دور مبادىء القانون المحلي في تطوير القانون الدولي

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The Role of Domestic Law Principles in the Development of International Law

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المستخلص

قد يعتري القانون الدولي ثغرات قانونية تعبر عن مجالات يكون فيها القانون غير كافٍ لحكم القضية، الامر الذي يطرح امكانية اللجوء إلى المبادئ العامة للقانون, بوصفها مصدراً متميزاً للقانون الدولي تقوم على أساس الارادة المفترضة لغالبية الدول, كونها تعبر عن الاتجاه العام للالتزام بما تتضمنه الانظمة القانونية المحلية من قواعد، وبذلك يمكن ان تصبح جزءاً من النظام القانوني الدولي. وذلك بعد الاقرار لها بصفة المصدر والذي يسبقه الاعتراف بها من عموم الانظمة المحلية للدول، وهي بذلك تسهم بدور بارز وهام في تطوير قواعد القانون الدولي العام بشكل عام, والقانون الدولي الجنائي بشكل خاص: كونها تطبق وبصفه خاصة من قبل القضاء الداخلي على الافراد عند ارتكابهم جرائم داخلية او ذات صفة دولية، ومن ثم يمكن نقلها إلى نطاق القضاء الدولي ليتم إستخلاص قواعد دولية منها,فلا تقتصر وظيفة المبادئ العامة للقانون على التفسير أو التكميل فهي في محصلة نهائية تهدف إلى تطوير قواعد القانون الدولي بشكل عام وتعديل وتطوير النظام الجنائي الدولي بشكل خاص وذلك انطلاقاً من الاتجاه العام في التشريعات الجنائية لمختلف الدول.

الكلمات المفتاحية: تطوير, قانون , مبادئ

Abstract:

International law may be exposed to legal loopholes that express areas in which the law is not sufficient to rule the case, which

raises the possibility of resorting to the general principles of law, as a distinct source of international law based on the presumed will of the majority of countries, as it expresses the general trend of commitment to what is included in legal systems .It is a rule of law, and thus can become a part of the international legal system. And that is after acknowledging it as a source, which is preceded by its recognition by the general local systems of countries, and thus it contributes a prominent and important role in developing the rules of public international law in general, and international criminal law in particular. It is applied, in particular, by the internal judiciary to individuals when they commit crimes internal or of an international character, and then it can be transferred to the scope of the international judiciary in order to extract international rules from them based on the general trend in the criminal legislation of different countries

Keywords: development, law, principles

Introduction:

Since the basis upon which international law is based is the general consent of states, it has become natural for the sources of this law to be multiplied by the multiplicity of means of expressing consent. The expression of consent and will is either explicit or implicit. States either express the consent of their will explicitly, and this expression is through the establishment of treaties, or they express it implicitly, and this is through custom..

In application of this, Article (38) of the Statute of the International Court of Justice stipulates that: "The Court's function is to settle disputes that are submitted to it in accordance with the provisions of international law. The accepted international law is a law, as indicated by the frequency, the general principles of law approved by civilized nations, the court rulings and the authors' doctrines of common law in various nations, and this or that is considered a backup source for the rules of law..

The sources of international law, according to this text, are divided into two parts: original sources, which are treaties, custom and general principles in the different legal systems, and backup

sources or sources of inference, which are the rulings of the judiciary and the opinions of jurists..

Paragraph (c) of Article (38) of the Statute of the International Court of Justice stipulates the general principles of law approved by civilized nations, within the provisions of international law, which the Court applies to adjudicate international disputes before it..

There is a link between the provision of this paragraph and the provision contained in Article 9 of the Court's Statute, which states. When forming the Court's judges' panel, "the panel, as a whole, should ensure the representation of the major cities and major legal systems in the world..

Paragraph (c) of Article 38 of the Statute states that if a dispute is brought before the court, and there is no text in treaties or custom governing the subject matter of this dispute, the court must apply the general principles of law recognized by civilized nations, i.e. legal principles The general public established in the principal legal systems of the world, whose representation in the Court of Justice is guaranteed by its elected judges. The origin of the general principles of law is that the sphere of domestic law prevails, and therefore it seems strange that the sphere of its application extends to the rule of relations between states..

However, it can be said that these general principles apply in the international circle in the event of the loss of every international legal rule stipulated in treaties or prescribed by custom. They are like rules by which justice is judged, for civilized nations..

Hence, the application of the general principles of domestic law within the scope of international relations is a matter that requires the availability of certain conditions so that it can be said that these principles have become a source of the international legal rule, as these principles cannot be applied automatically, so that they are transferred with all their technical subtleties to the scope of the law. On the contrary, we must analyze these principles in depth until we reach the basic ideas that lie in their essence, and then consider whether these ideas are suitable for application in the scope of international relations. There are many common

principles in domestic legal systems, which cannot be transferred to the scope of international law due to its invalidity or
because it contradicts the nature of international relations, and then the international judge uses the methods known in comparative law to ensure the existence of the general principle through induction and survey of comparative legal systems. As for the applicability of the principle at the international level, it is inferred by analogy. If the judge proves the existence of a common legal principle in all national legal systems specific to a specific situation, he can use it to subdue similar situations in international law as long as we agree in terms of the cause, and thus requires the fulfillment of two basic conditions, namely:[1]
First: That it be a general legal principle (the formation condition.(
Second: To be valid for the rule of international relations (a condition of application..)
It is noted that the beginning of Article (38) of the Statute of the International Court of Justice, which requires the settlement of disputes in accordance with international law, confirms the application of the general principles of law learned from domestic law in a manner consistent with the provisions of international law through their compatibility with this law and not automatically, and therefore the general principles learned from local legal systems that would be applied by analogy in the scope of international relations, by comparing legal facts and subjecting them to a single ruling because of the similarity between them in the local and international systems, which require a similarity in the definitions, concepts or elements that exist between the two systems so that the two systems can be Conducting the process of transferring these principles to the scope of international law, because the analogy requires matching between similarities so that

[1] Salah Edin Ahmed Hamdi , Studies in Public Internatiomal Law, General Principles , Persons Confiscations , War and Defining Aggression , Cihan University , Erbil ,2011,p.22.

acceptable results can be achieved in the application via the comparison method[1]

First: Problem of the Study

The problem of the study is to answer the following question: How can the development of the rules of internal law affect the development of the rules and principles of international law? As we have explained, the sources of internal law are part of the rules of international law, meaning that the principles that ensure respect for human rights internally in every country have been unified in international rules to protect human rights and international relations and transactions. The rules of the internal law of a state conflict with another state, so it was important that there be an international law governing international relations that applies to states or to individuals.

Second:The Significance of the Study

The significance of the study is to know how the rules of public law affect the rules of international law, and the most important principles governing international relations, It is known that the legal rules must fit every time and place and develop permanently until societies progress and fit what modern matters arise at the internal level of each country separately and at the international level ie between countries.

And the fact that internal law is a source of international law means that international law is also evolving in order to keep pace with developments taking place in the world or at the international level.

We believe that one of the most important consequences of globalization is the convergence of the world and that the world has become a small village. As the development increases, it is necessary that there be new legal rules surrounding modern international issues so that they can absorb all aspects of development, and so that international relations in their modern form are governed by legal rules modern, commensurate with the

1 Zuhair Al-Hasani, Sources of Public International Law, Qarios University, Benghazi, Algeria, 21993, p. 232

size of the progress that is taking place in the world over time and the changing needs of countries.

As a result, one of the most important principles shared between domestic law and international law are those basic rules, the rule and principle of the rule of will, that is, the person in all customs enjoys his freedom and full will to perform lawful and permissible acts that do not constitute a punishable crime, and also individuals have principles such as good the intent and the principle of the special restrict the public, equality before the law, the innocence of the accused, and the accused are innocent until proven guilty.

Third: Objectives of the Study

The subject of the study deals with one of the ways to develop the rules of public international law, which are the principles of domestic law. Some of them are measurable due to their agreement with the international system. On the other hand, the structure of local systems is based on factors that may not necessarily agree with the factors on which the international legal system is based, and the nature of international relations and the characteristics that distinguish their parties may also lead to the invalidity of these principles to rule, the matter which requires the international judge to delve deeper into the analysis of these principles in order to reach the basic ideas that lie in their essence.

Fourth:The Approach of the Study

In this study, we will follow the analytical approach, where we will analyze the most important rules and principles of international law.We also analyze the role and importance of the development of internal law principles, their role and implications for the development of international law rules.

:**Fifth: The Structure of the Study**

Our research will consist of two sections, the first section deals with the principles of public law as a source of international law, and the second section deals with how the development of internal law rules affects international law and we end our study with a conclusion..

The First Topic

Principles of Public Law as a Source of International Law

The principle in general is not a general and important rule, which makes it the basis for many of the detailed rules that emanate from it. Thus, these general principles of law are the general and fundamental rules that govern legal systems, and from which other applicable rules that come into force in the form of norms and statutes are derived.

In a related context, there are those who define the general areas of law as a set of principles on which they are based and recognized by most legal systems in various countries.

Among the most common definitions of general principles are the following:

The set of common principles of the major systems of contemporary law that are applied in the statute [1]

This means that general principles of law do not say anything other than general principles of international law. According to Article 38 of the Constitution of the International Court of Justice, these principles are relatively new and are distinguished by their generality and abstraction. In other words, it refers to principles drawn from international practice, the work on and crystallization of abstraction, and is usually included in explicit law in international arbitration agreements, with principles of international law in the field of source counting. Arbitrators derive from them the rules applicable to them, and in such cases, the term is reserved for the general rules and basic principles of international custom[2]In other words, it refers to the essence of international law, which is based on the behavior of states and the expression of their will in their interrelationships. The International Court of Justice previously proposed to define the term principles of international law contained in some of these conventions and stated that this expression means nothing but the international law of all the peoples that constitute the international

[1]Michael J.Zar,Understanding the Current International,Rand Corporation,California,2016,P.82.

[2]Ghazi Hassan Saberini,Al-Wajeez in the Principles of Public International Law ,Dar Al-Thaqafa Bookshop,Amman, 1992,P.74.

community, adding that without an explicit text, the phrase cannot be interpreted.

"Principles of 'international' law, in a sense different from its meaning, which refers to the rules that actually apply between independent states, with the result that they are applied to all the same parties[1]

Indeed, when considering general principles of law, this reasoning allowed its followers to see them as part of international custom, and thus reference to them from sources of international law says absolutely nothing and is an unacceptable opinion. Because it goes against a basic rule of interpretation rules, the effect of which is that if a text can have many interpretations, one must rely on an interpretation that gives it a reasonable meaning.[2]

The First Requirement: The Validity of the General Principles:

There is a doctrinal controversy about the validity of the general principles of law as a source of international law. We see that there are two tendencies that deny the existence of general principles of law as a source of international law, and their argument is that the positivist (voluntary) school of general legal principles does not recognize legal capacity as a source of public international law because the only source of this right in their opinion is the will of the former and nothing else, and this will can take the form of explicit (international art) or implied (international practice) as well as recognition of these principles by describing the source as this school has argued means the connection between international and national law, which is what it contradicts the principle of separation of the two laws, which is the basis of the positivist school of declining tendency. Socialist jurisdiction denies the possibility of civil servants because of the different laws in the capitalist system and the socialist state

[1] Salah El-Din Amer, Introduction to the Study of Public International Law,11th ed ,Arab Renaissance House, Cairo,2020,P.209.

[2] Abdel Aziz Muhammad Sarhan, Principles of Public International Law,Cairo,University Press,Egypt,1980,P.198.

system, depending on the interest that each system seeks to achieve. This result leads to the impossibility. Or at least - the difficulty of having common or unifying principles between the two systems that could in fact constitute general principles derived from them together, which ultimately indicates the lack of reference to these principles as a source of international law. In general, it does not exist at all[1].

But for the other direction, the trend in jurisprudence cannot deny the existence of general principles of law, because it denies their independence as a direct and separate source of public international law, and thus integrates them into other sources of law. This law, or in the concepts associated with it, where a part of jurisprudence holds that the general principles of law are nothing but ordinary international rules, which eventually find their independence and distinction. As an independent source mentioned in Article (38) of the basic system of the Statute of the International Court of Justice, by jumping on and overriding the provisions of the same text. According to Rutter, "general principles of law are only rules in the true sense, when customary rules give them roughly the same direction as the Soviet jurist" of Tonkin, where he believes that general principles of law operate or sources (convention), or from customary sources in the disclaimer , With regard to any independence of the general principles of law contained in Article (1/38) of the Statute of the International Court of Justice, it seems that the trend has confused two independent sources mentioned in Article (1/38) of the Statute of the International Court of Justice. Justice in a way that constitutes a clear logical error. However, the idea could not be accepted. The congruence of the general premises of customary international law for the first falls into the second, so that the international code of conduct becomes an international standard, it is necessary that the application be repeated by states in the way we have previously separated, while an international judge may advance for the first time one of the general principles of law on

[1] Ibid p.200ff

an international relationship. It may not be known as custom or treaty [1].The Soviet view set out - in light of the former federation's establishment from a voluntary point of view to support the former view, which sought to see the general principles of law as representing something beyond the general principles of international law[2]

It was a step forward in defining the general principles of international law. An important aspect of this is that general principles of law are articulated in a number of international treaties, which in themselves are an expression of the reasons for the philosophy underpinning international relations, particularly the Five Principles included in Disney-Indian. The treaty signed on November 29, 1954 included the Sino-Indian treaty signed on November 29, 1954. The treaty between two countries belonging to two different political systems included the text of a number of general principles[3]

The most important general principles are:

-Mutual respect for territorial integrity and political independence.

Mutual agreement on non-aggression-

Non-interference in internal affairs.-

-Equality and determination of advantages on the basis of reciprocity.(-Peaceful coexistence)which in its concept means international cooperation

The principles of these five years were affirmed in many international treaties signed between the countries belonging to the former socialist bloc and other countries that follow different political systems, and were developed and detailed on other occasions until they reached ten countries, as happened in the Bandung Declaration.

[1] Mofeed Shehab.General Principles for Law as a Source of International Law.The Egyptian Journal of International Law.Cairo,Egyptian Association of International Law,vol.23 ,1967.P.2ff

[2] John Garver, Indo-Chinese Rivalry in the Twentieth Century, University of Washington, USA, 2002, p. 447.

[3] John Garver, ibid., p. 449

If one views these principles above as embodying the general areas of law, then a reflection on these principles reveals that they are in fact nothing more than principles of customary law or agreed international law. Instead, most of these principles derive from the Charter of the United Nations, and some are merely political principles that do not rise to the level of legal principles(1).

General principles of law mean that they are general principles of domestic law that can be applied at the international level when there is no other recognized international legal source, such as the principle of incompetence in the abuse of law, which has been adopted in all national legal systems(2).

It was also adopted in accordance with some of the current international arts, among which we mention: The United Nations Convention on the Law of the Sea of 1982, in which Article 105 states the following: Any country on the high seas or in any place outside its territory. The jurisdiction of a State may seize any pirate ship or aircraft. Any ship or aircraft that has been seized by a pirate and is under the control of a pirate, the deck personnel have been arrested and their property seized, and the courts of the States may have established that there will be action to be taken when the shis are concerned, the aircraft, or cargo, subject to the rights of others acting in good faith(3).

Most contemporary authors seem inclined to believe that the intent of expressing general legal principles is the set of basic principles recognized by the domestic legal systems of different countries, such as the principle of contractual liability or tort, and that these principles are applied in the international circle. The Permanent Court of International Justice applied general principles of law in the 1928 case of the Krzof Project between Germany and Poland, ruling that under general principles of law

[1] Salah El-Din Amir.Ibid P.375.

[2] Omar Saad Allah, A Dictionary of Contemporary International Law, Diwan of University Publications, Algeria, 2007, p. 362.

[3] Salah al-Din Abd al-Latif al-Nahi, The General Theory of Balanced Law and the Science of Difference, Asaad Press, Baghdad, 1968, p. 14.

"one party (Poland) may not claim that the other party (Germany) has breached an undertaking to which it lent. If the first party uses unlawful methods to prevent the other party from performing its duty[1].

The Second Requirement: Classification of General Principles:

General principles of law are an original source of international law. The authors of this view agree that general principles of law should be treated as an original source of public international law. This opinion is especially important among supporters of objective trends.

Professor "George Sall" and Professor "Charles de Fischer" have already made this clear, but they go so far as to place the general principles of law in a higher hierarchy among the sources of public international law because they place the general principles of law at the forefront of the sources, arguing that they occupy a place among these sources are similar to those that occupy the system of justice court bases in relation to the other sources. In domestic law, that is, in the face of ordinary laws.

Whereas it is agreed that the general principles of international law should be considered the original source of the sources from which the rules of international law are derived, and that they are consistent with other original sources and the treaties as such, and we believe that the sources should be so, bearing in mind the general rules that lead to the enforcement of private law in the case of a conflict with common law, which in practice leads to not to apply rules derived on the basis of the idea of general legal principles, unless there is an agreement or custom that can be applied to the facts of the conflict[1].[2]

Among the most important principles of international law[3]:

[1] Abdul Alwan , Mediator in Public International Law , Book One , General Principles,First Edition , House of Culture for Publishing and Distribution , Amman , 2008, p.47.

[2] Salah El.Din Amer,lbid P.215.

[3] Boubartakh Naima, Sources of Public International Law, Mentouri Brothers University, Algeria, 2013, p. 12

•The principle of prohibiting the use of force in international relations.

The principle of non-interference in the internal affairs of states. •

•The principle of settling international disputes by peaceful means.

•The principle of sovereign equality between states.

•The principle of fulfilling international obligations.

•The principle of prohibiting aggression.

The Second Topic

How Does the Development of Rules and Principles of Domestic Law Affect International Law?

General principles of law have had a relatively limited role in the context of traditional relations between states, as these relations have been based on international norms and conventions.

The difference in the political, economic, social and other systems between the previous systems led to a clear distinction between the pattern of social relations at the local level and the manifestation of the pattern of these relations at the international level, which led to a limited participation or legal agreement about the unifying principles that can create the so-called general principles of law.

The First Requirement: The Development of Rules and Principles of Domestic Law on International Law:

The gap between countries at the political, economic and social level inevitably leads to spaces at the level of applicable law in each country, despite the lack of achievements. The concept of legal participation has led to the emergence of general legal principles suitable for application in the international field, and many of these principles were found to fulfill the role entrusted at that time in regulating the classical relations

between the former, and the application of these principles can be monitored in several sectors or areas, including the right of theory of law (permissible and integral rules of international law, fundamental rights) from the details of the international agreement (disadvantages of consent), The theory of public responsibility, state responsibility, terms and conditions), and areas related to the

administration of justice (the principle of litigation, equality before the courts, means of evidence) can be monitored)

A number of these principles have been found that have succeeded in fulfilling the role assigned to it at the time in regulating the classical relations between the former, and the application of these principles can be supervised in a number of sectors or fields, including the field of general theory, namely law and right (rules) permitted and complementary rules in international law, rights of the first). The general theory of the contract and borrowing its details, the International Covenant (principles of the agreement, defects of consent), the general theory of state responsibility, conditions and results), equality before the judiciary, means of proof can be monitored as well..)

The United Nations Convention is the best expression of what locksmiths wanted to save the world from the troubles of new wars after the horrors and tragedies of World War II, including texts that established various mechanisms for dealing with international problems and conflicts, in order to prevent their development into comprehensive wars, and support them in the set of principles on which the world organization must be based, and upon which are the principles of sovereign equality, refusing to interfere in the internal affairs of sovereign states and refusing to use force in international relations except in cases of deterring aggression or legitimate defense. The second was in 1945 until the end of Bipolarity with the collapse of the Soviet Union in 1991 when the algae began changes in the new world order, and the perception prevailed in the beginning that the world was about to play bigger roles than those that it did([1])

At first, the perception prevailed that the world was on the cusp of a stage in which the United Nations would play greater roles than the balance of great powers allowed it to play in the shadow of the Cold War between the two countries..

[1] Fathia Layam : Towards the Reform of the United Nations Organization for Maintaining Peace and Security , Center of Arab Unity Studies , Beirut, 2011, p.167.

The term sources is used in the field of international law to refer to the mechanisms that constitute the international legal basis, and the various sources play a fundamental role in building the system of international relations between individuals, which are embodied in the provisions of public international law, whether they are compatible or customary, and constitute a decisive criterion for the legitimate and illegitimate assessment in the field of international relations. Under the title of "international legality", it was noted in the field that the numerous literature that dealt with major transformations and deviations in the application of the provisions and principles of public international law, focused in most of its aspects on the method of transformations that occurred and the practical results caused by the accompanying deviations without immediate attention to their repercussions. The transformations and the accompanying reactions on the sources and roots of the international legal rule in and of itself, which can be drawn to the point of view the study of the sources of public international law is a scholastic affair with original theoretical benefits, and its mention is limited to the pages of books and books of international law(1).

It was also noted in the same context that the traditional view of the sources of the international legal base largely corresponds to the viewpoint of the sources of the national legal base, a view different from the reality of the difference between the environment. Both rules are applied, while the national legal norm enjoys a large degree of stability in terms of interpretation and standards. The legal application of the national judiciary, and the international legal rule is characterized by presenting it in the interpretation of the content and determining the criteria for its application in international groups on a realistic rather than legal environment, and in this sense it is less stable or more affected by changes in the international reality, in the absence of any

[1] Oscar Schachter, International Law in Theory and Practice : General Course on Public International Law , Martinus Nijhoff ,1988(82-75)N.

international judicial reference with evidence it is definitive, and in front of this fact we see the lack of research in the sources of the legal basis.

The internationalism should not be limited to searching for sources of texts, rulings or principles that constitute the content of this rule, but rather it should extend to include the reality of the international arena in which there is to be implementation as a source of interpretation and a source of standards that control the appropriate international vision at the time and place of its application and on . Previously, we must realize that understanding the reality of the apparent impact of the scale of the globalization

phenomenon within the framework of public international law is not correct without evaluating the impact and repercussions on the sources of the international legal base.

Accordingly, the sources of international law are the main working material of international judicial bodies, whether to resolve disputes between states or to consider a criminal offense of an international character.

Because of this, the numbering and clarification of the sources was included in the two laws that govern the most prominent institutions of international justice, namely the system of the International Court of Justice. Article (38) of it and the statute of the International Criminal Court in its article, where Article (38) referred to in its first paragraph contained the sources arranged in the following order::

1 -General and private international agreements.

2-The observed international customs considered as a law indicated by the frequency of use.

3- eneral principles of law adopted by civilized nations.

4-Judgments of the courts and doctrines of great authors in public law from different nations.

It is common in international cases to classify sources into two categories, the first being the original or primary sources represented by international treaties, international norms and general principles. These include judicial rulings, doctrines of

scholars of international law, principles of justice and equity and national laws. It was mentioned in Article 21, first paragraph, under the heading Applicable Law, and the numbering of the sources of the legal base valid in the course of the work of the Court.

A- First: The law consists of (12) articles and its appendix regulate the elements of crimes and the rules of procedures and evidence in court..

B - Second: applicable treaties and principles of international law for armed conflict..

C- The general principles of law that the Court extracts from national laws for legal systems around the world..

The second paragraph of the above-mentioned article allows the court to use its jurisprudence to interpret the principles and rules of law. We note here that the text of Article (38) remains the most comprehensive text in terms of the scope of the sources of the international legal rule, because it includes international custom, which was excluded by the status of the International Criminal Court[1].

Article 38 of the International Court of Justice recognizes the general principles of law recognized in civilized countries as an official source for the rules of public international law, and to which the judges of the Court may refer in their international disputes, as a backup source in the absence of international agreement or binding international practice.

It should be noted that the general principles of law, given their recognition as a source of international law, aroused widespread controversy among jurists in two interventions from their sources, a precautionary source or a conclusion.

The First Axis: relates to the classification of general principles as a source of the international legal base, because some

١ Ahmad Muhammad Tozan , The Implications of Globalization Within the Frame of Public International Law , Damascus University , Syria ,2013, p.99.

considered it a primary source of sources, while others said that it is a reserve or inferential sources(1).

The Second Axis: refers to the nature of general principles, as some jurists believe that there is no way to implement these principles as a source of international legal rules except through their embodiment in the form of binding international standards, while their opponents believe that these principles are an independent source of the rule of international law. < < All international jurisdictions abide by this without the need to expressly mention it in the form of an express treaty, customary or implied..

This controversy is added to a legal agreement about the mechanisms that make it possible to deduce and exhaust the general principles of international law from the provisions of domestic legal systems, in which it is necessary to derive the common principles of the different national legal systems, with the exception of buildings from a particular country

and the principles applied only in certain systems of law .This is one of the most important general principles of law in the field of public international law(2)..

Accordingly, we can say that the importance of general principles of law as a source of the contemporary international legal base, will be governed to a large extent by the results of the frantic and escalating competition in the open international arena between political systems and behind them national legal systems, which may make it difficult to find common principles in national laws.

The national legal systems from which general principles of law are derived, according to case law, are embodied in the Latin system adopted in France and in most Arab, European and international countries, the Anglo-Saxon system adopted in the United Kingdom, the Commodule and the United States, the American countries and the Islamic system based on Islamic law,

[1] Muhammad Hafez Ghanem .Principles of the Public International Law ,Al-Nahda Al-Arabiya Press . Egypt, Cairo, 1967,p.80.

[2] Ibid, p. 86.

which has been adopted by several Countries as a primary source of legislation such as Saudi Arabia and Iran, and most Arab countries will consider it the source of personal status provisions in them, and there is the socialist system that prevailed in the Soviet Union before its collapse and Black China to this day[1]

For example, the principle of the contract is the law of the contracting parties we see that among the recent developments that affect this legal rule in a large way are those developments that have arisen from the possibility of electronic commerce between scattered people in different countries. These contracts result in international issues that need to be addressed. We note that the basis of that legal rule is in Internal law, but with the passage of time and developments that occur on the international contract, we note the necessity of international legal rules derived from internal law as the rule of the contract, the law of contractors, that legal rule deals with the new matters in the field of contract The binding nature of the contract is a universal principle. This principle states that after the legal termination of the contract, the parties must apply it as required by law. Therefore, one of the contracting parties may not unilaterally reject it or change its terms without the consent of the other contracting party[2].

The obligation prevents both parties from changing the contract alone and requires that such change be the joint will of the contractors. This means that the contract is binding on its parties so that any legally agreed terms or conditions are in force by law and therefore enforced and prevented from being violated or

[1] Muhammad Ismail Ali , Principles of the Public International Law, Al-Nahda Al-Arabiya House , Cairo, 1984, p.110ff.

[2] Mallaurie ph.,Aynesl., et Stoffel-Munck Ph.,Droit Civil,Les Obligations, Defrenois,Paris,France,2e ed.,2005,P.360.

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changed and the binding nature associated with this contract. Communicate willingly the contracting parties[21]

Free will creates the contract, determines its content, and as the main effect to be performed becomes more binding, the purpose of the contract is to achieve the legal consequences arising from the will of its parties. Thus, an obligation is a characteristic of a contractual relationship that, if it becomes enforceable, takes the place of law in relation to the contracting parties and in relation to others and can only be resolved with the consent of the contracting parties or under the terms established by law.

The Second Requirement: The Presumption of Innocence at the National and International Levels:

Criminal legislation works to protect society from crime by defining crimes and their penalties, and this is the objective aspect of criminal law, but this protection seems ineffective, and therefore it is the only knowledge of the legitimacy of crimes and penalties, even if they threaten citizens to take punitive measures. The purpose of justice is to find out the truth about the crime committed, and the way to do this is only to determine the instructions that must be observed. Exposing crimes and their perpetrators and establishing evidence about them, which is the procedural aspect of criminal law.

Jurisprudence, the judiciary, and legislation recognize that the accused is innocent until his conviction, because this principle aims to protect the freedom of the individual regardless of whether it relates to the treatment to which the accused must be subjected or linked to incriminating evidence. The presumption of innocence is the most important guarantee for him, because he accepts his innocence until he fails in a fair trial. It guarantees him all means to defend himself, and thus protects him from any

١ Arabiya , Cairo, Egypt 2005 , p.16

violation of his rights and defends him in every action.It may affect his constitutionally recognized freedom[11].

Article (11) of the Universal Declaration of Human Rights states the following: "Every person accused of a crime is presumed innocent until legally proven guilty in a public trial in which he has all the guarantees necessary for his defence[22] "Article (2/14) of the International Covenant on Civil and Political Rights states the following: - The right of those accused of a crime to be considered innocent until proven guilty by law..And the Law of the International Criminal Court known as the "Rome Convention" because it is linked to a permanent international criminal court and also because of its clear content, where Article (66) states the following::

•Presumption of innocence.

•Every person is innocent until proven guilty before the court and according to the applicable law.

•The plaintiff has a duty to prove the defendant's guilt.

•The court must be satisfied that the accused is reasonably guilty before it can pass a verdict on his conviction.

One of the most important characteristics of the legal base is that it is general and abstract in an attempt to keep pace with all the facts and developments. It is also characterized by flexibility and modernity so that it can govern what is not mentioned in a text, and does not leave people to their whims until the legal centers are established..Accordingly, it can be said that one of the most important sources of international law is internal law, as it contains important principles that help people preserve their identities and rights under the umbrella of international law.

Conclusion

The rules of national law are considered as the most important sources of international legislation. The international legal rule,

[1] Nazem Tawfiq Al-Majali , The Criminal Legitimacy as a Guarantee for the protection of Individual Freedom , Study in Jordanian Legislation , Journal of Law , Kuwait University ,N.4 1994, p.59.

[2] Article 11 from the Universal Declaration of Human Rights..

like the legal rule of national law, develops as the rules of internal law develop. We see that one of the most important principles on which international law is based, which is essentially derived from the rules of internal law, is the principle of equality. And the principle of justice, since the individual is the vital source of the national society, there must be internal legal rules that protect the human being because he is an individual in it, and considering the human being is also a member of the international community and is a center that establishes relations. This entails rights and obligations, that the human being enjoys the simplest possible of those principles, which are represented in equality and justice.

The Results

The rules of international law must be developed in order to be appropriate with the development of relations based on modernity and development. This is deduced from the urgent need to develop legal rules after the phenomenon of globalization and after making the world like a small village.This ensures the efficiency of those operations. - Internal law may receive a rule of international law and turn it into an internal rule.

-In the event of a conflict that occurs between the treaty and the internal regulations, the national judge must adopt the idea of harmonizing the treaty with the internal legislation, in order not to waste the international rule or disrupt it for the sake of the internal rule, nor vice versa.

-The general principles of internal law can become part of the international public legal system, after recognition of them as the source, which is preceded by recognition by the general internal regulations, the generality of the principle in the internal regulations is a necessity to raise it to the level of the international legal source, and that in itself is not enough to say Its suitability to the rule of international relations, because the general principle, even in the internal systems, is not a rule with precise limits suitable for immediate application to legal relations..

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