NATO'S CONCERNS FOR COMPLIANCE AND IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS LAW

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Abstract: *Fundamental rights and freedoms of man is one of the essential pillars of democratic societies. Democracy does not exist unless it practices recognition and observance of human rights. Fundamental rights and freedoms are a common legal heritage of humanity because they refer to universally recognized values in international relations.*

Keywords: *international human rights law; humanitarian law; international; international humanitarian law; international organizations; NATO.*

1. NATO – the main international security structure

The world in which we live in is extremely complex. An unforeseen event can change the regular course of everything. Seemingly, hopeless situations can only be resolved if it is understood that no nation can act alone, and that relations between countries should be based on common interests and views. In order to ensure peace and security, it must be taken into account the political, military roles of international organizations.

In this regard, we will outline through short historical references NATO's role as the main international security structure, and then we will attempt to analyze some of the Alliance's concerns pertaining the compliace and application of the international human rights law.

The North Atlantic Alliance was founded in April 1949, by signing the Treaty of Washington, which issued a joint security system, based on a partnership between 12 independent States in Europe and North America. The initiative of the establishment of an Alliance appeared defensive in the first years after the end of World War II, when the Soviet Union's expansionist attempts had become a real threat to Europe.

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A series of spectacular events occurred between the years 1947 and 1949, events which had precipitated things. These include the direct threats against the sovereignty of Norway, Greece, Turkey and other countries in Western Europe, the *coup d'etat* in Czechoslovakia, in June 1948, the illegal blockade of Berlin, begun in April of the same year. The nucleus for the Alliance was created by the Treaty of Brussels, in March 1948, when five Western European countries – Belgium, France, Luxembourg, the Netherlands and the United Kingdom – expressed their wish to establish a common defense system and strengthen relationships, so that they can withstand dangers of ideological, military and political nature. Negotiations with the United States and Canada followed this, with the goal of creating a unique Alliance of the North Atlantic, based on security guarantees and mutual commitments between Europe and North America. Also, Iceland, Italy, Norway and Portugal were invited to participate in this process. Negotiations were completed in April 1949, with the signing in Washington of the North Atlantic Treaty Organization. Greece and Turkey joined NATO in 1952, the Federal Republic of Germany joined NATO in 1955 (when it regained its independence, until then being under the Anglo-American protectorate, and Spain was also a member in 1982.

The fall of the Berlin wall in November 1989, the reunification of Germany in October 1990, the disintegration of the Soviet Union in December 1991, and the spectacular changes in Central and Eastern Europe marked the end of the cold war. The threat from the East had disappeared; accordingly, the security imperatives of all members of the Alliance changed. In 1991, at the Summit in Rome, NATO adopted a new strategic concept, a concept which paid special attention to cooperation with the States of the former Communist space. The Summit in Rome, defined – in addition to the new strategic concept – the guidelines for future missions of NATO in relation with both the institutions working in the field of the future security of Europe, as well as with the development of partners and cooperation from the countries of Central and Eastern Europe. Considerable attention was given to the appeals for the Alliance's readiness to receive new members and strengthen the partnership for peace. The time for enlargement of NATO had already taken place in the summer of 1997 by agreeing the Czech Republic, Poland and Hungary as members with full powers, being thus one more step ahead on the path to achieving the fundamental goal of the Alliance - to enhance security and stability in the Euro-Atlantic area, in the context of a broad European security architecture.

At the next NATO summit, which was held in Prague in November 2002,

the names of the new European countries that would begin talks on a new and substantial enlargement of the Alliance were made known. Romania and Bulgaria were invited along with the Baltic countries, Latvia, Lithuania and Estonia, but also Slovenia and Slovakia. Since its establishment, the North Atlantic Treaty Organization has represented the collective decision-making, through collective effort. Under the umbrella of NATO, member countries have benefited from the peace, stability, freedom, security, democracy and collective defense.

Created in accordance with article 51 of the Charter of the United Nations, which affirms the natural right to individual or collective self-defense, the Alliance is an Association of sovereign States, united in their determination to maintain security through mutual guarantees and stable relations with other countries. The main purpose of NATO is to safeguard the freedom and security of all its members by political and military means. Built on shared values of democracy, respect for human rights and legality, the Alliance has campaigned for the establishment of a fair and supportive order in Europe. NATO was scheduled to meet the following fundamental missions:

- providing an indispensable foundation for establishing the security climate in Europe, based on the development of democratic institutions and the will to resolve their differences peacefully. The Alliance aims to create a climate in which countris will no longer be able to resort to intimidation or retaliation against an European country, nor to impose hegemony by resorting to force;
- establishing of a transatlantic forum for Allied consultations on any issue which can affect the common interests, especially in the case of events that pose a risk to the members' security;
- providing of means of deterrence or defense against all forms of aggression aimed at the territory of a Member State of NATO.

2. Brief considerations on the issue of human rights and fundamental freedoms

Fundamental rights and freedoms of man are one of the essential pillars of democratic societies. Democracy does not exist unless it practices recognition and observance of human rights. Fundamental rights and freedoms are a common legal heritage of humanity because they refer to universally recognized values in international relations.

Currently, following national and international regulatory developments,

as well as practice in the last decades of the States and relevant international organizations, a series of characteristic traits of the international protection of human rights have been detached, more and more widely accepted by the authors of the international doctrine.

2.1. The universality of human rights

The universal nature of human rights is generally accepted today, even though there are still some voices saying otherwise. This follows from the very nature of these rights. Declaration of the rights of man and of the citizen of 1789, which solemnly proclaims the natural, inalienable and sacred human rights, also consecrates their universal character by making the distinction between "man and citizen".

The Universal Declaration of human rights, adopted in 1948 by the General Assembly of the United Nations, reflected the same concern for universality: "considering that recognition of the inherent dignity of all members of the human family and of the equal and inalienable rights is the Foundation of freedom, justice and peace in the world". The proclamation of human rights has more recently resulted from written sources written, i.e. a few hundreds of legal texts adopted at national and international level after the Second World War. The recognition of human rights operates at a global level, the trait that translates into a consensus among the international society. The instruments with universal vocation find their origin in the work of the United Nations and specialized institutions and can have general or specific application.

The Universal Declaration of human rights -a declaration of principles in binding form and, therefore, a political document, but not an international treaty- was intended from the beginning to be supplemented by other texts. In this regard, after a difficult negotiation and drafting procedure, the two International Pacts on Civil and political rights and economic, social and cultural institutions, were adopted by the General Assembly of the United Nations on 16 December 1966. While the Universal

The Universal Declaration of human rights is entirely focused on the individual person. Human rights are primarily individual rights, and the Declaration is addressed to individuals and not States. The pacts provide a phenomenon of collectivization to these rights. They are addressed to States and not individuals, and the social dimension is taken into account. Man can see his rights carried out

only inside a society free of any constraint [external (colonization) or internal (the dictatorship)]. Individual interest thus merges with that of the society in which he lives. Therefore, the two Pacts list in a common article 1 that the right of nations is the prerequisite for the recognition of other human rights and the exercise of individual rights presupposes the exercise of collective rights. Therefore, "the Pacts neglect the fact that the exercise of human rights is possible only in a democratic society and that the emancipation of a nation can lead to the formation of free societies, but terrible for man".

This is why later developments of normative acts (universal, regional or national, as well as those related to the practice of States or courts) have been important to bring the necessary corrections of the universal character of human rights; generally unchallenged on the its own, but formally materialized and changed depending on the political and ideological visions at the beginning of the cold war. In this respect, the question of actual protection and organized defense of human rights was translated into the creation of political or judicial bodies, including the establishment of an International Criminal Court pertaining to the most serious violations of human rights.

For some authors of doctrine or for some States, the universality of human rights is not an accepted feature, and it even constitutes the object of substantive appeals, justified by different cultural models, but most often by highly pragmatic political interests which can hide violations of human rights.

The way of condemning human rights violations by States differs sometimes in surprising manners, according to pragmatic or even cynical economic considerations. The game of power in international relations between Western countries and Russia or China is an eloquent example in this respect. It is certain that both global instruments adopted within the United Nations system and their application in practice, as well as regional systems (European, Interamerican, African) of human rights protection, provide a protection of fundamental rights and freedoms that is difficult to be challenged in a legitimate or credible way.

2.2. The objective character of human rights

Human rights have a general characteristic, and the international protection of human rights recognizes this reality. This means that these rights are attached as essential principles to the quality of human person and are not attributed to individuals through a particular legal status.

The preamble of the Charter of the United Nations, as well as art. 1 of the Universal Declaration of human rights, formally renders this idea. This character of human rights, which is especially true in the case of classical rights described as "fundamental" in the preamble of the United Nations Charter, implies that the human rights of the individual are not, in principle, subject to a States' attitude towards conventional instruments. This character proclaims these rights and drives at the same time "into question the general principle of reciprocity". This principle has been affirmed in European law. The former European Commission of human rights expressly recognized the objective character of the (European) Convention for the protection of human rights and fundamental freedoms (hereinafter referred to as the Convention). In its decision of 11 January 1961, pronounced in case "Austria vs. Italy", we quote the relevant passages of the basic decision:

"Considering that (by the conclusion of the Convention, the Contracting States did not have the intention to grant reciprocal rights, but obligations for pursuing national interests of each, but also to achieve the goals and ideals of the Council of Europe, as they are set out in the Statute and to establish a public policy of free democracies of the European Community) in order to safeguard their common heritage of political traditions, ideals, freedom and the law preemption, "Considering that the obligations to which Contracting States under the Convention subscribe are essentially objective, given that it is aimed at defending the fundamental rights of individuals against abuse by the Contracting States rather than creating subjective and reciprocal rights for those States, Whereas the objective character of the undertakings mentioned also in revealing the mechanism established by the Convention in order to ensure their observance as a Contracting State when the matter the Commission pursuant to article 4. 24 should not be so considered as acting in order to enforce their own rights but rather as bringing a matter to the Commission for the European public order ".

The European Court of human rights (hereinafter the ECHR) reiterated that, against the international treaties, the Convention creates objective obligations that benefit from a "collective guarantee which exceeds the framework of simple reciprocity of the Contracting States. The Convention is more than a simple exchange of commitments between states. It ensures, in the name of common and superior values, the protection of individuals under national authority and creates "objective obligations", which States must observe not as a counterpart to rights undertaken by the States concerned, but as a commitment towards individuals.

The objective character of the Convention, "an instrument of protection for human beings", is the basis of common solidarity, expressed through the establishment of a collective human rightsprotection: "the Convention must be understood according to its specific character, a treaty of collective guarantee of human rights and fundamental freedoms".

Affirming the objective nature of human rights was not circumscribed exclusively to the European framework. The Inter-American Court of human rights, incorporating the European courts ' analysis, expressed a similar position: "in general, the current treaties relating to human rights and the American Convention in particular are not multilateral treaties of the traditional type concluded with an exchange of rights based on reciprocity, on behalf of the Contracting States. By adopting these treaties relating to human rights, the states are subject to a legal order within which they assume, for the common good, various obligations, not with respect to other countries, but to any person under their jurisdiction ".

UN's Human Rights Committee follows the same direction as well. The instruments relating to human rights "do not represent a network of exchanges of obligations between States, they are aimed at the recognition of the rights of individuals. Principle of inter-State reciprocity does not apply ".

2.3. The evolving Nature

International protection of human rights is a legal institution of public international law, in relation to other institutions, as well as humanitarian, consular or diplomatic law. It is true that under national law, protection of human rights has had in some cases a livel of many centuries. Instead, in international relations, legal norms on human rights appeared only in the second half of the 19th century; we can say that after this point, international protection of human rights has experienced a very rapid evolution. Practically, since the period after the Second World War, one can speak of a new institution.

The crimes against humanity perpetrated during the war have prompted States to adopt a common position and to enshrine protection of human rights through collective security through international cooperation instruments. The number of reguated areas, which previously to the war limited was limited to 3 or 4 (international humanitarian law, the prohibition of slavery and trafficking in human beings, the protection of national minorities, the protection of workers' rights), has multiplied, covering the entire social-political, economic and cultural dimension.

The date of birth of the international protection of human rights is considered to be the adoption of the Universal Declaration of human rights on 10 December 1948 (Paris). This political text adopted by the General Assembly of the United Nations was not an international treaty, but has subsequently acquired over time an authority at the international level (a force of "soft law"). It is the first international document of a general nature and universal vocation in the field of human rights.

In terms of geographical size, international protection of human rights has applicability both regional and universal. At the universal level, there were two phases in the evolution of this institution, namely the declaratory stage (starting with the adoption of the Universal Declaration of human rights) and the conventional stage (starting with the adoption of the two International Pacts from 1966).

At regional level, there are three systems of protection of human rights: European, American and African. It is true that in recent years the doctrine mentioned the adoption of a new Convention of human rights and fundamental freedoms in May 1995, the Commonwealth of independent States (CIS) which would suggest the outline of a fourth regional model. Although the aforementioned Convention includes a number of guarantees for civil and political rights, and at the same time creates a framework for a Commission on human rights (art. 34), it has not generated from the date of its entry into force (11 august 1948) a significant casuistry that deserve to be recorded. Therefore, we join the opinion that the CIS reported attempt cannot be considered to be a regional model in the field of international protection of human rights.

On the other hand, the regional systems of protection, *especially the European law of human rights, and the European Convention on human rights*, are distinguished by an impressive evolving capacity. This evolutionary nature allows the emergence of progressive commitments and increasingly more burdensome for States. This was achieved either by way of additional or new protocols of amendment to the Convention – 14 protocols have benn adopted to this day -either through creative and evolutionary interpretation adopted by ECHR judges, depending on historical developments, social-political and economical in European society. Permanent adaptation to new social realities, which are based on considerations that the Convention is a "living instrument" and has found expression in legal logic expressed by the Strasbourg Court in the case of "Aireys vs. Ireland" according to which the Convention must be read in light of the conditions of life of today. In this way, the international protection of human rights in the European system has a

permanent need to adapt to developments in European society, and therefore it has increased effectiveness.

2.4. Establishing and safeguarding international human rights

The essence of the consecration at international level of the protection of human rights is based on the need of acceptance by States of the fact that human rights can no longer be left to the free will of each State. Such cooperation should be the rule in international level in this matter, so that human rights may no longer be the exclusive domain of national competence.

State sovereignty must be the basis for the protection of human rights and not for their violation. Conscious of the need to reduce the risk of serious and systematic violations of human rights at the national level -under the cover of a State's absolute sovereignty- States have agreed to cooperate at international level to ensure the promotion and observance of human rights.

Protection of human rights at the national level represents the basic level. Common minimal standards of international protection means that no State can derogate from it to a lower level of protection. The more the common denominator brings together the will of States with national and constitutional systems, the more the standard increases. Consequently, one can understand why international treaties include a clause that allows the individual to invoke a higher level of protection.

The subsidiarity of human rights guarantees manifests itself through international mechanisms intervention only as a last resort, after prior appeal to national courts and protection mechanisms. The rule of exhaustion of internal appeals before the admission to international courts reveals a mechanism for dealing with breaches of international courts' fundamental rights and freedoms of the individual through national mechanisms and, only as a last resort, should the individual appeal to international institutions. The main purpose of the international protection of human rights is not sanctioning of the guilty, but States respecting human rights, i.e. to restore the rights violated and to offer compensation for damages suffered by the victim.

2.5. The applicability of international human rights standards into national law

Rules of public international law, which traditionally regulate relations between States, are not directly applicable in the domestic legal order. The situation is different in the case of international protection of human rights, ranging from international public policy stakes in this specific area to the interests of States in supporting the efficiency and standards of human rights protection. This is

because the impact of a right recognized in an international treaty is greater and more effective if the international norm is directly applicable in the domestic legal order, which allows the individual to invoke it before the national courts of Justice. According to the doctrine, two cumulative conditions must me met. First, if the international norm presupposes the introduction into the domestic legal order by a specific provision, that rule is applicable. This issue of reception of conventional rule depends on the constitutional regime, which defines the general attitude of the State in relation to international law.

If we refer to the example of the Convention, it is incorporated into the internal legal order of States either directly, through the effect of provisions of the national constitutions, or indirectly after the transposition into the domestic agenda through a special law. Accordingly, the Convention as such in the first hypothesis and its substantial rules in the second, has direct applicability in some states (exception of those Member States of Council of Europe to whom international norms have value only in the legal relations between States, being neither part of the domestic law -as has been the case with Ireland until the Irish European Convention on Human Rights Act 2003). What defines the possibility of direct application of international standard at this point is to sum up the typology of the existing national system in the relationship between domestic law and international law. In other words, one-tier system allows a direct applicability, while the two-tier system opposes this possibility. The second condition concerns the quality of conventional rule which involves a dual requirement.

Firstly, the direct effect of international standard is related to the intention expressed by the signatiry states to create rights for individuals.

Secondly, the international norm must be sufficiently precise, both in terms of subject and shape, to be directly applicable in the internal order without accompanying measures of enforcement. Therefore, it must be "self-executing". This double requirement is usually determined by the competent national jurisdictions by reference whith the constitutional law and existing practice.

2.6. The superiority of international human rights law over domestic norms

More recent developments in international affairs, and at the level of national legal systems have, consecrated the superiority of international norms in the field of human rights over national rules. This statement is fully valid in international

law. In this regard, international jurisdictions consistenly outline the superiority of international norms, especially in the field of human rights, over national rules, on the basis of the principle of *pacta sunt servanda*.

At the level of domestic law, the relationship between the two types of rules is resolved according to national constitutional construction and the method of incorporation into domestic law of international standards. In general, the States which have adopted the one-tier system in constitutional order enshrine the superiority of international standard. According to Ian Brownlie, the one-tier system recognizes the supremacy of international law against those rules, even on questions of legal solutions within the national system, to which is added a vision that acknowledges the individual's ability to be a subject of international law.

From this perspective, international law is widely regarded as the best "moderator of human rights". On the other hand, the dualistic doctrine highlights significant differences between international and domestic law in the light of different competences, covering different matters. International law governs relations between sovereign States; national law applies within one State and regulates relations between citizens and Government or among themselves. In this view, one of the mentioned legal agendas cannot create or modify the other one.

When the national law provides that international law applies in whole or in part in its jurisdiction, this is really an exercise of authority of national law in the form of transformation of rules of international law. In the event of a conflict between the two legal orders, the two-tier system states that the national law will prevail.

Incorporating conventional rules in the internal legal order of States parties, will be subject to the one-tier or two-tier system adopted at the national level either directly through the provision of national constitutions, or indirectly after transposition into the internal order by a specific law. As a result, the Convention's rank and order depends on the state's constitutional solutions: supraconstitutional rank (Netherlands), constitutional rank (Austria, Romania), supralegislative rank (Belgium, Switzerland, Spain, France, Czech Republic) or legislative rank (Greece, Italy, Turkey, Hungary, Finland).

There's an exception, however, in the field of human rights regarding the superiority of international standards over domestic norms. By referencing the superiority of international norms and the principles of subsidiarity in relation to national law, in the event of a conflict between an international norm of human

rights and an internal rule, the more favorable norm shall apply.

2.7. The individual-subject of international law of human rights

In the classical doctrine of public international law, the person or individual are not subject of international law. The developments of the last decades in international affairs have given the individual – in the field of the protection of human rights- a more widely accepted role of subject of international law.

This trait refers to the ability of the individual to be entitled to the rights and obligations of being able to access a number of judicial and non-judicial proceedings pertaining to international law. This has become possible due to the fact that States, at the time of adoption of international norms, agreed to confer on individuals' rights and obligations in the international legal order. This condition was the result of the international norms in the field of human rights. Consequently, the individuals become holders of rights that they can invoke before domestic and international bodies, including the international judicial procedures in ensuring human rights, procedures in which they are at an equal level with the State. The individual's position in the European system of human rights protection and the specific provisions of the Convention are, from this point of view, highly relevant (*see art. 34 of the Convention)*.

2.8. International organizations and the international human rights law

International organizations constitute an important framework of cooperation between States in various fields and are a relatively new phenomenon in the process of developing international relations and international law.

International human rights law, a branch of public international law, has evolved and witnessed a steady development, trying to adapt to international realities and to deal with the numerous threats. Trying to analyze together the international human rights law and international organizations proves to be difficult. The main reason is that, although both are part of public international law, the subjects of their regulation are different. Thus, international human rights law designates fundamental human rights and freedoms.

From another perspective, international organizations are forms of institutionalization of the will of States to cooperate with each other in various aspects of their fundamental interests as an expression of globalization. Apparently, humanitarianism and security represent two indisociabile approaches of the

contemporary world, by sharing the common principle of "survival". While security is based on the use, as a last resort, of armed force, international human rights law constitutes the angular stone of the present system of international security.

If in the beginning of their existence, international organizations did not have specific concerns in the field of international human rights law, explainable by the fact that they are derrivative subjects of international law and they are limited to the competences given by signatory States, currently, more and more organizations, starting with the universal vocation, the UN and continuing with the OSCE and the European Union's manifest their interest and concerns for human rights. In recent decades, the concern of international organizations toward the human rights issue has been due to the lack of uniformity in the application of international law by States; a result of globalization and the adverse consequences of armed conflicts. On the other hand, the relative autonomy of international organizations towards neutral States they have created, has led to increasing interest, particularly in the last couple of years.

The increasing concern of international organizations regarding human rights arises in an entirely legitimate light if we consider the fact that some of them are empowered to decide and use force in peace and security management at global or regional levels; in such situations, a use of armed force without complying with the principles and norms of human rights would be contrary to law.

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