



COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Strasbourg, 21 October 2004

Study no. 304/2004

Restricted
CDL-DI(2004)006rev
Engl. only

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

SPECIAL STATUS
OF INTERNATIONAL HUMAN RIGHTS TREATIES

ELEMENTS FOR REFLECTION

The adoption of the UN Charter and the subsequent enactment of a great number of international instruments on the protection of human rights has resulted in an increasing acceptance of the concept that human rights must be respected everywhere in the world. States have gradually come to accept the idea that massive infringements of basic human rights should be punished and that States which violate basic human rights should be made accountable to the whole international community.

Today, the essential core of human rights is generally recognized as *erga omnes* obligations of a *ius cogens* nature. There is, however, no clear agreement as to which particular rights compose the “essential core of human rights”.

Should an essential core of human rights be given primacy in international law ? And should international human rights treaties be given a special legal status?

The present paper is intended as a starting point for reflection on the subject, which should not be restricted to the European framework but should include non-European experience, in particular that of the UN system and of the USA. The topic could become the subject of a future UNIDEM seminar, which might be organised in co-operation with the International Association of Constitutional Law (IACL), thus implementing the agreement recently signed between the Commission and IACL.

1. Special features of international human rights treaties

- a. Existence of special control bodies, e.g. European Court of Human Rights, European Committee for the Prevention of Torture, etc.
- b. Absence of reciprocity.
- c. Collective enforcement.
- d. Limits on the emission of reserves.

Is this evidence that international human rights treaties can be considered to be of a higher level than other international treaties?

2. Is there a hierarchy in international human rights?

- a. Essential core of human rights = *ius cogens*?
- b. Establishment of specialised tribunals, such as the International Criminal Courts for the former Yugoslavia and Rwanda and the International Criminal Court, for the protection of an essential core of human rights.
- c. Is there a public order of human rights? See case-law of the International Court of Justice and the European Court of Human Rights.

3. Should international human rights treaties be given a special status?
 - in international law?
 - in national constitutions? (see for example Constitutions of the Czech Republic, Moldova and Romania)