The Effects of Globalisation on Law: the Impact on the Council of Europe

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Never in the history of humankind has so much information been so widely available, so many places so easily accessible or markets so readily open. This new openness is the result of technical achievements coupled with economic development as well as the emergence of new mentalities. Globalisation has obvious positive effects but also carries concomitant risks such as the inevitably homogenising effect upon cultural diversity or the unchecked spread of criminal behaviour. It has also affected the way governments design their policies since the lines between domestic and international issues are becoming increasingly blurred. Moreover, the impact that national or regional interests have at global level has grown steadily.

While the concept of superpowers is still a valid one, the influence that countries exert is not measured in military terms alone, but in economic ones, thus transforming at the same time the very concept of security.

Globalisation has a direct impact on the law, the way it is conceived, its content and its application at national, international and supranational level.

Indeed, it imposes the definition of universal standards affecting the very basis of the organisation of our society. This is particularly so in the case of human rights, where beyond their obvious objective and practical implications, different policies exist regarding compliance and there is a pressing need to ensure greater protection of fundamental values. Therefore, globalisation affects also the definition of legal rules at international level rendering some of the notions of international law.

The Council of Europe, the pioneer among pan-European organisations, which is committed to increased intergovernmental co-operation in Europe and is fundamentally devoted to the promotion and protection of human rights, provides various examples of how the globalisation phenomenon has affected the law as well as the Organisation’s very existence and structures and the way it operates.

For instance, in the field of basic rights, the Council of Europe set up, as early as 1950, a most comprehensive and sophisticated system for the protection of human rights which has proven successful and is taken as a model in other parts of the world, such as Latin America. Human rights are enshrined in the European Convention on Human Rights adopted in 1950 and breaches thereof are assessed by an independent body, the European Court of Human Rights placed under the

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aegis of the Organisation. The position that this Court has upheld in respect of reservations to the European Convention — termed the *Strasbourg approach* — has had a profound impact at a universal level. While the Vienna Convention on the Law of Treaties of 1969 provides that States are free to accept or object to reservations made by other parties to a treaty, the Court established that some reservations made by two member States party to the European Convention on Human Rights were inadmissible as they were contrary to the very essence, i.e. the object and purpose of the Convention. Although initially reticent, the member States of the Council of Europe finally accepted this approach, which some endorsed further at international level.

At a global level, the United Nations Human Rights Committee tried to take a similar stand, drawing on the Strasbourg precedent, but it did not succeed. Yet, the effects of the *Strasbourg approach* upon the international community’s understanding of human rights and its effective protection have been considerable.

Also in this connection, it is worth noting that in the Dayton Agreements the international community agreed to refer to the European Convention on Human Rights as a basic premise of the rule of law although Bosnia and Herzegovina is not yet a member State of the Council of Europe and this convention applies only to member States, all of which have signed and ratified it as *sine qua non* for accession to the Organisation.

The effects of globalisation on law have very soon become evident in the work and activities of our Organisation. The Council of Europe has responded speedily to new behavioural and societal challenges by regulating phenomena such as bio-ethics, corruption, organised crime and cyber-crime, through the preparation of international treaties in these complex fields, providing an international legal basis for fighting undesirable behaviour. Some of these treaties are unique and serve as a basis for harmonisation of positions far beyond the pan-European context. For instance, the *Group of States against Corruption (GRECO)*, an enlarged and partial agreement of the Council of Europe, is open to member and non-member States on an equal footing, regardless of their geographical position. This is also the case with the Council of Europe conventions in the criminal and civil fields aimed at fighting corruption. Some Council of Europe instruments have been acceded to by countries such as South Africa, the Kingdom of Tonga, Panama, the United States, Canada, Australia, New Zealand, Costa Rica, Burkina Faso and Tunisia.

Globalisation has also affected the very infrastructure of the Council of Europe. Following the events of 1989, this Organisation saw its membership explode to its present membership of 41 members encompassing states from the Mediterranean to the Barents Sea and from the Caspian Sea to the Atlantic Ocean, thus covering almost the entire European continent. Moreover, a number of countries including