Decline of the concept of internal affairs of States before human rights protection mechanisms

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Note: The views contained in the paper reflect the opinion of the researcher only

Executive Summary

This paper deals with conceptual legal developments in two principles stipulated in the fourth and seventh paragraphs of Article 2 of the Charter of the United Nations to address mechanisms for international protection of human rights.

The fourth paragraph of Article 2 stipulated the inadmissibility of the use of force in international relations against the territorial integrity or political independence of any State, which is known as the principle of non-interference of States in the internal affairs of other States. The seventh paragraph of the same article, stipulated that there is nothing in this Charter that authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of a State, which is known as the United Nations would not interfere in the internal affairs of States.

This paper Includes the following sections:

1. International instruments on the principle and developments of non-interference of States in the internal affairs of other countries, and the stance of international justice from the principle of non-interference.
2. Evolution of the United Nations perspective of the principle within the domestic jurisdiction of States to human rights protection mechanisms.
3. The legal status of human rights: international obligations resulting in protection mechanisms out of internal affairs and the domestic jurisdiction of States.

The first section

International instruments on the principle and developments of non-interference of States in the internal affairs of other countries, and the stance of international justice from the principle of non-interference.

Several declarations and international instruments have been issued pursuant to paragraph 4 of Article 2 of the Charter of the United Nations:

1. Declaration of the inadmissibility of interference in the internal affairs of 2131, 1965

The United Nations General Assembly issued its first declaration on the inadmissibility of interference in the internal affairs of States and protection of

its independence and sovereignty by resolution 2131 Date 21/12/1965 whi9ch was adopted by a majority of 109 States and the absence of one country, without opposition or abstention.

The first operative paragraph stated the following:
No State has the right to interfere, directly or indirectly, for any reason whatever, in internal and external affairs of any other country, and thus prevent all armed or unarmed interference and every threat against the personality of State or its political, economic or cultural elements.

The second operative paragraph reads as follows:
No State may use economic, political or any other type of measures or encourage their use to coerce another State to come down on the practice of political rights or to obtain from it any benefits, and may not regulate subversive, terrorist or armed activities aimed at regime change in another country through violence or assist these activities or incitement, financing, encouraging or interference in the internal conflict in any other country.

2. Declaration of Principles of International Law concerning Friendly Relations and Cooperation among States No. 2625 of 1970.

The General Assembly adopted the Declaration adopted by consensus on resolution 2625 date 24/10/1970. This declaration included the principle of a special duty of States not to intervene in matters which are subject to the internal authority of other States under the Charter. Four commitments branched out from this principle but of similar detail to what was stated in the Declaration of 1965, mentioned above.

3. Charter of Rights and Economic Duties of States issued in the year 1974, and opposition from Western countries.

The General Assembly adopted resolution No. 3281 date 12/12/1974 Charter on the Rights and Economic Duties of States by a majority of 120 votes against 6, with 10 abstentions, almost all western states.
The Charter stated the principle of non-interference as one of the principles governing economic relations between States.

4. Special Declaration on the Inadmissibility of Intervention in the internal affairs of States No. 36/103 of 1981 and enactment despite opposition from 22 States.

The U.N. General Assembly adopted resolution No. 36/103 Date 12/09/1981 to declare the inadmissibility of interference in the internal affairs of States. The Declaration was adopted by a majority of 120 countries with 22 countries against and 6 abstentions. Western countries voted against the Declaration in addition to Israel, Japan and Venezuela, while Western countries, Finland, Greece and Turkey abstained .

The importance of this Declaration is that it exposed in detail the principle of non-interference in internal and external affairs of States. The second operative paragraph included two parts: the first devoted to the rights of States, and the second to the duties of States.
The rights of States included three key issues, namely:

A. The sovereignty and political independence of all States, territorial integrity and national unity and security and national identity and cultural heritage of peoples.
B. The sovereign and inalienable right of States to freely determine their political, economic, social and cultural systems and to exercise permanent sovereignty over natural resources in accordance with the will of its people without the intervention or exposure, destruction, or external threat.
C. The right of all nations and peoples to have the freedom of information without interference, to develop their information, communications and media in the service of their hopes and interests on the basis of the provisions of the Universal Declaration of Human Rights and the principles of the new international system of Information.

The duties of the States stated in the second section are distributed to 14 paragraph including the following:

1. The duty of States in their international relations is to refrain from resorting to the threat or use of force in any way to infringe the rights recognized by any State, to destabilize the political system and social and economic status of other States, to alter the political system of another country or overthrow its government.
2. The State's duty not to use its territory to threaten the sovereignty, political independence, territorial integrity and national unity of other States.
3. The State's duty to refrain from resorting to armed intervention, subversion, military occupation or any form of interference, being declared or hidden against the other State or group of States.
4. The State's duty to resort to force to deprive peoples under colonial domination and foreign occupation of their right to self-determination.
5. State's duty to prevent its territory from being used for training and financing of mercenaries
6. The state's duty to refrain from any action that would strengthen the existing military alliances, or create or strengthen a new military alliances.
7. The State's duty to refrain in their international relations from actions that constitute an interference in the internal or external affairs of States.
8. The state's duty to refrain from the exploitation and distortion of human rights issues to interfere in the internal affairs of States and the use of pressure on States to raise disobedience or lack of stability within States.
9. The State's duty to refrain from resorting to the practices of terrorism as state policy against other nations or peoples under colonial or foreign occupation.

The position of international justice on the principle of non-interference

Two issues related to the principle of non-interference have been presented to the International Court of Justice: the first in 1949 belonging to Britain's involvement in the Corfu Channel, and the second in 1986 relating to U.S. intervention in Nicaragua.

First: the issue of the Corfu Channel

International Court of Justice issued its decision of 04/09/1949 in the conflict between Albania and the UK. The court resolution stated that the Court cannot accept the United Kingdom's defense, it can only consider the alleged right of intervention as the embodiment of the policy of force, as happened in the past that allowed serious abuses. These cannot find a place in international law, whatever the defects in international organization, where it remains limited to the most powerful, and can easily lead to preventing the establishment of international justice itself.[1]

Second: the case of U.S. intervention in Nicaragua

The second issue presented to the International Court of Justice is the conflict between the United States and Nicaragua. The court issued its decision on 06/27/1986 to condemn the United States for training, arming and funding the Contras and to encourage and assist the activities of military and paramilitary actions against Nicaragua in violation of customary law, which imposes non-interference in the internal affairs of another State.[2] The decision contained important human rights connotations as stated in paragraph 267 of the reasoning that human rights are protected by international agreements and that this protection is contained in the texts of the Conventions themselves.

Section II

Development of the perspective of the United Nations on the principle of non-interference in the domestic jurisdiction of States versus human rights protection mechanisms.

Paragraph VII of article 2 of the Charter of the United Nations stated that there is nothing in the present Charter that authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State, nor shall it require the Members to submit such matters to settlement under the Charter, that this principle shall not prejudice the application of enforcement measures under Chapter VII.

We will review in this section the most important conceptual developments that have taken place on the meaning of the seventh paragraph, starting from the drafting stage and until the current stage.

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[2] The court's decision of the Security Council was distributed as document No. s/1822 dated 1986/7/11 and published in Page 202 of the previous reference.

1 - Difference in views about the wording of paragraph 7 of Article 2 of the Charter

Since the drafting of this paragraph in the Charter, it was the subject of controversy in terms of significance and the criteria adopted to determine the matters which are essentially within the domestic jurisdiction of the state and that prevents the United Nations to intervene. The procedures for the protection of human rights were the most contentious issues on the coverage of the seventh paragraph in question. In other words, whether human rights issues should be considered within the domestic jurisdiction of state or not?

When discussing the wording of paragraph 7, France moved a memorandum to the panel drafting the Charter of the United Nations on 21 March 1945 and confirmed that the reservation or the pretext of domestic jurisprudence of the State must not apply in the event of serious violations of fundamental freedoms and human rights, which is in itself a threat to peace. The French memo was rejected.[3]

The delegation of Australia noted that if members of the United Nations determined to adopt means for the protection of minorities, they must recognize that the protection of minorities is one of the issues of the international system, in other words, the protection of minorities should be out of the domestic jurisdiction of States .[4]

2 - Development of human rights constituency

In exercising their mandates, the organs of the United Nations since 1945, both the Security Council or the General Assembly or the Economic and Social Committees and in particular the Commission on Human Rights, the subject of the domestic jurisdiction of States was a centerpiece of the difference in views between the international blocs on the nature of commitment to human rights and whether it is an international obligation or due to the domestic jurisdiction of the state.

After the adoption of the Universal Declaration of Human Rights in 1948, which is considered the base forward of the United Nations in this field, the General Assembly issued the Declaration on the Granting of Independence to Colonial Countries and Peoples in 14/12/1960, which considered colonialism a denial of human rights and is contrary to the Charter of the United Nations, thus moving the independence of colonial peoples and the exercise of their right to self-determination out of the domestic jurisdiction of States. Accordingly, the argument of the colonial powers to invoke internal jurisdiction did not stand against the United Nations resolutions on the protection of human rights of colonized peoples, especially around the apartheid regime in South Africa.[5]

When the Commission on Human Rights started in the seventies to discuss

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[3] Mario Batati . Droit d, ingerence RJDI No3 -1991 P 643

[4] La Charte des Nations Unies – Pellet P145

[5] Repertoire de la pratique suivie par les organs des Nations Unies , Vol 1- 1981 p 134

human rights situation in the world, the international protection of human rights developed through parallel and intersecting mechanisms that converge in the single goal of achieving international protection of human rights and stopping the violation in all countries, including independent countries. These mechanisms have taken two main forms: task forces to address human rights violations in specific countries "Country mandates" and Chile was the first country to form an independent working group to study human rights situation in 1974. And working groups dealing with specific topics "Thematic mandates" for stand-alone human rights as a team, arbitrary detention, summary or arbitrary executions, torture and enforced disappearance.

Nor did the defenses based on paragraph 7 of Article 2 of the Charter of the United Nations interrupt these mechanisms, and then came into force the international conventions on human rights to make human rights an international obligation that does not fall within the domestic jurisdiction of States.

3 - The impact of international conventions on human rights on the principle of non-intervention of the United Nations in matters of domestic jurisdiction of States.

Since the drafting of international covenants on human rights, many reservations were raised during the discussion of the texts of the Covenants about the establishment of the Commission on Human Rights to monitor implementation of the International Covenant on Civil and Political Rights, and the extent to which the Commission intervention in the domestic jurisdiction of States.[6]

However, the argument of those who say not to prejudice the internal jurisprudence of States stood the ground because monitoring the implementation of the Convention is a part of the commitment to its content.

The Vienna Convention on the Law of Treaties of 1969, Article 27 stated that domestic law must not be invoked to refrain from implementation of the Treaty

This provision gives preference to international treaties and out of the content of the domestic jurisdiction of States.

4 - Membership of the mechanisms of human rights and the universal periodic review excluded non-interference in the domestic jurisdiction of States. Recent developments have been the formation of the Human Rights Council in 2006, an alternative to the Commission on Human Rights to put new mechanisms into the election of the States Members of the Council and the mechanisms of the universal periodic review of human rights. Member States in the election to the Council pledge a set of commitments that constitute international obligations beyond the domestic jurisdiction. The Council shall undertake a periodic review of comprehensive human rights in the States so that the contents of human rights are out of the domestic jurisdiction of States,

[6] Ibid page 157

present the experience of each State and receive questions, comments and proposals for the future.

It shall explain the issues of human rights of the States as a whole without distinguishing between accession to international conventions or not so that discussions address all aspects of human rights without adherence to the seventh paragraph of Article 2 of the Charter.

Section III: the legal status of human rights: international obligations beyond the internal affairs and the domestic jurisdiction of States.

In the light of the current international political environment, and according to the developments outlined in section II of this contribution, it is possible to reach an international legal conclusion about the legal adaptation of the human rights and whether they fall within the internal affairs or the domestic jurisdiction of States or international obligations with effects on the domestic level.

The diagnosis of the legal status of human rights and whether they fall within the international obligations or part of the internal affairs of States or within their domestic jurisdiction, is the key substantive legal research on the permissibility of the United Nations intervention in cases of human rights in the States.

International jurisprudence has linked in this regard between the concept of domestic jurisdiction of States and the meaning of the so-called doctrinal field "Domain reserve", which may not be incurred.
The international jurisprudence linked the two main criteria to exclude the domestic jurisdiction: the standard of international commitment and standard of fundamental rights.

A - Criteria of international commitment:

As stated above, Article 27 of the Vienna Convention on the Law of Treaties had suggested international obligations on domestic law. The Institute of International Law in The Hague had adopted a resolution in 1954 which was known as a reserved field activities exercised by the State when they are not linked to international law. The breadth of this field is linked to international law and the acceptance of its evolution.[7]

The Permanent Court of Justice had referred to the dynamic and advanced concept to the field exclusively reserved for the domestic jurisprudence in its own decree on procedures of citizenship in Tunisia and Morocco, where it stated that the knowledge of whether some of the issues fell or not within the field of exclusive state, becomes a relative issue linked to development of international relations.

B - The criteria of inalienable rights which may not be compromised

[7] Ingerence – reaction non arme – Cortenet P Klein – Revue Belge de droit international 1991-p408

The international community distinguished between two types of human rights: the first - the basic rights that are not dirigible even in times of war and emergency, which constitute jus cogent Yus Gogens. For example, as stated in Article 3 of the Geneva Conventions of 1949 and Article 2 of the Convention on the Prevention and punishment of genocide of the 1948 and Article IV of the International Covenant on Civil and political rights of 1966. namely, the right to life and non-arbitrary executions and not to be subjected to torture, war crimes and crimes of genocide.

In light of the above criteria to characterize the human rights, it can be said that fundamental human rights are outside the field reserved for States and is therefore international obligations with effects reflected on the national level and does not fall within the internal affairs or domestic jurisdiction of States, and these rights are subject to international protection mechanisms for human rights.

There remain non-core rights which account for a small percentage of human rights that are subject of international protection as well, such as the right to elections and to contribute to political and public life, which are subject to the supervision of High Commissioner for Human Rights and its subsidiary organs which are protecting those rights, in coordination with the States concerned. While protecting the fundamental rights without the consent of the States concerned or coordination.