

HUMAN RIGHTS AT THE TURN OF THE TWENTIETH CENTURY

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I. A Brief Historical Survey

In recent years, the human rights problem has become a major issue, as well in international relations as on the internal level of many countries. This matter, indeed, is debated within the United Nations, the C. S. C. E., the Council of Europe, the E. E. C., the North-South dialogue and in many other organizations or negotiations. In a great number of countries also, the implementation of fundamental rights is an important preoccupation for a majority of people.

Yet, such a situation is not the result of a sudden awareness. In Western culture, one can root the first concern for some basic rights back to *the Code of Hammurabi*, King of Babylonia, the XXth century B. C. Throughout the centuries, once in a while other realizations in the field of human rights are noticeable⁽¹⁾. It is also quite evident that the concept of human dignity has gained an extraordinary value under Christian influence.

During the Middle-Age, the battle for human rights has resulted in the granting of charters and privileges by the feudal power to the rising middle-class or to turbulent vassals⁽²⁾. In the XVIIth century and in the XVIIIth century, the first major declarations on human rights are adopted: *the English Bill of Rights in 1689*; *the French Declaration of the Rights of Man and of the Citizen in 1789* and *the American Bill of Rights in 1791*. But, it is only in the XXth century, that the concept of human rights will emerge on the international level: first, after World War One under *the League of Nations* in an attempt to protect minorities, and later, within *the United Nations*, by the adoption of *the Universal Declaration of Human Rights*⁽³⁾ and the two international covenants⁽⁴⁾.

It is also during the last 45 years that several international treaties were ratified in order to protect or merely to promote

human rights on regional basis: *the European Convention on Human Rights*⁽⁵⁾ and *the European Social Charter*⁽⁶⁾, *the American Convention on Human Rights*⁽⁷⁾, *the African Charter on Human and Peoples' Rights*⁽⁸⁾, *the Universal Declaration of Human Rights in Islam*⁽⁹⁾ and *the Declaration of the Basic Duties of Asean Peoples and Governments*⁽¹⁰⁾.

Other conventions or declarations on a specific aspect of human rights, have also been signed or published. But, those mentioned above are undoubtedly the most important!

II. The Importance of Human Dignity

From that brief historical survey, two initial conclusions can be drawn.

First, it seems obvious that the concept of human rights has a Western origin. Of course, nowadays, this principle has received a universal acceptance—at least in theory and at governmental levels —; as stated above, the concern for human rights is a general preoccupation everywhere in the world.

The idea of embodying some fundamental rights in a legal text with or without a mechanism of control, is rooted, however, in Western traditions⁽¹¹⁾. It might be considered as a contribution of the West to the universal culture! Putting aside the fact that totalitarian regimes will never accept the mere principle of human rights, their origin as suggested above could perhaps explain the reason why it remains still difficult for some nations to incorporate them in their daily life, although the concept might be enshrined in the constitution and basic laws of these States.

The general acknowledgment of the importance of human dignity will certainly remain the major challenge for all States at the turn of the present century.

This leads to a second conclusion. Even now that the concept of

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human rights has penetrated in all legal systems, the disparity in their interpretation or appreciation remains wide from one country to another. Therefore, an effective protection of these fundamental rights may not be vested with the sole national jurisdictions. The experience of many States, high contracting parties to the European Convention on Human Rights, has showed that some procedures regarded as perfectly admissible by national judges, might very well be considered as contrary to the European Convention by the judges of *the European Court of Human Rights*. Since the latter come from different origin and have been trained under different legal systems, their approach to human rights is frequently of a more objective kind⁽¹²⁾.

It is regrettable, thus, that so many States still prefer to keep the protection of fundamental rights within their national framework.

On the other hand, if an international court controls the safeguard of these rights by national authorities, it is obvious that the international judges will obtain a more efficient result within a regional organization as on a universal level⁽¹³⁾.

Once again, the experience has proved that, on a regional basis, States are willing to concede a greater transfer of sovereignty because they have more elements in common (same culture, similar political institutions, identical economic development and so on); they accept, therefore, to implement the decision taken by the international court⁽¹⁴⁾. On the contrary, at the universal level, disparity among nations are too great: governments put more emphasis on "loss of face". This is why these mechanisms are usually influenced by political factors and for, that very reason, they lack for efficiency.

III. The European Convention

The international acknowledgment of human rights has far rea-

ching consequences.

Taking the European Convention again, one notices that twenty six States up to now "have not only consecrated some fundamental rights and set up an international mechanism to protect them, but also conceded to each other permission to interfere if one of them does not respect these rights. This 'joint security' has worked in the past and has resulted in several cases referred to the *European Commission of Human Rights* by one or more states alleging a breach by another State of the provisions of the European Convention⁽¹⁵⁾. These European States consider that there is no real democracy without recognizing some fundamental rights to persons and, therefore, they created a public order of human rights, to which they are all accountable"⁽¹⁶⁾.

By ratifying the European Convention, the various States concerned have accepted in advance to submit themselves to the European Court's decisions⁽¹⁷⁾ and to modify their legislation or practice, each time that these latter are contrary to the European Convention. This has resulted in many legislative amendments for most of these countries⁽¹⁸⁾.

It is interesting to notice that such modifications are not necessarily the consequence of decisions imposed by the European Court, but sometimes the result of decisions taken by the internal jurisdictions, since the European Convention has become an integral part of the national legislation in many of the West-European countries.

IV. The International Concept of Human Rights

On the international level, the concept of human rights has also innovated. It has become, indeed, a new dimension of international relations⁽¹⁹⁾. Some years ago, the French Professor *Michel Virally* wrote that the concept of human rights transcended public interna-

tional law⁽²⁰⁾ by its new approach and by the duties which are derived from it. As a matter of fact, if one considers the official reactions of all governments represented in the United Nations⁽²¹⁾ and if one accepts the various international instruments mentioned above as being the common denominator of all civilized nations on earth, one must necessarily draw the conclusion that nowadays human rights have become part of the '*jus cogens*'.

According to many scholars, the *jus cogens* is the '*hard core*' of public international law. In other words, the *jus cogens* contains the few paramount principles which prevail even over the sovereignty of States. The safeguard of the public international order requires the absolute respect of some basic principles which no State may disregard on any account, even sovereignty"⁽²²⁾.

"It seems quite obvious, if one considers the present attitude of States that human rights are now also part of that *jus cogens*. Any violation of human rights, therefore, also violates the public international order and, as such, endangers world peace. This entails not only an absolute interdiction for any State to act in contempt of human rights, but also the right for other States, if a violation occurs, to intervene without the violating State's being entitled to object to such interference in the name of its sovereignty or independence"⁽²³⁾.

This argument has received some strong support in recent months. On the 30th of May 1989, opening the Paris session of the C. S. C. E., *President Mitterrand* of France stated that, in cases where a State violates seriously the human rights, the fact for other States not to intervene might be assimilated to refuse to help a person whose life is in danger, refusal which is rightfully a breach of law in many countries. That very same year, the Institute of International Law, a private but worldwide famous association of lawyers expert in international law, came to a similar conclusion at its September session in Spain⁽²⁴⁾. Last but not

least, in Spring of 1991, the military intervention in Irak by the Unites States, the United Kingdom and France, in order to save the Kurds from a *genocide* by the army of *Saddam Hussein*, has no other justification as the principle that no State may hide behind sovereignty when it comes to serious violation of fundamental rights.

V. Conclusion

In conclusion of this short introduction to human rights as they prevail at the end of the present century, one could emphasize two major reflections.

The first is the importance of the education to human rights. In order to become part of the daily life of all mankind, it is essential that the youth of all countries be educated to respect human dignity. All the international treaties, all the court's decisions will remain theory as long as persons are intolerant towards others because of colour, religion, social or ethnic origin, or any other reason. Such tremendous change, however, can only occur when it starts at the root, i. e. the youth.

The second major idea is to realize that human rights relate not only to classic rights, as they are enshrined in almost all the constitutions of the world, such as the right to life, the prohibition of torture, the freedom of expression and of association, the judicial rights and so on. The concept of human rights includes these, of course, but it has also a much broader meaning: it entails a paramount respect for human dignity in all its aspects.

It modern life, new dangers may threaten the human being in his search for a greater fulfilment. Let us just mention a few of them: the complex life conditions in today's world are sometimes difficult to conciliate with a full respect of the basic principles of democracy, as they were laid down since two centuries. Other

examples can also be given: the multiplication of pressure groups of all kind, the influence of multinational corporations or of international labour unions, the great power usually uncontrolled of the medias, the invasion of privacy by computers..... These few illustrations carry naturally positive elements but, in the same way, they might also involve dangers for human dignity, if they are not kept under careful scrutiny.

This could be the case for the present tremendous explosion of science, especially in the various aspects of the origin of life. Let us hope that this will not become a Pandora's box!

Science represents a fantastic power for mankind but it is essential that it always aims at a greater fulfilment for all human beings.

The twenty-first century has to be dedicated to the human rights or it might very well never reach its normal end!

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- (1) S. Marcus-Helmons, "L'émergence des droits de l'homme dans la culture occidentale: origine du concept et conséquences actuelles", dans *Cahier de Droit et d'Ethique de la Santé*, Lyon juillet-août 1990, vol. 1, n 2, pp. 74-76.
 - (2) For instance, the well known *Magna Carta* of 1215 dictated to *King John* by his insurgent barons.
 - (3) Adopted on the 10th of December 1948.
 - (4) The International Covenant on economic, social and cultural rights and the International Covenant on civil and political rights, both adopted on the 16th of December 1966.
 - (5) Adopted within the Council of Europe on the 5th of November 1950.
 - (6) Adopted within the Council of Europe on the 18th of October 1961.
 - (7) Adopted under the aegis of the Organization of American States on the 22nd of November 1969.
 - (8) Adopted by the Organization of African Unity in June 1981.
 - (9) Published by the Islamic Council on the 19th September 1981.
 - (10) Adopted by the Regional Council on Human Rights in Asia on the

9th of December 1983.

- (11) In the early eightieth, with the financial support of the Belgian National Fund for Scientific Research (FNRS) and of the Japanese Niwano Peace Foundation, I made a thorough study in three non-European States (Japan, Egypt and Senegal), in order to discover whether the concept of human rights could be found in their traditional culture, before they adopted some Western pattern. This analysis led to the conclusion stated above!
- (12) For instance, the Tyrer case against the United Kingdom, judgment of 25 April 1978, Series A no. 26, or the Borghers case against Belgium, judgment of 30 October 1991, Series A no. 214.
- (13) S. Marcus-Helmons, "Protection universelle ou régionale des droits de l'homme?" in *Revue Générale Belge*, June 1968, vol. 6 pp. 89-102.
- (14) S. Marcus-Helmons, "A New Dimension of International Relations", in *Political and Social Changes in Taiwan and Mainland China*, Ed. King-yuh Chang, National Chengchi University, Taipei, 1989, p. 271.
- (15) For instance, the cases referred to the European Commission of Human Rights by Norway, Sweden, Denmark and The Netherlands against Greece from 1967 to 1970, when the latter country was under military dictatorship and when Greek citizens were tortured.
- (16) S. Marcus-Helmons, "A New Dimension.....", Taipei, op. cit., p. 271.
- (17) Article 53 of the European Convention.
- (18) S. Marcus-Helmons, "La contribution de la consécration internationale des droits de l'homme au développement du droit", to be published in *Mélanges Georges Levasseur*, Paris, Summer 1992.
- (19) S. Marcus-Helmons, "A New Dimension.....", Taipei, op. cit., pp. 267 to 275.
- (20) M. Virally, "Droits de l'homme, et théorie générale de droit international", document without other references distributed to the participants in the International Conference on Human Rights held in Brussels in 1970.
- (21) All the states, indeed, always vote in favour of human rights and adopt unanimously all recommendations promoting human rights.
- (22) S. Marcus-Helmons, "A New Dimension.....", Taipei, op. cit., pp. 269-270.

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23 Ibidem, p. 270.

24 P. De Visscher, "La contribution de l'Institut de droit international à la protection des droits de l'homme", dans *Mélanges Michel Virally*, Paris 1990, pp. 222—223.

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