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WITHDRAWAL FROM A HUMAN RIGHTS TREATY AND PEREMPTORY NORMS OF INTERNATIONAL LAW: THE CASE OF “BELARUS 2020”

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ABSTRACT

The article analyzes the general concept of withdrawal from human rights treaties and addresses a specific case of withdrawal from the Optional Protocol to the International Covenant on Civil and Political Rights. The article argues that the human rights regime, due to its axiological nature, the non-reciprocal character of treaty parties' relations, and the final beneficiaries' expectations, needs *lex specialis* provisions on the withdrawal matters. Moreover, the results of analyses of the United Nations' bodies show that the general clause on withdrawal being requested by a non-democratic state may lead to the denial of access to international justice for individuals and jeopardize the entire human rights protection system. Nowadays, however, the Vienna Convention on the Law of Treaties does not satisfy the needs of the human rights regime. The United Nations and its mandate holders are recommended to request an advisory opinion of the International Court of Justice to clarify the compliance of the termination clause of the human rights treaties with the common values of the international society of states as a whole and the principles of the United Nations.

KEYWORDS

Human rights, withdrawal from human rights treaties, Vienna Convention on the Law of treaties, Belarus, international law.

Presidential elections were held in Belarus on August 9, 2020.
Mass falsifications made people take to the streets.
Good and Evil came together in a duel. Evil is well-armed.
And from the side of Good there only peaceful mass protests
unheard of for the country, which gathered hundreds of thousands of people.
This is the highest and unspeakable of level of repression in its cruelty.
People are subject to ghastly tortures and unimaginable suffering.
Ales Bialiatski, Nobel Lecture, 2022¹

INTRODUCTION

From February 8, 2023, persons living under the jurisdiction of the Republic of Belarus (RB, Belarus) cannot send their complaints (communications) to the Human Rights Committee (HRC) of the International Covenant on Civil and Political Rights (ICCPR)², the only international quasi-judicial body available for individual complaints, specifically against torture, from Belarus since 1992³. This happened three months after RB announced its withdrawal from the Optional Protocol (OP-ICCPR)⁴, and the United Nations (UN) Secretary General (SG) accepted the government's statement⁵ as meeting the formal terms of the said international treaty.

The right of any individual to apply to international organizations for the purpose of protecting their rights is a constitutional guarantee stipulated by the Constitution of Belarus⁶, Article 61⁷. This provision de jure was not changed in a referendum conducted in February 2022. The occurred Constitutional Amendments extended the powers of position of a President, consolidated the power's monopoly through the introduction of a "parade" All-Belarusian Assembly, and abolished the Belarus status of a nuclear-free territory. The date of the referendum coincided with the moment of Russia's invasion of Ukraine, which began in the territory of the RB in February 2022⁸. Democratic states and the European Union (EU) did not recognize the results of the referendum⁹. The fact of withdrawal got little if any attention from the main subjects of the public international law (PIL) States, nor have any legal actions been launched by the bodies of the UN in

¹ Ales Bialiatski, *The Nobel Peace Prize 2022* (December 2022) // <https://www.nobelprize.org/prizes/peace/2022/bialiatski/lecture/>

² *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, Vol. 999, 171 (1966).

³ Alexander Vashkevich, *First Optional Protocol to the International Covenant on Civil and Political Rights: scientifically-practical commentary* (Positive-Centre, 2016), 5–126.

⁴ *Optional Protocol to the International Covenant on Civil and Political Rights*, UN, Treaty Series, Vol. 999, 171 (December 1966).

⁵ UN. Press-relies of treaties bodies, *Belarus' withdrawal from individual complaints procedure is a serious setback for human rights protection, UN Human Rights Committee says*, (November 2022) // <https://www.ohchr.org/en/press-releases/2022/11/belarus-withdrawal-individual-complaints-procedure-serious-setback-human>

⁶ Constitution of the Republic of Belarus (1994, last amendments 27 February, 2022).

⁷ *Ibid.*, Art. 61. "Everyone shall have the right in accordance with the treaties of the Republic of Belarus to appeal to international organisations to defend their rights and freedoms, provided all available domestic legal remedies have been exhausted".

⁸ M. Williams and D. Ljunggren, "Belarus referendum approves proposal to renounce non-nuclear status - agencies," *Reuters* (27.02.2022) // [referendum%20on,introduced%2C%20two%20articles%20were%20excluded](https://www.reuters.com/world/europe/belarus-referendum-approves-proposal-to-renounce-non-nuclear-status-2022-02-27/)

⁹ See the EU statement that the referendum "is taking place against the background of a sweeping crack-down on domestic opponents of the government". *Belarus: Statement by the High Representative/Vice-President Joseph Borrell on the constitutional referendum*, Brussels (28.02.2022) // https://www.eeas.europa.eu/eeas/belarus-statement-high-representativevice-president-josep-borrell-constitutional-referendum_en

that respect. Civil society and some international bodies expressed their concerns and substantiate them.¹⁰

A withdrawal from a treaty is generally recognized as a legitimate means of terminating agreements due to the principle of States' free consent. Meanwhile, in accordance with the VCLT,¹¹ Belarus's withdrawal from the treaty¹² requires careful consideration due to a number of implications: (1) Well-documented facts concerning allegations of systematic and widespread violations of jus cogens norms in Belarus, as reported by UN bodies¹³; (2) Withdrawal in the case of "Belarus 2020" seems to be not in conformity with the treaty's goal as well as principles of the UN, including the good faith principle¹⁴; (3) The final beneficiaries of the Optional Protocol (OP)—individuals living under Belarus's jurisdiction—have had their expectations for effective international protection against violations of the rights and freedoms stipulated in the ICCPR broken. This protection is a goal and the purpose of the OP-ICCPR, as reflected in its Preamble and even in the "dual" title of the treaty¹⁵. Moreover, the domestic legislative act¹⁶ of withdrawal has breached constitutional guarantees for individuals under the jurisdiction of Belarus.

The situation raises the following questions: (1) Are there any *lex specialis* procedures established in the international human rights regime for challenging the right of a state party to withdraw from a human rights treaty in cases where the application of a withdrawal clause in a human rights treaty, specifically in the OP-ICCPR, seems to be in conflict with jus cogens norms, the treaty's goals, and the UN principle, including the good faith? (2) If there are no such rules, does the Vienna Convention on the Law of Treaties (VCLT) provide the possibility to a State party to challenge a withdrawal from a human rights treaty when it seems that the withdrawing state's deeds are in conflict with jus cogens norms, a treaty's goals, and good faith principle of the international

¹⁰ The Special Rapporteur on the HR Situation in Belarus (UN SR Belarus) Anaïs Marin told reporters that Belarusian "authorities completely consolidated the control of the judiciary and the court system to silence dissidents", several international human rights(hr) organizations condemned the withdrawal, which, in their opinion, aims to remove avenues for redress for victims of hr violations committed by states' authorities and hr defenders echoed the alarms highlighting that among the cases pending before the HRC are allegations of systematic torture that amount to crimes against humanity. See Institute for war and peace reporting (IWPR), *Belarusian citizens denied justice at home may no longer be able to appeal to a last resort committee*, (2022) // <https://iwpr.net/global-voices/belarus-leave-un-human-rights-body>; HRHF, *Petition "Belarusian authorities must not withdraw Belarus from First OP-ICCPR,"* (August 2022) // <https://humanrightshouse.org/statements/belarusian-authorities-must-not-withdraw-belarus-from-first-optional-protocol-of-the-iccpr/>; OMCT World Organization against Torture, *Briefing of the on Belarus. 100 days of ongoing hr crisis Facts & Figures*, (2020) // <https://www.omct.org/en/annual-report-2020/belarus>

¹¹ UN, *Vienna Convention on the Law of Treaties* (VCLT), Arts 42, 54, 65, 70, 23 May 1969, UN, Treaty Series, Vol. 1155, 331.

¹² "1. Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations. Denunciation shall take effect three months after the date of receipt of the notification by the Secretary-General. 2. Denunciation shall be without prejudice to the continued application of the provisions of the present Protocol to any communication submitted under article 2 before the effective date of denunciation", *supra* note 5, Art. 12.

¹³ See an analyse in details below. As an example, Report of the UN HRCHR, Belarus in the run-up to the 2020 presidential election and in its aftermath, A/HRC/49/71, (March, 2022) // <https://daccess-ods.un.org/tmp/1728628.27777863.html>.

¹⁴ UN, Charter of the UN, 24 October 1945, Art. 1 and 2, UNTS XVI // <https://www.refworld.org/docid/3ae6b3930.html>

¹⁵ "Considering that in order further to achieve the purposes of the ICCPR (hereinafter referred to as the Covenant) and the implementation of its provisions it would be appropriate to enable the HRC set up in part IV of the Covenant (hereinafter referred to as the Committee) to receive and consider, as provided in the present Protocol, communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant", *supra* note 5, Preamble, paragraph 2 and the title "Optional Protocol to the International Covenant on Civil and Political Rights".

¹⁶ Belarus denounced the OP-ICCPR dated 12/16/1966 (hereinafter - the OP) by the Law No. 217-Z of October 27, 2022 which invalidated the paragraph of the resolution of the Supreme Council of the Republic of Belarus dated 10.01.1992 "On the ratification of the OP-ICCPR of December 16, 1966 on the recognition of the competence of the HRC in accordance with Article 41 of the Covenant".

human rights law? (3) Shall the UN bodies request the International Court of Justice's (ICJ) advisory opinion on the legal questions concerning an "exit" right from a human rights treaty?

1. METHODOLOGY, SOURCES, RESEARCH QUESTIONS, AND SCOPE

The scope of the paper is the state of regulations of the withdrawal from human rights treaties in the international law and the legal consequences of the withdrawal of the RB from the OP-ICCPR due to the reporting by international bodies on violations of *jus cogens*, the OP-ICCPR's goal and the UN principles.

The article's hypothesis is that the current case of withdrawal from the OP-ICCPR shows that the international human rights law failed to establish a coherent procedure equipped to examine cases of withdrawal from a human rights treaty on its conformity with the treaty's goals, UN principles, the *jus cogens* norms. There is a need to obtain an advisory opinion of the ICJ in order to prevent a threat to the international human rights protection system and to restore beneficiaries' expectations for the protection.

The grounds challenging the conformity of the withdrawal of Belarus 2020 from the OP-ICCPR is analysed through theoretical concepts and normative provisions. The concept of *jus cogens* will be presented through a synthesis of separate elements: "general international law" (GIL) and "international community of states as a whole" (ICS) which will be taken in conjunction with notions that connect the *jus cogens* with the principles of the UN, namely "good faith," "pacta sunt servanda" and "continuity". Such an approach's reasoning assumes that the application of human rights treaties which are based on axiological values should be viewed as an integrated process linked to the UN goals. The section also includes a part where the case "Belarus 2020" is illustrated via an analysis of data pertaining to the country and presented by international bodies. The data is grouped and presented in two tables: I "Jus cogens" and II "Good faith". The third section (III) considers general approaches and peculiarities in legal regulations of the withdrawal from treaties and human rights treaties (HR withdrawal), the fourth section (IV) is devoted to the possibilities of the UN bodies to request an advisory opinion of the ICJ in order to clarify legal questions with respect to the general withdrawal clause in human rights treaties and the consequences of the RB withdrawal from the OP-ICCPR(2023). The conclusions summarize the main findings and recommendations.

2. JUS COGENS, GOOD FAITH AND BELARUS 2020

2.1. Jus Cogens: A Normative and Academic Outlook

The notion *jus cogens* is defined in the VCLT (1969)¹⁷ and further conceptualised by the International Law Commission (ILC) in the "Draft Conclusions on identification and legal consequences of peremptory norms of general international law" (Draft, 2022)¹⁸.

¹⁷ "...a peremptory of general international law 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* having the same character", *supra* note 13, Art. 53, Sentence 2.

¹⁸ *Draft conclusion on identification and legal consequences of peremptory norms of general international law*, International Law Commission. *Yearbook of the International Law Commission* Vol. II, Part Two (2022).

The Draft reiterates the definition of *jus cogens*, explains its nature¹⁹ and provides a list of the norms, most of which are derived from human rights, humanitarian law and the provisions of the UN Charter²⁰. Scheuner has grouped the “candidates” to *jus cogens* in the following way: 1) protecting the foundation of law, peace, and humanity; 2) developing peaceful cooperation in the protection of common interests; 3) protecting human dignity, personal and racial equality, life, and personal freedoms²¹. The ICJ Judge Tanaka’s in his dissenting opinion de facto supported the last group by emphasizing that human rights law “...exists independently of the will of the state and, accordingly, cannot be abolished or modified even by its constitution because it is deeply rooted in the conscience of mankind and of any reasonable man”²². While not all scholars and practitioners agree that, for example, every provision of the ICCPR should be considered a peremptory norm, a consensus on the absolute prohibition of torture has been established in the 1990s. For the current research, it is important to highlight that while the ILC included position (g) prohibition of torture in the Draft as the seventh out of eight other serious violations that concern the international community²³, the international consensus on the prohibition of torture exists since late decades of the last century.

2.2. Concepts That Make the Jus Cogens

Jus cogens is rooted in and interconnected with other key notions of the law of treaties (2.2.1) and principles of the UN (2.2.3). Both groups are interconnected, and its division is applied as a matter of structuring of the article’s materials.

2.2.1. General International Law (GIL) and the International Community of States (ICS)

The ICJ case law²⁴ as well as scholars²⁵ point out that *jus cogens* shall be referred to as norms of GIL and “must have equal force for all members of the international community”. The Draft²⁶ includes interpretation of the notion of the ICS in conjunction with the process of recognition and acceptance of the *jus cogens* norms and lists three major elements: 1) the ICS is a very large and representative majority of states, but not all states; 2) the positions of other “actors” may be relevant in providing context and for assessing acceptance and recognition of *jus cogens* by the ICS; 3) these positions

¹⁹ *Ibid.* Conclusion 2. Nature of (jus cogens): “Peremptory norms of general international law (jus cogens) reflect and protect fundamental values of the international community. They are universally applicable and are hierarchically superior to other rules of international law” and Conclusion 3 Definition of (jus cogens) “A peremptory norm of general international law (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 cogens) having the same character”.

²⁰ “...(a) prohibition of aggression; (b) prohibition of genocide; (c) prohibition of crimes against humanity; (d) basic rules of international humanitarian law; (e) prohibition of racial discrimination and apartheid; (f) prohibition of slavery; (g) prohibition of torture; (h) right of self-determination”, see *supra* note 19, Annex.

²¹ Ulrich Scheuner, “Conflict of Treaty Provisions with a Peremptory Norm of General International Law and its Consequences. Comments on Art. 50, 61 and 67 of the ILC’s. Draft Articles on the Law of Treaties”, *Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht* (1967): 525–527.

²² DISSENTING OPINION OF JUDGE TANAKA, *South West Africa, Judgement of 18 July 1066*. ICJ Reports, (1966), 298.

²³ *Supra* note 21, Annex.

²⁴ See, for example, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007, p. 43, at pp. 110–111, para. 161; and *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment, I.C.J. Reports 2015, p. 3, at p. 46, para. 87.

²⁵ Christian Tomuschat, “General International Law: A New Source of International Law?”, 185–204, in: *Global Justice, Human Rights and the Modernization of International Law* (Springer, 2018).

²⁶ See the *supra* note 20, conclusion 7, part 3.

cannot, in and of themselves, form part of such acceptance and recognition of *jus cogens*²⁷.

Consequently, the term GIL emphasizes the consensus (acceptance and recognition), specifically towards the *Jus cogens* which is a matter for the ICS as a whole, even if some states refuse to recognize it. Moreover, the Draft includes the statement that "any state is entitled to invoke the responsibility of another state for a breach of a peremptory norm of general international law (*jus cogens*), in accordance with the rules on the responsibility of states for internationally wrongful acts".²⁸

2.2.2. Table 1 "Jus Cogens" and Belarus 2020

This part includes the Table I accumulating data related to the case "Belarus 2020" and contained in reports of international organizations, mainly the UN. The data has been analysed and presented consequently in the following columns: (A) Time; (B) Facts as "*jus cogens norms*"²⁹; (C) The bodies, mandates, values. A summary of the analysed information follows the table.

Table 1. "*Jus cogens*" re Belarus 2020

N	(A) Time	(B) Facts as <i>jus cogens norms</i> and the state of impunity	(C) The bodies, mandates, protecting values
1.	2020 Sep.– Nov.	Rapporteur W. Benedek, Report OSCE30: " torture and other cruel, inhuman, or degrading treatment or punishment, widespread impunity for all of the above" ³¹ , "(r) egarding the allegations related to <i>major human rights abuses</i> , they were found to be <i>massive and systematic and proven beyond doubt</i> . It is worrying that the <i>well-documented cases of torture and ill-treatment</i> in the crackdown by the security forces on political dissent have not resulted in anybody being held accountable, which confirms allegations of <i>impunity</i> , also due to the absence of fair trials in political cases" ³² .	17 OSCE states, <i>Moscow mechanism</i> , Report recommends: 4. Bring perpetrators of torture and inhuman treatment among the Belarusian security forces and their responsible superiors to justice wherever possible; 12. <i>Facilitate the involvement of the UN special procedures in the protection and promotion of human rights</i> as well as the establishment of a country office of the UNHCHR in Belarus ³³ .
2.	2021 Febr.	UNHCHR, Report ³⁴ : -impunity enjoyed by those who allegedly committed acts of torture the Report contains concrete facts. At end of 2020, 4,644 complaints had been filed with the Investigative Committee. Report indicates that cases were opened against individuals who having filed a complaint". Authorities are urged to conduct investigations into violations, including torture ..., and to ensure access to justice and accountability.	UNHCHR requests for assistance of the relevant experts and special procedure mandate holders: (a) To monitor and report on the situation; (c) To engage ... with UN agencies, the OSCE and relevant States with a view to ... providing support for national, regional and international efforts to promote accountability for human rights violations in Belarus ³⁵ .

²⁷ *Ibid.*

²⁸ *Supra* note 19, conclusion 17, part 2.

²⁹ *Ibid.*

³⁰ Wolfgang Benedek, Report "On Alleged Human Rights Violations related to the Presidential Elections of 9 August 2020 in Belarus" by the OSCE Rapporteur under the Moscow Mechanism (November, 2020).

³¹ *Ibid.*, Summary, para. 2.

³² *Ibid.*, Summary, para. 5.

³³ *Ibid.*, para. 9.

³⁴ UN High Commissioner for human rights, Report "On the situation of human rights in Belarus in the context of the 2020 presidential election", A/HRC/46/4 (February 2021), para. 73, 77 and others.

³⁵ *Ibid.*, para. 13.

N	(A) Time	(B) Facts as jus cogens norms and the state of impunity	(C) The bodies, mandates, protecting values
3.	2022 April	UN HR Council, Resolution ³⁶ : reports of systematic and widespread acts of torture and other cruel, inhuman or degrading treatment or punishment of, and sexual and gender-based violence against , individuals detained and arrested in Belarus, including children, with the knowledge of the Belarusian State authorities, and the reported inhumane detention conditions and denial of access to medical and legal help in prisons, which require an independent investigation ³⁷	UN HR Council recalls previous resolutions, and statements made by the UNHCHR, the Office of the UN SG and special procedure mandate holders of the HR Council. It extended the UN High Commissioner for HR with the assistance of the three appointed experts and special procedure mandate holders, to continue: (a) to monitor and report on the situation of human rights...;... (c)...to promote accountability for human rights violations in Belarus.
4.	2022 Feb.- March	UNHCHR 's Report ³⁸ analyses the cases and findings made by the International Rehabilitation Council for Torture Victims, which were based on a thorough forensic examination of 50 victims from different cities in Belarus detained during the same period and selected at random from the 1,500 interviews and cases in the database of the International Committee for Investigation of Torture in Belarus. It also found the 636 cases of torture documented and analysed by the non-governmental human rights organization Viasna to be credible ³⁹ .	UNHCHR ⁴⁰ recommends: - Member States: (a) Work towards accountability based on accepted principles of universal jurisdiction , and, in parallel, ...; (b) Provide additional protection measures to protect victims who have had to leave the country or who were expelled and those cooperating with investigative bodies in the context of promoting accountability ; (c) Maintain the HR situation in Belarus under review of the HR Council and consider other accountability mechanisms consistent with the Council's practice.
5.	2022 July	The Special Rapporteur (SR) on Belarus' Report: a detailed analysis on the situation, pointing out that "legislation that increasingly restricts the recognition and exercise of human rights" and that systematic repression has led to the "virtual eradication of civil society, with adverse impacts on independent media, civil society activists, and human rights defenders. Many Belarusian nationals have been left with no choice but to leave the country after being harassed, threatened, intimidated, and subjected to severe violations" ⁴¹	The SR recommends that other States, the international community and international organizations: (a)...(b) Uphold the human rights of Belarusian nationals who were compelled to leave their country,...; (c) Promote an enabling environment and conditions for Belarusians in exile to continue meaningfully participating in public life in Belarus... ⁴²

³⁶ UN HR Council, *Resolution "Situation of human rights in Belarus in the run-up to the 2020 presidential election and in its aftermath"*, A/HRC/RES/49/26 (April, 2022).

³⁷ *Ibid.*, p. 4.

³⁸ UN High Commissioner for Human Rights, *Belarus in the run-up to the 2020 presidential election and in its aftermath*, A/HRC/49/71 (February 2022).

³⁹ *Ibid.*, 51.

⁴⁰ *Ibid.*, p. 95

⁴¹ *UN Special Rapporteur on situation with human rights in Belarus Situation of human rights in Belarus*, A/77/195 (July 2022), p. 3 and further.

⁴² *Ibid.*, p.22.

N	(A) Time	(B) Facts as <i>jus cogens</i> norms and the state of impunity	(C) The bodies, mandates, protecting values
6.	2023 April	UN HR Council, Resolution ⁴³ : information about the deterioration of human rights in Belarus, highlighting the continued practice of systematic violation of fundamental freedoms. The OHCHR also expressed extreme concern at reports of torture, inhuman or degrading treatment , and sexual and gender-based violence against detainees and arrested persons.	UN HR Council stresses the need for accountability for the prevention of further violations and abuses, urges the Belarusian authorities to ensure prompt, effective, independent, transparent and impartial investigations into cases involving ... torture... -extends the mandate of the UNHCHR with the assistance of the three appointed independent experts and special procedure mandate holders... ⁴⁴

Summing up the data from the table regarding the case of Belarus 2020 that embraces the time period between the 2020 presidential elections and until the latest report (2023, April), one may see that the international organizations protecting human rights and fighting impunity for violations of *jus cogens* in the selected reports consistently include facts about alleged torture and mention the lack of investigations leading to impunity and further deterioration of human rights situation in Belarus.

The reports have been addressed to Belarusian authorities, to other states-members and to international organizations, including the UN bodies to be engaged in the following actions (*mutatis mutandis*):

- bring perpetrators of torture to justice domestically and in other countries applying universal jurisdiction principle;
- facilitate the involvement of UN special procedures in the protection of human rights in Belarus.

The UNHCHR, with assistance from relevant experts and special procedure mandate holders, has been engaged with UN agencies, the OSCE, and relevant states in exchanging information and providing support for national, regional, and international efforts to promote accountability for the violations in Belarus. Since April 2022, there have also been three appointed experts and special procedure mandate holders working to monitor and report on the situation of human rights in Belarus. Regrettably, in April 2023, when the HR Council by repeating the wording on accountability for violations urged to ensure investigations, it failed to mention the fact that Belarus has withdrawn from the OP-ICCPR and that Belarusians have been denied the access to international justice including cases on violation freedom from torture. Consequently, neither specific mechanisms nor actions in respect to withdrawal have been mentioned.

2.2.3. Principles of the UN to ensure the treaty's obligations in a good faith

Any treaty's obligations shall be also in line with member states obligations arisen from the UN Charter⁴⁵. The principles of good faith, *pacta sunt servanda*⁴⁶, and continuity have been inherited by and expressed in the UN purposes and principles.⁴⁷

⁴³ UN HR Council, Resolution "Human rights situation in Belarus ahead of time presidential elections of 2020 and beyond", 52/29 (4 April 2023), 37.

⁴⁴ *Ibid.*, 13, 15.

⁴⁵ UN Charter, *supra* note 15, Art. 103.

⁴⁶ See more in Liudmila Ulyashyna, "The meaning and role of the Pacta sunt servanda principle in international law in defining the challenges to the legitimacy of peace and war," *Public Security and Public Order, Research Journal* 32 (2023): 105–119.

⁴⁷ UN Charter, *supra* note 15, Preamble, Chapter I Purposes and Principles.

2.2.3.1. Good faith, pacta sunt servanda, and continuity

The Charter highlights that the rights and benefits resulting from the membership in the UN may be achieved only if the obligations are fulfilled in good faith⁴⁸. The principle *pacta sunt servanda* as an imperative of the law of treaties has been stipulated in the VCLT and includes the notion of good faith in two capacities: as a subjective element of the performance of treaties⁴⁹ and as a way of interpreting treaties.⁵⁰

Reinhold calls the good faith “an overarching principle” since it defines the conduct of the parties in the course of treaties’ implementation⁵¹. Russo sees the principle of good faith as a “general interpretive parameter” that requires states to consider the interests of other contracting parties, including international cooperation and the legitimate expectations of individuals as the ultimate beneficiaries of the human rights treaty regime.⁵² Binder and Hofbauen share the opinion that good faith is an integral part of the *pacta sunt servanda* principle: while the latter contains the formal order to comply with treaty obligations, the good faith determines the specific content of such compliance⁵³.

The wording of the principle of good faith is even more precise and clear within the human rights treaties framework: “The State Party is expected to collaborate sincerely and effectively in the realization of the aim of the Council”⁵⁴ for each State Party to the ICCPR “undertakes to ensure to all individuals within its territory and subjects to its jurisdiction the rights recognized in the present Covenant and/or “undertakes to take the necessary steps... to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant”⁵⁵. Since the principle of good faith entails ethical dimensions and requires the exclusion of any attempts to mislead the treaty parties, it might also be used as a benchmark to evaluate the compliance of a state with the implementation of obligations assumed by the parties. As examples of the application of the good faith principle in human rights treaties, it is worth presenting several provisions from human rights treaties that warn that nothing may be interpreted as implying any rights for any state, group, or individual to engage in activities or perform acts aimed at the destruction any of the protected rights or limiting them to a greater extent than what is provided in the treaty (e.g., Article 5 of the ICCPR, Article 17 and 18 of the ECHR).

While the OP-ICCPR does not contain explicit language regarding the way of compliance, the general principles, including the good faith have to be applied and being valid at all stages of their performance, including the withdrawal. Before giving concrete examples of the RB’s performance record towards the OP-ICCPR, there is a need to highlight one more principle: continuity that constitutes a value of the UN framework and is implied by a default in treaties’ performance.

Continuity of international obligations is a foundation for the entire system established by the UN Charter. All Members-states of the UN are supposed to respect

⁴⁸ *Ibid.*, Art. 2, part 2.

⁴⁹ *Supra* note 12, Art. 26.

⁵⁰ *Ibid.*, Art. 31.

⁵¹ Steven Reinhold, “Good Faith in International Law,” *UCL Journal of Law and Jurisprudence* 2(1) (2013): 40–63.

⁵² Deborah Russo, “Procedural obligations and good faith: the case of the human rights treaties,” *Question of International Law*, QIL. ZOOM in 2 (2014): 35–44.

⁵³ Christina Binder and Jan Hofbauen, “The Pacta Sunt Servanda Principle or the Limits of Interpretation”: 58–77; in: *The Gabčíkovo-Nagymaros Judgment and Its Contribution to the Development of International Law* (Brill: 2019).

⁵⁴ Council of Europe, Statute, Art. 3 (1949).

⁵⁵ ICCPR, *supra* note 3, Art. 2.

its purposes stipulating that the UN “establishes conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained” and to maintain international peace and security, and to that end “... to bring about peaceful means and in conformity with the principles of justice and international law... to promote universal respect for and observance of human rights and fundamental freedoms”⁵⁶.

The concept of continuity has been analysed in academic research. Lauterpacht highlighted the meaning of “continuity” as in itself an element of legal justice⁵⁷, and Hahn, who underlined that continuity must be ensured beyond changes in the objectives, jurisdiction, institutional structure, or even extinction of the organization originally entrusted with those tasks.⁵⁸ Reflecting on the IGL approaches to human rights and humanitarian law, Pocar emphasized that a state cannot deny the protection of the rights of its population and that international institutions have to enforced these obligations, resulting in the continuity of international human rights and humanitarian law treaties.⁵⁹ The concept of continuity was elaborated in two UN documents: the Report of the UN Sub-Commission⁶⁰, and in the General Comments of the HRC⁶¹ analysed in the part III.

Understanding a treaty as value for the UN framework, where good faith, respect for contractual obligations, and continuity are the elements of the UN as a “center for harmonizing the actions of nations in attainment of these common ends,”⁶² helps in conducting a critical assessment of facts led to the “Belarus 2020” withdrawal.

2.2.3.2. Table 2. Good faith and Belarus 2020

The table includes real examples of the RB’s position towards human rights treaties and specifically to the OP-ICCPR and its body – HRC (column B), a date (column A) and the author’s comments on the facts will (column C). Assessing the “specific content of such compliance”, the author applies the wording which express the good faith meaning derived from human rights treaties, specifically: “sincere and effective collaboration” and the state’s activities pursuing “to ensure to all individuals within its territory and subjects to its jurisdiction the rights recognized in the present Covenant” and/or the “necessary steps... to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant”⁶³. The focus here is, as rule, on facts and the arguments brought by the government and commented by the HRC⁶⁴. Conclusions will sum up the results.

⁵⁶ See *supra* note 15, Preamble para. 4, Art. 1, parts 1 and 3.

⁵⁷ Herch Lauterpacht, *The Development of International Law by the International Court* (Cambridge University Press, 1958).

⁵⁸ Hugo J. Hahn, “Continuity in the Law of International Organization,” *Duke Law Journal* Vol. 2 (1962): 379–423.

⁵⁹ Fausto Pocar, “Some Remarks on the Continuity of HRs and International Humanitarian Law Treaties”: 279–294; in: Enzo Cannizzaro, ed., *The Law of Treaties Beyond the Vienna Convention* (Oxford Academic, 2011).

⁶⁰ UN Sub-Commission on the Promotion and Protection of HRs, *Report “Continuing of obligations under international human rights treaties”, session 51, E/CN.4/SUB.2/RES/1999/5*, pp. 4–9 (August, 1999).

⁶¹ UN HRC, CCPR General Comment No. 26, Continuity of Obligations, CCPR/C/21/Rev.1/Add.8/Rev.1 (December 1997).

⁶² UN Statute, *supra* note 15. Art. 1, part 4.

⁶³ ICCPR, *supra* note 3, Art. 2.

⁶⁴ See comments on the suspected intention of the Belarusian withdrawal expressed by the civil society and international human rights organizations *supra* note 11.

Table 2. "Good faith" and Belarus 2020

N	(A) Date	(B) Facts as breaches of good faith	(C) Author's comments on the fact
1.	1992–2023	Implementation of the OP-ICCPR went through several stages: 2000, the HRC considered the first case from Belarus ⁶⁵ , in the period 1997–2006 – 38 cases registered, 2007–2012 – 145 new cases ⁶⁶ . To the 2023 – more than 175 Belarusians receiving decisions from the Committee, while around 300 complaints have been pending in the time when the RB announced its withdrawal ⁶⁷ .	Since 1992 till 2010, Belarus communicated with the HRC and enforced its decisions, as a rule. However, its national legislation was not amended to provide mechanisms for recognition of the HRC's decisions. There were no legal explanations by the the Supreme Court nor the Constitutional Court on the application of the constitutional guarantee for international protection for persons under the jurisdiction of Belarus. Generally, starting from the very beginning one may say that not all necessary steps has been undertaken by the State party. The State has delayed by presenting periodical reports for more than 10 years.
2.	2010–2018	Starting to refuse to recognize and enforce the HRC's decisions and co-operate with the HRC being disagree with the HRC rules of procedure, Belarus claimed that States parties are not obliged to accept the rules of procedure of the HRC and their interpretation of the provisions of this OP. RB ignored the HRC's words to "revisit its position with a view to fulfilling its obligations under the OP". Moreover, it did not take to consideration the wording of the HRC evaluating the Belarus performance as not being in line with good faith principle under the OP and demanded to examination of communications, to guarantee the right of victims to an effective remedy when there has been a violation of the ICCPR, in accordance with Art.2(3) of the ICCPR ⁶⁸ .	Denying to individuals the opportunity to restore substantive rights whose violation was determined by the HRC, Belarus seems to act not in accord with the OP-ICCPR goals and the good faith principle assuming the participation in the human rights treaty shall be sincere and effective. Moreover, RB has also refused to communicate with the HRC properly even after the HRC recommended to act in accordance with the good faith principle in 2018.

⁶⁵ *Laptsevich v Republic of Belarus*, Communication No. 780/1997, CCPR/ C/68/D/780/199 (13/04/2000) // http://www.unhchr.ch/tbs/doc.nsf/0/cc98a0722c3d4c62_c125690c003636a2?Opendocument

⁶⁶ Liudmila Ulyashyna, "Individual v. State: Submission, equality, conflict?": 15–40; In: *Individual v. State: Practice on Complaints with the United Nations treaty bodies with regard to the Republic of Belarus*, Vilnius (2014) // <http://humanrightshouse.org/noop-media/documents/21937.pdf>

⁶⁷ Institute for war and peace reporting, *Belarusian citizens denied justice at home may no longer be able to appeal to a last resort committee*, (October 2022) // <https://iwpr.net/global-voices/belarus-leave-un-human-rights-body>

⁶⁸ *Concluding observations on the fifth periodic report of Belarus*, United Nations Human Rights Committee, CCPR/C/BLR/CO/5 (2018) // <https://digitallibrary.un.org/record/1649136?ln=en>

N	(A) Date	(B) Facts as breaches of good faith	(C) Author's comments on the fact
3.	2010	One concrete case shows a theoretical view of the RB while refused to recognise the HRC decisions: answering to a request sent by a Belarusian human rights defender, Mr. Katzora ⁶⁹ , to implement a decision adopted by the HR Committee, the Ministry of Foreign Affairs (MFA) of the RB denied the state's obligations, giving the priority to the principle of sovereignty which allows the State to exercise full power on its own territory.	The theoretical basis prepared by the MFA has been applied later by representatives of the RB in UN. The HRC resumed that Belarus ⁷⁰ : – executed ten individuals before the HRC could conclude their cases; – rejecting the authority of the views adopted under the Optional Protocol and having failed to implement any of the 104 views adopted to date – refusing to fully cooperate with the HRC on individual communications, undermining the effectiveness of the treaty monitoring system.
4.	2018	By presenting the country Report ⁷¹ talking on cooperation between Belarus and the HRC in matters related to the OP, the delegation stressed that Belarus was conceptually in agreement with the HRC on certain issues related to the OP. Belarus will consider registered communication decisions null and void, adhering to national law's approach. Belarus considers Committee views advisory and will continue to apply its national legislation in death penalty cases.	In the author's opinion, the statement of Belarus manifested its abstain from the goal of the OP-ICCPR and may be even evaluated as intention to destruction of the rights and freedoms recognised by the Covenant which banned by the Art 5 of the ICCPR since refusing to recognise HRC competence to register and consider individual communications, the government denied individuals the substantive rights and the very perspective for effective protection. Doing this, it obviously abstained from the treaty objectives stipulated in its Preamble and sends a clear signal that the Belarusian government's attitude to ignore international obligations contradicts Art. 26 of the VCLT and the treaties goals.
5.	2022	Belarus did not provide any reasons for withdrawal, nor did it engage in consultations with civil society organizations. At the time of withdrawal, as reported by the SR, there was no longer any active civil society. ⁷²	The attitude shows that no legitimate rationale which would be a ground for withdrawal in accordance with provisions of the VCLT existed. One may assume that the previously expressed grounds and arguments which have been assessed by the HRC has prevailed by the RB.

Summing up the results of the facts presented in Table II, "Good faith and Belarus 2020," one may see that, starting in 2000 and during the first decade, the HRC has issued dozens of decisions with respect to Belarus. In spite of the fact that Belarus did not amend national legislation to recognize and enforce the HRC's decisions, as a rule, the state implemented its "views." Since 2008, there has been exponential growth in the number of registered communications, and in 2010, the MFA of the RB communicated a position that the RB as a sovereign state is not going to open the legal system for international human rights standards. Since that time, the state denies the competence of the HRC to issue decisions that shall be implemented, contests the HRC's rules of procedure, and it executes death penalty despite the HRC's requests about estopping

⁶⁹ Liudmila Ulyashyna, *supra* note 67, 15–40.

⁷⁰ *Human Rights Committee considers the report of Belarus* (09 October 2018) // <https://www.ohchr.org/en/press-releases/2018/10/human-rights-committee-considers-report-belarus>

⁷¹ *Ibid.*

⁷² UN, Press-relies, *supra* note 11.

due to preliminary measures. One may conclude that the statements of the RB might be assessed as there have been signs of the denial or destruction of the right of individuals for international protection. However, people under the RB jurisdiction continued to use the channel for submitting individual communications that helped victims of human rights violations to report on the situation and indirectly influenced the state's behaviour. In 2018, the oral rhetoric of the state party's representatives in front of the HRC has persistently repeated the State's position towards the HRC and stated that the registered individual communications will be considered as "null and void" etc. The HRC in its written conclusions diplomatically expressed the need to revisit the State position and respect the good faith principle. No progress was observed in the forthcoming period. In four years, Belarus submitted the denunciation letter to the General Secretary without providing any reasons⁷³. A logic of the consequences of ignoring human rights obligations, allows to say that the Belarusian crisis is caused by disrespect towards provisions, procedures of the OP-ICCPR and generally towards the UN principles, including the jus cogens and continuity. Denunciation from the OP-ICCPR which is still waiting for an adequate legal assessment establishes a negative precedent for the future of the international human rights regime, UN and the ICS as a whole. The next section analyses procedural possibilities and actors eligible for providing a fair evaluation of the case Belarus 2020 aiming to restore the rights of individuals.

3. WITHDRAWAL: GENERAL AND SPECIAL PROVISIONS

3.1. Withdrawal in international law and doctrine

The notion "withdrawal" has been conceptualized by scholars both as a customary rule and later as the VCLT's provisions (David⁷⁴, Rosenne⁷⁵, Aust,⁷⁶ Helfer⁷⁷, and others). One may classify three kinds of withdrawal modes:

1) a general withdrawal clause (for example, the American Convention on Human Rights, 1969, art. 78; OP - ICCPR, art. 12),

2) an optional jurisdiction clause for withdrawal (for example, UN Charter, Statute of the ICJ, Article 36, p. 2, and the Optional Protocol concerning the Compulsory Settlement of Disputes to the Vienna Convention on Consular Relations),

3) no provisions on withdrawal (for example, OP to CEDAW, 1999, art. 10; ICCPR).

The general provisions on the withdrawal stipulated in the VCLT⁷⁸ have been applied in the current article *mutandis mutatis*.

⁷³ "The Committee noted that Belarus adopted its decision without providing a particular explanation and without holding any consultation with civil society and non-governmental entities at any stage of the national process of denunciation. With this regrettable step, the Republic of Belarus becomes the fourth and only country in the twenty-first century to withdraw from the Optional Protocol, which has been ratified by 117 countries," UN Press release, *supra* note 6.

⁷⁴ Arie David, *The Strategy of Treaty Termination: Lawful Breaches and Retaliations* (New Haven: Yale University Press, 1975).

⁷⁵ Shabtai Rosenne, *Breach of Treaty* (Cambridge: Grotius publications, 1985).

⁷⁶ Anthony Aust, *Modern Treaty Law and Practice*, 2nd edn CUP (Cambridge University Press, 2007).

⁷⁷ Laurence Helfer, "Exiting Treaties," *Virginia Law Review* 91 (2005): 1579-1648.

⁷⁸ Vienna Convention on the Law of Treaties, *supra* note 6, Art. 42, 54, 65, 70, United Nations, Treaty Series, Vol. 1155 (23 May 1969): 331.

3.2. Withdrawal and human rights regime

3.2.1. Human Rights regime

The human rights framework is recognised as a *lex specialis* regime (Donnelly), which contributes to the understanding of international human rights law as a unified system for the protection of human rights, or, in other words, a set of norms, institutions, and procedures, i.e., activity that is aimed at raising awareness of existing standards and the implementation of these standards⁷⁹.

Human rights law has special characteristics that may need extra regulation in order to satisfy and not ignore them. In a nutshell, scholars emphasize the importance of (1) individuals' expectations and (2) the need for continuity of human rights treaties, which are of special importance for people: the rights of individuals, once recognized, cannot be subsequently withdrawn; and (3) the axiological nature of values—human dignity and worth—instead of the principle of reciprocity, which is common for "normal" bilateral treaties; (4) common interests of the ICS as a whole demand collective actions which are *erga omnes* obligations.

Finally, human rights are now considered so essential that to stop protecting them would be inconsistent with the whole tenor of the contemporary world community (Cassese).⁸⁰

3.2.2. Withdrawal and the human rights regime

In spite of the rapid development of the human rights regime in the last decades, the withdrawal from human rights treaties has neither been subject to legislative regulation nor has it received so needed attention from scholars. The case of the Democratic People's Republic of Korea (1997) that announced its intention to withdraw from the ICCPR sparked a chain reaction. From one side, in the period 1998–1999, several countries took steps to withdraw from human rights treaties⁸¹ and on the other side, the situation prompted the UN bodies to take positive actions⁸².

A joint legal analysis of the referenced sources devoted to the termination of human rights treaties generally and specifically to the withdrawal from the ICCPR allows

⁷⁹ Jack Donnelly, "International human rights: a regime analysis," *International Organizations* 40 (1986): 599–642.

⁸⁰ Karel Vasak, "Towards a Special International Human Rights Law": 671–672; in: K. Vasak and Ph. Alstom, eds., *The International Dimension of Human Rights* (UNESCO, Paris); Wolfgang Friedmann, *The Changing Structure of International Law* (London: Stevens and Sons, 1964), 40–44, 240–244; Liudmila Ulyashyna, *supra* note 47; Eckart Klein, "Denunciation of Human Rights Treaties and the Principle of Reciprocity": 477–487; in: Ulrich Fastenrath and et al., eds., *From Bilateralism to Community Interest: Essays in Honour of Bruno Simma* (Oxford, 2011); Gino Naldi, Konstantinos Magliveras, "Human Rights and the Denunciation of Treaties and Withdrawal from International Organisations," *Polish Yearbook of International Law*, Vol. 33 (2013): 95–127; Antonio Cassese, *International Law* (Oxford University Press, 2005), 79.

⁸¹ The first three countries from the OP of the ICCPR and the last one from the American Convention of Human Rights. See: Amnesty International, Unacceptably Limiting Human Rights Protection (AI Index: AMR 05/01/99) issued in March 1999.

⁸² The UN sent an Aide mémoire to Korea, stating withdrawal from the Covenant would not be feasible without the agreement of all States Parties (November 1997), in August, 1999, the Sub Commission on the Promotion and Protection of Human Rights issued a resolution addressing the mentioned cases and requested the Secretary General to submit a report on the status of withdrawals and reservations with regard to international human rights treaties to the Commission on Human Rights and the Sub Commission, in December 1997, the Human Rights Committee issued General Comment No. 26 "On the continuity of obligations of States on the ICCPR". See: Aide mémoire to Korea, "Denunciation of the PIDCP by the Democratic People's Republic of Korea," (September 23, 1997), C.N.467. TREATIES-10; UN, Sub-Commission on the Promotion and Protection of HR, *Resolution "Continuing of obligations under international human rights treaties"*, session 51, E/CN.4/SUB.2/RES/1999/5, 4–9; UN, Human Rights Committee (HRC), CCPR General Comment No. 26 *Continuity of Obligations*, CCPR/C/21/Rev.1/Add.8/Rev.1 (December, 1997).

for the identification of some important findings. The UN expressed its position on the opportunity for a state party to terminate the human rights treaty. Firstly, in the Aide Memoria UN experts stated (1997): "Human rights treaties express universal values from which no retreat should be allowed. This is also consistent with the United Nations' approach to human rights. Even though some human rights treaties explicitly provide that they may be denounced, such treaties in general do not imply an inherent right of denunciation or withdrawal".⁸³ Further, however, when the HRC⁸⁴ defended the ICCPR through a comparison method, it referred to the OP as an evidence that there are treaties, which allow termination⁸⁵.

As a result, no solid position based on the *lex specialis* character of the human rights treaties exists. Moreover, the HRC abstained from a broader consideration of other human rights treaties and recommended to referring to the general rules on termination, denunciation, or withdrawal, which shall be considered in the light of applicable rules of customary international law, which are reflected in the VCLT⁸⁶.

In summation of the analysis of the first part of the first research question: there are no *lex specialis* provisions in the international human rights law that clarify substantive and procedural rules for considering a dispute that arises due to the application of a general withdrawal clause. Human Rights law has failed so far to provide rules or approaches to protect "universality," "axiological" values, and individuals' expectations in terms of continuity of international human rights protection. As a result, the population of any state might be under threat if a withdrawal from a human rights treaty, especially if a withdrawal goes against the treaty goals or violates peremptory norms. Answers to the second part of the first research questions will be sought in the VCLT, with a focus on the provisions regarding the *jus cogens*. Moreover, they will be limited mostly to the termination-withdrawal issues in conjunction with the *jus cogens* norms' implication.

3.3. Termination of treaties and the *jus cogens* (Art. 66-1-(a) and Art.53 of the VCLT)

The VCLT is a set of codified customary rules. Being a broadly applied, the VCLT however does not include any specific rules which reflect the *sui generis* character of the non-reciprocal agreements. No wonder, since the customary rules did not exist for human rights which were recognised in international law only several decades ago.

This problem may cause limitations in comprehension and interpreting the general rules to relations appeared in human rights. Moreover, the *lex specialis* characteristics of human rights law and procedures (see p. 3.2.2) may be seeing as obstacles in predictability of legal consequences and risks by applying rules of VCLT.

The general provision of the VCLT, which embraces both the notion *jus cogens* and procedures for judicial settlement, arbitration and conciliation process, is Article 66-1-(a) in conjunction with the Article 65 (Procedure to be followed with respect to invalidity, termination, withdrawal from or suspension of the operation of a treaty), which stipulates that in case of a dispute concerning the application of the interpretation of articles 53 (Treaties conflicting with peremptory norm of GIL- *jus cogens*) or 64

⁸³ UN AIDE MEMOIRS, *Denunciation of the ICCPR by the Democratic People's Republic of Korea*, (September 23, 1997), C.N.467.TREATIES-10, para 8 // <https://treaties.un.org/doc/Publication/CN/1997/CN.467.1997-Eng.pdf>

⁸⁴ UN Human Rights Committee (HRC), CCPR General Comment No. 26, *supra* note 83, 1.

⁸⁵ *Ibid.*, 2, sentence 2.

⁸⁶ *Supra* note 83, 1, sentence 2.

(Emergence of a new peremptory norm of GIL- *jus cogens*) any one of the parties may submit a written application to the ICJ for a decision unless the parties by common consent agree to submit the dispute to arbitration.

Before the Article 66 applies, a State party shall go through several stages in order to reach the stage when an application might be brought to the ICJ.

Application of the general provisions of the VCLT in the case(s) of human rights treaties has several limitations. First of all, not all human rights treaties have provisions providing procedural possibility for an interstate complain. Those treaties which have such provisions, for example the ICCPR, establish a procedure which enables a treaty body to consider interstate communication. However, a State party may initiate a legal dispute in accordance with the Article 41 but is not obliged to do so. Due to its character, the human rights treaties are no reciprocal and the procedure shows a low effectiveness. While individuals, as the final beneficiaries of the treaty, have the procedural possibility to complain about violations of their individual rights and freedoms, they may not complain to international bodies about a State's withdrawal decision.

For the specific case in question – the withdrawal from OP-ICCPR by a State party which allegedly acts not in conformity with the treaty goals of both treaties – the ICCPR and the OP-ICCPR, as well as for refusing to investigate cases of *jus cogens* violations and stop the violation in the future, the general rules stipulated by the VCLT seem to be not practical nor effective.

First of all, the rules established by the VCLT even if they refer to the *jus cogens* norms and may be hardly applied for a dispute related to the termination or withdrawal from a human rights treaty, which indirectly or “instrumentally” connected to the human rights treaty which includes provision on the ban of torture, for example. While any state party to ICCPR shall follow the HRC's statement that the ‘rules concerning the basic rights of the human person’ are *erga omnes* obligations⁸⁷, this obligation relates to the contractual dimension of the ICCPR and involves State Parties to this particular treaty and more specifically concerns those who made a declaration recognising the HRC to consider interstate communication⁸⁸.

It means that in spite the fact that the OP's Preamble connects its aim to the ICCPR's literally: to “further achieve the purposes of the ICCPR and the implementation of its provisions”⁸⁹, formally the treaties remain separate agreements. Even if the interconnection between the two treaty is also emphasized in the title of the OP by the pretext “to,” underscoring the subordination or, rather, “instrumentality” of the OP to the ICCPR, the Article 41 about the interstate complain mechanism does not embrace the OP-ICCPR.

Moreover, so far, no state party has stood up by using the *erga omnes* mechanism to fight violations referring to community interests – in particular to the ICCPR and the OP-ICCPR. In spite of the calls of the UN bodies in previous periods and in the current case, neither the 173 states parties to the ICCPR nor the 116 states parties to the OP to the ICCPR have launched a legal procedure with respect to the Belarusian government for the violations of *jus cogens*.

This section concludes by answering the question of whether the VCLT provisions provide a legal basis to challenge the case of a withdrawal from a human rights treaty.

⁸⁷ UN HRC, CCPR General Comment No. 31, [80], *The nature of the general legal obligation imposed on States Parties to the Covenant*, (26 May 2004), CCPR/C/21/Rev.1/Add.13.

⁸⁸ ICCPR, *supra* note 3, Art. 41.

⁸⁹ OP-ICCPR, *supra* note 5, Preamble.

The case is complicated due to the facts that a withdrawing State's deeds seems to be in conflict with *jus cogens* norms. Analysing the VCLT provisions the peculiarities of the human rights treaties, the author tends to doubt about the practicality⁹⁰ of the VCLT for treaties of non-reciprocal nature. Provisions of the VCLT with respect to the termination of a treaty (Article 66-1-(a)) in conjunction with the Article 53 (*jus cogens*) seem to be not adjusted for application by a state-party to a human rights treaty and specifically, to the OP-ICCPR. The intricate nature of treaties, rooted in axiological values, and the specific provisions of the OP-ICCPR, which includes a general clause on withdrawal (Article 12) but necessitates the application of the concept of *jus cogens* due to the alleged violation of the freedom from torture as per the ICCPR (Article 7), contribute to the complexity of the Belarus 2020 case.

Moreover, justification of the legal action would also need assessment of the compliance of the State party performance of the treaties with the OP-ICCPR's goal as well as the principles of the UN Charter. The part II of the article provides facts that in the case "Belarus 2020", principles of good faith as well as the continuity of treaties have been disrespected and the withdrawal from the OP-ICCPR entails a number of negative consequences towards final beneficiaries as well as for the entire international system of protection on human rights.

Thus, in spite of the fact that the Article 66 (1a) of the VCLT provides the right to submit a written application to the ICJ for decision if the parties of a dispute concerning the application of *jus cogens* did not reach a consent, there is a little hope that any state-party to the OP-ICCPR may launch the formal procedure. Therefore, the author suggests another solution: namely, via an advisory opinion of the ICJ, which might be obtained by other actors.

4. UN BODIES OBTAIN THE ICJ ADVISORY OPINION

The case "Belarus 2020" got much attention from UN bodies. Part 2 (tables 1 and 2) of the article contains extracts from a number of reports and provides conclusions that the UN bodies (the GS, UNHCHR, HE Council, HRC, SR on the situation in Belarus, and others) possess the whole knowledge on the problem with the alleged violation of *jus cogens* and the UN principles, including the good faith and continuity of treaties regarding the case. Meanwhile, the steps and recommendations of the UN bodies towards Belarusian authorities, member states, and international organizations have negligibly addressed (so far) the problem of the withdrawal of RB from the OP-ICCPR, which has a direct negative impact on individuals and a long-lasting effect, causing further weakening of the UN human rights protection system and losing its authority.

The principle of effectiveness forces the UN as an organization and its bodies to look for next steps of a different mandate-holder, which shall be united by the determination to achieve common goals of the UN: "to reaffirm faith in fundamental rights," "to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained," and "to promote social progress and better standards of life in larger freedom"⁹¹. The case "Belarus 2020"

⁹⁰ Using the analogy with the principle "practical and effective and theoretical and illusory" expressed toward s under the ECHR. See, e.g. *Recommendations by the Office of the United Nations High Commissioner for Refugees ('UNHCR') concerning the execution of the judgments of the European Court of Human Rights in the cases of Ilias and Ahmed v. Hungary* (Application No. 47287/15; Grand Chamber judgment of 21 November 2019) and *Shahzad v. Hungary* (Application No. 12625/17; Judgment of 8 July 2021)

⁹¹ UN, Charter. Supra note 15, Preamble para 2, 3 and 4 (1945)

revealed, however, a lack of adequate application of the information from the issued reports and the UN bodies engagement in implementation of effective practical measures with respect to the collected information, including facts of alleged violations of human rights, jus cogens, and UN principles.

Just one indicative example is that the UN Secretary General formally accepts and approves a state party denunciation request without bringing it to the attention of the bodies, which may challenge the withdrawal from the perspective of international law using a holistic approach based on an understanding of the common interests of ICs as a whole. As a result of the withdrawal of Belarus 2020, an *opinio juris* on the possibility of escaping international judicial control might be built, and victims of alleged violations will be denied international justice.

Meanwhile, the UN Charter shall apply since, in the event of a conflict, the obligations of the Member of the UN under the Charter and their obligations under the other international agreement shall prevail.⁹² Consequently, it might be applied in the course of interpreting the provisions of the withdrawal within the OP – ICCPR (Article 12) on their conformity with the provisions of the UN Charter, including its principles (Article 1). The interpretation of a treaty as well as any questions of international law have been included in a list of the competences of the International Court with respect to legal disputes (Article 35)⁹³ and such a request might be initiated at the request of whatever body authorized by or in accordance with the UN Charter (Article 96).⁹⁴

Furthermore, even if the withdrawal of Belarus from the OP-ICCPR is effective, the ICJ's advisory opinion in the legal question related to the withdrawal from human rights treaties is still relevant. Despite advisory opinions from the ICJ not having legally binding force, they still hold moral authority and legal weight. While some states may welcome these opinions, others may resist. Despite not establishing clear rules, advisory opinions can influence states to act in accordance with them, contributing to the creation of customary law. It is very likely that the advisory opinion can also influence states' behaviour⁹⁵.

Further instructions on how to activate the mentioned provisions of the Charter, and not the ICJ Statute, were not found. Therefore, we take as an example a request in the framework of the *Advisory Opinion Concerning Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*,⁹⁶ which is based on the resolution of the GA.⁹⁷ In accordance with Article 96 of the Charter of the United Nations, to request the International Court of Justice, pursuant to Article 65 of the Statute of the Court, to urgently render an advisory opinion on the following question: "What are the legal consequences arising from the construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, as described in the report of the Secretary-General, considering the rules and principles of international law, including the Fourth Geneva Convention of 1949, and relevant Security Council and General Assembly resolutions?"

⁹² *Ibid.*, Art. 103.

⁹³ International Court of Justice, Statute, 1945, art. 36.

⁹⁴ *Ibid.*, Art. 65.

⁹⁵ *Anuatu Confirms A Global Coalition To Bring Climate Change to The Un's International Court Of Justice*, (27/10/22), Port Vila, Vanuatu // <https://www.vanuatuicj.com/icj-resolution-champions>.

⁹⁶ International Court of Justice (ICJ), *Advisory Opinion Concerning Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (9 July 2004).

⁹⁷ UN GA Resolution "Illegal Israeli actions in Occupied East Jerusalem and the rest of the Occupied Palestinian Territory", A/RES/ES-10/14, 2003.

In sum, there are legal prepositions and factual preconditions that allow an affirmative answer to the third research question: "Shall the UN bodies request the International Court of Justice's (ICJ) advisory opinion on the legal question concerning an 'exit' right from a human rights treaty if a withdrawing government allegedly committed *jus cogens* violations, broken expectations of the final beneficiaries of the human rights treaty, and abused the treaty's goals and UN principle of good faith?"

The research confirms that UN bodies are authorized to fulfill their functions by submitting a request to the UN General Assembly, which, in accordance with Article 96, may seek an advisory opinion on legal questions. The article elaborates two preliminary questions: (1) on its general nature, and (2) specifically one for the case "Belarus 2020":

1. Has it been feasible, and was it in conformity with the axiological nature, the non-reciprocal character of treaty parties in this kind of treaty, and the expectations of the final beneficiaries to include a general withdrawal clause in human rights treaties?
2. What are the legal consequences for final beneficiaries and for the international human rights system that arise from the withdrawal of the Republic of Belarus from the human rights treaty being formally accepted by the General Secretary and becoming effective, regardless of the well-established facts of the alleged *jus cogens* norms' violations and suspected abuses of the treaty's goals and the UN principles, including the good faith and continuity principles', which were not examined on the merits? (based on the OP-ICCPR and Belarus withdrawal).

CONCLUSIONS

The research shows that there is no solid set of norms regulating the withdrawal from human rights treaties. Having in mind the special nature of the human rights law, the non-bilateral relations of state parties to the human rights treaties, and the threat to final beneficiaries' expectations in case a non-democratic state withdraws from the international human rights protection treaty, the author has considered the Vienna Convention of the Law of Treaties' withdrawal provisions in terms of their practicality.

Legal analysis of the Vienna Convention suggests that its provision on withdrawal is not effective for human rights regimes, whereas state parties to the human rights treaties are rare or almost never launch disputes with respect to any state party performance as it is anticipated by the *erga omnes* concept. Under such conditions, a state party withdrawal in a non-democratic style and violating the treaty's goals, rights and expectations of individuals under its jurisdiction may have no reaction and go unnoticed for the international community of states as a whole. The case "Belarus 2020" is an illustration of such a pattern.

The UN bodies facilitate the fulfilment of the Organization's goals, purposes, and principles and intervene if needed to follow up on the general and specific issues related to the withdrawal from human rights treaties. The case "Belarus 2020" has been analyzed and the analysis has revealed that despite the numerous efforts of the UN bodies to monitor the Belarusian crisis in human rights, data from the reports, which included facts on violations of *jus cogens* norms were not utilized by considering the RB denunciation request. As a result, starting in February 2023 people living under the

jurisdiction of the RB have no access to the most applicable population channel: the Human Rights Committee.

The UN bodies may and shall request the ICJ to give an advisory opinion on issues related to general and specific legal questions, aiming to strengthen the conditions and institutions under which justice and respect for obligations arising from treaties can be maintained⁹⁸.

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⁹⁸ UN Charter, *supra* note 15, Preamble, paragraph 4.

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