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Mandatory of Public International Law of its Other Persons (International Organizations & Human Rights)

Assistant Lecturer. Basil Ali Abbas

University of Alqadisia – College of Law

Email: Basil.abbas@qu.edu.iq

Assistant lecturer. Ali Nadhim Salman

University of Alqadisia – College of Law

Email: lawyer5ali@gmail.com

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Abstract

Studying the relationship between international organization and human rights is a complex task, due to the specialization of international organizations that could be far from human rights conventions interest on one hand, or lacking of international organization's consent on the other hand. The subject of respecting human rights has become an important goal for all international law persons that states and international organizations seek to reach by many different means like entering international human rights convention and applying them over their policies. However, the situation with international organizations is slightly different with international organizations that are specialized with limited issues that might be far away from human rights while its charter limits their power to make conventions that are not related to their purpose. The point start for this paper will be, human rights are connected and mixed to the limit of being no person of international law could be far from it while international organizations have a privacy as an independent body that does not obey anything unless they clearly consent to commit itself with accordance to its charter. This paper focuses on the possibility to mandate the international organizations by international human rights in two ways, firstly, the direct way that discuss human rights as a *Jus Congns and* must be obeyed by all international persons, secondly, the indirect way that mandates the international organizations though its members.

Key words

International Organizations; human rights; Jus Cogens; international law.

I- Introduction

As a result of rapid and successive development of public international law and bifurcation of its persons and the appearance of international organizations, so breaching human rights has not only been committed by states, but also by IOs as well, the subject of mandating the IOs to international human rights has a crucial debate.

Standing with, international organizations should be legally obligated by international rules in the same way that states should be as they are both subjects of international law is not as easy as it appears. So, more precisely the IOs are obligated by what they agree to obligate itself and cannot be forced to obligate without the organizations approval because they are considered as legal independent persons.

Before starting to deeply navigate through this legal issue, we should clarify the relation between international organizations and states in international law. Firstly, both states and IOs are equal bodies under international law that is known as a horizontal relationship which puts both of them in completely independent positions of each other. Secondly, states are the founders of IOs and they can terminate IOs anytime, that is called vertical relationship.

The main goal of this research is to reveal the mandatory range of international law provisions to IOs by considering IOs as one of the public international law persons and the affect range of international organization decisions with rules contained in international treaties. The international organization as considered an independent person of international law is committed with international law as states committed based on the relationship between international organization and states.

In this research I will depend on the analytical and descriptive method to gain research results. This research depends on the hypothesis that says international human rights treaties mandate IOs as they mandate states, even if the organizations do not show their express consent, this statement faces some obstacles. First obstacle, in 1986 Vienna convention of treaties law stays explicitly that treaties are not binding the IOs without their consent.¹ However, this convention still controversial has not been in force after 30 years of being held. Second obstacle in the way of obligating IOs by human rights comes from the International Covenant on Economic, Social and Cultural Rights 1966 which does not recognize specialized agencies of the United Nations as a part of its mandated bodies and does not allow interpretation to force its rules upon UN bodies.² Meanwhile many international jurists insist that IOs should respect human rights, but looking for a way that human rights becomes as a binding law over IOs is what this paper seek.

A- Problem statement:

Many violations of human rights are committed all over the world. For

instance, the global report of International Amnesty 2014 “individuals exposed to torture at least in 81 states around world”.¹ While human rights have achieved respect the past six decades, serious violations of human rights have also cautiously affected the world.

In the beginning of twentieth century, world faced number of massacres like the genocide in Rwanda and massive killing in Democratic republic of Congo, Central African Republic, Libya, Somalia, Egypt, and newly Syria and Iraq, raping children and minors and more. In this situation any person can ask whether or not human rights exist? It will be more accurate to say this question is a necessary and essential questionnaire to know if human rights rules obligate all subjects of international law including the international organizations, and as it's known and actually understood, human rights applying can grant a real perspective.

The partial issues and theoretical interest that research focus on can formed in two questions like:

Are human rights considered as a peremptory norm of public international law then they should be obligating rules over all international law bodies including IOs?

How can membered states in international organizations change international organization policies to fit and respect international law rules of human rights?

C- Hypotheses

There are many arguments raised to justify the obligation of international law of human rights over the IOs. Two paths of arguments appeared, according to the first argument, IOs are one of the international law bodies or specialized agencies inside the UN which finally should obey the international law, especially those adopted by UN charter. However, in this hypothec as I mentioned above it is practically unavailable because of the lack of consent. That raises the alternative way to apply human rights on IOs as *Jus Cogens*. This hypothec ends with the statement which is international law has a direct impact over the IOs and this occupies the first part in this paper.

According to the second argument, the international law does not apply directly over the IOs but it will have indirect effect on the organization through its members, and the members should commit with convention provisions and fulfill their obligations by cooperating with other countries or with IOs, and I will have this in the second part.

D- Research objectives

The main goal of this study is to present analysis for the obligation extent of the international law related with basic human rights over the IOs through testing human rights rules as considered from public international law rules *Jus*

Cogens and then clarify the obligation extent to the international law of human rights through members by carrying out their international obligations of respecting human rights.

II: The direct effect of international law over the international organizations

The IOs as considered one of the public international law bodies exercise their work in accordance with their constitutions. At the time, IOs should not ignore international law rules (such as human rights) in its decision making and works, so the subject of the international law effect over workflow of IOs is the cornerstone, but by which norms are obligated? This part discusses the hypothesis that obligations stipulated in human rights conventions are mandatory provisions in public international law as considered peremptory norm and are mandatory for all, including the IOs. This argument could lead to the conclusion that items relating to human rights should be explained in a way that agrees with the goal of strengthening the rights within international conventions.

A- peremptory norm (Jus Cogens)

The term (***Jus Cogens***) is a Latin word that means peremptory norm which extends to a long period in international law and its literal translation is (***peremptory norm***). There are many definitions by international law jurists¹, the subject of finding a well-defined and specified definition for international peremptory norm raises a controversy in legal circles until writing the Vienna convention of treaties in 1969 which shows the term peremptory norm (***Jus Cogens***) in article (53) which stipulated any treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of public international law. Also Art. 53 explains the meaning of term (peremptory norm) in public international law as "norms accepted and recognized by the international community of states norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character."²

The definition of Vienna convention for treaties focuses in the first part on the result of the treaty which violates a rule of public international law rules. The treaty is born void when it conflicts with a rule that is considered as a (***Jus Cogens***). The second part of the article highlights the rule requirement to be an obligated peremptory norm in which international community recognition and acceptance to be considered as rule cannot be surpassed unless issuing another rule has the same description. Even though Vienna convention of treaties (1969) obligates states that ratified on 3, the text of article (53) goes far beyond the convention parties, where the peremptory norm is for the whole international community even if they are not part of the convention. For this study, I'll discuss the applicability of international law rules to human rights as part of the

peremptory norm from rules of international law.

In present time, humanity suffers roughly from serious violations of human rights including the norms of public international law, this situation pushes the writer to ponder in the efficiency of applying the concept of peremptory norm on all international law bodies to strengthen human rights as *Jus Cogens*. Doubtlessly, there are a lot of common factors between human rights and peremptory norms, but it's clear that peremptory norms do not contain all human rights rules.

Finally, it turns out that peremptory norms are basic and binding rules that no body of international law (states or IOs) is allowed to deviate from them or enter international conventions that are contrary to peremptory norms.

It is clear that peremptory norms are procedural frameworks which impose a binding power into some rules. From this point, the main hypothesis of this study will launch: where I see that human rights are a material needs a procedural form of international law mechanisms based on state consensus to overcome the legal obstacles to its enforcement in cases which IOs might protest to non-enforcement of human rights rules because they are not part of international instrument from one hand, or the convention subject is out of organization's purposes or specialization from another hand.

1- Human rights as Jus Cogens

The subject of finding a standard or legal condition capable of knowing which rule is considered a peremptory norm is an important subject for this discussion. In this part I'll highlight the necessary conditions to consider some rule a peremptory norm to gain the binding effect of peremptory norm.

Undoubtedly, IOs as one of the international law bodies exercise their work in accordance to international conventions which they are part of and their charter or constitution. As an obvious result, the IOs are not obligated by what they don't agree to bind themselves with, but some human rights have a mandatory power as a peremptory norm of international law to be obligated to international law subjects even if they are not part of conventions.

By reference to the article (53) of Vienna convention for treaties law 1969 which considers any agreement conflict with *Jus Cogens* is void. This article pursued clearing peremptory norms conditions in text that peremptory norms mean to be part of public law rules and accepted and recognized by the whole international community on the other hand.

Since the reference to peremptory norms in Vienna convention, but more likely because of this reference, the term "peremptory norm" is used more by international law and international courts. I'll try to highlight what may be considered from the "peremptory norm" of human rights which should be applied by all persons of international law even without prior approval.

Proving a rule as a peremptory norm should be through Article 53 of Vienna convention which condition the rule to be accepted and recognized by the

whole international community at the first step. Moving forward to proving international community acceptance to some rule is an ambiguous task because the different ways in showing a state consent that could take many forms depending on work types which might be by a diplomatic correspondence or ratifying an international treaty or a judgment where it is difficult getting the acceptance or agreement of all international bodies to apply some rule. It becomes necessary to refer to the treaties as a more efficient way and clear to identify the acceptance and recognition of states with a rule of public international law to be a peremptory norm obligated to all. In this regard I'll get some human rights rules that are acceptable and the nearest to get peremptory norm status contained in more than international covenant and have a large number of approvals:

The right to life: it is a crucial right that the world cannot ensure any other human rights without. It is mentioned in almost all the human rights documents. For instance, Universal Declaration of Human Rights, Art. 3 "Everyone has the right to life,"; the International Covenant on Civil & Political Rights (ICCPR), Art. 6(1) "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life." Additionally, "[T]he right to life... is one of the rights universally recognized as forming part of *jus cogens* ...toward the international community as a whole." [1] these examples from the most accepted conventions in the Human Rights environment. The number of ratified states on these conventions reflects how important human rights are to the international community as a whole and the international acceptance of these certain rules to be more than just rules on a paper, but they should be more effective on the international communities. The right to life has been mentioned in most international human rights instruments as a right that is the basis for all other rights. As a result of this acceptance, this right is accepted and recognized internationally which makes it as a *Jus Cogens*

The right to education: this right comes as an inevitable result of recognizing human rights in the international arena. It gained international recognition as a right in many international conventions as follows: Universal Declaration on Human Rights Art. 13; International Covenant on Economic, Social and Cultural Rights Art. 18; International Covenant on Civil and Political Rights Art. 28; and European Convention on Human Rights art.2. These acceptance and recognition meet the requirements of Art. 53 of Vienna Convention for a rule to be *Jus Cogens*. Referring to this article shows this right is a part of *Jus Cogens*. In sum up, the right of education shouldn't be ignored by anybody of international law even if this body was not a part of any international convention related to this right. For instance, the international agencies in the international arena do not have a relationship with the right of education because of the nature of their financial work. In spite of that, these agencies should not make their policy in a way that could violate this right since it is *Jus Cogens*.

The Right to Humane Treatment: this right has been a part in many

international conventions such as ICCPR, Art.7; European Convention for the Protection of Human Rights and Fundamental Freedoms, Art.3, American Convention on Human Rights, art. 5. Art. 5 of the Universal Declaration of Human Rights (The United Nations Declaration on the Protection of All Persons from Being Subjected to Torture and other Cruel, Inhuman or Degrading Treatment or Punishment provides 1975 in Art. 3. These articles reflect how important this right to the international community is, and show the international desire to make this right beyond international conventions.

Another justification that may be relevant in this regard is the decision of the European Court of human rights in 2001 in case *AL-Adsani v. The United Kingdom*, stated that "The Court's majority unequivocally accept that the rule on the prohibition of torture had achieved at the material time, the status of a peremptory rule of international law (*jus cogens*)."^[2] In addition, some courts have recognized this right as a *Jus Cogens*. For instance, the decision of the Inter-American Court for Human Rights in *Brothers Gómez Paquiyauri v. Peru* in 2004 pointed out unambiguously that the Torture domain [is considered] as international *Jus Cogens*.^[3]

Prohibition of Genocide: Genocide is classified as a crime against humanity as adapted by the General Assembly at its first session 1946.^[4] This crime shakes the international conscience and is forbidden and recognized by civilized nations as binding on States [and other subject for international law], even without an explicit consent [treaty-based] obligation.^[5] International community also adopted a convention about the crime of genocide alone as an effort to lighting the danger of this crime *Convention on the Prevention and Punishment of the Crime of Genocide*, 1948, and also, Rome Statute of the International Criminal Court criminalized Genocide in art.5 &6.

As a result of the international recognition for some human, it clear that some rights such as the right to humane treatment, the right to education, prohibition of genocide and some others are binding to all international subjects including IOs without looking for whether they have ratified in particular human right norm or not because they are considered as part of the *Jus cogens* which obligates all international law subjects.

III: The indirect impact of international law over the international organization

The current era is characterized by international organization, IOs play an important and major role in regulating the interests of states to achieving human interests such as economy and security. This newborn body of international law as an independent institution which has a group of establishers [sovereign states], faces different definitions. * However, I could collect the common points from different definitions to be able to clarify the relationship between States and IOs. As a result, IOs in short is a group of states which gather to establish an institution under authority of public international law to achieve some purpose

and have rights and obligations according to its mission created for, and above all, they should have an independent personality and make freely their policy¹. In spite of the independence, IOs need their members to make policy and decisions, so undoubtedly decisions of IOs is an expression of their members' will which firstly came into membership as a result of its will. The effect directly of international law of human rights on the IOs could face legal difficulties especially when there is an indicate clearly to nonexistence of obligating the international organization to provisions of some covenant², on the other hand it's appear that member states in organization are committed with the covenant provisions from human rights covenants and implementing the provisions in the covenant through their foreign policy by their relations to other states or international organizations which they are membered in, in this context membered states responsibility transport through establishing or joining the organization and what can defined as indirect commitment or indirect influence. To fill in the blanks, the following question is the starting point of this topic: When and why are rules of international human rights law established by states binding on international organizations? To answer this question there should describe the relation between states and international organizations in international law which is sometimes described as a horizontal relationship and other times as a vertical relationship. The horizontal relationship is when IOs looked as an international independent body has what states have; in the vertical relationship, IOs are established, ran and even terminated by states and the states are the players and the true engine of the organization.

For example, the economic, social and cultural council of United Nations admitted the international covenant influence over financial institutions through the member states in the covenant where decisions and opinions of any state in the international organization should agree with its international obligations like rights in the international covenant, that's what council reported in its private report to assess Italy report presented to the council where the Italy government committee encouraged (as a member international organizations, especially IMF and world bank) to do everything ensure consistency policies and decisions of that organizations with states obligations that membered the covenant, especially the obligations in the article (24)¹ related to international aids and cooperation². Where the council cleared that international covenant or international law rules even if the international organization did not commit directly through signing the covenant or ratifying it, that doesn't eliminate the organization commitment to the international law rules of human rights by states commitment or by ensuring the commitment of states policies through international cooperation. The council recommendations about committing with international law and rights in the international covenant have not been limited to ensure international organizations will commit to achieve member states obligations but the council

states a comment about on the report presented by the kingdom of Morocco by recommending Moroccan government strongly to consider Morocco

commitments of the covenant with its negotiation with international financial institutions, like IMF and world bank and WTO, to ensure the economic, social and cultural are not undermined, especially the rights of weakest community groups.1 of course, that the commitment of any state with a certain covenant of human rights makes it imperative to this state taking the necessary measures to fulfill this obligation and assure the commitment extent and take the procedures that fit its international commitments as a member in the IOs. In this regard, the states are obligated to fulfill their bilateral obligations with the state's parties in the covenant and its obligation being through IOs which is the most significant international behavior that states show their commitment to human rights. The IOs are financially and administratively independent and have its own constitution to commit with and work within the specific frameworks of convenience but the organization are part of the international community interacting with it and affected by it, and the member states are considered the engine of it. Since the states obligated with international covenants and have commitments according to covenants, they part of and they a member in international organization at same time which put the member states under obligation to commit the human rights through doing their job in the organization, so the organization will commit the international law of human rights through member states.

IV: Conclusion

The importance of international organizations and its role in preserving and developing human rights is not less important than the states' role in the international community. It is clear to ensure IOs operate rightly

For this importance, this study has the obligation of public international law to IOs as considered one of the international law persons, and to grasp the topic about the possibility to obligate such IOs with human rights in its work and to answer the study question, this study made two hypotheses to obligate the international organization with law where the first hypothesis take the existence of legal rules above the other rules and being mandatory to international law persons even if this commitment didn't related to previous clear approval and here the direct effect of international law on the international organizations work, also the second hypothesis sees the international organization as a person of public international law persons which flow and grow with all parts will who made it and it's usually severing and has international obligations should apply in all its behaves like practicing its work as a member in that organization and this what I called the indirect effect of international law of human rights.

At the first part of the study, I have how the international law of human rights has sometimes a mandatory status enabling it to pose its provisions even over international law persons without looking for their previous approval. The world work hard through long decades for codification of international law rules of human rights and transcribed with international conventions and make them mandatory but the development of international law and international view and

raising new persons for international law where some of the international organizations are at the time of its establishing according to the establishing agreement will be specialize with a specific field and cannot enter another obligations related to a different field that created for, and international rules appeared have mandatory power over all international law persons after been admitted and accepted by international community to be peremptory norm and be obligated according what mentioned in article (53) of Vienna convention of treaties law 1969.

The second part is clear that international organization will be affected and committed to apply the rules of international law of human rights as contained from states having international commitments poses the international cooperation to support and respect human rights in all its practices like practicing its work in the organization. So, we can conclude that the international organization is apparently not committed to apply and respect human rights because it's not part of any human rights conventions but the commitment is actually existing by its members.

The IOs even if it did not commit the international rules of human rights but from a practical reality it will be obligated to take in consideration at any action if it's applies with international law rules of human rights because it's illogical for the IMF a genocides or war criminals done by a specific state and arguing that IMF has nothing forbid it from supporting the genocides as being an economical special organization and didn't join any of conventions which forbidden the genocide