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Abstract

This article analyses the so-called 'rule of exhaustion of local remedies' whereby a State must be given the opportunity to redress an alleged wrong within the framework of its own domestic legal system before its international responsibility can be called into question at the level of regional or international organs. With respect to the specific historical development of the rule, the paper portrays the transition of the principle from its original function in international law to its extended application in human rights law. At the centre of the analysis is the question of whether the rule of exhaustion of local remedies has simply been 'transplanted' into the field of human rights protection or whether it has undergone substantial transformation to the extent that it now qualifies as a self-contained rule under human rights law. After having analysed the application of the local remedies rule in the field of human rights, it is argued that – even though initially influenced by the original rule in the field of diplomatic protection – at present the local remedies rule in human rights law is an autonomous and self-contained rule with different functions and aims.

Keywords

Diplomatic Protection, Domestic Remedies, European Charter of Fundamental Rights, European Court of Human Rights, Exhaustion of Local Remedies, Fundamental Rights, Human Rights Law, Human Rights Protection, International Court of Justice, Individual Rights and Remedies, Procedural v. Substantial Rule

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The Rule of Prior Exhaustion of Local Remedies in the International Law Doctrine and its Application in the Specific Context of Human Rights Protection

Silvia D'Ascoli and Kathrin Maria Scherr*

I. Introduction

The rule of exhaustion of local remedies whereby "A State should be given the opportunity to redress an alleged wrong within the framework of its own domestic legal system before its international responsibility can be called into question",[1] has undergone substantial development from its traditional function as a customary rule in inter-state diplomatic practice to its extended application in the field of human rights protection. With respect to the specific development of the rule, this paper will analyze the principle of exhaustion of local remedies from a dual perspective: The first part of the paper will focus on the historical development of the rule and its traditional application in the area of diplomatic protection. Thereby, special attention will be given to the interpretation of the nature of the rule and thus the practical implications of it. The second part of the paper will be devoted to the specific application of the rule in the field of human rights. The question that is at the centre of this analysis is whether the rule of exhaustion of local remedies is to be applied equally in the field of diplomacy and human rights.

The paper can be divided into two large sections. The first section, comprising *parts I* and *II,* analyzes the rule of exhaustion of local remedies in the light of general international law. The second section, comprising *parts III* and *IV* focuses on the application of the rule in the specific context of human rights.[2]

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[1] Cançado Trindade, *The Application of the Rule of Exhaustion of Local Remedies in International Law: Its rationale in the international protection of individual rights*, Cambridge University Press, 1983, p.1.

[2] Due to the vast number of issues related to the definition, development and application of the rule of exhaustion of local remedies and due to the limited scope of this paper, the authors do not claim to provide a comprehensive analysis of the topic, but were rather forced to be selective in the choice of the various aspects addressed in the paper. Thus, a number of questions related to the principle of exhaustion of local remedies had to be left out or could only be analyzed in a rather superficial manner.

II. The Rule of Prior Exhaustion of Local Remedies in the International Law Doctrine

The clear formulation of the rule of exhaustion of local remedies, its frequent application by international courts, its recognition in inter-state practice, and its extensive scholarly analysis allow for the assumption that the existence or general validity of the rule do not have to be questioned. However, there are many aspects of its practical application that remain doubtful, contested and unclear. In fact, as Philip Jessup rightly stated, the rule of exhaustion of local remedies "is a well established but inadequately defined rule."[3] Moreover, in addition to various uncertainties concerning the function, the rationale and the practical application of the principle of exhaustion of local remedies, controversy has also persisted in the discussion of the basic theoretical concept underpinning the rule.

1. Theoretical Concepts underpinning the Nature of the Rule of Exhaustion of Local Remedies in General International Law

The question of the defining moment when a breach of international law incurring liability on part of a State occurs is at the centre of the debate concerning the nature of the rule of exhaustion of local remedies. Within the different schools of interpretation with respect to the origin of a State's international responsibility, the rule of exhaustion of local remedies is either classified as a rule of substance or as a procedural prerequisite for the admissibility of an international claim. Moreover, a third approach in the literature[4] attributes both a substantive and a procedural character to the rule depending on the circumstances of the case.

The different lines of interpretation enjoy widespread scholarly attention and are based on convincing practical evidence in the jurisprudence of international courts and tribunals. However, none of those constructions is fully elaborated and in order to arrive at a clear classification of the rule of exhaustion of local remedies as a rule of substance or procedure it proves rather difficult to give precedence to one of the abovementioned theoretical concepts. In an attempt to clarify the basic differences between the various approaches underlying the theoretical understanding of the rule, the following section will outline the main arguments used by various authors in support of their interpretation of the structural nature of this rule.

a) The Rule of Exhaustion of Local Remedies as a Rule of Substance

The interpretation of the principle of prior exhaustion of local remedies as a rule of substance stems mainly from the disputed question concerning the precise moment of the generation of international responsibility: When does the responsibility of a State arise at the level of general public international law?

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[3] Philip C. Jessup, *A Modern Law of Nations*, Cambridge University Press (1956), 104.

[4] See for example García Amador, "State Responsibility: Some New Problems", 94 Hague Recueil (1958), p. 449; Herbert W. Briggs, "The Local Remedies Rule: A Drafting Suggestion", 50 AJIL (1956), p. 921.

Among a host of prominent supporters[5] of the substantive character of the rule, Roberto Ago[6] explicitly based the "*genesis*" of international responsibility of a State on the condition of the prior necessity for the individual to employ all the remedies available under internal law. Only after all existing appropriate and effective remedies had been exhausted without success, the vital condition of a "*fatto illecito internazionale perfetto*", i.e. an internationally wrongful act, would be fulfilled and would consequently give rise to a complete and final breach of an international obligation. In Ago's view (which was reflected in his work for the International Law Commission) the exhaustion of local remedies constitutes a substantive and not just a procedural element of responsibility. The principle of exhaustion of local remedies, he argued, was an essential and absolute condition for the determination of the existence of an internationally wrongful act. As long as local remedies have not been exhausted by the individual concerned, one can not qualify the State's action as amounting to an internationally wrongful act. It is only after local remedies have been invoked and the individual has been placed in a situation which is incompatible with the internationally required result that the internationally wrongful act has been created.[7] Therefore, the claim that the rule of exhaustion of local remedies is of substantive character implies that no international responsibility can arise until the claim has been rejected by the local courts or authorities.

This interpretation of the principle of exhaustion of local remedies as a rule of substance has not only caused controversy in the literature but has also been widely discussed by judges and arbitrators of international courts and tribunals. However, the question is less frequently raised in the case-law of the courts as such than in separate and dissenting opinions by various judges of the ICJ and of its predecessor, the Permanent Court of International Justice.[8] A definition of the rule as to its substantive character was also expressed by Judge Córdova in a separate opinion in the *Interhandel* Case.[9] Moreover, the question of the rule's nature was raised before the International Court of Justice in the context of the *Case Concerning The Barcelona Traction, Light and Power Company, Limited (Preliminary Objections)*.[10] In this case Belgium had filed an Application against Spain seeking reparation for the alleged damage caused to the *Barcelona Traction, Light and Power Company, Limited* by acts of Spain which were alleged to be contrary to international law. The Spanish government subsequently raised four preliminary objections to the Belgian Application among which it disputed the admissibility of the claim as such due to the non-exhaustion of local remedies with respect to the acts complained of. The ICJ thereafter decided to join the aforementioned objection to the merits. However, before the Court had a chance to

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[5] See, *inter alia*, E. Borchard, "Theoretical Aspects of the International Responsibility of States", 1 ZaöRV (1929), p.237; Durand, "La Responsabilité internationale des états pour déni de justice", 38 RGDIP (1931), p.721.

[6] Roberto Ago, "La Regola del Previo Esaurimento dei Ricorsi Interni in Tema di Responsabilità Internazionale", 3 Archivio di Diritto Pubblico (1938), p.182.

[7] Roberto Ago, Sixth Report on State Responsibility, 2 Yearbook of International Law Commission Part II (1977), p.20.

[8] In a dissenting opinion in the *Panevezys-Saldutikis Railway* Case (PCIJ, Series A/B, No.76, p.47) Judge Hudson claimed that "[i]t is a very important rule of international law that local remedies must have been exhausted without redress before a State may successfully espouse a claim of its national against another State. This is not a rule of procedure. It is not merely a matter of orderly conduct. It is a part of the substantive law as to international, i.e. State-to-State responsibility."

[9] ICJ Reports 1959, p.45.

[10] *Case Concerning the Barcelona Traction, Light and Power Company, Limited: Preliminary Objections* (Belgium v. Spain), International Court of Justice, Judgment of 24 July 1964, ICJ Reports 1964, p.6.

rule upon the question concerning the exhaustion of local remedies, Belgium's Application was rejected on the grounds of lack of *jus standi* before the ICJ.[11] Reference to the rule was then, however, made by Judge Morelli in his dissenting opinion in the case.[12]

If the rule of prior exhaustion of local remedies operates as one of substance, State liability at the international law level only arises after the fruitless resort to local remedies. Therefore, international law has not been violated at the time the initial injury to the individual or alien is committed, but only after local remedies have been exhausted. As long as the individual has not exhausted local remedies, the internationally wrongful act does in fact not yet exist or has at least not been completed and it follows that so far international responsibility has not been created. The core argument for the substantive character of the requirement to exhaust local remedies is linked to the respect of sovereignty of the respondent State which after all has to be given an opportunity to do justice in its own way through its internal means of jurisdiction.[13]

b) The Rule of Exhaustion of Local Remedies as a Rule of Procedure

On the other hand, if the liability of a State under international law is already generated at the time of the initial injury to the individual and even before the rule of exhaustion of local remedies is applicable then the principle of exhaustion of local remedies operates as one of procedure. As a consequence, the responsibility of a State at the international level is already created at the moment of the commission of an internationally wrongful act, even though the international enforcement of that responsibility is not permitted until the procedural requirement of exhaustion of local remedies has been complied with.

This view is consistently maintained by various authors[14] on the subject, among them Charles de Visscher, a prominent supporter of the procedural nature of the exhaustion of local remedies rule, who claimed as early as 1927 that the rule was in fact detached from the existence of responsibility as such.[15] In a similar manner, Fitzmaurice[16] defended the procedural nature of the rule of exhaustion of local remedies by claiming that "[w]here there has been an original wrong on the part of the State followed by a failure to redress it, amounting to a denial of justice, the denial may be a necessary condition of intervention, but it is not the ground of it."

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[11] For further reference see Alona E. Evans, "Case Concerning the Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain), Second Phase (1970)", 64 The American Journal of International Law 3, p.653.

[12] ICJ Reports 1964, p.114 (Emphasis added): "…the local remedies rule, as a rule of general international law, is in my view **substantive** and not procedural...the existence of an internationally unlawful act and of the international responsibility of the State cannot be asserted so long as the foreign national has the possibility of securing, through the means provided by the municipal legal system, the result required by the international rule."

[13] See Edwin M. Borchard, "Theoretical Aspects of the International Responsibility of States", 1 ZaöRV (1929), p.237.

[14] Among the principal supporters of the procedural view are: Alwyn Vernon Freeman, *The International Responsibility of States for Denial of Justice*, 1938, p.407; Chittharanjan Amerasinghe, "The Formal Character of the Rule of Local Remedies", 25 ZaöRV (1965), p.445 et al.

[15] Charles de Visscher, "Notes sur la responsabilité internationale des Etats et la protection diplomatique d'après quelques documents récents", 8 RDILC (1927), p.245.

[16] G.G. Fitzmaurice, "The Meaning of the Term Denial of Justice", 13 BYIL (1932), p.96.

Apart from various authors in the literature who are in favor of the procedural character of the rule, this approach has also been supported by various judges at international courts and tribunals. A clear opinion with respect to this question has been expressed by Judge Tanaka in the *Case Concerning The Barcelona Traction, Light and Power Company, Limited* in the course of his separate opinion.[17] A similar stance was taken by Judge Armand-Ugon in his dissenting opinion in the *Interhandel Case*[18] where he explicitly referred to the fact that international responsibility of a State was already generated long before the rule of exhaustion of local remedies came into play. Thus he attributed a merely procedural character to the rule. A strong argument favoring the procedural nature of the rule of exhaustion of local remedies was also rendered by the Permanent Court of International Justice in 1938 in the *Phosphates in Morocco Case (France v. Italy)*. In this judgment the Court ruled on the question of whether the denial of justice was an essential element for the genesis of international responsibility. In this context the Court confirmed the procedural nature of the rule and stated that "…the alleged denial of justice…exercises no influence either on the accomplishment of the act or on the responsibility ensuing from it."[19] Therefore, the international responsibility of a State would already be generated by the initial act independent of subsequent actions specifically related to the exhaustion of local remedies.

According to this approach, in the field of diplomatic protection the rule operates merely as a procedural bar which enables the State to make its claim before an international tribunal or court on behalf of the national it seeks to protect. However, the actual generation of international responsibility had already been construed at the moment when the initial wrongful act had been committed by the State concerned.

c) Practical Consequences of the Different Theories underlying the Nature of the Rule of Exhaustion of Local Remedies

At first sight it might seem that the discussion about the structural nature of the rule is more of theoretical than of real practical value. However, the theoretical interpretation of the rule in this context is of vital importance since in practice, different views on the nature of the rule can lead to quite different outcomes.

The way in which the principle of exhaustion of local remedies is treated from a procedural point of view is an important aspect which depends directly on the classification of the rule as one of procedure or substance. In this context the question at stake is whether the non-exhaustion of local remedies is relevant to the merits of the case or whether it can be invoked as a preliminary objection to admissibility? Over time the practice of the PCIJ and the ICJ has shown that the objection of a failure to exhaust local remedies is rather of preliminary nature which consequently contests the admissibility of an application, than an objection to the proceedings on the merits of the case. In the *Panavezys-Saldutiskis Railway*

[17] Dissenting Opinion, 1970 ICJ Reports, p.143 (Emphasis added): "There can be no doubt that the local remedies rule possesses a **procedural character** in that it requires the person who is to be protected by his government to exhaust local remedies which are available to him in the State concerned, before his government espouses the claim before an international tribunal."

[18] Dissenting Opinion, 1959 ICJ Reports, p.88.

[19] PCIJ, Series A/B, No. 74 (1938), p.28.

Case[20], for example, the PCIJ unhesitatingly ruled on the preliminary nature of the objection related to the rule of exhaustion of local remedies.

In some cases, the International Court of Justice has adopted the practice of joining the objection of exhaustion of local remedies to the merits of the case, such as in the *Case Concerning The Barcelona Traction, Light and Power Company, Limited*. The ICJ repeatedly justified its decision with the argument that "this is not a case where the allegation of failure to exhaust local remedies stands out as a clear-cut issue of a preliminary character that can be determined on its own. It is inextricably interwoven with the issues of denial of justice which constitute the major part of the merits".[21] However, this procedure does not substantially change the preliminary character of the rule and it is in fact only permissible in exceptional cases.

Following the examination of the relevant commentators, the decisions of international courts and the statements by international judges with respect to the nature of the principle of exhaustion of local remedies, it is evident that a great deal of disagreement concerning the theoretical understanding of the rule persists until today. However, if one discounts diverging academic commentaries as well as the dissenting opinions of various judges and focuses instead on the relevant case law, one might conclude that the practice of judicial bodies in general seems to lean more towards a procedural understanding of the rule.

Due to the limited framework of this paper we have limited our analysis to just a few areas of application of the rule. Hence, there are a number of interesting aspects in relation to the rule of exhaustion of local remedies which can not be addressed in detail but which are certainly of equal importance for a thorough analysis of the rule. For example, questions relating to the concept of direct injury, the aspect of possible contractual relationships between the State and the individual, the issue of waiver and estoppel and an in-depth analysis of the concept of denial of justice as such are closely linked to the principle at stake and are essential for a comprehensive investigation of the rule of exhaustion of local remedies. Due to the selective nature of this paper the following sections merely allow for the discussion of one of these additional aspects which are intrinsically linked to the practical application of the rule.

2. The Burden of Proof with regard to the Principle of Exhaustion of Local Remedies

Another important issue related to the practical application of the rule of exhaustion of local remedies would be the question of which party carries the burden of proof in a case where the contention is raised that the individual has not exhausted local remedies. Furthermore, which party has to prove objections raised with respect to the scope of and possible limitations to the rule? Generally speaking there are no universally applicable rules on the division of the burden of proof, either in general international law or in the application of the rule of exhaustion of local remedies. This subject has also not been considered with any comprehensiveness in the jurisprudence.

[20] *Panavezys-Saldutiskis Railway Case*, PCIJ, Series A/B, No. 76, p.22.
[21] 1970 ICJ Reports, p.46.

General customary international law on the burden of proof acknowledges the existence of two fundamental principles, namely the rule of "*onus probandi actori incumbit*" and the principle of "*reus in exceptione fit actor.*" While the first maxim refers to the basic concept that a claimant always carries the duty to prove his claim, the second general principle establishes the general obligation of the defendant to disprove the plaintiff's arguments. Hence it cannot only be assumed that there is generally some division in the burden of proof between the claimant and the defendant but also that the specific party raising the contention will usually have to carry the burden of proof.[22] These principles of general international law are equally applicable to the requirement of proof of exhaustion of local remedies. In this context difficulties might however arise with regard to the question of attribution, i.e. the question of which party is to be regarded as the primary actor with reference to a claim made.

The *Case Concerning Elettronica Sicula S.p.A.*, which has already been discussed in some detail in the previous sections, also serves as a valid practical example for the uncertainties pertaining over the question of burden of proof. As will be recalled, in this particular case the US filed an application before the ICJ instituting proceedings against Italy. Italy contended that the claim was inadmissible due to the alleged failure of the two US corporations concerned to exhaust on a primary basis the local remedies available to them in Italy.[23] According to the principles applicable under general international law, who carries the burden of proof with respect to this allegation? Is it for Italy to show the existence of a remedy or is it for the United States to prove that a national remedy was not available or as a matter of fact proved to be ineffective?

In its final judgment the ICJ ruled that: "…it was for Italy to show, as a matter of fact, the existence of a remedy which was open to the United States stockholders and which they failed to employ."[24] In sum, one could conclude in this particular case that the ICJ once again laid down the obligation on the party, which initially raised the contention. Further considerations on the issue of burden of proof were made by Judge Lauterpacht in the *Norwegian Loans Case*.[25]

The view endorsed by the ICJ in the *ELSI* Case has also been applied in the *Norwegian Loans Case* in that there is an initial onus on the party who raises the objection that local remedies have not been exhausted to prove the existence, in its system of internal law, of remedies which have not been used. However, Judge Lauterpacht further implied that the

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[22] See in particular: K. Buschbeck, "Evidence: Procedures of Judicial Discovery and the Burden of Proof", in 3 Gerichtsschutz gegen die Exekutive (1971), p.164; Amerasinghe, "Principles of Evidence in International Litigation", 70 AIDI (2003), p.156.

[23] *Case Concerning Elettronica Sicula S.p.A.* (United States of America v. Italy), ICJ, Judgment of 20 July 1989, ICJ Reports 1989, par.49.

[24] Ibid, par.62.

[25] *Norwegian Loans Case*, ICJ, Judgment of 6 July 1957, ICJ Reports 1957, p.9. In his separate opinion Judge Lauterpacht referred to "the existence of a *prima facie* distribution of the burden of proof" concerning the duty to exhaust local remedies and he defined the sequence of this distribution as follows: "(1) as a rule, it is for the plaintiff State to prove that there are no effective remedies to which recourse can be had; (2) no such proof is required, if there exists legislation which on the face of it deprives the private claimant of a remedy; (3) in that case it is for the defendant State to show that, notwithstanding the absence of a remedy, its existence can nevertheless reasonably be assumed; (4) the degree of burden of proof thus to be adduced ought not to be so stringent as to render the proof unduly exacting" (1957 ICJ Reports, p.39).

practice related to the distribution of the burden of proof has to remain flexible with respect to each case.

Although academic commentators agree on the existence of a general principle on the division of the burden of proof, it is still not possible to establish universally applicable rules for such a division. While it appears to be an accepted principle that the existence of a remedy must be proven by the party who raises the objection, it is not clear how the burden of proof should be divided beyond that. For example one related aspect, which still remains unanswered in this context, is the question of who carries the burden to prove the effectiveness of a remedy. In sum, there are still many facets concerning this particular issue which so far remain ambiguous and unresolved.

3. The Rule of Exhaustion of Local Remedies:A Conflict between Competing Interests

The rule of exhaustion of local remedies lies in the middle of a series of competing interests and its application in international law is in fact the result of a choice made between these different forces. At the centre of the conflict are on the one hand the interests pursued by the respondent State and, on the other, those of the individual concerned. In the mode of application of the rule of exhaustion of local remedies strong consideration has traditionally been attributed to the principle of State sovereignty. It is in the interest of the respondent State to have an opportunity to adjudicate by its own tribunals upon the issues of law and fact which the claim involves in order to discharge its responsibility and to redress the wrong committed. This interpretation of the rule has been confirmed by the ICJ in the *Interhandel Case*.[26] Furthermore, the *raison d'être* of the rule of exhaustion of local remedies was confirmed by Judge Córdova in a separate opinion to the judgment.[27]

Contrary to this aim, the individual concerned pursues the goal of having an alleged wrong remedied in the quickest and most efficient way. A rule which requires resort to local remedies might hinder the individual from having immediate access to possibly quicker, more economical and efficient means of dispute settlement by an international judicial body. Today, there is an increasing concern to provide the individual, who is not recognized as an independent actor in international law, with the possibility of access to justice on the international level. In fact, recent developments in international law, especially in the field of human rights law, have revealed the over-arching concern that the rule of exhaustion of local remedies might be used as to over-protect the interests of the State at the expense of the protection of the individual.[28] This concern was in fact shared

[26] 1959 ICJ Reports, p.27: "Before resort may be had to an international court in such a situation, it has been considered necessary that the State where the violation occurred should have an opportunity to redress it by its own means, within the framework of its own domestic legal system."

[27] 1959 ICJ Reports, p.45: "The main reason for its existence is the absolute necessity of harmonizing international and national jurisdictions – thus ensuring the respect due to the sovereign jurisdiction of States – to which nationals and foreigners are subject…"

[28] For further considerations see also Part III and VI of the paper.

by the ICJ in the *Finnish Ships Arbitration*, where the Court referred to the requirement of the individual to resort to local courts and internal dispute settlement mechanisms.[29]

The basic rationale underlying the rule of exhaustion of local remedies seems to be the guarantee and possibility for each State to apply its internal means of redress before exposing the dispute to an international level. This reasoning is based on the traditional inter-state relationship emphasizing the respect for State sovereignty which is still predominant in the area of international dispute settlement. Moreover, the argument is used that the rule of exhaustion of local remedies also attributes a certain order to the international procedure as such. It secures national States a dispute settlement function in international disputes in which they are directly concerned.[30] On the other hand, however, there is a growing support for the status and rights of individuals as independent, self-standing actors in the international law arena, especially in the field of protection of human rights. Therefore, a predominant concern for State sovereignty in international law might hinder the individual from achieving justice and fairness.

III. The Rule of Exhaustion of Local Remedies in the Human Rights Context

4. The Extension of the Rule to the Field of Human Rights Protection

It has already been shown that the rule of exhaustion of local remedies has undoubtedly undergone a long and constant evolution since its creation and has been extended – particularly since 1950 – from its original area of application (namely, the diplomatic protection of citizens abroad) to new areas, in particular to the protection of human rights. Human rights instruments contain precise provisions on the exhaustion of domestic remedies[31] and, in their formulation of the rule, they consider it as a principle of general international law; it thus seems that it is in such a capacity that international organs like the UN Human Rights Committee (HRC) or the European Court of Human Rights (ECHR) are called to apply it. This is where some difficulties start to arise as regards the need to

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[29] *Finnish Ships Arbitration* (1934), 3 UNRIAA, p.1497: "...it appears hard to lay on the private individual the burden of incurring loss of money and time by going through the courts, only to exhaust what to him – at least, for the time being – must be a very unsatisfactory remedy."

[30] Felix C. Amerasinghe, *Local Remedies in International Law*, 2nd edition, Cambridge University Press, 2004, p.427.

[31] See, for instance, Article 41.1c of the International Covenant on Civil and Political Rights (**Art.41.1c:** "The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged"), and its Optional Protocol (**Art.5.2:** "The Committee shall not consider any communication from an individual unless it has ascertained that: …(b) the individual has exhausted all available domestic remedies. This shall not be the rule where the application of the remedies is unreasonably prolonged"); Article 35.1 – former Article 26 of the European Convention on Human Rights (**Art.35.1:** "The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognized rules of international law, and within a period of six months from the date on which the final decision was taken"); and Article 46.1 of the American Convention on Human Rights (**Art.46.1:** "Admission by the Commission of a petition or communication … shall be subject to the following requirements: (a) that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law…").

assess the *proper* role of the rule in the field of the protection of human rights. In fact, a first reading of these provisions could lead to the idea that it is the same customary rule, existing in the field of the treatment of aliens and diplomatic protection, which has been expanded by analogy to cover the field of human rights protection.

The fundamental question which will be addressed in the following pages is whether it is adequate to address the local remedies rule in the human rights area in the same way as the rule is approached in general international law and in the framework of classical diplomatic protection. The question is relevant especially when considering the fact that human rights is an area to which the local remedies rule was not originally intended to apply and it is a specific field that involves interests and situations different from those of general international law. In analyzing the local remedies rule in the field of human rights, it is interesting to investigate whether – and to what extent – the basic differences between the human rights and general international law have had or can have an impact on the concrete application of the rule and on its essence or scope. The scope of the rule, in fact, is likely to affect the way in which the rule itself is, or has to, applied, thus influencing for example the extent to which domestic remedies must be exhausted in order for the requirements of the rule to be satisfied. Some of the most relevant aspects to be analyzed in the following pages are: the impact that the aim of protecting individual rights has on the application of the local remedies rule in the field of human rights; the *rationale* of the rule and the reasons for introducing it in the area of human rights; its *peculiarities* and the exceptions encountered in this field; the nature that the rule has assumed in this area, that is whether the rule is of a *substantive* character or has to be regarded only as a *procedural* prerequisite for the admissibility of an application, or whether it has a dual substantive/procedural character. The way in which the rule has been applied in the jurisprudence of human rights Courts and Committees will also be dealt with by reference to the case-law of the ECHR and of the UN HRC. The limited extent of this paper does not allow to address other interesting questions, such as whether the rule in the protection of human rights is of 'conventional' character or is still a customary rule, although distinct from the corresponding customary rule in the field of diplomatic protection; the burden of proof; and whether the rule – in human rights protection – is applicable not only to complaints filed by individuals but also to complaints filed by States.[32]

5. Peculiarities to be considered when applying the Rule in the Human Rights Context

To begin with, there are two main aspects to be highlighted which illustrate the differences between the context of diplomatic protection and the context of human rights protection. These are the *actors* involved and the *interests* involved. In its original application, the rule was applicable only to the relationship between a State and foreigners, for example in the case of a citizen claiming reparation for injuries suffered abroad. The relationship, therefore, was very often involving States and foreigners, subsequently leading to an inter-States relationship. The area of human rights protection is, on the opposite, concerned with

[32] Cf., for instance, *Ireland v. UK*, Series A No.25, 2 EHRR 25 (1979-1980), para.159; *Cyprus v Turkey*, 25781/94, 2001 ECHR 331 (10 May 2001), paras.82-102*; Denmark v. Turkey*, 2000 ECHR 150, (5 April 2000), p.34; and *Cyprus v. Turkey*, 8007/77, Dec. 10.7.78, D.R. 13, p.85.

relations between States and individuals, and – for the most part – between individuals and their own State.

Furthermore, the interests involved in the two contexts are quite different. While in the area of human rights the main interests to be protected are those of the individual victim of an alleged violation of human rights, in the area of diplomatic protection the interests affected are respect and protection of State sovereignty. The individual is certainly given greater recognition in the human rights system. The latter, therefore, often creates a conflict between recognizing the rights and respecting the sovereignty of the State in question, and protecting the rights of the individual.

6. The Rationale of the Local Remedies Rule in the System of Human Rights Protection

When trying to give a proper interpretation of the system of protection established by the European Convention, the then European Commission of Human Rights stated that the most important function of the Convention was to protect the rights of the individual and that the role of the Convention, and of its interpretation, was to render *effective* the protection of the individual. The European Court of Human Rights has also recalled that *effective human right protection* was the general aim set for by the Convention and that the provisions of the Convention should not be interpreted restrictively so as to prevent its aims and objects being achieved.[33] In early cases, the Court had emphasized the need to interpret the Convention so as to realise its aims and not to restrict the obligations undertaken by the parties.[34] Moreover, the rationale of the local remedies rule can also be found in the fact that before proceedings are brought to an international body the State concerned must have had the opportunity to remedy matters through its own legal system. In the *Akdivar* case, the Court well explained the rationale of the rule by stating that:

> "…the rule of exhaustion of local remedies…obliges those seeking to bring their case against the State before an international judicial or arbitral organ to use first the remedies provided by the national legal system. …The rule is based on the assumption, reflected in Article 13 of the Convention, that there is an effective remedy available in respect of the alleged breach in the domestic system whether or not the provisions of the Convention are incorporated in national law. In this way, it is an important aspect of the principle that the machinery of protection established by the Convention is subsidiary to the national systems safeguarding human rights."[35]

All these aspects and their implications will be recalled further on, after an overview of the relevant jurisprudence of the ECHR and of the HRC.

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[33] *Belgian Linguistic case*, 23 July 1968, Series A, p.32, para.5; *Golder v. UK case*, Application n.4451/70, 21 February 1975, in *Report*, p.25.

[34] See *Wemhoff v. Federal Republic of Germany*, Series A, 1968, p.23.

[35] *Akdivar and others v. Turkey*, Application No.21893/93, 16 September 1996, in *Reports*, 1996-IV, para.65.

7. The Rule as applied in the Case-law of Human Rights Courts and Committees

It is interesting at this point of our analysis to ascertain how the rule has been developed, applied and probably reshaped as a result of its extended application to the human rights area. What can easily be noticed is that, in the field of the protection of human rights, the rule of the exhaustion of local remedies has been interpreted in a more flexible way and in favor of the alleged victims. This tendency appears to be consistent with the need to take into account the general framework of the protection of individuals established by international Covenants and Conventions. In such a context, a broader interpretation of the norms in favor of the individual victim is to be preferred to a restrictive one. Therefore, the rule has undergone numerous exceptions and rightly appears not as a strict admissibility condition of an *absolute* content, but as a rule which needs to be applied with flexibility. This has been affirmed several times by the European Convention organs and by the UN HRC. What can be deduced from the practice of the Commission, the Court and the Human Rights Committee is that the rule requires the exhaustion of remedies which are available, effective, adequate and sufficient.

A remedy is considered *available* if it can be pursued by the applicant without difficulties or impediments. This also means that the applicant must be in the conditions of exercising the specific remedy. Moreover, a remedy is considered *available* only if the applicant can make use of it in the circumstances of the particular case. In fact, sometimes legal barriers or even practical impediments can represent an obstacle and can result in a remedy being unavailable. According to the Commission, a remedy, in order to be considered available, must have a certain degree of immediacy. The existence of a remedy must be sufficiently certain not only in theory but also in practice, failing which it will lack the requisite accessibility and effectiveness.[36]

A remedy is considered *effective* when it actually exists within the domestic legal system and when it offers a reasonable prospect of success. If it appears, for example – on the basis of established case-law – that the exhaustion of a particular remedy is futile and not helpful, then such a remedy needs not to be exhausted. In numerous cases the Court rejected preliminary objections based on the failure of exhausting specific domestic remedies and stated that the remedies in question offered no prospects of success.[37] An applicant, therefore, is only required to have recourse to remedies which are capable of providing effective means of redress.[38] Remedies, in fact, must be capable in practice to provide redress, in relation to the particular situation/complaint at hand. The then Commission reserved to itself the right to appreciate whether a given remedy was, in the particular circumstances of the case, effective or not.[39] Court or administrative proceedings involving undue delay may be regarded as ineffective remedies too.[40]

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[36] *Ciulla v. Italy*, Judgment of 22 February 1989; *Vernillo v. France,* Judgment of 20 February 1991, *Series A* 198.

[37] See, amongst other, *Johnston v. Ireland*, A112(1986), para.44; *Open Door and Dublin Well Woman v. Ireland*, A246(1992), para.47; *Keegan v. Ireland*, A291(1994), para.39; *Scordino and others v. Italy*, 27 March 2003, p.9.

[38] *Nielsen v. Denmark*, Application No.343/57, Yearbook II(1958-59), p.412.

[39] For example, in the case of *Kuijk v. Greece*, the Commission considered that remedies brought to the attention of a foreign detainee, without legal representation, were not *accessible* (Case No.14986/89, 70 Decisions and Reports, at 250-251, 1991).

[40] *X v. UK*, Case No.7161/75, 7 DR 100(1976); *Tomasi v. France*, Case No.12850/87, 64 DR 128(1990).

A remedy is deemed *adequate* or *sufficient* if it is capable of redressing the alleged harm in the specific case. An adequate remedy is one which is sufficient to provide redress to the applicant. For instance, in the case *Lawless v. Ireland*, where the applicant was seeking compensation for unlawful imprisonment, the Commission considered that the recourse to an Internment Commission did not constitute an adequate remedy since it could only recommend the applicant's release and was unable to award damages and compensation to the applicant.[41]

In sum, it can be said that, according to the relevant case-law, local remedies are considered *effective* and *adequate* when they are able to provide redress to the harm alleged by the applicant that is when they are capable of directly remedying the alleged wrong.

8. Exceptions to the Local Remedies Rule in the Human Rights Context

Given the above-mentioned characteristics, the rule itself is subject to a number of exceptions, particularly with regard to the *nature of the remedies* to be exhausted and the *conditions of their exercise*. These exceptions could be either considered as a necessary implication of the rationale of the rule when applied to human rights protection;[42] or as *limitations* to the rule, more than exceptions. Some Treaties and Conventions expressly mention and specify some of these exceptions. For instance, the American Convention on Human Rights states that the rule of the previous exhaustion of local remedies does not apply when domestic law does not guarantee a *due process of law*, when the individual has been denied access to local remedies, and when there occurred a prolonged and excessive delay in the decision of the case at the local level (art.46.2). The latter exception is also mentioned in the Additional Protocol to the ICCPR (art.5.2.b).

Some of the most relevant exceptions to the local remedies rule can be considered the following: 1. unavailability of domestic remedies; 2. lack of effectiveness and adequacy; 3. denial of justice or delay; and 4. disciplinary and administrative remedies.

1. As already observed when dealing with the requisite characteristics of domestic remedies it is of utmost importance that they actually exist not only in theory but also in practice. If domestic remedies do exist but they are very difficult to access, then there is no obligation to exhaust them.[43] Furthermore, the concept of an *available* remedy also includes procedural guarantees for fair and public hearings by an independent and competent tribunal.

2. Domestic remedies need not to be exhausted if there are serious reasons for believing that they have no real prospect of success.[44] If no effective remedies exist, there cannot be any requirement to exhaust them. An applicant is dispensed

[41] Case No.332/57, in *Year Book II* (1958-59) p.318.

[42] As rightly stressed by Roberto Ago, the so-called *exceptions* to the rule would be more adequately regarded as logical and necessary *consequences* of the application itself of the principle upon which the rule is based (AGO, *La regola del previo esaurimento dei ricorsi interni*…, in Archivio di Diritto Pubblico, 3(1938), p.182, 249).

[43] *Cyprus v. Turkey*, 26 May 1975, *DR*, vol.2, p.125.

[44] *T.K. v. France*, 8 November 1989, in *Rapport*, UNDoc.A/45/40, vol.II, 1990; *M.K. v. France*, 8 November 1989, *ibidem*.

from the obligation to exhaust certain local remedies if, in the circumstances of the case, those remedies are ineffective or inadequate. In the Strasbourg jurisprudence and the case law of the HRC, a remedy which does not have a reasonable prospect of success is not an *effective* remedy and, therefore, there is no need to exhaust it.[45] As showed by the *Scordino* case, in order to ascertain whether a specific domestic remedy is effective and adequate, the Court must look at the consolidated national jurisprudence and thus verify whether that remedy offers concrete prospects of success. A remedy is *ineffective* if, considering the well established case-law, it does not offer any real chance of success.[46] In such a case, however, the applicant must give some evidence of the existence of an established case-law.

3. For cases in which domestic tribunals refuse to administer justice, or they are not independent and impartial, or they render judgments which are manifestly unfair, the human rights case-law provides for another exception to the exhaustion of local remedies. For instance, the ICCPR states that, when the local remedy to be exhausted is "*unreasonably prolonged*", there is no duty to exhaust it (art.41.1c).

4. In its case-law, the HRC has stressed that the effectiveness of a remedy also depends on the nature of the alleged violation. Therefore, for particularly serious violations of human rights (violations of the right to life, torture, ill-treatment) purely disciplinary and administrative remedies have been deemed inadequate and ineffective as domestic remedies, thus exempting the applicant from their exhaustion.[47] Generally speaking, very often the ECHR and the HRC have found that in cases of gross and systematic violations of human rights there is a presumption of non effectiveness of domestic remedies given that the rules of law are no longer internally respected when human rights are systematically violated.[48] The European Commission for Human Rights repeatedly affirmed that remedies of a non-judicial character, leading to a discretionary decision by the relevant authorities, need not to be exhausted.[49] The same has been specified by the UN HRC which has stressed that local remedies which need to be exhausted are mainly those of a judicial character.[50] The HRC has also made it clear that extraordinary remedies (such as applications for annulment, review and conditional release) need not be exhausted. Like the Commission, the HRC is of the opinion that extraordinary remedies seeking discretionary decisions cannot be considered effective remedies.

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[45] *Lawless* case, p.308; *X. v. F.R. Germany*, Application n.968/61, p.27; *Austria v. Italy*, Application n.788/60, 11 January 1961, in *Reports*, p.55; *Vernillo* case, para.26.; *Pratt et Morgan v. Jamaica*, 6 April 1989, in *Report*, UNDoc.A/44/40, 1989, p.231.

[46] *X. v. FRG,* p.138; *Farragut v. France*, DR 39(1984), p.186; *Costello-Roberts v. UK*, DR 67(1991), p.216.

[47] *Arhuacos v. Colombia*, 29 July 1997, Application n.612/1995, in *Report*, UN Doc.A/52/40, vol.2, 1999, p.194.

[48] *Akdivar* case, para.67; *Dermit Barbato v. Uruguay*, 21 October 1982, Application n.84/1981, in *Report,* UN Doc.A/38/40, 1983, p.132.

[49] *Greece v. UK*, 12 October 1957, in *Yearbook II*, 1958-59, p.186; *De Becker v. Belgium*, 9 June 1958, Application n.214/56, *ibidem*, p.214; *X. v. Belgium*, 29 March 1960, in *Yearbook III*, 1960, p.222.

[50] *Prince v. Jamaica*, 30 March 1992, Application n.269/1987, in *Rapport*, UN Doc.A/47/40, 1993, p.240; *Ellis v. Jamaica*, 28 July 1992, Application n.276/1988, *ibidem,* p.255.

It can be concluded that the rule of exhaustion of local remedies in the field of the protection of human rights is not an *absolute* condition necessarily preceding any application, and it is not of a general, automatic or unqualified application but it is rather flexible and to be applied consistently with its rationale.

9. Original Reasons for Introducing the Local Remedies Rule in the Field of Human Rights

It is useful and opportune to investigate the original reasons for the incorporation of the local remedies rule in international instruments on human rights protection. In doing so, the *travaux preparatoires* of the ICCPR and of the ECHR are indispensable. From them, it emerges that the local remedies rule was widely discussed and then finally adopted both as a matter of principle – to respect the sovereignty of the respondent state and to avoid domestic courts being replaced by international courts – and for practical reasons, namely to avoid international organisms to be overloaded with excessive and irrelevant complaints.

Through the local remedies rule States are given the possibility of redressing the alleged wrong within their own domestic legal systems before their responsibility is brought to the international level, as recognized by the ECHR in the *Nielsen* case.[51] International Conventions on human rights also envisaged the local remedies rule as directly related to the State's duty to provide effective domestic remedies. Therefore, if there is a duty on individuals to exhaust domestic remedies, this is certainly complementary to the duty of the respondent State to provide and implement domestic remedies.

The rule reflects the fact that in the protection of human rights, where the systems established by Conventions are subsidiary to the national ones, the task and the duty of securing individual rights are, first of all, on contracting States. In the field of human rights the principle of *subsidiarity* is very important and has been often recalled by the ECHR, which has stated that the rule of exhaustion of local remedies "…is an important aspect of the principle that the machinery of protection established by the Convention is subsidiary to the national systems safeguarding human rights."[52] Furthermore, the Court has stated that "…the purpose of Article 26 is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before being confronted with an international proceeding. This is particularly true in the international jurisdiction of human rights, because the latter reinforces or complements the domestic jurisdiction."[53]

As one of the effects of a failure to comply with the exhaustion of local remedies can be the rejection of the application, the rule also serves the pragmatic purpose of reducing the over-burdening of courts.

Besides the intention of guaranteeing States the possibility of redressing an alleged wrong within their domestic systems, another important reason for the inclusion of the rule in

[51] *Nielsen* case, p.412.

[52] *Akdivar* case, para.65; *Aksoy v. Turkey*, 18 December 1996, in *Reports*, 1996-VI, p.2275, para.51; *Scordino* case, p.9.

[53] *Ankerl v. Switzerland*, 23 October 1996, in *Reports*, 1996-V, p.1565, para.34; *Selmouni v. France*, 28 July 1999, in *Reports*, 1999-V, p.175, para.74; *T.K. v. France*, p.139, para.8.3.

human rights treaties emerges clear when considering their specific aim, namely the creation of a global system for the protection of human rights. That considered, it is obvious that contracting States to the ECHR are obliged to guarantee to their citizens an effective judicial system for the protection of their rights. In this way, the local remedies rule would be a sort of test for verifying the compliance of domestic legal systems with the Convention.

10. Procedural or Substantive in Nature?

The field of human rights protection presents the same co-existence of different theories already observed in the field of diplomatic protection. Scholars, in fact, have applied the theories regarding the *substantial*, *procedural* or *mixed* nature of the local remedies rule to the field of human rights with similar consequences. This is understandable especially considering the fact that the local remedies rule in the field of human rights is still, or at least often, conceived either as a derivation from the local remedies rule in the field of diplomatic protection or as an extension of the latter to the area of human rights.

An alternative view is that the local remedies rule in the human rights field is a *new* rule, different from the one developed in the area of diplomatic protection, although *originally* deriving from that one. In considering the *nature* of the rule in the human rights context, it is important to take into account the general aim of systems like the ECHR and the ICCPR, and to look at their respective case-law for evaluating which of the different theories about the *nature* of the rule is accepted and applied. As already stated above, the aim of systems for the protection of human rights can surely be seen as ensuring an *effective* protection of fundamental rights of individuals. Consequently, as recognized by the Commission and the Court: "…the provisions of the Convention should not be interpreted restrictively so as to prevent its aims and objects being achieved".[54]

The international jurisprudence on human rights does not show a clear-cut preference for one theory or the other, although there are several elements which seem to prefer the theory of the *procedural nature* of the rule to the one of the *substantive nature*. Firstly, already the text of human rights treaties and Conventions is clear in considering *inadmissible* an application where the applicant has not exhausted local remedies. This element would favour an interpretation of the rule as a *procedural condition* rather than of a substantive character. Secondly, concerning the moment in which State liability arises at the international level, there is only one decision of 1958 by the European Commission of Human Rights, which seemed to support the *substantive nature* of the rule.[55] That finding is in contrast with more recent decisions by the Commission and the Court which, in fact, seem to support the *procedural nature* of the rule in affirming that a violation of the Convention arises immediately, as soon as a right protected by the ECHR is violated and thus before the exhaustion of local remedies.[56]

[54] *Golder v. United Kingdom*, Application n.4451/70, p.25.
[55] *X v. FRG*, 10 June 1958, Application n.235/56, in *Yearbook* II, p.304.
[56] See, for instance, *Ireland v. UK*, 18 January 1978, in *Series A*25, p.91; *Foti and others v. Italy*, 10 December 1982, in *Series A*56, p.21; *Zimmerman and Steiner v. Switzerland*, 13 July 1983, in *Series A*66, p.12.

In sum, international case-law in the area of human rights deals with the non-exhaustion of local remedies as a procedural matter and considers that the moment at which international State responsibility may arise is antecedent to the exhaustion of the last available remedy in the domestic legal system. Human rights jurisprudence, therefore, seems to show a preference for the theory of the *procedural nature* of the local remedies rule. This may be also explained in an *historical* perspective, if one considers that the rule needs to be contextualized and further if one considers that it is influenced by different factors, such as the evolution of norms of international law. The conceptualization of human rights norms has undoubtedly changed over the time as has the relationship between the interests of States and the interests of individual. Human rights courts and organs seem to take into account these major changes of perspectives as regards international law, albeit not completely yet.

The procedural nature, moreover, appears to be in accordance with the function and scope of the local remedies rule in the human rights context without derogating either from the principle of sovereignty of States, from the principle of subsidiarity or from the practical use of the rule itself. It would be therefore consistent with this approach to affirm that the theory of the procedural nature of the local remedies rule is more appropriate to *contemporary* international law.[57]

IV. Conclusions

11. Is the Principle of Exhaustion of Local Remedies in the Human Rights Context a different Rule from that under General Public International Law?

As a starting point it must be stated that, originally, it was the rule as applied in customary international law (diplomatic protection) that was transposed to the human rights area. It is an historical fact that there was *continuity* between the systems of diplomatic protection and of human rights protection. However, this does not imply that the rule applicable in human rights protection has to be interpreted in the light of the equivalent rule in the field of diplomatic protection. In the international human rights system the perspective is different and should take into account the fact that the system itself implies equal treatment of all the individuals protected and that, consequently, every State is under an obligation to provide local remedies. Furthermore, it appears that the two systems – of diplomatic protection and of human rights protection – are based upon different premises. In fact, considering their respective origins, one can notice some preliminary differences: while the local remedies rule in diplomatic protection is mainly grounded in the principle of sovereignty and mostly concerns the interests of State, the same rule in human rights protection appears to be grounded more on the principle of subsidiarity of international *fora*, and concerns individual interests. Therefore, in order to be properly understood, the rule of the exhaustion of local remedies should be regarded differently in the two diverse contexts of diplomatic and human rights protection. It is not convincing to apply the classic rule in its original form and meaning to the field of human rights.

[57] In this sense see also: PISILLO MAZZESCHI, *Esaurimento dei ricorsi interni e diritti umani*, Torino, 2004, p.87-94.

To guarantee that individuals have effective domestic remedies before their national authorities can be considered a *positive function* of the rule in the field of human rights. The ultimate goal of the rule in this field, in which the rule seems to represent a further guarantee for individuals, can thus be seen in improving the judicial protection of human rights at the national level, in coordinating the international with the national level and the interests of States with the interests of individuals. Furthermore, the rule can also be useful in order to verify the real level of compliance with protection and respect of human rights by single States.

It is worth noting that the general impact of the system established by the ECHR is a highly relevant one for its effects of strengthening domestic laws and contributing to the harmonization of national laws with the system established by the Convention. The local remedies rule shows that it is primarily before domestic courts that an effective remedy should be sought for alleged violations of the guaranteed rights.

To conclude, it is still debated whether human rights law has caused – or continues to cause – a definitive change of perspective in international law, finally making the individual a *legitimate subject* of international law. There still is a large part of the doctrine which considers States as the sole possible subjects of international law. What must be recognised is that certainly human rights law has contributed enormously to a certain *modernization* of 'classical' international law, introducing norms and set of rules which are now not only directed to States but also to *individuals*. Contemporary international law is more and more concerned with the protection of human beings in the sense of individuals with their own rights and interests to be protected.

The debate surrounding the nature and the scope of the local remedies rule can thus be situated in this broader context. The persistence of the rule in the field of human rights protection might be seen as the result of a certain delay in the evolution and development of international law from its State-centered origins to the recognition of the individual as a subject of international law. The Copernican revolution of international law is not yet complete, but is progressing gradually. States seem to remain the main agents in international law. This is what probably caused the introduction of the rule in the human rights field. The rule, originally, was still prisoner of its historical context but, interestingly, the jurisprudence of human rights Courts and Commissions has strongly contributed over the time to the progressive evolution and interpretation of the rule in a new light. If the individual still has – to a certain extent – the obligation to exhaust local remedies, States – on the other side – have undoubtedly the obligation to provide effective remedies.

In conclusion, it is possible to affirm that at present the local remedies rule in the field of human rights is a different one from the rule in the field of diplomatic protection. It is an autonomous rule which developed progressively through the case-law of human rights courts and bodies. In fact, as highlighted in this paper, the rule presents some differences in the two contexts, differences which are due to the diversity in functions and aims of diplomatic protection and of human rights protection. The two areas are therefore independent and the local remedies rule, although initially influenced by the original rule in the field of diplomatic protection, has acquired its independence in the field of human rights protection.

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