PUBLIC INTERNATIONAL LAW, HUMAN RIGHT AND INTERNATIONAL HUMANITARIAN LAW: ANY NEXUS?

INTRODUCTION

There is no gain saying the fact that Public International Law, Human Rights and International Humanitarian Law are three separate distinctive aspects of Law.

However, despite the distinction amongst them, there is a meeting point. I intend to critically analyze these various aspects of Law and subsequently identify the relationship amongst them.

At the end of this paper, readers would have an overview of Public International Law, Human Rights and International Humanitarian Law particularly the relationship amongst them.

PUBLIC INTERNATIONAL LAW

As its name suggests, International Law is (or was initially) the law operating among nations or state. Thus, in traditional International Law, states were at the centre of the whole system and even today states and their activities remain the main focus of International Law.1

International law itself is divided into conflict of laws (or Private International Law as it is sometimes called) and Public International Law (usually just termed International Law).2

1 Public International Law in the modern world: David H.O. (1987) P1 2 (International Law: Malcom N.S (2003) P1.

According to Malcom Shaw, Public International Law covers relations between states in all their myriad forms, from war to satellites, and regulates the operations at the many international institutions. It may be universal or general, in which case the stipulated rules bind all the states (or practically all depending upon the nature of the rule), or regional, whereby a group of states linked geographically or ideologically may recognize special rules applying only to them, for example, the practice of diplomatic asylum that has developed to its greatest extent in Latin America3.

With the evolution of various individual human rights, some writers have clearly noted that individuals may be subjects of international law. It is noteworthy that the world has experienced fast rate in the rise of international organizations, this trend has contributed to the development of modern international law. As a matter of fact, international law cannot be properly understood in this present world without reference to the growth in number and influence or such intergovernmental institutions, and or these the most important is the United Nations.4

In International law, International organizations have now been accorded recognition as a distinctive legal personality which can sue or be sued. The International Court of Justice in 1949 delivered an Advisory Opinion5 in which it stated that the United Nations was a subject of international claims.

By way of concluding this part, I would like to state the various sources of International law. They include custom, conventions (ie treaties), general principles, judicial decisions and the writings of highly qualified publicists (e.g academics). It is also important to appreciate that international law lacks both a universal legislative

3 (International Law: Malcom N.S 5th Edition (2003) P.2). 4
(United Nations (UN) was established in May 25, 1975) Un was established following the conclusion of the second world war and in the light of Allied planning and intentions expressed during that conflict. See: International Law: Malcom N.S. 5th Edition (2003) 5
Reparation for injuries suffered in the service of the United Nations, ICJ Reports, 1949, P. 174).

body – such as a parliament – and a universal mechanism for the interpretation of laws – such as a compulsory court structure.6

HUMAN RIGHTS

Originally, the ideology of human rights, of course, is a municipal ideology, to be realized by states within their national societies through national constitutional law and implemented by national institutions. However, with the end of the Second World War, the idea of human right has become a universal political idea and progressively a subject of international law.

What was once unthinkable had become normal by the end of the 20th Century. Individuals might seek for international remedies against its own government in the event that the government infringes on his rights as recognized by international law. This had been made possible with the existence of the various international (inter-governmental) organizations. Most cardinal of them all is the United Nations, as stated above. The resultant effect of this is that the UN can bring a claim for the enforcement of individual rights recognized by the UN against the defaulters of those rights, even if it is the government of the individual's state. How a state treated persons within its territory was its own affair, implicit in its sovereignty over its own territory and in the freedom to act there as it would unless specifically forbidden by international law.7

With the Universal Declaration on Human Rights8 as a yard-stick, certain human rights are nonderogable and recognizable. They include:

6 Cases and materials on International Law: Martin D. & Robert M. (2003). 7 International Law Cases and Materials, Fourth Edition: Lori F.D, Louis H., Richar C.P., Oscar, S., Hans S., eds). 8 (The Universal Declaration of Human Right is a resolution of the UN General Assembly, adopted on 10 December 1948).

Civil Rights: Right to life, liberty and security of person (Article 3); prohibition against slavery, torture and other ill-treatment, and arbitrary arrest or detention (Articles 4, 5, 9); the right to a fair trial, including the presumption of innocence (Articles 10, 11); freedom from interference with privacy, family, home, or correspondence (Article 13); the right to seek asylum (Article 14); the right to a nationality (Article 15); the right to marriage and a family (Article 16); the right to own property (Article 17); and freedom of thought, conscience, religion, opinion, expression, assembly, and association (Articles 18, 19, 20).

Article 21 sets forth political rights including the right to take part in government and a requirement that government be based on the will of the people, as expressed in periodic and genuine elections… by universal and equal suffrage'. It was understood by the drafters that these political rights could be limited to citizens or permanent residents of a country (although there is no requirement to do so); all other rights apply equally to every-one within a state's jurisdiction, whether citizen, resident, alien or visitor.

The next several articles deal with economic and social rights, which include the right to social security (Article 22); the right to work and free choice of employment, including 'just and favourable remuneration,' equal pay for equal work, and the right to form and join trade unions (Article 23); the right to rest and leisure, including limited working hours and periodic paid holidays (Article 24); the right to an adequate standard of living, including food, clothing, housing, and medical care (Article 25); and the right to education (Article 26).

The final substantive article, Article 27, proclaims the right of everyone to participate in the cultural life of the community and to have his or her interest resulting from any scientific, literary or artistic production protected.9

It is noteworthy at this juncture that, the "exhaustion of domestic remedies rule" is very essential in dealing with violation or individual human right in the international scene. The rule is to the effect that such individual whose right has been infringed upon must exhaust all available avenues of local remedy before seeking for remedy at the international level. Where such avenue of local remedy is not exhausted whether by way of neglect or non-existence, such individual would not be required to seek international remedy.10

The African Charter on Human and Peoples' Right.11 is also a regional effort of the African Union to protect the rights of states and individuals in the region. The applicability of various international laws in states depends on the operating law in those states. In Nigeria for instance12 the provision is that:

> "*No treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly* ".

The effect of this is that treaties with other nations gone into by Nigeria has to be domesticated to have the force of law in Nigeria. Once it has been domesticated an individual can bring a claim on it in the Nigerian court.13

(a) See Abacha V. Eawehinmi (2000) b NWLR (Pt 660) P. 228): Between Monism And Positivism – An Exposition of the Application of International Treaty in Nigeria by Olagunju A.J LASU Law Journal Volume iv issue 1 (2001) P. 101.