

القانون الدولي لحقوق الإنسان و دساتير الدول

أطروحة تقدم بها

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إلى مجلس كلية القانون في جامعة الموصل
وهي جزء من متطلبات نيل درجة الدكتوراه
في القانون العام

بإشراف

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المستخلص

تقوم هذه الدراسة على اساس البحث في امكانية ايجاد حلول للمشاكل التي تعيق تطبيق القانون الدولي لحقوق الانسان ، وذلك القانون ذو الاهمية البالغة لتطبيق حقوق الانسان بشكل عام . والذي يمثل الاداة التي يمكن من خلالها تطوير القوانين الداخلية لخدمة هذه الحقوق . وتقوم فرضية هذه الدراسة على امكانية ايجاد علاقة بين كل من القانون الدولي لحقوق الانسان و دساتير الدول ، على اساس امكانية ان يكون للدستور دور ايجابي في الاسهام في عملية تطبيق القانون الدولي لحقوق الانسان .

وتبحث هذه الدراسة عن هذه الحلول من خلال الجمع بين كل من القانونين وخلق التفاعل الايجابي بينهما لخدمة حقوق الانسان ، ويكون ذلك على اساس الالتقاء الموضوعي بينهما من حيث الخصائص وفلسفة التطبيق في سبيل التوصل ابتداءً الى امكانية ايجاد الحل من خلال هذه العلاقة ، ومن ثم التأكد من فاعلية هذا الحل من خلال طرح كيفية تطبيق القانون الدولي لحقوق الانسان واحكام ذلك واهدافه . وبعد ذلك التعرف على اهم المشاكل التي قد تواجه هذا التطبيق وفي النهاية البحث لها عن الحلول من خلال دساتير الدول وذلك على اساس التأثير الايجابي بها دولياً وتعديلها بما يخدم هذه المهمة . بحيث يؤدي كل ذلك بالنهاية الى التوصل الى ان الدستور دون سواه من القوانين الداخلية يمكن ان يكون خير سبيل لانتقال قواعد القانون الدولي لحقوق الانسان الى القوانين الوطنية ومن ثم تطبيق احكامه بالنهاية وتحقيق اهدافه .

Abstract

The present study deals with one of the principal subjects of public International Law , viz the relationship between the international Law of human rights and the Constitution, The most important part of this relation is concerned with the application and concepts of human rights or what is called the Law of human rights.

The present study is therefore based on the possibility of finding out a positive relationship which may lead to establish a new Law whose subject is human rights and how these rights are applied and developed.

The present study also aims at investigating the relationship between the International Human Rights Law and constitution. This relationship is represented by its objective aspects and the aspects related to the objectives of each of the Laws. And the privacy which concern the application of human rights. These rights are regarded as common object for both Laws so that this common ground may be regarded as a cause and impetus to the interaction between the Law in applying human rights. This interaction may conduce to its objectives through making use of the merits and characteristics of both the laws to achieve the common goal.

The relationship between the two laws is evident through demonstrating the various aspects of the relationship between the, which is represented by the general relationship between the internal law and the international law and the specific relationship between the international law of human rights and the internal law and the special relationship between the constitution and the International Law of Human Rights.

All these aspects indicate that the International Law for Human Rights needs the internal law to achieve its goals. The best way to achieve these goals is to make the constitution prominent and supreme and able to govern all the internal law beneath it.

The ability of the constitution to assist in applying the international law of human rights is ensured through investigating the possibility of activating the constitution to solve the problems which impede the application of the international law of human rights such as the problem of the relationship between internal and international laws, the problem universality of human rights, and the problem of reservation, etc.

The present study indicate that the solution to all these is to include specific constitutional provision which are compatible with the international law of human rights who goal is to solve the problems which impede applying it so that the constitution will be the suitable means to convey the rules of the international law of human rights to the internal law and at the same time to solve the problem which impede its application in addition to providing a permanent guarantee for application . These will create an anticipatory effect and a remedy against the violation of human rights. Accordingly, it can be better than the humanitarian intervention who effect is therapeutic and temporary and is full of precautions and fears, so that the anticipatory solution is better than the remedy.