

THE SIGNIFICANCE OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

THE RECORD SO FAR AND FUTURE PROSPECTS ¹

by A. Verdoodt

On the 10th December 1948, the General Assembly of the United Nations adopted the Universal Declaration of Human Rights which had been drawn up by a series of meetings of the Commission of Human Rights and the Commission on the Condition of Women as well as major discussions which took place during the first seven sessions of the Economic and Social Council. The General Assembly presented this Declaration "as a common standard of achievement for all peoples and all nations to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education . . . and by progressive measures, national and international, to secure their universal and effective recognition and observance . . ." ²

¹ The Universal Declaration of Human Rights, as we all know, springs from the same ideal as the founding and growth of the Red Cross. In fact, this Declaration, signed in 1948, has much in common with the Geneva Conventions which, originating in the last century, attained the most advanced stage of their development in 1949.

Mr. Albert Verdoodt is the author of a recently published book worthy of note entitled *Naissance et signification de la Déclaration universelle des droits de l'homme*, which was commented on by the *International Review* in its August 1965 issue. In this book, the author points to the general trend of efforts since the Second World War towards the safeguarding of essential human rights in all circumstances in time both of war and of peace. The review *World Justice* (Louvain, December 1965) has just published a further study by Mr. Verdoodt on the same subject, and we have pleasure in quoting the gist thereof. (*Ed.*)

² Preamble to the Declaration.

Do we consider that the decision taken on this document really corresponds to the breadth of the aims affirmed in this preliminary phrase? First of all, is it a standard?

Brief Description of the Declaration

The Declaration has been compared by Professor R. Cassin, one of its principal authors, "to the vast portico of a temple of which the forecourt is the preamble affirming the unity of the human family and the foundations are the general principles of freedom, equality, nondiscrimination and brotherhood proclaimed in Articles 1 and 2. Four pillars of equal importance support the portico. The first is that of personal rights and freedoms (Articles 3-11 inc.): life, freedom, security and dignity of the person, equal protection of the law, guarantees against slavery, torture, arbitrary arrest and punishment, legal remedies against abuse. The second pillar concerns the rights of the individual in his relationship to the groups of which he is a part and the external world (Articles 12-17 inc.). Men and women are entitled, on an equal footing, to marry, to found a family, to have a home, a residence and asylum against persecution. Every human being has the right to be the member of a city or the national of a country and to control the things which have become his property.

The third pillar is that of the spiritual capacities, public freedoms and fundamental political rights (Articles 18-22): freedom of conscience, thought and religion; freedom of word, expression, assembly and association, the right to take part in government, to participate in periodic and genuine elections. The will of the people is proclaimed as the basis of government authority. The fourth pillar, symmetrical with the first, the strength of which is in no way inferior to the others, is that of economic, social and cultural rights (Articles 22-27 inc.): the right to work, to free choice of employment, to social security and trade union freedoms; the right to education and leisure, to cultural life and protection of intellectual and artistic creation.

On these four pillars a pediment had to be placed, denoting the links between the individual and society. Articles 28-30 affirm the necessity for an international social order so as to find for the rights

and freedoms of the human person their full effect within it. They also proclaim the existence of the duties of the individual towards the community; he must respect the rights and freedoms of others; he may not attack the just requirements of morality, public order and welfare in a democratic society, nor the aims and principles of the United Nations. Thus the Declaration does exemplify the continued impetus of the individual towards the social being".¹ This magnificent description leaves no doubt as to the quality of the 'standard' which the Declaration claims to represent.

Universality of the Declaration

But is this standard really valid 'for all peoples and all nations, to the end that every individual and every organ of society keep this Declaration constantly in mind . . .'?

Here we come to the question of its universal character. 'In fact', M. Cassin continues, 'the Declaration is novel in that it formulates those rights which no national law has been able to formulate except by reference to a given country. Article 15, for instance, provides 'that everyone has the right to a nationality'. Now, a nation has no authority to decree that everyone has the right to be attached to a nation. It also happens that certain constitutions recognise the right to asylum on the territory of the country in question of those who are persecuted in the cause of freedom. But only the United Nations had the power to formulate a general principle, as in Article 14, para. 1: 'Everyone has the right to seek and to enjoy in other countries asylum from persecution'.

How fruitfully the universal character of the Declaration could be applied in relation to 'the status of the foreigner' in a given country. Article 6 provides that everyone has the right to recognition everywhere as a person before the law. The Declaration does not specifically recognise any differences in favour of the national of a country, as against a foreigner, except the right to return to his country (Article 13, para. 2), that of taking part in government in his country or the right of equal access to public service in his country (Article 21, paras. 1 & 2) '.

¹ *Collected lectures*, 1951 (II), Academy of International Law, The Hague, pp. 340-345.

The Limits of the Declaration

It must not, however, be forgotten that the General Assembly did not wish to define the practical measures of application. We shall say a word later about the real influence of the Declaration. But on the level of principles, the United Nations has ignored rights as important as those of petition, of minorities, the right to the free development of national communities in those countries which contain several, or the freedom to emigrate. With regard to this last right, Article 13 simply says: ‘ § 1 Everyone has the right to freedom of movement and residence within the borders of each state. § 2 Everyone has the right to leave any country, including his own, and to return to his country ’.

Reference to the doctrine of the Catholic Church shows a parallel wording in the Encyclical ‘ *Pacem in terris* ’, which in fact covers almost all the rights contained in the Universal Declaration. It is even more explicit, declaring: ‘ Everyone has the right to freedom of movement and residence within the political community of which he is a citizen; he also has the right, as long as his reasons are valid, to go abroad and to reside there. Membership of any particular political community must never prevent anyone from being a member of the human family and a citizen of that universal community, where all men are joined by common bonds ’. This last explanatory phrase is further reinforced by another passage of the Encyclical which says: ‘ It is also a right inherent in the human person that he be permitted to travel to any country where he hopes to find living conditions more suitable for himself and his family. It is therefore incumbent on governments to welcome immigrants...’

The Practical Influence of the Declaration

Of course, there is still the fundamental question of the effective guarantee of these human rights. In 1950, 1958 and 1962 the United Nations published records of the principle manifestations of the influence of the Declaration ¹.

First of all, in the international institutions; the Declaration was invoked and its violation regularly denounced by the organs of the United Nations and their special institutions.

¹ *The Universal Declaration of Human Rights. A Standard of Achievement*, U.N., N.Y., 1950; id. 1958; id. 1962.

For instance, there was Resolution 1514 of the 15th General Assembly on granting independence to the Colonial countries and peoples. Paragraph 7 of that Resolution demands that 'all states faithfully and strictly observe the provisions of the Charter of the United Nations and of the Universal Declaration of Human Rights'.

With regard to the legal value of the Declaration, we will simply quote a recent memorandum by the Legal Department of the United Nations which reads: 'According to the practice of the United Nations Organisation a 'Declaration' is a formal and solemn instrument justified on rare occasions when principles of great importance and lasting value are being announced, as in the case of the Declaration of Human Rights. A recommendation is less formal.' Apart from the distinction just indicated, there is probably no difference from the strictly legal standpoint between a 'recommendation' and a 'declaration' in the practice of the United Nations. A 'declaration' or 'recommendation' is adopted by a body of the United Nations. As such, it cannot be made binding on the member-states in the sense in which a treaty or a convention is binding on the parties to that treaty or convention, by the simple artifice of calling it a 'declaration' rather than a 'recommendation'. However, in view of the greater solemnity and significance of a 'declaration', it may be considered that the organ which adopts it thus shows its lively hope that the member of the international community will respect it. Consequently, to the extent to which this hope is gradually justified by the practice of the nations concerned, a declaration may be considered, by custom, as setting out rules which are binding on governments¹. Moreover, the European Convention on Human Rights, the obligatory character of which is not questioned by any of the signatory nations, clearly recognises in its preamble that it is an off-spring of the Universal Declaration. The progress made by the idea of regional supervision of the rights of man within the Organisation of American States, owes a great deal to the influence of the Universal Declaration.

The programmes of technical co-operation with the developing countries, the rate of which is constantly increasing, are familiar with the dynamism initiated by the proclamation of universal eco-

¹ Document E/CN.4/L.610.

conomic and social rights, and constitute a concrete factor in its implementation.

On their part, those nations which have recently gained their independence and those which have joined the United Nations since the Declaration was adopted, have affirmed their readiness to conform to the Universal Declaration, either in their Constitution or in unilateral declarations or in conventional acts.

As to practical influence on legislation, administration and even national legislatures, the cases where this has occurred have been extremely numerous.

It is above all important to emphasise that the Commission of Human Rights received a mandate in 1946 to prepare not only the Declaration but one or more Pacts of Human Rights intended to implement, under international supervision, the general principles proclaimed in the Declaration. And in fact between 1948 and 1954 the Commission drew up such Pacts, despite all the difficulties inherent in enterprises of this nature. Since 1954 the General Assembly itself, and its Third Commission in particular, have been slowly but surely promoting the implementation of the Pacts. Let us note that in order to make this operation possible the Commission had to submit to the General Assembly not one Pact but two. The first relates to civil and political rights, while the second Pact relates to economic, social and cultural rights.

It must not be forgotten that a large number of nations were born after the Declaration of Human Rights had already been in existence for a long time. The slowness of the discussions and decisions on the Pacts will at least have enabled these young nations to get to know them better, to familiarise themselves with their contents and their future mechanism, to contribute to their composition and to be more clearly aware of the scope of the undertakings they imply for those who decide to sign them.

Important as they are, there has been no question of waiting for a decision on the Pacts, imminent as it is, before making certain parts of the Declaration obligatory by means of multilateral agreements of limited scope. We may quote the International Convention on the Prevention and Punishment of the Crime of Genocide (1948), the Protection of Refugees and the Expatriated and the Prevention of Expatriation (1951, 1954), the Political Rights of Women

(1952), the Nationality of Married Women (1957), the Convention for the Abolition of Repression and Slavery in all its forms (1951), the three Conventions adopted by the International Labour Conference, one on Equal Pay for Equal Work as between men and women (1951), the second on the Abolition of Forced Labour (1957) and the third on Discrimination in Employment and Profession (1958), as well as the Universal Agreement adopted by U.N.E.S.C.O. on Authorship Rights (1952) and the one directed against Discrimination in Education (1962). Discussion of a Convention on Racial Discrimination has just ended and another is planned on Religious Intolerance. Many of these agreements have been successfully ratified and applied.

The Responsibility of the Educators

M. Cassin rightly commented¹ 'the preamble to the Declaration mentions national and international measures only secondarily. It puts first . . . the obligation on individuals and every organ of society (nations, territorial groups and other social groups) to strive by teaching and education to promote respect for these rights and freedoms . . . It is not without reason that the preamble refers to both teaching and education: it is in fact education which exercises the most influence on the mentality of human beings, for it is not limited to lessons and pedagogic conferences which are often formal and sometimes tedious. In fact, the child is educated by the whole complex of the social and family milieu in which he lives and not simply by a particular teacher. Public services, cultural and economic groups therefore have a high task to fulfil'.

It is interesting to mention here that in May 1953, the North American delegates to the Commission of Human Rights submitted a series of proposals which envisaged:

1. An annual report to be made by each government on the status of the rights of man in his country;
2. Studies on the various aspects of the rights of man throughout the world;
3. Advisory services on the rights of man in form of seminars, study and research grants.

¹ *U.N. Review*, Sept. 1958, p. 8.

The proposal on the advisory services was the first to be approved by the Commission and the General Assembly. Later, dozens of scholarships were granted by the United Nations in spheres relating to the rights of man¹. Moreover, some 20 seminars were organised in various parts of the world under the auspices of important people in a certain number of countries. These constituted a meeting ground between representatives of the public and private sectors and the officials of the United Nations who are experts on matters concerning the rights of man. Their printed reports contain ideas which are very useful to governments and public opinion.

The American proposals on the reports on human rights and the studies were not accepted by the General Assembly until 1956. It was felt that triennial reports would be adequate. In the first series, which referred to the years 1954-1956, there were replies from 41 governments, including all the permanent members of the Security Council. The second series, covering the years 1957-1959, includes the reports of 66 governments. Of course, there is no guarantee that the information reported is a faithful reflection of the status of human rights in the various parts of the world at a given moment. The sources are, in fact, limited to government departments. But at least we can say that their effect is to make every government face up to its responsibilities and to lead it to some extent to compare its legislation with the Universal Declaration.

A reason of the same nature tends to cast doubt on the real value of the study programme on characteristic features of human rights. The Commission did in fact reject a proposal presented by a delegate of the United States which suggested entrusting the studies to a private person. This refusal betrays a deep mistrust of independent studies. We may recall that the first subject of enquiry, carried out by a Committee of four members of the Commission referred to Article 9: 'No-one shall be subjected to arbitrary arrest, detention or exile'. The second subject covers 'the right of arrested persons to communicate with those whom it is necessary for them to contact to ensure their defence or the protection of their essential interests'.

¹ We would also mention that the Council of Europe devotes a number of research scholarships to the same subject.

From the point of view of the value of the information, the studies of the Sub-Committee on the Abolition of Discriminatory Measures and the Protection of Minorities, are in striking contrast to the previous example. These studies are in fact the work of individual reporters. Take, for instance, the work of M. Charles Ammoun (Lebanon) on Discriminatory Measures in Teaching, that of M. Arcot Krishna Swani (India) on Religious Freedom, the study of Discriminatory Measures in the Sphere of Political Rights by M. Hernan Santa Cruz (Chile) and a study on discrimination with regard to ' the right of every individual to leave a country including his own and to return to his own country ' by M. José De Ingles (Philippines).

Conclusion

The least that can be said in conclusion is that international law which, over the centuries, has simply tried to organise relationships between nations, is progressively giving more thought to certain human rights. Are these rights any the better for it? This question, which is as wide as the world, might receive quite an accurate answer if the recommendation recently adopted by the Commission on Human Rights is implemented. The latter looks to the meeting in 1968 of a World Conference to evaluate the progress achieved in the sphere of human rights since the Universal Declaration was adopted, in order to assess the techniques used in this matter by the United Nations and to draw up a programme of additional measures. Private studies devoted to the application of the Declaration could very usefully supplement this official picture.

Undoubtedly one may regret the extraordinary slowness with which the work of the United Nations has progressed, especially with regard to the Implementation Pacts. The resistance of certain nations justifies, at least a posteriori, the relative speed employed in preparing and voting on the Declaration alone. It is in fact a matter of the utmost importance to define the rights—and also the duties—of human beings, even if this knowledge helps only indirectly to restrain abuses and guide legislatures. The Ten Commandments are violated every day, yet they continue to influence even those who violate them!

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Finally, it is realistic to consider that the governmental delegates sitting at the United Nations and entrusted with the composition of the implementation agreements are not generally enthusiastic about a task the ultimate object of which is to place them under the supervision of the international community! Finally, it will still be individuals, non-governmental groups, the press and organs of public opinion who will have to be most zealous in invoking human rights and denouncing any state opposed to effective respect for them.

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