THE TRUSTEESHIP AND MANDATE SYSTEMS - METHODS OF EXERCISING THE TERRITORIAL JURISDICTION OF THE STATE IN PUBLIC INTERNATIONAL LAW

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Abstract

Territory is one of the "major notions" of international law, arose from the need of states to distribute their competences on European and American continents between the 15th and 17th centuries. In certain time periods, the concept of "absolute competence" of the state over its territory underwent transformations. In this respect, the international community, through international organizations, in order to ensure international peace and security, the balance between the great powers and the countries which were only just starting to affirm their sovereignty, established international mechanisms for the administration of the territories. The scientific research that we have proposed to carry out will analyze the international mandate system and the international trusteeship system.

Keywords: *territory, jurisdiction, international administration, mandate, trusteeship*

CZU: 341.1/.8+342.15

Introduction. The United Nations Charter is the document that serves as the legal basis for the entire activity of the United Nations. In general, the United Nations is a universal vocation organization that was created to "keep future generations away from the scourge of war", the

main purpose of which is to preserve international peace and security. Although peacekeeping operations are not expressly set out in the U.N. Charter, they have become a tool that the U.N. can often use to achieve its primary purpose. At the current stage, the methods of ensuring international peace and security are in accordance with the general principles of public international law, including the principle of sovereign equality, the renunciation of the threat or use of force, the inviolability of frontiers, the territorial integrity of states, peaceful settlement of disputes, non-interference in internal affairs, observance of human rights and fundamental freedoms, equality of rights and self-determination of peoples, cooperation between states, good faith in executing the commitments assumed by virtue of public international law [3, p.61].

The legal support of peacekeeping operations is represented by the mandate. The mandate is usually issued at the initiative and with the approval of the Security Council, but this role can also be fulfilled by the U.N. General Assembly. Article 24 (1) of the Charter of the United Nations confers to the Security Council "*the primary responsibility for the maintenance of international peace and security*".

For its part, N.A.T.O. specifies that that mandate is to authorize multinationals to execute missions in theaters of operations, based on the decision of an international forum (MC362 / 1-NATO Rules of Engagements) [10, p. 99]. The mandate, in fact, determines the limits of engagement of the forces in conflict, the concept of hiring rules expresses some concrete realities about the use of force by the military as representatives of the state authorities that entrusted them with the mission.

In the study that we propose to carry out, we will try to highlight the issues that concern in particular the management arrangements applied by other states or international organizations on the territory of other states so that a peace climate can be ensured, with respect for human rights and fundamental freedoms.

Applied methods. The accomplishment of the objectives of the study on the trusteeship and mandate system, on the ways of their management on the territory of other states is possible under the conditions of capitalizing the cognitive potential of the theoretical and empirical research methods. The content analysis was applied.

The results of the study. Public international law highlights the situations in which a territory can be administered internationally by individual

states or through an international organization. The methods recognized by the international community are mandate and trusteeship.

The international mandate is characterized by the exercise of territorial competences by a state under the control of an international institution [6, p.96]. This model of "representation" was enshrined in the art. 22 of the Covenant of the League of Nations, which was established in 1919 and stated the following: "*Territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilisation and that securities for the performance of this trust should be embodied in this Covenant. The best method of giving practical effect to this principle is that the tutelage of such peoples should be entrusted to advanced nations who by reason of their resources, their experience or their geographical position can best undertake this responsibility, and who are willing to accept it, and that this tutelage should be exercised by them as Mandatories on behalf of the League. The character of the mandate must differ according to the stage of the development of the people, the geographical situation of the territory, its economic conditions and other similar circumstances.*" [13, p. 19].

According to the content of art. 22 of the Covenant of the League of Nations and interpreted by the Council of the League of Nations, the following principles were applicable to the mandate:

a) The mandate applies to territories which, after World War I, ceased to be under the authority of the states that have governed them;

b) Ensuring the welfare and development of these peoples by the League of Nations;

c) Mandating powers are responsible for their work towards the League of Nations;

d) The content of the mandate depends on the level of development of the respective population.

From this standpoint, the territories placed under mandate can be divided into three categories:

1) Type A mandates: These states were formally declared as independent, under the "leadership" of the mandate state until the state un-

der mandate would be able to govern without any help from outside. As a result of the struggle for national liberation, the territories under this kind of mandate gained independence until the end of the Second World War. Among the territories subject to the type A mandate system can be highlighted: Syria and Lebanon - French mandate, Palestine, Iraq and Transjordan mandate - English mandate.

2) Type B mandates: These territories were placed under the authority of the mandate state, on condition that it has certain obligations to the local population. For example, the Belgian mandate on the territories of East Africa, such as Rwanda-Burundi, by the decision of the Council of the League of Nations of July 20, 1922, art. 5 of the Agreement establishing the mandate, states that the mandate power has to:

- eliminate all forms of slave trade;
- prohibit forced or compulsory labor, with the exception of essential public works and services, and subject to fair remuneration;
- protect the native population against fraud and constraints by closely monitoring labor contracts;
- perform effective control over arms and ammunitions trafficking, as well as trade of spirit drinks [9, p.37].

Type B mandates were also applied to Cameroon and Togo - French and English mandate, Tanganica - English mandate [14, p.87].

3) Type C mandates: refers to the territories on which the mandate state was authorized to act as in the territories incorporated into its territory by the direct application of its laws. This type of mandate was essentially applied to the old German colonies, South Africa - mandate of the South African Union (the present territory of Namibia, which became independent on March 30, 1990), Nauru Island - United Kingdom mandate, New Guinea - Australian mandate, etc. [11, p. 306]. The League of Nations has recoursed to the mandate system to entrust the administration of these territories to great powers such as England, France, Japan with the aim of preparing them to become autonomous or independent. The term of office may vary. Beneficiaries of the mandates were Japan in China and the Pacific region, England and France in Africa, and the Ottoman Empire in the Arabic area (Syria and Lebanon - France, Palestine, Mesopotamia, the future Israel - England). Some disputed cities have been declared free cities and passed under the authority of the League of Nations. It was the case of Danzig citi-

es, disputed by Germany and Poland, and Fiume, claimed by Italy and Yugoslavia.

In the mandate nomination procedure, first, mandate states were appointed. This process was carried out by the Supreme Council on behalf of the Assembly of Allied and Associated Powers, and subsequently the League of Nations, through a legal act, specified the conditions under which the mandate would be exercised [1, p.220]. The mandate power, exercising the mandate regime, was entitled to exercise certain competences in the territories under mandate, while assuming certain obligations, being subject to international control.

The Covenant of the League of Nations uses the term "mandate", but it does not correspond to the term of national law, and the parties are not in a position of legal equality, according to the general contractual arrangements. In accordance with the Civil Code of the Republic of Moldova, by mandate is meant the power granted to the mandate state to represent the mandate when the legal acts are concluded, and the mandate state acts in the name and on behalf of the mandate [5]. In view of the above, it is important to note that the mandate established for a certain territory could not be revoked because it was established under a treaty.

The treaties concluded by the mandating state did not extend to the territories under its mandate, except where there was an express provision for that, those regulations were in particular related to the content of the competences conferred. There was no automatic extension of the legal order of the mandate authority over the territories under mandate. The legal status of public goods located in the territories under mandate was respected. The integrity of the territory under the mandate was respected, and the transfer of territory to third parties and the incorporation of the territory under mandate into the territory of the mandate state were forbidden. Considering the purpose for which the mandate systems were established, that of raising the welfare of the population, of fostering social progress, the mandate state had the right to lead and control local public services and to defend that territory [2, p.221]. With the disappearance of the League of Nations, the international mandate system is replaced by the international guardianship, created by Cap. XII of the O.N.U.

The United Nations has in fact developed for many years peacekeeping missions whose purpose is to temporarily administer certain areas

in order to ensure the security of the some regions and, in some cases, to promote the creation of a democratic state. These areas, qualified as "territorial collectivities" administered internationally or "territories under international administration", are the scope of non-sovereign international competences, and to be clear, it is sufficient to refer to the resolutions of the Security Council (international norms), which creates these spaces, giving U.N. representatives on the ground defined (non-sovereign) civil, political and military competencies valid for a defined area (territorial jurisdiction) [12, p. 51]

According to art. 77 of the U.N. Charter, the trusteeship system shall apply to such territories in the following categories as may be placed thereunder by means of trusteeship agreements:

a. territories now held under mandate;

b. territories which may be detached from enemy states as a result of the Second World War;

c. territories voluntarily placed under the system by states responsible for their administration [4].

According to art. 77 of the U.N. Charter, Somalia, an old colony of Italy, was the only territory placed under trusteeship under Art. 77 lit. b) of the U.N. Charter as a territory detached from enemy states as a result of the Second World War [7, p. 306].

According with the provisions of the U.N. Charter, the basic objectives of the trusteeship system are:

- to further international peace and security;
- to promote the political, economic, social, advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence;
- to encourage respect for human rights and for fundamental freedoms;
- to encourage recognition of the interdependence of the peoples of the world.

In order to ensure the application of the U.N. Charter rules, for each territory, a trusteeship agreement was concluded between the U.N. and the administering state, confirmed by the General Assembly or the Security Council. The trusteeship system is under the responsibility of the Trusteeship Council, which forms an international supervisory system for the trusteeship application.

In accordance with art. 75 of the U.N. Charter, "*The United Nations shall establish under its authority an international trusteeship system for the administration and supervision of such territories as may be placed thereunder by subsequent individual agreements*". We note that the U.N. uses the term "territory" rather than "state". This is explained by the fact that the trusteeship system is conceived as a transitional regime of these territories towards self-government and independence. In order to determine the content of the competences of the territories under trusteeship and the content of the rights conferred to the administering state, it is proposed to analyze a practical case, by exemplifying the trusteeship of the Cameroon territory.

Conclusions. According to the provisions of the French Constitution of 1946, to the territory of Cameroon was assigned a legal status of "associated territories" corresponding to those territories that were under trusteeship. The French Constitution was directly applied to the territory of Cameroon, being administered , according to the French legislation, as an integral part of the French territory. The Decree of 1957 stipulated the limits of the administering state powers and of the territory under trusteeship, so France retained the field of foreign affairs, with the right to conclude treaties, the right to active and passive legacy, the right to represent Cameroon in conferences and international organizations [8, p.612]. Some broad social freedoms, such as the right to work, the freedom of association, were beyond the jurisdiction of France [8, p. 613]. In 1960, the territory under trusteeship gained its independence under the name of Cameroon.

The territories administered by foreign states on behalf of the League of Nations, then in the name of the U.N., maintain part of their sovereign rights, and no entity that has managed it can claim any sovereign rights. The legitimacy of such systems arises from their temporary or transitional nature. The administering powers did not restitute a title of sovereignty over these territories, justifying their presence by applying the mandate conferred by the international community on behalf of which they had to bring the population to the capacity to self-administer. In 1994, with the full autonomy of Palaos, which freely joined the United States of America, the Trusteeship Council ceased its activity. The study of the international legal trusteeship of territories has emerged from the need to understand the impact it had on states, former

colonies, which through a transitional regime, succeeded in becoming independent.

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