HUMAN RIGHTS: UNIVERSAL RELEVANCE BUT LOCAL INTERPRETATION?

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The author's central argument is that our perception of a universally recognised concept is in fact relative. Although certain values seem to transcend the various diversities between peoples, cultural differences do persist even in the area of human rights. Experience in Europe and elsewhere has shown that relative homogeneity of values within a group is less likely to create problems of relevance and interpretation than on a universal level. Nonetheless, the drafters of the European Convention on Human Rights, keeping in mind the diversity of the legal traditions of the Member States, left a measure of latitude or discretion for interpretative purposes. Is the 'exportation' of human rights a form of latter day cultural imperialism? What if the democratic process as understood and interpreted in the Western world is alien to a particular state or region? The author believes that the absence of an integrated European policy towards the Mediterranean in the past caused a backlash against Europe because a sharper divide between north and south was created. The Euro-Mediterranean Partnership, which commenced in Barcelona, should put an end to this but the social and cultural aspects of this process should be developed. It is vital to make multi-culturalism the starting-point for thinking about human rights and to develop a policy of inter-culturalism as one of the aims of the Euro-Med dialogue. Links should be found between the universalism of human rights and the diversified expression due to local perceptions.

1. Introduction

When the title of the subject we are about to discuss came to my knowledge for the first time, [1] it was drafted in the form

[1] A first draft of this article was originally printed as the opening address in the afternoon session of the Euro-Mediterranean Conference on Strengthening

of a statement. No question mark was appended at the end. So I set my mind thinking about its possible implications. I asked myself whether it asserts the obvious; whether it implies an approval of such a state of affairs in the present international scenario or whether it is critical of the fact that things have turned out the way they are now; whether it is meant to be axiomatic or deliberately concocted to elicit a dialectic upon the problems facing the recognition and the application of human rights today. Of course, the title in question-form would suggest that the general idea was the latter - namely that it calls for a general debate.

Most people in this field would readily agree that human rights are imbued with universal relevance. So much so that along the years, and more so after World War II and the proclamation of the UN Universal Declaration on Human Rights in 1948, these rights have been regaled with all sorts of impressive attributes: basic, fundamental, universal, immutable, inalienable and such like. Assuming that these attributes are true, one would logically expect that their global recognition and adoption should have presented no problems whatsoever. Everyone knows from experience that this assumption is wrong. If they are so basic and relevant to one and all, it stands to reason that their widespread implementation and harmonized interpretation should be a foregone conclusion. Wrong again! Why so? Well it has very much to do, I think, with the relativity theory. "Do not worry about difficulties in mathematics - Albert Einstein once told his students - I can assure you that mine are still greater!" We might indeed all share the same view that no one should be subjected to inhuman and degrading treatment but our idea of what actually constitutes an infringement thereof might differ. We all share the same idea or notion, hence its universality, but the way we perceive it is often different.

In other words, our perception of a universally recognised concept is a relative one. Our idea of its consistency, extent, significance and so on might not exactly tally. When we fail to agree as to the extent of its relevance, for a variety of reasons, then it comes as no surprise to discover that local interpretation too will sometimes

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vary. The further we distance ourselves from the notion, and its relevance to us, the greater the probability of arriving at various conclusions by way of interpretation. As an object moves further away from us, its retinal image size begins to diminish. We know that in reality nothing has happened to the object itself. Nonetheless the illusion remains. In our case, however, the change in perception leads to real problems for the way it translates itself in practice. The perceptual change here is not an illusion but the reality of a given situation. If we perceive a right in a particular way, than our interpretation is bound to be conditioned.

2. The Perception Of Human Rights Is Conditioned

The first obstacle standing in the way of the universal relevance aspect lies therefore in the conditioning of our perception due to external pressure. Marcelino Orejo[2] summed it up as follows:

> "The perception of human rights is conditioned, in space and time, by a combination of historical, economic, social, cultural and religious factors. As a result, the actual substance of these rights will be defined in different ways, and the means of securing them will similarly vary. This diversity, reflecting the very nature of societies and of mankind's conceptions, raises a question: Is there a universal conception of human rights?"

No civilised person can possibly deny the existence of certain human values that seem to transcend the much diversity that divide mankind. After all, the fact that we all belong to the human race is a common bond that unites us. Human dignity, love of freedom, equality and justice for all are values that transcend differences in the same way that the abstract notions of good, beauty and truth do. They belong to humanity as a whole - a common heritage of mankind if you will. In principle, therefore, human rights should be the same for all. In reality, however, we know that this is not invariably so. Cultural differences around the world beget diversity.

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[2] Orejo M., Secretary-General of the Council of Europe, Opening Address Session, Colloquy on the Universality of Human Rights, Strasbourg, 17-19 April, 1989.

For example, which rights should qualify as basic and immutable and which should be regarded as secondary and open to different interpretation remains, of course, a matter of debate. Thus, it is not just a matter of a standard set of ideals but also very much a matter of different priorities, subjective value judgments and local interpretation. Many feel, for example, that racism is not adequately controlled under existing conventions and that a wider protection must be provided for. When rights appear in various conventions, there is then another factor to reckon with. Since the text of one treaty may well vary from that of another, differences in interpretation are in such cases inevitable. But for the moment I am more concerned with so-called conceptual diversities on account of cultural differences; taking 'culture' here in its broadest meaning. Torture is one practice that is today considered by many as a flagrant violation of human rights, but there are countries where torture is part and parcel of domestic law and is in fact institutionalised.

3. The European Experience And The European Convention On Human Rights

At the global level, a need has always been felt among men for a basic minimum of human rights' protection. As the emphasis on man's development increases, the unfolding potential of the human rights movement will correspondingly demand either a more extensive charter or more incisive and fine-tuned rules in addition to effective remedies by way of redress. Experience in Europe and elsewhere has shown that it is possible for a group of states belonging to one region and who share a common heritage of political traditions, political interaction, ideals, freedom and the rule of law, to set up a more effective system for the protection of human rights than appeared possible at global or universal level. Relative homogeneity of values within a group is less likely to create problems of relevance and interpretation.

Let us focus our attention for a while on the European Convention on Human Rights. The ECHR is clearly the product of a Western conception of human rights. In other words, it embodies and defines human rights principles from a Western perspective. For this reason, it lends itself easily to a structure in which Western society finds itself quite at home, in familiar surroundings.

It stands to reason that the Western ethos places great emphasis on values considered to be more important than others: political liberty, democracy, the rule of law, social and property rights. Had this not been the case, European states would have been faced with a set of contrived, alien precepts that might not have wholly fit in a European milieu and, as such, the entire exercise would have been self-defeating or only partly successful. For this reason, it would have been very difficult to provide an efficient and effective remedy in the case of proven violations of human rights treaty provisions. What I am saying is that in formulating principles of universal relevance, the actual rendition was conditioned by values held dear or cherished more than others in this part of the world. Hence, it would not be surprising were we to find out that non-European nations or societies feel that they do not view the same values from the same perspective nor share the same degree of enthusiasm as their western counterparts.

4. The Diversity Factor Within A Regional Framework

The 19th Colloquy on European Law held under the auspices of the Council of Europe in November 1989 chose to discuss the abuse of rights and equivalent concepts. One report in particular[3] examined the topic from the aspect of comparative law. The three rapporteurs inter alia commented as follows,

> "European States have very few points in common as regards the definition of abuse of rights, conditions of implementation, areas of application and, finally, legal effects. So few, in fact, that there are almost as many conceptions of abuse of rights as there are Member States of the Council of Europe. And that is not all: this diversity is further accentuated by the fact that, within most countries, there is no unanimous agreement as to the scope of the prohibition of abuse of rights, doctrinal disputes and contradictory judgments are commonplace."

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[3] This report was drafted on the basis of preliminary studies presented by Ms. Rieben A.S., Ms. Spirou C. and Verschraegen B., as well as by Ms Samuel A., Scientific assistants of the Swiss Institute of Comparative Law.

Naturally, if we examine the domestic laws of different countries on a comparative basis, we are bound to find contrasts and even conflicts. Indeed, this phenomenon has even flourished into a fully-fledged area of legal study known as the Conflict of Laws or, more euphemistically, Private International Law. But the interesting point to note is that during the same meeting, the concept of abuse of rights was also reviewed in relation to the ECHR. The question examined was whether the individual, in exercising those guarantees enshrined in the ECHR could abuse of them either vis-à-vis the community as a whole or vis-à-vis others.

A number of rights laid down in the Convention and in the various Protocols thereto have been somewhat restricted in order to preserve or to accommodate other values deemed to be more important than the effective exercise of these rights. In theory, a proclaimed right can be exercised and can therefore be protected. Yet the exercise of such a right may endanger other rights considered as being of more fundamental value. Continuing to exercise that right in such circumstances would be tantamount to abusing it. The difficulty is knowing at what point we are faced with a possible abuse of rights. Moreover, the exercise in itself implies the taking of corrective or remedial action whereby a certain degree of limitation is allowed so as not to imperil a higher right. In a long line of judgments, the European Court of Human Rights and later the treaties of the European Community have elaborated those circumstances in which the exercise of a right may be limited. It is very difficult to supply a precise criterion, however, as the State authorities are often better placed than an international judge to determine whether and to what extent a right may be restricted,. The now well-established criterion is known as the "margin of appreciation". It is beyond the scope of my contribution to elaborate further on this norm. But from our standpoint, it remains a valid point because the application of this criterion leads us to the conclusion that national authorities are left with a certain degree of discretion to require the individual, as it were, to 'give up' the exercise of an inherent right. As Francois Ost (1988) puts it:

> "Such concepts as 'democratic society", "public order" and 'health and morality' obviously reflect 'social goals' which the individual must bear in mind when he demands observance of a fundamental right, but which are too abstract for him to know ab initio whether or not he is abusing his rights".

So the lesson to be learnt from what I have just reviewed is that the drafters of the Convention, fully aware of the diversity among the legal traditions of the Member States left a measure of latitude for interpretative purpose. So not only does there exist a relative perception of the intrinsic value of the right invoked, but allowances are made to interpret such right in the context of a number of formulated conditions or requirements.

5. Self-Imposed Limits On Human Rights Application

A cursory examination of the wording and contents of Article 10 of the ECHR, just to cite one example, would illustrate my point. It contains two paragraphs. The first paragraph, in turn, is divided into three statements starting solemnly with: "Everyone has the right to freedom of expression." Thus far, the wording is faultless. The second statement then goes on to spell out some added guarantees:

> "This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers."

The third statement is somewhat of a damper to what preceded it, but the nature of the guaranteed right nonetheless remains untarnished:

> "This Article shall not prevent states from requiring the licensing of broadcasting, television or cinema enterprises."

This makes us suddenly aware that we are not living in a vacuum. It acts as a reminder that there are secondary rules and regulations that govern us from the cradle to the grave and sometimes even beyond. But it also paves the way for what lies in store in the second paragraph that follows. The latter in fact conditions this right in very wide terms and in a rather paternalistic way too,

> "The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society..."

The nature of these so-called formalities, conditions etc is quite

generic and extensive and include restrictions in the interest of national security, territorial integrity or public safety; for the prevention of disorder or crime, the protection of health or morals, the protection of the reputation or rights of others; to prevent the disclosure of information received in confidence and to maintain the authority and impartiality of the judiciary. I am not saying that these declared limitations are capricious or unnecessary but that they nevertheless condition to a marked extent the enjoyment or use of the proclaimed right and that they certainly leave a government unsympathetic to this right with a lot of room for manoeuvre.

6. The General Outlook Of The European Union On Human Rights Observance

The far-reaching ideas outlined by Jean Monnet, Robert Schumann and others in post-war Europe towards a closer unity among European States tended to take human rights principles for granted. After all, another European regional organisation had already by then taken up the initiative in the field. The fusion of the coal and steel industries, aspects of defence and the pooling of economic resources of the Benelux countries were of more immediate interest to the pioneers of the European Community. Of course, things have gone quite a long way since those formative years. At Maastricht, for example, formal political recognition was given to fundamental human rights by Article F(2) of the Treaty on European Unity:

> "The Union shall respect fundamental rights, as guaranteed by the ECHR and as they result from the constitutional traditions common to the member states, as general principles of Community Law."

It is obvious that the TEU did not want to necessarily equate human rights either with the provisions of the ECHR or case law emanating from the European Court of Human Rights. Indeed Article L of the Treaty makes it clear that Article F(2) is not part of Community Law and, as such, is not justiciable by the European Court of Justice.

Did the Community, through its institutions, ever envisage the possibility of having two competing European Courts dealing with

the same human rights issues? Actually, the European Court of Justice initially seemed reluctant to develop human rights as a general principle of Community Law, let alone adopt the ECHR. In Stauder v. Ulm (1969), however, the notion was espoused. The case concerned the interpretation of the different language texts of a decision by the Commission. The liberal interpretation given by the Court to that decision avoided any possibility of breach of fundamental human rights, but the court established its acceptance of the concept by affirming that,

> "Interpreted in this way the provision at issue contains nothing capable of prejudicing the fundamental human rights enshrined in the general principles of Community Law and protected by the Court."

A more outright pronouncement is found in the Internationale Handelsgeselleschaft Case (1970), where the Court held that these rights are: "inspired by the Constitutional traditions common to the member states." In 1974, in Nold v. Commission, the Court reaffirmed that: "fundamental human rights form an integral part of the general principles of law, the observance of which they ensure." In Johnson v. Chief Constable of the RUC (1986), the Court did refer to the ECHR. The European Court of Justice, it affirmed, is not bound by this Convention though it conceded that: "the principles on which that Convention is based must be taken into consideration in Community Law." Therefore, the European Court of Justice only embraced international human rights treaties - notably the ECHR - upon which its own member states had collaborated - by way of supplying "guidelines" to be followed within the framework of Community Law.

This anomaly was touched upon in 1982 by the then German Federal Minister of Justice, Hans Jochen Vogel, who stated that,

> "A uniform application of the Convention, in the territories of all the States Party to the Convention requires, logically, also its application to acts of the European Communities. It would not make much sense if acts which, being subject to the binding effect of the Convention as acts of a State Party to the Convention, should be freed from this binding effect for the mere reason that, as a result of that State joining the European Community, they are no longer made

> on national level but by the organs of the Community.... It was not the intention of the Fathers of the European Community to create again a new space where the Convention does not apply."

Of course, there is a lot of truth in this but there is always the other side of the coin to consider.

7. The Politics of Human Rights

The open-ended approach adopted so far by the EU in relation to human rights criteria within the Union is not devoid of merit. While accepting existing treaties as guidelines, it leaves space to tap other sources thereby allowing itself space to formulate its own interpretations should this be necessary. Commenting upon the legal framework of human rights application, Pierre-Henri Imbert, a Council of Europe Director of Human Rights, pointed out that the attention we pay to rights, through declarations or conventions, may have caused us to lose sight of the very foundations of such rights and to concentrate only on affirmed rights. Individual rights seem to be degenerating into individualism. We hear much less talk of "freedoms" than of "rights". Hence our difficulty in "managing" problems of intolerance and exclusion. The gap has widened between progress achieved at international normative and institutional levels and the reality of national, regional and local everyday life, and the possible tendency on the part of some to turn the human rights machinery into an ersatz ideology by expecting it not only to protect the individual from state abuses and inadequacies but also to regulate all forms of social behaviour. The distinction between individual and collective rights on the basis of the principles of universality and indivisibility should be abandoned. Even here though, I feel that there is a reason for this shift in favour of so-called individualism. Firstly, the individual was always the main centre of attention; secondly, once human rights were identified, we then moved towards the ideal or essential abstraction of these rights, namely, human dignity. Now human dignity cannot simply be dismissed as a collective right for it resides in each and every one of us.

In January 1998, the European Union sent three junior foreign ministers as her representatives to Algeria in order to meet the

Algerian Prime-Minister and Foreign Minister as well as members of the opposition parties and newspaper editors. The mission's leader, British Foreign Office Secretary of State, Mr. Derek Fatchett, said in a statement that the EU regretted that Algeria had again rejected a UN human rights probe but was pleased that the Algerian Foreign Minister had agreed to visit London to continue discussing the Algerian conflict[4]. Mr. Fatchett said that the EU meant the dialogue with Europe would be pursued, despite Algeria's firm rejection of any kind of outside interference in what it insists is not a civil war but a struggle to defeat Islamic fundamentalist terrorism.

We are not here concerned with the present state of affairs in Algeria. This news item is a typical involvement by the EU in matters concerning human rights outside the Union. The question is: why the emphasis on probing human rights elsewhere, beyond Europe? Is the EU really concerned about human rights violations out of a genuine humanitarian sense of solidarity with that people or is it rather perturbed in case things might get out of hand in that country with an effect on other interests? Why this urge, this impulse to go beyond simple fact-finding towards a more interventionist approach? Lest I be misunderstood - I am not critical of any approach that would somehow alleviate the sufferings of innocent people. I am just posing a number of questions to try to get to the root of the matter: why does the EU or, for that matter any other nation, concern themselves with extra-territorial issues involving human rights violations? Is it human solidarity, the protection of private interests, or the fear of the spread of integralist fundamentalism? There are other aspects to this scenario. Why should certain states or governments perceive a threat to their own stability if they were to open their doors, as it were, to a general and widespread recognition and application of human rights? If fundamental freedoms and human rights are so basic to mankind, so universal in their relevance, why is it that we have to develop strategies to put them on a sound footing wherever needed? Is there such a thing as the politics of human rights?

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[4] Sant A., Prime Minister of Malta, Closing statement, Euro-Mediterranean Conference, Valletta, April, 16, 1997.

One might well probably answer that in the absence of a pluralist democracy, human rights principles need to be established first and foremost. But what if the democratic process as understood and interpreted in the Western Hemisphere is alien or not part of the political fabric of this or that state, this or that region? And assuming that powerful regional organisations like the EU and others genuinely want to foster among such nations a greater respect towards human rights, and the would-be recipient is as yet unconvinced, is there some sort of a price to pay in order to implement the policy? Must human rights be negotiated or bartered like a material commodity?

8. The Euro-Med Process and Human Rights Concerns

If reconciling human rights attitudes within one region presents some problems, then it is even more likely that reconciling standards between one region and another is going to create greater problems both from the point of view of relevance as well as local interpretation. The EU has by now fully realised, one hopes, that instability in the Mediterranean region can possibly have a destabilising effect on Europe itself. In the absence of integrated European action towards the Mediterranean basin in the past decades, the Member States of the EC were left free to mould their own policies as dictated by their respective national interests. This 'laissez-faire' policy has created a backlash against Europe because it gradually developed into a sharper divide between north and south. The new phase in Euro-Med relations, launched in part with the Euro-Mediterranean Partnership in Barcelona will hopefully put an end to uncoordinated national initiatives and weld the economic and political aspects of Europe's policy in the region. In other words, the action policy would thus represent the whole of the Union and not only those Member States with interests in the Mediterranean. But economic and political aspects should be developed in conjunction with the social and cultural aspects as well for it is in the latter aspects that the human dimension is at its most complete.

In his closing statement at the Euro-Med Ministerial Conference held in Valletta three years ago, the then Maltese Prime Minister *inter alia* stated that:

> "Results are measured by expectation, but also with realism.... Fundamentally, the Euro-Med Partnership is the product of the recognition that in spite of manifest difficulties, there are more unifying than divisive elements in the rich, cultural, political and geographical diversities of the Mediterranean region...."

After highlighting that there is a sensitive linkage between progress in the Barcelona process and the evolution of the Middle-East peace process, he continued by saying that:

> "We attach particular importance to the initiatives, which bring the Barcelona process closer to the individual citizens in our respective countries. We (also) welcome the importance given to the initiatives for co-operation and inter-action between peoples of different cultures and religions. As at Barcelona, again here (in Malta) the Partners have reaffirmed their firm commitment to the promotion of human rights and fundamental freedoms and to the fight against the various manifestations of international crime. Our ultimate aim is for a wider partnership of peoples rather than one exclusively restricted to Governments."

To a large extent, these ideas converge with the views expressed by our former Shadow Minister for Foreign Affairs who also spoke out in favour of a greater emphasis on the social, cultural and human dimension. The objective is to develop human resources, promote understanding between cultures and exchanges within civil society. In this context of decentralised co-operation, the emphasis is placed on education, training of young people, culture and the media, migrant population groups and health. We have to evolve in the Mediterranean region a 'people to people' approach.

9. Increased Emphasis on Fundamental Social Rights

Without in any way minimising the universal relevance of human rights provisions, it is fairly obvious that in the more advanced and developed countries, alleged violations are increasingly becoming more particular and specious. Individual complaints nowadays concern an ever-broadening range of specific and particular issues

like the use of corporal punishment, the confinement of mental patients, the detention of vagrants, telephone tapping, the status of transsexuals, laws on homosexual activities, professional and military discipline, the closed-shop within the ambit of trade union activity. Then there is another category involving more serious human rights violations involving prisoners' rights, access to the courts, custody and care of children, freedom of the media, immigration, deportation, and extradition. Admittedly, these rights, in addition to those higher fundamental rights like the right to life, can never be by-passed but it should be realised that other rights, which to us might appear of lesser import, can mean more to others - if only because they are more immediately or realistically realisable. Within the framework of the European Social Charter, we might well include such broader issues as the work environment, the rights of children, the conditions of migrant workers and their families.

It is vital to make multi-culturalism the starting-point for thinking about human rights and develop a policy of inter-culturalism as one of the central aims of the Euro-Med dialogue. The main goal is that of establishing a kind of public area of thinking and discussion enabling links to be found between the universal relevance of human rights and the diversified expression due to local perceptions. If need be, the goals of democracy should be redefined through this dynamic interaction. A reassessment should be made of the principle that should guide the choice of objectives in the field of human rights, in the context of geographical and social considerations. I believe that while taking into consideration local conditions, even at the risk of losing some of the momentum on human rights monitoring, greater emphasis should be laid on fundamental social and cultural rights. Respect for human rights cannot develop satisfactorily, and their universal relevance would therefore recede, unless the would-be recipients are ready to participate in this process. A working balance should ideally be struck between those principles stemming from a common European identity on the one hand and the diversity and "otherness" aspects that originate from non-European sources on the other.

10. Conclusion

Human rights philosophy must take ideological and cultural relativity into account. It must proceed upon the model that these

rights have to be realised within a pluralistic framework. What I am trying to say is that whereas these values are universal, we must not forget that there are different, not to say contrasting, conceptions of how to implement and interpret such rights. Ideological and cultural homogeneity might be a perfect model within a particular world region or group of nations but this does not always apply to other regions. Human rights must proceed from the basis of ideological pluralism. In this sense, quite ironically perhaps, any initiative coming from a regional body concerning the development of human rights must adopt a global approach. Diversity will continue to exist in form and expression, but this is to be expected. Indeed, it should be accepted and not frowned upon because the resulting grand mosaic within the universal fold can only result in enriching the totality of human society.

Bibliography

De.Marco G. (1996) Opening Statement, Cooperation and Security in the Mediterranean, Prospects After Barcelona, Mediterranean Academy of Diplomatic Studies Publication in conjunction with the University of Malta, Editor Alberto Bin

Ost F. (1988) *Le concept de 'democratie' dans la jurisprudence de la Cour Europeene des Droits de l'Homme*, Journal des Proces, no.124

Pathak R.S. (1990) Chief Justice of India, Introductory Report on Universality of Human Rights in a Pluralistic World, Council of Europe, N.D. Engel Publisher

Reuters, Press reports, (21.1.1998) *UN human Rights: A Probe Rejected*, The Times of Malta

Spielmann A., Spielman D., (1990) *The Concept of Abuse of Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms*, Written Communication, Strasbourg.

Vogel H.J., (1982) The Incorporation of the Catalogue of Human Rights in the Law of the European Union.

Voyame J., Cottier B., Rocha B., (1990) *Written Report on Abuse of Rights in Comparative Law*, Strasbourg, Council of Europe.

Weatherill S. & Beaumont P., EC Law, 2nd Ed, Chap.8, London, Penguin Books.