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In a recent public opinion survey in the member countries of the European Union, their ordinary citizens have demonstrated their usual blissful ignorance of political and strategic matters, including an amazing lack of information about member states other than theirs, and especially about the neighbours of the Union. However, the encouraging fact for me was that the interviewees, when asked about the basic values to which the Union is committed, indicated human rights (39%) at the first place, even before security and democracy.

This is another proof that the idea of human rights has been victorious in the period after Wold War II and that no political leader, party or movement can afford to be openly and explicitly against human rights. For national politicians, as well as those politicians who are leaders international organisations, this is an undoubted advantage because they do not have to prove that the very idea of human rights and human rights as a political and social goal are not desirable in spite of some doubts which - interestingly enough - subsist in some philosophical circles. "Human rights" has become a "good" word or *syntagme*, the way "democracy" has become a "good" term and "terrorism" an absolutely bad designation.

In the context we shall be discussing at this meeting, this raises some interesting points and commands extreme caution. What do those who allegedly support human rights envisage under that term? Does the content of the idea of human rights depend too much on cultural surroundings and do we speak about the same thing when we discuss human rights at an international level?

The French moralist La Rochefoucauld noted that hypocrisy is the homage vice pays to virtue. Are we in a similar situation when we deal with the idea of human rights, which is being advocated by some of those who have the reputation of violating some basic rights and freedoms of the human being, as we understand them. To be more concrete, are the critics of the former UN Commission on Human Rights and its successor. the UN Council for Human Rights, justified in their lamentations that membership in these presumably prestigious bodies is sought and often obtained by those states which by generally expected standards have a poor human rights record?

The other question, more germane to the present deliberations, is how to stop praising human rights and start doing something meaningful to improve the general human condition. We shall deal here with the enormous problem of internationally controlling the respect for human rights but in the same time reducing the need for international action, which in fact will not be that necessary when human rights become respected at the national level.

In other words, signals like the clogging of the European Court for Human Rights and similar regional institutions in other parts of the world, together with the

perceived problems facing the universal “treaty bodies”, have to be overcome by new initiatives for reform and improvement in culturally well defined and homogeneous societies encompassed by most modern states.

The first question that has to be posed relates to the zero phase of every decision to be made, to the first step in rational decision making. Do we have, at the international level, a clear picture of human rights situations in particular countries and regions.

I have the impression that in this field, as in many others (such as international sanctions), lawyers have led the way. Namely, the first reaction of jurists when it comes to protecting human rights is whether there is a remedy that can be initiated and obtained by the aggrieved subject - an individual or a group. It has therefore been held that the main pillar of the implementation of the internationally guaranteed human rights (at least those belonging to the category of civil and political rights) is procedure before courts of law, based on communications or complaints by affected victims of alleged violations. We therefore tend to judge the situation in a given society by the number of such complaints and by the circumstances the cases themselves have revealed. The jurisprudence of some international judicial or quasi-judicial bodies shows that some of them have become aware of systematic defects in national systems, reflected by a high number of complaints relating to bad laws or bad practices. This, however is not a direct method to ascertain the whole of the situation, because it leaves out of the picture many symptoms that are not "justiciable" or do not reach the courts because of their very nature. Take, for example the right to life, where statistically the loss of life mostly due to infant mortality, poverty, hunger, lack of security, bad hygiene, uncontrollable internal conflicts, which normally cannot be raised before national courts. Such factors have vastly outnumbered the losses caused by classical "deprivation of life".

A more systematic and more holistic picture of the situation in a given country could be obtained by a careful study of reports submitted about any particular country. At the universal level, this was the first idea related to the monitoring of the fulfilment of national obligations based on the Covenant on Civil and Political Rights and other human rights treaties adopted under the auspices of the United Nations. In those early days when distinctions and rivalries due to ideological reasons, and reflected in the Cold War, were still acute and present, this was the way to overcome the resistance of many socialist states and a number of developing states against international judicial monitoring, which allegedly violated their sovereignty.

The political situation has dramatically changed after 1989, but this did not bring any improvement in the effectiveness of implementation through the fulfilment of reporting obligations. Many governments are overburdened to such an extent that they cannot always regularly fulfil such obligations, which is reflected in the high number of delayed reports; such reports are furthermore generally examined in a perfunctory manner due to the overload of the corresponding treaty bodies. Another problem related to this is the lack of a systematic flow of information from many countries, which has forced members of monitoring bodies to compare information provided by governments with data originating from alternative sources, such as the media and the reports of national and international non-governmental organisations. Such alternative sources do not exist for many countries so that the examination of many reports tends to be an empty exercise depending very much on the wits of the

members of monitoring bodies and the willingness of state delegations, composed mainly of civil servants, to engage in an in-depth analysis of the situation.

Another problem related to reporting procedures is that they have tended to remain without a meaningful echo. Comments on state reports have been kept in many countries outside the public view and, what is even more unfortunate, there is no interest in the media for the reports and for the debate which has ensued before international bodies; the exception is only if a strong agent within the society, such as a reputable non-governmental organisation, studies carefully the report and its effects before an international body and publicises its findings, including the production of a counter-report, attempting to influence the situation in the country. However, such reactions have not been very frequent. International effects have even been weaker. I am not aware of any action of an international organisation which is based on the results of the studies of state reports.

There is now the promise that the unsatisfactory and uneven situation with state reports would be remedied by the establishment of the UN Human Rights Council to replace the UN Commission on Human rights, the disrepute of which has been mainly caused by the perception on its over-politization. Under the guidance of the Council, and with intense cooperation of its huge membership of 47 States, the procedure before the Council will be completed by a "universal periodic review mechanism", envisaged as a method to submit all states on the planet to uniform periodic review of their human rights records. However, the relevant paragraph 5 (e) of the General Assembly resolution 60/251 establishing the Council is not very promising. It is a typical example of a provision in a UN resolution where the original idea has been watered down by reluctant delegations. A perusal of that paragraph can reveal to the careful reader the sentences that have been added with this motive in mind: he/she can easily guess that they come from governments interested to reduce independent monitoring by non-state entities to the minimum and to keep the procedure firmly in the hands of national bureaucracies. Thus the Human Rights Council will

> (*e*) Undertake a universal periodic review, based on objective and reliable information, of the fulfilment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States; the review shall be a cooperative mechanism, based on an interactive dialogue, with the full involvement of the country concerned and with consideration given to its capacity-building needs; such a mechanism shall complement and not duplicate the work of treaty bodies; the Council shall develop the modalities and necessary time allocation for the universal periodic review mechanism within one year after the holding of its first session.

According to the draft report from the Fifth Session of the Human Rights Committee (UN Doc.A/HRC/5/L.11) the review promises to be speedy but also perfunctory. Information submitted by the state concerned cannot exceed 20 pages, the compilation prepared by OHCHR on the information contained in the reports of treaty bodies and other agencies is limited to 10 pages and additional “credible and reliable” information provided by other relevant stake holders will also not be longer than 10 pages. The review shall be conducted in one working group composed of 47 member states of the Council. The outcome of the review shall be a report containing a summary of the proceedings, conclusions and recommendations. The duration of the review will be 3 hours for each county in the working group with the possibility for

one additional hour. Half an hour will be allocated for the adoption of the report of the working group and the final outcome will be adopted by the plenary of the Council.

Reporting has mainly been confined to universal level and has not been visibly present at the regional one. For instance, in comparison with the work of European Court for Human Rights, those European instruments which contain timid efforts to introduce reporting obligations have not been taken very seriously by anyone.

To return to the judiciary, by referring to the fact that legal remedies are favourite tools of a classical lawyer I have never wanted to underestimate the importance of judicial proceedings in defence of human rights. Observations related to national and international judiciary are well known and will be discussed here. At the national level, the length of proceedings and the defects resulting in the fact that too many cases have to move to international jurisdictions for banal reasons. The defects at the international level are of similar origin: many cases which could have been effectively settled at the national level unnecessarily reach international jurisdictions, which is especially characteristic of those regional jurisdictions where the number of “client” countries has dramatically increased, such as in Europe. I come from such a European sub-region.

This brings us to the conclusion that the improvement of the human rights situation in any country largely depends on internal factors. International efforts should be concentrated on meaningful assistance to be given to the already identified agencies, such as judiciary and to the nongovernmental organisations to which in the most recent times the independent national institutions have been added. The United Nations and other international organisations, among them the OSCE, have already done a lot in that respect. The moment is now to reconsider the existing strategies, to set the right priorities to avoid duplication and unnecessary waste of efforts.

What can be generally said is that, especially in the countries which have recently become aware of importance of human rights and have sincerely joined the international protection system, there is the need to improve the quality of all participants, not only judges, but also NGO leaders and members of national institutions, for the promotion and protection of human rights. A decisive role, frequently but not always mentioned in this respect, is to be played by education. Let us bear in mind that many members of national courts in the former socialist countries who got their law degrees before 1989 have not followed any course in human rights. In spite of intense training provided by international organizations for the selected few, most judges are still unaware of the less dramatic violations of human rights and still unable to apply international instruments in their own political and social setup.

The tradition of non-governmental organisations in socialist and developing countries, which were ruled for long periods by authoritarian systems, is to specialise in cases of violation of political rights, while not being aware of other human rights . This was correctly pointed out by Mrs. Hina Jilani, special representative of the UN Secretary General on the situation of the human rights defenders. Both the NGOs and the media, she finds, tend not to treat people

defending economic, social and cultural rights as genuine human rights defenders[1]. In some countries, insisting on social, economic and cultural rights against the grain of whole society and formidable social and religious forces takes more courage and is sometimes more important (and dangerous) than defending civil and political rights. In this and in many other contexts the wrong policy is to regard governments as the only "enemies" and violators of human rights and forget about other strong oppressive and human rights denying forces in the society.

The most recent additions to the internationally supported and recommended internal factors are the already mentioned national institutions, which are essentially a hybrid of state administration and non-governmental organisations. They can be roughly divided in 2 categories: human rights committees and ombudspersons. Generally, the following common characteristics separate them from the courts: they can assist alleged victims of human rights violations, but cannot provide legal remedies; on the other hand, there is no international rule or any rule whatsoever, describing their activities and competences in various countries. What is considered an effective national institution in one country is not necessarily a good example for another. In the last 20 years national human rights institutions have created an international association and they regularly meet. The last meeting was in 2006 in Santa Cruz (Bolivia). A good thing related to the international cooperation of national institutions is that they concentrate at every meeting on a universal problem effecting human rights and facing most countries in the world. At the Fourth meeting in Seoul (Korea) the main subject was terrorism, whereas at the last participant institutions concentrated on the problem of migration.

In conclusion, one can say that for the time being the best approach to the international cooperation in the field of human rights is to strengthen national institutions and procedures. The latter are in the best position to adapt to local circumstances and, in the words of the Covenant on Civil and Political Rights, to identify "factors and difficulties" affecting the protection and promotion of human rights in a particular country. However, this can only help after primary and most important political decisions have already been made in a democratic state. After the decision to follow the path of improvement in the field of human rights, remaining problems are more or less technical. This is a field where the international expertise can be helpful, but the fundamental political course must be established by the political decision makers. This is why democratic changes are welcome but this leads us to the dilemma of inducing such changes from the outside.

This conclusion brings me to a new topic, which will probably be discussed at the next conference related to the human dimension. The most appropriate organiser of such a conference is OSCE, which, still at the stage of the Conference for Security and Cooperation in Europe, made the first steps in that direction; at the time they were not convincing for everybody but through perseverance they have borne fruit.

[1] Responses to the Economist, *The Economist,* 22 March 2007