JUS COGENS PRO HOMINE[1]*: CONSIDERATIONS ON A SPECIAL CATEGORY OF NORMS OF PROTECTION OF THE HUMAN PERSON*

JUS COGENS PRO HOMINE: CONSIDERAÇÕES SOBRE UMA CATEGORIA ESPECIAL DE NORMAS DE PROTEÇÃO À PESSOA HUMANA

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ABSTRACT

Objectives: This paper aims to analyze some norms of protection of the human person, called *jus cogens pro homine* or *pro persona*, due to their specificities.

Methodology: The inductive approach study was carried out through the understanding of legal concepts and extensive bibliographic research, with an exploratory and conclusive objective.

Results: The study concludes that *jus cogens* involves a set of norms covering the international community, States and individuals. *Jus cogens pro homine* or *pro persona*, inserted in the last field, contains a special category of the norms of protection of the human person.

Contributions: It is an extremely relevant discussion, which helps to define the scope of action of international *jus cogens*.

Keywords: International Law. Human rights. *Jus cogens pro homine* or *pro persona*.

RESUMO

Objetivos: Neste artigo, analisaremos algumas normas de proteção aos indivíduos, denominadas *jus cogens pro homine* ou *pro persona humana*, por suas especificidades.

Metodologia: O estudo, de abordagem indutiva, foi realizado por meio do entendimento de conceitos jurídicos e de ampla pesquisa bibliográfica, com objetivo exploratório e conclusivo.

Resultados: O estudo conclui que o *jus cogens* envolve um conjunto de normas que abrange a comunidade internacional, os Estados e os indivíduos. O *jus cogens pro homine* ou *pro persona*, inserto no último campo, contém uma categoria especial de normas de proteção à pessoa humana.

Contribuições: Trata-se de discussão de grande relevância, que contribui para delimitar o escopo de atuação do *jus cogens* internacional.

Palavras-chave: Direito Internacional. Direitos Humanos. *Jus cogens pro homine* ou *pro persona humana*.

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1. INTRODUCTION

At the end of the 1960s, the International Law Commission (ILC) of the United Nations[3], responsible for standardizing the law of treaties, after lengthy discussions[4] explained the concept of "peremptory norms of general International Law" *(jus cogens)*:

> Art. 53 [...] For the purposes of the present Convention, a peremptory norm of general international law [that is to say, "a jus cogens norm"] is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.

This definition of the Vienna Conventions on the Law of Treaties (1969 and 1986) transcended the field of the Law of Treaties[5] and is currently firmly rooted in the contemporary International Law.

Nevertheless, despite the unquestionable progress resulting from the approval of the apparatus, the concept inserted in both international instruments is imperfect, as it does not contemplate all the characteristics of the institute. Thus, it was up to the doctrine, as an auxiliary means of International Law (IL), to foster the development of the matter with the presentation of a broader concept. In this regard, the institute can be defined as

> [...] a set of universal precepts with normative superiority, which is why any type of derogation or modification of its content is not allowed, except for another precept of the same nature, and even so provided that it is to add rights in respect of the principle of prohibition of retrogression; and which allow their objective application because of the attribute of peremptoriness. [6] [7]

[3] See **Audiovisual Library of International Law**. Retrieved January 10, 2017, from http://legal.un.org/avl/ha/vclt/vclt.html.

[4] In 1966, after the conclusion of the works, the International Law Comission (ILC) recommended to the United Nations General Assembly the convening of an international conference to approve the final text. Two years later, on May 21, 1968, the first session of the Diplomatic Conference convened by the United Nations for the approval of the draft Convention on the Law of Treaties was finally held. On this occasion, Article 53 (then Article 50), which contained the concept of a peremptory norm of General International Law, received 72 votes in favour, 3 against, and 18 abstentions. In the second session, on May 12, 1969, the same provision received 87 votes in favour, 8 against, and 12 abstentions. There were eight states that voted against the international *jus cogens*. These were Belgium, France, Switzerland, Australia, Turkey, Liechtenstein, Monaco, and Luxembourg.

[5] See FINKELSTEIN, Cláudio. **Hierarquia das Normas no Direito Internacional:** *Jus Cogens* e Metaconstitucionalismo. São Paulo: Saraiva, 2013, p. 184.

[6] One of the prominent trends of the contemporary Law of Nations (*jus gentium*) is its objectification - which translates into a non-voluntarist foundation of its norms, strengthening of multilateral treaties, interpretation and modification only in the scope of its object and purpose, and the emergence or valorization of *jus cogens* as a collection of principles that prevail over the remaining norms. MIRANDA, Jorge. **Teoria do Estado e da Constituição**. 4. ed. Rio de Janeiro: Forense, 2015, p. 186.

[7] See MIGUEL MARQUES. **Teoria das garantias universais e imperativas de direito convencional**. São Paulo: Ed. Arraes, 2018, p. 48.

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It can be drawn four important characteristics from the above concept: universality, normative superiority, non-derogability and imperativeness. *Jus cogens* precepts are universal, as they radiate *erga omnes* effects[8] to the entire system, binding on all subjects of International Law, "including on those who are expressly contrary to it"[9]. They are superior because, according to the view of an important part of the contemporary doctrine[10] of some International Courts[11], they are the most influent existing order in the contemporary international legal system[12]. They are non-derogable because they cannot undergo any content modification, except for another precept of the same nature (due to the specialty criterion), and even then only to add rights by virtue of the principle of prohibition of retrogression. Lastly, they are peremptory because they are enforceable against all States, regardless of their manifestation of will[13].

This paper will analyze one of the numerous discussions on the subject: the scope of action of peremptory norms in the field of human rights, a perspective within which we identify *jus cogens pro homine* or *pro persona*.

2. CLASSIFICATION OF INTERNATIONAL *JUS COGENS*

There is no doctrinal consensus on the scope of action of international *jus cogens*.

For some authors (CAICEDO[14]; ROBLEDO[15]; BRITO[16]), the peremptory norms of International Law, inserted in five large groups, would be related to the following issues: a) The

[8] See MIRANDA, 2009, p. 110; MACHADO, 2013, p. 142.
[9] See VARELLA, 2018, p. 78.
[10] See MIRANDA, 2009, p. 110; PEREIRA; QUADROS, 2015, p. 277; CASSESE, **Diritto Internazionale**. 2.ed. Bologna: Il Mulino, 2013, p. 221; MAZZUOLI, 2018, p. 114; FINKELSTEIN, 2013, p. 199; MARQUES, 2018, p. 50-51.
[11] According to the European Court of Human Rights, the affirmation that the principle of equality and non-discrimination belongs to the domain of *ius cogens* has several legal effects: **recognition that the norm ranks higher** than any norm of international law, except other norms of *ius cogens*; in case of dispute, the norm of *ius cogens* would prevail over any other norm of international law, and the provision that contradicts the peremptory norm would be null or lack legal effects. (Taken from the arguments of the Legal Clinics of the College of Jurisprudence of the Universidad San Francisco, Quito). In: INTER-AMERICAN COURT OF HUMAN RIGHTS. **Advisory Opinion OC-18/03 of September 17, 2003**. Requested by the United Mexican States. Concurring Opinion of Judge Alirio Abreu Burelli) (emphasis added).
[12] [...] The idea of *jus cogens* inevitably introduces some type of normative hierarchy in a legal order that hitherto exempted it. NASSER, Salem Hikmat. *Jus Cogens*: Ainda Esse Desconhecido. **Revista Direito GV**, São Paulo, v. 1, n. 2, p. 161-178, 2005.
[13] See MARQUES, 2018, p. 112; VARELLA, Marcelo Dias. **Direito Internacional Público**. 7. ed. São Paulo: Saraiva Educação, 2018, p. 83.
[14] PERDOMO, Caicedo J. La Teoria del lus Cogens en Derecho Internacional a la Luz de la Convención de Viena sobre el Derecho de los Tratados. **Revista de la Academia Colombiana de Jurisprudencia**, enero-jun. 1975, p. 261-274. Quoted by GÓMEZ ROBLEDO, Antonio. El Ius Cogens International, Estudio histórico-crítico. México: Instituto de Investigaciones Jurídicas, Universidad Nacional Autónoma de México. 2003, p. 156 e 158.
[15] GÓMEZ ROBLEDO, Ob. Cit., p. 160.
[16] BRITO, Wladimir. **Direito Internacional Público**. 2. ed. Coimbra: Coimbra, 2014, p. 220.

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sovereign rights of States and peoples - a perspective which would include, for example, the principles of equality, territorial integrity, and free determination of peoples; b) The maintenance of international peace and security, which would encompass, for instance, the prohibition of the threat or use of force; the peaceful resolution of conflicts; and the principles of diplomatic and consular law; c) The freedom of contractual will and inviolability of treaties, which include: the *pacta sunt servanda* ("agreements must be kept"); the principle of good faith; and, according to Brito, the *pacta tertiis nec nocent nec prosunt* ("a treaty binds the parties and only the parties; it does not create obligations for a third state"); d) The use of terrestrial and extraterrestrial space belonging to the international community, which would involve the fundamental freedoms of the high seas (common heritage of humanity), extra-atmospheric space, etc.; and e) Men's rights, such as those banning slave and women trade, genocide, and torture; respect for the right to asylum, the freedom of assembly, the religion or belief, and the equal rights; and the prohibition of racial discrimination (apartheid), among others.

For other authors (NAHLIK; RIPOLL[17]), on the other hand, the *iuris cogentis* norms would involve a triad with the components: a) Interests and values of the international community – for instance, the prohibition of the threat or use of force; the maintenance of peace; the crackdown on piracy and on the fundamental freedoms of the high seas, and others; b) Interests and fundamental rights of each State (individually and in their reciprocal relations) as members of the international community – for example, the principles of sovereign equality of States, self-determination of peoples, and non-intervention; and c) Fundamental rights of the human person – e.g., norms banning slavery and the slave trade, genocide, and others.

There are also those authors who summarize the peremptory norms of general International Law into two large groups: the first, aimed directly at States – for example, the norms included in certain provisions of the UN Charter, such as world peace and security; essential interests of the international community; regulation of the threat or use of force; space rights (land, air, sea, sovereignty over natural resources); and fundamental rights of States (diplomatic rights, freedom of contract, inviolability of treaties); and the second, with rules concerning the individuals' dignity - for instance, the rights inherent to the human person individually and to peoples collectively[18].

[17] NAHLIK, Stanislaw E., ***Ius cogens* and the codified law of treaties**, Temis, 1973-1974, núms. 33-36, p. 85-111; PUCEIRO RIPOLL, R., Desarrollos actuales del ius cogens, **Revista Uruguaya de Derecho Internacional**, núm. 3, 1974, p. 70. Citados por GÓMEZ ROBLEDO, Ob. Cit., p. 156 e 158.
[18] V. FRIEDRICH, Tatyana Scheila. **As Normas Imperativas de Direito Internacional Público** – *Jus Cogens*. Belo Horizonte: Fórum, 2004, p. 102.

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We understand that *jus cogens* comprises a set of norms at the top of the hierarchy of contemporary International Law sources[19] (a concept within which Dominique Carreau[20] coined the expression "international supra-legality"), and which encompasses the international community, the States, and primarily the protection of the human person.

As far as the international community is concerned, the peremptory norms would be aimed primarily at the maintenance of international peace and security.

In relation to States, the peremptory norms, present in instruments such as the UN Charter of 1945, involve, inter alia, issues like the sovereign equality of States and space rights (land, air, sea, sovereignty over natural resources, etc.).

Regarding the individuals' protection, the cogent norms (hereinafter called *jus cogens pro homine* or *pro persona*) are situated in the field of human rights.

3. HUMAN RIGHTS TREATIES

Unlimited state voluntarism[21], based on the classical conception of sovereignty, enabled a myriad of human rights violations, particularly during the Second World War[22].

A paradigm shift started in the middle of the last century[23], when human rights began to be governed by a universal system of protection[24].

In this new phase, the then classical model of International Law, affected, inter alia, by the insertion of *iuris cogentis* norms in the text of the Vienna Convention on the Law of Treaties (VCLT)

[19] PEREIRA, André Gonçalves; QUADROS, Fausto. **Manual de Direito Internacional Público**. 3. ed. 11. reimpressão. Lisboa: Almedina, 2015, p. 277; CASSESE, A. **Diritto Internazionale**. 2.ed. Bologna: Il Mulino, 2013, p. 221; MAZZUOLI, Valerio de Oliveira. Curso de Direito Internacional Público. 10. ed. São Paulo: **Revista dos Tribunais**, 2016, p. 185; FINKELSTEIN, Cláudio. **Hierarquia das Normas no Direito Internacional:** *Jus Cogens* e Metaconstitucionalismo. São Paulo: Saraiva, 2013, p. 199.

[20] The international supra-legality idealized by Carreau involves two areas of Contemporary International Law: peacekeeping and *jus cogens*. Dominique Carreau, Jahyr, Philippe Bichara. **Direito Internacional**. 2.ed. Rio de. Janeiro: Lumen Juris, 2016, p. 106.

[21] TRINDADE, Antônio Augusto Cançado. **A Humanização do Direito Internacional**. Belo Horizonte: Del Rey, 2006, p. 110.

[22] Sovereignty is no longer understood in its absolute sense today. Quite the opposite, it is seen as depending on the international legal order. The Sovereign State must be understood as being directly and immediately subordinated to the international legal order, without any other intervening collectivity between it and the International Law. In this way, subject of the International Law with full capacity, it is the State that has the "competence of competence" in the language of German authors. MELLO, Celso Duvivier de Albuquerque. **Curso de Direito Internacional Público**. 10. ed. Rio de janeiro: Renovar, 1994, v. 1, p. 314.

[23] Signs of a paradigm shift on the Voluntary School of International Law emerged after the experiences of Nazism and the Second World War. In 1937, Alfred Verdross wrote a paper about Hitler entitled "Forbidden Treaties in International Law". FINKELSTEIN, Cláudio. **Hierarquia das Normas no Direito Internacional:** *Jus Cogens* e Metaconstitucionalismo. São Paulo: Saraiva, 2013, p. 207.

[24] PIOVESAN, Flávia. **Direitos Humanos e Justiça Internacional:** um estudo comparativo dos sistemas regionais europeu, interamericano e africano. 6. ed. São Paulo: Saraiva, 2015, p. 45.

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of 1969, for the first time in history suffers an important mitigation in the freedom of agreement of the States[25].

Hence, notwithstanding the production of a human rights treaty being broadly guided by the rules established in the VCLT of 1969, we cannot forget that these instruments are subject to specific rules and principles[26].

In this respect, we can affirm that States, in the current context, even if backed by the mantle of sovereignty, are no longer free to establish agreements among themselves that violate fundamental values defended by international society[27]. This line of thinking is well illustrated by Brownlie:

> [...] an agreement concluded by a State which allows another State to detain and search its ships on the high seas is valid; nevertheless, an agreement concluded with a neighboring State to conduct a joint operation against a racial group that is in the border region between the two States and which, if carried out, would constitute genocide, is null and void, since the prohibition with which the treaty is incompatible is a *jus cogens* norm[28].

As a matter of fact, the specificity of the Law of Nations (*jus gentium*), apart from triggering a mitigation to the classical contractualist notion, inevitably imposes a reinterpretation of some institutes incident on the general theory of treaties (such as reservations and denunciations), which may eventually restrict the scope and effectiveness of international norms for the protection of human beings[29].

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[25] FRIEDRICH, Tatyana Scheila. **As Normas Imperativas de Direito Internacional Público** – *Jus Cogens.* Belo Horizonte: Fórum, 2004, p. 168-169.

[26] Human rights treaties are clearly distinct from classic treaties, the latter establishing or regulating subjective rights, or reciprocal concessions or advantages, for the Contracting Parties. Human rights treaties, in contrast, prescribe *obligations of an essentially objective character*, to be collectively guaranteed or implemented, and emphasize the prevalence of considerations of the public policy doctrine or *ordre public* that transcend the individual interests of the Contracting Parties. The special nature of human rights treaties has an impact, as it could not fail to be, in their interpretation process. Such treaties - as the European and the Inter-American Courts of Human Rights have warned - are not effectively interpreted in the light of reciprocal concessions, as in the classic treaties, but rather in the pursuit of achieving the ultimate purpose of protecting the fundamental rights of the human being. TRINDADE, Antônio Augusto Cançado. TRINDADE, Antônio Augusto Cançado. **Tratado de Direito Internacional dos Direitos Humanos**. Porto Alegre: Sergio Antônio Fabris Editor, 1999, v. II, p. 29-30.

[27] See RAMOS, André de Carvalho. In: SALIBA, Aziz Tuffi (Org.). **Direito dos Tratados:** Comentários à Convenção de Viena sobre o Direito dos Tratados (1969). Belo Horizonte: Arraes Editores, 2011, p. 452.

[28] BROWNLIE, Ian. **Princípios de Direito Internacional Público**. Lisboa: Fundação Calouste Gulbenkian, 1997, p. 538.

[29] [...] the specificity of human rights treaties affects not only their interpretation rules, but also other norms and procedures of the law of treaties, - such as those relating to the termination of treaties or suspension of their operation, the denunciation of treaties, and reservations to treaties, in the present context of human rights protection. The recognition of that specificity has contributed considerably to the evolution of International Human Rights Law. The interpretation of human rights treaties effectively shows the autonomy of this new *corpus juris* and has contributed to its continuous evolution. TRINDADE, Antônio Augusto Cançado. **Tratado de Direito Internacional dos Direitos Humanos**. Porto Alegre: Sergio Antônio Fabris Editor, 1999, v. II, p. 34-35.

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As for reservations, doctrine[30] and the international community[31] have long condemned their application when it has the potential to mitigate the Law of Nations (*jus gentium*)[32].

The same reasoning can be employed for complaints. In this case, the treaties that contemplate *jus cogens pro homine* norms cannot be denounced, even if they have a withdrawal clause inserted in the body of the instrument, since such norms are fixed (because of the principle of prohibition of retrogression) as a hard core of the international system for the protection of the human person[33].

In this new scenario, the *iuris cogentis* norms fulfill a highly important function, as they present themselves as an overwhelming ethical minimum to be respected and observed by all subjects of International Law.

4. SCOPE OF *JUS COGENS PRO HOMINE* OR *PRO PERSONA*

Notwithstanding the progress connected to the approval and insertion of Article 53 in the Vienna Conventions on the 1969 and 1986 Law of Treaties defining the institute, there is a criticism regarding the lack of a normative reference list[34].

In the preparatory work for the 1969 Vienna Conventions on the Law of Treaties, led by Humphrey Waldock, some members of the 1963 International Law Commission (ILC) even suggested its inclusion:

> [...] **It seems convenient to indicate, as an example, some of the most notable types of treaties that are considered non-valid for being incompatible with the rules of *jus cogens***. Paragraph 2 accordingly lists three cases. The first case – the illicit use of force – needs no explanation; it is generally recognized that the principles of the U.N. Charter express not only the obligations of the Members of the United Nations but also the general rules of International Law that currently govern the use of force. The second case also requires no explanation: If a treaty contemplates the performance of an act which is criminal under IL,

[30] See AMARAL JÚNIOR, Alberto do. **Curso de Direito Internacional Público**. 5. ed. São Paulo: Atlas, 2015, p. 61; TRINDADE, Antônio Augusto Cançado. **Tratado de Direito Internacional dos Direitos Humanos**. Porto Alegre: Sergio Antônio Fabris Editor, 1999, v. II, p. 155-157.; MIRANDA, Jorge. **Curso de Direito Internacional Público:** Uma Visão Sistêmica do Direito Internacional dos Nossos Dias. 4. ed. Rio de Janeiro: Forense, 2009, p. 79; CASSESE, Antonio. **Diritto Internazionale**. 2.ed. Bologna: Il Mulino, 2013, p. 266-267.

[31] See The discussion at the Inter-American Commission on Human Rights/IACHR (Michael Domingues v. United States, Case 12.285), involving the reservation to Article 6.5 of the ICCPR, 1966 (which prohibits imposing the death penalty for persons under the age of 18), presented by the USA, which led to intense international repercussion; and also the EUROPEAN COURT OF HUMAN RIGHTS (ECHR). Application No. 10328/83: **Case of Belilos v. Switzerland**, Judgment of 29 April 1988.

[32] It can be stated that the *jus cogens* norm is not subject to reservation. MELLO, Celso Duvivier de Albuquerque. **Curso de Direito Internacional Público**. 10. ed. Rio de janeiro: Renovar, 1994, v. 1, p. 212.

[33] BAHIA, Saulo José Casali. **Tratados Internacionais no Direito Brasileiro**. Rio de Janeiro: Forense, 2000, p. 158-159.

[34] RAMOS, André de Carvalho. **Teoria Geral dos Direitos Humanos na Ordem Internacional**. 3. ed. São Paulo: Saraiva, 2013, p. 146.

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> its object is clearly illegal. The third case also seems to be evident. When International Law obliges upon every State to cooperate on the suppression and punishment of certain acts such as slave trade, piracy & genocide, a treaty contemplating or conniving at their commission must be clearly tainted as illegality. However, these instances are not exhaustive; the words "in particular" at the beginning of the paragraph indicate that these are simply specific applications of the principle according to which the breach of a *jus cogens* norm renders the treaty void (emphasis added)[35].
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> **Some members of the Commission considered that it might be useful to point out, as an example, some of the most evident and well-established *jus cogens* norms to indicate the character and general scope of the norm enunciated in the article. Suggested examples of treaties inconsistent with such norms comprised:** a) a treaty contemplating a case of unlawful use of force in violation of the Charter's principles; b) a treaty contemplating the performance of any other criminal act under International Law; and c) a treaty contemplating or conniving at the commission of acts such as trading in slaves, piracy or genocide, against which all States are under an obligation to co-operate. Other members expressed the view that, if examples were given, it would be undesirable to appear to limit the scope of the article to cases involving acts that constitute crimes under International Law; treaties violating human rights or the principle of self-determination were also cited as possible examples (emphasis added)[36].

Nevertheless, this idea was rejected by the Commission[37] itself for two main reasons: a) To avoid serious omissions and/or interpretation errors; and b) To not excessively delay the approval of the conventional text, given that the insertion of a list would require in-depth research[38].

Because of the normative omission, it is questioned whether the *jus cogens pro homine* norms would cover entirely or only partially the norms for the protection of the human person. Despite the fact that there is an understanding to the contrary, we believe that only some rights that consider essential values to the human person[39] are part of this special category of rights[40].

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[35] UNITED NATIONS. **Yearbook of the International Law Commission, 1963**, Vol. II. (Article 13 – Comment No. 4, p. 61); The consolidation of *erga omnes* obligations of protection, as a manifestation of the emergence itself of imperative norms of international law, would represent the overcoming of the pattern erected upon the autonomy of the will of the State. INTER-AMERICAN COURT OF HUMAN RIGHTS (IACtHR). Blake versus Guatemala (Merits), Judgment of January 24, 1998. Retrieved 10 July 2017, from http://www.corteidh.or.cr/docs/casos/articulos/seriec_36_esp.pdf.

[36] THE UNITED NATIONS. **Yearbook of the International Law Commission, 1963**, Vol. II (Article 37 – Comment No. 3, p. 232).

[37] THE UNITED NATIONS. **Yearbook of the International Law Commission, 1963**, Vol. II (Article 37 – Comment No. 3, p. 232).

[38] See RAMOS, André de Carvalho. **Teoria Geral dos Direitos Humanos na Ordem Internacional**. 3. ed. São Paulo: Saraiva, 2013, p. 146; REMIRO BROTÓNS, Antonio y otros. **Derecho Internacional**. Curso General. Valencia: Tirant loBlanch, 2010, p. 232.

[39] Taking into account that the most essential human rights are considered to be part of *jus cogens*, it is reasonable to admit the special and privileged hierarchy of international human rights treaties relative to other traditional treaties. PIOVESAN, Flávia. **Direitos Humanos e o Direito Constitucional Internacional**. 14. ed. São Paulo: Saraiva, 2013, p. 129.

[40] From our side, we believe that, for the sake of the necessary democratization of the International Community, now reinforced with the adhesion of some Eastern European States to the Universal Declaration of 1948, it must be understood that at least the most important rights and freedoms included in that Declaration and in the 1966 Covenants, and which are not part of General Customary Law, already belong to the *ius cogens* – as is the case with the rights to life, private property rights, the rights to freedom, the rights to form a family; and the freedom of opinion and expression, the freedom of association and assembly, the freedom of movement, among others. Nevertheless, it must be increasingly expanded the reach of Peremptory International Law of general scope to all rights and freedoms recognized by the 1966 Universal Declaration and Covenants, without however consolidating the different sets of regional *ius cogens* formed around

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In light of the normative gap and without prejudice to the provision included in other international instruments[41], we suggest the hard core as a (positive) reference list (merely illustrative), present in Article 4.1 of the International Covenant on Civil and Political Rights/ICCPR (adopted by the General Assembly of the United Nations on 16 December 1966 - XXI Session, and approved in Brazil by Legislative Decree No. 226 on 12 December 1991, and by Presidential Decree No. 592 on 6 July 1992), which prevents the suspension of some norms of protection of the human person, such as the right to life and freedom, the right to recognition as a person before the law, the right to freedom of thought, conscience and religion, which prohibits torture, slavery, servitude, civil debt imprisonment, and the imposition of the death penalty for persons under the age of 18 and pregnant women.

Furthermore, we cannot overlook some important international precedents: banning racial discrimination (apartheid)[42], human life[43], torture[44], equality and non-discrimination[45], access to justice[46]; and banning slavery and similar practices[47].

regional conventions on human rights. PEREIRA, André Gonçalves; QUADROS, Fausto. **Manual de Direito Internacional Público**. 3. ed. 11. reimpressão. Lisboa: Almedina, 2015, p. 283-284.

[41] Convention on the Prevention and Punishment of the Crime of Genocide (1948); European Convention on Human Rights (1950); Declaration of the Rights of the Child (1959); Declaration on the Elimination of All Forms of Racial Discrimination (1963); the International Convention on the Elimination of All Forms of Racial Discrimination (1965); Declaration on the Elimination of Discrimination Against Women (1967); Genocide Convention (1948); Convention on the Political Rights of Women (1953); Convention on the Elimination of All Forms of Racial Discrimination (1966); International Covenant on Civil and Political Rights (1966); the American Convention on Human Rights (1969); International Convention on the Suppression and Punishment of the Crime of Apartheid (1973); the Helsinki Accords – also called The Helsinki Final Act (1975); the African Charter on Human and Peoples' Rights (1981); Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) the UN World Conference on Human Rights Declaration and Program of Action (1993); Rome Statute of the International Criminal Court (ICC) (1998).

[42] INTERNATIONAL COURT OF JUSTICE (ICJ). **South West Africa Cases** (Ethiopia v. South Africa; Liberia vs. South Africa): Reports of Judgments, Advisory Opinions and Orders. Retrieved 30 April 2017, from http://www.icj-cij.org/files/case-related/47/047-19621221-JUD-01-00-EN.pdf.

[43] INTER-AMERICAN COURT OF HUMAN RIGHTS**. Case of the "Street Children " (Villagran-Morales et al.) v. Guatemala**. Judgment of November 19, 1999.

[44] INTER-AMERICAN COURT OF HUMAN RIGHTS. **Case of Maritza Urrutia v. Guatemala**, Judgment of November 27, 2003. Concurring Opinion of Judge A.A. Cançado Trindade, Par. 1. Retrieved 31 January 2017, from http://www.corteidh.or.cr/docs/casos/articulos/seriec_103_esp.pdf.

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5. CONCLUSION

Based on the above considerations, there is no doubt that the scope of action of the peremptory norms of general International Law *(jus cogens)* is limited to three large groups: a group concerning the International Community; another one aimed at the States; and a third group fundamentally focused on protecting individuals.

It is therefore evident that the Law of Nations (*jus gentium*) involves only one of the different aspects of international *jus cogens*. It is precisely this last group of the peremptory norms that we call *jus cogens pro homine* or *pro persona*.

Within this specific field of international *jus cogens* (human rights) it is discussed, because of the lack of a normative reference list, what would be the values covered by *jus cogens pro homine*.

In this regard, the doctrine is lame. For some, all norms of protection of the human person would be peremptory. With the utmost respect, we disagree with this line of thought. In fact, we understand that only the rights considered most essential to the human person are part of the category of *jus cogens pro persona*.

Hence, it is undoubtedly included in this conception (without prejudice to the provisions comprised in other instruments): the right to life and freedom; the right to equality, non-discrimination and access to justice; the right to recognition as a person before the law; the right to freedom of thought, conscience and religion, which prohibits genocide, torture, slavery, slave trade, servitude and other similar practices, civil debt imprisonment, and the imposition of the death penalty for persons under the age of 18 and pregnant women, and racial discrimination (apartheid).

This special category of human rights reflects the new International Law: a law based on values, which accepts hierarchy and acknowledges the human being as the final receiver of any and all international legal norms.

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