

Fifty Years Universal Declaration of Human Rights – Balance and Challenges of the International Protection of Human Rights

The Origin

‘To save succeeding generations from the scourge of war (...) and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small.’

These words, a quotation from the preamble of the United Nations Charter, were the expression of a major determination born from the pain and despair of World War II. As we now move very close to the beginning of a new century and a new millennium, we are well advised to recall the events which shaped the international order in the aftermath of World War II, and the reasons for the inclusion of human rights among its central purposes.

The 1948 Universal Declaration of Human Rights was devised to articulate a common understanding of the scope and content of human rights and was proclaimed as a ‘common standard of achievement for all peoples and all nations’. The Declaration also served as a total renunciation of the Holocaust and the inhumanity of the Nazi regime and its leaders. Whether the authors of the Universal Declaration and the Governments which adopted the text, were fully mindful of the far-reaching and revolutionary steps of making human rights an international responsibility and an international concern, is open to question. The motivations of most Governments – at the time still limited in number – were probably mixed. In any case, their common resolve went largely untested given the advent of the Cold War which hindered effective international co-operation in the area of human rights, as in many other fields.

A Balance Sheet

Earlier this year, I was asked to answer the question what I considered the most positive and the most negative development in the area of human rights since the proclamation of the Universal Declaration in 1948. This is not an easy question and many different answers are fully plausible. I ventured to give *my* answer which I will share with you.

A Broad Human Rights Movement

On the positive side, I value as one of the most important and hopeful developments in the past half century the almost explosive growth of non-governmental organizations for the promotion and the defence of human rights. By way of illustration I recall that, at the time of the drafting of the Universal Declaration of Human Rights, in the years 1947-1948, some fifteen non-governmental organizations with consultative status were closely associated with this process, virtually all of them based in North America and in Europe. Twenty years later, in 1968, at the first United Nations World Conference on

Human Rights in Teheran, this number of NGOs was multiplied by ten: some 150 NGOs participated in the first world conference. And again 25 years later in 1993, at the second World Conference on Human Rights in Vienna, this number was multiplied ten times, reaching the figure of some 1500 NGOs. It is significant that, unlike in the early days of the United Nations, many of these organizations are based in all parts of the world and that, for instance, women's organizations and also indigenous peoples' organizations take an active part in this movement. The emergence of all these organizations at the international scene and their activities within many nations of all five continents – Africa, Asia, the Americas from North to South, Australia and Europe – is more than symbolic evidence of the universality of the human rights constituency. This development constitutes the backbone of the human rights movement. Without the efforts and the input of this movement, the global human rights situation would be bleaker. It is a matter of great satisfaction that the UN Commission on Human Rights adopted earlier this year, after some thirteen years of difficult and protracted negotiations, a draft Declaration on Human Rights Defenders. This document, which has been approved by the UN General Assembly, constitutes in itself a worthy milestone to mark the fiftieth anniversary of the Universal Declaration of Human Rights and may become an effective tool in the hands of all those who defend human rights, often under perilous conditions.

Rwanda

I now present to you the other side of the coin: two of the heaviest and grimmest defeats for human rights, occurring in 1994 and 1995, in spite of the existence of numerous international instruments on international humanitarian law and for the protection of human rights, in spite of the setting up of advanced systems of human rights monitoring, in spite of preventive strategies articulated by successive UN Secretaries-General, and even in spite of the presence of UN peace-keeping forces in the areas and regions concerned. I am referring to the genocide in Rwanda in the first part of 1994, victimizing many hundreds of thousands of Rwandese citizens. While, as was later revealed, the United Nations and some major foreign actors, members of the Security Council, were aware of the existence of extermination schemes, it was nonetheless decided that the UN military presence be reduced to insignificant proportions instead of bringing those forces to a level that they could effectively have helped to prevent the massacres to reach such terrible and untold dimensions. UN Secretary-General Kofi Annan stated some time ago in a press interview in Geneva that, if a brigade of 5000 well-equipped servicemen would have been on the spot, hundreds of thousands of human lives could have been spared. And he added very frankly: 'If a genocide does not push us to intervene, what else can make us move'.¹

¹ *Le Temps*, 18 March 1998 (translation TvB).

Srebrenica

As a Dutchman, I feel in conscience bound to deal with another major defeat for human rights which occurred in July 1995, virtually under the eyes of the Netherlands battalion of the United Nations Protection Force, in and around the enclave of Srebrenica in Bosnia, which was declared ironically a 'safe haven' guaranteed by international agreements. I spare you the details of the great tragedy that happened at Srebrenica. I only quote a passage from a statement confirming the indictment by the International Criminal Tribunal for the Former Yugoslavia on 16 November 1995, accusing Radovan Karadžić and Ratko Mladić of their criminal involvement. The statement reads:

'After Srebrenica fell to besieging Serbian forces in July, 1995, a truly terrible massacre of the Muslim population appears to have taken place. The evidence tendered by the Prosecutor describes scenes of unimaginable savagery: thousands of men executed and buried in mass graves, hundreds of men buried alive, men and women mutilated and slaughtered, children killed before their mothers' eyes (...). These are truly scenes from hell, written on the darkest pages of human history.'²

Fifty Years

I now will review some developments which have taken place over the past fifty years since the adoption of the Universal Declaration of Human Rights. Thereafter, I will point to some of the challenges, as I see them, for a more effective international protection of human rights.

From Exclusion to Inclusion

The history of actual enjoyment of basic human rights is marked by the exclusion and marginalization of many people: women, aliens, non-whites, Jews, people of different sexual orientation, travellers, physically and mentally disabled and many others. The major message and the real thrust of the Universal Declaration of Human Rights is its emphasis on human rights belonging to *all* human beings, to *everyone* without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Not the *exclusion* but the *inclusion* of people is the historic precept which the Universal Declaration seeks to highlight as a matter of principle and as a task for all peoples and all nations. The all-inclusive purpose and scope of the Universal Declaration is in my view the essential quality to mark its universality. In the process from the exclusion to the inclusion of people – a process by no means completed today – significant steps have been taken. I refer to the wave of decolonization in which the United Nations has played an instrumental role. It is not by coincidence that the well-known Declaration on the Granting of Independence to Colonial Countries and Peoples (1960) included in its

² Press Release International Criminal Tribunal for the Former Yugoslavia, *Radovan Karadžić and Ratko Mladić accused of genocide following the take-over of Srebrenica*, CC/PIO/026-E, The Hague, 16 November 1995.

wording a call to observe faithfully and strictly the provisions of the Universal Declaration of Human Rights.

In similar spirit, a good deal of human rights standard-setting activities has been undertaken, with the Universal Declaration of Human Rights as its basis, to bridge the gap between exclusion and inclusion and to bring categories of vulnerable and marginalized persons more fully and more explicitly within the realm of human rights promotion and protection, recognizing the special needs and interests of these persons. By way of illustration I mention the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, international instruments on the rights of national minorities, and current efforts to draw up instruments for the protection of the rights of indigenous peoples. As Europeans we should put soul-searching questions to ourselves why efforts to bridge the gap between exclusion and inclusion have failed to bring about in our continent effective and humane results regarding the rights of asylum seekers, non-citizens, migrants and persons who carry the dubious status – or rather the non-status – of ‘illegals’. Some ten years ago, the Austrian human rights scholar Manfred Nowak observed:

‘There are millions of migrant workers, refugees and other aliens and ethnic minorities living in Europe as second class human beings. If we believe in the equal rights of all human beings we should not accept that our societies are split into two major categories of people: in the class of citizens enjoying human rights and in the class of aliens dependent on “human allowances”.’³

Is this observation not even more pertinent today and is this reality on the European scene not a reflection of the reality in the world at large? While, by and large, it may be true that, nationally and internationally, important steps have been taken on the path towards the inclusion and emancipation of people, nevertheless the gap between what is preached and what is practised is still immense.

Impact of the Cold War

Fifty years of Universal Declaration of Human Rights were largely influenced by the Cold War. The shadows of this episode became already visible in the days of the drafting and the adoption of the Universal Declaration – six of the eight abstentions on 10 December 1948 came from countries ruled by communist parties – and during some forty years the Cold War had a major impact on international relations. Human rights was one of the important issues of Cold War discourse and propaganda. In the United Nations, the Cold War was instrumental in slowing down the work on the International Covenants on Human Rights. The drafting of the International Bill of Human Rights was only completed 18 years after the Universal Declaration. The Cold War stalemated imaginative proposals such as the establishment of the post of United Nations High Commissioner for Human Rights. It was the main reason why in the seventies the

³ M. Nowak, ‘Perceptions of racism’, in: *New expressions of racism: growing areas of conflict in Europe*, SIM Special No. 7, Utrecht: SIM, 1987, p. 19.

genocide in Cambodia received hardly any attention in the United Nations. In similar fashion, other situations involving gross and systematic violations of human rights remained unattended. Too often, human rights situations were assessed from the perspective whether the regimes involved were ideological (and commercial) friends or foes. The margins were rather narrow for pursuing a dynamic and effective human rights policy. Not surprisingly, the Cold War did have a stimulating effect on the creation and development of important human rights institutions in Western Europe as a means to defend democracy and the rule of law. I am referring to the European Convention on Human Rights which, together with the European Commission and the European Court of Human Rights, was introduced within the Council of Europe as 'first steps for the collective enforcement of certain of the Rights stated in the Universal Declaration'.⁴ The days of the Cold War also triggered off the so-called Helsinki process in the framework of the (then) Conference on Security and Co-operation in Europe (CSCE) which elevated human rights to a priority item on the political agenda of East-West relations.

Post-Cold War Euphoria

The chilly climate of the Cold War gave way to a friendlier atmosphere which characterized the policy of *glasnost* and *perestroika* closely associated with Mikhail Gorbachev. The collapse of the Berlin Wall – the most visible and deeply symbolic event that marked the end of the Cold War – led to a deep sense of euphoria. For instance, at a summit in November 1990 of the heads of State and Government of the countries participating in the Conference on Security and Co-operation in Europe, these political leaders reflected their optimism in the Charter of Paris in the following terms:

'(...) Europe is liberating itself from the legacy of the past (...). Ours is a time for fulfilling the hopes and expectations our peoples have cherished for decades: steadfast commitment to democracy based on human rights and fundamental freedoms; prosperity through economic liberty and social justice; and equal security for all our countries.'⁵

The same euphoric spirit was in the minds of those who took the initiative to hold a second World Conference on Human Rights, which eventually took place in Vienna in June 1993. The conference was meant not only to consolidate achievements, but also to map out broad avenues of progress and development.

Dramatic Setbacks

However, the days of euphoria did not last very long. Dramas in the former Yugoslavia, in parts of the former USSR, and in the Great Lakes region of Africa reached proportions and a degree of national, ethnic and racial hatred and cruelty remindful of

⁴ European Convention for the Protection of Human Rights and Fundamental Freedoms, last preambular paragraph.

⁵ 'Charter of Paris for a new Europe', Paris, 21 November 1990, in: A. Bloed (ed.), *Conference on Security and Co-operation in Europe: analysis and basic documents, 1972-1993*, Dordrecht: Kluwer, 1993, p. 537.

the time of World War II. War crimes, crimes against humanity, genocide, practices of widespread and systematic rape and of 'ethnic cleansing' were widely reported and demanded urgent action, both in the preventive and in the repressive sphere. Furthermore, we note with concern that since the end of the Cold War tensions between North and South have become accentuated. Ethnocentrism, virulent nationalism and religious extremism in various places have put human rights in serious jeopardy and severely narrowed down the margins for dialogue, understanding and peaceful solution. It was no surprise that against this background, the Vienna World Conference could not produce major break-throughs and open up new perspectives, although the Conference was instrumental in paying the way for the creation of the post of United Nations High Commissioner for Human Rights. The Conference also had the merit of reaffirming and consolidating existing achievements and of giving new impulses to special groups, in particular in the area of women's rights. Thanks to a well-organized strategy by activists, Vienna was instrumental in bringing women's human rights into the 'mainstream' of UN human rights activities. This line was carried forward to the Beijing Declaration of September 1995 which stated simply but forcefully: 'Women's rights are human rights'.

The general picture which now prevails is complex. Before I will outline some of the challenges we are facing, I would like to point to four areas of recent progress in UN human rights programmes and approaches.

Four Areas of Progress

First, thanks to the establishment of the post of United Nations High Commissioner for Human Rights, the human rights programme is obtaining increased political and moral weight and offers more room for initiatives and dynamic action. The political significance of the human rights programme is also underscored by the fact that the present UN Secretary-General, more than most of his predecessors, has professed himself as a staunch advocate of human rights.

Second, human rights monitoring has become more widespread and to some extent more effective. The specific country and thematic procedures of the United Nations Commission on Human Rights, which started to gain importance in the late seventies and early eighties as a means to investigate serious human rights abuses and to take delinquent regimes to task, is now a well-established and incisive feature of the human rights programme. No less than sixteen countries are presently under close scrutiny by special rapporteurs and independent experts, and fourteen types of widespread evil practices, ranging from extrajudicial and summary executions to violence against women, are closely reviewed and the subject of detailed reports. Similarly, the treaty procedures under the human rights covenants, the anti-racism convention, the women's convention, the children's convention and the anti-torture convention have become more to the point, more specific, more geared towards follow-up control, and more sensitive to the need of a constructive dialogue with States Parties.

Third, until recently, the attention in the UN system was mainly focused on violations of human rights as facts and practices, leaving the persons behind the facts and practices, notably the perpetrators and the victims, outside the spectrum of concern. This is changing. The establishment of the *ad hoc* international criminal tribunals for the former

Yugoslavia and for Rwanda, and the adoption in July 1998 of the Rome Statute of the International Criminal Court,⁶ are clear evidence of the determination of the international community to combat impunity and to insist on the criminal responsibility of perpetrators of the most serious crimes of concern to the international community.

Fourth, the international protection of national minorities is gaining new impetus, both in terms of standard-setting and in the creation of mechanisms for discourse and mediation. As the previous UN Secretary-General quite aptly stated in his forward looking report 'An Agenda for Peace':

(...) if every ethnic, religious or linguistic group claimed statehood, there would be no limit to fragmentation, and peace, security and economic well-being for all would become ever more difficult to achieve. One requirement for solutions to these problems lies in commitment to human rights with a special sensitivity to those of minorities, whether ethnic, religious, social or linguistic.⁷

This quotation from brings me finally to some of the challenges ahead of us.

Challenges

Prevention

UN Secretary-General Kofi Annan said in his statement at the opening of the 1998 session of the UN Commission on Human Rights: ' (...) the next century must be the age of prevention'.⁸ Mary Robinson, the UN High Commissioner for Human Rights, has equally stressed the importance of prevention. And indeed, the human rights field presences established by the Office of the High Commissioner in fifteen countries have given a new and vital dimension to the UN human rights programme and are potentially among the most promising devices of a preventive nature. Moving into the field requires special training of human rights workers and effective co-ordination with other intergovernmental and non-governmental field activities. Substantial investments in terms of human and material resources are absolutely indispensable. In this regard, we should be mindful of the old wisdom that '*one ounce of prevention is worth more than one pound of cure*'. Time does not permit me to go much further into the preventive approach as a great challenge to the international community and to all of us. I would merely like to recall that also European organizations and fora have created special institutions and mechanisms with a preventive mandate that proved to be effective. I am referring to the European Committee for the Prevention of Torture which now has been functioning since November 1989 and the OSCE High Commissioner on National Minorities who took up office in 1993.

⁶ A/CONF.183/9, *Rome Statute of the International Criminal Court*, 17 July 1998.

⁷ A/47/277 - S/24111, *An Agenda for Peace; Preventive diplomacy, peacemaking and peace-keeping*, 17 June 1992, para. 17-18.

⁸ SG/SM/98/53, Statement by Mr. Kofi Annan, Secretary-General of the United Nations to the opening of the fifty-fourth session of the Commission on Human Rights, Geneva, 16 March 1998.

Non-State Actors

A second challenge, of a different nature, is the growing power of non-State actors or non-State entities. The present international system of human rights law is largely based on the accountability of States. States have undertaken obligations to protect human rights and fundamental freedoms and to promote human welfare. International human rights law is meant as a guarantee against abuse of State power and as a safety net to secure social justice. Particularly in these days of globalization of the world economy with increasing power of transnational economic actors and international telecommunication systems, and with a corresponding decrease in the role of national and international State institutions, the international human rights system tends to lose ground as it lacks the capacity to hold non-State actors effectively accountable for practices entailing adverse consequences for human rights. There are no easy solutions here but I believe that efforts developed in the Netherlands by organizations such as Amnesty International and Pax Christi in order to come to terms with transnational corporations on codes of conduct monitored by effective and independent control mechanisms, constitute steps in the right direction.⁹

Justice for Perpetrators and Reparation for Victims

Some moments ago, I referred to the persons behind the violations of human rights, perpetrators and victims, who for various reasons remain outside the reach of justice. Too often impunity prevails. Is it not most cynical that a hungry child who steals a loaf of bread is more likely to get punished than a dictator who is responsible for the killing of thousands of people? It is equally unacceptable that millions of victims remain unacknowledged, unattended, uncared for. Therefore, as a third challenge, I wish to stress the need to break patterns of impunity and to pursue reparation for victims. In the years to come the International Criminal Court will be put in place. Kofi Annan has termed the establishment of the Court as a gift of hope to future generations and a giant step forward in the march towards universal human rights and the rule of law. We would stretch our expectations too far if we assume that the Court will be a panacea to wipe out all evil. However, the Court may well develop over the years into an incentive and a catalyst in support of the struggle against impunity, at national and international levels, and it may help breaking the walls of silence around the suffering victims. The role of a conscientious judiciary and of a dynamic and vigilant civil society will be crucial factors in this process.

Racism and Racial Discrimination

A matter of profound concern is the continuing presence of racism, racial discrimination, xenophobia, anti-Semitism and anti-Muslim sentiments in our societies. Recent surveys have shown high levels of racism in the Member States of the European Union, and

⁹ See *Multinational Enterprises and Human Rights*, A Report by the Dutch Sections of Amnesty International and Pax Christi International, Utrecht, November 1998.

a new action plan in the European Union calls this a major challenge to our societies.¹⁰ As a member of the UN Committee on the Elimination of Racial Discrimination, which monitors the compliance of States Parties to the corresponding International Convention, I fully endorse the expressions of serious concern of the European Union. It is absolutely imperative that States Parties, notably also European countries, take their obligations under the International Convention seriously. We are all aware of what disasters evil and erroneous doctrines of racial superiority can lead to, and what levels of untold suffering were caused by practices of racism, within Europe and elsewhere. Vigilance and recognition of the dangers prevalent in our societies are of cardinal importance, provided this is matched by policy measures prescribed by international agreements. The action plan of the European Union, but also the World Conference against Racism and Racial Discrimination, Xenophobia and Related Intolerance planned for the year 2001, will create a new momentum so as to attach to the action against racism and racial discrimination the high priority it fully requires.

Mainstreaming Human Rights

Last but not least, the UN Secretary-General, in his proposals for United Nations reform, responded to the need felt for many years to integrate the human rights programme into the broad range of United Nations activities. This will mean in effect that the human rights programme will be closely associated with the work on peace and security, economic and social affairs, development operations and humanitarian affairs. Thus, the human rights programme will regularly participate in every stage of the UN's activities in relation to actual or potential conflicts or post-conflict situations that have a human rights dimension. This development holds great potential, both from the perspective of integrating human rights concerns in all sectors of UN activities and for the sake of making preventive human rights strategies more effective. The challenge of mainstreaming human rights – that is actually what the UN Secretary-General has himself committed to – will require corresponding measures for strengthening the capacity of the Office of the High Commissioner for Human Rights, in terms of human and material resources. Here we can only express the strong wish that the UN membership will be ready to accept this challenge.

In Conclusion

Many of the issues I have touched upon – as well as other issues – will be further discussed these days at the International Academic Conference on the 50th Anniversary of the Universal Declaration of Human Rights. In fact, the questions that appear on our agenda are of great academic interest but, most importantly, they are by their nature determinants for the life and well-being of all people. In the final analysis 'people matter'.

¹⁰ Communication from the Commission, An Action Plan against Racism, COM (98) 183 final, 25 March 1998; see Johannes van der Klaauw, 'Human Rights News – European Union', *Netherlands Quarterly of Human Rights*, Vol. 16, No. 2, 1998, p. 231.

