

JUS COGENS - IMMUTABLE TO CHANGE OR NOT?

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Abstract

This paper examines the implications of peremptory norms (jus cogens) and their integral role in the enforcement of human rights. Jus cogens are recognized as fundamental principles within the hierarchy of international law, reflecting their compelling nature and inherent connection to human rights protection. Through a comprehensive literature review and analysis of pertinent case law, this study investigates whether peremptory human rights norms are immutable. The findings of this research yield three significant conclusions: First, jus cogens are fundamentally dedicated to safeguarding essential human rights, underscoring their paramount status within the international legal framework. This coherence among compelling rules theoretically ensures the protection of human rights under all circumstances. Second, the conceptual and procedural contradictions within peremptory human rights norms render them nearly impossible to amend. Third, an examination of doctrinal sources in light of practical legal cases suggests that potential changes may arise from the evolving content of human rights rather than from the peremptory norms themselves. In conclusion, this study posits that modifications are evident in the subject matter of jus cogens. The insights presented herein contribute to the ongoing discourse on the development of international law and highlight avenues for further research in this critical area.

Keywords: Jus cogens, Peremptory norm, International law, Human rights, Human rights-based approach

Jus Cogens có “miễn nhiễm” với sự thay đổi không?

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Tóm tắt

Bài viết tập trung vào quy phạm mệnh lệnh bắt buộc (Jus Cogens) và vai trò của quy phạm này trong việc thực thi bảo vệ quyền con người. Mặc dù không phải là nguyên tắc của Luật Quốc tế, quy phạm mệnh lệnh bắt buộc có giá trị quy định hiệu lực và tính hợp pháp của các quy phạm khác của luật quốc tế. Đồng thời, Jus Cogens có mối quan hệ nội tại với quyền con người. Thông qua phương pháp nghiên cứu tài liệu và nghiên cứu 07 vụ án có liên quan đến quyền con người, bài viết xem xét liệu quy phạm mệnh lệnh bắt buộc chung có “miễn nhiễm” với sự thay đổi không. Bài viết chỉ ra 03 vấn đề: Một là, Jus Cogens chủ yếu về bảo đảm quyền cơ bản con người trong đa số các hoàn cảnh và điều này được thể hiện thống nhất không thay đổi về tính ưu tiên trong luật pháp quốc tế; Hai là, bản thân các quy phạm này có những mâu thuẫn nhất định trong khái niệm và cơ chế sửa đổi; Ba là, từ các học thuyết về nguồn luật, xem xét dưới góc độ tập quán quốc tế và các án lệ có liên quan đến quyền con người, ban đầu cho thấy mạnh mẽ những thay đổi từ nội dung quyền của con người. Từ đó, cho thấy sự thay đổi đã hiện diện ở mức độ nhất định ở khách thể chịu sự điều chỉnh của quy phạm này. Các kết quả nghiên cứu ban đầu hi vọng có thể đóng góp nhất định cho các nghiên cứu tiếp theo minh chứng cho sự vận động và phát triển của luật quốc tế.

Keywords: Jus Cogens, quy phạm mệnh lệnh bắt buộc, luật quốc tế, quyền con người, cách tiếp cận dựa trên quyền.

1. Introduction

As legal framework governing relations between states, modern international law is generally regarded as having begun its development following the Westphalian Peace Treaty in 1648. International law has evolved into a comprehensive legal system encompassing various branches that regulate most aspects of international relations. In the *Lotus* case, the Permanent Court of International Justice (PCIJ), the predecessor of the International Court of Justice (ICJ), made observations regarding the nature of international law. The Court stated that international law “governs the relations between independent States” [1]. Consequently, the legal norms binding states arise from the free will of these states, as expressed in international treaties or through widely accepted practices that reflect established legal principles. These norms are designed to regulate relations among independent communities coexisting together or to achieve common objectives. International human rights law is a vital branch of general international law. Article 1 of the United Nations Charter affirms that promoting and encouraging respect for the fundamental rights and freedoms of all individuals is one of the primary objectives of the United Nations. The Universal Declaration of Human Rights, adopted by the UN General Assembly in 1948, states that “all human beings are born free and equal in dignity and rights” and emphasizes that the recognition, protection, and promotion of human rights are “the foundation of freedom, justice, and peace in the world.” [2, p. 1]. The Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights in 1993, asserts that “the promotion and protection of human rights is a priority issue for the international community.” It also emphasizes the responsibility of all states to advance the fundamental rights and freedoms of individuals without discrimination, regardless of race, gender, language, religion, or skin color. With this shared understanding, the international community has established numerous international treaties on human rights to codify and promote the respect, protection, and realization of fundamental human rights within nations. Additionally, various international and regional mechanisms have been put in place to assess, monitor, support, and resolve disputes related to the implementation of these treaties in practice.

The rationale for conducting this research and the significance of the chosen topic arise from the context of globalization. Over the past few years, numerous regions and continents have experienced new challenges that significantly impact fundamental human rights. International law serves as the legal framework governing these issues. Considering the changes occurring in practical life, this raises questions about the dynamics and interactions between legal provisions and their implementation in practice.

International human rights law is a system of legal norms established through various forms of international treaties, customary international law, general principles, and other sources of international law. It aims to regulate the relationships among entities regarding respect, protection, and promotion of fundamental human rights. *Jus cogens* first emerged in the Vienna Convention on the Law of Treaties of 1969. According to Article 53 of the 1969 Vienna Convention, a peremptory norm (*jus cogens*) is defined as “a norm accepted and recognized by the international community of states as a norm from which no derogation is permitted, and which can only be modified by a subsequent norm of general international law of similar character” [3].

The *jus cogens* norm serves as a standard for the validity and legality of other international legal norms (dispositive norms). Currently, international law lacks a unified system for identifying the *jus cogens* norms that represent the fundamental principles of international law [4]. Examples of *jus cogens* cited by the International Law Commission (ILC) include the prohibition of piracy, the prohibition of the slave trade, and the prohibition of genocide adopted in its 1966 ILC meeting session [5]. Some other members of the ILC have suggested additional principles, such as equality of states and the right to self-determination. To date, the International Court of Justice (ICJ) has explicitly recognized only one norm as *jus cogens*: the prohibition of torture in the case [6]. Vietnam asserts that the principles of sovereign equality and territorial integrity also qualify as *jus cogens* norms [7], [8].

The *jus cogens* norm holds the highest legal authority among all norms of international law. In some respects, *jus cogens* norm is akin to public order or public policy in national law [9, p. 125]. No provision of any international treaty may contravene a *jus cogens* norm [3]. Nevertheless, the legal

concept of *jus cogens* are “open to varying interpretation” [10]. The *jus cogens* “as the supposedly most important norms of international law, are based on the most uncertain or even ‘enigmatic’ mechanism of norm change” [11, p. 1]. And as affirmed by Christine Chinkin, “there remains controversy over which human rights norms have this status” of *jus cogens* [12, p. 76]. In the current context, the implementation of human right protection faces changes. Such changes varied across the sectors, from new types of torture to threats from cyber security, technologies and new types of labor, or even the changes in ILC’s work towards producing more of soft law [13] than official legal instruments.

Although the uncertainty in concepts and the rules of changes of *jus cogens* itself as well as the application in different aspects, i.e. gender, human security, technology; there are not many studies that connect from concepts to implementation. On one hand, the human rights are identified as equally important [14]; [2]; on the other hand, peremptory human rights norms are explicitly recognized some of the rights.

About research questions, this paper examines whether peremptory human rights norms are immutable to changes. By exploring options to answer the questions, this study aimed at 3 objectives including examining the relationship between *jus cogens* and human rights, the inner contradiction in peremptory norms and human rights framework, and the possibility of changes which derives from content of human rights rather than from preemptory norms themselves. In the following parts, the paper presented its literature review, theoretical bases and research methodology on session 2, the key findings and discussion on session 3, and its conclusions and recommendations on the last part.

2. Literature Review, Theoretical Bases and Research Methodology

2.1. Literature Review

The contradiction problem of *jus cogens* in contemporary international law has been widely commented in various works.

Hui-Choi Pak (2022) stemmed his comments from the analysis of Article 53 of the Vienna Convention on the Law of Treaties. On one hand, he reaffirmed that the Law of Treaties was a fundamental treaty providing rights and obligations that states assume in the conclusion and implementation of treaties. On the other hand, he claimed that provisions of the

Convention remained ambiguous “... the legal definition of *jus cogens* is still open to varying interpretation among different countries and international publicists” [10]. Levan Alexidze (1981) examined the rules of international law from which subjects of law cannot derogate. He particularly focused on the international law that can be non-derogated even by mutual consent of participating state members and the *lex lata* (*lex ferenda*) in *jus cogens* [15]. Elena A. Baylis (2019) investigated the implications, in which International Law Commission’s transition toward a greater emphasis on soft law. In addition to international treaties, the soft law, i.e. principles and draft conclusions, revealed its role of an effective vehicle for the International Law Commission’s mission of codification and progressive development of international law [13]. However, in her work, neither relationship nor influences were established between peremptory norms and human rights.

Human rights are universal legal guarantees protecting individuals and groups against actions and omissions that interfere with fundamental freedoms, entitlements and human dignity. Human rights law obliges Governments (principally) and other duty-bearers to do certain things and prevents them from doing others [14, p. 1]. According to Alfred Verdross, most *jus cogens* norms are the rules of general international law; they were invented for, and grounded on, humanitarian arguments. French and German international lawyers jointly reflected the need of reconceptualizing the doctrine of hierarchy in international law by emphasizing that a clear distinction should be drawn between primary rules, which encapsulate precepts for the protection of the basic values of the international community, and secondary rules, which determine the regime of legal consequences flowing from a breach of such rules of conduct [16].

To sum up, various works were conducted which helped identify the core issues of *jus cogens*, i.e., the legal nature of *jus cogens* in contemporary international law, the criteria for identifying the norms of *jus cogens* in international law, and the legal definition of *jus cogens* in three aspects of general and universal international law. Some problems arising were identified in understanding the non-erosion from and modifiability of *jus cogens*. Finally, the article discusses some issues regarding ‘acceptance and recognition’ of *jus cogens* by the ‘international community of states as a whole’.

2.2. Theoretical Bases and Research Methodology

This paper was based on the theory of doctrine of source and the Human Rights-Based Approach (HRBA). The doctrine of source focuses on respect, protection and implementation of human rights through identifying expected outcomes and creating framework for the process to attain the outcomes. This doctrine was introduced by with focus on the progress of how norms come to be accepted as international law [17]. The doctrine of sources in international law mentioned the forms in which international law represents. According to the Charter of International Court of Justice (ICJ), the sources of international law comprised international conventions, international custom, the general principles of law, judicial decisions and the teachings of the most highly qualified publicists ... as subsidiary means. The doctrine of sources helped identify legal rules which international subjects must comply [18, Ch. II]. Moreover, sources of international law included legal unilateral acts, resolutions of international organizations and soft law.

Regarding Human Rights-Based Approach (HRBA), it is the approach developed on the base of standards and principles of international human rights. This approach is not only outcome – oriented but also implementation-centered. Therefore, it ensured the rights of entitled bodies who were subjected to direct influences of legal responsibilities. A human rights-based approach is a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights. It seeks to analyze inequalities which lie at the heart of development problems and redress discriminatory practices and unjust distributions of power that impede development progress [14, p. 16].

HRBA normally served as Framework of Rights Holders and Duty Bearers, Participation and Empowerment, Non-Discrimination and Equality, Accountability Mechanisms, Interdisciplinary Perspectives, Evolving Content of Human Rights, Case Studies and Comparative Analysis. In the scope of this study, case studies and comparatives analysis and evolving content of human rights are focused on. Regarding case studies and comparative analysis, 07 specific case studies were examined that illustrate the application of *jus cogens* norms

in various jurisdictions including: The Nuremberg Trials (1945-1946), the Pinochet Case (Chile), the International Criminal Tribunal for the former Yugoslavia (ICTY), The Darfur Genocide (Sudan), the Case of the Indigenous Peoples in Brazil, the Rohingya Crisis (Myanmar), the Case of Torture and Inhumane Treatment in Guantanamo Bay. Through comparative analysis, different approaches to human rights protection and the effectiveness of these norms in different legal systems were highlighted.

3. Findings and Discussion

3.1. Research Results

Starting from the three research questions, the paper research outcomes including key findings as follow:

Firstly, *jus cogens* primarily concerns the safeguarding of fundamental human rights in most circumstances, and this is consistently reflected in its unchanging precedence within international law. Regarding the first question whether *jus cogens* have relationship with human rights, the findings represented an intrinsic relationship between *jus cogens* and human rights law, which coined the term *peremptory human rights norms* in international law.

Secondly, these norms themselves contain certain contradictions in terms of their concepts and mechanisms for modification. In seeking answer to the second question regarding the inner contradiction in in peremptory norms and human rights framework, findings pointed out ambiguity in concepts of *jus cogens*, the mechanism of changes of this type of norms, and also ambiguity in the concept of human rights. The international human rights system faces criticisms regarding a range of issues, including ambiguity in its standards, weakness in its enforcement mechanisms and the resultant lack of impact on the ground, and the notion of universality being incompatible with cultural particularities existing human rights frameworks should be reimaged [19].

Thirdly, examining the theories of sources of law from the perspective of international customary law and relevant case law concerning human rights reveals the emergence of changes in the content of human rights. This demonstrates that change has already manifested to a certain extent in the subjects governed by these norms. Basing on the two above-mentioned issues in research question 1 and research question 2, the paper examines the immutability of *jus cogens* in human rights. Results pointed

out that, despite the original intention of designing *jus cogens* to be unable to change in any circumstances, the implementation in fact revealed changes. Such changes derived from content of human rights in the environment of disruptive technologies and arisen of new type of social relationship rather than from preemptory norms themselves.

3.2. Discussion

In this part, the paper described and explained the findings in relation to what existed and explores the new aspects proposed by this work.

3.2.1. Relationship Between *Jus Cogens* and Human Right Norms

Firstly, *jus cogens* primarily concerns the safeguarding of fundamental human rights in most circumstances, and this is consistently reflected in its unchanging precedence within international law. Regarding the first question whether *jus cogens* have relationship with human rights, the findings represented an intrinsic relationship between *jus cogens* and human rights law, which coined the term *peremptory human rights norms* in international law.

Peremptory human rights norms, also known as *jus cogens*, are fundamental principles of international law that cannot be overridden by any state or agreement. While they serve as crucial safeguards for human dignity, they also present several challenges: (i) Lack of clear definition: There has been ongoing debate about which norms qualify as *jus cogens*, leading to uncertainty in legal interpretation; (ii) Enforcement issues: Despite their binding nature, enforcement mechanisms are often weak, making it difficult to hold violators accountable; (iii) State Sovereignty Conflicts – Some states resist the application of peremptory norms, arguing that they infringe upon national sovereignty; (iv) Legal Ambiguities: The Vienna Convention on the Law of Treaties recognizes *jus cogens*, but reservations and unilateral acts related to these norms remain contentious; (v) Limited Practical Impact: While these norms establish moral and legal standards, they have struggled to effectively shape real-world social practices.

The Vienna Convention of 1969 contains two provisions regarding the consequences of invalid international treaties. Article 69 provides a general rule, while Article 71 addresses the case of invalidity due to conflict with *jus cogens* norms. Article 69(1) establishes the principle that an international treaty deemed invalid shall have no legal effect. This lack of legal effect is retroactive

to the date of the treaty's signature, rather than the date of its invalidation, as the invalidity of a treaty implies that it has no legal value from the outset (*ab initio*). In simple terms, a treaty that is invalid is, by its nature, not an international treaty for the state invoking its invalidity and therefore cannot generate any legal effect for that state from the outset. The International Law Commission (ILC) on its Draft Conclusions on the Identification of Legal Consequences of Peremptory Norms of May 2022 did not address the modification of *Jus Cogens*. Some of the substantive (or primary) norms with *jus cogens* status are under pressure for change, not to mention exposed to “norm erosion”.

3.2.2. Contradictions in *Jus Cogens* and Human Rights Norms

Regarding the nature of *jus cogens*, Article 64 of the 1969 Vienna Convention reflects the prevailing nature of the concept of *jus cogens* by stating that: If a new peremptory norm of general international law emerges, any existing treaty which conflicts with that norm becomes void and terminated. In 2001, the International Law Commission also remarked that the concept of ‘peremptory norms of general international law is recognized in international practice, in the jurisprudence of international and national courts and tribunals and in legal doctrine’. These norms themselves contained certain contradictions in terms of their concepts and mechanisms for modification. In seeking answer to the second question regarding the inner contradiction in in peremptory norms and human rights framework, findings pointed out ambiguity in concepts of *jus cogens*, the mechanism of changes of this type of norms, and ambiguity in the concept of human rights. The international human rights system faces criticisms regarding a range of issues, including ambiguity in its standards, weakness in its enforcement mechanisms and the resultant lack of impact on the ground, and the notion of universality being incompatible with cultural particularities existing human rights frameworks should be reimaged [19].

Dated back in the earlier days, the first introduction of *jus cogens* into the academic discourse was done by Alfred Verdross, who successfully laid strong influence in the 1969 Vienna Convention on the Law of Treaties. As coined by original ideas by Verdross, a *jus cogens* norm: “consists of the general principle prohibiting states from concluding treaties contra

bonus mores. This prohibition [...] is the consequence of the fact that every judicial order regulates the rational and moral coexistence of the members of a community. No juridical order can, therefore, admit treaties between juridical subjects, which are obviously in contradiction to the ethics of a certain community" [20]. Although in official stipulations of general international law, a *jus cogens* norm was not recognized as the international law principle proposed by Verdross, but the nature of *jus cogens* remained with its top position in the normative hierarchy in international law and widely followed by generations of publicists. For instance, later, Hans Kelsen reflected "*power of the state to conclude treaties under general international law is in principle unlimited. States are competent to make treaties on whatever matter they please. But the content of the treaty must not conflict with a norm of general international law which has the character of jus cogens* [21].

Indeed, in 1966 the International Law Commission introduced the concept of the peremptory norm in Articles 50 and 61 of the final draft of the law of treaties. This concept eventually came to the forefront of international law through the 1969 Vienna Convention. Article 53 of the Vienna Convention read as follows: "*A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States 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*". Regarding the roles of *jus cogens*, in the Agenda item 79 regarding the Report of the International Law Commission on the work of its seventy-third and seventy-fourth sessions. The Committee adopted the draft resolution II to be the Resolution 78/109 entitled "*Peremptory norms of general international law (jus cogens)*" without a vote. As Mexico chose to dissociate itself from the Resolution, its representative spoke in explanation of position on resolution 78/109 and identified that *jus cogens* is "*controversial*" [22, p. 22].

3.2.3. Inner Changes of Peremptory Human Rights Norms

This study explores the evolution of *jus cogens* within human rights norms,

highlighting changes that have emerged despite the initial intention of *jus cogens* to remain unchangeable. These alterations are attributed to shifts in the content of human rights due to disruptive technologies and the emergence of new social relationships, rather than changes in the preemptory norms themselves.

By delving into international customary law and relevant case law surrounding human rights, the text reveals shift in the content of human rights, indicating a certain level of change in the subjects governed by these norms. The hierarchical nature of legal systems, based on the sources of norms, is outlined, emphasizing the structure established by different sources [23].

Furthermore, the multifaceted nature of human rights is emphasized, with various perspectives such as philosophical, religious, political, social, economic, and legal angles contributing to different interpretations of the origin and nature of human rights [24, Pt. A]; [25]. The text underscores the pivotal role of human beings as the central beneficiaries of international human rights law, with states also bearing obligations under this legal framework.

The article discusses the levels of obligations imposed on states to uphold human rights, including the obligation to respect, protect, and fulfill these rights. It also touches upon global mechanisms for human rights, involving organizations like the United Nations Human Rights Council and treaty bodies tasked with monitoring and promoting the implementation of international human rights treaties. Regarding *jus cogens*, the article mentions a resolution titled "*Peremptory norms of general international law (jus cogens)*" adopted by the International Law Commission. It notes Mexico's dissent from the resolution, citing *jus cogens* as a "*controversial*" topic [22, p. 22]. The research then transitions to an analysis of human rights, detailing fundamental civil and political rights recognized by international law. It discusses the three levels of state obligations in ensuring human rights and reflects on the evolving understanding of international law sources, proposing a revised doctrine focused on *opinio juris*. The work also addressed contradictions in the interpretation of human rights elements and the role of public trust in actors at national and regional levels, citing studies within the European Community. It emphasizes the importance of peremptory norms in protecting human rights and their

role in sustaining democracy, particularly within the European Union. International law establishes three levels of obligations for states in ensuring human rights: the obligation to respect, the obligation to protect, and the obligation to fulfill. [26, Pts. II-The Substantive Obligations].

Drawing from a few theories developed to explain why states comply with international law, this Article proposes a new doctrine of sources focused on *opinio juris* and how norms come to be accepted as international law. Rather than taking for granted that a treaty reflects international law, the rules laid out in a treaty would themselves be judged by the internalized norms supporting them, either (a) in the strength and legitimacy of the process that led to the adoption of those rules, or (b) in the customary acceptance of the rule itself. This Article argues that such a revised doctrine of sources will better capture which rules are actually treated as law in the international system, blunting skepticism about international law and placing international law on firmer footing.

Currently, certain contradictions persist in the understanding of the elements constituting human rights and the role of public trust in actors at both national and regional levels, such as studies conducted within the European Community [27]. The differences in conceptual understanding and subsequent variations in action have resulted in gaps in the implementation of human rights norms, as well as affecting the quality and sustainability of democratic principles in certain member states of the European Union (EU) [28]. Research on the process of accession to the European Union (EU) according to the Copenhagen criteria has further affirmed the necessity of elevating the norms for the enforcement and protection of human rights to the status of peremptory norms (*jus cogens*) and enhancing compliance while reducing exceptions related to the reinstatement of the death penalty. Furthermore, the peremptory norms regarding human rights contribute to the long-term sustainability of democracy and serve as one of the criteria for assessing membership eligibility within the European Union (EU) [27].

The analysis of key legal cases has revealed instances of violations and mechanisms for redress concerning *jus cogens* norms. The following case studies exemplify these violations and the corresponding responses:

In the case of Nuremberg Trials (1945-1946), violations included the Holocaust and other war crimes committed during World War II. The Nuremberg Trials established accountability for crimes against humanity, setting a significant precedent in international law and reinforcing the enforcement of *jus cogens* norms against genocide and war crimes.

In the Pinochet Case (Chile), violations comprised human rights abuses, including torture and extrajudicial killings under Augusto Pinochet's regime (1973-1990). The arrest of Pinochet in the United Kingdom in 1998 for these violations demonstrated the application of *jus cogens* norms. Although extradition was not granted, the case highlighted the principle of universal jurisdiction.

In the International Criminal Tribunal for the former Yugoslavia (ICTY), violations involved ethnic cleansing and genocide during the Bosnian War (1992-1995). The ICTY's prosecution of key individuals, including the conviction of Radovan Karadžić for genocide, reinforced the *jus cogens* norm against genocide and affirmed the international community's role in upholding human rights.

In the case of Darfur Genocide (Sudan), systematic attacks against civilians, including mass killings, sexual violence, and displacement, were identified as violations. The International Criminal Court (ICC) issued arrest warrants for Sudanese President Omar al-Bashir for crimes against humanity and genocide, thereby emphasizing the enforcement of *jus cogens* norms within the framework of state sovereignty.

In the case of the Indigenous Peoples in Brazil, violations included infringements on land rights and environmental destruction affecting indigenous communities. Legal actions undertaken by these groups before the Inter-American Commission on Human Rights (IACHR) and Brazilian courts exemplify the application of *jus cogens* norms related to the right to life and cultural integrity.

In the Rohingya Crisis (Myanmar) case, violations involved ethnic cleansing and mass atrocities against the Rohingya in Rakhine State. The case initiated by Gambia against Myanmar at the International Court of Justice (ICJ) for breaches of the Genocide Convention illustrates the international community's duty to address violations of *jus cogens*.

In the case of Torture and Inhumane

Treatment in Guantanamo Bay, violations included torture and cruel, inhuman, or degrading treatment of detainees. Ongoing legal challenges in U.S. courts, coupled with international scrutiny, have sparked debates regarding the legality of practices at Guantanamo, invoking *jus cogens* norms that prohibit torture.

These case studies collectively highlighted the application and enforcement of *jus cogens* norms across various contexts, revealing both challenges and potential avenues for redress within international law. While violations of *jus cogens* may be interpreted as legal breaches, they also underscore the necessity for reform in certain perspectives.

From the practical implementation, it is observable that despite changes which majorly occurred in human right domain, a few early signals of changes were observed from the *jus cogens* norms themselves. From the doctrinal construction approach, Antonio Trindade (2018) pointed out the gradual expansion of material content of *jus cogens* towards new *jus gentium*, the International Law for Humankind [29]. This clearly showed through international case-laws, i.e. through the Inter-American Court of Human Rights (IACtHR)'s Judgment on August 18, 2000, in the case of *Cantoral Benavides versus Peru Absolute* in the regards of Prohibition of Torture and of Cruel, Inhuman or Degrading Treatment. In the same sense, in the Judgment of July 8, 2004, in the case of the Brothers Gómez Paquiyauri versus Peru, the IACtHR pointed out that “*torture is strictly prohibited by the International Law of Human Rights. The prohibition of torture is absolute and non-derogable, even in the most difficult circumstances, such as war, threat of war, fight against terrorism and any other delicts, state of siege or of emergency, commotion or internal conflict, suspension of constitutional guarantees, internal political instability or other emergencies or public calamities*”. Additionally, from jurisprudential construction approach, the ICJ's decisions across different cases, i.e. in the Judgment for the case of *Blake versus Guatemala* (preliminary objections, Judgment of July 2, 1996) and the case *Cantoral Benavides* (Concurring Opinion in the Judgment of March 14, 2001) and the case of *Barrios Altos versus Peru* shared the same points in recognition of derogatory nature of *jus cogens*. In both approaches, the evolution of the aforementioned jurisprudential construction ought to be

appreciated in a wider dimension.

In Vietnam, the integration of a human rights-based approach in the implementation of laws protecting the rights of vulnerable groups has been applied. However, in practice, the process faces numerous difficulties, limitations, and challenges. Therefore, enhancing the effectiveness of a human rights-based approach in the implementation of laws protecting the rights of vulnerable groups in our country is a necessary and practical endeavor. For Vietnam, territorial integrity is a principle that possesses the characteristics of a *jus cogens* norm [7, pp. 16–23]. In the statement of the Representative of Vietnam before the International Court of Justice on December 11, 2009, Vietnam clearly distinguished between the right to self-determination of nations and the rights of ethnic groups.

To summarize, in this part, the paper represented its three key findings, explained the meaning and importance of *jus cogens* in human rights and made comparisons of different authors and publicists to illustrate the gaps in concepts and change mechanisms of peremptory human rights norm.

4. Conclusion and Recommendations

This research aims to explore the nature of *jus cogens* and their role in the implementation of human rights, particularly examining whether these norms are immutable or subject to change over time. The significance of this study lies in its contribution to understanding the dynamic relationship between *jus cogens* and human rights. As global challenges to human rights continue to evolve, clarifying the status and applicability of these norms is essential for effective legal frameworks and human rights protections. The paper presents three key findings: *Jus cogens* primarily safeguard fundamental human rights, demonstrating its paramount importance in international law; There are inherent contradictions in the concepts and mechanisms governing *jus cogens*, complicating its perceived immutability; Changes in human rights content, driven by social and technological advancements, indicate that while *jus cogens* norms are foundational, their application may evolve. The findings addressed the research objectives as follows: The intrinsic relationship between *jus cogens* and human rights was established, highlighting the significance of peremptory human rights norms; The study identified contradictions within *jus cogens* and the broader human

rights framework; and changes emerging from human rights content, particularly influenced by new social dynamics and technologies, were discussed, suggesting that the application of *jus cogens* is not entirely static. Overall, the paper pointed out that while violations of *jus cogens* may be interpreted as legal breaches, they also underscore the necessity for reform in certain perspectives. On one hand, the doctrinal construction of peremptory human right norms faced less challenges in practice; on the other hand, the jurisprudential construction of *jus cogens* encountered various obstacles arising. That fact suggested the evolution of *jus cogens*, or one of its bases, the jurisprudential construction, ought to be appreciated in a wider dimension. Additionally, the paper

reaffirmed the need of reconceptualizing the doctrine of hierarchy in international law.

The research faced limitations in terms of the scope of case studies analyzed and the complexity of varying interpretations of *jus cogens* across different legal systems. Additionally, the evolving nature of human rights challenges necessitates ongoing examination beyond the timeframe of this study. Future research could focus on longitudinal studies that examine the application of *jus cogens* in response to emerging global issues, such as digital rights and environmental challenges. Additionally, comparative analyses of how different jurisdictions interpret and implement *jus cogens* would provide valuable insights into their adaptability and effectiveness in protecting human rights ./.

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