

Dawn of the 21st century:

A European perspective

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Secretary General, Council of Europe

■ The state of the world scarcely justifies a euphoric assessment of what the international community has succeeded in doing to ensure respect for human rights. And yet the upheavals that have occurred since 1989, especially in Europe, gave rise to an immense hope. There were many of us who thought that human rights, having ceased to be a factor for division and a subject of ideological controversies between the West and the East, would become a powerful catalyst for the unity of all Europe and even of the world. Since then this great surge of hope has largely subsided and given way to disillusion and resignation.

The Preamble to the Universal Declaration of Human Rights, drafted in the wake of the Second World War, states that 'disregard and contempt for human rights have resulted in barbarous acts which outraged the conscience of mankind'. More than 40 years later, however, despite all the legal instruments and machinery set up for that purpose, disregard and contempt for human rights are still resulting in barbarous acts which outrage the conscience of mankind.

We should not, of course, belittle or denigrate the efforts made since 1945 to place the individual and his or her dignity and rights at the centre of the international community. Substantial progress has been made, including – indeed, perhaps above all – in the framework of the Council of Europe. The case law of the European Commission and Court of Human Rights is exerting an ever deeper influence on the laws and social realities of the states which are parties to the European Convention on Human Rights. But even the system established by the Convention, often held up as the most advanced one of its kind, is not free from weaknesses, of which I shall mention but four:

- the system's relative impotence vis-à-vis serious, systematic abuses of human rights in the Convention's contracting states, which contrasts with the rather lavish amount of detail and care with which fairly minor problems are sometimes tackled;
- the relative facility with which the Convention's contracting states may avail themselves of the right of derogation in 'exceptional' situations;
- the excessive length of the procedure before the Convention's organs, which are increasingly victims of their own success;

- the system's insufficiently judicial nature in view of the fact that the Committee of Ministers, a political organ, may be called upon to decide on breaches of the Convention.

Among the positive effects of the system set up by the European Convention on Human Rights, it would be wrong to underestimate the preventive effect. This important idea of preventing abuses of human rights has been taken further in relation to one particularly scandalous type of abuse, namely torture and inhuman or degrading treatment. The European Convention for the Prevention of Torture, settled in 1989, is undoubtedly one of our most important achievements.

Challenges and Threats

What Alexis de Tocqueville said about democracy – namely that it is constantly threatened – is, of course, also true of human rights.

Human rights are invariably asserted and defended in relation to power, not only the power of the state, but all power, be it political, economic, social, military, media-based, scientific, technological or even spiritual. Any exercise of power is accompanied by a temptation to abuse it. The fact is that human rights are designed to limit power, circumscribe its exercise and attenuate its violence. Human rights counterbalance a utilitarian view of power with an ethical requirement setting a limit to power.

The whole human rights edifice is founded on the principle of the equal dignity of all human beings. The logical and inescapable consequence of this principle is what we call the universality of human rights. These are essentially rights belonging to all human beings, to every woman, man and child, wherever they live on this earth.

But how do things stand in reality? Are the human rights proclaimed as universal actually and equally available to all? Whereas the Universal Declaration of Human Rights and, in its wake, all the major international treaties on human rights proclaim the right of every individual to life as a fundamental right, thousands of people – including some 40,000 children – die of hunger and malnutrition every day. And how many others die as a result of war and violence?

Even in our European societies many human beings are still denied full and effective enjoyment of human rights, such as the poor, foreigners and so on.

This fundamental principle of the universality of human rights is not only inadequately practised and applied; it is also openly disputed, even rejected, by certain movements advocating cultural relativism in the human

The end of the Cold War offers us a new opportunity for the promotion and protection of human rights both on a national and international level. It is very encouraging that a firm belief in universal human rights and our ardent aspiration for democracy prevailed at the World Conference. What we need now is action so that we can hand down to future generations a more peaceful and affluent world.

H.E. Kim Young-Sam
President

rights field. According to them, the cultural, social or religious context gives rise to different and yet equally valid conceptions of human rights. In 1981 the Swiss philosopher Jeanne Hersch wrote the following: '...in a vivid, diffuse and deeply felt form, there is in all individuals and all cultures a need, an expectation and a sense of these rights... The main point is that this fundamental requirement is perceptible everywhere: something is due to the human being simply because he is a human being... To advance the diversity of cultures as a reason for refusing to recognize the universality of human rights can only be a very poor pretext.'

It is true that human rights are designed to protect not only an abstract individual but also individuals in concrete situations (accused persons, workers etc) and individuals as members of groups of communities. Now the time has perhaps come to adopt a more dispassionate approach to the relationship between 'individual rights' and 'collective rights'.

A right may be 'collective' by virtue of the way in which it is exercised or by virtue of its holder. There are rights and freedoms that presuppose the existence of other individuals, groups and communities with which and within which they are exercised. Mention may be made, by way of example, of freedom of

religion, freedom of assembly, freedom of association, the right to organize and the right to free elections. These are rights with a collective dimension by virtue of the way in which they are exercised.

Another distinguishing factor is the holder of a right. Whereas individual rights are rights of human beings considered in their individual essence, collective rights construed in this sense would be rights of groups or of communities which group individuals together.

We are probably agreed in according certain rights to certain 'natural' groups, such as the family which is the 'natural' group par excellence. But where does the concept 'natural' end? And what about minorities, nations, peoples and even states?

I should like to make it quite clear straight away that I cannot conceive of states possessing human rights.

But is it not true that even the idea of a nation or a people possessing human rights fills us with a kind of instinctive distrust? Is this not because these concepts have been and are still being 'hijacked' and abused? We all know to what extent the right of a people or a nation has been played off against individual rights, the community against the individual. In Nazi doctrine, with its glorification of the 'Volksgemeinschaft' (community of the

Poverty afflicts people in every part of the world, dividing families and forcing children to work.



UNITED NATIONS

Despite all the international legal machinery to protect human rights, barbarous acts which outrage the conscience of humanity are still a daily reality. A soldier on the front line in Bosnia



people), there was no room for human rights, and eminent professors of law who were zealous acolytes of the regime felt able to announce triumphantly the death of personal rights or human rights.

For many of those who set themselves up as protagonists of the rights of peoples, the term 'people' is synonymous with 'state'. In that way they succeed in transforming human rights, via so-called rights of peoples, into rights of the state: rights of the state valid vis-à-vis the individual, instead of human rights valid vis-à-vis the state.

Another fundamental principle is the indivisibility of human rights. These rights form an indivisible whole, whether they be civil, political, economic, social or cultural rights. Only if the individual is guaranteed all these rights can he live in dignity. The Universal Declaration of Human Rights announced a two-fold liberation to individuals: liberation from terror and liberation from poverty.

It might have been hoped that the end of the ideological confrontation between West and East had put a stop to the meaningless debates of yesteryear in which economic, social and cultural rights were played off against civil and political rights and vice versa. Alas, this is not quite the case. Some are preaching a new determinism, a kind of inverted Marxism, which claims that market freedom and economic freedom are both the necessary and the sufficient condition of all freedom and of the enjoyment of human rights. The experience of some of the world's regions and countries shows how

misguided these doctrines are.

Even those who profess the indivisibility of human rights do not always go to the end of their reasoning. Thus we, in the Council of Europe, have advanced less far along the path of 'social democracy' than along that of 'political democracy'. The European Social Charter, a legal instrument concluded in the Council of Europe in 1961, has still not been ratified by all of the Council's member states; it affords less effective protection than the European Convention on Human Rights.

Lastly, there is the principle of solidarity. The main international texts on human rights emphatically proclaim the pre-eminence of the individual at the heart of the international community responsible for the joint and collective protection of the rights of the human being. Safeguarding those rights is not only a legitimate concern but one of the principal tasks of the international community.

This solidarity should be expressed at all levels of social life, in all the communities to which we belong, at both national and international level.

Main lines of future action

What should be done in the face of the multitude of threats and challenges with which human rights are confronted?

First of all, after so many proclamations, declarations and conventions have been issued on the subject of human rights, stress should be laid on their implementation. This will mean not only remedying abuses of human

Lebanon, in reaffirming its long-standing commitment to the principles of the Charter of the United Nations and the Universal Declaration of Human Rights, was proud to take part in the World Conference on Human Rights. This universal endeavour aimed at promoting our common humanity and bringing about a truly universal culture of human rights, with due consideration to the particular culture and traditions of each nation, is crucial to peace and stability in our fast-changing world.

H.E.M. Elias Hraoui
President
Republic of Lebanon

The conflict in the former Yugoslavia brought the return of the monstrous concept of 'ethnic cleansing'. A UN convoy from Belgrade halts en route to Sarajevo to put on bullet-proof vests



rights but above all preventing them. This process of implementation and prevention should be conducted primarily at national level. The international machinery set up for the purpose, important though it is, can play but a subsidiary role.

The state should be the principal custodian of human rights; its role is to respect and enforce those rights. But experience teaches us that it can be not only the protector but also the gravedigger of human rights. It was because the state has often failed in its role as custodian of human rights and been transformed into an instrument of oppression that the international community was given a watching brief over the behaviour of states. These can no longer shelter behind the cosy screen of non-interference. Human rights have ceased to belong to the domain of 'domestic affairs'. Respect for human rights is a duty of every state, not only towards its people but also towards the international community.

At the same time, the international community should equip itself with infinitely more effective means for playing this role, even though a subsidiary one, of implementing human rights and preventing their abuse. Human rights should be a fundamental part of all efforts aimed at the maintenance and consolidation of peace, preventive diplomacy and early warning. For we know – as the Preambles to the Universal Declaration and European Convention on Human Rights remind us – that there can be no peace without respect for human rights.

It may be observed that within the UN the concept of threat to international peace and

security is being broadened. Should it not include widespread abuses of human rights? In that case there arises the serious question of the possible exercise of a 'right of interference' and the possible use of force. If a 'right of interference' was to be exercised and force used, this could be done only in full accordance with the international community's rules of law and in a just and balanced manner. If there were double standards in the matter, the international community's credibility would be seriously impaired. As regards humanitarian action, the need for which is denied by no one, it ought not to cover up the international community's political fecklessness or serve as a screen behind which some carry on with impunity their crimes against peace and human rights.

Another important and necessary way of preventing abuses of human rights is to punish those who are responsible for them. In other words, it is essential to put an end to the impunity that is, alas, a virtually universal phenomenon. There already exist rules of international law enabling the perpetrators of the atrocious crimes at present being committed to be prosecuted. The atrocious crimes committed on the soil of the former Yugoslavia, especially in Bosnia-Herzegovina, emphasize the urgent need for rapid and effective international action. Whatever institutional framework is eventually chosen is of little importance provided words are at last followed by deeds. For my part, I believe that, where necessary, the Council of Europe should be available to serve as an institutional framework for such action aimed at finally

The World Conference on Human Rights was a unique opportunity not only to review the progress in the field of human rights, but also to lay the foundation for a forward-looking plan of action. I applaud the successful work done by the UN and the UNHCR in these difficult and dangerous fields and wish them every success in their future work.

H.E. Jacques Santer
Prime Minister
Grand-Duchy of Luxembourg

The convening of the World Conference on Human Rights marked yet another milestone in the efforts of the United Nations to create a better world for all the peoples of the world. It is of utmost importance that the concept of universality and demands of specificity in defining human rights be reconciled in a positive and meaningful direction without bargaining for one set of rights at the expense of another. I hope that the outcome of this renewed commitment by the international community in the pursuit of human rights and fundamental freedoms for all will provide further impetus to create a better and a more just world.

H.E. Maumoon Abdul Gayoom
President
Republic of Maldives

Beggars are an increasingly common sight on the streets of European cities: a woman begging in Moscow

breaking the shameful circle of impunity.

Lastly, education is without doubt a powerful means of preventing abuses of human rights. In this connection, a huge effort is necessary to create in our societies a genuine human rights culture.

The relationship between democracy, development and human rights to be investigated more thoroughly.

I consider it important to emphasize at the outset that under-development, hunger and poverty are abuses of the fundamental rights of those afflicted by them; these might be said to be structural violations of human rights. They are a vivid and practical demonstration of the indivisibility of all human rights. People living in poverty are in danger of being denied almost all fundamental rights. What does freedom of expression, for example, mean to those who have no voice and who live in extreme poverty, even in our affluent societies or rather on their fringes?

In saying this, I am not, of course, subscribing to the views of those who use poverty and under-development as a pretext for postponing the enjoyment of human rights.

Under-development or the goal of development should not serve as an excuse for those who abuse human rights. It was a great African jurist, Kéba M'Baye, one of the first to moot the concept of the right to development, who exclaimed: 'Development, how many crimes

have been and are being committed in your name!'

Any form of development worthy of the name should also be a development of democracy and human rights. Killing, torture and repression are not, of course, means of economic development. Respect for human rights does not preclude development but fosters it. The international community should integrate the human rights dimension into development strategies.

Whether they are concerned with implementing human rights or with promoting development in accordance with those rights, the role of NGOs is, of course, of paramount importance. The breakthrough achieved by these organizations and the growing impact they are having are, in my view, one of the most encouraging aspects of recent decades. They have practical experience of the solidarity existing between individuals in the protection of human rights. It is largely thanks to them that what is called the international community is becoming rather more like a community of people instead of being exclusively a community of states and 'reason of state'.

EXTRACT FROM a speech to the interregional meeting organized by the Council of Europe in advance of the World Conference on Human Rights, 'Human Rights at the Dawn of the 21st Century'.

