CHAPTER ONE

THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

This chapter analyses the possibility of the ICCPR applying beyond the territory of states parties. It is divided into two main parts, namely, the ICCPR preparatory work, which has been heavily referred to in the discussion on the subject, and the interpretations given, especially by monitoring bodies and states parties, to this question.

Preliminary Considerations on the Interpretation of International Treaties

Before commencing the analysis of the ICCPR, there is a need to clarify a number of points. It is important to state at the outset that this book is not about treaty interpretation as such. It will not address in detail general issues or debates on treaty interpretation. In the current work the interpretation of treaties is merely considered a means to an end. The end is to find whether the selected treaties may apply beyond the national territory of states parties. In order to do so, it will adopt as its main framework the rules of treaty interpretation contained in the Vienna Convention on the Law of Treaties (1969), which are largely considered to reflect customary international law on the matter.


A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

---

1 For recent academic literature investigating the subject see, for example, Alexander Orakhelashvili (2008), The Interpretation of Acts and Rules in Public International Law (Oxford: Oxford University Press); Richard Gardiner (2008), Treaty Interpretation (Oxford: Oxford University Press).

As explained by the International Law Commission:

… the application of the means of interpretation in the article would be a single combined operation. All the various elements, as they were present in any given case, would be thrown into the crucible, and their interaction would give the legally relevant interpretation.3

As suggested by the ILC, the interpreter’s task is the combination of literal, contextual and teleological interpretations, the result of which is to lead to the meaning to be given to the text, which can be confirmed by recourse to the ‘supplementary means of interpretation’, among which figure the preparatory work, as stated in article 32 VCLT. Furthermore, article 32 VCLT (including recourse to the preparatory work) shall also be invoked in case the interpretation resulting from article 31: (a) leaves the meaning ambiguous or obscure; or (b) leads to a result which is manifestly absurd or unreasonable.

Commenting on the difficult task of treaty interpretation, Henkin suggests that:

No legal instrument, however well drafted, is beyond the need for interpretation. International instruments, produced by a complicated process involving many and diverse participants over many years, are subject to ambiguities and uncertainties, some unwitting, many knowing and even intentional. Authentic interpretation requires careful study of the text of each provision in the context of the whole, the preparatory work (travaux préparatoires), the practice of states and international bodies, authoritative interpretation of similar provisions in other international instruments, the views of judges and scholars, and much else that may be relevant to the quest for meaning and understanding.4

Henkin’s words are to be kept in mind throughout the current research. The heated debate on the extraterritorial application of human rights treaties is closely related to the meaning assigned to the word ‘jurisdiction’ in several such treaties. This is so because the great majority of human rights treaties present particular formulas linking the obligations arising from the treaty to the jurisdiction of the state party (though the formulas vary from treaty to treaty). Accordingly, the central issue is identifying what is to be understood by jurisdiction of states parties to the selected human rights treaties. Does it mean that states parties’ human rights obligations are to

3 See the ‘Draft Articles on the Law of Treaties with Commentaries’, adopted by the International Law Commission at its 18th session, in 1966, published in the Yearbook of the International Law Commission, 1966, vol. II, pp. 219–220 (emphasis added, hereinafter ‘ILC Articles on the Law of Treaties’). Furthermore, in relation to the articles on treaty interpretation, the ILC has indicated that there is no hierarchy among the three methods of interpretation, but that ‘considerations of logic, not any obligatory legal hierarchy, which guided the Commission in arriving at the arrangement proposed in the Article’. See ILC Articles on the Law of Treaties, p. 220. Finally, even though the ICCPR was concluded before the VCLT, the rules of treaty interpretation contained in the latter are widely considered a compilation of already existent rules on the subject, and thus of relevance even when interpreting an earlier treaty.