WHERE AND WHAT ARE WOMEN’S RIGHTS
FOR ONE AND FOR THE OTHER

If there is such thing as ultimate or objective truth, I can never, in my own lifetime, be absolutely sure that I have discovered it (...) [I]ndeed, there is no place at which we could finally arrive.

Katharine T. Barlett, Feminist Legal Methods, p. 885

Know that it is beautiful to seek the truth, but every time you claim to have found it, you are flirting with a lie, and risking the ugliness of conceit.

Khaled M. Abou El Fadl, Conference of the Books, p. 351

I. INTERNATIONAL LAW, HUMAN RIGHTS, AND THE STATUS OF WOMEN

A. Introductory Remarks

Law is made of rules. It determines how these rules are formulated, applied and implemented.

International law deals with rules applicable to States or inter-State relations. When a traditional international lawyer observes the world he or she sees States. Rules are formulated, established, applied and implemented by States. According to traditional international law, no rule can bind States without their consent. This consent can be either expressed in an explicit form or be implied. As an overall generalization we can presume that explicit consent is required when rules are formulated in treaties, whereas custom is a source of rules which only presumes consent. To put it differently, rules can be established in two ways. Firstly, States can agree on certain provisions, write them down and expressly give their consent to comply with these provisions. Secondly, when States behave in a certain way with a belief that they comply thereby with a rule of law, they establish this rule through their behavior.38 According to the doctrine of

38 Obviously, it is a very simplified presentation of the doctrine of sources in international law. Especially in the modern doctrine of international law various nuanced theories have been developed. However, till now neither of these theories did fundamentally change this simplified vision of international law sources. For some issues discussed in modern literature in relation to the doctrine of sources see e.g. COHEN, Harlan Grant. “Finding International Law: Rethinking the Doctrine of Sources.” 93 Iowa Law Review 2007, pp. 1–52; HOLLI, Duncan B. “Why State Consent Still Matters: Non-State Actors, Treaties, and the Changing Sources of International Law.” 23 Berkeley Journal of International Law 2005, pp. 1–39; OCHOA, Christiana. “The Individual and Customary
traditional international law, there is a third source of rules for States, namely general principles of law. However, the exact nature of this source is relatively obscure, but can be traced back to the implied consent of States.\(^\text{39}\)

Once rules are established through one or another source of international law, application and implementation of these rules lies exclusively in the hands of States.\(^\text{40}\)

In case of a breach of a rule of international law consequences are also determined by States. In classical international law they were determined by affected States themselves through different forms of self-help. In the modern international law “punishment” and enforcement of the violated rule is often effected through institutions established by States and is associated with denial of benefits and advantages of being a member of a particular institution or structure.

The effective functioning of such a system which contains no official relations of hierarchy but is based on horizontal relationship between equal subjects is possible only due to reciprocity inherent to such relationships. It is in this sense that international legal order is often described as a system of contractual obligations between independent States.

Thus, law operates between States on the basis of their consent and reciprocity.\(^\text{41}\) The centrality and independence of the State in this system are expressed through the notion of sovereignty which also protects States from any outside intervention.

Human rights law appeared as a part of international law only after the Second World War in response to this war’s atrocities. The Universal Declaration of Human Rights of 1948\(^\text{42}\) for the first time recognized that not only States, but also human beings may have rights protected at international level, that States should not be completely free to treat their citizens – a category initially protected by the notion of sovereignty from any control or influence from outside – as they wish. Thus, conceptually, human rights are safeguards against the abuse of power by governments/States relying on self-restraint of the same governments/States.

However, the drafters of the Universal Declaration did not really care about the question of compliance with standards defined therein; even less did the question of enforcement come to their minds, since declaration is supposed to be a non-binding instrument.

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\(^{39}\) More about general principles of law as a source of international law see below I.B.2.a) with further references.

\(^{40}\) Sometimes States can establish bodies empowered to different extent with implementation and supervisory functions. However, in all cases States have to agree to establish such a body and determine themselves modalities of establishment and powers granted to such bodies, so that at the final analysis the decision rests with States.

\(^{41}\) It has to be stressed again that despite all new doctrines developed in international law, this traditional vision remains valid and even returns in a new form. For some examples see HOLLIS, loc. cit. above, fn. 38 and PARISI, Francesco, GHEI, Nita. “The Role of Reciprocity in International Law.” \(^{36}\) Cornell International Law Journal 2003, pp. 93–123.

\(^{42}\) Adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948.