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THE AUT DEDERE AUT JUDICARE PRINCIPLE AND JUS COGENS VIOLATIONS

Kosianenko S. O.

*Postgraduate Student at the Department
of International Law and European law
National University "Odesa Law Academy"
Odesa, Ukraine*

The *aut dedere aut judicare* principle is intertwined with many other concepts of international law in the implementation process. In this regard, the interaction of the concept of *aut dedere aut judicare* with the concept of *jus cogens* deserves special attention.

The *jus cogens* norm is a norm of international law, which, due to its importance and worldwide recognition, has acquired the highest imperative status [1, p. 18]. In spite of not using the term itself, the *jus cogens* concept was applied for the first time by the US Military Tribunal at Nuremberg, which declared that the alleged treaty between Germany and Vichy France that authorized the use of French prisoners of war in German armaments was invalid under international law as *contra bonos mores* [2, p. 752]. The list of imperative norms in modern international law is not clearly defined. According to established practice, most of the recognized *jus cogens* norms reflect the desire to protect a person from serious violations (for instance, norms prohibiting aggression, genocide, apartheid, slavery, slave trade, torture, racial discrimination, crimes against humanity, basic norms of international humanitarian law applied in armed conflict).

The existence of *jus cogens* as part of modern international law is not seriously contested. Nevertheless, there remains a debate over the precise

contours, contents, and effects of *jus cogens*. The International Law Commission noted that while states have often agreed that the specific norms qualified as *jus cogens*, the dispute has often related to the effect of the *jus cogens* norms on other rules of international law [3, paras. 19–20], in particular, on the principle of *aut dedere aut judicare*.

There is a position according to which the international law concept of *jus cogens* (meaning ‘peremptory norms’) may also create a duty to extradite or prosecute. This point of view is supported, for instance, by such commentators as C. Ford, L. Sadat, and A D’Amato [2, p. 752]. The rationale for this position is as follows. Under the concept of *jus cogens*, states are prohibited from committing crimes against humanity, and an international agreement between states that facilitates the commission of such crimes would be invalid from the outset. Therefore, the next logical step is that the concept of *jus cogens* also gives rise to a duty to extradite or prosecute those who have committed crimes against humanity [2, p. 752].

In 1998, the Trial Chamber of the International Criminal Tribunal for the former Yugoslavia concluded the *Furundzija case* that despite the existence of any treaty, persons suspected of torture are obliged to be extradited or tried because the prohibition of torture is based on *jus cogens* nature: “Furthermore, at the individual level, that is, that of criminal liability, it would seem that one of the consequences of the *jus cogens* character bestowed by the international community upon the prohibition of torture is that every state is entitled to investigate, prosecute and punish or extradite individuals accused of torture, who are present in a territory under its jurisdiction» [4, para. 156].

The question of whether there exists a general *aut dedere* obligation for all international crimes is disputed and that a ‘more accepted suggestion is that such an obligation exists in relation to *jus cogens* crimes’ [5, p. 92]. It should be noted that first of all, the question of whether an international crime reaches the status of violation of *jus cogens* norms is debatable. It is important to realize that the norms of *jus cogens* are recognized as rules of customary international law and thus should be shaped by the common practices of states. The confirmation that a certain international norm has reached the status of *jus cogens* should be sought in the decisions of international courts and tribunals, as well as national courts. The application of the principle of *aut dedere aut judicare* is already a consequence of the recognition of an international *jus cogens* crime. The mere fact that a particular rule has acquired the status of *jus cogens* automatically does not mean that its related duty to prosecute has also

gained that status automatically. There are examples of states granting amnesty, or asylum, to individuals who have committed *jus cogens* crimes.

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THE IMPACT OF CYBER ATTACKS ON HUMAN RIGHTS

ВПЛИВ КІБЕРАТАК НА ПРАВА ЛЮДИНИ

Paseshnyk O. R.

*Postgraduate Student at the Department
of International, Civil
and Commercial Law
State University of Trade and
Economics
Kyiv, Ukraine*

Пасешник О. Р.

*аспірант кафедри міжнародного,
цивільного та комерційного права
Державний торговельно-
економічний університет
м. Київ, Україна*

У сучасному світі розвиток технологій призвів до досить серйозних загроз для безпеки та приватного життя громадян. Ці загрози охоплюють різні сфери нашого повсякденного життя. Від кібератак на критичну інфраструктуру і корпоративні об'єкти до втручання