RCMOS – Multidisciplinary Scientific Journal of Knowledge.
ISSN: 2675-9128. São Paulo-SP.
Year IV, v.1, n.1, jan./ jul. 2024. | submission: 09/09/2024 | accepted: 11/09/2024 | publication: 13/09/2024

HUMAN RIGHTS AND LIMITS TO DOMESTIC JURISDICTION

HUMAN RIGHTS AND LIMITS TO DOMESTIC JURISDICTION

SUMMARY: This paper aims to analyze the relationship between human rights and state sovereignty by rereading the content of the principles of sovereignty and non-intervention. In addition, the possibility of approaching the issue of human rights from an international perspective and no longer as a matter limited to the domestic sphere of states was discussed. Based on the study carried out, it is concluded that the evolution in the interpretation of human rights protection standards and classical principles of international law such as non-intervention can contribute to strengthening the human rights protection system. The deductive method was adopted by examining the content and bibliographic review of books and articles and analyzing decisions of International Courts related to the topic addressed.
Keywords: Sovereignty. State jurisdiction. International obligations. Protection system. Human rights.

ABSTRACT: Work presented with the goal of examining the relationship between Human Rights and Sovereignty from a different approach to the principles of sovereignty and nonintervention. Beyond that, it has been discussed the possibility to deal with the human rights subject from an international stance in as much as it has not been an issue to be dealt with as an internal affair of a state anymore. From the study, it might be concluded that a new interpretation of human rights laws and principles of international law, such as the nonintervention might strengthen the human rights protection system. The deductive method was adopted through the content examination and bibliographic review of books and articles and analysis of decisions International Courts related to the topic addressed.
Keywords: Sovereignty. State jurisdiction. International obligations. Protection system. Human rights.

INTRODUCTION

The purpose of this paper is to examine the relationship between the internal orders of states and international law, as well as the theories that support the prevalence of international law over domestic law. In addition, the paper addresses the meanings of the concept of sovereignty and the prevailing conception of sovereignty that is responsible with respect to human rights. Furthermore, the paper critically discusses the possibility of a state invoking domestic law norms as a pretext for failing to comply with international obligations, and examines some decisions of international courts on the subject. The topic under debate does not only have theoretical consequences, since it has repercussions on the instruments available for the protection of human rights and their application within the domestic order of the states that are members of the international community.

2. INTERNATIONAL STANDARDS

Every society, regardless of its size or power, creates and establishes a framework of principles within which it develops. Law is the element that unites the components of a community to common principles and values, establishes rights and obligations and the set of rules that regulate the behavior of its members. This is also the function of International Law, with the difference that its main subjects are states and not individuals.[1].

The norms of international law constitute sources of international law, are provided for in Article 38 of the Statute of the International Court of Justice and should not be confused with rules of mere courtesy and international morality, which have no binding force[2].

Contrary to common belief, States, as a rule, observe and comply with the norms international, with violations being comparatively rare. What happens is that when they occur, they are given wide publicity and strike at the heart of the system, which seeks to preserve peace and justice, without however nullifying its validity or necessity for the achievement of common objectives among States.[3].

At the international level, there is no unified system of sanctions, however, there are circumstances in which the

1 SHAW, Malcolm N. International Law. 6th Ed. Cambridge: Cambridge University Press, 2008, p. 01.
2 GUERRA, Sidney. Course in public international law. São Paulo: Editora Saraiva, 2023. p. 30. E-book. ISBN 9786553627918. Available at: https://integrada.minhabiblioteca.com.br/#/books/9786553627918/. Accessed on: March 8, 2024. 3 SHAW, Malcolm N. International Law. 6th Ed. Cambridge: Cambridge University Press, 2008, p. 06.

The use of force is considered legal and justified. In the United Nations system, sanctions may be imposed when there is a threat or breach of the peace or an act of aggression. Sanctions may be economic, as was the case in 1966 against Rhodesia, military, as occurred in the Korean War in 1950, or both, as occurred in Iraq in 1990.[4].

The role of the State in the modern world is complex. The development of communications and interdependence in the economic and political fields show that there are no States free from any international interference, and even the most powerful ones depend on other States and external actors for the success of their actions.[5]. This phenomenon has led to an increase in the interpenetration between international law and domestic law in numerous areas, such as human rights, in which the subject is subject to regulation at both levels, giving rise to discussions about the relationship between the internal order of a State and the rules and principles of international law.

3. DUALIST AND MONIST THEORIES

One of the existing doctrinal currents, known as dualist, maintains that international law and the domestic law of each State are independent and distinct systems.[6]. Positivism considers consent between States, resulting from treaties and customs, as the foundation of international law. According to this conception, in States where international law is applied internally, this only happens because the State, in the exercise of its sovereignty, allows the incidence of international law norms in the domestic sphere.[7].

In contrast to the dualist theory, the monist current asserts that there is a single legal order, with no division between domestic and international law, which constitute two branches of law within a legal system.[8]. The question of the hierarchy between domestic and international norms then arises. For the defenders of the nationalist monist theory, the domestic legal order of each State prevails over international norms in the event of conflict, while the supporters of the internationalist monist theory maintain the prevalence of international law over the domestic law of each State.[9]. This last line of thought is divided into two others, according to the basis of justification for the preponderance of international norms. One line of understanding, defended, among others, by Lauterpacht, advocates the supremacy of international law over domestic law on the grounds that the primary function of norms is the well-being of individuals and the protection of human rights, and the supremacy of international law is the best method to achieve this goal. Kelsen, in turn, follows the logical formalist line and states that domestic and international norms establish standards of behavior that must be followed, as well as sanctions in the event of their violation. In his view, there is no difference between domestic law and international law in relation to the subject of obligations and rights, which in both cases is the human person. The difference between the two orders would be only of degree and not in essence. As the norms have the same nature, he envisions a union between both spheres and because the States owe the legal relations that exist between them to the provisions contained in the international norms, the consequence is their preponderance over the domestic norms of each of the States.[10].

Today, the expansion of the scope of international law has led most states to adopt an intermediate position, whereby the norms of international law are seen as part of a distinct legal system, but capable of internal application in certain circumstances.[11].

3.1 - STATE SOVEREIGNTY

According to the classic definition of BODIN "(...)*sovereignty constitutes the absolute and perpetual power of*

4 Ibid., p. 04.

5 VARELLA, Marcelo D. Public international law. [Enter Publisher Location]: Editora Saraiva, 2019. p. 111. E-book. ISBN 9788553609031. Available at: https://integrada.minhabiblioteca.com.br/#/books/9788553609031/. Accessed on: March 9, 2024.

6 REZEK, Francisco. Public International Law. São Paulo: Editora Saraiva, 2024, p. 08. E-book. ISBN 9788553622870. Available at: https://integrada.minhabiblioteca.com.br/#/books/9788553622870/. Accessed on: March 9, 2024.

7 SHAW, Malcolm N. International Law. 6th Ed. Cambridge: Cambridge University Press, 2008, p. 132.

8 MAZZUOLI, Valerio de O. Course in Public International Law. Rio de Janeiro: Grupo GEN, 2023, p. 71. E-book. ISBN 9786559645886. Available at: https://integrada.minhabiblioteca.com.br/#/books/9786559645886/. Accessed on: March 9, 2024.

9 Ibid. p. 72.

10 SHAW, Malcolm N. International Law. 6th Ed. Cambridge: Cambridge University Press, 2008, p. 131/132.

11 Ibid., p. 133.

a Republic[12].

According to Krasner, the term sovereignty has been used in at least four different ways. Domestic sovereignty, which refers to the organization of public authority that effectively exercises control at the domestic level; interdependent sovereignty, which consists of the ability of public authorities of a state to control the flow of movement within its borders; international legal sovereignty, which concerns the mutual recognition of states as well as other entities; and finally, Westphalian sovereignty, which concerns the exclusion of external actors from the organization and structure of domestic authorities.[13].

Sovereignty, originally related only to aspects of the internal structure of the state, later came to also describe the relationship between rulers or between states.[14].

There is still a prevailing view, especially in states that have been subjected to colonialism and predatory interventions, of sovereignty that approximates it to a prerogative to reject external claims and interference and an unrestricted freedom to act within the borders of the state.[15].

Opposing political views have defended different conceptions of sovereignty. Some argue that absolute sovereignty only serves the political elites and hinders the influence of the marginalized population of a state. There are those, however, who take a diametrically opposite position and demonstrate concern about the already fragile state sovereignty and that its further weakening could lead to the limitation of a state's domestic and international action. This line of understanding asserts that the doctrines of sovereignty and non-intervention constitute the main line of defense against external efforts to limit a state's domestic and international action.[16].

Currently, there is a tendency to defend a more balanced and complex vision of the concept of sovereignty, moving away from the traditional conception of unconditional sovereignty, towards a concept of responsible sovereignty, based on the protection of human rights, through which the State must observe humanitarian norms and have the capacity to act to effectively ensure a minimum standard of security and well-being for its citizens.[17]. In this way, States become subject to obligations, which can be demanded and implemented through political resistance by the country's citizens or through humanitarian intervention by the international community. Furthermore, in cases where the State does not have the capacity to perform the functions of government adequately and fails to protect vulnerable populations from civil conflicts and religious and ethnic extremists, the legitimacy of other political actors to act to contain human rights violations has been defended.[18].

At this point, it is important to highlight that it is wrong to understand sovereignty as a blank check for the State, since it is contingent and subject to compliance, by each State, with the imperatives of peace, the protection of human rights and subject to the law.[19].

In this context, the borders of a State no longer constitute an absolute impediment to the intervention of the international community, which in some situations has not only the right, but the obligation to act to put an end to serious human rights violations committed within a State.[20].

The difficulty observed, however, is to obtain consensus regarding which obligations emerge with sovereignty, as well as the sanctions and their respective gradation in case of non-compliance or refusal of the state to fulfill its obligations.[21].

4. INTERNATIONAL OBLIGATIONS AND SOVEREIGN STATES

As a general rule, based on the practice of the States, the case law on the matter and the provision

12 BODIN, Jean. Six books of the commonwealth. Translated by MJ Tooley. Oxford: Basil Blackwell Oxford, 1955, p. 24.
13 KRASNER, Stephen D. Sovereignty: Organized Hypocrisy. Princeton: Princeton University Press, 1999, p. 10. STEINER,
14 Henry N.; ALSTON, Philip; GOODMAN, Ryan. International Human Rights in Context. Law, Politics, Morals. 3rd Ed. Oxford: Oxford University Press, 2007, p. 689.
15 Ibid., p. 696.
16 Ibid., p. 698.
17 JONES, Bruce. PASCUAL, Carlos. STEDMAN, Stephen John. Power &*Responsibility: Building International Order in an Era of Transnational Threats*. Washington: The Brookings Institution, 2009, p. 09. 18
STEINER, Henry N.; ALSTON, Philip; GOODMAN, Ryan*. International Human Rights in Context. Law, Politics, Morals*. 3rd Ed. Oxford: Oxford University Press, 2007, p. 697. 19
MAZZUOLI, Valerio de O. Course in Public International Law. Rio de Janeiro: Grupo GEN, 2023, p. 483. E-book. ISBN 9786559645886. Available at: https://integrada.minhabiblioteca.com.br/#/books/9786559645886/. Accessed on: March 8, 2024.
20 STEINER, Henry N.; ALSTON, Philip; GOODMAN, Ryan. International Human Rights in Context. Law, Politics, Morals. 3rd Ed. Oxford: Oxford University Press, 2007, p. 699. 21
Ibid., p. 699.

constant in numerous treaties, such as the Vienna Convention on the Law of Treaties, it has not been accepted that a State violates its international obligations under the pretext of complying with the rules of its domestic legal system[22].

In the case of the Polish Nationals in Danzig, the then Permanent Court of International Justice stated that "*a State may not invoke provisions contained in its Constitution against another State with the aim of evading compliance with obligations provided for in international law or in treaties in force*[23]". On another occasion, when considering the case of Certain German Interests in Upper Silesia, the same Court stated that from the point of view of international law, domestic laws are mere facts expressing the will and constituting activities of the State. The Court stated that "*from the point of view of international law and the court, which is its organ, domestic laws are merely facts that express the will and constitute the activities of States, in the same way as legal decisions and administrative measures*"[24].

Along the same lines was the decision of the International Court of Justice, which when considering the case of the Applicability of the Arbitration Obligation under Section 21 of the United Nations Headquarters Agreement highlighted that the prevalence of international norms over domestic norms constitutes a fundamental principle of international law.[25].

At this point, it is important to highlight that the assertion of the superiority of international law rules over domestic law does not translate into the irrelevance of domestic law. On the contrary, domestic law rules play a fundamental role in the functioning of the international law system, since the State's actions in the international sphere are generally influenced by the rules contained in its legal system. Furthermore, it is possible that the resolution of a dispute submitted to an International Court may require the interpretation of a State's domestic legislation.[26].

States have a general obligation to act in accordance with the rules of international law. The international responsibility of States is a fundamental principle of public international law and imposes the duty of States to make reparation for injuries to the rights or dignity of other States. It has been argued that the international responsibility of States also extends to their relations with persons subject to their jurisdiction, notably when human rights violations are involved.[27]There is currently a tendency for international standards to penetrate the domestic legal systems of each state, which, associated with the increasingly broad jurisdiction of domestic courts in the assessment of matters with an international dimension, has led to a reformulation of the role of international law within states, as well as the readiness of domestic courts to analyze government acts in light of international law and the need to establish the interpretation of a standard of international law so that it can be applied in a case submitted for its assessment or even to resolve a conflict between international standards.[28].

5. HUMAN RIGHTS AND INTERNATIONAL LAW

The universalization of human rights is marked by the Universal Declaration of Human Rights of 1948[29]. However, the source of human rights is a point of debate among authors. From the perspective of Natural Law, certain rights exist as a result of a source superior to positive law and are universal, absolute, timeless, exist independently of being provided for in positive law and arise from the set of principles that govern human beings. The conception of rights natural defense didactic in the 17th century had as one of its main exponents John Locke and supported the

22 SHAW, Malcolm N. International Law. 6th Ed. Cambridge: Cambridge University Press, 2008, p. 133/134.

23 PERMANENT COURT OF INTERNATIONAL JUSTICE. Advisory Opinion A/B43. Treatment of Polish Nationals and Other Persons of Polish Origin or Speech in the Danzig Territory. Available at: < https://www.icj-cij.org/sites/default/files/permanent-court-of-international-justice/serie_AB/AB_44/01_Traitement_nationaux_polonais_Avis_consultatif.pdf>. Accessed on: 03/09/2024.

24 PERMANENT COURT OF INTERNATIONAL JUSTICE. Judgment A07. Certain German Interests in Polish Upper Silesia (Merits). Available at: https://www.icj-cij.org/sites/default/files/permanent-court-of-international-justice/serie_A/A_07/17_Interets_allemands_en_Haute_Silesie_polonaise_Fond_Arret.pdf>. Accessed on 03/09/2024.

25INTERNATIONAL COURT OF JUSTICE. Advisory Opinion of 26 April 1988. Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947. Available at: <https://www.icj-cij.org/sites/default/files/case-related/77/077-19880426-ADV-01-00-EN.pdf>. Accessed on: 09/03/2024.

26 SHAW, Malcolm N. International Law. 6th Ed. Cambridge: Cambridge University Press, 2008, p. 136/137. MAZZUOLI,

27 Valerio de O. Course in Public International Law. Rio de Janeiro: Grupo GEN, 2023, p. 535. E-book. ISBN 9786559645886. Available at: https://integrada.minhabiblioteca.com.br/#/books/9786559645886/. Accessed on: March 8, 2024

28 SHAW, Malcolm N. International Law. 6th Ed. Cambridge: Cambridge University Press, 2008, p. 138

29 RAMOS, André de C. Human Rights Course. São Paulo: Editora Saraiva, 2022. p. 21. E-book. ISBN 9786553622456. Available at: https://integrada.minhabiblioteca.com.br/#/books/9786553622456/. Accessed on: March 8, 2024.

inalienability of rights such as life, liberty and property from the conclusion of a social contract that put an end to the state of nature[30]. This conception even supported the existence of the individual's right in the face of state arbitrariness, whose function is to safeguard man's natural rights.[31]. This formulation played an important role throughout the 20th century in consolidating human rights as universal principles of the international community.[32].

Throughout the 19th century, positivist doctrines of state sovereignty and domestic jurisdiction advocated that issues relating to human rights were a matter for the domestic sphere of each state, with a few exceptions, such as issues relating to piracy and slavery. An important change began with the creation of the League of Nations in 1919, which had among its functions to oversee the system of mandates for people in former enemy colonies, through which freedom of conscience and religion and fair treatment for the natives of the territories in question were to be ensured. The peace agreements signed in 1919 with the countries of Eastern Europe and the Balkans were also supposed to ensure the protection of minorities and equality of treatment and opportunities.[33].

The Second World War and the numerous and serious human rights violations that occurred during this period had a profound impact on the design and implementation of an international system for the maintenance of peace and the protection of human rights. In the post-war period, numerous non-governmental organizations emerged in the field of human rights, as well as intergovernmental committees, bodies and courts that began to examine human rights violations.

Since the creation of the United Nations on 24 October 1945, many States have ratified human rights treaties adopted by the Organization and its specialized agencies. International instruments have raised the issue of human rights to the international sphere not only among signatory Member States, but also individually the human rights guaranteed in the respective treaties. Since some of these treaties have been and continue to be widely ratified by States, the human rights standards embodied in them have been seen as a set of customary standards of international law. Consequently, it has become increasingly difficult for a non-signatory State to claim that it is not bound by the human rights standards provided for in international instruments, notably those considered non-derogable.[34].

There are certain rights provided for in international human rights instruments that are non-derogable even in times of war or other public emergency that threatens the State, such as the right to life, the prohibition of torture and slavery under the European Convention, and the rights to legal personality, to dignified treatment, to life, to freedom of conscience, religion, among others, under the Inter-American Convention. Rights provided for as non-derogable in international instruments hold a special position in the hierarchy of rights, especially when not subject to the clawback clause.[35]

6. STATE JURISDICTION

Except in the case of immunities, the State has jurisdiction over all persons within its territory, as well as over those who are in a place subject to its sovereignty. In other words, the State holds power and exercises its authority over nationals and foreigners who are in a territory subject to its jurisdiction.[36].

Jurisdiction is a fundamental characteristic of a sovereign State, as it not only portrays equality between states prevents external interference in domestic affairs. It arises from the exercise of state authority and allows the establishment of regulations on persons, property, facts and can create, alter or extinguish relationships and obligations through legislative, executive and judicial functions[37].

30 SHAW, Malcolm N. International Law. 6th Ed. Cambridge: Cambridge University Press, 2008, p. 266.

31 RAMOS, André de C. Human Rights Course. São Paulo: Editora Saraiva, 2022. p. 24. E-book. ISBN 9786553622456. Available at: https://integrada.minhabiblioteca.com.br/#/books/9786553622456/. Accessed on: March 8, 2024.

32 SHAW, Malcolm N. International Law. 6th Ed. Cambridge: Cambridge University Press, 2008, p.267.

33 Ibid., p. 270-271.

34 BUERGENTHAL, Thomas. "The Evolving International Human Rights System." The American Journal of International Law, vol. 100, no. 4, 2006, pp. 783–807. JSTOR, http://www.jstor.org/stable/4126317. Accessed 6 Oct. 2023.

35 SHAW, Malcolm N. International Law. 6th Ed. Cambridge: Cambridge University Press, 2008, p. 275.

36 MAZZUOLI, Valerio de O. Course in Public International Law. Rio de Janeiro: Grupo GEN, 2023, p. 642. E-book. ISBN 9786559645886. Available at: https://integrada.minhabiblioteca.com.br/#/books/9786559645886/. Accessed on: March 8, 2024

37 SHAW, Malcolm N. International Law. 6th Ed. Cambridge: Cambridge University Press, 2008, p. 138, p. 645.

Although closely related to a territory, jurisdiction may be based on other grounds, such as nationality, and in this situation, it is possible for a State to have jurisdiction to judge offenses that occurred outside its territory. On the other hand, there are people, goods and situations that are immune to the jurisdiction of a State despite being located or having occurred in its territory.[38].

The duty of non-intervention in the domestic affairs of a State was included in the Declaration of Principles of International Law Concerning Friendly Relations and Co-operation among States, adopted by the UN General Assembly, in which it was emphasized that:

> No state or group of states has the right to interfere directly or indirectly for any reason whatsoever in the internal or external affairs of another state. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the state or against its political, economic and cultural elements are violations of international law.[39].

It is worth highlighting, as appropriate, that there are numerous state functions that are outside of international regulation and control and are subject exclusively to the sphere of the States, such as criteria for acquiring nationality and admitting foreigners into the territory of the state.[40].

6.1. DOMESTIC JURISDICTION AND PRINCIPLE OF NON-INTERVENTION

The principle of domestic jurisdiction constitutes a general principle of international law[41]and emphasizes the supremacy of the State within its own borders[42]. An area of activity for government and administrative bodies is established, free from interference from principles of international law.[43]. From the principle in question arises the conception that a State is supreme in the internal sphere, within its borders and, in the same way, must refrain from intervening in the domestic affairs of other States.[44]. However, the principle of domestic jurisdiction does not have a clearly delimited specific sphere of application and for its incidence to be ruled out it is sufficient that the matter be regulated, in certain aspects, by international law.[45].

In turn, the principle of non-intervention was first mentioned by Wolff and Vattel in the second half of the 18th century and its conception revolves around the idea that no State can intervene in the domestic affairs of another.[46]. The Charter of the Organization of American States in its Article 19 provides [47]:

> No State or group of States has the right to intervene, directly or indirectly, for any reason whatsoever, in the internal or external affairs of any other State. This principle excludes not only armed force but also any other form of interference or tendency to undermine the personality of the State and the political, economic and cultural elements that constitute it.

The principle in question also constitutes a basic principle of international law, based on sovereignty and equality between states and is reflected in Article 2(7) of the UN Charter, according to which[48]:

> Nothing in the present Charter shall authorize the United Nations to intervene in matters

38 Ibid., p. 646.
39 UNITED NATIONS ORGANIZATION - UN. General Assembly. 25th Session of 24 October 1970. Available at: <https://digitallibrary.un.org/record/202170/files/A_RES_2625%28XXV%29-EN.pdf?ln=en>. Accessed on 03/09/2024.
40 SHAW, Malcolm N. International Law. 6th Ed. Cambridge: Cambridge University Press, 2008, p. 647/648.
41 CRAWFORD, James. Brownlie's Principles of Public International Law. 9th Ed. Oxford: Oxford University Press, 2019, p. 190.
42 SHAW, Malcolm N. International Law. 6th Ed. Cambridge: Cambridge University Press, 2008, p. 493.
43 Ibid., p. 697.
44 Ibid., p. 647.
45 CRAWFORD, James. Brownlie's Principles of Public International Law. 9th Ed. Oxford: Oxford University Press, 2019, p. 679.
46 KRASNER, Stephen D. Sovereignty: Organized Hypocrisy. 1st Ed. Princeton: Princeton University Press, 1999. p. 21
47 OAS Charter. Available at: <https://www.cidh.oas.org/basicos/english/basic22.charter%20oas.htm> Accessed on: 03/07/2024.
48 UN Charter. Available at: https://brasil.un.org/sites/default/files/2022-05/Carta-ONU.pdf https://brasil.un.org/pt-br/download/75228/91220> Accessed on 02/03/2024.

> which are essentially within the jurisdiction of any State or shall oblige Members to submit such matters to settlement in accordance with the present Charter; this principle shall, however, not prejudice the application of the coercive measures provided for in Chapter VII.

The defense of the principle of non-intervention, provided for in Article 2(7) of the UN Charter, and its interpretation in conjunction with Articles 55 and 56 of the same document, which contain vague and generic provisions for the protection of human rights, for many years made it difficult for the UN to act when confronted with human rights violations.[49].

The UN Charter contains numerous provisions dealing with human rights, but no procedure has been provided for compelling States to observe them. There is a line of thought that asserts that in a historical interpretation, taking into account the time of its promulgation, the purposes enumerated in Article 55 of the Charter do not constitute legal obligations, but merely an exhortation, either because of the language used or because it did not specify which human rights it was intended to protect.[50].

And, according to the traditional interpretation of Article 2(7) of the Charter, a State or Body International has no right to interfere in the domestic affairs of other states unless coercive measures under Chapter VII are applied.[51].

However, the provision in question has been subject to reinterpretation and claims based on the principle of non-intervention have been gradually rejected by the majority of the Organization's members, who have come to understand that the UN Charter has internationalized the concept of human rights and that Member States have assumed international obligations on the subject. Although it is still necessary to define the scope of these obligations, States can no longer validly claim that human rights are exclusively domestic.[52]. Thus, the treatment of nationals of a State, previously considered an internal matter, is currently analyzed from the perspective of international human rights standards.[53]. The Principle of Domestic Jurisdiction is relative in nature and other principles of international law have limited and restricted its scope in domestic matters that may have international repercussions.[54].

Finally, it is important to highlight that, although some authors defend the understanding that the UN Charter did not grant the General Assembly or any of its other bodies the authority to interpret the provisions set forth in the document, this is not, however, the line of understanding that has prevailed. The majority position has emphasized that the General Assembly has the authority to interpret the provisions of the UN Charter and that the provision in Article 2(7) should be interpreted restrictively and analyzed from a teleological perspective, in light of the purposes embodied in Article 1. Furthermore, it has been emphasized that human rights are a matter of international interest, which cannot simply be subject to the domestic jurisdiction of states.[55].

6.1.1. PRINCIPLE OF DOMESTIC JURISDICTION AND HUMAN RIGHTS

The cornerstone of the UN system is the Universal Declaration of Human Rights, adopted by the UN General Assembly on 10 December 1948 without a single dissenting vote. This instrument was not intended to establish binding obligations but rather common standards to be achieved by all peoples and nations. However, the question arises whether the Declaration has become binding either by virtue of custom or general principles of law or by virtue of the interpretation of the UN Charter itself by subsequent practice.[56].

The UN's work on human rights issues has deepened over time and this expansion in the scope of action has succeeded in limiting the principle of domestic jurisdiction.[57]and currently,

49 BUERGENTHAL, Thomas. "The Evolving International Human Rights System." The American Journal of International Law, vol. 100, no. 4, 2006, pp. 786. JSTOR,http://www.jstor.org/stable/4126317. Accessed 6 Oct. 2023

50 STEINER, Henry N.; ALSTON, Philip; GOODMAN, Ryan. International Human Rights in Context. Law, Politics, Morals. 3rd Ed. Oxford: Oxford University Press, 2007, p. 277.

51 Ibid., p. 1,205

52 Buergenthal, Thomas. "The Evolving International Human Rights System." The American Journal of International Law, vol. 100, no. 4, 2006, pp. 786-787. JSTOR,http://www.jstor.org/stable/4126317. Accessed 6 Oct. 2023 .

53 STEINER, Henry N.; ALSTON, Philip; GOODMAN, Ryan. International Human Rights in Context. Law, Politics, Morals. 3rd Ed. Oxford: Oxford University Press, 2007, p. 648. 54

SHAW, Malcolm N. International Law. 6th Ed. Cambridge: Cambridge University Press, 2008, p. 648.

55 STEINER, Henry N.; ALSTON, Philip; GOODMAN, Ryan. International Human Rights in Context. Law, Politics, Morals. 3rd Ed. Oxford: Oxford University Press, 2007, p. 701. 56

SHAW, Malcolm N. International Law. 6th Ed. Cambridge: Cambridge University Press, 2008, p. 278/279.

57 Ibid., p. 649.

the interpretation regarding the topics that fall within the scope of this principle is increasingly restricted[58].

At the regional level, in the performance of its advisory function, the Inter-American Court of Human Rights, in its advisory opinion on "Definition of other treaties subject to interpretation by the Inter-American Court", had the opportunity to state that any human rights treaty to which an American State is a party may be submitted to the advisory assessment of the Court.[59]. Furthermore, it was stated that human rights treaties differ in nature from other traditional multilateral treaties, since they do not aim at the granting and reciprocal exchange of rights between the parties, but at the protection of the basic rights of individuals, so that the obligations are *erga omnes*[60].

The International Court of Justice, when considering the Anglo-Norwegian fishing case, stated that although the act of delimitation of territorial waters is a unilateral act of the State, its validity in relation to other States depends on what is provided for in the rules of international law.[61]. Also in the Nottebohm case, the Court had the opportunity to assess the principle and point out that, although a State may establish the criteria it deems pertinent for the acquisition of nationality, the exercise of diplomatic protection based on nationality was subject to the rules of international law.[62].

It is worth mentioning, as appropriate, that it is a consolidated principle at international level that the definition of domestic jurisdiction is a matter of international law and not domestic law of each state.[63]. This principle has a relative and changeable nature and outlines the sphere of international and national action and its content is independent of the unilateral determination of each of the States.[64].

The internationalization of human rights has contributed to changing the notion of sovereignty, as they no longer belong exclusively to the domestic jurisdiction and exclusive domain of the State.[65].

CONCLUSION

Human rights violations often have deep roots within States rather than in the relationship between them. In this field, there is no intrinsically international aspect, although the consequences may have repercussions beyond the State in which the violation occurs.[66].

Unlike many other issues, the human rights movement does not seek to resolve practical issues between states, such as diplomatic immunities, or to regulate areas that have historically caused conflicts between them, such as the use of the sea and airspace. More than that, it has a broad spectrum of coverage, which touches on sensitive points in the internal distribution of political power within a state. As international human rights standards spread and gain prominence and the human rights protection movement acquires a dimension that aspires to the formation of a broad and vigorous political community, the potential for conflict with those who hold power within a state increases.[67].

The evolution in the interpretation of traditional political and legal principles such as sovereignty, non-intervention and state jurisdiction have contributed to strengthening the system of protection of human rights, which are no longer treated as an internal and exclusive matter of a State and acquire the veneer of a topic of international interest.

The change in relations and in the form of interaction between the internal orders of States and international law, guided by a reinterpretation of concepts dear to States, such as sovereignty and

58 CRAWFORD, James. Brownlie's Principles of Public International Law. 9th Ed. Oxford: Oxford University Press, 2019, p. 679.

59 INTER-AMERICAN COURT OF HUMAN RIGHTS. Advisory Opinion OC-1/82 of 24 September 1982. Other treaties subject to the consultative jurisdiction of the Court. Available at: <http://www.corteidh.or.cr/docs/opiniones/seriea_01_ing1.pdf>. Accessed on 02/24/2024.

60 SHAW, Malcolm N. International Law. 6th Ed. Cambridge: Cambridge University Press, 2008, p. 388

61 INTERNATIONAL COURT OF JUSTICE. Judgment of 18 December 1951. Fisheries Case. Available at:<https://www.icj-cij.org/sites/default/files/case-related/5/005-19511218-JUD-01-00-EN.pdf>. Accessed on: 03/09/2024 .

62 INTERNATIONAL COURT OF JUSTICE. Judgment of April 6, 1955. Nottebohm Case. Available at: <http://www.corteidh.or.cr/docs/opiniones/seriea_01_ing1.pdf>. Accessed on February 24, 2024.

63 SHAW, Malcolm N. International Law. 6th Ed. Cambridge: Cambridge University Press, 2008, p.1084.

64 Ibid., p. 1,205.

65 GUERRA, Sidney. Course in public international law. São Paulo: Editora Saraiva, 2024, p. 264. E-book. ISBN 9788553623396. Available at: https://integrada.minhabiblioteca.com.br/#/ books/9788553623396/. Accessed on: March 9, 2024.

66 STEINER, Henry N.; ALSTON, Philip; GOODMAN, Ryan. International Human Rights in Context. Law, Politics, Morals. 3rd Ed. Oxford: Oxford University Press, 2007, p. 58/59.

67 Ibid., p. 695/696.

jurisdiction, presents a path that can contribute to advancing the effectiveness of existing protection mechanisms in regional and global human rights protection systems.

REFERENCES

BODIN, Jean. Six books of the commonwealth. Translated by MJ Tooley. Oxford: Basil Blackwell Oxford, 1955.

BUERGENTHAL, Thomas. "The Evolving International Human Rights System." The American Journal of International Law, vol. 100, no. 4, 2006, pp. 783–807. JSTOR, http://www.jstor.org/stable/4126317. Accessed 6 Oct. 2023.

OAS Charter. Available at: https://www.cidh.oas.org/basicos/english/basic22.charter%20oas.htm > Accessed on: 03/07/2024.

UN Charter. Available at: https://brasil.un.org/sites/default/files/2022-05/Carta-ONU.pdf https://brasil.un.org/pt-br/download/75228/91220> Accessed on 02/03/2024.

PERMANENT COURT OF INTERNATIONAL JUSTICE. Advisory Opinion A/B43. Treatment of Polish Nationals and Other Persons of Polish Origin or Speech in the Danzig Territory. Available at: < https://www.icj-cij.org/sites/default/files/permanent-court-of-international-justice/serie_AB/AB_44/01_Traitement_nationaux_polonais_Avis_consultatif.pdf >. Accessed on: 09/03/2024.

PERMANENT COURT OF INTERNATIONAL JUSTICE. Judgment A07. Certain German Interests in Polish Upper Silesia (Merits). Available at: https://www.icj-cij.org/sites/default/files/permanent-court-ofinternational-justice/serie_A/A_07/17_Interets_allemands_en_Haute_Silesie_polonaise_Fond_Arret.pdf>. Accessed on 09/03/2024.

INTER-AMERICAN COURT OF HUMAN RIGHTS. Advisory Opinion OC-1/82 of September 24, 1982. Other treaties subject to the consultative jurisdiction of the court. Available at: <http://www.corteidh.or.cr/docs/opiniones/seriea_01_ing1.pdf>. Accessed on 2/24/2024.

INTERNATIONAL COURT OF JUSTICE. Advisory Opinion of 26 April 1988. Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947. Available at: <https://www.icj-cij.org/sites/default/files/case-related/77/077-19880426-ADV-01-00-EN. pdf>. Accessed on: 09/03/2024.

INTERNATIONAL COURT OF JUSTICE. Judgment of 18 December 1951. Fisheries Case. Available at: <https://www.icj-cij.org/sites/default/files/case-related/5/005-19511218-JUD-01-00-EN. pdf>. Accessed on: 09/03/2024.

INTERNATIONAL COURT OF JUSTICE. Judgment of April 6, 1955. Nottebohm Case. Available at: <http://www.corteidh.or.cr/docs/opiniones/seriea_01_ing1.pdf>. Accessed on February 24, 2024.

CRAWFORD, James. Brownlie's Principles of Public International Law. 9th Ed. Oxford: Oxford University Press, 2019.

GUERRA, Sidney. Course in public international law. São Paulo: Editora Saraiva, 2023.. E-book. ISBN 9786553627918. Available at: https://integrada.minhabiblioteca.com.br/#/books/9786553627918/. Accessed on: March 8, 2024.

JONES, Bruce. PASCUAL, Carlos. STEDMAN, Stephen John. Power & Responsibility: Building International Order in an Era of Transnational Threats. Washington: The Brookings Institution, 2009

KRASNER, Stephen D. Sovereignty: Organized Hypocrisy. 1st Ed. Princeton: Princeton University Press,

1999.

MAZZUOLI, Valerio de O. Course in Public International Law. Rio de Janeiro: Grupo GEN, 2023, E-book. ISBN 9786559645886. Available at: https://integrada.minhabiblioteca.com.br/#/books/9786559645886/. Accessed on: March 8, 2024

UNITED NATIONS ORGANIZATION - UN. General Assembly. 25th Session of 24 October 1970. Available at: <https://digitallibrary.un.org/record/202170/files/A_RES_2625%28XXV%29-EN. pdf?ln=en>. Accessed on 09/03/2024.

RAMOS, André de C. Human Rights Course. São Paulo: Editora Saraiva, 2022. E-book. ISBN 9786553622456. Available at: https://integrada.minhabiblioteca.com.br/#/books/9786553622456/. Accessed on: March 8, 2024.

REZEK, Francisco. Public international law. São Paulo: Editora Saraiva, 2024. E-book. ISBN 9788553622870. Available at: https://integrada.minhabiblioteca.com.br/#/books/9788553622870/. Accessed on: March 9, 2024

SHAW, Malcolm N. International Law. 6th Ed. Cambridge: Cambridge University Press, 2008.

STEINER, Henry N.; ALSTON, Philip; GOODMAN, Ryan. International Human Rights in Context. Law, Politics, Morals. 3rd Ed. Oxford: Oxford University Press, 2007.

VARELLA,MarceloD.InternationalPublicLaw. [DigiteoLocaldaPublishora]:EditoraSaraiva, 2019.E-book. ISBN 9788553609031. Available at: https://integrada.minhabiblioteca.com.br/#/books/9788553609031/. Accessed on: March 9, 2024.