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-Applicable International Human Rights And Humanitarian Law

Dr. Tahani Yahia Abdalla ElMobasher •

1. Introduction [1]

Definition of human rights by itself is not enough; one need to know, what is the legal force of human rights? Are they enforceable at the state level? and to what extent? If we say human right is a legal claim, does this mean it is part of the law of the country?

The concept of human rights is sometimes mixed with the concept of humanitarian law. So there is a need to know what humanitarian law is? And what are the similarities and differences between them?

It is true that the international law of human rights, which is stated in the International Bill of rights, is the primary source [2], but human rights are also stated in the constitutions and national laws of many states around the world. In addition, the many treaties, or agreements further protect human rights; governments have signed which oblige them to ensure these rights and freedoms.

These issues will be discussed in detail in this chapter.

• Legel Counsel –Ministry of Justice

(1) The Article was part of the PHD thesis of the author, University of Khartoum, Faculty of Law, 1996

(2) The reason why human rights laws are universally recognized to be so important are best stated in the preamble to the Universal Declaration which, " recognizes that the inherent dignity and...equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world and that disregard and contempt for human rights resulted in barbarous acts" The Preamble goes on to give a warning: "...it is essential if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law..."

2. Relevance of International Human Rights Standards to Human Rights Values

(i) Introduction

Human rights are attributed to the human being and cannot be taken away from him. This is an indication that there should be international or internal standards through which an individual or groups can claim their rights. Everyone needs to know and be aware of international human rights standards and the legal obligations they establish, and therefore provide the basis to require respect for human rights from the governments and other actors. So they are the principal normative point of reference.

To know these international human rights standards and the human rights indicated in them we will go through those international human rights standards and pointing out the relevant human rights principles they lay down.

(ii) United Nations Charter

Modern human rights law emerged at the end of the Second World War in response to the atrocities and massive violations of these rights witnessed during the conflict. So the United Nations Charter [3] was signed in San Francisco on 26 June 1945 at the end of the Second World War. The organization was set up to help stabilize international relations and give peace more secure foundation. [4] The Charter of the United Nations is the first international treaty whose aim was expressly based on universal

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(3) " The UN Charter is the document that created the UN. The representatives of 50 states wrote it. The Charter sets out the aims and purposes of the Un, its powers and structures.

(4) Kathryn English, Adam Stapleton, The Human Rights Handbook, A Practical Guide to Monitoring Human Rights, Human Rights Centre, University of Essex, produced by Ennis field PRINT& Design p14 . (1995).

respect for human rights. [5] Article 1 of the Charter establishes respect for human rights as the basis and the primary vehicle for achieving the purposes of the Organization, and articles 55 and 56 pledge the member States and the United Nations organization itself to promote "universal respect for, and observance of, human rights and fundamental freedoms".

The United Nations Charter grants very wide mandates and responsibilities to a large number of bodies created by the Charter itself to observe the realization of human rights at the state level. So all of the principal United Nations organs have been entrusted with direct or indirect role to play in the field of human rights. The roles of these organs will be outlined briefly.

(a) The General Assembly

The General Assembly is made up of representatives of all Member States. [6] Article 13, paragraph 1 (b), of the Charter states that" it can initiate studies and make recommendations for the purpose of assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion. Most of the issues that are

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(5) The idea of international protection for human rights by an international organization originated in philosophical, social and political movements and diverse legal doctrines, bom several centuries ago, in a number of different parts of the world. However, for various reasons, including the conflicting interests of States, it was for many years limited to simple declarations of intent. Among the rare examples in history is the formal prohibition of the slave trade by the Treaty of Vienna (1815) and the General Act of Brussels, as well as the protection of the wounded and the sick in wartime laid down by the first Geneva Conventions in 1864. Respect for these standards was safeguarded by the "concert" of States parties to the treaties, meeting in periodic congresses. After the First World War, in 1919, the Covenant of the League of Nations emphasized the principle of the primacy of human dignity over the interests of States in a number of areas such as the situation of the inhabitants of trust territories and the minority groups. On the other hand the Constitution of the International Labour organization (ILO) also adopted 1919, established as one of its main objectives the promotion of social justice and respect for the dignity of workers.

(6) Art. 9 of the United Nations Charter.

directly containing a human rights element are referred to the Third Committee. The General Assembly [7] usually makes decisions and resolution that reflect the world opinion on that given issue. The General Assembly's recommendations are not legally binding on states. But should be read together with the general obligation of Member States, under Article 55 and 56 of the Charter, to act " in cooperation" with the United Nations, and also if the recommendations was adopted unanimously, by consensus or without dissenting vote.

(b) The Security Council

The Security Council is composed of 15 States, five are permanent (China, France, the United States, Britain, The Russian Federation) the other ten are elected by the General Assembly for a term of two years [8]. Each member has one vote. Decisions require the majority of nine including all five permanent members. This is known as the "Great Power unanimity", or veto right. In situations endangering the international peace and security, it is usually suspected that massive and persistent human rights violations may occur and in this regard the Security Council is linked to human rights. Not only this but the Council itself may determine that the situation characterized by particularly serious human rights violations constitutes threat to the international peace and security. [9] The obvious example to this is the genocide committed in Rwanda. As a consequence of

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(7) The general Assembly meets once a year between end of September and middle of December. Sometimes they meet in emergency and exceptional cases.

(8) Art.23 of the United Nations Charter. Also according to Art. 24 the Security Council is entrusted with the primary responsibility for the maintenance of international peace and security.

(9) The United Nations and human Rights 1945-1995, The United nations Blue Books Series, Volume VII, published by the Department of public Information, United Nations, and New York. p. 11

this genocide two million were displaced and escape to the neighboring countries, 200,000 Hutu refugees were in Congo and 50,000 in Tanzania. [10] The Security Council responded to these massive human rights violations by establishing the International Tribunal Court for Rwanda by its resolution 955 Of 8 November 1994.

(c) The Economic and Social Council (ECOSOC)

According to United Nations Charter ECOSOC is composed of 54 members elected for three years. Its functions and jurisdictions are: [11] first to make or initiate studies and reports in relation to international economic, social, cultural, educational, health and related matters; secondly to make recommendations for the promotion and protection of human rights and fundamental freedoms for all; thirdly to draft conventions in matters falling under its mandate; fourthly to call for international conferences in matters falling under its mandate.

To fulfill the above-mentioned functions the Economic and Social Council had established other commissions to assist it in its work. These are; first the Commission on Human Rights. Since 1946 and pursuant to the decisions taken at the first and second sessions of ECOSOC, the Commission has the mandate of submitting proposals, recommendations and reports to the Council in relation to the following:

a) An international bill of rights;
b) International declarations or conventions on civil liberties, the status of women, freedom of information and similar matters;
c) Protection of minorities;

([10]) Borgan, World Conflict ,p. 26, London, Bloomsbury (1998)
([11]) Art. 62 of the United Nations Charter.

d) Prevention of discrimination on grounds of race, sex, language or religion;

e) Any other matter concerning human rights.

Secondly the Commission on the Status of Women, which was established in February 1946 as one of the sub commissions of the Commission on Human Rights. But in June 1946, the Council considered it as an intergovernmental commission reporting directly to it. This Commission was mandated with promoting and protecting the political, economical, social and educational rights of women. It consists of 45 members, chosen according to geographical representation. (12) Thirdly the Sub Commission on the Prevention of Discrimination and Protection of Minorities which was established in 1946 and made up of 26 independent experts elected by the Commission on Human Rights. It is entrusted with preventing discrimination and protecting minorities as well as carrying out any other tasks assigned to it by the Commission on Human Rights. Another commission is the Sub Commission on Freedom of Information and the Press, which was established in 1947 by the Commission on Human Rights, and entrusted with studying the rights, obligations and practices that constitute the freedom of information. As soon as it completed the draft of the Code of Ethics, ECOSOC decided to disband it in 1951. (13)

(d) The International Court of Justice (ICJ)

It is the basic judicial organ of the UN. Any dispute relating to the application, fulfillment or interpretation of a convention should immediately be referred to the ICJ. It is constituted of 15 judges chosen

(12) Id. at 16
(13) Id- at 18.

on their qualifications. [14]

(e) United Nations Secretariat

It consists of the Secretary General and other staff to run the day-to-day administrative work of the organization. An important principle is laid down in article 100 of the Charter that the Secretary General and his staff shall not seek or receive any instructions from any government or other authority in performing their duties.

(f) Centre for Human Rights

The center carries out studies on human rights if requested to do so by relevant international organs and also preparing reports about the implementation of human rights, and in that regard it is considered as part of the secretariat of the United Nations.

(d) The International Labour organization

It was established in 1919 but became part of the UN system since its establishment in 1945. Its main responsibility is to protect the rights of workers and to make recommendations to governments about the implementation of the relevant conventions at the state levels. [15]

(H)The High Commissioner for Human Rights

In 1993 the World Conference on Human Rights recommended the establishment of the Office of the High Commissioner for Human Rights

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(14) Art. 92 & 96 of the UN Charter.

(15) Office of the High Commissioner for Human Rights, professional training Series No.7, Training Manual on Human Rights Monitoringو United Nations New York and Geneva 2001 p11. The ILO is composed of governments, employers and workers. At the annual International Labour Conference, the ILO adopts Conventions and Recommendations dealing with international labour standards and a number of rights and freedoms, from the right of association to the rights of indigenous and tribal peoples.

for the promotion and protection of human rights. [16] The General Assembly reached consensus for the creation of that post in its resolution 48/141 of 20 December 1993. The functions and tasks of the High Commissioner for Human Rights can be summarized as comprising: [17] promotion and protection of human rights worldwide; reinforcement of international cooperation in human rights field; establishing constructive dialogue with governments to ensure the respect for human rights; coordination with other United Nations organs with human rights mandate; and supervising the Center for Human Rights.

(iii) The International Bill of Human Rights

The international bill of human rights contains the following instruments:

- The Universal Declaration of Human Rights (UDHR).
- The International Covenant on Economic, Social and Cultural Rights (ICESCR).
- The International Covenant on Civil and Political Rights (ICCPR).
- The two Optional Protocols to the International Covenant on Civil and Political Rights.

The adoption of the Universal Declaration of Human Rights was the first task of the Commission on Human Rights. It was approved by the General Assembly on 10 December 1948; by 48 votes in favour, non-against and 8 abstained. Those, which abstained, were South Africa, Byelorussia SSR, Czechoslovakia, Poland, Saudi Arabia, the Ukrainian SSR, the USSR and Yugoslavia. The Universal Declaration proclaims both the first generation rights (civil and political rights) as well as the second

(16) The Vienna Declaration, Section II, paragraph 18), But the idea of establishing such an office was invoked 40 years before that date.

(17) Kathryn English, supra note 18 at 110.

generation rights (economic, social and cultural rights) in the language of aspiration and to guide the political organs of the United Nations in their interpretation and application of the human rights clauses in the Charter. [18]

When it comes to the adoption of a multilateral treaty, the ideological differences between the East and the West made it impossible to produce a single multilateral treaty giving legal effect to the UDHR. Instead two covenants were drafted. [19] The International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR) were adopted in 1966 and came into force in 1976. The ICCPR enumerated a number of rights like self-determination; prohibition of torture, cruel, inhuman or degrading treatment; prohibition of slavery; right to liberty and security of persons; fair and free trial; freedom of movement; thought; conscience and religion; expression; assembly and association; right to vote and participate in public life; privacy and other rights as indicated in articles 1- 26. On the other hand the ICESCR deals with the second generation rights that is the right to work; to enjoy the just and favorable conditions of work; form trade union; social security education; health; housing and others enumerated in articles 1-15. The two optional protocols additional to the ICCPR were also drafted, the first optional protocol is about individual complaint adopted in

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(18) Philip Alston, The United Nations and Human Rights, Clarendon Press. Oxford, P.240 (1992). The impact of the UDHR on the development of human rights has been immense. It has inspired the two covenants and several regional treaties; it was served as a model for national Bills of Rights; sometimes it was used as a measure to the conduct of states, consequently it was argued that the UDHR forms part of the international customary law. In a further step 84 states declared in the Declaration of Teheran" the UDHR states a common understanding of the people of the world concerning the inalienable and inviolable rights of all members of the human family and constitutes an obligation for the members of the international community"

(19) Id at 242.

December 1966, and the second is about abolishing the death penalty, which was adopted by the Resolution of the General Assembly on 15 December 1989.

(iv) Convention on the Elimination of All Forms of Racial Discrimination

In all the international declarations and covenants since the creation of the United Nations, States have accepted that all members of the human family have equal and inalienable rights, and have made commitments to assure and defend these rights. The existence and the continuation of the practice of racial discrimination that is distinction, exclusion, restrictions and preferences based on race, colour, descent, national or ethnic origin encouraged the United Nations General Assembly in 1963 to take the formal step of adopting the Declaration on the Elimination of All Forms of Racial Discrimination. This Declaration has laid down four principles related to human rights. These are: [20] First any doctrine of racial differentiation or superiority is scientifically false, morally condemnable, socially unjust and dangerous and has no justification in theory or practice. Secondly government policy based on racial discrimination violates human rights. Thirdly racial discrimination harms both objects to it as well as those who practice it and finally a world without discrimination is the basic aim of the United Nations.

In a very important development the General Assembly passed a legal document, which is the Convention on the Elimination of All Forms of Racial Discrimination (CERD) in 1965. The Convention came into force in 1969. Under the Convention the duties of the States parties as spelled out in

[20] Human Rights, The Committee on The Elimination of Racial Discrimination, Fact Sheet No. 12, world Campaign for Human Rights

its articles were as follows: No act of racial discrimination should be practised against any individual within a state; the State must ensure that public authorities and institutions are not practicing racial discrimination; not to sponsor, defend or support racial discrimination by persons or organizations; to review national and local policies and to amend or repeal laws and regulations which create or perpetuate racial discrimination; to end such practices by individuals or groups; to end barriers between different races and to discourage anything which tends to strengthen racial division.

The Convention created a committee to monitor its implementation, and it was tasked with certain mandate, which is going to be discussed in a later chapter.

(v) Convention on the Elimination of All Forms of Discrimination Against Women

The Convention on the Elimination of All Forms of Discrimination Against Women, commonly referred to as CEDAW, is an international convention that was adopted by the United Nations General Assembly in 1979 and came into force in 1981. The Convention requires States Parties to: pursue a policy of eliminating discrimination against women by all appropriate means and without delay [article 2]; reaffirm the equality of human rights for women in society and the family [article 1]; remove laws, stereotypes, practices and prejudices that impair women's well being [article 2 (f) and (g), and article 5 (b)]. The Convention also provides that special (affirmative action) measures aimed at accelerating de facto equality between men and women [article 4, paragraph 1] and measures protecting maternity, shall not be considered discriminatory [article 4, paragraph 2], In addition, state parties are required to take all appropriate measures: first to guarantee women the exercise and enjoyment of human

rights and fundamental freedoms on a basis of equality with men [article 3]; secondly to suppress all forms of traffic in women and exploitation of prostitution of women [article 6]; thirdly to eliminate discrimination against women in political and public life [article 7]; fourthly to ensure women the opportunity to represent their Governments at the international level and to participate in the work of international organizations [article 8]; fifthly to grant women equal rights with men to acquire, change or retain their nationality [article 9]; sixthly to ensure women equal rights with men in the field of education [article 10]; seventhly to eliminate discrimination against women in the field of employment [article 11]; eighthly to eliminate discrimination against women in the field of health care [article 12]; ninthly to take into account the special problems faced by rural women and the significant roles that rural women play in the economic survival of their families, including their work in the non-magnetized sectors of the economy [article 14]; tenthly to accord women equality with men before the law [article 15] and finally to eliminate discrimination against women in all matters relating to marriage and family relations [article 16].

Over the years certain principles have evolved out of CEDAW (21)

(a) Equality

In terms equality of opportunity, equality of access, and equality of results, must be both de jure (by law) and de facto (in fact). Formal equality is a flawed concept because it assumes that women and men are the same, and does not take into consideration the biological and socially constructed differences between them. For instance, a fish project in Bangladesh required that all participants should own a pond in a situation where women

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(21) Information taken from the internet http://www.unifem-eseasia.org/gendiss3.htm

did not have property rights. This amounts to de facto discrimination against women. Protectionist approaches that prohibit women from working at night are also discriminatory. Rather than imposing discriminatory protective measures, Governments should explore why it is not safe for women to work or travel at night and address these factors.

Thus, the CEDAW concept of equality must provide enabling conditions that remove the obstacles or barriers arising from socially constructed or biological differences.

(b) Non-discrimination

CEDAW requires the elimination of all forms of discrimination, both direct and indirect. Direct discrimination has the purpose or intent of discriminating. For example, a regulation prohibiting women from working in certain industries or occupations, such as underground mining, constitutes direct discrimination. Indirect discrimination is unintended but has the effect of discrimination. Indirect discrimination is often subtle and invisible. If women do not take advantage of opportunities, CEDAW requires that Governments find out why and then address these factors.

(c) Historic discrimination

The impact of previous discrimination may cause later, apparently unrelated, measures to have a discriminatory effect. For example, as a result of recession, an Australian company adopted a policy of firing those workers most recently hired. However, due to previous discrimination against women, all the factory's women workers were among the most recently hired. Consequently, this policy was deemed to constitute discrimination.

(d) State obligation

The state is obligated under CEDAW to ensure both de jure and de facto equality. The rights of women must be respected by regulating all

state actions and actors, as well as the private sector, individuals and organizations. The rights of women must also be ensured in the public, private and family domains with effective laws against discrimination. The state should protect the full rights of women and put in place enabling conditions such as legal aid to ensure that women can exercise their rights in practice.

(vi) Convention against Torture, Inhuman and Degrading Treatment or Punishment

The term 'torture' means " any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions" (22)

It is quite obvious that torture is an international crime and it is absolutely prohibited and cannot be justified. This prohibition forms part of international customary law. So it is binding on every member of the international community, regardless of whether a State has ratified international treaties in relation to torture or not

(vii) Convention on the Rights of the Child (CRC) 1989

The activities of the world in relation to the children's rights started

(22)This definition was mentioned in Article 1 paragraph 1 of the Convention against Torture, The same was also mentioned in Article 5 of the Universal Declaration of Human rights and Article 7 of the International Covenant on Civil and Political Rights.

since 1924 and continue till it came to a very crucial point by the establishment of the United Nations Children's fund (UNICEF) on 11 December 1946. This organization remains till today the primary organization responsible for international assistance to the children all around the world. In 1989, the General Assembly adopted the Convention on the Rights of the Child. This Convention contains all the civil, political, economic, social and cultural rights. It aims at protecting the child from sexual and economic exploitation, emergency situations abandonment and ill treatment. It also protects children involved in armed conflict. [(23)]

Almost all the countries of the world except the United States (for the reason that the age limits for children is below the required age in the Convention) and Somalia (because they did not acquire the status of a state according to the requirement of a state under international law) have ratified this convention. In March 2001 two optional protocols were added to the Convention on the rights of the child one on the involvement of children in armed conflict and the other is about the sale of children, child prostitution and child pornography.

3. Geneva Conventions and their Protocols

Geneva Conventions and their two Protocols are sometimes referred to as the international humanitarian law. I will give a brief summary of this branch of law. International humanitarian law is a set of international rules, established by treaty or custom, which are specifically intended to solve humanitarian problems directly arising from international or non-international armed conflict. It protects persons and property that are, or may be affected by an armed conflict and limits the rights of the parties to a

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(23) Human Rights: A compilation of International Instruments, Volume 1 (First part) Universal Instruments. United Nations, New York and Geneva, 1994. P. 174.

conflict to use methods and means of warfare of their choice. [24]

The main sources of international humanitarian law are:

(i) The Four Geneva Convention 1949

These are the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (Convention I of 12 August 1949); Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at the Sea (Convention II of 12 August 1949); Geneva Convention relative to the Treatment of Prisoners of War (Convention III of 12 August 1949) and the Geneva Convention relative to the Protection of Civilian persons in time of War (Convention IV of 12 August 1949).

(ii) The two Protocols of 1977.

Namely, the First Additional Protocol relating to Protection of Victims of International Armed Conflict 1977; and the Second Additional Protocol relating to the Protection of Victims of Non- International Armed Conflicts 1977.

(iii) The Rome Statute for International Criminal Court 1998.

Since the text of the Geneva Conventions and their Additional protocols is very complex, the following simplified brief is given: [25]

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(24) Information was taken from the website: http://www.icrc.org/eng/ihl. International humanitarian law (IHL) is the body of rules, which, in wartime, protects people who are or are no longer participating in the hostilities. Its central purpose is to limit and prevent human suffering in times of armed conflict. The rules are to be observed not only by governments and their armed forces, but also by armed opposition group and any other parties to a conflict. The four Geneva Conventions and their two optional protocols of 1977 are the principal instruments of humanitarian law.

(25) These different rules were summarized from the articles of the different above-mentioned Conventions and the two optional protocols. The same is also taken from the website http:// www.icrc.org/Web/Eng/siteeng0.nsf/iwpListl04/B14FDBD9E3BCB51FC1256

- Persons hors de combat and those who do not take a direct part in hostilities are entitled to respect their lives and their moral and physical integrity.
- They shall be protected and treated humanely in all circumstances.
- It is forbidden to kill or injure an enemy who surrenders or who is hors de combat.
- The wounded and the sick shall be collected and cared for by the party to the conflict, which has them in its power.
- Protection also covers medical personnel, establishments, transports and equipment's. The emblem of the Red Cross or the Red Crescent is the sign of such protection and must be respected.
- Captured combatants and civilians under the authority of an adverse party are entitled to respect for their lives, dignity, personal rights and convictions.
- They shall be protected against any acts of violence and reprisals and they shall have the right to correspond with their families and to receive relief.
- Everyone shall be entitled to benefit from fundamental judicial guarantees.
- No one shall be held responsible for an act he has not committed.
- No one shall be subjected to physical or mental torture, corporal punishment or cruel or degrading treatment.
- Parties to a conflict and members of their armed forces do not have an unlimited choice of methods and means of warfare. It is prohibited to employ weapons or methods of warfare of a nature to cause unnecessary losses or excessive suffering.
- Parties to a conflict shall at all times distinguish between the civilian

population and combatants in order to spare civilian population and their property

- Attack shall be directed to military objectives only.

These principles and agreements on international humanitarian law generally bind all actors to an armed conflict. They also impose obligations on individuals in that persons may be held individually criminally responsible for grave breaches of the Geneva Conventions and protocols and violations of the Protocols of 1977 and the Rome Statute of 1998.

The duty to implement the international humanitarian law at the national level is mainly on the states and they must take the necessary legal and practical measures both in peacetime and in armed conflict. These measures include: [26]

- Translating IHL treaties;
- Preventing and punishing war crimes, through the enactment of penal legislation.
- Protecting the Red Cross and the Red Crescent emblems,
- Applying fundamental and judicial guarantees,
- Training personnel qualified in IHL and appointing legal advisors to the armed forces.

4. Differences and Resemblances between International Human Rights Law and Humanitarian Law

Both international humanitarian law and human rights law strive to protect the lives, health and dignity of individuals. This is why the essence of some of their rules is similar. For example, the two bodies of law aim at protecting the human life, prohibit torture or cruel treatment, prohibit discrimination, protect women and children and regulate aspects of the

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([26]) Id.

right to food and health. On the other hand, IHL deals with many issues, which are not dealt with under human rights law, such as conduct of hostilities, combatant and prisoners of war, and protection of the Red Cross and the Red Crescent emblems. Similarly human rights law deals with aspects of life in peacetime, which is not dealt with by IHL, such as freedom of the press, the right to assemble, to vote or to strike.

5. Legal Force of International Human Rights Law and Humanitarian Law

Multilateral treaties are often given different names, e.g. charter, covenant, convention, and protocol. All are treaties among nations, which carry legally binding obligations according to their language. All treaties are of the same legal effect with the exception of the United Nations Charter, which according to article 103 should prevail in cases of conflict with another treaty. Other internationally agreed texts are referred to as declarations, body of principles, guidelines, etc. The principal difference between treaties and this second type of documents is that governments among nations may formally accept treaties. Documents such as declarations, guidelines, minimum rules, bodies of principles, vary as to their binding effect depending upon the degree to which they interpret the treaty obligations, reflect customary international law or reflect the best practices without having more binding legal effect. (27)

(i) Reservations and their Effects

The issue of reservations and its effects on any international treaty has been of concern to many legal persons and specially reservation made to the Convention on the Elimination of all Forms of Discrimination Against

(27) Motala, Human Rights in Africa: A Cultural. Ideological and Legal Examination, 12 Hastings Int. and Comp. L.Rev.30 (1989)

Women. To clarify this issue I will consider in this part the following: first, the legal basis for reservation and secondly the legal effect of reservation.

(a) The legal basis for reservation:

In this regard I will state the relevant articles of the Vienna Convention on the Law of Treaties 1969 in relation to reservation since they are self-explanatory articles.

Article 19 Formulation of reservations:

A State may, when signing, ratifying, accepting, approving or acceding to a treaty, formulate a reservation unless:

(a) The reservation is prohibited by the treaty; (b) the treaty provides that only specified reservations, which do not include the reservation in question, may be made; or (c) in cases not falling under sub-paragraphs (a) and (b), the reservation is incompatible with the object and purpose of the treaty.

Article 20 Acceptance of and objection to reservations:

1. A reservation expressly authorized by a treaty does not require any subsequent acceptance by the other contracting States unless the treaty so provides.
2. When it appears from the limited number of the negotiating States and the object and purpose of a treaty that the application of the treaty in its entirety between all the parties is an essential condition of the consent of each one to be bound by the treaty, a reservation requires acceptance by all the parties.
3. When a treaty is a constituent instrument of an international organization and unless it otherwise provides, a reservation requires the acceptance of the competent organ of that organization.
4. In cases not falling under the preceding paragraphs and unless the treaty otherwise provides:

(a) Acceptance by another contracting State of a reservation constitutes the reserving State a party to the treaty in relation to that other State if or when the treaty is in force for those States;

(b) An objection by another contracting State to a reservation does not preclude the entry into force of the treaty as between the objecting and reserving States unless a contrary intention is definitely expressed by the objecting State;

(c) An act expressing a State's consent to be bound by the treaty and containing a reservation is effective as soon as at least one other contracting State has accepted the reservation.

5. For the purposes of paragraphs 2 and 4 and unless the treaty otherwise provides, a reservation is considered to have been accepted by a State if it shall have raised no objection to the reservation by the end of a period of twelve months after it was notified of the reservation or by the date on which it expressed its consent to be bound by the treaty, whichever is later.

Article 21 Legal effects of reservations and of objections to reservations:

1. A reservation established with regard to another party in accordance with articles 19, 20 and 23:

(a) Modifies for the reserving State in its relations with that other party the provisions of the treaty to which the reservation relates to the extent of the reservation; and

(b) Modifies those provisions to the same extent for that other party in its relations with the reserving State.

2. The reservation does not modify the provisions of the treaty for the other parties to the treaty inter se.

3. When a State objecting to a reservation has not opposed the entry

into force of the treaty between itself and the reserving State, the provisions to which the reservation relates do not apply as between the two States to the extent of the reservation.

Article 22 Withdrawal of reservations and of objections to reservations

1. Unless the treaty otherwise provides, a reservation may be withdrawn at any time and the consent of a State which has accepted the reservation is not required for its withdrawal.
2. Unless the treaty otherwise provides, an objection to a reservation may be withdrawn at any time.
3. Unless the treaty otherwise provides, or it is otherwise agreed:

(a) The withdrawal of a reservation becomes operative in relation to another contracting State only when notice of it has been received by that State; (b) the withdrawal of an objection to a reservation becomes operative only when notice of it has been received by the State, which formulated the reservation.

Article 23 Procedure regarding reservations

1. A reservation, an express acceptance of a reservation and an objection to a reservation must be formulated in writing and communicated to the contracting States and other States entitled to become parties to the treaty.
2. If formulated when signing the treaty subject to ratification, acceptance or approval, a reservation must be formally confirmed by the reserving State when expressing its consent to be bound by the treaty. In such a case the reservation shall be considered as having been made on the date of its confirmation.
3. An express acceptance of, or an objection to, a reservation made previously to confirmation of the reservation do not itself require confirmation.

4. The withdrawal of a reservation or of an objection to a reservation must be formulated in writing.

(b) **The Legal Effect of Reservation**

The Vienna Convention on the Law of Treaties, 1969, defines a reservation as a "unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty whereby it purports to exclude or to modify the legal effects of certain provisions of the treaty in their application to that State". The Vienna Convention on the Law of Treaties 1969 prohibits reservations which are incompatible with the object and the purpose of the treaty. Despite the prohibition of such reservations, there is no explicit mechanism, beyond the mechanism of objections by other States parties, in the Vienna Convention by which a reservation can be adjudged incompatible with the Convention.

To examine the question of reservation I will look at the convention on the Elimination of All Forms of Discrimination against women as an example, since it is a very controversial issue. A number of States parties that had entered reservations allege that the debate represents both cultural insensitivity and interference with the sovereign right of States to enter reservations. (28) The General Assembly subsequently adopted resolution 41/108, of 4 December 1986, in which it made no specific reference to reservations, but "recalled the decision of the States parties" and

(28) Information taken from the Internet http: // www . ejil.org / ioumal / Vol13 / No2 /abl.html. Two conflicting views may be identified. On the one hand, it is maintained that as consent remains the governing principle of the existing regime of reservations, states parties to human rights treaties have the discretionary power to determine the admissibility and validity of reservations to treaties. On the other hand, it is argued that, because of the special features of human rights treaties, a different regime of reservations should be applicable to these treaties, but the question then arise as to whether human rights treaties are sufficiently different from other international treaties.

"emphasized the importance of strictest compliance with their obligations under the Convention". The Committee on the Elimination of Discrimination against Women has been preoccupied with the issue of reservations since its inception. At the third session of the Committee, the Treaty Section of the Office of Legal Affairs of the United Nations Secretariat provided a legal opinion in which it indicated that neither the Committee nor the Secretary-General, as depository of the treaty, had the power to determine the compatibility of reservations. In 1992, the Committee formulated a further general recommendation concerning reservations. This general recommendation, No. 20, suggested that States parties should, in their preparation for the 1993 United Nations World Conference on Human Rights, raise the question of the validity and legal effect of reservations to the Convention in the context of reservations to other human rights treaties and reconsider such reservations with a view to strengthening the implementation of all human rights treaties.

From the above-mentioned information we find that at the heart of the issue of reservations is "the balance to be struck between the legitimate role of States to protect their sovereign interests and the legitimate role of the treaty bodies to promote the effective guarantee of human rights". (29)

To conclude this part of the study and after considering the above-mentioned information, one can draw the following conclusions:

1. Reservation to any article in any international convention is allowed, unless it is prohibited expressly.
2. The Committee of any international treaty is not authorized to determine whether the reservation made by any state is against the object and the purpose of the treaty.

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(29) Id.

3. Only the International Court of Justice has the authority to determine whether the reservation made by any state is against the object and the purpose of the treaty in the case of CEDAW. (Article 29).
4. The state has the right to reserve article 29 of CEDAW.

6. Conclusion

As discussed above, it appears that the international system for human rights and international humanitarian law have gone through different developments in the modern history before they became part of the current system in the world. It is quite obvious that there are some similarities and differences between the part of the system that is the human rights and the humanitarian law. Whatever those differences are, human rights and international humanitarian law complement each other and help in organizing our world in peacetime as well as in warfare. Since most of the international system depend on the consent of the States to be part of this system, it is only the will of that state that promote being part of that system. But as part of the world and with the existence of the new terms of globalization, economic interrelation, every state finds itself in a position in which it has no alternative but to be part of that system. Hence, it is important to know the procedures and mechanisms of the international system for human rights in order to choose whether to be or not to be part of world's system.