

EDITORIAL

THE INTERNATIONAL RESPONSIBILITY OF STATES

The States, by only being members of the United Nations Organization—by virtue of the obligations derived from its Charter -, but even more so by their conventional commitments, have a duty to comply with international standards and respond to the international community. In particular, States have a duty to respect and guarantee the human rights provided for in each treaty, which includes the obligation of non-violation and of prevention, investigation and sanction in case of non-compliance. Also included in this framework is the duty of effective judicial protection, and it is prohibited, in turn, to invoke provisions of domestic law that prevent compliance with the obligations assumed. Only in this way is an integral framework given to the protection of human rights.

Therefore, states must not only violate or allow violating people's human rights, but also actively promote the process that goes from investigation to sanction, reparation and guarantee of non-repetition in case of human rights violations. This comes from international law from its different sources, but it is consolidated in each treaty signed by each State. It is that the state responsibility appears in a general way already in the Vienna Convention on the Law of Treaties that in its article 26 establishes that "any treaty in force obliges the parties and must be fulfilled by them in good faith". And even in his Article 27 of the Vienna Convention itself provides that "a party may not invoke the provisions of its domestic law as justification for breach of a treaty."

Then, both in general treaties and in thematic or special treaties, the general and particular duties of the States regarding each of these treaties are reflected. And by that general rule, states must comply with them.

For example, article 2.1. of the International Covenant on Civil and Political Rights (ICCPR) states that

Each of the States parties to the present Covenant undertakes to respect and guarantee to all individuals that are in its territory and are subject to its jurisdiction the rights recognized in this Covenant.

And, according to article 2.2. of the Covenant, states that:

Each State party undertakes to adopt, in accordance with its constitutional procedures and the provisions of this Covenant, the appropriate measures to enact the legislative or other provisions that are necessary to enforce the rights recognized in this Covenant and that were not already guaranteed by legislative or other provisions.

Similarly, at the inter-American regional level, the American Convention on Human Rights (ACHR) establishes in its Article 1: "The States parties to this Convention undertake to respect the rights and freedoms recognized therein and to guarantee their free and full exercise. to any person who is subject to their jurisdiction (...)." And in his article 2, he adds:

if the exercise of the rights and freedoms mentioned in article 1 is no longer guaranteed by legislative or other provisions, the States parties undertake to adopt, in accordance with their constitutional procedures and the provisions of this Convention, the legislative measures or otherwise that are necessary to enforce such rights and freedoms.

Thus, the basic duties of the States are determined: the duty to respect and guarantee the rights contained in the treaties to which the State is a party, and the duty to adopt provisions of domestic law in order to guarantee such rights. In case of default, the State has international responsibility.

The duty to respect human rights is the generic basis for the protection of the rights recognized by human rights treaties. Thus, the action or omission of any public authority constitutes a fact attributable to the State that commits its responsibility. The exercise of public service has limits that derive from the fact that human rights are attributes inherent to human dignity and, consequently, superior to the power of the State.

On the other hand, the duty to guarantee human rights, according to the *Velásquez Rodríguez vs. Judgment. Honduras* of the Inter-American Court of Human Rights, includes the tripartite obligation to prevent, investigate and punish any violation of human rights, in addition to the basic obligation to maintain an internal regulatory order that gives framework to those duties. The State must organize:

the entire governmental apparatus and, in general, all the structures through which the exercise of public power is manifested, in such a way that they are able to legally ensure the free and full exercise of human rights. As a consequence of this obligation, the States must prevent, investigate and punish any violation of the rights recognized by the Convention and also seek the establishment, if possible, of the right violated and, where appropriate, the repair of the damages caused by the violation of human rights (...) The obligation to guarantee the free and full exercise of human rights is not exhausted by the existence of a normative order aimed at making it possible to fulfill this obligation, but rather to share the need for conduct government that ensures the existence, in reality, of an effective guarantee of the free and full exercise of human rights.

Added to this is a responsibility from another area: that which comes from international criminal law. Here, the individuals responsible for the human rights violations that fall within the criminal types provided by the respective international criminal law, today the Rome Statute of the International Criminal Court, will be criminally responsible at the international level.

Therefore, the duties of the State that arise from human rights treaties are given in the field of international law to which the State must respond; This is not the criminal domain. But when the violation of human rights falls within an international crime, there will also be criminal responsibility before the international community of that individual who commits the crime.

Thus, the responsibility of the State, which for years had remained in the field of international human rights law and international humanitarian law, after an evolution and going through several attempts at international criminal trials of various kinds, now legitimately reaches the field of inter-

national criminal law, in force since 2002 with the current Rome Statute and the activation of the jurisdiction and competence of the International Criminal Court.

Now international responsibility is greater, more comprehensive, more protective and thus makes the duties of States more effective.

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