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RUSSIA AND INTERNATIONAL LAW : NEW APPROACHES (*)

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It is well recognized that the former USSR never considered international law as a part of its internal legal system. The Constitution of 1978, Art. 28, proclaimed that the relations of the USSR with other states shall be built on the basis of the principle of *« fulfillment in good faith of obligations arising from the generally recognized principles and rules of international law, and from international treaties signed by the USSR »*. But this clause has never been interpreted as an incorporation of international rules into our internal law.

The Soviet legal system was protected from any direct penetration of international law by the concept according to which international law and national law are two separate legal systems. As a result the USSR signed the international treaties, including treaties on human rights, but at the same time abstained from implementing all or some of their provisions into its domestic legal order.

The movement towards reform of the pre-existing « closed » legal system began only with the advent of « perestroika ». An important element of the overall political and legal reform was the recognition of the fact that the country would never be fully integrated into the world community if it would not ensure the observance of the internationally accepted norms, in particular norms concerning human rights.

Many policy-makers and lawyers argued that the gradual transformation of international rules and standards into new legislative acts should be accompanied by a radical constitutional reform which would have opened the domestic legal system to direct penetration of international principles and norms. Such a reform required that the Soviet Union accepted a general constitutional principle proclaiming international law as part of the law

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of the country. The 1989 Law on Constitutional Supervision introduced major changes in the pre-existing legal situation. It gave to the Committee of Constitutional Supervision the power to review domestic laws by reference to international obligations of the USSR, specifically those concerning human rights. In November of 1991 the Congress adopted the Declaration of the Rights and Freedoms of Man and Citizen which was largely based on the internationally recognized human rights principles and norms. An important element of the Declaration is a general clause which incorporated international norms concerning human rights into the Russian domestic law. Art. 1 of the Declaration provides that « *the generally recognized international norms concerning human rights have priority over laws of the Russian Federation and directly create rights and obligations for the citizens of the Russian Federation* ». In April of 1992 the Declaration, including Art. 1, became part of the Constitution. Thus, for the first time in its history Russia adopted a general constitutional principle incorporating certain international norms into its domestic law. Although Art. 32 of the Constitution, based as it is on Art. 1 of the Declaration, referred only to international norms concerning human rights, the significance of this first step cannot be overestimated.

But now we have in our new Constitution, which has been approved on December 12, 1993, Art. 15, the provision concerning the interrelationship between internal and international law not only with regard to human rights, but to all principles and norms of international law. Art. 15, para. 4, of our new Constitution establishes two very important provisions :

1° the generally recognized principles and norms of the international treaties of the Russian Federation are a part of its legal system ;

2° if an international treaty of the Russian Federation contains provisions different from those in a Russian Federation law, the provisions of the international treaty will be applied.

These principles mean that our new Constitution shows that Russia embraced the idea of direct incorporation of international law as part of a general policy aimed at advancing the rule of law at the international and domestic level. From the international perspective, the direct application of international law in the Russian Federation may become an important factor enhancing the compliance with the principles and rules of international law.

The prominent British professor Ian BROWNLIE in the fourth edition of his *Principles of Public International Law*, 1991, included my country into the list of countries (United States, Federal Republic of Germany, Belgium, etc.), where international treaties of the given state are considered as part of its internal law without adopting a special legislative act. He names the treaties of that kind as « self-executing » treaties.

The Russian Federation has been recognized by the international community as the continuing state of the former USSR. That is why the Russian Federation was at once granted membership in the UN and other international organizations. Other states — former republics of the USSR, except the Baltic States, are successors.

The concept of a continuing State infers the transfer of rights and obligations from a predecessor state to a continuing state, from an old state to a new one.

The 1978 Convention on the Succession of States in Respect of Treaties and 1983 Convention on Succession of States in Respect of State Property, Archives and Debts have not come into force, because in essence they have not been a codification of the norms of customary law and have not reflected the international generally accepted practice. Successor-states have to join treaties to which their predecessor was a party or to make applications for joining. A successor state has to join international organizations anew.

In case of the Russian Federation, however, we are not dealing with the creation of a new subject of the international law. Continuity is not a kind of succession. Despite the change of the name, political regime and some other attributes, this is the case of an uninterrupted continuation of an international legal personality.

The Ministry of Foreign Affairs of the Russian Federation in the circular note of January 13, 1992 informed all, that the Russian Federation is the continuing state of the former USSR. There was also a letter to the UN. But the recognition by the international community was more important, because for the continuation of a state this is of decisive significance. In this respect it is important that there was the recognition by the former union republics, reflected in the 1991 Alma-Ata Declaration. Of special significance was the recognition by the European Community in a joint Statement of 12 States, including Belgium.

The role of silent recognition should also be noted. Not a single state objected to that decision. A number of leaders sent their messages of recognition to President Yeltsin. There is also a positive opinion of the UN legal adviser.

A special position was taken only by the Ukraine, Austria and Mexico.

Russia has taken upon itself the rights and obligations in bilateral agreements too as for example in the agreement with Belorussia. The relation to property both on the territory of the former USSR and abroad attracts great interest. The property on the territory of the former USSR falls into the possession of the former republics. This relates in the first place to real estate.

A different situation concerns the property abroad. A number of agreements have been concluded by the Russian Federation with other former republics : on liabilities and assets, etc.

The Russian Federation has taken upon itself the commitment to pay part of their foreign debt and the republics gave up in favor of the Russian Federation.

It is natural that a most important factor of our new approach to the international law has been the change in the attitude to human rights. Here I would like to point out two aspects. Firstly, we try to attain a situation where our legislation and law enforcement practice correspond with the internationally accepted standards and first of all European standards, being the most advanced. Secondly, we strive to meet the demands and requirements of the CSCE and the European Council.

Together with the experts of the National Minorities Council we carry out a great amount of work relating to harmonization of Russian legislation. To us this aspect is of great importance, since 30 million Russian speaking people live outside Russia on the territory of the former Soviet republics.

It should be admitted that the rights of the Russian speaking population, to varying degrees, are violated in all these republics except Belorussia and the Ukraine. Hence — the aggravation of the ethnie minorities problem. It refers in the first place to Estonia and Latvia. It is a fact that 30-40 % of the population are deprived of the right to citizenship. Now we attach great importance to the work relating to problems of national minorities.

Of course, we have wasted time and worked along that line with insufficient energy, etc. Now the Ministry of Foreign Affairs is making up for the time lost, and the speech by Mr. A. Kozyrev at the Conference on human rights in Vienna in 1993 testifies to this. It was underlined, firstly, that « human rights » is a set of universally acknowledged norms of international law, of a universal character. Secondly, it was pointed out that we recognize the sphere of human rights as belonging already to the realm of international legal regulation, and not solely of internal law. The Minister particularly pointed out that *« a state violating the rights of its citizens constitutes a threat to the surrounding world... »*.

Mass violations of human rights may be considered as a threat to peace, and it gives the international community the right to interfere.

The establishment of the tribunal dealing with Yugoslavia has drastically accelerated the development of the standing international criminal court. The position of Russia is unambiguous : to a maximum degree we support this process of setting up the standing international criminal court. This view was expounded in the statement made by our representative at the 48th session of the UN General Assembly, before the VI Committee. The

necessity to finish that work at the next session of the UN International Law Commission was pointed out.

I would like to emphasize that Russia was an active supporter of the establishment of the International tribunal on war crimes, committed on the territory of the former Yugoslavia. Certain lawyers express doubts about the lawfulness of the establishment of this tribunal, because there is no international agreement. However, the establishment of the tribunal ad hoc is lawful and possible, since it is considered as one of the measures for maintaining peace in accordance with Chapter 7 of the UN Charter. The Security Council qualified these crimes and actions as a threat to peace.

At present we carry out a serious work in the Commonwealth of Independent States relating to the preparation of the multilateral Convention on national minorities.

Peaceful settlement of international disputes is the cornerstone of international law. The climate for such settlement has improved during the last few years. The idea that conflicts must be resolved peacefully rather than by force appears to enjoy growing support. We have now the International Court of Justice. It increased its activity during the last two decades. We have now also the Permanent Court of Arbitration (PCA). Parties to disputes often prefer to settle their disputes by methods other than recourse to a court. The PCA offers such methods of arbitration.

This is in accordance with Article 33 of the UN Charter. The competence of the PCA is neither limited to legal disputes, nor to disputes between States. The PCA derives its position from the 1899 and 1907 Hague Conventions for the Pacific Settlement of International Disputes. The PCA is serving as a center for studies on the peaceful resolution of disputes. The UNCITRAL Rules are a basis for the PCA's Optional Rules for Arbitrating Disputing between Two States. The PCA is used for the disputes not only between states but between states and non-state parties also. I mean private companies and various legal persons.

There was unanimous support during the conference held on 10-11 September 1993 at the Hague for the initiative of the Secretary-General of the PCA to obtain permanent observer status for the PCA with the UN General Assembly. While some members advocated the establishment of stronger ties with the UN, it was generally felt that the formal relationship with the UN should not extend any further. The Secretary-General of the PCA was encouraged to establish a cooperative relationship with all relevant organs and organizations within the UN family.

The UN General Assembly and the Security Council could consider recommending to States that they submit their disputes to the PCA. Art. 36 of the UN Charter already authorizes the Secretary-General to do so.

Art. 48 of the 1907 Convention provides that *« the Contracting Powers consider it their duty, if a serious dispute threatens to break out between two or more of them, to remind these latter that the Permanent Court is open to them »*.

It has even been suggested to convene the Third Hague International Peace Conference. This Conference could then adopt a universal convention on the peaceful settlement of international disputes.

The USSR was against the obligatory jurisdiction of the International Court of Justice. But already in the process of « perestroika » we started changing our attitude. Earlier the USSR made reservations to all multilateral treaties indicating that it does not recognize the jurisdiction of the International Court of Justice as to disputes stemming from such treaties. As early as 1989 we withdrew reservations from a number of treaties in the field of human rights.

Russia was also an active participant in establishing the Court of Conciliation and Arbitration within the framework of the Convention on Conciliation and Arbitration within the CSCE in December 1992.

It is possible that Russia will recognize the obligatory jurisdiction of the Permanent Court of Arbitration, provided for by that convention.

In the course of considering the draft articles on liability at the 48th session of the UN General Assembly, Committee VI, the Russian representative made a statement that Russia is in favor of the procedure of obligatory regulating, with the participation of a third party, of disputes connected with the use of countermeasures.

It is finally interesting to note that we are beginning to look in a somewhat different way at the legal personality of individuals, non-governmental organizations, international transnational corporations, etc.