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THE PRINCIPLE OF NON-INTERFERENCE IN THE INTERNAL AFFAIRS OF STATES AND RESPECT FOR HUMAN RIGHTS

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I. THE DEFENCE OF HUMAN RIGHTS AT INTERNATIONAL LEVEL

The greatest progress in the defence of human rights at international level has been made since the end of the Second World War. The intention of introducing new international legal provisions requiring states to respect human rights reflected the deeper level of democratic maturity created by past experience.

Two international organizations in particular, the United Nations and the Council of Europe, deserve credit for ensuring a substantial improvement in the protection of human rights at international level. Other organizations at continental level, such as the Organization of American States (OAS), or at regional level, such as the Arab league, have also contributed towards this end.

(a) UN

The policy of the United Nations, which dates from 1947, of ensuring the protection of human rights through international provisions was based from the outset on the principles embodied in the UN Charter and the Universal Declaration of Human Rights adopted by the UN on 10 December 1948.

Thanks to the unceasing efforts of the UN Human Rights Committee, on 16 December 1966 the UN General Assembly was able to adopt - after innumerable debates - Resolution No. 2200, to which are attached the two International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights.

The two international Covenants are now an integral part of the international legal system. The Covenant on Economic, Social and Cultural Rights came into force on 3 January 1976, and that on Civil and Political Rights on 23 March 1976.

(b) Council of Europe

The Council of Europe has ensured compliance in Europe with the Universal Declaration of Human Rights adopted by the United Nations and was responsible for the adoption of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

This Convention, signed in Rome on 4 November 1952, transformed a whole series of principles proclaimed by the United Nations into legal obligations safeguarding fundamental civil and political rights and human freedoms.

In addition, the European Social Charter, adopted by the Council of Europe in 1961, is designed to protect economic and social rights in the light of the new requirements of contemporary society.

The European Convention for the Protection of Human Rights does not merely lay down rules. It also sets up an institutional mechanism consisting of the European Commission of Human Rights and the European Court of Human Rights.

Both these institutions are responsible for ensuring the respect of the rights recognized and safeguarded by the Convention. On the whole, the European system for the protection of human rights is more complete than that introduced at international level by the United Nations.

(c) Other organizations

The 1967 review of the Charter of the Organization of American States (OAS) confirmed the protection of human rights on the American continent and provided for the setting up of an Inter-American Committee on Human Rights with appropriate jurisdiction. However, this jurisdiction has not yet been introduced.

In addition, in 1968 the Council of the Arab League set up a permanent Arab Commission on Human Rights in which all members of the Arab League are represented. Up to now, the Permanent Arab Commission has confined its investigations of respect for human rights to the Arab territories occupied by Israel.

II. THE RELATIONSHIP BETWEEN THE DEFENCE OF HUMAN RIGHTS AND NATIONAL SOVEREIGNTY

The defence of human rights at international level, as the practical result of relations between States, is still hampered today by the fact that almost all States continue to consider any question relating to the rights of their nationals as the exclusive responsibility of the respective national authorities.

Furthermore, the UN Charter itself would seem to provide a perfect legal basis for this attitude. Article 2(7) of the Charter stipulates that :

> 'Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter'.

The problem of compatibility of the defence of human rights at international level with respect for national sovereignty was particularly evident on two separate occasions which illustrate the evolution of the situation. The first occasion was the negotiations for the conclusion of the above-mentioned European Convention for the Protection of Human Rights and Fundamental Freedoms. The second was the Belgrade follow-up Conference

from October 1977 to March 1978 on the implementation of the Final Act of the Conference on Security and Cooperation in Europe signed in Helsinki on 1 August 1975.

Certain European states expressed serious reservations, before the conclusion of the European Convention for the Protection of Human Rights, on the desirability of setting up an international legal body specifically for the protection of the rights of the individual. This negative attitude was based on the argument that such a legal body would be unable effectively to perform its function without intervening in the internal affairs of the states accused of violating rights.

These objections led to a substantial limitation of the powers of the European Court of Human Rights. This Court delivers rulings solely on cases referred to it by the European Commission of Human Rights or by states, and may not be approached directly by individual citizens.

With regard to the application of the Helsinki Final Act, there has also been an attempt to ensure minimum encroachment upon the principle of national sovereignty.

At the end of Principle VII of Basket I, the Act refers to the abovementioned two international Covenants attached to UN Resolution No. 2200 in the following terms:

> 'In the field of human rights and fundamental freedoms, the participating States will act in conformity with the purposes and principles of the Charter of the United Nations and with the Universal Declaration of Human Rights. They will also fulfil their obligations as set forth in the international delcarations and agreements in this field, including inter alia the International Covenants on Human Rights, by which they may be bound.'

Artificial justification of failure to comply with these international Covenants is thus drawn from the wording of the provisions contained therein. For example, as regards economic, social and cultural rights, Article 4 of the relevant Covenant sanctions their restriction wherever this may be necessary in order to promote the general well-being of a democratic society. As regards civil and political rights, cases in which they may be restricted under the relevant Covenant are bound up with questions of national security, public order, public health and morals etc.

This restrictive view of the means available for the recording, condemnation and elimination of violations of human rights within the sphere of national sovereignty is in line with the traditional principle of non-interference in the internal affairs of states embodied in international law.

However, within the field of human rights and fundamental freedoms, the principle of non-interference is evolving towards acceptance of the legality of action by another state or international organization in the defence of such rights.

III. THE PRINCIPLE OF NON-INTERFERENCE AND THE DEFENCE OF HUMAN RIGHTS

The principle of non-interference, as referred to in Article 2(7) of the UN Charter, was reaffirmed in Principle VI of Basket I of the Helsinki Final Act.

It is worth examining to what extent this principle may be invoked, in cases involving the violation of human rights, by signatory states of international agreements designed to protect such rights.

(a) Significance of the non-interference clause

Principle VI of Basket 1 of the Helsinki Final Act stipulates that:

> 'The participating States will refrain from any intervention, direct or indirect, individual or collective, in the internal or external affairs falling within the domestic jurisdiction of another participating State, regardless of their mutual relations'.

In short, therefore, the non-interference clause figures in international conventions and acts of fundamental importance for mankind - namely the UN Charter and the Helsinki Final Act.

Since 1946 the provisions of Article 2(7) of the UN Charter have been invoked on numerous questions submitted to the UN General Assembly or Security Council. However, these two UN bodies have always interpreted this provision restrictively by affirming that it precludes 'intervention', in other words any action which aims at imposing a specific line of conduct, although it does not prevent the initiation of a 'debate' which may be followed by a recommendation. Furthermore, these two bodies always reserve the right to establish, for each individual case, whether the matter concerned effectively falls within the domestic jurisdiction of the state in question.

This attitude of the UN General Assembly and Security Council does not conflict with the principles of existing international law. The extension of international law to matters concerning human rights, colonial exploitation and the maintenance of peace is undeniable. It has therefore been evident to the two UN bodies that such matters have now been removed from the exclusive domestic jurisdiction of states.

This situation - or legal nicety - must be recognized by law.

(b) Need for legal interpretation

The effective scope of the clauses contained in Article 2(7) of the UN Charter and Principle VI of Basket I of the Helsinki Final Act should be interpreted under international law. The International Court of Justice should stipulate the limits of the non-interference clause with regard to the protection of human rights and the extent to which states may take refuge behind this clause to exampt themselves from obligations at international level.

While making due allowance for the fundamental differences between the European Community and the United Nations, a certain similarity may be perceived between the interpretation given by the Court of Justice of the European Communities to the concept of 'public security' in the Community Member States and that of the UN.

The concept of public security, which is referred to in Article 48 of the EEC Treaty, is interpreted by some Member States as implying a virtually unlimited discretionary power on their own territory, with consequently negative repercussions for the freedom of movement of workers.

In its decision of 28 October 1975[1], as confirmed by subsequent rulings, the Court of Justice of the European Communities described the limits of the power of action of the authorities of the Member States responsible for the protection of public order, in cases where such action constitutes a violation of the principle of free movement of workers laid down in the Treaty.

An analogous interpretation by the International Court of Justice of the scope of the non-interference clause with regard to the protection of human rights would help to fix the conditions under which the signatory states of international acts concerning such rights may legitimately invoke this clause.

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[1] Case 36/75, Rutili, ECR 1975, p. 1230

(c) Respect of good faith

A ruling by the International Court of Justice is also desirable from another point of view. Both Article 2(2) of the UN Charter and Principle X of Basket I of the Helsinki Final Act expressly state that the parties must fulfil in good faith the obligations assumed by them under these international acts.

The principle of good faith is directly derived from Article 26 of the Vienna Convention, pursuant to which the parties are bound by all existing treaties and must implement them in good faith.

The principle of good faith thus constitutes a line of conduct which must be maintained by states in their international relations. There is no lack of legal decisions condemning the devious conduct of states wishing to escape obligations assumed under international agreements.

Within the framework of international acts safeguarding human rights, the contracting states may not use their domestic jurisdiction as a pretext for barring intervention by other states designed to halt the unlawful violation of such acts. On the contrary, their attitude should be such as to ensure the effective fulfilment of the obligations which they have assumed.

(d) Legality of internal acts under international law

One further point should be mentioned concerning the compliance by states at international level, with the obligations which they have assumed concerning the protection of human rights.

In performing its many different functions, the State may execute a number of different acts, which may be constitutional, legislative, administrative, legal or coercive. All these acts represent practical illustrations of its territorial sovereignty as legally recognized under international law.

However, a law enacted by a state to be applied within its territory may conflict with international law, one rule of which is that actions implemented within a state must be considered unlawful at international level where they conflict with international agreements signed by that state.

This principle, which has been upheld on several occasions under international law by the(Permanent Court of International Justice and the International Court of Justice), should remain valid when applied to conformity between the internal acts of states and international acts to which they are signatories in the field of human rights.

IV. THE EUROPEAN COMMUNITY AND THE PRINCIPLE OF NON-INTERFERENCE

Within the context of the European Community, the importance of the principle of non-interference, as traditionally understood in international law, has clearly diminished.

The legal system of the Community, as defined by the Court of Justice, is a new legal system of international law[1].

Within the territory of the Community, the Member States are subject to strict control to ensure that they comply with their obligations under the Treaties. This control is exercised by the Commission, the Community's executive body, and, at legal level, by the Court of Justice.

In cases where the Commission considers that a Member State has failed to fulfil its obligations, it opens the infringement procedure provided for under Article 169 of the EEC Treaty. Under this procedure, the Commission (i.e. an international organ enjoying executive powers) may control the actions of a Member State within its own territory and, where appropriate, refer the matter to the Court of Justice. Once the matter is referred to the Court, its ruling is binding for the state in question.

This means of action by an executive body such as the Commission helps to ensure that Member States both comply with provisions of the EEC Treaty, and respect fundamental rights. This is an unprecedented example of voluntary acceptance by states of intervention by an external body responsible for examining their internal acts in the light of their international commitments.

Although it does not contain a list of fundamental rights, the EEC Treaty contains numerous provisions concerning, directly or indirectly, the enjoyment of such rights (prohibiting of discrimination, principle of equality, freedom of establishment and to provide services etc.). It is clear, therefore that the failure to comply with one of these provisions by a Community Member State constitutes a violation not only of the provisions of the Treaty but of the fundamental rights safeguarded by those provisions.

Nor should it be forgotten that, if we refer specifically to the protection of human rights at international level, the Community, which it itself signed the Helsinki Final Act, is not only formally committed to protecting those rights within its territory[2], but also endeavours to safeguard respect for such rights in the agreements which it concludes with Third countries or other international bodies.

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[1] Case 26/62, ECR 1963, p.23

[2] See Joint Declaration by the European Parliament, the Council and the Commission, OJ No. 103, 27.4.1977

The most striking example concerns the current renewal of the Lomé Convention, under which 55 developing countries are at present associated with the Community with a view to promoting their economic and social progress. The Community institutions have contemplated inserting, in the new text of the Convention, a clause expressly stating that the overriding objective of any economic and social cooperation is to serve mankind.

Within this field of international relations, there is a growing tendency to provide for specific clauses compelling parties to respect human rights and, with regard to the protection of such rights, rendering invalid any reference to the concept of non-interference in the internal affairs of states.

V. CONCLUSIONS

With the progressive development of international law following the Second World War, the principles and rules governing the legal protection of human rights have been consolidated.

International law has thus been extended to a sphere which had previously always been considered the sole concern of states and reflected the main features of the various legal and social systems.

The State, therefore, no longer enjoys unlimited power of decision and action in exercising its sovereignty in cases where human rights are concerned. Certain restrictions have been placed on its jurisdiction in this field, reflecting the extent to which human rights are protected today at international level.