

HUMAN RIGHTS AND INTERNAL CONFLICTS: SOME ASPECTS OF THE UNITED NATIONS APPROACH*

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Promoting respect for human rights in the particularly difficult circumstances of an internal conflict is a matter of special concern for the United Nations in its activities in the field of human rights, whether those activities are of standard setting, research, or implementation. Recently, in addition to the standard already laid down, new steps have been taken toward a better understanding of respect for human rights in internal conflicts and of ways of coping with such problems.

I. INTERNATIONAL STANDARDS

The great bulk of United Nations human rights standards, beginning with the Universal Declaration of Human Rights, focuses on ensuring observance of basic human rights in what could be called the "normal," but perhaps, in fact, the somewhat more rare, circumstances of internal tranquility within a state. Should the "normal" situation deteriorate to such an extreme as to constitute a "public emergency" which threatens "the life of the nation," international norms, and in particular the International Covenant on Civil and Political Rights, permit, under certain circumstances, limitations to be imposed on the enjoyment of some human rights, but those limitations must be "strictly required by the exigencies of the situation." Nevertheless, even when acting to protect the life of the nation, the public authorities of the more than seventy states parties to the Covenant must respect a number of basic human rights including the right to life; the right to be free from torture, or cruel, inhuman or degrading treatment or punishment; the right to be free from slavery; the right to be free from *ex post facto* laws; the right to be recognized as a person before the law; and the right to freedom of thought, conscience, and religion. This

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basic principle, that extraordinary circumstances cannot be a justification for violations of certain fundamental human rights, is further spelled out in the Declaration Against Torture.¹

Should the internal conflict reach the level of an "armed conflict not of an international character," then, under the Geneva Conventions of 1949, each party to the conflict must apply certain minimum standards which prohibit, *inter alia*, "violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture, . . . [and] outrages upon personal dignity, in particular humiliating and degrading treatment . . ."² Moreover, the Geneva Conventions go beyond the International Covenant in their explicit prohibition of "the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples."³

This approach of the United Nations and the Geneva Conventions, to protect in all circumstances certain basic human rights, is also that taken by the Inter-American and European regional systems for the promotion and protection of human rights.

II. STUDY OF STATES OF EMERGENCY AND HUMAN RIGHTS

Over the past few years it has become increasingly evident that much more needs to be known about those situations of "emergency" that in international law would justify limitations on human rights and the effective enjoyment of such rights in practice. The Sub-Commission on Prevention of Discrimination and Protection of Minorities has named a special rapporteur to study the matter. In a preliminary report, the special rapporteur has dealt with states of emergency from the point of view of international law, the deviations noted in practice from international

¹ Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, G.A. Res. 3452, 30 U.N. GAOR Supp. (No. 34) at 91, U.N. Doc. A/10034 (1975).

² Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Aug. 12, 1949, art. 3, para. 1(c), 6 U.S.T. 3114, 3118, T.I.A.S. No. 3362, 75 U.N.T.S. 31, 34; Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, Aug. 12, 1949, art. 3, para. 1(c), 6 U.S.T. 3217, 3222, T.I.A.S. No. 3363, 75 U.N.T.S. 85, 88; Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, art. 3, para. 1(c), 6 U.S.T. 3316, 3320, T.I.A.S. No. 3364, 75 U.N.T.S. 135, 138; Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, art. 3, para. 1(c), 6 U.S.T. 3516, 3520, T.I.A.S. No. 3365, 75 U.N.T.S. 287, 290.

³ *Id.* at art. 3, para. 1(d).

norms, and the impact of states of emergency on actual enjoyment of human rights.⁴

III. IMPLEMENTATION OF INTERNATIONAL MONITORING

Respect for human rights in internal conflicts has become an important element in the activities of the United Nations in monitoring respect for human rights standards in specific circumstances. Over the past fifteen years, the United Nations has developed and increasingly used a method of monitoring implementation of human rights that consists of establishing a fact-finding mechanism (working group, special rapporteur, specific request to the Secretary-General), discussing in public session the information so gathered, and making the recommendations thought necessary to remedy any deficiencies noted. Originally, this approach was adopted with regard to respect for human rights in specific countries or territories, but more recently it has been used to inquire into specific types of violations of human rights observed in a number of countries. Under both approaches, internal conflicts have proven to be important factors in the actual enjoyment of human rights.

In 1980, a working group was established by the Commission on Human Rights to study enforced or involuntary disappearances. The reports by the working group and the views expressed by concerned governments show a clear link between certain disappearances and various states with internal conflicts. The General Assembly has also recognized this link in its discussion of "enforced or involuntary disappearances of persons as a result of excesses on the part of law enforcement or security authorities or similar organizations, often while such persons are subject to detention or imprisonment, as well as of unlawful actions or widespread violence."⁵ The working group referred to the minimum standards mentioned above, as had its predecessor, the expert on disappearances in Chile. They concluded that internal conflicts could not justify enforced or involuntary disappearances, nor could they exempt states from responsibility for such occurrences.

⁴ Study of the Implications for Human Rights of Recent Developments Concerning Situations Known as States of Siege or Emergency: Report by Sub-Commission on Prevention of Discrimination and Protection of Minorities, 34 U.N. ESCOR (Agenda Item 8) at —, U.N. Doc. E/CN.4/Sub.2/490 (1981).

⁵ Resolution On Disappeared Persons, G.A. Res. 33/173, 33 U.N. GAOR Supp. (No. 45) at 158, U.N. Doc. A/33/45 (1978).

In 1982, the Commission on Human Rights and the Economic and Social Council decided upon the appointment of a special rapporteur on summary or arbitrary executions. The special rapporteur is expected to be called upon to deal with summary or arbitrary executions in the context of internal conflicts.

In 1967, the Commission on Human Rights established an ad hoc working group of experts on the situation of human rights in southern Africa, and since that time this country or territory-oriented approach to monitoring respect for human rights has been used with regard to the following: the occupied territories in the Middle East, Afghanistan, Bolivia, Chile, El Salvador, Equatorial Guinea, Guatemala, Iran, Kampuchea, Nicaragua, and Poland. In each of these situations the internal circumstances, which ranged from external armed intervention to conditions of relative tranquility, were taken into consideration in assessing the degree of respect for human rights and in making any recommendations for improvement.

In approaching the situation of human rights in El Salvador, both the Commission on Human Rights and the General Assembly have refined their approach to questions of internal conflicts and human rights. They did this by adding to the simple assessment of the degree of respect for human rights in the given conditions a specific concern for identifying the underlying causes of the internal conflict and making recommendations for their solution. In its 1982 resolution describing the situation in that country,⁶ the Commission referred to the persistence of gross violation of human rights "perpetrated by governmental paramilitary organizations and other armed groups." The Commission called attention to the minimum standards of the Geneva Conventions and requested all parties to respect those standards. For the Commission, the situation in El Salvador had its causes rooted in internal political, economic, and social factors; the Commission thus focused its recommendations on creating conditions in which those causes could be dealt with. An appeal was first made to the Salvadoran parties involved to reach a peaceful settlement and to put an end to violence. The Commission then underlined the fact that it was for the Salvadoran people themselves to decide on the future of the country, without external interference, and it called for an end to such interference.

⁶ C.H.R. Res. 1982/28, 1982 U.N. ESCOR Supp. (No. 2) at —, U.N. Doc. E/1982/12 & Corr. 1 (1982).

Activities are now underway at the United Nations level, both in the area of research and fact-finding, that may well lead to a better understanding of the legal aspects of respect for human rights during internal conflicts and may more closely identify the causes of such conflicts, all with a view to enabling the international community to better contribute to the elimination of violations of human rights in such circumstances.

