
Human Rights and the International Community

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Abstract

Human rights reflect a natural order from which fundamental freedoms flow. The exercise of human rights reflects this order and these freedoms. These are the key principles which inspired the 1948 Universal Declaration of Human Rights. International practice, however, shows that, while the importance of human rights is almost universally recognized, in practice the exercise of individual rights is subjected to numerous constraints. In spite of substantial amounts of legislation enacted around the world to promote and protect human rights, the rise of nationalism and the return of identity politics generate discrimination and hamper dialogue. Increasing constraints imposed by governments on the freedom of the media are an additional obstacle to the fight against injustice. The international community, however, is not doing enough to tackle this fundamental problem. The United Nations remain the bedrock of any effort to foster security, stability and prosperity with full respect for human dignity and human rights. The principle of humanitarian intervention should be further explored with an open mind, since it may provide a key towards more effective policies aimed at addressing serious violations of international humanitarian laws, including genocide, war crimes or crimes against humanity. Yet, the members of the United Nations are unable and unwilling to reform and modernize its institutions and procedures, beginning with the Security Council, an outdated symbol of power politics inherited from the last century. Similarly, the effectiveness of the Human Rights Council should be enhanced. The issue of the presence within this Council of States whose democratic credentials are questionable and which appear openly disrespectful towards human rights should be better leveraged to

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promote human rights standards, to avoid weakening the credibility of the action of this institution. As human rights cover the whole spectrum of human activities, a special thought should be given to women's rights, which in many of our countries have been to varying degrees disregarded for centuries. Important steps have taken place in recent years, especially following the adoption in 1979 of the UN Convention on the Elimination of all Forms of Discrimination against Women. A stronger legal basis for all these steps, however, must be ensured to provide the international community with a more effective and efficient tool to address serious cases of discrimination and promote concrete steps toward a real recognition of the equal role that women do play in every aspect of everyday life.

Keywords

Human Rights, International Community

Introduction

Emerging from more than a century-old tradition of European Liberalism, the progressive strengthening of the rule of law and values spread by the French Revolution, the doctrine of Human Rights has gained increasing international relevance over the last decades, also thanks to global media drawing attention to the numerous violations of these rights caused by war, violence, prevarications and fundamentalism.

Therefore, the actual protection of human rights is affirming itself today as a priority responsibility for the international community, not least because it has come to be part of general international law, and a specific objective for a number of multilateral organizations. However, those who believe in the promotion of an authentic cosmopolitan legal system where each individual holds inviolable rights - regardless of any political affiliations and cultural identities – appear to underestimate the impact of certain weaknesses at the conceptual level and of terminological imprecision that characterize various aspects of the Universal Declaration of Human Rights.

Today, the expression “Human Rights” is often used generally to underscore the unlimited exercise of freedom, but is sometimes abused to refer

to false rights, which negatively affect the rights of others. The Universal Declaration of Human Rights (UHDR) dated 1948, claims the opposite, reflecting a natural order that predates the exercise of freedom itself. The exercise of freedom presupposes this order: therefore, if rights are natural, they precede any decision reflecting them, and this makes such decision legitimate.

As a consequence, it appears preferable to refer to freedom rather than to rights - as freedom may be limited by the freedom of others and sanctioned by consent of the majority. No words could better explain than those of the Russian writer Aleksandr I. Solzhenitsyn, who stated that "Human rights' are a fine thing, but how can we make ourselves sure that our rights do not expand at the expense of the rights of others. A society with unlimited rights is incapable of standing to adversity. If we do not wish to be ruled by a coercive authority, then each of us must rein himself in... A stable society is achieved not by balancing opposing forces but by conscious self-limitation: by the principle that we are always duty-bound to defer to the sense of moral justice".⁽¹⁾

Article 1 of the 1948 Universal Declaration of Human Rights (UDHR) states that: "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood." This implies that fundamental rights inherent to each person are innate and therefore inviolable, inalienable and imprescriptible. In fact, they are recognised as such without any attribution, as it is the case for subjective rights. Human rights should not be either revoked or suspended due to political change or shifts of power, once affirmed by the law.

But equals can greatly differ, and this diversity - resulting in struggle and above all sufferings - has taken a long historical journey. It is this heterogeneity that must enhance and unite human beings that are different but at the same time equal, allowing equality to conquest humanity. Unfortunately, the theme of diversity still today elicits strong reactions, including both anxiety and fear - which in turn feed nationalisms and ethnocentrisms that ultimately divide rather than uniting. This is unfortunately what we increasingly witness today.

It is therefore even more necessary, in this growing climate of antagonism, to learn how to respect others, including their differences, and to strive to reach a common understanding by fostering an open dialogue on the motivations and historical roots that underpin certain visions. Dialogue must necessarily grow in a constructive manner; by using a language totally absent of any political, economic or social prejudices, and aiming to revitalize a truly authentic approach to respecting human rights, avoiding empty statements or proclamations.

An extraordinary amount of legislation has been enacted around the world to promote and protect human rights, and this has led to the establishment of numerous organizations active in this field. These often act as instruments through which the civil society can apply pressure on Governments whenever there is suspicion or evidence that these do not live up to commitments solemnly undertaken and signed in front of the entire international community. But it is also obvious that there is still much work to do, as we still witness war, discrimination and persecutions.

The communication “noise” to which we are all exposed does not help in this regard. Modern communication tools, enhanced by digital media, while representing a useful platform of dialogue, can distort messages and create confusion and ambiguity. While many States try to influence the media and take on a monopoly when it comes to representing the views of local communities, true freedom of the media remains essential to promoting human rights, the respect of human dignity and fight injustice. Internal legislation of States should guarantee this freedom, and States themselves should become the carriers and promoters of those rights and wills and ideals throughout the world.

So, why doesn't this happen?

Too often, solemn but empty proclamations appear to assume higher moral and symbolical values, rather than actual legislation which would allow for concrete action.

The resistance by national and sovereign States to any sort of real “super partes” arbiter or supervisor able to assist them impartially and effectively to

address their differences and resolve conflicts by applying agreed international norms fuels friction and controversy and sometimes generates unrest or more widespread crises. It is in these situations that too often human rights are the first victim. In fact, we witness a crisis of multilateralism exactly at a time when multilateralism should be made more effective and international organizations should be empowered to play a stronger role in ensuring full implementation of values and principles that are universally recognised.

The first step would be to strengthen the role of the United Nations, as a key instrument to enact agreed universal values. In fact, if it is true that the establishment of the United Nations represented a fundamental step towards promoting peace, the respect of human dignity and human rights and fostering peaceful development, we increasingly witness divisions and rivalries which undermine progress towards the achievement of those values of justice and equality that a global organisation representing all nations should be called upon to promote.

Founded at the end of the Second World War, as stated in Article 24 of the Charter, the primary responsibility for the establishment of peace and security rests with the Security Council, whose composition still today reflects the balance of power resulting from the end of the war, three quarters of a century ago. The Council comprises five permanent members - Russia, Great Britain, China, the United States of America and France, commonly known as the five "Great Powers", the only ones with a right of veto, unlike the other non-permanent members, elected on a rotation basis. There are still today countries that have never managed to gain election among the ten non-permanent positions - and so obviously have no possibility whatsoever to express their opinions. In an increasingly globalised world, where new influential actors have emerged and political and economic power shifts have become apparent, the need for reform appears imperative.

It may be noted that the principle of non-interference regarding internal affairs of each State continues to limit any attempt to consider the legitimacy of external interventions in case of extreme violations of fundamental rights and freedoms and providing a shield for States and world powers are defended to

hide behind, if necessary also to cover their internal violations of human rights. It seems clear that to overcome obstacles and maintain peace, stability and respect for human rights, there is a need to move beyond the current logic of power relationships, a sort of international oligarchy where a chosen number of powers are able to completely influence the course of international politics, moving towards a better regulated and open international set-up based on effective multilateralism.

So, how can these obstacles be overcome and succeed to enhance and encourage the fundamental principles of human and individual rights?

In recent years, the USA, with the operation against Milosevic's Serbia in Kosovo, tried to circumvent obstacles by promoting the doctrine of "Humanitarian Intervention" in cases of major violations of human rights and of supposed genocide, but Russia imposed in the Security Council its veto to any possible action by NATO Forces.

Even though the enactment of this doctrine allowed for an operation which brought to an end any attempt of ethnic cleansing and allowed for the return of nearly 2 million displaced Albanians in Kosovo in 1999, it never gained any formal endorsement either by the UN or the International Court of Justice. In fact, even though justified on the basis of similar precedents, the US led-interventions defined as "humanitarian" (in Afghanistan, Iraq, etc.) were never based on a UN resolution or confirmation of any kind. In fact, actions taken were never authorized by the United Nations - even if ethically justified by the objective of ceasing violations of the international humanitarian law.

The so-called "Duty of Humanitarian Intervention", interpreted as a State or group of States' duty to intervene throughout the territory of others without the consent of the State concerned or of the United Nations and aiming to end a serious violation of rights - is based on in Article 30 of the 1996 Universal Declaration of the Rights of Peoples which affirms that "The re-establishment of the fundamental rights of peoples, when they are seriously disregarded, is a duty incumbent upon all members of the international community." Therefore, in the context of a reform of the by-now obsolete UN Security Council to guarantee the fair and equal participation of all member States, one should also

consider limiting the right of veto (should this obsolete privilege be maintained) in cases of genocide, crimes against humanity, war crimes or other serious violations of international humanitarian laws.

So far the proposals of reform that have been presented are however varied and appear somewhat problematic. It may be true that by increasing the number of members the efficiency of a body called upon to make fast decisions on often delicate matters could be undermined. Understandably, where the interests of a majority are not represented it is more likely that a lack of sense of legitimacy, and therefore respect for decisions made, could still undermine the authority of this body. So then it is necessary to find a very difficult balance between acknowledgement of power and representativeness. This is an enormous challenge to face for the international community but a change worth undertaking using tenacity and impartiality.

Similar problems are apparent in the Human Rights Council, a subsidiary body of the General Assembly which stands as a major structure of the UN organization and is responsible for strengthening the promotion and protection of human rights at an intergovernmental level. If on the one hand the representation of the UN member States in this body is governed by a resolution guaranteeing greater representativeness by applying the principle of fair geographical distribution (in theory, noting the composition of the Security Council), then on the other its functioning is not at all exempt from accusations and criticism. The presence within this Council of States whose democratic credentials are questionable and which appear openly disrespectful towards human rights weakens the credibility of the action of this institution in front of an international audience. Perhaps the issue of participation should better leveraged to promote better human rights standards and lead to opportunities for exchanges and dialogue taking into account the potential of every individual, once detached from partisan perceptions and interests or freed by partisan historic narratives which limit his perspective, to contribute to open exchanges and dialogue and the promotion of universal values. And recognising misperceptions, mistakes and other's perspectives are the first key steps towards developing the degree of understanding that is required to make

real progress towards the resolution of these delicate and complex issues.

The UN guidelines state that the elected members of the Council must ensure high levels of promotion and protection of human rights.⁽²⁾ These guidelines should be considered only after the mandate created within the Security Council is implemented, at a time when consideration of any breaches, or default or failure to meet obligations can be examined, thus potentially leading to the exclusion of the reticent State and opening the possibility of concrete interventions. As the Council's resolutions are of a non-binding nature, the implementation rests in the hand of the individual states, and this weakens the impact of the collective efforts to facilitate the implementation of relevant policies, which in the end rests on the goodwill of individual Governments. Seemingly, there are States that appear to commit to respecting rights by taking a universal perspective, with an almost idealistic approach, as if violations perpetrated by their subjects were assessed and judged on the basis of rules descending from internal cultural or social traditions, sometimes openly discriminatory. While the socio-cultural environment for the implementation of rights remains important, it is equally essential to avoid situations where civil and political rights might in fact be abused in the name of preservation of a cultural heritage reflecting principles and realities which no longer match universally recognised principles and values.

And what about violations of human rights at home? What about acts of physical and psychological violence at work? And the right to personal security? The right to education?

Looking at all these aspects, a first thought must be dedicated to all women, considering that their rights have been trampled on for centuries. Various themes regarding gender equality and acts of gender-based violence were raised in international debates already during the last century. The situation of these debates today shows that they remain controversial and still meet with reticence and resistance.

The 1979 Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW),⁽³⁾ followed by the Vienna Conference on Human Rights in 1993, finally managed to achieve two

important results: the commitment to launch the Declaration on the Elimination of Violence against Women, subsequently adopted by the General Assembly on 20 December 1993, and the establishment of a special rapporteur to follow the issue. The most successful step was agreed during the World Conference on Women, held in Beijing in September 1995, which was followed by debates held by the UN Commission on the Status of Women (CSW), the Commission of Human Rights and the General Assembly and, importantly, in the Millennium Summit, which identified in its Final Declaration the fight against any act of violence against women a prime goal for the United Nations at the opening of the 21st century. It is also a debate which is not relegated in the UN Building in New York – the declarations which were adopted, the reports, the campaigns and the projects funded by the UN all stimulate legislative action and more constructive spirit of numerous Governments and regional institutions, under the ever-increasing pressure coming from the civil society.

Nevertheless, not one of any international acts that have been adopted has a legally binding value, and as a consequence, once again, it is possible to detect a clear legal uncertainty at the international level. No doubt, a number of concrete, solid objectives have been achieved, but only at the regional level. For instance, the 2011 Convention of the Council of Europe regarding the prevention and fight against violence towards Women and Domestic Violence is a very good example of a positive and very welcome regional initiative, but obviously that is only a drop in the ocean.

Any violation to right of equality, starting with gender equality, should be firmly condemned and punished.⁽⁴⁾

Negative discrimination, leading in some cases to conditions of submission, must be fought, but at the same time it is important not to abstract the notion of women's rights from the reality of a complementarity of roles within the society which must foresee equal treatment and opportunities but should also recognise different paths towards the achievement of such opportunities. In reality, women are being now reborn from a centuries-long tradition of submission, often living in the shadow of man and even, identifying themselves within that "shield" that ensured the light to overcome obstacles, safely

crossing fire or water. They have learnt to defend themselves, fighting their own fears and sufferings and arriving to sacrifice their own lives for their children and sometimes even for a man that never understood them. But women are tenacious and continue to dream, without fear or restlessness because they have learnt piety, the piety that even when suffering abuse allows them to seek fulfilment and realization.

How can one govern with justice without recognising pity?

If one day just some of those men holding powerful “positions” could learn to listen by using their hearts and by going beyond ancient traditions or partisan interests, paying attention to pain and listening to requests for aid and helping those who suffer in silence: that would be something to celebrate! Giving importance to help those silent women, men and children who heroically fight for their rights, but in a concrete manner.

We may consider that to achieve gender equality would be like reaching the sun at its zenith, eliminating all shaded areas in which many women lived and continue to “live” today, by finally offering them a solid application of the key principles enshrined in the solemn 1948 Declaration of Human Rights.

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