to both foreign aid and foreign investment, according to Goenawan Moehamad,¹⁰ the present Indonesian government has been forced to recognize human rights, allowing several laws to be enacted, gradually participating in international fora and became increasingly involved in hosting human rights workshops in recent years.

The government, nevertheless, is firm in its intentions to reject foreign aid if it is tied with conditionalities.¹¹ This argument emerges from the logic that assumes that protests by other countries [on its human rights record] are an intervention in its domestic affairs. Instead the Indonesia government argues that donors should urge international cooperation to uphold human rights without violating Indonesia's national sovereignty (Report Reg.Meeting Asia, April,1993). Because, it adds, when the socio-economic differences of developing countries are disregarded, this leads countries to confront imbalances, in form of politisation, selectivity, double standards and

discrimination. The latter implies that, the uniqueness of Indonesia, such as its huge diversity in culture, religion, ethnicity and language, requires different approaches. Arguably, human rights implementation requires different approaches as well. In addition, failure to disregard the above notion will lead a country to be subjected to groundless criticisms which are not compatible to the values of its society (Alatas, June 1993). To improve the universal promotion and protection of human rights, therefore, means considering the adoption of an integrated and balanced approach, taking into account the diversity of societies in the world (Wanandi in TIQ, Vol XXI No 1, 1992).

Indonesia, along with other South East Asian (ASEAN) countries, through the ASEAN-ISIS (Institute of Strategies and International Studies) have gone further to elaborate their views in response to donors attempts to link foreign aid to human rights.

In essence, despite recognizing sanctions as a last resort, they argue that the problem of human rights should be implemented by acknowledging the principles of interdependence, comprehensiveness and cooperation and not conflict, discrimination and must take into account the principle of justice and equal contribution. Given the diversity of the LDCs, in addressing human rights issues that might prove incompatible with the values of some developing countries, it is argued that donors should adopt an uniform criteria of conditionalization so that human rights implementation will not lead to discrimination, selectivity, and double standards (ASEAN-ISIS:4-9). The Indonesian government view on human rights was then incorporated into the Bangkok Declaration in March 1993 reaffirming its principle of strongly opposing donors' attempts to link foreign aid to human rights.¹²

2.2. The Non Government View

The non-government view on human rights, since the latter has been linked to foreign aid, has been represented by those who directly or indirectly oppose the government of President Soeharto. These include individuals, intellectuals, political dissidents, human rights activists, the national NGOs, and other opponents of the regime.

They reject the character of human rights which the Soeharto regime has envisaged. According to this group, despite a cursory acknowledgement that Indonesia adheres to the concept of universality, in implementation so-called "national and domestic affairs" seem to predominate in questions of human rights, hence inhibiting or undermining the principle of universality (Economic Review,1993).

Todung Mulya Lubis, a human rights activist also rejects the government view on human rights. First, he argues, human beings in fact live in a variety of different societies with distinct social and cultural values. This statement means, however, that human rights are neither local nor particular. "Above all this diversity in social life, human beings are human beings with all basic human rights attached to them for being human". If the adjective "human" is taken seriously, the idea of human rights must be the idea that there are certain rights which whether or not they are recognised, belong to all human beings at all times and all places.

Second, with regard to the concept that, "domestic affairs determine a country's sovereignty", he says, this idea is agreeable as far as national interest is concerned.

However, it has also been accepted among the international community that human rights are a matter of international concern. Certainly, he added, "every human rights violation can be questioned by the international community", because, in the case of "gross and systematic violations of human rights no one country can claim it is a matter of domestic affairs". According to this human right activist, "international concern and protest becomes inevitable because in our civilized world gross and systematic violation of human rights should never take place" (Lubis:Paper Seminar on Human Rights:The Jakarta Post).

This view, among others, dominates in the non-government perspective in Indonesia and it seems to me, that it adheres to the idea of "natural rights theory", that is, it rejects any idea that limits the concept of human rights under the banner of a "cultural relativism" theory.

The second non-government view is from those who seems to admit, or at least, understand the government position but, argue that foreign investment brings with it "values" of the supplier. These values are a "conditio sine qua non" in foreign aid, and are unavoidable.¹³ If the government is willing to accept aid, the above conditionalities will follow as well. This idea is inherent in the Dependency Theory which holds that foreign aid brings with it foreign expertise, ideology and its values. If aid is to be accepted then such values must inevitably be accepted as well.

The third view that rejects the government's claim that human rights are a matter of domestic affair includes, individuals, some intellectuals, political dissidents, and the

NGOs.

Goenawan Moehamad,¹⁴ the former chief of the banned magazine "Tempo" for instance, argues that Indonesia's human rights, since the New Order regime took place in 1968, have been the worst in Indonesia history. The attempt by several donor countries to withhold aid on the ground of human rights abuses therefore, is mostly welcome. According to him, this effort is not only important, but a necessary requirement to pressurize the government of Indonesia into improving its human rights record.

Another prominent figure, Dr Arief Budiman,¹⁵ a sociologist at the Satya Wacana Christian University (UKSW) of Salatiga and a former 1966 activist for democracy, upholds what he calls universalism within diversity, and supports the idea of linking foreign aid to human rights. He deems it a necessary condition in current civilized society to prevent further human rights violations perpetrated by the government.

Finally, Dr George Aditjondro,¹⁶ an environmentalist at the UKSW and a human right activist, contends that attempts by the government to argue that human rights must be seen from a view of "cultural relativism" is only a justification for its bad record on human rights. Indonesia he adds, has experienced severe human rights abuses for a long time. The act of donor countries in linking aid to human rights, according to Aditjondro, could be one of the most effective weapons to force the LDCs and in particular the Indonesian government, to improve its human rights record.

The current debate on the linking of foreign aid to human rights, and the demand for greater democracy, have been characterised by some low intensity political upheavals. Street demonstrations, seminars and intellectual debates such as the one held by the Jakarta Post and some NGOs, have taken place since the late 1980s. Nevertheless, it is still unclear whether the non-government view is likely to have much impact in such a short period. In the name of "national stability" the government of Indonesia has, recently taken several strict measures to pressurize its opponents into submission. The closure of three popular magazines (Tempo, Editor, and DeTik) for "creating political disorder and undermining national stability" can be cited as examples (Indonesia Publications, 1994: No 643).

To conclude this section, the debate over linking of foreign aid to human rights in Indonesia, as we have seen, has been characterised by two broad strands of thought. First from the Government perspective and second by those who disagree with the former, represented in the Non-Government view. Despite the fact that the current regime claims to welcome criticism of its policies, it nevertheless refuses to accept any attempt to link foreign aid to human rights. The government of President Soeharto is firm in the idea that foreign values of human rights could undermine national stability and, in turn, hamper economic development.

3. The Role of Non-Governmental Organisations (NGOs)

The United Nations has acknowledged the concept of eligibility for aid to include NGOs (Tomasevski, 1993: 143). When referring to NGOs, two different, but interrelated,

types of organisation can be identified. First, there are the international, non-government human rights bodies. These include the International Court of Justice (ICJ), the International Law Commission (ILC), Amnesty International (AI) and Asia Human Rights Watch (AHRW). These international human rights bodies function worldwide and are independent of government control. Amnesty International, for instance, is concerned primarily with rights of personal integrity, arbitrary detention, unfair trials and the imposition of death penalty. Other organisations such as the ICJ, the AHRW and the ILC choose to take up issues of human rights enshrined throughout the UDHR and other international instruments (Hannum,1992:34). They tend to work closely with one or more national NGOs (Hannum,1992:19) in developing countries as partners in the advocating of human rights.

Second, there are national NGOs. There are two types of national NGOs operating within each specific country: those whose functions are concerned with development, and those which function as human rights organisations (Tomasevski, 1993:140). The latter type of NGO, according to CIDA (1987:77), has increasingly grown in both individual and group form, operating at the national level or at a regional level as in Latin America (Tomasevski, 1993:145).

Throughout the Latin American countries and Asia these national NGOs are working closely with the population. They contribute much to issues relating to the life of the population, the fulfilment of basic needs such as housing, clothing and food and human rights. They have become one of most important components in the promotion of human rights in the Third World. It is argued by the proponents of human rights

around the world, "the accuracy and reliability of NGOs' information on torture, disappearances or arbitrary detention is beyond doubt" (Tomasevski, 1993:145). AI has a number of agencies in more than 70 countries around the world. This organisation provides a yearly report on human rights conditions worldwide, and it has been a reference for various international human rights bodies, and most donor countries, including the UN.

In addressing a serious human rights concern, NGOs, apart from advocating human rights abuses, are also permitted to use the necessary means to prevent further abuses of human rights. In doing so they might consider adopting a number of the following actions:

- *"Address letter to the country in which the violations are taking place, [and] to the appropriate foreign minister's department in one own's country, requesting the resolution of specific aspects of the situation and the undertaking of at least private diplomatic initiatives;*
- *ensure that available domestic remedies are engaged;*
- *contact the media with information regarding the human rights violations that have occurred or are threatened;*
- *issue a report on the human rights situation in question, based on an on-site investigation or, where that is not feasible, on other means of fact finding;*
- *file a formal individual complaint under the relevant treaty;*
- *file a communication alleging the existence of a consistent pattern of violations under "1503 procedure".¹⁷*
- *attempt to introduce public discussion of the violations into UN forums, including, if feasible, calls for a country specific rapporteur or adoption of an appropriate resolution;*
- *publicise all (or most) of the above, bearing in mind rules of confidentiality where relevant" (Hannum,1992:34-35).*

In short, there are three broad areas in which NGOs generally contribute to the prevention of human rights violations: (1) by supplying information to committee members of international human rights bodies; (2) by drawing up state reports and; (3) by ensuring that domestic human rights are not subject to heavy handed repression by the government.

The existence of NGOs in promoting human rights at the national level have also been recognised by donor countries. The Netherlands, in its foreign aid policy, highlights the role of AI and other international human rights bodies (Holland-Information:VB03.2E92), pledging to provide assistance for their work. The Canadian government went even further to ensure that the country assistance is channelled through its development partners at the grassroots levels - such as non governmental organisations - "who can ensure that aid goes directly to the poor in areas where it is mostly needed" (CIDA, Sharing Our Future,1987:5). Likewise, the United States expresses its full support to cooperate with volunteers of grassroots movements that worked for human rights, freedom and democracy, acting through NGOs (US Dept Dispatch,1994:58).

To conclude this section, the role of both national and international NGOs have been internationally recognised; their work in promoting human rights problems in practice is widely accepted by the international community including the United Nations. Furthermore as their work is based mostly at the grassroots level, the accuracy of their reports is one of the most reliable sources in the overall supervision of human rights

around the world. The role of these organisations cannot, therefore, be left out from the promotion and the prevention of human rights abuses worldwide.

4. Assessing the Effectiveness of Human Rights Criteria

The legitimacy of promoting human rights in other countries derives from the universality of these rights (Tomasevski, 1993:153). Due to their universal nature, human rights should be elaborated and be applied in any model of development. The immediate purpose of including human rights criteria in development aid is to prevent abuse of people's human rights by their governments.

Despite the fact that recipients disagree with, criticise and even refuse to accept donors' attempt to link human rights to aid, several attempts portrayed in the implementation of the above have been very effective in terms of preventing further abuses of human rights. For instance; there was the trial in Somalia in 1988 of twelve opposition leaders, who had been detained since 1982. This resulted in seven death sentences and five long-term imprisonments. Protests from donors were addressed to the Somali government including threats to withhold aid. "The threats were effective. Death sentences were commuted and imprisonment replaced by house arrests" (Tomasevski,1993:99).

Second, in Ethiopia in 1984, the government initiated a forced resettlement of its population. Numerous protests including threats to withdraw all aid took place. The government, apparently, pledged to voluntarily cancel its program at the end of 1989

(Tribune,1988:5).

More evidence is provided by the case of Burundi. The government which was dominated by the Tutsi tribe, killed more than 1000 people from the Hutu tribe, according to AI. Protests by donor countries prompted the government to restore order. Some military officers were brought to court and were accused of violating human rights (Tribune, 1992), 500 suspects were also arrested and brought to trial (New African, 1992:31).

The above evidences suggest that attempts made to link human rights to aid, despite the limitations of these attempts, have provided grounds, at least for the international community to play a role in preventing the abuse of human rights perpetrated by individual developing countries. This is not to deny some lack of success in similar attempts in other countries, but rather it shows an increasing awareness and desire to protest. It shows that linking foreign aid to human rights could help preventing the abuse of human rights which, if neglected, could only subvert the value of human life.

5. Notes.

1. International Human Rights Law Group, 1991 "U.S. Legislation - **Relating Human Rights to US Foreign Policy**, fourth edition, Washington DC.

2. **Cited from U.S. Department of States Dispatch 1994** "Text of the Overview of the 1993 Report to Congress on Human Rights Practices, in Human Rights February 1, 1994 Vol 5 No 6 (This was part of an Amendment presented by Senator Harkin which was passed unanimously by the Congress at that time).

3. In my own research, I found that this report records the abuses of human rights that are implicit in civil and political rights. The report based its investigation on the abuses committed by LDCs governments against those who sought political freedom and those whose ethnic origin, race, gender, or faith made them prime targets.

4. See American Association for the International Commission of Jurists 1984 "**Human Rights and the US Foreign Aid Policy: The First Decade 1973 - 1983 p.6**", New York.

5. CIDA, 1987 **To Benefit A Better World: Response of the Government of Canada to the Report by the Standing Committee on External Affairs and International Trade - Ottawa September, 1987 pp. 50-1**

6. See CIDA 1987 "**To Benefit A Better World**"

7. According to T. M. Lubis, since 1968 until 1988, the government of the New Order insisted that human rights must be suspected and rejected because, according to the Regime it will only hamper the economic development (**Lubis, Paper on Human Rights: The Jakarta Post**).

8. See, **The speech of President Soeharto before the 47th General Assembly of the United Nations, New York, September 24, 1992, pp.11-2**

9. See, **Indonesia and the Issue of Human Rights**: A paper presented by the Indonesian Embassies in Germany, Belgium, the Netherlands, the United Kingdom, France, European Community, and the United Nations. London, January 6, 1993 p.5

10. I interviewed **Mr Goenawan Moehamad** in Jakarta, 7-12-1993. He was the chief editor of the TEMPO magazine (recently banned by the government) and a human rights activist. He said that foreign aid and investment, among others, are essential tool to pressurize the government to uphold human rights.

11. I did interview **Mr Firmansyah**, the head of foreign aid department of BAPENAS (Board for National Planning and Development) in 14-12-93, Jakarta. He, as a government officer, strongly rejects donor views on human rights.

12. See **Bangkok Declaration, adopted at the regional meeting on human rights, Bangkok from March 29 to April 2 1993, pp. 2-6.**

13. This view seems to be a bridge between the government and the non-government's view on human rights. It advocates that influence of external values as a logical consequence of foreign aid are inevitable.

14. In our long-taped interview, 7-12-1993 he reiterated his strong rejection of the views of the government on human rights.

15. Dr **Arif Budiman** is a sociologist, at the UKSW (Satya Wacana Christian University) of Salatiga. My interview with this sociologist, took place several days before other interview with MR Aditjondro.

16. **Dr George Aditjondro**, an environmentalist at the UKSW - Salatiga, author of several books on human rights and the environment.

17. See **Tomasevski, 1993: 125** (see also in the appendix).

CHAPTER FIVE

ASSESSING THE HUMAN RIGHTS PERFORMANCE AND THE FOREIGN AID FLOW TO INDONESIA

This chapter assesses the implementation of the link between aid and human rights in Indonesia. Firstly, it refers to both the general provisions of human rights in Indonesia and the country's participation in international human rights covenants.

Secondly, this chapter will describe Indonesia's human rights performance in the 1980s and the 1990s. Such a description adheres to the empirical studies carried out by human rights experts, the US Department of State (Country Report) and reports from international organisations such as Amnesty International (AI) and Asia Human Rights Watch (AHRW). The use of these sources is based on the considerations that access to domestic human rights sources in Indonesia is strictly controllable, and that the credibility of these studies is considered beyond doubt¹ in terms of both reports and their neutral stance.

The third section of this chapter analyses the foreign aid performance of three individual donors -the USA, Canada and the Netherlands- each dealing independently with Indonesia between 1980 and the estimated year of 1995, and finally; it will conclude by presenting Indonesia's response to the development of "aid-human rights link" during the same period.

1. Legal Procedures on Human Rights

1.1. National Procedures.

Indonesia is governed under a constitution drawn up in 1945 in the wake of the proclamation of independence. It is based on five principles; monotheism, humanitarianism, Indonesian unity, representative democracy by consensus and social justice, all embodied in the state ideology Pancasila. Originally perceived of as a temporary document, this constitution is relatively brief and consists only of a preamble, 37 articles, four transitional clauses and two additional provisions (see the 1945 Constitution of Indonesia). From 1945 to 1966, political instability in Indonesia caused the country's constitution to experience several fashion changes (Tasrif,1979:2).

- In 1949, the 1945 Constitution was replaced by a federal constitution as Indonesia, under President Sukarno, was about to shift towards a federal state.
- In 1950 however, the Federal Constitution was replaced by a liberal democratic Constitution in the midst of the [formal] transfer of sovereignty from the Netherlands to Indonesia (which began in 1949).
- In 1959, the 1945 Constitution was reinstated by President Sukarno as a basis for the system of guided democracy. It has remained in place since then, and was taken over by the New Order government, under President Soeharto in the 1966, whose commitment asserts that the 1945 Constitution will not be subjected to

any form of change. The New Order pledges to consistently implement the 1945 Constitution as the only source for all legal procedures in Indonesia.

As far as human rights protection is concerned, the 1945 Constitution contains the following articles:

Article 27. (1) All citizens have equal status before the law and in government and shall abide by the law and the government without any exception.

(2) Every citizen has the right to work and to live in human dignity.

Article 28. Freedom of association and assembly, of verbal and written expression and the like, shall be prescribed by law.

Article 29. (1) The State shall be based upon the belief in the One and Only God.

(2) The State guarantees all persons the freedom of worship, each according to his/her own religion or belief.

Article 30. (1) Every citizen has the right and duty to participate in the defence of the country.

(2) The rules governing defense shall be regulated by law.

Article 31. (1) Every citizen has the right to education.

(2) The government shall establish and conduct a national educational system

which shall be regulated by law.

Article 32. The government shall advance the national culture.

Article 33. (1) The economy shall be organized as a common endeavour based upon the principles of the family system.

(2) Sectors of production which are important for the country and affect the life of the people shall be controlled by the state.

(3) The land, the waters and the natural riches contained therein shall be controlled by the state and exploited to the greatest benefit of the people.

Article 34. The poor and destitute children shall be cared for by the state.

According to Dr Ismail Suny,² a scholar of Indonesian constitutional law, the 1945 Constitution covers almost half of the fundamental human rights principles enshrined in the Universal Declaration of Human Rights (UDHR). He stresses, that there are 18 articles concerning basic human rights in the UDHR featured in the 1945 Constitution of Indonesia. They include (Tasrif,1979:11);

- Freedom of speech (Article 28)
- Freedom of religion (Article 29 point 2)
- Freedom from fear (Article 27 point 1)
- Freedom from want (Article 27 point 2; Article 33)

To further strengthen the government's commitment to human rights, several forms of legal procedures salient to the protection of human rights have been adopted since 1970s. These include the 1981 Criminal Procedures Code (KUHAP), which contains protection against arbitrary arrest and detention and specifies the right of prisoners to legal council and notification of family. KUHAP, in addition, acknowledges the right to "Presumption of Innocence", on charges against someone before any judicial process has been pursued.

In contemporary Indonesia any expression regarding human rights, either verbal or written shall be prescribed by the law (see article 28 of 1945 Constitution) and based on the nation's constitution.

1.2. Indonesia and International Conventions

Indonesia's participation in the ratification of international human rights instruments can be described as unsatisfactory. For example, since its establishment in 1945, the UN has institutionalized 38 international human rights instruments (Tomasevski,1993:150).

TABLE 1. Chronology of human rights instruments

1945	United Nations Charter
1948	Universal Declaration of Human Rights
1948	American Declaration of the Rights and Duties of Man
1948	Convention on the Prevention and Punishment of Genocide
1949	Convention on the Suppression of Traffic in Persons
1950	European Convention for the Protection of Human Rights and Fundamental Freedoms
1951	Convention on the Status of Refugees

- 1952 Convention on the Political Rights of Women
- 1953 Protocol Amending the 1926 Slavery Convention
- 1956 Supplementary Convention on the Abolition of Slavery
- 1957 Convention on the Nationality of Married Women
- 1957 Abolition of Forced Labour Convention
- 1958 Discrimination (Employment and Occupation) Convention
- 1960 Convention against Discrimination in Education
- 1961 European Social Charter
- 1962 Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages
- 1965 Recommendation on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages
- 1965 International Convention on the Elimination of All forms of Racial Discriminations
- 1966 International Covenant on Economic, Social and Cultural Rights
- 1966 International Covenant on Civil and Political Rights
- 1966 Protocol Relating to the Status of Refugees
- 1967 Declaration on the Elimination of All Forms of Discrimination against Women
- 1968 Proclamation of Teheran
- 1969 American Convention on Human Rights
- 1969 Declaration on Social Progress and Development
- 1971 Declaration on the Rights of Mentally Retarded Persons
- 1973 International Convention on the Suppression and Punishment of Apartheid
- 1974 Universal Declaration on the Eradication of Hunger and Malnutrition
- 1974 Declaration on the Protection of Women and Children in Emergency and Armed Conflict
- 1975 Declaration on the Rights of Disabled Persons
- 1975 Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- 1978 Declaration on Race and Racial Prejudice
- 1979 Convention on the Elimination of All Forms of Discrimination against Women
- 1981 African Charter of Human and People's Rights
- 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief
- 1984 Convention against Torture and Inhuman or Degrading Treatment or Punishment
- 1989 Convention on the Rights of Child
- 1991 International Convention for the Protection of Human Rights of All Migrant Workers and Their Families

Of these, the Indonesian government has ratified only four of them including:

- Convention on the Elimination of All Forms of Discrimination Against Women, adopted in February 1, 1991
- Convention of the Rights of the Child, adopted in August 1, 1991
- International Convention on the Suppression and Punishment of Apartheid, adopted in early 1994 (Hannun,1993:280-290; Suara Pembaharuan Oct 26 1994)

- A UN Memorandum for the Protection of Human Rights signed in October 25, 1994 (Suara Pembaharuan:Ibid).

According to John Pace, who represented the UN High Commissioner for Human Rights, "Indonesia is duty-bound to observe and protect all human rights and fundamental freedoms" in accordance with the Charter of the United Nations and UDHR (Indonesia Publications,1994:No 724), following its agreement to sign the latter memorandum. It is expected, therefore, that in the near future Indonesia will ratify all important international instruments including those dealing closely with all sorts of civil, political and economic, social and cultural rights.

Jakarta's ratification of international human rights instruments is poor when compared to other Third World countries such as the Philippines who has ratified 18 international instruments; Egypt 18; Libya 18; Syria 12; Ghana 12; Srilanka 11; Bangladesh 9; China 9; Iran 9; Laos 9; and Vietnam 8 (Suara Pembaharuan Oct 26 1994). Indonesia, is one of the most prominent Third World countries actively urging the equal implementation of social and economic rights and civil and political rights. Nevertheless the country was not a participant either in the 1966 International Covenant on Economic, Social and Cultural Rights or in the 1966 International Covenant on Civil and Political Rights.

2. Brief Account on Indonesia's Human Rights Performance

The Republic of Indonesia is a multi-ethnic state, the territorial extent of which is defined principally by the boundaries of the former Dutch colonial empire in South

East Asia. In 1976 the Eastern part of Timor island, a former Portuguese colony, was incorporated³ into Indonesia, making it the country's 27th province. Nevertheless, the UN does not recognize the former's incorporation with the latter and regard it as an illegal occupation.

The first 15 years of Indonesia's history as a sovereign state were marked by political instability. Several changes, as mentioned in the previous section, fashioned the shifting of one constitution to another. "The era of guided democracy (1950-1959) was an era of political turmoil during which economic prudence was eclipsed by revolutionary zeal in domestic policy making and confrontations with the Netherlands and Malaysia were the prime features of foreign policy" (Intelligence Unit,1993:4).

The September 1965 coup by the alleged communist party (PKI) marked the end of the Old Order under Sukarno's presidency. It was crushed by the military, under which the New Order was established when the executive power of government was transferred to Major General Soeharto. "As many as 750,000 alleged members of the PKI and its affiliated, were subsequently killed" (Intelligence Unit,1993:ibid) by the time Soeharto came to power. President Soeharto has been elected for five year terms in 1973, 1978, 1983, 1988 and 1993.

During more than 25 years in office, however, Soeharto's government has come under critical scrutiny by both domestic and international human rights activists. Criticisms of Indonesia's records on human rights continue to this date. This situation is accentuated by an overwhelming military dominance in the bureaucracy, which has

the backing of the government (Intelligence Unit,1993:6). The following studies will briefly present Indonesia's human right records since the New Order came to power in late 1960s. The first of these is a study carried out by Charles Humana which records the human rights performance of 120 countries up until the late 1980s.

With regard to Indonesia, Humana (1986:128) asserts that since the late 1960s the following factors have affected human rights within the country:

- The country is governed by a small military group.
- Individual and human rights are subordinated to the continued rule of the present authorities.
- The country is a collection of different communities and a few large and many small islands, some of which are pressing for self-rule and are being subjugated by the security forces, for example East Timor and Irian Jaya.

The following method of assessing a country's human rights performance was used. A questionnaire was compiled, based on 40 human rights questions. The result were graded according to the degree of respect for the relevant article of the human rights treaty (e.g. the UNCHR). There were four grades or categories of response and they were indicated on the questionnaires as YES, yes, no and NO (Humana,1986:3).

YES, represents the category of unqualified respect for the freedoms, rights or guarantees of the article stated in the questionnaire.

yes, qualifies otherwise satisfactory answers on the grounds of occasional breaches

of respect for the freedoms, rights or guarantees of the article stated in the questionnaire.

no, indicate frequent violation of freedoms, rights or guarantees of the article stated in the questionnaire.

NO, indicates a constant pattern of violations of the freedoms, rights or guarantees of the article states in the questionnaire.

In addition, the assessment on human rights can be identified in the areas indicated in tables 2, 3, 4, 5 and table 6.

TABLE 2

FREEDOM TO	GRADE	COMMENTS
Travel in own country	no	Unrest in East Timor and Irian Jaya restrict movement in these areas
Travel outside own country	yes	Exit permit required
Peacefully associate and assemble	no	Government permission required. Current secessionist ideas a taboo subject. A new bill (1985) regulates all 'community organisations'
Teach ideas and receive informations	no	Discretion practised in academic circles particularly with the need to support Pancasila. Universities under general police surveillance
Monitor human rights violations	NO	Considered to be interference in internal affairs
Publish and educate in ethnic language	NO	No Chinese schools or newspapers for the minority of 4 million. All writing of Chinese characters banned. Other minorities also affected

TABLE 3

FREEDOM FROM	GRADE	COMMENTS
Extrajudicial killings or disappearances	NO	Apart from summary executions, there have been 1700 sanctioned 'executions' of criminal syndicates by government death squads
Torture or coercion by the state	NO	Particularly when secessionist elements are being interrogated by the security forces, government handbook condone, use of torture when necessary
Compulsory work permits or conscription of labour	YES	Discrimination against a few former political prisoners
Capital punishment by the state	NO	By firing squad for murder, subversion, drug trafficking, etc. Since 1969, estimates of deaths -include those killed in military actions- have been put at 500.000
Court sentences of corporal punishment	yes	But the extent of officially condoned torture must be regarded as corporal punishment by the state
Indefinite detention without charge	NO	A form of martial law gives the security forces arbitrary powers to arrest and detain
Compulsory membership of state organisation parties	YES	Rights respected
Compulsory religion or state ideology in schools	yes	Rights respected
Deliberate state policies to control artistic works	yes	Erratic censorship. Punishment for the socially or ethically unacceptable
Political censorships of press	NO	Journalists, editors and newspapers are arrested or banned for provocative reports.
Censorship of mail or telephone-tapping	no	Surveillance of suspected subversives and others

TABLE 4

FREEDOM FOR OR RIGHTS TO	GRADE	COMMENTS
Peaceful political opposition	NO	The compulsory ideology, Pancasila, determines politics, morality, religion, etc
Multi-party elections by secret and universal ballot	no	3 parties by law but government power, with the support of the military, is assured and absolute
Political and legal equality for women	no	Position improving but little representation at highest level
Social and economic equality for women	no	Traditional and economic distinctions
Social and economic equality for ethnic minorities	no	Many ethnic groups affected. Dominant positions are held by Javanese
Independent newspaper	no	On important issues the owners of independent papers are advised on policy by officials
Independent book publishing	no	Understood guidelines. Strict conformity with ideology. Penalties including banning and closures
Independent radio and television networks	no	Department of Information and private stations. Careful guidelines followed by the latter
All courts to total independence	no	Judges are public servants and subjects to pressures and bribery. Many cases of corruption of the judiciary
Independent trade unions	no	Only about 5% of workers unionised. Public servants and many categories of labour forbidden to form unions.

TABLE 5

LEGAL RIGHTS	GRADE	COMMENTS
From deprivation of nationality	YES	Rights respected
To be considered innocent until proved guilty	NO	Security powers have arbitrary powers, particularly in areas of armed opposition to the central government
To free legal aid when necessary and counsel of own choice	yes	Legal aid for 'most needy'. Defence lawyers appointed by court in 'subversion cases'. A developing legal aid scheme promoted by independent lawyers
From civilians' trials in secret	no	Left to discretion of courts
To be brought promptly before a judiciary court	NO	Detention without trial for many cases of subversion. Legality to this given in certain instances by the 1981 criminal code
From police searches of home without warrant	no	Various categories of crime subjected to unauthorised searches
From arbitrary seizure of personal property	YES	Rights respected

TABLE 6

PERSONAL RIGHTS	GRADE	COMMENTS
To inter-racial, inter-religious or civil marriage	no	The new government ideology reinforces the normal Muslim interdiction on intermarriage (88% of population)
Equality of sexes during marriage and for divorce proceedings	no	Position affected by traditions and religion. The prevailing Islamic faith does not grant equality in divorce or inheritance
To practice any religion	no	Baha'i religion banned 1984. 'Contrary to true teaching of islam'. Other religions tolerated
To use contraceptive pills and devices	YES	State-supported schemes
To practice homosexuality between consenting adults	yes	Tolerated despite article in penal code

The second assessment of an individual country's human rights performance is recorded by the United States Department of State in its Country Reports on human rights. This follows the Country's Foreign Aid Act (FAA) 1961 which requires complete information on the human rights performance of countries receiving the US foreign aid. As far as Indonesia is concerned, assessment on its human rights performance compiled from three successive US Country Reports (1990-1991; 1991-1992; 1992-1993) can be divided into 6 broad sections.⁴

Section 1: Respect for the integrity of the person, including freedom from political and other extra judicial killings; disappearance; torture and other cruel, inhuman, or degrading treatment; arbitrary arrest, detention, or exile; denial of fair public trial; and arbitrary interference with privacy, family home or correspondence.

Charges that there is the abuse of human rights against civilians by the security forces in places which are pushing for independence or separation, such as Aceh, East Timor and Irian Jaya, were expressed by such reports. For example in November 12, 1991 the armed forces opened fire against a group of demonstrators in Dili, East Timor, killing dozens of people. While those deemed responsible for it were brought to trial, according Amnesty International (1994), the verdicts failed to meet international standards. Some civilians were sentenced to life imprisonment, whereas members of the military responsible for the shootings, despite the fact that they pleaded guilty, were given only light sentences ranges from one to two years imprisonment.

Disappearance, torture and other cruel and degrading punishment remain prevalent in 1990s. Despite the fact that the Indonesia Criminal Procedure Code (KUHAP) containing safeguards against such violations, they are often disregarded in practice. People are often taken into custody without going through the state of "due process", a state which requires the government not to deny or remove an individual's property or freedom without showing cause and following proper legal procedures. The security forces intimidate or conduct campaigns of psychological terror, for example intimidating persons or the family of persons who have exercised some political activity which is deemed to be against the state (Amnesty International, 1994).

On 5th September 1988, the government founded the Coordinating Agency for the Reinforcement of National Stability (Bakorstanas), under the command of the armed forces and, under a presidential decree (KEPRES No.29/1988). Bakorstanas is more a set of powers than an institution. It influences a range of governmental instrumentalities giving them extraordinary powers which allow them to sidestep normal procedures, including the Code of Criminal Procedure (Indonesia Task Force, 1994). According to David Bourchier (1994) by using Bakorstanas powers, local military commanders can and do arrest, detain and torture "troublemakers" denying them access to legal counsel (ibid).

Section 2: Respect for civil liberties, including freedom of speech and press; freedom of peaceful assembly and association; freedom of religion; and freedom of movement within the country, foreign, travel, emigration and repatriation.

Among the above points only freedom from religion is fully granted. Although the population is overwhelmingly Moslem, the religion of the others are recognised including Catholicism, Protestantism, Buddhism and Hinduism. Tolerance among religions is promoted by the state. However for the other three freedoms namely, peaceful assembly, movement within the country, foreign travel, emigration and the like, according to the US Country Reports, government permission is necessary. In March 1992, for example, the DPR (the Legislative Body) passed a new immigration law which can effectively bar Indonesia residents from returning, if the government decided they had been disloyal (US Department, 1994:Chapter 4.07). Targets of the new law, according to the same report, were elements that ABRI (the Indonesian Armed Forces) would naturally want to ban; secessionist movement members and alleged communists.

With regard to social organisations (ORMAS), the law requires all social organisations, including recognised religions and associations to adhere to Pancasila, the state ideology.

Section 3: Respect for political rights: The rights of citizens to change their government.

Parliament, political organisations and the general public have limited ability to influence government decisions but cannot change the system or its leadership. The parliament, whose members are screened by the government before election or appointment has the right, as granted by the 1945 Constitution, to consider laws presented by government but does not draft laws on its own.

Section 4: Government attitude regarding international and Non-Governmental investigation of alleged violations of human rights.

According to the reports of 1991, 1992 and 1993, the government generally ignores calls by domestic human rights groups and activists. In October 1994, for instance, the government held a seminar on human rights in Jakarta. While many NGOs and human rights organisations were invited, other organisations and individuals, which were critical of government views on human rights, were refused permission to attend. According to the Minister of Foreign Affairs, Ali Alatas, they were not invited because they hold different views on human rights to that of the government (Suara Pembaharuan Oct 26, 1994).

For investigations of alleged human rights incidents, while various domestic organisations (e.g. INFHIGT - INFID - YLBHI) and persons interested in human rights operate energetically, the government discourages public human rights activities. For example they are prevented from speaking publicly on violations of human rights by government bodies. The government consider outside investigation of alleged human rights violations to be interference in its internal affairs.

The reports conceded that the Indonesian government has allowed some improvements to take place, such as giving certain international organisations (e.g. International Committee of Red Cross - ICRC), access to political prisoners. Nevertheless such organisations have experienced significant delays in gaining access to those wounded or imprisoned by the government. The case of East Timor following

the Dili massacre (known in Indonesia as Dili incident) provided such an example. Independent observers, including international organisations, were denied permission by government troops to visit those hospitalised. (Amnesty International, 1994). Only after international pressure was increasingly intensified was the ban lifted.

Section 5: Discrimination based on race, sex, religion, language and social status.

Indonesia exhibits considerable tolerance for ethnic and racial differences and, as mentioned before, for the major religions. 1991 however saw a rise in anti-Chinese feeling in many quarters of Indonesia society, particularly against the affluent Chinese. Another example of this was a recent riot in Medan (North Sumatra, 1994) against the Chinese. Thousands of workers went on strike demanding increased wage rates. The demonstration turned into an anti-Chinese riot.

Under the law (Article 26, 1945 Constitution), as President Soeharto and other officials periodically affirm, there is no difference between Indonesian people. Nevertheless, under this law the government also suppresses political dissent and ethnic conflict. Racial tensions sometimes lead human rights abuse to occur as security forces use the "extraordinary power" to maintain the so-called national stability.

In Indonesia women are supposed to be equal to and have the same rights, obligations and opportunities as men. Some Indonesian women enjoy a high degree of economic and social freedom and occupy important mid-level positions in the civil service, educational institutions, labour organisations, the military, in the professions and

in private business. Nevertheless, in places which are pushing toward independence, the overwhelming military presence has specifically affected women. In East Timor, for instance, in a statement presented before the UN Decolonisation Committee, July 18 1994, the East Timor Alert Network (ETAN)/Canada reported that women who actively resist (i.e. by joining the struggle) have been directly affected by Indonesia's occupation. According to ETAN, evidences of murder, rape, sexual assault, torture, kidnap and enforced sterilisation of women in that area are well documented (ETAN,1994).

Section 6: Workers rights, including the right to association; the right to organise and bargain collectively; prohibition of forced or compulsory labour; minimum age for employment of children; and acceptable conditions of work.

The Indonesian government acknowledges only "the All Indonesia Workers Unions" (SPSI). In 1990 the SPSI reorganised into 13 autonomous divisions, covering broad industrial sectors and specialized institutions. It claims to have over 3 million members. Nevertheless, the SPSI is not fully independent. The government and employers have considerable influence over SPSI affairs; the Ministry of Manpower is a member of the SPSI Consultative Council. Members of SPSI are pressured to join Golongan Karya (GOLKAR) which is a political grouping, a coalition of functional groups not affiliated to either political parties (PPP and PDI) and which includes civil servants, retired members of the armed forces, women's organisations and professional groups.⁵

In November 1990, a number of human rights campaigners created the Setia

Kawan (Solidarity) Free Trade Union, alleging that SPSI had failed to defend workers interest adequately. The Coordinating Minister for Political and Security Affairs immediately declared government disapproval of such a trade union but did nothing to prevent its existence. The Setia Kawan was, however, not able to function as a labour union since it does not meet the requirement for legal recognition referred to above. According to the US Country Report of 1991 the Setia Kawan organizers have been harassed, and in June, Secretary General Saut Aritonang reported he was abducted by armed men and detained for several days. Aritonang has not, however, been able to publicly speculate on the identification of his abductors.

In 1993 another Serikat Buruh Sejahtera Indonesia (SBSI - Indonesian Workers Welfare Union) was organized but it is not registered. The Department of Home Affairs refused to accept SBSI's application to be formally registered. In August 1994 the SBSI leader, Dr Muchtar Pakpahan, was taken to Medan (North Sumatra), following the Medan workers riot in August 1994, and was brought before the court. He was allegedly accused of both organizing and inciting the previous street demonstrations which led to the death of a chinese. Pakpahan, despite his rejection of all the accusations made against him, was finally sentenced to 3 years imprisonment.

Collective bargaining is provided by law, known as HIP (Pancasila Industrial Relations) but only recognized trade Unions may engage in it. In companies without unions the government discourages workers from NGOs taking parts in consultations with employers over company regulations (see the US Country Reports 1991;1992;1993).

Forced Labour is strictly forbidden by law, and enforcement is generally adequate. The government, however, is often slow to investigate allegations of forced labour. Press reports and NGOs have confirmed that there have been cases of fraudulent recruitment of Timorese workers for employment in Java and forced labour by logging companies in Irian Jaya.

Child Labour continues to be a serious problem. Despite the law (Minister of Manpower regulation per-ol/men/1987) prohibiting children below 12 entering the work force, child labour can still be found around the country, even if they are known to the government apparatus. For instance in a company in Surabaya (East Java), children were detained and forced to work with salary below the standard required (The US Country Report 1992).

In terms of acceptable conditions for work, while Indonesia has succeeded in dramatically lowering the level of poverty (from 60% in 1970 to 28% in 1993) throughout the country, the minimum wage for workers are still below the standard required by the Ministry of Manpower. According to AHRW, the Indonesian government in December 24, 1993 announced the minimum daily wage would be raised from Rp1800 (US \$0.94) to Rp3.800 (US \$1.40) effective January 1, 1994 (Asia Human Rights Watch, 1994). On January 16, 1994 the Minister of Manpower repealed its Decree No 342 of 1986 which authorized the military to interfere in the settlements of labour disputes. Nevertheless, in the view of Asia Watch (mid-1994), in practice it will be harder to eradicate. The murder of a labour activist, Marsinah in May 1993, in East Java confirmed this argument. Through a careful and intensive investigation by various

human rights NGOs it was proved that the senior figures in the watch factory (PT Catur Surya or CPS) where Marsinah worked, and members of the local military were the architects of her death.⁶

The first three sections of this chapter have briefly described the general record of Indonesia's human rights performance from the late 1960s to 1994. Domestically, Indonesia possesses comprehensive legal procedures which cover almost half of the UNCHR requirements for basic human rights protection. Nevertheless, the country has a poor record in the ratification of international human rights instruments. From 38 institutionalized covenants on human rights, Indonesia has entered into only four of them.

Furthermore, Jakarta's overall human rights performance since the late 1960s, when the New Order government came to power is deplorable. It has failed to meet international standards requirements. The studies carried out by Charles Humana (1986), the US Country Reports and international human rights organisations showed that, despite the fact that Indonesia has made important improvements and performed well in areas like religion, ethnic tolerance, women rights (to some extent) and revamping some of its previous labour regulations, the country has failed to uphold most of the civil and political rights of its citizens. Torture, arbitrary arrest, punishment and other inhuman treatment of some of its population continue to characterize Indonesia's human rights performance. This situation emphasizes the long standing domestic and international accusations made regarding Indonesia's poor human rights performance and it confirms Charles Humana's remark that Indonesia should be included with those

countries of the world which have the "worst" human rights records (Humana,1986:8-9).

3. Donor's Aid Performance to Indonesia from 1980 to 1995

Table 7 provides a compilation of the USA, Canada and the Netherlands aid performance to Indonesia. It shows the transactions of each of the donor countries and lists the nominal value of their official bilateral resource flows (ODA) from 1980 to 1993, including the estimated ODA for 1994 and 1995 to Indonesia. The latter is taken from the Congressional Reports in the United States Foreign Department Quarterly. The percentage value given in the table recounts the increased-amount of ODA in every single year.

3.1. The United States of America

The USA seemed to experience a steady decline in foreign aid to Indonesia from 1980 to 1992, with only a slight increase of 8% from 1982 to 1983; 16% from 1986 to 1987; and 41% from 1988 to 1989. Between 1980 and 1992, however, the US commitment to link foreign aid to human rights remained only nominal. No action was taken against Indonesia during that period⁷. This partly reflected the character of the Ronald Reagan and George Bush governments whose policies, as mentioned in chapter Four, were aimed primarily at preserving America's international influence in the midst of the collapse of the former Soviet Union. They thus favouring their allies including Indonesia, despite the fact that Indonesia was known to have exhibited a considerably poor human rights record since 1966.

TABLE 7. The ODA net (US 000') to Indonesia

Year	THE USA	%	CANADA	%	THE NETHERLANDS	%
1980	117.0	-	14.4	-	85.4	-
1981	103.0	-12	21.2	47	68.0	-20
1982	72.0	-30	26.8	26	105.3	54
1983	78.0	8	10.6	-60	61.8	-41
1984	61.0	-22	26.0	14	78.0	26
1985	43.0	-29	34.1	31	56.6	-27
1986	31.0	-27	33.4	-2	161.5	185
1987	36.0	16	43.0	29	140.3	-13
1988	22.0	-39	40.1	-6	156.2	11
1989	31.0	41	33.4	-17	161.5	3
1990	31.0	0	48.4	45	190.1	17
1991	18.0	-42	42.7	-12	139.4	-26
1992	-1.0	-94	33.7	-21	8.0	-94
1993	43.5	45	***	-	=	-
1994	48.8*	12	***	-	=	-
1995	62.5**	28	35+	-	=	-

Source: Geographical Distribution of Financial Flows (OECD), 1980-1993,

*. Estimate (see Congressional Quarterly, April 2, 1994-Vol 52. No13:808).

** . Requested (ibid).

***. Data unavailable.

=. Indonesia, since 1992 refused to receive further Dutch aid.

+. Canada is expected to disburse another \$35 million dollars in its bilateral aid to Indonesia in 1995 (See Canada's statement at the meeting of the Indonesian Consortium (CGI) - Paris, July 6-8, 1994 in **Indonesia Task Force**).

Only since 1991, following the Dili massacre (known in Indonesia as the Dili incident) have attempts been made to implement strict criteria attached to foreign aid. For example, from 1992 to 1993 the US Congress and administration cut funds for military education and training (IMET) to Indonesia armed forces on human right grounds. In 1993 the Congress prevented the sale of fighter jets to Indonesia also on human rights ground. Again, in the same year the Senate Foreign Relations Committee voted unanimously to adopt a proposal by senator Russ Feingold (Development Wisconsin) to link US arms sales to Indonesia to improvements in the human rights situation in East Timor (ETAN, 1994). In 1993 the Senate also warned the Indonesian government that it might lose its trading privileges unless it substantially improved its labour rights (Amnesty International 1994) such as granting the right to form unions, and the right to strike and some increase in labour wages.

Nevertheless, in 1993 after the UN Commission for Human Rights in Geneva adopted a resolution condemning Indonesia's human rights record, the USA extended another \$43.5 billion in the form of ODA to Indonesia. Thus the Congressional Quarterly - April 2, 1993 estimated that, the Clinton government, despite promises to strictly implement human rights criteria, was preparing to increase its foreign aid to Indonesia to a total of 48.8 billion in 1994; a net increase from 12% in 1993. At the same time another amount requested for the fiscal year of 1994/1995 was announced. The latter, though still unconfirmed, if approved will amount to a total of \$62.8 billion, a net increase of 28% from the previous year. Thus, though persistent human rights abuses have continued in Indonesia from the 1960s to the 1990s, and in some ways intensified, the ODA nevertheless continues.

3.2 Canada

The level of Canadian foreign aid to Indonesia has experienced ups and downs during the period from 1980 to 1993. Table 7 shows that the nominal value of aid increase between 1980 and 1981 was 47%. This was then followed by 1981-1982 (26%); 1983-1984 (14%); 1984-1985 (31%); 1986-1987 (29%); and 1989-1990 (45%) respectively. Whereas the decline of the ODA volume occurred only during 1982-1983 (69%); 1985-1986 (2%); 1987-1988 (6%); 1988-1989 (17%); and 1990-1992 (12%) respectively.

This indicates again that Canada's commitment to implement sanctions on Indonesia on human rights grounds remains unclear. Indeed, Canada's Prime Minister, in 1993, asserted that development assistance has not always been and will not be given to countries who show no respect for the fundamental rights and individual freedoms of their people. "Canada will not subsidize repression and the stifling of democracy" (The Indonesian Quarterly, Vol XXI No 1, 1993:42). The period between 1980-1991, nonetheless, showed the reverse of these sentiments. It evidences that no attempt had been made to link aid to human rights to Indonesia.

After the Dili massacre/incident in 1991 Canada, like the USA "froze" new commitments of aid (Amnesty International, 1994). This action was followed by the suspension of three planned aid projects totalling \$30 million followed by a complete cancellation of the projects in 1992 (ETAN,1994).⁸ Between 1993 and 1994 the Canadian government increased its efforts by backing positive resolutions supporting

the Timorese people at the UN Commission on Human Rights and has, since 1991, made no sales of military equipment to Indonesia (ETAN,1994). Despite such experiences, however, Canadian ODA continues. For example, in Paris, July 6 - 8, 1994 the Canadian government praised Indonesia's achievement; for the multi-fold increase in its per capita income; for the drop from 60 to 40 percent in the number of Indonesians living under the poverty line; for the restructuring of the economy; and for the significant improvements in literacy and health. At the same time Canada pledged to increase its bilateral aid for 1994/1995 to 35 million (Canadian) and made no mention of human rights issue. In fact, on 21st June 1994 the Indonesia government had just withdrawn three leading magazines (Tempo, Editor and DeTik) from publicity, claiming their existence as threat to national stability (Amnesty International, 1994). Their licences were cancelled and were not allowed to function further. As a consequence a number of journalists lost their jobs. No recognition was given by the Canadian government to these job losses. Such a situation summarizes our early argument that the condition of Canadian aid performance remained incompatible with its commitment to uphold human rights.

3.3. The Netherlands

Dutch foreign aid also has seemed to spiral up and down since 1980. There have been several experiences of massive increase in Dutch aid; for example, between 1981-1982 (54%); 1983-1984 (26%); 1985-1986 (185%); 1987-1988 (11%); 1988-1989 (3%); and between 1989-1990 (17%) respectively.

Given that human rights abuses prevailed in Indonesia at those times, Dutch aid seemed to show no signs of discontinuation or suspension, yet the Dutch government, like that of the USA and of Canada, propagates the universality of human rights. It supports the claim that political and civil rights are valid at all places under all circumstances (Rooijen, in *Business Indonesia*, 1993:13).⁹

In 1991, after the Dili massacre or incident of East Timor the Dutch government like that of the USA and Canada severely criticized Indonesia and attempted to cut its foreign aid to the country. In late 1991 the Dutch government decided to discontinue all forms of aid to Indonesia. The Netherlands were also the chairman of the former IGGI (Inter-Governmental Group on Indonesia) whose members consisted of main OECD countries such as Canada, the USA, Germany, France and others. On March 25, 1992 after persistent attempts by the Dutch government to impose political conditions on aid commitment to Indonesia, the Indonesia government decided to reject all further financial assistance from the Netherlands and announced the dissolution of IGGI (Intelligent Unit, 1994:73).

Commenting on the above, Robert Dudley Van Rooijen, Dutch ambassador to Indonesia in 1993 insists, that the Netherlands regarded human rights as transcending national sovereignty. Countries, he added, cannot "escape behind the argument of sovereignty in order to not be scrutinized by the UN in one way or another to improve human rights" (*Business Indonesia*, 1993:13).

4. Indonesia's Response to Donor Countries' Reaction

In Chapter Four, this thesis illustrated several progressive achievements regarding the effectiveness of human rights as an aid criterion. Several governments have improved or subsequently cancelled arbitrary executions of their political opponents following international condemnation and threat to suspend further assistance (See New African, 1992: 31-32; Tribune, 1988:4-5).

The Indonesian government has proved willing to comply with the international pressure, despite officially resisting the linking of aid to human rights (Simandjuntak and Santoso, 1993:15), after increasing international criticism following the Dili massacre/incident in 1991¹⁰. As briefly depicted in the previous section, governments like that of the USA, of Canada and of Netherlands have in 1990s, reluctantly, have advanced simultaneous efforts to raise the issue of human rights in relation to their aid relationships with Indonesia.

Indonesia's response, nevertheless, has been ambiguous. With its commitment to both the cultural relativism theory and the post war security approach which emphasize the principle of "international interdependence", Jakarta has set out to respond with such international pressure in two ways:

First, while maintaining its strong refusal to accept international supervision of its human rights record, Jakarta has anticipated donors' action by cancelling or refusing the latter's foreign aid. Two examples of this were; one, in 1991 on the eve of Dutch

decision to suspend its aid the Indonesian government suddenly terminated the aid relationship between the two countries claiming it will not accept foreign values of human rights being imposed in Indonesia (Simandjuntak and Santoso,1993:15). Second, in May 1994, Jakarta cancelled a \$38 million (Guelph) project funded by a Canadian University in South Sulawesi after the former released a report severely criticising human rights abuses in Indonesia (Toronto Star-July 6, 1994).

The second way of responding to international pressure has been via the following methods;

Firstly, Indonesia has gradually engaged in international human rights institutions such as the Commission of Human Rights (UNCHR) since 1991 and adheres to the Universal Declaration of Human rights (UDHR).

Secondly, Indonesia has been participating actively in regional forums regarding human rights such as the Bangkok Declaration on Human Rights in 1992, which is a commitment to the observance and protection on human rights (Though the declaration, nonetheless, emphasizes a refusal to comply with the Western values).

Thirdly, Indonesia participated in the establishment of a National Commission on Human Rights in 1993. This commission was set up under a presidential decree yet, according to domestic and international observers, its dedication to the eradication of human rights abuses remains doubtful. All members of the

Committee are known for their loyalty to the government. Furthermore, the Committee was aimed primarily at advising the government on issues regarding human rights, but has no judicial power to enforce its findings.

Fourthly, Indonesia invited the United Nations Special Rapporteur to review claims of human rights abuses in July 1994. The full UN report on the finding will be published in 1995.

And finally, the government signed a UN memorandum in October 1994 pledging to uphold human rights, and respect the fundamental rights of its citizens (see The Ministry of Foreign Affairs -29-9-1994).

Such developments, at a cursory glance seem to reveal the Indonesian government's willingness to uphold human rights yet, in practice, torture and other forms of physical and inhuman treatment by the armed forces still prevail and will be difficult to eradicate in the near future. Also, there are several government policies that allow certain set of powers to sidestep normal procedures. For example, the existence of BAKORSTANAS which operates outside the KUHAP, and the permissive killings by government death squad (pembunuh misterius), in the name of maintaining the national stability (The US Country Report 1992).

Despite several positive developments by Jakarta which followed international pressure which intensified in 1992, Indonesia has not thoroughly improved its human rights performance nor is she complying with international human rights standards. The

Indonesian government still refuses to accept what it alleges are inappropriate, Western values though, in practice, changes are gradually taking place.

5. Notes

1. As mentioned in chapter Four, empirical studies on human rights worldwide carried out by independent international NGOs such as Amnesty International and Asia Human Rights Watch, have been widely recognised including the UN (see **Tomasevski, 1994 142-143**).
2. The writer is an expert on Indonesian Constitutional law and is the author of several books on the topic (Source, **the Embassy of the Republic of Indonesia-Wellington**).
3. Indonesia invaded the Portuguese colony of East Timor on 7-12-1975 and subsequently annexed it on July 16, 1976 (**Intelligence Unit, 1993:4**). The UN has, since then, adopted several resolutions demanding the withdrawal of Indonesian military from the territory. Nevertheless the problem remains, so far, unsettled.
4. The US Country Report on recipient's human rights records, including Indonesia's is large. It is based on 6 broad areas of human rights and details clearly, specific human rights performances of the country. For the purpose of description, in this chapter, the writer will briefly explain only in broad terms.
5. See **Intelligence Unit, 1993: 6**.
6. Goenawan Moehamad, the former chief editor of Tempo magazine, in our interview, confirmed the above case. In his position as the chairman of the Legal Aid Foundation (YLBHI) he presented the Yap Thian Hien human rights award to Marsinah in December 1993 (**The Jakarta Post December 10th, 1993**).
7. In my own research, I found that none of the US Country Reports and Congressional Reports between 1980 and 1990 recorded statements which claimed to link aid to human rights. Some of the Congressional reports, (e.g. 1989 and 1990) indeed touched on human rights issues in Central America and Africa, but no action was taken by US governments during that period.
8. Robert Dudley Van Rooijen was Dutch ambassador to Indonesia between the late 1980s and early 1990s (**Business Indonesia, Vol 1, No 29 July 2, 1993**).
9. **ETAN/Canada**: see the statement before the UN Decolonisation Committee presented to the Special Committee on the situation with regard to the implementation of the Declaration on the Grant of Independence to colonial countries and peoples.
10. Dr George Aditjondro and Goenawan Moehamad confirmed that the Dili massacre (refer to in the government version as the Dili incident) has provided ground for the launching of international pressure on the government of President Soeharto to improve its human rights record for the first time ever.

CHAPTER SIX

CONCLUSION AND RECOMMENDATION

1. Introduction

One of the facets of development in the post World War II period and after the Cold War was the inclusion of human rights into international relations. There was an agreement among the international community to push governments to respect the human rights of their citizens. One example of this was the idea to link foreign aid, by donors, to the human rights record of some Third World countries who are known to show little or no respect for such rights for their citizens.

Nevertheless, attempts to link aid to human rights have been met with strong opposition by such Third World governments. Therefore the issue has emerged, as a source of controversy between donors (West) and recipients (Third World). This controversy has been characterized by differences such as;

- The principle of universality of human rights held by donors versus the principle of cultural relativism upheld by recipients.
- The stress on civil and political rights by donors and on social, economic and cultural rights by developing countries.
- The upholding of the concept of individual rights by donors as opposed to support for the concept of communal or social rights held by recipients.

- Claims of alleged intervention by donors in the domestic affairs of recipients and the opposition to "aid and human rights linkage" by the recipients.

These are the main points argued throughout this thesis.

As we have seen from the beginning of this study, persistent human rights abuses that had been considered almost as the cornerstone of the development process by some left wing Third World governments, have been gradually, though not completely, removed. Partly, this has been because of increasing international interdependence and popular involvement on the part of NGOs and individuals in the development. Partly, it has resulted from increasing international commitment to uphold human rights and development and the rejection of the concept of "trade off", that is economic development at the expense of the suspension of human rights. Nevertheless, one must question the extent to which such a commitment been successfully implemented and, one must ask what has been the impact of these developments on the prevention of human rights abuses, particularly in Third World or recipients nations?

We have also seen the extent to which aid theories have built themselves around various development theories which have proliferated over the last five decades. Similarly, we have discussed in some detail the two most recent theories on human rights, the Natural rights theory and the Cultural Relativism theory. The notion of "intervention" which has remained undefined over the past two decades, since aid was linked to foreign aid, has also been discussed in this thesis. We have also taken into account the profile of foreign aid in practice and the increasing involvement of both

domestic and international NGOs in the development process and their impact on donor countries' decision-making particularly with regard to development aid. Furthermore, we have, with the data available, attempted to assess donors (the USA, Canada and the Netherlands) and recipient (Indonesia) aid relationship during the period of 1980 to 1995. This thesis, is now able to draw some conclusions and make some recommendations.

2. Overall Conclusion

Similar to most developed countries in the Western world, the stance of the United States of America, Canada and the Netherlands on human rights has been strongly influenced by the ideological views of the early Western philosophers (e.g. John Locke and J.J. Rousseau) whose emphasis accentuated the natural rights theory. Natural rights theory regards civil and political rights as inalienable and indispensable rights of every human being because all men, it is argued, are born equal. Any reduction of such rights will paralyse the state of being human.

Whereas Indonesia, like other Third World nations, being in the stage of development, subscribes to the theory of cultural relativism. The latter constitutes what is, in theory, known as a "trade-off", economic development is highlighted, but little attention is paid to the protection of civil and political rights. Despite Jakarta's formal stance, that it does not adhere to the "trade-off" ideology, nevertheless, its consideration to give primacy to economic development and its human rights record between 1966 and 1990s both confirm that the country's affiliation is with the concept of cultural

relativism. This is the first conclusion of this thesis.

Such a controversy characterises the paradoxical implication of "aid and human rights linkage". Donor countries have formally promised to link foreign aid to the human rights record of the recipients. Indonesia however refuses any attempt to link aid to human rights. With its commitment to cultural relativism, Jakarta describes donors' attempts to link the two items as "intervention" in its national affairs. The cancellation of several donors' foreign aid is a consequence of such a response. This argument, as we have seen, emerges from a political stance which holds that protest by other countries about its human rights record is intervention in its domestic affairs. As the discussion in chapter Two illustrated, however, protest exercised by other countries on human rights grounds is not considered by them as intervention in domestic affairs because it is seen to be aimed at preventing further abuses of human rights which are considered universal. Pervasive human rights abuse cannot be simply justified as a domestic matter in which other people have no right to interfere. It has indeed been stated in the UDHR that every human being is entitled protection against abuses of their human rights perpetrated either by individuals or by the state. This constitutes our second conclusion.

The most positive progress made by donors (the USA, Canada and the Netherlands) in relation to human rights in Indonesia came only in 1991. Despite this progress, a genuine implementation of their advocacy remains questionable. The records of US, Canadian and Dutch aid to Indonesia between 1980 and 1995 reveals that in practice there has not been any "sincere will" to link aid to human rights. The US and

Canada, from the data analyzed, have continued to pour foreign aid into Indonesia, since 1991. Threats by both countries to withhold or cancel aid to Jakarta on human rights ground have not been implemented in practice. For both the US and Canada there has been an incompatibility between their commitment to uphold human rights and the fulfilment of such a commitment. With regard to the Netherlands, considering the massive aid it had extended to Indonesia between 1985 and 1991, if Indonesia had not decided to refuse further aid, the Dutch government would probably have continued in the same manner as the USA and Canada. Suspension of aid on human rights ground remains just so much rhetoric. This is the third conclusion of this thesis.

Fourthly, despite the fact that Indonesia, in the last four years has put greater efforts into improving its human rights performance as a result of increasing international pressure, nevertheless many problems still remain unresolved. Government apparatus, in practice, using their "extraordinary powers, still often act in ways which exceeding acceptable norms. Thus, the existence of certain set of powers, institutionalized by the government to operate outside legal procedures (KUHAP) have accentuated Indonesia's poor image on human rights.

After delving into the main points above, we could now reveal our final comments:

The commitment to link aid to human rights generally is viewed as a good attempt to prevent or slow the pace of human rights abuses. Nonetheless, despite mounting pressure, there has never been any comprehensive implementation of

such an advocacy on the part of donors. Foreign aid goes on though the recipients' human rights records show no sign of improvement.

Secondly, there is a lack of political will on the part of both the donors (the USA, Canada and the Netherlands) and Indonesia. This leads to the absence of genuine efforts to improve the condition of human rights in the latter. While Indonesia still sees the postponement of human rights as the better way to achieve economic development, donors, because of their political and economic interests, tend to accept, uncritically, alleged reports by Jakarta that improvements on human rights have really taken place.

As a consequence, the threat to suspend aid by the Netherlands and the non-sale of military equipment to Indonesia by the USA and Canada have not made any serious impact on the overall improvement of Indonesia's human rights performance. Both foreign aid and persistent human rights abuses continue.

3. Comments and Recommendation

Human rights has been one of the most salient issues on the international agenda for the last five decades. Nevertheless, the existing paradoxical ideologies that alienate donor countries (The USA, Canada and the Netherlands) and most of the North from Indonesia (and most of the South), such as their ideological persuasion, cultural background, national interest and different perceptions on the implementation of human rights have been the main constraints to a common acceptance of the universality of

human rights.

Despite attempts to reconcile such different views through the recognition of civil and political rights, as well as social economic and cultural rights, fragmentation on the ground remains unchanged. Many countries including Indonesia have, so far, treated human rights issues with suspicion and regard them as a tool used by the North to suppress the South. This logic arises from the traditionally based assumption that regards domestic matters as not the business of outsiders. Indeed, as mentioned before, in Indonesia, human rights are lined up behind a score of other national interests, such as the unity of the nation and economic growth and security. This kind of climate overbears sporadic efforts to fight human rights violation.

That is not to say however, that the Western countries (donors) are performing better than those of the South with regard to the protection of human rights. The US and Canada, for example, the most vociferous proclaimers of the human rights standard while unceasingly bashing China and Cuba for human rights violations, gave, at the same time billion of dollars to governments of countries like El Salvador, Burma and Indonesia, knowing full well that they have very bad human rights records.

Although government policies are fraught with hypocrisy, human rights cannot be discarded in international relations. Human rights are not a "Western idiosyncrasy", they are - as the Vienna Declaration has reaffirmed - universal standards of civilized intercourse within societies. No nation where people are treated in a way that violates human rights, can claim cultural reasons for doing so.

Having seen the complicity of donors in, and the refusal of the recipients on, the "linking of foreign aid to human rights" throughout this thesis, there are several possibilities decisive in the future improvements of human rights in the developing countries that need to be considered. First, it is necessary to establish a uniform criteria for conditionalization by an international body representing donor countries to deal with human rights in the recipient which is reflective of global and comprehensive values. For example through the United Nation Commission on Human Rights. To materialize this alternative, all donor countries who have committed to link foreign aid to human rights should bind themselves, without distinction, to all standards set up and required by such a body in linking aid to the human rights performance of the recipient. This is to avoid attempts that may exclude allies or friendly nations for specific reasons.

Second, the need to promote cooperation, give incentives and assistance which is formulated in a mutual consultation and dialogue between donor and recipients at their bilateral capacity is important. This is to avert direct confrontation and alleged accusation that donors are intervening in other state affairs and; to prevent actions that may damage global or international relations between the South and the North. Finally, sanctions should be clearly defined and be exercised, by donor countries, whenever all efforts to prevent the abuse of human rights in the recipient have failed. The complicity of the USA, Canada and the Netherlands should no longer prevail, and a genuine effort to improve the respect on human rights worldwide should be introduced. The future improvement of human rights depends on the present actions to improve them. If they are not seriously taken into account then our future generations will inherit only, we may say, a tragedy of human misery of our era.

With regard to Indonesia, likewise, improving its human rights performance is not a matter of domestic affairs. Given their universal nature, human rights are a responsibility which require different sectors within a society and all its interested parts to uphold them. To do so firstly, existing positive progresses needed to be maintained, at the same time the government must disassociate itself from all negative attributes inherent in its views regarding human rights. Domestically, for example, the suspicion of human rights as a threat to national stability should be negated and all existing policies that permit certain institutions to operate outside the normal procedures should be abolished. Secondly, the government should disengage itself from all forms of interference in the activity of NGOs and individuals whose work is aimed at promoting human rights in the nation. Instead, encouraging such NGOs and individuals to engage actively in the promotion of human rights and thus working together with them, is more important than restraining their activities. Grass roots organisations and individuals should be seen as constructive partners and not as constraints in the development process. Furthermore, the government should assure a climate of political openness, people should be guaranteed the right to self-determination and to have more "say" about their own affairs. Public intervention is necessary if, and only if, activities openly contravene law or regulations.

Thirdly, in connection to international relations, Indonesia should welcome the outside's propensity to help in improving its human rights performance. In the contemporary world, the rejection of international collaboration to uphold human rights will only create, we may say, a climate of "unbalanced-international relations". Given that human rights transcends national boundaries and that one country cannot live

without the help of the others, this so called "New World Order" refuses any claim of cultural specificity to justify human rights abuses. In short, their universal nature allow human rights to be scrutinized by others regardless of place and time.

In our civilized world no human beings should be treated differently from others. Outside supervision should not be considered inappropriate but should be seen as one of the many attempts to prevent the abuse of human rights. In this world which is growing interdependent, no country can claim domestic human rights abuses as a matter of non-outside interference and of wholly national interest. Because, achieving development that brings prosperity to a nation can only be done through a comprehensive and mutual respect for the very fundamental rights of those who are the object of development itself.

APPENDIX 1

Complaints of Human Rights Violations: 1503 Procedure

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- Step 1 Complaints from individuals and organisations received and registered by the UN Centre for Human Rights.
- Step 2 The Centre for Human Rights acknowledges the receipt, and sends a copy to the government of the country where the alleged violations took place for its reply. The Centre analyses and summarizes the received complaints in a monthly confidential document.
- Step 3 The Working Group on Communications meets annually before each session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities and consider all communications, including replies from governments. It decides which communications appear to reveal a consistent pattern of gross and reliably attested violations and thus should be brought to the attention of the Sub-Commission. The Sub-Commission, on the basis of the confidential report of its Working Group, and the government replies, decides at a close meeting which country situations to refer to the Commission on Human Rights, and for which ones to defer action or take no action.
- Step 4 The Working Group on Situations meets annually before each session on the Commission and examines cases referred to in the confidential report of the Sub-Commission. It elaborates recommendations to the Commission on what type of action to take regarding specific country situation.
- Step 5 The Commission on Human Rights examines at closed sessions country situations which appear to reveal a consistent pattern of gross and systematic violations. This includes a dialogue with the respective governments about possible measures to remedy the situation. The Commission may ultimately condemn individual governments for violations of human rights.
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Source: Tomasevski, 1993: 124

APPENDIX 2

Human Rights Guaranteed in Main International Treaties

Rights to self-determination
Non-discrimination
Prohibition of Apartheid
Right to effective remedy for violations
Prohibition of retroactivity for criminal offenses
Prohibition of imprisonment for contractual obligations
Rights to procedural guarantees in criminal trials
Right to life
Right to physical and moral integrity
Prohibition of torture and of cruel, inhuman or degrading treatment or punishment
Prohibition of slavery, forced labour or trafficking in persons
Right to recognition of legal personality
Right to liberty and security
Prohibition of arbitrary arrest, detention and exile
Right to freedom of movement and residence
Right to seek asylum
Right to privacy
Right to freedom of thought, conscience and religion
Right to freedom of expression
Right to freedom of peaceful assembly
Right to freedom of association
Right to marry and to found a family
Right to protection of motherhood and childhood
Right to a nationality
Right to work
Right to food
Right to social security
Right to enjoy the highest standard of physical and mental health
Right to education
Right to Participation in cultural life

Source: Tomasevski, 1993: 163

APPENDIX 3

Questions used in the interview with leading human rights
activists and writers in Jakarta between
December 1993 to February 1994.

1. Given that approaches to the implementation of human rights vary from one country to another, in which perspective do you see human rights as a matter of international concern? Do you have any specific reason for that? What role can human rights play in international relations?
2. Developing countries, on one hand, insist that aid is necessary for their national development. On the other hand, however, they reject attributes attached to aid as for example, human rights as a condition. Will you call this as a hypocrite attitude? If you do, what are the main reasons? In which context do you base your argument?
3. What is the meaning of "different societies require different implementation of human rights", as argued by many Third World countries including Indonesia? Do you think it is necessary to have a conventional agreement in the implementation of human rights worldwide?
4. Is it right that Indonesia adheres to the theory of cultural relativism, where economic development and national stability demand the suspension of civil and political rights?
5. Indonesia agrees that human rights are universal. Does it mean that the country accept international supervision on its human rights record? If no, what is the legal basis of such an argument?
6. Does Indonesia human rights view roots in its traditional/ customary law of state which is based on the family system as envisaged by the founding fathers of the country?
7. Why does Indonesia refuse to receive aid from the Netherlands? Was the dissolution of IGGI was one form of Jakarta's refusal to the link of human rights to aid?

8. What kind of development do you see as is giving impact to the overall improvement of human rights in Indonesia to date? Has the government taken positive steps to improve its human rights record following increasing international pressure?
9. In which contexts (cultural, economic, political and social) will you place the rejection of foreign aid, by the Indonesian government, from other countries including the Netherlands?
10. What will you suggest to the Indonesian government on issues regarding human rights and aid, if you are required to do so? What should the donor countries do to improve human rights in Indonesia, apart from linking aid to human rights?

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