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Inga MOTUZIENĖ

Doctoral Dissertation

RIGHT TO PROPERTY AS A HUMAN RIGHT UNDER INTERNATIONAL LAW: LEGAL POSITIVISM AND CONTEMPORARY NATURAL LAW

SOCIAL SCIENCES,
LAW (S 001)
VILNIUS, 2026

Mykolas Romeris University

MYKOLAS ROMERIS UNIVERSITY

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Inga Motuzienė

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TABLE OF CONTENTS

INTRODUCTION

Relevance and Problem of the Research

The right to property as a human right is the most controversial[1] in the list of basic human rights pronounced in the 1948 UN Declaration. It becomes obvious from various factual incongruities.

First, the list of inherent basic human rights pronounced in 1948 included the right to property, but when this declarative list was transferred to the two legally binding sources of law – the Covenants of 1966 – the right to property was the only one left overboard. This raises a lot of queries. Moreover, the right to property can be found in almost all domestic constitutions of States as one of the fundamental human rights, however, its status, scope, and characteristics in international law are unclear. Why is it protected like other human rights on national or regional level, but ignored on international level?

Second, in 1994 the independent expert Luis Valencia Rodriguez on behalf of the UN Commission on Human Rights after having worked on the right to property concluded: "The basic right of the individual to own property and develop it to its full economic potential may be regarded as an essential human right and a fundamental freedom."[2] In his other conclusion, he even stressed the importance of this right in relation to other human rights: "The sense of security and dignity gained from being able to own property is an essential prerequisite for the pursuit of happiness and exercise of a variety of other human rights."[3] On the other hand, he highlighted the vast amount of restrictions put on this right: "...no other right is subject to more qualifications and limitations (...)."[4].

Third, where the right to property is entrenched in regional treaty provisions, it is among the most allegedly violated rights. For example, the ECtHR issued 19570 rulings between 1959 and 2016, and 3098 of them were claims under the right to property. More common claims are only the ones regarding the right to liberty and security and the right to fair trial as well as claims of inhuman/degrading treatment[5]. The impressive number of claims alleging breaches of the right to property suggests that the understanding and regulation of this right pose many questions. It is not surprising as the right to own property "...is an extremely complex question that touches upon a wide spectrum of activities and relationships with other humans."[6] Therefore, the question of the status and characteristics of the right to property is a complicated and confusing one.

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1 Anne Peters "Beyond Human Rights: The Legal Status of the Individual in International Law," 2018, CUP, p. 442

2 1994 UN Commission on Human Rights, Rodriguez, p. 90, para. 474

3 1994 UN Commission on Human Rights, Rodriguez, p. 90, para. 477

4 1994 UN Commission on Human Rights, Rodriguez, p. 89, para. 472

5 Jose E. Alvarez, The Human Right of Property, University of Miami Law Review (2018), p. 657

6 1994 UN Commission on Human Rights, Rodriguez, p. 90, para. 473

Fourth, being a complex phenomenon, the right to property is closely related to politics. Authoritarian rulers have always used property deprivations as a method of dealing with political opponents – from Chavez to Putin to Xi[7]. Moreover, "property rights violations have served as a tool to pursue ethnic cleansing or to commit other crimes against humanity, or genocide, as in Mugabe's Zimbabwe from 2000 to 2012; (...) The Khmer Rouge in Cambodia targeted intellectuals-clump-property owners; Mao denied landed peasants access to their plots during his "Great Leap Forward"."[8]. One could write an endless list of examples, when authoritarian rulers committed serious human rights violations, which started from the denial of the right to private property or strict limitations to this right.

Fifth, the recent trend among States is to base their claims (as injured and non-injured parties) in the ICJ on the grounds of *erga omnes partes*. All the instances in the already solved cases (involving the Genocide Convention, the CAT) and in the still pending cases (involving the Genocide Convention, the CAT, and the CERD) are related to the protection of human rights. For example, in 2018 Qatar started the proceedings before the ICJ claiming that the UAE violated the right to property established in the CERD, which is one of the fundamental human rights[9]. On the ground of this claim Qatar requested the Court to order that the UAE should: "Restore rights of Qataris to (…) property"[10]. Although when answering to the UAE objections, the ICJ found that it has no jurisdiction to entertain the application filed by Qatar[11], still, the questions remain. How would the ICJ treat the right to property under the CERD: as a human right, as an individual right or would avoid the discussion on the right to property altogether, as in the *Diallo* case? The right to property is established in anti-discriminatory conventions such as the CERD, the CEDAW, and the CRPR, therefore, the question is would it be possible to claim the right to property effectively under these conventions in the ICJ?

Sixth, on 12 April 2023 the request for the advisory opinion by the UN Secretary-General was addressed to the ICJ. The relevant part of the question is: "Having particular regard (...) to the rights recognized in the Universal Declaration of Human Rights (...) what are the obligations of States under international law to ensure the protection of the climate system (...)?"[12] As the right to property is included in the 1948 Declaration, the ICJ is free to comment on this particular right. This is not a mere theoretical possibility because States and international organizations are actively put

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7 Jose E. Alvarez, The Human Right of Property, University of Miami Law Review (2018), p. 671

8 Jose E. Alvarez, The Human Right of Property, University of Miami Law Review (2018), pp. 671-672

9 ICJ, Application of the International Convention of the Elimination of All Forms of Racial Discrimination, Judgement (2021), para. 21, citing para. 65 (b).

10 Para 21., citing para. 66 https://www.icj-cij.org/sites/default/files/case-related/172/172-20210204-JUD-01-00-EN.pdf

11 https://www.icj-cij.org/sites/default/files/case-related/172/172-20210204-JUD-01-00-EN.pdf, para. 115, p. 43

12 https://www.icj-cij.org/sites/default/files/case-related/187/187-20230412-app-01-00-en.pdf

forward their legal positions to the ICJ regarding this question and refer to the right to property. 96 States and 11 international organizations presented oral statements during the hearings[13]. As many as 35 States from all over the world, including Australia, Portugal, Chile, Columbia, Sri Lanka, Switzerland, etc., expressly mention the right to property among other human rights and how climate change triggers this right.

Seventh, the pending case in the ICJ *Request to relating to the Return of Property Confiscated in Criminal Proceedings* (Equatorial Guinea v. France)[14] is a legal dispute related to an individual's and state's right to property. Although Equatorial Guinea is claiming the breach of the UN Convention against corruption[15] by France, judging from the description of the factual circumstances the important issue is the confiscated property in Paris and who is the actual owner (individual or state) of that property[16]. It is true that Mr. Teodoro Nguema Obiang Mangue is not an ordinary individual, but the Vice-President of Equatorial Guinea and the son of the President, the longest consecutively serving current non-royal national leader in the world. However, this dispute raises the question of a person's right to property as well.

Eighth, there are topics related to the right to property as a human right pending on the long-term agenda of the ILC. Namely, "Compensation for the Damage Caused by International Wrongful Acts"[17], "Ownership and protection of wrecks beyond the limits of national maritime jurisdiction"[18], and "Reparation to individuals for gross violations of international human rights law and serious violations of international humanitarian law"[19]. Regarding the second topic, in para. 20 the question is raised whether the "finder" acquires title to the property which is the question about the right to acquire property as a part of the right to property. In practice there are situations when private persons are "finders" of a cargo. Therefore, it is not clear whether it is possible to acquire title to the content of the cargo. Moreover, which courts would have jurisdiction to adjudicate disputes over this type of claims? Should certain subjects have preferential rights to prohibit sale or purchase of such contents?[20] As for the

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13 https://www.icj-cij.org/sites/default/files/case-related/187/187-20241213-pre-01-00-en.pdf

14 https://www.icj-cij.org/case/184 (last visited 2025-05-30)

15 ICJ *Request to relating to the Return of Property Confiscated in Criminal Proceedings* (Equatorial Guinea v. France), para. 31, https://www.icj-cij.org/sites/default/files/case-related/184/184-20220929-APP-01-00-EN.pdf

16 ICJ *Request to relating to the Return of Property Confiscated in Criminal Proceedings* (Equatorial Guinea v. France), para. 3-9, https://www.icj-cij.org/sites/default/files/case-related/184/184-20220929-APP-01-00-EN.pdf

17 Para. 423, https://legal.un.org/ilc/reports/2024/english/a_79_10_advance.pdf (last visited 2024-08-17)

18 Addendum 2, https://legal.un.org/ilc/publications/yearbooks/english/ilc_1996_v2_p2.pdf (last visited 2024-08-17)

19 Report of the ILC, 2019, Annex B, https://documents.un.org/doc/undoc/gen/g19/243/93/pdf/g1924393.pdf (last visited 2024-08-17)

20 Para. 20, Addendum 2, https://legal.un.org/ilc/publications/yearbooks/english/ilc_1996_v2_p2.pdf (last visited 2024-08-17)

third topic, the question remains whether the right to property would be mentioned and treated as one of possible "gross violations" or "serious violations" in the works of the ILC.

All the instances presented demonstrate that the questions of the status, scope, and characteristics of the right to property as a human right have caused problems in the past, are currently relevant, and seem to carry potential for causing problems in the future.

Scientific Novelty and Significance of the Thesis

There are several scientific novelties in the thesis.

Firstly, the author of the thesis aims to identify the scope and content of the right to property as a human right under the sources of international law as it stands today by taking into consideration the ongoing changes in the understanding of the sources of international law as reflected in the work of the ILC. This provides an opportunity to identify the differences and similarities of the exact content of the right to property as a general principle of law (taking into account the 2023 ILC conclusions on general principles of law), as a treaty provision (established in universal human right treaties and other universal treaties), and as an international custom (relying on the conclusions of the ILC of 2018). To continue, the author also evaluates the right to property as a right found in the non-legally binding international agreements (the so called 'grey zone' of international treaty law), which is a new category in the list of sources currently (in 2025) being examined by the ILC. Moreover, the author compares the status and scope of the right to property in various sources of positive law and draws conclusions regarding the practical significance of the issue.

Secondly, the author of the thesis searches for the content of the right to property as a human right in the sources of *natural law*. As to the knowledge of the author, the right to property as a human right has never been examined and evaluated purely from the perspective of natural law. Indeed, this is not an easy task as there is no well-established and broadly acknowledged list of sources of natural law. Therefore, the author examines the concept of contemporary natural law and the existing suggestions on the sources of natural law and proposes a new approach to the source of natural law based on the concept of collective legal (un)consciousness as well as identifies the status, scope, and characteristics of the right to property as a human right from the perspective of natural law.

Thirdly, the author of the thesis suggests the practical significance of combining these two approaches as the right to property is a complex phenomenon and one of the most frequently allegedly violated rights in the field of human rights.

The author of the thesis has decided to examine the right to property not only from the perspective of positive law, but also from the perspective of natural law. There are at least several reasons for such a choice. First, the author seconds the approaches of Sir Hersh Lauterpacht who re-presented international law as a hybrid system of positive

and natural law[21] and of a contemporary scholar Mary Ellen O'Connell who claims that "natural law is essential to a complete understanding of law, since positivism alone fails to answer fundamental questions as to what counts as law and why we have a duty to obey law"[22]. Therefore, when examining the status, scope, and characteristics of the right to property, natural and positive law should be evaluated integrally. Second, the right to property together with other basic human rights was pronounced in the 1948 UN Declaration[23]. Also, there is a widely accepted statement that basic human rights derive from natural law[24]. According to syllogism, if these two propositions are assumed to be true, then the right to property derives from natural law. Consequently, it would be inconsistent and incomplete to ignore the primary source of the right to property when seeking to define its status and characteristics. Third, Article 38(1)(c) incorporates elements of natural law by extending the sources of international law beyond the limits of strict legal positivism as it was stated by Judge Tanaka in his Dissenting Opinion in the 1966 *South-West Africa Cases*[25] and these elements of natural law can be found in *travaux preparatoires* of the drafting history of Article 38 of the ICJ Statute[26]. Moreover, this approach is supported by such authoritative international lawyers as J. L. Brierly[27], Shabtai Rossene[28], and Judge Antonio Augusto Cancado Trindade[29]. Thus, the natural law perspective on the right to property as a human right is relevant and provides an all-inclusive (or broader) picture.

The Object of the Thesis/the Object of the Research is the status and characteristics of the right to property as a human right under contemporary international law.

The author focuses solely on the legal aspects of the international dimension of the right to property and sets aside regional or domestic considerations on the subject.

The Purpose of the Thesis is to provide a conceptual viewpoint on the human right to property in international law that combines positive and contemporary natural law.

The author's premise is that the continual decades-long obscurity regarding this right has caused undesirable effects: not only incongruities between practice and legal regulation, but also legal uncertainty.

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21 Hersh Lauterpacht, The Grotian Tradition in International Law, British Yearbook of International Law 23(1946)

22 Mary Ellen O'Connell and Caleb M. Day, *Sources and the Legality and Validity of International Law: Natural Law as Source of Extra-Positive Norms*, p. 562, Ed. Samantha Besson and Jean D'Aspremont, *The Oxford Handbook on the Sources of International Law*, (OUP), 2017, p. 563

23 https://www.un.org/en/about-us/universal-declaration-of-human-rights

24 https://courier.unesco.org/en/articles/human-rights-and-natural-law

25 ICJ, 966 *South-West Africa Cases,* Dissenting Opinion of Judge Tanaka, pp. 298-299

26 ICJ, 966 *South-West Africa Cases,* Dissenting Opinion of Judge Tanaka, pp. 298-299

27 J. L. Brierly, The Law of Nations, 6th ed., p. 63

28 ICJ, 966 *South-West Africa Cases,* Dissenting Opinion of Judge Tanaka, p. 299

29 Antonio Augusto Cancado Trindade, *International Law for Humankind: Towards a New* Jus Gentium, 2nd ed. (Leiden: Martinus Nijhoff, 2013), p .139 in O'Connell article, p. 576

The Objectives of the Research

- To analyze the right to property from the positivistic point of view (a list of international treaties incorporating the right to property is made and analyzed, the possibility of the existence of right to property in customary international law is examined, the probability of the right to property as a general principle of law is evaluated).
- To analyze the right to property from the perspective of contemporary natural law (the approach of natural law is presented; then it is applied to the right to property and analysis is made).
- To reveal the shortcomings of legal positivism in the application of the right to property through the example of *Diallo* case and the possibility to solve this problem with the help of contemporary natural law.

Methodology of the Implementation of the Objectives

Triangulation method. The triangulation of theories is a method which allows to combine the benefits of the theories and eliminate the problematic aspects in each[30]. The triangulation method is employed in this thesis to combine two distinct frameworks: the positive law approach and contemporary natural law theory. In Part I, the analysis adopts a positivistic perspective, examining the right to property as a human right within the framework of international law as it is formally codified. In Part II, the same right is examined through the lens of contemporary natural law theory. By applying these two theoretical perspectives to the same subject, the triangulation method exposes the limitations and shortcomings inherent in each approach when used in isolation. At the same time, the combination of both theories enables a more comprehensive and nuanced understanding of the right to property as a human right, enriching the overall analysis and strengthening its theoretical depth.

Scientific description method. Being a social science, international law seeks to be **described**, **analyzed**, and **explained**[31]. The descriptive method is a valuable method if it is not a mere description of a tourist (random expression of what I see and what I think), but a methodological description using specific tools. There should be clear-cut boundaries regarding what the object of the research is and what one wants to know about that object. To put it in other words, **scientific description** might provide new knowledge or additional value if it is done from an interesting, progressive, authentic, and open-minded perspective. It provides new knowledge and new understanding about the same object or process.

Therefore, if one criticized the object of the thesis (the right to property as a human right in international law) as lacking innovation or not relevant, the author of the

30 Filip Horak, David Lacko, Triangulation of Theoretical and Empirical Conceptualizations Related to the Rule of Law, Hague Journal on the Rule of Law (2023), https://link.springer.com/article/10.1007/s40803-022-00181-x

31 John Finnis, Natural Law and Natural Rights (Clarendon Press, 1980), p.3

thesis could not agree with such an opinion at least for the following reasons. First, the history as well as current situation of positive law in drafting documents regarding the right to property shows that differences on the topic arise between States. Second, a mass of case law in international courts shows that something is wrong with the drafting, understanding, and applying this right in practice. Somewhere there is a misconception of how we understand this right, how we draft it, and how we apply it in practice in everyday life. Third, this thesis is novel from the methodological perspective – it states that positive law alone is not capable of explaining the right to property as a human right in international law, therefore, it analyzes this right not solely from the perspective of positive law, as all authors do; the author of the thesis develops a *contemporary natural law* perspective (as inspired by Lauterpacht and Jung, introduced by Finnis and Bos, and suggested by O'Connell).

The descriptive method is used in several ways. **First**, regarding the right to property from the perspective of positive law, multilateral treaties with relevant provisions are analyzed in order to describe the scope and content of the right to property currently existing in the international arena. Moreover, recent works of the ILC are taken into consideration when trying to identify whether the right to property as a human right can be found in various sources of international law: (a) as an international custom according to the 2018 ILC Conclusions on the identification of customary international law and the formulated criteria for the identification; (b) as a general principle of international law according to the 2022 conclusions on the identification and legal consequences of the peremptory norms of general international law (jus cogens) and the ongoing[32] work of the ILC on general principles of law; (c) as a subsidiary mean helping to identify the existing rule according to the ongoing work of the ILC on Subsidiary means for the determination of international law[33] and on non-legally binding international agreements[34]. **Second**, this method is used regarding the right to property from the perspective of natural law. The worldwide dominant paradigm is describing, analyzing, and explaining the right to property in international law from the perspective of positive law. This thesis goes another way – describes, analyzes, and explains it from the perspective of natural law. Why is it beneficial? Because this point of view helps to solve and explain the problems which cannot be solved and explained by positive law alone. Moreover, this thesis goes further – by using the **structural method**[35] it proposes how these two approaches could be used in a joint system for practical benefit. (As there is an internal system with its own hierarchy in national law,

32 It is planned to complete the second reading on the topic in 2025 (Para. 20) https://documents.un.org/doc/undoc/gen/n24/025/43/pdf/n2402543.pdf

33 https://documents.un.org/doc/undoc/gen/n24/025/43/pdf/n2402543.pdf (para. 59-78)

34 It is planned to examine questions relating to the regime and (potential) legal effects of the agreements in 2026-2027. (First report on non-legally binding international agreements, by Mathias Forteau, Special Rapporteur, para. 143(c).

35 Mark Van Hoecke, Methodology of Comparative Legal Research, in Comparative Law Methodology, Volume I, (ed. M.Adams, J.Husa, M.Oderkerk), (2017 Edward Elgar Publishing Limited), p. 137-139

one system of international law with the inner hierarchy uniting natural law and positive law could be acknowledged. As Finnis states, it is not a question of belief – natural law simply exists, no matter if we accept it or not). The questions arise[36]: who has the power to make law and to change law and who has the power to make decisions regarding the application of law.

The Comparative method is employed in this thesis in several complementary ways. In Part I, it is used to compare various treaty provisions in order to identify and clarify the constituent elements of the right to property as a human right under international law. In addition, the comparative method is applied in the analysis of 191 national constitutions, with the aim of determining the existence and scope of a general principle of law relevant to international law. In Part II, the comparative method serves a theoretical function by comparing three different strands of natural law theory, allowing for the identification of their shared foundations and common normative elements. Therefore, in this case the *presumption of similarity*[37] is important. Through these applications, the comparative method facilitates both doctrinal and theoretical coherence and contributes to a more systematic understanding of the right to property as a human right. Thus, the two legal thoughts are cumulative, contemporary natural law is not a substitution of the positive law, and not *vice versa*. Both has their own crucial functions.

Case Study Method. The case study method is employed in Part III of the dissertation to analyse the application of the right to property as a human right in international judicial practice, with particular reference to the *Diallo* case before the International Court of Justice. This method allows for an in-depth examination of a single, complex judicial decision in its legal, factual, and doctrinal context. The *Diallo* case is selected as a representative and illustrative example of the limitations of a strictly positivist approach to the right to property, particularly in relation to the treatment of general principles of law and fundamental human rights. Through focused analysis of the Court's reasoning, the case study method facilitates the identification of structural shortcomings in the application of the right to property and provides a concrete basis for assessing the potential corrective role of contemporary natural law.

Inductive and Deductive Method. The inductive and deductive method is employed primarily in Part I of the thesis in order to assess whether the right to property as a human right amounts to a general principle of law under international law. This method reflects the approach adopted by the International Law Commission and explained in the commentary to its conclusions on general principles of law. Induction is used to examine national legal systems by analysing property-related provisions in a large number of domestic constitutions, with the aim of identifying common normative elements shared across legal orders. Deduction is subsequently applied to

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36 Mark Van Hoecke, Methodology of Comparative Legal Research, in "Comparative Law Methodology", Volume I, (ed. M.Adams, J.Husa, M.Oderkerk), (2017 Edward Elgar Publishing Limited), p. 139

37 Geoffrey Samuel, Comparative law and its methodology, in „Comparative Law Methodology", Volume II (ed. M.Adams, J.Husa, M.Oderkerk), (2017 Edward Elgar Publishing Limited), p.9

determine whether the principles identified at the domestic level are capable of transposition to the international legal order, in accordance with the criteria articulated by the ILC. The combined use of inductive and deductive reasoning enables a systematic and methodologically sound assessment of the existence and content of a general principle of law concerning the right to property as a human right.

Main Statements Defended in the Thesis

1. The right to property is a fundamental human right which primary derives from natural law sources.
2. International dimension of the right to property as a human right is established in general principles of law under international law as it stands today.
3. The general principles of law is one of the three legally binding sources of international law, therefore the right to property as a human right should be applied in international courts and tribunals even if there is no conventional law or international court would be of the opinion that there is no such right under customary international law.
4. The essential function of contemporary natural law is identifying archetypes in collective legal unconsciousness and transposing them into collective legal consciousness. The right to property as a human right is discovered in the content of related archetype, therefore can be used in the collective legal consciousness.

The Degree of the Research on the Right to Property on National and International Level

The right to property as a natural person's right is usually investigated and studied as an object in national systems or regional systems. From the methodological perspective, researchers in the field usually choose to apply comparative method – compares understanding, history, existing laws, practice, case law on property law among different national systems, or between national and relevant regional systems.

For example, in 2004 **Ali Riza Coban** presented a book "Protection of Property Rights within the European Convention on Human Rights"[38] based on his dissertation prepared in University of Kirikkale (Turkey). The aim of the book is to examine definition of property, protection and limitations of property rights under the European Convention on Human Rights. Thus, the focus is on the regional aspects of the right to property and its protection.

In 2005, **Tom Allen** presented his work "Property and the Human Rights Act 1998", which concentrates on property law. In his own words the work is: "… structured approach to the extensive case law of the European Court of Human Rights and the UK courts on these issues (…). Chapters cover the history and drafting of the relevant Convention rights, the scope and structure of the rights (especially Article 1 of the

38 Ali Riza Coban, Protection of Property Rights within the European Convention on Human Rights (Ashgate, 2004)

First Protocol), and how, through the Human Act 1998, the Convention rights have already affected and are likely to affect developments in selected areas of English law[39].

In 2005 in Mykolas Romeris University **Eglė Švilpaitė** defended a disertation "Limitations of property rights under Article 1 of the First Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms" (originally written in Lithuanian "Nuosavybės teisės apribojimai pagal 1950 žmogaus teisių ir pagrindinių laisvių apsaugos konvencijos Pirmojo protokolo 1 straipsnį"), where author investigates right to property from national and Europien perspective.

The other popular approach is to examine the interconnectedness between human right to property and investment law, or between human right to property and environmental law, or human right to property and other human rights or even fields of law.

For example, in 2009 **P.M. Dupuy, F. Francioni, and E.U. Petersmann** edited "Human Rights in International Investment Law and Arbitration", where right to property is examined in the field of investor-state arbitration[40].

Sandra Fredman writes about interconnectedness between poverty and human rights, including right to property, in 2020 "Poverty and Human Rights"[41].

However, the question of the right to property as a human right in international law is still controversial, although there was an attempt to evaluate this right in 1994 by the UN Commission on Human Rights. The independent expert Mr. Luis Valencia Rodriquez presented a report "The right of everyone to own property alone as well as in association with others"[42], which contains useful observations and findings. Nevertheless, the report was not able to answer the questions fully regarding the status and scope of the right to property. What is more, since 1994 there are additional universal conventions proclaiming right to property, relevant case law in the ICJ and contemporary problems, such as climate change, triggering the right to property.

Authors Investigating the Right to Property Under International Law

The most recent and comprehensive studies on the topic or related with the topic of the thesis are:

Jose E. Alvares in 2018 has presented his study "The Human Right of Property". The author primarily concentrates on the property jurisprudence of Inter-American Court of Human Rights and the way it contrasts with the U.S. courts resistance to

39 Tom Allen, Property and the Human Rights Act 1998, Hart Publishing, Axford and Portland, Oregon, 2005

40 Editors P.M. Dupuy, F. Francioni and E.U. Petersmann, Human Rights in International Investment Law and Arbitration. OUP, 2009

41 Sandra Fredman, Poverty and Human Rights, p.222-246 in ed. Dapo Akande, Jaako Kuosmanen, Helen McDermott, Dominic Roser "Human Rights & 21 st Century Challenges: Poverty, Conflict, ant the Environment", OUP, 2020

42 1994 UN Commission on Human Rights, Rodriguez

admit that international human right of property exists[43]. However, he also comments on universal human rights treaties which recognize the right to property. He explicitly states that "…this work does not address issue of customary rule or general principles".[44] Thus, only one out of the three traditional legally binding sources of international law are taken into consideration when trying to answer the question whether a right to property exists. One of his main conclusions is: "..no such thing as a single global regime for property protection"[45] because for the time being right to property is regulated by bilateral or multilateral various international treaty regimes[46].

John G. Sprankling in 2012 published "The Emergence of International Property Law"[47], in 2014 announced his research "The Global Right to Property",[48] and finally introduced a book "The International Law of Property"[49]. Others refer to him as the leading scholar in the field of international property protection[50]. His main conclusion is that right to property under international law does exist. He supports this statement by his findings after the analysis of the right to property as: a) a right recognized in the international treaties, b) as a custom and c) as a general principle of law. However, the aim of the author is to create a new field of law in international law – international law or property, thus he concentrates on different fields of international law (investment law, environmental law, human rights, States right to property and so on) and searches for common grounds. According to him, the separate field of international law – that is an international law of property – should be recognized. Thus, his object of the research differs from the authors of this thesis at least on two aspects: (i) John G. Sprankling does not concentrates on right to property as a human right but rather investigates right to property in various fields of international law as a right of different subjects of international law and advocates for a unified regime. Having in mind that the conception and scope of the right to property differs significantly in all the fields, it is understandable that the focus of Sprankling and the focus of the author of the thesis differ. (ii) Sprankling investigates right to property only from positive law perspective while the author of the thesis investigates it from natural law perspective as well.

Van der Walt issued a study "Constitutional property clauses: a comparative analysis"[51] in 1999, which is useful when writing on the right to property as a general principle of law under international law. Van der Walt chooses to analyze property

43 Alvarez, The Human Right of Property, University of Miami Law Review, (2018), p.581

44 *Ibid*., p.684

45 *Ibid*., p.650

46 *Ibid*., p.688

47 John G. Sprankling, The Emergence of International Property Law, 90 N.C.L.Rev.461 (2012)

48 52 Colum. J. Transnat'l L.464

49 John G. Sprankling, The International Law of Property, OUP, 2014

50 Alvarez, The Human Right of Property, University of Miami Law Review, (2018), p.587

51 Andries Johannes Van der Walt, Constitutionla Property Clauses: A Comparative Analysis, (1999) Kluwer Law International, Cape Town, Cambridge.

clauses from 86 different jurisdictions and does it in depth. The author of the thesis analyses 191 constitutional property clauses but have different objectives. First, the author of the thesis concentrates only on the provisions of property as a human right (eliminating State property and other types of property). Second, the comparative analysis of the provisions is used for the purpose to identify the status and characteristics of the right to property as a human right under the international law.

The Overview of the Sources and Literature Used

Sources, where the **object of the thesis** (right to property as a human right) was found – primarily universal conventions and the provisions on property in the 191 domestic constitutions. Also the legal instruments of the UN were used, for example, the 1994 Report "The right of everyone to own property alone as well as in association with others" submitted by the UN Commission on Human Rights.

When analyzing right to property from **positive law** perspective, the author of the thesis applied the insights of the leading scholars: Anne Peters "Beyond Human Rights: The Legal Status of the Individual in International Law", Bruno Simma "The Sources of Human Rights Law: Custom, Jus Cogens, and General Principles". Moreover, the case law of the ICJ was evaluated.

When analyzing right to property from **natural law** perspective, the author of the thesis primarily relayed on the works of: Mary Ellen O'Connell "The Art of Law in the International Community", John Finnis "Natural Law and Natural Rights", Maarten Bos "A Methodology of International Law". Some perceptions of the authors were useful when examining the right to property from both perspectives, for example, Antonio Augusto Cancado Trindade "International Law for Humankind Towards a New Jus Gentium"[52].

The author of the thesis finds very innovative the work of Marina Kurkchiyan[53] (who was a Senior Research Fellow at the Centre for Socio-Legal Studies and a Fellow of Wolfson College at the University of Oxford) on her ideas on collective legal consciousness.

Finally, the author of the thesis acknowledges with gratitude the inspirational influence of the ideas expressed in Carl Gustav Jung works, especially "Archetypes and Collective Unconscious" and "Civilization in Transition".

52 Antonio Augusto Cancado Trindade, International Law for Humankind Towards a New Jus Gentium, The Hague Academy of International Law Monographs, Volume 10 (2019)

53 Marina Kurkchiyan, A Sociology of Justice in Russia (ed. Marina Kurkchiyan, Agnieszka Kubal)

PART I. THE RIGHT TO PROPERTY AS A HUMAN RIGHT UNDER INTERNATIONAL LAW: LEGAL POSITIVISM

Part I of the thesis seeks to answer the question what the status and characteristics of the right to property as a human right in the sources of positive international law *as it stands today* are.

To reach conclusions regarding the status of the right to property, the author of the thesis will apply the required criteria of each source of international law. To delineate the characteristics of the right to property and the content of this right, the author will conduct an analysis of the elements of the right to property in each source of international law.

One of the leading authors advocating for the existence of the global right to property in international law John G. Sprankling states that the right to property has "five basic components under international law. (...) The components are: the right to acquire; the right to use; the right to destroy; the right to exclude; and the right to transfer."[54] One of the tasks of this thesis is to examine this proposition by J. Sprankling reflecting a popular approach among the scientists and practitioners acknowledging the existence of the right to property as a human right in international law and see whether it could be confirmed and explicated/clarified. Do all these five elements have substantial legal basis under international law? Are there any components which could be appended to the just mentioned list? The author of the thesis will scrutinize the main sources of international law in turn in search of the components of the right to property as a human right.

In the thesis the terms "components," "elements," "aspects," and "parts" of the right to property as a human right are used interchangeably as synonyms.

A. Definition of the Key Concepts

The present Chapter (A) seeks to explain: (1) the state of the definition of *property* and *the right to property* as a human right in international law; (2) which sources of positive international law *as it stands today* the right to property as a human right is found in.

The straightforward answer to the **first question** is that there is no developed definition under international law[55]. Attempts to define *property* or *the right to property* have proved complicated even for regional human rights systems where the texts of the regional human right treaties explicitly protect the right to property but still do not define the term[56]. However, the rich jurisprudence regarding the right to property in European, Inter-American, and African legal systems allows to define the characteristics of the concept. For example, the principles of the African Commission on Human

54 John G. Sprankling, The International Law of Property, OUP, 2014, p. 219-220

55 John G. Sprankling, The International Law of Property, OUP, 2014, p. 21

56 John G. Sprankling, The International Law of Property, OUP, 2014, p. 25

and Peoples' Rights (ACHPR) state: "the right to property is a broad right that includes the protection of the real rights of individuals and peoples in any material thing which can be possessed as well as any right which may be part of a person's patrimony."[57] The Inter-American understanding is well reflected in the statement that its case law had "developed a broad concept of property that covers, among other things, the use and enjoyment of goods, defined as both material, appropriable things and intangible objects, as well as all rights that could form part of a person's wealth."[58]

On the level of international law it is an even more complicated question. As a starting point, a very broad working definition of property is borrowed from John Sprankling: "Property may be broadly defined under international law as an entitlement of a person that is related to a thing"[59]. If one were looking for a legally binding and generally accepted definition of *property* in international law, the author of the thesis would refer them to Article 2(d) of the UN Convention Against Transnational Organized Crime, which has 193 States Parties: "Property shall mean assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets."[60]

There are at least two approaches to the *right to property* in different sources of international law. One concentrates on property as a thing and the other on property as rights[61]. For the purposes of the thesis, the author upholds the position that the primary and broader value which should be acknowledged and defended is the right to property rather than property as a thing, the main reason being that the author's focus is on the right to property as a human right. Property as such is not only naturally existing objects (land, natural resources, etc., which might even be common heritage of mankind), but also objects created by humans (buildings, pieces of art, intellectual property, etc.). Therefore, the special tie or relation between a human and an object should be recognized and protected on international level. Moreover, the right to exclude others from that special tie is also an important aspect.

From the traditional perspective the answer to the **second question** seems to be clear-cut as it is widely accepted that sources of positive international law are embodied in Article 38 of the International Court of Justice (ICJ) Statute. If that were the case, the exercise of the research would be to look for the right to property as a human right in the three main legally binding sources of international law: international treaties, international customary law, and general principles of law. Also, subsidiary sources would be examined as a helpful and enlightening supplementary means. However,

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57 African Commission on Human and Peoples' Rights, Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights (2011), para. 53 (In The International Law of Property, p. 26).

58 Abrill Alosilla v. Peru, Series C no 235 (IACtHR, March 4, 2011), para. 82 (in The International Law of Property, p. 25)

59 John G. Sprankling, The International Law of Property, OUP, 2014, p.23

60 2000 UN Convention Against Transnational Organized Crime, Art. 2(d)

61 John G. Sprankling, The International Law of Property, OUP, 2014, p. 22

the emphasis on the sources of positive international law "*as it stands today*" is not accidental. Arguably, there have been numerous developments on the understanding of sources of international law since 1945. The recent and ongoing work of the International Law Commission (ILC) confirms the considerable importance on the topic of sources in international law and, thus, the relevance of the developments of these sources to the research of the present thesis. As many as six topics are related to the sources, namely: the 2018 Conclusions on subsequent agreements and subsequent practice in relation to the interpretation of treaties[62]; the 2018 Conclusions on identification of customary international law[63]; the 2022 Conclusions on identification and legal consequences of peremptory norms of general international law (*jus cogens*)[64]; the ongoing work on general principles of law (the 2018 decision to include the topic)[65], the ongoing work on subsidiary means for the determination of rules of international law (the 2021 decision to include the topic)[66]; and the ongoing work on non-legally binding international agreements (the 2023 decision to include the topic in its agenda)[67]. It is an axiom that the ILC selects new topics according to certain criteria: "(i) the topic should reflect the needs of States in respect of the progressive development and codification of international law; (ii) the topic should be at a sufficiently advanced stage in terms of State practice to permit progressive development and codification; (iii) the topic should be concrete and feasible for progressive development and codification; (iv) the Commission should not restrict itself to traditional topics but should also consider those that reflect new developments in international law and pressing concerns of the international community as a whole."[68]

Bearing in mind the criteria cited above, the fact that the ILC has just finished working on three topics and is currently (in 2025) working on three more topics regarding sources of international law shows that something has changed and/or is still changing in this fundamental subject of international law. Sources of international law are currently in the process of transformation, and we are witnessing transition in the subject. Thus, there would be no sufficient scientific explanation if these novelties regarding sources of international law were ignored and not taken into consideration while trying to identify the contemporary status, scope, and characteristics of the right to property as a human right in international law.

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62 https://legal.un.org/ilc/texts/instruments/english/draft_articles/1_11_2018.pdf

63 https://legal.un.org/ilc/texts/instruments/english/commentaries/1_13_2018.pdf

64 https://legal.un.org/ilc/texts/instruments/english/commentaries/1_14_2022.pdf

65 https://legal.un.org/ilc/guide/1_15.shtml

66 https://legal.un.org/ilc/guide/1_16.shtml

67 https://legal.un.org/ilc/guide/1_17.shtml

68 Yearbook 1997, vol. II (Part Two), para. 238 https://legal.un.org/ilc/publications/yearbooks/english/ilc_1997_v2_p2.pdf

B. Conventional Law

Although treaties start the list of sources pronounced in Art. 38 of the ICJ's Statute and probably are the most important source of international conduct, historically they are the second source of international law.[69] The oldest and the original source of international law is custom[70], therefore "treaties have to be interpreted and applied against the background of customary international law."[71]

For the purposes of this research certain features of treaties (and including human right treaties) as a source of international law are important. First, Gerald Fitzmaurice among other authors suggests that "it may be strictly more correct to regard them [treaties] formally as a source more of rights and obligations than of law, which is usually taken to require a generality and automaticity of application which treaties do not typically possess."[72] Consequently, when analyzing treaty provisions on the right to property, the author of the thesis concentrates on given rights (who are the receivers of the rights and what is the scope of the rights) and obligations (who are the obliged and what are the characteristics of the obligations). Second, it is well established that the primary role of codifying international law belongs to the ILC. However, this role is not exclusive and "treaties which, even if not expressly designated as codification treaties, nevertheless have the effect of codifying significant parts of international law may be concluded by groups of states, whether acting within the framework of an international organization (particularly the United Nations) or on regional basis or through an ad hoc conference."[73] Therefore, the author of the thesis examines whether in a particular treaty a certain aspect of the right to property can be regarded as codifying existing customary rights or obligations of the right to property.

To evaluate the status and scope of the right to property as a human right in international treaties as a legally binding source, the author takes the following steps. ***First***, the author establishes a list of relevant treaties in force. ***Second***, the author analyzes the human right treaties and other universal treaties enumerated in *Annex I* that include the right to property clause with the purpose of evaluating the status of the right to property**.** ***Third***, the author examines the elements of the right to property established in universal treaties with the intention of determining the scope of the right to property. ***Fourth***, the author presents the interim conclusions on the right to property as a human right in treaties as a source of international law.

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69 Oppenheim's International Law, p. 31

70 *Ibid*., p. 25-26

71 *Ibid*., p. 31

72 *Ibid*., p. 31

73 *Ibid*., p. 114

1. Treaties with the Right to Property Clause in Force

The author of the thesis collected, sorted, and presented the relevant data on multilateral treaties containing the right to property provisions. The list of multilateral treaties is organized in the form of a table and presented in *Annex I* of the thesis.

The author included in the list the multilateral treaties in force in which: (a) the right to property/ownership is mentioned directly, (b) particular components of the right to property are mentioned directly (for example, the right to inherit, the right to dispose, etc.), (c) the protected objects of the treaty constitute property rights/property, or (d) the contracting parties accept the obligations to protect a certain type of property.

The table consists of the following parts: (1) the column named "Year". The author sorted all the treaties in chronological order. Therefore, the earliest conventions are in the beginning of the list and the lately adopted conventions end the list. This information is relevant when evaluating the evolution of the right to property. (2) The names of the conventions are given. (3) The number of the States Parties to each treaty is provided. This is a valuable aspect that allows to assess the universality of the acknowledgement among States of the right to property. (4) The author cites the text of the relevant provisions of each treaty. The formulations of the provisions are later analyzed in detail. (5) The penultimate column provides information about beneficiaries – who are the holders of the right to property according to the texts of the treaties. (6) The last column indicates the field of law to which each convention belongs. This is important context information because the references to the right to property or to some elements of the right to property are entrenched in multilateral treaties from various fields of international law: human rights law, international humanitarian law, refugee law, diplomatic and consular law, international labor law, international cultural law, intellectual property law. The author of the thesis argues that the right to property or a particular element of the right to property mentioned in human rights treaties is different from the right to property (or the elements of that right) reflected in multilateral treaties from other fields. Therefore, the author analyzes separately the provisions on the right to property in universal human rights treaties (as *human rights*) and the provisions of the relevant universal treaties from various other fields of international law (as *international individual rights*). The author of the thesis elaborates on the differences between these two categories which sometimes might also overlap.

In the table of universal treaties provided in *Annex I*, the 2012 ASEAN Human Rights Declaration representing Asian regional approach of 10 Asian States to the right to property (and human rights in general) is not included. It is the author's choice because technically it is not a treaty. It falls out of the scope of international treaties. The status of this document is rather a non-legally binding international agreement, to put it in the words of the ILC's Special Rapporteur Mathias Forteau.[74] As the ASEAN Human Rights Declaration is not a treaty, the author of the thesis analyzes it together

74 First Report on non-legally binding international agreements, UN ILC, 21 June 2024, A/CN.4/772

with other influential and well-known non-legally binding international agreements containing provisions on the right to property. For example, the famous 1948 Universal Declaration of Human Rights. Although this document is of significant importance as a starting point when talking about the right to property as a human right, it is not a treaty and does not directly create legal rights and obligations to the States. Despite their influence, these legal documents do not amount to treaties as a source of international law, therefore, they are analyzed separately, under the chapter of non-legally binding international agreements.

All the treaties presented in the table could be classified into (a) regional and (b) universal. It is not a mere theoretical classification; it has scientific and practical significance for the purpose of the research. The difference between the two systems is accurately summarized by former judge of the ICJ Bruno Simma: "When dealing with the topic of human rights treaties, my starting point and 'standard' is the global, UN, treaty system, while the ECHR system for me finds itself at the lonely upper end of any scale; it has its place there rather as an exception to an otherwise much less encouraging picture. (...) the (still relatively) clean air of Strasbourg – a harmonious environment in which domestic legislators, domestic and international judges, treaty makers, etc., all (more or less) happily work together to attain the high objective of turning shared values into law. Unfortunately, this scene has very little in common with the present condition of international human rights outside that shelter."[75] Therefore, the regional European standard of the right to property differs remarkably from the universal standard and stands alone. The task of the author of the thesis is to determine the scope of the right to property embodied in universal treaties as a common standard in international law, not in separate regional systems or one regional system. Consequently, in line of this global approach (which differs significantly from the regional realities) the author of the thesis focuses on the examination of universal human right treaties and universal conventions embodying provisions on the right to property. Regional human rights treaties incorporating the right to property are briefly mentioned for a better contextual understanding and for comparative purposes.

Regional level

Currently in the world there are five regional human rights systems: (1) In Europe 44 states are members of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR); (2) in North and South Americas 23 states are members of the American Convention on Human Rights (ACHR); (3) in Africa 53 states are members of the African Charter on Human and People's Rights (ACHPR); (4) in the Middle East and North Africa (or Arab States) 16 states[76]

75 Bruno Simma, *Sources of International Human Rights Law: Human Rights Treaties*, Ed. Samantha Besson and Jean D'Aspremont, *The Oxford Handbook on the Sources of International Law*, (OUP), 2017, p. 871

76 https://ijrcenter.org/regional/middle-east-and-north-africa/#:~:text=As%20of%20January%202021%2C%20there,United%20Arab%20Emirates%2C%20and%20Yemen. (last visited 2024-08-12)

are members of the Arab Charter on Human Rights (Arab Charter); (5) in Asia 10 states have agreed on adopting the ASEAN Human Rights Declarations (not a treaty under international law). All the five treaties are included in the list in *Annex I*. In total, 146 states participate in regional cooperation regarding the right to property, which means that 46 states are still not participating in any regional group acknowledging the human right to property (although 10 Asian States are not legally bound by the declaration and 16 Arab States do not have a mechanism of protection of any of the human rights at the regional level). Therefore, in practice 120 states from 3 regional groups do cooperate to create the common standards of human rights and the right to property in particular among their group members. All these jurisdictions cover at least 3 billion people out of 8 billion people living in the world (at least 38% of all human beings or more than one third of humanity). The 46 states not participating in regional human rights systems include such jurisdictions as the United States (with the population of more than 335 million),[77] Canada (with the population of around 40 million),[78] India (with the population of around 1.4 billion),[79] China (with the population of more than 1.409 billion),[80] Belarus, Switzerland, Monaco, North Korea, South Korea, Oman, Marocco, Somalia, Tunisia, Russia (the denunciation of the ECHR entered into force on September 16, 2022; Russia was a party to the Convention from May 5, 1998)[81] and others. It is worth mentioning that all the five groups are not related and function individually. The author concludes that in the best-case scenario at least every third person lives in a jurisdiction that is not concerned about acknowledging and creating legal standards on regional level regarding the right to property as a human right.

Universal level

On the universal level the right to property as a human right is reflected in different types of universal conventions. Therefore, for the purposes of the thesis all the universal treaties provided in *Annex I* are classified into categories: (1) universal human rights treaties and (2) *other* universal treaties, i.e. universal treaties from various fields of international law. Moreover, it is noted that universal human right treaties are divided into two subcategories: (a) conventions pronouncing a catalogue of human rights and (b) anti-discrimination conventions. Starting with the subcategory (a), there are two conventions pronouncing a catalogue of human rights on the universal level: the 1966 International Covenant on Civil and Political

77 https://www.cbsnews.com/news/us-population-expected-to-top-335-million-by-new-years-day-2024/ (last visited 2024-08-12)

78 https://www.cbc.ca/news/politics/population-growth-canada-2023-1.7157233 (last visited in 2024-08-12)

79 https://www.statista.com/statistics/263766/total-population-of-india/ (last visited 2023-08-12)

80 https://time.com/6556324/china-population-decline-births-deaths/ (last visited 2024-08-12)

81 https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=009 (last visited 2024-08-12)

Rights (ICCPR) and the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR). However, the right to property is not established in either of them. Consequently, these two treaties are not included in the list of *Annex I* and fall out of the scope of the research. Turning to the subcategory (b), there are four anti-discriminatory conventions in the list which are analyzed further for the purpose of identifying the status and scope of the right to property. These are: the CERD, the CEDAW, the CRPD, and the CPRMW. Finally, all the rest of the universal treaties in the list, being from various fields of international law, fall under the category (1). Naturally, the question arises whether the right to property provisions in the treaties belonging to category (1) can be considered as *human rights* or as *(simple) individual rights* to property.

2. Human Rights Treaties and Other Universal Treaties with the Right to Property Clause

The idea that there are two groups of international individual rights is not a new one.[82] The author of the thesis relies on this suggestion to present a way of interpreting the right to property in different universal treaties as this would help to answer practical questions raised in the thesis (namely, to define status and characteristics of the right to property). The position found in the doctrine is that international individual rights consist of two groups of rights: human rights and simple or ordinary international individual rights.[83] The jurisprudence of the ICJ also reflects the acknowledgement and use of the two terms – *individual rights* (for example, in *La Grand* case) and *human rights* (for example, *Barcelona Traction* case). Therefore, in the case of the right to property, the author of the thesis suggests that the provisions in human rights treaties should be interpreted as a *human right* to property, while provisions in the treaties from other fields of international law should be examined as possibly amounting to *(simple) individual rights* to property. Moreover, the category of human rights treaties is also not monosemantic. Consequently, when interpreting the right to property in human rights treaties, the type of the treaty should be evaluated: whether it is a treaty pronouncing a catalogue of human rights (for example, the ECHR) or a treaty concluded to solve a particular problem of anti-discrimination related to a certain vulnerable group of people (for example, the CERD, the CEDAW, the CRPD, the CPRMW). The scheme of the categories is further analyzed in the thesis:

82 Anne Peters, "Beyond Human Rights: the Legal Status of the Individual in the International Law", CUP (2016), p. 436

83 *Ibid*., p. 436

International Individual Right (to Property)

Human Right (to Property):

(1) Treaties-Manifestations
(2) Anti-discrimination Conventions

(Simple) Individual Right (to Property)

Why does this distinction matter? It helps to organize the existing mix of various legal provisions on the right to property in international law and thus solve theoretical problems (such as how to decide whether the right to property is a human right; and if yes, whether it is a fundamental or a non-fundamental human right) and practical concerns (such as appeared in *LaGrand* case, when it was questioned whether Art. 36 of The Vienna Convention on Consular Relations (VCCR) includes a human right or an individual right, and might appear again regarding other rights, including the right to property).

How does this distinction work? According to Anne Peters, who commented on all the existing human rights and individual rights in general, it is: "based on the assumption that within the domain of international law, a constitutional-like layer of norms has begun to crystalize and is being further developed. We refer to this as a process of constitutionalization of international law. (...) Human rights belong to the layer of international constitutional law. The simple individual rights do not belong to this layer, but rather (figuratively) to the layer of ordinary international law "below" that layer. This distinction between the two layers of norms in international law, namely international constitutional law on the one hand (including international human rights) and ordinary international law on the other hand (including ordinary or simple individual rights), is still only rudimentary. So far, there are hardly any special law-making processes guaranteeing that international constitutional law would be more difficult to amend, thus implementing a hierarchy of norms of international law."[84] Following this line of explanation and combining it with the object of the thesis, the question of the status of the right to property might be divided into two parts: first, if there is a *human right* to property under international treaty law, and second, if there is a *(simple) individual right* to property under international treaty law. As Anne Peters observes, "The demarcation proposed here does not mean that human rights and ordinary or simple international rights of the individual are two strictly separate compartments in the category of international individual rights. Evidently, human rights form the basis or at least the background for most of the individual rights (...)."[85] So, in addition, the following questions arise: what is the relation between the human right to property and the (simple) individual right to property? And what are the possible legal

84 *Ibid.*, p. 437

85 *Ibid.*, p. 442

consequences of such division? Further analysis of the list of treaties will provide answers to these queries.

Universal Human Right Treaties: Anti-discriminatory Conventions

In this part of the thesis the author examines the four anti-discriminatory conventions: the CERD, the CEDAW, the CRPD, and the CPRMW. Under each of these conventions, there is a Committee that has a UN mandate to monitor the implementation of a particular Convention, give recommendations, and consider the communications submitted by individuals or groups of individuals alleging violations of the Convention in member states,[86] namely: (1) the Committee on the Elimination of Racial Discrimination,[87] (2) the Committee on the Elimination of Discrimination against Women,[88] and (3) the Committee on the Rights of Persons with Disabilities.[89] Therefore, they are also the official commentators on the scope of the right to property in each field respectively.

When considering the important aspects of the work of the three Committees and their input into the interpreting of the right to property, some facts about the number of States Parties to the Conventions and Optional Protocols are taken into account as this helps to understand: (a) the gap between the effort of the States to look credible, human right oriented, and accepting right to property on the formal level (or "*opinio juris*") and the real actions (or "general practice") granting the individuals in their respective jurisdictions the means of implementing the right to property; (b) the legal reality regarding the number of States willing to give chances to individuals under their jurisdiction to practically protect their rights related to property.

One more aspect to consider is the legal effect of the pronouncements of the Committees mentioned above. In this respect a reference should be made to the 2018 ILC Conclusions on Subsequent Agreements and Subsequent Practice in Relation to the Interpretation of Treaties.[90] In its Commentary to Conclusion 13 "Pronouncements of expert treaty bodies" the reference is made to the expert treaty bodies established under the human right treaties at the universal level.[91] All the detailed analysis of the ILC suggests that such pronouncements are *not legally binding* upon States Parties, but the States must take the suggestions into account, and international courts are not obliged to follow the views expressed by the expert treaty bodies. However, the Committees have authority to interpret and comment upon provisions of a particular treaty. As it is analyzed in the thesis, the ICJ's practice shows that the Court does take into account

86 https://wwaw.ohchr.org/en/treaty-bodies/cedaw/membership (last visited 2024-08-22)

87 https://www.ohchr.org/en/treaty-bodies/cerd

88 https://www.ohchr.org/en/treaty-bodies/cedaw

89 https://www.ohchr.org/en/treaty-bodies/crpd (last visited 2024-08-22)

90 2018 ILC Conclusions on Subsequent Agreements and Subsequent Practice in Relation to the Interpretation of Treaties

91 Conclusion 13, para.1, p.106

the Committees' view and in its judgements refers to the propositions of such expert treaty bodies but not necessarily chooses to approve and follow them.

CERD

There are 182 States Parties to the CERD and only less than one third of them, namely, 59 states, have accepted the individual communications procedure (last updated February 21, 2023).[92] The list of the non-State Parties to the Convention consists of 15 States: Bhutan, Brunei Darussalam, the Cook Islands, the Democratic People's Republic of Korea, Kiribati, Malaysia, Micronesia (the Federated States of), Myanmar, Nauru, Niue, Palau, Samoa, South Sudan, Tuvalu, and Vanuatu. A lot of States, such as Afghanistan, Belarus, Canada, Cambodia, China, Columbia, Croatia, the Democratic People's Republic of Korea, the Democratic Republic of Congo, Egypt, India, Indonesia, Japan, Kuwait, Lebanon, Lithuania, Malaysia, Namibia, Nicaragua, Nigeria, Qatar, Saudi Arabia, Somalia, Thailand, Turkey, Viet Nam, the USA and others are not consented to the possibility to bring claims of individuals under their jurisdiction.[93] Some comments regarding the right to property and declarations made by the States are as follows.

The Bahamas made a general declaration: "Acceptance of this Convention by the Commonwealth of the Bahamas does not imply the acceptance of obligations going beyond the constitutional limits nor the acceptance of any obligations to introduce judicial process beyond these prescribed under the Constitution."[94] **Belgium** made a declaration which is important in regard to understanding the Universal Declaration of Human Rights as a legal instrument embodying principles: "The Kingdom of Belgium nevertheless wishes to emphasize the importance which it attaches to the fact that article 4 of the Convention provides that the measures laid down in subparagraphs (a), (b), and (c) should be adopted with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of the Convention."[95] According to Belgium, the right to property is a principle under the 1948 Declaration and a right under the CERD. **France** made a declaration: "With regard to article 4, France wishes to make it clear that it interprets the reference made therein to the principles of the Universal Declaration of Human Rights and to the rights set forth in article 5 of the Convention as releasing the States Parties from the obligation to enact anti-discrimination legislation which is incompatible with the freedoms of opinion and expression and of peaceful assembly and association guaranteed by those texts,"[96] which seconds Belgium's position that the right to property is

92 https://indicators.ohchr.org (last visited 2024-08-22)

93 https://indicators.ohchr.org (last visited 2024-08-22)

94 https://indicators.ohchr.org (last visited 2024-08-27)

95 https://indicators.ohchr.org (last visited 2024-08-27)

96 https://indicators.ohchr.org (last visited 2024-08-27)

a principle under the 1948 Declaration and a right under the CERD. **Ireland** made a reservation/interpretative declaration: "Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination provides that the measures specifically described in sub-paragraphs (a), (b) and (c) shall be undertaken with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in Article 5 of the Convention."[97] **Italy** made a declaration: "The positive measures, provided for in article 4 of the Convention and specifically described in sub-paragraphs (a) and (b) of that article, designed to eradicate all incitement to, or acts of, discrimination, are to be interpreted, as that article provides, "with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5" of the Convention". **Japan** made the reservation: "In applying the provisions of paragraphs (a) and (b) of article 4 of the [said Convention] Japan fulfills the obligations under those provisions to the extent that fulfillment of the obligations is compatible with the guarantee of the rights to freedom of assembly, association and expression and other rights under the Constitution of Japan, noting the phrase 'with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention' referred to in article 4."[98] **Malta** made a declaration: "It interprets article 4 as requiring a party to the Convention to adopt further measures in the fields covered by sub-paragraphs (a), (b) and (c) of that article should it consider, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights set forth in article 5 of the Convention, that the need arises to enact '*ad hoc*' legislation, in addition to or variation of existing law and practice to bring to an end any act of racial discrimination." **Monaco** made a reservation in regard to Article 4: "Monaco interprets the reference in that article to the principles of the Universal Declaration of Human Rights, and to the rights enumerated in article 5 of the Convention as releasing States Parties from the obligation to promulgate repressive laws which are incompatible with freedom of opinion and expression and freedom of peaceful assembly and association, which are guaranteed by those instruments." **Papua New Guinea** made a reservation: "The Government of Papua New Guinea interprets article 4 of the Convention as requiring a party to the Convention to adopt further legislative measures in the areas covered by sub-paragraphs (a), (b) and (c) of that article only in so far as it may consider with due regard to the principles contained in the Universal Declaration set out in Article 5 of the Convention that some legislative addition to, or variation of existing law and practice, is necessary to give effect to the provisions of article 4." **Saudi Arabia** made a reservation: "The Government of Saudi Arabia declares that it will implement the provisions of the above Convention, providing these do not conflict with the precepts of the Islamic *Shariah*." **Tonga** made a reservation to article 5 (d) (v) regarding the right to own property: "To the extent, [...], that any law relating to land in Tonga which prohibits or restricts the alienation of land by the indigenous

97 https://indicators.ohchr.org (last visited 2024-08-27)

98 https://indicators.ohchr.org (last visited 2024-08-27)

inhabitants may not fulfil the obligations referred to in article 5 (d) (v), [...], the Kingdom of Tonga reserves the right not to apply the Convention to Tonga."[99] **The United Kingdom of Great Britain and Northern Island** made a reservation upon signature in 1966: "Lastly, to the extent if any, that any law relating to election in Fiji may not fulfil the obligations referred to in article 5 (c), that any law relating to land in Fiji which prohibits or restricts the alienation of land by the indigenous inhabitants may not fulfil the obligations referred to in article 5 (d) (v), or that the school system of Fiji may not fulfil the obligations referred to in articles 2, 3 or 5 (e) (v), the United Kingdom reserves the right not to apply the Convention to Fiji." However, in 1973 Fiji joined the Convention as a separate state without any declarations to the CERD.

To sum up, first, the signatories of the CERD consider the right to property as a principle under the 1948 Declaration. This corresponds to the text of the treaty itself (Article 4) and, moreover, some states, such as Belgium, France, Ireland, Italy, Japan, Malta, Monaco, Nepal, Tonga, and the UK, state this repeatedly in their declarations or reservations. Second, in their declarations or reservations none of the states declared that they do not recognize "the right to own property alone as well as in association with others" or "the right to inherit", therefore, this suggests that they admit the existence of at least such elements of the right to property as: (1) the right to own (alone or in association with others) and (2) the right to inherit. Third, the beginning of Article 5 states: "guarantee the right of *everyone*, without distinction (…) in the *enjoyment of the following rights*", which expressly declares "everyone" as a bearer of the right to own property. However, bearing in mind the object and purpose of the Convention, in order to prove that this right was breached under the CERD it is not enough to prove the violation of the right to own property as such, but it must be coupled with one of the discriminatory grounds as well. It means that two elements should be proved cumulatively. Thus, from a practical perspective, the implementation of the right to property is complicated on the international level even for the persons from 59 jurisdictions of the States which have accepted the individual communications procedure. Finally, although States in their Conventions almost unanimously guarantee the right of everyone under their jurisdiction to enjoy the right to own property or the right to inherit property, they are not so quick to take steps to ensure the possibility for individuals to protect these rights on the international level.

Interpretation of the ICJ and Possible Legal Consequences

One of the richest universal human rights treaties in the sense of the number of States parties containing provision regarding the right to property as a human right is the International Convention on the Elimination of All Forms of Racial Discrimination (CERD)[100]. Relevant part of article 5 states: "(…) States Parties undertake to

99 https://indicators.ohchr.org (last visited 2024-08-27)

100 182 states parties to the convention, https://en.unesco.org/conventions/pdf/297951 (last visited 2023-07-27)

prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or *national* or ethnic *origin*, to equality before the law, notably in the enjoyment of the following rights: (…) the *right to own property* alone as well as in association with others."[101] In 2021 judgement the ICJ had an opportunity to comment on this article ant its interpretation as Qatar claimed the violation of this provision by the UAE as a discrimination on the ground of "national origin ". The crux of the question was whether the "national origin" should be understood as including nationality (as suggested by Qatar) or whether it excludes nationality as a ground (as advocated by the UAE). Although in this case the question was not about the right to property, still it worth to have a close examination because in the future the interpretation of "national origin" could occur regarding the protection of a right to property and have practical effect. For example, if to interpret that "national origin" includes nationality this would lead to the conclusion that a State has obligation to respect right to property under the CERD in the same way for its citizens and non-citizens. On the contrary, if to interpret that "national origin" excludes nationality as a ground, then a State could treat citizens' and non-citizens' right to property in its jurisdiction differently. Thus, in the latter case there would be no violation of CERD if, for example, it would be allowed to sell land in a particular jurisdiction only to citizens, or if there would be additional taxes or other restrictions for non-citizens when buying real estate, but in the former case it would amount to a violation of art. 5(d)(v)[102] .

The ICJ gives a 4-step methodology how it is going to interpret the provision and in particular term "national origin": (1) to apply rules of customary international law of treaty interpretation (reflected in the art. 31 of Vienna Convention on the Law of Treaties), (2) to apply rules customary international law of treaty interpretation (reflected in the art. 31 of Vienna Convention on the Law of Treaties), (3) to *examine* the practice of CERD Committee, (4) to *examine* the practice of regional human rights courts.[103]

Turning to the first point, article 31 of the Vienna Convention is considered a general rule, encompassing three elements: (a) treaty should be interpreted in good faith, (b) in accordance with the ordinary meaning to be given to the terms of the treaty in their context, and (c) in light of its object and purpose[104]. However, the article is not applicable for the two reasons: first, Vienna Convention entered into force later then CERD; second, Convention is not in force between the Qatar and the UAE[105]. There-

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101 https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-elimination-all-forms-racial (last visited 2024-08-18)

102 Art. 5(d)(v), https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-elimination-all-forms-racial

103 Para 75, 76, 77, https://www.icj-cij.org/sites/default/files/case-related/172/172-20210204-JUD-01-00-EN.pdf

104 Art.31, Vienna Convention of the Law of Treaties

105 Para 75, https://www.icj-cij.org/sites/default/files/case-related/172/172-20210204-JUD-01-00-EN.pdf (last visited 2024-08-19)

fore, the Court applies customary rules on treaty interpretation, which are identical, as was affirmed in number of earlier cases[106]. All three elements of a general rule are analyzed by the ICJ in the following order.

Indeed, the Court stresses that the definition of racial discrimination in CERD includes term "national origin" but demonstrates a clear difference between "national origin" and "nationality" [107]. Former is seen as a bond between individual and his or her birthplace[108]. It is a constant fact and shows one's belonging to certain national or ethnical group. Later is understood in line with previous jurisprudence of the ICJ, namely, Nottebohm case[109], as a "legal attribute which is within the discretionary power of the state and can change during a person's lifetime"[110]. Moreover, all the other elements, listed in art.1 paragraph 1 of CERD (race, colour, and descent) also refer to the features that are inherent in birth[111]. To continue, the Court then analysis the context of CERD, pointing out that paragraphs 2 and 3 of the same art. 1 expressly addresses the question of citizenship[112]:

"2. This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens.

3. Nothing in this Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate any particular nationality."[113]

The Court is of the opinion that para.2 does not prevent States Parties to the Convention from adopting national laws, which would differentiate citizens and non-citizens. Thus, if there is no such restriction, the States are allowed to act in such a matter. Lastly, the object and purpose of CERD is examined by the ICJ. The Preamble of the Convention is recalled as well as the historical circumstances of the adoption of the treaty, namely, the 1960s decolonization movement and the aim of the Convention "to eliminate all forms and manifestations of racial discrimination against human beings

106 Para 75, https://www.icj-cij.org/sites/default/files/case-related/172/172-20210204-JUD-01-00-EN.pdf (last visited 2024-08-19)

107 Para 81, https://www.icj-cij.org/sites/default/files/case-related/172/172-20210204-JUD-01-00-EN.pdf (last visited 2024-08-19)

108 Para 81, https://www.icj-cij.org/sites/default/files/case-related/172/172-20210204-JUD-01-00-EN.pdf (last visited 2024-08-19)

109 ICJ, Nottebohm (Liechtenstein v.Guatemala), Second Phase, Judgment, 1955, p.20 and 23)

110 Para 81, https://www.icj-cij.org/sites/default/files/case-related/172/172-20210204-JUD-01-00-EN.pdf (last visited 2024-08-19)

111 Para 81, https://www.icj-cij.org/sites/default/files/case-related/172/172-20210204-JUD-01-00-EN.pdf (last visited 2024-08-19)

112 Para 82, https://www.icj-cij.org/sites/default/files/case-related/172/172-20210204-JUD-01-00-EN.pdf (last visited 2024-08-19)

113 CERD, art 1.

on the basis of real or perceived characteristics as of their origin, namely at birth."[114] The Court observes, what was proposed by the UAE during the dispute, that "differentiation on the basis of nationality is common and is reflected in the legislation of most States parties."[115] Having in mind, that currently there are 182 states parties to CERD and that state practice widely affirms differentiation of nationals and non-nationals in their national legislation, the inference is that at least the most States are of the opinion that the term "national origin" does not include citizenship. The ICJ after applying the first step rules arrives at the conclusion: term "national origin" in CERD "does not encompass current nationality"[116]. Following this line of arguments and basing on the conclusion of the Court, restrictions to non-nationals regarding the right to own property could not be treated as discriminatory and violating art.5 of CERD.

The second step of the methodology applied by the Court is consideration of the customary rule of treaty interpretation, which is reflected in art.32 of the Vienna Convention. Because this rule is a supplementary and the meaning of the term is clear after the first step, it is not necessity to use it "to confirm the meaning resulting from the application"[117] of customary rule reflected in art.31. However, the Court decides to resort to *travaux preparatoires* as an element of this rule of interpretation because both Parties have referred to preparatory works in their arguments when explaining and interpreting term "national origin"[118]. The Court reminds that CERD was drafted in three stages: within the Sub-Commission on Prevention of Discrimination and Protection of Minorities, within the Commission on Human Rights, and within the Third Committee[119]. Indeed, there were discussions in the Sub-Commission regarding the inclusion of nationality[120] and discussions in the Commission on Human Rights on the scope of "national origin"[121], thus preparatory works confirm that the drafters were aware of the question of the term "national origin" and its scope. Nevertheless, all the exchanges of the views ended in the same way – "national origin" does not include nationality. During the final stage in the Third Committee, it was made clear that "the

114 Para 86, https://www.icj-cij.org/sites/default/files/case-related/172/172-20210204-JUD-01-00-EN.pdf (last visited 2024-08-19)

115 Para.87, https://www.icj-cij.org/sites/default/files/case-related/172/172-20210204-JUD-01-00-EN.pdf (last visited 2024-08-19)

116 Para.88, https://www.icj-cij.org/sites/default/files/case-related/172/172-20210204-JUD-01-00-EN.pdf (last visited 2024-08-19)

117 Art.32, Vienna Convention on the Law of Treaties

118 Para.89, https://www.icj-cij.org/sites/default/files/case-related/172/172-20210204-JUD-01-00-EN.pdf (last visited 2024-08-19)

119 Para.93, https://www.icj-cij.org/sites/default/files/case-related/172/172-20210204-JUD-01-00-EN.pdf (last visited 2024-08-19)

120 Para.93, https://www.icj-cij.org/sites/default/files/case-related/172/172-20210204-JUD-01-00-EN.pdf (last visited 2024-08-19)

121 Para.94, https://www.icj-cij.org/sites/default/files/case-related/172/172-20210204-JUD-01-00-EN.pdf (last visited 2024-08-19)

term refers to persons of foreign origin who are subject to racial discrimination in their country of residence on the grounds of that origin"[122]. Thus, the second step affirms the findings of the first step that term "national origin" does not encompass nationality.

The third step, suggested by the Court is to examine the practice of the Committee on the Elimination of Racial Discrimination (CERD Committee). The CERD Committee is a body of independent experts that monitors implementation of CERD[123]. The ICJ refers to para.4 of the 2005 General Recommendation XXX[124]: "differential treatment based on citizenship or immigration status will constitute discrimination if the criteria for such differentiation, judged in the light of the objectives and purposes of the Convention, are not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim"[125] and briefly comments that "in the present case concerning the interpretation of CERD, the Court has carefully considered the position taken by the CERD Committee" and "came to the same conclusion"[126] that term "national origin" does not mean nationality.

A few comments on this point. First, the Court relayed on para.4, but not on the other parts of the General Recommendation XXX, in particular, para.3 which expressly comments on art.5 of CERD: "States parties are under an obligation to guarantee equality between citizens and non-citizens in the enjoyment of these rights to the extend recognized under international law."[127] It is explicitly stated that equality for citizens and non-citizens should be quaranteed for the human rights listed in art.5 of CERD, that is right to property included as well. However, if one would follow this recommendation, the tricky question is how to interpret the last part of the sentence "to the extend recognized under international law". What is the extend of the right to property as a human right recognized under international law? This is precisely one of the questions to which this thesis is dedicated for. In addition, this formulation of the recommendation is open to constant change as one of the main characteristics of the international law is dynamics. Second, the Court referred to its jurisprudence, namely, the *Diallo* case, where it was indicated that the Court should ascribe a great weight, but is not obliged to follow the interpretation of treaty bodies[128]. It seems that in this case the Court assured that it is fully aware of the position of the CERD Committee and is not wiling to comment on it. As the author of the thesis sees the situation, the interpretation of "national origin" given by the CERD Committee and the interpretation given

122 Para.95, https://www.icj-cij.org/sites/default/files/case-related/172/172-20210204-JUD-01-00-EN.pdf (last visited 2024-08-19)

123 https://www.ohchr.org/en/treaty-bodies/cerd (last visited 2024-08-19)

124 https://www.refworld.org/legal/general/cerd/2004/en/39027

125 Para 100, https://www.icj-cij.org/sites/default/files/case-related/172/172-20210204-JUD-01-00-EN.pdf (last visited 2024-08-19)

126 Para 101, https://www.icj-cij.org/sites/default/files/case-related/172/172-20210204-JUD-01-00-EN.pdf (last visited 2024-08-19)

127 https://www.ohchr.org/en/treaty-bodies/cerd (last visited 2024-08-19)

128 Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of Congo), 2010 (II), p.664, para 66

by the ICJ differs. The CERD Committee is not categorical that term "national origin" does not include nationality. On the contrary, it says in the General Recommendation XXX that there is a possibility, that differential treatment based on citizenship *might* constitute discrimination if it fullfils two conditions: criteria for differentiation are not applied pursuant to a legitimate aim (in the light of object and purpose of the Convention) and are not proportional to the achievement of this aim. While the conclusion of the Court is unconditional – term "national origin" does not include citizenship. Consequently, one faces the situation when two authoritative bodies having the mandate to interpret CERD, arrive at different conclusions regarding the same term. Alhought formally the recommendation of CERD Committee is of general nature and the Court's decition is primarily important for that particular dispute resolution and is legally binding to the parties of the dispute, nevetheless, the CERD Committee is also capable of receiving petitions from individuals. This means that there might be situations when different interpretations of these two authoritative bodies would lead to different outcomes of the same situation creating a legal uncertainty.

The fourth and the final step proposed by the Court is examination of the regional human rights courts jurisprudence on the term "national origin". The Court summarizes all the three actively functioning regional human rights regimes by noting that the relevant provision in all the three regional human rights conventions (namely, article 14 of the European Convention on Human Rights, article 1 of the American Convention on Human Rights, and art.2 of the African Charter on Human and Peoples'Rights) are modelled on the basis of one standard, that is on article 2 of Universal Declaration of Human Rights[129]. The article states: "everyone is entitled to all the rights and freedoms set forth in this Declaration, without distiction of any kind, such as race, colour, sex, language, religion, political or other opinion, *national* or social *origin*, property, birth or other status"[130]. The court holds that despite the fact that the term "national origin" is present in all the three Conventions, the aim of the Conventions is to ensure a wide scope of human rights and, consequently, the regional jurisprudence is based on this approach[131]. For this reason all the interpretations of the three regional courts is of no relevance to the interpretation on "national origin" in universal treaty- CERD[132].

This way of interpretation applied by the ICJ worth paying a closer attention. There are many instances where the same human right (as well as the same term) is entrenched in the number of international human rights treaties in the broad sence (as defined by Vienna Convention on the Law of Treaties). The same situation is with the right to property – it is well established under the three functioning regional human

129 Para 104, https://www.icj-cij.org/sites/default/files/case-related/172/172-20210204-JUD-01-00-EN.pdf (last visited 2024-08-19)

130 Universal Declaration of Human Rights, 1948, art.2

131 Para 104, https://www.icj-cij.org/sites/default/files/case-related/172/172-20210204-JUD-01-00-EN.pdf (last visited 2024-08-19)

132 Para 104, https://www.icj-cij.org/sites/default/files/case-related/172/172-20210204-JUD-01-00-EN.pdf (last visited 2024-08-19)

rights systems and it is present in various specialized universal human rights treaties. However, the ICJ is capable to interpret and to find a breach of any of these treaties, universal as well as regional, and have done that many times. It is understandable, that the Court is not bound to follow any interpretation of the other bodies, just to consider them. Still, when the same term is interpreted adversely (differently) on regional level and on international level, it creates confusion in practice. It is hard to expect more order and clarity from the States in their actions on the international plane, when the interpretation of a scope of a legal notion suggested by authoritative bodies is opposite and thus confusing. It might be different, but it has to give well articulated reasons. There should be assurance and explanation, why the previous understanding was inaccurate or why it is better to take the other approach from now on. Although, the author of the thesis does agree with the outcome of the interpretation done by the Court, however, it is suggested that the choice of methodology and reasons are not well explained. To conclude, according to the CERD Committee's suggested interpretation of "national origin", citizens' and non-citizens' right to property should be treated equaly in the same jurisdiction, while according to the ICJ's interpretation States are allowed to differenciate the scope of the right to property (as well as other human rights in art.5 of the CERD) on the basis of citizenship.

CEDAW

There are 189 States Parties to the CEDAW and 115 of them are States Parties to its Optional Protocol (last updated February 21, 2023)[133], which allows individuals or groups of individuals to submit communications "under the jurisdiction of a State Party, claiming to be victims of a violation of any of the rights set forth in the Convention by that State Party."[134] Among the non-consented to the Optional Protocol of the CEDAW are: the USA, Honduras, Nicaragua, Suriname, Guyana, China, Japan, Cambodia, Uzbekistan, Estonia, Latvia, India, Afghanistan, all the Arab States, the Democratic Republic of Congo, Vietnam, Algeria, Kenya, Ethiopia, Sudan, Mauritania and others.[135]

There are two provisions in the Convention related to the right to property. First, Art. 15 (2) names the right to property in the context of legal capacity: "States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals."[136] Second, Art. 16 (1) (h) declares the right to property in the context of family relations: "1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters

133 https://indicators.ohchr.org (last visited 2025-05-15)

134 Art. 2 of Optional Protocol of the CEDAW

135 https://indicators.ohchr.org (last visited 2024-08-22)

136 CEDAW, Art. 15 (2)

relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women (…) (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration."[137] The cases of 22 States Parties are briefly discussed as they have opted for a declaration or reservation, which possibly could have an impact on the rights and obligations arising from the two articles related with the right to property mentioned above.

Algeria, party to the Convention, but not to the Optional Protocol, made a reservation on Art. 16: "The Government of the People's Democratic Republic of Algeria declares that the provisions of article 16 concerning equal rights for men and women in all matters relating to marriage, both during marriage and at its dissolution, should not contradict the provisions of the Algerian Family Code."[138] **Bahrain** made a reservation (party to the Convention, but not to the Optional Protocol) on Art. 16: "formula of the reservation states that the implementation of these articles will be without breaching the provisions of the Islamic Shariah."[139] "The Government of **Brunei Darussalam** expresses its reservations regarding those provisions of the said Convention that may be contrary to the Constitution of Brunei Darussalam and to the beliefs and principles of Islam, the official religion of Brunei Darussalam."[140] **Chile** submitted: "The Government is obliged to state, however, that some of the provisions of the Convention are not entirely compatible with current Chilean legislation."[141] **Egypt** made a reservation on Art. 16: "In respect of article 16 Reservation to the text of article 16 concerning the equality of men and women in all matters relating to marriage and family relations during the marriage and upon its dissolution, without prejudice to the Islamic Sharia's provisions whereby women are accorded rights equivalent to those of their spouses so as to ensure a just balance between them. This is out of respect for the sacrosanct nature of the firm religious beliefs which govern marital relations in Egypt and which may not be called in question and in view of the fact that one of the most important bases of these relations is an equivalency of rights and duties so as to ensure complementary which guarantees true equality between the spouses. The provisions of the *Sharia* lay down that the husband shall pay bridal money to the wife and maintain her fully and shall also make a payment to her upon divorce, whereas the wife retains full rights over her property and is not obliged to spend anything on her keep. The *Sharia* therefore restricts the wife's rights to divorce by making it contingent on a judge's ruling, whereas no such restriction is laid down in the case of the husband."[142] **India** made a declaration regarding Art. 16 (1): "the Government of the Republic of India

137 CEDAW, Art. 15 (1) (h)

138 https://indicators.ohchr.org (last visited 2024-09-13)

139 https://indicators.ohchr.org (last visited 2024-09-14)

140 https://indicators.ohchr.org (last visited 2024-09-14)

141 https://indicators.ohchr.org (last visited 2024-09-14)

142 https://indicators.ohchr.org (last visited 2024-09-14)

declares that it shall abide by and ensure these provisions in conformity with its policy of non-interference in the personal affairs of any Community without its initiative and consent." **Iraq** made a reservation to Art. 16. **Israel** noted: "The State of Israel hereby expresses its reservation with regard to article 16 of the Convention, to the extent that the laws on personal status which are binding on the various religious communities in Israel do not conform with the provisions of that article." **Malta** made a reservation on Art.16: " While the Government of Malta is committed to remove, in as far as possible, all aspects of family and property law which may be considered as discriminatory to females, it reserves the right to continue to apply present legislation in that regard until such time as the law is reformed and during such transitory period until those laws are completely superseded." **Mauritania** made a reservation regarding Art. 16 that it approves everything that is not "contrary to Islamic Sharia and are in accordance with our Constitution." **Monaco** made two general reservations, which are not directly pronounced as affecting Article 15 or 16, but are related to some aspects of the right to property. Reservation No.1 states: "The ratification of the Convention by the Principality of Monaco shall have no effect on the constitutional provisions governing the succession to the throne" and reservation No. 6 proclaims: "The Principality of Monaco reserves the right to continue to apply its social security laws which, in certain circumstances, envisage the payment of certain benefits to the head of the household who, according to this legislation, is presumed to be the husband." Both reservations are connected with the possible discrimination on gender ground and not to the right to property as such. **Marocco** made a reservation (not directly to Art.15 (2) or Art. 16 (1) (h)) regarding the inheritance of the title. **New Zealand** made a reservation (not directly to Art. 15 (2) or Art.16 (1) (h)) "to the extent that the customs governing the inheritance of certain Cook Islands chief titles may be inconsistent with those provisions." **Niger** made a reservation (not directly to Art. 15 (2) or Art. 16 (1) (h)) "concerning the taking of all appropriate measures to abolish all customs and practices which constitute discrimination against women, particularly in respect of succession." **Oman** made a general reservation: " All provisions of the Convention not in accordance with the provisions of the Islamic sharia and legislation in force in the Sultanate of Oman." **Pakistan** made a general declaration: "The accession by [the] Government of the Islamic Republic of Pakistan to the [said Convention] is subject to the provisions of the Constitution of the Islamic Republic of Pakistan." **Saudi Arabia** (party to the Convention, but not to the Optional Protocol) made a reservation: "In case of contradiction between any term of the Convention and the norms of Islamic law, the Kingdom is not under obligation to observe the contradictory terms of the Convention." **Spain** made a declaration: "The ratification of the Convention by Spain shall not affect the constitutional provisions concerning succession to the Spanish crown." **Switzerland** made a reservation on both Articles, namely, 15 (2) and 16 (1) (h): "Reservation concerning article 15, paragraph 2, and article 16, paragraph 1 (h): Said provisions shall be applied subject to several interim provisions of the matrimonial regime (Civil Code, articles 9 (e) and 10, final section)." **Tunisia** made a reservation on Art. 16 (1) (h): "must not conflict with the provisions of the Personal Status Code concerning (…)

the acquisition of property through inheritance", which were valid until April 17, 2014, when the Republic of Tunisia decided to withdraw this reservation. **The United Arab Emirates** made a reservation to Art. 16 and provided an explanation: "The United Arab Emirates will abide by the provisions of this article insofar as they are not in conflict with the principles of the Shariah. The United Arab Emirates considers that the payment of a dower and of support after divorce is an obligation of the husband, and the husband has the right to divorce, just as the wife has her independent financial security and her full rights to her property and is not required to pay her husband's or her own expenses out of her own property. The Shariah makes a woman's right to divorce conditional on a judicial decision, in a case in which she has been harmed." **The United Kingdom of Great Britain and Northen Ireland** made a reservation on Art. 16 regarding the territory of the Bailiwick of Jersey: "The Bailiwick of Jersey reserves the right, notwithstanding the obligations undertaken in Article 16, paragraph 1(h), to continue to apply the customary rule of law whereby where a person dies intestate, with no issue, the distribution of immovable property may favour the paternal side of the family pending the abolition of this law."

How should these reservations and declarations on Article 16 (1) (h) be evaluated? The Committee on the Elimination of Discrimination against Women (the CEDAW Committee) in the 1998 statement on reservations to the convention specifically stated: "Articles 2 and 16 are considered by the Committee to be core provisions of the Convention. Although some States parties have withdrawn reservations to those articles, the Committee is particularly concerned at the number and extent to reservations entered to those articles."[143] When commenting the impact of the reservations in regard to Article 16 the Committee explicitly stated: "Neither traditional, religious or cultural practice nor incompatible domestic laws and policies can justify violations of the Convention. The Committee also remains convinced that reservations to article 16, whether lodged for national traditional, religious or cultural reasons, are incompatible with the Convention and therefore impermissible and should be reviewed and modified or withdrawn."[144] Moreover, in 2013 the Committee issued the General recommendation on Article 16 of the CEDAW, where it repeated the position just quoted.[145] The Committee noted that since 1998 some States have modified their laws to provide for equality related to economic aspects in family life and the Committee recommends the rest of the States to follow in the same manner.[146] All the mentioned 22 Contracting Parties who have made reservations to Art. 16 (1) (h) relied on one of the grounds mentioned by Committee. Therefore, according to the pronouncements of the Committee, all these reservations or declarations cannot be used by the Contracting Parties

143 Para. 6, 1998 Statement, https://www.un.org/womenwatch/daw/cedaw/cedaw25years/content/english/Reservations-English.pdf (last visited 2025-05-18)

144 Para.17, 1998 Statement, https://www.un.org/womenwatch/daw/cedaw/cedaw25years/content/english/Reservations-English.pdf (last visited 2025-05-18)

145 https://www.refworld.org/legal/general/cedaw/2013/en/96526, para. 545, p. 10 (last visited 2025-05-18)

146 https://www.refworld.org/legal/general/cedaw/2013/en/96526, para. 545, p. 10 (last visited 2025-05-18)

as justifying the violations of the CEDAW. However, it is a recommendation by an expert treaty body which is used in a discretionary way by international courts and tribunals. Such pronouncement does not mean that the ICJ would necessary follow this line of reasoning[147] while interpreting the CEDAW provision related to the right to property, nor that the practice of the majority of State Parties is reflected in such a recommendation and could constitute subsequent practice as explained in the 2018 ILC Conclusions on Subsequent Agreements and Subsequent practice in relation to the interpretation of treaties.[148] On the contrary, the ICJ has stated explicitly its position regarding the pronouncements of the Committees of universal human rights Conventions in its jurisprudence: "Although the Court is in no way obliged, in the exercise of its judicial functions, to model its own interpretation of the Covenant on that of the Committee, it believes that it should ascribe great weight to the interpretation adopted by this independent body that was established specifically to supervise the application of that treaty."[149] Consequently, the probability that the Court would use the pronouncements of the CEDAW Committee only in the discretionary way is high.[150] As a result, reservations and declarations of states parties to the CEDAW on Article 16 (1) (h) cannot be held invalid as suggested by the CEDAW Committee. Rather in the legal reality the validity is questionable and would depend on the Court's interpretation.

CRPD

There are 185 States Parties to the CRPD (according to the official statistics there are 186 as 185 are States and the EU is also a party to the Convention) and 104 of them are States Parties to its Optional Protocol (last updated February 21, 2023),[151] which means that individuals under these jurisdictions are able to submit communications regarding the alleged violation of the right to property pronounced in the CRPD. Just a small number of States is not parties of the Convention: Bhutan, Cameroon, Eritrea, Holy See, Lebanon, Liechtenstein, Niue, Somalia, South Sudan, Tajikistan, Tonga, and the USA. Among the non-consented states to Optional Protocol are: the Russian Federation, Belarus, Poland, Norway, Switzerland, the Netherlands, Ireland, Indonesia, China, Viet Nam, Pakistan, Malaysia, Philippines, Oman, Iraq, Afghanistan, Iran, Columbia, Suriname, Guyana, Libya, Egypt, Sudan, Somalia and others. Some of these 104 States have made declarations regarding Article 12, which includes the right to property in its sub-article 4.

147 Commentary, 2018 ILC Conclusions on Subsequent Agreements and Subsequent practice in relation to the interpretation of treaties, para. 24, p. 115

148 Commentary, 2018 ILC Conclusions on Subsequent Agreements and Subsequent practice in relation to the interpretation of treaties, Commentary to Conclusion 13, pp. 106-116

149 Ahmadou Sadio Diallo case, Merits, Judgement, 2010, para. 66

150 Commentary, 2018 ILC Conclusions on Subsequent Agreements and Subsequent practice in relation to the interpretation of treaties, para. 24, p. 115

151 https://indicators.ohchr.org (last visited 2024-08-22)

Relevant part of the Article 12 (4) provides: "States Parties shall take all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit, and shall ensure that persons with disabilities are not arbitrary deprived of their property."[152] From the text quoted certain elements of the right to property are proclaimed expressly: (1) the right to own property, (2) the right to inherit property (which is one of the methods of acquisition of property), (3) the right to control one's financial affairs, (4) the right to access to bank loans, mortgages or other forms of financial credit, (5) prohibition of arbitrarily deprivation of one's property. The formulation in the provision repeated twice "to ensure the *equal* right" and "to have *equal* access" presupposes that the other persons, meaning persons without disabilities, do have such a right to property, therefore, for the persons with disabilities it should be assured *as well*. To conclude generally on the right to property as a human right, it seems that drafters and States parties to the Convention assume that: first, *every person* does have a right to property; and, second, at minimum the scope of the right to which States parties consented encompasses the elements listed above.

How to interpret the right to property, which is guaranteed especially for persons with disabilities? Committee on the Rights of Persons with Disabilities in 2014 announced the General comment No.1 on Art. 12.[153] General comment No.1 primarily concentrates on the explanation on term "legal capacity" because it is closely linked with ability to enjoy other human rights, including the right to property. It stated that States parties have an obligation to respect, protect, and fulfil the inherent human right to legal capacity in order to let persons with disabilities to realize and enjoy their right to property (as well as other human rights).[154] Comment on Art. 12 (4) proclaiming the right to property is a brief one: "Article 12, paragraph 5, requires States parties to take measures, including legislative, administrative, judicial and other practical measures, to ensure the rights of persons with disabilities with respect to financial and economic affairs, on an equal basis with others. Access to finance and property has traditionally been denied to persons with disabilities based on the medical model of disability. That approach of denying persons with disabilities legal capacity for financial matters must be replaced with support to exercise legal capacity, in accordance with Article 12, paragraph 3. In the same way as gender may not be used as the basis for discrimination in the areas of finance and property, neither may be disability."[155] The comment itself concludes that there are two approaches: traditional, which denies access to property to people with disabilities and the new one, that they have an equal right to property.

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152 Art. 12 (5) CRPD

153 https://documents.un.org/doc/undoc/gen/g14/031/20/pdf/g1403120.pdf (last visited 2024-08-23)

154 Para. 24, General Comments No.1, 2014, https://documents.un.org/doc/undoc/gen/g14/031/20/pdf/g1403120.pdf (last visited 2024-08-23)

155 Para. 23, General Comments No.1, 2014, https://documents.un.org/doc/undoc/gen/g14/031/20/pdf/g1403120.pdf (last visited 2024-08-23)

The traditional approach is based on medical model of disability and the progressive one, which is advocated by the CRPD Committee, states that the concepts of mental and legal capacity should not be conflated as they are different issues.[156] From the legal perspective, if on tried to assess, whether the customary rule regarding the right to property to persons with disabilities exists, the answer, most likely, would be "no". Such suggestion is deduced from the Committee's explanation that, indeed, the traditional approach is widespread among the States parties to the CRPD: "In most of the State party reports that the Committee has examined so far, the concepts of mental and legal capacity have been conflated so that where a person is considered to have impaired decision-making skills, often because of a cognitive or psychosocial disability, his or her legal capacity to make a particular decision is consequently removed. This is decided on the basis of the diagnosis of an impairment (status approach), or where a person makes a decision that is considered to have negative consequences (outcome approach), or where a person's decision-making skills are considered to be deficient (functional approach). The functional approach attempts to assess mental capacity and deny legal capacity accordingly."[157] When legal capacity is denied, the *equal* right to property is denied as well. For example, a person with disability in such cases cannot protect his or her rights (meaning to institute proceedings), cannot buy or sell property of certain higher value, cannot get a bank loan and so on. On the other hand, Committee's proposed approach could be described as a progressive and an aspirational one from the point of view of customary international law. The Committee states that according to the old view (based on one of the three mentioned approaches): "a person's with disability and/or decision-making skills are taken as a legitimate grounds for denying his or her legal capacity and lowering his or her status as a person before law." [158] Thus, the Committee encourages states to interpret Article 12 according to the progressive approach and suggests that "Article 12 does not permit such discriminatory denial of legal capacity, but, rather, requires that support be provided in the exercise of legal capacity."[159] Some States Parties made declarations and/or reservations to Article 12 as they might have different suggestions on interpretation on term "legal capacity" and its outcomes to the right to property (and to other human rights as well).

For example, **Estonia** made a declaration: "The Republic of Estonia interprets article 12 of the Convention as it does not forbid to restrict a person's active legal capacity, when such need arises from the person's ability to understand and direct his or her actions. In restricting the rights of the persons with restricted active legal capacity the Republic of Estonia acts according to its domestic laws."[160] **The Syrian Arab Repub-**

156 Para. 15, General Comments No.1, 2014, https://documents.un.org/doc/undoc/gen/g14/031/20/pdf/g1403120.pdf (last visited 2024-08-23)

157 Para. 15, General Comments No.1, 2014, https://documents.un.org/doc/undoc/gen/g14/031/20/pdf/g1403120.pdf (last visited 2024-08-23)

158 https://documents.un.org/doc/undoc/gen/g14/031/20/pdf/g1403120.pdf

159 https://documents.un.org/doc/undoc/gen/g14/031/20/pdf/g1403120.pdf

160 https://indicators.ohchr.org (last visited 2024-08-22)

lic pronounced understanding: "We signed today on the basis of the understanding contained in the letter dated 5 December 2006 from the Permanent Representative of Iraq to the United Nations addressed, in his capacity as Chairman of the Group of Arab States for that month, to the Chairman of the Committee, which contains the interpretation of the Arab Group concerning article 12 relating to the interpretation of the concept of "legal capacity"". To sum up, these declarations have legal consequences as the scope of the right to property to persons with disabilities in these jurisdictions might be very different from the scope suggested by the Committee.

Brunei Darussalam is not a signatory to the Optional Protocol, but a party to the Convention. Brunei Darussalam made a reservation: "The Government of Brunei Darussalam expresses its reservation regarding those provisions of the said Convention that may be in contrary to the Constitution of Brunei Darussalam and to the beliefs and principles of Islam, the official religion of Brunei Darussalam." **Egypt,** not a signatory to the Optional Protocol, but a party to the Convention, made an interpretative declaration: "The Arab Republic of Egypt declares that its interpretation of article 12 of the International Convention on the Protection and Promotion of the Rights of Persons with Disabilities, which deals with the recognition of persons with disabilities on an equal basis with others before the law, with regard to the concept of legal capacity dealt with in paragraph 2 of the said article, is that persons with disabilities enjoy the capacity to acquire rights and assume legal responsibility ('ahliyyat al-wujub) but not the capacity to perform ('ahliyyat al-'ada'), under Egyptian law." **The Islamic Republic of Iran,** not a signatory to the Optional Protocol, but a party to the Convention, made a declaration: "with regard to Article 46, the Islamic Republic of Iran declares that it does not consider itself bound by any provisions of the Convention, which may be incompatible with its applicable rules." **Ireland,** not a signatory to the Optional Protocol, but a party to the Convention, made reservation and declaration to Article 12: "Ireland recognizes that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life. Ireland declares its understanding that the Convention permits supported and substitute decision-making arrangements which provide for decisions to be made on behalf of a person, where such arrangements are necessary, in accordance with the law, and subject to appropriate and effective safeguards. To the extent article 12 may be interpreted as requiring the elimination of all substitute decision making arrangements, Ireland reserves the right to permit such arrangements in appropriate circumstances and subject to appropriate and effective safeguards." Declaration: Articles 12 and 14 "Ireland recognizes that all persons with disabilities enjoy the right to liberty and security of person, and a right to respect for physical and mental integrity on an equal basis with others. Furthermore, Ireland declares its understanding that the Convention allows for compulsory care or treatment of persons, including measures to treat mental disorders, when circumstances render treatment of this kind necessary as a last resort, and the treatment is subject to legal safeguards." **Kuwait,** not a signatory to the Optional Protocol, but a party to the Convention, made an interpretative declaration: " Article 12, paragraph 2: The enjoyment of legal capacity shall be subject to the conditions applicable under Kuwaiti law." **The**

Netherlands, not a signatory to the Optional Protocol, but a party to the Convention, made a declaration on article 12: "The Kingdom of the Netherlands recognizes that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life. Furthermore, the Kingdom of the Netherlands declares its understanding that the Convention allows for supported and substitute decision-making arrangements in appropriate circumstances and in accordance with the law. The Kingdom of the Netherlands interprets Article 12 as restricting substitute decision-making arrangements to cases where such measures are necessary, as a last resort and subject to safeguards." **Norway,** not a signatory to the Optional Protocol, but a party to the Convention, made a declaration: "Article 12 Norway recognizes that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life. Norway also recognizes its obligations to take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity. Furthermore, Norway declares its understanding that the Convention allows for the withdrawal of legal capacity or support in exercising legal capacity, and/or compulsory guardianship, in cases where such measures are necessary, as a last resort and subject to safeguards." **Poland**, not a signatory to the Optional Protocol, but a party to the Convention, made an interpretative declaration: "The Republic of Poland declares that it will interpret Article 12 of the Convention in a way allowing the application of the incapacitation, in the circumstances and in the manner set forth in the domestic law, as a measure indicated in Article 12.4, when a person suffering from a mental illness, mental disability or other mental disorder is unable to control his or her conduct." **Singapore**, not a signatory to the Optional Protocol, but a party to the Convention, made a reservation on article 12: " The Republic of Singapore's current legislative framework provides, as an appropriate and effective safeguard, oversight and supervision by competent, independent and impartial authorities or judicial bodies of measures relating to the exercise of legal capacity, upon applications made before them or which they initiate themselves in appropriate cases. The Republic of Singapore reserves the right to continue to apply its current legislative framework in lieu of the regular review referred to in Article 12, paragraph 4 of the Convention." **Uzbekistan** not a signatory to the Optional Protocol, but a party to the Convention, made a declaration and reservation on Article 12: "Declaration and reservation: The Republic of Uzbekistan recognizes that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of their life. The Republic of Uzbekistan declares its understanding that the Convention allows for taking appropriate measures to ensure access of persons with disabilities to support and substitute decision-making arrangements, including restriction of the active legal capacity of persons with disabilities, in appropriate circumstances and in accordance with the law. To the extent article 12 may be interpreted as requiring the elimination of substitute decision-making arrangements, the Republic of Uzbekistan reserves the right to continue their use for persons with disabilities in appropriate circumstances and subject to appropriate and effective safeguards."

To sum up, 12 states expressly commented on how they will interpret Article 12, mainly stating that they will base their interpretation on their national law. None of the

States parties commented on the right to property itself or on the formulation "*equal* right of persons with disabilities to own or inherit property". Thus, it is suggested that at minimum, all the 189 States parties to the Convention understand the right to property as a right of an individual under their national law and agrees to be bound on international level regarding the protection of *equal* right to property of persons with disabilities. *Equal*, meaning that the status and scope of the right to property under their national jurisdiction can be enjoyed by persons with disability on the equal basis with others. Moreover, all States parties agree (no declarations or reservations received on the point) regarding the explicitly mentioned elements of the right to property in the Conventions: (1) the right to own, (2) the right to inherit, (3) the right to control one's financial affairs, (4) the right to access to bank loans, mortgages or other forms of financial credit, (5) prohibition of arbitrarily deprivation of one's property.

CPRMW

The Convention of the Rights of All Migrant Workers and Members of Their Families was adopted in 1990.[161] There are 60 States Parties to the Convention.[162] The relevant part of the Convention regarding the right to property is Article 15 which states: "No migrant worker or member of his or her family shall be arbitrarily deprived of property, whether owned individually or in association with others."[163]

From the formulation of Article 15 it is clear that: (i) the Convention protects not only migrant workers, but also their family members, (ii) the arbitrary deprivation is prohibited, and (iii) the right to property might be individual or collective.

Only one state, **Turkey,** made a declaration regarding Article 15. It says: "The restrictions by the related Turkish laws regarding acquisition of immovable property by the foreigners are preserved."[164] Therefore, Turkey is one of the States which treat citizens and non-citizens right to acquisition of immovable property differently.

Under the Convention there is the Committee on the Protection of the Rights of All Migrant Workers and members of their Families,[165] but neither the inter-State communications procedure nor the individual complaint mechanism have entered into force.[166] Moreover, the Committee on Migrant Workers has never mentioned anything regarding Article 15 or the right to property in its general comments (as of March 2025, the Committee on Migrant Workers has adopted 6 general comments in total[167]).

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161 https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/cmw.pdf (last visited 2025-08-05)

162 https://indicators.ohchr.org, (last visited 2025-08-05)

163 CPRMW, art.15, https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/cmw.pdf (last visited 2025-08-05)

164 https://indicators.ohchr.org, Turkey declaration to art. 15 of the CPRMW

165 https://www.ohchr.org/en/treaty-bodies/cmw/general-comments

166 https://www.ohchr.org/en/treaty-bodies/cmw/communications-procedures (last visited 2025-05-18)

167 https://www.ohchr.org/en/treaty-bodies/cmw/general-comments (last visited 2025-05-18)

However, the Committee established under the Convention of the Rights of All Migrant Workers and Members of Their Families is authorized to "provide authoritative interpretation of substantive articles of the Convention and makes recommendations to States parties to better fulfil their obligations,"[168] thus in the future this expert treaty body might add some pronouncements on Article 15 related to the right to property.

Right to Property in Universal Treaties Other Than Human Rights Treaties

The right to property or the elements of the right to property are mentioned in multilateral treaties from various fields of international law as it is indicated in the list of treaties in the *Annex I*. The author of the thesis examines the universal treaties one by one having in mind a particular task – to define the status of the right to property in each of them.

International Humanitarian Law

To start with, international humanitarian law treaties contain some general provisions related to the right to property. In the Annex to the Convention (IV) Respecting the Laws and Customs of War on Land, Hight Contracting Parties agreed that: "All their [prisoners of war] personal belongings, except arms, horses, and military papers, remain their property"[169] and that private property must be respected and cannot be confiscated[170]. In the IV Geneva Convention (196 High Contracting Parties) one can find a provision prohibiting destruction of private property: "Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons (...), is prohibited, except where such destruction is rendered absolutely necessary by military operations"[171]. In addition, internees are allowed to *retain* and *receive* property: "Internees shall be permitted to retain articles of personal use. Monies, cheques, bonds, etc., and valuables in their possession may not be taken from them (...)"[172] and "internees may receive allowances from the Power to which they owe allegiance, the Protecting Powers, the organizations which may assist them, or families, as well as the income on their property in accordance with the law of the Detaining Power"[173]. The construction of the text shows reciprocal obligations of the States which they have accepted regarding protection of civilian persons' property. In

168 https://www.ohchr.org/en/treaty-bodies/cmw/general-comments (last visited 2025-05-18)

169 https://ihl-databases.icrc.org/assets/treaties/195-IHL-19-EN.pdf, art.4

170 Art.46, https://ihl-databases.icrc.org/assets/treaties/195-IHL-19-EN.pdf

171 Art.53, IV Geneva Convention.

172 Art.97, https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.33_GC-IV-EN.pdf

173 Art.98, https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.33_GC-IV-EN.pdf

case of internees States are more specific, naming (1) a right to retain property and (2) a right to receive property. A few examples of what constitutes internees' property are also mentioned: monies, cheques, bonds.

Traditionally provisions of the 1907 Hague Convention (IV) and 1949 Geneva Convention (IV) are interpreted as giving rise obligations between States[174]. The construction of the provision focuses on what one State party to the Convention (Occupying Power) is prohibited to do with the real or personal property belonging to the individuals of the other State Party[175]. Therefore, it can be argued that individuals are primarily beneficiaries, but not a direct right holders. This conclusion is in line with the approach of the scholars, such as Kate Parlett, who states that: "The normative framework of international law applicable in international armed conflict is one which establishes standards of treatment for individuals rather than creating direct rights for individuals."[176] or Rene Provost, who observes that: "Protection given to individuals thus would not be in the nature of rights, either for the state or the individual, but more in the nature of standards of treatment."[177] Moreover, in this context IHL treaties are distinct from CEDAW, CERD or CRPD because it is not a promise from one State party to the other State party that under domestic law one will protect the right to property of one's inhabitants. It is a promise from Occupying Power not to destroy property of the other State's nationals. The Occupying Power gives a promise not to its own inhabitants, but indirectly to the inhabitants of the other Contracting State. On the other hand, "the negotiating history of the Geneva Conventions suggest that their provisions should not be thought of solely as objective norms of protection. Rather, it indicates that certain provisions should be interpreted as to generate individual rights"[178]. Anne Peters summarizes that whether a particular provision generates individual right, should be evaluated on case-by-case basis: "In other words, there is a primary legal relationship between the obligator and the entitled individual. The State claim for compliance with international humanitarian law can, theoretically, persist alongside the individual claim"[179]. Nevertheless, even if in a certain case one would assume that art.53 of the 1949 Geneva Convention can be interpreted as generating the individual right to property, yet the common understanding by the courts is that "individuals do not have any general treaty claim to compensation arising from Article 3 of Hague Convention (IV) or Article 91 of AP I due to violations of international

174 Anne Peters, "Beyond Human Rights: the Legal Status of the Individual in the International Law", CUP (2016), p.194

175 Art.53, IV Geneva Convention.

176 Kate Parlett, The Individual in the International Legal System (CUP, 2011), p.176-228 (in Anne Peters p.195)

177 Rene Provost, International Human Rights and Humanitarian Law (CUP, 2002), p.27-34 (in Anne Peters p.195)

178 Anne Peters, "Beyond Human Rights: the Legal Status of the Individual in the International Law", CUP (2016), p.198

179 *Ibid*., p.201

humanitarian law"[180]. In *Jurisdictional Immunities* case the ICJ also denied the existence of a *jus cogens* norm for individual compensation[181]. Consequently, if individual's real or private property is destroyed by the Occupying Power, right to reparation belongs not to an individual as an owner, but to its State of nationality as a Contracting Party to the mentioned conventions[182].

To conclude, the IHL treaties contain provisions prohibiting to destroy private property, acknowledge possibility to retain and receive certain property. Therefore, these provisions could be seen as rights of individuals.

International Refugee Law

International refugee law is one of the fields, where the provisions on protection of property is found. In 1951 Convention Relating to the Status of Refugees there are two provisions related to property rights, namely art. 13: "The Contracting States shall accord to a refugee treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the acquisition of movable and immovable property and other rights pertaining thereto, and to leases and other contracts relating to movable and immovable property"[183] and art. 14: "In respect of the protection of industrial property, such as inventions, designs or models, trademarks, trade names, and of rights in literary, artistic and scientific works, a refugee shall be accorded in the country in which he has habitual residence the same protections is accorded to nationals of that country."[184].

Although the primary purpose of the 1951 Convention was to channel migration flows rather than to protect individual interests of the persons, arguably, the gradually raising importance of the human rights has also made an influence on refugee law. From the linguistic perspective, the 1951 Convention treats refugees as beneficiaries and it "is a duty-based rather than a human-rights based instrument"[185]. Article 13 states that the Contracting State should treat refugees not less favourable that aliens in general. So, the question arises, whether the right to property mentioned in art.13 arise directly from the Convention itself or should exist in the domestic legal system of the Contracting State? The formulation of the provision is formulated in the language of obligations of States, not of rights of persons. Yet, according to the commentaries, the right to property in art.13 is among the rights which amount to international

180 *Ibid*., p.207

181 ICJ, Jurisdictional Immunities, para.94

182 Anne Peters, "Beyond Human Rights: the Legal Status of the Individual in the International Law", CUP (2016), p.205

183 1951 Convention Relating to the Status of Refugees, art.13

184 1951 Convention Relating to the Status of Refugees, art.14

185 Vincent Chetail, Are Refugee Rights Human Rights? in Ruth Rubio-Marin (ed.), Human Rights and Immigration, Collected Courses of the Academy of European Law (OUP, 2014), p.19-72

individual rights[186]. Therefore, the 1951 Convention creates the right to property (under the limited scope of art.13) as an international individual right. Namely, explicitly referring to (a) the right to acquisition (and other rights pertaining thereto), (b) right to leases and other contracts, both in relation to movable and immovable property.

At the same time article 14 is treated differently. It is dedicated to the industrial property rights, rights of literary, artistic and scientific works and is among the Convention provisions to which the national treatment is guaranteed. Moreover, article 14 is not in the list of the provisions to which commentaries grant the status of self-standing international individual right. It seems, that first such rights should be created in the domestic legal system and refugees are able to enjoy them in the same scope as the other nationals of the Contracting State.

As A. Peters argues, "the refugee rights are distinct from human rights. An important difference is that refugee rights are not linked to the quality of being a human. (...) The quality as a refugee is different because it is contingent and often temporary and does not flow from a personal or human quality (as one's sex or age) but from mixture of political factors and personal choice"[187]. Refugee rights are not obsolete, and they are not human rights themselves. First, they can be changed, revoked or amended by treaties and it will not influence self-standing human rights. Moreover, Contracting States can provide different scope of protection to nationals and non-nationals.

The author of the thesis concludes that in the field of refugee law, art.13 of the 1951 Convention creates these international individual rights: (a) the right to acquisition, and (b) right to leases and other contracts, both in relation to movable and immovable property.

International Intellectual Property Law

In the field of international intellectual property law, the Agreement on Trade-Related Aspects of Intellectual Property Rights (164 Contracting Parties) states: "Each member shall accord to the nationals of other Members treatment no less favorable than that it accords to its own nationals with regard to the protection of intellectual property(...)"[188] and Paris Convention for the Protection of Industrial Property (179 Contracting Parties) concentrates on "protection of industrial property"[189]. The Contracting Parties seek to protect intellectual works and to ensure that the measures and procedures used for that does not become barriers to legitimate international trade[190]. So, the purpose of these treaties is twofold – to encourage international trade and

186 Scott Leckie/ Ezekiel Simperingham, Article 13, in: Andreas Zimmermann (ed.), The 1951 Convention Relating to the Status of Refugees and Its 1967 Protocols (OUP, 2011), p.883-893.

187 Anne Peters, "Beyond Human Rights: the Legal Status of the Individual in the International Law", CUP (2016), p.454

188 1994 Agreement on Trade-Related Aspects of Intellectual Property Rights, art.3(1)

189 Paris Convention for the Protection of Industrial Property, art 1.

190 Preamble, https://www.wto.org/english/docs_e/legal_e/31bis_trips_02_e.htm

to shield intellectual property rights. In preamble States recognize that: "intellectual property rights are private rights"[191] and in the treaty text they agree that intellectual property rights "(...) shall be understood as those *natural* or legal persons (...)"[192]. Thus, on universal treaty level States explicitly do recognize at least one type of property rights for natural persons (as well as legal persons) – intellectual property rights. They also define the scope of 'intellectual property' by naming the concrete categories of intellectual property: (1) copyright and related rights, (2) trademarks, (3) geographical indications, (4) industrial designs, (5) patents, (6) layout-designs (topographies) of integrated circuits, (7) protection of undisclosed information[193]. Moreover, in the text of the treaty Contracting States consented to various elements of intellectual property rights: (1) right to authorize[194], (2) right to prohibit[195], (3) right to prevent[196], (4) right to assign[197], (5) right to use[198], (6) right to prevent[199], (7) right to transfer by succession[200].

The teleological and linguistic analysis of the treaty leads to the conclusion that an impressive number of States (164 Contracting Parties) recognizes the fact that natural persons do have right to intellectual property. States enumerate exact objects of intellectual property and even refer to concrete seven elements constituting intellectual property rights. In addition, States have consented to the detailed provisions regarding enforcement of intellectual property rights[201] which guarantees not a mere proclamation of approach, but a practical protection of intellectual property rights in everyday life. Indeed, this is the most detailed universal treaty related to individuals' property rights.

International Labour Law

A huge number of conventions exit in international labour law. Some of the provisions explicitly mentions certain property rights of peoples. For example, ILO Convention No.169: "The rights of ownership and possession of the peoples concerned

191 Preamble, https://www.wto.org/english/docs_e/legal_e/31bis_trips_02_e.htm

192 https://www.wto.org/english/docs_e/legal_e/31bis_trips_02_e.htm, art. 1(3)

193 https://www.wto.org/english/docs_e/legal_e/31bis_trips_04d_e.htm, Part II, Sections 1-7.

194 Art.11, 14(2), https://www.wto.org/english/docs_e/legal_e/31bis_trips_04d_e.htm

195 Art.11, art.14(3), https://www.wto.org/english/docs_e/legal_e/31bis_trips_04d_e.htm

196 Art.16, https://www.wto.org/english/docs_e/legal_e/31bis_trips_04d_e.htm

197 Art.21, 28(2) https://www.wto.org/english/docs_e/legal_e/31bis_trips_04d_e.htm

198 Art.24(5)(b)

199 Art.26(1)

200 Art.28(2)

201 Part III of the Convention

over the lands which they traditionally occupy shall be recognized."[202] or "The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these people to participate in the use, management and conservation of these resources."[203] A very similar example is found in the ILO Convention No.107: "The right to ownership, collective or individual, of the members of the populations concerned over the lands which these populations traditionally occupy shall be recognized."[204]. The ILO Convention No.117 talks about the control of the ownership and use of land resources: "The measures to be considered by the competent authorities for the promotion of productive capacity and the improvement of standards of living of agricultural producers shall include (...) the control (...) of the ownership and use of land resources to ensure that they are used, with due regard to customary rights, in the best interests of the inhabitants of the country."[205]

Generally, the interests of the workers can be analyzed from the perspective of the international individual rights[206]. For example, ILO Convention No.95 states that: "Employers shall be prohibited from limiting in any manner the freedom of the worker to dispose of his wages"[207] or ILO Convention No.100 says that: "Each Member shall (...) ensure the application to all workers of the principle of equal remuneration for men and women workers for equal value"[208]. In these examples the primary tie is between a worker and an employer. The right for equal remuneration for the same work is not a human right, it is an individual guarantee agreed among Contracting Parties on international level. It could be stated that the right to property is in the background as a fundamental human right from which other international individual rights might occur, such as a mentioned right for equal remuneration[209]. However, the previously mentioned ILO Conventions are not typical to the protection of workers' rights. The ILO Convention No.169 and No.107 concern the rights of the indigenous and tribal or semi-tribal people. Therefore, the main characteristic of an individual is not a person who works and is in an employment relationship, but the main characteristic is the origin of a person – indigenous, tribal or semi-tribal people. Consequently, the main differences listed by A. Peters between labour rights and human rights are not directly

202 1989 ILO Convention No.169 Concerning Indigenous and Tribal Peoples in Independent Countries, art.14(1)

203 1989 ILO Convention No.169 Concerning Indigenous and Tribal Peoples in Independent Countries, art.15(1)

204 1957 ILO Convention (No.107) Concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations of Independent Countries, art.11

205 1961 ILO Convention (No.117) Concerning Basic Aims and Standards of Social Policy, art.4

206 Anne Peters, "Beyond Human Rights: The Legal Status of the Individual in the International Law", CUP (2016), p.457

207 ILO Convention No.95, art.6

208 ILO Convention No.100, art.2(1)

209 Anne Peters, "Beyond Human Rights: The Legal Status of the Individual in the International Law", CUP (2016), p.457-468

applicable in the case of the right to property provisions[210].

The Convention No.107 is dedicated for the integration of tribal and semi-tribal populations in the national communities of the Contracting States[211]. In the preamble States notice that tribal and semi-tribal populations do not benefit from the same rights and advantages as the rest of the national communities, thus the States want to improve their living and working conditions, to uprise them[212]. This suggests that the standards of the right to property (and other rights) are already created in national legal systems and States on international level only express will to integrate the mentioned group of people into national communities. In the other words, the Convention No.107 does not establish a new status of the right to property on an international level, it just states that the tribal or semi-tribal people should not be discriminated and enjoy the same level of protection as the rest of the people in a particular jurisdiction. Moreover, the provisions of the Convention No.107 make references to the existing national laws on the right to ownership. For example, article 12 confirms the principle of compensation, if it would be a necessary measure to take the land from the tribal or semi-tribal people or article 13, which states that the transmission of rights of ownership of land according to the established tribal customs should be respected, but only in the framework of the existing domestic legislation. Again, the limits are in the national law of each Contracting Parties, thus international law does not add further content to the right to property as such.

However, the land is a special object for the indigenous or tribal people, which has influence on their traditional way of living, culture and Contracting States' wish to preserve these traditions. This is the reason why the different regulation regarding the right to property, where the object is land might be created. For example, in Convention No.169 it is stated: "Persons not belonging to these peoples shall be prevented from taking advantage of their customs or of lack of understanding of the laws on the part of their members to secure the ownership, possession of use of land belonging to them."[213] or "Procedures established by the people concerned for the transmission of land rights among members of these peoples shall be respected."[214] Consequently, it can be argued that these provisions establish additional content to the right to property for the mentioned category of people when they deal with the land.

The author of the thesis suggests that in the ILO treaties dedicated to the protection of indigenous, tribal and semi-tribal people, there is an overlap of human rights and

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210 *Ibid*., p.457-468

211 1957 ILO Convention (No.107) Concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations of Independent Countries, art.1(1)

212 1957 ILO Convention (No.107) Concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations of Independent Countries, preamble

213 1989 ILO Convention No.169 Concerning Indigenous and Tribal Peoples in Independent Countries, art.17(3)

214 1989 ILO Convention No.169 Concerning Indigenous and Tribal Peoples in Independent Countries, art.17(1)

labour rights. Therefore, the right to ownership (collective and individual) mentioned in the ILO Convention No.169 and No.107 constitute international human rights, while a lot of labour rights established in ILO conventions (such as equal remuneration, periodic holidays with pay, etc.) have derived from the right to property (and other basic human rights) are international individual rights.

One point related to the child's rights and right to property should be mentioned. The Convention on the Rights of the Child (196 States parties) belongs to the category of the human rights conventions. There is Article 32 to which the Committee on the Rights of the Child[215] in its General Comment No.16[216] has briefly refered. It reflects the obligation of the States to protect children from economic exploitation and from performing any work that might be hazardous[217]. In the General Comment No.16 the Committee states that a child can legitimately work as an employee[218]. Because of this statement the author of the thesis presumes that the Committee is of the opinion that a child has a right to work and, accordingly, to get wages. Therefore, at least implicitly a child is entitled to get wages (of course the child must be above minimum working age and the working conditions must be in line with international standards[219]), which is a reference to a possibility to own money (form of property) even for a child.

International Cultural Heritage Law

In the field of cultural property, the emphasis is on protection of property as an *object*, not on protection of a *right* to property as such. The reason is that the cultural heritage is understood by Contracting Parties as "heritage of all mankind"[220] irrespective of ownership[221] and that "the protection of cultural property shall comprise the safeguarding of and respect for such property"[222]. The Hague Convention for Protection of Cultural Property in the Event of Armed Conflict (134 Contracting Parties) gives a list of objects, which constitutes "cultural property" and explicitly states that it

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215 https://www.ohchr.org/en/treaty-bodies/crc (last visited 2025-05-18)

216 General Comment No. 16 https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FGC%2F16&Lang=en (last visited 2025-05-18), p.8

217 Art.32, Convention on the Rights of the Child

218 General Comment No. 16 https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FGC%2F16&Lang=en, p.8

219 General Comment No. 16 https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FGC%2F16&Lang=en, p.8

220 https://www.unesco.org/en/legal-affairs/convention-protection-cultural-property-event-armed-conflict-regulations-execution-convention, preamble

221 https://www.unesco.org/en/legal-affairs/convention-protection-cultural-property-event-armed-conflict-regulations-execution-convention, art.1

222 https://www.unesco.org/en/legal-affairs/convention-protection-cultural-property-event-armed-conflict-regulations-execution-convention, art.2

shall cover all these objects irrespective of origin or ownership[223]. States give priority to the objects themself, not to the property rights of the owners. The main concern is to protect objects (cultural property), not to assure that the property rights of individual owners towards these objects would be protected during armed conflicts or transfers. The other example is the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (143 Contracting Parties), which is established to combat with the illegal practice to take important cultural property out of the jurisdictions of the Contracting Parties. In art.3 it is stated: "The import, export or transfer of ownership of cultural property effected contrary to the provisions adopted under the Convention by the States Parties thereto, shall be illicit"[224]. States Parties have agreed to take measures on the domestic level – to have necessary legislation and regulations[225], to impose penalties or other administrative sanctions[226]. Therefore, this Convention sets limitations to the owners, who have objects enrolled in the list of the cultural property. The owners are not allowed to transfer property rights freely. The treaty emphasizes the value of the common interest and need to protect it; thus, the owners have additional obligations to act according to the specific regulation.

One more universal treaty in the field is UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects[227] (54 States parties), which has a primary purpose to combat against illicit trade of cultural objects. There is obligation for a possessor of the cultural property to return a cultural object which has been stolen[228]. However, the principle of compensation is also established in the Convention: "The possessor of a stolen cultural object required to return it shall be entitled, at the time of its restitution, to payment of fair and reasonable compensation provided that the possessor neither knew nor ought reasonably to have known that the object was stolen and can prove that it exercised due diligence when acquiring the object"[229].

To sum up, the examined conventions assume that the right to own cultural property is established in domestic law systems. The preambles reflect States' appreciation of objects of cultural property as important not only to the owners, but also to the society of a particular jurisdiction, or even to the humanity. Therefore, in international treaties the protection of the property as an object is emphasized, not a right of an owner. Moreover, the Contracting States establish limitations (or additional

223 Hague Convention for Protection of Cultural Property in the Event of Armed Conflict, art.1

224 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, art.3

225 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, art.7

226 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, art.8

227 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects

228 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, art.3(1)

229 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, art.4(1)

requirements) to the cultural objects' owners, for example, when they wish to transfer their ownership rights.

International Criminal Law

UN Convention Against Transnational Organized Crime (193 States Parties)[230] defines the term "property": "Property shall mean assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets."[231] The purpose of the convention is established in article 1 – to combat transnational organized crime. For this purpose, States agree that they must adopt measures in their domestic systems, criminalizing the laundering of proceeds of crime, if it is done internationally[232]. The Convention states that "the acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime" is subject to the basic concepts of State's own legal system[233]. Also, it is up to individual domestic legal systems to choose which crimes are to be defined as "serious crimes". Convention states that serious crime is all offences punishable by a maximum deprivation of liberty of at least four years[234].

To sum up, Convention adopts definition of property for the purposes of the Convention and affirms States determination to combat against the transnational organized crime, which is related with the organized abuse of the right to property. Allegedly, the States Parties' primary intention to combat against such crime is highly motivated by the huge loss of incomes to States' budgets and not with aspiration to protect individual right to property.

Diplomatic and Consular Law

In the field of diplomatic and consular law, the Vienna Convention on Diplomatic Relations (193 Contracting Parties) states that diplomatic agent's "(...) property shall likewise enjoy inviolability"[235] or the Vienna Convention on Consular Relations assures that "The receiving State shall, even in case of armed conflict, (...) in case of need, place at their disposal the necessary means of transport for themselves and their property (...)"[236]. By these treaties the Contracting Parties primarily seek to maintain friendly relations among nations and ensure the efficient performance of the functions

230 2000 UN Convention Against Transnational Organized Crime (193 States Parties), https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html (last visited on 2025-07-08)

231 *Ibid*., art. 2(d)

232 *Ibid*., art. 6(1)

233 *Ibid*., art. 6(1)(b)

234 *Ibid*., art. 2(b)

235 1961 Vienna Convention, art.30(2)

236 https://treaties.un.org/doc/Treaties/1967/06/19670608%2010-36%20AM/Ch_III_6p.pdf, art.26

of diplomatic missions[237]. States do not seek to provide benefits to individuals (meaning diplomats), and this is even stated in the preamble directly[238].

Possible Analogy from the ICJ Jurisprudence

The question remains whether right to property mentioned directly or indirectly in conventions from various international law fields had over time developed into a human right? Do all these treaties should be seen only as creating obligations to participating States or also as establishing human right to property? One can see similarities between this question and issue addressed in 2001 *LaGrand*[239] and 2004 *Avena*[240] judgements of the ICJ. The question in both cases was regarding the individual's right to consular notification – does such a right found in Vienna Convention on Consular Relations developed into a human right? While the task for the purposes of the thesis is to answer, whether the right to property found in the VCCR has developed into a human right; and whether the findings of the Court can serve as analogy for the other conventions.

In *LaGrand* case Germany contended that "the breach of Article 36 by the United States did not only infringe upon the rights of Germany as a State party to the Vienna Convention but also entailed a violation of the individual rights of the LaGrand brothers"[241]. Additionally, Germany referred to the UN GA resolution, which adopted Declaration on the human rights of individuals who are not nationals of the country in which they live[242], confirming that "(...) the right of access to the consulate of the home State, as well as the information on this right, constitute individual rights of foreign nationals and are to be regarded as human rights of aliens."[243] The response of the USA was that "(...) rights of consular notification and access under Vienna Convention are rights of States, and not of individuals, even though these rights may benefit individuals by permitting states to offer them consular assistance"[244]. The Court interpreted the article 36(1)(b) as incorporating receiving State's obligations towards both: a detained person as well as a sending State[245]. The ICJ supports this conclusion by referring to the last sentence of the text: "The said authorities shall inform the person concerned

237 1961 Vienna Convention, pleamble, https://legal.un.org/ilc/texts/instruments/english/conventions/9_1_1961.pdf

238 Preamble, https://legal.un.org/ilc/texts/instruments/english/conventions/9_1_1961.pdf

239 LaGrand (*Germany v. United States of America*), Judgement of 27 June 2001, ICJ

240 Avena and Other Mexican Nationals (Mexico v. United States of America), ICJ, 2004

241 LaGrand (*Germany v. United States of America*), Judgement of 27 June 2001, ICJ, para. 75, p.30

242 UN Declaration on the human rights of individuals who are not nationals of the country in which they live, UN GA Res 40/144, 13 December 1985

243 LaGrand (*Germany v. United States of America*), Judgement of 27 June 2001, ICJ, para. 75, p.31

244 LaGrand (*Germany v. United States of America*), Judgement of 27 June 2001, ICJ, para. 76, p.31

245 LaGrand (*Germany v. United States of America*), Judgement of 27 June 2001, ICJ, para. 77, p.32

without delay of *his rights* under this subparagraph"[246] and to art.36(1)(c) stating that "the sending State's right to provide consular assistance to the detained person may not be exercised "if he expressly opposes such action". (...)"[247], but does not elaborate on the text of the Convention. The author of the thesis notices that in the first quote of the Convention there is no explicit statement what constitutes '*his rights*'. Are these 'right to consular notification' or 'right to be informed of his rights under art.36' or 'right of access to the consulate of home state'? All of them or some of them or something more could be added to the list. The Court is silent on this point, therefore the obscurity what is precisely meant by '*his rights*' persist. The second quote might be valuable as it demonstrates that contracting State's *right to provide* consular assistance is not absolute and can be limited by detained persons expressed will *not to receive* any consular assistance. The construction of the provision shows that sending state's rights and individual's rights are intertwined or in the other words that individual rights in this Convention are not substantive and capable to stand-alone. Even though there is not expressly formulated right in art. 36, the Court concluded: "(...) Article 36, paragraph 1, creates individual rights, which (...) may be invoked in this Court by the national State of the detained person. These rights were violated in the present case."[248] The Court found by fourteen votes to one that: "by not informing Karl and Walter LaGrand (...) of their rights under Article 36 (1)(b), of the Convention, and thereby depriving the Federal Republic of Germany of the possibility, in a timely fashion, to render the assistance provided for by the Convention to the individuals concerned, the United States of America breached its obligations to the Federal Republic of Germany and to the LaGrand brothers under Article 36, paragraph 1"[249]. To sum up, the Court's view was that: first, article 36(1)(b) establishes *individual rights* (plural, but not expressly listed) to which receiving State has obligations; second, article 36(1) creates rights for the sending State and obligations for the receiving State; and third, the receiving State's breach of its obligation to individual leads to the receiving State's breach of its obligation to the sending State.

The author of the thesis is not convinced by the Court's reasoning on these findings. Some judges also expressed their doubts and added individual comments to the final judgement. Judge Oda pointed out, "(...) that it is unlikely that Convention grants to foreign individuals any rights beyond those which might necessary be implied by the obligations imposed on States under that Convention"[250]. Even if one would suggest interpreting the Convention as establishing rights to individuals, these rights should be limited exclusively to the corresponding obligations of the receiving State,

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246 Vienna Convention on Consular Relations, art. 36(1)(b)

247 LaGrand (*Germany v. United States of America*), Judgement of 27 June 2001, ICJ, para. 77, p.32

248 LaGrand (*Germany v. United States of America*), Judgement of 27 June 2001, ICJ, para. 77, p.32

249 LaGrand (*Germany v. United States of America*), Judgement of 27 June 2001, ICJ, para. 128, p.53, https://www.icj-cij.org/sites/default/files/case-related/104/104-20010627-JUD-01-00-EN.pdf

250 Judge Oda, Dissending Opinion, https://www.icj-cij.org/sites/default/files/case-related/104/104-20010627-JUD-01-03-EN.pdf, para 27, p.75

but in no way these rights could "(...) include substantive rights of the individuals, such as the right to life, property, etc."[251]. The second point made by the judge Oda was that if one would follow the Courts reasoning, one should admit that VCCR "grants more extensive protection and greater or broader individual rights to *foreign* nationals"[252] than to the receiving State's nationals themselves. This would not be a valid interpretation as Contracting Parties did not have such intensions. Furthermore, vice-president Shi provided a very detailed and persuasive reasoning why art.36(1)(b) cannot be interpreted as creating individual rights[253]. Vice-president Shi expressed his opinion that he cannot agree with Court's finding that United States violated its obligations to the LaGrand brothers[254] because of the following four reasons. His starting point is that he agrees with traditional approach, to which the Court relayed in the case, that the words in the treaty should be interpreted according to the ordinary meaning of the terms used in the treaty[255]. However, this rule is not absolute and not sufficient when "(...) interpretation results in a meaning incompatible with the spirit, purpose and context"[256] of the treaty. This methodology is in line with Courts jurisprudence[257]. Judge Shi notes that Germany and United States do not have different views regarding the terms of the treaty, rather they have different conclusions on the interpretation of the subparagraph, thus he refers to the *title*, *object* and *purpose* of the VCCR[258]. The object and purpose correspond to the title of the Convention and in the preamble the purpose is indicated: "contribute to the development of friendly relations among nations"[259]. There is no reference to the intension to create rights of individuals[260]. Thus, title, object and purpose of the Convention do not uphold the suggested interpretation that Convention creates rights for individuals. Secondly, vice-president Shi draws attention to the text "with a view to facilitating the exercise of consular function relating

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251 Judge Oda, Dissending Opinion, https://www.icj-cij.org/sites/default/files/case-related/104/104-20010627-JUD-01-03-EN.pdf, para 27, p.75

252 Judge Oda, Dissending Opinion, https://www.icj-cij.org/sites/default/files/case-related/104/104-20010627-JUD-01-03-EN.pdf, para 27, p.75

253 Judge Vice-president Shi, Separate Opinion, https://www.icj-cij.org/sites/default/files/case-related/104/104-20010627-JUD-01-02-EN.pdf

254 Judge Vice-president Shi, Separate Opinion, https://www.icj-cij.org/sites/default/files/case-related/104/104-20010627-JUD-01-02-EN.pdf, para.2, p.56

255 Judge Vice-president Shi, Separate Opinion, https://www.icj-cij.org/sites/default/files/case-related/104/104-20010627-JUD-01-02-EN.pdf, para.3, p.57

256 South West Africa, Preliminary Objections, Judgement, ICJ, 1962, p.336

257 Arbitral Award of 31 July 1989 (Guinea Bissau v. Senegal)

258 Judge Vice-president Shi, Separate Opinion, https://www.icj-cij.org/sites/default/files/case-related/104/104-20010627-JUD-01-02-EN.pdf, para.4-5, p.58

259 Judge Vice-president Shi, Separate Opinion, https://www.icj-cij.org/sites/default/files/case-related/104/104-20010627-JUD-01-02-EN.pdf, para.5, p.58

260 Judge Vice-president Shi, Separate Opinion, https://www.icj-cij.org/sites/default/files/case-related/104/104-20010627-JUD-01-02-EN.pdf, para.5, p.58

to nationals of the sending State"[261] serving as *chapeau* of the article 36, including the subparagraph (1)(b)[262]. The function of the *chapeau* is to delineate the realm in which the agreed rules are valid. Thus, article 36 deals with 'individual rights' only in such a capacity in which sending State exercises its consular functions. It is not a substantive right of an individual *per se*. Thirdly, judge points out that: "It is obvious that there cannot be rights to consular notification and access if consular relations do not exist between the States concerned, or if rights of the Sending State to protect and assist its nationals do not exist."[263] Therefore, to say that a right of individual has evolved in a certain situation, there is a necessary precondition – the right of a Sending State should have been existing first. This confirms that it is not a self-sufficient or self-standing right of an individual, but a secondary right from which he or she can benefit only if Sending State maintain friendly relations with the Receiving State according to the VCCR. Fourthly, he analyzes in detail the drafting history of the VCCR and makes a conclusion that "(...) the general tone and thrust of the debate of the entire Conference concentrated on the consular functions and their practicability, the better view would be that no creation of any individual rights independent of rights of States was envisaged in the Conference"[264].

The author of the thesis upholds the line of reasoning of the mentioned ICJ judges and suggests that the interdependence of individuals rights and State's rights should be examined carefully on a case-by-case basis, when interpreting the *other* then universal human rights conventions, which include reference to the right to property (or any other individual rights). This leads to the conclusion that Vienna Convention on Diplomatic Relations or Vienna Convention on Consular Relations although mentions receiving State's obligations related to the inviolability of individual's property, still this reference to property does not amount to the substantive right to property *per se*.

In *Avena* case[265] Court uses a bit different terms in the final judgement if to compare with the *LaGrand* judgement. Court finds that: "(...) by not informing, without delay upon their detention, the 51 Mexican nationals (...) of their rights under Article 36, paragraph 1(b), of the Vienna Convention on Consular Relations of 24 April 1963, the United States of America breached the obligations incumbent upon it under the subparagraph"[266]. The similarity is that in both cases the Court acknowledges that individuals do have rights under article 36(1)(b). The difference is that the ICJ does not

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261 Vienna Convention on Consular Relations, art. 36

262 Judge Vice-president Shi, Separate Opinion, https://www.icj-cij.org/sites/default/files/case-related/104/104-20010627-JUD-01-02-EN.pdf, para.6, p.58

263 Judge Vice-president Shi, Separate Opinion, https://www.icj-cij.org/sites/default/files/case-related/104/104-20010627-JUD-01-02-EN.pdf, para.7, p.59

264 Judge Vice-president Shi, Separate Opinion, https://www.icj-cij.org/sites/default/files/case-related/104/104-20010627-JUD-01-02-EN.pdf, para.15, p.62

265 https://www.icj-cij.org/sites/default/files/case-related/128/128-20040331-JUD-01-00-EN.pdf

266 Avena Judgement https://www.icj-cij.org/sites/default/files/case-related/128/128-20040331-JUD-01-00-EN.pdf, para.4153

repeat expressly in the *Avena* that Receiving State has obligations towards individuals. President Shi makes a declaration that everything he individually stated in *LaGrand* case applies to *Avena* case as well.

To sum up, in *LaGrand* and *Avena* cases the Court introduced a new category of rights of individuals - the ones which might rise directly from international treaties. Although the ICJ noted that there is such type of rights, yet the Court was "(...) very carefully avoiding answering the question whether the thus-construed right in question, namely an individual's right to consular notification, had over time developed into a human right"[267]. This comment by the former Judge of the ICJ Bruno Simma leads to the assumption that treaties from various fields of international law might have provisions creating individual rights and in certain cases even develop into human rights. Therefore, the international law rather than domestic law might be a primary (and direct) source from which the human right evolves.

Therefore, the conclusions are as follows. First, universal treaties from various fields of international law presented in the list do refer to the right to property or more often to certain elements of the right to property, but not necessarily amount to the human right. Second, from the universal treaties the individual rights regarding property can develop, but this should be examined on case-by-case basis, having in mind the title, object and purpose of a concrete treaty.

3. Components of the Right to Property Acknowledged in the Multilateral Treaties

All the provisions related to property and ownership in the treaties enlisted are analyzed with the task to identify different components of the right to property and their prevalence. This reveals whether the general agreement among States on certain elements of the right to property exists under international treaty law.

The General Right to Property/ The Right to Own

Universal level. Three anti-discrimination conventions explicitly mention right to own property. The CERD states that States Parties have an obligation to eliminate racial discrimination in all its forms in the enjoyment of this civil right (as well as other rights): "The right to own property alone as well as in association with others"[268]. States Parties to the CEDAW ensure that married woman have equal rights for ownership as their husbands[269]. The CRPD guarantees that persons with disabilities have equal right to own property[270]. The all three conventions contain the so called "equal rights"

267 Bruno Simma „Sources of International Human Rights Law: Human Rights Treaties", in Oxford Handbook on the Sources of International Law, (2017), p.877-878

268 CERD, art.5(d)(v)

269 CEDAW, art.16(1)(h)

270 CRPD, art.12(5)

clauses and because of them the right to property might be interpreted in two ways[271].

First option, according to Sprankling, is to assume "...that the right to property exists as a background principle in international law, but that discrimination at the national level prevents the protected group from enjoying this right on an equal basis with other nationals."[272]. But to expect this way of interpretation (the recognition approach) from international courts and tribunals is rather doubtful. Firstly, the primary object and purpose of the State Parties to the conventions is to protect vulnerable groups by eliminating discrimination, not to proclaim concrete human rights giving them wider scope on an international level then they have had, and it is well established in the texts of the conventions. The purpose of the States was not to strengthen the concrete list of human rights mentioned in these conventions. The emphasis was on not discriminating vulnerable groups of people on national level when establishing and applying nationally acknowledged human rights. Secondly, such interpretation could be possible only if there would be no doubt that the right to property as a human right has already existed independently on the international level at the time the three conventions were adopted. However, it is not the case.

The alternative view to the possible way of interpretation is that "...each convention bars discrimination in the exercise of the right to property only if and to the extent that a state recognizes such a right under its domestic law."[273]. This proposition of national treatment view seems more persuasive, at least from dominating positivistic perspective which gives priority to States' will. Having in mind that the right to property as a human right have always been[274] and still is a debatable right[275] on universal level, it is doubtful that the States would have been accepted the three conventions almost universally without expressing their doubts on the right to property provision. At the same time the domestic acceptance of the right to property is almost unanimous, although the scope of this right varies in different national systems. (This is demonstrated in the chapter of this thesis on the general principles of law.) Thus, to treat the right to property according to the national understanding seems a more consistent approach.

To sum up, Sprankling does not express his position, whether he upholds one or the other way of interpretation of the right to property in these conventions. The author of the thesis is of the opinion that the most States would opt for the second interpretation. It would be also in line with the property clauses in 1951[276] and 1954[277] conventions, which are similar to anti-discrimination conventions from the point of

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271 John Sprankling, The International Law of Property, OUP, 2014, p.207

272 *Ibid*., p.207-208

273 *Ibid*., p.208

274 The only right not transferred from UN HR declaration to the ICCPR and ICESCR

275 UN 1994 Commission on HR evaluation on "The right of everyone to own property alone as well as in association with others, completed final report submitted by Mr. Luis Valencia Rodriquez, independent Expert

276 1951 Convention Relating to the Status of Refugees, art.13

277 1954 Convention Relating to the Status of Stateless Persons, art.13

purpose - to protect vulnerable groups of people and which say that States shall accord treatment "as favourable as possible and in any event, not less favorable than accorded to aliens generally in the same circumstances"[278]. So, the States compare the scope of the rights of people (and the right to property in this case) of vulnerable group with the rights of citizens and aliens under their domestic jurisdictions.

Meanwhile on *regional level*, multilateral human right treaties establish the right to property in a broader way. The ACHPR says: "The right to property shall be guaranteed."[279]. The Charter of Fundamental Rights of the European Union proclaims: "Everyone has the right to own (...) his or her lawfully acquired possessions."[280]. The Arab Charter on Human Rights states: "Everyone has a guaranteed right to own property"[281]. All these conventions declare a list of human rights, including the right to property. This is their primary purpose, therefore the obligation to protect the right to property of each human is clearly formulated.

To conclude, even from the examination presented, the huge difference of the status of the right to property in universal human right treaties and regional human right treaties is well seen. First, the purposes of the universal and regional conventions are different. Second, the contexts of the provisions in the universal and regional conventions are different. Third, the formulations of the right to property in the universal and regional conventions are different. Forth, the beneficiaries of these provisions differ. Fifth, the scope of obligations of States Parties also differ.

The Right to Acquire

Universal level. Right to acquire property is explicitly mentioned in several universal treaties. To start with, refugees have a right to acquire movable and immovable property.[282] According to the 1951 Convention: "The Contracting States shall accord to a refugee treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances"[283]. Currently there are 146 States which recognizes right to acquire to refugees. Moreover, stateless persons also have a right to acquire property. 1954 Convention Relating to the Status of Stateless Persons[284] seconds the 1951 Convention regarding the right to acquire

278 1951 Convention Relating to the Status of Refugees, art.13, 14. 1954 Convention Relating to the Status of Stateless Persons, art.13, 14

279 ACHPR, art.14

280 Charter of Fundamental Rights of the European Union, art.17

281 Arab Charter on Human Rights, art.31

282 1951 Refugee Convention, https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-2&chapter=5&Temp=mtdsg2&clang=_en, art.13

283 1951 Refugee Convention, https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-2&chapter=5&Temp=mtdsg2&clang=_en, art.13

284 https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-3&chapter=5&Temp=mtdsg2, art.13

property in identical terms, just the number of the Contracting party differs. Only 96 States are parties to the 1954 Convention. Finally, the Convention on the Elimination of All Forms of Discrimination Against Women, which is accepted by 189 States, acknowledges a right of married women to acquire property on a basis of equality for both spouses[285]. In the CEDAW there are two separate articles related to right to acquire property. Article 16 addresses a wider and more general right to acquire but only to married women (on equal basis with their husbands), while article 15 talks about equal rights of men and women to conclude contracts (that is one of the methods of acquisition) but to all women on equal basis with men before law. The formulation in all the three treaties reflects positivistic perspective - the right is granted by Contracting Parties (States shall *ensure* right to women or to married women or shall *accord* right to refugees or stateless persons). The language and construction of the sentences stresses the approach that it is only for the State to decide whether a right to acquire property should be given to a particular group of people.

Although a broad right to acquire property is mentioned only in three universal treaties, yet the author of the thesis has found various methods of acquisition of property explicitly mentioned in some other conventions. For example, right to inherit[286] is expressed in the International Convention on the Elimination of All forms of Racial Discrimination. 182 Contracting Parties have agreed that right to inherit property exists: "(...) States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:(...) (d) Other civil rights, in particular: (...) (vi) The right to inherit;"[287]. The scope of the right holders is rather wide - "right of everyone without distinction as to race, colour, or national or ethnic origin". Nevertheless, there is distinction on the basis of gender: "The cultural prejudice against allowing women to inherit was evidenced during the negotiations for CEDAW: a provision that would have given women and men equal inheritance rights was omitted due to strong opposition"[288]. Moreover, the CERD directly names right to inherit (as well as right to own property in art.5(d)(v)) as a civil right, which is unique in universal treaties. To continue, the Convention on the Rights of Persons with Disabilities which has 186 Contracting Parties consenting to obligation "(...) to take all appropriate and effective measures to ensure the equal right of persons with disabilities to (...) inherit property"[289].

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285 https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-8&chapter=4&clang=_en, art.16(1)(h)

286 https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-elimination-all-forms-racial

287 https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-elimination-all-forms-racial, art.5(d)(vi)

288 John Sprankling, The International Law of Property, p.248

289 Convention on the Rights of Persons with Disabilities, art. 12(5)

The other method of acquisition is a purchase and sale transaction or contractual transaction[290]. Right to conclude contracts is found in CEDAW and was already mentioned.

Regional level. The only one regional human rights document which expressly acknowleges the right to acquire property is Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol)[291]. It states: "during her marriage, a woman shall have the right to acquire her own property and to administer and manage it freely."[292] 42 States consented to this provision.

The Right to Use

Universal level. The only multilateral treaty on a universal level, which explicitly addresses the right to use is the ILO Convention (No.169) Concerning Indigenous and Tribal Peoples in Independent Countries. However, the right to use addressed in the Convention is a narrow one. First, limitation of subjects - the right to use is applicable only to indigenous and tribal peoples in the use of natural resources pertaining to their lands. Second, limitation of the scope - provision encompass not a full right to use but just *participate* in the use (as well as management and conservation)[293] together with the authorities of the State. Third, limitation of objects - the right to use is not general but related only to the concrete object – natural resources. Finally, there are only 24 States parties to the Convention (Argentina, Bolivia, Brazil, Central African Republic, Chile, Colombia, Costa Rica, Denmark, Dominica, Ecuador, Fiji, Germany, Guatemala, Honduras, Luxembourg, Mexico, Nepal, Netherlands, Nicaragua, Norway, Paraguay, Peru, Spain, Venezuela)[294]. To conclude, on universal treaty level the expressly stated right to use as a component of a right to property is extremely rare and limited on subjects, objects and scope.

Regional level. Explicitly the right to use one's property is guaranteed in a regional treaty – the ACHR[295] (25 States parties). The other regional treaty - Charter of Fundamental Rights of the European Union (27 States parties) - grants the right to use lawfully acquired possessions. First, the right to use is applicable to both, all natural and all juridical persons. Second, the right to use is independent, there is no need to

290 John Sprankling, The Inter national Law of Property, p.240

291 https://au.int/sites/default/files/treaties/37077-sl-PROTOCOL%20TO%20THE%20AFRICAN%20CHARTER%20ON%20HUMAN%20AND%20PEOPLE%27S%20RIGHTS%20ON%20THE%20RIGHTS%20OF%20WOMEN%20IN%20AFRICA.pdf

292 https://au.int/sites/default/files/treaties/37077-sl-PROTOCOL%20TO%20THE%20AFRICAN%20CHARTER%20ON%20HUMAN%20AND%20PEOPLE%27S%20RIGHTS%20ON%20THE%20RIGHTS%20OF%20WOMEN%20IN%20AFRICA.pdf. Art.6(j)

293 art.15 (1)

294 https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312314:NO

295 https://www.oas.org/dil/treaties_b-32_american_convention_on_human_rights_sign.htm

get permission from the authorities each time one wants to exercise the right to use his or her property. Third, there are no limitation on property objects (except the objects which generally cannot be the objects of the property). Thus, on regional level the right to use as a component of a right to property is wider in scope than on universal level. Moreover, it is acknowledged by 52 States.

The Right to Peacefully Enjoy Possessions

Universal level. After analyzing the list of treaties, the author of the thesis can name only one treaty which uses the term enjoyment of property – the CEDAW: "States Parties shall (...) ensure, on a basis of equality of men and women (...) the same rights of both spouses in respect of enjoyment (...) of property"[296]. The provision is applicable for married women, but not to all women. The treaty limits the scope of the right holders and basis for the limitation is a marital status.

Regional level. On regional level there are two treaties – the ECHR[297] and ACHPR[298], which admits that everyone has a right to peacefully enjoy possessions. Indeed, these regional systems have a wide regional court practises on this aspect of a right to property and on right to property in general.

Although one of the leading scolars in the field Sparkling contends that the right to use and peacefully enjoy possessions is a fundamental attribute of the right to property[299], the comprehensive examination of the international treaties shows that the basis for such an assured statement is definately not a treaty law. On the contrary, the opposite would be a following conclusion – according to the existing universal treaty law there is no such explicitly established element as a right to use and peacefully enjoy possessions on a universal level.

The Right to Administer/ The Right to Manage

Universal level. The CEDAW mentions the right to administer property two times. First, in art.15(2), it is proclaimed that all the women have the right to administer their property equally with all the men; and second, in art.16 (1)(h) dedicated specifically for married woman, it is proclaimed that they have the right to administer property equally with their husbands. Interestingly, this is the only element of the right to property which is mentioned twice. All the other property rights (including the right to manage on a basis of equality of men and women) explicitly mentioned only in article 16(1)(h), which is applicable only for married women.

Regional level. The ACHPR establishes that a woman during her marriage shall

296 CEDAW, art.16(1)(h).

297 https://www.echr.coe.int/documents/d/echr/convention_ENG

298 https://www.oas.org/en/iachr/mandate/basics/3.american%20convention.pdf

299 John Sprankling, The International Law of Property, p.250

have a right to administer and manage her own property[300].

To sum up, this aspect of the right to property is not common on the universal treaty level.

The Right to Transfer/ The Right to Dispose

The right to transfer property rights has various forms under municipal law systems: property may be sold, exchanged, abandoned (refusement of property rights), property rights may be transfered to the other owner as a gift and so on. No doubt that the right to transfer property is a fundamental aspect of a right to property in international economic law or in the realm of World Trade Organization, where selling and buying are the key concepts. However, the task of the author is to examine the scope of this element of the right to property as a human right, thus only the relevant treaties for the establishment and protection of human rights are examined.

Universal level. Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property which has 143 Contracting Parties states that "the import, export or transfer of ownership of cultural property effected contrary to the provisions adopted under this Convention by the States Parties thereto, shall be illicit"[301]. First, the right to transfer is mentioned explicitly and is not limited to a particular form of transfer (for example, just sale or exchange). Second, it is designed only for certain type of property, namely, cultural property. Although in many cases cultural property belongs to the State, yet according to the broad definition of the "cultural property" in article 1[302], an individual may also be an owner of cultural property. For example, Convention expressly mentions these objects of cultural property: "antiquities more than one hundred years old, such as inscriptions, coins and engraved seals"[303], "objects of ethnological interest"[304], "rare manuscripts and incunabula, old books, documents and publications of special interest (historical, artistic, scientific, literary, etc.) singly or in collections"[305], "articles of furniture more than one hundred years old and old musical instruments"[306], "property of artistic interest, such as: (ii) original works of statuary art and sculpture in any

300 ACHPR, art.6(j)

301 https://www.unesco.org/en/legal-affairs/convention-means-prohibiting-and-preventing-illicit-import-export-and-transfer-ownership-cultural, art.3

302 https://www.unesco.org/en/legal-affairs/convention-means-prohibiting-and-preventing-illicit-import-export-and-transfer-ownership-cultural, art.1

303 https://www.unesco.org/en/legal-affairs/convention-means-prohibiting-and-preventing-illicit-import-export-and-transfer-ownership-cultural, art.1(e)

304 https://www.unesco.org/en/legal-affairs/convention-means-prohibiting-and-preventing-illicit-import-export-and-transfer-ownership-cultural, art.1(f)

305 https://www.unesco.org/en/legal-affairs/convention-means-prohibiting-and-preventing-illicit-import-export-and-transfer-ownership-cultural, art.1(g)

306 https://www.unesco.org/en/legal-affairs/convention-means-prohibiting-and-preventing-illicit-import-export-and-transfer-ownership-cultural, art.1(k)

material"[307] Third, having in mind that one of the goals of this Convention is to protect cultural heritage, the purpose of the Convention is to list rather limited terms and conditions when the right to transfer of cultural property is acknowledged. In all the other cases which would be not in line with the requirements of the Convention, it is prohibited.

One more term in the treaties is the right to dispose which is a synonym for a right to transfer. The CEDAW affirms that "States Parties shall (...) ensure, on a basis of equality of men and women (...) the same rights for both spouses in respect of (...) disposition of property (...)"[308]. The ILO Convention (No.95) Concerning the Protection of Wages which has 99 Contracting Parties states: "Employers shall be prohibited from limiting in any manner the freedom of the worker to dispose of his wages"[309].

Regional level. According to the Charter of Fundamental Rights of the European Union which has 27 Contracting Parties „Everyone has the right to (...) dispose of and bequeath his or her lawfully acquired possessions"[310].

To conclude, on universal level right to transfer cultural property is rather narrow and strictly controlled by the Contracting Parties, in the field of workers' rights the right to dispose of one's wages is not limited, and in the field of women's rights the married women can have equal right with men in respect of disposition of property. According to Sprankling the right to transfer should be seen as a well established element of a global right to property[311]. However, the author of the thesis has to make a conclusion that the universal treaties proclaiming the right to property have not much to say explicitly about the right to transfer.

The Obligation to Protect Pproperty and Property Rights

States themselves consent to obligations to 'protect' or to "respect" property or/ and property rights. Some conventions concentrate on protection of property as a thing, while the others focus on protection of property rights as relations between a person and a thing.

Universal level. The first way of formulation is common in the property clauses of the universal international treaties. The things, the items, the objects as such are protected, but not the relation. For example, the 1954 Hague Convention states: "The protection of cultural property shall comprise the safeguarding of and respect for such property."[312]. It is in line with the purpose of the convention, which seeks to preserve

307 https://www.unesco.org/en/legal-affairs/convention-means-prohibiting-and-preventing-illicit-import-export-and-transfer-ownership-cultural, art.1(g)(2)

308 CEDAW, art.16(1)(h)

309 https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312240 (last visited 2023-07-25), Art.6

310 Art.17(1)

311 John Sprankling, The International Law of Property, p.221

312 1954 Hague Convention for Protection of Cultural Property in the Event of Armed Conflict, art.30(2)

the cultural property in special circumstances because of its value and does not care much about the concrete person's (owner's) relation with that object. Again, on universal level the States see the need for interaction and cooperation not because they are concerned how to protect the person's right to enjoy his or her owned cultural property, but because the States seeks to preserve precious cultural objects for the future generations, for their societies or even for humanity. In the same field of cultural property there is 1995 UNIDROIT Convention on Stolen and Illegally Exported Cultural Objects (54 States Parties), which states: "The possessor of a stolen cultural object required to return it shall be entitled, at the time of its restitution, to payment of fair and reasonable compensation provided that the possessor neither knew nor ought reasonably to have known that the object was stolen and can prove that it exercised due diligence when acquiring the object."[313] The provision explains the relation between a possessor (a person) and a stolen cultural property (a thing, item, object). The States agree that such a person has a right to compensation, if he or she can prove being innocent of the theft and acting in a due diligence. The pronouncement of compensation is an important aspect of property rights as generally the expropriation of property without compensation is prohibited. Even though, as it is stated in the preamble, the purpose of the convention is to preserve and protect cultural heritage and to fight against illicit trade, the principle of compensation is established.

The other common formulation on universal level is when States explicitly pronounce that they protect a particular property but also guarantee a specific regime for persons owning that property. For example, 1951 Convention states: "In respect of the protection of industrial property such as inventions, designs or models, trademarks, trade names, and of rights in literary, artistic and scientific works, a refugee shall be accorded in the country in which he has his habitual residence the same protection as is accorded to nationals of that country."[314]. The identical provision is found in the 1954 Convention[315]. Such formulation primarily acknowledges the importance of the industrial property objects and then promises protection not less favourable than to the nationals, which means that a national standard, not an international standard is applicable to the scope of rights.

The third example is found in 1989 ILO convention (No.169): "Special measures shall be adopted as appropriate for safeguarding the persons, institutions, property, labour, cultures and environment of the peoples concerned."[316]. From the first glance is might seem strange that persons and property are listed like the objects. However, having in mind the purpose of the convention found in the preamble, States want to preserve the culture and the phenomenon of indigenous and tribal people, to remove assimilationist orientation, to prevent discrimination. Therefore, the persons as such

313 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects

314 1951 Convention Relating to the Status of Refugees, art.14

315 1954 Convention Relating to the Status of Stateless Persons, art.14

316 1989 ILO Convention (No.169) Concerning Indigenous and Tribal Peoples in Independent Countries, art.4(1)

and property as such are the two separate objects which are protected. To continue, art.14 elaborates on the relation between persons and one concrete object of property – the land: "The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognized."[317] Yet, it is related with the purpose of the convention and rights of indigenous and tribal people, not primary to the right to property as such.

The obligation to protect and not to destruct property is acknowledged by 196 States Parties in times of armed conflict: "Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons (...) is prohibited (...)."[318]

On *regional level* the emphasis is everywhere on the right itself, on the relation between a person and a thing: "Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions."[319], "Everyone has the right to the use and enjoyment of his property."[320], "The right to property shall be guaranteed."[321], "Everyone has a guaranteed right to own private property."[322].

To conclude, on regional level where the States dedicate multilateral treaties for human rights protection, they explicitly pronounce the protection of the right to property and focuses on relation between a person and a thing. On the universal level, in the universal human right treaties dedicated specifically for human right protection, the right to property is not mentioned at all. At the same time in the universal treaties from other fields, property clauses focus exclusively (for example, cultural property law) or primarily (for example refugee law) on a thing as a protected value. Thus, the current situation is that universal treaty law prefers to protect things and regional treaty law prefers to protect relations. The author of the thesis observes that this is just a one more reason, why it is not an appropriate approach to compare treaties of regional human rights systems and to state that if they contain similarities this leads to the conclusion that the content of a right in the universal international law is also the same. As one can see, all the regional treaties encompass one approach, while the universal treaties the other.

The Prohibition to Deprive Property

Universal level. Various formulations are found in universal treaties dedicated for the prohibition to deprive property from certain groups of people. For example, "No migrant worker or member of his or her family shall be arbitrarily deprived of

317 1989 ILO Convention (No.169) Concerning Indigenous and Tribal Peoples in Independent Countries, art.14(1)

318 1949 Convention (IV), art. 53

319 2000 Charter of Fundamental Rights of the European Union, art.17

320 American Convention on Human Rights, art.21(1)

321 African Charter on Human and Peoples' Rights, art.14

322 Arab Charter on Human Rights, art.31

property, whether owned individually or in association with others. "[323], "States Parties (...) shall ensure that persons with disabilities are not arbitrary deprived of their property."[324], "Private property cannot be confiscated."[325] In the case of migrants and their family members and persons with disabilities, States acknowledge the obligation towards the other Contracting States to protect the mentioned persons' property in their own jurisdiction. In the last example the States promise to Contracting States to abstain from confiscation of property not from their own citizens, but from the other Contracting States' citizens in the case if a particular State would become an Occupying Power.

Regional level. The prohibition to deprive property is explicit in all regional human right treaties: "No one shall be deprived with his possessions (...)."[326], "No one shall be deprived of his property."[327], "It [right to property] may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws."[328], "(...) shall not under any circumstances be arbitrarily or unlawfully divested of all or any part of his property."[329]

To sum up, the explicit prohibition to deprive property on a universal level is quite a new phenomenon. It is established in the conventions which entered into force only in the 21st century, the CPRMW – in 2003 and CRPD – in 2008. Accordingly, the prohibition to deprive property is directly applicable only to the vulnerable groups of people mentioned in the conventions. Meanwhile in all four regional human rights treaties the prohibition to deprive property is well established.

To sum up, the examination of the separate elements of the right to property in property clauses shows that the comparative law of regional systems and international law on universal level are two different realms which might vary a lot or even have nothing in common. Therefore, the comparative law differs from international law and even if all the regional human right systems reflect the same trend, it does not automatically mean that this trend is characteristic to the universal human rights law.

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323 1990 International Convention of the Rights of All Migrant Workers and Members of Their Families, art.15

324 2006 CRPD, art.12(5)

325 1907 Hague Convention (IV) Respecting the laws and Customs of War on Land, art.46

326 1952 Protocol I to the European Convention for the Protection of Human Rights and Fundamental Freedoms, art. 1

327 1967 American Convention on Human Rights, art.21(2)

328 African Charter on Human and Peoples'Rights, art.14

329 2004 Arab Charter on Human Rights, art.31

4. Interim Conclusions

1. The differentiation between international individual rights and international human rights in the universal international treaties is a helpful tool for the purposes of the research. First, it serves as a criterion which let us to identify the status of the right to property as a human right more precisely in the international treaty law. Second, it explains why the discussions of the existence or non-existence of the right to property as a human right on a universal treaty level is a complex and confusing. Third, on a broader perspective it suggests the solution to the containment of such undesirable phenomenon as "hypertrophy" of rights or "rights inflation".
2. Universal treaties from various fields of international law incorporates property clauses. These property rights should be examined on case-by-case basis. Often they amount to a simple individual right to property but does not amount to a human right to property. This is an important distinction because it might have different legal effects.
3. The author of the thesis sees the pronouncements of the Commitees of the anti-discriminatory human right treaties more like aspirations or *lege ferenda*, but rarely as an existing international law. While the ICJ has a task to apply the existing law as it stands at the time of the dispute, thus to verify whether the suggested *lege ferenda* indeed already developed into *lege lata* and can be applied at that particular moment in a concrete case. Consequently, in a case of the right to property as a human right, the implicit recognition approach is hardly probable. Rather the interpretation based on national treatment view is predominant as *lege lata*.

C. Customary International Law

The starting point is a well-established definition of the international custom as: "…evidence of a general practice accepted as law"[330]. As it was mentioned in the introduction by the author of the thesis, this thesis does not deal with the regional law, therefore particular customary international law is not analyzed. The ILC concluded that "a rule of particular customary international law, whether regional, local or other, is a rule of customary international law that applies only among a limited number of States"[331]. Such type of a custom of a regional nature was recognized by the ICJ in *Asylum* case[332] as well as in *Right of Passage* case[333]. Therefore, the practice of the ECtHR (or IACHR or AfCHPR) as the separate regional court is not relevant *stricto sensu* in identifying whether a right to property exists under international customary law. It

330 ICJ Statute, art.38 (1)(b)

331 ILC, Conclusionson Identification of Customary International Law (2018), conclusion no.16

332 ICJ, Asylum case

333 ICJ, Right of Passage

is true that the Protocol I art.1 of the ECHR admits the right to property as a human right and the ECtHR deals with a huge number of cases regarding this right every year. However, as the ILC commented "…there may well be "local customs" among States that do not amount to rules of international law"[334]. These are the treaty obligations regarding the right to property, but not automatically customary rules. As the aim of this part of the thesis is to examine whether the right to property amounts to customary international law, the regional human right systems based on human right treaties are set aside and might be used only as supplementary means[335].

In 1989 Bruno Simma and Philip Alston wrote: "The question of sources of international human rights law is of major significance."[336] At that time the two authors were very skeptical about the existence of customary law of human rights: "…a discussion of whether such obligations do indeed exist, amounts to more than an exercise in esoterics"[337]. The aim of this part of the thesis is to revise and re-evaluate this question after more than 35 years regarding one but highly disputed human right, i.e. the right to property. Consequently, the author of the thesis follows these steps: *first*, analyzes criteria for international customary law proposed by the ILC in 2018 Conclusions; *second*, applies the defined criteria to the right to property; *third*, formulates conclusions on the right to property as a possible international customary rule.

1. Contemporary Understanding of Customary International Law

The question of evidence of customary international law was examined in 1949 by the ILC and since then "…both the scope of customary international law and the availability of evidence thereupon have changed strikingly"[338]. Therefore, in order to conclude, whether the right to property as a human right is a customary rule in contemporary international law, the analysis will be done according to the resent criteria, presented in the 2018 conclusions of the ILC on the identification of customary international law. The ILC explicitly states that these conclusions are "concerned only with the methodological issue of how rules of customary international law are

334 ILC, Conclusions on Identification of Customary International Law (2018), conclusion no.16, commentary (1), p.154

335 ILC, Conclusions on Identification of Customary International Law (2018), with Commentaries 2018, Part Five, para.1, p.142

336 The Sources of Human Rights Law: Custom, Jus Cogens, and General Principles", Simma and Alston, p.82, https://ael.eui.eu/wp-content/uploads/sites/28/2016/04/HR-04-dAspremont-Simma-and-Alston.pdf

337 The Sources of Human Rights Law: Custom, Jus Cogens, and General Principles", Simma and Alston, p.88, https://ael.eui.eu/wp-content/uploads/sites/28/2016/04/HR-04-dAspremont-Simma-and-Alston.pdf

338 ILC, Memorandum by the Secretariat, 14 February 2019, https://documents.un.org/doc/undoc/gen/n19/018/96/pdf/n1901896.pdf, para.8, p.4

to be identified"[339], therefore they are particularly useful for the purposes of the thesis. The author of the thesis uses these criteria as recognized and reliable, bearing in mind the mandate of the ILC given by the 193 states of the world. ILC works only on topics which satisfies these criteria: "(a) reflect the needs of the states in respect of the progressive development of international law and its codification; (b) be sufficiently advanced in stage in terms of state practice to permit progressive development and codification; and (c) be concrete and feasible for progressive development and codification."[340] It is considered that the criteria set in 2018 conclusions, fulfills the listed yardstick, therefore, they are used during the analysis, which seeks to identify the existence or non-existence and characteristics of the international custom of the right to property as a human right.

Criteria for International Customary Rule to Emerge

In order to assess the existence of the international custom, the starting point just mentioned remains the same - the two constituent elements should be established[341]. Firstly, the requirement of practice should be satisfied[342]. Secondly, the *opinio juris* should be demonstrated[343]. In addition to the two elements, various materials may be consulted in the process of determining the existence and content of rules of customary international law, which are named in Part Five of the ILC's 2018 Conclusions[344].

Conclusion 4 indicates the **first requirement of general practice**. Primarily it refers to the practice of States that contributes to the formation or expression of customary international rules, but Conclusion 4 acknowledges that in certain cases the practice of international organizations also contributes to the formation or expression of customary international rules[345]. It is specified that State practice consists of conduct of any organ of the State and whatever position it holds in the organization of the State, whether in exercise of executive, legislative, judicial or other functions (for example, exercising commercial activities of giving administrative guidance to the private sector)[346]. Moreover, the Commission emphasizes that relevant practice is not limited to conduct directed towards other States or other subjects of international

339 ILC, Conclusions on Identification of Customary International Law, with commentaries (2018), commentary to conclusion 1, para.6, p.124

340 Para 30, https://legal.un.org/ilc/reports/2024/english/a_79_10_advance.pdf (last visited 2024-08-17)

341 ILC, Conclusions on Identification of Customary International Law (2018), conclusion no.3, p.126

342 ILC, Conclusions on Identification of Customary International Law (2018), conclusion no.4, p.130

343 ILC, Conclusions on Identification of Customary International Law (2018), conclusion no.9, p.138

344 ILC, Conclusions on Identification of Customary International Law (2018), Part Five, p.142-151

345 ILC, Conclusions on Identification of Customary International Law (2018), conclusion no.4, p.130

346 ILC, Conclusions on Identification of Customary International Law (2018), commentary to conclusion no.5, p.132

law, but also towards the States own nationals[347]. The author of the thesis suggests that this point is of particular importance when considering human rights. The forms of the practice may take a wide range of forms, including physical and verbal (whether written or oral) acts, and there is no exhaustive list of such forms[348]. The examples of the forms are: decisions of the national courts, claims before national and international courts, official statements on the international plane, conduct in connection with resolutions adopted, conduct in connection with treaties, executive conduct, diplomatic acts, negotiations and conclusions of treaties. Conclusion 8 requires that the practice must be general, meaning that it must be (i) sufficiently widespread, (ii) representative, and (iii) consistent[349].

The evidence of the **second requirement of *opinio juris*** means that the practice in question must be undertaken with a sense of legal right or obligation[350]. Even a widespread practice without *opinio juris* is nothing more than a non-binding usage or habit, therefore the second element is crucial[351]. *Opinio juris* may take a wide range of forms according to the ILC[352]. For example, public statements made on behalf of States, government legal opinions, diplomatic correspondence, decisions of national courts, treaty provisions, conduct in connection with resolutions adopted by international organizations or at an intergovernmental conferences[353].

Finally, various materials can be consulted in order to identify the existence of customary international rule. The ILC lists certain examples, such as the pronouncements of the ILC itself, the output of the ICJ, treaties, resolutions of international organizations and intergovernmental conferences, decisions of courts and tribunals (international and national), teachings, etc.[354].

2. Right to Property as an International Custom

As the ILC notices, there is some common ground between forms of evidence of general practice and *opinio juris* and sometimes they may be found in the same

347 ILC, Conclusions on Identification of Customary International Law (2018), commentary to conclusion no.5, para.3, p.133

348 ILC, Conclusions on Identification of Customary International Law (2018), conclusion no.6, p.133

349 ILC, Conclusions on Identification of Customary International Law (2018), with Commentaries 2018, p.135-136

350 https://documents.un.org/doc/undoc/gen/n19/018/96/pdf/n1901896.pdf, para.25

351 ILC, Conclusions on Identification of Customary International Law (2018), commentary to conclusion no.2, para.4,p.126

352 ILC, Conclusions on Identification of Customary International Law (2018), conclusion no.10(1), p.140

353 https://documents.un.org/doc/undoc/gen/n19/018/96/pdf/n1901896.pdf, para.25

354 ILC, Conclusions on Identification of Customary International Law (2018), with Commentaries 2018, Part Five, p.142-151

material[355]. However, in such case identification of custom still requires separate evaluation[356]. Indeed, this is the case at hand. For example, according to the ILC, the provisions of the domestic constitutions acknowledging the right to property might be treated as evidence of general practice as well as *opinio juris*. The same should be said about the public statements made on behalf of States in international courts or international organizations. For the sake of clarity, the author of the thesis inspects these evidence separately.

General Practice of States

In order to examine the general practise of States regarding the right to property as a human right, the author of the thesis proposes to relay on conduct of States when exercising legislative function, that is to relay on property clauses in domestic constitutions. The choice is based on a fact that a constitution occupies an exceptional place in national law system. A rule pronounced in constitution is considered to be of a great importance and cannot be derogated by the other legal norms. Moreover, such rule is further detailed in the other relevant legal instruments, implemented by the executive organs and interpreted by the judicial organs when needed. Therefore, the conduct of a State which can be identified from the constitution is not accidental or short-term, but on the contrary, consistent and reflects a repetitive narrative in all legal system. It also resembles the important statement of the ILC that relevant practice of a State is not limited to conduct vis-à-vis other States, but also important to assess conduct within the State, "such as a State's treatment of its own national, may also relate to matters of international law"[357]. Indeed, to evaluate real State practise regarding the right to property as a human right, the State's conduct within the State's jurisdiction is principal. Furthermore, author's choice to examine domestic constitutions is in line with recent methodological approach of the ICJ found in Advisory Opinion of 23 July 2025 on Obligations of States in respect of Climate Change[358]. The Court when considering the existence of a right to a clean, healthy and sustainable environment, draws attention to the facts that (a) over one hundred States enshrined this right in their constitutions or domestic legislation,[359] (b) States were discussing about this right in front of the ICJ[360], and (c) 161 States voted in favour when adopting the GA resolution 76/300 of 28 July 2022 recognizing this right[361].

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355 ILC, Conclusions on Identification of Customary International Law (2018), with Commentaries 2018, para.3 p.141

356 ILC, Conclusions on Identification of Customary International Law (2018), with Commentaries 2018, para.3 p.141

357 ILC, Conclusions on Identification of Customary International Law (2018), with Commentaries 2018, para.3 p.133

358 Advisory Opinion of 23 July 2025 on Obligations of States in respect of Climate Change, para.387-393

359 Advisory Opinion of 23 July 2025 on Obligations of States in respect of Climate Change, Para.391, p.113

360 Advisory Opinion of 23 July 2025 on Obligations of States in respect of Climate Change, Para.387, p.112

361 Advisory Opinion of 23 July 2025 on Obligations of States in respect of Climate Change, Para.392, p.113

Constitutional Provisions on Right to Property

The author of the thesis has looked over the 191 domestic constitutions of the States of the various legal systems of the world and has identified the constitutional provisions on the right to property as a human right. All the provisions are listed in the table, which is attached as the *Annex II* to the thesis. The author describes comprehensively the methodology of collecting, sorting and examining the data presented in the Annex II, in Chapter D "General Principles of Law", therefore in this part of the thesis they go straight to the analysis whether the content of the constitutional provisions shows the existence of general practice regarding the right to property.

Existence of Right to Property

To start with, 185 constitutions out of 191 explicitly mentions right to property as an individual right. Therefore, the practice in regard to understanding the fact that natural person has a right to property is general – sufficiently widespread, representative and consistent – as required in the 2018 Conclusions of the ILC. The great majority of the domestic constitutions, i.e., at least 157 out of 191, were revised or adopted in the 21 century, as it is reflected in the footnotes of the *Annex II*. Naturally, the domestic constitutions reflect current and relevant practice of the States. The author of the thesis is persuaded that the 185 constitutions is more than enough to conclude the fact that the acknowledgement of the States regarding the right to property is general. The scope of the right to property – is a separate issue, which raises many questions. However, the mere fact of the existence of such a right in domestic constitutions cannot be denied.

Right to Property as a Fundamental Human Right

At least 94 domestic constitutions out of 191 place the right to property under the chapter of fundamental or basic human rights. Therefore, in practice of at least 50% of the States the right to property is treated as a fundamental human right. Is the practice of 50% of States constitute general practice for the purposes of the identification of customary rule? The ILC does not give any concrete numbers but advises assessing possible inconsistent practices[362]. The author of the thesis argues that generally it would be imprudent to conclude that the practice based on one form of evidence of 50% of States amount to general practice. However, if there is no widespread concurrent conduct in the form analyzed and there are more evidence of such confirming practice in the other forms, the 50% of States might be a sufficient number to conclude that particular conduct is a general and widespread.

The author submits, that a widespread concurrent conduct to the statement "right to property is a fundamental right" (or basic right) was not discovered, meaning that

362 ILC, Conclusions on Identification of Customary International Law (2018), with Commentaries 2018, commentaries on Conclusion 7, 8

States do not object to such position. On the contrary, some States which do not pronounce in their domestic constitutions that the right to property is a fundamental human right, still, demonstrates such conduct in the other forms. For example, New Zealand is in the process of acknowledging this fact in its Bill of Right[363], Lithuania does not pronounce in domestic constitution that the right to property is a fundamental right, but Lithuania have accessed international treaties stating that right to property is a fundamental human right (such as Charter of Fundamental Rights of the European Union[364]), Qatar does not pronounce in its constitution that the right to property is a fundamental right, but explicitly confirms this position in 2021 when addressing claims to the ICJ[365]. Qatar holds in proceedings before the ICJ that the right to property is one of the fundamental human rights[366]. This is the official statement of the Qatar regarding human right to property. In 2018 Qatar filled the application, where one of the claims was: "Qatar, in its right and as *parens patriae* of its citizens, respectfully requests the Court to adjudge and declare that the UAE through its State organs, State agents, ant other persons and entities exercising governmental authority, and thought other agents acting on its instructions or under its direction and control, has violated its obligations under Articles (…) 5 of the CERD by taking, *inter alia*, the following unlawful actions: (a) Expelling, on a collective basis, all Qataris from, and prohibiting the entry of all Qataris into, the UAE on the basis of their national origin; (b) Violating other fundamental rights, including the rights to (…) property (…)."[367] On the ground of this claim Qatar requested the Court to order that the UAE should: "Restore rights of Qataris to (…) property"[368].

To sum up, it is more likely, that the statement "right to property is a fundamental human right" reaches the requirement of general practice. So, the feature of this right – that it is fundamental (or basic) - does amount to general practice.

Prohibition of Expropriation

At least 119 domestic constitutions establish the prohibition of expropriation. The author of the thesis suggests that this is a sufficient amount of general practice required for the existence of customary international rule.

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363 https://www.parliament.nz/media/9648/new-zealand-bill-of-rights-right-to-lawfully-acquired-property-amendment-bill.pdf

364 Charter of Fundamental Rights of the European Union, art. 17(1)

365 ICJ, Application of the International Convention of the Elimination of All Forms of Racial Discrimination, Judgement (2021), para.21, citing para.65 (b).

366 *Ibid*., para.21, citing para.65 (b).

367 Para.21, citing para.65 https://www.icj-cij.org/sites/default/files/case-related/172/172-20210204-JUD-01-00-EN.pdf

368 Para 21., citing para.66 https://www.icj-cij.org/sites/default/files/case-related/172/172-20210204-JUD-01-00-EN.pdf

Elements of the Right to Property

The task to identify which elements of the right to property or what scope of the right to property or which characteristics of the right to property could amount to general practice required for customary international law is a harder one. For this excersice the data and findings from the previous chapter of the thesis on conventional law is also used.

In all the cases, where the widespread concurrent conduct exist, the general practice cannot amount to extent required.

First, according to the States practice the beneficiaries of the right to property varies. Some constitutions acknowledges the right to property to "everyone", but the others treat foreigners' right to property differently from their citizens' right to property. In some domestic constitutions (at least 23) it is established that the right to property is guaranteed only for the citizens, not for all the persons under State's jurisdiction. Therefore, the conclusion is that the general practice amounts at least in regard to citizens.

Second, when considering what can be the object of the right to property, the practice reflected in the domestic constitutions varies. The common object of the right to property, which would for sure amount to general practice is personal belongings. Land is among objects, which might have limitations according to national laws. Intellectual rights explicitly mentioned in at least 38 domentic constitutions. However, the number is not enough to conclude that it constitutes general practice.

Third, at least 47 domestic constitutions out of 191 acknowledges the right to inherent. However, the right to inherit is treated differently. (Example from UN 1994 examination on India.) Therefore, the conslusion can be made that there is general practice of acknowledging the right to inherent as such, but the beneficiaries of this right and scope of this right are different.

Opinio Juris

The author examines various forms of evidence of *opinio juris* regarding the right to property as a human right.

Existence of the Right to Property

To start with the current resonant event, on 12 April 2023 the request for the advisory opinion by the UN Secretary-General was addressed to the ICJ. During the process the participants of the case (States and international organizations) presented their official legal positions, reflecting their *opinio juris* on the right to property. The relevant part of the question is: "Having particular regard (...) to the rights recognized in the Universal Declaration of Human Rights (...) what are the obligations of States

under international law to ensure the protection of the climate system(...)?"[369] States and international organizations were actively addressing their comments to the ICJ regarding this question. As the right to property was also included in 1948 Declaration among other human rights, at least 35 States (out of 96 participating in the procedures) expressly mention right to property. Moreover, 6 international organizations including European Union and African Union also express their legal positions advocating for the importance of the right to property as a human right.

Marshall Islands states that right to property is one of the fundamental human rights which is connected with right to clean, healthy and sustainable enviroment[370]. **Vanuatu** is of the opinion that right to property is one of the most important rights which are threatened and violated in the context of climate change[371]. **Seychelles** states that enviromental degradation could lead to a violation of right to property and supports such possition by reference to the 2017 advisory opinion of Inter-American Court of Human Rights[372]. **Australia** comments on link between climate change and human rights: "The clearest example of the link between the environment and human rights is where a State's acts or omissions in respect of environmental matters directly and specifically affect the enjoyment of human rights for individuals within its jurisdiction or under its control. For example:(...) in *Haraldsson and Sveinsson v Iceland*, the UN Human Rights Committee found that differentiations in Iceland's fisheries regime on the basis of property rights breached the Authors' rights under Article 26 of the ICCPR."[373]. **The Netherlands** admits the position of the UN Special Rapporteur on Human Rights and the Environmnent that detrimental effects of climate change extend to right to property[374]. **Sri Lanka** does not expressly talks abour right to property, but when lists the obligations of States in the climate change context, includes rights of women, rights of persons with disabilities, duty to refrain from depriving a people of their subsistence[375], which are related to right to property according the conventions. **Samoa** submits that its national courts have found that fossil fuel projects contribute

369 https://www.icj-cij.org/sites/default/files/case-related/187/187-20230412-app-01-00-en.pdf

370 https://www.icj-cij.org/sites/default/files/case-related/187/187-20241220-oth-38-00-en.pdf, p.10, Marshall Islands

371 https://www.icj-cij.org/sites/default/files/case-related/187/187-20241220-oth-67-00-en.pdf, para.19, Written reply of Vanuatu on 13 December 2024

372 https://www.icj-cij.org/sites/default/files/case-related/187/187-20241220-oth-56-00-en.pdf, p.8, Seychelles

373 https://www.icj-cij.org/sites/default/files/case-related/187/187-20240815-wri-14-00-en.pdf, Australia p. 34-35

374 https://www.icj-cij.org/sites/default/files/case-related/187/187-20240321-wri-14-00-en.pdf, para.3.26, p.16

375 https://www.icj-cij.org/sites/default/files/case-related/187/187-20241220-oth-58-00-en.pdf, p.3, Sri Lanka

to climate change, thus can violate right to property[376]. **Saint Lucia** holds that mining and burning coal can increase climate change impact and breach right to property[377]. **Uruguay** sees the link between enviromental damage and property[378]. **Gambia** is of the opinion that climate change results in severe flooding which leads to harm to various human rights, including property damage[379]. **The Republic of Madagascar** in written statement mentioned that cklimate change affected various human rights, including right to property[380]. **Chile** relayed on the position of observations of the Inter-American Commission on Human Rights and the Special Rapporteurship on Economic, Social, Cultural, and Environmental Rights on the Request for an Advisory Opinion on Climate Emergency and Human Rights submitted by the Republics of Chile and Colombia (18 December 2023) that link between climate change and human rights (one of them explicitly mentioning right to property) is clear[381]. **The Republic of Colombia** holds that sea-level rise is a significant threat to property damage[382]. **Switzerland** states that climate change causes human rights crisis and names right to property as one of the most affected rights[383]. **Portugal** acknowledges that "the Portuguese Government has the obligations of identifying risks and acking to prevent and mitigate the consequences of climate change on (...) property and the regular exercise of rights (...)"[384]. **Sierra Leone** submits that effects of climate change for island States and States with low-lying coastal areas can lead to loss of property[385]. **Belize** when making its statement referes to the Convention on Long-Range Transboundary Air Pollution (adopted 13 November 1979, entered into force 16 March 1983), 1302 UNTS 21623, Article 1(a) ("'[a]ir pollution' means 'the introduction by man, directly or indirectly, of substances or energy into the air resulting in deleterious effects of such a nature as to endanger human health, harm living resources and ecosystems and material property and impair or interfere with amenities and other legitimate uses of the environment,

376 Samoa, https://www.icj-cij.org/sites/default/files/case-related/187/187-20241220-oth-54-00-en.pdf, p.5, reply statement of the Independent State of Samoa, https://www.icj-cij.org/sites/default/files/case-related/187/187-20240322-wri-40-00-en.pdf, p.10, p.13

377 https://www.icj-cij.org/sites/default/files/case-related/187/187-20241220-oth-52-00-en.pdf, SAINT LUCIA'S RESPONSE TO QUESTIONS BY THE COURT, answer to question no.3; also https://www.icj-cij.org/sites/default/files/case-related/187/187-20240321-wri-03-00-en.pdf

378 https://www.icj-cij.org/sites/default/files/case-related/187/187-20240815-wri-40-00-en.pdf, para.163

379 https://www.icj-cij.org/sites/default/files/case-related/187/187-20240815-wri-37-00-en.pdf, para.2.13

380 https://www.icj-cij.org/sites/default/files/case-related/187/187-20240320-wri-02-00-en.pdf, para.65, p.13

381 https://www.icj-cij.org/sites/default/files/case-related/187/187-20240815-wri-19-00-en.pdf, para.28, Chile,

382 https://www.icj-cij.org/sites/default/files/case-related/187/187-20240311-wri-01-00-en.pdf, para.2.24

383 https://www.icj-cij.org/sites/default/files/case-related/187/187-20240318-wri-02-00-en.pdf, para.59

384 https://www.icj-cij.org/sites/default/files/case-related/187/187-20240307-wri-01-00-en.pdf, para.102

385 https://www.icj-cij.org/sites/default/files/case-related/187/187-20240315-wri-02-00-en.pdf, para.3.91; para.3.53

and 'air pollutants' shall be construed accordingly")[386]. **Bangladesh** sees the link between climate change and right to property[387]. **Barbados** when commenting on climate change and right to property relayes on ILC Draft Princinciples on the Allocation of Loss in the Case of Transboundary Harm arising out of Hazardous Activities[388]. Also mentions that "extreme weather events have collateral effects on (...) property losses"[389]. **Cook Islands** notes that impacts of climate change is a risk to violate human rights, incuding right of individual to own property[390]. **Tuvalu** states in the written comments that it has already submited evidence that climate change has made impact on its population's human rights, including right to property[391]. **El Salvador** agrees that right to property is one of the rights which is particularly vulnerable to enviromental impact[392]. **Kenya** relays on ILC observations and on factual events it its country and states that flooding already has caused loss of property and that climate change cannot be overemphasized[393]. **Tonga** asknowledges that sea-level rise has negative impact on property[394]. **The Democratic Republic of Congo** supports its position by quoting *Trail smelter* case[395], where already in 1905 Arbitral Tribunal has stated that fumes caused the "reduction in the value of the use or rental value of the property"[396]. The DRC also supports its position on the Advisory Opinion of the Inter-American Court of Human Rights: "The rights especially linked to the environment have been classified into two groups: (i) rights whose enjoyment is particularly vulnerable to environmental degradation, also identified as substantive rights (for example, the rights to (...) property), and (ii) rights whose exercise supports better environmental policymaking, also identified as procedural rights(...)."[397] **Burkina Faso** in written comments expresses its view

386 https://www.icj-cij.org/sites/default/files/case-related/187/187-20240815-wri-16-00-en.pdf, p.9, Belize

387 https://www.icj-cij.org/sites/default/files/case-related/187/187-20240815-wri-15-00-en.pdf, p.28, para.42,

388 https://www.icj-cij.org/sites/default/files/case-related/187/187-20240815-wri-10-00-en.pdf, Barbados, p.48, para.85

389 https://www.icj-cij.org/sites/default/files/case-related/187/187-20240322-wri-11-00-en.pdf, para.105, p.53

390 https://www.icj-cij.org/sites/default/files/case-related/187/187-20240815-wri-01-00-ene.pdf, p.34, para.46

391 https://www.icj-cij.org/sites/default/files/case-related/187/187-20240815-wri-01-00-ene.pdf, p.9, para.22; also https://www.icj-cij.org/sites/default/files/case-related/187/187-20240322-wri-05-00-en.pdf

392 https://www.icj-cij.org/sites/default/files/case-related/187/187-20240814-wri-04-00-en.pdf, p.7

393 https://www.icj-cij.org/sites/default/files/case-related/187/187-20240813-wri-02-00-en.pdf, para.3.30, p.28, written comments of the DRC

394 https://www.icj-cij.org/sites/default/files/case-related/187/187-20240315-wri-01-00-en.pdf, para.89.

395 https://www.icj-cij.org/sites/default/files/case-related/187/187-20240802-wri-01-00-en.pdf, para.33, p.10

396 Trial smelter case (United States, Canada, https://legal.un.org/riaa/cases/vol_iii/1905-1982.pdf, p.1926

397 https://www.icj-cij.org/sites/default/files/case-related/187/187-20240304-wri-01-00-en.pdf, para.154

that property is lost or damaged because of the climate change[398]. **The Dominican Republic** relayed on UN Human Rights Council statement that effects of climate change make impact on enjoyment of the rights and destroy property[399]. **New Zeland**[400] and **Liechtenstein**[401] also expresly mentions destuction of property. **Solomon Islands** mentions productive use and enjoyment of property and interprets it as a part of rigt to self-determination[402]. **Ecuador** in the written comments among the other examples talks about situations, where "injured person's property has suffered environmental harm caused by pollution"[403]. **Antigua and Barbuda** in written statement says that significant harm can be made to property due to events caused by climate change[404]. **The Bahamas** states that adverse environmental effects leads to various damages, including a loss of property[405]. **Palau** notes that tropical storms, intense winds and so on have negative impact on property[406]. **The Federated States of Micronesia** (Yap, Chuuk, Pohnpei, and Kosrae) holds that right to property is a long-rezognized and well-established right under international law, which is triggered by the harmful effects of anthropogenic emissions of greenhouse gases on the climate system[407]. Loss of property rights due to sea-level rise is mentioned in the written statement of **Organization of African Carribean and Pacific States** (OACPS)[408]. The **African Union** relies on *Trial Smelter* arbitration and holds that pollution leads to reduction in value of the polluted property[409]. The **Commission of Small Islands States** (COSIS) in written statement emphasizes that right to property is implicated from the adverse effects of climate change[410]. The **European Union** explained its position: "Obligations of conduct can therefore be referred to as 'due diligence obligations', meaning that compliance with those obligations requires acting with due diligence. Accordingly, the Court has found that a duty to protect property from physical harm in a treaty of amity triggered an obligation of one contracting party to exercise due

398 https://www.icj-cij.org/sites/default/files/case-related/187/187-20240402-wri-01-00-en.pdf, p.11

399 https://www.icj-cij.org/sites/default/files/case-related/187/187-20240322-wri-39-00-en.pdf, p.47, para.4.47

400 https://www.icj-cij.org/sites/default/files/case-related/187/187-20240322-wri-37-00-en.pdf, p/4, para.4

401 https://www.icj-cij.org/sites/default/files/case-related/187/187-20240322-wri-34-00-en.pdf, p.16, para.31

402 https://www.icj-cij.org/sites/default/files/case-related/187/187-20240322-wri-30-00-en.pdf, p.60, para.172

403 https://www.icj-cij.org/sites/default/files/case-related/187/187-20240322-wri-27-00-en.pdf, p.72, para. 4.28

404 https://www.icj-cij.org/sites/default/files/case-related/187/187-20240322-wri-08-00-en.pdf, para.131

405 https://www.icj-cij.org/sites/default/files/case-related/187/187-20240322-wri-04-00-en.pdf, para.103

406 https://www.icj-cij.org/sites/default/files/case-related/187/187-20240319-wri-04-00-en.pdf, p.19

407 https://www.icj-cij.org/sites/default/files/case-related/187/187-20240315-wri-03-00-en.pdf, para.80

408 https://www.icj-cij.org/sites/default/files/case-related/187/187-20240322-wri-15-00-en.pdf, p.91

409 https://www.icj-cij.org/sites/default/files/case-related/187/187-20240322-wri-10-00-en.pdf, para.287

410 https://www.icj-cij.org/sites/default/files/case-related/187/187-20240322-wri-09-00-en.pdf, para.132

diligence in providing protection from physical harm to the property of nationals and companies of the other contracting party within its own territory."[411]. The **Melanesian Spearhead Group** (MSG) seconds the findings of Intergovernmental Panel on Climate Change (IPCC) and recognizes the impact of climate change on right to property[412]. The **International Union for Conservation of Nature** (IUCN) holds that existing human rights framework includes right to property and that States should take appropriate measures to avoid known risks regarding climate change to ensure the enjoyment of the human rights[413]. The IUCN upholds the position that fossil fuel production contributes to violation of various human rights, including right to property[414].

Right to Property as a Fundamental Human Right

In regard to States' positions in connection with resolutions adopted by international organizations, it should be reminded that the UN GA resolution 217A ratifying the Universal Declaration of Human Rights, was adopted by 48 votes for, none votes against, 8 votes abstained. The 1948 Declaration pronounces that the human rights listed are fundamental and the right to property is among them.

Subsidiary Means for the Determination of Customary International Rule

Specifically, in the context of the human rights, the right to property was mentioned in the ILC's work of the Study Group On sea-level rise in relation to international law[415]. In para.74 it was stated: "Members of the Study Group noted the importance of general human rights obligations in the context of the protection of persons affected, including by sea-level rise. Some members highlighted the applicability of civil and political rights, including the right to life, the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment and *the right to property*."[416]

3. Interim Conclusions

1. Analysis demonstrates that the first requirement of general practice of States is easily satisfied as 185 constitutions out of 191 explicitly mentions right to property as an individual right. Moreover, the second requirement *opinio juris*

411 https://www.icj-cij.org/sites/default/files/case-related/187/187-20240322-wri-07-00-en.pdf, para.82; See also, *Certain Iranian Assets* (Islamic Republic of Iran v. United States of America), judgment of 30 March 2023, para. 190.

412 https://www.icj-cij.org/sites/default/files/case-related/187/187-20240322-wri-01-00-en.pdf, para.13

413 https://www.icj-cij.org/sites/default/files/case-related/187/187-20240319-wri-02-00-en.pdf, para.460-461

414 https://www.icj-cij.org/sites/default/files/case-related/187/187-20241220-oth-30-00-en.pdf, pra.20, p.8

415 Study Group on sea-level rise in relation to international law, draft interim, report, 6 June 2024

416 https://documents.un.org/doc/undoc/ltd/g24/122/79/pdf/g2412279.pdf

is also satisfied. Therefore, the right to property as an individual right is an international customary rule.

2. Nevertheless, the author must conclude that she could not identify any concrete elements of the right to property (for example, right to inherit, right to acquire) as constituting international customary law because in most of the cases the general practice of States as reflected in the domestic constitutions was not enough or the widespread concurrent conduct existed.

D. General Principles of Law

1. General Principles as a Source of International Law

The traditional formulation of the description of this source can be found in Article 38 (1)(c) of the 1945 ICJ Statute: "general principles of law recognized by civilized nations"[417]. However, in 2018 the ILC started working on the topic of general principles of law and appointed Mr. Marcelo Vazquez-Bermudez as a Special Rapporteur[418]. In 2023 the Commission adopted 11 conclusions on the subject, modifying the traditional approach to general principles as a source of international law[419].

To start with, the ILC does not explicitly state that the Commission gives a definition of general principles, but in Conclusion 2 the Commission have changed the expression "civilized nations" used in the ICJ Statute to the "community of nations": "For a general principle of law to exist, it must be recognized by the community of nations"[420]. The ILC itself notes that "civilized nations" is an anachronistic term[421], thus it should be changed. Some Governments welcome the idea of abandoning this expression. For example, Brazil, the United States of America, and Singapore agree that this term is outdated[422]. The EU also expressed the position that it seconds the ILC's approach regarding the old-fashioned term[423]. (The author of the thesis elaborates on the term "civilized nations," its origin and meaning in the second chapter of this work as this term is closely related to the *travaux preparatoires* of Article 38 (1)(c) of the ICJ Statute and reflects the clash between legal positivism and legal naturalism.) However, some Governments are not satisfied with the proposed substitute "community of nations." For example, Poland affirms that the term "community of nations" is confusing and that the already known expression "international community of states as a whole"

417 Statute of the ICJ, art 38 (1)(c)

418 Report on the work of the 74th session (2023), A/78/10, p. 10, para. 30

419 Report on the work of the 74th session (2023), A/78/10, pp.11-13, para. 40

420 Conclusion 2, Report on the work of the 74th session (2023), A/78/10, p. 1, para. 40

421 Commentary to Conclusion 2, Report on the work of the 74th session (2023), A/78/10, p .14, para. 3

422 https://legal.un.org/ilc/sessions/76/pdfs/english/gpl_brazil.pdf, para.5; https://legal.un.org/ilc/sessions/76/pdfs/english/gpl_us.pdf; https://legal.un.org/ilc/sessions/76/pdfs/english/gpl_singapore.pdf

423 https://www.un.org/en/ga/sixth/78/pdfs/statements/ilc/23mtg_eu_1.pdf

would be a better option[424]. Yet the Commission has already noticed in its commentary that the expression "international community of states as a whole" is not a good choice because there is no need for unanimity of recognition[425]. Moreover, the ILC observes that not only States, but also international organizations are subjects which indeed do influence the formation of general principles[426], thus "community of nations" does not equal "international community of states as a whole."

Another novelty that has caused hot debates in various formats[427] is the categorization of general principles by dividing them into two groups:

"(a) that are derived from national legal systems;

(b) that may be formed within the international legal system"[428].

This distribution is based on the origin of general principles and "…the process through which they may emerge"[429]. It is true that the opinion of the members of the ILC as well as of the Governments of States regarding the second category of principles is not unanimous. Nevertheless, this debatable novelty confirms that the traditional 20th century understanding of general principles in international law is not enough, and the process of transformation is ongoing. Currently one can only make predictions regarding the result of this process based on the observations and comments of States on the topic of general principles of law.

Still, the author of the thesis has a task to identify whether the right to property as a human right does exist as a general principle in international law as it stands today. To fulfil this task, it is enough to conclude that such a right exists in at least one category. Therefore, the category (a) is examined as there is no objection from States regarding the existence of this category.

As the ILC explains, the methodology for the identification of general principles of law derived from national legal systems consists of two methods which should be applied in turn – starting with inductive analysis and later using deduction[430]. The requirement of the above-mentioned methods is reflected in Conclusion 4 which states that:

"…it is necessary to ascertain:

(a) The existence of a principle common to the various legal systems of the world; and

(b) Its transposition to the international legal system."[431]

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424 https://legal.un.org/ilc/sessions/76/pdfs/english/gpl_poland.pdf

425 Commentary to Conclusion 2, Report on the work of the 74th session (2023), A/78/10, p. 14, para. 4

426 Commentary to Conclusion 2, Report on the work of the 74th session (2023), A/78/10, p. 14, para. 5

427 Between the ILC members during the 74th plenary session, 2023, and Discussion held in the Sixth Committee of General Assembly, 2024, February 6, A/CN.4/763

428 Conclusion 3, Report on the work of the 74th session (2023), A/78/10, p. 11, para. 40

429 Commentary to Conclusion 3, Report on the work of the 74th session (2023), A/78/10, p. 14

430 Commentary to Conclusion 7, para. 3-4, Report on the work of the 74th session (2023), A/78/10, p. 23

431 Conclusion 4, Report on the work of the 74th session (2023), A/78/10, p. 11, para. 40

The author of the thesis discusses the two requirements in turn and applies them to the right to property as a human right.

2. Application of "(a) The existence of a principle common to the various legal systems of the world"

Turning to the (a) **first requirement**, it is explained in detail in Conclusion 5[432]. According to paragraph 1: "…comparative analysis of national legal systems is required"[433]. Paragraph 2 states that "the comparative analysis must be wide and representative, including different regions of the world"[434]. The ILC comments that "…while it is not necessary to assess every single legal system of the world to identify a general principle of law, the comparative analysis must nonetheless be sufficiently comprehensive to take into account the legal systems of States in accordance with the principle of sovereign equality of States"[435]. Moreover, the ILC gives precise examples when it is considered that the comparative analysis is wide and representative enough[436]. For example, if a principle is identified in 58 different States (covering all the continents) as it was in 1960 in the *Case concerning Right of Passage over Indian Territory*[437] or in 44 different states (covering all the continents except South America) as it was in 2014 in *Questions relating to the Seizure and Detention of Certain Documents and Data*[438], it is a sufficient analysis. This test is not new as the International Court of Justice has used it several times, for example in the *Barcelona Traction case*, stating that a general principle should be "generally accepted by municipal legal systems"[439], however, the examples examined by the ILC add some clarity.

Finally, paragraph 3 names materials that can be examined to determine the existence of a principle "…the comparative analysis includes an assessment of national laws and decisions of national courts, and other relevant materials"[440]. The ILC notes that terms "national laws" and "decisions of national courts" should be understood broadly and covers such materials as constitutions, legislation, decrees and regulations,

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432 Conclusion 5, Report on the work of the 74th session (2023), A/78/10, p. 11, para. 40

433 Conclusion 5, Report on the work of the 74th session (2023), A/78/10, p. 11, para. 40

434 Conclusion 5, Report on the work of the 74th session (2023), A/78/10, p. 11, para. 40

435 Commentary to Conclusion 5 (para. 4), Report on the work of the 74th session (2023), A/78/10, p. 18

436 Commentary to Conclusion 5 (footnote 29), Report on the work of the 74th session (2023), A/78/10, pp.18-19

437 ICJ, *Case concerning Right of Passage over Indian Territory (Merits),* Judgement of 12 April 1960, Observations and Submissions of Portugal on the Preliminary Objections of India, annex 20, pp. 714-752

438 ICJ, *Questions relating to the Seizure and Detention of Certain Documents and Data* (Timor-Leste v. Australia), Provisional Measures, Order of 3 March 2014, p. 147

439 ICJ, Barcelona Traction case, 1970, p. 38, para. 50

440 Conclusion 5, Report on the work of the 74th session (2023), A/78/10, p. 11, para. 40

decisions of the courts of various levels and jurisdictions[441].

To sum up, to fulfill the (a) **first requirement** in the case at hand – to identify that the right to property as a human right is a general principle of law – three steps are taken. *To start with*, data from national law systems is collected, sorted, and presented in the thesis. *Then*, a comparative analysis of the provisions on the right to property as a human right is conducted to identify the possible existence and the scope of the principle of right to property. *Lastly*, conclusions are presented.

Step one. The author of the thesis has looked at 191 national constitutions of States representing various legal systems and has identified constitutional provisions on the right to property as a human right. The type of national law (constitutions) and the amount of the countries analyzed (191) is more than enough according to the requirements of the ILC. The provisions of the constitutions on the right to property as a human right are cited in the table which is attached as an annex to the thesis[442]. The table provides the name of the State, the provisions on the right to property, the name of the chapter in which this provision is established, the concrete article or part of the document (for example, some rights are found in the preambles of the constitutions), and the year of the constitution. Provisions related to State property or other types of property are not reflected in the list provided as this is out of the scope of the present research.

Step two. The author of the thesis analyzes constitutional provisions on the right to property as a human right having in mind the aim of the thesis – to identify the status and the scope of the right. Before the investigation, it should be stressed that comparative law and international law are not the same[443]. They might overlap, but they are different subjects. In case of general principles of law, the approved methodology for the first category of general principles of law is based on comparative method. Therefore, the comparative analysis of provisions of national constitutions should be seen as part of a methodological tool, not as comparative law as such. *First*, the context of the provisions is considered. *Second*, the formulation of the right to property is examined. *Third*, the elements of the right to property as a human right are studied.

To start with, almost all 191 constitutions mention the right to own property and guarantee protection from expropriation with only a few exceptions. These are: Austria, Brunei Darussalam, Canada (no provisions on the right to property as a human right in all three), New Zealand (there is a Parliament proposition to add to the Bill of Rights a Right to lawfully Acquired Property[444]), Norway (the protection of expropriation is established, but no proclamation of the right to property), and Sri Lanka (no

441 Commentary to Conclusion 5 (para. 5), Report on the work of the 74th session (2023), A/78/10, pp.19-20

442 Annex. "Right to property as a human right in Constitutions of States"

443 A. A. Candado Trindade, „International Law for Humankind towards a New *Jus Gentium*" (Leiden/Boston), The Hague Academy of International Law, 2020, p. 122

444 *there is a proposition to add to the Bill of Rights (Right to lawfully Acquired Property) an Amendment Bill https://www.parliament.nz/media/9648/new-zealand-bill-of-rights-right-to-lawfully-acquired-property-amendment-bill.pdf

provisions on the right to property as a human right). However, these 185 constitutions establish the right to property in non-identical contexts. The context of the provision resembles a frame that surrounds it and provides resources for its appropriate interpretation.[445] The most frequent part in which this right is proclaimed is a chapter dedicated to the human rights. The titles of the chapters vary, but the most common are the ones including the word "fundamental". There are as many as 86 constitutions which place the right to property provision under the chapter of "fundamental" rights. For example, "fundamental rights and freedoms"[446], "fundamental rights"[447], "the recognition and protection of fundamental human rights and freedoms of the individual"[448], "fundamental rights and principles of policy"[449], "fundamental rights and duties"[450], etc. Some States even use the concept *fundamental* in their official rhetoric to characterize the nature of certain human rights or to stress their importance. For example, Qatar holds in the proceedings before the ICJ that the right to property is one of the *fundamental* human rights[451]. In 2018 Qatar filled an application which contained the following claim: "Qatar, in its right and as *parens patriae* of its citizens, respectfully requests the Court to adjudge and declare that the UAE through its State organs, State agents, ant other persons and entities exercising governmental authority, and through other agents acting on its instructions or under its direction and control, has violated its obligations under Articles (…) 5 of the CERD by taking, *inter alia*, the following unlawful actions: (a) Expelling, on a collective basis, all Qataris from, and prohibiting the entry of all Qataris into, the UAE on the basis of their national origin; (b) Violating other *fundamental* (emphasis added) rights, including the rights to (…) property (…)."[452] On the ground of this claim Qatar requested the Court to order that the UAE should: "Restore rights of Qataris to (…) property"[453]. To sum up, although in Qatar's constitution the property clause is under the chapter "Basic pillars of the society" and the word "fundamental" is not used explicitly, in its practice before the ICJ Qatar holds that the right to property is a fundamental human right. Moreover, it can be argued that words "fundamental" and "basic" are often used as synonymous when stressing the importance of certain human rights. At least 8 constitutions in the given list proclaim the right to property in the part which is under the title "basic human rights".

445 Goodwin, Charles; Duranti Allessandro, eds. (1992). "Rethinking context: an introduction".

446 Spain

447 Switzerland, India

448 Sierra Leone

449 Pakistan

450 Nepal

451 ICJ, Application of the International Convention of the Elimination of All Forms of Racial Discrimination, Judgement (2021), para. 21, citing para. 65 (b).

452 Para. 21, citing para. 65 https://www.icj-cij.org/sites/default/files/case-related/172/172-20210204-JUD-01-00-EN.pdf

453 Para. 21, citing para. 66 https://www.icj-cij.org/sites/default/files/case-related/172/172-20210204-JUD-01-00-EN.pdf

For example, "basic rights and duties of the citizen"[454], "basic freedoms and rights of the individual and citizen"[455], "basic rights and freedoms"[456], "basic human rights and freedoms"[457], etc. The term *basic* is also found in the ICJ's dictum *Barcelona Traction*. The ICJ observes that some of the *basic* human rights are part of general international law and others are based in "international instruments of universal or quasi-universal character".[458] Therefore, the Court accepts the concept of *basic* human rights and even names the sources where it can be found in international law, namely: (a) general international law, (b) international instruments of universal character, and (c) international instruments of quasi-universal character.

At least 8 States include the property clause in the chapters under the title "bill of rights", name it "principle human rights" or "personal rights", for example, the Marshall Islands, the Philippines, South Africa, etc. A rather exceptional place for the property clause is found in Cameroon's constitution. It is established in the preamble of the constitution. However, the text of the preamble and explicit references to the international human rights instruments make it clear that the right to property is treated as a human right.

A small number of States place the right to property under the chapters dedicated to the structure or main principles of the society, for example, "economic principles"[459], "basic principles"[460], "the basic foundations of Kuwaiti society"[461], "principles and basis of the political, economic and social system"[462], "basic constituents of the society"[463], "general principles"[464] etc.

In some constitutions the element of "duties" is equally stressed, for example, "rights and duties of citizens"[465], "fundamental rights and the duties of the citizens"[466], "rights and duties of the people"[467], "rights, freedoms, and basic duties of man and citizen"[468], etc.

In conclusion, according to the data presented in the annex, the vast majority of

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454 Haiti

455 North Macedonia (Republic of)

456 Slovakia

457 Tanzania

458 ICJ, Barcelona Traction, Judgement (1970), para. 34

459 Saudi Arabia

460 Myanmar

461 Kuwait

462 Guyana

463 Bahrain

464 China

465 Korea (Democratic People's Republic of)

466 Somalia

467 Taiwan

468 Tajikistan

the 191 States is of the position that the right to property is a human right. Moreover, at least 50% of all these States treat the right to property in their constitutions as a fundamental (or basic) human right. This characteristic is rather important as it demonstrates the position of the States that the right to property is one of the most important human rights. Moreover, allegedly it could have legal implications, if this domestic law is transposable to international law (this aspect of transposability is examined in the following part of the thesis). The ICJ noted that obligations *erga omnes* derive "… from the principles and rules concerning the *basic* (emphasis added) rights of human person"[469]. Consequently, if the right to property amounted to a fundamental or basic human right under international law, it would mean that obligations *erga omnes* derive from this right. A constitution is the foundation of a State's political, legal, and economic system. It is not just one speech of an official of a State or one action of a representative of a State or one court decision (although technically it would be sufficient when looking for evidence of one State to support that State's practice or *opinio juris*). Therefore, national positions established in constitutions around the world is a weighty argument. According to at least 50% of the States, the right to property is a fundamental (or basic) right of a human under their domestic law systems.

To continue, the formulations of the right to property vary. In some constitutions the highlight is on the right itself, while in other constitutions the understanding of property as a thing is dominating. For example, "The right to own or to hold property is inviolable."[470], "Everyone has the right to own, use and dispose of his or her property, and the results of his or her intellectual and creative activity. The right of private property is acquired by the procedure determined by law."[471], "The right of private ownership shall be inviolable"[472], "The right of property shall be inviolable"[473], "The right of property is guaranteed."[474], "The right to private property and inheritance is recognized."[475], "Every person has a right to own property either individually or in association with others."[476], "Everyone has the right to own and inherit property"[477]. These provisions suggest that the right itself is a value protected by law. The constitutions mentioned above emphasize the importance of the special relation between a person and a thing. Moreover, constitutional provisions guarantee that nobody has a right to ruin this relation and should respect it. They give the impression that the value of the thing is not of the primary importance. Rather, the most important point

469 ICJ, Barcelona Traction, Judgement (1970), para. 34

470 Japan

471 Ukraine

472 Iceland

473 Denmark

474 Venezuela

475 Spain

476 Uganda

477 Turkey

is respect for the right as such, the necessity to obey the law of the society. Meanwhile in other constitutions the accent is on the property as a thing. "Property shall be inviolable"[478], "Citizens' lawful private property is inviolable."[479], "There shall be no violation of the property of a person."[480], "Property is under the protection of the State"[481], "Private property is protected."[482]. Such expressions appear to be more concerned with the property as an item, as a thing. They give the impression that the primary goal is to protect the thing from damage and general reduction in value. Therefore, the emphasis is on the protection of economic value, not on human rights as such.

In the following part the author of the thesis discusses these aspects of the right to property provisions: (a) the subjects to which the right to property is proclaimed; (b) the objects of the right to property; (c) the source of the right to property.

(a) In some provisions emphasis is put on "citizens" as the right holders, not on human beings in general. One group of constitutions (at least 23 constitutions from the list in the annex) guarantees the right to property only to citizens, for example, "the right of property of all citizens shall be guaranteed."[483], "Every Ethiopian citizen has the right to the ownership of private property."[484], "Every citizen has the right to own personal property[485], "Citizens of the Republic of Kazakhstan may privately own any legally acquired property."[486], "Private property is property owned and consumed by individual citizen"[487], "Citizens' lawful private property is inviolable"[488]. It seems that in these constitutions stress is put on the States' obligation to protect their citizens but not all the people under their jurisdiction. From constitutional perspective it is a traditional approach and usual practice as a sovereign State is a political unity connecting all the population, but primarily its own citizens. However, from the perspective of natural law a human right (and especially fundamental) is a right which belongs to a person despite his or her nationality. Moreover, it is well established in international law that stateless persons also have basic human rights just because they are humans. Yet, the analysis shows the existing incongruity: on the one hand, the States declare the right to property as a fundamental human right in their constitutions, on the other hand, on the same constitutional level the

478 Lithuania

479 China

480 Israel

481 Greece

482 United Arab Emirates

483 Republic of Korea

484 Ethiopia

485 Guyana

486 Kazakhstan

487 Korea (Democratic People's Republic of)

488 China

States narrow the circle of subjects (or possible right holders) to their citizens exclusively. Another group of constitutions guarantees the right to property to all ("everyone", "a person"[489], "every person"[490], or the subject is not determined like in the provision "The right to property is guaranteed."[491]), but property clauses make limitations on the basis of citizenship, for example, "certain items of property may be owned exclusively by citizens or legal persons with their headquarters in the Czech and Slovak Federal Republic"[492], "Classes of property which, in the public interest, may be acquired in Estonia only by Estonian citizens (...) may be provided by law"[493], "...Parliament may by legislation prohibit or regulate as it deems expedient the right to acquire property by persons who are not Namibian citizens"[494], "Only national citizens have the right to ownership of land"[495]. The Armenian constitution expressly names that stateless persons are treated the same as foreign nationals: "Foreign citizens and stateless persons shall not enjoy property right on land, except for cases stipulated by law"[496]. Such references to stateless persons are found only in two constitutions – Armenian and Romanian. The most extreme example of limitation could be a provision, stating that none of the property rights given to citizens apply to non-citizens: "Nothing in the proceeding provisions (...) applies to or in relation to the property of any person who is not a citizen (...), the property of any such person shall be as provided for by an Act of the Parliament."[497] Of course, all States have a right to choose how to treat their citizens' and non-citizens' right to property. However, if a State is a party to a certain regional human right treaty or universal human right treaty which requires to treat the right to property equally towards the persons despite their citizenship, it is an axiom of international law that such international obligation would prevail over domestic constitution. For example, as it was discussed by the author of the thesis in the previous subchapter on the right to property in the international conventions, if a State is a party to CERD, according to the CERD Committee's suggested interpretation of "national origin", citizens' and non-citizens' rights should be treated equally. This would mean that citizens' and non-citizens' right to property should be treated equally in the same jurisdiction (as well as other human rights in Art. 5 of CERD). Otherwise, it would amount to discrimination on

489 Eswatini

490 Estonia

491 Kosovo

492 Czech Republic

493 Estonia

494 Namibia

495 Timor-Leste

496 Armenia

497 Papua New Guinea

the basis of citizenship, thus a violation of CERD. Consequently, it is the duty of a State to ensure that its constitutional provisions comply with international obligations.

(b) States choose various formulations regarding the objects of the right to property. The most popular expression is an abstract one, without reference to any particular objects. For example, "Everyone shall have the right to own property."[498], "The right to property is guaranteed by the law"[499], "Everyone shall have the right to property."[500], "The right to own property is guaranteed."[501], "Property shall be inviolable. The rights of ownership shall be protected by law."[502], "The right to own or to hold property is inviolable."[503]. This allows to conclude that in most of the States the object of the right to property is understood broadly. A small number of States which choose to name concrete objects frequently mention "land". However, this word is used to describe the limitations of the right to property for non-citizens: "A Bhutanese citizen shall have the right to own property, but shall not have the right to sell or transfer land or any immovable property to a person who is not a citizen of Bhutan, except in keeping with laws enacted by Parliament."[504], "Only natural and legal persons or legal entities of Khmer nationality shall have the rights to own land"[505], "As a resource of special importance, agricultural land may be owned only by the State, a self-governing unit, a citizen of Georgia or an association of citizens of Georgia."[506], "Only national citizens have the right to ownership of land"[507]. In some rare cases the word "land" is also used to claim that an individual does not have a right to own land: "All land and natural resources below and above the surface of the territory of Eritrea belongs to the State."[508], "The Union: a) is the ultimate owner of all lands and all natural resources (...)."[509]. Mexico holds that private property of land is a privilege: "The property of all land and water within national territory is originally owned by the Nation, who has the right to transfer this ownership to particulars. Hence, private property is a privilege created by the Nation."[510].

498 Uzbekistan

499 Togo

500 Syrian Arab Republic

501 Switzerland

502 Lithuania

503 Japan

504 Bhutan

505 Cambodia

506 Georgia

507 Timor-Leste

508 Eritrea

509 Myanmar

510 Mexico

(c) Another popular type of property explicitly mentioned in the constitutions is intellectual rights. At least 38 constitutions refer to intellectual rights. Most of them use broad expressions, such as "The State (...) guarantees the right of intellectual property"[511], others are quite concrete: "The Union: (...) c. shall permit citizens (...) right of private initiative and patent in accord with the law"[512]. The third option is to include the term "intellectual property" in the definition of property: "*property* means all type of movable and immovable property and the word also includes intellectual property."[513]. Chile and Zimbabwe explicitly mention "pension" as an object over which a person has ownership.

What is more, when proclaiming the right to property, some states simply use the word "property", while others add the adjective – "private property". At least 28 constitutions use the term "private property". For example, Guyana even lists possible objects of private property: "Every citizen has the right to own personal property which includes such assets as dwelling houses and the land on which they stand, farmsteads, tools and equipment, motor vehicles and bank accounts"[514]. The Democratic People's Republic of Korea adds a characteristic "consumable": "Private property is property owned and consumed by individual citizen. (...) The products of individual sideline activities including those from kitchen gardens, as well as income from other legal economic activities shall also be private property."[515]. Cuba's pronouncement is as follows: "The following are recognized as forms of property: (...) Personal property: that which is exercised over one's belongings that, without constituting means of production, contribute to the satisfaction of the material and spiritual necessities of their owner."[516] Having in mind that the constitution, which is the most fundamental document on the national level, contains formulations describing such things as "products from kitchen gardens", "tools" or "motor vehicles", it seems that these States adopt a narrow understanding of a person's right to property. However, the analysis of the 191 constitutions confirms that such approach is an exception, rather than a general rule.

The source of the right to property can be identified from the formulation of the constitutional provisions. A rare example is the one which refers to what is traditionally understood as classical natural law: "since it appears to be the will of God (...) all men may use their lives and persons and time to acquire and possess property (...)"[517], i.e. the source is "a will of God". However, the author of

511 Madagascar

512 Myanmar

513 Nepal

514 Guyana

515 Korea (Democratic People's Republic of)

516 Cuba

517 Tonga

the thesis highlights that the contemporary natural law differs from the classical one and does not suggest that the transcendental element of natural law is God. The author presents a detailed explanation of this point in Part II of the thesis. Other constitutional provisions on the right to property are easily divided into two groups: constitutions which explicitly say that the State is a giver and protector of the right to property and constitutions which proclaim that a human inherently has a right to property. Traditionally, the former follow the positivistic approach and the latter reflect the influence of natural law. These are some examples illustrating the legal positivism: "The right of property is guaranteed by this Constitution."[518], "The Republic of Poland shall protect ownership and the right of succession."[519], "The Republic of Guinea-Bissau recognizes the following property titles:(...) c. Private property, which may be established over goods that do not belong to the State"[520], "The State recognizes and guarantees the right to property in all of its forms (...)"[521]. These examples suggest that the right to property is an inherent human right: "Everyone has the right to own property."[522], "Everyone has the right to property"[523] "Every person has the right to property."[524], "Everyone shall have the right to property and inheritance"[525], "Every person has the right to own property either alone or in association with others."[526]. To sum up, the positivistic way of formulation reflecting the position that the State is a sovereign which gives the right to property to a person or protects the private property is a dominant one.

Finally, the author of the thesis shall enlist the most frequently used elements of the right to property in the constitutional provisions. The most common provision relating to the right to property in all the constitutions is the prohibition of expropriation. It is established in at least 119 constitutions. Most of the constitutions list the same exceptions when expropriation is possible: according to the established law (as an example, Thailand's constitution), for public purposes (as an example, Timor-Leste's constitution), and when compensation is provided (as an example, Sweden's constitution). Therefore, the prohibition of expropriation (with given exceptions) is a general principle of law which exists in most States.

59 States in the list explicitly recognize the right to inheritance in their constitutions, which also suggests that this is a well-established general principle of law around

518 Senegal

519 Poland

520 Guinea-Bissau

521 Ecuador

522 Latvia, Czech Republic

523 Azerbaijan

524 Burundi

525 Hungary

526 Ghana

the globe. At least 43 States use the expression "right to own" in their constitutions and 36 States explicitly acknowledge intellectual property provisions. Yet, the provisions on intellectual property are not always under the same chapter as the general right to property. For example, in Yemen's constitution the protection of private ownership is established under the section "economic foundations" while the protection of intellectual property is under the section "social and cultural foundations". However, such approach is an exception characteristic to a minority of constitutions in which the right to property is not proclaimed as a human right rather than a general tendency among the world's constitutions.

Other popular elements enlisted in the constitutions are the right to transfer property (pronounced by 24 constitutions), the right to enjoy property (mentioned in at least 44 constitutions), the right to dispose of property (included in 23 constitutions), and the expression "right to use" (chosen in at least 10 constitutions). To sum up, almost all the constitutions mentioned the right to own, to transfer, to inherit and the protection from expropriation are the most popular expressions in property clauses found in the constitutions around the world in the domestic jurisdictions.

Step three. After examining the context, the formulations, and the elements of the right to property as a human right in constitutions, the author of the thesis has drawn the following conclusions. First, 185 States out of 191 acknowledge in their constitutions that the right to property for a private individual exists. Second, more than half of the 191 include sovereign's position that the right to property is a basic (fundamental) human right under domestic law. Third, the formulations of the provisions confirm that the majority of States support the idea that the source of the right to property is found in a sovereign will rather than in the realm of natural law. Forth, the analysis of the subjects shows that States tend to choose one of the two dominant approaches: to grant the right to everyone or just to its own citizens. Fifth, the general tendency regarding the object of the right to property is to treat it broadly, without listing things which should be considered property. Sixth, the most frequently mentioned element of the right to property is prohibition of expropriation. In addition, the right to inherit, to enjoy, to own, and to transfer property as well as the right to intellectual property are among the most popular elements of the right to property established in domestic constitutions and could be claimed to amount to a general principle of law.

3. Application of "(b)Its transposition to the international legal system"

Turning to the (b) **second requirement**, the transposition of the right to property from national legal systems to international law must be shown to make a conclusion that the right to property as a human right is indeed a principle in international law. The ILC formulated this requirement in draft conclusion 6: "A principle common to the various legal systems of the world may be transposed to the international legal system insofar as it is compatible with that system."[527] It is submitted that the expression

527 Conclusion 6, Report on the work of the 74th session (2023), A/78/10, p. 20, para. 40

"*may be*" means that the transposition is not automatic[528]. Thus, merely identifying the existence of a principle in national systems is not enough. It must be shown that this principle is compatible with the unique characteristics of the international law system: "The rationale that underlies this compatibility test is that the international legal system and national legal systems have distinct structures and characteristics that should not be overlooked. Principles that may be common to the various legal systems of the world, adopted first and foremost to meet the needs of particular society and to apply within a specific legal system, are not necessarily capable of operating at the international level due to those differences."[529] The concern of the ILC is well understandable. However, the Commission does not provide the practical step by step methodology of measuring the possibility of transposition. The author of the thesis discusses three points for some clarity.

First, "no formal act of transposition is required for a general principle of law to emerge"[530]. In other words, generally and in the case at hand there is no need to prove the fact that the right to property as a human right has already been transposed from national systems of law to international law. Only a mere possibility of transposition of this principle can generally be inferred, i.e., deduced from reasoning that it is compatible with the structure and characteristics of international law. Thus, there is no need for empirical investigation, but rather for legal assessment. Denmark, Finland, Iceland, Norway, and Sweden explicitly agree with this understanding[531]. Nevertheless, not all States uphold this ILC's proposition. For example, the USA is of "the view that some objective indication that States consider a principle to be transposed to the international legal system is required before it may be considered a general principle of law"[532]. To continue, the United Kingdom holds up the USA's position by stating that it is not persuaded "that recognition is implicit when the compatibility test is fulfilled, as suggested in the draft commentary"[533]. To sum up, at this stage two opposing views regarding the requirement of transposition appear. On the one hand, the suggestion is that the mere compatibility test is enough, and the recognition by States could be implied[534]. On the other hand, the recognition by States of a general principle as existing

528 Commentary to Conclusion 6 (para. 2), Report on the work of the 74th session (2023), A/78/10, p. 21

529 Commentary to Conclusion 6 (para. 3), Report on the work of the 74th session (2023), A/78/10, p. 21

530 Commentary to Conclusion 6 (para. 7), Report on the work of the 74th session (2023), A/78/10, p. 22

531 Comments and observations submitted by the Nordic countries (Denmark, Finland, Iceland, Norway and Sweden), 01.12.2024, para. 16, https://legal.un.org/ilc/sessions/76/pdfs/english/gpl_nordic.pdf

532 Submission from the United States to the International law Commission on the draft conclusions on general principles of law and commentaries adopted on first reading, December 17, 2024, p. 4, https://legal.un.org/ilc/sessions/76/pdfs/english/gpl_us.pdf

533 Comments and observations of the United Kingdom of Great Britain and Northern Ireland on the draft conclusions on general principles of law, 1st December 2024, para. 18, https://legal.un.org/ilc/sessions/76/pdfs/english/gpl_uk.pdf

534 Explicit proposition by ILC, admission of the position by Denmark, Finland, Iceland, Norway, Sweden. Also, a number of States were silent on this concrete conclusion while opposing other conclusions, which implicit the admission: Poland, Singapore, Brazil, Israel, Czech Republic.

in international law is necessary in all the cases[535]. The USA explained that such recognition can be seen from the facts that the States invoke a particular general principle before international courts or other international bodies[536].

As the work on the question of general principles is still in progress in 2025, the current understanding on the content of what a general principle in international law is and how to determine the existence of such a principle is in transition. The author of the thesis contends that for the purposes of the current exercise, i.e., to determine whether the right to property as a human right is a general principle in international law as it stands today, the most objective solution from a scientific perspective would be to examine both views regarding the requirement of transposition.

To start with the current position provided by the ILC, the legal assessment of transposition should be made whether the right to property as a human right does not contradict the structure and main characteristics of international law as it stands today. At least two questions arise: who can be the authoritative assessor and what is the exact test? The ILC's conclusions and commentary is silent on these points, but the Second Report on General Principles of Law by Special Rapporteur Marcelo Vazquez-Bermudez is helpful on the question of an applicable test. He concludes that "transposition of a principle *in foro domestico* to the international legal system occurs if: (a) the principle is compatible with fundamental principles of international law; and (b) the conditions exist for the adequate application of the principle in the international legal system"[537].

The first condition was addressed by States and elaborated on by international tribunals in several cases[538]. To sum up the jurisprudence, the fundamental principles of international law are the principle of sovereignty, the notion of territorial sovereignty, the principles set out in Friendly Relations Declaration and "principles on which, in the international legal system, the positive law regulating the matter is based"[539]. It is hard to imagine hypothetical situations where the right to property proclaimed in the 1948 UN Universal Declaration on Human Rights could be incompatible with the

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535 Position expressed by the USA and the UK

536 Submission from the United States to the International law Commission on the draft conclusions on general principles of law and commentaries adopted on first reading, December 17, 2024, p. 4, https://legal.un.org/ilc/sessions/76/pdfs/english/gpl_us.pdf

537 Second Report on General principles of Law, 2020, para. 74, https://digitallibrary.un.org/record/3868897?ln=en&v=pdf

538 *Right of passage over Indian Territory* (Portugal v. India), ICJ, Counter-Memorial of the Government of India, para. 300; *North Atlantic Coast Fisheries case* (Great Britain, United States), Award 7 September 1910, UNRIAA, vol XI,pp.167-226, at p. 182; *Certain Phosphate Lands in Nauru* (Nauru v. Australia), ICJ, 1993 Counter-Memorial of the Government of Australia, para. 292-293; Separate Opinion of Judge Shahabuddenn, p. 285; North Sea Continental Shelf (Federal Republic of Germany/ Netherlands), ICJ, 1967 Memorial submitted by the Government of the Federal Republic of Germany, para. 30; *Questions relating to the Seizure and Detention of certain Documents and Data* (Timor-Leste v. Australia), 2014 Memorial of Timor-Leste, para. 6.2-6.4;

539 North Sea Continental Shelf case, ICJ, Denmark and Netherlands words, from Second Report on General principles of Law, 2020, para. 83, https://digitallibrary.un.org/record/3868897?ln=en&v=pdf

aforementioned fundamental principles. Of course, there might be clashes between the right to property as a human right and other rights or obligations under international law, but mere legal collisions of norms do not amount to the contradiction with the structure or characteristics of international law as such. Legal collisions are resolved with the help of the existing conflict resolution rules and do not amount to incompatibility with fundamental principles of international law. Thus, the author contends that the right to property as a human right is compatible with fundamental principles of international law.

The second condition means that a general principle found in various national legal systems of the world should be "applicable to relations of states"[540], and in no case legal principles of national systems can be blindly copied and applied in international law[541]. Therefore, if the right to property exists in national laws it cannot be directly applied in international law without assessment. For example, in the *Questions relating to the Seizure and Detention of certain Documents and Data* case Timor-Leste in its Application claimed "that the seizure by Australia of the documents and data violated (...) its property rights"[542], to which Australia contended that there is no such general principle of immunity or inviolability of State (...) property, and therefore the rights asserted by Timor-Leste are not plausible"[543]. This clash of legal positions illustrates the situation when there is no doubt that legal or natural persons' property is protected from expropriation or a State is an owner of various property under domestic law systems, but it does not automatically mean that inviolability of the State property is an existing legal right under international law[544]. According to the Special Rapporteur, the evidence confirming transposition are international instruments, in particular treaties[545]. The right to property as a human right is entrenched in a number of treaties (the list was provided in the previous chapter) and is constantly applied by international courts and tribunals; therefore, the author of the thesis submits that the requirement is fulfilled and, indeed, the provisions on the right to property (both as a human right and as the right of an individual) are applicable to the relations of states.

For the sake of consistency, the reflection on the positions of the UK and USA proposing the additional criterion is desirable. They advocate for the *explicit recognition by states* that a particular principle can be transposed into international law. If we were to admit this as the third criterion, according to the USA the proofs should be sufficient, if states invoke such a general principle before international courts and

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540 Oppenheim's International Law, 9th edition, p. 37

541 Second Report on General principles of Law, 2020, para. 96, https://digitallibrary.un.org/record/3868897?ln=en&v=pdf

542 ICJ Order of 3 March 2014, para. 2 https://www.icj-cij.org/sites/default/files/case-related/156/156-20140303-ORD-01-00-EN.pdf

543 ICJ Order of 3 March 2014, para. 25 https://www.icj-cij.org/sites/default/files/case-related/156/156-20140303-ORD-01-00-EN.pdf

544 Peter Tzeng, The State's Right to Property Under International Law, Yale Law Journal, p. 1806

545 Second Report on General principles of Law, 2020, para. 97, https://digitallibrary.un.org/record/3868897?ln=en&v=pdf

other international bodies. In the case of the right to property as a human right (or individual right) the practice is rich, thus it is an easy exercise. There are several states which invoke the right to property before the ICJ (for example, Qatar[546], Guinea[547]), not to mention plenty of cases before regional human right courts and international organizations dealing with the protection of this right. Consequently, in the case of the right to property as a human right even this additional criterion would be satisfied.

Second, there is a degree of flexibility in the criterion of transposition: "if only part of that principle is compatible with international legal system, it may be transposed to that extent only"[548]. Consequently, principles applied in national systems and international law do not necessarily have the same content. In the case of the right to property as a human right it is understandable that domestic systems address it in a more detailed way and vary from each other. However, there is a common denominator regarding this principle on the international level.

Third, concrete cases are presented by the Commission in the commentary, which allows to draw some useful and practically applicable conclusions. For example, the ILC analyzes the right of access to courts as widely accepted in various national law systems, but not transferable to the international law system[549]. It is worth examining this example because it reveals the possible obstacles to determining the criteria of transposition in general and in the case of the right to property as a human right. The ILC draws the following conclusion: although the right of access to courts would satisfy the first criteria found in Conclusion 4, it does not satisfy the second criteria of transposition, therefore, the right of access to courts is not a general principle under international law. To put it in words of the ILC:

"Such a right cannot be transposed to international courts and tribunals because it would be incompatible with the fundamental principle of consent to jurisdiction in international law, which underlies the structure and functioning of international courts and tribunals. Transposition of the right of access to courts would not only result in a direct contravention of the principle of consent to jurisdiction – that right would also be incapable of operating at the international level due to the absence of conditions for its application, i.e. a judicial body with universal and compulsory jurisdiction to settle disputes."[550]

However, it is worth reminding that only one year earlier, in 2022, the ILC in its "Conclusions on identification and legal consequences of peremptory norms of general international law (*jus cogens*)" have cited decisions of international tribunals as the good examples of subsidiary means for the determination of the peremptory character of norms of general international law that the same *right of access to courts* is a *jus*

546 ICJ, Application of the International Convention of the Elimination of All Forms of Racial Discrimination, Judgement (2021), para. 21, citing para. 65 (b).

547 ICJ, Diallo case, pp. 29-31, https://www.icj-cij.org/sites/default/files/case-related/103/7175.pdf

548 Commentary to Conclusion 6 (para. 6), Report on the work of the 74th session (2023), A/78/10, p. 22

549 Commentary to Conclusion 6 (para. 5), Report on the work of the 74th session (2023), A/78/10, p. 21

550 Commentary to Conclusion 6 (para. 5), Report on the work of the 74th session (2023), A/78/10, p. 21

cogens[551]. To quote precisely:

"The Special Tribunal for Lebanon, in *El Sayed*, determined that the right of access to justice has "acquired the status of a peremptory norms (*jus cogens*)" based on, *inter alia*, jurisprudence of both national and international courts. The decision in El Sayed provides a particularly apt illustration of the manner in which decisions of international courts and tribunals can be subsidiary means for the identification of peremptory norms of general international law (*jus cogens*). There, the Tribunal, in the judgement written by its then-President, Antonio Cassese, relied on various forms of evidence, including evidence listed in draft conclusion 8, to come to the conclusion that, taken as a whole, the evidence suggested that there was an acceptance and recognition of the peremptory character of the *right of access to courts* (emphasis added). The decision then refers to the decision in the case of *Goiburu*, et al. *v. Paraguay*, in which the Inter-American Court of Human Rights determined that the *right of access to courts* (emphasis added) is a peremptory norm of general international law (*jus cogens*), in order to give context to the primary evidence relied upon and to solidity that evidence."[552]

There is a huge contradiction between these two quotes of the ILC on the same right of access to courts and its status in general international law: from a peremptory norm of general international law in 2022 to a principle found in national legal systems which does not amount to general principle in international law because it does not satisfy the criteria of transposition in 2023. How might these incongruities be explained and, more importantly, applied in practice when trying to identify a general principle of law deriving from national legal systems?

One possibility is to think that human rights law and general international law are two separate systems, therefore, different principles are applicable. It could be argued that in the 2023 commentary the ILC examines the right of access to courts as a general right of all the subjects of international law. It is well known that states are considered as the primary subjects of international law, and it is true that the principle of consent to jurisdiction does not give a state (or an international organization) the right of access to courts, as the consent of the other party to the dispute is also necessary. Thus, a conclusion that this principle is not transposable from national law systems to international law because of its "distinct structures and characteristics" might seem logical. On the other hand, the two cases cited by the ILC are related to human rights, thus, theoretically, the conclusion could be made that the right of access to courts is a peremptory norm only in the context of human rights law. (Of course, it would raise other questions, such as whether it is possible to have a peremptory norm

551 Commentary to Conclusion 9 (para. 3), Draft Conclusions on identification and legal consequences of peremptory norms of general international law (jus cogens), Adopted in 73rd session, 2022, A/77/10, p. 44

552 Commentary to Conclusion 9 (para. 3), Draft Conclusions on identification and legal consequences of peremptory norms of general international law (jus cogens), Adopted in 73rd session, 2022, A/77/10, p. 44

only in a certain field of international law, but not in general international law, and the answer from the position of international law as it stands today would likely be – no.) However, if one follows the quote carefully, it says explicitly that "the right of access to courts is a peremptory norm of *general international law*" (emphasis added), not of human rights law. So, this hypothetical argument fails.

The other possibility is that the ILC has been too quick or not attentive enough to make a generalization that the right of *access to justice* is the same as the right of *access to courts*. If one reads the just cited two cases – *El Sayed*[553] and *Goiburu*, et al. *v. Paraguay*[554] – one will notice that both are silent on a right of access *to courts*. Such a right was never mentioned in these decisions. In both cases the international judges were dealing with the right of *access to justice* as a possible peremptory norm. Arguably, the right of access to courts is part of the wider right of access to justice under national laws. Yet, if the former one is deduced from the national principle of the doctrine of the separation of powers, the latter one refers to a universal principle of justice. Accordingly, principles which are based on the national principle of the doctrine of the separation of powers (or other doctrines which are created for national law systems) are not necessarily transposable to international law as they might contradict its structure and fundamental features. Hence, the author of the thesis states that the right of access to courts does not fulfill the transposability criteria, therefore is not a general principle of law under international law. Even more, it goes without saying that the author of the thesis objects to the position of the ILC expressed in the commentary that the right of access to courts can be considered as an example of *jus cogens*[555]. However, the principle of the right of access to justice is a universal principle of justice and is compatible with the structure and fundamental principles of international law, therefore, it is transposable and can be regarded as a general principle of international law.

To sum up this example, a general rule can be educed that a broader principle can be transposable to international law although a narrower principle (being part of the wider one in national legal system) can contradict its structure and fundamental features and thus does not constitute a general principle of law under international law. Moreover, the identification of the source of the principle is helpful when examining the transposability criterion. If the source is national doctrine (for example, the separation of powers, the hierarchy of legal authority, etc.), the principles evolving from it most likely would contradict the structure and fundamental principles of international law as the international law has its own distinguishable features.

This general rule is applicable when evaluating the transposability criterion in the case of the right to property as a human right. The completed analysis of the

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553 El Sayed, https://www.worldcourts.com/stl/eng/decisions/2010.04.15_In_the_Matter_of_El_Sayed.pdf, para. 29

554 *Goiburu*, et al. *v. Paraguay,* https://www.corteidh.or.cr/docs/casos/articulos/seriec_153_ing.pdf,

555 Commentary to Conclusion 9 (para. 3), Draft Conclusions on identification and legal consequences of peremptory norms of general international law (jus cogens), Adopted in 73rd session, 2022, A/77/10, p. 44

constitutional provisions on the right to property and their transposability leads to further conclusions. The author of the thesis contends that the right to property as a human right in its broadest sense is a general principle of law under international law.

4. Interim Conclusions

1. The right to property as a human right is a general principle of law under international law as it satisfies both requirements: first, it exists in the vast majority of the States around the globe as it was proved by the analysis of property clauses of 185 constitutions; and, second, it is transposable to international law as it does not contradict the fundamental principles of international law and is recognized by States before international courts.
2. As confirmed by the analysis of the constitutions, the right to property is a fundamental (or basic) human right according to the 50% of the States around the world. If one follows the ICJ's pronouncement in the *Barcelona Traction* case that obligations *erga omnes* derive from basic human rights, the conclusion would be that obligations *erga omnes* derive from the right to property as a human right (as a general principle of law under international law).

E. Non-legally Binding International Agreements

In this part of the thesis the existence of the right to property in the non-legally binding international agreements is examined. The author of the thesis sees the necessity to include this source of international law in the current research at least for two reasons. First, because the amount of such instruments keeps growing every year, "the non-legally binding international agreements are a significant feature of contemporary international relations"[556] to put in in Mathias Forteau words. Second, this phenomenon raises practical everyday problems and dilemmas for practitioners all over the world. The rising importance of the source in practice is undisputed. Various attempts to work on the question confirms its importance. For example, historically, the Institute of International Law was the first one to address this topic, although in a broader scope. The work was conducted between 1976 and 1983 and resulted in document under the title "International texts of legal import in the mutual relations between their authors and texts devoid of such import"[557]. Then the Inter-American Juridical Committee worked on the topic between 2016 and 2020 and adopted the guidelines

556 Para.2, p.3, First Report on non-legally binding international agreements, UN ILC, 21 June 2024, A/CN.4/772

557 Para.56, p.21, First Report on non-legally binding international agreements, UN ILC, 21 June 2024, A/CN.4/772
21 June 2024, UN ILC, A/CN.4/772

for binding and non-binding agreements[558]. To continue, the Committee of Legal Advisers on Public International Law (CAHDI) started its work on 2021 on non-legally binding agreements in international law[559]. The work is still on-going. Finally, UN International Law Commission addressed the question of non-legally binding agreements in different contexts. The ILC decided on the 4 th of August 2023 to include the topic of non-legally binding international agreements in its programme of work[560].

The list of conventional sources of international law reflected in art.38 of the ICJ Statute is 80 years old. During these years the number of subjects of international law (especially, international organizations) increased significantly. Consequently, various legal instruments have been created by States and International Organizations and continue to appear in the international relations. Therefore, in practice there are legal instruments which cannot be easily classified under the art.38 as it has been understood in 1945. The question of changeability of the content of art.38 was mentioned by the author of the thesis in previous work[561].

To evaluate the possible legal effect of the right to property found in the international legal instruments other than the three legally binding sources of international law, the following steps are taken. *Firstly*, the first and the second reports on non-legally binding international agreements presented by Special Rapporteur Mathias Forteau in 2024[562] and 2025 are considered to define what is a non-legally binding international agreement and what is its difference from the treaty. *Secondly*, the three examples containing provisions on right to property are discussed. *Thirdly*, the interim conclusions presented.

1. Novelty of a Non-legally Binding International Agreement as a Source

The novelty of non-legally binding international agreements as a source of international law lies in their recognition by the International Law Commission as instruments capable of influencing state practice and the formation of customary international law, despite lacking formal legal enforceability. The ILC has emphasized that such instruments can serve as evidence of *opinio juris* and, over time, contribute to the crystallization of binding rules, highlighting their growing significance in the development of international legal norms.

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558 Para.61, p.25, First Report on non-legally binding international agreements, UN ILC, 21 June 2024, A/CN.4/772

559 Para.69, p.28, First Report on non-legally binding international agreements, UN ILC, 21 June 2024, A/CN.4/772

560 Para.8, p.4, First Report on non-legally binding international agreements, UN ILC, 21 June 2024, A/CN.4/772

561 "COVID-19 pandemijos iššūkis PSO valstybėms narėms: 2005 m. Tarptautinės sveikatos priežiūros taisyklės", co-authors Motuzienė Inga and Katuoka Saulius in "Law and COVID-19 Pandemic", 2022, MRU p.543-544; Also see Jennings, R.; Watts, A. *Oppenheim's International Law*. Volume I, Ninth Edition, New York: Longman, 1996, p. 46.

562 21 June 2024, UN ILC, A/CN.4/772

2. The Right to Property in the Non-legally Binding International Agreements

Two different documents addressing the issues of a right to property and falling under this category of sources are mentiones. **First**, the 1948 UN Universal Declaration of Human Rights. **Second**, ASEAN Human Rights Declaration.

1948 Universal Declaration of Human Rights

In 1948 the UN Universal Declaration of Human Rights among other fundamental human rights acknowledged the right to own property[563]. Although it is called a "milestone document in the history of human rights"[564], it is not a legally binding document. The 1948 Declaration as well as many other documents (political agreements, legal instruments international arrangements and so on) in the international relations between States and International Organizations fall under the category so called "grey area", therefore their precise legal value is the object of the discussion. In order to evaluate the legal effect of this Declaration from the contemporary international law perspective, the first report on non-legally binding international agreements presented by Special Rapporteur Mathias Forteau in 2024[565] is considered.

ASEAN Human Rights Declaration

Association of Southeast Asian Nations (ASEAN) is an international organization, although it was not established by a legally binding treaty. Member of the ILC, Ms. Mangklatanakul explained during the ILC meeting, that ASEAN was established on the basis of the constituent instrument "which was not a legally binding treaty"[566]. Moreover, the 2012 ASEAN Human Rights Declaration is also not a treaty and falls under the category of non-legally binding international agreement. The 10 states which participate in the creation and announcement of the declaration are listed in the beginning: Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic, Malaysia, The Republic of the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand, and the Socialist Republic of Viet Nam[567]. They declare their commitment (to use the word proposed by various entities) in the preamble, stating "reaffirming further our commitment to the Universal Declaration of Human Rights…" and point out specifically the *political* acceptance of the right to property: "Every person has a right to

563 UN Universal Declaration on Human Rights, art.17

564 https://www.un.org/en/about-us/universal-declaration-of-human-rights

565 21 June 2024, UN ILC, A/CN.4/772

566 Para.52, p.19, First Report on non-legally binding international agreements, UN ILC, 21 June 2024, A/CN.4/772

567 https://www.fidh.org/IMG/pdf/ahrd_november_2012.pdf

own, use, dispose of and give that person's lawfully acquired possessions alone or in association with others. No person shall be arbitrarily deprived of such property."[568]

3. Interim Conclusions

1. The non-legally binding international agreement is a new source of international law proposed by the ILC, which examination in 2026 is still in process. It is not a legally binding source of international law.
2. The right to property is found in well-known legal instruments, which fall under the category of non-legally binding international agreement. Although these documents do not create legal obligations regarding the right to property, they demonstrate the political will and intention of the States internationally as well as regionally to accept the existence of such a right.

568 Para.17, https://www.fidh.org/IMG/pdf/ahrd_november_2012.pdf

PART II. THE RIGHT TO PROPERTY AS A HUMAN RIGHT UNDER INTERNATIONAL LAW: CONTEMPORARY NATURAL LAW

"Unless you can learn to look beyond the local dictates of what is right and what is wrong, you're not a complete human being. You're just a part of that particular social order."[569]

A. Contemporary Understanding of Natural Law and its Sources

The issue of sources of natural law is not as clear-cut as one might expect because a formal list of such sources has not been established. In positive law the distinction between the formal and the material sources of international law is well known. The former "…is the source from which the legal rule derives its legal validity, while the latter denotes the provenance of the substantive content of that rule. For example, the formal source of a particular rule may be custom, althought its material source may be found in a bilateral treaty concluded many years previously, or in some state's unilateral declaration"[570]. However, in natural law there is no such accepted list of sources. Therefore, before examining the right to property according to the sources of natural law it is necessary to take an additional step of identifying these sources. In the following thesis, the author analyzes **three** different suggestions regarding possible sources of natural law:

1. The sources of natural law put forward by **Maarten Bos** in "A Methodology of International Law". Bos dedicated his life to the study and development of international law. He worked at the United Nations Office of Legal Affairs, served as a Professor of International Law at Utrecht University for 26 years, and was an active member of the International Law Association as well as the President of the Dutch branch of this organization. His contention is that (i) the general principles of conduct and (ii) the principles of structure are the essence of natural law and could be named "principles of natural law"[571].
2. The sources of natural law proposed by an Australian legal philosopher and jurist **John Finnis**, who created the most comprehensive modern understanding of natural law. The sources according to Finnis are: (i) seven basic goods as objective values[572] and (ii) nine basic requirements of practical reasonableness[573].

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569 Joseph Campbell, Pathways to Bliss, (Joseph Campbell Foundation 2004), p.72

570 Oppenheim's International Law, Ed. Robert Jennings and Arthur Watts (9th edition), Volume I, Introduction and Part 1, 1996 Longman, p.23

571 Maarten Bos, *A Methodology of International Law*, North-Holland (Amsterdam-New York-Oxford), 1984, p. 34

572 John Finnis, *Natural Law and Natural Rights*, (OUP, 1980), p. 85-89

573 John Finnis, *Natural Law and Natural Rights*, (OUP, 1980), p. 100-127

3. The sources of natural law as suggested by an American professor of law at the University of Notre Dame Law School **Mary Ellen O'Connell** in "The Oxford Handbook on The Sources of International Law"[574]. O'Connell names three sources: (i) general principles inherent to legal systems; (ii) *jus cogens*; and (iii) the basis of legal authority to natural law.

The choice of these three authors and the order in which their ideas are examined is not a coincidence. Firstly, the author of the thesis analyzes Maarten Bos's holistic structural perspective on international law as a whole and explains how natural law and positive law interact together in this system. Then, the author of the thesis concentrates solely on natural law as a phenomenon the way it is seen by John Finnis. Finally, the author of the thesis investigates Mary Ellen O'Connell's contemporary proposal to supplement the understanding of natural law by adding the insights of aesthetic philosophy.

To sum up, in this part of the thesis the author examines these three suggestions on sources of natural law one after the other, looks for common denominators, and makes interim conclusions, which will serve as a tool for further investigation on the right to property as a human right from the perspective of contemporary natural law.

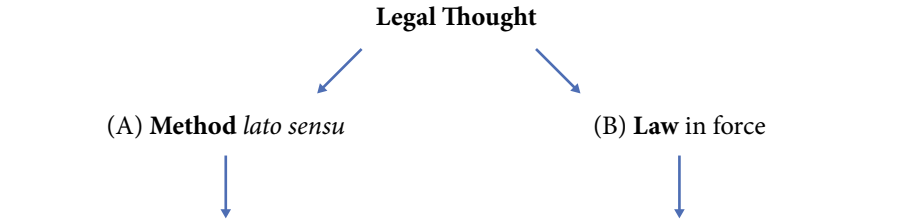
1. Natural Law in Maarten Bos's Theory on Methodology of International Law

According to M. Bos, natural law is understood as "any normative principle or rule which is "law" independently of human intervention"[575]. Based on this description, two characteristics of natural law emerge: first, the content of natural law can be found in certain principles or laws of nature, and second, these principles or laws of nature exist separately of human will or action. For an international lawyer, the main question is "where to look for these principles or laws of nature". Bos suggests a diagram which helps to explain not only the content of natural law but also its function in international law[576]:

574 Mary Ellen O'Connell and Caleb M. Day, *Sources and the Legality and Validity of International Law: Natural Law as Source of Extra-Positive Norms*, p. 562, Ed. Samantha Besson and Jean D'Aspremont, *The Oxford Handbook on the Sources of International Law*, (OUP), 2017

575 Maarten Bos, *A Methodology of International Law*, North-Holland (Amsterdam-New York-Oxford), 1984, p. 33

576 *Ibid*., p. 11



(1) general principles of conduct	(2) principles of structure	(3) Method *stricto sensu*
(i) necessary (ii) optional	(i) fixed (ii) variable	

(1) positive law	(2) general principles of law
(i) laid down in formal process (ii) generated in informal process	

According to M. Bos, there are two basic modes of expression of legal thought – Method *lato sensu* and Law in force[577]. He claims that "Law cannot exist without Method, and Method has an existence of its own"[578]. Method *lato sensu* and its subdivisions of general principles of conduct and principles of structure should be understood as natural law. Law in force and its subdivisions are currently existing international law or *lex lata*. Bos expresses his position on the relation between natural law and positivism: "positivism should be unacceptable to lawyers generally, whether national or international, inasmuch as it appears to be oblivious of Method as distinct of Law"[579]. He strongly disagrees that natural law is merely legal philosophy and perceives it as an indivisible methodological part of legal thought: "relegating natural law to legal philosophy, and scrapping positivism as an obsolete doctrine which even in its heyday and in the limited context of the national legal order was never correct, analytical conceptualism as a methodology intends to put forward a universally valid view of legal thought generally, and of international legal thought in particular, based on phenomenology not tainted by any specific creed of ideology. It should provide lawyers, and international lawyers especially, with a "language" in which to converse and to be understood. The importance of it in today's world can hardly be overestimated."[580]

In Bos's diagram, the part of the 'Law in force' corresponds to the three legally binding sources of international law: international conventions, international custom, and the general principles of law as recognized in Art. 38 (1) of the ICJ's Statute. He divides the 'Law in force' (*lex lata*) into two parts: (1) positive law and (2) general principles of law. Positive law is divided into two groups of rules based on the process

577 *Ibid*., p. 3

578 *Ibid*., p. 3

579 *Ibid*., p. 34

580 *Ibid*., p. 34-35

of their coming into existence. The group the author describes as 'laid down in formal process' is generally known as treaties, and the group he describes as 'generated in informal process' stands for customary law. General principles of law is a third binding source of international law.

Turning to the natural law (or Method *lato sensu*) sources, a closer examination of the author's proposition is needed. "Method *lato sensu* consists of three categories: the general principles of conduct, the principles of structure, and method *stricto sensu*"[581]. (1) The general principles of conduct are divided into two subcategories: (i) necessary and (ii) optional.

Necessary General Principles of Conduct

M. Bos proposes that there are four necessary general principles of conduct[582]:

- Everyone is born into a general legal order or, in other words, that no legal order of a general nature is optional to its subjects.
- No subject can be allowed to frustrate the law through an act of his own volition.
- *Pacta sunt servanda*.
- *Nemo plus iuris transferre potest quam ipse habet*.

The first principle reflects the inevitable situation which every human being faces. One has no possibility to choose a legal order. One is born and suddenly appears in certain legal order, with its history, requirements, and processes, although one never took part in shaping it. The idea of the principle is that there is no legal vacuum. For some reason every subject is a part of the existing system. To put it in Brierly's words: "We have seen how international law had its origin in natural law, that is to say, in the belief that nations must be bound to one another by law because it is a principle of nature that this world should be a system of order and not a chaos, and that therefore states, despite their independence, can be no exceptional to this universal rule"[583].

The second principle is closely related to the first one. It says that every legal subject should obey the general laws, and no one is allowed to modify any obligations under these laws unilaterally. This principle is illustrated by the ICJ in *North Sea Continental Shelf Case* when explaining the duties of the States. The Court stated that general or customary law rules must have equal force for all members of the international community, and cannot be subject of any right of unilateral exclusion exercisable by the will "in the case of general or customary law rules and obligations which, by their very nature, must have equal force for all members of the international community, and cannot therefore be subject of any right of unilateral exclusion exercisable at will by any one of them in its own favour."[584]

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581 *Ibid*., p. 10

582 *Ibid*., p. 3

583 L. Brierly, *The Law of Nations*, Oxford, 1963, 6th ed., pp. 43-44

584 ICJ, *North Sea Continental Shelf Cases*, 1969, para. 63

The third principle *pacta sunt servanda* (meaning 'agreements must be kept') is a fundamental one, carrying a deep moral meaning in it. Special Rapporteur on the law of treaties for the ILC, Sir Gerald Fitzmaurice, stated that *pacta sunt servanda* derives from natural law[585]. It is the basis for collective co-existence. An individual is not self-sufficient (as it is already clear from the first principle) and needs to cooperate with others. Cooperation starts with an agreement on certain exchanges performed in free will. To exchange something, one must have something.

Thus, the fourth principle relates to the *pacta sunt servanda*. *Nemo plus iuris transferre potest quam ipse habet* means that one cannot transfer more rights than one has. In his dissenting opinion, Judge Fitzmaurice described this principle as "an elementary yet fundamental principle of law"[586]. The version he used was a little bit different: "*nemo dare potest quod ipse non habet*, or (the corollary) *nemo accipere potest it quod ipse donator nunquam habuit*"[587], but the idea is the same, that one cannot give what does not have, and vice versa, one cannot receive from the giver what the giver does not have himself or herself. This "incontestable legal principle"[588] is well known under similar variation as *nemo dat quod non habet.* It is commonly applied in property law as a *nemo dat* rule or *nemo dat* doctrine, which states that the purchase of a possession from someone who has no ownership over that thing also denies the purchaser any ownership title. Or, for another example, a person cannot pass a better title than one has.

Finally, the author of the theory raises the question whether there are more necessary general principles of conduct. He considers two options – personal responsibility and distributive justice – but rejects both as the inappropriate candidates to this category[589]. The author of the thesis is not persuaded that there are only four necessary general principles of conduct or that it is possible to identify the fixed and exhaustive list. The main reason is that the content of the collective legal consciousness is not a constant. (The characteristics of the CLC will be discussed in the part of the thesis dealing with the collective legal consciousness and collective legal unconsciousness).

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585 Gerald Fitzmaurice, *The Law and Procedure of the International Court of Justice 1954-1959*, British Yearbook of International Law, 35 (1959), 183-216, in Mary Ellen O'Connell, *The Art of Law in International Community,* (CUP), 2020, p. 76

586 ICJ, Advisory Opinion, Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Judge Fitzmaurice dissenting opinion, para. 65

587 ICJ, Advisory Opinion, Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Judge Fitzmaurice dissenting opinion, para. 65

588 ICJ, Advisory Opinion, Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Judge Fitzmaurice dissenting opinion, para. 65

589 Maarten Bos, *A Methodology of International Law*, North-Holland (Amsterdam-New York-Oxford), 1984, p. 6

In conclusion, from the perspective of natural law these necessary general principles of conduct are a must. Therefore, when assessing the existence of the right to property and identifying its content, these principles should be carefully evaluated. Interestingly, the principles themselves are particularly and closely related to property law, although they are general principles applicable to all legal relations.

Optional General Principles of Conduct

M. Bos describes this category of principles as "a rough materials only"[590] and the ones which "are not necessarily in the background of *every* legal order"[591], therefore, they are called optional. He adds the following explanation: "After a "legislative" process of refinement, many of them have been promoted to the status of law, others are kept in abeyance, but even so may possibly exert some measure of influence. (…) Generally, there will be a tendency in them towards realization as law. In the international legal order, however, there is one important exception to the rule of previous "legislative" refinement, viz., that of the general principles of law recognized by civilized nations, which under Article 38 of the International Court's Statute were raised to the level of law. The process of refinement which may be required for their application was left to the Court (…). But raised to the level of law, they cannot possibly be considered to be "positive law". Too much, indeed, is there to be decided by the Court apart from their possible refinement, and this is why (…) these general principles will be placed in a category of their own"[592]. It is important to note that the word "legislative" is placed between quotation-marks because there is no legislator in the international law in the sense the concept is used in the modern legal systems[593].

This explanation leads to some conclusions based on logical ties. First, the scope of the necessary general principles of conduct is broader than the scope of the optional principles of conduct. Second, the optional principles of conduct may vary in different times and according to different cultures. Third, the necessary principles of conduct are common to everyone all over the world. Fourth, all optional general principles of conduct are also necessary general principles of conduct, but not vice versa. Fifth, the necessary general principles of conduct exist despite the will of the human being, and on the contrary, optional general principles of conduct exist only with the acknowledgement of the legislator. Sixth, the principles embodied in positive law, which are incompatible with the necessary general principles of conduct, do not belong to the category of optional general principles of conduct, thus, their content does not reflect natural law.

590 *Ibid*., p. 10

591 *Ibid*., p. 10

592 *Ibid*., p. 10-12

593 *Ibid*., p. 15

Fixed Principles of Structure

"Fixed principles of structure are those determining the non-operational (static) part of the legal process"[594]. According to M. Bos, legal process in the international legal order is a sum of three such phases: phase I – genesis of the abstract rule, phase II – recognized manifestations of law, phase III – application and realization of law[595]. Good faith and equity are the two examples which are principles of application of law and are attributed to fixed principles of structure by M. Bos[596]. As the term "fixed" itself implies, these are the principles which should be obeyed if one is acting in the realm of order and not outside the scope of a certain law system. If one denies fixed principles of structure in positive law (legislating, applying or interpreting it), one enters a realm of chaos. Therefore, these fixed principles of structure are fundamental in the sense that they are the foundation of any law system and cannot be omitted or missed out. Any positive law contrary to these fixed principles of structure is contrary to natural law.

Variable Principles of Structure

To start with, all the recognized manifestations of law (that is the Law in force) are among the variable principles of structure[597]. Then the author continues with additional principles in this category: "Each and every principle of structure may, of course, develop into customary law, as much as it may be codified. This does not do away, however, with its true nature as such a principle, underlying its developed appearance. Further principles of structure to be mentioned, here, and with a special view to the international legal order, are sovereignty and the freedom of the high seas. Implied in the principle of sovereignty are the principles of recognition, consent, self-defense, and of what this writer calls "geographical order""[598]. Natural geographical order is one of the variable principles of structure[599]. The ICJ declared that "the land dominates the sea"[600] in the 1969 judgement and this is an example of the use of principle of structure.

The application of principle based on geographical order can be found in property law. *Cuius est solum, eius est usque ad coelum et ad inferos* – "whoever's is the soil, it is theirs all the way to Heaven and all the way to Hell", meaning that the property holder has rights not only to the land itself, but also over the air above and the ground below the land. It is known as the *ad coelum* doctrine. The principle has been found in the

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594 *Ibid*., p. 12

595 *Ibid*., p. 16

596 *Ibid*., p. 12 and 16

597 *Ibid*., p. 12

598 *Ibid*., p. 12

599 *Ibid*., p. 12

600 ICJ, North Sea Continental Shelf Cases, 1969, p.51, para 96. (in Methodology of International Law, p. 13)

work of a 13th century Italian jurist and glossator Accursius. Interestingly, in modern times this principle is limited by various rules (right to exploit minerals, air rights and so on).

Method *Stricto Sensu*

The author labels this category as working methods or know-how: "…one should think of methods and rules of interpretation, in which the lawyer's "art" comes so clearly to light. In the same category, rules on procedure and evidence should be placed, and this is the reason why in so many international arbitral *compromis* the arbitrator himself is charged with laying down the rules on these subjects. The United Nations International Law Commission went as far as to refer to "the inherent power of arbitral tribunals to formulate their own rules of procedure, even in the absence of any express authorization in the compromise""[601]. It is interesting to note that Method *stricto sensu* shares the same characteristic with Method *lato sensu* – that there is no need for anybody's consent in order to apply these principles[602]. The examples are the principles of rational organization applied in the process of law: reason, order, efficiency, and adaptability[603].

Interim Conclusions on M. Bos's Findings

Principles of conduct are applicable to all legal subjects of a particular system of law; thus, they are the guidelines for the content of a concrete legal rule and for the general conduct of all the subjects of the system; while principles of structure are applicable in the legal process and their addressees are the persons in charge of the application of recognized manifestation of law. For example, an international judge is an authorized official who applies international law following certain principles, that is principles of structure. In other words, principles of structure require certain conduct from such an international judge. So, the primary function of principles of conduct is to be applied to all the legal subjects of a legal system, and the primary function of principles of structure is to guide the conduct of the authorized officials participating in the legal process.

Nevertheless, some principles may overlap. For example, the principle of good faith. On the one hand, it is applicable to every legal subject in international law, and examples of acting in good faith can be quoted from various treaties, such as Vienna Convention on the Law of Treaties: "Every treaty in force is binding upon the parties

601 Maarten Bos, *A Methodology of International Law*, North-Holland (Amsterdam-New York-Oxford), 1984, p. 14

602 *Ibid*., p. 14

603 *Ibid*., p. 17

to it and must be performed by them in good faith"[604]; on the other hand, the principle of good faith is applicable to the conduct of an international judge acting as an arbitrator in an international dispute: "I solemnly declare that I will perform the duties incumbent upon me as an official of the International Court of Justice in (…) good conscience, and that I will faithfully observe all the provisions of the Statute and Rules of the Court"[605].

As for the principle of equity, the situation is different. The parties before the international Court can claim that the principle of equity should be applied, but the idea is that the tribunal should look at both parties as equal and does not give any priority to one of them. Parties require certain standard of conduct from the tribunal, and this is their right. From this perspective equity is a fixed principle of structure. However, there is no such requirement upon a party to the dispute as a procedural obligation. It is up to the party to decide what will be its strategy in the Court, what evidence they will present and so on. The party has no duty to ensure the application of this principle.

Consequently, some principles are both principles of conduct and principles of structure, while others belong to only one category.

The author of the thesis does not pursue the goal of determining whether the system proposed by M. Bos is the most effective and reliable as such. Therefore, the critical approach towards some of the propositions is not addressed. Rather, the author of the thesis concentrates on the value of the system for the purposes of the current work. The use is at least threefold: first, Bos aims to address the place of the natural law within international law; second, the ideas which are formulated in regard to the sources of natural law and their content; and third, it is used for the aim of understanding the content of a right to property as a human right in international law.

2. Natural Law Theory by John Finnis and Emphasis on Human Reason

Finnis defines natural law as "the set of principles of practical reasonableness in ordering human life and human community"[606]. Therefore, a fundamental concern of a person applying natural law is to understand the relationship between the particular laws of particular society and the permanently relevant principles of practical reasonableness[607]. The former is an existing positive law and the latter in Finnis's theory is a combination of sevent basic goods and nine basic requirements of practical reason.

Seven Basic Goods

Finnis provides an exhaustive list of seven basic goods without an objective

604 Art. 26, Vienna Convention on the Law of Treaties, https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf

605 Art. 25, https://www.icj-cij.org/rules

606 John Finnis, *Natural Law and Natural Rights*, (OUP, 1980), p. 280

607 *Ibid*., p. 281

hierarchy amongst them:

- Life
- Knowledge
- Play
- Aesthetic experience
- Sociability (friendship)
- Practical reasonableness
- "Religion" [608].

He suggests that this is a final list of basic goods as every other value can be deduced from these seven goods. Obviously, property is not among the basic goods according to Finnis. He expresly mentions that property is merely instrumental good, but not a basic good[609]. In the list there is no such values as health or family, but there is no doubt that many people would name them among their personal values and priorities.

Principles of Practical Reasonableness

Principles of practical reasonableness are unchanging principles[610] which "derive their authority from their appropriateness (in justice and for the common good) and not, or not merely, from their origin in some past act of stipulation or some settled usage."[611] These nine principles are: (1) a coherent plan of life, (2) no arbitraty preferences amongst values, (3) no arbitrary preferences amongs persons, (4) detachment, (5) commitment, (6) efficiency, (7) respects for every basic value in every act, (8) favouring and fostering the common good of one's communities, (9) following one's conscience. According to Finnis, the product of the sum of all these requirements is morality[612].

3. Mary Ellen O'Connell's Suggestions to Revitalize Natural Law with The Help of Aesthetic Philosophy

According to M. E. O'Connell, international law as well as other systems of law incorporate both positive and natural law[613]. She submits: "Positive law results from designated material acts, such as the making of treaties or the practices leading to customary international law. Other essential aspects of law, however, are not reducible to positive acts. For those aspects, natural law explanations are needed. Within

608 *Ibid*., p. 85-95

609 *Ibid*., p. 111

610 *Ibid*., p. 351

611 *Ibid*., p. 356

612 *Ibid*., p. 126

613 Mary Ellen O'Connell and Caleb M. Day, *Sources and the Legality and Validity of International Law: Natural Law as Source of Extra-Positive Norms*, p.562, Ed. Samantha Besson and Jean D'Aspremont, *The Oxford Handbook on the Sources of International Law*, (OUP), 2017, p. 562

international law, natural law provides a method for explaining three significant aspects of the law: why law command compliance; the concept of *jus cogens* or "peremptory norms"; and the general principles of law – the third primary source of international law as set out in Article 38 of the Statute of the ICJ."[614]

In her works, O'Connell refers to the three elements of natural law:

- Reason
- Reflection on nature
- Openness to transcendence[615].

These three elements appear all through history and are still present nowadays. Because of these three continual characteristics (or essential features), natural law is not a subjective, but rather an objective phenomenon with its unique qualities.

Reason

Human reason is especially emphasized by J. Finnis over other strands of just mentioned classic three-part synthesis[616]. In his email to M. E. O'Connell, Finnis himself admits that his work on natural law is based on the importance of human reason[617].

Reflection on nature

Lex naturalis: Natural Law which is the law that is decoded by human that sourced from *lex aeterna* with human reason /*ratio*/ senses.

Openness to Transcendence

In Ancient thought "transcendence could accommodate diverse theological views: Greeks, Romans, Jews, and Christians associated transcendence variously with Zeus, Jupiter, or YHWH"[618]. In the Middle Ages, Thomas Aquinas, one of the Catholic Church's greatest theologians and philosophers, developed the notions of *lex aeterna* (or eternal law), which is law of God's ratios that cannot be captured by human sensory – it is the decree of God that governs all creation; and *lex divina* (or divine law), which is God's law stated in the Holy Bible[619]. O'Connell notices that "transcendence functioned similarly for the scholastics as for the ancients: it provided a pre-social

614 *Ibid*., p. 563

615 *Ibid*., p. 579

616 Mary Ellen O'Connell, *The Art of Law in International Community,* (CUP), 2020, p. 86

617 *Ibid*., p. 86

618 Mary Ellen O'Connell and Caleb M. Day, *Sources and the Legality and Validity of International Law: Natural Law as Source of Extra-Positive Norms*, p. 562, Ed. Samantha Besson and Jean D'Aspremont, *The Oxford Handbook on the Sources of International Law*, (OUP), 2017, p. 565

619 https://www.quora.com/According-to-St-Thomas-Aquinas-how-do-four-kind-of-law-relate-to-one-another

norm for law, highlighting the contingency of human-made laws"[620]. In modernity there has been an attempt to remove transcendence as a necessary element from the concept of natural law.[621]

The Oxford English Dictionary provides the following definition of the term 'transcendence': "the ability to go beyond the usual limits; existence or experience beyond the normal or physical level"[622]. According to O'Connell, transcendence is missing from contemporary understanding of natural law[623]. "Without transcendence the understanding of why certain legal principles are superior to rules of positive law loses its rationale. Transcendence is essential but can be approached from secular as well as religious avenues. Aesthetic theory offers a secular path to transcendence."[624]

M. E. O'Connell proposes three sources of natural law: (i) general principles inherent to legal systems; (ii) *jus cogens*; and (iii) the basis of legal authority to natural law[625]. The author of the thesis is going to examine them in turn.

General Principles Inherent to Legal Systems

M. E. O'Connell divides general principles in international law into two categories stating that general principles developed from the legislation and common law of the national legal systems are a source of positive law and general principles inherent to legal systems are a source of natural law[626]. She contends that general principles found through comparing provisions of national law are a source of positive law as the ICJ used this method in *Barcelona Traction Case* when looking for the rules on nationality of corporations.[627] Whilst inherent principles "given their durable, progressive quality (…) are discerned, rather than created through positive law method"[628].

O'Connell suggests that inherent general principles "…tend to be abstract, taking form from facts. (…) They may not be overridden by treaties or customary rules and are, therefore, explained by natural law, but they are not so much "higher" norms as

620 Mary Ellen O'Connell and Caleb M. Day, *Sources and the Legality and Validity of International Law: Natural Law as Source of Extra-Positive Norms*, p. 562, Ed. Samantha Besson and Jean D'Aspremont, *The Oxford Handbook on the Sources of International Law*, (OUP), 2017, p. 568

621 *Ibid*., p. 570

622 https://www.oxfordlearnersdictionaries.com/definition/english/transcendence

623 Mary Ellen O'Connell and Caleb M. Day, *Sources and the Legality and Validity of International Law: Natural Law as Source of Extra-Positive Norms*, p. 562, Ed. Samantha Besson and Jean D'Aspremont, *The Oxford Handbook on the Sources of International Law*, (OUP), 2017, p. 579

624 *Ibid*., p. 579

625 *Ibid*., p. 576

626 *Ibid*., p. 579

627 Mary Ellen O'Connell, *The Art of Law in International Community,* (CUP), 2020, p. 65

628 *Ibid*., p. 65

foundational norms"[629]. She provides the following examples of principles inherent to legal systems: equity, fairness, good faith, necessity, proportionality[630], attribution[631], and the rule that two States may not deprive a third State of its rights[632]. Inherent principles are the ones which "…are essential to the reality of fair systems of law in positing, for example, equality (…) of human beings before the law"[633].

Jus Cogens

M. E. O'Connell describes *jus cogens* by comparing the concept with general principles and showing their differences. First, she explains that *jus cogens* has specific substantive content in contrast to general principles, which are abstract[634]. Second, she claims that *jus cogens* has moral quality characteristics while general principles do not[635], although both are non-derogable[636]. Moreover, *jus cogens* "…are more like negative rights (…). They do not establish positive obligations that might require the expenditure of resources. They do entail the affirmative duty of respect attaching to all legal prohibitions."[637]

On the point of *jus cogens* the author of thesis must add some commens. Alhough the idea of hierarchy and fundamental principles is inherent in natural law, the concept *jus cogens* itself is a creation of positive law. Even the ILC's recent draft conclusions on *jus cogens*[638] are based solely on positive law approach. Although the function of ILC is double, i.e., identification of progressive development of international law and codification of existing customary law, the fomer is missing. According to this document a defenitinion of a *jus cogens* is „a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law (*jus*

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629 Mary Ellen O'Connell and Caleb M. Day, *Sources and the Legality and Validity of International Law: Natural Law as Source of Extra-Positive Norms*, p. 562, Ed. Samantha Besson and Jean D'Aspremont, *The Oxford Handbook on the Sources of International Law*, (OUP), 2017, pp. 578-579

630 *Ibid*., p. 563

631 Mary Ellen O'Connell, *The Art of Law in International Community,* (CUP), 2020, p. 67

632 Mary Ellen O'Connell and Caleb M. Day, *Sources and the Legality and Validity of International Law: Natural Law as Source of Extra-Positive Norms*, p. 562, Ed. Samantha Besson and Jean D'Aspremont, *The Oxford Handbook on the Sources of International Law*, (OUP), 2017, p. 578

633 Mary Ellen O'Connell, *The Art of Law in International Community,* (CUP), 2020, p. 77

634 Mary Ellen O'Connell and Caleb M. Day, *Sources and the Legality and Validity of International Law: Natural Law as Source of Extra-Positive Norms*, p. 562, Ed. Samantha Besson and Jean D'Aspremont, *The Oxford Handbook on the Sources of International Law*, (OUP), 2017, p. 578

635 *Ibid*., p. 579

636 Mary Ellen O'Connell, *The Art of Law in International Community,* (CUP), 2020, p. 72

637 *Ibid*., p. 77

638 ILC, Draft conclusions on identification and legal consequences of peremptory norms of general international law (jus cogens) (2022)

cogens) having the same character."[639] So, these are two criteria of *jus cogens*: (i) a norm of general international law and (ii) a norm accepted and recognized by international community of states as a whole as a norm from which derogation is not permited[640]. According to the ILC, first criteria means that *jus cogens* norm usually can be found in in the customary international law. It is also possible to tackle them in treaty provision or general principle of law, but in this case it should be proved that a particular provision of a treaty is a general international law[641]. ILC continues that „ a general practice accepted as law (*opinio iuris*), is the most common basis for peremptory norms"[642]. Thus it is a suggestion that an evolution of a *jus cogens* norm starts from being an ordinary customary rule and only later it rises to the higher level of a non-derogable norm. To sum up, ILC reflects the positivistic position that everything depends upon the will of the States. Everything what States (i.e., Governments representing the States) call general international law is actually general international law. Everything what States call *jus cogens* is acually *jus cogens*.

Basis of Legal Authority to Natural Law

This source corresponds to the transcendence strand of the three-part synthesis. The author suggests an interdisciplinary approach – to relay on aesthetic theory as a path to explain the authority of natural law: "Through the aesthetic theory of beauty, legal theory regains reasons in support of law's higher norms that command obedience even when entirely in the interest of others and the natural world and not in self-interest or the national interest"[643].

639 ILC, Draft conclusions on identification and legal consequences of peremptory norms of general international law (jus cogens) (2022), Conclusion no.3

640 ILC, Draft conclusions on identification and legal consequences of peremptory norms of general international law (jus cogens) (2022), Conclusion no.4

641 ILC, Draft conclusions on identification and legal consequences of peremptory norms of general international law (jus cogens) (2022), Commemntary on Conclusion no.5, para 1

642 ILC, Draft conclusions on identification and legal consequences of peremptory norms of general international law (jus cogens) (2022), Commemntary on Conclusion no.5, para 4

643 Mary Ellen O'Connell and Caleb M. Day, *Sources and the Legality and Validity of International Law: Natural Law as Source of Extra-Positive Norms*, p. 562, Ed. Samantha Besson and Jean D'Aspremont, *The Oxford Handbook on the Sources of International Law*, (OUP), 2017, p. 579

4. Interim Conclusions on The Sources of Natural Law

Despite the noticeable differences, there are some general characteristics in all the three approaches suggested by the authors. This is an important feature and advantage of the phenomenological method. Although every scientist can describe natural law relying on his or her personal understanding, still there are main communalities, which empower to make a list of general characteristics of the phenomenon called natural law.

Table on natural law sources and function:

Author of a Theory	Sources of NL	Where does the sources come from?	Function of NL	Perspective
J.Finnis	- unchanging principles that have force from their reasonableness[644]	Reasonableness (element of reason)	-to identify the principles and limits of the rule of law[645], -trace the ways in which sound laws are to be derived from unchanging principles[646]	Legal philosophy
M.E. O'Connell	- general principles inherent to legal systems - *Jus cogens* - Basis of legal authority	Aesthetic philosophy and arts (element of transcendence)	-to provide a method for explaining 3 significant aspects of international law: (i)why law commands compliance, (ii) the concept of *jus cogens*, (iii) general principles of law[647]	Historical, Legal theory, interdisciplinary approach

644 John Finnis, Natural Law and N*atural Rights*, (OUP, 1980), 351p.

645 *Ibid*.

646 *Ibid*.

647 Mary Ellen O'Connell and Caleb M.Day, *Sources and the Legality and validity of International Law: Natural Law as Source of Extra-Positive Norms*, p.562, Ed.Samantha Besson and Jean D'aspremont, *The* Oxford Handbook on t*he Sources of International Law*, (OUP), 2017, p.563

M.Bos	- general principles of conduct (necessary and optional) - principles of structure (fixed and variable)	Method (as a necessary part of Legal Thought)		Methodological approach

First, all three authors suggest that natural law does not depend on humans' convictions. Even though legitimate "legislators" acknowledge or not certain principles, they do not cease to exist. They are present and independent on the wishes or perceptions of human beings and official positions of authoritative institutions. Therefore, their approach is in line with the statement that the source of natural law cannot be found in the will of sovereign (which is an axiom when talking about legal positivism).

Second, the word "fundamental" is used to describe main natural law notions. This gives an understanding that the natural law is of the most concentrated and abstract nature. All the starting points of the conceptual, philosophical notions of law can be found in the content of natural law. That is why certain legal concepts, such as *jus cogens*, can hardly be explained by positive law alone. The author of the thesis submits that a more suitable word would be "inherent" because it reflects the origin of these notions (as it is described in part on collective legal consciousness and collective legal unconsciousness).

Consequently, the aspiration should be than any action contrary to the natural law should be incompatible with the law in force. To put it in the other words, the positive law should follow from and be in consistency with the natural law.

B. Collective Legal (Un)consciousness as a Source of Natural Law

1. Definition of the Problem of Transcendence of Natural Law

The principal reason for criticism towards natural law is its transcendental element – the assumption that what "is" the law is based on a higher law[648]. The higher law, the primary higher ideals, or as Aquinas called it *lex aeterna,* is a law of nature which should be followed and from which positive law should emerge. However, the critical problem in legal philosophy is how to bridge the gap between "is" and "ought"[649]. In order to propose a solution to this problem, the author of the thesis takes the following steps. First, they use an interdisciplinary approach to investigate the realm of "ought" (or transcendental, metaphysical element of the natural law). Second, they demonstrate that "is" stands for the realm of collective legal consciousness, "ought" stands for collective legal unconsciousness, and universal archetypes are helpful to bridge the gap between the two.

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648 Lloyd's Introduction to Jurisprudence (Sweet & Maxwell Ltd.& Tomson Reuters, 2008/2014), p.75

649 *Ibid*.

2. Concepts of Collective Legal Consciousness, Collective Legal Unconsciousness, and Universal Archetypes

In this part of the thesis the author examines the concepts of collective legal consciousness, collective legal unconsciousness, and universal archetypes. For this purpose they use an interdisciplinary approach: firstly, a linguistic method to show the relatedness of terms "conscience" and "consciousness" and their use in international law; secondly, the knowledge of psychology to explain the structure of the human psyche and how collective legal consciousness and unconsciousness function; and thirdly, comparative cultural studies to identify a universal archetype and its application to the right to property.

Concept of Collective Legal Consciousness

Although references to the "conscience of mankind", "conscience of humanity", "legal conscience of mankind" or "universal juridical conscience" can be found in various legal sources, for example, in the texts of international treaties, in the jurisprudence of the ICJ, in *travaux preparatoires* of Art. 38 (1)(c) of the ICJ Statute, in the legal doctrine, etc., the study of the concept "collective legal consciousness" (CLC) is quite a recent phenomenon. CLC is substantial in quantity, however, uneven in understanding and in providing a definition[650].

The notion of conscience is deeply rooted in human thinking[651] and can be found in various legal sources. For example, the former judge of the ICJ Antonio Augusto Cancado Trindade states that human conscience is a source of international law[652]. He uses the term "universal juridical conscience"[653] and devotes a chapter to elaborate on it in his life's work "International Law for Humankind"[654]. He was the one who constantly advocated the universal juridical conscience as a source of international law. For another example, the ICJ have referred to the concept "conscience of mankind" when commenting on prohibition of genocide: "to condemn and punish genocide as 'a crime under international law' involving a denial of the right of existence of entire human groups, a denial which shocks the conscience of mankind and results in great losses to humanity, and which is contrary to moral law and to the spirit and aims of the United Nations"[655]. Moreover, the former judge of the ICJ, Kotaro Tanaka used the term "conscience of mankind" when explaining his position in the dissenting opinion

650 https://journals.copmadrid.org/apj/art/apj2021a2

651 Trindade, International Law of Humankind: Towards a New Jus Gentium (2020) p. 142

652 *Ibid*., p. 139

653 *Ibid*., p. 143-145

654 *Ibid*., p. 139-161

655 ICJ, Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, 1951, p. 15 (also cited in the ILC Commentary on Jus cogens 2022, Conclusion 2).

to the 1966 *South-West Africa Cases*[656]. To continue, as the drafting history of Art. 38 (1)(c) of the ICJ Statute shows, Baron Descamps referred to "*la conscience juridique des peuples civilisés*" when proposing the formulation of the provision. "Legal conscience of mankind" was the term used by different delegations during the preparatory works on the two Vienna Conventions on the Law of Treaties (1969 and 1986): the delegate of Mexico E. Suarez stated that "the rules of *jus cogens* were those rules which derived from principles that the legal conscience of mankind deemed absolutely essential to coexistence in the international community"[657], and the delegate of Italy A. Maresca noticed that the norms of *jus cogens* "were norms of general international law acknowledged by the international community as a whole, that was to say they were based on the legal conscience of the whole of mankind"[658]. The preambles of the treaties can be added as examples: the 1998 Rome Statute of the International Criminal Court mentions the "conscience of humanity", and the 1972 Convention on the Prohibition of Bacteriological (Biological) Weapons and on Their Destruction states that the use of such weapons "would be repugnant to the conscience of mankind"[659].

The author of the thesis submits that in all these examples the "legal conscience of mankind" could be seen as the synonym of collective legal consciousness because of the following two reasons.

First, from a linguistic perspective words "conscience" and "consciousness" are not identical, but related. They share the same etymology as they both originate from the Latin word *conscient* meaning "being privy to"[660], i.e., to be told information that is not told to many people[661], allowed to know about (something secret)[662], sharing in the knowledge of facts that are secret[663]. All the definitions possess the element of special knowledge or of awareness of something not easily attainable, something that can be accessed only by great effort. Nowadays the term "conscience" is defined as "a person's moral sense of right and wrong, viewed as acting as guide to one's behaviour"[664] and the term "consciousness" is understood as "a person's awareness or perception of something"[665] or as "the state of being aware of and responsive to one's surroundings"[666].

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656 ICJ, 966 *South-West Africa Cases,* Dissenting Opinion of Judge Tanaka, p. 298

657 UN, United Nations Conference on the Law of Treaties – Official records (First Session, March/May 1968), vol. I (statement of 04.05.1968), p. 294, para. 7

658 UN, United Nations Conference on the Law of Treaties – Official records (second Session, April/May 1969), vol. II (statement of 12.05.1969), p. 104, para. 39

659 1972 Convention on the Prohibition of Bacteriological (Biological) Weapons and on Their Destruction, preamble

660 Oxford Languages Dictionary

661 Cambridge dictionary, https://dictionary.cambridge.org/dictionary/english/be-privy-to

662 Merriam-Webster dictionary, https://www.merriam-webster.com/dictionary/privy%20to

663 Longman Dictionary, https://www.ldoceonline.com/dictionary/be-privy-to-something

664 Oxford Dictionary,

665 *Ibid*.

666 *Ibid*.

There is a similarity of meaning in the definitions because the first one requires to sense what is right and wrong, while the second one requires to be aware of something. In the legal context "conscience" is a popular concept, nevertheless often criticized by positivists or legal realists for its cultural relativism and abstractness. In the definitions there is an emphasis on individuality because each person has moral sense of what is right and wrong. However, this individual moral sense might be highly developed, or on the contrary, undeveloped. Even in the ICJ Statute the requirement for a judge is to have a "*high* moral character"[667], not simply act according to a personal moral sense. So, the individual aspect of conscience is indeed sensitive to a number of factors, including cultural relativism. It still remains an unknown, hardly measurable, transcendental aspect of a human, remaining yet to be discovered. On the other hand, the term "consciousness" as an aspect of mind is primary an object of modern philosophy[668] and psychology[669], but is also used in legal sciences.

Second, the content of legal consciousness is not only a theoretical concept, but might be identified, analyzed and characterized[670]. Conscience has an ideal moral aspect, which is not a single and universally accepted phenomenon. Therefore, to evaluate "conscience of mankind" would be an inconceivable task. While the content of the collective consciousness can be identified and analyzed. Moreover, for some contexts the collective consciousness would be a more coherent term, for example, in French formulation of the general principles of law.

Moreover, the author of the thesis draws attention to the fact that all the given examples of the use of conscience in the legal contexts could be divided into two categories: the ones that talk about the conscience of mankind and the ones that add the word legal (or juridical). The author proposes to use the term which is more precise and refers directly to the realm of law – collective *legal* consciousness.

One of the proposed definitions of the concept "individual legal consciousness" is as follows: "Legal consciousness is a complex of law-related knowledge, skills, attitudes, beliefs, and values of an individual, whereby the mutual relationship between the individual and law is being created, deepened, and developed with the context of specific society and legal system providing such system with the necessary authority and legitimacy for the regulation of human behavior."[671] Therefore, each person has their own unique legal consciousness which is a sum of the various characteristics set out in the definition.

The concept of "collective legal consciousness" was introduced in 2012 by Marina

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667 ICJ Statute, art.2 (emphasis added), https://www.icj-cij.org/statute#CHAPTER_I

668 Stanford Encyclopedia of Philosophy, https://plato.stanford.edu/entries/consciousness/

669 APA Dictionary of Psychology, https://dictionary.apa.org/consciousness

670 Marina Kurkchiyan, Perception of Law and Social Order: a Cross-National Comparison of Collective Legal Consciousness, 29 Wis. Int'l L. J. 366 (2012), p.366

671 https://journals.copmadrid.org/apj/art/apj2021a2

Kurkchiyan[672]. CLC was defined "…as the dominant perception of what law is and how people tend to relate to it in a given society"[673]. The author of the article Marina Kurkchiyan conducted an empirical cross-national study of CLC and presented her findings on the distinctive patterns of CLC in different societies[674]. Therefore, the concept is not an exclusively theoretical proposal as its features have been tested empirically and certain characteristics of CLC have been determined[675].

Bearing in mind the just provided definition of individual legal consciousness, the author of the thesis proposes to make a small change in the definition of collective legal consciousness proposed by Marina Kurkchiyan. The author of the thesis argues that the part referring to the "dominant perception" should be changed and CLC should be understood as including not only dominant, but all the existing understandings of what law is as well. This is because all the conscious ideas and concepts, for example, dominant or less popular patterns, new ideas and understandings, knowledge that used to be leading, but is not anymore, etc., about law of a defined group of individuals (for example, from one university, one country, or one legal tradition) constitute a single collective legal consciousness.

CLC is a dynamic structure. It is like a living organism which is constantly changing because people's understanding of law and their relation to law is constantly changing as well. There are innumerable reasons for this, just to mention some: the composition of the society, the political, economic, social, cultural, environmental, and scientific circumstances, etc. CLC is not of a permanently defined size. The size is changing as well because new fields of law emerge, the scope of relations which a society decides to regulate varies, or a deeper understanding of the existing order is attained, etc. Therefore, in different societies and different times CLC varies in size and content. Therefore, the author of the thesis suggests the following definition of CLC: "CLC is the wholeness of perceptions of what law is and how people tend to relate to it in a given society."

Of course, each scientific research has its purposes, and in some of them the focus might be on dominant understandings (as in Marina Kurkchiyan's case), in others – on outdated or evolving new understandings, but when defining CLC as a phenomenon, arguably, the sum of all perceptions is a more accurate choice.

The concept of CLC can be understood from at least two perspectives[676]. First, in a professional sense – professional collective legal consciousness (pCLC), as suggested by Pound, and second, in common sense – common collective legal consciousness

672 Marina Kurkchiyan, Perception of Law and Social Order: a Cross-National Comparison of Collective Legal Consciousness, 29 Wis. Int'l L. J. 366 (2012) https://heinonline.org/HOL/LandingPage?handle=hein.journals/wisint29&div=20&id=&page=

673 *Ibid*., p. 366

674 *Ibid*., p. 372

675 *Ibid*., p. 390-391

676 Marc Hertogh, A 'European' Conception of Legal Consciousness: Rediscovering Eugen Ehrlich, Journal of Law and Society, volume 31, 2004

(cCLC), as suggested by Ehrlich[677]. The latter approach focuses on the examination of the CLC of the non-professionals, i.e., how law is understood and perceived in a certain society or group of people. The former approach concentrates on the CLC of the professionals of law in a certain society. For example, to explain how a unique professional legal tradition of a particular society is formed, one needs to concentrate on the quality of pCLC. In the words of Marina Kurkchiyan and Agnieszka Kubal, in order "to transform law from being a 'lay' social phenomenon into a professionalized institution, it is first necessary for legal actors to be consolidated into independent groups, with gate-keeping rules, internal procedures and a distinct identity."[678]

The author of the thesis upholds the idea that collective legal consciousness is a complex phenomenon which at least currently cannot be fully deconstructed into an exhaustive list of components. Moreover, the author of the thesis welcomes and strongly supports the position of Marina Kurkchiyan who states that gaining "better insight into collective legal consciousness is fundamentally important to socio-legal scholarship"[679]. Indeed, the phenomenon of CLC is interdisciplinary as it combines the knowledge of anthropology, psychology, sociology, and law.

The author of the thesis proposes that CLC should primarily be understood and used as a concept denoting international lawyers' perceptions regarding international law as a whole. For the purposes of the thesis, however, only the part of its content related to the right to property as a human right is relevant and further examined.

Concepts of CLU and Universal Archetypes

After exploring the realm of the conscious, the author of the thesis suggests proceeding to the analysis of the realm of the unconscious. The author would like to introduce the interdisciplinary concept *collective legal unconsciousness* (CLU) in the field of human rights and in international law in general as a necessary notion for at least two reasons. Firstly, it explains the element of transcendence of natural law (the primary reason why natural law has been criticized for centuries). Secondly, it throws light on the biggest shortcomings of legal positivism. To better explain this proposition, the author of the thesis shall start with the elaboration on the genesis of the concept of CLU.

From the point of view of psychology, each human has *the personal conscious* as well as *the personal unconscious*[680]. These two parts constitute the personal psyche of a human[681]. The contents of the psyche are authentic experience, individual thoughts, and personal feelings[682]. They can take place in a person's consciousness or be re-

677 *Ibid.*

678 Marina Kurkchiyan, Agnieszka Kubal, A Sociology of Justice in Russia, CUP, 2018, p. 13

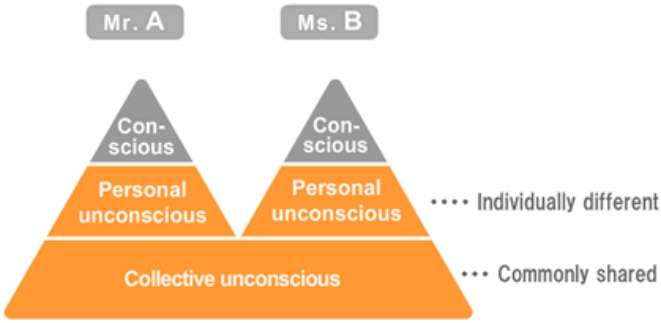
679 Marina Kurkchiyan, Perception of Law and Social Order: a Cross-National Comparison of Collective Legal Consciousness, 29 Wis. Int'l L. J. 366 (2012), p. 391

680 C. G. Jung, The Archetypes and the Collective Unconscious, Volume 9, Part I, (Routledge 2014) p. 3

681 *Ibid.*, p.3-4

682 *Ibid.*, p. 4

pressed or forgotten and thus transposed to the *personal* unconsciousness. However, later in his practice C. G. Jung noticed that unconsciousness is not one-layered but possesses another layer which is universal to all human beings. That is how C. G. Jung introduced the term *the collective unconscious* which describes the universal aspect of unconsciousness[683]. This image is an illustration of all three parts of human psyche and their relatedness[684]:



C. G. Jung makes a distinction between *the personal unconscious* and *the collective unconscious*: "While the personal unconscious is made up essentially of contents which have at one time been conscious, but which have disappeared from consciousness through having been forgotten or repressed, the contents of the collective unconscious have never been in consciousness, and therefore have never been individually acquired, but owe their experience exclusively to heredity. Whereas the personal unconscious consists for the most part of *complexes*, the content of the collective unconscious is made up essentially of *archetypes.*"[685]. It follows that the main difference between the two concepts is that the personal unconscious is individually acquired and the collective unconscious is inherited.

Further C. G. Jung elaborates: "In addition to our immediate consciousness, which is of a thoroughly personal nature and which we believe to be the only empirical psyche (…), there exists a second psychic system of collective, universal, and impersonal nature which is identical in all individuals. *This collective unconsciousness does not develop individually but is inherited.* It consists of pre-existent forms, the archetypes, which can only become conscious secondarily and which give definite form to certain psychic contents."[686] From this statement follows:

(a) The personal unconscious is full of content which primarily appeared in individual consciousness and only then was transferred to individual unconsciousness. Moreover, it can be transferred back into individual consciousness. For example, a

683 *Ibid*., p. 3

684 https://65903021.weebly.com/the-unconscious-mind.html

685 C. G. Jung, The Archetypes and the Collective Unconscious, Volume 9, Part I, (Routledge 2014), p. 42

686 *Ibid*., p. 43 (emphasis added)

lawyer may work with a concrete convention and almost know it word by word. However, when they finish the work, they focus on other topics and after some time forget the exact formulations and precise articles of the convention. The legal conscious has been transferred into the legal unconscious.

(b) The content of the universal unconscious has always been there. Therefore, the content of the universal unconscious can be discovered and become conscious. For example, the law of universal gravitation has always existed, even though humans were not aware of it. The information was outside the realm of collective consciousness, but it was in collective unconsciousness. Thus, the law of universal gravitation was discovered by Newton, not created or invented. Hardly anyone could tell who the creator of the law of universal gravitation is. This knowledge is in collective unconsciousness of humanity – for the present. Analogically, the author of the thesis proposes that the understanding of inherent human rights, just like the law of universal gravitation, has always existed in collective legal unconsciousness, even though they were not established in the form of positive law. Hence, the primary source of human rights (and the object of this thesis, the right to property) is CLU. At some point in time some of the inherent rights were discovered, not invented or created by the will of sovereign. The author of the thesis adds the word "legal" to narrow down the immense scope of collective unconsciousness to the content relevant to legal studies.

(c) Collective unconsciousness includes pre-existent forms or archetypes. C. G. Jung shows that the concept of *archetype* is not his invention, but is used in different types of science, for example, psychology and comparative religion studies[687]. An archetype from Greek *archetypos* means "original pattern". C. G. Jung refers to Plato's theory of Forms ("Ideas") in order to explain the meaning of the archetype and says that this notion is used to describe archaic or primordial types, universal images that have existed since the remotest times [688]. He also stresses that "one must, for the sake of accuracy, distinguish between "archetype" and "archetypal ideas". An archetype as such is a hypothetical and irrepresentable model, something like a "pattern of behavior"."[689] To make an analogy with Plato's theory of Forms, an archetype would represent perfect ideas or forms, while "essentially an unconscious content that is altered by becoming conscious and by being perceived, and takes its colour from the individual consciousness in which it happens to appear"[690] should be called an archetypal idea and in Plato's theory would resemble the material world known to us through sensation.

To get a better understanding of an archetype, Joseph Campbell suggests using a doctrine in Vedantic tradition[691] as a tool. It helps to explain certain characteristics of archetypes and understand how archetypes interact with consciousness and might

687 *Ibid*., p. 42

688 *Ibid*., p. 4-5

689 *Ibid*., p. 5

690 *Ibid*., p. 5

691 Joseph Campbell, Pathways to Bliss: Mythology and Personal Transformation, 2004, p. xx

manifest themselves in empirical reality. At the same time, it proves that the same narratives are characteristic to different cultures around the world. According to Campbell, "the Taittiriya Upanishad speaks of five sheaths that enclose the *atman*, which is the spiritual ground or germ of the individual"[692]. He further describes the sheaths one by one:

- The first sheath is called *annamaya-kosa* or the food sheath. It is our physical body.
- The second sheath is called *pranamaya-kosa* or the breath, which turns the food sheath into life. A more usual concept for an individual from Western culture would be emotions, thus the food sheath could be equated with the emotional body.
- The third sheath is called *manomaya-kosa* or the mental sheath. It is our mental body. It is what we describe as consciousness.
- Then there is a huge gap, emptiness between the third and the fourth sheaths.
- The fourth sheath is called *vijnanamaya-kosa* or the wisdom sheath. This is the natural wisdom that, when you cut yourself, knows how to heal the wound. "This is the sheath of the wisdom of the transcendent pouring in."[693]
- The fifth sheath is called *anandamaya-kosa* or the sheath of bliss. It is the sheath inward of the wisdom sheath and is a kernel of that transcendence in and of itself. Life is a manifestation of bliss.[694]

For the purposes of the research the author of the thesis directs their attention to the emptiness between the first three sheaths and the last two sheaths. This gap illustrates the traditional understanding of the vast division of the two worlds – the empirical world which is cognizable by the human senses and the transcendental world which exists beyond the realm of conscious awareness. Event in legal philosophy it is considered that bridging the gap between "is" and "ought" remains a critical problem of natural law[695]. Bearing in mind the gap, the emptiness between the two, it is no wonder that it is easy to accept legal positivism which easily fits the categories of the empirical world, but at the same time there is constant resistance to acknowledging natural law which seems so ephemeral due to its transcendental element. Notwithstanding the gap, the five sheaths still belong to one system, thus are somehow connected. Therefore, the author of the thesis suggests that the understanding of the concept of the archetype evolving from Jung's valuable studies on the collective unconscious serves as a bridge to join the gap between the mental sheath and the wisdom sheath or in other words between the empirical world (CLC) and the transcendental world (CLU). It would not be an overestimation to say that this is not a simple bridge to cross, but a quantum leap to make.

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692 *Ibid*., p. xx

693 *Ibid*., p. xx-xxi

694 *Ibid*., p. xx-xxi

695 Lloyd's Introduction to Jurisprudence (Sweet & Maxwell Ltd.& Tomson Reuters, 2008/2014), p.76

The former Judge of the ICJ Christopher Weeramantry reflects on the question "why the international law has lost the benefit of the teachings of the world's religions, philosophies, arts, and culture"[696]. He suggests bringing these sources of human wisdom into the process of legal interpretation[697]. The source of human wisdom might sound abstract, but the author of the thesis advocates for understanding it as the just described fourth sheath – the sheath of wisdom. Indeed, for international law to be capable of solving contemporary problems, the human wisdom coming from CLU (a transcendental element of natural law) in the form of archetypes is crucial.

Archetypes rest in the fourth (or even the fifth) sheath or in collective unconsciousness. As Jung explains: "The archetype is essentially an unconscious content (…)"[698]. While archetypes might manifest in numerous ways, some of the best-known expressions of these pre-existent forms in the empirical world are myths and fairytales[699]. The most fundamental narratives in the myths or fairytales are repetitive and can be found in all civilizations across the globe in different historical times.

The author of the thesis submits that the essential function of natural law is identifying archetypes in collective legal unconsciousness and transposing them into collective legal consciousness. For the purposes of the thesis the author searches for the archetypal ideas related to the right to property in myths and then turns to the analysis of concrete archetypal ideas related to the right to property as a human right.

3. *Lex Aeterna* Archetypes Related to the Right to Property

In this section the author of the thesis examines the example of *lex aeterna* archetypes related to the right to property. First, they describe the famous myth of the seventh labor of Heracles to tame and bring the bull to Eurystheus[700] and identify the lesson of the story. Second, they study the archetype of resource as one of the key concepts, the essence of the archetype.

Myths and fairytales from different parts of the world are suitable for this exercise as they all include the same archetypal ideas. For the purposes of the thesis the author of the thesis relies on Greek mythology and on one of the labors of Heracles, the capture of the Cretan Bull.

The Seventh Labor of Heracles

According to the myth, Minos, the king of Crete, promised Poseidon to sacrifice him whatever first emerged from the sea. The god Poseidon caused a beautiful bull to

696 M. E. O'Connell, p. 88

697 *Ibid*., p. 88

698 C. G .Jung, The Archetypes and the Collective Unconscious, (Routledge) 2014, p. 5

699 *Ibid*., p. 5

700 Gustav Schwab, Gods &Heroes: Myths and Epics of Ancient Greece (Pantheon books, New York, 1974), pp.172-173

rise up through the waters. The king was so charmed by the splendid animal that he secretly mingled it with his herds and substituted with another bull for offering. Of course, the sea-god was angry and as a penalty he afflicted the beast with madness, so that it caused destruction on the island of Crete. The seventh labor of Heracles was to tame the bull and bring it to Eurystheus. Therefore, Heracles traveled to Crete and caught the beast. He tamed the bull so well that he was able to ride it from the island of Crete to Peloponnesus. Eurystheus was satisfied with this achievement, but he set the animal free again. The moment the bull no longer felt the restraining hand of Heracles, its madness returned.[701]

Analysis of the Story

The central figure of the myth is the bull. The primary symbolic meaning of a bull is power, fertility and wealth[702]. In primitive societies it was the main domestic animal used for agricultural works; therefore, it was appreciated for physical strength, tenacity, steadiness, and productivity. For Buddhists it is also a symbol of calmness and wisdom[703]. The Charging Bull or the Bull of Wall Street is a famous symbol of New York's financial industry. If we tried to find the common denominator in these qualities, the most suitable umbrella word, it would probably be "resource ". Another option could be the word "wealth" used in the broadest sense and incorporating all forms of wealth, but as the present-day society would first of all associate this word with material wealth, the author of the thesis proposes to use the term "resource ". The bull is the symbol of resource. As we can see from key words used in different cultures, this resource might take various forms. Some societies value bull for the practical use (physical strength), others for qualities like wisdom. The meaning of the term "resource" is a broad one. Resource could be an umbrella term for all these words: wealth, money, funds, capital, assets, riches, people, materials, talent, ability, capability, source, system[704], etc. But all the forms of the resource can be divided into four categories: material resource, emotional resource, intellectual resource, and spiritual resource.

What we know about Heracles is that he is a hero who gets tasks one by one from Eurystheus and must complete them. To paraphrase it using Campbell's perspective, all the Heracles' labors resemble lessons which one must inevitably learn during their journey called life[705]. The myth is about the inner world of an individual – how they deal with the resource. So, when we are reading that Heracles has to complete a task – to find and tame the mad beast, it means that a person should actually find a resource and learn to use it productively and wisely. Or to put it in legal terminology – to

701 *Ibid*., p. 172-173

702 Dorling Kindersley, Signs & Symbols, 2008, pp. 52-55

703 *Ibid*., p. 52-55

704 https://www.thesaurus.com/browse/resource

705 Joseph Campbell, The Hero's Journey, (New World Library, 1990)

acquire property and then manage, use, and enjoy it.

It is interesting to note that the bull "first emerged from the depth of the sea." Quite an extraordinary way for a bull to appear. But the depth of the sea is the symbol of the unconscious mind[706]. All life sprang from primordial waters[707]. The depth of the sea is related with the supernatural powers[708]. Therefore, we get an idea that by nature resource possesses primordial force. It is powerful and if uncontrolled it can be as destructive as the mad bull in the myth.

This narrative can be applied when thinking about different kinds of resource, for example, talent. A child is not aware of their talent to swim. A child simply possesses physical strength and likes being in the water and competing with friends in the summer in the lake; they have no idea that they were not just lucky to win the race but have potential to become a professional swimmer. What might they do with this resource? Obviously, there are many scenarios, but all of them lead to two possible results: use the potential and through consistent and hard work, which are the qualities of a bull, develop it into wealth; or ignore the potential, and sooner or later it will hurt or destroy you in the most unpredictable way, just like the mad bull destroyed Crete.

The myth tells that Heracles succeeded – he managed to find the bull, i.e. to identify the resource which might be in our unconsciousness in the form of a "mad beast" and tame it, i.e., to learn to deal with the primordial power and transform it into civilized form. Heracles did not use his brutal strength to defeat the mad bull or to control it, he managed to tame it. It is not about competing and being stronger but about developing a tie with the resource – a primarily inner tie. And it takes time to establish that inner tie. Therefore, from the perspective of natural law, the tie or the relation between an individual and a thing (in this case, a resource) should be valued and protected in positive law. The approach to value a right as a tie comes from natural law. When this is mastered, the external recognition comes as a consequence. In the myth it is said "Eurystheus was satisfied with this achievement"[709]. The king and people of Crete were more than grateful to Heracles for stopping the destructive beast. Heracles made no additional effort to please them, he just created an inner tie with the bull. Analogically, when someone masters their resource, external appreciation follows. Others desire to buy their products or services, give awards for their creative work, acknowledge the job done, etc.

The end of the myth is quite unexpected – Eurystheus tells Heracles to let the bull free. Interestingly, the bull's madness comes back. This teaches us that as soon as a person loses the tie and individual relation with a resource, the resource regains the state of uncontrollable primordial power. However, it is up to a person's will to let go of that individual relation. This part resembles the right to transfer, or in this case, to abandon

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706 Dorling Kindersley, Signs & Symbols, 2008, p. 32

707 *Ibid*., p. 32

708 *Ibid*., p. 32

709 Gustav Schwab, Gods & Heroes: Myths and Epics of Ancient Greece (Pantheon books, New York, 1974), p. 172

the property, and once again shows us the importance of the relation between an individual and a thing. When a person transfers their property, the property is no longer the same. It is true that it might look physically identical because it is still "a bull" (a house, a book, intellectual rights, etc.), but its qualities (whether it is calm or destroying everything around, in other words, whether the house is still cozy and welcoming or messy and untidy) and its value (whether it is possible to ride it or it runs freely, meaning, whether a rare book is being used according to its purpose or just serves as a decoration or simply takes space in the attic) are no longer exactly the same. The new owner should establish their individual tie with the resource, and it is up to them to either fail or succeed in using it wisely and productively.

Heracles appears only later in the story. In the beginning it is king Minos who witnesses the emergence and acquires the resource as a gift from the god Poseidon but fails to transform it into wealth because he acts in bad faith – cheats. In legal terms, king Minos breaks the principle of *pacta sunt servanda* by committing a fraud. That is why he is forced to bear responsibility and face the sanctions – the people of his kingdom experience the destructive side of the resource. Only then Heracles comes and acquires the resource with the help of his work.

One more principle can be deduced from the myth – the principle of hierarchy (from Greek *hierarkhes* - meaning "sacred ruler"). Resource is a gift from god Poseidon transferred to king Minos, from the higher authority to the lower authority. This is one of the principles of natural law, which is generally acknowledged in positive law. The principle of hierarchy has many aspects and should be taken into account when considering right to property.

This myth teaches us that it is inherent to human nature to face this key lesson (one of the labors among others) and learn how to use the resource, or in other words, how to be wealthy at least in one of the chosen forms: materially, emotionally, intellectually, or spiritually. When a human ignores their resource and is not able to establish a tie with it, the destructive processes begin. Inevitably, pronouncing in legal context that a human does not have a right to property (or resource) or that it is not a fundamental human right amounts to disregarding the harmony of the laws of nature.

The myth about the bull is fundamental from the perspective of the right to property as it explains the main dynamics of the resource (or property). First, it shows us where the resource comes from, i.e., that the starting point might be unconsciousness. Second, we see how the resource is acquired. Third, we find out how it is transformed into wealth, i.e., how the use, management, or enjoyment of property becomes fruitful and effective. Finally, we see how it is transferred.

In addition, from natural law perspective the resource is a broad concept. It has not only physical form, but also emotional, mental, spiritual forms. This aspect is well illustrated in the other myth about king Midas and his golden touch. In the myth the king gets the gift he wishes from god Dionysus, namely, the golden touch. The golden touch symbolizes a material resource. However, the king makes a huge mistake – he asks for all other resources to be eliminated or changed into the material one. Therefore, when he takes a rose to smell a fragrance, it turns into gold, when he takes a grape

to eat – it turns into gold, etc. This causes enormous disharmony, which culminates in a disaster when the king touches his beloved daughter, and she turns into a golden statue. All the mentioned objects – rose, grape, princess - are strong symbols of the resources and archetypes themselves. The myth teaches that each resource is important, has a right to exist and brings value. Therefore, from natural law perspective, the objects of the right to property are not only material values, but also emotional (for example, special individual tie), intellectual (for example, know-how), spiritual (for example, art objects) values. Consequently, if a physical item is destroyed, the owner is entitled not only to the compensation according to the market value, but also the individual tie with the owner should be considered, in legal terms moral damage or non-material injury.

In this part of the thesis the author has demonstrated how the myths are analyzed, the archetypes are found, and the characteristics of the right to property are discovered in the realm of natural law. In other words, the author has demonstrated how the essential function of natural law works, when identifying archetypes in collective legal unconsciousness and transposing them into collective legal consciousness.

4. Interim Conclusions

1.This part of the thesis explains that the human right to property may be understood as an archetypal idea. It advances the concept of collective legal unconsciousness (CLU) as a theoretical framework for analysing the origin of the right to property as a human right. From this perspective, human rights are not created by sovereign will but are discovered and articulated as elements of collective legal consciousness, which offers an explanation for their claimed universality and inherent character.

2. By positioning archetypes as a bridge between the empirical realm of enacted law and the transcendental dimension traditionally associated with natural law, CLU addresses key limitations of legal positivism while preserving its methodological clarity. This patrt of the thesis demonstrates that the persistent "is–ought" divide in legal theory does not preclude the influence of transcendental human wisdom on legal development. Instead, CLU provides a coherent framework through which such wisdom may inform the interpretation and evolution of human right to property. This conceptual groundwork enables the subsequent analysis of specific human right—the right to property—as archetypal rights whose legal expressions develop within, but are not exhausted by, positive international law.

3. The analysis of the myth demonstrates concrete inherent characteristics of the human right to property, namely the tie between the owner and the object and the right to exclude others from that tie. Moreover, it reveals the inherent elements of the right, including the right to acquire, the right to use, the right to manage, the right to transfer, and the right to abandon. In addition, the interpretation of the myth discloses features inherent to the concept of what may constitute an object of the human right to property and shows that this concept is broad, encompassing material, emotional, intellectual, and spiritual values.

PART III. THE EXAMPLE OF THE RIGHT TO PROPERTY AS A HUMAN RIGHT IN DIALLO CASE

"In India I was once asked what is the difference between East and West, and I answered: "The best roses of East and West have the same fragrance." So, while we are speaking about opposition and differences, essentially we have the great "One", because really all law is One; and under this law, everything is One. We have only to serve this One; and if we are unable to do so, we may say mea culpa*, for we are guilty of having failed to follow the law."*[710]

In this Part of the thesis the primary task of the author is to demonstrate that the combination of the two approaches – positive law and natural law – is desirable and beneficial in practice, when solving problems related to the right to property as a human right. For this reason, the author takes the following steps. **First**, they select an already solved case by the ICJ regarding the right to property and present the relevant factual circumstances. **Second**, they examine the Court's findings and argumentation on the right to property in the case which are the result of the predominant positivistic approach. **Third**, they demonstrate how the application of natural law could change the findings and argumentation.

A. Relevant Factual Circumstances of the Diallo Case

The author suggests that for the purposes of the thesis the example of the *Diallo* case is the best possible choice because of a number of reasons. To start with, the scope of the thesis requires a case from a universal tribunal, not a regional one. Therefore, the World Court is a suitable forum to search. Second, the right to property as a human right is not a regular object of a dispute in the ICJ, which is a forum for inter-state dispute settlement. The *Diallo* case is exclusively about individual rights under international law, including the right to property among others. Third, the case is already solved, which allows the author to examine its findings and argumentations closely without wondering what the final decision would be. Fourth, after this case there were no substantial disputes in the ICJ involving the right to property, therefore, there is no more recent practice on the subject in the mentioned forum.

Guinea's Application Regarding Mr. Diallo's Right to Property

In 1998 Guinea instituted proceedings stating that the Democratic Republic of the Congo violated Mr. Diallo's rights, including his right to property[711]. According to the facts presented in Guinea's application, Mr. Diallo Ahmadou Sadio was a businessman

710 Nicholas Roerich, initiator of the Treaty on the Protection of Artistic and Scientific Institutions and Historic Monuments, in "Beautiful Unity", Nicholas Roerich Museum, New York, (2019), p.75

711 P. 29-31, https://www.icj-cij.org/sites/default/files/case-related/103/7175.pdf

of Guinean nationality but resided in the Democratic Republic of the Congo for 32 years[712]. Guinea claimed that the DRC unlawfully detained and later expelled him from the territory of the DRC, "despoiled of his sizable investments, business, movable and immovable property and bank accounts"[713].

Guinea pronounced the legal grounds for such a claim in the application. First, Guinea stated that the DRC violated major principles of international law, namely "the obligation to respect the freedom and property of foreign nationals"[714]. Second, Guinea referred to the article 2 of the Declaration of the Rights of Man and Citizens of 1789[715] proclaiming the right to property. Moreover, Guinea linked the breach of all human rights with peremptory norms: "Whereas a State which violates human rights, as is the case here with the Democratic Republic of the Congo, is in breach of a peremptory norms of general international law, within the meaning of Article 53 of the Vienna Convention on the Law of Treaties"[716].

Objects of the application was diplomatic protection on behalf of Mr. Diallo for the alleged violations of three categories of rights: (a) Mr. Diallo's individual personal rights, (b) Mr. Diallo's direct rights as *associe* in two companies, Africom-Zaire and Africontainers-Zaire, (c) the rights of the two companies.[717] Accordingly, the Democratic Republic of the Congo raised preliminary objections to the admissibility. The ICJ ruled that regarding the first two categories of rights the application of Guinea is admissible[718], but Guinea's claim to exercise diplomatic protection by substitution cannot be accepted[719]. Therefore, in the judgement of 2010 the ICJ elaborated on the two categories of rights already mentioned. However, because the scope of the thesis is the right to property as a human right, the author focuses solely on this aspect of the case and does not analyze other human rights or other aspects of the right to property.

712 Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), ICJ, Application Instituting Proceedings, 1998-12-28, p. 3

713 Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), ICJ, Application Instituting Proceedings, 1998-12-28, p. 3

714 P. 5, https://www.icj-cij.org/sites/default/files/case-related/103/7175.pdf (last visited 2024-08-22)

715 P. 31, https://www.icj-cij.org/sites/default/files/case-related/103/7175.pdf (last visited 2024-08-22)

716 P. 31, https://www.icj-cij.org/sites/default/files/case-related/103/7175.pdf (last visited 2024-08-22)

717 Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), ICJ, Judgement of 24 May 2007, p. 4

718 Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), ICJ, Judgement of 24 May 2007, para. 98, pp. 39-40

719 Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), ICJ, Judgement of 24 May 2007, para. 94, p. 38

B. Application of Positive Law to the Facts

1. Judgement of 2010

In the final judgement the ICJ found that the following individual rights of Mr. Diallo were violated: first, the DRC violated his rights guaranteed in Article 13 of the ICCPR (and Art. 12(4) of the African Charter); second, the DRC violated his rights guaranteed in Art. 9(1) and 9(2) of the ICCPR (and Art. 6 of the African Charter); third, the DRC violated his rights guaranteed in Art. 36(1)(b) of the VCCR. However, there were no findings regarding the right to property.

In the part of the judgement named "Protection of Mr. Diallo's Rights as an Individual" the ICJ devoted only one paragraph to the comment on his right to property: "Guinea has further contended that Mr. Diallo's expulsion, given the circumstances in which it was carried out, violated his right to property, guaranteed by Article 14 of the African Charter, because he had to leave behind most of his assets when he was forced to leave Congo.

In the Court's view, this aspect of the dispute has less to do with the lawfulness of Mr. Diallo's expulsion in the light of the DRC's international obligations and more to do with the damage Mr. Diallo suffered as a result of the internationally wrongful acts of which he was a victim. The Court will therefore examine it later in this Judgement, within the context of the question of reparation owed by the Respondent (see paragraphs 160-164 below)."[720] The paragraph, or to be more precise, one key sentence, read together with the final findings of the Court raises queries which require comments.

First, Guinea stated that Mr. Diallo's right to property established in the Art. 14 of the African Charter was violated. The Court cited this contention but said nothing about it of substance. What might be the reasons? One might guess that the Court was of the opinion that such a right to property as a human right does not exist in international law. But if this was the position, the ICJ could simply state that indeed such a right was still in the process of formation and was not a part of customary international law or did not amount to the general principle of law as it was at the time of the dispute. On the other hand, there was an option not to dwell into the evaluation of international customs or general principles of law because the African Charter was applicable. From the context of the dispute one can see that the ICJ found violations of other articles of this regional convention, namely, Art. 12(4), 9(1) and 9(2). Therefore, the Court acknowledged that the treaty was applicable to the dispute. If the Court considered that the factual circumstances did not amount to the breach of Art.14, it would have been desirable to pronounce this.

Second, the chosen formulation of the sentence on the right to property is not enlightening. The ICJ refers to Guinea's claim on Mr. Diallo's right to property as "this aspect of the dispute", thus, it accepts that there is a *dispute* regarding property. And if

720 Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), ICJ, Judgement of 30 November 2010, para. 98, p. 38 (emphasis added)

it constitutes a dispute, the Court has an obligation to settle it because that is the function of the ICJ according to the Art. 38(1) of the Statute. However, the Court was silent on the allegations on violation of the right to property as an individual right.

Even more confusion is brought as the Court continues: "…*less* to do with the lawfulness of Mr. Diallo's expulsion (…) and *more* to do with the damage Mr. Diallo suffered as a result of the internationally wrongful acts". *Less* and *more* presuppose that both elements are relevant with regard to the right to property, just the second one is more related than the first one. Regarding the *less* relevant element the Court's view is that the alleged loss of property is less connected (but still connected) with the lawfulness of Mr. Diallo's expulsion. Which means that from the perspective of the loss of property it is not so important whether the expulsion was lawful and according to the DRC's international obligations or it was unlawful and contrary to these obligations. So, the Court suggests that the loss of property is a separate question, independent from the lawfulness or unlawfulness of detention and expulsion. To follow this line of reasoning, it means that even if expulsion was lawful, the existence of a separate right of Mr. Diallo (the right to property) or the DRC's obligation to protect individuals from the loss of their property in the DRC's jurisdiction under international law should be examined. Nevertheless, the Court left this *less* relevant element without elaboration and turned to a *more* relevant one.

On this point, the ICJ suggested that the loss of property was the result of the violation of guarantees established in the ICCPR, VCCR, and ACHPR. So, Mr. Diallo's property and his right to property is not a value *per se* which a State is obligated to protect, but just damage which occurred because of other internationally wrongful acts. In this scenario there is no need to elaborate on the legal status of the right to property as an individual right or on the possible obligations of the DRC to protect an individual's property in its jurisdiction and no need to evaluate whether the factual circumstances of the case amount to a violation of this right or obligation. The ICJ have chosen this aspect as a *more* relevant and the only one that matters.

Such reasoning would suggest the following methodology for the practitioners in the cases where the violation of the right to property is possible. First, one should evaluate whether there are other violations of individual rights related to the right to property (for example, violation of the right to privacy, the right to housing, the right not to be arbitrary arrested or expelled, etc.). If the answer is yes, then the second step is to say that the loss of property is just the result of the violation of the former rights. If the answer is no, only then, probably, one should move to the *less* relevant element. The methodology does not sound convincing, but rather as an escape from the need to evaluate the status and scope of the right to property as an individual right under international law.

Still, the question remains *how* the ICJ arrived at the conclusion that the loss of property in this case is less relevant as a separate value which deserves to be protected, but more relevant as caused damage. Not a sentence is given on this point. Moreover, why the Court left without examination the question of violation of Art. 14 of the African Charter, which, as the Court has acknowledged is not irrelevant, but just *less*

connected. The author of the thesis has no suggestions on how to answer the first question but would like to make some propositions for a further discussion about the second question.

Possibility No.1. One could state that Guinea itself did not put enough effort to focus the Court's attention on Mr. Diallo's right to property. In presenting its position on Mr. Diallo's individual rights, Guinea focused on the ICCPR, Articles 9 and 13, and did not elaborate on his personal right to property. The African Charter on Human and Peoples' Rights was included in the written proceedings later (10 November 2008) and the parties did not delve into it during the pleadings (19 April 2010)[721]. Interestingly, in their Separate Opinion Judge Trindade elaborated on the point that the ICJ *motu proprio* developed its arguments based on the Articles 6 and 12 of the African Charter[722]. As the ICJ chose to elaborate on the African Charter regarding other rights, it could have also *motu proprio* developed a position on the right to property. But the Court did not. Bearing in mind the factual loss of Mr. Diallo's property and the continual debates about the right to property in international law, there was a chance to pronounce a position. For some reason there was no such will or there was dominant assurance that there is no need for such an examination.

Possibility No.2. There might be a position that the case was not about the right to property, as proposed by Judge Trindade[723]. He suggests that the case has undergone a metamorphosis in time[724]. To put in his words: "Earlier on, much emphasis was placed on property rights and diplomatic protection, but enthusiasts of those two traditional issues seemed gradually to lose some or much of their interest (…), as the dynamics of the present case has fortunately taken new course, in the written and oral phases concerning the merits"[725]. Judge Trindade continues: "To my mind, the truth is that, during the proceedings on the merits, the present case has taken form – as it should – of a clear case of *human rights protection*. (…) *Vivere* itself comes before *habere*, and *dignitatem vivere* surely stands above property rights. Well above discretionary diplomatic protection, this has become a case of human rights protection, and one with far greater interest, in my view, for the *jus gentium* of our times."[726].

The author of the thesis finds this pronouncement confusing. Former judge Trindade expresses his delight that the case has changed from focusing on property rights to *other* human rights. Property rights and *other* human rights are seen as opposites. What the true motives of the applicant were one can only imply. Whatever they were, it does not explain the proposed separation from and contrasting to Mr. Diallo's right

721 https://www.icj-cij.org/sites/default/files/case-related/103/103-20101130-JUD-01-05-EN.pdf, para. 25-26, pp. 101-102

722 https://www.icj-cij.org/sites/default/files/case-related/103/103-20101130-JUD-01-05-EN.pdf, para. 2, p. 102

723 https://www.icj-cij.org/sites/default/files/case-related/103/103-20101130-JUD-01-05-EN.pdf, para. 17

724 https://www.icj-cij.org/sites/default/files/case-related/103/103-20101130-JUD-01-05-EN.pdf, para. 17

725 https://www.icj-cij.org/sites/default/files/case-related/103/103-20101130-JUD-01-05-EN.pdf, para. 17

726 https://www.icj-cij.org/sites/default/files/case-related/103/103-20101130-JUD-01-05-EN.pdf, para. 18

to property and other human rights which were indeed violated, according to the ICJ. And if indeed the suggested approach is that the right to property should be separated from other "true" human rights, then an explanation is more than indispensable. Perhaps no one would contest that *vivere* stands above *habere*, but this does not explain why two human rights cannot be violated by the same actions. On the contrary, as it was already pronounced by the author "One unlawful act can violate more than one international obligation. (…) This could be the case for Mr. Diallo. The unlawful actions of the DRC caused not only illegal expulsion and detention, but also a violation of the right to property. The choice of the Court to acknowledge the violation of the former but keep silent on the latter leaves uncertainties and fosters further queries"[727]. Unless, of course, one considers that the right to property is not a human right.

Third, the ICJ promises to examine "this aspect of a dispute" in paragraphs 160-164[728]. However, these paragraphs briefly mention "personal belongings" without providing further examination: "The Court is of the opinion that the Parties should indeed engage in negotiation in order to agree on the amount of compensation to be paid by the DRC to Guinea for the injury flowing from the wrongful detention and expulsion of Mr. Diallo in 1995-1996, *including the resulting loss of his personal belongings*."[729] The ICJ explicitly adds the loss of personal belongings labeling it as an injury caused by unlawful detention and expulsion. Therefore, according to the Court, formally the breaches have nothing to do with the right to property, but the loss of personal belongings should be compensated.

Moreover, the Judges' opinions amended to the Judgement of 2010 raise important aspects of the right to property. In the joint dissenting opinion Judges Al-Khasawneh and Yusuf noted that they disagree with the Court that Mr. Diallo's direct rights as *associe* have not been violated by the DRC bearing in mind the evolution of international law on the issue[730]. They see the clear causal link between the DRC's actions when arresting and expelling Mr. Diallo and the loss of his rights of ownership in his companies and state that the DRC's actions amount to undeclared expropriation[731]. Judge Bennouna upholds this position in his dissenting opinion stating that hindrance to the exercise of Mr. Diallo's rights amounted to "the DRC depriving him of his direct rights as *associe*, thereby committing wrongful acts which engage its international responsibility"[732]. Therefore, questions emerged on the property rights not only from

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727 Saulius Katuoka, Inga Motuzienė, Shareholders' Rights in International Law: (Con)temporary Reflections in the Diallo case, Entrepreneurship and Sustainability Issues, 2020 Volume 8 Number 1, p. 252

728 Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), ICJ, Judgement of 30 November 2010, para. 98, p. 38

729 Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), ICJ, Judgement of 30 November 2010, para.163, p. 56 (emphasis added)

730 https://www.icj-cij.org/sites/default/files/case-related/103/103-20101130-JUD-01-02-EN.pdf, p. 76

731 https://www.icj-cij.org/sites/default/files/case-related/103/103-20101130-JUD-01-02-EN.pdf, p. 76

732 https://www.icj-cij.org/sites/default/files/case-related/103/103-20101130-JUD-01-04-EN.pdf, p. 93

the perspective of international human rights law, but from the perspective of international investment law as well. However, the author of the thesis has already stated that the scope and focus of the thesis is the right to property as a human right, therefore, the perspective of international investment law is out of the scope and will not be analyzed.

After the Judgement of 2010, Guinea and the DRC did not manage to reach an agreement on the amount of compensation for the damage, therefore, the former State presented the memorial and the latter State the counter-memorial regarding the question.

2. Judgement of 2012

It was the first occasion since the 1949 *Corfu Channel* case when the ICJ had to assess damage.[733] Although the purpose of this judgement was to assess the size of the compensation based on the previously found violations, some aspects are relevant in the context of the right to property.

Guinea sought compensation under four heads of damage: (a) non-material injury (Guinea named it mental and moral damage, asked for US$ 250 000[734]) and three types of material damage: (b) alleged loss of personal property, (c) alleged loss of earnings during Mr. Diallo's detention and after his expulsion, and (d) alleged deprivation of potential earnings[735]. When claiming compensation for the loss of personal property, Guinea divides the property into three categories: furnishings, high-value items, and assets in bank accounts[736], and claims US$ 550 000 for all three categories. Guinea lists various high-value items, including two Salvador Dali paintings, a bronze Yolo statue, the complete memoirs of General de Gaulle, three Chinese carpets purchased at a trade fair in Kinshasa, a Cartier watch with 16 small diamonds, etc.[737].

In response to Guinea's claims, the DRC builds the arguments on the interpretation of the facts: "claim by Guinea is not based on any serious and credible evidence and should be dismissed"[738]. The DRC continues in its counter-memorial: "…it is true that the Court clearly stated in its Judgement on the merits of the dispute that the DRC must pay compensation to Guinea for the injury flowing from the wrongful detention and expulsion of Mr. Diallo in 1995-1996, *including the resulting loss of his personal belongings*. The Respondent considers that this is simply a statement of principle by the Court regarding the possible loss of Mr. Diallo's personal belongings. It is thus now for Guinea, at the present stage of the proceedings, to provide the Court with evidence

733 https://www.icj-cij.org/sites/default/files/case-related/103/103-20120619-JUD-01-03-EN.pdf, para. 8

734 https://www.icj-cij.org/sites/default/files/case-related/103/17028.pdf, para. 69

735 Case Concerning Ahmadou Sadio Diallo, ICJ, 2012, Judgement of 19 June 2012, para. 14, p. 11

736 Case Concerning Ahmadou Sadio Diallo, ICJ, 2012, Judgement of 19 June 2012, para. 29, p. 16

737 https://www.icj-cij.org/sites/default/files/case-related/103/17028.pdf, para. 56

738 2.40, https://www.icj-cij.org/sites/default/files/case-related/103/17030.pdf (last visited 2024-08-22)

under three heads: (1) credible and convincing evidence of the genuine, rather than imaginary, existence of Mr. Diallo's personal belongings; (2) evidence of the real, rather than hypothetical, loss of those belongings following his expulsion; (3) credible and irrefutable proof of their financial value."[739] The Democratic Republic of the Congo asks to prove three points regarding the personal belongings. The author notices that these three requirements resemble the aspects of the right to property. First, the fact of the real existence of the property, proof that the *ownership over it was acquired* by Mr. Diallo. Guinea is asked to demonstrate that Mr. Diallo did acquire the listed objects of the property in the past. Second, the fact that these objects of property were lost and neither Mr. Diallo nor his relatives had access to them and could exercise the *peaceful use of the property* mentioned. Third, proof regarding the real financial *value of the objects* should be provided.

The Court examines all the types of claimed damage one by one. Regarding the non-material injury, the Court agrees with Guinea's proposition that it can be established without specific evidence[740]. When making arguments on the non-material damage Guinea describes Mr. Diallo as an extraordinary personality, who "…belonged to the country's wealthiest social class"[741], lived in luxury apartments, established all his personal and professional ties in the DRC and thus, after deprivation had no assets or property in Guinea to continue living in the equivalent or even normal circumstances[742]. In other words, the emphasis is on the financial and social benefits that he had in the DRC and lost afterwards, while the Court elaborates on significant psychological suffering and loss of reputation which were caused by the changes forced by the DRC[743].

Regarding all three types of the material injury, after the examination the ICJ states that there is no evidence to uphold any of the claims (no records of purchase, no evidence that the alleged items were in the apartment during the time of his expulsion, etc.)[744]. In other words, the examination resembles the DRC's contentions that Guinea must provide evidence regarding the acquisition of property, inability to transfer it after expulsion, etc. Nevertheless, the ICJ states that "despite the shortcomings in the evidence related to the property (…) the Court recalls that Mr. Diallo lived and worked in the territory of the DRC for over thirty years, during which time he surely accumulated personal property. (…) Thus, the Court is satisfied that the DRC's unlawful conduct caused some material injury to Mr. Diallo *with respect to personal property* that had been in the apartment in which he lived, although it would not be reasonable

739 2.42, https://www.icj-cij.org/sites/default/files/case-related/103/17030.pdf (emphasis added) (last visited 2024-08-22)

740 Case Concerning Ahmadou Sadio Diallo, ICJ, 2012, Judgement of 19 June 2012, para. 21, p. 14

741 https://www.icj-cij.org/sites/default/files/case-related/103/17028.pdf, p. 6

742 https://www.icj-cij.org/sites/default/files/case-related/103/17028.pdf, p. 5

743 Case Concerning Ahmadou Sadio Diallo, ICJ, 2012, Judgement of 19 June 2012, para. 21, p. 14

744 Case Concerning Ahmadou Sadio Diallo, ICJ, 2012, Judgement of 19 June 2012, para. 31, 34, 35, 46, 49, 54

to accept the very large sum claimed by Guinea for this head of damage"[745]. Therefore, based on equitable considerations the Court awards the sum of US$ 10 000 regarding Mr. Diallo's personal property[746].

Regarding the claim on the alleged loss of earnings during Mr. Diallo's detention and after his expulsion, the ICJ holds that Guinea offers no evidence to support such a statement[747] and that such a claim is speculative[748]. Therefore, the Court states that the compensation for remuneration will not be awarded[749]. Judge Yusuf adds a declaration to the Judgement where he disagrees with such a finding. He stresses that "by focusing solely on the lack of reliable evidence relating to the amount of monthly earnings of Mr. Diallo (paragraphs 42-44 of the Judgement), the Court has lost sight of the actual injury caused by unlawful detention of Mr. Diallo – i.e., the disruption of his income-generating activities."[750] The author of the thesis upholds Judge Yusuf's position that the fact that Guinea was not able to establish the exact amount of earnings "can neither detract from the existence of an injury due to his detentions nor from the fact that these unlawful detentions interfered with his ability to engage in his normal income-generating activities"[751]. The causal nexus does exist between the DRC's illegal actions – detention and expulsion – and the injury suffered, i.e., interference into Mr. Diallo's income-generating activities. Therefore, a causal nexus should be a sufficient reason to award a compensation notwithstanding the fact that there is lack of evidence about pre-detention earnings. Furthermore, such a final finding of the ICJ is contrary to the extensive practice of international human rights courts. For example, in *Stafford v. United Kingdom*, the ECHR stated that the applicant failed to provide evidence for the loss of earnings, however, the Court found that there was a causal nexus between the unlawful detention and the injury suffered and this was enough to award both pecuniary and non-pecuniary damages on the basis of equity[752]. The same approach was taken by the ECHR in *Assanidze v. Georgia*[753] as well as by the IACHR in *Caracazo v. Venezuela*[754] and *Ituango Massacres v. Columbia*[755].

The author of the thesis cannot uphold the ICJ's arguments on the point of the alleged loss of earnings of Mr. Diallo because of the incongruity of the Court's position stated and the arguments presented to support that position. The arguments of the

745 Case Concerning Ahmadou Sadio Diallo, ICJ, 2012, Judgement of 19 June 2012, para. 33, p. 17

746 Case Concerning Ahmadou Sadio Diallo, ICJ, 2012, Judgement of 19 June 2012, para. 36, p. 18

747 Case Concerning Ahmadou Sadio Diallo, ICJ, 2012, Judgement of 19 June 2012, para. 41, 46

748 Case Concerning Ahmadou Sadio Diallo, ICJ, 2012, Judgement of 19 June 2012, para. 49

749 Case Concerning Ahmadou Sadio Diallo, ICJ, 2012, Judgement of 19 June 2012, para. 50, 61

750 https://www.icj-cij.org/sites/default/files/case-related/103/103-20120619-JUD-01-02-EN.pdf, para. 10

751 https://www.icj-cij.org/sites/default/files/case-related/103/103-20120619-JUD-01-02-EN.pdf, para. 11

752 https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-60486%22]}, 2002, ECHR

753 https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-61875%22]}, 2004, ECHR

754 https://www.corteidh.or.cr/docs/casos/articulos/seriec_95_ing.pdf, 2002, IACHR

755 https://www.corteidh.or.cr/docs/casos/articulos/seriec_148_ing.pdf, 2006 IACH

Court are more suitable for the non-violation of the right to property and not for the Court's position that certain human rights established in the treaties were violated and because of these violations (already acknowledged in the 2010 Judgement) the injury occurred. In the 2010 Judgement the Court stated that the aspect of the dispute related to property rights should be seen not as a separate violation of the right to property under Article 14 of the African Charter, but as "…the damage Mr. Diallo suffered as a result of the internationally wrongful acts of which he was a victim"[756]. This means that the Court had already acknowledged that the violation had taken place and damage had been incurred. So, if the task of the ICJ in the 2012 Judgement was only to *assess* the damage, the question arises how it could change its mind on the ground of lack of proof for the precise amount of earnings and pronounce that the compensation was not awarded at all. Particularly bearing in mind that there is plenty of jurisprudence of the international human rights courts where failure to provide evidence is not a reason to deny compensation if causal nexus is established. Indeed, it is hard to calculate the amount of compensation, but to deny it is not in line with the Court's previous statement. There is always an option to award a certain amount of compensation on the basis of equity the way it was done many times by the ECHR, the IACHR, and by the ICJ itself in the same Diallo case regarding the material claim (b) on the loss of personal property. The Court itself states that "despite of *shortcomings in the evidence* related to the property listed (…), the Court considers it appropriate *to award an amount of compensation based on equitable considerations*"[757]. Therefore, it is very hard to find a sound reason why the ICJ is not following its own position regarding the alleged loss of earnings during the detention and expulsion. Unless, what the Court was actually doing was giving the reasoning another statement – that the right to property was not violated. The author of the thesis submits that the applicant's three claims could amount to the objects of the right to property, i.e., personal property, the loss of earning, and potential earnings. The choice of the Court to differentiate its position on personal property (treating it as the damage that resulted from the violations of human rights) and the loss of earnings (*de facto* treating it as the examination of a possible violation of the right to property) sustains the suspicion that the Court was not willing to elaborate on the right to property as an individual right and its status under contemporary international law.

Finally, the ICJ concluded that compensation should be paid only on the two mentioned grounds – (a) and (b). The Court fixed the compensation for the non-material injury suffered at the sum of US$ 85 000 and "…for the material injury suffered by Mr. Diallo in relation to *his personal property* at US$ 10 000"[758].

Although the judgement is about the compensation for the acknowledged violations of human rights, the positions of the States presented in the memorial and

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756 Case Concerning Ahmadou Sadio Diallo, ICJ, 2010, Judgement of 30 November 2010, para. 98

757 Case Concerning Ahmadou Sadio Diallo, ICJ, 2012, Judgement of 19 June 2012, para. 32, p. 17 (emphasis added)

758 Case Concerning Ahmadou Sadio Diallo, ICJ, 2012, Judgement of 19 June 2012, para. 61, p. 25

counter-memorial as well as the Court's examination turn upon Mr. Diallo's property. Arguably, if the Court had made a choice to examine a possible violation of the right to property in the 2010 Judgement, the argumentation on the findings of the 2012 Judgement would have been different.

To sum up, from the perspective of positive law the ICJ said nothing regarding the right to property. Guinea invoked the treaty (African Charter, Art. 14) as a source, but the ICJ gave no comments on its applicability/inapplicability to the case at hand. Guinea did not try to invoke customary law or general principles of law on the question of the right to property and the ICJ did not mention it *motu proprio* either.

C. Applying the Contemporary Natural Law Approach to the Dialo Case

To start with, a notable point of contention in the Diallo case was the ICJ's application of the merger doctrine, under which a single act that constitutes two violations may allow the lesser violation to merge into the greater. From a contemporary natural law perspective, this approach is problematic. Both the human right to property and other fundamental human rights violated in the case carry equal normative weight, and their violations should not be treated as hierarchical. The merger of fundamental rights undermines the moral and legal significance inherent in each right, contradicting the contemporary natural law principle that fundamental (or basic) rights are universally and equally binding. The fact that the Court applied the merger doctrine to the human right to property demonstrates that it did not recognize the fundamental importance of this right. Indeed, as the analysis has shown, the human right to property is not firmly established in universal international treaties. Nevertheless, the research presented in Part I demonstrated that the human right to property is a general principle of law and, furthermore, that it constitutes a fundamental right. The research in Part II substantiates this position by identifying additional key features of this right: first, the importance of the tie between the owner and the object; and second, the significance of protecting this tie from third-party interference. These two features should be taken into account when evaluating the factual circumstances in the case from natural law perspective.

To continue, the case also illustrates the broader hesitation of the ICJ to rely solely on general principles of law, despite their formal recognition as one of the three primary sources of international law. One underlying reason is the inherent uncertainty introduced by natural law elements. International judges, trained within domestic legal frameworks emphasizing legal certainty, often perceive natural law reasoning as unpredictable and not reliable. However, this is the effect of their domestic legal background traning. Yet international law operates differently and has its unique characteristics: legal certainty is dynamic, contingent on State consent and evolving practices, rather than fixed. The ICJ's preference for treaties and customary law—clear expressions of sovereign will—reflects this positivist bias, relegating general principles of law to a gap-filling role.

Contemporary natural law provides a framework for revitalizing general principles

in international law, reinforcing them as a self-sufficient source of international law. By acknowledging natural principles, as reflected in the collective legal consciousness, general principles of law can complement positivist sources, guiding courts and scholars in the interpretation of international rights and obligations. This perspective aligns with Maarten Bos' understanding of the methodology of international law, as he emphasizes that legal thought is always composed of two equally important components: law in force and method lato sensu (where natural law is found). In the Diallo case, it appears that the Court relied solely on one component of legal thought—the law in force. Moreover, it did so in a very narrow sense, ignoring even a formal source of law: general principles of law.

The application of natural law approach allows for the creation and application of rules beyond treaty amendments or new conventions, incorporating inputs from civil society, scholars, and non-governmental organizations, and thereby contributing to the evolution of international law in a dynamic, contemporary manner. This evolutionary path is also in line with the broader tendency in international law to shift from a state-centric approach toward a human-centered approach.

To conclude, the application of a general principle of law, recognized as a formal source of positivist law, when supported by the content of the human right to property as understood through the contemporary natural law approach to the facts of the Diallo case, would inevitably lead to the conclusion that the human right to property was violated.

CONCLUSIONS AND SUGGESTIONS

After a comprehensive analysis has been carried out, the author of the thesis concludes that the objectives of the research set in the introduction have been fully implemented, the research purpose has been achieved, and the defense statements have been justified. The following conclusions substantiate this.

The conclusions No.1 and No.2 corresponds to the **purpose of the thesis** to provide a conceptual viewpoint on the human right to property in international law that combines positive and contemporary natural law.

1. Analysis suggests that the two approaches – positive law and contemporary natural law – should be used cumulatively in order to solve current problems related to the the status and application of a right to property as a human right under the international law and guarantee the harmonious evolution of the understanding of the mentioned right. These two approaches perform different functions. Therefore, it cannot be the choice of *this* or *that*, both should be used. They are not alternatives, where one is better than the other. They are the form (positive law) and the substance (contemporary natural law). Both should be studied, understood, and applied. They should coexist in various stages of legal reality, when creating the international rules related to the right to property as a human right as well as when applying them. The deficiancies of the positive law can be overcome by the help of the contemporary natural law.
2. In the field of human rights it is worth to examine closely both contemporary natural law (which reflects the everlasting archetypical laws existing in the collective legal unconsciousness or a *lex aeterna*) and positive law (which reflects the current will of States, the law in force or a *lex lata*), when analyzing a particular rule in problematic cases. After that, to use comparative method and to examine, what is a difference on status and scope between them. If there is a huge gap and it is getting wider, the crisis on the subject or constant problems with the regulation of relations regarding the subject are guaranteed. Therefore, the creation of *lex ferenda*, narrowing such gap is important. It means that *lex ferenda* will help only if it will be adjusted to *lex aeterna*. The author of the thesis agrees that the examination of the scope of the legal rule from the natural law perspective is a complex and time-consuming process. However, at least the status and scope of general principles of law (as it usually encompasses both, the natural and positive law, thus has a part of *lex aeterna*) can be examined and compared with such sources as treaties or international customs (*lex lata*), which are primarily based on the will of States.

The conclusions No.3, No.4, No.5, No.6 corresponds to the **first objective** - to analyze the status and characteristics of the right to property from the positivistic point of view.

3. There are several answers to the question about the status of the right to property in **international treaty law**. To start with, the human right treaties are not monosemantic but are divided into two categories: (i) conventions

pronouncing catalogue of human rights and (ii) anti-discrimination conventions. The author concludes that there is no right to property as a human right in the first category of treaties. As to the second category, the distinction should be made between property clauses in (a) the CEDAW and the CERD on one hand and (b) the CPRMW and the CRPD on the other hand. In the former case, interpretation of the clauses leads to the conclusion that the States are not creating legally binding treaty rights to property, therefore the CEDAW and the CERD do not add anything new to the right to property existing in each domestic legal system. In the latter case, the sum of all the circumstances suggest that the States recognize the fact that vulnerable groups of people do have a self-sufficient international individual right to property. While the CPRMW is ratified by 60 States, which amounts to less than one third of all the States, the CRPD is ratified by 186 states, which confirms the universal acceptance of the right to property. Second, the universal conventions in various fields of international law have property clauses. These clauses should be examined on case-by-case basis in order to conclude whether they amount to international individual right to property.

4. The most formal source of positive law, the international treaty law affirms the existence of the following components of the right to property: right to own, right to acquire (right to inherit as one of the forms), right to use, right to administer/ right to manage, right to transfer. The general prohibition to deprive property is a common feature to the universal human right treaties, which entered into force in the 21st century, and regional human right treaties.
5. Evaluation of general state practice and *opinio juris* leads to the suggestion that the status of the right to property is a customary rule. However, the content of this right is very modest in **customary international law** because almost in all cases the widespread concurrent conduct exists, which means that the general practice does not amount to the extent required. After the analysis the author concludes that the customary rule could be formulated at least as follows: "Everyone has a right to personal belongings".
6. The right to property as a fundamental (or basic) human right is a **general principle of law** under international law as it satisfies both requirements: first, it exists in the vast majority of the States around the globe as it was proved by the analysis of property clauses of 185 constitutions; and, second, it is transposable to international law as it does not contradict the fundamental principles of international law and is recognized by States before international courts. The author of the thesis concludes that a general principle of law in international law regarding the right to property as a human right might be formulated: "Everyone has a fundamental right to own property. No one shall be deprived of his or her property except upon payment of just compensation, for reasons of public interests and subject to the conditions provided for by law."

The conclusions No.7, No.8, No.9 corresponds to the **second objective** – to analyze the right to property from the perspective of contemporary natural law.

7. The analysis shows that the scope of the right to property as a human right is wider in contemporary natural law than in positive law. The characteristics of the right found in the formal sources of international law are modest, while the sources of natural law reveal the right's multi-dimensional characteristic. The interdisciplinary analysis from natural law perspective suggests that the subject-matter of the right to property is a resource. It can be divided into four categories: material resource, emotional resource, intellectual resource, and spiritual resource. Accordingly, one of the key characteristics of the right to property is the tie between the owner and the object. The right to exclude others from the tie is also essential. Therefore, the author suggests that the protection of the tie in positive law is of the great importance. This characteristic found in natural law is a reason why reparation for damage caused when the right to property is violated should be compensated in both forms – material and non-material.
8. After the analysis **the author of the thesis suggests** modifying the definition of the **collective legal consciousness** proposed by Marina Kurkchiyan. The formulation of the definition could be as follows: "The collective legal consciousness is *a sum of all existing perceptions* of what law is and how people tend to relate to it in a given society". Such modification correctly and more precisely reflects the complex content of the collective legal consciousness.
9. **The author of the thesis introduces** the concept of **collective legal unconsciousness**, based on the C.G. Jung findings in the field of collective unconsciousness and archetypes. The author submits that the essential function of natural law is identifying *lex aeterna* archetypes in collective legal unconsciousness and transposing them into collective legal consciousness in the form of principles and laws of nature. Further, it is suggested that they should be used when creating, applying and interpreting formal sources of the right to property as a human right in international law.

The conclusions No.10, No.11, No.12 corresponds to the **third objective** - to reveal the shortcomings of legal positivism in the application of the right to property through the example of *Diallo* case and the possibility to solve this problem with the help of contemporary natural law.

10. The finding that the right to property is a basic (fundamental) human right has legal consequences in practice. If one follows the ICJ's pronouncement in the *Barcelona Traction* case that obligations *erga omnes* derive from basic human rights, the conclusion would be that obligations *erga omnes* derive from the right to property as a human right (as a general principle of law under international law).
11. As the right to property is a basic (fundamental) right, **the author suggests** that the merger doctrine, where a single act constitutes two violations and the lesser violation merges the greater one, should not be used as it was done in *Diallo* case by the ICJ. It is the proposition of the author that the violations of the two

fundamental rights cannot be merged as the both fundamental rights are of the equal importance.

12. In theory general principles of law is acknowledged to be one of the three main formal sources of international law, but the ICJ rarely relay in its final judgements solely on this source as a self-sufficient. *Diallo* case illustrates this tendency. The author suggests that one of the main reasons is that the general principles of law in international law encompass the element of natural law, which brings in uncertainty in the collective legal consciousness of the international judges and tribunals. For most of them the uncertainty is something they instinctively and unconsciously try to avoid because in all legal systems lawyers are trained that one of the key concepts for a lawyer is an opposite one - legal certainty. But the truth is that international law as a legal system has unique characteristics and legal certainty in this system is not a static, but rather a dynamic concept, which depends on States' will. The dominance of the legal positivism is reflected in the choice to relay on treaties and international customs as these are the legal sources emerging from the will of the sovereign States. General principles of law in international law are seen as gap filling. However, although it is true in the national law systems, the same approach does not work in the international law system. Therefore, **the author submits** that the revitalizing of the general principles of law in international law in their understanding and application is a way towards evolution of international law. The creation and application of rules of international law can be achieved not only though the amendments of treaties or proposing new treaties (traditional positivistic approach, dependent on sovereigns' will), but also though the form of general principles of law (contemporary natural law approach, dependent on scholars, civil societies, non-governmental organizations, etc.).

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7. Argentina 1853 (reinst. 1945, rev. 2013)
8. Armenia 1995 (rev. 2015)
9. Australia (Commonwealth of) 1901 (rev.1985)
10. Austria 1920, (reinst.1945, rev.2013)
11. Azerbaijan 1995 (rev.2016)
12. Bahamas (1973)
13. Bahrain 2002 (rev.2017)
14. Bangladesh 1972 (rev.2014)
15. Barbados 1966 (rev.2007)
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26. Bulgaria 1991 (rev.2015)
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34. Chad 2018
35. Chile 1980 (rev.2021)
36. China (People's Republic of) 1982 (rev.2018)
37. Colombia 1991 (rev.2015)
38. Commonwealth of Australia Constitution Act 1901 (rev. 1985)
39. Congo (Democratic Republic of the) 2005 (rev.2011)
40. Congo (Republic of the) 2015
41. Costa Rica 1949 (rev.2020)
42. Cote d'Ivoire 2016
43. Croatia 1991 (rev.2013)
44. Cuba 2019
45. Cyprus 1960 (rev.2013)
46. Czech Republic 1993 (rev.2013)
47. Denmark 1953
48. Djibouti 1992
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57. Eswatini 2005
58. Ethiopia 1994
59. Fiji 2013
60. Finland 1999 (rev. 2011)
61. France 1958 (rev.2008)
62. Gabon 1991 (rev.2011)
63. Gambia 2020
64. Georgia 1995 (rev.2018)
65. Germany 1949 (rev.2014)
66. Ghana 1992 (rev.1996)
67. Greece 1975 (rev.2008)
68. Grenada 1973 (reinst.1991, rev.1992)
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Annex I

Right to Property as a Human Right In International Treaties in Force

No.	Year	Name of Treaty	No. of Parties	Provisions (Directly using word 'property')	Beneficiaries	Field of law
1.	1883	Paris Convention for the Protection of Industrial Property (revised in 1900, 1911, 1925, 1934, 1958, 1967, 1979)	179[759]	Protection of industrial *property* (art.1)	Nationals of member states and nationals of others domiciled or established in the member states (art.3)	Intellectual property law
2.	1907	Hague Convention (IV) Respecting the laws and Customs of War on Land (Annex to the Convention)	38[760]	-'All their personal belongings (…) remain their *property*' (art.4) -Prohibition to destroy or seize enemy *property* (art.23) -Private *property* must be respected. Private *property* cannot be confiscated (art.46)	-Prisoners of war (art.4) -parties in hostilities (art.23)	International humanitarian law
3.	1949	Convention (IV) Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)	196[761]	'Any destruction by the Occupying Power of real or personal *property* belonging individually or collectively to private persons (...) is prohibited (…)' (art 53.)	Individuals and groups during armed conflict or military occupations (art.53)	International humanitarian law

759 https://www.wipo.int/wipolex/en/treaties/ShowResults?start_year=ANY&end_year=ANY&search_what=C&code=ALL&treaty_id=2 (last visited 2023-07-25)

760 https://ihl-databases.icrc.org/en/ihl-treaties/hague-conv-iv-1907/state-parties?activeTab=default (last visited 2023-07-25)

761 https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/state-parties?activeTab=default (last visited 2023-07-25)

4.	1951	Convention Relating to the Status of Refugees	146[762]	- 'The Contracting States shall accord to a refugee treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the acquisition of movable and immovable *property* and other rights pertaining thereto, and to leases and other contracts relating to movable and immovable *property*. (art. 13) - 'In respect of the protection of industrial *property*, such as inventions, designs or models, trademarks, trade names, and of rights in literary, artistic and scientific works, a refugee shall be accorded in the country in which he has his habitual residence the same protection as is accorded to nationals of that country.'(art.14)	Refugees (art.3)	Refugee Law
5.	1952	Protocol 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms	44[763]	'**Article 1 – Protection of *property***. Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived with his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.' (art.1)	Every natural of legal person	Human Rights law (regional)

762 https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-2&chapter=5&Temp=mtdsg2&clang=_en (last visited 2023-07-25)

763 https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=009 (last visited 2023-07-25). Since 2022-

6.	1954	Convention Relating to the Status of Stateless Persons	96[764]	'The Contracting States shall accord to a stateless person treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the acquisition of movable and immovable *property* and other rights pertaining thereto, and to leases and other contracts relating to movable and immovable *property*. (art. 13) - 'In respect of the protection of industrial *property*, such as inventions, designs or models, trademarks, trade names, and of rights in literary, artistic and scientific works, a stateless person shall be accorded in the country in which he has his habitual residence the same protection as is accorded to nationals of that country.'(art.14)	Stateless persons	Refugee law
7.	1954	Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict	134[765]	'…the protection of cultural *property* shall comprise the safeguarding of and respect for such *property*.'(art.2)	All mankind, States (preamble, art.3)	Cultural property law/ Art and culture law
8.	1961	Vienna Convention on Diplomatic Relations	193[766]	'His papers, correspondence and (…) his *property*, shall likewise enjoy inviolability.' (art.30(2))	Diplomatic agents	Diplomatic law

764 https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-3&chapter=5&Temp=mtdsg2 (last visited 2023-07-25)

765 https://en.unesco.org/protecting-heritage/convention-and-protocols/states-parties (last visited 2023-07-25)

766 https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=III-3&chapter=3&clang=_en (last visited 2023-07-25)

9.	1965	International Convention on the Elimination of All Forms of Racial Discrimination	182[767]	'The right to own *property* alone as well as in association with others.' (art.5 (d) (v)) 'The right to inherit.' (art.5 (d)(vi))	Individuals and groups	Human rights law
10.	1967	American Convention on Human Rights (ACHR)	25[768]	'**Article 21. Right to *Property*.** 1.Everyone has the right to the use and enjoyment of his *property*. The law may subordinate such use and enjoyment to the interest of society. 2. No one shall be deprived of his *property* except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law.' (art.21)	Everyone (art.21)	Human Rights law (regional)
11.	1970	Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property	143[769]	'The import, export or transfer of ownership of cultural *property* effected contrary to the provisions adopted under this Convention by the States Parties thereto, shall be illicit.'(art.3) 'To ensure the protection of the cultural *property* against illicit import, export and transfer of ownership, the States Parties to this Convention undertake (…) to set up within their territories one or more national services, where such services do not already exist, for the protection of the cultural heritage, with a qualified staff sufficient in number for the effective carrying out of the following functions (…).' (art.5)	Everyone, States	Cultural property law/ Art and culture law

767 https://indicators.ohchr.org (last visited 2023-07-31)

768 https://www.oas.org/dil/treaties_b-32_american_convention_on_human_rights_sign.htm (last visited 2023-07-27)

769 https://www.unesco.org/en/legal-affairs/convention-means-prohibiting-and-preventing-illicit-import-export-and-transfer-ownership-cultural (last visited 2025-05-02)

12.	1979	Convention on the Elimination of All Forms of Discrimination against Women	189[770]	'States Parties shall (…) give women equal rights to conclude contracts and to administer *property* (…).' (art. 15.2) 'States Parties shall (…) ensure, on a basis of equality of men and women (…) the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of *property* (…).'(art.16(1)(h))	Women	International human rights law
13.	1981	African Charter on Human and Peoples' Rights	54[771]	'The right to *property* shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.'(art. 14)	Every individual (art.2)	Human rights law (regional)
14.	1989	ILO Convention (No.169) Concerning Indigenous and Tribal Peoples in Independent Countries	24[772]	'Special measures shall be adopted as appropriate for safeguarding the persons, institutions, *property*, labour, cultures and environment of the peoples concerned.'(art.4(1)) 'The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognized.'(art.14(1)) 'The rights of peoples concerned to the national resources pertaining to their lands shall be specially safeguarded. These rights include the right of these people to participate in the use, management and conservation of these resources.'(art.15 (1))	Indigenous and tribal people (art.1)	Labour law and Indigenous people

770 https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-8&chapter=4&clang=_en (last visited 2025-05-01)

771 https://achpr.au.int/en/charter/african-charter-human-and-peoples-rights (last visited 2023-07-27)

772 https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312314:NO (last visited 2023-07-31)

15.	1990	International Convention of the Rights of All Migrant Workers and Members of Their Families	60[773]	'No migrant worker or member of his or her family shall be arbitrarily deprived of *property*, whether owned individually or in association with others.'(art.15)	Migrant workers and members of their families	International human rights law
16.	1994	Agreement on Trade-Related Aspects of Intellectual Property Rights	164[774]	'Each Member shall accord to the nationals of other Members treatment no less favourable than that it accords top its own nationals with regard to the protection of intellectual *property* (…).' (art. 3(1)).	Everyone entitled to intellectual property (art.3)	International trade law/ international property law
17.	2000	Charter of Fundamental Rights of the European Union	27[775]	**'Article 17. Right to *property*.** 1.Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of *property* may be regulated by law in so far as is necessary for the general interest. 2. Intellectual *property* shall be protected.' (art.17)	Every citizen of EU	Human rights law/ EU law (regional)

773 https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-13&chapter=4&clang=_en (last visited 2025-05-18)

774 https://www.wipo.int/wipolex/en/treaties/parties/231 (last visited 2023-07-31)

775 https://european-union.europa.eu/easy-read_en#:~:text=The%20European%20Union%20is%20a%20group%20of%2027%20countries%20in%20Europe.&text=to%20make%20things%20better%2C%20easier,together%20and%20help%20each%20other. (Last visited 2023-07-31)

18.	2000	United Nations Convention Against Transnational Organized Crime	193[776]	'Each State Party shall adopt (…) such legislative and other measures as may be necessary to establish as criminal offences, when committed internationally: (a)(i) The conversion or transfer of *property* (…). (b) Subject to the basic concepts of its legal system: (i) The acquisition, possession, or use of *property*, knowing, at the time of receipt, that such property is the proceeds of crime.'(art.6)	Everyone	International criminal law
19.	2003	Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol)	42[777]	'During her marriage, a woman shall have the right to acquire her own *property* and to administer and manage it freely.' (art.6(j)) 'In case of separation, divorce or annulment of marriage, women and men shall have the right to an equitable sharing of the joint *property* deriving from the marriage.'(art.7(d)) 'Promote women's access to and control over productive resources such as land and guarantee their right to *property*.' (art.19(c))	Women	Human rights law (regional)
20.	2004	Arab Charter on Human Rights	16[778]	'Everyone has a guaranteed right to own private *property*, and shall not under any circumstances be arbitrarily or unlawfully divested of all or any part of his *property*.'(art. 31)	Everyone	Human rights law (regional)

776 https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html (last visited 2025-06-27)

777 https://au.int/sites/default/files/treaties/37077-sl-PROTOCOL%20TO%20THE%20AFRICAN%20CHARTER%20ON%20HUMAN%20AND%20PEOPLE%27S%20RIGHTS%20ON%20THE%20RIGHTS%20OF%20WOMEN%20IN%20AFRICA.pdf (last visited 2023-07-31)

778 https://ijrcenter.org/regional/middle-east-and-north-africa/#:~:text=As%20of%20January%202021%2C%20there,United%20Arab%20Emirates%2C%20and%20Yemen. (last visited 2024-08-12); there are 22 members of League of Arab States, but only 16 are States Parties to the Arab Charter of Human Rights.

21.	2006	Convention on the Rights of Persons with Disabilities	186[779]	'…State Parties shall take all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit *property*, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit, and shall ensure that persons with disabilities are not arbitrarily deprived of their *property*.'(art.12(5))	Persons with disabilities	Human rights law
22.	2018	United States-Mexico-Canada Agreement (USMCA), replaced 1994 NAFTA on 2020-07-01	3	'Each Party shall provide in its territory to the nationals of another Party adequate and effective protection and enforcement of intellectual *property* rights, while ensuring that measures to enforce intellectual *property* rights do not themselves become barriers to legitimate trade.' (art. 20.5, Chapter 20 'Intellectual property rights')	Workers, farmers, businesses (nationals of US, Mexico, Canada)	Trade law/ Intellectual property law (regional)

779 https://indicators.ohchr.org (last visited 2023-07-31)

Word 'property' is NOT used directly in the provisions, but protected object can be considered as constituting property

No.	Year	Name of Treaty	No. of Parties	Provisions (NOT using word 'property')	Beneficiaries	Type of property
1.	1886	Berne Convention for the Protection of Literary and Artistic Works (revised in 1896, 1908, 1914,1928, 1948, 1967, 1971, 1979)	181[780]	Protection of the *rights of authors* over their literary and artistic works (art.1)	Authors who are subjects or citizens of the member states, or their lawful representatives (art.2)	Intellectual property law
2.	1891	Madrid Arrangement Concerning the International Registration of Marks (revised in 1900, 1911, 1925, 1934, 1957, 1967, 1979)		*Right to protection for marks* (art.1)	Nationals of member states and nationals of others domiciled or established in the member states.	Intellectual property
3.	1949	ILO Convention (No.95) Concerning the Protection of Wages	99[781]	'Wages payable in *money* shall be paid only in legal tender (…)'(art.3.1) 'Employers shall be *prohibited from limiting* in any manner the *freedom* of the worker *to dispose* of his *wages*.'(art.6)	'…all persons to whom wages are paid or payable.'(art.2.1.)	Labour law/ Workers' rights

780 https://www.wipo.int/wipolex/en/treaties/ShowResults?search_what=C&treaty_id=15 (last visited 2023-07-25)

781 https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312240 (last visited 2023-07-25)

4.	1957	ILO Convention (No.107) Concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries	27[782]	'The *right of ownership*, collective or individual, of the members of the populations concerned over the lands which these populations traditionally occupy shall be recognized.'(art.11)	Indigenous, tribal, semi-tribal populations (both, collective and individual), (art. 1)	Labour law and Indigenous people
5.	1961 (revised 1996)	European Social Charter	35[783]	'All workers have the *right to a fair remuneration* sufficient for a decent standard of living for themselves and their families.' (Part I, pric.4)	Workers	Workers' rights (regional)
6.	1961	Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations	97[784]	'The *protection* provided *for performers*…'(art.7)	Performers, producers of phonograms and broadcasting organizations	Intellectual property law
7.	1962	ILO Convention (No.117) Concerning Basic Aims and Standards of Social Policy	33[785]	'The measures to be considered by the competent authorities for the promotion of productive capacity and the improvement of standards of living of agricultural producers shall include (…) the control (…) of the *ownership and use of land* resources to ensure that they are used, with due regard to customary rights, in the best interests of the inhabitants of the country.'(art. 4)	Agricultural producers	Labour law

782 https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312252:NO (last visited 2023-07-25)

783 https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=163 (last visited 2023-07-25)

784 https://www.wipo.int/wipolex/en/treaties/ShowResults?search_what=C&treaty_id=17 (last visited 2023-07-25)

785 https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312262 (last visited 2023-07-25)

8.	1971	Geneva Convention for the protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms	81[786]	'Each Contracting State shall protect producers of *phonograms* who are nationals of other Contracting States against the making of duplicates without the consent of the producer of such duplicates (…).'(art. 2)	Producers of phonograms, persons, and legal entities (art.1)	Intellectual property law
9.	1989	Convention on the Rights of the Child	196[787]	'States Parties recognize the right of the child to be protected from *economic exploitation* and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.' (art. 32(1))	Child (art.1)	International Human rights law
10.	1995	UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects	54[788]	'The possessor of a *cultural object* which has been stolen shall return it.' (art. 3(1)) 'The possessor of a stolen *cultural object* required to return it shall be entitled, at the time of its restitution, to payment of fair and reasonable *compensation* provided that the possessor neither knew nor ought reasonably to have known that the *object* was stolen and can prove that it exercised due diligence when acquiring the *object*.' (art.4(1))	Possessors of stolen or illegally exported cultural objects	Cultural property law

786 https://www.wipo.int/wipolex/en/treaties/ShowResults?search_what=C&treaty_id=18 (last visited 2023-07-27)

787 https://indicators.ohchr.org (last visited 2023-07-25)

788 https://www.unidroit.org/instruments/cultural-property/1995-convention/status/ (last visited 2023-07-30)

Annex II

Right to Property as a Human Right in Constitutions of States

No.	State	Constitutional provision
1.	Afghanistan	Chapter II. Fundamental Rights and Duties of Citizens **Property** shall be safe from violation. No one shall be forbidden from owning **property** and acquiring it, unless limited by the provisions of law. No one›s **property** shall be confiscated without the order of the law and decision of an authoritative court. Acquisition of private **property** shall be legally permitted only for the sake of public interests, and in exchange for prior and just compensation. Search and disclosure of private **property** shall be carried out in accordance with provisions of the law.[789]
2.	Albania	CHAPTER II. PERSONAL RIGHTS AND FREEDOMS 1.The right of private **property** is guaranteed. 2.**Property** may be gained by gift, inheritance, purchase, or any other classical means provided by the Civil Code. 3.The law may provide for expropriations or limitations in the exercise of a **property** right only for public interests. 4.The expropriations or limitations of a **property** right that are equivalent to expropriation are permitted only against fair compensation.[790]
3.	Algeria	CHAPTER I. FUNDAMENTAL RIGHTS AND PUBLIC FREEDOMS The State shall be responsible for the security of people and **properties**. Any foreigner legally present in the national territory shall enjoy legal protection of his person and **property**. Private **property** shall be guaranteed. **Property** shall not be expropriated except within the scope of the law and with equitable compensation. Right to inheritance shall be guaranteed. The duty of every citizen is to protect public **property** and the interests of the national community and to respect the **property** of others.[791]

789 Constitution of Afghanistan 2004, art.40, https://www.constituteproject.org/constitutions?lang=en&q=property

790 Constitution of Albania 1998 (Rev.2016), art.41, https://www.constituteproject.org/constitutions?lang=en&q=property

791 Constitution of Algeria 2020, Art.28, 50, 60, 87

4.	Andorra	TITLE II. RIGHTS AND FREEDOMS Chapter V . Rights, and economic, social and cultural principles. 1.Private **property** and the rights of inheritance are recognised without other limits than those derived from the social function of **property**. 2. No one shall be deprived of his or her goods or rights, unless upon justified consideration of the public interest, with just compensation by or pursuant to a law. [792]
5.	Angola	TITLE I. FUNDAMENTAL PRINCIPLES The state shall respect and protect the private **property** of individuals and corporate bodies and free economic and entrepreneurial initiatives exercised within the terms of the Constitution and the law. CHAPTER II. FUNDAMENTAL RIGHTS, FREEDOMS AND GUARANTEES Everyone shall be guaranteed the right to private **property** and to its transmission, under the terms of the Constitution and the law. The state shall respect and protect the **property** and any other rights in rem of private individuals, corporate bodies and local communities, and temporary civil requisition and expropriation for public use shall only be permitted upon prompt payment of just compensation under the terms of the Constitution and the law.[793]
6.	Antigua and Barbuda	CHAPTER II. PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL Whereas every person in Antigua and Barbuda is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, regardless of race, place of origin, political opinions or afiliations, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely- life, liberty, security of the person, the enjoyment of **property** and the protection of the law; No property of any description shall be compulsorily taken possession of, and no interest in or right to or over property of any description shall be compulsorily acquired, except for public use and except in accordance with the provisions of a law applicable to that taking of possession or acquisition and for the payment of fair compensation within a reasonable time.[794]
7.	Argentina	CHAPTER I. DECLARATIONS, RIGHTS AND GUARANTEES All inhabitants of the Nation enjoy the following rights, in accordance with the laws that regulate their exercise, namely: (…) of using and disposing of their **property**" "**Property** is inviolable, and no inhabitant of the Nation can be deprived thereof except by virtue of a judgment supported by law. Expropriation for reasons of public utility must be authorized by law and previously indemnified.[795]

792 Constitution of Andorra 1993, Art.27

793 Constitution of Angola 2010, Art.14, 37

794 Constitution of Antigua and Barbuda 1981, Art.3, 9

795 Constitution of Argentina 1853 (reinst. 1945, rev. 2013), Art.14, 17

8.	Armenia	CHAPTER 2. FUNDAMENTAL RIGHTS AND FREEDOMS OF THE HUMAN BEING AND THE CITIZEN Everyone shall have the right to own, use, and dispose at his discretion the lawfully-acquired **property**. The right to **property** may be restricted only by law with the aim of protecting the interests of the public or the fundamental rights and freedoms of others. No one shall be deprived of **property**, except by court procedure in cases stipulated by law. The expropriation of **property** for prevailing interests of the public shall be performed in exceptional cases stipulated by law and in the manner stipulated by law, and only with prior adequate compensation. Foreign citizens and stateless persons shall not enjoy **property** right on land, except for cases stipulated by law. Intellectual **property** shall be protected by law.[796]
9.	Australia	Part V . Powers of the Parliament The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to: (…) xviii. copyrights, patents of inventions and designs, and trade marks; (...) xxxi. the acquisition of **property** on just terms from any State or person for any purpose in respect of which the Parliament has power to make laws; (...)[797]
10.	Austria	Chapter III. Federal Execution "If the life, health, freedom or **property** of individuals are actually in danger or such danger is directly impending, security officials are, irrespective of the competence of another authority for repulse of the hazard, competent to render primary assistance till the intervention of the respective competent authority.[798]
11.	Azerbaijan	Chapter III. Principal Human Rights and Civil Liberties I. Everyone has the right to **property**. II. No form or kind of **property** shall have any advantage. The **property** right, including the private **property** right, is protected by law. III. Every individual may possess moveable and immoveable **property**. The **property** right consists of the owner›s right to possess, use and dispose of the **property**, individually or jointly. IV. No one is dispossessed without a decision of the court. Complete confiscation is inadmissible. The alienation of **property** for state needs is allowed only after a fair reimbursement of its value has been granted. V. Private **property** shall entail social responsibility.[799]

796 Constitution of Armenia 1995 (rev. 2015), art. 60

797 Commonwealth of Australia Constitution Act 1901 (rev. 1985), art.51

798 Austria 1920, (reinst.1945, rev.2013), Art.78A

799 Constitution of Azerbaijan 1995 (rev.2016), art.29

12.	Bahamas	CHAPTER III. PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL 1.No **property** of any description shall be compulsorily taken possession of, and no interest in or right over **property** of any description shall be compulsorily acquired, except where the following conditions are satisfied, that is to say- (a)the taking of possession or acquisition is necessary in the interests of defence, public safety, public order, public morality, public health, town and country planning or the development or utilization of any **property** in such manner as to promote the public benefit or the economic well-being of the community; and (b)the necessity thereof is such as to afford reasonable justification for the causing of any hardship that may result to any person having an interest in or right over the **property**; and (c)securing to any person having an interest in or right over the **property** a right of access to the Supreme Court, whether direct or on appeal from any other authority, for the determination of his interest or right, the legality of the taking of possession or acquisition of the **property**, interest or right, and the amount of any compensation to which he is entitled, and for the purpose of obtaining prompt payment of that compensation;[800]
13.	Bahrain	Chapter II. Basic Constituents of Society Private ownership is protected. No one shall be prevented from disposing of his **property** within the limits of the law. No one shall be dispossessed of his **property** except for the public good in the cases specified and the manner stated by law and provided that he is fairly compensated.[801]
14.	Bangladesh	FUNDAMENTAL RIGHTS. RIGHT TO PROPERTY Subject to any restrictions imposed by law, every citizen shall have the right to acquire, hold, transfer or otherwise dispose of **property**, and no **property**shall be compulsorily acquired, nationalized or requisitioned save by authority of law.[802]
15.	Barbados	1 CHAPTER III. PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL No **property** of any description shall be compulsorily taken possession of, and no interest in or right over **property** of any description shall be compulsorily acquired, except by or under the authority of a written law, and where provision applying to that acquisition or taking of possession is made by a written law— giving to any person claiming such compensation a right of access, either directly or by way of appeal, for the determination of his interest in or right over the **property** and the amount of compensation, to the High Court. a.to the extent that the law in question makes provision for the taking of possession or acquisition of any **property**- v.in circumstances where it is reasonably necessary so to do because the **property** is in a dangerous state or injurious to the health of human beings, animals or plants; i.enemy **property**;

800 Bahamas Constitution (1973)(https://www.constituteproject.org/constitutions?lang=en&q=property)

801 Bahrain 2002 (rev.2017), Art.9(c),

802 Bangladesh 1972 (rev.2014), Art.42(1), https://www.constituteproject.org/constitutions?lang=en&q=property

		ii.property of a deceased person, a person of unsound mind or a person who has not attained the age of twenty-one years, for the purpose of its administration for the benefit of the persons entitled to the beneficial interest therein; **iii.property** of a person adjudged insolvent or a body corporate in liquidation, for the purpose of its administration for the benefit of the creditors of the insolvent person or body corporate and, subject thereto, for the benefit of other persons entitled to the beneficial interest in the **property**; or **iv.property** subject to a trust, for the purpose of vesting the **property** in persons appointed as trustees under the instrument creating the trust or by a court or, by order of a court, for the purpose of giving effect to the trust. 3.Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision for the orderly marketing or production or growth or extraction of any agricultural product or mineral or any article or thing prepared for market or manufactured therefor or for the reasonable restriction of the use of any **property** in the interest of safeguarding the interests of others or the protection of tenants, licensees or others having rights in or over such **property**.[803] 4.Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision for the compulsory taking possession in the public interest of any **property**, or the compulsory acquisition in the public interest of any interest in or right over **property**, where that **property**, interest or right is held by a body corporate established directly by law for public purposes in which no monies have been invested other than monies provided by Parliament or by any Legislature established for the former Colony of Barbados.
16.	Belarus	Section 2. Individual, Society and the State The State shall guarantee everyone the right of **property** and shall contribute to its acquisition. A proprietor shall have the right to possess, enjoy and dispose of assets either individually or jointly with others. The inviolability of **property** and the right to inherit **property** shall be protected by law. **Property** acquired in accordance with the law shall be safeguarded by the State. The exercise of the right of **property** shall not be contrary to social benefit and security, or be harmful to the environment or historical and cultural treasures, or infringe upon the rights and legally protected interests of others.[804]
17.	Belgium	ON BELGIANS AND THEIR RIGHTS. No one can be deprived of his **property** except in the case of expropriation for a public purpose, in the cases and manner established by the law and in return for fair compensation paid beforehand.[805]

803 Barbados 1966 (rev.2007), art.16

804 Belarus 1994 (rev.2004), art.44

805 Belgium 1831 (rev.2014), art.16

18.	Belize	PART II. PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS. No **property** of any description shall be compulsorily taken possession of and no interest in or right over **property** of any description shall be compulsorily acquired except by or under a law that- secures to any person claiming an interest in or right over the **property** a right of access to the courts for the purpose of- Nothing in this section shall invalidate any law by reason only that it provides for the taking possession of any **property** or the acquisition of any interest in or right over **property**- where the **property** consists of an animal, upon its being found trespassing or straying; by way of the vesting and administration of trust **property**, enemy **property**, the **property** of deceased persons, persons of unsound mind or persons adjudged or otherwise declared bankrupt or the **property** of companies or other societies (whether incorporated or not) in the course of being wound up; for the purpose of marketing **property** of that description in the common interests of the various persons otherwise entitled to dispose of that **property**; or Subsection (1) of this section does not apply to petroleum, minerals and accompanying substances, in whatever physical state, located on or under the territory of Belize (whether under public, private or community ownership) or the exclusive economic zone of Belize, the entire **property** in and control over which are exclusively vested, and shall be deemed always to have been so vested, in the Government of Belize.[806]
19.	Benin	RIGHTS AND DUTIES OF THE INDIVIDUAL. Art.22. Every person has the right to his **property**. No one shall be deprived of his **property** except for state-approved usefulness and in exchange for a just and prerequisite compensation. Art.37. Public **property** shall be sacred and inviolate. Each Béninese citizen must respect it scrupulously and protect it. Any act of sabotage, vandalism, corruption, diversion, dilapidation or illegal enrichment shall be suppressed under conditions provided by law.[807]
20.	Bhutan	FUNDAMENTAL RIGHTS. 9.A Bhutanese citizen shall have the right to own **property**, but shall not have the right to sell or transfer land or any immovable **property** to a person who is not a citizen of Bhutan, except in keeping with laws enacted by Parliament. 14.A person shall not be deprived of **property** by acquisition or requisition, except for public purpose and on payment of fair compensation in accordance with the provisions of the law.[808]

806 Belize 1981 (rev.2011), part II.

807 Benin 1990, art.22, art.37

808 Bhutan 2008

21.	Bolivia	FUNDAMENTAL RIGHTS AND GUARANTEES. SOCIAL AND ECONOMIC RIGHT. RIGHT TO PROPERTY. I.Everyone has the right to private, individual or collective **property**, provided that it serves a social function. II.Private **property** is guaranteed provided that the use made of it is not harmful to the collective interests.[809]
22.	Bosnia and Herzegovina	Article II. HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS. 3.All persons within the territory of Bosnia and Herzegovina shall enjoy the human rights and fundamental freedoms referred to in paragraph 2 above. These include: (...) k. The right to property.[810]
23.	Bostwana	3.FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL. Whereas every person in Botswana is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his or her race, place of origin, political opinions, colour , creed or sex, but subject to respect for the rights and freedoms of others and for the public interest to each and all of the following, namely— (...) c. protection for the privacy of his or her home and other **property** and from deprivation of **property** without compensation. 8.PROTECTION OF DEPRIVATION OF PROPERTY. 1. No **property** of any description shall be compulsorily taken possession of , and no interest in or right over property of any description shall be compulsorily acquired, except where the following conditions are satised, that is to say— a. the taking of possession or acquisition is necessary or expedient— i. in the interests of defence, public safety, public order , public morality, public health, town and country planning or land settlement; ii. in order to secure the development or utilization of that, or other, property for a purpose benecial to the community; or iii. in order to secure the development or utilization of the mineral resources of Botswana; and b. provision is made by a law applicable to that taking of possession or acquisition— i. for the prompt payment of adequate compensation; and ii. securing to any person having an interest in or right over the property a right of access to the High Court, either direct or on appeal from any other authority, for the determination of his or her interest or right, the legality of the taking of possession or acquisition of the property, interest or right, and the amount of any compensation to which he or she is entitled, and for the purpose of obtaining prompt payment of that compensation. 2. No person who is entitled to compensation under this section shall be prevented from remitting, within a reasonable time after he or she has received any amount of that compensation, the whole of that amount (free from any deduction, charge or tax made or levied in respect of its remission) to any country of his or her choice outside Botswana.[811]

809 Bolivia (Plurinational State of) 2009, Art.56,

810 Bosnia and Herzegovina 1995 (rev. 2009), art.II.

811 Bostwana 1966 (rev.2016), art.3, art.8

24.	Brazil	FUNDAMENTAL RIGHTS AND GUARANTEES Art.5. Everyone is equal before the law, with no distinction whatsoever, guaranteeing to Brazilians and foreigners residing in the Country the inviolability of the rights to life, liberty, equality, security and **property**, on the following terms: XXII.the right of **property** is guaranteed; **XXIII.property** shall comply with its social function; in the event of imminent public danger, the proper authority may use private **property**, assuring the owner subsequent compensation in case of damage; XXVI.small rural **property**, as defined by law, whenever worked by a family, shall not be subject to attachment for payment of debts stemming from its productive activities, and the law shall provide for ways to finance its development; LIV.no one shall be deprived of liberty or **property** without due process of law;[812]
25.	Brunei Darussalam	*No right to property to individuals (no human rights at all)*[813]
26.	Bulgaria	FUNDAMENTAL PRINCIPLES. Art.17 1.The right to **property** and inheritance shall be guaranteed and protected by law. **2.Property** shall be private and public. 3.Private **property** shall be inviolable. 4.The regime applying to the different units of State and municipal **property** shall be established by law. 5.Forcible expropriation of **property** in the name of State or municipal needs shall be effected only by virtue of a law, provided that these needs cannot be otherwise met, and after fair compensation has been ensured in advance.[814]
27.	Burkina Faso	FUNDAMENTAL RIGHTS AND DUTIES. The right of **property** is guaranteed. It may not be exercised contrary to social utility or in a manner which results in prejudice to the security, to liberty, to existence or to the **property** of others.[815]
28.	Burundi	FUNDAMENTAL RIGHTS AND DUTIES, OF THE INDIVIDUAL AND OF THE CITIZEN. Every person has the right to **property**. No one may be deprived of their **property** except for public utility, according to the case and manner established by law and by means of a just and prerequisite indemnity or in the execution of a judiciary decision taken in force of the thing judged.[816]
29.	Cambodia	THE RIGHTS AND OBLIGATIONS OF KHMER CITIZENS All persons, individually or collectively, shall have the rights to own **property**. Only natural persons or legal entities of Khmer nationality shall have the rights to own land.[817]

812 Brazil 1988 (rev.2017), art.5

813 Brunei Darussalam 1959 (rev.2006), https://www.constituteproject.org/constitution/Brunei_2006.pdf

814 Bulgaria 1991 (rev.2015), art.17

815 Burkina Faso 1991 (Rev.2015), art.15

816 Burundi 2018, ar.t38

817 Cambodia 1993 (rev.2008), art.44

30.	Cameroon	Preamble We, the people of Cameroon, Afirm our attachment to the fundamental freedoms enshrined in the Universal Declaration of Human Rights, the Charter of United Nations and the African Charter on Human and Peoples' Rights, and all duly ratied international conventions relating thereto, in particular , to the following principles: 19.ownership shall mean the right guaranteed every person by law to use, enjoy and dispose of **property**. No person shall be deprived thereof, save for public purposes and subject to the payment of compensation under conditions determined by law; 20.the **right of ownership** may not be exercised in violation of the public interest or in such a way as to be prejudicial to the security, freedom, existence or **property** of other persons;[818]
31.	Canada	*No mentioned right to property to individuals*[819]
32.	Cape Verde	RIGHTS AND DUTIES OF CITIZENS. Everyone shall have the right to private **property**, and to transmit it while alive or at death.[820]
33.	Central African Republic	FUNDAMENTAL BASES OF SOCIETY. Art.18. Any physical or juridical [morale] person has the right to **property**. No one may be deprived of his **property**, except for cause of public utility legally declared and under the condition of a just and prior indemnification. The right to **property** may not be exercised contrarily to public utility, social [utility], or in a manner to prejudice the security, the freedom, the existence or the **property** of others. Art.19. The **property** and the assets of persons as well as the patrimony of the Nation are inviolable. The State and Territorial Collectivities as well as all citizens must protect them.[821]
34.	Chad	FUNDAMENTAL RIGHTS. Art.17 Every individual has the right to life, to the integrity of their person, to security, to liberty, to the protection of their privacy and of their **property**. Art.45 Private **property** is inviolable and sacred.[822]

818 Cameroon 1972 (rev.2008), preamble 19, 20

819 Canadian Charter of Rights and Freedoms (part of Constitution), no right to property/ ownership mentioned. https://laws.justice.gc.ca/eng/ConstRpt/page-12.html; https://www.constituteproject.org/constitution/Canada_2011.pdf

820 Cape Verde 1980 (rev.1992), art.66

821 Central African Republic 2016, art.18, art.19

822 Chad 2018, art.17, art.45

35.	Chile	FUNDAMENTAL RIGHTS AND LIBERTIES. Art.16: (28)(b) Each person shall have ownership over his or her old-age pension contributions and the savings produced by them, and shall have the right to freely choose the institution, state or private, that administers and invests them. In no case may they be expropriated or appropriated by the State through any mechanism. (35) The right of property in its various forms over all kinds of tangible or intangible property. (a.) Only the law can establish the manner of acquiring, using, enjoying and disposing of property, and the limitations and obligations deriving from its social function. This includes whatever is required by the general interests and security of the Nation, public utility and health, and the conservation of the environmental heritage. (b.) No one may, in any case, be deprived of his property, of the property on which it falls, or of any of the essential attributes or faculties of dominion, except by virtue of a general or special law authorizing expropriation for reasons of public utility or national interest, qualied by the legislator. The expropriated party may challenge the legality of the expropriatory act before the ordinary courts and shall always be entitled to monetary compensation for the damage caused, which shall be determined by mutual agreement or in a judgment rendered in accordance with the law by those courts. In the absence of an agreement, the compensation must be paid in cash. (c.) The taking of physical possession of the expropriated property shall take place upon payment of the total compensation, which, in the absence of agreement, shall be provisionally determined by experts in the manner indicated by law. In the event of a claim about the appropriateness of the expropriation, the judge may, on the merits of the information invoked, order the suspension of the taking of possession.[823]
36.	China	GENERAL PRINCIPLES. Art.13. Citizens' lawful private **property** is inviolable. The State, in accordance with law, protects the rights of citizens to private **property** and to its inheritance. The State may, in the public interest and in accordance with law, expropriate or requisition private **property** for its use and shall make compensation for the private **property** expropriated or requisitioned.[824]
37.	Colombia	ON FUNDAMENTAL PRINCIPLES. Art.2. The authorities of the Republic are established in order to protect all individuals residing in Colombia, in their life, honor, **property**, beliefs, and other rights and freedoms, and in order to ensure the fulfillment of the social duties of the State and individuals.[825] Art.34.However, a judicial sentence may nullify ownership of **property** when same is injurious to the public treasury or seriously harmful to social morality.

823 Chile 1980 (rev.2021), art.16

824 China (People's Republic of) 1982 (rev.2018), art13

825 Colombia 1991 (rev.2015), art.2

38.	Congo (Democratic Republic of the)	HUMAN RIGHTS, FUNDAMENTAL FREEDOMS. Art.34. Private **property** is sacred. The State guarantees the right to individual or collective **property**, acquired in conformity to the law or to custom. One may only be deprived of his **property** for reasons of public utility and in return for a just and prior indemnity conceded under the conditions established by the law.[826] Art.46. Copyrights and intellectual **property** [rights] are guaranteed and protected by the law.
39.	Congo (Republic of the)	FUNDAMENTAL RIGHTS AND FREEDOMS. Art.23.The rights of **property** and of succession are guaranteed. No one may be deprived of their **property** except for cause of public utility, [and] subject [moyennant] to a just and prior indemnification, within the conditions specified by the law.[827]
40.	Costa Rica	INDIVIDUAL RIGHTS AND GUARANTEES Art.23 The domicile and any other private premises of the inhabitants of the Republic are inviolable. However, they may be intruded [allanados] by the written order of [a] competent judge, or to prevent the commission or the impunity of crimes, or to prevent grave damage to persons or to **property**, subject to what the law prescribes. Art.45. **Property** is inviolable; none may be deprived of it[,] if it is not for [a] legally proven public interest, [with] prior indemnification in accordance with the law. In the case of war or internal commotion, it is not indispensible that the indemnification be prior. Nevertheless, the correspondent payment will be made at the latest two years after the state of emergency has been concluded. The Legislative Assembly can, for reasons of public necessity through the vote of two-thirds of the totality of its members, impose on **property** limitations of social interest. Art.47. Any author, inventor, producer or merchant will temporarily enjoy the exclusive **property** of their work, invention, trademark or trade name, in accordance with the law.[828]
41.	Cote d'Ivoire	RIGHTS AND FREEDOMS. Art11. No one should be deprived of their **property** if it is not for the purposes of public utility and under the condition of a reasonable and prior compensation.[829]

826 Congo (Democratic Republic of the) 2005 (rev.2011), art.34

827 Congo (Republic of the) 2015, art.23, https://www.constituteproject.org/constitutions?lang=en&q=property

828 Costa Rica 1949 (rev.2020), art. 23, 45, 47

829 Cote d'Ivoire 2016, art.11

42.	Croatia Right to own, Right to transfer, Protection from expropriation, right to establish business	PROTECTION ON FUMAN RIGHTS AND FUNDAMENTAL FREEDOMS. Art.48. The right of ownership shall be guaranteed. Ownership implies obligations. Owners and users of property shall contribute to the general welfare. A foreign person may acquire property under conditions spelled out by law. The right of inheritance shall be guaranteed.[830] Art.49. Entrepreneurial and market freedom shall be the basis of the economic system of the Republic of Croatia. The State shall ensure all entrepreneurs an equal legal status on the market. Abuse of monopoly position dened by law shall be forbidden. The State shall stimulate the economic progress and social welfare and shall care for the economic development of all its regions. The rights acquired through the investment of capital shall not be diminished by law, or by any other legal act. Foreign investors shall be guaranteed free transfer and repatriation of prots and the capital invested.
*f*43.	Cuba Right to own property, Right to transfer property, Right to inherit	ECONOMIC FOUNDATIONS. Art.22 The following are recognized as forms of **property**: Socialist **property** of the entire population: in which the State acts as a representative and beneficiary of the people as **property** owner. Cooperative **property**: that which is sustained through the collective labor of partner owners and through the effective exercise of the principles of cooperativism. **Property** of political, social, and mass organizations: ownership that they exercise over their goods designed to fulfill their roles. Mixed **property**: that which is formed through the combination of two or more forms of ownership. Institutional and associative **property**: that which these groups exercise over their goods for non-profit purposes. Personal **property**: that which is exercised over one's belongings that, without constituting means of production, contribute to the satisfaction of the material and spiritual necessities of their owner. RIGHTS, DUTIES, GUARANTEES. Art.58 All people have the right to enjoy their personal **property**. The State guarantees its use, enjoyment, and free disposal, in accordance with what is established in the law.[831] Art.62. People's intellectual **property** rights are recognized according to the law and to international treaties. Article 63. The State recognizes the right to succession in the case of death. The law regulates its content and scope.

830 Croatia 1991 (rev.2013), art.48.

831 Cuba 2019, art.58

44.	Cyprus	FUNDAMENTAL RIGHTS AND LIBERTIES. Art.23. Every person, alone or jointly with others, has the right to acquire own, possess, enjoy or dispose of any movable or immovable **property** and has the right to respect for such right. The right of the Republic to underground water, minerals and antiquities is reserved. Restrictions or limitations which are absolutely necessary in the interest of the public safety or the public health or the public morals or the town and country planning or the development and utilisation of any **property** to the promotion of the public benefit or for the protection of the rights of others may be imposed by law on the exercise of such right. Just compensation shall be promptly paid for any such restrictions or limitations which materially decrease the economic value of such **property**: such compensation to be determined in case of disagreement by a civil court. Any movable or immovable **property** or any right over or interest in any such **property** may be compulsorily acquired by the Republic or by a municipal corporation or by a Communal Chamber for the educational. religious, charitable or sporting institutions, bodies or establishments within its competence and only from the persons belonging to its respective Community or by a public corporation or a public utility body on which such right has been conferred by law. Any immovable **property** or any right over or interest in any such **property** compulsorily acquired shall only be used for the purpose for which it has been acquired. If within three years of the acquisition such purpose (has not been attained, the acquiring authority shall, immediately after the expiration of the said period of three years, offer the **property** at the price it has been acquired to the person from whom it has been acquired. Such person shall be entitled within three months of the receipt of such offer to signify his acceptance or non-acceptance of the offer, and if he signifies acceptance, such **property** shall be returned to him immediately after his returning such price within a further period of three months from such acceptance. Nothing in paragraphs 3 and 4 of this Article contained shall affect the provisions of any law made for the purpose of levying execution in respect of any tax or penalty, executing any judgment, enforcing any contractual obligation or for the prevention of danger to life or **property**.[832]
45.	Czech Republic	FUNDAMENTAL HUMAN RIGHTS AND FREEDOMS. Art.11 Everyone has the right to own **property**. Each owner's **property** right shall have the same content and enjoy the same protection. Inheritance is guaranteed. The law shall designate that **property** necessary for securing the needs of the entire society, the development of the national economy, and the public welfare, which may be owned exclusively by the state, a municipality, or by designated legal persons; the law may also provide that certain items of **property** may be owned exclusively by citizens or legal persons with their headquarters in the Czech and Slovak Federal Republic. Ownership entails obligations. It may not be misused to the detriment of the rights of others or in conflict with legally protected public interests. **Property** rights may not be exercised so as to harm human health, nature, or the environment beyond the limits laid down by law. Expropriation or some other mandatory limitation upon **property** rights is permitted in the public interest, on the basis of law, and for compensation.[833]

832 Cyprus 1960 (rev.2013), art.23

833 Czech Republic 1993 (rev.2013), art.11

46.	Denmark	Art.73. The right of **property** shall be inviolable. No person shall be ordered to cede his **property** except where required by the public weal. It can be done only as provided by Statute and against full compensation.[834] Art.74 Any restraint of the free and equal access to trade which is not based on the public weal, shall be abolished by Statute.
47.	Djibouti	RIGHTS AND DUTIES OF THE HUMAN PERSON. Art.12 The right to **property** is guaranteed by this Constitution. It may not be infringed except in the case of public necessity legally established, under reserve of a just and prior indemnity.[835]
48.	Dominica	PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS. Art.1. Whereas every person in Dominica is entitled to the fundamental rights and freedoms, that is to say, the right, whatever his race, place of origins, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely— a. life, liberty, security of the person and the protection of the law; b. freedom of conscience, of expression and of assembly and association; and c. protection for the privacy of his home and other **property** and from deprivation of **property** without compensation, Art.61. No property of any description shall be compulsorily taken possession of , and no interest in or right over property of any description shall be compulsorily acquired, except where provision is made by a law applicable to that taking of possession or acquisition for the payment, within a reasonable time, of adequate compensation. 2. Every person having an interest in or right over property that is compulsorily taken possession of or whose interest in or right over any property is compulsorily acquired shall have a right of direct access to the High Court for— a. determining the nature and extent of that interest or right; b.determining whether that taking of possession or acquisition was duly carried out in accordance with a law authorising the taking of possession or acquisition; c. determining what compensation he is entitled to under the law applicable to that taking of possession or acquisition; d. obtaining that compensation: Provided that if Parliament so provides in relation to any matter referred to in paragraph (a) or (c) of this subsection the right of access shall be by way of appeal (exercisable as of right at the instance of the person having the interest in or right over the property) from a tribunal or authority, other than the High Court, having jurisdiction under any law to determine that matter.[836]

834 Denmark 1953, art. 73, 74

835 Djibouti 1992 (rev.2010)

836 Dominica 1978 (rev.2014), art.1, art6.

49.	Dominican Republic	FUNDAMENTAL RIGHTS. Art.51.RIGHT OF PROPERTY. The State recognizes and guarantees the right of **property**. **Property** has a social function and implies obligations. All persons have the right to the full use, enjoyment, and disposal of their assets. No one may be deprived of his **property**, unless for a justified cause of public utility or social interest, previous payment of its just value determined by an agreement between the parties or the ruling of the appropriate court, in accordance with that established by law. In the case of the declaration of a State of Emergency or of Defense, the compensation may not be made previously. The State shall promote, in accordance with the law, access to **property**, especially to titled real estate. Art.52.RIGHT TO INTELLECTUAL PROPERTY. The right to the exclusive **property** of scientific, literary, and artistic works, inventions, and innovations, names, brands, distinctive marks, and other productions of the human intellect for the time are recognized and protected, in the form and with the limitations established by law.[837]
50.	Ecuador	LABOR AND PRODUCTION, TYPES OF PROPERTY. Art.321. The State recognizes and guarantees the right to **property** in all of its forms, whether public, private, community, State, associative, cooperative or mixed- economy, and that it must fulfill its social and environmental role. Intellectual **property** is recognized pursuant to the conditions provided for by law. Any form of appropriation of collective knowledge, in the fields of science, technology and ancestral wisdom, is forbidden. The appropriation of genetic resources contained in biological diversity and agricultural biodiversity is likewise forbidden. The State shall guarantee equal rights and equal opportunity to men and women in access to **property** and decision-making in the management of their common marital estate.[838]
51.	Egypt	BASIC COMPONENTS OF SOCIETY. Art.35.Private property. Private **property** is protected. The right to inherit **property** is guaranteed. Private **property** may not be sequestrated except in cases specified by law, and by a court order. Ownership of **property** may not be confiscated except for the public good and with just compensation that is paid in advance as per the law.[839] PUBLIC RIGHTS, FREEDOMS AND DUTIES. Art.69. Intellectual property rights. The state shall protect all types of intellectual property in all elds, and shall establish a specialized body to uphold the rights of Egyptians and their legal protection, as regulated by law.

837 Dominican Republic 2015, art.51, art.52

838 Ecuador 2008 (rev.2021), art. 321

839 Egypt 2014 (rev.2019), art.35

52.	El Salvador	THE RIGHTS AND FUNDAMENTAL GUARANTEES OF THE PERSON. Art.2. Every person has the right to life, physical and moral integrity, liberty, security, work, **property** and possession, and to be protected in the conservation and defense of the same. Art.11. No person shall be deprived of the right to life, liberty, **property** and possession, nor any other of his rights without previously being heard and defeated in a trial according to the laws; nor shall he be tried twice for the same cause. Art.22. Every person has the right to dispose freely of his **property** in conformity with the law. **Property** is transferable in the form determined by the laws. There shall be free making of wills (testamentifacción). Art.23. The freedom to make contracts in conformity with the laws is guaranteed. No person who has the free administration of his **property** may be deprived of the right to settle his civil or commercial affairs by compromise or arbitration. As to those who do not have free administration, the law shall determine the cases in which they may do so and the necessary requirements. ECONOMIC ORDER. Art.103 The right to private **property** is recognized and guaranteed as a social function. Likewise, intellectual and artistic **property** is also recognized, for the time and in the fom determined by the law.[840]
53.	Equatorial Guinea	FUNDAMENTAL PRINCIPLES OF THE STATE. Art.30. 1. The State recognizes property of public and private character . 2. The right of **property** is guaranteed and protected without any limitations other than those established in the law. 3. Property is inviolate, no person shall be deprived of his assets and rights, except for causes of public utility and upon the corresponded compensation. 4. The State guarantees to farmers the traditional property of the lands that they possess. 5. The law will determine the legal regime of the assets of the public domain. Art.28(d). The private sector , integrated by companies owned by one or more physical or legal persons of private law and, in general, by companies that do not fall under the sectors enumerated above.[841]
54.	Eritrea	FUNDAMENTAL RIGHTS, FREEDOMS AND DUTIES. Art.23. Right to Property. 1. Subject to the provisions of Sub-Article 2 of this Article, any citizen shall have the right, anywhere in Eritrea, to acquire and dispose **property**, individually or in association with others, and to bequeath the same to his heirs or legatees. 2. All land and all natural resources below and above the surface of the territory of Eritrea belongs to the State. The interests citizens shall have in land shall be determined by law. 3. The State may, in the national or public interest, take property, subject to the payment of just compensation and in accordance with due process of law.[842]

840 El Salvador 1983 (rev.2014), art. 2,11,22,23,103.

841 Equatorial Guinea 1991 (rev.2012), art.30, 28(d).

842 Eritrea 1997, art.23

55.	Estonia	FUNDAMENTAL RIGHTS, FREEDOMS AND DUTIES. Art.32. The **property** of every person is inviolable and equally protected. **Property** may be expropriated without the consent of the owner only in the public interest, in the cases and pursuant to procedure provided by law, and for fair and immediate compensation. Everyone whose **property** is expropriated without his or her consent has the right of recourse to the courts and to contest the expropriation, the compensation, or the amount thereof. Everyone has the right to freely possess, use, and dispose of his or her **property**. Restrictions shall be provided by law. **Property** shall not be used contrary to the public interest. Classes of **property** which, in the public interest, may be acquired in Estonia only by Estonian citizens, some categories of legal persons, local governments, or the Estonian state may be provided by law. [843]
56.	Eswatini	PROTECTION AND PROMOTION OF FUNDAMENTAL RIGHTS AND FREEDOMS. Art.19. 1. A person has a right to own property either alone or in association with others. 2. A person shall not be compulsorily deprived of property or any interest in or right over property of any description except where the following conditions are satisfied - a. the taking of possession or acquisition is necessary for public use or in the interest of defence, public safety, public order , public morality or public health; b. the compulsory taking of possession or acquisition of the property is made under a law which makes provision for - i. prompt payment of fair and adequate compensation; and ii. a right of access to a court of law by any person who has an interest in or right over the property; c. the taking of possession or the acquisition is made under a court order .[844]
57.	Ethiopia	FUNDAMENTAL RIGHTS AND FREEDOMS. Art.40. Right to Property. 1. Every Ethiopian citizen has the right to the ownership of private property. Unless prescribed otherwise by law on account of public interest, this right shall include the right to acquire, to use and, in a manner compatible with the rights of other citizens, to dispose of such property by sale or bequest or to transfer it otherwise. 2. «Private property» , for the purpose of this Article, shall mean any tangible or intangible product which has value and is produced by the labour , creativity, enterprise or capital of an individual citizen, associations which enjoy juridical personality under the law, or in appropriate circumstances, by communities specically empowered by law to own property in common. 3. The right to ownership of rural and urban land, as well as of all natural resources, is exclusively vested in the State and in the peoples of Ethiopia. Land is a common property of the Nations, Nationalities and Peoples of Ethiopia and shall not be subject to sale or to other means of exchange. 4. Ethiopian peasants have right to obtain land without payment and the protection against eviction from their possession. The implementation of this provision shall be specied by law.

843 Estonia 1992 (rev.2015), art.32

844 Eswatini 2005, art.19

		5. Ethiopian pastoralists have the right to free land for grazing and cultivation as well as the right not to be displaced from their own lands. The implementation shall be specied by law. 6. Without prejudice to the right of Ethiopian Nations, Nationalities, and Peoples to the ownership of land, government shall ensure the right of private investors to the use of land on the basis of payment arrangements established by law. Particulars shall be determined by law. 7. Every Ethiopian shall have the full right to the immovable property he builds and to the permanent improvements he brings about on the land by his labour or capital. This right shall include the right to alienate, to bequeath, and, where the right of use expires, to remove his property, transfer his title, or claim compensation for it. Particulars shall be determined by law. 8. Without prejudice to the right to private property, the government may expropriate private property for public purposes subject to payment in advance of compensation commensurate to the value of the property.[845]
58.	Fiji	CHAPTER II. BILL OF RIGHTS. Art.27. Freedom from compulsory or arbitrary acquisition of property. 1. Every person has the right not to be deprived of property by the State other than in accordance with a written law referred to in subsection (2), and no law may permit arbitrary acquisition or expropriation of any interest in any property. 2. A written law may authorise compulsory acquisition of property- a. when necessary for a public purpose; and b. on the basis that the owner will be promptly paid the agreed compensation for the property, or failing agreement, just and equitable compensation as determined by a court or tribunal, after considering all relevant factors, including- i. the public purpose for which the property is being acquired; ii. the history of its acquisition by the owner; iii. the market value of the property; iv. the interests of any person affected by the acquisition; and v. any hardship to the owner. 3. Nothing contained in, or done under the authority of, a law is inconsistent with this section to the extent that the law makes provision for the acquisition of property by way of- a. taxation; b. sequestration of bankrupt estates; c. conscation of the proceeds of crime; d. penalty for breach of the law; e. satisfaction of a mortgage, charge or lien; or f. execution of a judgment of a court or tribunal.[846]
59.	Finland	BASIC RIGHTS AND LIBERTIES. Section 15. Protection of property. The property of everyone is protected. Provisions on the expropriation of property, for public needs and against full compensation, are laid down by an Act.[847]

845 Ethiopia 1994, art.40

846 Fiji 2013, art.27

847 Finland 1999 (rev. 2011), section 15

60.	France	DECLARATION OF HUMAN AND CIVIL RIGHTS OF 26 OF AUGUST 1789. Art.2. The aim of every political association is the preservation of the natural and imprescriptible rights of Man. These rights are Liberty, **Property**, Safety and Resistance to Oppression. Art.17. Since the right to Property is inviolable and sacred, no one may be deprived thereof, unless public necessity, legally ascertained, obviously requires it, and just and prior indemnity has been paid.[848]
61.	Gabon	FUNDAMENTAL PRINCIPLES AND RIGHTS. 10. All people, as individuals or as groups, have the right to own property. None may be deprived of one's property, if not for a public necessity, legally declared, required and under conditions of a just and prior compensation. Notwithstanding, the dispossession of abandoned buildings justied by public utility and or an insufciency of development is regulated by the law;[849]
62.	Gambia	PART II. SPECIFIC RIGHTS AND FREEDOMS. 42. Protection of right to property. 1. Subject to the provisions of this Constitution, a person has the right to acquire and own property. 2. No property of any description or interest in or right over any property shall be compulsorily taken possession of or acquired by the State, unless the following conditions are satised– a. the taking of possession or acquisition is necessary in the interest of defence, public safety, public order , public morality, public health, town and country planning, or the development or utilisation of any property in such manner as to promote the public benet; and b. the necessity for the possession or acquisition is clearly stated and is such as to provide reasonable justication for causing any hardship that may result to any person who has an interest in or right over the property. 3. Compulsory acquisition of property by the State shall only be made under a law which makes provision for– a. the prompt payment of fair and adequate compensation; and b. a right of access to the High Court by any person who has an interest in or right over the property, whether direct or on appeal from any other authority, for the determination of his or her interest or right and the amount of compensation to which he or she is entitled. 4. Nothing in this section shall be construed as affecting the making of any law in so far as it provides for the taking or acquisition of property– a. in satisfaction of any tax, rate or due; b. by way of penalty for breach of law, whether under civil process or after conviction of a criminal offence; c. as an incident of a lease, tenancy, mortgage, charge, bill of sale, pledge or contract; d. by way of the vesting or administration of trust property, enemy property, bona vacantia or the property of persons adjudged or otherwise declared bankrupt or insolvent, or persons of unsound mind; e. in the execution of judgments or orders of courts; f. by reason of such property being in a dangerous state or liable to cause injury to the health of human beings, animals or plants;

848 France 1958 (rev.2008), art.2, 17, https://www.constituteproject.org/constitution/France_2008.pdf

849 Gabon 1991 (rev.2011), 10

		g. in consequence of any law with respect to the limitation of actions; or h. for so long as such taking of possession may be necessary for the purpose of any examination, investigation, trial or inquiry, or , in the cases of land, the carrying out on the land of– i. work of soil conservation or the conservation of other resources; or ii. agricultural development or improvement which the owner or occupier of the land has been required and has without reasonable or lawful excuse refused or failed, to carry out, except so far as that provision or , as the case may be, the thing done under the authority thereof , is shown not to be reasonably justiable in an open and democratic society. 5. Nothing in this section shall be construed as affecting the making or operation of any law for the compulsory taking in the public interest of any property, or the compulsory acquisition in the public interest of any interest in or right over property, where that property or interest is held by a body corporate which is established directly by any law and in which no monies are provided by an Act of the National Assembly. 6. Where a compulsory acquisition of land by or on behalf of the State in accordance with subsection (2) involves the displacement of any inhabitants, the State shall resettle the displaced inhabitants on suitable alternative land with due regard to their economic well-being and social and cultural values. 7. Any property compulsorily taken possession of , and any interest in or right over property compulsorily acquired in the public interest, or for a public purpose, shall be used only in the public interest or for the public purpose for which it is taken or acquired. 8. Where the property is not used in the public interest or for the public purpose for which it was taken or acquired, the owner of the property immediately before the compulsory taking or acquisition, shall be given the rst option of acquiring the property– a. after refunding the whole or part of the compensation paid to him or her , as may be agreed between the parties; or b. in the absence of any agreement under paragraph (a), pay such amount, which shall not be more than the amount of the compensation, as may be determined by the High Court. 9. The State shall support, promote and protect the intellectual property rights of the people of The Gambia. 10. The rights under this section do not extend to any property that has been found to have been unlawfully acquired or settled on.[850]
63.	Georgia	FUNDAMENTAL HUMAN RIGHTS. Art.19. Right to property. 1. The right to own and inherit property shall be recognised and guaranteed. 2. This right may be restricted in cases dened by law and in accordance with the established procedure for the public interest. 3. The expropriation of property shall be admissible in cases of pressing social need as directly provided for by law, based on a court decision or in the case of urgent necessity established by the organic law, provided that preliminary, full and fair compensation is paid. Compensation shall be exempt from any taxes and fees.

850 Gambia (The) 2020, art.42, https://www.constituteproject.org/constitution/Gambia_2020D.pdf

		4. As a resource of special importance, agricultural land may be owned only by the State, a self-governing unit, a citizen of Georgia or an association of citizens of Georgia.chinaExceptional cases may be determined by the organic law, which shall be adopted by a majority of at least two thirds of the total number of the Members of Parliament.[851]
64.	Germany	BASIC RIGHTS. Art.14. Property-Inheritance-Expropriation. 1. Property and the right of inheritance shall be guaranteed. Their content and limits shall be dened by the laws. 2. Property entails obligations. Its use shall also serve the public good. 3. Expropriation shall only be permissible for the public good. It may only be ordered by or pursuant to a law that determines the nature and extent of compensation. Such compensation shall be determined by establishing an equitable balance between the public interest and the interests of those affected. In case of dispute concerning the amount of compensation, recourse may be had to the ordinary courts.[852]
65.	Ghana	FUNDAMENTAL HUMAN RIGHTS AND FREEDOMS. Art.18. PROTECTION OF PRIVACY OF HOME AND OTHER PROPERTY. 1. Every person has the right to own property either alone or in association with others. 2. No person shall be subjected to interference with the privacy of his home, property, correspondence or communication except in accordance with law and as may be necessary in a free and democratic society for public safety or the economic well-being of the country, for the protection of health or morals, for the prevention of disorder or crime or for the protection of the rights or freedoms of others. Art.20. PROTECTION FROM DEPRIVATION OF PROPERTY. 1. No property of any description, or interest in or right over any property shall be compulsorily taken possession of or acquired by the State unless the following conditions are satised- a. the taking of possession or acquisition is necessary in the interest of defence, public safety, public order, public morality, public health, town and country planning or the development or utilization of property in such a manner as to promote the public benet; and b. the necessity for the acquisition is clearly stated and is such as to provide reasonable justication for causing any hardship that may result to any person who has an interest in or right over the property. 2. Compulsory acquisition of property by the State shall only be made under a law which makes provision for- a. the prompt payment of fair and adequate compensation; and b. a right of access to the High Court by any person who has an interest in or right over the property whether direct or on appeal from any other authority for the determination of his interest or right and the amount of compensation to which he is entitled.

851 Georgia 1995 (rev.2018), art.19

852 Germany 1949n(rev.2014), art.14

		3. Where a compulsory acquisition or possession of land effected by the, State in accordance with clause (1) of this article involves displacement of any inhabitants, the State shall resettle the displaced inhabitants on suitable alternative land with due regard for their economic well-being and social and cultural values. 4. Nothing in this article shall be construed as affecting the operation of any general law so far as it provides for the taking of possession or acquisition of property- a. by way of vesting or administration of trust property, enemy property or the property of persons adjudged or otherwise declared. bankrupt or insolvent, persons of unsound mind, deceased persons or bodies corporate or unincorporated in the course of being wound up; or b. in the execution of a judgment or order of a court; or c. by reason of its being in a dangerous state or injurious to the health of human beings, animals or plants; or d. in consequence of any law with respect to die limitation of actions; or e. for so long only as may be necessary for the purpose of any examination, investigation, trial or inquiry; or f. for so long as may be necessary for the carrying out of work on any land for the purpose of the provision of public facilities or utilities, except that where any damage results from any such work there shall be paid appropriate compensation. 5. Any property compulsorily taken possession of or acquired in the public interest or for a public purpose shall be used only in the public interest or for the public purpose for which it was acquired. 6. Where the property is not used in the public interest or for the purpose for which it was acquired, the owner of the property immediately before the compulsory acquisition, shall be given the rst option for acquiring the property and shall, on such reacquisition refund the whole or part of the compensation paid to him as provided for by law or such other amount as is commensurate with the value of the property at the time of the reacquisition. Art.22. PROPERTY RIGHTS OF SPOUSES. 1. A spouse shall not be deprived of a reasonable provision out of the estate of a spouse whether or not the spouse died having made a will. 2. Parliament shall, as soon as practicable after the coming into force of this Constitution, enact legislation regulating the property rights of spouses. 3. With a view to achieving the full realization of the rights referred to in clause (2) of this article- a. spouses shall have equal access to property jointly acquired during marriage; b. assets which are jointly acquired during marriage shall be distributed equitably between the spouses upon dissolution of the marriage.[853]

853 Ghana 1992 (rev.1996), art. 18, 20, 22.

66.	Greece	INDIVIDUAL AND SOCIAL RIGHTS. Art.17. 1. Property is under the protection of the State; rights deriving there from, however , may not be exercised contrary to the public interest. 2. No one shall be deprived of his property except for public benet which must be duly proven, when and as specied by statute and always following full compensation corresponding to the value of the expropriated property at the time of the court hearing on the provisional determination of compensation. In cases in which a request for the nal determination of compensation is made, the value at the time of the court hearing of the request shall be considered. If the court hearing for the final determination of compensation takes place after one year has elapsed from the court hearing for the provisional determination, then, for the determination of the compensation the value at the time of the court hearing for the nal determination shall be taken into account. In the decision declaring an expropriation, specic justication must be made of the possibility to cover the compensation expenditure. Provided that the beneciary consents thereto, the compensation may be also paid in kind, especially in the form of granting ownership over other property or of granting rights over other property. 3. Any change in the value of expropriated property occurring after publication of the act of expropriation and resulting exclusively there from shall not be taken into account. 4. Compensation is determined by the competent courts. Such compensation may also be determined provisionally by the court after hearing or summoning the beneciary, who may be obliged, at the discretion of the court, to furnish a commensurate guarantee in order to collect the compensation, as provided by the law. Notwithstanding article 94, a law may provide for the establishment of a uniform jurisdiction, for all disputes and cases relating to expropriation, as well as for conducting the relevant trials as a matter of priority. The manner in which pending trials are continued, may be regulated by the same law. Prior to payment of the nal or provisional compensation, all rights of the owner shall remain intact and occupation of the property shall not be allowed. In order for works of a general importance for the economy of the country to be carried out, it is possible that, by special decision of the court which is competent for the nal or the provisional determination of the compensation, the execution of works even prior to the determination and payment of the compensation is allowed, provided that a reasonable part of the compensation is paid and that full guarantee is provided in favour of the beneciary of the compensation, as provided by law. The second period of the rst section applies accordingly also to these cases. Compensation in the amount determined by the court must in all cases be paid within one and one half years at the latest from the date of publication of the decision regarding provisional determination of compensation payable, and in cases of a direct request for the nal determination of compensation, from the date of publication of the court ruling, otherwise the expropriation shall be revoked ipso jure. The compensation as such is exempt from any taxes, deductions or fees. 5. The cases in which compulsory compensation shall be paid to the beneciaries for lost income from expropriated property until the time of payment of the compensation shall be specied by law. 6. In the case of execution of works serving the public benet or being of a general importance to the economy of the country, a law may allow the expropriation in favour of the State of wider zones beyond the areas necessary for the execution of the works. The said law shall specify the conditions and terms of such expropriation, as well as the matters pertaining to the disposal for public or public utility purposes in general, of areas expropriated in excess of those required.

		7. The digging of underground tunnels at the appropriate depth without compensation, may be allowed by law for the execution of works of evident public utility for the State, public law legal persons, local government agencies, public utility agencies and public enterprises, on condition that the normal exploitation of the property situated above shall not be hindered.[854]
67.	Grenada	Chapter I. Protection of Fundamental Rights and Freedoms. 6. Protection from deprivation of property. 1. No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where provision is made by a law applicable to that taking of possession or acquisition for the prompt payment of full compensation. 2. Every person having an interest in or right over property which is compulsorily taken possession of or whose interest in or right over any property is compulsorily acquired shall have a right of direct access to the High Court for: a. the determination of his interest or right, the legality of the taking of possession or acquisition of the property, interest or right and the amount of any compensation to which he is entitled and b. the purpose of obtaining prompt payment of that compensation: Provided that if Parliament so provides in relation to any matter referred to in paragraph (a) of this subsection the right of access shall be by way of appeal (exercisable as of right at the instance of the person having the interest in or right over the property) from a tribunal or authority, other than the High Court, having jurisdiction under any law to determine that matter . 3. The Chief Justice may make rules with respect to the practice and procedure ofthe High Court or any other tribunal or authority in relation to the jurisdiction conferred on the High Court by subsection (2) of this section or exercisable by the other tribunal or authority for the purposes of that subsection (including rules with respect to the time within which applications or appeals to the High Court or applications to the other tribunal or authority may be brought). 4. No person who is entitled to compensation under this section shall be prevented from remitting, within a reasonable time after he has received any amount of that compensation, the whole of that amount (free from any deduction, charge or tax made or levied in respect of its remission) to any country of his choice outside Grenada. 5. Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (4) of this section to the extent that the law in question authorises- a. the attachment, by order of a court, of any amount of compensation to which a person is entitled in satisfaction of the judgment of a court or pending the determination of civil proceedings to which he is a party; or b. the imposition of reasonable restrictions on the manner in which any amount of compensation is to be remitted. 6. Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) of this section- a. to the extent that the law in question makes provision for the taking of possession or acquisition of any property, interest or right- i. in satisfaction of any tax, rate or due; ii. by way of penalty for breach of the law or forfeiture in consequence of a breach of the law;

854 Greece 1975 (rev.2008), art.17

		iii. as an incident of a lease, tenancy, mortgage, charge, bill of sale, pledge or contract; iv. in the execution of judgments or orders of a court in proceedings for the determination of civil rights or obligations; v. in circumstances where it is reasonably necessary so to do because the property is in a dangerous state or likely to be injurious to the health of human beings, animals or plants; vi. in consequence of any law with respect to the limitation of actions; or vii. for so long only as may be necessary for the purposes of any examination, investigation, trial or inquiry or , in the case of land, for the purposes of the carrying out thereon of work of soil conservation or the conservation of other natural resources or work relating to agricultural development or improvement (being work relating to such development or improvement that the owner or occupier of the land has been required, and has without reasonable excuse refused or failed, to carry out), and except so far as that provision or , as the case may be, the thing done under the authority thereof if shown not to be reasonably justiable in a democratic society; or b. to the extent that the law in question makes provision for the taking of possession or acquisition of any of the following property (including an interest in or right over property), that is to say- i. enemy property; ii. property of a deceased person, a person of unsound mind or a person who has not attained the age of eighteen years, for the purpose of its administration for the benet of the persons entitled to the benecial interest therein; iii.property of a person adjudged bankrupt or a body corporate in liquidation, for the purpose of its administration for the benet of the creditors of the bankrupt or body corporate and, subject thereto, for the benet of other persons entitled to the benecial interest in the property; or iv. property subject to a trust, for the purpose of vesting the property in persons appointed as trustees under the instrument creating the trust or by a court or , by order of a court, for the purpose of giving effect to the trust. 7. Nothing contained in or done under the authority of any law enacted by Parliament shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision for the compulsory taking of possession of any property, or the compulsory acquisition of any interest in or right over property, where that property, interest or right is held by a body corporate established by law for public purposes in which no monies have been invested other than monies provided by Parliament or by any other legislature established for Grenada.[855]

855 Grenada 1973 (reinst.1991, rev.1992), art.6

68.	Guatemala	TITLE II. HUMAN RIGHTS. CHAPTER I. Individual Rights. Art.39. Private property Private **property is guaranteed as a right inherent** to the human person. Any person can freely dispose of his [or her] property in accordance with the law. The State guarantees the exercise of this right and must create the conditions that enable [faciliten] the owner to use and enjoy his [or her] property, in such a way as to achieve individual progress and the national development to [the] benet of all Guatemalans. Art.40. Expropriation In specic cases, private property can be expropriated for reasons of duly proven collective utility, social benet or public interest. The expropriation must be subject to the proceedings specied by the law, and the affected asset will be appraised by experts taking its actual value as a basis. The indemnication must be prior and in an effective currency of legal tender, unless another form of compensation is agreed upon with the interested party. Only in [the] cases of war , public calamity, or serious disruption of peace can a property be occupied or intervened, or be expropriated without prior compensation, but the latter must be made immediately following the end of the emergency. The law will establish the norms to be followed with enemy property. The form of payment of the indemnications due to the expropriation of idle [ociosas] lands will be determined by the law. In no case will the deadline [término] to make such payment effective exceed ten years. Art.41 Protection of the Right of Ownership The right of ownership may not be limited in any form due to political activity or crime. The conscation of property and the imposition of conscatory nes are prohibited. In no case may the nes exceed the value of the unpaid tax. Art.42. The Right of the Author or Inventor The right of an author and an inventor is recognized; the titleholders of the same will enjoy the exclusive ownership of their work or invention, in accordance with the law and the international treaties.[856]
69.	Guinea-Bissau	The Nature and Foundations of the State. Art.12. 1. The Republic of Guinea-Bissau recognizes the following property titles: a. State property, belonging to all people; b.Cooperative property which, organized according to free consent, may be established over agriculture, the production of consumption goods, arts and crafts and other economic activities deemed as so by law; c. **Private property**, which may be established over goods that do not belong to the State. 2. The State has ownership over the soil, the underground, mineral goods, the main energy sources, the forest wealth and social infrastructure. Art.14.The State recognizes the right to inheritance, according to the law.[857]

856 Guatemala 1985 (rev.1993), art.39-42

857 Guinea-Bissau 1984 (rev.1996), art.12, 14

70.	Guyana	CHAPTER II. PRINCIPLES AND BASES OF THE POLITICAL, ECONOMIC AND SOCIAL SYSTEM. Art.19. Personal property. Every citizen has the right to own personal property which includes such assets as dwelling houses an d the land on which they stand, farmsteads, tools and equipment, motor vehicles and bank accounts. Art.20. Right to inheritance. The right of inheritance is guaranteed. PART 2. SPECIFIC RULES. TITLE 1. PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL. Art.142.Protection from deprivation of property. 1. No property of any description shall be compulsorily taken possession of , and no interest in or right over property of any description shall be compulsorily acquired, except by or under the authority of a written law and where provision applying to that taking of possession or acquisition is made by a written law requiring the prompt payment of adequate compensation.[858]
71.	Haiti	Title III. Basic Rights and Duties of the Citizen. Section H. Property. Article 36. Private property is recognized and guaranteed. The law species the manner of acquiring and enjoying it, and the limits placed upon it. Article 36-1. Expropriation for a public purpose may be effected only by payment or deposit ordered by a court in favor of the person entitled thereto, of fair compensation established in advance by an expert evaluation. Article 36-2. Nationalization and conscation of goods, property and buildings for political reasons are forbidden. No one may be deprived of his legitimate right of ownership other than by a nal judgment by a court of ordinary law, except under an agrarian reform. Article 36-3. Ownership also entails obligations. Uses of property cannot be contrary to the general interest. Article 36-4. Landowners must cultivate, work, and protect their land, particularly against erosion. The penalty for failure to fulll this obligation shall be prescribed by law. Article 36-5. The right to own property does not extend to the coasts, springs, rivers, water courses, mines and quarries. They are part of the State's public domain. Article 38. Scientic, literary and artistic property is protected by law. [859]

858 Guyana 1980 (rev.2016), art.19 ,20, 142

859 Haiti 1987 (rev.2012), art. 36-39

72.	Honduras	TITLE III. DECLARATIONS, RIGHTS, AND GUARANTEES Art.61. The Constitution guarantees to all Hondurans and to foreigners residing in the country the right to the inviolability of life, and to individual safety, freedom, equality before the law, and property. CHAPTER II. Individual Rights. Art.103. The State recognizes, guarantees, and promotes the existence of private property in its broadest sense as a social function and without further limitations than those established by law for reasons of necessity or public interest. Article 104. The right to property shall not prejudice the right of eminent domain of the State. Article 105. Confiscation of property is prohibited. Property may not be limited in any way for reasons of political crimes. The right to recover conscated property is imprescriptible. Article 106. No one may be deprived of his property except by reason of public need or interest denied by law or a decision based on law, and shall not take place without assessed prior compensation. In the event of war or internal disorder, it is not necessary that the compensation be paid in advance; however, the corresponding payment shall be made not later than two years after the termination of the state of emergency. Article 108.Every author , inventor , producer or merchant shall enjoy the exclusive ownership of his work, invention, trademark, or commercial name, according to law.[860]
73.	Hungary	FREEDOM AND RESPONSIBILITY. Article XIII 1. Everyone shall have the right to property and inheritance. Property shall entail social responsibility. 2. Property may only be expropriated exceptionally, in the public interest and in the cases and ways provided for by an Act, subject to full, unconditional and immediate compensation.[861]
74.	Iceland	Chapter II. Human rights and nature. Article 13. Right of ownership The right of private ownership shall be inviolate. No one may be obliged to surrender his property unless required by the public interest. Such a measure requires permission by law, and full compensation shall be paid. Ownership rights entail obligations as well as restrictions in accordance with law.[862]

860 Honduras 1982 (rev.2013), art.61, 103-108

861 Hungary 2011 (rev.2016), art.XIII

862 Iceland 2011, art.13, https://www.constituteproject.org/constitution/Iceland_2011D.pdf

75.	India	PART III.FUNDAMENTAL RIGHTS. Art.19(1) 1. All citizens shall have the right- (...) g. to practise any profession, or to carry on any occupation, **trade or business**. CHAPTER IV. RIGHT TO PROPERTY. 300A. Persons not to be deprived of property save by authority of law. No person shall be deprived of his property save by authority of law.[863]
76.	Indonesia	Human Rights. Article 28G 1. Every person shall have the right to protection of his/herself , family, honour dignity, and **property**, and shall have the right to feel secure against and receive protection from the threat of fear to do or not do something that is a human right. Article 28H (...) 4. Every person shall have the right to own personal property, and such property may not be unjustly held possession of by any party.[864]
77.	Iran	CHAPTER III. The Rights of the People. Art.22. The dignity, life, property, rights, residence, and occupation of the individual are inviolate, except in cases sanctioned by law.[865]
78.	Iraq	Chapter One. Rights. Economic, Social and Cultural Freedoms. Art.23 First Private property is protected. The owner shall have the right to benet, exploit and dispose of private property within the limits of the law. Second Expropriation is not permissible except for the purposes of public benet in return for just compensation, and this shall be regulated by law. Third A. Every Iraqi shall have the right to own property anywhere in Iraq. No others may possess immovable assets, except as exempted by law. B. Ownership of property for the purposes of demographic change is prohibited.[866]
79.	Ireland	Private property. Art.43 The State acknowledges that man, in virtue of his rational being, has the natural right, antecedent to positive law, to the private ownership of external goods. The State accordingly guarantees to pass no law attempting to abolish the right of private ownership or the general right to transfer, bequeath, and inherit property. The State recognises, however , that the exercise of the rights mentioned in the foregoing provisions of this Article ought, in civil society, to be regulated by the principles of social justice. The State, accordingly, may as occasion requires delimit by law the exercise of the said rights with a view to reconciling their exercise with the exigencies of thecommon good.[867]

863 India 1949 (rev.2016), art.19(1), 300a

864 Indonesia 1945 (reinst.1959, rev.2002), art.28G, 28H

865 Iran (Islamic Republic of) 1979 (rev.1989), art.22

866 Iraq 2005, art.23

867 Ireland 1937 (rev.2019), art.43

80.	Israel	Basic Law. Human Dignity and Liberty. (1992) 3. Protection of property There shall be no violation of the property of a person.[868]
81.	Italy	TITLE III. ECONOMIC RIGHTS AND DUTIES. Art. 42 Property is public or private. Economic assets may belong to the State, to public bodies or to private persons. Private property is recognised and guaranteed by the law, which prescribes the ways it is acquired, enjoyed and its limitations so as to ensure its social function and make it accessible to all. In the cases provided for by the law and with provisions for compensation, private property may be expropriated for reasons of general interest. The law establishes the regulations and limits of legitimate and testamentary inheritance and the rights of the State in matters of inheritance.[869]
82.	Jamaica	CHAPTER OF FUNDAMENTAL RIGHTS AND FREEDOMS. Art.15. Protection of property rights. 1. No property of any description shall be compulsorily taken possession of and no interest in or right over property of any description shall be compulsorily acquired except by or under the provisions of a law that- a. prescribes the principles on which and the manner in which compensation therefor is to be determined and given; and b. secures to any person claiming an interest in or right over such property a right of access to a court for the purpose of- i. establishing such interest or right (if any); ii. determining the compensation (if any) to which he is entitled; and- iii. enforcing his right to any such compensation.[870]
83.	Japan	Chapter III. Rights and Duties of the People. Art.29 The right to own or to hold property is inviolable. Property rights shall be dened by law, in conformity with the public welfare. Private property may be taken for public use upon just compensation therefor .[871]
84.	Jordan	Chapter II. Rights and Duties of Jordanians. Article 11 No property of any person shall be expropriated except for public utility and in consideration of a just compensation as shall be prescribed by law. Article 12 Compulsory loans shall not be imposed and property, movable or immovable, shall not be conscated except in accordance with the law.[872]

868 Israel 1958 (rev.2013), art. 3

869 Italy 1947, art.42

870 Jamaica 1962 (rev.2015), art.15

871 Japan 1946, art.29

872 Jordan 1952 (rev.2016), art.11, 12

85.	Kazakhstan	Section II. The Individual and Citizen. Article 26 1. Citizens of the Republic of Kazakhstan may privately own any legally acquired property. 2. Property, including the right of inheritance, shall be guaranteed by law. 3. No one may be deprived of his property unless otherwise stipulated by court decision. Forcible alienation of property for the public use in extraordinary cases stipulated by law may be exercised on condition of its equivalent compensation. 4. Everyone shall have the right to freedom of entrepreneurial activity, and free use of his property for any legal entrepreneurial activity. Monopolistic activity shall be regulated and limited by law. Unfair competition shall be prohibited.[873]
86.	Kenya	Part 2. Rights and Fundamental Freedoms. 40. Protection of right to property 1. Subject to Article 65, every person has the right, either individually or in association with others, to acquire and own property- a. of any description; and b. in any part of Kenya. 2. Parliament shall not enact a law that permits the State or any person- a. to arbitrarily deprive a person of property of any description or of any interest in, or right over, any property of any description; or b. to limit, or in any way restrict the enjoyment of any right under this Article on the basis of any of the grounds specified.[874]
87.	Kiribati	CHAPTER II. PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL. Art.8. Protection from deprivation of property. 1. No property of any description shall be compulsorily taken possession of , and no interest in or right over property of any description shall be compulsorily acquired, except where the following conditions are satised, that is to say— a. the taking of possession or acquisition is necessary or expedient in the interests of defence, public safety, public order , public morality, public health, town or country planning or the development or utilisation of any property for a public purpose; and b. there is reasonable justication for the causing of any hardship that may result to any person having an interest in or right over the property; and c. provision is made by a law applicable to that taking of possession or acquisition— i. for the payment of adequate compensation within a reasonable time; and ii.securing to any person having an interest in or right over the property a right of access to the High Court, whether direct or on appeal from any other authority, for the determination of his interest or right, the legality of the taking of possession or acquisition of the property, interest or right and the amount of any compensation to which he is entitled, and for the purpose of obtaining that compensation.[875]

873 Kazakhstan 1995 (rev.2017), art.26

874 Kenya 2010, art.40

875 Kiribati 1979 (rev.2013), art.8

88.	Korea (Democratic People's Republic of)	Chapter II. The Economy. Article 23 The State shall enhance the ideological consciousness and the technical and cultural level of the peasants, increase the role of the property of all the people in leading the cooperative property so as to combine the two forms of property in an organic way, and shall consolidate and develop the socialist cooperative economic system by improving the guidance and management of the cooperative economy and gradually transform the property of cooperative organizations into the property of the people as a whole based on the voluntary will of all their members. Article 24 Private property is property owned and consumed by individual citizens. Private property is derived from socialist distribution according to work done and from supplementary benets granted by the State and society. The products of individual sideline activities including those from kitchen gardens, as well as income from other legal economic activities shall also be private property. The State shall protect private property and guarantee by law the right to inherit it.[876]
89.	Korea (Republic of)	CHAPTER II. RIGHTS AND DUTIES OF CITIZENS. Article 23 1. The right of property of all citizens shall be guaranteed. The contents and limitations thereof shall be determined by law. 2. The exercise of property rights shall conform to the public welfare. 3. Expropriation, use or restriction of private property from public necessity and compensation therefor shall be governed by law. However , in such a case, just compensation shall be paid.[877]
90.	Kosovo	FUNDAMENTAL RIGHTS AND FREEDOMS. Article 46. Protection of Property 1. The right to own property is guaranteed. 2. Use of property is regulated by law in accordance with the public interest. 3. No one shall be arbitrarily deprived of property. The Republic of Kosovo or a public authority of the Republic of Kosovo may expropriate property if such expropriation is authorized by law, is necessary or appropriate to the achievement of a public purpose or the promotion of the public interest, and is followed by the provision of immediate and adequate compensation to the person or persons whose property has been expropriated. 4. Disputes arising from an act of the Republic of Kosovo or a public authority of the Republic of Kosovo that is alleged to constitute an expropriation shall be settled by a competent court. 5. Intellectual property is protected by law.[878]
91.	Kuwait	Part II. The basic Foundations of Kuwaiti Society. Article 16 Ownership, capital and labor are the mainstays of the State's social entity and of national wealth. They all are individual rights with social functions regulated by Law.

876 Korea (Democratic People's Republic of) 1972 (rev.2016), art.23, 24

877 KOREA (REPUBLIC OF) 1948 (REV.1987), art.23

878 Kosovo 2008 (rev.2016), art.46

		Article 18 Private ownership is safeguarded. No person shall be prevented from disposing of his property save within the limits of the Law; and no person shall suffer expropriation save for the public benet in the cases determined and in the manner prescribed by Law provided that he be equitably compensated therefor. Inheritance is a right governed by Islamic Law. Article 19 General conscation of property is prohibited; and only by Court Judgment, in the circumstances described by the Law, can private conscation as a punitive measure be imposed. Article 20 National economy is based upon social justice; its mainstay is a balanced cooperation between public and private enterprise; its aims are the realization of economic development, the increase of production, the raising of the standard of living, and the substantiation of the citizens' prosperity, all within the limits of the Law.[879]
92.	Kyrgyzstan	HUMAN RIGHTS AND FREEDOMS. Article 42 1. Everyone shall have the right to possess, use and dispose of his/her property and results of activity. 2. Everyone shall have the right to economic freedom and free use of his/her abilities and property for any economic activity not prohibited by law. 3. Everyone shall have the right to freedom of labor , the use of his/her their abilities for work and choice of profession and occupation, labor protection and labor arrangements meeting safety and hygienic requirements as well as the right to remuneration for labor not less than minimum subsistence level. Article 49 (...) 3. Intellectual property shall be protected by law.[880]
93.	Lao People's Democratic Republic	Chapter II. The Socio-Economic Regime Article 16 The State protects and promotes all forms of property rights: State, collective, private domestic and foreign investment in the Lao People's Democratic Republic. Article 17 (Amended) The State protects the property rights (such as the rights of possession, use, exploitation and disposition) and the inheritance rights of individuals, legal entities and organizations in accordance with the laws. Land, minerals, water , air , forests and forest products, aquatic life, wildlife and other natural resources all belong to the nation's community with the Lao government as the centralized and unied representative to manage those resources under laws of Lao PDR.

879 Kuwait 1962 (reinst.1992), art.16-20

880 Kyrgyzstan 2010 (rev.2016), art. 42, 49

		Article 24 (Amended) The State focuses on promoting knowledge and invention in scientic, academic and technological research and development, innovation, [and] protecting intellectual property while building up a community of scientists to promote industrialization and modernization.[881]
94.	Latvia	Chapter VIII. Fundamental Human Rights Article 105 Everyone has the right to own property. Property shall not be used contrary to the interests of the public. Property rights may be restricted only in accordance with law. Expropriation of property for public purposes shall be allowed only in exceptional cases on the basis of a specic law and in return for fair compensation.[882]
95.	Lesotho	CHAPTER II. PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS. 4. Fundamental human rights and freedoms 1. Whereas every person in Lesotho is entitled, whatever his race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status to fundamental human rights and freedoms, that is to say, to each and all of the following— (...)m. freedom from arbitrary seizure of property; 17. Freedom from arbitrary seizure of property 1. No property, movable or immovable, shall be taken possession of compulsorily, and no interest in or right over any such property shall be compulsorily acquired, except where the following conditions are satised, that is to say-- a. the taking of possession or acquisition is necessary in the interests of defence, public safety, public order , public morality, public health, town and country planning or the development or utilisation of any property in such manner as to promote the public benet; and b. the necessity therefor is such as to afford reasonable justication for the causing of any hardship that may result to any person having an interest in or right over the property; and c. provision is made by a law applicable to that taking of possession or at matter .[883]
96.	Liberia	CHAPTER III. FUNDAMENTAL RIGHTS. Article 22 a. Every person shall have the right to own property alone as well as in association with others; provided that only Liberian citizens shall have the right to own real property within the Republic. b. Private property rights, however , shall not extend to any mineral resources on or beneath any land or to any lands under the seas and waterways of the Republic. All mineral resources in and under the seas and other waterways shall belong to the Republic and be used by and for the entire Republic.[884]

881 Lao People's Democratic Republic 1991 (rev.2015), art.16, 17, 24

882 Latvia 1922 (reinst.1991, rev.2016), art.105

883 Lesotho 1993 (rev.2018), art.4, art.17

884 Liberia 1986, art.22, 23, 24

97.	Libya	CHAPTER TWO. RIGHTS AND FREEDOMS. Article 68. Private Property Private property shall be safeguarded as a right. No custodianship shall be imposed on private property except by a court order and in the cases that are determined by the law. It shall not be taken away except for the general good and in exchange for fair compensation. In cases other than emergency and martial law, compensation for property shall be paid in advance and property shall not be seized except by a court order. General seizure shall be prohibited. Article 60. Intellectual Property The State shall protect the material and intangible rights of intellectual property in all forms and in all domains. The State shall support it in accordance with what is specied by the law.[885]
98.	Liechtenstein	CHAPTER IV. GENERAL RIGHTS AND OBLIGATIONS OF LIECHTENSTEIN CITIZENS. Art 28 1. Every citizen shall be freely entitled to reside in any locality within the territory of the State and to acquire property of any description, provided that he observes the detailed legal regulations relating to such matters. Art 34 1. The inviolability of private property is guaranteed; conscation may only take place in such cases as determined by law. 2. Copyright shall be regulated by law. Art 35 1. Where necessary in the public interest, property of any kind may be compulsorilyassigned or subjected to an encumbrance, against appropriate compensation, the amount of which in cases of dispute shall be determined by the courts. 2. The procedure for expropriation shall be regulated by law.[886]
99.	Lithuania	CHAPTER II. THE HUMAN BEING AND THE STATE. Article 23 Property shall be inviolable. The rights of ownership shall be protected by laws. Property may be taken over only for the needs of society according to the procedure established by law and shall be justly compensated for.[887]
100.	Luxembourg	Chapter II. Public Freedoms and Fundamental Rights. Article 16 One may only be deprived of his property for a reason of public utility and [with] consideration [of a] just indemnity, in the case and in the manner established by the law. Article 17 The penalty of the conscation of property may not be established.[888]

885 Libya 2016, art.60, 68

886 Liechtenstein 1921 (rev.2011), art.28, 34, 35

887 Lithuania 1992 (rev.2019), art.23

888 Luxembourg 1868 (rev.2009), art.16, 17

101.	Madagascar	THE ECONOMICAL, SOCIAL AND CULTURAL RIGHTS AND DUTIES Article 20 The family, natural and fundamental element of the society, is protected by the State. All individuals have the right to found a family and **to transmit by inheritance t**heir personal assets. Article 26 (...) The State, with the participation of the Decentralized Territorial Collectivities, guarantees the right of intellectual property. Article 34 The State guarantees the **right to individual property**. No one may be deprived of it except by way of expropriation for cause of public utility and subject to a fair and prior indemnication. The State assures the facility of access to land property through the appropriate juridical and institutional provisions and a transparent administration of the information concerning land.[889]
102.	Malawi	CHAPTER IV. HUMAN RIGHTS. 28. Property 1. Every person shall be able to acquire property alone or in association with others. 2. No person shall be arbitrarily deprived of property.[890]
103.	Malaysia	FUNDAMENTAL LIBERTIES 13. Rights to property 1. No person shall be deprived of property save in accordance with law. 2. No law shall provide for the compulsory acquisition or use of property without adequate compensation.[891]
104.	Maldives	FUNDAMENTAL RIGHTS AND FREEDOMS 40. Right to acquire and hold property a. Every citizen has the right to acquire, own, inherit, transfer or otherwise transact of such property. b. Private property shall be inviolable, and may only be compulsorily acquired by the State for the public good, as expressly prescribed by law, and as authorised by order of the court. Fair and adequate compensation shall be paid in all cases, as determined by the court. c. Nothing in this Article prevents any law authorising a court to order the forfeiture(without the giving of any compensation) of illegally acquired or possessed property, or enemy property. d. Property of a person shall not be forfeited in substitution for any offence.[892]

889 Madagascar 2010, art.20, 26, 34

890 Malawi 1994 (rev.2017), art.28

891 Malaysia 1957 9rev.2007), art.13

892 Maldives 2008, art.40

105.	Malta	FUNDAMENTAL RIGHTS AND FREEDOMS 37. Protection from deprivation of property without compensation 1. No property of any description shall be compulsorily taken possession of , and no interest in or right over property of any description shall be compulsorily acquired, except where provision is made by a law applicable to that taking of possession or acquisition - a. for the payment of adequate compensation; b. securing to any person claiming such compensation a right of access to an independent and impartial court or tribunal established by law for the purpose of determining his interest in or right over the property and the amount of any compensation to which he may be entitled, and for the purpose of obtaining payment of that compensation; and c.securing to any party to proceedings in that court or tribunal relating to such a claim a right of appeal from its determination to the Court of Appeal in Malta: Provided that in special cases Parliament may, if it deems it appropriate so to act in the national interest, by law establish the criteria which are to be followed, including the factors and other circumstances to be taken into account, in the determination of the compensation payable in respect of property compulsorily taken possession of or acquired; and in any such case the compensation shall be determined and shall be payable accordingly.[893]
106.	Marshall Islands	ARTICLE II. BILL OF RIGHTS Section 4. Due Process and Fair Trial 1. No person shall be deprived of life, liberty, or property without due process of the law. Section 5. Just Compensation 1. No land right or other private property may be taken unless a law authorizes such taking; and any such taking must be by the Government of the Republic of the Marshall Islands, for public use, and in accord with all safeguards provided by law. 4. Before any land right or other form of private property is taken, there must be a determination by the High Court that such taking is lawful and an order by the High Court providing for prompt and just compensation. 5. Where any land rights are taken, just compensation shall include reasonably equivalent land rights for all interest holders or the means to obtain the subsistence and benets that such land rights provide. 6. Whenever the taking of land rights forces those who are dispossessed to live in circumstances reasonably requiring a higher level of support, that fact shall be considered in assessing whether the compensation provided is just. 7. In determining whether compensation for land rights is just, the High Court shall refer the matter to the Traditional Rights Court and shall give substantial weight to the opinion of the latter . 8. An interest in land or other property shall not be deemed «taken» if it is forfeited pursuant to law for non-payment of taxes or debt or for commission of crime, or if it is subjected only to reasonable regulation to protect the public welfare. 9. In construing this Section, a court shall have due regard for the unique place of land rights in the life and law of the Republic.[894]

893 Malta 1964 (rev.2016), art.37

894 Marshall Islands 1979 (rev.1995), sec.4, 5

107.	Mauritania	Preamble: the Mauritanian people proclaim, in particular, the intangible guarantee of the following rights and principles: -the right to equality; -the fundamental freedoms and rights of the human person; -the right of property; (...) GENERAL PROVISIONS AND FUNDAMENTAL PRINCIPLES. Article 15 The right of property is guaranteed. The right of inheritance is guaranteed. The law can limit the extent of the exercise of private property if the exigencies ofeconomic and social development necessitate it. Expropriation can only proceed when public utility commands it and after a just and priorindemnity. The law establishes the juridical regime for expropriation.[895]
108.	Mauritius	CHAPTER II. PROTECTION OF THE FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL. 8. Protection from deprivation of property 1. No property of any description shall be compulsorily taken possession of , and no interest in or right over property of any description shall be compulsorily acquired, except where a. the taking of possession or acquisition is necessary or expedient in the interests of defence, public safety, public order , public morality, public health, town and country planning, the development or utilisation of any property in such a manner as to promote the public benet or the social and economic well-being of the people of Mauritius; and b. there is reasonable justication for the causing of any hardship that may result to any person having an interest in or right over the property; and c. provision is made by a law applicable to that taking of possession or acquisition i. for the payment of adequate compensation; and ii. securing to any person having an interest in or right over the property aright of access to the Supreme Court, whether direct or on appeal from any other authority, for the determination of his interest or right, the legality of the taking of possession or acquisition of the property, interest or right, and the amount of any compensation to which he is entitled, and for the purpose of obtaining payment of that compensation[896]
109.	Mexico	HUMAN RIGHTS AND GUARANTEES. Art.14. (...) No one can be deprived of his freedom, **properties** or rights without a trial before previously established courts, complying with the essential formalities of the proceedings and according to those laws issued beforehand. (...)

895 Mauritania 1991 (rev.2012), art.15

896 Mauritius 1968 9rev.2016), art.8

		Art.27. The property of all land and water within national territory is originally owned by the Nation, who has the right to transfer this ownership to particulars. Hence, private property is a privilege created by the Nation. Expropriation is authorized only where appropriate in the public interest and subject to payment of compensation. The Nation shall at all time have the right to impose on **private property** such restrictions as the public interest may demand, as well as to regulate, for socialbenet, the use of those natural resources which are susceptible of appropriation, in order to make an equitable distribution of public wealth, to conserve them, to achieve a balanced development of the country and to improve the living conditions of rural and urban population. Consequently, appropriate measures shall be issued to put in order human settlements and to dene adequate provisions, reserves and use of land, water and forest. [897]
110.	Micronesia (Federal States of)	ARTICLE IV. DECLARATION OF RIGHTS Section 3 A person may not be deprived of life, liberty, or **property** without due process of law, or be denied the equal protection of the laws.[898]
111.	Moldova	TITLE I. GENERAL PRINCIPLES Article 9. Fundamental principles regarding property 1. Property shall be public and private. It shall be constituted of material and intellectual goods. 2. No property may be used to the prejudice of human rights, liberties and dignity. 3. The market, free economic initiative and fair competition shall represent the main elements of the economy. CHAPTER II. FUNDAMENTAL RIGHTS AND FREEDOMS Article 46. Right to private property and its protection 1. The right to possess private property and the debts incurred by the State shall be guaranteed. 2. No one may be expropriated unless for a matter of public utility, established, under the law, against a fair and previously determined compensation. 3. No assets legally acquired may be seized. The legal nature of the assets' acquirement shall be presumed. 4. Goods intended for, used or resulted from misdemeanours or offences shall be seized only under the law. 5. The right to hold private property shall coerce to the observance of duties as regarding the environment protection and maintenance of good neighbourhood, as well as other tasks incumbent upon the owner, under the law. 6. The right to inherit private property shall be guaranteed.[899]
112.	Monaco	CHAPTER III. FUNDAMENTAL FREEDOMS AND RIGHTS Art 24 Property is inviolable. No one may be deprived of property except for public benefit as established by law, and upon a fair, settled and paid compensation in the circumstances and manner specied by law.[900]

897 Mexico 1917 (rev.2015), art.14, 27

898 Micronesia (Federal States of) 1978 (rev.1990)

899 Moldova (Republic of) 1994 (rev.2016), art. 9, 46

900 Monaco 1962 (rev.2002), art.24

113.	Mongolia	CHAPTER TWO. HUMAN RIGHTS AND FREEDOMS. Article 16 The citizens of Mongolia shall be guaranteed to exercise the following rights and freedoms: (...) 3. The right to fair acquisition, possession and inheritance of movable and private property. Illegal conscation and requisitioning of the private property of citizens shall be prohibited. If the State and its organs appropriate a private property on the basis of exclusive public need, then there shall be [fair] payment of compensation and cost. (...)[901]
114.	Montenegro	PART 2. HUMAN RIGHTS AND LIBERTIES. ECONOMIC, SOCIAL AND CULTURAL RIGHTS AND LIBERTIES Article 58. Property Property rights shall be guaranteed. No one shall be deprived of or restricted in property rights, unless when so required by the public interest, with rightful compensation. Natural wealth and goods in general use shall be owned by the state. Article 60. Right to succession The right to succession shall be guaranteed. Article 61. Rights of foreign nationals A foreign national may be the holder of property rights inaccordance with the law.[902]
115.	Morocco	FUNDAMENTAL FREEDOMS AND RIGHTS Article 35 The right to property is guaranteed. The law can limit the extent of it and the exercise of it if the exigencies of economic and social development of the country necessitate it. Expropriation may only proceed in the cases and the forms provided by the law. The State guarantees the freedom to contract and free competition. It works for the realization of a lasting human development, likewise to permit the consolidation of social justice and the preservation of the national natural resources and of the rights of the future generations. The State looks to guarantee the equality of opportunities for all and [to] one specic protection for the socially disfavored categories.[903]
116.	Mozambique	TITLE III. FUNDAMENTAL RIGHTS, DUTIES AND FREEDOMS CHAPTER V. ECONOMIC, SOCIAL AND CULTURAL RIGHTS AND DUTIES Article 82. Right of Ownership 1. The State shall recognise and guarantee the right of ownership of property. 2. Expropriation may take place only for reasons of public necessity, utility, or interest, as dened in the terms of the law, and subject to payment of fair compensation. Article 83. Right of Inheritance The State recognises and guarantees, in accordance with the law, the right of inheritance.[904]

901 Mongolia 1992 (rev.2001), art.16(3)

902 Montenegro 2007 (rev.2013), art. 58-61

903 Morocco 2011, art.35

904 Mozambiques 2004 (rev.2007), art.82

117.	Myanmar	Part II. Basic principles. 37. The Union: a. is the ultimate owner of all lands and all natural resources above and below the ground, above and beneath the water and in the atmosphere in the Union; b. shall enact necessary law to supervise extraction and utilization of State-owned natural resources by economic forces; c. shall permit citizens **right of private property**, **right of inheritance**, **right of private initiative and patent** in accord with the law.[905]
118.	Namibia	FUNDAMENTAL RIGHTS AND FREEDOMS Article 16. Property 1. All persons shall have the right in any part of Namibia to acquire, own and dispose of all forms of immovable and movable property individually or in association with others and to bequeath their property to their heirs or legatees: provided that Parliament may by legislation prohibit or regulate as it deems expedient the right to acquire property by persons who are not Namibian citizens. 2. The State or a competent body or organ authorised by law may expropriate property in the public interest subject to the payment of just compensation, in accordance with requirements and procedures to be determined by Act of Parliament.[906]
119.	Nauru	PART II. PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS 3. Preamble. Whereas every person in Nauru is entitled to the fundamental rights and freedoms of the individual, that is to say, has the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following freedoms, namely:- a. life, liberty, security of the person, the enjoyment of property and the protection of the law; 8. Protection from deprivation of property. 1. No person shall be deprived compulsorily of his property except in accordance with law for a public purpose and on just terms.[907]
120.	Nepal	PART 3. FUNDAMENTAL RIGHTS AND DUTIES 25. Right to property 1. Every citizen shall, subject to laws, have the right to acquire, enjoy own, sell, have professional gains, and otherwise utilize, or dispose of property. 1. Explanation: For the purpose of this Article, "property" means all type of movable and immovable property and the word also includes intellectual property. Provided that the state may impose tax on property and income of a person according to the norms of progressive tax. 2. The State shall not, except in the public interest, acquire, requisition, or create any encumbrance on the property of any person. Provided that this clause shall not be applicable to property acquired through illegal means. 3. In the case when the land of a person is acquisitioned by the State according to clause (2), the basis of compensation and the relevant procedure shall be as prescribed by Act.[908]

905 Myanmanr 2008 (rev.2015), art.37

906 Namibia 1990 (rev.2014), art.16

907 Nauru 1968 (rev.2015)

908 Nepal 2015 (rev.2016), art.25

121.	Netherlands	CHAPTER 1 Fundamental Rights Article 14 1. Expropriation may take place only in the public interest and on prior assurance of full compensation, in accordance with regulations laid down by or pursuant to Act of Parliament. 2. Prior assurance of full compensation shall not be required if in an emergency immediate expropriation is called for. 3. In the cases laid down by or pursuant to Act of Parliament there shall be a right to full or partial compensation if in the public interest the competent authority destroys **property** or renders it unusable or restricts the exercise of the **owner's rights** to it.[909]
122.	New Zealand	21. Unreasonable search and seizure Everyone has the right to be secure against unreasonable search or seizure, whether of the person**, property**, or correspondence or otherwise.[910]
123.	Nicaragua	TITLE IV. RIGHTS, DUTIES AND GUARANTEES OF THE NICARAGUAN PEOPLE Article 44 The right of private ownership of movable and immovable property and of the instruments and means of production is guaranteed. By virtue of the social function of property, for reason of public utility or social interest, this right is subject to the limits and obligations imposed by the laws regarding its exercise. Immovable property mentioned in the first paragraph may be the subject of expropriation in accordance with the law following the cash payment of fair compensation. As regards the expropriation of uncultivated large landed estates in the interest of land reform, the law shall determine the form, computation, installment of payments and interests recognized as indemnication. The confiscation of property is prohibited. Those ofcials who violate this provision shall respond with their property at all times for any damages they may have caused.[911]
124.	Niger	TITLE II. OF THE RIGHTS AND DUTIES OF THE HUMAN PERSON Article 28 Any person has a right to property. No one may be deprived of their property except for cause of public utility [and] subject to a fair and prior indemnication.[912]
125.	Nigeria	Chapter IV. Fundamental Rights 43. Subject to the provisions of this Constitution, every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria. 44.1. No moveable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law that, among other things- a. requires the prompt payment of compensation therefore; and

909 Netherlands 1814 (rev.2008), art.14

910 New Zealand 1852 (rev.2014), art.21

911 Nicaragua 1987 (rev.2014), art.44

912 Niger 2010 (rev.2017), art.28

		b. gives to any person claiming such compensation a right of access for the determination of his interest in the property and the amount of compensation to a court of law or tribunal or body having jurisdiction in that part of Nigeria.[913]
126.	North Macedonia (Republic of)	BASIC PROVISIONS. Article 8 The fundamental values of the constitutional order of the Republic of Macedonia are: (...) the legal protection of property; BASIC FREEDOMS AND RIGHTS OF THE INDIVIDUAL AND CITIZEN 2.Economic, social and cultural rights. Article 30 The right to ownership of property and the right of inheritance are guaranteed. Ownership of property creates rights and duties and should serve the wellbeing of both the individual and the community. No person may be deprived of his/her property or of the rights deriving from it, except in cases concerning the public interest determined by law. If property is expropriated or restricted, rightful compensation not lower than its market value is guaranteed.[914]
127.	Norway	E.Human Rights Article 96 (....) No one can be sentenced to forfeit immovable **property** or all of their assets, unless these values have been used for or are the result of an unlawful act. Article 105 If the welfare of the State requires that any person shall surrender his movable or immovable **property** for the public use, he shall receive full compensation from the Treasury.[915]
128.	Oman	Article 11 The Economic Principles (...) All natural wealth and resources thereof are the property of the State, which shall preserve and utilise them in the best manner taking into consideration the requirements of the security of the State and the interests of the national economy. No concession or investment of any public resource of the Country shall be granted except by virtue of a law, for a limited period of time, and in a manner that preserves national interests. Public property is inviolable, the State shall protect it, and Citizens and residents shall preserve it. **Private ownership** is safeguarded and no one shall be prevented from disposing of his **property** except within the limits of the Law. No **property** shall be expropriated except for the public interest in cases stipulated by the Law and in the manner specied therein, provided that the person dispossessed shall be fairly compensated. Inheritance is a right governed by Islamic Sharia. General conscation of **property** is prohibited. The penalty of specic conscation shall only be imposed by virtue of a judicial decision and in such circumstances as prescribed in the Law.(...)[916]

913 Nigeria 1999 (rev.2011), art.43, 44

914 North Macedonia (Republic of) 1991 (rev.2011), art.8, 30

915 Norway 1814 (rev.2016), art. 96, 105

916 Oman 1996 (rev.2011)

129.	Pakistan	II.FUNDAMENTAL RIGHTS AND PRINCIPLES OF POLICY 23. Provision as to property Every citizen shall have the right to acquire, hold and dispose of property in any part of Pakistan, subject to the Constitution and any reasonable restrictions imposed by law in the public interest. 24. Protection of property rights 1. No person shall be deprived of his property save in accordance with law. 2. No property shall be compulsorily acquired or taken possession of save for a public purpose, and save by the authority of law which provides for compensation therefor and either xes the amount of compensation or species the principles on and the manner in which compensation is to be determined and given.[917]
130.	Palau	ARTICLE IV. FUNDAMENTAL RIGHTS Section 6 The government shall take no action to deprive any person of life, liberty, or property without due process of law nor shall private property be taken except for a recognized public use and for just compensation in money or in kind. No person shall be held criminally liable for an act which was not a legally recognized crime at the time of its commission, nor shall the penalty for an act be increased after the act was committed. No person shall be placed in double jeopardy for the same offense. No person shall be found guilty of a crime or punished by legislation. Contracts to which a citizen is a party shall not be impaired by legislation. No person shall be imprisoned for debt. A warrant for search and seizure may not issue except from a justice or judge on probable cause supported by an afdavit particularly describing the place, persons, or things to be searched, arrested, or seized. Section 7 The national government may be held liable in a civil action for unlawful arrest or damage to private property as prescribed by law. ARTICLE VI. RESPONSIBILITIES OF THE NATIONAL GOVERNMENT The national government shall take positive action to attain these national objectives and implement these national policies: (…)protection of the safety and security of persons and **property**;[918]
131.	Palestine	PUBLIC RIGHTS AND LIBERTIES Article 21 1. The economic system in Palestine shall be based on the principles of a free market economy. The executive branch may establish public companies that shall be regulated by a law. 2. Freedom of economic activity is guaranteed. The law shall dene the rules governing its supervision and their limits. 3. Private property, both real estate and movable assets, shall be protected and may not be expropriated except in the public interest and for fair compensation in accordance with the law or pursuant to a judicial ruling. 4. Conscation shall be in accordance with a judicial ruling.[919]

917 Pakistan 1973 (reinst.2002, rev.2018), art.23, 24

918 Palau 1981 (rev.1992), art. IV, VI

919 Palestine 2003 (rev.2005), art.21

132.	Panama	TITLE III.INDIVIDUAL AND SOCIAL RIGHTS AND DUTIES Article 30 The death penalty, expatriation and conscation of property are abolished. Article 47 Private property acquired by juridical or natural persons is guaranteed in accordance with the law. Article 48 Private property implies obligations on the part of its owners because of the social function it must fulll. For reasons of public utility or social interest dened by law, there may be expropriation through special proceeding and compensation. Article 53 Every author, artist or inventor enjoys the exclusive ownership of his/her work or invention during the time and in the manner prescribed by law.[920]
133.	Papua New Guinea	BASIC RIGHTS PROTECTION FROM UNJUST DEPRIVATION OF PROPERTY Subject to Section 54 (special provision in relation to certain lands) and except as permitted by this section, possession may not be compulsorily taken of any property, and no interest in or right over property may be compulsorily acquired, except in accordance with an Organic Law or an Act of the Parliament, and unless- the property is required for- a public purpose; or a reason that is reasonably justified in a democratic society that has a proper regard for the rights and dignity of mankind.[921]
134.	Paraguay	Section I. Of the Economic Rights Article 109. Of Private Property Private property, whose content and limits will be established by the law, attending to its economic and social function, in order to make it accessible to all[,] is guaranteed. Private property is inviolable. No one may be deprived of his property if not by virtue of [a] judicial sentence, nevertheless the expropriation for cause of public utility or social interest, which will be determined in each case by law, is admitted. It will guarantee the prior payment of a fair indemnication, established conventionally or by a judicial sentence, except the unproductive latifundia [large scale land ownership] destined for agrarian reform, according to the procedure for expropriations to be established by law. Article 110. Of Copyrights and Intellectual Property All authors, inventors, producers, or merchants [comerciantes] will enjoy the exclusive property of their work, invention, brand or commercial name, in accordance with the law.[922]

920 Panama 1972 (rev.2004), art. 30, 47, 48, 53

921 Papua New Guinea 1975 (rev.2016), art.53

922 Paraguay 1992 (rev.2011), art.109, 110

135.	Peru	CHAPTER III. PROPERTY Article 70 The right to property is inviolable. The State guarantees it. It is exercised in harmony with the common good, and within the limits of the law. No one shall be deprived of his property, except, exclusively, on grounds of national security or public need determined by law, and upon cash payment of the appraised value, which must include compensation for potential damages. Proceedings may be instituted before the Judiciary to challenge the property value established by the State in the expropriatory procedure.[923]
136.	Philippines	ARTICLE II. DECLARATION OF PRINCIPLES. Sec 5 The maintenance of peace and order , the protection of life, liberty, and **property**, and the promotion of the general welfare are essential for the enjoyment by all the people of the blessings of democracy. ARTICLE III. BILL OF RIGHTS Sec 1 No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws. Sec 9 Private property shall not be taken for public use without just compensation.[924]
137.	Poland	Chapter I. The Republic Article 21 1. The Republic of Poland shall protect ownership and the right of succession. 2. Expropriation may be allowed solely for public purposes and for just compensation. ECONOMIC SOCIAL AND CULTURAL FREEDOMS AND RIGHTS Article 64 1. Everyone shall have the right to ownership, other property rights and the right of succession. 2. Everyone, on an equal basis, shall receive legal protection regarding ownership, other property rights and the right of succession. 3. The right of ownership may only be limited by means of a statute and only to the extent that it does not violate the substance of such right.[925]
138.	Portugal	FUNDAMENTAL RIGHTS AND DUTIES. Article 62. Right to private property. 1. Everyone shall be guaranteed the right to private property and to the transmission thereof in life or upon death, as laid down by this Constitution. 2. Requisitions and expropriations in the public interest shall only occur on a legal basis and upon payment of just compensation.[926]

923 Peru 1993 (rev.2021), art.70

924 Philippines 1987, art.II (5) , III (1) and (9)

925 Poland 1997 (rev.2009)

926 Portugal 1976 (rev.2005), art.62

139.	Qatar	CHAPTER II. BASIC PILLARS OF THE SOCIETY. Article 26 Ownership, capital, and labor are basic components for the State's social entity. They are all individual rights having social function, regulated by law. Article 27 Private property is inviolable. No one can be deprived of his property, save for public utility and in the cases prescribed by law and in the manner provided for therein provided that he is fairly compensated. CHAPTER III. PUBLIC RIGHTS AND DUTIES. Article 51 The right of inheritance is inviolable and is governed by the Islamic Law. Article 52 Every person, legally residing in the State, enjoys protection of his person and property, according to the provisions of the law. Article 56 Public conscation of property is prohibited. The punishment of private conscation can only be imposed by a court decision, in the case stipulated by the law.[927]
140.	Romania	FUNDAMENTAL RIGHTS, FREEDOMS, AND DUTIES. Article 44. Right to Private Property 1. The right to property and the nancial claims against the state are guaranteed. The content and limitations of these rights are dened by law. 2. Private property shall be equally guaranteed and protected by the law, irrespective of who owns it. Foreign and stateless persons may acquire private property of land only under the terms resulting from Romania's accession to the European Union and from other international agreements to which Romania is a party, on the basis of reciprocity and in accordance with the provisions of the relevant organic law, as well as by lawful inheritance. 3. No one may be deprived of his/her property, except for a reason of public interest, specied by law, with just and prior compensation. 4. Nationalizations and all other forcible transfers of assets into public ownership based on the owner's social, ethnic, religious or political status or other discriminatory features are prohibited.[928]
141.	Russian Federation	HUMAN AND CIVIL RIGHTS AND FREEDOMS Article 35 1. The right of private property shall be protected by law. 2. Everyone shall have the right to have property and to possess, use and dispose of it both individually and jointly with other persons. 3. Nobody may be deprived of property except under a court order. Forced alienation of property for State requirements may take place only subject to prior and fair compensation. 4. The right of inheritance shall be guaranteed.[929]

927 Qatar 2003, art.26, 27, 51, 52, 56

928 Romania 1991 (rev.2003), art.44

929 Russian Federation 1993 (rev.2014), art.35

142.	Rwanda	CHAPTER IV. HUMAN RIGHTS AND FREEDOMS. Article 34. Right to private property Everyone has the right to private property, whether individually or collectively owned. Private property, whether owned individually or collectively, is inviolable. The right to property shall not be encroached upon except in public interest and in accordance with the provisions of the law.[930]
143.	Saint Kitts and Nevis	CHAPTER II PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS Fundamental rights and freedoms Whereas every person in Saint Christopher and Nevis is entitled to the fundamental rights and freedoms, that is to say, the right, whatever his race, place of origin, birth, political opinions, colors, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely- protection for his personal privacy, the privacy of his home and other property and from deprivation of property without compensation. (...)8. Protection from deprivation of property No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except for a public purpose and by or under the provisions of a law that prescribes the principles on which and the manner in which compensation therefor is to be determined and given. Every person having an interest in or right over property that is compulsorily taken possession of or whose interest in or right over any property is compulsorily acquired shall have a right of direct access to the High Court for the determination of his interest or right, the legality of the taking of possession or acquisition of the property, interest of right and the amount of any compensation to which he is entitled; and the purpose of enforcing his right to prompt payment of that compensation: Provided that, if the legislature so provides in relation to any matter referred to in paragraph (a), the right of access shall be by way of appeal (exercisable as of right at the instance of the person having the interest in or right over the property) from a tribunal or authority, other than the High Court, having jurisdiction under any law to determine that matter.(...)[931]
144.	Saint Lucia	CHAPTER I. PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS. 1. Whereas every person in Saint Lucia is entitled to the fundamental rights and freedoms, that is to say, the right, whatever his race, place of origin, political opinions, colour , creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely- (...) c. protection for his family life, his personal privacy, the privacy of his home and other property and from deprivation of property without compensation. 1. No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except for a public purpose and except where provision is made by a law applicable to that taking of possession or acquisition for the prompt payment of full compensation.[932]

930 Rwanda 2003 (rev.2015), art.34

931 Saint Kitts and Nevis 1983, art.3, 8

932 Saint Lucia 1978, art.6

145.	Saint Vincent and the Grenadines	CHAPTER I. PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS 1. Fundamental rights and freedoms Whereas every person in Saint Vincent is entitled to the fundamental rights and freedoms, that is to say, the right, whatever his race, place of origin, political opinions, colour , creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely-- c. protection for the privacy of his home and other property and from deprivation of property without compensation. 6. Protection from deprivation of property. 1. No property of any description shall be compulsorily taken possession of , and no interest in or right over property of any description shall be compulsorily acquired, except for a public purpose and except where provision is made by a law applicable to that taking of possession or acquisition for the payment, within a reasonable time, of adequate compensation.(...)[933]
146.	Samoa	PART II. FUNDAMENTAL RIGHTS 14. Rights regarding property 1. No property shall be taken possession of compulsorily, and no right over or interest in any property shall be acquired compulsorily, except under the law which, of itself or when read with any other law a. requires the payment within a reasonable time of adequate compensation therefore; and b. gives to any person claiming that compensation a right of access, for the determination of his or her interest in the property and the amount of compensation, to the Supreme Court; and c. gives to any party to proceedings in the Supreme Court relating to such a claim the same rights of appeal as are accorded generally to parties to civil proceedings in that Court sitting as a court of original jurisdiction.[934]
147.	Sao Tome and Principe	FUNDAMENTAL RIGHTS AND SOCIAL ORDER Article 46. Intellectual property The State protects the inherent rights to intellectual property, including the rights of the author. Article 47. Private property 1. The right to private property and to its transfer in life or through death is guaranteed to all, in accordance with the law. 2. Requisition and expropriation for public use only may be effected as based on the law.[935]
148.	Saudi Arabia	Economic Principles Article 17 Ownership, capital and labour are the fundamentals of the Kingdom's economic and social life. They are private rights that serve a social function in conformity with Islamic Shari'ah.

933 Saint Vincent and Grenadines 1979, art.1, 6, 7

934 Samoa 1962 (rev.2017), art.14

935 Sao Tome and Principe 1975 (rev.2003)

		Article 18 The State shall guarantee the freedom and inviolability of **private property**. Private property shall be not be expropriated unless in the public interest and the conscatee is fairly compensated.[936]
149.	Senegal	TITLE II. OF THE PUBLIC FREEDOMS AND THE [FREEDOMS] OF THE HUMAN PERSON OF THE ECONOMIC AND SOCIAL RIGHTS AND OF THE COLLECTIVE RIGHTS Article 8 The Republic of Senegal guarantees to all citizens the fundamental individual freedoms, the economic and social rights as well as the collective rights. These freedoms and rights are notably: -The right to property (...) Article 15 The right of property [propriété] is guaranteed by this Constitution. It can only be infringed in the case of public necessity legally established [constatée], under reserve of a just and prior indemnity. The man and the woman have the right to accede to the possession and to the ownership [propriété] of land within the conditions determined by the law. [937]
150.	Serbia	HUMAN RIGHTS AND FREEDOMS. Article 58. Right to property Peaceful tenure of a person's own property and other property rights acquired by the law shall be guaranteed. Right of property may be revoked or restricted only in public interest established by the law and with compensation which can not be less than market value. The law may restrict the manner of using the property. Seizure or restriction of property to collect taxes and other levies or nes shall be permitted only in accordance with the law. Article 59. Right to inheritance Right to inheritance shall be guaranteed in accordance with the law. Right to inheritance may not be denied or restricted for failing to observe public duties.[938]
151.	Seychelles	PART I. SEYCHELLOIS CHARTER OF FUNDAMENTAL HUMAN RIGHTS AND FREEDOMS 26. 1. Every person has a right to property and for the purpose of this article this right includes the right to acquire, own peacefully enjoy and dispose of property either individually or in association with others. 2. The exercise of the right under clause (1) may be subject to such limitations as may be prescribed by law and necessary in a democratic society- a. in the public interest; b. for the enforcement of an order or judgment of a court in civil or criminal proceedings; c. in satisfaction of any penalty, tax, rate, duty or due;

936 Saudi Arabia 1991 (rev.2013), art.17, 18

937 Senegal 2001 (REV.2016), art.8, 15

938 Serbia 2006, art.58, 59

		d. in the case of property reasonably suspected of being acquired by the proceeds of drug trafcking or serious crime; e. in respect of animals found trespassing or straying; f. in consequence of a law with respect to limitation of actions or acquisitive prescription; g. with respect to property of citizens of a country at war with Seychelles; h. with regard to the administration of the property of persons adjudged bankrupt or of persons who have died or of persons under legal incapacity; or i. for vesting in the Republic of the ownership of underground water or unextracted oil or minerals of any kind or description.[939]
152.	Sierra Leone	CHAPTER III. THE RECOGNITION AND PROTECTION OF FUNDAMENTAL HUMAN RIGHTS AND FREEDOMS OF THE INDIVIDUAL 21. Protection from deprivation of property 1. No property of any description shall be compulsorily taken possession of , and no interest in or right over property of any description shall be compulsorily acquired, except where the following conditions are satised, that is to say— a. the taking of possession or acquisition is necessary in the interests of defence, public safety, public order , public morality, public health, town and country planning, the development or utilization of any property in such a manner as to promote the public benet or the public welfare of citizens of Sierra Leone; and b. the necessity therefor is such as to afford reasonable justication for the causing of any hardship that may result to any person having any interest in or right over the property; and c. provision is made by law applicable to that taking of possession or acquisition— i. for the prompt payment of adequate compensation; and ii. securing to any person having an interest in or right over the property, a right of access to a court or other impartial and independent authority for the determination of his interest or right, the legality of the taking of possession or acquisition of the property, interest or right, and the amount of any compensation to which he is entitled and for the purpose of obtaining prompt payment of that compensation.[940]
153.	**Singapore**	No provisions regarding property/ ownership as a human right. Property mentioned only in art.12 Equal protection. 12. Equal protection 1. All persons are equal before the law and entitled to the equal protection of the law. 2. Except as expressly authorised by this Constitution, there shall be no discrimination against citizens of Singapore on the ground only of religion, race, descent or place of birth in any law or in the appointment to any ofce or employment under a public authority or in the administration of any law relating to the **acquisition, holding or disposition** of **property** or the establishing or carrying on of any trade, business, profession, vocation or employment.[941]

939 Seychelles 1993 (rev.2017), art.26

940 Sierra Leone 1991 (reinst.1996, rev.2013), art.21

941 Singapore 1963 (rev.2016), art.12

154.	Slovakia	BASIC RIGHTS AND FREEDOMS. Article 20 1. Everyone has the right to own property. The ownership right of all owners has the same legal content and protection. Property acquired in any way which is contrary to the legal order shall not enjoy such protection. 2. The law shall lay down which property, other than property specied in Article 4 of this Constitution, necessary to ensure the needs of society, national food self-sufciency, the development of the national economy and public interest, may be owned only by the state, municipality, or designated individuals or legal persons. The law may also lay down that certain things may be owned only by citizens or legal persons resident in the Slovak Republic. 3. Ownership is binding. It may not be misused to the detriment of the rights of others, or in contravention with general interests protected by law. The exercising of the ownership right may not harm human health, nature, cultural monuments and the environment beyond limits laid down by law. 4. Expropriation or enforced restriction of the ownership right is possible only to the necessary extent and in the public interest, on the basis of law and for adequate compensation.[942]
155.	Slovenia	II. Human Rights and Fundamental Freedoms Article 33. Right to Private Property and Inheritance The right to private property and inheritance shall be guaranteed. Article 60. Intellectual Property Rights The protection of copyright and other rights deriving from artistic, scientic, research and invention activities shall be guaranteed. III. Economic and Social Relations Article 67. Property The manner in which property is acquired and enjoyed shall be established by law so as to ensure its economic, social and environmental function. The manner and conditions of inheritance shall be established by law. Article 68. Property Rights of Aliens Aliens may acquire ownership rights to real estate under conditions provided by law or a treaty ratied by the National Assembly. Article 69. Expropriation Ownership rights to real estate may be revoked or limited in the public interest with the provision of compensation in kind or monetary compensation under conditions established by law.[943]

942 Slovakia 1992 (rev.2017), art.20

943 Slovenia 1991 (rev.2016), art.33, 60, 67, 68, 69

156.	Solomon Islands	Fundamental rights and freedoms of the individual Whereas every person in Solomon Islands is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour , creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely: c. protection for the privacy of his home and other **property** and **from deprivation of property** without compensation. 8. Protection from deprivation of property 1. No **property** of any description shall be compulsorily taken possession of , and no interest in or right over property of any description shall be compulsorily acquired, except where the following conditions are satised. (...)[944]
157.	Somalia	CHAPTER 2. FUNDAMENTAL RIGHTS AND THE DUTIES OF THE CITIZEN Article 26. Property 1. Every person has the right to own, use, enjoy, sell, and transfer property. 2. The state may only compulsorily acquire property if doing so is in the public interest. Any person whose property has been acquired in the name of the public interest has the right to just compensation from the government as agreed by the parties or decided by a court.[945]
158.	South Africa	BILL OF RIGHTS 25. Property 1. No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property. 2. Property may be expropriated only in terms of law of general application- a. for a public purpose or in the public interest; and b. subject to compensation, the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a court.(...)[946]
159.	South Sudan	BILL OF RIGHTS 16. Rights of Women (...) 5. Women shall have the right to own property and share in the estates of their deceased husbands together with any surviving legal heir of the deceased. 28. Right to Own Property 1. Every person shall have the right to acquire or own property as regulated by law. 2. No private property may be expropriated save by law in the public interest and in consideration for prompt and fair compensation. No private property shall be conscated save by an order of a court of law.[947]

944 Solomon Islands 1978 (rev.2018), art. 3, 8

945 Somalia 2012, art.26

946 South Africa 1996 (rev.2012), art.25

947 South Sudan 2011 (rev.2013), art.16, 28

160.	Spain	FUNDAMENTAL RIGHTS AND FREEDOMS Section 33 1. The right to private property and inheritance is recognized. 2. The social function of these rights shall determine the limits of their content in accordance with the law. 3. No one may be deprived of his or her property and rights, except on justied grounds of public utility or social interest and with a proper compensation in accordance with the law.[948]
161.	**Sri Lanka**	*No provision on right to property as a human right*
162.	Sudan	THE BILL OF RIGHTS AND FREEDOMS 61. Right of Ownership 1. Every citizen has the right to acquire and own property in accordance with the law. 2. Private property shall not be appropriated except by virtue of a law and for the public interest, and in return for fair, and immediate compensation. Private funds may only be conscated by virtue of a court ruling.[949]
163.	Suriname	CHAPTER VI. SOCIAL, CULTURAL AND ECONOMIC RIGHTS Eighth Section. RIGHT TO PROPERTY Article 34 1. Property, of the community as well as of the private person, shall fulll a social function. Everyone has the right to undisturbed enjoyment of his property subject to the limitations which stem from the law. 2. Expropriation shall take place only in the general interest, pursuant to rules to be laid down by law and against compensation guaranteed in advance. 3. Compensation need not be previously assured if in case of emergency immediate expropriation is required. 4. In cases determined by or through the law, the right to compensation shall exist if the competent public authority destroys or renders property unserviceable or restricts the exercise of property rights for the public interest. CHAPTER VII. THE ECONOMIC SYSTEM Article 44 The right to industrial property shall be regulated by law.[950]
164.	Sweden	Chapter 2. Fundamental rights and freedoms Part 5. Protection of property and the right of public access Art 15 The property of every individual shall be so guaranteed that no one may be compelled by intellecion or other such disposition to surrender property to the public institutions or to a private subject, or tolerate restriction by the public institutions of the use of land or buildings, other than where necessary to satisfy pressing public interests. A person who is compelled to surrender property by expropriation or other such disposition shall be guaranteed full compensation for his or her loss.

948 Spain 1978 (rev.2011), art.33

949 Sudan 2019, art.61

950 Suriname 1987 (rev.1992), art.34, 44

		Compensation shall also be guaranteed to a person whose use of land or buildings is restricted by the public institutions in such a manner that on-going land use in the affected part of the property is substantially impaired, or injury results which is signicant in relation to the value of that part of the property. Compensation shall be determined according to principles laid down in law. In the case of limitations on the use of land or buildings on grounds of protection of human health or the environment, or on grounds of safety, however , the rules laid down in law apply in the matter of entitlement to compensation. Everyone shall have access to the natural environment in accordance with the right of public access, notwithstanding the above provisions. Part 6. Copyright Art 16 Authors, artists and photographers shall own the rights to their works in accordance with rules laid down in law.[951]
165.	Switzerland	Chapter 1. Fundamental Rights Art 26. Guarantee of ownership 1. The right to own property is guaranteed. 2. The compulsory purchase of property and any restriction on ownership that is equivalent to compulsory purchase shall be compensated in full.[952]
166.	Syrian Arab Republic	Chapter 2. Human and Civil Rights and Freedoms Article 23 1. Everyone shall have the right to property. 2. Property rights, including individual private ownership, shall be protected by law. 3. Nobody may be deprived of property except under a court order .Private ownership may be removed in the State or public interest only against fair compensation according to the law. 4. The State shall guarantee the right of inheritance in accordance with the law. [953]
167.	Taiwan	CHAPTER II. RIGHTS AND DUTIES OF THE PEOPLE Article 15 The right to existence, the right to work, and the right to own **property** shall be guaranteed to the people.[954]
168.	Tajikistan	Chapter 2. RIGHTS, FREEDOMS, [AND] BASIC expropriation OF MAN AND CITIZEN Article 32 Everyone has the right to property and inheritance. No one has the right to deprive [a citizen of] and limit the citizen's right to property. The conscation of private property by the State for public needs is permitted only on the basis of law and with the consent of the owner with the full compensation of its value.

951 Sweden 1974, art.15, 16

952 Switzerland 1999 (rev.2014), art.26

953 Syrian Arab Republic, Constitution of 2017, art.23

954 Taiwan (Republic of China) 1947 (rev.2005)

		Material and moral damage inicted on a person as a result of illegal actions by State organs, social associations, political parties, other legal entities or individuals is compensated in accordance with the law at their expense. Article 40 Everyone has the right to freely participate in the cultural life of the society, artistic, scientic, and technical creativity, and to use their achievements. Cultural and spiritual treasures are protected by the State. **Intellectual property** is under the protection of law.[955]
169.	Tanzania (United Republic of)	PART III. BASIC RIGHTS AND DUTIES 24. Right to own property 1. Every person is entitled to own property, and has a right to the protection of his property held in accordance with the law. 2. Subject to the provisions of subarticle (1), it shall be unlawful for any person to be deprived of property for the purposes of nationalisation or any other purposes without the authority of law which makes provision for fair and adequate compensation.[956]
170.	Thailand	CHAPTER III. RIGHTS AND LIBERTIES OF THE THAI PEOPLE Section 37 A person shall enjoy the right to property and succession. The extent and restriction of such right shall be as provided by law. The expropriation of immovable property shall not be permitted except by virtue of the provisions of law enacted for the purpose of public utilities, national defence or acquisition of national resources, or for other public interests, and fair compensation shall be paid in due time to the owner thereof , as well as to all persons having rights thereto, who suffer loss from such expropriation by taking into consideration the public interest and impact on the person whose property has been expropriated, including any benet which such person may obtain from such expropriation.[957]
171.	Timor-Leste	TITLE III. ECONOMIC, SOCIAL AND CULTURAL RIGHTS AND DUTIES Article 54. Right to Private Property 1. Every individual has the right to private property and can transfer it during their lifetime or on death, in accordance with the law. 2. Private property shall not be used to the detriment of its social function. 3. The requisitioning and expropriation of property for public purposes shall only take place following fair compensation in accordance with the law. 4. Only national citizens have the right to ownership of land.

955 Tajikistan 1994 (rev.2016), art. 32, 40

956 Tanzania (United Republic of) 1977 (rev.2005), art.24

957 Thailand 2017, section 37

		Article 60. Intellectual Property The State guarantees and protects the creation, production and commercialization of literary, scientic and artistic work, including the legal protection of the rights of authors.[958]
172.	Togo	Article 27 The right to property is guaranteed by the law. It may only be infringed for the cause of public utility legally declared and after a just and prior indemnication. One's assets may only be seized by virtue of a decision taken by a judicial authority. Article 84 The law establishes the rules concerning: (...) -nationality, the status and the capacity of persons, the matrimonial regimes, **inheritance and gifts**; -the regime of property, of real rights and of the civil and commercial obligations; (...)[959]
173.	Tonga	PART I. DECLARATION OF RIGHTS 1. Declaration of freedom Since it appears to be the will of God that man should be free as He has made all men of one blood therefore shall the people of Tonga and all who sojourn or may sojourn in this Kingdom be free for ever . And all men may use their lives and persons and time to acquire and **possess property** and to dispose of their labour and the fruit of their hands and to use their **own property** as they will. 14. Trial to be fair No one shall be intimidated into giving evidence against himself nor shall the life or **property** or liberty of anyone be taken away except according to law. (...)[960]
174.	Trinidad and Tobago	CHAPTER 1. THE RECOGNITION AND PROTECTION OF FUNDAMENTAL HUMAN RIGHTS AND FREEDOMS 4. Recognition and declaration of rights and freedoms It is hereby recognised and declared that in Trinidad and Tobago there have existed and shall continue to exist without discrimination by reason of race, origin, colour , religion or sex, the following fundamental human rights and freedoms, namely:— a. the right of the individual to life, liberty, security of the person and enjoyment of property and the right not to be deprived thereof except by due process of law; (...)[961]
175.	Tunisia	Title Two. Rights and Freedoms Article 41 The right to property shall be guaranteed, and it shall not be interfered with except in accordance with circumstances and with protections established by the law. Intellectual property is guaranteed.[962]

958 Timor-Leste 2002, art.54, 60

959 Togo 1992 (rev.2007), art. 27, 84

960 Tonga 1875 (rev.2013), art. 1, 14, 16, 18, 111

961 Trinidad and Tobago 1976 (rev.2007), art. 4

962 Tunisia 2014, art.41

176.	Turkey	CHAPTER TWO. Rights and Duties of the Individual XII. Right to property ARTICLE 35 Everyone has the right to own and inherit property. These rights may be limited by law only in view of public interest. The exercise of the right to property shall not contravene public interest.[963]
177.	Turkmenistan	SECTION I. FUNDAMENTALS OF THE CONSTITUTIONAL SYSTEM OF TURKMENISTAN Article 12 The property shall be inviolable. Turkmenistan shall recognize the right to private ownership of the land, means of production, and other material and intellectual values. They may also belong to the associations of citizens and the state. The law shall establish the objects that shall be exclusive property of the state. The state shall guarantee equal protection of all forms of ownership and create equal conditions for their development. Conscation of property shall be prohibited, except for the property acquired by means prohibited by law. Forced conscation of property shall be permissible only in cases stipulated by law. SECTION II. RIGHTS, FREEDOMS AND DUTIES OF A PERSON AND A CITIZEN OF TURKMENISTAN Article 47 Everyone shall have the right to freely use his/her abilities and property for entrepreneurial and other economic activity that is not prohibited by law. Article 48 The right to private property shall be protected by law. Citizens shall have the right to own private property, use and dispose it individually or jointly with others. The inheritance right shall be guaranteed.[964]
178.	Tuvalu	11. The fundamental human rights and freedoms 1. Every person in Tuvalu is entitled, whatever his race, place of origin, political opinions, colour , religious beliefs or lack of religious beliefs, or sex, to the following fundamental rights and freedoms: (...) h. protection for the privacy of his home and other **property** (see section21); and i. protection from unjust deprivation of **property** (see section 20), and to other rights and freedoms set out in this Part or otherwise by law.[965]

963 Turkey 1982 (rev.2017), art.35

964 Turkmenistan 2008 (rev.2016), art.12, 47, 48

965 Tuvalu 1986 (rev.2010), art. 11

179.	Uganda	CHAPTER 4. PROTECTION AND PROMOTION OF FUNDAMENTAL AND OTHER HUMAN RIGHTS AND FREEDOMS 26. Protection from deprivation of property 1. Every person has a right to own property either individually or in association with others. 2. No person shall be compulsorily deprived of property or any interest in or right over property of any description except where the following conditions are satised- a. the taking of possession or acquisition is necessary for public use or in the interest of defence, public safety, public order , public morality or public health; and b. the compulsory taking of possession or acquisition of property is made under a law which makes provision for- i. prompt payment of fair and adequate compensation, prior to the taking of possession or acquisition of the property; and ii. a right of access to a court of law by any person who has an interest or right over the property. 27. Right to privacy of person, home and other property 1. No person shall be subjected to- a. unlawful search of the person, home or other property of that person; or b. unlawful entry by others of the premises of that person. 2. No person shall be subjected to interference with the privacy of that person's home, correspondence, communication or other property.[966]
180.	Ukraine	**Chapter II. Human and Citizens' Rights,** **Freedoms and Duties** Article 41 Everyone has the right to own, use and dispose of his or her property, and the results of his or her intellectual and creative activity. The right of private property is acquired by the procedure determined by law. In order to satisfy their needs, citizens may use the objects of the right of state and communal property in accordance with the law. No one shall be unlawfully deprived of the right of property. The right of private property is inviolable. The expropriation of objects of the right of private property may be applied only as an exception for reasons of social necessity, on the grounds of and by the procedure established by law, and on the condition of advance and complete compensation of their value. Article 54 Citizens are guaranteed the freedom of literary, artistic, scientic and technical creativity, protection of intellectual property, their copyrights, moral and material interests that arise with regard to various types of intellectual activity. Every citizen has the right to the results of his or her intellectual, creative activity; no one shall use or distribute them without his or her consent, with the exceptions established by law.[967]

966 Uganda 1995 (rev.2017), art.26, 27

967 Ukraine 1996 (rev.2019), art.41, 54

181.	United Arab Emirates	PART II. BASIC SOCIAL AND ECONOMIC PILLARS OF THE UAE Article 21 Private property is protected and the restrictions against it shall be specied by law. A person may not be deprived of his/her private property except in such circumstances as may be dictated by the public interest, in accordance with the provisions of law, and for equitable consideration. PART III. FREEDOMS, RIGHTS AND PUBLIC DUTIES Article 39 Public conscation of property is prohibited. A person's private property may not be conscated except by court judgment and in such cases as may be provided in law.[968]
182.	United Kingdom	Human Rights Act 1998 Part II. The First Protocol Article 1. Protection of property Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however , in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.[969] "intellectual property" means any patent, trade mark, copyright , design right, registered design, technical or commercial information or other intellectual property;[970]
183.	United States of America	The Bill of Rights Amendment V No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of W ar or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself , nor be deprived of life, liberty, or **property**, without due process of law; **nor shall private property be taken for public use, without just compensation**.

968 United Arab Emirates 1971 (rev.2009), art.21, 39

969 United Kindgom, 1215 (rev.2013), p.367

970 United Kindgom, 1215 (rev.2013), p.85 (point no.72)

		Amendment XIV Section 1 All persons born or naturalized in the United States and subject to the jurisdiction thereof , are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.[971]
184	Uruguay	SECTION II. Rights, Duties and Guarantees Article 7 The inhabitants of the Republic have the right of protection in the enjoyment of life, honor, liberty, security, labor , and property. No one may be deprived of these rights except in conformity with laws which may be enacted for reasons of general interest. Article 14 The penalty of conscation of property may not be imposed for reasons of a political nature. Article 32 The right of property is inviolable, but it is subject to laws enacted in the general interest. No one may be deprived of his property rights except in case of public necessity or utility established by law, and the National Treasury shall always pay just compensation in advance. Whenever expropriation is ordered for reasons of public necessity or utility, the property owners shall be indemnied for loss or damages they may suffer on account of delay, whether the expropriation is actually carried out or not, including those incurred because of variations in the value of the currency. Article 33 Intellectual property, the rights of authors, inventors, or artists shall be recognized and protected by law. Article 48 The right of inheritance is guaranteed within the limits established by law. Lineal ascendants and descendants shall have preferential treatment in the tax laws. Article 49 The «family property", its constitution, conservation, enjoyment, and transmission shall be protected by special legislation.[972]
185.	Uzbekistan	Chapter IX. ECONOMIC AND SOCIAL RIGHTS Article 36 Everyone shall have the right to own property. The privacy of bank deposits and the right to inheritance shall be guaranteed by law.

971 United States of America 1789 (rev.1992)

972 Uruguay 1966 (reinst.1985, rev.2004), art.7, 14, 32, 33, 48, 49

		Chapter XII. ECONOMIC FOUNDATION OF THE SOCIETY Article 53 The economy of Uzbekistan, evolving towards market relations, is based on various forms of ownership. The state shall guarantee freedom of economic activity, entrepreneurship and labour with due regard for the priority of consumers' rights, equality and legal protection of all forms of ownership. Private property, along with the other types of property, shall be inviolable and protected by the state. An owner may be deprived of his property solely in the cases and procedure stipulated by law. Article 54 An owner at his discretion, shall possess, use and dispose of his property. The use of any property must not be harmful to the ecological environment nor shall it infringe on the rights and legally protected interests of citizens, juridical entities and the state.[973]
186.	Vanuatu	5. FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL 1. The Republic of Vanuatu recognises, that, subject to any restrictions imposed by law on non-citizens and holders of dual citizenship who are not indigenous or naturalised citizens, all persons are entitled to the following fundamental rights and freedoms of the individual without discrimination on the grounds of race, place of origin, religious or traditional beliefs, political opinions, language or sex but subject to respect for the rights and freedoms of others and to the legitimate public interest in defence, safety, public order , welfare and health- (...) j. protection for the privacy of the home and other property and from unjust deprivation of property; (...)[974]
187.	Venezuela	Chapter VI. Culture and Educational Rights Article 98 Cultural creation is free. This freedom includes the right to invest in, produce and disseminate the creative, scientic, technical and humanistic work, as well as legal protection of the author's rights in his works. The State recognizes and protects intellectual property rights in scientic, literary and artistic works, inventions, innovations, trade names, patents, trademarks and slogans, in accordance with the conditions and exceptions established by law and the international treaties executed and ratied by the Republic in this eld. Chapter VII. Economic Rights Article 115 The right of property is guaranteed. Every person has the right to the use, enjoyment, usufruct and disposal of his or her goods. Property shall be subject to such contributions, restrictions and obligations as may be established by law in the service of the public or general interest. Only for reasons of public benet or social interest by nal judgment, with timely payment of fair compensation, the expropriation of any kind of property may be declared.

973 Uzbekistan 1992 (rev.2011), art.36, 53, 54

974 Vanuatu 1980 (rev.2013)

		Article 116 Conscation of property shall not be ordered and carried out, but in the cases permitted by this Constitution. As an exceptional measure, the property of natural or legal persons of Venezuelan or foreign nationality who are responsible for crimes committed against public patrimony may be subject to conscation, as may be the property of those who illicitly enriched themselves under cover of Public Power , and property deriving from business, nancial or any other activities connected with unlawful trafcking in psychotropic and narcotic substances.[975] TITLE IV. PUBLIC POWER Chapter I. Fundamental Provisions Article 140 The State shall be nancially liable for any damages suffered by private individuals to any of their property or rights, provided the harm is imputable to the functioning of Public Administration.
188.	Viet Nam	CHAPTER II. HUMAN RIGHTS AND CITIZEN'S FUNDAMENTAL RIGHTS AND DUTIES Article 32 1. Every one enjoys the right of ownership with regard to his lawful income, savings, housing, chattel, means of production funds in enterprises or other economic organizations. 2. The right of private ownership and the right of inheritance are protected by the law. 3. In cases made absolutely necessary by reason of national defence, security and the national interest, in case of emergency, and protection against natural calamity, the State can make a forcible purchase of or can requisition pieces of property of individuals or organizations against compensation, taking into account current market prices. Article 33 Every one enjoys freedom of enterprise in branches and trades not banned by the law.[976]
189.	Yemen	Section II. Economic Foundations Article 16 Private ownership is protected and the enjoyment and disposition is guaranteed, and the State and society are obligated to protect and respect this right. It is prohibited to prejudice or expropriate this right except for public benet and only in exchange for equitable compensation paid in advance pursuant to the situations and in the manner set forth in the law.

975 Venezuela (Bolivarian Republic of) 1999 (rev.2009), art. 115, 116

976 Viet Nam 1992 (rev.2013), art. 32, 33

		Article 25 Inheritance is guaranteed according to the provisions of Islamic Sharia, and shall be regulated by law. Section III. Social and Cultural Foundations Article 64 The State shall support the advancement of all areas of science, culture, literature and the arts and support the establishment of cultural and artistic associations and centers. It shall support the freedom of scientic, literary, artistic and cultural creativity, and encourage the efforts of creative people and inventors and accord protection to intellectual property.[977]
190.	Zambia	Article 11. Fundamental Rights and Freedoms It is recognised and declared that every person in Zambia has been and shall continue to be entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed, sex or marital status, but subject to the limitations contained in this Part, to each and all of the following, namely: a. life, liberty, security of the person and the protection of the law; b. freedom of conscience, expression, assembly, movement and association; c. protection of young persons from exploitation; d. protection for the privacy of his home and other **property** and from deprivation of **property** without compensation; and the provisions of this Part shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest. Article 16. Protection from Deprivation of Property 1. Except as provided in this Article, no property of any description shall be compulsorily taken possession of , and no interest in or right over property of any description shall be compulsorily acquired, unless by or under the authority of an Act of Parliament which provides for payment of adequate compensation for the property or interest or right to be taken possession of or acquired. (...)[978]
191.	Zimbabwe	PART 2. FUNDAMENTAL HUMAN RIGHTS AND FREEDOMS 71. Property rights 1. In this section-- «property» means property of any description and any right or interest in property. 2. Subject to section 72, every person has the right, in any part of Zimbabwe, to acquire, hold, occupy, use, transfer, hypothecate, lease or dispose of all forms of property, either individually or in association with others.[979]

977 Yemen 1991 (rev.2015), art.16, 26, 64

978 Zambia 1991 (rev.2016), art.11, 16

979 Zimbabwe 2013 (rev.2017), art.71

MYKOLAS ROMERIS UNIVERSITY

Inga Motuzienė

RIGHT TO PROPERTY AS A HUMAN RIGHT UNDER INTERNATIONAL LAW: LEGAL POSITIVISM AND CONTEMPORARY NATURAL LAW

Summary of Doctoral Dissertation
Social Sciences, Law (S 001)

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This doctoral dissertation was prepared during the period 2017 – 2025 at Mykolas Romeris University, under the right to conduct doctoral studies granted jointly to Mykolas Romeris University and Vytautas Magnus University by the Order No. V-160 of the Minister of Education, Science and Sport of the Republic of Lithuania, dated 22 February 2019.

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SUMMARY

Relevance and Problem of the Research

The right to property as a human right remains one of the most controversial rights proclaimed in the Universal Declaration of Human Rights of 1948. This controversy is reflected in several legal and practical incongruities.

First, although the right to property was included among the inherent human rights in the 1948 Declaration, it was omitted from the two legally binding International Covenants of 1966. Notably, it was the only right from the original catalogue that was not incorporated into these instruments. This omission raises fundamental questions regarding its status in international law. While the right to property is entrenched in the vast majority of domestic constitutions as a fundamental right, its international legal status, scope, and characteristics remain unclear. This discrepancy between national, regional, and international protection demands closer examination.

Second, authoritative assessments by United Nations bodies confirm the ambiguous position of the right to property. In 1994, the Independent Expert Luis Valencia Rodríguez characterized the right to property as an essential human right and emphasized its role as a prerequisite for dignity, security, and the exercise of other human rights. At the same time, he observed that no other human right is subject to as many qualifications and limitations. This internal tension illustrates the conceptual and normative uncertainty surrounding the right.

Third, where the right to property is protected at the regional level, it is among the most frequently alleged violations. The case law of the European Court of Human Rights demonstrates that claims concerning property rank among the most common, surpassed only by claims related to liberty, fair trial, and ill-treatment. This extensive litigation indicates persistent difficulties in defining, interpreting, and applying the right to property in practice.

Fourth, the right to property is deeply intertwined with political power. Historical and contemporary examples demonstrate that authoritarian regimes have repeatedly used property deprivation as a tool of political repression, ethnic persecution, and social control. Such practices underscore the vulnerability of the right and its central importance for the protection of human dignity and political freedom.

Fifth, recent developments before the International Court of Justice further highlight the contemporary relevance of the right to property. States increasingly invoke obligations *erga omnes partes* in human rights disputes, including claims concerning property rights under anti-discrimination conventions such as CERD. Although the ICJ has often avoided addressing the right to property directly, as illustrated in the *Diallo* case, pending and recent proceedings raise unresolved questions regarding its treatment as a human right under international law.

Sixth, the request for an advisory opinion on climate change submitted to the ICJ in 2023 provides a new context in which the right to property may be addressed. Numerous States and international organizations have explicitly linked climate change

impacts to violations of property rights, suggesting that this right may acquire renewed prominence in international legal discourse.

Finally, the ongoing work of the International Law Commission on topics such as reparation to individuals, compensation for internationally wrongful acts, and ownership beyond national jurisdiction further demonstrates that unresolved issues relating to property rights continue to occupy the international legal agenda.

Taken together, these developments demonstrate that uncertainty regarding the status, scope, and characteristics of the right to property as a human right has generated persistent legal difficulties in the past, remains highly relevant today, and is likely to continue to do so in the future.

Scientific Novelty and Significance of the Thesis

This thesis contains several elements of scientific novelty and practical significance.

First, the thesis identifies the scope and content of the right to property as a human right under contemporary international law by taking into account recent developments in the understanding of the sources of international law, particularly as reflected in the work of the International Law Commission. This approach enables a systematic comparison of the content of the right to property as it appears in different sources of positive international law: as a general principle of law (with reference to the ILC's recent conclusions on general principles), as a treaty-based right (in universal human rights treaties and other multilateral conventions), and as a customary norm (in light of the ILC's 2018 Conclusions on the identification of customary international law). In addition, the thesis examines the right to property as reflected in non-legally binding international instruments, often described as the "grey zone" of international law, a category currently under examination by the ILC. Through this analysis, the thesis identifies similarities and differences in the status and scope of the right to property across various sources of positive law and evaluates their practical implications.

Second, the thesis explores the content of the right to property as a human right from the perspective of contemporary natural law. To the author's knowledge, the right to property has not previously been examined in international law exclusively and systematically from this perspective. Given the absence of a universally accepted catalogue of natural law sources, this analysis requires a reconceptualization of contemporary natural law itself. Accordingly, the thesis develops an original approach to the sources of natural law based on the concept of collective legal (un)consciousness. On this basis, it identifies the status, scope, and characteristics of the right to property as a human right within natural law.

Third, the thesis demonstrates the practical value of integrating positive law and contemporary natural law. Given the complexity of the right to property and its frequent invocation in human rights litigation, the thesis argues that reliance on positive law alone is insufficient to explain or resolve existing inconsistencies in interpretation and application. The combined approach proposed in this study provides a more comprehensive analytical framework and contributes to greater coherence in the

understanding of the right to property under international law.

The decision to examine the right to property from both positive and natural law perspectives is grounded in both doctrinal and theoretical considerations. This thesis follows the approach advanced by Sir Hersch Lauterpacht, who conceptualized international law as a hybrid system combining positive and natural law, and by Mary Ellen O'Connell, who argues that natural law is essential to a complete understanding of legal obligation. Since the right to property was proclaimed alongside other fundamental rights in the 1948 Universal Declaration of Human Rights, and since basic human rights are widely understood to derive from natural law, it follows that the right to property must also have a natural law foundation. Ignoring this foundation would result in an incomplete analysis of its status and characteristics.

Furthermore, Article 38(1)(c) of the ICJ Statute incorporates elements of natural law by recognizing general principles of law as a source of international law. This understanding was explicitly articulated by Judge Tanaka in his dissenting opinion in the *South West Africa* cases and is supported by the drafting history of Article 38. The relevance of natural law to international law is also affirmed in the writings of authoritative scholars, including J. L. Brierly, Shabtai Rosenne, and Judge Antônio Augusto Cançado Trindade. Accordingly, the natural law perspective adopted in this thesis provides a broader and more inclusive understanding of the right to property as a human right.

Object and Purpose of the Thesis

The **object of the research** is the status and characteristics of the right to property as a human right under contemporary international law. The analysis focuses exclusively on the international legal dimension of the right to property, deliberately setting aside regional and domestic legal regimes.

The **purpose of the thesis** is to develop a conceptual understanding of the right to property as a human right in international law through an integrated approach combining positive law and contemporary natural law.

The thesis proceeds from the premise that the prolonged uncertainty surrounding the right to property has produced undesirable consequences, including discrepancies between legal regulation and practice, as well as persistent legal uncertainty in international adjudication.

Objectives of the Research

The objectives of the research are:

1. To analyse the right to property from a positivist perspective by examining its presence in international treaties, assessing the possibility of its existence as a customary norm of international law, and evaluating its status as a general principle of law.

2. To analyse the right to property from the perspective of contemporary natural law by developing the relevant theoretical framework and applying it to the right to property.
3. To identify the shortcomings of legal positivism in the application of the right to property, with particular reference to the *Diallo* case, and to assess the potential of contemporary natural law to address these shortcomings.

Methodology of the Research

This thesis employs a combination of complementary research methods.

Triangulation Method

The triangulation of theories is used to combine the strengths of different theoretical approaches while mitigating their respective limitations. In this thesis, triangulation is applied by integrating the positive law approach and contemporary natural law theory. In Part I, the right to property is examined through a positivist lens, focusing on formal sources of international law. In Part II, the same right is analysed from the perspective of contemporary natural law. Applying these approaches to the same object of study reveals the limitations inherent in each when used in isolation, while their combination enables a more comprehensive and nuanced understanding of the right to property as a human right.

Descriptive Method

As a social science, international law relies on systematic description, analysis, and explanation. The descriptive method is employed in this thesis in a structured and analytical manner. With respect to positive law, relevant multilateral treaties and the work of the ILC are analysed to identify the scope and content of the right to property in international law, including its possible existence as a customary rule, a general principle of law, or a norm reflected in non-legally binding international instruments.

The descriptive method is also applied to the analysis of the right to property from a natural law perspective. While dominant scholarship explains this right primarily through positivist frameworks, this thesis adopts an alternative approach by describing and analysing it through contemporary natural law. This perspective allows for the identification and explanation of conceptual problems that cannot be adequately addressed by positive law alone.

Comparative Method

The comparative method is used in several ways. In Part I, it facilitates comparison between treaty provisions in order to identify the constituent elements of the right to property under international law. It is also applied to the analysis of 191 national

constitutions to determine whether the right to property qualifies as a general principle of law. In Part II, the comparative method is employed at the theoretical level to compare different strands of natural law theory and to identify their shared normative foundations. Through these applications, the comparative method contributes to doctrinal clarity and theoretical coherence.

Case Study Method

The case study method is employed in Part III of the dissertation to analyse the application of the right to property as a human right in international judicial practice, with particular reference to the *Diallo* case before the International Court of Justice. This method allows for an in-depth examination of a single, complex judicial decision in its legal, factual, and doctrinal context. The *Diallo* case is selected as a representative and illustrative example of the limitations of a strictly positivist approach to the right to property, particularly in relation to the treatment of general principles of law and fundamental human rights. Through focused analysis of the Court's reasoning, the case study method facilitates the identification of structural shortcomings in the application of the right to property and provides a concrete basis for assessing the potential corrective role of contemporary natural law.

Inductive and Deductive Method

The inductive and deductive method is employed primarily in Part I of the thesis in order to assess whether the right to property as a human right amounts to a general principle of law under international law. This method reflects the approach adopted by the International Law Commission and explained in the commentary to its conclusions on general principles of law.

Induction is used to examine national legal systems by analysing property-related provisions in a large number of domestic constitutions, with the aim of identifying common normative elements shared across legal orders. Deduction is subsequently applied to determine whether the principles identified at the domestic level are capable of transposition to the international legal order, in accordance with the criteria articulated by the ILC. The combined use of inductive and deductive reasoning enables a systematic and methodologically sound assessment of the existence and content of a general principle of law concerning the right to property as a human right.

Main Statements Defended in the Thesis

1. The right to property is a fundamental human right that primarily derives from natural law.
2. The international dimension of the right to property as a human right is currently established through general principles of law under international law.

3. As general principles of law constitute one of the three primary sources of international law, the right to property as a human right should be applied by international courts and tribunals even in the absence of treaty provisions or clear customary norms.
4. A central function of contemporary natural law is the identification of archetypes within the collective legal unconscious and their translation into collective legal consciousness. The right to property as a human right is embedded in such archetypical content and can therefore be normatively operationalized within international law.

The Degree of Research on the Right to Property at the National and International Level

The right to property as a natural person's right is most frequently studied within national or regional legal systems. From a methodological perspective, researchers in this field usually apply the **comparative method**, analyzing the understanding, history, legislation, practice, and case law on property rights across different national systems or between national and relevant regional systems.

For example, in 2004, Ali Riza Coban published *Protection of Property Rights within the European Convention on Human Rights*, based on his dissertation at the University of Kirikkale (Turkey). The book examines the definition of property, as well as the protection and limitations of property rights under the European Convention on Human Rights, focusing on regional aspects of the right to property.

In 2005, Tom Allen presented his work *Property and the Human Rights Act 1998*, which concentrates on property law in the UK. According to the author, the work provides a "structured approach to the extensive case law of the European Court of Human Rights and the UK courts on these issues. Chapters cover the history and drafting of the relevant Convention rights, the scope and structure of the rights (especially Article 1 of the First Protocol), and how, through the Human Rights Act 1998, the Convention rights have already affected and are likely to affect developments in selected areas of English law."

Also in 2005, Eglė Švilpaitė defended a dissertation at Mykolas Romeris University, Lithuania, entitled *Limitations of Property Rights under Article 1 of the First Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms* (originally in Lithuanian: *Nuosavybės teisės apribojimai pagal 1950 m. Žmogaus teisių ir pagrindinių laisvių apsaugos konvencijos Pirmojo protokolo 1 straipsnį*). The study investigates the right to property from both national and European perspectives.

Another common approach is to examine the interconnectedness between the human right to property and other areas of law, such as investment law, environmental law, or other human rights. For example, in 2009, P.M. Dupuy, F. Francioni, and E.U. Petersmann edited *Human Rights in International Investment Law and Arbitration*, analyzing the right to property in the context of investor–state arbitration. Sandra Fredman, in *Poverty and Human Rights* (2020), discusses the interrelation between poverty

and human rights, including the right to property.

Despite these studies, the status of the right to property as a human right under **international law** remains controversial. An early attempt to evaluate this right was made in 1994 by the UN Commission on Human Rights. The independent expert Luis Valencia Rodriguez submitted the report *The Right of Everyone to Own Property Alone as Well as in Association with Others*, which contains useful observations. However, the report did not fully resolve questions regarding the status and scope of the right to property. Since 1994, additional universal conventions have proclaimed the right to property, new case law has emerged before the ICJ, and contemporary challenges, such as climate change, have further highlighted the relevance of this right.

Authors Investigating the Right to Property under International Law

The most recent and comprehensive studies directly related to the topic of this dissertation include:

Jose E. Alvarez (2018), in *The Human Right of Property*, focuses primarily on the jurisprudence of the Inter-American Court of Human Rights and contrasts it with the resistance of U.S. courts to recognize an international human right to property. He also comments on universal human rights treaties recognizing the right to property. However, Alvarez explicitly states that his work does not address the issue of customary international law or general principles of law, considering only one of the three traditional legally binding sources of international law. One of his main conclusions is that "no single global regime for property protection" exists, as the right is currently regulated by various bilateral and multilateral treaty regimes.

John G. Sprankling published *The Emergence of International Property Law* (2012), *The Global Right to Property*(2014), and *The International Law of Property*. He is considered a leading scholar in international property protection. Sprankling concludes that the right to property exists under international law, as reflected in treaties, customary law, and general principles. However, his aim is to establish a new field—an international law of property—which encompasses property rights across investment law, environmental law, human rights, and state property. The focus of Sprankling differs from this dissertation in two main respects: (i) he examines property rights generally across multiple fields rather than specifically as a human right, and (ii) he approaches the topic solely from a positive law perspective, whereas this dissertation also considers natural law.

Van der Walt (1999), in *Constitutional Property Clauses: A Comparative Analysis*, analyzes property clauses from 86 jurisdictions, which is useful for understanding the right to property as a general principle of law under international law. In this dissertation, the author analyzes 191 constitutional property clauses but focuses exclusively on provisions recognizing property as a human right, excluding state property or other types. The comparative analysis serves to clarify the status and characteristics of the right to property under international law.

Overview of the Sources and Literature Used

The primary sources for this dissertation include **universal conventions** and property provisions in 191 domestic constitutions. Key legal instruments of the UN were also considered, including the 1994 report by Luis Valencia Rodriguez.

From a **positive law perspective**, the dissertation draws on the work of leading scholars such as Anne Peters (*Beyond Human Rights: The Legal Status of the Individual in International Law*) and Bruno Simma (*The Sources of Human Rights Law: Custom, Jus Cogens, and General Principles*), as well as relevant ICJ case law.

From a **natural law perspective**, the author relies on Mary Ellen O'Connell (*The Art of Law in the International Community*), John Finnis (*Natural Law and Natural Rights*), and Maarten Bos (*A Methodology of International Law*). Some authors, such as Antonio Augusto Cancado Trindade (*International Law for Humankind: Towards a New Jus Gentium*), provide insights relevant to both perspectives.

The dissertation also draws on **Marina Kurkchiyan**'s innovative work on **collective legal consciousness**, and on **Carl Gustav Jung**'s concepts of archetypes and the collective unconscious (*Archetypes and the Collective Unconscious*; *Civilization in Transition*). These interdisciplinary sources inform the analysis of natural law and its connection to the right to property.

Structure of the Dissertation

The main part of the dissertation is structured into three main parts, each addressing specific objectives of the research.

Part I examines the status of the right to property as a human right from the perspective of positive law. In this part, the analysis focuses on identifying whether the right to property is established in international treaties, customary international law, and general principles of law. Relevant treaty provisions, state practice, opinio juris, and national constitutions are examined to assess the formal recognition, scope, and content of this right in the international legal order. Additionally, non-legally binding international agreements are analyzed as a source of international law, reflecting the ongoing work of the International Law Commission in defining and clarifying these instruments.

Part II explores the right to property from the perspective of contemporary natural law. It examines three main approaches: John Finnis' theory of natural law, Mary Ellen O'Connell's approach to contemporary natural law, and Maarten Bos' position. After identifying common grounds regarding the sources of natural law, one fundamental question remains: what is the source of natural law itself? Because existing approaches do not provide a fully satisfying answer, the author employs an interdisciplinary method, drawing on findings from psychology and mythology. In particular, the author incorporates the concept of **collective legal consciousness**, developed by Marina Kurkchiyan, and proposes a modification of its definition to better capture its complexity. Building on C.G. Jung's concept of the collective unconscious, the author

introduces a new concept: **collective legal unconsciousness**. Finally, Part II includes a symbolic analysis of the myth of *Heracles and the Cretan bull*, illustrating key features of the right to property from a symbolic perspective.

Part III investigates the shortcomings of legal positivism in the application of the right to property, using the *Diallo* case before the International Court of Justice as a case study. This part illustrates practical challenges in applying the right to property in international adjudication and explores the potential corrective role of contemporary natural law in addressing these challenges.

Together, these three parts provide an integrated analysis of the right to property as a human right, combining doctrinal, theoretical, interdisciplinary, and practical perspectives to achieve the objectives of the dissertation.

Conclusions and Suggestions

Following a comprehensive analysis, this thesis concludes that the research objectives outlined in the introduction have been fully achieved, the research purpose has been fulfilled, and the defence statements have been substantiated. The conclusions below reflect these findings.

Conclusions **Nos. 1 and 2 correspond** to the overall purpose of the thesis: to develop a conceptual understanding of the human right to property in international law through a combined approach of positive law and contemporary natural law.

1. The analysis demonstrates that positive law and contemporary natural law should be applied cumulatively when addressing contemporary problems related to the status and application of the right to property as a human right under international law. These approaches are complementary rather than alternative: positive law represents the formal dimension of the law, while contemporary natural law provides its substantive foundation. Both should be applied in the creation and interpretation of international legal norms. The deficiencies of positive law may be mitigated through recourse to contemporary natural law.

2. In the field of human rights, both contemporary natural law—reflecting enduring archetypical norms rooted in the collective legal unconscious (lex aeterna)—and positive law—reflecting the current will of States (lex lata)—should be examined when interpreting legal rules in problematic cases. A comparative analysis of their status and scope is essential. Where a significant gap exists between them, persistent regulatory or interpretative difficulties are likely to arise. Accordingly, the development of lex ferenda aimed at narrowing this gap is crucial and can be effective only if aligned with lex aeterna. At minimum, the status and scope of general principles of law—often encompassing elements of both natural and positive law—may be compared with treaties and international custom, which primarily reflect State will.

Conclusions **Nos. 3–6 correspond** to the first objective of the thesis: analysing the status and characteristics of the right to property from a positivist perspective.

3. The status of the right to property in international treaty law admits multiple interpretations. Human rights treaties are not uniform in scope and may be divided

into treaties establishing a catalogue of human rights and anti-discrimination treaties. This thesis concludes that the right to property is absent as an autonomous human right in the first category. Within the second category, a distinction must be drawn between property-related provisions in CEDAW and CERD, on the one hand, and those in CPRMW and CRPD, on the other. While CEDAW and CERD do not create legally binding international rights to property, CPRMW and CRPD reflect recognition of a self-standing international right to property for vulnerable groups. The broad ratification of CRPD confirms widespread international acceptance of this right. Property clauses in other universal treaties must be assessed on a case-by-case basis.

4. International treaty law affirms several core components of the right to property, including the right to own, acquire, use, manage, and transfer property. A general prohibition on arbitrary deprivation of property is a common feature of both universal and regional human rights instruments.

5. An evaluation of State practice and *opinio juris* suggests that the right to property has attained the status of a customary norm of international law. However, its substantive content remains limited. At minimum, the customary rule may be formulated as: "Everyone has the right to personal belongings."

6. The right to property qualifies as a general principle of law under international law, as it exists in the vast majority of domestic legal systems and is transposable to international law. This thesis proposes the following formulation: "Everyone has a fundamental right to own property. No one shall be deprived of property except in the public interest, subject to conditions provided by law, and upon payment of just compensation."

Conclusions **Nos. 7–9 correspond** to the second objective: analysing the right to property from the perspective of contemporary natural law.

7. The analysis reveals that the scope of the right to property is broader in contemporary natural law than in positive law. While formal sources present a limited conception of the right, natural law sources disclose its multidimensional character. The subject matter of the right to property may be understood as a resource—material, emotional, intellectual, or spiritual. A defining feature of this right is the personal tie between the owner and the object, together with the right to exclude others. This characteristic justifies compensation for violations of the right to property in both material and non-material forms.

8. This thesis proposes a refined definition of the collective legal consciousness as follows: "The collective legal consciousness is the sum of all existing perceptions of what law is and how individuals relate to it within a given society." This formulation more accurately reflects the concept's complexity.

9. The thesis introduces the concept of collective legal unconsciousness, drawing on C.G. Jung's theory of archetypes. It argues that natural law identifies lex aeterna archetypes within the collective legal unconscious and translates them into collective legal consciousness through legal principles. These archetypes should inform the creation, interpretation, and application of international legal rules concerning the right to property.

Conclusions **Nos. 10–12 correspond** to the third objective: identifying shortcomings of legal positivism through the *Diallo* case and assessing the corrective role of contemporary natural law.

10. Recognizing the right to property as a fundamental human right entails significant legal consequences. Following the ICJ's reasoning in *Barcelona Traction*, obligations *erga omnes* may be understood as arising from the right to property as a general principle of international law.

11. Given the fundamental nature of the right to property, the application of the merger doctrine—as employed by the ICJ in *Diallo*—should be rejected. Violations of two fundamental rights cannot be merged, as both possess equal normative importance.

12. Although general principles of law are formally recognized as a primary source of international law, the ICJ rarely relies on them as a self-sufficient basis for judgment. This reluctance may be explained by the natural law element inherent in general principles, which introduces uncertainty often avoided in favour of legal certainty. However, legal certainty in international law is dynamic and dependent on State will. This thesis argues that revitalizing general principles of law, grounded in contemporary natural law, is essential for the further evolution of international law.

LIST OF SCIENTIFIC PUBLICATIONS

The key results of the research have been published in the following articles and scholarly studies:

1. **"Shareholders' Rights in International Law: (con)Temporary Reflections in the Diallo Case,"** Katuoka, Saulius, Motuzienė, Inga. *Entrepreneurship and Sustainability Issues*, 2020. (https://cris.mruni.eu/cris/entities/publication/2f3a4587-17b0-44d4-acc2-3b4718bc8849).
   Part III of the dissertation is dedicated to the analysis of the Diallo case, which is extensively discussed in this article.
2. **"The Challenge of the COVID-19 Pandemic for WHO Member States: The 2005 International Health Regulations,"** Katuoka, Saulius, Motuzienė, Inga, 2022. (https://cris.mruni.eu/cris/entities/publication/a86b5db8-3788-4900-8271-a4df594835b7).
   This study examines issues related to the content and form of contemporary sources of international law in the context of COVID-19, which are further analyzed in Part I of the dissertation, particularly regarding the human right to property.
3. **"Understanding the Function of the Prohibition of the Use of Force and Its Impact on Seeking Peace,"** Inga Motuzienė, Chapter Section 2.2, 2024. (https://cris.mruni.eu/cris/entities/publication/2fbac61b-ad76-4504-8f24-50b05b32f7b1).
   This monograph section explores the interaction between positive law and natural law in the context of the prohibition on the use of force to achieve peace. In the dissertation, these principles are applied in detail to the analysis of the individual right to property.

LIST OF SCIENTIFIC EVENTS WHERE THE RESULTS OF THE DISSERTATION WERE PRESENTED

The results of the research were presented at the following academic events:

1. On 15 December 2021, a presentation was delivered at the scientific conference organized by Mykolas Romeris University (MRU) entitled *"The Relationship Between National Law (including Constitutional Law), the European Convention on Human Rights, and European Union Law: Compatibility and Challenges in Interpretation and Application"*. The presentation focused on *"The Legitimacy of Restrictions on Property Rights in Protected Areas: ECHR Case Law and the Lithuanian Context."*
2. On 23 May 2025, a presentation was delivered at the scientific conference organized by Vytautas Magnus University (VDU) *"Contemporary Law Trends and Perspectives"*, with the topic *"Contemporary Changes in the Understanding of the Sources of International Law: General Principles of Law."*

Research Internships Completed:

1. **Swiss Institute of Comparative Law, Lausanne, Switzerland**, March – April 2022.
2. **United Nations International Law Commission, Geneva, Switzerland**, 74th session of the International Law Commission: Part I, 25 April – 2 June 2023; Part II, 3 July – 4 August 2023.

CURRICULUM VITAE

Inga Motuzienė

Academic career

2011-… *Mykolas Romeris University, Law School (Lithuania)*

Lecturer (2011-…)

- International Dispute Settlement, Public International Law, Law of Treaties, Law of International Organizations
- Research Methodology (Since 2011, Focusing on Research, Legal Reasoning, Persuasive Legal Writing Skills)
- Coach of Philip C. Jessup team of Mykolas Romeris University (2012-2015)

2022-09 University of Cadiz, Faculty of Law (Spain)

Visiting Lecturer (Research Methodology and Legal Reasoning – Lectures for Colleagues from European Universities)

2022-04 *Swiss Institute of Comparative Law (Switzerland)*

Visiting Researcher (Comparative Law Methodology and Right to Property)

2012 *Klaipeda University (Lithuania)*

Visiting Lecturer (Public International Law)

Education

2017-2025 Mykolas Romeris University, Law School

PhD in Law

- Key Research Topics: Right to Property in International Law, Legal Philosophy and Legal Methodology, Human Rights Theories.

2011 *Mykolas Romeris University, Law School*

MA in Law

- Master's Thesis: Dispute Settlement in International Economic Organizations: Case Study of the World Bank and the World Trade Organization

2010 *University of Copenhagen*

MA in Law

- International Commercial Arbitration, European and International Commercial Law, Law of the Sea

2009 *Mykolas Romeris University, Law School*

BA in Law

2003 *Vilnius University, Faculty of Physics (Former: Šiauliai State University)*

Diploma from School of Young Physicists "FOTONAS" (2000-2003)

Languages

Lithuanian (native), English (C1), Russian (B1), French (A1)

Educational Projects/ Trainings

2023 *UN International Law Commission*

- Research assistant (for a member of ILC)

2019-2023 Philip C.Jessup International Law Moot Court Competition (ILSA)

- Judge (International Rounds and Written Memorials)

2012-2015 *Philip C.Jessup International Law Moot Court Competition (ILSA)*

- Coach of Mykolas Romeris University Team (Developing Students' Research, Persuasive Legal Writing, and Oral Advocacy Skills)
- Four Times Winners of National Rounds, Participating in International Rounds, Washington, D.C., USA
- Award for Best Written Memorial (Top 10)

2011 *Philip C.Jessup International Law Moot Court Competition (ILSA)*

- Member of Mykolas Romeris University Team (Research for Written Memorials and Oral Pleadings: IHRL, IHL, Legality of Armed Drones, Responsibility of States)
- Winner of National Rounds, Representing Lithuania in International Rounds, Washington, D.C., USA

2010-07 *Transparency International (Summer School)*

- "Corruption in Public and Private Sectors"

2010 *Philip C.Jessup International Law Moot Court Competition (ILSA)*

- Member of Mykolas Romeris University Team (Research for Written Memorials and Oral Pleadings: Right to Self-Determination, *Uti Possidetis Juris*, Territorial Acquisition, Intertemporal Law)
- Winner of National Rounds, Representing Lithuania in International Rounds, Washington, D.C., USA

2009 *Philip C.Jessup International Law Moot Court Competition (ILSA)*

- Member of Mykolas Romeris University Team (Research for Written Memorials and Oral Pleadings: R2P and Use of Force, Status of Forces Agreement (SOFA), Responsibility of International Organizations)
- Representing Lithuania in International Rounds, Washington, D.C., USA
- The Best Written Memorial (Top 20)

2009-05/06 *Ministry of Foreign Affairs of Lithuania, Department of UN and Global* Politics

- Internship (Research and Assistance in Preparing Lithuania's Position on R2P, Supervisor Ambassador Rita Kazragienė)

MYKOLO ROMERIO UNIVERSITETAS

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ŽMOGAUS TEISĖ Į NUOSAVYBĘ TARPTAUTINĖJE TEISĖJE: TEISINIO POZITYVIZMO IR ŠIUOLAIKINĖS TARPTAUTINĖS TEISĖS PERSPEKTYVA

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SANTRAUKA

Mokslinės problemos identifikavimas

Disertacijoje formuluojama pagrindinė **mokslinė problema** – žmogaus teisės į nuosavybę statusas tarptautinėje teisėje. Ar žmogaus teisė į nuosavybę yra teisiškai įpareigojanti ir iš kurių tarptautinės teisės šaltinių konkrečiai (tarptautinių sutarčių, tarptautinio papročio, bendrųjų tesės principų) kyla teisinis privalomumas?

Žmogaus teisė į nuosavybę pasižymi kompleksiškumu ir daugialypiškumu, o jos statusas tarptautinėje teisėje iki šiol išlieka itin kontroversiškas. 1948 m. Visuotinė žmogaus teisių deklaracija įtvirtino pagrindinių žmogaus teisių sąrašą. Ši deklaracija buvo priimta JT Generalinės Asamblėjos rezoliucija, taigi, tai buvo politinis dokumentas, neturintis privalomos teisinės galios. Deklaracijos 17 straipsnis skelbia, kad „kiekvienas žmogus turi teisę turėti nuosavybę tiek vienas, tiek kartu su kitais". Vėliau visos deklaracijoje išvardintos pagrindinės žmogaus teisės - išskyrus teisę į nuosavybę - buvo perkeltos į dvi tarptautines sutartis, 1966 m. Tarptautinį pilietinių ir politinių teisių paktą bei 1966 m. Tarptautinį ekonominių, socialinių ir kultūrinių teisių paktą. Taigi, visos pagrindinės žmogaus teisės šiomis sutartimis buvo pripažintos teisiškai įpareigojančiomis ir tik vienintelė žmogaus teisė į nuosavybę buvo palikta nuošalyje, nesuteikiant jai tokio statuso. Natūralu, kad toks šios teisės atskyrimas sukėlė klausimų dėl jos statuso tarptautinėje teisėje. Praėjus daugiau nei dviem dešimtmečiams, 1993 metais, Luis Valencia Rodriquez, paskirtasis JT žmogaus teisių komiteto ekspertas, paskelbė atlikto tyrimo apie žmogaus teisę į nuosavybę išvadas. Ekspertas tyrimą pradėjo darydamas prielaidą, kad tarptautinėje teisėje žmogaus teisė į nuosavybę nėra teisiškai įpareigojanti. Išvadose jis savo pirminę prielaidą patvirtino, sakydamas, kad egzistuoja regioninės tarptautinės sutartys, pripažįstančios žmogaus teisę į nuosavybę tarp valstybių sutarčių šalių, tačiau universaliu lygmeniu žmogaus teisė į nuosavybę tarptautinėje teisėje neegzistuoja. Vis tik, disertacijos autorė šiame tyrime daro kitokią prielaidą – kad žmogaus teisė į nuosavybę tarptautinėje teisėje XXI amžiaus pradžioje yra teisiškai įpareigojanti, tačiau lieka klausimas, iš kokio tarptautinės teisės šaltinio ar kelių šaltinių toks privalomumas kyla. Tam, kad prielaidą būtų galima patvirtinti arba paneigti, disertacijos autorė atlieka visapusišką tyrimą pasitelkdama mokslinių teorijų trianguliacijos metodą, t.y., analizuodama žmogaus teisę į nuosavybę tiek iš pozityviosios, tiek iš šiuolaikinės prigimtinės teisės perspektyvos.

Tyrimo aktualumas

Kaip jau buvo įvardinta fomuluojant mokslinę problemą, žmogaus teisė į nuosavybę yra kontroversiška ir kelianti teorinių ir praktinių iššūkių. Kyla klausimas, kodėl būtent dabar verta grįžti prie žmogaus teisės į nuosavybę statuso ir turinio tyrimų? Kas lemia tokio tyrimo aktualumą ir kodėl tikimasi kitokių rezultatų nei prieš keletą dešimtmečių, kai 1993 metais ekspertas Luis Valencia Rodriquez paskelbė savo išvadas? Priežasčių nuo 1993 metais skelbto tyrimo atsirado ne viena.

Pirma, Tarptautinis teisingumo teismas teismas *LaGrand* ir *Avena* bylose aiškiai įvardina naują tendenciją savo jurisprudencijoje (nors doktrinoje toks skirstymas randamas jau anksčiau) – atskirti žmogaus teises ir paprastas individo teises. Taigi, tai pirma indikacija, kad žmogaus teisė į nuosavybę ir individo teisė į nuosavybę tarptautinėje teisėje nebūtinai sutampa.

Antra, išsami teisėjo Shi atskiroji nuomonė *LaGrand* byloje pateikia detalų paaiškinimą apie individo teises tarptautinėje teisėje ir jų kilmę, todėl disertacijos autorei natūraliai kyla klausimas, koks yra individo teisės į nuosavybę kilmės šaltinis ir koks yra žmogaus teisės į nuosavybę kilmės šaltinis. Iš čia kilo poreikis tyrimą konstruoti pasitelkiant trianguliacijos metodą - tirti teisę į nuosavybę ne tik iš pozityviosios teisės perspektyvos, bet ir iš šiuolaikinės prigimtinės teisės perspektyvos.

Trečia, pastaraisiais metais tarp valstybių pastebima nauja tendencija teikti ieškinius Tarptautiniam teisingumo teismui remiantis *erga omnes partes* pagrindu (ir tais atvejais, kai ieškinio teikėja yra tiesiogiai nukentėjusioji šalis, ir tais atvejais, kai ji nėra patyrusi tiesioginės žalos). Visi tokie atvejai yra susiję su universaliomis tarptautinėmis žmogaus teisių apsaugos sutartimis - ir jau Teismo išspręstose bylose (susijusiose su Konvencija dėl kelio užkirtimo genocido nusikaltimui ir baudimo už jį bei 1984 metų Konvencija prieš kankinimą ir kitokį žiaurų, nežmonišką ar žeminantį elgesį ar baudimą), ir vis dar Teismo sprendimo laukiančiose bylose (taip pat susijusiose su minėtomis dvejomis konvencijomis bei Tarptautine konvencija dėl visų formų rasinės diskriminacijos panaikinimo). Pavyzdžiui, 2018 m. Kataras pradėjo procesą prieš Jungtinius Arabų Emyratus, teigdamas, kad JAE pažeidė fizinio asmens teisę į nuosavybę, nustatytą Tarptautinėje konvencijoje dėl visų formų rasinės diskriminacijos panaikinimo. O ši teisė, anot Kataro, yra viena iš pagrindinių žmogaus teisių. Remiantis šiuo ieškiniu, Kataras paprašė Teismo įpareigoti JAE „atkurti teisę į (...) nuosavybę." Nors Teismas nustatė, kad neturi jurisdikcijos nagrinėti Kataro pateikto ieškinio, išlieka esminis klausimas, kaip Teismas traktuotų fizinio asmens nuosavybės teisę pagal minėtą antidiskriminacinę konvenciją - kaip žmogaus teisę, kaip individo teisę, ar visiškai vengtų diskusijos apie nuosavybės teisę, kaip tai įvyko *Diallo* byloje? Fizinio asmens teisė į nuosavybę yra minima antidiscriminacininėse konvencijose, pavydžiui, Tarptautinėje konvencijoje dėl visų formų rasinės diskriminacijos panaikinimo, Jungtinių Tautų konvencijoje dėl visų formų diskriminacijos panaikinimo moterims, Jungtinių Tautų neįgaliųjų teisių konvencijoje, todėl kyla klausimas, ar būtų galima efektyviai ginti fizininių asmenų teises į nuosavybę pagal šias konvencijas Tarptautiniame teisingumo teisme? Taigi, daugėjant ieškinių šių konvencijų pagrindu, didėja tikimybė, kad fizinių asmenų teisė į nuosavybę vis dažniau pateks į Teismo akiratį.

Ketvirta, Tarptautinis teisingumo teismas 2025 metų liepos 23 dienos konsultacinėje išvadoje dėl klimato kaitos turėjo galimybę pasisakyti apie žmogaus teisę į nuosavybę tarptautinėje teisėje, tačiau pasirinko jos net neminėti. 2023 m. balandžio 12 d. Tarptautinis teisingumo teismas gavo prašymą dėl konsultacinės išvados pateikimo. Šio tyrimo prasme reikšminga klausimo dalis buvo: „Atsižvelgiant (...) į teises, pripažintas Visuotinėje žmogaus teisių deklaracijoje (...), kokios yra valstybių pareigos pagal tarptautinę teisę, siekiant užtikrinti klimato apsaugą (...)?". Kadangi žmogaus teisė į

nuosavybę yra įtraukta į klausime minimą 1948 m. Deklaraciją, Teismas turėjo teisę komentuoti ir šią konkrečią teisę. Be to, tai nėra tik teorinė galimybė, nes valstybės ir tarptautinės organizacijos aktyviai teikė savo teisines nuomones ir išsakė argumentus. 96 valstybės ir 11 tarptautinių organizacijų pateikė žodinius pareiškimus per posėdžius. 35 valstybės iš viso pasaulio, įskaitant Australiją, Portugaliją, Čilę, Kolumbiją, Šri Lanką, Šveicariją ir kt., savo rašytinėse pozicijose aiškiai įvardino ir žmogaus teisę į nuosavybę tarp kitų žmogaus teisių ir pasisakė, kad klimato kaita sukelia neigiamas pasekmes ir šios teisės atžvilgiu. Vis tik 35 valstybių pozicijos dėl žmogaus teisės į nuosavybę niekaip neatsispindėjo galutinėje Teismo konsultacinėje išvadoje. Šis faktas vėlgi skatina kelti hipotezes – ar valstybių praktika ir *opinio juris* yra pakankami, kad būtų galima teigti, jog jau susiformavo ir egzistuoja žmogaus teisės į nuosavybę tarptautinis teisinis paprotys?

Penkta, Jungtinių Tautų Tarptautinės teisės komisijos darbotvarkėje yra temų, susijusių su nuosavybės teise kaip žmogaus teise ir tai rodo šios teisės aktualumą. 2025 metais tema „Žalos, kilusios dėl padarytų tarptautinių nusikaltimų, kompensavimas" buvo perkelta iš Komisijos ilgalaikio darbų sąrašo į dabar atliekamų tiriamųjų darbų sąrašą. Ilgalaikiame Komisijos darbų sąraše yra ir daugiau temų susijusių su fizinių asmenų teise į nuosavybe. Pavyzdžiui, „Žalos atlyginimas asmenims už grubius tarptautinės žmogaus teisių pažeidimus ir rimtus tarptautinės humanitarinės teisės pažeidimus".

Pateikti atvejai rodo, kad žmogaus teisės į nuosavybę statusas, šios teisės apimtis ir turinys yra klausimai, kurie tiek praeityje sukėlė neaiškumų, tiek šiuo metu yra aktualūs, tiek ir ateityje gali sukelti dar daugiau problemų.

Mokslinis naujumas

Disertacijoje yra keletas mokslinio naujumo aspektų. Pirma, disertacijos autorė siekia nustatyti žmogaus teisės į nuosavybę tarptautinėje teisėje statusą ir turinį, remiantis tarptautinės teisės šaltiniais taip, kaip jie suprantami ir aiškinami šiuolaikinėje tarptautinės teisės doktrinoje – tai yra, atsižvelgiant į vykstančius šaltinių sampratos pokyčius, atsispindinčius Jungtinių Tautų Tarptautinės teisės komisijos darbuose. Taigi, ne tik pačios žmogaus teisės į nuosavybę statusas tarptautinėje teisėje iki šiol yra kontroversiškas ir reikalauja detalaus tyrimo (šis faktas išsamiai aptartas identifikuojant mokslinę problemą), bet ir kai kurių tarptautinės teisės šaltinių samprata yra virsmo procese, į ką autorė atsižvelgia, siekdama identifikuoti minėtos teisės turinį skirtinguose šaltiniuose. Pastarąjį teiginį, kad tarptautinės teisės šaltinių samprata yra kintanti, autorė grindžia faktu, kad Komisija, kuriai vienintelei Jungtinės Tautos pavedė funkciją kodifikuoti tarptautinę paprotinę teisę ir identifikuoti progresyvią tarptautinės teisės plėtrą, paskutiniaisias metais skiria išskirtinai daug dėmesio būtent tarptautinės teisės šaltinių temai. Nuo 2018 iki 2023 metų Komisija nuodugniai išnagrinėjo ir patvirtino net penkis atskirus projektus, skirtus tarptautinės teisės šaltiniams – tarptautinėms sutartims, tarptautiniams papročiams, *jus cogens* normoms ir bendriesiems teisės principams. Be to, Komisija 2026 metais ir toliau tęsia darbus prie

dar dviejų tarptautinės teisės šaltiniams skirtų temų – papildomų tarptautinės teisės šaltinių bei ne teisiškai įpareigojančių tarptautinių susitarimų (angl. *non-legally binding international agreement*), o 2025 metais Komisijai pasiūlyta imtis temos dėl *erga omnes* įsipareigojimų tarptautinėje teisėje. Toks išskirtinis dėmesys tarptautinės teisės šaltiniams neturi precedento ir rodo, kad šis fundamentalus klausimas yra persvarstomas. Atitinkamai, autorė, tirdama, ar žmogaus teisė į nuosavybę yra tarptautinis teisinis paprotys, atsižvelgia į 2018 metų Komisijos išvadas dėl tarptautinio papročio identifikavimo; o tirdama, ar žmogaus teisė į nuosavybę yra bendrasis teisės principas, remiasi 2023 metų Komisijos išvadomis dėl bendrųjų teisės principų. Papildomai autorė aptaria ir ne teisiškai įpareigojančius tarptautinius susitarimus bei juose įtvirtintos žmogaus teisės į nuosavybę reikšmę. Tiesa, kadangi ši kategorija yra nauja šaltinių sąraše ir jos santykio su tradiciniais tarptautinės teisės šaltiniais, įtvirtintais Tarptautinio teisingumo teismo statuto 38 straipsnyje, Komisija kos kas neaptaria (šios temos tyrimas 2026 metais vis dar vyksta), o ir pats šaltinis neturi teisiškai įpareigojančios galios, autorė plačiai šio šaltinio neanalizuoja. Apibendrinant pirmąjį mokslinio naujumo aspektą, autorė remiasi ne tik standartinu požiūriu – analizuoti vien tik universaliose tarptautinėse sutartyse įtvirtintus žmogaus teisės į nuosavybę aspektus, bet ir imasi detaliai tirti kitus du, dažnai doktrinoje vadinamus efemeriškais, tačiau teisiškai įpareigojančius tarptautinės teisės šaltinius – tarptautinius teisinius papročius ir bendruosius teisės principus, pasiremiant naujausia ir autoritetingiausia šių šaltinių identifikavimo metodologija, siekiant atsakyti į klausimą, koks yra minėtos teisės statusas tarptautinėje teisėje.

Antrasis mokslinio naujumo aspektas susijęs su šiuolaikinės prigimtinės teisės požiūrio panaudojimu, tiriant žmogaus teisę į nuosavybę tarptautinėje teisėje. Disertacijos autorė, atsižvelgdama į šios teisės statuso neapibrėžtumą, šios teisės istorijos problematiškumą ir ginčų dėl šios teisės turinio bei ribų gausą, daro prielaidą, kad pozityvioji teisė nėra pakankama, norint išspręsti šias problemas, ir pasitelkia kitą žiūros kampą - šiuolaikinės prigimtinės teisės perspektyvą. Keliamas klausimas, ar žmogaus teisė į nuosavybę yra fundamentali žmogaus teisė, ieškoma šios žmogaus teisės esminių charakteristikų šiuolaikinės prigimtinės teisės šaltiniuose. Kiek autorei žinoma, žmogaus teisė į nuosavybę tarptautinėje teisėje niekada nebuvo išsamiai tyrinėta ir vertinta iš šiuolaikinės prigimtinės teisės perspektyvos. (Paradoksalu, bet netgi žymiausių prigimtinės teisės atstovų darbuose, pavyzdžiui, John Finnis veikale „Prigimtinis įstatymas ir prigimtinės teisės", apie teisę į nuosavybę tik užsimenama, bet ji nepatenka į žymųjį jo fundamentalių septynių gėrių sąrašą. Taigi, iš pirmo žvilgsnio susidaro įspūdis, kad šu teisė nėra svarbi ar juolab fundamentali.) Visiškai suprantama, kad žmogaus teisės į nuosavybę tyrimas iš prigimtinės teisės perspektyvos nėra populiarus užsiėmimas, nes ši užduotis komplikuota ir nėra apibrėžta dėl kelių priežasčių. Pirma, pati prigimtinės teisės samprata nėra vienalytė. Antra, XXI amžiuje prigimtinė teisė nėra populiari ar juolab dominuojanti kolektyvinėje teisinėje sąmonėje. Ji dažniausiai yra vertinama iš teisės teorijos istorijos perspektyvos, susilaukia kritikos kaip nepakankamai racionali ar nepakankamai moderni. Trečia, ir, ko gero, daugiausiai keblumų keliantis faktas - nėra visuotinai pripažinto šiuolaikinės prigimtinės teisės

šaltinių sąrašo, dėl kurio būtų sutariama, kaip ir nesutariama, iš kokio šaltinio kyla pati prigimtinė teisė. Dėl šių priežasčių, prieš naudojant šiuolaikinės prigimtinės teisės požiūrį kaip įrankį žmogaus teisės į nuosavybę analizei, primiausia tenka susiformuoti patį įrankį. Taigi, turint tikslą apibrėžti šiuolaikinės prigimtinės teisės sampratą ir šaltinius, autorė nagrinėja trijų šiuolaikinių mokslininkų (Mary Ellen O'Connell, John Finnis ir Maarten Boss) požiūrį į prigimtinę teisę ir jos šaltinius bei sėkmingai ieško juose bendrų vardiklių. Vis tik, nei trijų autorių požiūrių visuma, nei kiekvieno iš jų individualiai pateikta samprata neatsako į klausimą, iš kur kyla šiuolaikinė prigimtinė teisė, kas yra jos šaltinis. Tam, kad pasiūlyti atsakymą į šį problematišką klausimą, autorė naudoja tarpdisciplininį požiūrį, remdamasi psichologijos ir mitologijos mokslais, bei siūlo naują sampratą apie šiuolaikinės prigimtinės teisės šaltinį, kildinant ją iš kolektyvinės teisinės sąmonės ir kolektyvinės teisinės pasąmonės. Galiausiai, susiformavus aiškią šiuolaikinės prigimtinės teisės sampratą, autorė ją taiko žmogaus teisės į nuosavybę analizei.

Trečia, disertacijos autorė siūlo integruoti du požiūrius – pozityvistinės teisės ir šiuolaikinės prigimtinės teisės – sprendžiant problemas, susijusias su žmogaus teise į nuosavybe. Ši teisė yra kompleksinė ir, kaip rodo praktika, viena iš dažniausiai sukeliančių teisminius ginčus. Disertacijos autorės pasirinkimą tirti žmogaus teisę į nuosavybę integruojant du požiūrius lėmė kelios priežastys. Pirma, autorė pritaria Hersh Lauterpacht ne kartą išreikštai pamatinei pozicijai, kad tarptautinė teisė yra hibridinė pozityviosios ir prigimtinės teisės sistema. Taip pat palaiko šiuolaikinės mokslininkės Mary Ellen O'Connell požiūrį, kad „prigimtinė teisė yra būtina norint visiškai suprasti teisę, nes pozityvizmas vienas nesugeba atsakyti į fundamentalius klausimus, kas yra laikoma teise ir kodėl mes turime pareigą laikytis teisės". Todėl, visapusiškai nagrinėjant žmogaus teisės į nuosavybę statusą, apimtį ir ypatybes, šiuolaikinė prigimtinė ir pozityvioji teisė turėtų būti vertinamos integraliai. Antra, žmogaus teisė į nuosavybę kartu su kitomis *pagrindinėmis* (arba fundamentaliomis, arba prigimtinėmis – šie terminai tarptautinėse sutartyse, teismų praktikoje bei teisės mokslo doktrinoje naudojami kaip sinonimai) žmogaus teisėmis buvo paskelbta 1948 m. JT Deklaracijoje. Plačiai pripažįstama, kad *pagrindinės* žmogaus teisės, įtvirtintos minėtoje Deklaracijoje kyla iš prigimtinės teisės. Žmogaus teisė į nuosavybę yra įvirtinta Deklaracijoje. Vadinasi, remiantis kategoriniu silogizmu, jeigu šie du teiginiai teisingi, tai ir išvada, kad žmogaus teisė į nuosavybę kyla iš prigimtinės teisės, yra teisinga. Todėl autorė mano, kad būtų negalima ignoruoti pagrindinio žmogaus teisės į nuosavybę šaltinio, t.y., šiuolaikinės prigimtinės teisės, siekiant apibrėžti jos statusą ir ypatybes. Trečia, autorė laikosi požiūrio, kad Tarptautinio teisingumo teismo Statuto 38 straipsnio 1 dalies (c) punktas apima ir prigimtinės teisės elementus, išplėsdamas tarptautinių teisės šaltinių apimtį už griežto teisinio pozityvizmo ribų, kaip tai buvo nurodyta ir Tarptautinio teisingumo teismo teisėjo Tanaka'os atskirojoje nuomonėje, dar 1966 m. Pietvakarių Afrikos byloje. Tokia pozicija atsispindi ir Tarptautinio teisingumo teismo Statuto 38 straipsnio parengiamuosiuose darbuose. Be to, šis požiūris matomas ir tokių autoritetingų tarptautinės teisės specialistų kaip J. L. Brierly, Shabtai Rossene, Antonio Augusto Cancado Trindade darbuose. Taigi, integralus žmogaus teisės į nuosavybę tyrimas iš

pozityviosios teisės ir iš prigimtinės teisės perspektyvos moksline prasme yra naujas, bet tuo pačiu motyvuotas, pagrįstas ir aktualus.

Tyrimo objektas

Tyrimo objektas yra žmogaus teisė į nuosavybę tarptautinėje teisėje. Autorės tikslas nėra tirti visą nuosavybės teisės institutą, kaip tai daro John G Sprankling savo knygoje "The International Law of Property", bet koncetruotis konkrečiai tik į žmogaus teisę į nuosavybę, už šio tyrimo ribų paliekant kitų tarptautinės teisės subjektų – pavyzdžiui, valstybių ar tarptautinių organizacijų – teisę į nuosavybę. Be to, šio tyrimo tikslas yra tirti tik tarptautinę teisę, siekiant identifikuoti universalius žmogaus teisės į nuosavybę aspektus ir jos statusą. Vadinasi, atskirų regioninių ar nacionalinių žmogaus teisių apsaugos standartų analizavimas ar lyginimas nėra šio tyrimo tikslas, o minėtų teisinių sistemų indėlis patenka į šio tyrimo apimtį tik tiek, kiek metodologiškai reikalinga, pavyzdžiui, siekiant identifikuoti egzistuojančius bendruosius teisinius principus ar tarptautinį teisinį paprotį.

Tikslas ir uždaviniai

Disertacijos tikslas yra pateikti konceptualų požiūrį į žmogaus teisę į nuosavybę tarptautinėje teisėje, derinant dvi perspektyvas – pozityviosios teisės ir šiuolaikinės prigimtinės teisės. Kompleksiškas požiūris į žmogaus teisę į nuosavybę prisidės prie dešimtmečius trunkančio šios teisės statuso neapibrėžtumo eliminavimo tarptautinėje teisėje bei padės ateityje išvengti keliamų nepageidaujamų pasekmių – teisinio neaiškumo dėl šios teisės egzistavimo ir neatitikimo tarp praktikos ir teisinio reguliavimo.

Tyrimo uždaviniai

- Identifikuoti žmogaus teisės į nuosavybę teisinį statusą ir šios teisės elementus iš pozityviosios teisės perspektyvos (įvertinti žmogaus teisės į nuosavybę statusą ir elementus tarptautinėse sutartyse, sudarant ir analizuojant tarptautinių sutarčių, kuriose yra minima žmogaus arba individo teisė į nuosavybę, sąrašą; įvertinti žmogaus teisės į nuosavybę egzistavimo galimybę paprotinėje tarptautinėje teisėje, atsižvelgiant į valstybių praktiką ir *opinio juris*; įvertinti žmogaus teisės į nuosavybę kaip bendrojo teisės principo egzistavimo galimybę, pasitelkiant nacionalines konstitucijas ir jose įtvirtintos žmogaus teisės į nuosavybę analizę).
- Pateikti žmogaus teisės į nuosavybę sampratą iš šiuolaikinės prigimtinės teisės perspektyvos (apibrėžti prigimtinės teisės sampratą ir identifikuoti jos šaltinius; identifikuoti esminius žmogaus teisės į nuosavybę požymius, kylančius iš šiuolaikinės prigimtinės teisės).
- Atskleisti teisinio pozityvizmo trūkumus sprendžiant ginčus susijusius su žmogaus teise į nuosavybę tarptautinėje teisėje, remiantis *Diallo* bylos pavyzdžiu, ir pasiūlyti galimybę išspręsti šią problemą integruojant šiuolaikinės prigimtinės teisės požiūrį.

Tyrimo metodai (disertacijos uždavinių įgyvendinimo metodologija)

Trianguliacijos metodas. Trianguliacijos teorijų metodas reiškia, kad tyrimo objektas analizuojamas iš kelių skirtingų perspektyvų. Tai leidžia sujungti pasirinktų taikomų teorijų privalumus ir pašalinti jų probleminius aspektus. Taip gaunamas visapusiškesnis tiriamo objekto vaizdas. Trianguliacijos metodas taikomas šioje disertacijoje, siekiant sujungti dvi skirtingas teorijas: pozityviosios teisės požiūrį ir šiuolaikinės prigimtinės teisės požiūrį. I disertacijos dalyje žmogaus teisės į nuosavybę analizė pagrįsta pozityviaja teise, nagrinėjama, kaip ši teisė pasireiškia formaliai pripažintuose ir teisiškai įpareigojančiuose tarptautinės teisės šaltiniuose – visų pirma tarptautinėse sutartyse, tarptautiniuose teisiniuose papročiuose ir bendruosiuose teisės principuose. II dalyje ta pati teisė nagrinėjama per šiuolaikinės prigimtinės teisės prizmę. Taikant šiuos du požiūrius tai pačiai žmogaus teisei į nuosavybę, trianguliacijos metodas atskleidžia kiekvieno požiūrio trūkumus ir nepakankamumus, kai jie naudojami atskirai. Taigi, abiejų teorijų derinimas leidžia geriau ir nuodugniau suprasti žmogaus teisę į nuosavybę tarptautinėje teisėje, praturtindamas bendrą analizę ir stiprindamas jos gylį.

Mokslinio aprašymo metodas. Tarptautinė teisė yra socialinis mokslas, kuris siekia būti apibūdintas, analizuojamas ir aiškinamas. Aprašomasis metodas yra vertingas metodas, jei tai nėra tik atsitiktinis objektų ar reiškinių aprašymas, bet metodologinis aprašymas, naudojant specifinius įrankius. Tam būtinos aiškiai apibrėžtos ribos, kas yra tyrimo objektas ir ką norima sužinoti apie tą objektą. Kitaip tariant, mokslinis aprašymas gali suteikti naujų žinių ar papildomos vertės, jei jis atliekamas iš novatoriško, pažangaus ir autentiško požiūrio perspektyvos. Jis suteikia naujų žinių ir naujo supratimo apie tą patį objektą ar procesą. Šios disertacijos atveju tyrimo objektas yra labai aiškus – žmogaus teisė į nuosavybę tarptautinėje teisėje. Nors objektas iš pirmo žvilgsnio gali pasirodyti gana įprastas, disertacijos autorė niekaip negalėtų sutikti, kad jis neaktualus ar nenusipelno atskiro tyrimo pasitelkiant aprašomąjį metodą bent dėl kelių priežasčių. Pirma, tiek istorija, tiek šiandien galiojantys formalūs tarptautinės teisės šaltiniai rodo, kad tarp valstybių pozicijų nuolat kyla esminių skirtumų, kalbant apie žmogaus teisės į nuosavybę statusą ir turinį. Antra, gausi tarptautinių teismų praktika, sprendžiant ginčus susijusius su minėta tiese, leidžia daryti prielaidą, kad kažkurioje ar kažkuriose stadijose (reglamentavime, aiškinime, taikyme) žmogaus teisė į nuosavybę yra problematiška. Trečia, ši disertacija yra novatoriška metodologiniu požiūriu – ji teigia, kad pozityvioji teisė viena negali paaiškinti žmogaus teisės į nuosavybę tarptautinėje teisėje, todėl analizuoja šią teisę ne tik iš pozityviosios teisės perspektyvos (dar tiksliau, ne tik iš tarptautinių sutarčių perspektyvos, kaip tai daro dauguma šį objektą analizuojančių mokslininkų), bet plėtoja šiuolaikinės prigimtinės teisės perspektyvą. Aprašomasis metodas naudojamas tyrime keliais būdais. Pirmoje disertacijos dalyje, nagrinėjant žmogaus teisę į nuosavybę iš pozityviosios teisės perspektyvos, detaliai aprašomos daugiašalių tarptautinių sutarčių nuostatos, susijusios su šios teisės apimtimi ir turiniu, kuris šiuo metu egzistuoja tarptautinėje teisėje. Kolektyvinėje teisinėje sąmonėje dominuojanti paradigma apibūdina, analizuoja ir aiškina žmogaus teisę į

nuosavybę iš tarptautinių sutarčių teisės perspektyvos, o šioje disertacijoje aprašomasis metodas naudojamas ir platesniam tarptautinės teisės šaltinių spektrui. Antroje disertacijos dalyje aprašomasis metodas naudojamas apibūdinant trijų skirtingų autorių požiūrius apie prigimtinę tarptautinę teisę ir jos šaltinius. Trečiojoje disertacijos dalyje aprašomasis metodas naudojamas supažindinant su tyrimui esminiais *Diallo* bylos faktais ir šią bylą sprendusio Tarptautinio teisingumo teismo argumentais. Be to, disertacijoje naudojamas struktūrinis metodas – siūloma, kad šie du požiūriai galėtų būti derinami ir naudojami kartu.

Lyginamasis metodas taikomas šioje disertacijoje keliais būdais. Pirmojoje disertacijos dalyje jis naudojamas lyginant įvairių tarptautinių sutarčių nuostatas, siekiant nustatyti ir paaiškinti žmogaus teisės į nuosavybę sudedamuosius elementus (apimtį) pagal tarptautinę teisę. Lyginama, kaip minėta teisė įtvirtinta tarptautinėse žmogaus teisių sutartyse ir kaip ji įtvirtinta kitose tarptautinėse sutartyse (pavyzdžiui, diplomatinėje teisėje, tarptautinėje baudžiamojoje teisėje ir t.t.). Šio palyginimo atspirties taškas yra prezumpcija, kad skirtingo tipo sutartys įtvirtina *skirtingą* teisės į nuosavybę apimtį. Be to, lyginamasis metodas taikomas analizuojant 191 nacionalinę konstituciją. Lyginamos konstitucijų nuostatos, siekiant nustatyti, ar žmogaus teisė į nuosavybę egzistuoja kaip bendrasis teisės principas ir kokia to principo apimtis. Disertacijos antrojoje dalyje lyginamasis metodas naudojamas siekiant palyginti tris skirtingus prigimtinės teisės požiūrius, leidžiančias nustatyti jų panašumus ir skirtumus. Šiuo atveju autorė remiasi prielaida, kad teorijos turi *panašumų* ir tai tampa atspirties tašku taikyti lyginamąjį metodą. Per šias taikymo sritis lyginamasis metodas prisideda prie tiek doktrininio, tiek teorinio nuoseklumo ir padeda sistemingai suprasti žmogaus teisę į nuosavybę.

Atvejo analizės metodas pasitelkiamas trečiojoje disertacijos dalyje. Šio metodo tikslas yra nuosekliai etapas po etapo ištirti vieną konkretų atvejį. Pirmiausia, identifikuojamas atvejis, tinkamas nagrinėjamos problemos iliustracijai. Tada tyrime pateikiama išsami informacija apie pasitinktą realų atvejį. Vėliau atliekama analizė ir galiausiai ji yra interpretuojama, pateikiant išvadas. Šio tyrimo tikslais pasirinkta Tarptautinio teisingumo teismo spręsta *Diallo* byla kaip tinkamiausia disertacijoje nagrinėjamos temos iliustracija. Bylos faktinės aplinkybės, teismo argumentai ir teisėjų atskirosios nuomonės išsamiai aprašytos ir atlika analizė. Galiausia, pateikiama autorės interpretacija ir išvados, kodėl teismo argumentuose atsispindinti samprata į žmogaus teisę į nuosavybę tarptautinėje teisėje yra kritikuotina ir kaip ateityje teismas galėtų išspręsti analogišką situaciją pasitelkdamas siūlomą integralų požiūrį, kai taikoma ne tik pozityvioji teisė, bet ir prigimtinės teisės požiūris.

Dedukcijos ir indukcijos metodai pirmiausia naudojami bendrųjų teisės principų identifikacimo procese, taip kaip juos naudoja Jungtinių Tautų Tarptautinės teisės komisija savo siūlomoje metodologijoje. Kaip pažymi Komisija, normų identifikavimas įvairiose nacionalinėse teisės sistemose yra iš esmės indukcinis procesas. Taip ir šiame tyrime, žmogaus teisės į nuosavybę normų atradimas atskirose nacionalinėse konstitucijose ir vėliau jų turinio apibendrinimas formuluojant išvadas apie minėtą teisę kaip bendrąjį teisės principą ir yra indukcinis procesas. Dedukcinis procesas vyksta tiriant,

ar bendroji taisyklė, kad nacionalinės teisės normos gali būti perkeltos į tarptautinės teisės rėmus ir tapti konkrečiu tarptautinės teisės principu. Šioje disertacijoje tai pasireiškia tyrimu, ar nacionalinėse teisėse gausiai sutinkama žmogaus teisė į nuosavybę gali būti perkelta į tarptautinės teisės lygmenį (ar neprieštarauja pačiai tarptautinės teisės esmei ir jos pamatiniams principams) ir taip patenkinti antrąjį metodologinį kriterijų, darant išvadą, kad šiuo konkrečiu atveju žmogaus teisė į nuosavybę gali būti laikoma bendruoju teisės principu, taikomu tarptautinėje teisėje. Suprantama, kad tai vieni esminių metodų teisiniame samprotavime, todėl jie naudojami ir kitose tyrimo dalyse. Pavyzdžiui, disertacijos pirmojoje dalyje indukcinis procesas vyksta ieškant žmogaus teisės į nuosavybę įvairiose universaliose tarptautinės teisės sutartyse ir formuluojant jose esančias charakteristikas į bendrą šios teisės požymį. Lygiai taip pat indukcinis procesas vyksta tiriant, ar žmogaus teisė į nuosavybę gali būti laikoma tarptautine paprotine teisė, kai analizuojami įvairių valstybių pasisakymai dėl šios teisės Tarptautiniame teisingumo teisme, norint identifikuoti, ar yra susiformavęs galimo papročio *opinio juris* elementas. Tuo tarpu trečiojoje dalyje pasitelkiamas dedukcinis procesas, kai analizuojant konkretų teismo sprendimą (ir atsižvelgiant į ankstesnių sprendimų tendencijas), formuluojamos bendros išvados dėl tarptautinio teisingumo teismo požiūrio į žmogaus teisę į nuosavybę ir jos statuso tarptautinėje teisėje.

Pagrindiniai ginamieji teiginiai

1. Žmogaus teisė į nuosavybę yra fundamentali žmogaus teisė, kuri pirmiausia kyla iš prigimtinės teisės.
2. Žmogaus teisė į nuosavybę yra bendrasis teisės principas (kaip tarptautinės teisės šaltinis).
3. Bendrieji teisės principai yra vienas iš trijų teisiškai įpareigojančių tarptautinės teisės šaltinių, todėl tarptautiniai teismai turi taikyti šią teisę spręsdami ginčus net ir tais atvejais, kai žmogaus teisė į nuosavybę nėra įtvirtinta tarptautinių sutarčių teisėje arba tarptautinis teismas laikytųsi nuomonės, kad tokia teisė nėra susiformavęs tarptautinis teisinis paprotys.
4. Esminė šiuolaikinės prigimtinės teisės funkcija yra identifikuoti archetipus esančius kolektyvinėje teisinėje pasąmonėje ir perkelti juos į kolektyvinę teisinę sąmonę. Žmogaus teisė į nuosavybę yra randama kolektyvinio archetipo turinyje, todėl gali būti naudojama kolektyvinėje teisinėje sąmonėje.

Tyrimų apie teisę į nuosavybę nacionaliniu ir tarptautiniu lygmeniu apžvalga

Teisė į nuosavybę kaip fizinio asmens teisė dažniausiai tiriama ir analizuojama nacionalinių arba regioninių teisinių sistemų kontekste. Metodologiniu požiūriu šios srities tyrėjai paprastai taiko lyginamąjį metodą ir lygina teisės į nuosavybę sampratą, analizuoja raidą, galiojančius teisės aktus, teisinę praktiką ir teismų jurisprudenciją skirtingose nacionalinėse sistemose arba tarp nacionalinių ir atitinkamų regioninių

sistemų.

Pavyzdžiui, 2004 m. Ali Riza Coban pristatė monografiją "Protection of Property Rights within the European Convention on Human Rights", parengtą disertacijos, apgintos Kirikkale universitete (Turkija), pagrindu. Šio darbo tikslas – išanalizuoti nuosavybės sąvoką, nuosavybės teisių apsaugą ir jų ribojimus pagal Europos žmogaus teisių konvenciją. Taigi dėmesys sutelkiamas į regioninius žmogaus teisės į nuosavybę aspektus ir jos apsaugą.

2005 m. Tom Allen paskelbė darbą "Property and the Human Rights Act 1998", kuriame daugiausia dėmesio skiriama nuosavybės teisei. Pats autorius šį darbą apibūdina kaip struktūruotą požiūrį į gausią Europos Žmogaus Teisių Teismo ir Jungtinės Karalystės teismų praktiką. Knygoje aptariama atitinkamų Konvencijos teisių rengimo istorija, jų apimtis ir struktūra (ypač Pirmojo protokolo 1 straipsnis), taip pat analizuojama, kaip tai paveiks tam tikras Anglijos teisės sritis.

2005 m. Mykolo Romerio universitete Eglė Švilpaitė apgynė disertaciją „Nuosavybės teisės apribojimai pagal 1950 m. Žmogaus teisių ir pagrindinių laisvių apsaugos konvencijos Pirmojo protokolo 1 straipsnį", kurioje teisė į nuosavybę analizuojama nacionaliniu ir regioniniu lygmenimis.

Kitas dažnai taikomas požiūris – nagrinėti žmogaus teisės į nuosavybę sąsajas su investicijų teise, aplinkos apsaugos teise, kitomis žmogaus teisėmis ar kitomis teisės šakomis. Pavyzdžiui, 2009 m. P. M. Dupuy, F. Francioni ir E. U. Petersmann paskelbė leidinį "Human Rights in International Investment Law and Arbitration", kuriame teisė į nuosavybę analizuojama investuotojo ir valstybės ginčų sprendimo kontekste.

Sandra Fredman 2020 m. veikale "Poverty and Human Rights" nagrinėja skurdo ir žmogaus teisių tarpusavio ryšį, įskaitant ir žmogaus teisę į nuosavybę.

Nepaisant to, teisės į nuosavybę kaip žmogaus teisės statusas tarptautinėje teisėje išlieka kontroversiškas.

Autoriai, nagrinėjantys teisę į nuosavybę tarptautinėje teisėje:

Vienas naujausių ir išsamiausių darbų šia tema yra Jose E. Alvarez 2018 m. studija **"The Human Right of Property"**. Autorius daugiausia dėmesio skiria Amerikos Žmogaus Teisių Teismo jurisprudencijai ir jos priešpriešai Jungtinių Amerikos Valstijų teismų nenorui pripažinti tarptautinės žmogaus teisės į nuosavybę egzistavimą. Nors autorius taip pat aptaria universaliąsias žmogaus teisių sutartis, jis aiškiai nurodo, kad darbe nenagrinėjami tarptautinės paprotinės teisės ar bendrųjų teisės principų klausimai. Taigi, siekiant atsakyti į klausimą dėl žmogaus teisės į nuosavybę egzistavimo, analizuojamas tik vienas iš trijų formliųjų tarptautinės teisės šaltinių. Viena pagrindinių autoriaus išvadų – šiuo metu neegzistuoja vieningas globalus nuosavybės apsaugos režimas, nes ši teisė reglamentuojama įvairiais dvišaliais ir daugiašaliais tarptautinių sutarčių režimais.

John G. Sprankling 2012 m. paskelbė straipsnius **"The Emergence of International Property Law"**, 2014 m. – **"The Global Right to Property"**, o vėliau ir monografiją **"The International Law of Property"**. Jis dažnai laikomas vienu pagrindinių teisės

į nuosavybę tarptautinėje teisėje tyrėjų. Autorius daro išvadą, kad teisė į nuosavybę tarptautinėje teisėje egzistuoja kaip sutartinė teisė, paprotinė norma ir bendrasis teisės principas. Vis dėlto jo tikslas – suformuoti atskirą tarptautinės teisės šaką – tarptautinę nuosavybės teisę. Todėl jis analizuoja teisę į nuosavybę įvairiose tarptautinės teisės srityse. Šiuo aspektu jo tyrimo objektas skiriasi nuo disertacijos autorės tyrimo: pirma, Sprankling nesikoncentruoja į žmogaus teisę į nuosavybę; antra, jis ją analizuoja tik pozityviosios teisės požiūriu, tuo tarpu disertacijos autorė taiko ir šiuolaikinės prigimtinės teisės perspektyvą.

Van der Walt 1999 m. paskelbė studiją **"Constitutional property clauses: a comparative analysis"**, kurioje išsamiai analizuojamos 86 jurisdikcijų konstitucinės nuosavybės nuostatos. Ši studija yra reikšminga nagrinėjant teisę į nuosavybę kaip bendrąjį teisės principą tarptautinėje teisėje. Vis dėlto disertacijos autorė analizuoja 191 valstybės konstitucines teisės į nuosavybę nuostatas ir siekia kitokių tikslų: pirma, ji koncentruojasi tik į žmogaus teisę į nuosavybę; antra, lyginamoji analizė pasitelkiama siekiant nustatyti teisės į nuosavybę statusą ir pagrindinius požymius tarptautinėje teisėje.

Naudotų šaltinių ir literatūros apžvalga

Pagrindiniai disertacijos šaltiniai yra universalios tarptautinės sutartys ir 191 valstybės nacionalinių konstitucijų nuostatos dėl žmogaus teisės į nuosavybę. Taip pat naudoti Jungtinių Tautų dokumentai, įskaitant 1994 m. ataskaitą "The right of everyone to own property alone as well as in association with others", valstybių ir tarptautinių organizacijų teisinės pozicijos pateikiamos Tarptautiniam teisingumo teismui bei Jungtinių Tautų Tartpautinei teisės komisijai.

Analizuodama žmogaus teisę į nuosavybę pozityviosios teisės požiūriu, disertacijos autorė rėmėsi Anne Peters darbu "Beyond Human Rights: The Legal Status of the Individual in International Law", Bruno Simma studija "The Sources of Human Rights Law: Custom, Jus Cogens, and General Principles", Tarptautinio teisingumo teismo jurisprudencija.

Analizuodama žmogaus teisę į nuosavybę prigimtinės teisės požiūriu, disertacijos autorė daugiausia rėmėsi Mary Ellen O'Connell "The Art of Law in the International Community", John Finnis "Natural Law and Natural Rights", Maarten Bos "A Methodology of International Law". Taip pat naudotos Antonio Augusto Cançado Trindade įžvalgos, išdėstytos veikale "International Law for Humankind: Towards a New Jus Gentium", leidusios vertinti žmogasu teisę į nuosavybę iš abiejų perspektyvų.

Disertacijos autorė novatorišku laiko Marina Kurkchiyan indėlį, susijusį su kolektyvinės teisinės sąmonės koncepcija.

Struktūra

Disertaciją sudaro: įvadas, dėstomoji dalis (sudaryta iš trijų pagrindinių skyrių), išvados bei pasiūlymai, naudotos literatūros sąrašas, du priedai (tarptautinių sutarčių

sąrašas, kuriose yra minima žmogaus arba individo teisė į nuosavybę ir 191 nacionalinės konstitucijos sąrašas su nuoroda į žmogaus teisę į nuosavybę), disertacijos santraukos lietuvių ir anglų kalbomis, disertantės mokslinių publikacijų disertacijos tema sąrašas, disertantės mokslinės veiklos aprašymas, nuorodos į disertantės publikacijas disertacijos tema.

I dalis.

Disertacijos pirmoji dalis skirta žmogaus teisės į nuosavybę analizei – jos teisinio privalomumo ir turinio identifikavimui pozityviojoje tarptautinėje teisėje. Autorė šiai analizei pasitelkia teorinį metodą – detaliai tiria kiekvieną iš trijų teisiškai įpareigojančių tarptautinės teisės šaltinių ir tikrina žmogaus teisės į nuosavybę pasireiškimą, apimtį ir elementus pagrindiniuose tarptautinės teisės šaltiniuose — universaliose tarptautinėse sutartyse, paprotinėje tarptautinėje teisėje, bendruosiuose teisės principuose — bei apsvarsto papildomus ir teisiškai neįpareigojančius instrumentus. Tyrimas taip pat vertina John G. Sprankling siūlomus penkis nuosavybės teisės elementus (teisę įgyti nuosavybę; teisę naudoti objektus, priklausančius nuosavybės teise; teisę naikinti objektus, priklausančius nuosavybės teise; teisę atsisakyti savo turimos nuosavybės; teisę perleisti savo turimą nuosavybę), siekiant nustatyti, ar visi šie elementai iš tiesų randami tarptautinės teisės šaltiniuose ir sudaro žmogaus teisės į nuosavybės turinį. Natūralu, kad dėl tokio kompleksinio ir detalaus pozityviosios teisės tyrimo, ši disertacijos dalis savo apimtimi yra didžiausia, lyginant su disertacijos antruoju ir trečiuoju skyriais.

Disertacijos pirmąją dalį sudaro penki skyriai. Trumpai apibudinamas kiekvienas skyrius.

Pirmos dalies (A) skyrius skirtas pagrindinėms šios dalies tyrimo sąvokoms – nuosavybei ir žmogaus teisei į nuosavybę. Be to, paaiškinami esminiai pokyčiai, kuriuos savo išvadose patvirtino Tarptautinės teisės komisija dėl tarptautinės teisės šaltinių. Kadangi tyrimas nustatinėja žmogaus teisės į nuosavybę statusą įvairiuose tarptautinės teisės šaltiniuose, būtina tą daryti metodologiškai teisingai pagal naujausius doktrininius reikalavimus. Šiame skyriuje konstatuojamas faktas, kad tarptautinėje teisėje nėra visuotinai pripažintos ir teisiškai privalomos žmogaus teisės į nuosavybę definicijos. Tiesa, regioniniai tarptautiniai žmogaus teisių apsaugos teismai (Europos, Afrikos, Amerikos šalių) savo praktikoje yra pateikę išaiškinimus, kaip jie supranta, ką apima ši teisė. Bendras visų regionų sampratų apie žmogaus teisę į nuosavybę bruožas – tai kad teisė yra ir individuali, ir kolektyvinė. Be to, kad tai yra plati, savyje daug talpinanti (skirtingų nuosavybės objektų prasme) ir daug apimanti teisė (skirtingų teisių prasme). Vis tik tarptautinės teisės metodologija neleidžia, tiesiog pritaikius lyginamąjį ir indukcinį metodus, įvertinti regionines šios sąvokos sampratas ir tokio vertinimo pagrindu išvesti vieną bendrą generalizuotą apibrėžimą, teigiant, kad tokia yra tarptautinės teisės samprata. Tai būtų klaidingas būdas daryti išvadas, nes tarptautinė teisė taip neveikia. Tarptautinė teisė yra savarankiška unikali teisės sistema turinti savo struktūrą, metodus ir veikimo principus, todėl būtina jų laikytis. Tuo tarpu nuosavybės

kaip turto apibrėžimas randamas Jungtinių Tautų Konvencijoje prieš tarptautinį organizuotą nusikalstamumą (Palermo konvencija), 2 straipsnio (d) dalyje: „tai visų rūšių turtas, tiek materialus, tiek nematerialus, kilnojamasis ar nekilnojamasis, daiktinis ar nedaiktinis, ir teisę į tokį turtą ar jo dalį patvirtinantys teisniai dokumentai".

Pirmos dalies (B) skyrius skirtas tarptautinių sutarčių kaip tarptautinės teisės šaltinio analizei. Pirmas žingsnis šiame skyriuje – tarptautinių sutarčių su žmogaus teisės į nuosavybe nuostata sąrašo sudarymas. Siekiant nuoseklumo, aiškumo ir visapusiško situacijos įvertinimo, į sąrašą yra įtraukiamos tiek regioninės tarptautinės sutartys, tiek universalios tarptautinės sutartys. Trumpai apžvelgiama įvairių regioninių sutarčių, įtvirtinančių žmogaus teisės į nuosavybę nuostatą, situacija. Oficialiai laikoma, kad egzistuoja penkios regioninės žmogaus teisių apsaugos sistemos (visos, išskyrus Aziją, įkurtos tarptautinių regioninių sutarčių pagrindu). Europoje jos apima 44 valstybes, Amerikos žemyne apima 23 valstybes, Afrikos regione apima 53 valstybes, Arabų šalių regione apima 16 valstybių, o Azijoje apima 10 valstybių. Taigi, iš viso 146 pasaulio valstybės bent kažkokia apimtimi dalyvauja ar yra išreiškusios norą kurti regioninę tarptautinę žmogaus teisių apsaugos sistemą, o kartu ir konkrečiai žmogaus teisės į nuosavybę apsaugos sistemą (nes šį teisė yra įvardinama visų penkių paminėtų regionų dokumentuose). Vis tik, Arabų šalių regione ir Azijos regione nėra sukurta praktinių mechanizmų, kurie realiai veiktų ir žmonės galėtų jų pagalba ginti savo pažeistą žmogaus teisę į nuosavybę. Tai reiškia, kad tokie mechanizmai geriausiu atveju prieinami tik 120 valstybių jurisdikcijoje esantiems asmenims. Grįžtant prie valstybių, kurios niekaip nėra išreiškusios valios dalyvauti jokiose regioninėse žmogaus teisių apsaugos sistemose, tenka pastebėti, kad jų jurisdikcijoms priklauso bent 3 milijardai gyventojų iš 8 milijardų viso pasaulio gyventojų, t.y., mažiausiai 38% arba daugiau nei vienas trečdalis viso pasaulio gyventojų. Taigi, net vertinant pačio geriausio scenarijaus atvejį, kas trečias pasaulio gyventojas gyvena tokioje teisinėje sistemoje, kuri nesuteikia galimybės jam ginti savo žmogaus teisės į nuosavybę regioniniu tarptautiniu lygmeniu. Daroma išvada, kad trys regioninės sistemos (Europoje, Amerikos žemyne ir Afrikos žemyne) per savo tarptautinių regioninių teismų praktiką yra išplėtojusios žmogaus teisės į nuosavybę sampratą, tvirtai ir nedviprasmiškai artikuliuoja šios teisės egzistavimą, detaliai įvardina jos turinį.

Universalios tarptautinės sutartys (B) skyriuje išskiriamos į dvi grupes – pirma, universalias žmogaus teisių sutartis, kurių tikslas pirmiausia ir yra įtvirtinti pamatines žmogaus teises, bei, antra, kitų tarptautinės teisės šakų universalias sutartis, kurių pirminis tikslas yra sureguliuoti tam tikrus valstybių tarpusavio santykius (pavyzdžiui, diplomatinius ir konsulinius santykius), tačiau jose taip pat atsiranda nuostatos, mininčios fizinio asmens teisę į nuosavybę. Pirmoji tarptautinių sutarčių grupė savo ruožtu dar yra skirstoma į du pogrupius – pirmąjį pogrupį sudaro konvencijos, kurių tikslas yra skelbti ir įtvirtinti pagrindinių žmogaus teisių katalogus, o antrąjį pogrupį sudaro antidiskriminacinės konvencijos, kurių tikslas yra apsaugoti pažeidžiamiausias žmonių grupes. Pirmajam pogrupiui priskiriamos tik dvi universalios žmogaus teisių sutartys – 1966 metų Tarptautinis pilietinių ir politinių teisių paktas bei 1966 metų Tarptautinis ekonominių, socialinių ir kultūrinių teisių paktas. Nei vienoje iš šių

sutarčių, kaip jau buvo minėta aptariant viso tyrimo mokslinę problemą, žmogaus teisė į nuosavybę nėra įtvirtinta. Taigi, šios sutartys nepatenka į tolimesnę tyrimo apimtį. Tačiau pats fakto konstatavimas rodo, kad valstybių, kaip tarptautinės teisės subjektų valia, žmogaus teisė į nuosavybę buvo svarstoma, bet sąmoningai nebuvo įtvirtinta greta kitų pamatinių žmogaus teisių. Antrajam pogrupiui įprastai yra priskiriamos keturios antidiskriminacinės sutartys ir jose visose yra minima fizinio asmens teisė į nuosavybę.

Antras žingsnis šiame skyriuje – sugrupuotų tarptautinių sutarčių analizė ir vertinimas. Jis atliekamas pasitelkiant doktrininį požiūrį, kad tarptautinės individualios teisės (*international individual rights*) yra skirstomos į žmogaus teises (*human rights*) ir paprastas individualias tarptautines individo teises (*simple or ordinary individual rights*). Tokį skirstymą išsamiai aprašo Anne Peters. Be to, tokį skirstymą naudoja ir Tarptautinis teisingumo teismas savo jurisprudencijoje, pavyzdžiui, *LaGrand* byloje teismas naudoja sąvoką individualios teisės (*individual rights*), o *Barcelona Traction* byloje kalba apie žmogaus teises (*human rights*). Šis atskyrimas randamas ir Bruno Simma darbuose, kur buvęs Tarptautinio teisingumo teismo teisėjas analizuoja *LaGrand* ir *Avena* bylas ir aptaria teismo pasirinkimą Vienos konvencijoje dėl konsulinių santykių 36 straipsnyje įtvirtintą fizinio asmens teisę pripažinti kaip individo teisę, bet susilaiko nuo atsakymo į bylos šalių klausimus, ar tai yra ir žmogaus teisė. Disertacijoje daroma išvada, kad Tarptautinis teisingumo teismas *LaGrand* ir *Avena* bylose aiškiai įvardina naują tendenciją savo jurisprudencijoje (nors doktrinoje toks skirstymas randamas jau anksčiau) – atskirti žmogaus teises ir paprastas individo teises. Teismas taip pat nurodo, kad fizinio asmens individualios teisės gali kilti tiesiogiai iš valstybių tarptautinių sutarčių, nepaisant to, kad tokia teisė dar neegzistuoja kaip žmogaus teisė. Kitaip tariant, nėra tokios žmogaus teisės *per se* būti informuotam apie galimybę gauti konsulinę apsaugą, ši individuali teisė suprantama tarsi antrinė teisė ir kyla tik tuo atveju, jei valstybės tarpusavyje palaiko konsulinius ryšius ir yra prisijungusios prie Vienos konvencijos dėl konsulinių santykių. Disertacijos autorė pastebi, kad toks atskyrimas vertas dėmesio ir įvertinimo žmogaus teisės į nuosavybę tarptautinėse sutartyse tyrimo kontekste, nes svarbu suprasti, kada ši teisė gali būti įvardinama kaip žmogaus teisė, o kada ji gali būti vadinama tarptautine individo teise ir kodėl toks skirtumas atsiranda bei kokią tai turi praktinę reikšmę. Atitinkamai, taikant šią teismo naudojamą diferenciaciją ir teisėjo Shi atskirojoje nuomonėje pateiktą metodologiją, tyrime analizuojama, ar tarptautinėse sutartyse esančios nuostatos susijusios su fizinio asmens teise į nuosavybę yra žmogaus teisės, ar paprastos tarptautinės individo teisės.

Taigi, pirmiausia vertinamos antidiskriminacinių tarptautinių sutarčių nuostatos, kuriose yra minima fizinio asmens teisė į nuosavybę: (1) Tarptautinė konvencija dėl visų formų rasinės diskriminacijos panaikinimo (*International Convention on the Elimination of All Forms of Racial Discrimination*), (2) Jungtinių Tautų konvencija dėl visų formų diskriminacijos panaikinimo moterims (*Convention on the Elimination of All Forms of Discrimination against Women*), (3) Jungtinių Tautų neįgaliųjų teisių konvencija (*Convention on the Rights of Persons with Disabilities*), (4) Tarptautinė konvencija dėl visų migruojančių darbuotojų ir jų šeimos narių teisių apsaugos (*International*

Convention of the Rights of All Migrant Workers and Members of Their Families). Disertacijos autorė į šį pogrupį siūlo įtraukti ir penktąją tarptautinę sutartį – Konvenciją dėl asmenų be pilietybės statuso (*Convention Relating to the Status of Stateless Persons*).

Vėliau vertinamos antrosios tarptautinių sutarčių grupės nuostatos – septynių skirtingų tarptautinės teisės šakų universaliųjų sutarčių dalys, mininčios fizinio asmens teisę į nuosavybę. Į šį sutarčių sąrašą patenka: (1) dvi tarptautinės humanitarinės teisės sutartys - 1907 metų Hagos konvencija dėl karo sausumoje įstatymų ir papročių bei 1949 metų Ženevos IV konvencija dėl civilių asmenų apsaugos karo metu, (2) tarptautinės pabėgėlių teisės sutartis - 1951 metų Konvencija dėl pabėgėlių statuso, (3) dvi tarptautinės intelektinės teisės sutartys – 1994 metų sutartis dėl intelektinės nuosavybės teisių aspektų, susijusių su prekyba ir Paryžiaus konvencija dėl pramoninės nuosavybės saugojimo, (4) tarptautinės darbo teisės sutartys – Tarptautinės darbo organizacijos (TDO) konvencija Nr.169, Tarptautinės darbo organizacijos (TDO) konvencija Nr.107, Tarptautinės darbo organizacijos (TDO) konvencija Nr.117, Tarptautinės darbo organizacijos (TDO) konvencija Nr.95, Tarptautinės darbo organizacijos (TDO) konvencija Nr.100, (5) tarptautinės kultūros paveldo apsaugos sutartys – 1954 metų Hagos konvencija dėl kultūros vertybių apsaugos ginkluoto konflikto metu, UNESCO nelegalaus kultūros vertybių įvežimo, išvežimo ir nuosavybės teisės perdavimo uždraudimo priemonių konvencija, (6) tarptautinės baudžiamosios teisės sutartis - Jungtinių Tautų Konvencija prieš tarptautinį organizuotą nusikalstamumą (Palermo konvencija), (7) tarptautinės diplomatinės ir konsulinės teisės dvi sutartys – 1961 metų Vienos konvencija dėl diplomatinių santykių ir 1963 metų Vienos konvencija dėl konsulinių santykių.

Trečias žingsnis (B) skyriaus tyrime – atskirų fizinio asmens teisės į nuosavybę elementų vertinimas tarptautinėse sutartyse. Pirmas elementas – teisė įgyti (*right to acquire*) nuosavybę. Šis elementas randamas trijose universaliose tarptautinėse sutartyse - dviejose antidiskriminacinėse sutartyse ir vienoje tarptautinės pabėgėlių teisės sutartyje. Siauresne apimtimi, kai kalbama tik apie vieną iš šio elemento formų, t.y., teisę įgyti nuosavybę konkrečiai paveldėjimo būdu, užsimenama trijose antidiskriminacinėse sutartyse. Taigi, galima teigti, kad tarptautinėse sutartyse yra įtvirtintas *individualios* teisės į nuosavybę elementas - teisė įgyti, bet, kad tai yra žmogaus teisės į nuosavybę elementas be detalesnės analizės teigti negalima. Antras elementas - teisė naudoti (*right to use*) objektus. Nors regioninėse tarptautinėse sutartyse tai vienas iš esminių žmogaus teisės į nuosavybę sudedamųjų dalių, universaliosiose antidiskriminacinėse sutartyse šis elementas apskritai nėra minimas. Šis elementas aptiktas tik TDO konvencijoje Nr.169, tačiau prie konvencijos yra prisijungusios vos 24 valstybės, o pati teisė naudoti yra labai apribota tiek subjektų, tiek objektų prasme. Kaip šio elemento sinonimas vartojamas terminas teisė taikiai naudotis (*right to peacefully enjoy possessions*), tačiau ir šis terminas universaliose tarptautinėse sutartyse nėra populiarus – randamas tik vienoje antidiskriminacinėje sutartyje, siekiančioje apsaugoti moterų teises, bet taikomas ne visoms moterims, o tik santuokoje esančių moterų teisių apsaugai. Ši tyrimo dalis rodo, kad John Sparkling teiginys, jog teisė naudoti neabejotinai yra tarptautinės teisės į nuosavybę elementas, negali būti patvirtintas, nes

universaliose tarptautinėse sutartyse jo paprasčiausiai nėra. Taigi, šios dalies tyrimas rodo, kad kalbant apie žmogaus teisę į nuosavybę, nėra pagrindo teigti, kad elementas „teisė naudotis" galėtų būti laikoma tokios teisės sudėtine dalimi. Trečias elementas – teisė administruoti (*right to administer/ right to manage*). Šis elementas sutinkamas tik vienoje antidiskriminacinėje sutartyje, Jungtinių Tautų konvencijoje dėl visų formų diskriminacijos panaikinimo moterims, ir ten yra minimas du kartus: ir kaip visų moterų teisė administruoti savo turtą ir atskirai kaip ištekėjusių moterų teisė, kuri yra lygi jų vyrų turimai teisei administruoti turtą. Taigi, tyrimas rodo, kad ir šis teisės į nuosavybę elementas nėra paplitęs tarptautinėse sutartyse, todėl sunku būtų pagrįsti teiginį, kad tarptautinė sutartinė teisė įtvirtina žmogaus teisės į nuosavybę turinyje šį elementą. Geriausiu atveju būtų galima kalbėti apie teisės administruoti elementą kaip individo teisės į nuosavybę sudedamąją dalį. Ketvirtas elementas – teisė perleisti arba teisė disponuoti (*right to transfer/ right to dispose of*). Šis elementas sutinkamas tik Jungtinių Tautų konvencijoje dėl visų formų diskriminacijos panaikinimo moterims, kai kalbama apie ištekėjusių moterų ir jų vyrų lygybę. Taip pat šis elementas paminimas TDO konvencijoje Nr.95, teigiant, kad darbuotojas turi teisę disponuoti savo darbo užmokesčiu, bei UNESCO nelegalaus kultūros vertybių įvežimo, išvežimo ir nuosavybės teisės perdavimo uždraudimo priemonių konvencijoje. Vadinasi, tyrimas rodo, kad šis elementas gali būti vertintinas kaip individo teisės į nuosavybę sudedamoji dalis, bet ne kaip žmogaus teisės į nuosavybę dalis. Apibendrinant trečią žingsnį (B) skyriuje, daroma išvada, kad tarptautinėje sutarčių teisėje yra identifikuojami minėti individo teisės į nuosavybę elementai, tačiau negalima teigti, kad tai yra žmogaus teisės į nuosavybę elementai.

Ketvirtas žingsnis (B) skyriaus tyrime – atliktos analizės tarpinių išvadų pateikimas. Pirma, doktrinoje, aiškinančioje žmogaus teisę į nuosavybę randami du pagrindiniai požiūriai: vienas, kad svarbiausias dalykas yra pačių nuosavybės objektų apsauga (nuosavybė kaip daiktas, objektas), ir, antras, kad svarbi yra santykio tarp asmens ir objekto apsauga (nuosavybė kaip teisė). Tarptautinių sutarčių analizė leidžia daryti išvadą, kad regioninės tarptautinės sutartys saugo ir objektą, ir santykį, tuo tarpu universalių tarptautinių sutarčių turinyje (ypač specializuotų tarptautinės teisės šakų) randamos formuluotės, kuriose akivaizdus prioritetas yra pats objektas ir jo apsauga, o ne asmens teisės (ryšio tarp asmens ir objekto) apsauga. Antra, pasinaudojus doktrinoje ir Tarptautinio teisingumo teismo jurisprudencijoje daroma skirtimi tarp individo teisės ir žmogaus teisės, autorei sugrupavus tarptautines sutartis ir įvertinus jų nuostatas apie nuosavybę, daroma išvada, kad specializuotų tarptautinės teisės šakų sutartyse pirmiausia yra įtvirtinta individo teisė į nuosavybę, o ne žmogaus teisė į nuosavybę. Antidiskriminacinėse tarptautinėse sutartyse situacija nėra vienareikšmiška ir turėtų būti tiriama konkrečiai kiekvienu atveju, norint pasakyti, ar toje sutartyje įtvirtinta teisė yra individo teisė į nuosavybę, ar žmogaus teisė į nuosavybę. Trečia, tarptautinėse žmogaus teisių sutartyse, kurių pirminis tikslas yra skelbti žmogaus teisių sąrašą teisė į nuosavybę nėra įtvirtinta. Ketvirta, net ir doktrinoje dažniausiai minimi fizinio asmens teisės į nuosavybę elementai nėra dažnai sutinkami tarptautinėse sutartyse, taigi, daroma išvada, kad remiantis universaliomis tarptautinėmis sutartimis negalima

užtikrintai įvardinti, koks yra žmogaus teisės į nuosavybę turinys. Labiausiai tikėtina, kad teisė įgyti, kaip teisės į nuosavybę elementas, ir teisė paveldėti, kaip teisės į nuosavybę elementas, yra žmogaus teisės į nuosavybę turinio dalys, įtvirtintos universaliose tarptautinėse sutartyse. Penkta, nors tarp pagrindinių tyrimo užduočių nėra siekiama lyginti regioninių tarptautinių sutarčių ir universalių tarptautinių sutarčių, vis tik, matyti, kad takoskyra yra didžiulė, todėl vertinant tik sutartis, kaip žmogaus teisės į nuosavybę šaltinį, nereikėtų stebėtis, kad regioninė šios teisės samprata ir universali samprata skiriasi iš esmės savo apimtimi.

Pirmos dalies (C) skyrius skirtas tyrimui, ar žmogaus teisė į nuosavybę egzistuoja kaip tarptautinis teisinis paprotys. Tiriama valstybių praktika ir *opinio juris*. Ši tyrimo dalis atskleidžia, kad individo teisė į nuosavybę turi tarptautinio papročio statusą, tačiau atlikta analizė neleidžia teigti, kad žmogaus teisė į nuosavybę turi tokį statusą. Vis tik ir individo teisė į nuosavybę tarptautinėje paprotinėje teisėje yra itin ribota. Autorė, remdamasi tyrimu, sutiktų tik su labai kuklia tokio papročio formuluote: „Kiekvienas individas turi teisę į *asmeninį* turtą."

Pirmos dalies (D) skyrius skirtas tyrimui, ar žmogaus teisė į nuosavybę egzistuoja kaip bendrasis teisės principas. Remiamasi Tarptautinės teisės komisijos 2023 m. pasiūlyta metodologija ir atliekamas 191 nacionalinės konstitucijos tyrimas. Esminė šios tyrimo dalies išvada – žmogaus teisė į nuosavybę yra fundamentali žmogaus teisė ir ji egzistuoja kaip bendrasis teisės principas (tarptautinio teisės šaltinio prasme).

Pirmos dalies (E) skyrius skirtas trumpai apžvelgti esminius dokumentus, kurie yra laikomi neteisiškai įpareigojančiais tarptautiniais susitarimais ir kuriuose yra minima žmogaus teisė į nuosavybę.

Apibendrinant, I disertcijos dalis konstatuoja, kad atsakymas, ar pozityvioji tarptautinė teisė pripažįsta žmogaus teisę į nuosavybę yra nevienareikšmiškas, o priklauso nuo konkretaus šaltinio.

II dalis.

Antrojoje disertacijos dalyje pirmiausia yra analizuojama šiuolaikinės prigimtinės teisės samprata ir jos šaltiniai. Prigimtinės teisės šaltinių problema nėra tokia vienareikšmė, kaip galėtų atrodyti iš pirmo žvilgsnio, kadangi nėra suformuoto ir visuotinai pripažinto šių šaltinių sąrašo. Pozityviojoje teisėje gerai žinomas skirtumas tarp formaliųjų ir materialiųjų tarptautinės teisės šaltinių. Formalieji šaltiniai apibrėžiami kaip tie, iš kurių teisės norma įgyja teisinį privalomumą, o materialieji šaltiniai nurodo normos turinio kilmę. Pavyzdžiui, konkrečios teisės normos formalusis šaltinis gali būti tarptautinis paprotys, tačiau jos materialusis šaltinis gali būti aptinkamas prieš daugelį metų sudarytoje dvišalėje sutartyje arba kurios nors valstybės vienašaliame pareiškime. Tuo tarpu prigimtinės teisės srityje tokio nusistovėjusio ir pripažinto šaltinių sąrašo nėra. Dėl šios priežasties, prieš pradedant žmogaus teisės į nuosavybę analizę prigimtinės teisės šaltinių kontekste, būtina atlikti papildomą analitinį žingsnį – identifikuoti šiuolaikinės prigimtinės teisės šaltinius. Šiuo tikslu disertacijos autorė analizuoja tris skirtingus prigimtinės teisė požiūrius.

Pirma, nagrinėjami Maarten Bos prigimtinės teisės šaltiniai, pristatyti jo veikale "*A Methodology of International Law*". Bos reikšmingą savo akademinės ir profesinės veiklos dalį skyrė tarptautinės teisės teorijai ir praktikai. Bos teigia, kad prigimtinės teisės esmę sudaro (i) bendrieji elgesio principai ir (ii) struktūriniai principai, kurie gali būti įvardijami kaip prigimtinės teisės principai. Antra, analizuojama Australijos teisės filosofo ir teisininko John Finnis, sukūrusio vieną iš išsamiausių šiuolaikinių prigimtinės teisės teorijų, pozicija. Pasak Finnio, prigimtinės teisės šaltinius sudaro: (i) septynios pagrindinės gėrybės, suvokiamos kaip objektyvios vertybės, ir (ii) devyni pagrindiniai praktinio protingumo reikalavimai. Trečia, nagrinėjamas Mary Ellen O'Connell, Jungtinių Amerikos Valstijų Notre Dame universiteto Teisės mokyklos profesorės, požiūris, pateiktas leidinyje "*The Oxford Handbook on the Sources of International Law*". O'Connell išskiria tris prigimtinės teisės šaltinius: (i) bendruosius principus, būdingus teisės sistemoms, (ii) *jus cogens* normas ir (iii) teisinės valdžios pagrindą prigimtinėje teisėje. Šių trijų autorių pasirinkimas ir jų teorijų nagrinėjimo seka nėra atsitiktiniai. Pirmiausia disertacijos autorė analizuoja Maarten Bos holistinę, struktūrinę tarptautinės teisės kaip visumos sampratą, atskleisdama prigimtinės ir pozityviosios teisės tarpusavio sąveiką šioje sistemoje. Vėliau dėmesys sutelkiamas išimtinai į prigimtinę teisę kaip savarankišką reiškinį, remiantis Johno Finniso teoriniu požiūriu. Galiausiai nagrinėjamas Mary Ellen O'Connell šiuolaikinis siūlymas praplėsti prigimtinės teisės sampratą, pasitelkiant estetinės filosofijos įžvalgas. Apibendrinant, šioje disertacijos dalyje nuosekliai analizuojami trys skirtingi požiūriai į prigimtinės teisės šaltinius, siekiant identifikuoti jų bendruosius vardiklius. Šios išvados sudaro metodologinį pagrindą tolesniam nuosavybės teisės kaip žmogaus teisės tyrimui šiuolaikinės prigimtinės teisės perspektyvoje. Vis tik šių teorijų analizė neatsako į vieną klausimą – koks yra šiuolaikinės prigimtinės teisės kilmės šaltinis? O prigimtinė teisė dažnai sulaukia kritikos būtent dėl savo transcendentaliosios prigimties – prielaidos, kad teisė „yra" remiasi aukštesniąja, gamtos teise (*lex aeterna*), iš kurios turėtų kilti pozityvioji teisė. Esminė problema teisės filosofijoje yra spraga tarp realybės („yra") ir normatyvumo („turėtų būti"), kuri kelia abejonių dėl prigimtinės teisės kilmės ir pagrįstumo. Šioje disertacijoje siūlomas sprendimas grindžiamas **kolektyvinės teisės sąmonės ir pasąmonės koncepcijomis**: „yra" atspindi kolektyvinę teisės sąmonę – veikiančias normas ir institucijas, o „turėtų būti" – kolektyvinę pasąmonę, kurioje glūdi archetipiniai modeliai (universalūs etiniai idealai ar vertybės). Jungo psichologijos sąvokomis universalūs archetipai veikia kaip tiltas tarp šių lygmenų, leidžiantis paaiškinti, interpretuoti ir pritaikyti prigimtinės teisės principus. Disertacijoje aptariama kolektyvinės teisės sąmonės (KTS) sąvoka, kuri buvo pristatyta 2012 m. (Marina Kurkchiyan) ir apibrėžiama kaip „požiūrių į tai, kas yra teisė, visuma ir žmonių santykis su ja tam tikroje visuomenėje". Remiantis individualios teisinės sąmonės samprata, disertacijos autorė siūlo šiek tiek pakeisti Marina Kurkchiyan apibrėžimą - joje turėtų būti atsižvelgiama ne tik į dominuojančius, bet į visus egzistuojančius požiūrius į teisę. Tai reiškia, kad tiek naujos, tiek senos, tiek mažiau populiarios idėjos apie teisę, egzistuojančios tam tikroje grupėje (pvz., universitete, šalyje ar teisės tradicijoje), sudaro vieną kolektyvinę teisės sąmonę. Tolimesnėje disertacijos dalyje autorė parodo, kaip archetipiniai

modeliai gali būti interpretuojami, pateikdama simbolinę Heraklio mito apie Kretos buliaus sutramdymą interpretaciją. Tai leidžia padaryti išvadas apie žmogaus teisės į nuosavybę prigimtines charakteristikas iš šiuolaikinės prigimtinės teisės perspektyvos. Pirma, kad žmogaus teisė į nuosavybę kertinę reikšmė turi santykis tarp nuosavybės turėtojo ir nuosavybės objekto. Antra, kad taip svarbu, jog šis santykis būtų gerbiamas ir į jį nesikištų tretieji asmenys.

III dalis.

Šioje disertacijos dalyje išsamiai analizuojama Tarptautinio teisingumo teismo *Diallo* byla. Ji pasirinkta kaip tinkamiausias pavyzdys šiam tyrimui dėl keleto priežasčių. Pirma, atsižvelginat į tyrimo sumanymą buvo reikalinga būtent Tarptautinio teisingumo teismo praktika, o ne regioninių teismų jurisprudencija. Antra, *Diallo* byla yra išimtinai apie žmogaus teises, įskaitant ir žmogaus teisę į nuosavybę. Be to faktinės aplinkybės susijusios ir su asmenine žmogaus nuosavybe, ir su jo turtinėmis teisėmis. Trečia, byla jau yra galutinai išspręsta, o vėlesnės praktikos šiuo klausimu Teisme nėra.Taikoma metodologija apima: tyrimui reikšmingų faktinių aplinkybių aprašymą, Teismo išvadų, grindžiamų pozityviąja teise, analizę; bei pasiūlymus, kaip įiuolaikinės prigimtinės teisės požiūris galėtų papildyti ar pakeisti Teismo galutines išvadas.

Pirmiausia pateikiamos tyrimui reikšmingiausios *Diallo* bylos faktinės aplinkybės. *Diallo* byla susijusi su Ahmadou Sadio Diallo – Gvinėjos pilietybę turinčiu verslininku, kuris 32 metus gyveno Kongo Demokratinėje Respublikoje. Ten jis valdė ne vieną verslą, ten buvo jo gyvenamoji vieta. 1998 m. Gvinėja inicijavo teisminį procesą prieš Kongo Demokratinę Respublikoją, teigdama, kad buvo pažeistos A. S. Diallo teisės, įskaitant jo žmogaus teisę į nuosavybę. Šis asmuo buvo neteisėtai sulaikytas ir išsiųstas iš šalies, neleidžiant jam pasirūpinti savo turimu turtu. Gvinėjos teigimu, iš pono Diallo buvo neteisėtai atimtos jo reikšmingos investicijos, verslas, kilnojamasis ir nekilnojamasis turtas neliko galimybių pasinaudoti banko sąskaitose esančiomis lėšomis.

Gvinėja savo ieškinyje rėmėsi bendraisiais teisės principais, 1789 m. Žmogaus ir piliečio teisių deklaracija (2 straipsnis) bei imperatyviosiomis tarptautinės teisės normomis (1969 m. Vienos konvencijos dėl tarptautinių sutarčių teisės 53 straipsnis). Reikalavimas apėmė tris kategorijas: (a) A. S. Diallo asmenines teises; (b) jo teises kaip dviejų bendrovių – *Africom-Zaire* ir *Africontainers-Zaire* – savininko; ir (c) pačių bendrovių teises.

Kongo Demokratinė Respublika, atsakydama į ieškinį, pateikė preliminarius prieštaravimus, tačiau Teismas nusprendė, kad pirmosios dvi reikalavimų kategorijos yra priimtinos, o reikalavimai dėl bendrovių teisių negali nagrinėjami byloje iš esmės. Tyrimo tikslais disertacijoje atliekama analizė apsiriboja A. S. Diallo asmenine žmogaus teise į nuosavybę.

Pozityviosios teisės taikymas faktinėms aplinkybėms atsispinti Teismo 2010 metų sprendime ir 2012 metų sprendime.

2010 m. sprendime Teismas nustatė A. S. Diallo teisių pažeidimus pagal Tarptautinį pilietinių ir politinių teisių paktą, Afrikos žmogaus ir tautų teisių chartiją bei Vienos

konvenciją dėl konsulinių santykių, tačiau nepateikė jokio pasisakymo dėl žmogaus teisę į nuosavybę. Kalbėdamas apie nuosavybę, Teismas pripažino Gvinėjos argumentą, grindžiamą Afrikos chartijos 14 straipsniu, tačiau nurodė, kad tai susiję su „žala, kurią A. S. Diallo patyrė dėl neteisėtų veiksmų", ir šio klausimo nagrinėjimą perkėlė į tolimesnę stadiją, kai bus nagrinėjamas žalos atlyginimo klausimas. Toks lakoniškas Teismo argumentavimas kelia esminių klausimų. Pirma, Teismas nepaaiškino, ar nuosavybė laikytina žmogaus teise pagal tarptautinę teisę ir, ar Afrikos chartijos 14 straipsnis turėjo būti taikomas iš esmės. Antra, laikydamas nuosavybės praradimą tik pasekme, o ne savarankišku žmogaus teisės į nuosavybę pažeidimu, Teismas išvengė žmogaus teisės į nuosavybę kaip savarabkiškos tarptautinės teisės analizės. Trečia, Teismas atskyrė „išsiuntimo teisėtumą" nuo „patirtos žalos", leisdamas suprasti, kad nuosavybės praradimas tam tikra prasme yra nepriklausomas nuo kitų teisių pažeidimų, tačiau galiausiai jį traktavo kaip išvestinį. Toks požiūris siūlo neįprastą metodologiją: nuosavybės praradimas laikomas reikšmingu tada, kai jis siejamas su kitų teisių pažeidimais, o kitais atvejais – antraeiliu ir nereikšmingu. Disertacijos autorė tokią argumentaciją laiko neįtikinama, nes ji ignoruoja galimybę laikyti žmogaus teisę į nuosavybę savarankiška žmogaus teise.

Savo atskirojoje nuomonėje teisėjas Trindade pažymėjo, kad byla evoliucionavo ir pasikeitė jos akcentai - nuo nuosavybės ir diplomatinės apsaugos klausimų ji perėjo prie platesnės ir svarbesnės žmogaus teisių apsaugos. Jo teigimu, *vivere* yra svarbiau nei *habere*, o orus gyvenimas – aukščiau už nuosavybės teises. Nors požiūris, kad gyvybė ir orumas yra pamatinės vertybės, yra suprantamas, disertacijos autorė kritikuoja tokį dirbtinį nuosavybės atskyrimą nuo kitų pamatinių žmogaus teisių, nes vienas veiksmas gali pažeisti kelias pamatines žmogasu teises. Teismo sprendimas pripažinti neteisėtą sulaikymą ir išsiuntimą iš šalies kaip esminį žmogaus teisių pažeidimą, bet nutylėti žmogaus teisės į nuosavybę pažeidimą, sukuria teisinį neapibrėžtumą.

Teismo sprendimo 160–164 punktuose tik trumpai paminimi pono Diallo „asmeniniai daiktai", žalos atlyginimo kontekste, bet nepateikiama net menkiausia žmogaus teisės į nuosavybę analizė. Atskirosiose nuomonėse teisėjai Al-Khasawneh, Yusuf ir Bennouna teigia, kad valstybės atsakovės veiksmai prilygo netiesioginei ekspropriacijai, ypač kalbant apie A. S. Diallo teises bendrovėse. Nors šios individualios teisėjų pozicijos kelia svarbius klausimus ir tarptautinės investicijų teisės kontekste, disertacijos autorė dėmesį sutelkia į žmogaus teisės į nuosavybę klausimą.

Vėlesnis 2012 m.etų Teismo sprendimas buvo skirtas 2010 m. nustatytų pažeidimų kompensacijos dydžiui nustatyti. Gvinėja savo reikalavimą kompensuoti žalą suskirstė į keturias rūšis: (a) neturtinę žalą; (b) asmeninio turto praradimą; (c) pajamų praradimą sulaikymo ir išsiuntimo laikotarpiu; (d) potencialių pajamų praradimą. Asmeninio turto praradimo atvejo atžvilgiu Gvinėja nurodė tokius konkreęius objektus: baldus, didelės vertės daiktus (įskaitant ir vertingus pono Diallo paveikslus, papuošalus) ir banko sąskaitų turinį, iš viso reikalaudama 550 000 JAV dolerių žalos atlyginimo. Valstybė atsakovė ginčijo šiuos reikalavimus, sakydama, kad pirmiausia riakia įrodyti turto egzistavimą, tada tik jo praradimą ir galiausiai tikrąją finansinę vertę. Toks atsakovės reikalaviams atspindi pagrindinius žmogaus teisės į nuosavybę turinio elementus:

nuosavybės įgijimą, taikų naudojimąsi ir vertę.

Teismas kiekvieną iš minėtų keturių reikalavimų nagrinėjo atskirai. Neturtinė žala buvo pripažinta (85 000 JAV dolerių), o dėl asmeninio turto, nepaisant įrodymų trūkumų, Teismas priteisė 10 000 JAV dolerių, remdamasis teisingumo (*equity*) kriterijumi. Reikalavimai dėl prarastų pajamų buvo atmesti dėl įrodymų stokos – šiai pozicijai nepritarė teisėjas Yusuf savo atskirojoje nuomonėje. Tam pritaria ir disertacijos autorė, remdamasi argumentu, kad priežastinis ryšys tarp valstybės atsakovės veiksmų ir atsiradusios žalos turėjo būti pakankama, atsižvelgiant į tarptautinių regioninių žmogaus teisių teismų praktiką (pvz., *Stafford v. United Kingdom*, *Assanidze v. Georgia*, *Caracazo v. Venezuela*).

Teismo nurodytas skirtumas tarp asmeninio turto ir prarastų pajamų leidžia manyti, kad Teismas vengė pripažinti žmogaus teisę į nuosavybę kaip savarankišką žmogaus teisę. Materialinė žala buvo traktuojama kaip išvestinė iš kitų teisių pažeidimų, o ne kaip savarankiška teisė. Tai atskleidžia griežtai pozityvistinio požiūrio ribotumą – vengimą vertinti nuosavybę kaip savarankišką žmogaus teisę tarptautinėje teisėje.

Analizė ir kritika. Pozityviosios teisės požiūriu Teismas nevertino, ar žmogaus teisė į nuosavybę egzistuoja kaip tarptautinės paprotinės teisės norma, ar kaip bendrasis teisės principas, taip pat nepasisakė dėl Afrikos chartijos 14 straipsnio taikymo. Gvinėjos dėmesys kitoms teisėms ir Teismo vengimas spręsti nuosavybės klausimą lėmė tai, kad šios teisės statusas liko niekaip nepaaiškintas ir neapibrėžtas. Sprendimai atskleidžia pasikartojantį modelį: nuosavybės praradimas laikomas kitų teisių pažeidimų pasekme, o ne savarankiškos teisės pažeidimu.

Šiuolaikinės prigimtinės teisės požiūriu, žmogaus teisė į nuosavybę yra fundamentali. Be to, ši teisė yra bendrasis teisės principas. Vien šių dviejų tyrimo išvadų pakanka, kad Teismas galėtų priimti visiškai kitokį sprendimą tokio pobūdžio bylose. Pirma, Teismas turėtų pripažinti žmogaus teisės į nuosavybę pažeidimą kaip savarankiškos tarptautinės teisinės taisyklės pažeidimą, nes tai yra bendrasis teisės principas. Antra, Teismas negali laikyti nuosavybės prapradimo tik kaip kitos fundamentalios teisės pažeidimo pasekmės, nes pati žmogaus teisė į nuosavybę yra fundamentali teisė. Manytina, kad dvi fundamentalios teisės negali būti lyginamos siekiant kažkurią iš jų įvardinti kaip svarbesnę.

Nors Teismas pripažino nuosavybei padarytą žalą kaip kitų teisių pažeidimų pasekmę, jis susilaikė nuo nuosavybės vertinimo kaip savarankiškos žmogaus teisės. Sprendimai atskleidžia tarptautinės teisės neaiškumus nuosavybės apsaugos srityje ir pabrėžia būtinybę derinti pozityviosios teisės ir įiuolaikinės prigimtinės teisės perspektyvas. Šių požiūrių integravimas sustiprintų nuosavybės, kaip žmogaus teisės, apsaugą, užtikrinant, kad neteisėti veiksmai, pažeidžiantys kelias teises, būtų vertinami visapusiškai, o ne selektyviai.

Išvados ir pasiūlymai

Disertacijos autorė konstatuoja, kad tyrimo tikslai buvo įgyvendinti, uždaviniai pasiekti, o ginamieji teiginiai pagrįsti ir įrodyti.

1. Analizė rodo, kad siekiant spręsti problemas, susijusias su žmogaus teisės į nuosavybę tarptautinėje teisėje statusu ir apimtimi, būtina kumuliatyviai taikyti pozityviąją teisę ir šiuolaikinę prigimtinę teisę. Šie du požiūriai atlieka skirtingas funkcijas. Pozityvioji teisė pirmiausia suteikia teisinį privalomumą ir teisinį aiškumą, o šiuolaikinė prigimtinė teisė leidžia suprasti teisės turinio ir vertybinius teisės kilmės niuansus. Abu požiūriai turi būti taikomi kartu, nes papildo vienas kitą.
2. Žmogaus teisės į nuosavybę analizė rodo, kad verta remtis tiek šiuolaikine prigimtine teise (atspindinčią archetipines normas kolektyvinėje teisės pasąmonėje – *lex aeterna*), tiek pozityviąja teisa (visų pirma atspindinčia valstybių valią – *lex lata*), nagrinėjant problematiškus žmogaus teisės į nuosavybę atvejus. Tarptautinėje teisėje neapibrėžtumas pirmiausia kyla todėl, kad nėra aiškaus žmogaus teisės į nuosavybę reglamentavimo tarptautinių sutarčių teisėje ir tenka remtis kitais tarptautinės teisės šaltiniais. Autorė sutinka, kad prigimtinės teisės požiūrio taikymas yra sudėtingas ir laikui imlus procesas, tačiau problematiškų bylų atvejais tai galėtų būti tinkamas sprendimas.
3. Tarptautinių sutarčių teisėje žmogaus teisė į nuosavybę nėra vienareikšmė. Tarptautinėse žmogaus teisių sutartyse, kurių pirminis tikslas yra skelbti žmogaus teisių sąrašą, teisė į nuosavybę nėra įtvirtinta. Pasinaudojus doktrinoje ir Tarptautinio teisingumo teismo jurisprudencijoje daroma skirtimi tarp individo teisės ir žmogaus teisės, sugrupavus tarptautines sutartis ir įvertinus jų nuostatas apie nuosavybę, daroma išvada, kad specializuotų tarptautinės teisės šakų sutartyse pirmiausia yra įtvirtinta individo teisė į nuosavybę, o ne žmogaus teisė į nuosavybę. Tuo tarpu antidiskriminacinėse tarptautinėse sutartyse situacija nėra vienareikšmiška ir turėtų būti tiriama konkrečiai kiekvienu atveju, norint pasakyti, ar toje sutartyje įtvirtinta teisė yra individo teisė į nuosavybę, ar žmogaus teisė į nuosavybę.
4. Doktrinoje dažniausiai minimi fizinio asmens teisės į nuosavybę elementai, sudarantys šios teisės turinį, beveik nėra sutinkami tarptautinėse sutartyse. Taigi, tarptautinių sutarčių analizė atskleidžia, kad jose randami vos keli žmogaus teisės į nuosavybę elementai. Galima konstatuoti, kad teisė įgyti, kaip teisės į nuosavybę elementas, ir teisė paveldėti, kaip teisės į nuosavybę elementas, yra žmogaus teisės į nuosavybę turinio dalys, įtvirtintos universaliose tarptautinėse sutartyse. Tarptautinės sutartys, sudarytos XXI amžiuje, įtvirtina bendrą draudimą neteisėtai atimti fizinio asmens turtą. Išsami sutarčių analizė neleidžia patvirtinti doktrinoje randamų teiginių, kad tokie elementai kaip teisė administruoti ar teisė perleisti yra žmogaus teisės į nuosavybę turinio dalis.
5. Nors valstybių praktikos ir *opinio juris* analizė leidžia teigti, kad individo teisė į nuosavybę turi tarptautinio papročio statusą, tačiau atlikta analizė neleidžia teigti, kad žmogaus teisė į nuosavybę turi tokį statusą. Vis tik ir individo teisė į nuosavybę tarptautinėje paprotinėje teisėje yra itin ribota. Autorė, remdamasi tyrimu, sutiktų tik su labai kuklia tokio papročio formuluote: „Kiekvienas individas turi teisę į *asmeninį* turtą."

6. Žmogaus teisė į nuosavybę yra bendrasis teisės principas. Tokia išvada daroma atlikus išsamią nacionalinių konstitucijų analizę (185 konstitucijose iš 191 tirtos konstitucijos tokia teisė yra minima) ir įvertinus bendrojo principo perkėlimo į tarptautinės teisės sistemos galimybę. Siūloma tokia bendrojo principo kaip tarptautinės teisės šaltinio formuluotė: „Kiekvienas žmogus turi prigimtinę teisę į nuosavybę. Iš nieko negali būti atimtas turtas, išskyrus atvejus, kai tai būtina dėl viešojo intereso, yra laikomasi įstatymo nustatytų sąlygų ir kompensuojama už prarastą turtą."
7. Analizė atskleidžia, kad žmogaus teisės į nuosavybę turinys šiuolaikinėje prigimtinėje teisėje yra kur kas platesnis nei pozityviojoje teisėje. Minėtos teisės turinys formaliuosiuose tarptautinės teisės šaltiniuose yra siauresnis nei šiuolaikinės prigimtinės teisės šaltiniuose, kurie atskleidžia žmogaus teisės į nuosavybę turinio daugiaplaniškumą. Šis požiūris atskleidžia tokias esminius žmogaus teisės į nuosavybę turinio charakteristikas kaip ryšio tarp savininko ir jam priklausančio objekto svarba arba savininko teisė į šio ryšio apsaugą, neleidžiant tretiesiems asmenims į jį įsiterpti.
8. Disertacijos autorė siūlo patikslinti Marinos Kurkchiyan kolektyvinės teisinės sąmonės apibrėžimą, fokusuojantis ne tik į dominuojančius požiūrius kaip siūlo minėta mokslininkė, bet išplečiant sampratą taip, kad ji apimtų visų esančių požiūrių sumą, neatsižvelgiant į jų dažnumą. Nauja kolektyvinės teisinės sampratos formuluotė galėtų skambėti taip: „kolektyvinė teisinė sąmonė – tai visų visuomenėje esančių požiūrių į teisę ir santykį su ja visuma". Ši samptata tiksliau atspindi kompleksinį kolektyvinės sampratos turinį.
9. Disertacijoje pristatoma nauja teorinė kolektyvinės teisinės pasąmonės koncepcija, paremta C.G. Jung archetipų ir kolektyvinės pasąmonės teorija. Šiuolaikinės prigimtinės teisės esminė funkcija yra identifikuoti archetipus esančius kolektyvinėje teisinėje pasąmonėje ir perkelti juos į kolektyvinę teisinę sąmonę.
10. Analizės metu patvirtintas teiginys, kad žmogaus teisė į nuosavybę yra pagrindinė (arba fundamentali) žmogaus teisė turi praktines teisines pasekmes. Tarptautinis teisingumo teismas dar Barcelona Traction byloje konstatavo, kad pagrindinės žmogaus teisės kartu yra ir *erga omnes* įsipareigojimai. Vadinasi, žmogaus teisė į nuosavybę, būdama viena iš pagrindinių (arba fundamentalių) žmogaus teisių, sukelia lygiai tokias pat teisines pasekmes – esant jos pažeidimui, galima kalbėti apie *erga omnes* įsipareigojimų pažeidimą.
11. Išsami *Diallo* bylos analizė rodo, kad Tarptautinis teisingumo teismas šioje byloje pasinaudojo „susiliejimo doktrina" (*merger doctrine*), priimdamas sprendimą, kad žmogaus teisė į neteisėtą išsiuntimą iš šalies yra svarbesnė nei žmogaus teisė į nuosavybę ir sakydamas, kad vienas neteisėtas valstybės veiksmas sukėlė du pažeidimus, tačiau didesnis pažeidimas apima mažesnį pažeidimą, todėl žmogaus teisė į nuosavybę nėra atskiras pažeidimas, o tik neteisėjo išsiuntimo iš šalies padarinys. Autorė daro išvadą, kad dvi pagrindinės (arba fundamentalios) žmogaus teisės negali būti lyginamos, nes abi yra vienodai svarbios,

todėl ateityje siūlo atsisakyti tokios praktikos ir įvardinti aiškiai abiejų teisių pažeidimus, nepaisant to, kad juos abu sukėlė vienas veiksmas.

12. Doktrinoje bendrieji teisės principai yra įvardinami kaip vienas iš trijų teisiškai įpareigojančių tarptautinės teisės šaltinių, tačiau Tarptautinis teisingumo teismas nėra linkęs remtis šiuo šaltiniu kaip savipakankamu. *Diallo* bylos analizė iliustruoja šią tendenciją. Vis tik autorė siūlo nevertinti bendrųjų teisės principų tarptautinėje teisėje vien tik kaip spragas užpildančio teisės šaltinio, kaip tai yra būdinga nacionalinėms teisės sistemoms. Tarptautinės teisė sistema yra unikali ir vienas iš jos savitų bruožų - bendrųjų teisės principų kaip savarankiško teisės šaltinio statusas. Taigi, žmogaus teisės į nuosavybę statusas ir jos turinys gali būti atskleidžiamas ne tik įtvirtinant šią teisę tarptautinėse sutartyse ar laukiant kol susiformuos tarptautinis teisinis paprotys, bet ir per bendruosius teisės principus kaip savarankišką tarptautinės teisės šaltinį.

SVARBIAUSIUS SAVO TYRIMŲ REZULTATUS PASKELBIAU STRAIPSNIUOSE/ MOKSLO STUDIJOSE:

1. „Shareholders' Rights in International Law: (con)Temporary Reflections in the Diallo case", Katuoka, Saulius, Motuzienė, Inga. Entrepreneurship and Sustainability Issues, 2020. (https://cris.mruni.eu/cris/entities/publication/2f3a4587-17b0-44d4-acc2-3b4718bc8849). Disertacijoje skirtas III skyrius *Diallo* bylos, aptariamos straipsnyje, analizei.
2. „COVID-19 pandemijos iššūkis PSO valstybėms narėms: 2005 m. Tarptautinės sveikatos priežiūros taisyklės", Katuoka, Saulius, Inga Motuzienė, 2022. (https://cris.mruni.eu/cris/entities/publication/a86b5db8-3788-4900-8271-a4df594835b7). Šioje mokslo studijoje minimos šiuolaikinės tarptautinės teisės šaltinių turinio ir formos problemos (COVID-19 kontekste), kurios atskleidžiamos disertacijos I skyriuje (žmogaus teisės į nuosavybę kontekste).
3. „ Understanding the Function of the Prohibition of the Use of Force and Its Impact on Seeking Peace", Inga Motuzienė, Chapter Section 2.2, 2024. (https://cris.mruni.eu/cris/entities/publication/2fbac61b-ad76-4504-8f24-50b05b32f7b1). Šioje monografijos dalyje aptariama pozityviosios teisės ir prigimtinės teisės sąveikos svarba (draudimo panaudoti jėgą, siekiant taikos, kontekste), o disertacijoje minėtais dviem aspektais išsamiai analizuojama asmens teisė į nuosavybę;

SAVO TYRIMŲ REZULTATUS PRISTAČIAU ŠIUOSE MOKSLINIUOSE RENGINIUOSE:

1. 2021-12-15 skaitytas pranešimas MRU organizuotoje mokslinėje konferencijoje „Nacionalinės teisės (inter alia konstitucinės teisės), Europos žmogaus teisių konvencijos ir Europos Sąjungos teisės santykis: aiškinimo ir taikymo suderinamumas ir jo iššūkiai", pranešimo tema „Nuosavybės teisės apribojimų teisėtumas saugomose teritorijose: EŽTT praktika ir Lietuva".
2. 2025-05-23 skaitytas pranešimas VDU organizuotoje mokslinėje konferencijoje "Contemporary Law Trends and Perspectives", pranešimo tema "Contemporary Changes in the Understanding of the Sources of International Law: General Principles of Law".

ATLIKTOS MOKSLINĖS STAŽUOTĖS:

1. Swiss Institute of Comparative Law, Lausanne (Switzerland), 2022 m. kovo - balandžio mėn.
2. UN International Law Commission, Geneva (Switzerland), Tarptautinės teisės komisijos 74-oji sesija, pirmoji dalis 2023 m. balandžio 25 – birželio 2 d. d., antroji dalis liepos 3 – rugpjūčio 4 d. d.

CURRICULUM VITAE

Inga Motuzienė

Akademinė karjera

2011-… *Mykolo Romerio Universitetas, Teisės mokykla (Lietuva)*

Lektorė (2011-…)

- Tarptautinių ginčų sprendimas, Viešoji tarptautinė teisė, Tarptautinių sutarčių teisė, Tarptautinių organizacijų teisė
- Mokslinių tyrimų metodologija
- MRU Philip C. Jessup komandos trenerė (2012-2015, 2024)

2022-09 *Kadiso (Kadiz) Universitetas, Teisės fakultetas (Ispanija)*

Kviestinė lektorė (paskaitos kolegoms iš Europos universitetų)

2022-04 *Šveicarijos lyginamosios teisės institutas (Šveicarija)*

Vizituojantis mokslininkas

2012 *Klaipėdos Universitetas (Lietuva)*

Kviestinė lektorė

Išsilavinimas

2017-2025 *Mykolo Romerio Universitetas, Teisės mokykla*

Doktorantė (2026 expected)

- Pagrindinės mokslinių tyrimų temos: teisė į nuosavybę tarptautinėje teisėje, Teisės teorija ir teisės filosofija, žmogaus teisės, prigiminė teisė.

2011 *Mykolo Romerio Universitetas, Teisės mokykla*

Magistro laipsnis

- Magistro baigiamasis darbas: Dispute Settlement in International Economic Organizations: Case Study of the World Bank and the World Trade Organization

2010 *Kopenhagos Universitetas*

- Tarptautinis komercinis arbitražas, Europos ir tarptautinė komenrcinė teisė, Jūrų teisė

2009 *Mykolo Romerio Universitetas, Teisės mokykla*

Bakalauro laipsnis

2003 *Joniškio M. Slančiausko gimnazija*

Brandos atestatas (su pagyrimu, M. Slančiausko premija)

Kalbos

Lietuvių k. (gimtoji), Anglų k. (C1), Rusų k. (B1), Pracūzų (A1)

Motuzienė, Inga

RIGHT TO PROPERTY AS A HUMAN RIGHT UNDER INTERNATIONAL LAW: LEGAL POSITIVISM AND CONTEMPORARY NATURAL LAW: daktaro disertacija. – Vilnius: Mykolo Romerio universitetas, 2026, p. 287.

Bibliogr. 153-165 p.

Šios disertacijos pagrindinis tikslas – nustatyti žmogaus teisės į nuosavybę statusą tarptautinėje teisėje. Siekiant šio tikslo taikoma trianguliacinė analizė, apjungianti pozityviąją teisę, šiuolaikinę prigimtinę teisę bei atvejo analizės metodą. Nors žmogaus teisė į nuosavybę buvo pripažinta 1948 m. Visuotinėje žmogaus teisių deklaracijoje, į 1966 m. Paktus ji nebuvo įtraukta, todėl jos tarptautinis teisinis statusas išlieka neaiškus. Esami moksliniai tyrimai dažniausiai apsiriboja regionine šios teisės analize arba tik pozityviąja teise, todėl lieka spragų, kurios tiriamos disertacijoje. I dalyje sistemingai analizuojama žmogaus teisė į nuosavybę iš tarptautinės teisės šaltinių perspektyvos – tarptautinių sutarčių, tarptautinių teisinių papročių ir bendrųjų teisės principų. II dalyje nagrinėjamos trys prigimtinės teisės teorijos (John Finnis, Mary Ellen O'Connell, Maarten Bos) ir pasitelkiama kolektyvinės teisinės sąmonės samprata, siekiant suprasti šiuolaikinės prigimtinės teisės kilmę ir jos šaltinius. III dalyje šios išvados pritaikomos praktikoje – analizuojama Diallo byla, siekiant parodyti, kaip pozityviosios ir prigimtinės teisės integravimas gali pašalinti esamą teisinį neapibrėžtumą. Disertacija prisideda teoriniu požiūriu, integruodama pozityviąją ir šiuolaikinę prigimtinę teisę, atskleidžia žmogaus teisės į nuosavybę statusą tarptautinėje teisėje ir siūlo praktines gaires, pateikdama visapusišką, tarpdisciplininę dažnai ginčijamos žmogaus teisės sampratą.

The purpose of this dissertation is to identify the status of the human right to property in international law. To achieve this, a triangulation analysis combining positive law, contemporary natural law, and a case study approach is applied. Despite its recognition in the 1948 Universal Declaration of Human Rights, the human right to property was excluded from the 1966 Covenants, leaving its international legal status ambiguous. Part I systematically analyzes the right to property as recognized in international treaties, customary law, general principles, and non-legally binding agreements, reflecting ongoing work of the International Law Commission. Part II examines three natural law theories (John Finnis, Mary Ellen O'Connell, Maarten Bos), identifies common principles, and applies the concept of collective legal consciousness to understand the source of contemporary natural law. Part III applies these findings to practice, analyzing the Diallo case to demonstrate how combining positive and natural law perspectives can clarify legal ambiguities and improve understanding of the right to property as a human right. The dissertation contributes theoretically by integrating positive and natural law approaches, clarifies the status of the right to property as a human right in international law, and offers practical guidance for courts and states, presenting a comprehensive, interdisciplinary understanding of this right.

Inga Motuzienė

RIGHT TO PROPERTY AS A HUMAN RIGHT UNDER INTERNATIONAL LAW: LEGAL POSITIVISM AND CONTEMPORARY NATURAL LAW

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