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Conceptual Problematic and Internationalization of Human Rights: Implications for Domestic Jurisdiction

Problematik Konseptual dan Internasionalisasi HAM: Implikasinya Terhadap Yurisdiksi Domestik

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ABSTRAK

Makalah ini mengevaluasi implikasi dari masalah konseptual dan internasionalisasi hak asasi manusia untuk prinsip yurisdiksi domestik. Konsepsi hak asasi manusia sebagai hak mutlak menimbulkan masalah untuk menentukan yurisdiksi yang tepat untuk perlindungan dan penegakan hak. Jika hak-hak itu mutlak, bagaimana mereka dapat dilindungi dan ditegakkan melalui undang-undang negara, yang hanya dapat menetapkan dan menegakkan hak-hak relatif? Makalah ini menunjukkan bahwa masalah konseptual hak asasi manusia, meskipun tampaknya diselesaikan dengan pengakuan hak-hak seperti hak-hak dasar, tetap ada karena negara masih dapat menentukan sejauh mana hak-hak tersebut dapat dilaksanakan. Namun, hak-hak dasar melampaui relativitas hak-hak sosial-ekonomi dan politik. Jadi, tidak seperti hak yang berpusat pada negara, hak asasi manusia dianggap tidak dapat dicabut dan tidak dapat diubah; karenanya, internasionalisasi hak-hak tersebut. Internasionalisasi memberikan hak asasi manusia esensi reifikasi, sehingga hukum negara tidak dapat menetapkan batas-batas perlindungan dan penegakannya. Hak asasi manusia hanya dapat diratifikasi dan ditambahkan ke dalam konstitusi negara oleh negara melalui perjanjian. Perserikatan Bangsa-Bangsa (PBB) memastikan bahwa masing-masing negara (anggota dan non-anggota) melindungi dan menegakkan hak asasi manusia. Makalah ini menyatakan bahwa, terlepas dari internasionalisasi, sifat hak asasi manusia sebagai hak absolut hanya dapat diwujudkan jika tidak ada pembatasan yang ditempatkan pada pelaksanaan hak. Karena hak asasi manusia itu penting, negara harus berbuat lebih banyak untuk melindungi dan menegakkannya. Mereka juga harus menghindari pembatasan yang akan membuat pelaksanaan hak asasi manusia seperti menjalankan hak masyarakat.

Kata Kunci: Konseptual; bermasalah; Penginternasionalan; Hak asasi Manusia; Yurisdiksi domestik.

ABSTRACT

This paper evaluates the implications of conceptual problems and the internationalization of human rights for the principle of domestic jurisdiction. The conception of human rights as absolute rights creates a problem for determining the proper jurisdiction for protection and enforcement of the rights. If the rights are absolute, how can they be protected and enforced through state laws, which can only establish and enforce relative rights? This paper shows that the conceptual problematic of human rights, though it seems to be resolved in the recognition of such rights as fundamental rights, persists as states can still determine the extent to which such rights can be exercised. However, fundamental rights transcend the relativity of socio-economic and political rights. Thus, unlike state-centric rights, human rights are considered inalienable and immutable; hence, the internationalization of such rights. Internationalization confers on human rights the essence of reification, such that state laws cannot set boundaries on their protection and enforcement. Human rights can only be ratified and added to state constitutions by states through treaties. The United Nations (UN) makes sure that individual states (members and non-members) protect and enforce human rights. This paper maintains that, despite internationalization, the nature of human rights as absolute rights can only be realized when no restrictions are placed on the exercise of the rights. Since human rights are important, states should do more to protect and enforce them. They should also avoid restrictions that would make the exercise of human rights like exercising a societal right.

Keywords: Conceptual; Problematic; Internationalization; Human Rights; Domestic jurisdiction.

1. INTRODUCTION

The word "right" is a complex expression. The lawyer, the moralist, the politician, the economist, and even the layman talk about rights. Therefore, "right" is a concept with profound juristic, economic, political, religious, and social ramifications. As a political-juridical concept with legendary and historic antecedents, it has been used, abused, castrated, and sometimes, however grudgingly, internalized by political and historic Bills of Rights in various societies from the dawn of civilization. In the preface to the American Bill of Rights, for instance, David Bearinger (1999) states that the document provides a strong and durable framework in which the limits of government, the scope of individual liberty, and the nature of the democratic system have been defined. Rulers, especially dictators and pretenders, see rights and human rights as disposable goods that can be used or thrown away based on their own needs or desire for power (Machiavelli, 1981). However, conceptually, human rights are conceived as absolute as opposed to relative rights. This conception is difficult given the cogency of the argument that the idea of an absolute right is absurd because society defines and protects all forms of rights. However, the fact that human rights have assumed international significance demonstrates that they transcend the dictates of particular societies.

The internationalization of human rights follows from the fact that the United Nations has played an active role in the enforcement and protection of human rights not only through standard setting but also through the establishment of various machineries for the actualization of its goals. This impinges on the idea of state sovereignty. This work is to analyze how the conceptual problems of human rights and the internationalization of such rights affect the principle of domestic jurisdiction. Consequently, the paper is divided into six sections. Section one is the ongoing introduction. Section Two: The Conceptual Problem of Human Rights will be discussed in Section Two. In section three, the principle of domestic jurisdiction will be explained. Section four will explain the internationalization of human rights. The implications of the conception of human rights and the internationalization of the same for the principle of domestic jurisdiction will be the concern of section five. What follows is the conclusion, which serves as section six.

2. CONCEPTUAL PROBLEMATIC OF HUMAN RIGHTS

The conceptual problematics of human rights are premised on the conceptual problems of the concept of right itself. When it comes to the conception of right, formal definitions seem unsatisfactory but necessary. The definition and meaning of rights in any society at any period in history depend on a number of factors. Such factors include the political climate, the respect for the rule of law, especially by political actors and government functionaries, the degree of judicial independence, the virility and independence of the press, the prevailing degree of free speech and the ability of the citizens to criticize the policies of the government without reprisal or fear of reprisal, and generally, the degree of the socio-political development of the society or state (Ayeni & Ebong, 2013; Eba, 2020). Undoubtedly, the degree of independent and competitive economic activity and the resultant material well-being of the citizens are cooperating factors in the determination of how many rights and freedoms citizens enjoy in a state. This also accounts for the difference between the types and quality of rights prevalent in capitalist and communist states. There are as many definitions as there are scholars on the subject of rights. Due to the necessity of a formal definition, the definition of "right" given by Black's Law Dictionary is worth considering. According to the source, "Taken in a concrete sense, "right" means a power, privilege, faculty, or demand, inherent in one person and incident upon another (p. 1436). In this manner, right is conceived as correlative to duty. Society is seen as a system of patterns and regulated relationships in which law takes centre stage as the regulator of society and right is the foundation of law in society. Wesley Hohfeld (1923) carried out jural computations of power, liability, privilege, duty, immunity, disability, no right, obligation, etc., which constitute fundamental components of rights in society. Hohfeld (1923) argues that the most promising line of procedure seems to consist of exhibiting all the various relations in a scheme of "opposites" and "correlation," and then proceeding to exemplify their individual scope and application in concrete cases. Hohfeld then paired the jural "opposites" and "correlatives" as follows: Jural Opponents (right/privilege/power/immunity) (no right/duty/disability/liability), power, immunity) (duty/no right/liability/disability) (no right/liability/disability).

Hohfeld (1923) quarreled with the indiscrimate use of the word "right" to cover what, in any given case, may be a privilege, a power, or immunity, rather than a right in the strictest sense. He submits that "duty" and "right" are correlative terms. When a right is invaded, a duty is violated. However, Hohfeld's analysis of the concept of right ran into confusion when he stated that one cannot have a legal relationship between a person and a non-person (36). His position makes it difficult to understand, for instance, one claim to property bequeathed to him in a will or one claim to personal property. Thus, those in the legal field most of the time disregard his analysis of

the concept of right. Notwithstanding the rejection, Hohfeld's analysis contributes immensely to the sphere of ought law; thus, legal philosophers find his analysis very insightful. His insistence on right-duty correlative emphasizes that the concept "right" strictly stands for a claim which one can make against another person's duty. This definition of right presents the concept in the abstract moral sphere where rights are conceived to be predicated on human nature based on the rational or moral propensity of the human species. His conception of right therefore gives credence to the concept of human rights as inherent and inalienable rights.

William Blackstone (1977) observes that rights, if considered in their natural capacities, are of two categories: absolute and relative rights. Absolute rights, identified as human rights, are inherent to individuals as human species endowed with reasoning and the capacity to distinguish right from wrong. Relative rights, on the other hand, are those conferred on individuals by society. This position of Blackstone ((1977) is heavily criticized because it is difficult to determine if any right is absolute. Critics point out that all rights are relative and not absolute, though they may be either incidental, as the analytical positivists argue, or inborn, as natural rights theorists maintain. The idea of right as absolute is only possible within an abstract moral sphere. Leaving that sphere, and giving the term "right" a juristic content, the right has the force of "claim" and is properly expressed by the Latin "jus" (Rommen 1998). A "right" can also be defined as a legally enforceable claim of one person against another, one group of persons against another group, or one person or one group against the state. The society or state provides the legal infrastructure or assistance for enforcement of a "right" in this sense. According to John Salmond (2001), "In this generic sense, a legal right may be defined as any advantage or benefit conferred upon a person by a rule of law" (p. 231). In this sense, also, rights are of four kinds, namely, rights in the strict sense, liberties, powers, and immunities.

H.L.A. Hart (1964) elaborates on the concept of "right" by highlighting the conditions necessary for the assertion that one has a right. A statement of the form "X has a right" is true, according to him, "where the existence of a legal system is not in doubt; the legal system designates some other person Y as having a duty towards X; and only X or a representative of X can authorize Y to abstain from the duty, in which case, X willingly forfeits the right" (Hart 1964, pp. 65-67).This means that right exists in the strict sense when the law limits the liberty of others on behalf of an individual; liberty when the law allows the will of an individual some latitude of activity without restraint; power when the law actively assists the individual in making his will effective immunity; and when the law denies to others a particular power over the individual (Salmond 2001).

What follows from the above analysis of the concept of "right" is that "right" could hardly be conceived as absolute. Even a layman understands the saying that every man's rights begin where another's rights end. Hence, it is argued that not even the right to life is absolute. There are always lawful derogations. This fact poses a serious difficulty to the conception of human rights as absolute rights (Akaruese 2012). Chatters on human rights are considered legal documents both internationally and locally. States that have enshrined specific human rights content in their constitutions specify the constitutional limits to which they can be exercised and protected. A person's right to life, for instance, can be lawfully violated if the individual commits murder or high treason. Such crimes undoubtedly attract the death penalty. Even in the most functional democracies in the world, the rights of citizenship and, sometimes, even of the free press can be circumscribed in times of war or other national emergencies. During World War II, President Franklin D. Roosevelt initiated Congressional legislation that led to the massive arrest and internment of American citizens of Japanese extraction. The reason cited by that administration was national security, since the United States and Japan were at war. In the circumstances, freedom of the press was also tampered with on grounds of "national security". Section 9(2) of the *United States Constitution* makes a provision for a derogation from the fundamental right of the Writ of Habeas Corpus in times of "rebellion or invasion" when the needs of public safety may require it. Likewise, Section 45 of the *Constitution of the Federal Republic of Nigeria, 1999* makes provision for restriction on and derogation from the fundamental rights enshrined in that constitution. Similar provisions are found in the written constitutions of many countries in the world.

While the contentions against the categorization of rights as absolute and relative may point to facts about the conception of rights, they expose the conceptual problematic of human rights. Human rights are conceived as absolute rights, which, therefore, should be inviolable, immutable, and inalienable. Natural rights or natural law schools argue that absolutes are possible because there are rights inherent or inborn. Such rights are seen as fundamental to the existence of man in society (Finnis 1980). The positivists, on the other hand, argue that rights are not inborn but determined by society. As far as they are concerned, what is natural to all men are tendencies. A man did not come into the world with a bundle of rights tied around his neck. It is society that determines the rights of each individual. As far as the individual is concerned, the fact that you are a member of society is the conclusive factor of right (Bentham 1977). Despite the contention between the naturalists and the positivists as to whether there could be absolute rights, human rights are generally understood as possessing a

nature different from obvious societal rights. Thus, they are usually designated as "fundamental rights." A fundamental right is a right that is superior to ordinary laws of the land and, in fact, predates the political society itself. Thus, even though human rights may be defined and protected by the law in the form of fundamental rights, they are conceived as predating positive law. They are considered the principles of natural law or natural justice. When, therefore, a nation's constitution embodies a class of rights thus described as' fundamental rights', such as the 1979 and, subsequently, 1999 constitutions of the Federal Republic of Nigeria, there has thus been enshrined a people's expression of political, civil, and or civil rights (as endowed by nations), but only to the extent that the strictness or largeness of modern systems of government does permit (Onuoha 2012).

3. PRINCIPLE OF DOMESTIC JURISDICTION

Jurisdiction generally connotes some basic principles of international law, such as state sovereignty, equality of states, and non-interference in the internal affairs of a state. It is about the right of a state to exercise power or authority over people, property, or circumstances within its territory. It is a central feature of state sovereignty achieved through legislative, executive, and judicial actions (Shaw 2003). Jurisdiction ordinarily is territorial. However, there are instances whereby it could be extra-territorial and where it cannot even be exercised within the territory of that particular state. There are factors that need to be present for a state to exercise its jurisdiction over a matter. These are territorial principle, nationality principle, passive personality (victim's nationality), security principle (protection of state) and universality principle (Gardner 2003). On the other hand, the principle of domestic jurisdiction is one of the cardinal doctrines in international law as regards international relations among nations. It signifies an area of internal state authority which is beyond the richness of international law. In other words, it is about a state's jurisdiction over matters that are not subject to the regulation of international law but within the reserved domain of its domestic jurisdiction. This principle flows from the nature of the sovereignty of states. It is based on the principle of equality of states, which in turn posits that in international law, a state is supreme internally within its territory and so restricted from interfering or intervening in the domestic affairs of another sovereign state (Art. 2(7) of the UN Charter).

Traditionally, the doctrine of domestic jurisdiction in international law was not necessary because there was no distinction drawn between jus gentium and common law except where they related to different subject matters. In the 19th century, the theory of positivism in international law made the conceptualization of domestic jurisdiction unnecessary. This was due to the fact that, in this theory, international law was at the mercy of states that had superior power. Thus, international law depends on the consent of states, which if not granted, would mean there would be no need for any form of domestic reservation. However, the issue of the relationship between municipal law and international law that gave rise to the doctrines of dualism and monism enhanced the subsequent articulation of the concept of domestic jurisdiction (Nwazuoke, 2006). Therefore, in order to curtail the intrusion of international law into the national legal systems, the reservation of domestic jurisdiction started to feature in international treaties and charters of international organizations. For instance, in Art. 2(7) of the United Nations Charter, it is provided that:

> Nothing contained in this present Charter shall authorize the United Nations to intervene in matters essentially within the domestic jurisdiction of any state or shall require the member to submit such matters to settlement under the Charter; but this principle shall not prejudice the application of enforcement measures under Chapter V11.

Chapter VII of the UN Charter deals with actions with respect to threats to the peace, breaches of the peace and acts of aggression. By this proviso, the UN Security Council is empowered to take enforcement measures provided for in Chapter VII against a state. To this end, the essence of the concept of domestic jurisdiction is to shield and protect a state from any form of external influence on its internal affairs.

4. INTERNATIONALIZATION OF HUMAN RIGHTS

Prior to 1919, there was no recourse to any international organization for the enforcement of human rights. Rather, where an individual lays claim to a violation of his human rights, that individual would have to make do with remedies available at the national level. However, where state laws make no room for remedies for human rights violations, the individual can only invoke principles of natural justice, morality, or natural law. Note that, originally, there was no provision for the protection and conferment of rights on an individual which the person could assert under international law. Instead, rights and duties were conferred on sovereign states (Ortuanya, 2012). However, in 1919, after World War I, the League of Nations came into being. Through this organization, national minority rights were successfully protected in Europe using minority rights treaties. This was truncated by World War II. After World War II, there was a need to establish another

international organization for the purposes of maintaining "international peace and security" and "promoting and encouraging respect for human rights and fundamental freedoms for all" (Art. 1 UN Charter). Governments responded by creating the United Nations in 1945, establishing Nuremberg and Tokyo tribunals, and promulgating the Four Geneva Conventions of 1949 (Newman and Weissbrodt 1990). Some other human rights instruments were made by the UN.

The advent of the Cold War halted once again the development of human rights protection at the global level (Ebong & Ayeni, 2013). Nevertheless, in the early 1950s, a regional organization, the Council of Europe, was created by Western European countries. Subsequently, this organization produced the European Convention for the Protection of Human Rights and Fundamental Freedoms and the European Court of Human Rights. Fortunately, this proved that protection of human rights beyond national borders is possible. The success story of the applicability of the European Convention for the Protection of Human Rights and Fundamental Freedoms This spurred the UN into creating many human rights instruments, which are binding on states upon ratification. Other regional organizations were not left out in establishing a system for the protection and enforcement of human rights. Notable among them are the Organization of American States (OAS) and the African Union (AU). It is pertinent to mention the role of non-governmental organizations (NGOs) in relation to the enforcement and protection of international human rights. Although these NGOs have no power to directly enforce or implement human rights, their activities have been very helpful in the advancement of human rights protection and enforcement. Some of these NGOs are very active at the international level in the fields of human rights, war crimes, and humanitarian aid. They investigate complaints, influence policy, and shape the agendas and treaties of the UN either through participation or lobbying. They operate through advocacy, which involves educating the public about their rights and persuasion on the part of governments to respect and protect human rights. It also includes exposure and criticism of human rights violations perpetrated around the world. NGOs make available information about human rights abuses through their reports and testimonies.

Historically, the internationalization of human rights can be traced to the United Nations Charter, which approved human rights and the Universal Declaration of Human Rights (UDHR), which articulated the same. Nonetheless, sovereign states maintained that their internal affairs, including the treatment of their nationals, remained a matter of domestic concern. In order to make UDHR have the force of law, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) were promulgated. Afterward, other international treaties in the field of human rights were adopted by the United Nations (UN) General Assembly (Shaw 2003). Despite these agreements, the lack of interest in the establishment of an effective implementation mechanism at the international level and the sovereignty issue continued to stand as barriers. Notwithstanding, some developments have paved the way for the effective internationalization of human rights. One such development was the UN's stand on the issue of self-determination. In the late 1940s and early '50s, European colonial powers lost out in their stand against UN debate concerning colonization. The UN adopted resolutions on self-determination and independence for the colonies. Incidentally, the UN categorized all colonial matters as issues outside the sphere of domestic jurisdiction of the mother country (Wilson 1979). Moreover, in 1946, the UN criticized and condemned South Africa's Apartheid policies, which institutionalized racial discrimination against its nationals, despite its argument that such an issue was a matter within its internal affairs and, so the UN had no jurisdiction to intervene by virtue of Art. 2 (7) of the UN Charter. 2 M Another development that aided the internationalization of human rights was the establishment of civil rights law in the United States of America in the 1 950s and 1 960s, which helped to eliminate racial discrimination.

Furthermore, the European Conference on Security and Cooperation was also of help to the internationalization of human rights. This conference gave rise to the so-called Helsinki Final Act of 1975. This Act provides that the parties are to work in a positive and humanitarian spirit and that it is the individual's right to know and act on their human rights. Most significantly, it incorporated by reference the entire provisions of UDHR in its Principle VII. There was also an arrangement whereby there would be a review of each country's compliance and progress in the light of the agreement. The implication of this was that there was an indirect acceptance of the right of one country to comment on another's internal practices (Wilson, 1979). Another event was the championing of the course by the United States of America through its former President, Jimmy Carter. In his first address to the General Assembly, he stated categorically that "no member of the United Nations can have exclusive concern for the rights of its citizens." Accordingly, through these developments, the internationalization of human rights came to be despite state sovereignty.

The United Nations, through its various arms and organizations, oversees the protection and enforcement of human rights in all the states that are members of the organization. It also imposes sanctions on violations of human rights, even on countries yet to

become members of the organization. Thus, the United Nations' human rights machineries, which are charter-based bodies and treaty bodies, are mobilized in pursuit of the organization's human rights agenda. The United Nations Charter-based bodies include the General Assembly, the Economic and Social Council, the Security Council, and the United Nations Secretariat. The UN General Assembly is one of the principal organs of the United Nations and also the main representative body of the UN where every member state is represented with one vote (Art 7, 9 and 18 of the UN Charter). Among its various functions, the General Assembly is to initiate studies and make recommendations for the purpose of promoting international cooperation in the economic, social, cultural, educational, and health fields and assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

The Economic and Social Council is also one of the principal organs of the UN. It is composed of 54 members and is empowered to make or initiate studies or reports on international economic, social, cultural, education, health and related matters. It can also recommend such issues to the General Assembly, UN members, and specialized agencies concerned. Furthermore, it can recommend, draft conventions, and convene international conferences for the purpose of promoting respect for and observance of human rights and fundamental freedoms. It also receives reports from Member States and specialized agencies concerning compliance with recommendations on human rights. Again, it can set up commissions in economic and social fields and for the promotion of human rights (Art. 61 of the UN Charter). In order to effectively carry out its mandate concerning human rights, the Council created a Commission on Human Rights and a Commission on the Status of Women. It has also established *ad hoc* committees and appointed special rapporteurs or committees. The Security Council has the primary responsibility of maintaining international peace and security (Art. 24 of the UN Charter). It has the power to sue for binding decisions regarding international peace and security, authorize military interventions, and impose diplomatic and economic sanctions. It receives reports from all UN organs and can take action based on such reports (human rights issues inclusive). The Rome Statute of the ICC recognizes the Security Council's power to refer cases to the ICC where the court has no jurisdiction. The UN Secretariat, which is the High Commissioner for Human Rights, serves as a full-time advocate for human rights within the UN. Its function was established in 1993 as one of the recommendations made at the World Conference on Human Rights by the General Assembly as part of the UN secretariat. The Office of the High Commissioner for Human Rights works closely with treaty bodies and acts as the coordinator of human rights activities within the UN. Its defined functions include assisting in the development of new treaties and procedures; setting the agenda for human rights agencies within the UN; and providing advisory services to governments.

The United Nations Expert and Treaty Bodies include the Committee on the Elimination of Racial Discrimination (CRRD), the Human Rights Committee, the Committee on Economic, Social, and Cultural Rights (ICESCR), the Committee on the Elimination of Discrimination against Women (CEDAW), the Committee against Torture (CAT), the Committee on Migrant Workers-ICRMW, the Committee on the Rights of Persons with Disabilities or Convention on the Rights of Persons with Disabilities, and the Committee on the Rights of the Child (CRC) (Harris 873-882). These treaty bodies were established by the UN to monitor and study human rights under the leadership of OHCHR. They are committees of independent experts that monitor the implementation of international human rights treaties. Each committee monitors the treaty that created it, and each of them gets secretariat support from the Treaties and Commission Branch Office of the High Commissioner of Human Rights in Geneva, except for CEDAW, which gets support from the Division of the Advancement of Women (DAW).

The Committee on the Elimination of Racial Discrimination (CRRD) was established in 1970 by virtue of Art. 8 of the International Convention on the Elimination of All Forms of Racial Discrimination. It has 18 expert memberships. According to part II of the Convention, the Committee is mandated, among other things, to consider reports submitted by state parties on the extent of their compliance with the provisions of the Convention. Based on these reports, the committee also makes suggestions and recommendations. It receives and considers communications from individuals or groups within a state party that has recognized its jurisdiction. Again, when necessary, the Committee establishes an ad hoc conciliation commission for the peaceful settlement of disputes that may arise among State parties as to the application of the Convention. The Human Rights Committee was instituted in 1977 under Art. 28 of the International Covenant on Civil and Political Rights, which instituted this Committee. It encourages adherence to the ICCPR standards.Under the Optional Protocol to the ICCPR, individual written communications on violations of civil and political rights are submitted to and considered by the Committee. However, for this to be possible, the individual must have exhausted local remedies and must be from a state that is a party to the Optional Protocol. The Committee on Economic, Social, and Cultural Rights (ICESCR) was created in 1985 to monitor the implementation of the International Covenant on Economic, Social, and Cultural Rights. On

its own, the Committee on the Elimination of Discrimination Against Women (CEDAW) was created in 1982 under Art. 17 of the Convention on the Elimination of All Forms of Discrimination Against Women. Its functions are similar to those of other committees in considering the progress made by the state members towards the implementation of the Convention. The Committee against Torture was established by Art. 17 of the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment.

There are also some specialized agencies of the UN system that have an interest in the field of human rights. These are the International Labour Organization, the United Nations Educational, Scientific, and Cultural Organization (UNESCO), the Food and Agriculture Organization (FAO), and the World Health Organization (WHO). The International Labour Organization (ILO) was established in 1919 as an autonomous institution associated with the League of Nations. According to its Constitution, it is the right of all human beings to pursue their material well-being and spiritual development in conditions of freedom and dignity, economic security, and equal opportunity. It prepares international labour standards and their effective execution concerning human rights issues such as the elimination of discrimination in employment and occupation, the enforcement of the principle of equal remuneration for both men and women, trade union rights, social security, and so on. The United Nations Educational, Scientific, and Cultural Organization (UNESCO) has in its Constitution the objective of contributing to peace and security by promoting collaboration among nations through education, science, and culture. The aim of this collaboration is to facilitate universal respect for justice, the rule of law, and human rights and fundamental freedoms without discrimination. Thus, it has prepared several conventions and recommendations in the field of human rights. It considers communications a violation of the right to education and participation in cultural life through its Committee on Conventions and Recommendations.

The primary objective of FAO is to contribute to the expansion of the world economy and guarantee humanity's freedom from hunger. Thus, it engages in increasing levels of nutrition and standards of living, securing the improvement in the efficiency of production and distribution of food and agricultural products. The World Health Organization (WHO), as stipulated in the preamble to its Constitution, maintains that it is the fundamental right of every human being to enjoy the highest attainable standard of health. It therefore co-ordinates international health work, maintains certain international health services, promotes and conducts research, and works to improve the standards of teaching in the health, medical, and other related professions.

5. IMPLICATIONS FOR DOMESTIC JURISDICTION

In the recent past, the issue of human rights has permeated international discourse. It has also become a vital feature in interstate relations and "has burst the sacred bounds of national sovereignty" (Wilson 1979, p. 47). Hence, the reinterpretation of the doctrine of domestic jurisdiction in the field of human rights protection. The implication is that states may no longer plead domestic jurisdiction as a bar to international scrutiny of their internal human rights situations. The internationalization of human rights means that no nation can claim that it does not understand what human rights are, nor can any nation claim that the way it treats its citizens is immune from international scrutiny (Mckay 1979). This implies that human rights issues, which are traditionally within the domain of domestic jurisdiction in line with the doctrine of state sovereignty, have been altered. Involvement of states in each other's internal affairs is not new but has a long history. Conversely, the making of a principle out of such involvement is new (Cleveland 1979). There are a lot of instances wherein the internal affairs or decisions of a country have been taken cognizance of internationally. An instance is the 1948 US Marshal Plan.

The role of states as enforcers and protectors of human rights cannot be overemphasized. Originally, individuals were not subjects of international law and so could not enforce their human rights at an international level. They made due with the available enforcement procedures within their countries. However, with the evolution of international law, individuals have become subjects of international law and can now enforce such rights. Notwithstanding this development, the principle of exhaustion of local remedies still applies. States carry out ratification of human rights instruments. International human rights instruments are meant to be applied mainly at the national level, and a state can only be bound by such a treaty upon ratification and deposit of instruments of ratification. Traditionally, ratification of bounds by the executive was to confirm that the government's representatives who negotiated such a treaty had the full power to do so. However, in the course of the development of international relations, ratification came to be used as a way of subjecting the executive's treaty-making power to parliamentary control. The implication of this fundamental change is that a state can only be bound by a treaty when it has been subjected to ratification. Thus, when a state ratifies a treaty, it is under an obligation to bring its domestic laws into conformity with its obligations under international law. It can't use the rules in its constitution or laws as an excuse for not meeting its obligations under an

international agreement. Obviously, general international law is governed by the rule of *pacta sunt servanda*, which means that parties to an agreement or treaty must abide by the terms of such agreement. Therefore, no nation is justified if it uses its local legislation to defeat or evade its obligations under a treaty that it consented to freely (Okeke 2004).

Also, states incorporate Human Rights Instruments into their state laws. After the creation of a treaty and ratification, states help to give it life by incorporating it into their legal systems. States are under an obligation "to take joint and separate actions in cooperation with the organization" to achieve its purposes of "observance of human rights and fundamental freedom for all without distinction as to race, sex, language, or religion" (Art. 55 of the UN Charter). Individual state efforts can be manifested through the incorporation of international human rights into domestic law.Incorporation becomes necessary after ratification, and this depends on the constitutional framework of a particular state. At the national level, the relationship between international law and municipal law determines the position and attitude of the state towards such international legislation. There are two theories: dualism and monism. Dualism posits that municipal law and international law constitute two separate and distinct categories of legal systems. Thus, the implementation of international law depends on the willingness of a state to domesticate such a law. Consequently, domestic law may be applied at will by a state contrary to the rules of international law. In the words of Antonio (1986):

> …dualist theory was inspired by a moderate nationalism; it endeavored to face the reality of international society, but at the same time insisted on relying on an emergency exists, as it were, in case international law proved to be in harsh conflict with national interest (p. 20).

On the other hand, monism postulates that international law is superior to municipal law. Kelsen (1967) argues for the hierarchy of laws and maintains that, whether at the national or international level, law is meant to prescribe behavioral patterns to be adhered to and, if otherwise, attract sanctions. Consequently, in Monism, a logical unity is forged between international law and municipal law such that the latter is subject to the former. Then, since legal relationships among states are governed by international law, international law is superior (Shaw 2003). The two systems are, therefore, not coordinated norms of equal level. Otherwise, this will amount to different legal orders independent of each other but with national norms flowing into each other for a monistic world order to be formed. Though neither of the two theories is accepted without reservation, philosophical jurisprudence favours the superiority of international law.

The status of treaties in national law is determined by two constitutional techniques. These are legislative incorporation and automatic incorporation. Legislative incorporation, also known as transformation, posits that for an international law to have effect on the national plane, it must be expressly "transformed" into municipal law through appropriate constitutional machinery, such as Acts of Parliament. Conversely, automatic incorporation or transformation does not require such a constitutional procedure (Leary 1982). Whichever approach is favoured, what is important is that through incorporation of international human rights treaties, implementation of their provisions becomes possible domestically, thus making possible the role of states as enforcers and protectors of human rights.

6. CONCLUSION

This paper argues that, despite the conceptual difficulties associated with human rights, their nature as inalienable and immutable natural principles makes them fundamental as opposed to non-fundamental rights. Human rights and economic rights are certainly fundamental rights upon which the foundation of society should revolve if men are not to be treated like beasts and if society itself is not to slip back to the Hobbesian state of nature. Again, the internationalization of human rights reveals human rights as a genre of rights that stand above the ordinary rights that societies confer on their members, such as political and socio-economic rights. Thus, domestic jurisdiction concerning human rights matters is limited as individuals can seek remedies for violations of their human rights at the International Court of Justice. States can ratify and incorporate human rights into their legal systems, yet their protection and implementation of such rights are subject to international scrutiny. That is why the understanding of the human rights concept should not be based on what states or regional laws define them to be.

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