Brun-Otto Bryde, Verpflichtungen Erga Omnes aus Menschenrechten, in: Aktuelle Probleme des Menschenrechtsschutzes, Berichte DGVR Bd. 33, Heidelberg 1994

Summary

Obligations erga omnes arising from Human Rights

1. The question whether human rights create obligations erga omnes, (i.e. obligations towards the international community as a whole or regional communities) has to be distinguished from the question whether individual states not specially affected may enforce human rights abroad ut singuli, and if so which remedies they then have.

I. Human Rights as Obligations towards the International Community as a whole

2. Human rights are natural obligations towards the international community. This is valid not just for some rights because of their special importance but for all human rights due to their very nature.

3. The international law of human rights contributes thereby to a constitutionalization of international law and to the recognition of the concept of an international community set above the individual states.

4. At the same time the international law of human rights dissolves the traditional distinction between domaine reservé and international legal regulation and makes international law much more ambitious (less realistic) than it used to be.

II. Individual States as Enforcement Agents

5. Due to the haphazard development of international law, means do not necessarily follow ends, so that the importance of human rights and their insufficient protection by international organs does not automatically lead the individual states to become subsidiary enforcement agents.

6. In practice, individual states are less than ideal protectors of human rights in other countries.

7. Also, practice shows that endowing states with legal remedies against human rights violations in other countries is not that important because reactions against such violations usually take the form of retorsions, and NGOs generally can act more effectively.

8. Because the international law of human rights comprehensively covers what used to be regarded as domaine reservé, the border between domestic jurisdiction and intervention has to be redefined: states must be entitled to develop their own human rights politics.

9. This competence and the right of all states to pursue a worldwide politics of human rights, and to judge foreign acts within their own jurisdiction in private, criminal and administrative law according to their own standards, must be brought together in a human rights dialogue.

10. Remedies going beyond this (actio popularis, reprisals) are only given in cases of consistent patterns of gross and reliably attested violations of human rights.

11. Multilateral human rights conventions (with the possible exception of effective systems like the ECHR) do not constitute a "self-contained regime" that could exclude the remedies available under general international law.

12. Nor do they automatically allow all state parties to the treaty to resort to reprisals in case of a breach.

13. Humanitarian intervention involving the use of force is forbidden.

III. Observations de lege ferenda

14. Effective protection of human rights cannot be secured by employing not directly affected states as enforcement agents but by making the true beneficiaries, human beings, subjects of international law, and by giving them protection through organs of the international community.