INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

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After the horrors of World War II, a broad consensus emerged at the worldwide level demanding that the individual human being be placed under the protection of the international community. As particularly the atrocities committed against specific ethnic groups had shown, national governments could gravely fail in their duty to ensure the life and the liberty of their citizens. Some had even become murderous institutions. However, never again should a holocaust occur. Accordingly, since the lesson learned was that protective mechanisms at the domestic level alone did not provide sufficiently stable safeguards, it became almost self-evident to entrust the planned new world organization with assuming the role of guarantor of human rights on a universal scale. At the San Francisco Conference in 1945, some Latin American countries requested that a full code of human rights be included in the Charter of the United Nations itself. Since such an initiative required careful preparation, their motions could not be successful at that stage. Nonetheless, human rights were embraced as a matter of principle. The Charter contains references to human rights in the Preamble, among the purposes of the Organization (Article 1) and in several other provisions (Articles 13, 55, 62 and 68). Immediately after the actual setting up of the institutional machinery provided for by the Charter, the new Commission on Human Rights began its work for the creation of an International Bill of Rights. In a first step, the Universal Declaration of Human Rights was drafted, which the General Assembly adopted on 10 December 1948.

In order to make human rights an instrument effectively shaping the lives of individuals and nations, more than just a political proclamation was needed. Hence, from the very outset there was general agreement to the effect that the substance of the Universal Declaration should be translated into the hard legal form of an international treaty. The General Assembly reaffirmed the necessity of complementing, as had already been done in the Universal Declaration, traditional civil and political rights with economic, social and cultural rights, since both classes of rights were "interconnected and interdependent" (see section E of resolution 421 (V) of 4 December 1950). The only question was whether, following the concept of unity of all human rights, the new conventional rights should be encompassed in one international instrument or whether, on account of their different specificities, they should be arranged according to those specificities. Western nations in particular claimed that the implementation process could not be identical, economic and social rights partaking more of the nature of goals to be attained whereas civil and political rights had to be respected strictly and without any reservations. It is this latter view that eventually prevailed. By resolution 543 (VI) of 4 February 1952, the General Assembly directed the Commission on Human Rights to prepare, instead of just one Covenant, two draft treaties; a Covenant setting forth civil and political rights and a parallel Covenant providing for economic, social and cultural rights. The Commission completed its work in 1954. Yet it took many years before eventually the political climate was ripe for the adoption of these two ambitious texts. While both the Western and the Socialist States were still not fully convinced of their usefulness, it was eventually pressure brought to bear upon them from Third World countries which prompted them to approve the outcome of the protracted negotiating process. Accordingly, on 16 December 1966, the two Covenants were adopted by the General Assembly by

consensus, without any abstentions (resolution 2200 (XXI)). Since that time, the two comprehensive human rights instruments of the United Nations have sailed on different courses. However, contrary to many pessimistic expectations, they have mostly been ratified simultaneously. The difference in the circle of States parties is low. As of June 2008, the International Covenant on Civil and Political Rights (ICCPR) comprises 161 States parties, whereas the International Covenant on Economic, Social and Cultural Rights (ICESCR) holds the second place with 158 ratifications. The Russian Federation, for instance, is a party to both Covenants, while the United States has left aside the ICESCR, and China, on the other hand, has not found it convenient to ratify the ICCPR. In general, however, the lacunae include only a small part of the world population. True universality is within reach.

The ICCPR comprises all of the traditional human rights as they are known from historic documents such as the First Ten Amendments to the Constitution of the United States (1789/1791) and the French *Déclaration des droits de l'homme et du citoyen* (1789). However, in perfect harmony with its sister instrument, Part I starts out with the right of self-determination which is considered to be the foundational stone of all human rights (article 1). Part II (articles 2 to 5) contains a number of general principles that apply across the board, among them in particular the prohibition on discrimination. Part III enunciates an extended list of rights, the first of which being the right to life (article 6). Article 7 establishes a ban on torture or other cruel, inhuman or degrading treatment or punishment, and article 8 declares slavery and forced or compulsory labour unlawful. Well-balanced guarantees of *habeas corpus* are set forth in article 9, and article 10 establishes the complementary proviso that all persons deprived of their liberty shall be treated with humanity.

Freedom of movement, including the freedom to leave any country, has found its regulation in article 12. Aliens, who do not enjoy a stable right of sojourn, must as a minimum be granted due process in case their expulsion is envisaged (article 13). Fair trial, the scope *ratione materiae* of which is confined to criminal prosecution and to civil suits at law, has its seat in articles 14 and 15. Privacy, the family, the home or the correspondence of a person are placed under the protection of article 17, and the social activities of human beings enjoy the safeguards of article 18 (freedom of thought, conscience and religion), article 19 (freedom of expression), article 21 (freedom of assembly), and article 22 (freedom of association). Going beyond the classic dimension of protection against interference by State authorities, articles 23 and 24 proclaim that the family and the child are entitled to protection by society and the State.

Article 25 establishes the right for everyone to take part in the running of the public affairs of his/her country. With this provision, the ICCPR makes clear that State authorities require some sort of democratic legitimacy. Finally, article 27 recognizes an individual right of members of ethnic, religious or linguistic minorities to engage in the cultural activities characteristic of such minorities. No political rights are provided for. Minorities as such have not been endowed with any rights of political autonomy.

Article 26 establishes a clause on equality and non-discrimination which seemingly stands in contrast to article 2, paragraph 3, the introductory non-discrimination clause, which is ancillary in nature, being applicable only in conjunction with one of the other substantive rights. The Human Rights Committee, the organ entrusted with monitoring compliance by States with their obligations under the ICCPR, has interpreted article 26 as setting forth a general ban on discrimination, without any regard for the field of life

concerned. To date, this extension of the scope *ratione materiae* of article 26 remains contested.

The Human Rights Committee is the principal actor at the international level mandated to enforce the rights enunciated in the ICCPR. The instruments put at its disposal for that purpose are of limited scope, however. States are required to submit at regular intervals reports which are carefully scrutinized; at the end of that process, the Committee summarizes its assessment of the prevailing human rights situation by noting in particular its concerns in open and straightforward language without any diplomatic inhibitions. Such concluding observations are not legally binding. Similarly, the final views which the Committee delivers after having examined an individual communication under the [First] Optional Protocol to the ICCPR lack any binding legal force. Of course, States are expected to live up in good faith to the views addressed to them by the Committee. If they just shoved away such recommendations, the whole procedure would make no sense. In addition, by formulating "general comments", the Committee has opened up a new window of activity. Through such "general comments", it explains the scope and meaning of the provisions of the ICCPR and clarifies general issues as they arise in the process of implementation.

It is at the national level that the ICCPR has exerted its greatest impact. When today anywhere in the world a national constitution is framed, the ICCPR serves as the natural yardstick for the drafting of a section on fundamental rights. In most countries, the ICCPR has been made part and parcel of the national legal order although there is no general rule of international law that would enjoin States to embrace a specific method of implementation. Thus, the United States has made a declaration according to which the ICCPR is not self-executing within its domestic legal system. In some countries, administrative authorities and the courts are specifically enjoined to follow the applicable international guarantees when interpreting the national constitution (e.g., article 10, paragraph 2 of the Spanish Constitution). In other countries, the ICCPR has even been given the legal force of a provision of constitutional or quasi-constitutional rank (e.g., article 15, paragraph 4, of the Constitution of the Russian Federation). These legal techniques are not automatically successful, since, as a rule, national judges are not very familiar with the guarantees laid down in international human rights instruments and are more often than not reluctant to accord them precedence over the applicable national laws and regulations.

Related Materials

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