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HUMAN RIGHTS OR THE SEARCH FOR AN ETHIC

This was the title of an address by Mr. P. Modinos to the General Assembly of the World Veterans' Federation in the Maison de l'Europe. A large part of his text is reproduced below, as we believe it will interest readers of the International Review, for is it not the aim of the Red Cross to safeguard certain fundamental human rights, even in extreme circumstances when peoples take up arms against each other? (Ed.)

At the time when in Europe the warring brothers were destroying both themselves and their ancient cities, the Atlantic Charter of 14th August 1941 brought the first message of hope " for a better future for the world ".

By the " United Nations " Declaration of 1st January 1942, twenty-six nations affirmed their determination to defend life, liberty, independence, human rights and justice " in their own lands as well as in other lands ".

Then, as early as 30th October 1943, came the Moscow Declaration setting forth the decision to found an international organisation " based on the principle of the sovereign equality of all peace-loving States, and open to membership by all such States, large and small . . . ".

Thus, between 1942 and 1945, while men were still at war in Europe, in Africa and in Asia, institutions were being created in order to ensure " a rapid and orderly transition from war to peace " : the Food and Agriculture Organisation (FAO), the United Nations Educational, Scientific and Cultural Organisation (UNESCO), the

United Nations Relief and Rehabilitation Administration (UNRRA), the International Monetary Fund (IMF) and the International Bank for Reconstruction and Development (IBRD).

From Dumbarton Oaks, via Yalta, we come, on 5th March 1945, to San Francisco, to the United Nations Charter with its proclamation that the preservation of international peace and security is founded on the principle of equal rights and self-determination of peoples and on respect for human rights for all without distinction as to race, sex, language, or religion.

This was not of course the first time that human rights had been set forth in a charter. History has recorded tables, laws, rescripts, edicts, assizes, constitutions and conventions enough, all those pacts and charters which testify to the slow process of the emancipation of man. Human rights can be traced back to the remotest ages. Nor is it any wonder that, more often than not, they were not acknowledged until they had been won by the people. It is absorbing to follow, along the infinite path of history, the often bloody trail of these masses as they advance towards the conquest of their freedoms.

Human rights were not invented by the philosophers of the 18th century; they arose with the earliest form of social organisation, undergoing a continuous process of evolution, transformation and adaptation until they became enshrined in the Habeas Corpus Act of 1679, the American Constitution of 1787 and the French Declaration of 26th August 1789.

Why, then, is such an important place accorded to the United Nations Charter and to the instrument which followed it, the Universal Declaration of Human Rights of 10th December 1948?

The answer is simple. Human rights serve to define the place of the individual in the society to which he belongs, to locate him in his social setting—to reflect his activity as a human being; they follow him as they precede him, existing only through him and for him. They appertain to man from his birth and accompany him in his family life, in his work, in his social life, in his reading, and in his travels. They enable him freely to express his thoughts and profess his faith; they accord him the essential right to choose freely those who are to govern him. In short, human rights protect the individual's private life and public life, for it has become auto-

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matic that, under the exigencies and demands of our time, there is less and less distinction between what is private and what is public.

Concurrently, within the framework of the State, human rights regulate the functioning of our public institutions and political systems.

The Second World War marked a major stage in the evolution of human rights. It took them beyond national frontiers and brought them into the international life of the peoples. It was no longer a matter of defining the relationship between citizens and the State or, as in the Declaration of 1789, attributing "the causes of public misfortunes and of the corruption of Governments" to a want of respect for those rights. The point at issue now was the expression of an ideology and an ethic capable of allowing the community of nations to live in peace, recognising at the same time, "the worth of the human person".

The League of Nations, too, born of the suffering of the First World War, was created to develop co-operation and to safeguard peace and security among States. But the Covenant of the League of Nations is concerned only with relations among States and reflects the desire to preserve peace among them through the friendly settlement of their differences. Thus it was that the League of Nations had the great merit of securing protection for national minorities through an international procedure. The protection of minorities had its foundation in the Treaty of Versailles which rightly affirmed that peace cannot exist among nations unless it exists within States. However, the League of Nations Covenant does not contain the words "human rights" or any reference to such rights.

To the United Nations, therefore, is due the great credit of proclaiming in its Charter its 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".

Fundamental human rights thus became "international rights", in accordance with the hope expressed before by the Institute of International Law in its often forgotten declaration of 12th October 1929 which, even then, advocated "extending to the whole world the international recognition of human rights".

The Universal Declaration of 10th December 1948, although presented as a common standard of achievement for all peoples and all nations, in fact has the effect of internationalising the rights it embodies.

In calling on "individuals" and "organs of society" to promote respect for these rights and freedoms "by progressive measures, national and international", it has placed such rights in their true perspective.

The two legal instruments of the United Nations—the Charter and the Declaration—have played a major role in the development of the post-war world, shaking it to the very foundations. Never before had the rights and obligations of States, of peoples and of men been so solemnly proclaimed and so unanimously accepted.

Thenceforward the following rules were set forth:

The obligation of nations to preserve peace among themselves.

The equality of nations, large and small.

The right of peoples to self-determination.

The respect of human rights and fundamental freedoms for all, without any discrimination.

For the "right of conquest", practised and accepted for centuries, it was the beginning of the end.

Recognition of the principle of the sovereign equality of nations marked the dawn of "decolonisation". Human rights, in their turn, have ceased to be an attribute of the citizen, of the national, and are now concerned with the individual, the human being, without distinction as to race, nationality or religion. For the last twenty years we have had a set of rules which are binding on States both in their national life and in their international relations. Their rights now have limits and their duties are obligations.

From these rules flows the idea that the rights and duties of States are bound up with the rights and duties of individuals. For the former to be respected, the latter must exist.

Such, in brief, is the ethic which emerges from the post-war acts and charters. How it was applied and how it is practised is another matter. It might often be observed, not without sadness,

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that the need for purification which guides the human soul after every disaster does not always succeed in destroying the root of the evil. There is, unfortunately, no lack of such examples in the world of today. Nor have they ever been lacking in the history of mankind, despite the teaching of the moralists, the philosophers and the prophets. And yet, but for this teaching, where would we be?

Remembering the legend of Prometheus, let us acknowledge, quite simply, that gods and men alike need a long, a very long preparation if their acts are to be just.

Be it the science of morals or the science of justice, the ethic which informs all these legal instruments has the special characteristic of being concerned with peoples, individuals, nations, and States, that is to say, an international community whose sole hope of survival is peace.

In the words of Albert Camus: " The demand for justice results in injustice unless it is first founded on an ethical justification of justice ".

In the matter of human rights, may the search for their ethic provide us with the justification of justice.

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The European Convention on Human Rights, for its part, while based on this ethic, serves more specific objectives.

For the member countries of the Council of Europe, the aim was to define and safeguard, by means of this Convention, the political basis of their association. Both the Council of Europe and its first legal instrument, the Convention, arose from the idea of European unification. Membership of the Council of Europe is confined to countries which recognise and apply human rights, these being essential to the preservation of democracy. And since the Statute of the Council proclaims that any democracy is based in the principles of " individual freedom, political liberty and the rule of law ", a Convention was needed to define those civil and political rights without which there can be no democracy.

A declaration of those rights, however great its moral force might have been, was not sufficient. It was necessary to bind countries by legal obligations, provide a joint guarantee, and set

up organs to ensure respect of the undertakings entered into. As a result, the European Convention on Human Rights has introduced into international law new concepts and rules. And that is not the least of its merits. The Convention is much more than an instrument of peace and of justice. It is above all a political instrument, providing a common denominator for our political institutions. It is a constitutional code of democracy which endows the individual with a legal status beyond national frontiers. . .

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It may be asserted without hesitation that the rights and freedoms set forth in the Convention guarantee the fundamental principles of political democracy. Freedom of thought, conscience and religion (Article 9), freedom of expression (Article 10), freedom of assembly and association (Article 11), the guarantee of non-discrimination (Article 14), the right of parents to ensure the education of their children in conformity with their own religious and philosophical convictions (Article 2 of the First Protocol); the right of the people to express themselves freely in the choice of their legislator (Article 3 of the First Protocol): these are essential rights on which any democratic system must be based.

Without going into the details of the operation of the Convention, it may simply be recalled that fifteen member States of the Council of Europe have so far ratified it. Of these, eleven have already recognised the right of individual petition to the Commission and ten have accepted the compulsory jurisdiction of the Court.

The effects of the Convention are already appreciable: in 1956 Norway amended a provision in its Constitution which, until then, prohibited Jesuits from entering its territory; in 1961 the Belgian Parliament amended an article in the Belgian Penal Code; in 1963 the Austrian Parliament amended certain rules of Austrian criminal procedure.

The Convention is directly applied by the courts of the countries which, through ratification, have incorporated it in their domestic law. In several countries, such as the Federal Republic of Germany, the Netherlands and Belgium, in which the Convention has the

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force of municipal law, numerous cases have been tried on the basis of the Convention.

But the most fruitful work is that done by the Commission and the Court of Human Rights, sitting in Strasbourg...

...The rights and freedoms embodied in the Convention are, under Article 1 of the Convention, secured to "anyone" within the jurisdiction of the Contracting Parties.

"In becoming a Party to the Convention", the Commission has decided, "a State undertakes, vis-à-vis the other High Contracting Parties, to secure the rights and freedoms defined in Section I to every person within its jurisdiction, regardless of his or her nationality or status; ... it undertakes to secure these rights and freedoms not only to its own nationals and those of the other High Contracting Parties but also to nationals of States not Parties to the Convention and to stateless persons ...".¹

It is surely impossible to deny the importance of this innovation which leaves nationality out of account and is concerned solely with the human being. Moreover, proceedings instituted before the international authority transcend, by their nature, the personal interests of the applicant and are concerned with the general interest of the European community.

The significance of this has been fully appreciated by the Commission, which has stated that "a High Contracting Party, when it refers an alleged breach of the Convention to the Commission, is not to be regarded as exercising a right of action for the purpose of enforcing its own rights, but rather as bringing before the Commission an alleged violation of the public order of Europe"...

...Creating as it did obligations among States and establishing a system of supervision, the European Convention had of course to define the right it protected—something which the Universal Declaration did not do. It allows of no exceptions or limitations unless they are "in accordance with law" and are "necessary in a democratic society", while the right of derogation provided for by Article 15 in time of war or other public emergency threatening the life of the nation is carefully controlled.

¹ Application No. 788/60; *Yearbook 1961*, Volume 4, pp. 138-140.

As a result, the Commission (in the "Cyprus" and "Lawless" cases) and the Court (in the "Lawless" case) were able to declare themselves competent to verify the existence of a public emergency and even to ascertain whether the measures taken were done so to the strict extent required by the exigencies of the situation.

It must be acknowledged that such verification by an international authority of matters which previously fell essentially within the national jurisdiction of the State introduces, without doubt, considerable innovations into international law.

Moreover, through the right of individual appeal, now accepted by eleven European States, the individual is recognised as a subject of international law and is armed with the power to institute international proceedings against his own State or against the State to whose jurisdiction he is amenable.

Although the plaintiff may directly petition the Commission, he may not himself bring his case before the Court. This can be done only by Contracting States and the Commission. However, in the very first case referred to it (the "Lawless" case), the Court decided that it was its "duty" to safeguard the interests of the individual, since the whole of the proceedings in the Court, as laid down by the Convention and the Rules of Court, "are upon issues which concern the Applicant."

The individual is protected even if his acts are tainted with ignominy. In the Commission's view, the fact that an applicant has been convicted of "crimes against the most elementary rights of men"—a reference to Ilse Koch of Buchenwald concentration camp—does not deny him the guarantee of the rights and freedoms defined in the Convention.

But the Convention goes beyond the individual and purports to establish standards pertaining to "European public order (*ordre public*)" with the result that, once a case has been referred to the authorities, they continue to be competent to deal with it even if the applicant withdraws his petition with the agreement of his own Government (De Becker and Gericke cases). In such circumstances, says the Commission, the principle rises above the person and interests of the applicant.

The very matter of human rights is one which, in specific circumstances, authorises the Commission—unlike ordinary courts—

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not to follow strict rules with regard to the force of *res judicata*.¹ For this purpose, the Commission points out that “as an international tribunal, it is not bound to treat questions of form with the same degree of strictness as might be the case in municipal law” (Lawless case).

It is important, moreover, to note that the right of ownership—an indication of social ideology—was afforded protection only in the First Protocol to the Convention with the restrictions which modern economic life imposes on the exercise of that right. We are a long way from the conception of an absolute right which includes even its misuse. Under Article 1 of the First Protocol, the State is entitled to “control the use of property in accordance with the general interests”. Thus the Commission found no difficulty, in the *Gudmundsson v. the Icelandic Government* case, in upholding a graduated 25 per cent tax on capital assets. “. . . In view of the general purpose of the law, the maximum percentage and terms of payment affecting the particular category of taxpayers were not such as could deprive (the Act complained of) of the character of a tax imposed with the view of furthering the public interest”.²

These examples—and there are many more—serve to illustrate the profound changes taking place in traditional conceptions of law showing in what direction and for what reasons they are occurring. In the matter of human rights, the letter is invigorating the spirit.

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In the world of today, which is evolving and changing at a dizzy-making speed, while forces and techniques unsuspected a few years ago are urging nations and men towards global unity, it is important that we should review and reconsider our disciplines. In this, the study of human rights will help us, if only by providing us with the essential rules of our family, social and political life.

If the major preoccupation of our age is the search for democracy (on which all regimes pride themselves), then let us try to ensure that this search corresponds to the real needs of our present society.

¹ Application No. 202/56, *Yearbook 1*, p. 191.

² Application No. 511/59, *Yearbook 1*, p. 422.

“ The tragedy of modern democracies ”, Jacques Maritain has said, “ is that they have not succeeded in achieving democracy ”.

Democracy demands that human rights should be indivisible.

The great achievement of the Council of Europe is that of having drawn up a Convention which protects the civil and political rights of individuals. But what is the civil and the political side worth without the economic and the social side?

Let it be said once again: democracy is political by wish and social by duty. For what good is protection of family life without security from unemployment? What good is equality in the eyes of the law when there is inequality in our means of livelihood? Or what good is the supreme right of any democratic system, namely, the right to vote, unless it can be exercised in dignity and for the common good? Free elections are conceivable only among free men. To be free is to live securely in the present and for the future.

The greatest problem is to achieve equal recognition and equal protection of civil, political, economic and social rights.

After centuries of suffering and revolt, after winning recognition of their political freedoms, men are now asked to forego those freedoms in order to make their economic rights more secure. . .

. . . Political and civil rights and socio-economic rights have been divided into two rival groups and their antagonism has given rise to violently conflicting doctrines.

Let us assert once again that no right should give way to another and no freedom should be sacrificed for another. If a right is genuine and if a freedom is essential, then they must be exercised together. These rights are equal and indivisible. There is no choosing between them. As soon as one is abolished, all the others are abolished.

For democracy there can be no half-way house.

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What, after all, is the ethic deriving from human rights if not a continuous search for justice?

Law and justice are no abstractions. They operate on realities. They exist only through men and for men. . .

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... Many are those who think that the teaching of human rights should not be aimed at vindicating this or that regime. Human rights should not be a ground for hostility between countries with different political or economic conceptions or systems. Knowledge of human rights should not separate States and men, but bring them closer together. Respect for human rights should unite them.

It can never be said too often that human rights and the rights of peoples are one and the same; there are no two justices, one for individuals and one for States; nor is there a national justice and an international justice. Mankind being one, there cannot be different kinds of justice for different classes of men.

We may therefore observe that the only valid ethic is that which draws its strength from the hearts of men.

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UNESCO PAST AND FUTURE

The Junior Red Cross Newsletter¹ has published summaries relating to the 27 persons who have received UNESCO grants for leading members of the Junior Red Cross. What has become of these young leaders and how has their interest developed in the humanitarian ideal after a number of years? The outlook is promising, for all of them still have this ideal at heart and are disseminating the knowledge they were able to acquire thanks to the study grant. The issue in question of the Newsletter starts off with an article in which Mr. C.A. Schussel , Director of the League's Junior Red Cross Bureau, on the occasion of UNESCO's 20th anniversary, which was commemorated last November in Paris, recalls the bonds uniting that organization and our movement.

¹ Geneva, No. 4, 1966.