NATIONAL AND INTERNATIONAL EUROPEAN LAW

INTERNATIONAL LEGAL ORDER

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„Ubi concordia, ibi victoria"
(Where there is unity, there is the victory), Publius Syrus, 1st century B.C.)

Abstract

Along with the national legal order, the international legal order is conditioned and substantiated by the general principles of law recognized by the members of the international society. The contemporary international law system sensitizes the opinion of all nations on universal values: equality of states, freedom of peoples, unity and responsibility of states for the future of humanity, justice between peoples, etc.

Public international law through its laws and principles, regulates the conduct of the states between them, establishing mutual rights and obligations. The object of regulation being international relations between states. In order to be regulated by the rules of international law, the international relations between the states must be relations in which they appear as holders of their sovereign power, their behavior in this field must be an expression of the state power on an external level.

Public international law regulates not only the relations between states, but also the relations between states and other subjects of international law, such as international organizations (with certain limits), nations and peoples (at a certain stage of their evolution towards independence).

The will of the states, materialized in their behavior at the international level, in

their foreign policy, manifests itself in the context of the impact of different, objective and subjective, progressive and conservative factors.

The process of forming a common will of the states, expressed in the principles and the norms of international law, is an arduous and difficult process, in which the contradictory interests of the states are often confronted. Thus, there is a normal connection between the formation of the norms of international law and the foreign policy of the states. In the manifestations of foreign policy of the states, the process of forming the common will, of the consensus, on the regulation of international relations in a certain way according to their interests is carried out. Therefore, interest is a dynamic factor in the process of forming the norms of international law.

The greater the number of participating states in the process of forming the norms of international law, the more democratic the modalities of implementation, the more the norms in question will be expressed through their content closer to the interest of all participants, the more general the character, of universality of these provisions will be wider and, implicitly, their more rigorous application, thus contributing to the establishment of a stable international legal order.

Developing international relations in which all states have equal opportunities for expression and conduct, which have the same effect in international life, would be capable of giving international law more substance and efficiency.

Prospects for the evolution of international law towards a right of humanity includes:

international "fact", which is, in essence, a social relationship that hides a meaning given by the interests and values involved. Its range of significance may be smaller or greater, in this sense, disarmament, underdevelopment, environmental protection, etc. outlines areas of global interest, with long resonance;

the assertion of a right of humanity - for example, for the protection of the heritage of humanity - is increasingly occurring, in areas not subject to the jurisdiction of the states and in the environment. The notion of "humanity" is not only present, expressing the community, the solidarity of the people, the persistence of their identity and the rivalries between them, adding to the international law a transtemporal dimension, targeting not only the past and present generations, but also the future ones.

In these ways, the international law of the future should accentuate and develop, through concrete measures, planetary-scale goals that have not yet been achieved due to the lack of a common vision of the future by the states. Numerous destructions of human lives, cities, populations, which continue, put us in a position to endanger humanity in its genetic data and to survive or to promote human rights, through the achievement of the Rule of Law and the creation of a true international legal order for humanity. The rule of law contains three main constituent elements: legality, democracy and human rights, which are to be respected.

Keywords: Public International Law, International Relations, International Legal Order, Principles of Law, Rule of Law / Rule of Law.

CZU: 341.64

Motto:
"*Man is the cardinal axiological landmark of any legal system*" [1]

International relations can be defined as a branch of political science, which studies the relations between state actors within the international system and their interactions with non-state actors (intergovernmental organizations, nongovernmental organizations, international corporations etc.). This field of study is an interdisciplinary one, the most important contributions coming from the political sciences, economics, geopolitics, security studies, history, philosophy, law, cultural studies (area studies). The main areas of research related to the field of international relations are: international political economy, foreign policy, security studies and peace research, public international law. The term international relations refer to all the interactions within the international system and to the field of study that researches them.

In a broad sense, international relations define relationships, relations between nations as direct realities, which come into contact with each other, on the one hand, through non-state, as well as professional (economic, trade union, youth and women, cultural, scientific etc.), and on the other hand through the structures, institutions and policies of states, governments. In a narrow sense, international relations designate the relations between states, more precisely defined: interstate relations.

International Public Law, through its principles and norms, regulates the conduct of states between them, establishing mutual rights and obligations. Therefore, the object of regulation is the relations between states, social relations that appear and develop in different fields: political, economic, technical-scientific, social, cultural etc. International law emerged and developed out of the need to form an ORDERED framework for interstate relations. Its evolution, starting from disparate normative elements and of strictly bilateral nature, in its beginning period, was characterized by an exponential dynamic - an obvious reflection of the increase of international interdependencies that it is called to regulate.

The main issues to be investigated and reflected by specialists in the field of international law are:

- to what extent can contemporary international law "keep pace" with the extremely rapid evolution of international relations (?);
- how will the international normative ORDER evolve in the next decades (?);

- what are the modalities of connection and harmonization between the foreign policy of the states and the international law (?) etc.
- these would be just a few issues of an epistemological nature, to be discussed by specialists in international issues, at the beginning of this millennium.

International relations and international law are not and cannot be two isolated systems, they communicate and influence each other. Of course, the structural level remains - the one of the international relations, the international law, as a normative set, being a supra structural one, reflecting the changes that have taken place in the international relations in a broad sense. International law does not have a strictly passive character of inert reflection, of merely "photographing" what is happening in the international environment. He is increasingly inclined to assume the role of instrument, coordinator and regulator of international relations, which is all the more important in the context of current international relations, which are increasingly dynamic and with unpredictable developments.

Thus, a clear and stable legal framework is created for the future, with regard to certain categories of international relations which, ideally, should maintain, from the beginning, some flexibility, in order not to hinder the further development and evolution of these reports. In this way, the opposite influence of the normative level over the structural one is exercised, by rigorously conducting, from the moment of norming, the regulated reports in accordance with international law. Thus it is realized and it is ensured, through the function of conservation of the norm, the international legal order.

The structure of the two systems - that of international law and, respectively, that of international relations in the broad sense - is somewhat similar. If the structure of international law is strictly "horizontal", generated by the principle of equality (in rights and in the capacity to assume obligations) of the subjects of international law, based, mainly on the sovereignty of the states (which remain at the beginning of the third millennium the main subject of law (international), in the structure of international relations, two axes work, along with the "horizontal" one, outlining a "vertical" one, determined by the level of power, or, to use the terminology of Latin American and Scandinavian theories of dependence, polarizing the "center". " - "peripheries".

Obviously, this dual structure in international relations creates

tensions at the moment of "contact" of international relations in a broad sense with the international law in force.

Thus, there is a contradiction between the inequality of fact and the equality of law, the contemporary international law trying to exclude certain factors of discrimination, inheritance of the old international society, such as belonging to the "civilized nations", and to value the social and economic importance of states, their obligations in maintaining peace, promoting multilateral cooperation that will stimulate the progress of all peoples.

Regarding the dynamics of the two systems, it can be observed that international relations are characterized by a continuous evolution, while the international law has a uniform, uneven evolution, in leaps. Its development is materialized by the coexistence of such areas with rapid coding movement in some of its sub-branches (diplomatic law, consular law, treaty law, sea law), along with areas that "stagnate" in terms of international regulations (such as disarmament).

Historically, international law is closely linked to the emergence and development of states, other international entities, and changes in international relations, evolving with the development of political, economic, conceptual and mindset changes in societies of the time. International relations, initially rudimentary and limited in scope, have developed and diversified, the main role in this process being the states. Although the content and structure of international law have evolved, carrying, throughout history, the succession of successive socio-political systems, the development of international relations in more and more areas of international life - economic, social, cultural etc. - imposed the necessity of permanent crystallization and formulation of legal rules that adequately regulate the relations between states and other subjects of international law. At the same time, the emergence on the international stage of new entities and their participation in international life as subjects of international law - such as international governmental organizations, created in a significant number (especially after the Second World War), nations fighting for liberation and the formation of new independent states - but also the emergence of new actors who, although not (yet) "approved" as subjects of international law (natural person / individual, international non-governmental organizations, transnational corporations (STN), are increasingly influencing the action of the normative level, have determined the resizing and reconceptualization of public international law.

According to the nature of the problems (the object) regulated (s), international law is divided into: the law of treaties; the law of the sea; river law; air law; the right of cosmic space; international humanitarian law; international criminal law; international economic law; international environmental law; international protection of human rights; protection of the rights of persons belonging to national minorities; international development law, etc.

From a geographical point of view, there are:

American international law - formed by norms that, without extending the application of the rules of general international law, have formed as object the regulation of the problems and situations specific to the relations between the American states. For example: arbitration, river regime, asylum law, etc. It is considered in doctrine that the evolution of the Organization of American States, by receiving states unrelated to the Latin American legal thinking (former British and Dutch possessions) is likely to attenuate the particularism of American international law;

European law: conventional rules developed within the Council of Europe, which includes 47 Member States and European law (origin and derivative), which represent a specific autonomy and are characterized by priority, direct effect, direct applicability and compulsory jurisdiction of the Court of Justice of the European Union;

African law - decolonization has increased the number of independent states and led to the emergence of particular rules (regarding succession, borders) and to the questioning of international legal regulations (for example, the application of rules on the Niger river). The cause: these states have shown a certain restraint in the application of rules to whose elaboration they did not participate, the classical law being accused of Eurocentrism.

Another important aspect of the international legal order is the relationship between international law and domestic law. The differences between international law and national law are after: the object of regulation: international relations and not social relations between persons; how to elaborate the norms; the subjects of law; the enforcement and sanction system.

With reference to the doctrines and theories of the report, we mention:

Dualism: international law and domestic law are two equal, independent and separate legal systems. In order to apply in national law, the international norm must be transformed by a norm reproduced by the internal law, thus it can be modified / repealed by a subsequent law. Authors: **Triepel, Anzilotti, Strup**;

Monism with the primacy of domestic law: international law is derived from internal law, is an "external state law". Authors: Bonn School (**Zorn, Kaufmann, Wenzel), Decenciere-Ferrandiere, K. Schmitt**;

The monism with the primacy of international law: the superior position has international law, the domestic law being a derivation of it: Authors: The Vienna School (**H. Kelsen, Kunz, Verdross), Guggenheim, Politis, Delbez** etc. International practice generally consecrates the primacy of international law. The International Court of Justice (ICJ) has enshrined it in principle, for example in the Advisory Opinion of April 26, 1988 on "Applicability of the arbitration obligation under the section of the Agreement of June 24, 1947 on the UN headquarters";

Socialist doctrine equally criticizes dualism, the primacy of domestic law or international law; there was talk of "the dialectical correlation between international law and domestic law", recognizing "the mutual influences between them", although they are considered as "distinct orders of law, not subordinate to each other" (**Gr. Geamănu**). Cause: exacerbation of the principle of sovereignty and non-interference in internal affairs;

Pragmatic theory - in reality, everything is reduced to the international responsibility of the state, which would indicate the limits of the relationship between the two legal orders: in the monistic construction, the internal norms would be automatically abrogated by those of international law, in the dualistic one, they would remain valid, but the responsibility of the state would be committed internationally.

The solution provided by the **Constitution of the Republic of Moldova**:

The constitutional provisions on human rights and freedoms shall be interpreted and applied in accordance with the Universal Declaration of Human Rights, the pacts and other treaties to which the Republic of Moldova is a party. If there are inconsistencies between the pacts and treaties regarding the fundamental human rights to which the Republic of Moldova is a party and its internal laws, the international regulations have priority (art.4);

The Republic of Moldova undertakes to respect the Charter of the United Nations and the treaties to which it is a party, to base its relations with other states on the unanimously recognized principles and norms of international law. The entry into force of an international treaty containing provisions contrary to the Constitution will have to be preceded by a revision of it (art. 8);

The Republic of Moldova is a state of law, democratic, in which

human dignity, his rights and freedoms, the free development of human personality, justice and political pluralism represent supreme values and are guaranteed (art. 1 paragraph (3));

The Constitution of the Republic of Moldova is its Supreme Law. No law or any other legal act that contravenes the provisions of the Constitution has legal power (art. 7).

Thus, the Republic of Moldova maintains and develops peaceful relations with all the states, and within this framework, good-neighborly relations, based on the principles and other generally accepted norms of international law. The Republic of Moldova commits itself to fulfill, in good faith, the obligations deriving from the treaties to which it is a party, and the treaties ratified by the Parliament are part of the national law, so they acquire the same legal value as the laws. But if there is an inconsistency between the human rights treaties and treaties to which the Republic of Moldova is a party and the internal laws, the international regulations take precedence.

Relations between Community / European law, international law and national law

1. **Community law and international law**. Community / European law has been defined by some authors as "a legal order derived from international law" (G. Sperduti). The European communities are the result of the conclusion of treaties between sovereign states (constitutive or institutional treaties). The similarities and differences between Community / European law and international law result mainly from the relations of Community / European law with national law.

2. **Community / European law and national law**:

- the norm of European law automatically acquires a positive law status in the internal order of states - immediate applicability;

- the European norm is likely to create by itself rights and obligations for private persons - direct applicability. National judges are required to apply EU / European law;

- the European norm takes precedence over any national norm - the primacy of Community law. Thus, in the case of Community / European law, the monism derives from the very nature of the Communities, Opinion 1/91 of December 14, 1991 of the CJCE shows that "the constitutive treaties have instituted a new legal order for the benefit of

which the states have limited, in areas increasingly more broadly, their sovereign right and whose subjects are not just the Member States, but also their nationals".

3. **International law and Community / European law**:

The Court of Justice of the European Communities has established, by jurisdiction, the rule according to which the treaties in force concluded by the European Community, which contain provisions of direct applicability, have priority over the Community / European rules (before or after the treaties in question), which are , thus, inapplicable (monistic approach);

the treaties in force concluded by the European Community have priority over the national law of the Member States of the EU and can have direct effect in their domestic law;

under certain conditions, the Community may be bound by international agreements concluded by the Member States prior to the creation of the European Communities; theoretically, these agreements can also have direct effect;

the rules of customary international law can be invoked to successfully challenge the validity of a Community / European rule, if the violation of international law is manifest.

The concept of legal order is not just an attribute of the internal plan of law, as any legal order, any national / state law / public order interacts with other such orders in the plan of the existence of an international and increasingly internationalized society. as an effect of a quasi-total globalization. As such, symmetrical to an internal legal order, in the doctrine it was stated that there is a general international legal order [2], with certain particular notes that are given by the very nature of public international law, by its specific way of creating it as a normative field.

From such a generic definition, starting with the current doctrine of international public law, the legal order signifies the multitude of legal norms (customary ones - rank I norms in the development of international public law and rank II norms, in other words norms). as well as of the institutions to which such norms are related and whose purpose is the organization and ordering of universal international society and its sub-assemblies (regional societies, which is equivalent in doctrine to the recognition of regional areas of public international law, such as, for example, European international public law (also known as European

Central European international law), a Latin American international public law - in order to establish peace and justice, to promote development, as in the current conception, admits this perspective of Catholic doctrine, or the Islamic international public law).

However, whether we also consider the doctrinal and constructional features of such regional systems of international public law or if we consider only universalism as an essential property today of public international law, today's doctrine accepts, almost unanimously, that the purpose of all these systems / subsystems of law represent the international legal order, a concept complementary to that of internal / state / national legal order.

It has been shown, in the doctrine, that it is not permissible to project a rupture between the internal legal order and the international legal order [3], that between these two orders there is a certain logical-theoretical unity [4], most of the opinions in the doctrine inclining today towards monism. juridical with the pre-eminence of the international law in relation to the internal law, being such a position of position that is especially visible especially in the field of human rights and fundamental freedoms [5].

The abandonment by the doctrine and legislator of the old dualist positions, positions determined in particular ideological and political, was an important reality for establishing a normative foundation of a real rule of law [6], therefore for a legal order and an order of in accordance with the standards, with the general practices accepted as law and with the general principles of law recognized by the civilized states, as provided for in **article 38** of the Statute of the International Court of Justice [7].

But what exactly does the word law mean in the rule of law?

Three aspects can be distinguished.

First - legality, the rule of law assumes that laws are rules that possess a set of formal characteristics. These characteristics are called formal because they do not specify anything about the content or substance of the laws.

Second - democracy, looks at how laws are created. (Laws can be created by people who have been elected by vote and are accountable to voters or those who have not been elected. This can happen democratically or in a system where there is no democracy). It is understood that the

rule of law can only be fully realized in a democratic political system. It should, however, be noted that not all laws in a state are issued by parliament or another elected body. The legislative power may also be delegated to other bodies, especially local and regional agencies. And in some democratic systems there may also be representatives in parliament who were not elected by vote. The main thing is that those who are entrusted with the legislative power are subject to the law and the corresponding constitutional control.

Third aspect - refers to the content of the law. Here, the essential element is that the rule of law implies respect for human rights. This statement is especially true of civil and political rights. It is difficult to imagine, for example, how the rule of law can exist without due respect for the rights of free expression and association. But other human rights also have a role here, such as economic, social and cultural rights. Of course, the law must be legitimate, in the sense that the competent legislator must benefit from the confidence of the citizens. In fact, this confidence can only be established through a democratic process, in particular by a national assembly or a parliament elected by secret ballot.

The rule of law is also enshrined in Article 2 of the Treaty on European Union as one of the fundamental values of the Union. In accordance with the principles of the rule of law, all public authorities must always act within the limits set by the law, respecting the values of democracy and fundamental rights, as well as under the control independent and impartial courts. The rule of law includes, among others, the following principles: legality - which involves a process of adopting transparent legislation, held under conditions of accountability, democratic and pluralistic; legal certainty, prohibition of the arbitrary exercise of executive power; effective judicial protection provided by independent and impartial courts; effective judicial control; including respect for fundamental rights, separation of powers and equality before the law. These principles have been recognized by the Court of Justice of the European Union and the European Court of Human Rights.

As it has been shown throughout its evolution, public international law is a normative system as dynamically as possible subject to continuous development being meant to ensure the legal security of international society.

As a coordination right, public international law is applied to

international legal relationships that are carried out with a predilection on a horizontal level, this set of rules not expressing a universal will, the general interest being promoted by summing the will agreements expressed by states freely, individually and sovereignly. It is also stated that "in the international legal order the state is at the same time author and subject (addressee) of the rule of law" [8].

The systemic theory applied in the analysis of international law was imposed as a result of the development, starting with the twentieth century, of international regulations, under the influence of macro-economic factors and especially of the socio-political one, under the influence of the latter the set of norms making the qualitative leap towards a normative system to which the system imposed specific characteristics being an effective, complete and unitary one [9].

The phenomenon of globalization that began in the early twentieth century, which went through stages of evolution until today's globalization, was likely to cause a split between the interests of the states and the interests of other participants in international society, international governmental organizations, multinational corporations, non-governmental organizations and even non-governmental organizations. private individuals who began to act in the sense of coming under the guardianship of the states, the effect in the international law plan, being the proliferation of international organizations and the creation of particular legal regimes, thus leading to a complex process of division between different branches doubled by the creation of so-called legal orders specialized.

Given that the number of protagonists acting on the stage of international society has increased considerably, in conjunction with their tendency to manifest themselves freely and denying the guardianship of states, personalities from the world of international law have focused their attention on what has traditionally been called the unity of international law.

Considering that this unit could be affected as a result of the action of some factors involved in the evolution of international law, in 2006 in the International Law Commission (CDI) at the UN, a working group chaired by **Martti Koskenniemi** presented the final report entitled "Fragmentation international law: difficulties arising from the diversification and expansion of international law" [10].

International law as a highly dynamic normative system has undergone a constant expansion phenomenon in the post-war period.

Almost paradoxically, this evolution of nature gave hope to humanity, causing specialists a fear of unity international law threatened by a fragmentation of the system subject to the incidence of risk factors.

In the view of some authors [11] the main factors that would produce the phenomenon of fragmentation with negative consequences in the evolution of international law are:

- proliferation of international organizations;
- the multitude of international judicial tribunals;
- autonomous regimes;
- the diversity of sources of international law;
- conflict of international norms etc.

Without developing an analysis of the internal mechanisms of action of these factors, we considered that it is more important to discuss the solutions that limit the negative effects that could affect the normative system of the international society that must remain a unitary and coherent one.

It has become increasingly obvious that international law should not be viewed merely as a set of rules. International law is more than that, it is a system whose unity is based on coherence. This assertion is supported by theories with a special predictive value, which have promoted and developed the notion of legal order, which can give answers in counteracting the adverse effects following the action of risk factors in international law.

The legal order implies the organization of any system of norms and institutions intended to apply effectively to the constituent subjects of a given community, including at the international community level. However, the general legal order encompasses various types of particular orders, in which the unit assumes hierarchical relationships.

Santi Romano analyzing the international normative system emphasized re-offering to the concept of organization that it implies a report of superiority and consequently one of subordination [12].

This is where the clear idea that the systemic organization of international law implies a hierarchy of its norms emerges. In the final report presented to the International Law Commission on the fragmentation of international law, it is emphasized that the affirmation of the hierarchy in international law is a result of the willingness of the universal society to impose a certain value system [13].

At present, there is a growing presence of universal interdependence

within this society, which manifests itself not only in political and strategic terms, but also in other areas such as economic, ecological, cosmic etc.

It is absolutely imperative that we address **Montesquieu** in this regard, who recalled in his work, "The Spirit of Laws", that all nations know the existence of a body of special rules applicable to the relations of the law of nations.

It should be borne in mind that the purpose of law can only be one of human nature - "for man the right was constituted" (*hominum causa omne ius constitutum*), the statement being valid for both the internal and the international order.

The law can exist only in a society and without a system of law, which regulates the relations between its members, there can be no society, be it national, or international.

The dismantling of the communist system on the European continent has opened up hopes and numerous prospects, for the time being still unconfirmed, for a multi-polar international society, in principle favorable to finding solutions to the problems of humanity as a whole. In such a framework, the essential problem would be the elimination of all threats to peace, especially those characteristic through the use of force, the purpose being to establish a global political and legal order that, in the third millennium, to ensure the harmonious, economic and political development, after the model and standards of democracy, of all states and at the same time prevent new dangers, many of an unconventional and asymmetrical type, which threaten humanity.

Unfortunately, at present, the changes within the international community, instead of leading to a concentration of actions, with beneficial results for all the peoples of the world, sometimes generate convulsions and armed conflicts, as well as actions circumscribed by the "hybrid war", especially in context. regional and sub-regional, against the backdrop of recurrent economic and financial crises.

These findings call for widespread action, using all means to "pacify" the international community, resorting, inter alia, to the action of international organizations, especially at the regional and subregional levels, and, in particular, to the role of the Organization of Nations. United, which needs a deep and rapid reform, in order to maintain international peace and security through appropriate means of dispute resolution.

In conclusion, we note that on September 24, 2012, at the High Level Meeting of the UN General Assembly, the **Declaration of „Rule of Law at National and International Level"** was adopted, which reaffirms „the commitment to the rule of law / rule of law. and the fundamental importance for political dialogue and cooperation between all states and for the further development of their three main pillars on which the UN is built: international peace and security; human rights and development. We agree that our collective response to the challenges and opportunities resulting from multiple and complex political, social and economic transformations before us must be guided by the rule of law / rule of law, as this is the foundation of friendly and equitable relations between states and the basis on which fair and just societies are built". The document also states that „we recognize that the rule of law / rule of law applies equally to all states and international organizations, including the UN and its main bodies, and that respect for and promotion of the rule of law / rule of law and justice must be to guide all their activities and to give predictability and legitimacy to their actions".

At present, the creation of a new international legal order depends on the correctness of the implementation of international law through the realization of the rule of law / rule of law, as **Nicolae Titulescu** also said at the Conference held at Komensky University in Bratislava, on the occasion of granting the Title of Law. Doctor Honoris Causa:

... Only on the day when the policy will be confused with the law, when the political spirit will no longer oppose the legal spirit, only on the day when it will be understood that the true legal spirit is confused with the sharpest political spirit, for that he consists in harmonizing the contradictions at the moment in the service of the master who is called law, because he knows that if he no longer deserves to be a master he must be replaced by a new master, adapted to the new demands that are called all law, but a new law, only in the day when the law will shine like a sunrise in the soul of all people, as a guiding directive, as a categorical imperative that is imposed, as a self-assumption that is confused with organized freedom, only then will humanity be saved because in the peace that the legal order creates, man will be able to fulfill his destiny, according to the command of the Creative Ideal, (Bratislava, June 19, 1937) [14].

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