

EXPANDING INTERNATIONAL COOPERATION IN THE PROTECTION OF HUMAN RIGHTS AND THE SOVEREIGNTY OF STATES¹

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ABSTRACT:

CURRENTLY, MOST OF THE NATIONS ARE CONCERNED WITH STRENGTHENING DEMOCRACY AND, IN PARTICULAR, WITH ENSURING THE SAFETY OF THE HUMAN BEING, WITH THE PROMOTION AND COMPLIANCE, AS WIDELY AS POSSIBLE, OF HUMAN RIGHTS BY CREATING AN APPROPRIATE LEGAL FRAMEWORK AT GLOBAL, REGIONAL AND NATIONAL LEVELS, AS WELL AS THROUGH A BETTER COOPERATION BETWEEN STATES IN ORDER TO ESTABLISH THE MOST APPROPRIATE MECHANISMS FOR THE PROTECTION OF RIGHTS.

INTERNATIONAL COOPERATION IN THIS FIELD MAKES EACH STATE TO NO LONGER HAVE ABSOLUTE POWER OVER PERSONS UNDER ITS JURISDICTION BEING OBLIGED TO RESPECT THEIR RIGHTS UNDER INTERNATIONAL RULES, THEREBY THE SOVEREIGNTY OF STATES IS LIMITED BY THE RESPECTIVE REGULATIONS.

KEY WORDS: HUMAN RIGHTS, INTERNATIONAL COOPERATION, SOVEREIGNTY, PROTECTIVE MECHANISMS, COMPLIANCE WITH REGULATIONS

INTRODUCTION

Ever since ancient times and the Middle Ages we have made references to human rights, but this concept was asserted in social practice during the bourgeois revolutions in Europe³, while the formulation of coherent theories and regulations regarding such rights was achieved after a long period, during which we accumulated prerequisites on the crystallization of legal bases of human rights⁴.

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³ Adrian Năstase, *Human rights - religion of the end of the century* (Bucharest: Romanian Institute for Human Rights, 1992), 18.

⁴ Charles E. Wyzanski, *The Philosophical Background of the Doctrines of Human Rights*, in *Human Dignity: the Internationalisation of Human Rights*, coordinator A. HENKIN (Aspen: Institute of Humanistic Studies, 1979) 10.

As a *major imperative* of the international community, human rights promotion was achieved only after the Second World War, in order to prevent the future atrocities like those committed by the Nazis.

In this regard, numerous universal or regional regulations were adopted, starting with the United Nations Charter and the Universal Declaration of Human Rights - the first document with universal vocation, which stipulates the fundamental principles of human rights: freedom, equality, universality and inalienability, as well as express provisions relating to the legal framework of the exercise of human rights, the right to participate directly or through representatives in drafting laws, freedom of speech, freedom of the press, and others.

Ever since the proclamation of the Universal Declaration of Human Rights, over 140 countries have incorporated, in their legal systems, rules with regard to human rights and the specific jurisprudence of the states brought new dimensions to the normative concepts adopted in 1948 by this fundamental act⁵.

As the axiological generator of rights runs differently in each historical era, nationwide valuation processes mutually coexisting and influencing each other with international ones⁶ – internal regulations adopted by the states forming what is called “human rights with variable content”⁷, differentiated from the specific of each state – it is necessary to improve cooperation between states in order to improve human rights protection mechanisms.

THE NEED TO ESTABLISH A FAIR BALANCE BETWEEN THE SOVEREIGNTY OF STATES AND THE EXPANSION OF INTERNATIONAL COOPERATION IN THE OBSERVANCE OF HUMAN RIGHTS

Summing up a set of rights and freedoms and duties of the people (to one another), of states (to defend and promote these rights), of the entire international community⁸ (ensuring their compliance in each country, intervening in those situations in which human rights would be violated in a particular state), human rights regulations are related both to domestic order, as well as the international order⁹.

The establishment of rights protection mechanisms at international level is based on the acceptance by states of the reality that their defence cannot be left just to the discretion of each state.

Although contemporary international life highlights the need for the coexistence of sovereign states¹⁰, sovereignty cannot be absolute just due to the expansion of relations between states, which must cooperate in order to have access to the achievements in science and technology, to ensure their development and participation in decisions concerning the organization of the international community, and others.

By searching the realities of contemporary international relations, we find that state interdependence cannot be opposed to sovereignty, which is “an affirmation of what one

⁵ Nihal Jazawickrama, *The Judicial application of Human Rights Law, National, Regional and International Jurisprudence*, reprinted, introduction (Cambridge University Press, 2006).

⁶ Benedetto Conforti, *Diritto internazionale*, ediția a 3-a (Napoli: Editoriale Scientifico, 1987) 203.

⁷ Gaetano Arangio Rui, *The UN Declaration on Friendly Relations and the System of the Sources of International Law* (Alphen: Sijthoff, 1979) 277.

⁸ Victor Duculescu, *The Legal Protection of Human Rights* (Bucharest: Lumina Lex Publishing House, 2008) 24.

⁹ George N. Coca, *The general interest and fundamental human rights* (Bucharest: Legal Universe Publishing House, 2009) 192.

¹⁰ Dumitra Popescu, Felicia Maxim, *Public International Law*, volume I (Bucharest: Renaissance Publishing House, 2011) 65-66.

might call state dignity”¹¹, and not an obstacle to international cooperation, as interdependence relations necessarily imply that involved states be sovereign and equal in rights¹².

The sovereignty of states is the one that has enabled the creation of international law and it “recognizes sovereignty as its foundation and as a basic principle”¹³.

Moreover, the intervention of international organizations for the protection of human rights does not affect the sovereignty of states, as it should constitute grounds for protecting the rights of its own citizens or of other persons that are on their territories or that come in contact with them - and not for their violation.

The principles of sovereignty, non-interference etc. cannot be invoked as grounds for violation of human rights by states - just as the violation of human rights can ultimately lead to challenging the sovereignty of states - but they must comply with the rules that they have accepted internationally, under *pacta sunt servada* or *jus cogens* of the norms of customary international law¹⁴.

Sovereignty, previously regarded being absolute, as some thinkers thought to be entitled to deny the existence of a real international law, is today conceived as a necessity which restricts itself, in virtue of its own independent powers¹⁵.

By concluding agreements on human rights, states have the objective of determining the framework and forms of their cooperation in this area, without abandoning sovereignty¹⁶;

in this way, “state independence is not compromised by anything, nor its sovereignty affected through the existence of international obligations”¹⁷.

The application of the rules of public international law on the promotion and protection of human rights does not affect in any way the sovereignty of states¹⁸, but they are responsible for the persons under their jurisdiction, they must comply with the obligations arising from the specific international conventional or customary rules to which they adhere.

Therefore, by recognizing the authority of states, reflected in the condition required from persons under their jurisdiction (who report violations of human rights), to exhaust internal remedies before addressing an international organ, international practice substantially influenced the content of the national law of most democratic states in terms of human rights¹⁹.

In terms of human rights protection, the jurisdiction of states has not diminished²⁰, but it must be increasingly receptive to the decisions of intergovernmental organizations and

¹¹ Claude-Albert Colliard, *Institutions des relations internationales* (Paris: Dalloz Publishing House, 1974) 108.

¹² Adrian Năstase, *The destiny contemporary of international law. Reflections from a European perspective* (Bucharest: „Nicolae Titulescu” University Publishing House, 2004) 182-183.

¹³ Ram Prakash Anand, *Sovereign Equality of States in International Law*, in *Recueil des Cours de l'Académie de Droit International*, volume 197 (1986) 42.

¹⁴ Dumitra Popescu, Sofia Popescu, Felicia Maxim, *The concept of sovereignty and its evolution over time*, in the *Journal International Law Notebooks* 1/2008 (no. 18) 56; Theodore S. Orlin, *Evolution of sovereignty limitations for a new global community “Limiting Leviathan through International Law”* (Part II), *Romanian Journal of International Law*, no. 9 (2009) 8.

¹⁵ Nicolae Titulescu, *Dynamics of peace, in the volume Diplomatic Documents* (Bucharest: Political Publishing House, 1967) 298.

¹⁶ David Ruzie, *Droit international public* (Paris: Dalloz Publishing House, 1987) 62.

¹⁷ Nguyen Quoc Dinh, Alain Pellet, Patrick Dailier, *Droit international public*, 8-e édition (Paris: Librairie générale de droit et de jurisprudence, 2009) 371 and next.

¹⁸ Dumitra Popescu, Felicia Maxim, *Public International Law* (Bucharest: Renaissance Publishing House, 2010) 86.

¹⁹ Nicolae Purdă, Nicoleta Diaconu, *Legal protection of human rights*, second edition revised and enlarged (Bucharest: Legal Universe Publishing House, 2011) 22.

²⁰ Marc Agi, *René Cassin Père de la Déclaration Universelle des Droits de l'Homme* (Mensul-sur-l'Estrée: Librairie Académique Perrin, 1998) 230.

international courts jurisprudence, meant to influence increasingly more domestic practices²¹, even if the legal remedies of these international court, against human rights violations, are subsidiary²².

The concept of sovereignty has evolved so that states are responsible for the persons under their jurisdiction, and for the international community²³, having to comply with their obligations under international conventions or customary rules on ensuring human rights protection.

CONCLUSIONS

The existence of international conventions that establish, for involved states, obligations on human rights, is not a limitation of sovereignty, since they are the expression of the will of states to develop cooperation in this field, recognizing the prominence of certain fundamental values that are above the interests of each state.

In some areas of the world, many rights and freedoms enshrined by laws have not so far found any complete application between the securities provided and actual situations, therefore implying a considerable gap²⁴, slowing down the implementation of formally recognized rights.

According to the doctrine²⁵, the effective guarantee of certain rights remained fragile for political, economic, technological and institutional reasons, but we consider that this phenomenon is due to the customs, traditions and mentalities that act as a brake on change, which could require the intensification of international cooperation for improving human rights protection procedures and mechanisms intended to lead to economic development in those regions.

Starting from the reality that there are still numerous cases of human rights violations, we consider that it would be necessary to carry out a more rigorous global *research*, with the participation of the best specialists, based on in-depth understanding of the specific realities of each community, in order to know all the generating factors, so that we can establish, nationally and internationally, the most effective measures to be taken to remove the causes of human rights violation.

Moreover, educating people and those persons responsible in each country, in terms of knowledge of rights and means of preventing their violation, is more beneficial to the community, people exercising their rights and liberties freely, without the necessary expenses and other efforts to achieve international verification procedures and the measures of coercion in situations regarding their violation.

²¹ Mark Weston Janis, *International Law*, Fifth Edition (Aspen Publishers: Walter Kluwer Law & Business, 2008) 106.

²² Manfred Nowak, *Introduction to the International Human Rights Regime* (Leiden: Brill Academia Publishers - Martinus Nijhoff Publishers, 2003), 63-64.

²³ Mary Ann Glendon, *A World made New; Eleanor Roosevelt and The Universal Declaration of Human Rights* (New York: Random House, 2002) 59-60.

²⁴ Ionel Cloșcă, Ion Suceavă, *Treaty of Human Rights* (Bucharest: Europa Nova Publishing House, 1995) 31.

²⁵ Ion Dogaru, Dan Claudiu Dănișor, *Human rights and public freedoms* (Chișinău: Zamolxe Publishing House, 1998) 49.

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