

60 ANS ET APRÈS... L'ACTUALITÉ DE LA DÉCLARATION UNIVERSELLE DES DROITS DE L'HOMME

Doru COSTEA

Ambassadeur de Roumanie auprès des Nations Unies à Genève

Ancien président du Conseil des droits de l'homme

Présentation

La mise en œuvre de la réforme d'ensemble, décidée le 15 mars 2006 par la résolution 60/251 de l'Assemblée générale, créant le Conseil des droits de l'homme, a été un processus politique et technique particulièrement complexe, étalé dans le temps, sur plus de deux années, comme l'a bien montré Claire Callejon dans sa thèse sur La réforme de la Commission des droits de l'homme, De la Commission au Conseil récemment publiée (Pedone, 2008). Tout était sur la table de négociation, au risque de créer une pause, sinon une panne, dans le système de protection et de promotion des droits de l'homme, à un moment où la vigilance sur les questions de fond était plus nécessaire que jamais.

Le Conseil des droits de l'homme a lui-même vécu un premier cycle de transition, à compter du 19 juin 2006, sous la présidence de l'ambassadeur Luis Alfonso de Alba (Mexique), avec 5 sessions ordinaires et 4 sessions extraordinaires. Ce cycle s'est achevé avec la résolution 5/1 sur « la mise en place des institutions du Conseil des droits de l'homme », fruit de compromis multiples, adoptée – non sans mal, ni frustration de la part du Canada – le 18 juin 2007, à la veille d'un nouveau cycle.

La deuxième année de fonctionnement du Conseil, placée sous la présidence de l'ambassadeur Doru Costea (Roumanie), de juin 2007 à juin 2008, avec ses 3 sessions ordinaires et ses 3 sessions extraordinaires, peut également être considérée comme une année de rodage institutionnel, avec notamment l'expérimentation décisive de l'Examen périodique universel et la redéfinition progressive de l'ensemble des mandats, sans oublier la création du fragile Comité consultatif du Conseil des droits de l'homme et de la « procédure de requête » qui ressemble comme une sœur à la procédure 1503 créée en 1970... Les rapports volumineux des sessions montrent assez le poids des responsabilités qui pèsent en permanence sur le président du Conseil pendant toute une année d'exercice. La mise en route de la réforme doit beaucoup aux premiers présidents du Conseil qui ont tracé la voie, dans un contexte de crise latente.

C'est dire l'importance du témoignage personnel de l'ambassadeur Costea, qui a bien voulu intervenir lors de la séance officielle d'ouverture du 3^{ème} Forum mondial sur les droits de l'homme organisé à Nantes en juillet 2008, dans le cadre d'une table ronde animée avec une fougue juvénile par Stéphane Hessel, à l'occasion du 60^{ème} anniversaire de la Déclaration universelle des droits de l'homme. Ce bilan de première main est d'un intérêt évident pour tous ceux qui s'intéressent à la vie des Nations Unies, à la part des individualités dans les dynamiques collectives. L'ambassadeur Costea a bien voulu accepter que nous publions dans sa version originale le texte qu'il avait préparé en anglais pour ce débat, présentant, avec beaucoup de simplicité et de franchise, une analyse fine et nuancée de la réforme en cours par un acteur privilégié de la diplomatie multilatérale des droits de l'homme.

Emmanuel DECAUX

1. Endless pages have been written of late on the universal character of the human rights, as inscribed in the Declaration – partly because of a growing concern about voices and practices that seem to question it. A careful examination of what happens in various debates, as well as on the ground, would reveal disputes on how these values, principles and concepts are implemented and enforced; instances when attempts are made to highlight the priority of “specific circumstances” that would determine a particular understanding of human rights; and situations where gross and systematic human rights violations occur in the name of those “specific circumstances”.

At the same time, neither the understanding, nor the implementations of the human rights are simple processes that depend solely on the political will of the first parties responsible – i.e. governments. Constitutions and laws may consecrate the commitment of states to human rights; however, merely stating that a right or another is guaranteed in the everyday life does not make it happen.

There are some simple, even obvious facts, which need to be recalled, again and again nonetheless. One of them is that the implementation of the Universal Declaration does not take place in a vacuum – nor does it happen in an abstract, imaginary space. It stands to reason that implementing various fundamental rights shall require different methods and tools, for different places. However, this reality does not warrant the re-interpretation of the provisions of the Universal Declaration, nor should it be an excuse for non compliance with, or violation of, human rights under the pretext of “specific circumstances”.

The particular environment that made the approach of human rights a vital necessity was fraught with tragedy, misery and despair following World War II; protecting and promoting human rights were conceived as a natural and fundamental component of building peace, securing democracy and respect for the human dignity. These goals are forward-moving targets and their being attained cannot be considered fulfilled to

perfection, once and for all. It follows that the process of implementing, promoting and protecting human rights is as continuous as the human life itself.

During the 60 years of the existence of the Universal Declaration more has changed than the circumstances on the ground: for instance, the increasing importance that states give to their commitment to promote and protect human rights, both at home and abroad. Another significant development is the number of stakeholders that are involved in the process. While states and governments remain the main responsible actors, there is an almost unanimous acceptance of the fact that non-government players and representatives of the civil society are ever more present in the overall human rights-related picture. Their contributions may be not equal – either in terms of their efficiency, or regarding their being acknowledged as legitimate partners by state and political authorities; nevertheless, their messages and participation cannot be ignored anymore and many are the instances when sharing responsibility in implementing projects dedicated to improve the human rights situation has become a reality. Last, but not least, the responsibility to protect, including human rights, has brought about a new understanding of the scope of the national sovereignty, as well as new practices in this field.

As a preliminary remark to the above, the universal character of human rights may be also identified in their ever wider acceptance over the world; in the enlarging process of the scope of their implementation; and in the growing list of stakeholders that are involved in awareness raising and promotion and protection.

2. Turning human rights into facts on the ground cannot take place without institutions, mechanisms and tools to accomplish this goal. It took 45 years between the adoption of the Universal Declaration and the establishment of the Office of the High Commissioner for Human Rights; likewise, long years of negotiations were needed to set up the two Covenants and other international documents that are legally binding. The “Treaty Bodies” have worked for decades now – and, ultimately, the Human Rights Council was established as an outcome of the latest UN reform.

The results of using these instruments may be subject to debate; however, it is certain that the world would have been a worst place to live without the international regulations that were implemented following their adoption or without the public debates of some of the worst violations of the human rights, like those perpetrated by the Apartheid regime in South Africa or by the totalitarian regimes in Eastern Europe. The implementation of the provisions of the Universal Declaration was possible because of the multitude of these tools. At the same time, it is clear that streamlining the human-rights institutions and activities in the UN is needed, in order to increase their efficiency and avoid duplications.

In this respect, it is worthwhile noting the developments in simplifying the procedures of reporting to the Treaty Bodies, as well as the debate within the “Group of Friends of the 3rd Committee”. Some results have been achieved, yet there is still work to be done. The debate around the relationship between the Human Rights Council and the 3rd Committee is a part of these efforts, with some calling for a total distinction between the two – where the HRC should become the only UN body to deal with the human rights – while others see a need for greater synergy between the two – not in the least due to the universal membership of the 3rd Committee, as compared to the elected members of the Council.

While the debate is on, it seems that the reasonable line, at least for now, would be to strive for mutually reinforcing actions taken by the respective institutions, with a view to enhancing the ability of the UN to go beyond the promotion and protection of human rights, towards the capability to prevent their violations – a stage that is still to be reached by both.

3. A step in the right direction may be the Universal Periodic Review (the UPR) – the mechanism that was set up in the HRC, in order to examine the state of the human rights and the ways of further action to improve it. There are several major aspects that are related to this mechanism and highlight its considerable potential in further enhancing the promotion and protection of human rights:

First, *the universal character of the process*: it means that *all UN member states* are included in the review, as proven by the scheduling of their participation that was made in the Council. At the same time, *all rights* are to be considered when the State under Review introduces its national report to be considered; the same applies to the documentation prepared by the OHCHR, which is to facilitate the process; last, but not least, *all stakeholders* – national human rights institutions, subregional and regional organizations, NGOs – are called to contribute to the process, both in providing information for the compilation that the OHCHR prepares for the review, and in participating directly in the debates on the outcome of the review during the plenary meeting of the Council.

Second, *the periodicity of the review*: states are scheduled to come in front of the Council every four years for an examination of their performance, including the implementation of recommendations it had accepted and of pledges and commitments it had made. Meanwhile, the Agenda of the Council has a standing item that allows states to share their progress in process of improving the state of human rights at home.

Third, *the review*: in preparing the first iteration of the process it became clear that, in most cases, states took wide-ranging steps in order to have a comprehensive dialogue with the various governmental agencies that are involved in the human rights field; with national human rights institutions, where they exist; and with the civil society, as stakeholders in the process. There were cases when the preparation for the UPR led to streamlining the activity of human rights-related institutions, to amending draft laws and to embarking on national strategies in the field. Indeed, it may be said that the positive effects of the UPR had started to materialize even before the exercise actually took place – and this is one of the most remarkable results of the process, alongside with another segment of the review, which is the interactive dialogue that is taking place in the Working Group of the Council. During the interactive dialogue issues were raised by Member States that were inspired by the national report of the State under Review and by the contributions of the NGOs alike. Finally, recommendations were made, as well as suggestions to share and/or benefit by national experience and good practices.

The process of the Universal Periodic Review is still at its beginning: 32 states have been reviewed so far and the process is to run its first full round by 2011 – in time for the review of the Human Rights Council in the General Assembly, as provided by the GA Resolution 60/251. There are things that need to be improved – like the preparation of the

interactive dialogue itself; more concrete and measurable recommendations; lessening the “mutual admiration syndrome” that was sometimes recorded during the debates, at the expense of the credibility of the process. Even more important is the follow-up to the review, where states have to prove their readiness to implement the recommendations and pledges, while the Council will have the task of assessing their performance in an objective and balanced manner.

As any new mechanism, there are challenges and risks that may hinder its work; the level of expectations from the UPR should be realistic, bearing in mind hard facts like its intergovernmental character and the huge complexity of some very serious human rights situations on the ground. Neither the UPR, nor the Human Rights Council, nor the UN as a whole are magical solutions to the problems of the world; it is our shared duty and responsibility to make the famous choice between “what is right and what is easy” and to do our utmost in order to better use what we have, before discarding it after initial, sometimes unavoidable, errors.