
The Universal Declaration on Human Rights - A Commentary; Asbjorn Eide *et al.* (eds.); Oxford University Press/Scandinavian University Press 1992; ISBN 82-00-21339-0; 474 pp., price £ 35.

Two questions came to mind when I received this book. Why is the Universal Declaration still so immensely popular? And why did nobody write this book before?

The first question is a difficult one, especially for lawyers. As a lawyer one can hardly understand what's so attractive about a political document that only contains rather vague provisions and lacks any supervisory machinery. Wouldn't any human rights lawyer - at least any *bonafide* lawyer - prefer the 'hard' treaty texts, the covenants and conventions with their detailed and more carefully drafted provisions? Moreover, these treaties are not so much the final stage of human rights protection: they are just the starting point, the platform from which the jurisprudence of the supervising courts and committees can take off. Indeed, it is as a result of its comprehensive supervisory mechanisms that the European Convention on Human Rights is normally considered the most effective human rights instrument to date. The European Committee for the Prevention of Torture serves as a model for the future protection of human rights, because of its unprecedented investigative powers.

And yet. Ask anyone to name a human rights text, and it is not the European Convention that will be mentioned. Despite its revolutionary features, the European Committee for the Prevention of Torture still is a largely unknown organ. The Universal Declaration on Human Rights is by far the most well-known of all international instruments. Second might very well be the Helsinki Final Act, adopted in 1975 by the Conference on Security and Cooperation in Europe (CSCE) - yet another political document characterised by vague provisions. Although the former socialist countries were among the very first to ratify the UN covenants on human rights, dissidents, interestingly enough, usually preferred to rely upon the Helsinki Final Act when criticizing their governments. Consequently, there were many 'Helsinki monitoring groups' but few, if any, 'Covenant Monitoring Groups'.

What is the secret of these declarations? As far as the Universal Declaration is concerned, I think it is a powerful mixture of simplicity and idealism. I must concede immediately that this cannot be the only reason: the Helsinki Final Act is very long, its provisions are far from clear and nobody expected a great deal from it when it was adopted. The Universal Declaration is straightforward and easy-to-read. Its provisions do not contain conditions or limitations (although the lawyer cannot help but noticing the very vague limitation clause of Article 29), nor complicated procedures before committees with narrowly defined competences - just plain rights. And although the Declaration was criticized by some at the time of its adoption (mainly lawyers who would, of course, have preferred a legally binding instrument), it was generally welcomed with enthusiasm. The preamble in particular still succeeds in evoking that particular post-war atmosphere

of optimism. The 'Paris Charter for a New Europe' (November 1990) is comparable with the Universal Declaration to a large extent, but it still remains to be seen whether that instrument will serve as a guiding light for the coming generations.

Another explanation for the Declaration's charisma might be rather cynical. All legally binding instruments require individuals to exhaust local remedies before they can lodge a complaint before an international body - which is often, in practice, a great obstacle. Then the procedure at the international level still may take years; the risk of inadmissibility is always present; and only in very limited circumstances will the procedure result in a court handing down a binding judgment in which compensation for the damages suffered is awarded. The UN Human Rights Committee for example, charged with the supervision of the International Covenant on Civil and Political Rights (ICCPR), can only adopt 'views' which are non-binding. Moreover, in many dualist countries international treaties have not been incorporated and therefore lack direct effect. It is, for example, at present impossible to rely on the European Convention on Human Rights before an English court. A non-binding human rights instrument, adopted at the highest political level, more or less evades the whole problem. All in all, one of the advantages of the Universal Declaration might very well be the lack of any systematic supervision: it saves a lot of disappointment.

Professor Van Boven -who is a *bona fide* human rights lawyer beyond any doubt- goes one step further. According to him, the United Nations should even give preference to the drafting of instruments other than treaties. Van Boven argues that the advantage of these instruments is that they

[a]ddress themselves immediately (without long ratification delays) to the whole of UN membership and, as the case may be, to other actors and organs of society at the national and international levels, thus expressing the notion of collective and universal responsibility.¹

Given the popularity of the Universal Declaration, another question is maybe even harder to answer. Why did nobody analyse the provisions of the Universal Declaration? Of course, much has been written on its legal character and importance. But so far -at least to my knowledge-² no-one has endeavoured to comment on all provisions of the Declaration, and one cannot help wondering why.

Luckily enough, the book under review makes that question redundant. Although it is modestly called "A Commentary", I think it will be "*The Commentary*" for the years to come. The book contains contributions from distinguished scholars and practitioners

¹ See Th. C. van Boven, *The Future Codification of Human Rights: Status of Deliberations - A Critical Analysis*, 10 Human Rights Law Journal 8 (1989).

² In his review of this book, Nigel Rodley referred, however, to two relevant books: N. Robinson, *The Universal Declaration of Human Rights* (1958), and A. Verdoodt, *Naissance et Significance de la Déclaration Universelle des Droits de l'Homme* (1964). See N. Rodley, 42 ICLQ 201 (1993).

in the field of human rights: Asbjorn Eide, Hans Danelius, Jan Marteson, Torkel Opsahl and Allan Rosas. Each commentator discusses a particular provision of the Declaration. The editors have managed to select an all-Scandinavian team of commentators with particular expertise on their topic. Hans Danelius, for example, played an important role in the drafting and adoption of the UN Convention against Torture; in this book he discussed the prohibition of torture (Article 5). The late professor Atle Grahl-Madsen, to take another example, was a leading authority on refugee law; fittingly he wrote the commentary on Article 13, the freedom of movement.

Although the comments vary in length and scope, they all follow a similar pattern. An example is provided by the treatment of the presumption of innocence (Article 11). The historical roots of this principle are analysed, followed by its drafting history in the UN organs. Subsequently the elaboration of the presumption in other human rights instruments is discussed, notably the ICCPR. As in some of the other contributions, a short review of the Nordic practice in this respect is provided. It is by the way interesting to note that the Baltic states are not (yet) included in the analysis of the Nordic situation. Given the close links that are currently being established, one may expect a next edition consider these states as well. Finally, all commentators have included a useful list of literature for further reference. Unfortunately, an index is missing.

Tastes always differ, but I very much liked the contributions by Asbjorn Eide, director of the Norwegian Institute of Human Rights and for several decades a well-known human rights lawyer. In his comment on Article 25, he gives a fine overview of the nature of obligations for economic and social rights and the follow-up given to this provision in other instruments. Eide takes the same thorough approach in his treatise of what is possibly the Declaration's most visionary (and certainly most radical) provision, Article 28 - "Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized"; my other favourite would be "Articles 29 and 30 - The other side of the coin", in which Torkel Opsahl discusses the system of duties and limitations. Indeed, as Opsahl stresses, it is the balance struck between the individual and society that in the end determines the value of any right.

In conclusion, I can recommend this book for any lawyer interested in human rights. Together with Marc Bossuyt's *Guide to the "Travaux Préparatoires" of the ICCPR* one has as an excellent source of references to the origins of UN human rights law. This commentary is inspiring as the Universal Declaration itself.

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