

*Limits Drawn to Protect the Right to Physical Integrity
in International Legal Texts*

الحدود المرسومة لحماية الحق في السلامة الجسدية في النصوص القانونية الدولية



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Abstract

The right to physical integrity is a personal right that may not be violated under any circumstances, and may not be waived. It has been recognized by human rights declarations and international covenants in order to preserve human dignity in the first place, which inevitably affects how a person lives and how he deals with others, and thus, on society as a whole. Hence the importance of protecting the right to physical integrity at the international level, given that what is adopted at the international level will inevitably affect members of the international community, whether directly or indirectly. This is despite the current controversy surrounding the call by some for the necessity of amending the texts of international human rights law to be consistent with those who adopt the idea of physical freedom, for example, which may sometimes harm a person more than it benefits him, as it violates public order if left as it is. This is what we will discuss in this research paper.

Keywords: Safety, body, right, texts, international.

الملخص:

إن الحق في السلامة الجسدية حق شخصي لا يجوز المساس به تحت أي ظرف من الظروف، ولا يجوز التنازل عنه، وقد أقرته إعلانات حقوق الإنسان والمواثيق الدولية من أجل الحفاظ على كرامة الإنسان في المقام الأول، وهو ما يؤثر حتماً على كيفية عيش الإنسان وكيفية تعامله مع الآخرين، وبالتالي، على المجتمع ككل. ومن هنا تأتي أهمية حماية الحق في السلامة الجسدية على المستوى الدولي، على اعتبار أن ما يتم تبنيه على المستوى الدولي سيؤثر حتماً على أعضاء المجتمع الدولي، إن بطريقة مباشرة أو غير مباشرة. وهذا رغم الجدل الدائر حالياً حول دعوة البعض إلى ضرورة تعديل نصوص القانون الدولي لحقوق الإنسان لتتوافق مع من يتبنون فكرة الحرية الجسدية مثلاً، والتي قد تضر الإنسان أحياناً أكثر مما تنفعه، فهي تنتهك النظام العام إذا تركت على حالها. وفي هذه الورقة البحثية سنحاول مناقشة هذه النقاط بشكل قانوني كلما أمكن ذلك.

الكلمات المفتاحية: السلامة، الجسد، الحق، النصوص، الدولية.

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Introduction

Among the rights inherent in the human personality, we find the right to physical safety, which is guaranteed by comprehensive international legal texts that befit the human being as a human being, even if that is in texts scattered between general and specific. Due to the severe suffering witnessed by humanity, especially during the First and Second World Wars, and the resulting serious damage represented by the fall of tens of millions of dead and wounded. The right not to cause physical or moral harm to individuals is considered a human right that has been protected for thousands of years, as stipulated in ancient laws.

Many international agreements have recently paid great attention to establishing legal rules that oblige member states to respect the rules for protecting the physical safety of individuals, whether they are nationals or foreigners. The matter is no longer limited to criminalizing non-harm to the physical and psychological aspect of the human being, but rather extends to protecting other rights that help prevent the deterioration of the physical safety of the individual, as the protection of social rights is an urgent necessity in order for the individual to live in peace and security, and thus his body is protected from everything that harms him, even if it is indirectly.

The protection granted by comprehensive international legal texts to physical safety as one of the rights inherent in the personality that may not be waived regardless of the case that may violate these legal texts. Because physical safety is the focus of human rights, without adequate protection in legal texts that clearly stipulate this, this may lead to the non-exercise of other rights enjoyed by the human being. A person whose life or body is at risk cannot live freely and with dignity, which negatively affects his life and the life of society as a whole, and thus leaves harmful effects on the state. Hence, the importance of protecting the physical safety of the individual lies in protecting society as a whole, at the international level by achieving security and peace, and this is reflected positively at the international level, because the countries that have ratified the human rights protection agreements are obligated to change their legislation to be in line with international legal texts, despite the tragedies we see today through the violation of the physical safety of children, the elderly and women in current armed conflicts, including what is happening now in Gaza and its exposure to all types of violations that have affected all comprehensive international legal texts by Israel. All this makes us try to review the most important contents addressed by the comprehensive international legal texts on how to protect physical safety, and try to make some observations on the contents of these texts.

Thus, the following problem can be raised in this topic:

To what extent was the protection sufficient in the comprehensive international legal texts regarding the physical safety of individuals?

In order to analyze this topic, the descriptive analytical approach was used with the aim of reviewing and interpreting the contents of the texts of international agreements that protect physical safety, whether directly or indirectly. The comparative approach was also used with the aim of extracting the differences and drawing conclusions about the contents of protecting the right to physical safety between global international agreements.

The study plan has been divided into two parts: To answer this problem, we will divide the study into two parts: Part One -

First Topic - Protecting the Right to Physical Safety in Light of Comprehensive International Legal Texts.

Second Topic - An Evaluative Presentation of the Right to Protect Bodily Integrity in International Legal Texts with Reality.

First Topic - Protection of the Right to Physical Integrity in Light of Comprehensive International Legal Texts

There are many international legal texts that protect people from harm, whether directly, such as the text on protecting the body by prohibiting torture, or by preventing ill-treatment and insulting human dignity that will inevitably affect their bodies, or even indirect protection, by providing protection for the right to health, the right to the environment, and the right to food. These latter rights are considered indirect protection of physical integrity.

Violation of physical integrity has been prohibited in many international agreements related to times of peace and war, whether in relation to legal texts with general content (**the first requirement**), or in relation to legal texts with specific content (**the second requirement**)

The first requirement - in relation to legal texts with general content

International legal texts are among the texts that precede others in protecting the right to physical integrity, which include many rights that must be protected, regardless of the circumstances, including the Universal Declaration of Human Rights (**first section**); International Covenant on Human Rights (**second section**)

First section - Universal Declaration of Human Rights as General Principles

Universal Declaration of Human Rights issued in 1948 included the first legal principles that prohibit harming a person by any shameful act that affects his body, dealing with him in a rude, inappropriate or insulting manner, or punishing him harshly.¹

This text prohibits assaulting any human being by any means that harms his being, whether by torture in all its forms or cruel treatment or punishment inflicted on

¹ Universal Declaration of Human Rights, **article 5**.

the human body. It is not limited to harming the body, but also prohibits infringement of human dignity through bad and humiliating treatment.

The declaration also stipulated the protection of physical freedom, even implicitly, by stipulating that every human being has the right to life, liberty and security of person.

Although the Universal Declaration of Human Rights is not a binding legal agreement, and does not include how to implement it, it is considered a global constitution that contains general principles that protect human rights.

It has been an inspiration to many countries, by including it in their constitutions and declaring their acceptance of what is stated in the Universal Declaration of Human Rights, and all international agreements have stipulated what is stated in the Universal Declaration of Human Rights in more detail and clarification.

Section Two - Extension of the Protection of Physical Safety in International Legal Texts

The protection of physical safety in international legal texts is not limited to those texts related to the absence of physical or psychological harm, but rather extends to the protection of other rights related to the daily safety of the body. These rights are an integrated whole and cannot be divided. International legal texts related to human rights are considered among the basic texts in international law that protect the individual from infringement of his rights as a human being in the first place, and this comes within the framework of giving more commitment to protecting these rights, which are related to everything that affects the physical safety of the human individual.

There are many international agreements ratified by countries that protect the physical integrity of the individual, whether directly or indirectly. Among these agreements, we find the International Covenant on Civil and Political Rights (**firstly**), the International Covenant on Economic, Social and Cultural Rights (**secondly**), the Constitution of the World Health Organization as an indirect protection of the right to physical integrity (**thirdly**), and the texts of international humanitarian law agreements (**fourthly**) and the Statute of the International Criminal Court (**fifthly**)

Firstly - The international covenant on civil and political rights as direct protection

After the protection of physical safety was a general principle, the International Covenant on Civil and Political Rights was issued in 1966 to stipulate these rights after they were general before, as they came more detailed, clear and binding at the same time.

With reference to the legal text that dealt with the absolute prohibition of violating physical integrity, the International Covenant on Civil and Political Rights of 1966

stipulated that medical or scientific experiments may not be conducted except with the prior and full consent of the person concerned. This includes prohibiting any harm inflicted on a person that affects his physical or psychological integrity and using it as a means of torture. What is notable here, with regard to this text, is that it was inspired by the Universal Declaration of Human Rights, which included non-binding principles, unlike the covenant that is binding on the countries that signed it. Although there is a difference between the Declaration and the Covenant, the first emphasized the impermissibility of all forms of torture, while the second added the phrase indicating the absolute prohibition of experiments conducted without the full prior consent of the person concerned, regardless of the type of these experiments, whether of a scientific or medical laboratory nature.¹

The right to bodily integrity has been codified in texts of international law that are universal in nature, specifically the International Covenant on Civil and Political Rights, which also protects another aspect of this right. It stipulates that it is strictly prohibited to conduct medical experiments on humans. In contrast, these experiments are usually performed on animals, such as mice. As a result, performing medical experiments on a person puts his or her physical safety at risk. However, the International Covenant stipulates that tests may be conducted on individuals with their consent, and if this is not the case, the procedure is considered illegal and the perpetrator is punished.²

In fact, sometimes medical or scientific experiments may be conducted on the fetus in its mother's womb, and this causes great harm to the mother and may extend to the fetus, and this may result in endangering both of their lives. In particular, if there is no consent on the part of the parents, because the mother and fetus may suffer permanent disabilities later on. This falls within the framework of protecting the right to physical integrity.

It should be noted that there is a relationship between personal freedom and physical protection. It is certain that the absence of personal freedom constitutes a restriction of the human body and soul at the same time.³ A person who is restricted in his movements and positions will inevitably affect his psychology, and thus his body. In this sense, the International Covenant on Civil and Political Rights stipulates that the law does not deprive any person of his freedom except in accordance with the law itself, where every person has the right to be free and secure in his personal life.⁴

¹ International Covenant on Civil and Political Rights 1966, art 7.

² Ibid, art 7.

³BOUZIDI Messaoud, BEN GHARBI Med Toufik, **Protection of the right to physical integrity in international law**, A memorandum within the requirements for obtaining a master's degree, specializing in public international law, Faculty of Law and Political Science, University of Djelfa, Algeria, 2021/2022, p9.

⁴ International Covenant on Civil and Political Rights 1966, article 9/1.

For example, if any individual is imprisoned or arrested without right, this is considered unjust, and this person is deprived of his freedom and restricted. Therefore, this inevitably affects his body and psychology, because it is considered punishment without law and is illegal.

On the other hand, physical protection extends even to the body of the deceased, which in this case is called corpse protection, where it is not permissible to touch it and must be preserved, protected and honored. Because this is respect for the human being in and of himself, even if he is no longer alive.¹ However, the body of the deceased also has rights, although not to the same extent as the living. However, he asks permission from his family to conduct medical experiments on him.

It is worth noting that although this covenant has stipulated the physical protection of the individual, which concerns direct harm to the body or the insult that degrades dignity that will inevitably negatively affect the body of the individual, physical protection is not limited to those explicit legal texts that prohibit harming the body by touching it or harming the person morally. Rather, there is also indirect protection of the human body, which is stipulated in the International Covenant on Economic, Social and Cultural Rights.

Secondly - The International Covenant on Economic, Social and Cultural Rights as an indirect protection of physical safety

The International Covenant on Economic, Social and Cultural Rights, issued in 1966 in parallel with the International Covenant on Civil and Political Rights, is the second agreement that stipulates the right of a person to protect his body, albeit indirectly, by protecting those rights that are related to the existence of a person as a human being, which must provide him with the minimum rights to live in dignity, and thus, work to develop his body and help in that and provide him with all the necessary facilities for better protection.

It is worth noting that there are a number of rights closely related to the protection of the right to physical safety that have been stipulated in the International Covenant on Economic, Social and Cultural Rights. Where, the state must provide all members of society with these rights, including the right to work,² the right to health,³

¹ Such as burying the body in a designated place, which is the cemetery, and this is done quickly. As the Messenger, may God bless him and grant him peace, said: "Honoring the dead is burying him."

² International Covenant on Economic, Social and Cultural Rights 1966, **Art 6, 7.**

³ Ibid, **Art 12/1.**

The right to health is among the essential rights that the state must protect and provide to its citizens so that they can live in peace and security. The right to health is the basic guarantee for every individual to live without diseases and without infecting other healthy people, and to provide the best for his country by working in a healthy and disease-free framework.

the right to education,¹ the right to housing,² the right to food,³ and the right to a clean and healthy environment.⁴

All these rights work together to make every human being live a happy life, as without these rights or without the existence of one of them, this inevitably affects the physical and psychological safety of the human being. Consequently, he lives in a state of tension, exhaustion and instability, and as a result, the society becomes fragile and weak and irresistible, because social diseases will destroy it due to the failure to maintain its physical safety resulting from the failure to provide the requirements of a decent life.

In addition, this covenant stipulated another auxiliary right that is no less important than the other rights it guarantees, in the necessity of its presence in order to contribute to providing decent physical protection for the individual, which is the right to health, which every state must provide to its citizens so that they can live in a strong healthy environment. It is the basic guarantee for every individual to live free of diseases and without infection of other healthy people, so that he can provide the best for his country by working in a healthy framework free of diseases.

Thirdly - The Constitution of the World Health Organization as an indirect protection of the right to physical safety

The Constitution of the World Health Organization is among the laws that called for the necessity of protecting the human being physically and mentally by taking care of his health, which countries work to provide to members of society, through hospitals, specialized doctors, and the necessary medicines to protect patients from diseases that may strike them from time to time. All of this falls within the framework of providing effective protection for the right of every individual to good health, so that he is in good physical fitness and appropriate mental health.

Health is not merely the absence of disease and disability in society, according to the organization's constitution, but rather it goes beyond that to providing all the appropriate conditions for society to be in complete physical, mental and social health without deficiency.⁵

Every human being has the right to the highest attainable standard of physical and mental health, as stipulated in the World Health Organization Constitution. This is also linked to other rights related to human physical integrity, namely the need to provide the right to work on the basis of equality among individuals, and the state

¹ Ibid, **Art 13, 14.**

² Ibid, **Art 11/1.**

³ Ibid, **Art 11.**

⁴ Ibid, **Art 12/2/b.**

⁵ **Constitution of the World Health Organization, Key Facts, para 3**

<https://www.who.int/ar/news-room/fact-sheets/detail/human-rights-and-health>

must provide adequate education, healthy food and decent housing for all members of society without discrimination.¹ because this would create a strong society in terms of physical safety, which in turn has an effective impact on the strength and cohesion of society and hence the strength of the state in all areas, economically, socially, culturally and politically.

Fourthly - Texts of International Humanitarian Law Agreements

Wars usually directly affect the physical safety of those who cannot fight. If they are not killed, they will be injured with varying degrees of severity, which may in many cases leave permanent disabilities, such as the amputation of one or more limbs. Not to mention the psychological damage caused by these wars, which will inevitably have repercussions on the physical safety of these individuals.

Many international humanitarian law conventions have included the protection of the right to physical safety, either directly or indirectly. While despite armed conflicts, whether international or non-international, those who cannot fight must be preserved, whether they are women, children, the elderly or prisoners, and all those who do not bear arms against the enemy must be protected. Facilities necessary for the livelihood of civilians must not be attacked.²

International humanitarian law has prohibited the assault on civilians during their detention,³ and the same applies to prisoners of war,⁴ as they must be treated with kindness and gentleness.

Fifthly - The Statute of the International Criminal Court

Among the international legal texts that are supposed to form the basis for criminal prosecution of anyone who commits crimes, including those that affect physical integrity, especially those committed during wars or in times of peace.

We mention among the prohibited acts crimes against humanity⁵ committed against individuals. The statute lists the serious violations that constitute crimes against humanity as any of the acts that fall within a widespread attack against civilians with knowledge of that: murder; extermination; enslavement; deportation or forcible transfer of population; imprisonment or severe deprivation of physical liberty in violation of the fundamental rules of international law; torture; rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or any other form of sexual violence of comparable gravity; persecution of any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious or gender

¹ Ibid, **para 4**

²United Nations Publication, **International Legal Protection of Human Rights in Armed Conflict**, United Nations and United Nations Human Rights Office of the High Commissioner, New York and Geneva, 2011, p17.

³ Fourth Geneva Convention of 1949 **Art 3/1 and 27**

⁴ Third Geneva Convention of 1949 **Art 3/1, 13, 14, 16, 32, 36, 43, 57, 88, 125, 130.**

⁵ Statute of the International Criminal Court, **Art 7.**

grounds..., the crime of apartheid; other inhumane acts of a similar character intentionally causing great suffering or serious injury to body or to mental or physical health.¹

All of these acts have a significant impact on the physical integrity of those affected. They may disappear with time or may turn into permanent, lifelong pain. What is striking about the texts of the Statute is that it clearly includes when we are dealing with crimes of genocide,² crimes against humanity and war crimes.³ It lists almost all serious acts, most if not all of which revolve around violating the physical integrity of human beings and amount to international crimes that threaten international peace and security.

The second requirement - regarding legal texts with special content

By legal texts with special content, we mean those international rules stipulated in agreements on the protection of physical integrity, which are mentioned directly and in clear terms and are related to specific cases.

The legal texts with special content that provide comprehensive international legal protection for the human right to physical integrity are represented in the Convention against Torture, which was issued in 1984 by the United Nations General Assembly.

Torture is impermissible under the terms of this Convention under any circumstances, whether by private persons or by persons acting in an official capacity.

The Convention has defined the conditions for committing the crime of torture. Through specific acts, such as committing any act that inflicts severe pain or suffering on a person's mind or body, provided that it is linked to the intention to commit the crime to obtain information or that it is in response to an act committed or merely suspected of it using methods of coercion, intimidation and threats, pain for any reason based on discrimination, whether on the basis of colour, sex, race, language or anything else... whether it is done by an employee or at his instigation or with his consent or from any other person, with the exception of penalties imposed by judicial authorities in accordance with a fair law.⁴

In fact, the violation of physical safety is considered as such, whether it is committed by an ordinary person or an official, and the latter may be a high-ranking employee in the state or an ordinary one. In this context, we find that categories that are supposed to be in the service of humanity, such as doctors, may participate, but

¹ United Nations Publications, op.cit, pp75, 76.

² Statute of the International Criminal Court, **Art 6**.

³ Ibid, **Art 8**.

⁴ The 1984 United Nations Convention against Torture, Other Cruel or Degrading Treatment, Cruel or Degrading Punishment, **art 1/1**.

they are sometimes used to perform forbidden acts, which leads to harming the physical safety of individuals, and in doing so they contribute to dirty acts that are inconsistent with the humanitarian aspect that distinguishes them, which is mercy.¹

To protect victims of all types of harm, the Convention on the Prevention of Torture obliges its parties to punish any act that causes injury to individuals, especially physical harm. To achieve this, all necessary types of legislation must be enacted, whether related to the criminal, administrative or judicial aspects. To aim and punish these crimes at the same time.²

We also find that this agreement expanded the prohibition of everything that might harm physical safety, to include even those people who could be extradited to another country and whose physical safety is likely to be at risk.³

So, the goal of the Convention is to close any door that would expose anyone to torture by preventing any act that would cause cruel, degrading and inhuman harm to any person.⁴

It should also be noted here that many of the prohibitions and freedoms stipulated in human rights legislation are based on the preservation of physical integrity. While the International Covenant on Civil and Political Rights does not define physical integrity, it considers it fundamental to the right to personal security, which includes freedom from torture and cruel, inhuman and degrading treatment, as well as the protection of privacy.

Violations of bodily integrity, of any kind, are illegal under all national legislation of states, whether constitutions or laws, especially when carried out by official representatives of the state. This is confirmed with countries ratifying their accession to international agreements that prohibit harming individuals without justification, whether in times of peace or armed conflict.⁵

On this basis, the criminalization of the act of torture can be considered a final legal rule that may not be violated because it has become part of the public order.

So, what is noticeable about the Convention against Torture is that it addressed the protection of the right to physical integrity in a direct manner, as it criminalized acts that result in pain in the human body, whether they directly affect the body through harm by any means, or affect the mental aspect such as insult, cursing and abuse, which inevitably affect the human body.

¹ Muhammad bin Abdul Rahman Al-Ali Al-Dohan, **the prohibition of torture in international charters and agreements between texts and reality - a comparative, original study** -, a thesis submitted in fulfillment of the requirements for obtaining the degree of Doctor of Philosophy in Security Sciences, Naif Arab University for Security Sciences, Riyadh, 2010, p253.

² The 1984 United Nations Convention against Torture, op.cit, **art 2/1**,

³ Ibid, **art 3/1**.

⁴ The 1984 United Nations Convention against Torture, op.cit, **art 16/1**.

⁵ Oren Gross, **The Pprohibition on Torture and the Limits of the Law**, Oxford University Press, 2004, p7.

Also, if there is scientific research based on scientific experiments on the human body, this is done without sacrificing physical integrity. The basic criterion taken into account in any scientific experiment or any medical intervention, if it is not aimed at treatment, is the integrity of the person in his body. It is worth noting that the International Covenant and the Convention against Torture did not address protection from the undesirable effects that may result from medical and scientific experiments on the mother and fetus, as the statements were general. This is especially true with regard to the International Covenant, which guarantees protection in general without specification. The Convention did not mention this at all.

It is worth noting that perhaps the justification for excluding the death penalty and the penalty of torture lies in their contradiction with the humanitarian nature that distinguishes many contemporary penal legislations, which have come to see punishment as a means of reform rather than a tool for revenge and oppression.¹ In this context, the United Nations confirmed through the General Assembly, in Resolution No. 17/2014, that it recognizes the necessity of respecting human dignity, that the rights granted to every person covered by criminal procedures are in accordance with the applicable international human rights instruments.

Therefore, the physical protection that a number of international legal texts have meant, whether general or specific, and whether direct or indirect, all aim to provide sufficient protection for the human being to live in dignity and humanity. However, there is still some overlap between providing protection for those rights that are related to the physical safety of the individual and those freedoms that some call for and that affect physical safety, as well as the intervention of technological factors that may have an impact on the right of every human being to be healthy and well.

Section Topic - An Evaluative Presentation of the Right to Protect Bodily Integrity in International Legal Texts with Reality

In fact, the protection of the right to bodily integrity, as is well known, has been stipulated in most international agreements, in order to intensify the efforts of the international community to activate the texts of the agreements that have been approved by the countries. However, there is a part of society that calls for freedom of disposition of the body (**first requirement**), but there is another interference that may affect bodily integrity through some other rights that are intrinsically closely related to the protection of bodily integrity (**second requirement**)

¹Suleiman Abdel Moneim, Problematic **Aspects of the Legal System for Extradition of Criminals (Comparative Study)**, University Publications House, Alexandria, Egypt, 2015, p219.

First requirement - The call for freedom of disposition of the body

There has been much talk these days about calling for new rights that we did not know before, which is freedom of action in the body. That is, a man can become a woman and vice versa, and there can be another gender that is neither a woman nor a man. As well as the call for freedom of same-sex marriage, which may destroy humanity, so that there will be no reproduction between humans. This is because this freedom has been protected by some Western governments until now, because it is very likely that we will see an expansion in this regard in the future.

The recommendations of the Cairo and Beijing World Conferences in 1994 and 1995 respectively were on the family, especially the issues raised about sexual rights, sex education, and the rights of lesbians, gays, bisexuals, and transsexuals, as they threaten the family entity. Despite the opposition to these recommendations by Western countries.¹ This is because this freedom violates natural physical integrity, as well as the damage that may result from changing the sex of women and men, and also the high cost of surgical operations and their potential risks, because this is considered contrary to human nature that people have been accustomed to since creation. In addition, it violates public order and public morals in many societies, especially Eastern, Arab and Islamic societies. Which receive societal rejection of this seemingly strange phenomenon. Although many Western trends reject sex change.

A number of feminist associations have called for the need to pressure to include the protection of these freedoms in international agreements related to the protection of human rights.² Despite the opposition so far from Asian countries, Russia, Arab and Islamic countries. However, the question is to what extent can the results of this ongoing pressure from international organizations as well as countries that adopt an approach to protecting this type of freedoms be? However, it is very possible that the matter will turn into a gradual acceptance of this phenomenon, which will later be considered a personal freedom, and governments will work to protect it in their internal laws, starting with the constitution itself. Because the public order and public morals will change in the meantime, and it will become normal in conservative societies, and this is what a number of feminist organizations and associations are demanding under the pretext of complete equality between men and

¹Reports on Gender, **Bodily Autonomy & Integrity**, United Nations Independent Expert on Protection against Violence and Discrimination based on Sexual Orientation and Gender Identity – IESOGI, United Nations Human Rights Special Procedures, 2021, p1.

² **Melinda Adams and Gwynn Thomas**, Transnational Feminist Activism and Globalizing Women's Movements, 11 January 2018,

<https://oxfordre.com/internationalstudies/display/10.1093/acrefore/9780190846626.001.0001/acrefore-9780190846626-e-490> 28/08/2024 //20 :32.

women, and some consider this an assault on the physical safety of individuals, whether they are males or females.

It should be noted that the law guarantees the protection of the human being in his body and everything related to his person,¹ and this is through national laws that were established for this purpose. But a person is not always free to dispose of his body. There are limits to this, as some laws criminalize the act of suicide or those who assist in it. Rather, we find that when a person wants to perform surgery on his body, this must be with his consent.²

In fact, violating physical freedom falls within the framework of preserving human dignity, even if this concept is still vague to some,³ as there are those who adopt the idea that the body is the property of the individual to do with as he pleases⁴.

This is considered a violation of public order and public morals for many peoples and societies, as the latter reject the idea of suicide, or changing the sex of a person, or tampering with a dead body if it is not for a medical necessity, such as taking human organs for treatment.

In the item related to the right to physical and mental integrity, the Human Rights Council has recognized that every human being has the freedom to dispose of his body, and has the autonomy to make his own decisions regarding his body, including children.⁵ This, in fact, may negatively affect the understanding of the right to physical protection recognized by international agreements such as the two international covenants. Which stipulated that the protection of human rights always comes within the framework of not violating the public order and public morals of

¹ Radhika Rao, **Property, Privacy, and the Human Body**, Heinonline, Rev 359, 2000, pp367-416.

<https://heinonline.org/HOL/LandingPage?handle=hein.journals/bulr80&div=18&id=&page=05/09/2024//19:20>.

²Kawa Yassin Selim, **Legal Regulation of Guarantees of Human Rights and Freedoms - A Comparative Study** -, Modern University Office, Alexandria, Egypt, 2018, p. 265.

³ Jill Marshal, **Personal Freedom throw Human Rights Law?**, Martinus Nijhoff Publishers, 2008, p24.

https://books.google.fr/books?hl=en&lr=&id=6yuya_ackXIC&oi=fnd&pg=PR5&dq=Legal+Status+of+the+Human+Body+freedom+pdf&ots=QgExoUF2uU&sig=DMoSnptOa-N2oWHyn1VVcRlak#v=onepage&q&f=false 05/09/2024 // 19:55

⁴ J.W.HARRIS, Who Owns My Body? *Oxford Journal of Legal Studies*, Volume 16, Issue 1, Spring 1996.

<https://academic.oup.com/ojls/article-abstract/16/1/55/1426169?redirectedFrom=fulltext> 05/09/2024 //20:16

⁵ Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, United Nations, General Assembly, Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development, Human Rights Council, thirty-third session, agenda item 3, 2 August 2016, p12.

each society.¹ This is a regression in taking into account that there are countries that do not accept such absolute freedom to dispose of the body, because this may harm the human body more than it benefits it. Especially, if this freedom is the result of a whim or desire, meaning without a real reason such as the presence of a disease and the like.

The text issued by the Human Rights Council constitutes a violation of the texts of international human rights law represented by the two international covenants on human rights, because the text was clear that the protection of human rights always takes into account public order and public morals, which differ from one society to another.

The second requirement - Regarding legal texts with specific content

In fact, the right of a person to protect his body is not limited to direct harm, whether physical or moral, as stipulated in a number of international legal texts, but extends to everything that affects a person in his body, whether through a polluted environment or through lack of health care. These are factors that are often more dangerous to the protection of a person's physical safety than those that affect him directly. They affect the largest number of people, and they also harm the health of society as a whole. Consequently, they affect his health. This results in a negative impact on the work of the person himself, as he becomes emaciated, weak and unproductive, given that this person constantly suffers from the harmful environment in which he lives, which has a negative impact on his health.

It can be pointed out that what afflicts a person in his body is not only those direct actions that cause him pain, but also, there are actions that may result in dangerous effects that cause serious damage to the human body. This is what the Secretary-General of the United Nations stated in his report to the General Assembly, that states are legally obligated to protect individuals from exposure to hazardous waste, and this is through adopting laws that regulate the process of using chemicals that are deadly to humans.²

Furthermore, the report stated that the right to physical protection cannot be separated from other rights that are vital to human survival. It includes various rights, including the right to life, the right to health care, the right to food, the right to water, the right to adequate housing, the right to safe and healthy working conditions, the right to security, etc.³ All of these rights negatively affect the physical safety of any individual if they are not achieved at the required level. These rights are closely

¹ International Covenant on Civil and Political Rights of 1966, **art 12/3; 14/1; 18/3; 19/3/b; 21; 22/2;**

²Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, op.cit, p5.

³ Ibid, p13.

The Limits Drawn to Protect the Right to Physical Integrity in International Legal Texts

related to the human personality, and without them, a person cannot live in peace and security.

Another factor that indirectly maintains physical safety is maintaining a safe, pure, clean, healthy and sustainable environment,¹ especially, clean air and clean water. To achieve this, the necessary legal legislation must be put in place to ensure protection.

Therefore, protecting the right to physical integrity is not limited only to everything that befalls a person in his body, through torture or moral harm, through ill, humiliating, or degrading treatment. Rather, it extends beyond that to everything that might cause separation or separation. It negatively affects human health resulting from damage to environmental pollution, which will inevitably affect individuals' physical safety.

It is also worth noting that international legal texts did not address the protection of the human body from the person himself, but rather addressed the criminalization of acts that harm the human body if they were done by others, for example, with the aim of obtaining information.

There is also talk about the extent of a person's freedom to dispose of his body, such as someone who changes his gender from male to female or vice versa from female to male. Or changing to another gender, neither male nor female. This, of course, affects the physical integrity of the person himself. Therefore, it would have been better to set limits on this absolute freedom to dispose of the body, because with this behavior, a person may cause harm to himself and others, under the name of freedom to dispose of the body. This has not yet been addressed by global international legal texts.

It is also truly unfortunate that we often find doctors participating in torture operations that are often practiced by government authorities, given that they know the human body better than others. Although this group is supposed to have a humane character, the participation of some of them as assistants in torture operations is a painful process, because it is inconceivable that they all continue to carry out operations that have nothing to do with their profession described as compassion.²

In fact, Global international legal texts have tried to prohibit everything related to the violation of physical integrity. Referring to all forms of assault on bodily integrity, whether they affect the body or the mind. Whether committed by an ordinary person, the personally responsible person, or any person acting under the

¹Ibid, p13.

²Muhammad bin Abdul Rahman Al-Ali Al-Duhan, **The Prohibition of Torture in International Covenants and Agreements between Texts and Reality - A Comparative Study** - A thesis submitted in fulfillment of the requirements for obtaining a PhD in Security Sciences, Naif Arab University for Security Sciences, Riyadh, 2010, p253.

orders of the responsible person. Because protecting the right to physical integrity is considered one of the rights closely related to the personality and which may not be infringed under any circumstances.

There has become a major problem regarding the issue of proving the damages caused to the physical safety of people as a result of environmental pollution resulting from the use of environmental pollutants before the courts.¹

But what we notice today is that there are new forms of torture required by the current technological stage. Through social media and in certain ways, the weak-minded can be exposed to terrible pressures that may distort their minds and expose them to direct and indirect threats. This is in order to achieve certain goals. Torture has also become somewhat advanced through the use of artificial intelligence.

Artificial intelligence was used in euthanasia, which is considered a type of physical torture,² Even if it is with the victim's consent, it is considered a violation of public order and is rejected by society in many countries before the law rejects it. Because it is an assault on the body and then on the soul at the same time.

AI can also do this by simulating what a normal person would normally do in terms of prohibited methods that affect physical safety. AI is now almost used in many fields. Since it is somewhat similar to the human mind and at the same time implements what has been thought before. It is too early for humans to use algorithms that allow robots to take the place of humans in their actions. Therefore, it is very possible that this could be used to harm humans

In 1962, the General Assembly reaffirmed the WHO constitutional provision that health is a prerequisite for peace and security. About five years later, and for several years after that, the General Assembly expressed its concern about the problem of chemical and biological weapons. At the invitation of another group - the United Nations - the Executive Board of the World Health Organization responded to the issue of the need to develop a code of medical ethics for doctors in relation to torture and other cruel, inhuman or degrading treatment or punishment in relation to detention and imprisonment.³

¹Nicolas de Sadeleer, **The principles of prevention and precaution in international law: two heads of the same coin?**, Research handbook on international environmental law, p193.

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²Anne Boily, **Tensions en éthique de l'intelligence artificielle (IA) Un guide herméneutique pour les décideurs politiques**, Thèse présentée en vue de l'obtention du grade Philosophiæ Doctor (Ph.D), Université de Montréal, Décembre 2020, p109.

³Susan Scholle Connor and Hermn L. Fuenzalida-Puelma, **Health ethics and the law**, World Health, April 1989, p11.

<https://iris.who.int/bitstream/handle/10665/53528/WH-1989-Apr-p10-13-eng.pdf>

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Comparing the legal texts that have been developed by the international community and ratified by most countries, there are still serious violations and serious breaches of the legal rules that prohibit the violation of physical integrity. We note that today Israel is directly violating the texts of international law and in full view of the entire international community. It has killed, displaced, tortured, raped, destroyed and threatened to wipe out the Palestinian people with a nuclear bomb, according to statements by ministers in the Israeli government. In addition to using prohibited weapons and making the entire Gaza Strip uninhabitable due to the systematic destruction. All of these are considered war crimes, crimes of genocide, crimes against humanity, crimes against peace and crimes of aggression. All of them were committed by Israel and continue to be committed. Therefore, the international community remains unable to protect the Palestinian people from the daily crimes committed against them, despite the existence of international legal texts that stipulate the right to physical protection.

Instead of taking the initiative in this issue, the Executive Board and the General Assembly referred the matter to the Council for International Organizations of Medical Sciences and the World Medical Association (two non-governmental organizations of professional associations, both accredited by the World Health Organization).¹

It can also be noted that the technology that is being developed day after day, especially what is called artificial intelligence, which is increasingly being used in various fields, may have a negative impact, if the matter is not addressed. At least there should be strict legal rules in order to establish foundations, rules and limits for the use of artificial intelligence. Which may inevitably affect physical safety if not directed properly.

Conclusion

As we mentioned earlier, the right to physical integrity is protected in a variety of international legal texts, especially the International Bill of Human Rights, which includes: the Universal Declaration of Human Rights, the two international covenants and the Convention against Torture. In addition to the Constitution of the World Health Organization, international humanitarian law agreements, and the Statute of the International Criminal Court. This is based on the idea that the protection of this right is one of the rights that are closely linked to the human personality and exist from birth until death. International protection of the right to physical integrity was not limited to these texts, but rather included other texts related to the protection of this right, such as the International Covenant on Economic, Social and Cultural Rights and the Constitution of the World Health Organization.

¹Susan Scholle Connor and Hermn L. Fuenzalida-Puelma, op.cit, p11.

The human right to physical integrity is not limited to the usual protection, but extends to everything that may affect the protection of the physical and psychological condition. It does not only mean protecting a person from direct harm that may befall his body, such as criminalizing not harming his body directly, whether physical or moral. Or was it indirectly, especially the damage resulting from environmental pollution that affects human health, in addition to other rights directly related to the physical safety of the individual as well as psychological safety. In addition to the rights that some demand, which is the right to physical freedom and the resulting great physical damage to the health of those who practice it, and may even extend to society as a whole.

It is necessary to point out in international global human rights agreements the direct link between the human right to physical safety by not harming his body, whether by physical or moral harm, and other rights related to the development and preservation of his body, such as the right to food, the right to medicine, the right to work, the right to housing, the right to education, and the right to a clean, pure and healthy environment.

Suggestions

Therefore, it was necessary to demand not to harm the international legal texts that some international feminist organizations are pressing to make amendments to in order to achieve absolute equality between males and females. Because if we leave this without referring to it, we may witness over time the establishment of legal texts that allow the individual, whether a woman or a man, to do with his body whatever he wants, and this act is contrary to public order and public morals in a number of Eastern, Arab and Islamic countries.

We also draw attention to the need to criminalize all acts that affect the body under the pretext of exercising the right to physical freedom, and this matter concerns international legal texts, considering that this is contrary to public order and public morals. In particular, as we know, a number of countries strongly oppose the pressures exerted by most Western countries in favor of giving complete, comprehensive and absolute freedom to the human being to do with his body whatever he wants.

It is also necessary to expedite the codification of international legal rules that prohibit the use of artificial intelligence in what harms the physical safety of individuals. As is known, artificial intelligence can perform surgical operations on patients, and this is a natural thing. But the fear is that this will be used in physical and psychological torture operations.

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