Human Rights Norms: A Special Set of Rules

معايير حقوق الانسان : قواعد ذات طبيعة خاصة

[1]Djagham Mohamed
[1] Maitre de conference A, University of Biskra (algeria)
mohamed.djagham@hotmail.com
[2]Sofia Cherad
[2] Maitre de conference A, University of Biskra (algeria)
soufiacherrad1976@gmail.com

Received	Accepted	Published
(15/01/2020)	(25/01/2020)	(31/01/2020)

Abstract:

Human rights provisions differ from the internal rules on the one hand and the other branches of international law on the other hand. Among its most important characteristics is that it is objective in nature and not subject to the rule of reciprocity, which made it live up to the norms of customary and peremptory norms - or at least some of them - which made them obligations in the face of all. All of these characteristics have proven that the norms of international human rights law are intrinsically universal, as they deviate from the network of treaty obligations to attain the status of normative rules imposed on the entire international community.

key words: Human rights -rules-erga omne

الملخص:

[1]-*Corresponding author: Djagham Mohamed, e-mail: mohamed.djagham@hotmail.com*

أحكام حقوق الإنسان تختلف عن القواعد الداخلية من جهة وعن باقي فروع القانون الدولي من جهة أخرى ومن أهم خصائصها أنها موضوعية الطابع لا تخضع لقاعدة المعاملة بالمثل، وهو ما جعلها ترتقي لمصاف القواعد العرفية والقواعد الآمرة – أو على الأقل بعضها – مما جعلها التزامات في مواجهة الكافة. كل تلك الخصائص أثبتت أن قواعد القانون الدولي لحقوق الإنسان عالمية في الصميم، كونها تخرج عن شبكة الالتزامات التعاهدية لتنال مرتبة القواعد الشارعة المفروض على المجتمع الدولي كله احترامه.

الكلمات المفتاحية: حق ; حقوق الإنسان – التزامات – قواعد

introduction:

introduction:

Human rights appear as the outcome of a difficult historical and theoretical process through which the concept has emerged as a result of philosophical accumulations, which led to the formulation of human rights in a legislative form following a maturity processes that resulted in what is known as the international human rights law, which has a specificity that distinguishes it from international public law On the one hand and national law on the other hand, whether on the normative or on the institutional level which contributes at establishing its universal dimensions.

The international consecration of human rights was not a coincidence, given that the philosophical and historical march of human rights is rooted in the depth of history. The concept of human rights appears as an outcome of anthropological practices known to the to all the cultures, as there is hardly any civilization, religion or culture devoid of referring to the "rights" that a person acquires simply because he is a "human", regardless of the name or framework in which those practices existed .

On this basis, the universality of human rights is logical, because it is based on a postulate that the person takes precedence over all other considerations. Human rights are a theoretical approach based on a specific concept of the human being. It is also a project at

the same time based on the premise that international efforts are essential to establish them. The universality is "an intellect" before it becomes "a reality," but moving from the idea of universality to ways of applying it raises many problems.

Human rights norms are the texts and principles contained in international human rights conventions and other sources of international law related to human rights that aim to enshrine, promote, protect, or determine international responsibility in the case of their violation. The norms of international human rights law are distinguished from other branches of public international law by different provisions governing human rights, and this legal specificity has contributed to strengthening the universal nature of human rights as it establishes an objective system that gives rise to obligations of a special nature compared to classic international law.

This study aims at exploring the specificity of human rights norms as a special set of rules compared to the other branches of international law by answering the question: **What is the specificity of the rules of international human rights law?**

To answer this question this study will be divided into two parts, the first one will discuss the objectivity of the international human right norms that create a special kind of obligations between states that does not apply to the reciprocity principle enshrined in the classical international law, the objectivity results also from the customary nature of human rights norms. In the second part we will discuss the relation between human rights and erga omnes and jus cogens.

1/ the Objectivity of international human rights norms

Human rights are mainly directed at a person or a specific group of people. These rights are guaranteed simply because the addressee is a man or a woman, whether in the context of a group, a minority, or a specific group. Human rights are acquired by a person for his humanity, regardless of the international instruments that are

considered to reveal human rights not to establish them, especially when it comes to rights related to the basic pillars of human dignity.[1]

This objective characteristic results in the absence of reciprocity in the treatment applicable to the other branches of international law, in addition to the affiliation of human rights to the customary character that does not recognize the territorial borders of states.

1/1/ the absence of reciprocity

Reciprocity is one of the oldest principles that contributed to the stability of international relations based on the principle of sovereign equality between states, where obligations between states are subject to the principle of "contracting" that creates mutual obligations, which allows the state to reciprocate if the other country violates its obligations.[2]

The principle of reciprocity is considered a customary rule, whereby the state has the right according to this principle to treat other countries as it treated them. Modern jurisprudence tended to abolish the principle of reciprocity, as it is a remnant of the traditional custom, which was overtaken by events, and inconsistent with the purposes of the United Nations.[3]

The principle of reciprocity cannot be activated in the matter of protecting human rights, such as if a state invokes that a second country violates human rights and in turn violates the rights of its citizens, as if Egypt violates the rights of Egyptians on the pretext that Russia violates the rights of the Russians.[4]

[1]- Naima Amimer, **Al-Wafi in Human Rights**, First Edition, Dar Al-Kitab Al-Hadith, Cairo, 2009, p. 70.

[2] - Salem Muhammad Suleiman al-Awajli, P**rovisions of Criminal Responsibility for International Crime in National Legislations**, 1st edition, The Libyan Publishing and Distribution House, Libya, 2000, pp. 136-137

3 -laalali saadek, **International Cultural Relations, a Legal and Political Study**, 1st Edition, University Press Office, Algeria, 2006,p254.

[4] - Mohamed Saadi, **Public International Law, A Foundation Study on the Concept of Public International Law**, New University House, 1st Floor, Alexandria, 2016, p. 117

Although international human rights treaties are fully ratified by the states will, it is not permissible for the states parties to the treaty to suspend their implementation, application or respect of the provisions of the agreement to the extent that the rest of the states are respecting, implementing or applying them, since the letter is directed to each country On its own, there is no room to suspend the implementation of treaty obligations based on reciprocity.[1]

The reason for excluding human rights agreements from this principle is to consider them as one of the legislative treaties , which do not establish a network of mutual obligations between the states parties, but rather try to establish standards that the suspension or neglect may lead to a penalty on individuals or contracting states that have essentially violated its provisions, and therefore, The exercise and enjoyment of human rights stipulated in the treaties is not subject to the principle of reciprocity in contractual obligations between states.[2]

Because the purpose of protecting human rights is to ensure their respect as a national and international "public order", and not only to protect them as individual rights, and accordingly the principle of reciprocity does not apply, and from there if a country violates the rights of its citizen, the other state may not violate the rights of the citizen of the first state on Its territory, this is stipulated in Article 60/5 of the Vienna Convention on the Law of Treaties 1969, considering that the violation of the rights of persons is not permissible in the context of reciprocity in treatment, as it is not permissible for other parties to the treaty to terminate it or stop its application.[3]

---

[1] - Khairy Ahmed El-Kabbash, **Criminal Protection of Human Rights "A Comparative Study",** 1st Floor, Dar Al-Jamiyyin, Alexandria, 2002, p. 138.

[2] - Muhammad Yusef Alwan and Muhammad Khalil al-Musa, **International Human Rights Law: "Protected Rights"**, part 02, 1st floor, Dar al-Thaqafa for Publishing and Distribution, Amman, 2011, p. 37.

[3] - Ahmad Abu Al-Wafa, **International Protection of Human Rights in the Framework of the United Nations and Specialized International Agencies**, 3rd Edition, Dar Al-Nahda Al-Arabia, Cairo, 2008, pp. 125-126.

The emergence of a global legal network whose goal is to protect and promote human rights has contributed to the consecration and establishment of the principle of lack of reciprocity, as the individual has become the first beneficiary of the obligations in this field, as the interests of humanity transcend the narrow views of "mutual interest" between states, given that states have an absolute duty by respecting the rights of the individual "nationals and foreigners", other countries can demand the violating state of human rights to desist from human rights abuses[1]

the case of reservations to the 1951 "Prevention of Genocide" agreement, was the first case that dealt with the absence of the principle of reciprocity in treatment where the International Court of Justice in its advisory opinion focused on the "special nature" of the agreement: "In such an agreement it was not the contracting countries that have any interest of their own, because everyone has a common interest in achieving the higher purposes of the agreement, which was the reason for the existence of the agreement, and therefore in agreements of this type the state may not talk about individual advantages and disadvantages or maintaining the contractual balance.[2]

The principle was again enshrined in the European Commission of Human Rights resolution on January 11, 1961 regarding Austria's complaint against Italy, where the committee affirmed that: "The states parties did not seek to conclude the agreement, to grant each other mutual rights and obligations in order to achieve their own national interests. Rather, they were targeting protecting the fundamental rights of individuals from attacks by contracting states. "[3]

---

[1] - Antonio Cassese, **Human rights in a changing world**, 1st edition, polity press, UK, 1990, P 161.

[2] - Mathew Graven, "**legal differentiation and the concept of Human rights in international law"**, European journal of international law, university of Oxford, vol 11, N° 03,UK, 2000, P 505.

[3] - Muhammad Yusef Alwan, "**Items of Decomposition from International Human Rights Agreements**", First Section, al hokok Journal**,** College of Law, Kuwait University, 1985, p. 132

The European Court of Human Rights affirmed the same principle in its decision issued on March 23, 1995 in the loizidou case, describing the obligations of the parties as objective aimed at preserving the "European public order" in isolation from the Turkish reservation calling for excluding the territory of the Turkish Republic in Northern Cyprus from the spatial application of the agreement.[1]

In the same context, the advisory opinion of the American Court of Human Rights in the case of "the effects of reservations" where the court made clear that the objectives of the American Convention on Human Rights and its purpose are not to exchange rights between a number of countries, but rather to protect the human rights of all human beings, within the American continent regardless of their nationality.[2]

Most jurists consider that the principle of reciprocity is likely to disappear within the framework of the global system based on mutual cooperation and peaceful coexistence, as international relations have emerged from the logic of mutual obligations that permit the idea of revenge, under the name of reciprocal treatment, but there are those who reject this idea on its basis, especially with regard to the international human rights law, as it establishes an objective system based on the universal identity of "human beings" in a way that serves the "public interest" and "public order" of the international community, especially after the explicit link between human rights and international peace and security.[3]

---

1 - Pierre Marie Dupuy, **International Public Law**, translated by Muhammad Arab Saasila and Salim Haddad Majd, 1st edition, University Foundation for Studies and Distribution, Beirut, 2008, p. 234

2 - Yahya Yassin Saud, **Human Rights between State Sovereignty and International Protection**, First Edition, National Center for Legal Issues, Cairo, 2016, p. 211.

3 - Mark Osiel, **The end of reciprocity, terror, torture and the law of war**,1st edition.,UK, 2009, PP 112 to 148.also: Eric A Posner , "**Human rights, the laws of war and reciprocity"**, in John M. Olin Program in Law and Economics Working Paper, university of Chicago law school, N° 537 ,2010, PP 02 to 27.

1/2/The emergence of the international custom of human rights

The international custom related to human rights differs from the traditional custom in that it aims to make individuals alongside states a person of general international law, and because there are many countries that offend their citizens, the rules of international custom of human rights do not find a reflection of regular global behavior, and therefore the concept of international custom related to Human rights are more ambiguous and controversial than the traditional concept based on the union of material and moral elements.[1] Among the problems raised by the international custom of human rights are the uniqueness of its elements and its dialectical relationship to international agreements and the nature of the obligation arising from it, which will be examined in the following:

Without entering into the jurisprudence differences on the components of custom, the international human rights custom emerges as a union of two elements, the first material and the second moral, but they have a specificity that differs from the classical international custom. The material element of custom related to human rights consists of a set of increasingly repeated international antecedents, and they can be positive or negative behaviors, meaning all the actions and omissions issued by persons of public international law states and organizations (governmental and non-governmental) and even individuals as one of the persons of international law.

International practice has demonstrated the abundance of international human rights behaviors represented in internationally accepted treaties, ratifications, international conferences, human rights declarations, task forces, investigation groups, humanitarian intervention, sanctions for human rights violations, incorporation of human rights into national constitutions, Legislative and executive

[1] - Belmahdi Samiha, **Application of the International Custom on Human Rights in the Anglo-Saxon System**, Master's dissertation, Specialization in International Human Rights Law, University of Setif, 2013, p. 26.

matters reforms related to human rights, the activity of the international judicial and quasi-judicial bodies, etc. This frequency, progression, and repetition have laid the material pillar of the international custom of human rights.[1] As for the moral pillar, it means the psychological side, *opinio juris*, as it is necessary to feel the obligatory of these repeated behaviors, otherwise they become merely rules of courtesy.

The peculiarity of the moral pillar of the international custom of human rights highlights that the sense of its obligation is not the subject of consensus. There are those who deny the existence of an international custom of human rights, given that human rights practices differ from one country to another, and others affirm that human rights are limited to the consensual nature in which the explicit will of the state appears.

However, recent doctrinal tendencies see that sustained international behavior "is not caused by a sense of compulsion but rather arises from the four theoretical paradigms of; interests, cooperation, coordination and coercion. This theory, especially in the field of human rights, allows highlighting the role of the international community in imposing customary rules even in The dealings of countries with its citizens remained different, considering that the practice of the state is given limited importance, especially if it conflicts with human rights, and the focus is on the activity of the United Nations organization and its specialized agencies as factories to international customary standards. [2]

It is noticeable that the last three decades witnessed a rapid way to form the international custom of human rights, which is considered a “coutume sauvage” of a rapidly forming nature, as immediate custom has become a necessity for political, legal and social reasons

[1] - Abdel-Rasoul Karim Abu Saiba, **“The Materiality of International Customary: An Analytical Study,”** Al-Kufa Journal for Legal and Political Sciences, University of Kufa, Volume 1, Issue 25, 2015, pp. 81-126.

[2] - Mark Gambaraza, **Le statut juridique de la déclaration universelle des droits de l’ homme**, thèse doctorat en droit, Université Panthéon Assas, Paris, 2013, P 355

related to the accelerating development that the international community has known and for technical reasons due to the contribution of international and regional international organizations, especially after Internationalization of human rights issues.[1]

The rise of international human rights norms to the level of customary rules has contributed to the dedication of its global dimension, on the one hand, it widens the circle of commitment to include countries that have not participated in drafting international agreements or refused to join the process, and on the other hand makes the possibility of dissolving international human rights obligations more difficult.

Farhat Hernashi says in this regard: "Although the two sources (custom and conventions) have the same power and can cancel each other, the custom is a " distinct "obligation rooted in the" consciousness" of the international community, it is difficult to abolish a global norm that does not revolt doubts about its mandatory nature.[2]

The customary rule of human rights contributes to the expansion of the geographical area of human rights obligations, given that their effects apply to all states, whether or not they are parties to the treaties that include rights, as well as the countries that did not participate in drafting them. The Universal Declaration of Human Rights was adopted by 48 countries and 8 countries abstained from voting on it. In the year 1948, but it is now binding on 145 members of the United Nations, including the eight abstaining countries, its rules upgrade to the equivalent of customary rules.[3]

In addition, the transition of human rights from the treaty framework to the customary framework makes the countries that are not parties to the agreement and the countries that have reservations

[1] - Renee Jean Dupuy, **Coutume sage et coutume sauvage**, la communauté internationale, Mélange offerts à Charles Rousseau, editions A Pédone, Paris, 1974, P 85.

[2] - Farhat Hornachi, **Les sources du droit internationale public**, 2éme édition, CPU, Tunis , 2008, P 312.

[3] - Mark Gambaraza, Op cit, P 379

about some texts remain bound by the texts that turned into customary rules, and this was confirmed by the International Court of Justice in the case of military and paramilitary activities in Nicaragua when it stipulated: "The rules of customary international law retain their existence and their applicability to independent application next to the norms of conventional international law, even when these two sets of rules have one identical content".[1]

2/ the imperative rules of international human rights law

Talking about the mandatory rules of international law is not an easy matter, as it is one of the old and renewed topics, but the emergence of human rights as a legal value to be reckoned on the international scene made doubting it's imperative character more difficult because of its association with the ideas of jus cogens and erga omnes, which are linked to many theoretical and legal problems internationally, it will be studied in the following**:**

2/1/ Human rights are peremptory norms:

International law is an evolving system, the judiciary and international practices contributed to establishing its principles and developing its rules, and one of the issues that has caused many disputes is the idea of jus cogens as opinions diverged regarding the existence of an international system with rules that states and organizations cannot agree to violate.[2]

The debate becomes more intense when linking jus cogens with human rights and the extent of their binding nature, as it lies at the forefront of the problems faced by human rights activists, and researchers in the field, especially with regard to the enforcement of these laws within the state by the authorities, where these laws aim to protect the individual against the authorities of the states.[3]

1 - Belhadi Samiha, opcit, p. 41

2 - Haider Adham Al-Ta'i, "**The Evolution of Imperative Rule in International Law**," Journal of the College of Law, Al-Nahrain University, Volume 15, No. 9, 2006, p. 189.

3 - Mohamed Bou Sultan, **Principles of International Public Law**, Part 02, Dar El Gharb for Publishing and Distribution, Algeria, 2002, p. 278.

The term "jus cogens" literally means "binding law". In opposite to the term "jus disposivitum", this is the complementary law. The peremptory rule is not permissible for anyone to violate it is the required higher standards even if it contradicts the will of the states. The terminology referring to the concept of jus cogens has multiplied due to the difficulty of surrounding the widening aspects of the idea in international law, which differs in its terms from the internal law that the idea first appeared in its context.[1]

Although there are indications of the idea of jus cogens in jurisprudence and in international practice, the 1969 Vienna Convention on the Law of Treaties had great credit for incorporating the idea of jus cogens into positive law in the texts of articles 53, 64 and 71, but many criticized the Vienna Convention for not specifying the content and features of jus cogens.

George Abi Saab has compared the opacity of Article 53 to the "empty box", But he sees the category of jus cogens even if it is an empty box it is still useful, and the metaphor of the empty box is interesting because it contains differences regarding the content of jus cogens, even if it is difficult to define a comprehensive list of rules that are considered jus cogens.[2]

between the necessity to distinguish jus cogens from other rules and the difficulty in doing so, the International Law Commission preferred to conjure up the problem without solving it, as it provided some examples of agreements considered contrary to the jus cogens: "the treaty that provides for the use of force, the treaty inconsistent with the principles of the United Nations Charter, the organized agreement For slavery and servitude, the conventions affecting the rules that protect individuals ... "It becomes evident that this list is not exhaustive, as the committee has only mentioned some examples of

[1] - Ferhat Hornachi ,Op cit , PP 211-212.

[2] - Andrea Bianchi, "**Human rights and the magic of jus cogens"**, European journal of international law, university of Oxford, volume 19,n 03,UK, 2008, P 491.

jus cogens, leaving the task of defining them to international courts and states.[1]

the text of Article 53 and Article 64 of the 1969 Vienna Convention on the Law of treaties are establishing a hierarchy in international rules in which the jus cogens appear at the top of the hierarchy, without prejudice to the principle of the non-hierarchy of the sources enshrined in Article 38 of the Statute of the International Court of Justice, the idea of jus cogens is an "adjective" It is not a "source" of the rules, but the most important question is: What is the relationship of jus cogens with human rights? Do all human rights rise to the level of jus cogens?

It is important to emphasize human rights and peremptory norms share the same the source which is natural law, just as peremptory norms are the legal means to confront the sovereignty of states when they violate these rights, as well the link between human rights and peremptory norms makes them sit at the top of the hierarchy of international legal norms.[2]

In addition, peremptory norms relating to human rights are based on the existence of provisions of a customary origin that cannot be ignored. In other words, peremptory norms relating to human rights are a special category of customary rules that differ from other rules because they relate to the following characteristics:

A- Everyone is legally bound by international law "countries and organizations" without exception.

B- Its binding nature is independent from the acceptance of the state, its silence or its refusal, so that the rule of the "continuous protester" in force with international custom is not considered to discourage compliance with the imperative rules.

[1] - Patrick Daillier et autres, **Droit international public**, 8eme édition, Lextenson éditions, Paris, 2009, P 226

[2] - Predrag Zenovic **, "Human rights enforcement via peremptory norms a challenge to state sovereignty"** , RGSL research papers, Riga school of law , N° 06, Latvia, 2012, P 24

C- Failure to comply with the peremptory norm can not be justified legally unless there is another peremptory rule revoking or amending it.

D - Any legal treaty or behavior inconsistent with a peremptory norm is considered null and void, just as peremptory norms may not be restricted under any circumstance.[1]

Those who reflect on the aforementioned traits find it applied to the so-called basic human rights, which are the repeated rights in widely ratified international instruments that international judicial and quasi-judicial precedents have contributed to emphasizing their close link to human dignity, which makes every violation of them implies international responsibility.[2]

However, restricting the jus cogens nature to fundamental rights raises the reservation of many jurists, as it opens the way for violating "non-fundamental" rights, this division is inconsistent with the idea of interdependence among all groups of human rights, there is no room to differentiate between what is essential and what is not, and this What was enshrined in paragraph 5 of the Declaration that resulted from the 1993 Universal Declaration of Human Rights, which emphasized the interdependence and indivisibility of human rights.[3]

It should be noted that the International Court of Justice recognized the association of this type of rule with human rights in many advisory opinions and judgments, perhaps the most prominent of which was mentioned in the Barcelona traction case on 5 February 1970: "These rules derive not only from contemporary international rules prohibiting acts of aggression and genocide, it is also one of the principles and rules relating to fundamental human rights, including

[1] - John Tasioulas, "**Custom jus cogens and human rights"**, in **customs future international law in a changing world**, Cambridge university press, UK, 2016, P 106.

[2] - Theo Van Boven, "**Categories of human rights"**, in **international human rights law** ,2ed editions, Oxford university press, UK, 2010, P 150.

[3] - Muhammad Yusef Alwan and Muhammad Khalil al-Musa, opcit, p. 26.

protecting it from slavery and racial discrimination that have been recognized by international documents.[1]

Finally, it becomes clear that the 1969 Vienna Convention on the Law of Treaties placed the concept of peremptory norms in a global context that reflects shared universal values for the entire international community, and that the linking of human rights, or at least the "basic ones" to peremptory norms, gave them a high position in the legal hierarchy that contributed to establishing their universality excluding human rights from the principle of the relativity of the effects of the treaty enshrined in traditional international law.

2/2/ Human rights are binding on all:

In recent years, there has been a growing realization that the development of human rights standards and the processes associated with them must necessarily reflect the forms and structures of public international law. The concept of obligations Erga omres is a prime example of developments in the structure of international law whose concern has been the preservation of human dignity.[2] The concept was developed in the context of concern for human rights. The term was first mentioned in 1956 by the former President of the European Court of Human Rights, Henri Roland in his comment on the effects of the European Convention on Human Rights, describing them as obligations in the face of all.[3]

The term Ergaomnes means "Flowing to all." This concept was issued in the Barcelona Traction case, where the International Court of Justice affirmed that the first criterion for defining obligations flowing to all is that the latter interest "the international community as a

[1] - Ahmad Ghaleb Mohi and Zaid Adnan Al-Okaili, "**Human Rights and International Human Rights Law Judgments and opinions of the International Court of Justice**", Journal al oustadh al bahith, Al-Nahrain University, Volume 01, No. 209, p. 214, p. 793

[2] - Mathew Graven, Op cit, P 490.

[3] - Veoffray Francois , **L'action popularis ou la défense de l'intérêt collectif devant les juridictions internationales** , Graduat Institute publications, Genève, 2004, P 203.

whole". In the case, the International Court of Justice gave an example of obligations to all without giving a definition. [1]

Often, the concept of jus cogens and erga omnes are linked in spite of the existence of juristic trends that emphasize that the two concepts differ from each other despite their interdependence, it is logical that all the rules are peremptory, can be valid in front of everyone and the opposite is not correct. And that the formulation of a definition of jus cogens is easier than defining erga omnes.[2]

While the two concepts are complementary, they are distinct and considering them as synonymous leads to undermining the legal distinction of each category .the contradictory results that have been reached in the advisory opinion on the Israeli wall, when the International Court of Justice confirmed the approach of the International Law Commission on the penalty resulting from the serious violation of jus cogens, considering Israeli activity violates obligations erga omnes , not jus cogens, has created confusion among international law circles .[3]

If only basic human rights are jus cogens, then all human rights are erga omnes, then the obligations arising from the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights can constitute obligations flowing to all because they belong to the rules of customary law and are in the interest of the international community As a whole, it is respected because it deviated from the "packages of mutual obligations", at the same time, not all erga omnes are considered peremptory rules, as the right to life and the right to form associations cannot be equated, for example.[4]

[1] - Cherif Bassiouni, "**International crimes: jus cogens and obligations ergaomnes"**, law and contemporary problems , Duke university ,Vol 59 , N° 04, , North Carolina, P 72.
[2] - Haider Adham al-Tai, opcit, p. 202.
[3] - Andrea Bianch, Op cit, P 502.
[4] - Erik De Wet, **Jus cogens and obligations ergaomnes**, in **The Oxford handbook on human rights**, fortcoming editions, UK, 2013, P 555.

Therefore, it appears that the idea of erga omnes is more comprehensive and broader than the idea of jus cogens when it comes to human rights, just as the idea of erga omnes, like human rights, has a global dimension because both contribute to protecting the "fundamental interests" of the international community, especially after considering human rights violations A threat to international peace and security.

This is what the International Court of Justice put in its advisory opinion issued on the Namibian case regarding the interpretation of Security Council Resolution No. 276 of 1970, where it stated that "As for non-members of the United Nations that are not subject to the provisions of Articles 24 and 25 of the Charter, they are called upon to provide assistance, given that the declaration on The illegitimacy of the presence of South Africa in Namibia is binding to all states its effects includes non-members of the organization to act accordingly.[1]

In the same context, the International Court of Justice affirmed the affiliation of human rights to the category of obligations flowing to all in its advisory opinion on the threat or use of nuclear weapons, as it stated: "The rules of international humanitarian law are fundamentally related to human dignity, and they are binding to all states whether they ratified or not the instruments.", for its affiliation with the rules of international custom, which cannot be violated. "[2]

Conclusion:

Between the difficulty of establishing a comprehensive definition of human rights and the need to protect them, international documents opted to establish the list of rights without incurring the trouble of defining them, in order to avoid ideological differences as well as obtaining the largest number of ratifications, which some called "conceptual flexibility" or "constructive ambiguity" that provides an opportunity for states by dropping their own vision on the

[1] - Ahmad Ghaleb Mohi and Zaid Adnan Al-Okaili, opcit, p. 794.
[2] -- Ferhat Hornachi, Op cit, P 225.

right, which serves the idea of protecting the commitment of the treaty, especially since countries have different motives for joining the human right treaties.

Universality is related to human rights through the specificity of the rules governing human rights. Human rights provisions differ from the internal rules on the one hand and the other branches of international law on the other hand. Among its most important characteristics is that it is objective in nature and not subject to the rule of reciprocity, which made it live up to the norms of customary and peremptory norms - or at least some of them - which made them obligations in the face of all. All of these characteristics have proven that the norms of international human rights law are intrinsically universal, as they deviate from the network of treaty obligations to attain the status of normative rules imposed on the entire international community.

Bibliographie:

-Naima Amimer, **Al-Wafi in Human Rights**, First Edition, Dar Al-Kitab Al-Hadith, Cairo, 2009, p. 70.

-Salem Muhammad Suleiman al-Awajli, P**rovisions of Criminal Responsibility for International Crime in National Legislations**, 1st edition, The Libyan Publishing and Distribution House, Libya, 2000, pp. 136-137.

-laalali saadek, **International Cultural Relations, a Legal and Political Study**, 1st Edition, University Press Office, Algeria, 2006,p254.

- Mohamed Saadi, **Public International Law, A Foundation Study on the Concept of Public International Law**, New University House, 1st Floor, Alexandria, 2016, p. 117

- Khairy Ahmed El-Kabbash, **Criminal Protection of Human Rights "A Comparative Study",** 1st Floor, Dar Al-Jamiyyin, Alexandria, 2002, p. 138.

Muhammad Yusef Alwan and Muhammad Khalil al-Musa, **International Human Rights Law: "Protected Rights"**, part 02, 1st floor, Dar al-Thaqafa for Publishing and Distribution, Amman, 2011, p. 37.

[1] - Ahmad Abu Al-Wafa, **International Protection of Human Rights in the Framework of the United Nations and Specialized International Agencies**, 3rd Edition, Dar Al-Nahda Al-Arabia, Cairo, 2008, pp. 125-126.

- Antonio Cassese, **Human rights in a changing world**, 1st edition, polity press, UK, 1990, P 161.

- Mathew Graven, "**legal differentiation and the concept of Human rights in international law"**, European journal of international law, university of Oxford, vol 11, N° 03,UK, 2000, P 505.

- Muhammad Yusef Alwan, "**Items of Decomposition from International Human Rights Agreements**", First Section, al hokok Journal**,** College of Law, Kuwait University, 1985, p. 132

- Pierre Marie Dupuy, **International Public Law**, translated by Muhammad Arab Saasila and Salim Haddad Majd, 1st edition, University Foundation for Studies and Distribution, Beirut, 2008, p. 234

- Yahya Yassin Saud, **Human Rights between State Sovereignty and International Protection**, First Edition, National Center for Legal Issues, Cairo, 2016, p. 211.

- Mark Osiel, **The end of reciprocity, terror, torture and the law of war**,1st edition.,UK, 2009, PP 112 to 148.also: Eric A Posner , "**Human rights, the laws of war and reciprocity"**, in John M. Olin Program in Law and Economics Working Paper, university of Chicago law school, N° 537 ,2010, PP 02 to 27.

- Belmahdi Samiha, **Application of the International Custom on Human Rights in the Anglo-Saxon System**, Master's dissertation, Specialization in International Human Rights Law, University of Setif, 2013, p. 26.

Abdel-Rasoul Karim Abu Saiba, **"The Materiality of International Customary: An Analytical Study,"** Al-Kufa Journal for Legal and Political Sciences, University of Kufa, Volume 1, Issue 25, 2015, pp. 81-126.

Abdel-Rasoul Karim Abu Saiba, **"The Materiality of International Customary: An Analytical Study,"** Al-Kufa Journal for Legal and Political Sciences, University of Kufa, Volume 1, Issue 25, 2015, pp. 81-126.

Mark Gambaraza, **Le statut juridique de la déclaration universelle des droits de l' homme**, thèse doctorat en droit, Université Panthéon Assas, Paris, 2013, P 355

- Renee Jean Dupuy, **Coutume sage et coutume sauvage**, la communauté internationale, Mélange offerts à Charles Rousseau, editions A Pédone, Paris, 1974, P 85.

Farhat Hornachi, **Les sources du droit internationale public**, 2éme édition, CPU, Tunis , 2008, P 312.

Haider Adham Al-Ta'i, "**The Evolution of Imperative Rule in International Law**," Journal of the College of Law, Al-Nahrain University, Volume 15, No. 9, 2006, p. 189.

- Mohamed Bou Sultan, **Principles of International Public Law**, Part 02, Dar El Gharb for Publishing and Distribution, Algeria, 2002, p. 278.

Andrea Bianchi, "**Human rights and the magic of jus cogens"**, European journal of international law, university of Oxford, volume 19,n 03,UK, 2008, P 491.

- Patrick Daillier et autres, **Droit international public**, 8eme édition, Lextenson éditions, Paris, 2009, P 226

- Predrag Zenovic **, "Human rights enforcement via peremptory norms a challenge to state sovereignty"** , RGSL research papers, Riga school of law , N° 06, Latvia, 2012, P 24.

John Tasioulas, "**Custom jus cogens and human rights"**, in **customs future international law in a changing world**, Cambridge university press, UK, 2016, P 106.

- Theo Van Boven, "**Categories of human rights"**, in **international human rights law** ,2ed editions, Oxford university press, UK, 2010, P 150.

Ahmad Ghaleb Mohi and Zaid Adnan Al-Okaili, "**Human Rights and International Human Rights Law Judgments and opinions of the International Court of Justice**", Journal al oustadh al bahith, Al-Nahrain University, Volume 01, No. 209, p. 214, p. 793.

Veoffray Francois , **L'action popularis ou la défense de l'intérêt collectif devant les juridictions internationales** , Graduat Institute publications, Genève, 2004, P 203.

- Cherif Bassiouni, "**International crimes: jus cogens and obligations ergaomnes"**, law and contemporary problems , Duke university ,Vol 59 , N° 04, , North Carolina, P 72.

Erik De Wet, **Jus cogens and obligations ergaomnes**, in **The Oxford handbook on human rights**, fortcoming editions, UK, 2013, P 555.