



THE EVOLUTION OF INTERNATIONAL HUMAN RIGHTS: ADVANCES AND RETREATS

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RESUMO

Classical international law undergoes important changes from the reorganization of world society, having as its pillar the principle of sovereignty and conceived according to the philosophy of Western Europe. The arrival of Human Rights is decisive for the construction of a cosmopolitan international law, inaugurated with the creation of the United Nations, the emergence of international criminal law and the strengthening of regional protection systems, which began to identify universal values to be protected and placed the individual in the center of their protection, with advances and some retreats.

Palavras-chave: Cosmopolitanism; International Law; Human Rights, International society.

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1. INTRODUCTION

International law, as a set of customary and conventional rules and principles, is a product of history, life in society, and the evolution of people and nations. Born with the primary purpose of regulating relations between States, initially called Law of Nations, it was not indifferent to the changes that took place within them (Nations and people). Inserted into an international society nourished by violence, wars and massacres, the domination of some people over others and the systematic disrespect for intangible values, international law has been adapted to the needs of its time.

The history of international law begins with the era of the strengthening of national States, in which it was necessary to create indispensable rules for the maintenance of world balance. It is the context of the Peace of Westphalia that brings with it a series of postulates, including the paradigm that national States are the sole holders of the monopoly of the creation of law, the sacrosanct principle of sovereignty, and the principle of nonintervention.

These principles start to be overcome through a redesign of contemporary international society, from which emerge values that not even the national States themselves are able to safeguard, often presenting themselves as their principal violators.

From this new context, human rights are the *Leitmotiv* of the transformation of international law, engendering the protection movement to a hard core of rights that all States are called upon to protect. They (human rights) do not present themselves as a finished “product”. On the contrary, they have undergone many changes over the centuries.

In the study of the history of human rights⁴⁷, significant changes are evidenced, ranging from denial to full recognition of an international system that protects the rights of individuals⁴⁸. Although this study does not intend to broaden the study of the history of human rights⁴⁹, it is

⁴⁷ GUERRA, Sidney. *Direitos humanos: curso elementar*. 4. ed. São Paulo: Saraiva, 2016, cap. I.

⁴⁸ ARÉCHAGA, Eduardo Jiménez. *Derecho internacional público*. Montevideo: Fundación de Cultura Universitaria, 1995, p. 417.

⁴⁹ GUERRA, Sidney. *Direitos humanos na ordem jurídica internacional e reflexos para a ordem constitucional brasileira*. 2. ed. São Paulo: Atlas, 2014.

imperative to emphasize that the “history of law aims at understanding how current law was formed and developed, and how it evolved over the course of the centuries”⁵⁰.

Indeed, at the present stage of international relations, people recognize the Charter of Human Rights and its respective mechanism of implementation. However, that does not mean the guarantee of concrete justice, since these rights may vary according to the informing political or philosophical thinking of a given State. Nevertheless, it is clear that the legal institutions defending human dignity against violence, degradation, exploitation and misery, which were gradually being created, begin to produce very significant results in the international system.

In the present study, we seek to demonstrate how human rights have surpassed the borders of national States and permeated world society in a way that transforms many of the founding principles of international law. That from a law solely aimed at regulating relations between States it began to take care of the values necessary to preserve the dignity of human beings, making individuals their main object of protection. To this end, the discussion will start from the notion of a *classic international law* to a *cosmopolitan international law*, which attributes special value to the rights inherent to the human person.

2. THE NEW INTERNATIONAL SOCIETY

International society already existed in the earliest antiquity, as the internationalist doctrine⁵¹ emphasizes, from the moment when some groups had relations with each other. Similarly, it can be said that international law is as old as the civilization in general, since it is a necessary and inevitable consequence of every civilization.

Although there are several international documents that identify the origin of international law in ancient times, the doctrine does not usually reach a consensus as to the exact moment of its birth. In this sense, Bedin⁵², in an interesting study, asserts that “research involving the history of international law is quite divergent from the initial milestone of its trajectory. Some people place this landmark in Mesopotamia; others in Classical Greece; a

⁵⁰ GILISSEN, Jonh. *Introdução histórica ao direito*. Lisboa: Fundação Calouste Gulbenkian, 1995, p. 13.

⁵¹ GUERRA, Sidney. *Curso de direito internacional público*. 10. ed. São Paulo: Saraiva, 2016, p. 49

⁵²

third group points out that the origin of international law is linked to Roman law; and finally, there is a fourth group of researchers who trace this origin to the Peace of Westphalia Treaties. The present study follows the understanding of the fourth group. Nevertheless, it also considers that there are several previous historical facts very relevant to the subject, such as the studies carried out by the researchers of the Spanish School, led by Francisco Vitoria and Francisco Suarez⁵³. Although, the expression *International Law* has been used, as it is, for the first time by Jeremy Bentham, in the book *Introduction to the Principles of Morals and Legislation*⁵⁴, written in 1789, in which he designates international law as the set of rules applicable to the international community, replacing the current term used so far, *Law of Nations*.

In fact, the Westphalian paradigm is understood to be the one inaugurated by the so-called Peace of Westphalia, which in the XVII century ended the Thirty Years' War. Inaugurating, from then on, an international system governed by the existence of sovereign national States, whose relations are regulated by the idea of non-intervention and which in that context was fundamental to ensure the balance of the world, especially the European world.

The Peace of Westphalia served to consolidate the modern state as a sovereign and politically independent power, asserting itself as the hard core of the international society of the modern world, that is, of a world in which the modern state is configured as a fundamental subject, if not unique, in a tough new political game: the international relations game centered on the fight for power.

For these reasons Westphalia is considered the initial milestone in the formation of the international society of the modern world and in this fact lies all its historical importance. Therefore, more than the war to which it puts an end, and the political landscape it established at that time, the Peace of Westphalia stood out for revealing a new international consciousness in which states accepted the coexistence of various political societies and accepted the possibility that these companies had the right to be independent entities, the right to ensure their existence and, furthermore, to be treated on equal terms.

⁵³ PILLET, A (Org). *Les fondateurs du droit international*. Paris, éditions Panthéon-Assas, 2014.

⁵⁴ BENTHAM, Jeremy. *Introduction aux principes de morale et de législation*. Trad. Centre Bentham. Paris : Éditions Vrin, 2011, p. 339.

This historical moment coincides with the influence of Hugo Grotius's philosophy, especially the inheritance left in *De Jure Belli ac Pacis*, written in 1625, in which he not only creates the first principles of international humanitarian law, but also an international law of coordination between the States⁵⁵.

One of the fundamental objectives of international relations becomes the search for the balance of power between the various modern States and the necessary reconciliation of the exercise of the respective sovereignty of each of its members. This is because international relations are now determined by the “absence of a higher court that has a monopoly on legitimate violence” and the recognition of war as a legitimate resource in the preservation of each country's interests”⁵⁶.

It is in the context of the XVIII century, with the emergence of the nation-State, that this vast movement starts in Europe, whose main design is to affirm the power of the State to the detriment of the empire of the Church and various local rules. This function of political centralization of codification stems from the fact that through the progressive and monopolizing appropriation of law, the State asserts itself as the sole representative and guarantor of the common good. This monopoly of law by the State becomes a privileged instrument of its authority and its legitimacy, especially in the criminal field, where the State has the right to punish in the name of peacekeeping ⁵⁷.

Based on this premise, the XVIII century was fruitful in the development of the national law of each of the, then existing, sovereign States. Since the law is closely related to the maintenance of power, and each State being the only source of law within a given territory, naturally, as a consequence, each sovereign State should have its own law.

In the age of codification (on the European continent and later in various parts of the world), national States were entrenched, relating to each other solely for their own

⁵⁵ GROTIUS, Hugo. *Le droit de la guerre et de la paix*. Tome Premier. Traduction par Jean Barbeyrac. Amsterdam : Chez Pierre de Coup, 1724.

⁵⁶ BEDIN, Gilmar Antonio, op. cit., p. 7-9.

⁵⁷ FOUCHARD, Isabelle. *Crimes Internationaux : entre internationalisation du droit pénal et pénalisation du droit international*. Bruxelles : Éditions Bruylant, 2014. p. 37.

maintenance and for the mutual preservation of the balance of power. It is quite true that European codifications were influenced by the Enlightenment, which came shortly afterwards and brought important progress such as the softening of the inhuman character of the penalties, despite the slow progress. The new Codes were being revised little by little and these reforms were nonetheless partial. In France, for example, the legislative changes that took place in 1832 reduced the chances of capital punishment, giving judges the means to soften all sentences thanks to the attenuating system of circumstances, but the death penalty would not be abolished until 1981.

On the other hand, this same age of codifications marked a second aspect of law, characterized by the centralization of punitive power by the national States. This is a redesign of the international scene dating back to the Peace of Westphalia and that finds its *apex* from the moment that each State defines its own way of saying the law and above all of saying the criminal law, linked and always relativized to the State's reasons. rooted in power structures.

Under the auspices of Enlightenment philosophy, the law at this time is strongly linked to State's reason. Humanity is perceived only through the prism of sovereignty and the ideas of cosmopolitanism find no echo. It is from this perspective that statements such as Rousseau's will have the greatest influence on international law, as he stated that the links of humanity within societies are stronger and more necessary than those that reign within the human race⁵⁸.

Until this historical moment, the content of the law is essentially relative to each national power, which deals with regulating the facts that occur in its territorial space. Although there may be similarity or approximation of content between the various national legal systems, it does not seem to be any kind of universalist content between them. Each one concentrating within its own legal order, there is no relationship between the States regarding the exercise of jurisdiction. Jurisdiction as a whole is exercised by the State without the assistance of others. In this context, a conflict within the territory of a national State is seen as a dispute whose solution lies solely on it.

⁵⁸ BELISSA, M. *Fraternité universelle et intérêt national, les cosmopolitiques du droit des gens*. Paris : Éditions Kimé, 1988, pp. 52-55.

In this necessary balance of power lies the germ of an international law of a cosmopolitan nature⁵⁹, driven by the initial phase of international relations⁶⁰.

The XIX century is marked by this redesign. The fragility of the Ottoman Empire flows into the independence of Greece (1822) and the Crimean War (1853-1856), ended with the Paris Congress, which recognized Turkey as a European state. Outside Europe there is a change in the relationship of forces, such as the independence of the Latin American states, the territorial expansion of the United States, and the opening to the west of China and Japan. Within Europe, the last national movements culminate in the unification of Italy and Germany.

From 1870 to 1905, what can be called a new phase of world history is passed, since European hegemony is abandoned and an incipient globalization of international relations takes place. The war did indeed drive States out of their state of nature and set the rules for their relations, abandoning Eurocentralization. But this departure from the state of nature was solely for the purpose of restoring the balance between States arising from war conflicts.

Profound changes on the international scene from the XX century, however, yielded intense observations about the inadequacy of this model of State sovereignty to prevent and repress criminal conduct and circumvent the contingencies of a new market, which was crucial for the development of new models of jurisdiction, no longer founded solely on the model of State sovereignty.

Between the XIX and the XX centuries there was a significant paradigm shift regarding the purpose of international relations. The XIX century was marked by attempts by States to tighten their international relations to find interstate aid rules capable of resolving conflicts with a view to restoring the balance between nations and securing their respective sovereignties. The world map has been redrawn from the wars and supervening peace accords that were only firmly grounded in the development of international relations and international law.

⁵⁹ Neste sentido, GUERRA, Sidney. *O direito à privacidade na internet: uma discussão da esfera privada no mundo globalizado*. Rio de Janeiro: América Jurídica, 2004, p. 120-134.

⁶⁰ BARBÉ, Esther. *Relaciones internacionales*. 2. ed. Madrid: Tecnos, 2006, p. 112-113.

This end of the century brought changes in the scenario that lasts until the First World War. In the meantime, other topics are starting to be debated, such as: international cooperation in customs and monetary matters and judicial cooperation (with the creation of the Hague Court in 1899), creation of the Red Cross⁶¹ and all the Geneva law supervenient to the Convention of 1864, as well as the first bases of international humanitarian law followed by the Hague Conventions. These are instruments designed to protect people and property affected by hostilities during armed conflicts⁶².

Classical international law, founded on the liberal pluralism of State sovereignty, starts to be severely questioned. Conceived doctrinally⁶³ according to Western European thought and reflecting the will to impose a rational order on international relations, this right is now incapable and obsolete to resolve controversies in an international society that starts to become disorganize.

The modification of the global scenario, especially after the two great world wars, definitely broke up with the postulates of classical international law. From the holocaust atrocities, for example, emerged some evidence such as the idea that there are values that overcome the existence of the nation state.

As Mireille Delmas-Marty states, this globalization was not the first in history, but it was for the first time characterized by technologies that abolished distances and brought boundaries closer. If it favors local claims and the proliferation of new States, globalization is also accompanied, especially after the Cold War, by the development of transnational strategies that affect the whole of exchanges, whether economic, financial, scientific and cultural or migratory flows. It also marks the weakening of the principles of State sovereignty and territoriality, as well as the overcoming of national law systems towards a time when world institutions are not ready to take their place completely⁶⁴.

⁶¹ GUERRA, Sidney. *Curso de direito internacional público*. 10. ed. São Paulo: Saraiva, 2016, p. 64.

⁶² BETTATI, Mario. *Droit humanitaire*. Paris : Dalloz, 2012, p. 25.

⁶³ TOURME-JOUNNET, Emmanuelle. *Le droit international*. Paris : Presses Universitaires de France, 2013, pp. 23-27.

⁶⁴ DELMAS-MARTY, Mireille. Trad. Maria Ermantina de Almeida Prado Galvão. *Por um direito comum*. São Paulo: Martins Fontes, 2004, p. 36.

It is in this context that arises the need to think of a cosmopolitan international law, whose main characteristic is the loss of State monopoly as a primary source, with the emergence of 'destatized' legal spaces, although the idea of withdrawal of State authority may be mistaken or exaggerated, since the exercise of jurisdictional power and its effectiveness is still dependent on the imperativity of internal rules.

In the words of Habermas⁶⁵, the world's contemporary political agenda is no longer dominated only by conflicts between States. It is now delineated as to whether potential international conflicts can be controlled in such a way that, through the cooperation of world powers, effective rules and procedures can be developed globally. Such conflicts must also generate widespread political action capacities and better legal regulation through an internationalization process integrated with national law.

Thus the XX century becomes the fertile ground on which cosmopolitan international law develops, arising from the supervenience of facts whose solution cannot be given by national law. In fact, despite being the main subject of international society, the nation-State is no longer the only one, as it has new subjects and actors, such as international organizations, transnational corporations, non-governmental organizations and other protagonists that directly affect the traditional and classical foundations of international law.

3. A NEW INTERNATIONAL LAW FROM THE PROTECTION OF HUMAN RIGHTS

International justice has already presented itself as inter-State justice: if a person wanted to make a legal claim against a foreign government, his only recourse, except to bring it an action in its own courts, was to have his claim upheld by his own government. Currently the scenario above is different⁶⁶, as the protection of individual rights was raised in the concern of international law, prompting the defense of the existence of a cosmopolitan justice⁶⁷.

⁶⁵ HABERMAS, Jürgen. *Sobre a Constituição da Europa*. Trad. Denilson Luis Werle, Luiz Repa e Rúrion Melo. São Paulo: Unesp, 2012, p. 92.

⁶⁶ TRINDADE, Caçado. *Las cláusulas pétreas de la protección internacional del ser humano*, op. cit., p. 23.

⁶⁷ NARDIM, Terry. *Lei, moralidade e relações entre os Estados*. Rio de Janeiro: Forense Universitária, 1987, p. 270.

The proposition of a cosmopolitan international law takes into account the high value attributed to human rights in the current stage of international relations and, therefore, the search for a “universal human community”, because human rights are rights that people have as members of that community. It means that as human beings, not as citizens of a particular State. In this same line of reasoning Terry Nardim (1987, p. 272) asserts that:

Nothing in the idea of human rights precludes the possibility that the postulated universal community can organize itself as a society of states. And if it is organized in this way, the idea of human rights requires that these rights be recognized and respected by states. This, in turn, is more likely to occur if human rights are grounded in the common norms of conduct governing state society, that is, international law. The tendency of efforts to strengthen respect for human rights is, thus, towards the creation of norms and institutions that require states to treat all persons, especially their own inhabitants, in accordance with certain internationally recognized standards⁶⁸.

The fact is that in the late XIX and early XX centuries, classical international law no longer responded to the needs of an international community from which Human Rights⁶⁹ began to emerge in a level that goes beyond the boundaries of the national State. While it is true that the doctrine of human rights was born within States as an internal conquest against the absolutism of European monarchies, in this new historical moment they become transversal to national rights.

In this context, a new entity starts to demand the protection of the law. Idea that was not feasible before, as it considers humanity as a whole, and so humanity becomes one of the centers of protection of international law, appearing for the first time in a legal text in the Hague Convention, in 1899, with the Martens Clause⁷⁰, and starting to create new legal categories soon after that, when one starts to speak of “crime against humanity” or “world heritage of humanity”, gaining a body of law, especially after 1945, when the concept of humanity begins to infiltrate the legal field⁷¹.

Indeed, the principles of the protection of humanity and a universal link to safeguard human dignity are the heritage of World War II, and this legacy has laid the foundations for a new international law.

⁶⁸ Idem, p. 272

⁶⁹ CASSESE, Antonio. *Le droit international dans un monde divisé*. Paris : Berger-Levrant, 1986, pp. 185-186.

⁷⁰ Convention (II) concernant les lois et coutumes de la guerre sur terre et son Annexe : Règlement concernant les lois et coutumes de la guerre sur terre. La Haye, 29 juillet 1899.

⁷¹ LE BRIS, Catherine. *L'humanité saisie par le droit international public*. Paris, LGDJ, 2012, pp. 23-24.

On the one hand, the Charter of San Francisco and on the other, the new building of the United Nations system, starting point for the creation of a new international legal order, consisting of *core conventions* designed to protect a hard core of intangibles human rights⁷².

The system of international protection of human rights, inaugurated in 1945 with the creation of the United Nations, is characterized as a system of intergovernmental cooperation that aims to protect the rights inherent to the human person⁷³.

In addition to establishing international protection of human rights as fundamental principles of its normative text, the UN Charter also made it explicit that the protection of human rights is an important means of securing peace.

On December 10, 1948, the United Nations General Assembly approved the Universal Declaration of Human Rights, with 48 votes in favor, none against and 8 abstentions⁷⁴.

This Bill of Rights presents a universalist human rights dynamic by stating that all men are born free and equal in dignity and rights, and that they have the capacity to enjoy rights and freedoms without distinction of any kind, race, sex, color, language, political opinion or any other nature, national, social origin, wealth, birth or any other limitation of sovereignty.

This document is extremely important, since it conceived in a pioneer way the foreseen of various human rights in the international system, and demonstrates the intent of international society to devise norms that are contrary to the practices of demeaning human dignity.

Corroborating the understanding, Salcedo asserts that “there is no doubt that the 1948 Declaration is presented as a higher law, and this condition cannot be ignored”⁷⁵.

⁷² FROUVILLE. Olivier de. *L'intangibilité des droits de l'homme en droit international*. Paris : Pedone, 2004.

⁷³ ABC de las Naciones Unidas. Nova York: Publicación de las Naciones Unidas, 2004, p. 295.

⁷⁴ ABC de las Naciones Unidas, op. cit., p. 296.

⁷⁵ SALCEDO, Juan Antonio Carillo. *Curso de derecho internacional público*. Madri: Tecnos, 1991, p. 131.

Later, the International Court of Justice acknowledged the superior status of the 1948 Declaration, in its judgment of May 24, 1980, concerning United States diplomatic and consular personnel in Tehran⁷⁶.

However, the 1948 Bill of Rights states in its Article 2 that “everyone has the ability to enjoy the rights and freedoms set forth in the Declaration, regardless of race, color, sex, language, religion, opinion political or otherwise, national or social origin, wealth, birth or any other condition”.

The Universal Declaration of Human Rights of 1948 also establish the prevision of rights of different categories, which reflect the great concern with the dignity of the human person.

Subsequently, the Covenant on Civil and Political Rights, as well as the Covenant on Economic, Social and Cultural Rights are created, both in 1966, and came into force in 1976, after 35 States ratified them.

It follows, therefore, that the life and dignity of the human person now occupies a prominent and privileged place in the international system and, consequently, a "great codification" in the field of human rights⁷⁷.

The International Charter of Human Rights comprises the Universal Declaration of Human Rights (1948) and the two Covenants - one on Civil and Political Rights and the other on Economic, Social and Cultural Rights. The Optional Protocol complementing the mechanism for guaranteeing and monitoring the implementation of the provisions of the Civil and Political Rights Pact cannot be forgotten, by allowing individual petitions to the Committee to be submitted by persons who are victims of violations of the provisions of the aforementioned international document.

In addition, the protection of human rights in the international system has been developed from regional institutions which have been very positive, as States in the same geographical, historical and cultural context are more likely to transpose worldwide obstacles⁷⁸.

⁷⁶ Idem, p. 132.

⁷⁷ GUERRA, Sidney. *Direito internacional dos direitos humanos*. 2. ed. São Paulo: Saraiva, 2015, p. 94

⁷⁸ FAVOREU, Louis et al. *Droit des libertés fondamentales*. 4. ed. Paris : Dalloz, 2007, p. 44.

In another band, driven by the principles of human rights enshrined in the international system, originated the international criminal law, which immediately broke with the idea that the State is the sole source of law. With the Treaty of London, in 1945, for the first time in history, a criminal offense originated in a text of international law, which eventually led to its direct application, the results of which resulted in convictions imposed by the Nuremberg International Court. One cannot forget the Tokyo Charter, which gave rise to the Far East Court. Under these circumstances, it is evident that there are violations of the inherent rights of the human person that go beyond the limits established by domestic law, conferring a certain primacy of international law⁷⁹.

This new international criminal law has produced a normative framework for the protection of human rights on the basis of incrimination. In this context, were conceived: the Convention on the Prevention and Suppression of Genocide Crime, in 1948; the Convention on the Imprescriptibility of War Crime and Crime against Humanity, in 1968; the Convention on the Elimination and Suppression of Apartheid Crime, in 1973; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in 1984; and the International Convention for the Protection of All Persons against Forced Disappearances, in 2006.

Undoubtedly, an international legal system has been created that unites all human communities, no longer limited to the rule of relations between States, but rather to the protection of the individual. The fact that human rights permeate international law completely changes its founding principles and inaugurates a new paradigm: if classical international law was limited to the relationship between States, anchored on the hierarchy between cultures, which served to underpin processes of colonization as if it were a civilizing work, cosmopolitan international law, founded on the rights of individuals, reflects the recognition of the equal status and rights of these individuals, as well as the equal dignity of their cultures and civilizations.⁸⁰ The individual gains the status of subject under international law, as regards both his prerogatives and his obligations.

⁷⁹ GUERRA, Sidney. *Curso de direito internacional público*. 10. ed. São Paulo: Saraiva, 2016, p. 536.

⁸⁰ TOURME-JOUANNET, Emmanuelle. *Le droit international*. Paris : Presses Universitaires de France, 2013, pp. 12-122.

The perception that the international community is bound by a hard core of common values has given rise to the legitimation of international jurisdictions, which further relativize the concept of sovereignty, causing what Antonio Cassese calls “retraction of state authority, in particular because of its loss of monopoly over the power to state the law”⁸¹.

From this core of values that give rise to the protection of rights of a universal nature, because they are valid regardless of cultures, and absolute, because they are not susceptible to relativization by domestic law, international cosmopolitan law will extract principles that have reached the status of *ius cogens* with *erga omnes* application, such as the prohibition of torture; of genocide; the use of forced labor and slavery; and the use of cruel or inhuman treatment that, if violated, would lead to access to international jurisdiction.

These premises made it possible for international law, in the course of the XX century, to see an unprecedented development that culminated in the multiplication of jurisdictions positioned above states, leading to the birth of a *world legal order* contextualized in an era of transition from the model of sovereignty to a universalist model, or what Olivier de Frouville calls the transition from the model of society of sovereign States to the model of universal human society⁸².

In this new paradigm, in which subsist the coexistence of international and domestic jurisdictions, and which can no longer function in isolation due to the diversity of themes to which they are subject, there is a need to regulate the relationship between peoples and between states. In this model that consecrates the existence of a true universal human society, the International Courts gain importance⁸³.

The International Courts have different competences and may function in judgments involving states or individuals. In the case, for example, of the International Court of Justice, it has jurisdiction to settle conflicts between states; Human Rights Courts operating in regional systems, such as the European and the American, for example, prosecute human

⁸¹ DELMAS-MARTY, Mireille & CASSESE, Antonio (Orgs). *Crimes internacionais e Jurisdições Internacionais*. Trad. Silvio Antunha. Barueri: Manole, 2004, p. 4 e seguintes.

⁸² FROUVILLE, Olivier de. *Droit international pénal. Sources, Incriminations, Responsabilité*. Paris : Pedone, 2012, pp. 1-3.

⁸³ GUERRA, Sidney. *O sistema interamericano de proteção dos direitos humanos e o controle de convencionalidade*. São Paulo: Atlas, 2013.

rights violations by the state against individuals; as for the criminal liability of individuals for international crimes, there is the International Criminal Court which acts in complementarity with the various internationalized jurisdictions and national jurisdictions.

4. FINAL CONSIDERATIONS

The vast number of international documents produced under UN auspices on human rights has made the dignity of the human person one of the main interests of international society. There is, therefore, a view that international society forms a whole and its interests predominate over those of individual states⁸⁴. Cançado Trindade⁸⁵ had the opportunity to affirm the importance of the protection of human rights and pointed to the great dimension acquired in the twilight of the XX century.

Another relevant consequence of the internationalization of the rights inherent to the human person is related to the sovereignty of states, whose notion is being systematically changed, *i.e.*, human rights no longer belong to the domestic jurisdiction or the reserved domain of States.

Thus, human rights that belonged to the constitutional domain are in a continuous and progressive migration (internationalization) to a supranational leadership, which is electing and accommodating its tensions in supranational primary standards.

It is clearly noted that in the relentless pursuit of the recognition, development and achievement of the greatest goals by the human person and against the violations that are perpetrated by states and individuals, international human rights law has proved to be a vital instrument for standardization, strengthening and implementing the dignity of the human person⁸⁶.

Thus, the dignity of the human person present itself as a true value in international society and should guide any interpretation of Public International Law, *i.e.*, the law that

⁸⁴ GUERRA, Sidney. *Direito internacional dos direitos humanos*. 2. ed. São Paulo: Saraiva, 2015, p. 96

⁸⁵ CANÇADO TRINDADE, Antônio Augusto. La protección internacional de los derechos económicos, sociales y culturales en el final del siglo. *El derecho internacional en un mundo en transformación*. Montevideo: Fundación de Cultura Universitaria, 1994, p. 345-346.

⁸⁶ GUERRA, Sidney. *Direito internacional dos direitos humanos*. 2. ed. São Paulo: Saraiva, 2015, p. 96

regulates it. It is solidified that human rights permeate all areas of human activity and correspond to a new *ethos* of our times.

With all this reconfiguration of world society, a new, disorderly international law appears, composed of a pluralism of sources, and therefore somewhat disturbing, but at the same time more adapted to the complex problems that surround *humanity*, creating a transition between the moderate universalist model of Grotius and a cosmopolitan view of law that expresses the need for protection of human rights understood as universal (DELMAS-MARTY, 2004, p. 27).

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A EVOLUÇÃO DOS DIREITOS HUMANOS INTERNACIONAIS: AVANÇOS E RECUOS

RESUMO: O direito internacional clássico sofre importantes modificações a partir da reorganização da sociedade mundial, tendo como pilar o princípio da soberania e concebido segundo a filosofia da Europa Ocidental. A chegada dos Direitos Humanos é decisiva para a construção de um direito internacional cosmopolita, inaugurado com a criação das Nações Unidas, o surgimento do direito penal internacional e o fortalecimento dos sistemas regionais de proteção, que passaram a identificar valores universais a serem protegidos e colocados o indivíduo no centro de sua proteção, com avanços e alguns recuos.

PALAVRAS-CHAVE: Cosmopolitismo; Lei internacional; Direitos Humanos, Sociedade Internacional.