

IMPERATIVES OF THE INTERNATIONAL POLITICAL AND LEGAL ORDER

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Abstract

In this paper, we intend to discuss a topic of particular importance, given that it addresses the imperatives of international political and legal order, as they appear in the light of current international law. It is an issue of great complexity, of very wide current interest because the international law that establishes and maintains an international legal order is a real energetic factor of organization of international community life. So viewed, the rules of international nature respond to the current acute need of founding the relations in this field and of meeting the common needs of the members of international society. We considered that by comparison with the internal legal order reflecting the health inscribed in this order, the international legal order is influenced by the structuring and training of the mondial community. Therefore we shall insist on the principal model of organizing international life – the state – to be viewed and analyzed in a double perspective: as an internal sovereign authority and as an actor on the scene of international life. In both instances, the state provides the foundation of legal order (domestic or international) for that law has always been the expression of the state wish.

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Motto: "The international law does not appear in the eyes of everyone as the right subordinate law, but as a law of "coordination" and the situation of each state relative to each other does not appear as only a situation of dependence, but as a statement of independence".

Nicolae Titulescu

I. THE STATE AND THE PLURALITY OF LEGAL SYSTEMS

We live in a world characterized by a close competition between thirds and classical methods of organizing society (state, nation, traditions, etc. and new trends that are emerging in the concepts of globalization and integration, estimated to be ways for reassessment and reshaping of the world.

If until recently the state was considered to be the major factor in domestic and international relations, it is currently in competition with a variety of forces: political, economic, legal, cultural, etc, that cooperate in achieving a new world order. Moreover, in some opinions, the state system is declining, its credibility is undermined as in the first half of the twentieth century, nationalist ideas emerged and they led to the two world wars, and also because of its inability since 1945 to meet the requirements of a modern global society (Bibere, 1999). To all this adds that emerging trends such as globalization and integration are still uncertain as it is not clear "how will be made the division of powers and obligations between states and global bodies, how will evolve the principle of national sovereignty and how it will behave in such varied circumstances of the contemporary world" (Iftime, 2003).

Investigation and knowledge of this process in all its dimensions, especially considering the political and legal imperatives, is necessary due to theoretical reasons, but mostly practical ones, "starting from the need of concerns and regulations at the global level, in fields that concern the good functioning of international life."

In the context outlined above, plus the demands of multiculturalism, any theoretician or practitioner of law (and others) must have the knowledge and means needed for the orientation in the "wildwood" of domestic legal rules, of the international law and that where appropriate, the rules of integrated community life.

Thus, a plurality of legal systems based on a plurality of legal systems emerge: the national system, the international system, the system of community law. Capturing its essence and identifying commonalities or demarcation lines, require, above all, some conceptual clarifications regarding the law systems and the rules underpinning them, and the state whose will these rules express. We refer in this article to the international legal and political order, and to its current imperatives.

II. INTERNATIONAL LEGAL ORDER

Generally considered, the legal order shows a social status built on a set of institutions and norms that govern the domestic relations of a human community. As described above, the legal system involves necessarily two essential elements:

1. The existence of a human society in which people are both the creators and recipients of legal norms;
2. The existence of an institutional device to establish and maintain social order through law.

The interaction and cooperation of the two components show a political authority (the state) and a legal dimension to the ordering of human relationships (law as the exposure of the will of state). The interaction between the political phenomenon (the state) and the legal phenomenon (the law) is obvious, though their social missions are distinct. The state is based on the primordial function of human community organization and management, while law is meant to establish and maintain a legal order. However, the social functions of the two phenomena interfere to collaborate on building a social order, of a balance between social forces and trends.

As outlined above, the law expresses the will of force which legitimately holds power, and the state cannot exist and function only in certain frames set by the rules of law. Therefore, apart from their common origin explained by common determinations, in the practice of social life their constant efforts combined for the purposes of organizing human community are applied, so as to be assured a social balance based on the norms of human behaviour with a political and legal tendency, to which naturally join other social norms: economic, moral, religious ones.

The social mission and functions are fulfilled according to the human space where we place the discussion: the internal space of a state, the international society or the coverage of community life forms.

As regards the international society, this is made up by all the human beings that inhabit the planet space, usually under the authority of a state entity. Viewed in their specific lives or as support of the various forms of common life organization of people, they have a certain legal status, in other words, they are topics of national or international law.

As main subjects of international law, on the stage of planetary life appeared the states which bear sovereignty, but also other non-state entities “whose ability to assume rights and international obligations, is stemming from the will of the states”. International organizations also have a status of subjects of international law.

Relations between these subjects of law are governed by a special group of legal norms, previously known as the “law of nations” (*fus genetium*) and currently, of public international law. In the regulations that make up this sector, the correlation between the state and the legal term presents specific notes. At the level of the global community there is a unique power (as it appears in the domestic society) whereas, under the sovereignty which they enjoy, member states are not subject in the relations between them to a superior authority. Is the defining feature of international society, in which power is decentralized, being assigned between the different states that compose it. The relations between these countries, traditionally called international relations, take various forms depending on the topics among which they appear.

1. Some relationships are to be found between states, as sovereign entities, and other relationships appear between the states and the other structures of international society, such as international organizations. Said relationships fall under international public law.

2. The second category is constituted by those relationships involving natural or legal persons belonging to different countries and legal systems. Given their nature, the legal rules that govern them belong to private international law.

It results that no category of social relationships arising and evolving in international society can exist outside a system of rules to govern it. The process of formation and application of these rules is part of what is generally and specifically called legal order.

Like any rule of law, with their attribute of managing human relations, international law answers the need for regulation of international relationships, in the sense of satisfying the common needs of the members of international society. Thus, international law establishes and maintains an international legal order, outside public or private life. At the level of public life, international law acts as a system of rules created especially by states but also by its subjects. The object of public international law is represented by relations between states, called international relations that can be of development or fighting. Therefore, current international law contains, in addition to rules that ensure peaceful collaboration between states its other subjects, and rules of conduct of war (humanitarian law). Also, compliance with the rules of public international law is made freely by its subjects, which they have recognized and committed themselves to respect. The rules of public international law are guaranteed by exercising coercion by states, individually or collectively. The collective coercion of the states is exercised through international organizations (especially through the United Nations Security Council).

Unlike other branches of law, the rules of public international law have some peculiarities:

Concerning the adoption of these rules, we find the lack of a supranational body with legislative powers. If in the internal law of any constitutional system, legislative power is achieved through national representatives (parliament), the rules adopted by this supreme power are mandatory, in public international law there is no higher state organs with legislative powers. Creators of rules of law are states or groups of states which subsequently become addressees of the rules they have developed. So, the legislative function is not performed by any institution with legislative powers higher than the states themselves. The creators of the rules of private international law and their recipients, this group of rules is considered to be a right of coordination, as opposed to the right of power, which is a right of subordination. Most rules of public international law are developed within international conferences dedicated to this purpose (UN conference on state legislatures, 1969). Also, several international organizations offer their institutionalized framework for adopting their rules of public international law (The UN Commission of private international law; OIM OMS).

- Applying the rules of public international law has also some specific notes, explained by the fact that in the international community there is not an administration that pursues law enforcement. Structures within which are elaborated the rules of public international law are often those bearing responsibilities for tracking their application. It should be added that though international treaties can be attributed to bodies or international organizations tasks to pursue the enforcement of such rules.

- Certain features can be identified concerning the control of the international law enforcement, given that in the international legal order there are no bodies to supervise the observance of legality and to intervene to impose sanctions when rules are not respected. Of course in public international law there is a possibility to use some type of bodies with jurisdictional attributions. But their operation is marked by some specific features, because the recourse to international courts is optional, and the jurisdictional proceedings may be initiated only with the consent of each member.

- Some discussions are about the legal force of public international law. As outlined above as regards public international law, it is widely recognized as a rule of law. According to some opinions, the public international law is an incomplete and imperfect system of rules. Those assertions are contradicted by authors who believe that, even if the application of public international law does not have any constraint for its application (as in internal law), the social mission of this branch of law remains unchanged. As domestic law, international law prescribes rules of conduct necessary for the proper functioning of a society (whether domestic or international). Moreover, the binding nature of the rules of public international law is supported by the entities that have developed it. The distinction between international law and domestic law aims only at the ways through which the development and the accomplishment of rules are achieved in both cases. Coercion, for example, is done in different ways in international law than in internal law. If in the domestic legal system, the application of coercive measures is done by jurisdictional bodies with general and binding competences, in international law sanctions are applied, if necessary, by international courts, such as the International Court of Justice from Hague. In the legal doctrine, this jurisdictional body is compared with the main institution of this kind in the European Union. The Court of Justice of the EU that ensures the uniform application and interpretation of the law which is considered to be the bond of Europe. This institution can be addressed both by EU states and individuals and legal entities from EU (directly). With this feature, the Court of Justice of the European Union distinguishes from the International Court in Hague to which have access only states, and not individuals and legal entities. On the other hand, the Court of Justice of the European Union does not have an international vocation, like the International Court of Justice, being an internal jurisdiction of the European Union, conceived according to the model of the state jurisdiction. Finally, while the competence of the Court of Justice of the EU is mandatory and general, being able to treat the EU states, ICJ jurisdiction is optional, “member states not being subject to its jurisdiction regarding a dispute, except to the extent in which it was agreed upon it.” (Art. 36, pct. 1 from the CIJ statute which stipulates the principle of the optional nature of the Jurisdiction of the Court). Therefore, the proceedings before that court (or similar) can be initiated only with the consent of those involved in the dispute. As for the peculiarities pointed out above, the issue of including international law in the general legal concept compared to the internal or community law remains an open question, and international law seems, according to some opinions to have a “moral” substrate, as long as the force of coercion is missing, which could be able to impose these rules. In a more subdued opinion, rules like this are qualified to be a “quasi-law”, since they are incomplete and imperfect, not liable to be assigned to patterns of a branch of law.

The view that has imposed itself and that we rally to is that the rules of international law represent “a set of legal rules that are binding for all independent states or different international organizations in their mutual relations” (Iftime, 2003). This organization of international law has the configuration of a branch of law with a well-defined purpose and a specific method of regulation.

The subject of the public international law is the relations between states and other legal topics, that arise and evolve in the international sphere. These relations become, in the power of public international law real legal relationships which acquire the legal form and force imposed by these rules. Like any other legal

relationship, the relations of public international law are composed of correlative rights and obligations incumbent upon states and other subjects of public international law under recognized international skills.

The method of regulating public international law also requires some clarification in respect to the particularities presented, generated by the consensual nature of the rules in question. As we outlined above, the binding force of private international law stems from the agreement between the states, as entities with authority. This agreement is not limited to the moment of creation of the law, but extends in its interpretation phase, especially in its process of application. With these arguments, we intended to support the binding nature of international law. In other words, the obligation of public international law is a particular application of the principle “pacta sunt servanda”, which lies in the power of promises and good faith with which international agreements have to be concluded.

III. CONCLUSIONS

In this article, we have tried to outline the special need for rules of public international law whose main function is to prescribe rules of conduct indispensable to an orderly and formal functioning of international communities. Such rules may take a customary or conventional form, in both cases passing through the filter of “conscience” and will of those who create them and apply them in international life. We insisted on the role that the state plays in setting international public order and balance. It was the first topic of public international law, established since ancient times and it remained for a long period the subject of this law. Therefore, by the rules enacted in line with other international legal entities, the state has an important role in ensuring a solid and balanced order in the planetary space. Therefore, the development of the state as a political phenomenon, is in line with the birth and maintaining of an international legal order, which had a slow evolution or warning, depending on the age and context in which they were the bearers of this state order. Although still incomplete and imperfect (but still functional), the international legal order is part of an international legal dimension in the interference and cooperation with political, moral, economic, religious order. With all the talk generated by the compulsoriness of international law, no state has yet challenged the legal nature of the rules through which the subjects of international law serve the need of rules of international law “as a strong condition regarding international relations, in order to maintain international peace and security”. In conclusion, the state is essentially the main actor of international life, so that international law has as originating and main topics – the states. But states have some autonomy in relation to the international legal order, because in their domestic lives they are only rarely controlled by the international legal order. The competences executed by each state within their sovereign borders and boundaries are not derived from a “hierarchically superior” order, such as the international order.

IV. REFERENCES

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