

THE HIERARCHY OF THE NORMS IN THE INTERNATIONAL LAW SYSTEM

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Abstract

In the international law system hierarchy of the norms is recognized and accepted; without being put on the doubt sign the equality of the international law sources; such as are covered by the article 38 from the International Court of Justice Statute (C.I.J.); preeminence of a source to another being excluded. International law was consolidate in a hierarchy in top of which are situated imperative norms – jus cogens – of nature to validate the contrary rules; regardless of the formal source in which them find their expression.

Key words

Hierarchy of norms; hierarchy of the law sources; public international order; imperative norms; jus cogens

1. GENERAL INTERNATIONAL LAW

Public international law is fundamentally different by the intern law and default by any component branch of that. In the development of the public international law doesn't exist superior authorities of the states with legislative powers. The regulations imposing conduct rules in the international society and having like receiver. The states but others subjects of international law also are result of a process which develops under the base of some principles totally different from the intern legislative system.

Usually in the intern law legislative power belongs to the parliament invested with special powers of development of the laws applied into a given territory and to a given population having an obligatory character.

In the international law the states or the groups of states are the ones which on the base of the express free will agreement develop law rules; rules destined to the same states; to which are imposed certain conduct rules in the international society.

An organized structure on the top of the states with legislative powers doesn't exist. Precisely why it is affirmed that „in the international juridical order the state is in the same time author but also receiver (subject) of the law rules”¹

¹ Raluca Miga-Beșteliu, Public International law, Ed. All Beck București 1997, pag.4

International public law is regarded mostly like an ensemble of rules including the specific elements. What imposes an emphasis on defining the public international law is his character of unitary normative system. International law represents also a complex of juridical rules created initially like a customary law and later like a conventional law with specificity well determinate².

Like unitary normative system; international law was consolidated under the influence of the political action; in time; within its being centralizing phenomena which allows us today to speak about a general international law.

Undoubted centralizing grade of the international normative system is lower comparative with the one of the state intern system. General rules instead; keep their importance also in the international system; the rules developed by the regional subsystems being in accordance with the general international law.

General international law it is consist of those rules which regulates fundamentals material such as politically-juridical organization of the system and also the fundamental rights of the juridical order subjects. Also; those rules are characterized through stability in time; their modification imposing special procedures.

2. THE HIERARCHY OF THE LAW SOURCES AND THE HIERARCHY OF THE RULES IN THE INTERNATIONAL JURIDICAL SYSTEM.

Considering that the authority of the O.N.U. Book such as the International Court of Justice Statute and in mainly universal vocation of .ON.U.; we report in the field of international law sources; to enumerate form the article 38 of the C.I.J. Statute; according which the main sources of international law are the treaty; the custom and the law general principles (art. 38 lit.a;b) to which are added the auxiliary means of determination of law rules; namely sentences and international law doctrine.

In the article 38 from the C.I.J. Statute can't be surprised a hierarchy of the international law sources. That's why the doctrine has promoted the idea of equality between the main international law sources; being said like example that "an international treaty doesn't have a priori a superior value over the one of a unilateral document or over a customary rule".³

² Hans Kelsen – *Theorie pur du droit*, Paris, Dalloz 1962, pag. 425

³ Philippe Blancher – *Droit des relations internationales*, Ed. Lexis-Nexis Paris 2006, pag.9

Regarding the law sources can be concluded that in the positive international law doesn't exist a recognizing rule of the formal source preeminence over another; here not being an hierarchy of the formal sources. Totally different is the situation regarding the international law rules.

Any rule of international law which implies the obligation to respect certain conduct rule establish through the will agreement of the states will be respected regardless the ways which express her. An international rule can be analyzed after the importance of the domain but also after the scale of the will agreement necessary to his adoption. Or; from that point of view; the doctrine promoted the idea of the existing of a hierarchy between different categories of norms belonging to the international law. The existence of that hierarchy implies the deepen of some aspect related by the relation between the provisions of the U.N. Charter and the dispositions of others treaties; as that between the general treaties and the bilateral or regional ones; also will be taken in view the rapport treaty-custom and the statute and the importance to the jus cogens norms.

International concerns for peace and security in relations between states has based the idea of the rule of the UN Charter provisions on treaties concluded by various subjects of international law.

Article 103 of the UN Charter emphasizes that "in case of conflict between the obligations of members under this charter natiunilro united and obligations under any international agreement; obligations under the Charter shall prevail". This article was inspired by Article 20 of the League of Nations Covenant which contained the provision that: This pact repeals all obligations and agreements inconsistent with its provisions. Primary role of regulations contained in the UN Charter in relation to those contained in any other international agreement is in one of the strongest arguments in promoting the idea of the existence of a hierarchy among many categories of rules of international law.

Hierarchy of norms of international law; so commented but finally accepted in theory but is supported by conventional plan and agreement of will of international community members who promoting the interests of the entire humanity have created the premises of the International Public Order; which currently presents a complex and dynamic configuration whose existence is recognized and accepted as a guarantee of balance in the conduct of international relations. It is currently regarded as the "formation of new rules of international law; development and prediction of existing regulatory process is a complex contribution of all the ad states; using the

many means by which legal; the spring meant to achieve and will express agreement on the regulation of various issues and areas of cooperation⁴".

3. PUBLIC INTERNATIONAL ORDER.

Accepting the existence of a hierarchy between the rules of international law and recognizing the role and importance of public order established by the international community is to remember that this order has been established and are consolidated in those rules-- meaning principles and rules-- arising from proper and essential values of the Humanity and which is presented "like an amount of principles and rules of which applying would be so important for the international community in his ensemble; that any unilateral action or agreement which would be contrary to those principles or rules would be without juridical force"⁵.

It is obvious that through that configuration of the international public order; the rules hierarchy in the international law is undeniable; knowing that the main rules defends the most important values of the international community in his ensemble; all the states having a juridical interest of protect those values.

In the hierarchy of the international rules was formed an ensemble of rules with strict obligatory character; in which application doesn't admit any derogation and which in rapport with the all International community impose the respecting of some obligations with erga omnes character. Taking in view that any international rule is obligatory; that distinct category is consecrated in the public international law through the term imperative rules; what suppose near the strict obligatorily the categorical interdiction of any derogation⁶. This it is the reason for which it's considered that the object of a treaty is illicit if is contrary to a rule of imperative nature⁷. That ensemble of rules has based in the international law the concept of jus cogens; of which importance and resonance in the international law system doesn't delayed to be recognized both in doctrine and with prudence (sometimes objectify justified) in the international jurisdiction. Regarding the place in the imperative rules hierarchy was said that "the term of jus cogens signifies the imperative law; a rule of jus cogens

⁴ Dumitra Popescu, Adrian Nastase, Florian Coman – Public International law, Casa de Editura si Presa „Sansa” SRL, Bucuresti, 1994, pag. 46

⁵ H. Mosler – The international Society as a Legal Community, RCADI 1974 –IV, pag. 34

⁶ Dumitra Popescu – Public International Law, Ed. Universitatii Titu Maiorescu 2005, pag. 47

⁷ Grigore Geamanu – Public International Law volume II, Ed. Didactica si Pedagogica, Bucuresti, 1983, pag.153

occupies for that reason the highest hierarchic position over the all others rules and principles”⁸.

Initially the concept of jus cogens belonged to the national law; the reason which was at the base of his apparition being the protecting of intern public order⁹.

Jus cogens was constitute in time like an ensemble of rules which doesn't admit any kind of derogation between particulars; any violation of such rule being equivalent with the put in danger of the internal public order. Consequential; any convention concluded without respecting the exigencies imposed by a rule of jus cogens will be without effects; being declared invalid.

The notion of jus cogens will be taken by the international law from the intern law; his evolution in the international domain from the origins and till the moment of the consecration of the concept through the codification accomplished by the Convention from Viena to the treaty right from the year 1969; scrolling in time over several centuries.

4. IMPERATIVE NORMS - JUS COGENS – IN THE HIERARCHY OF THE INTERNATIONAL NORMATIVE SYSTEM.

The adoption in 1969 of the Convention from Viena to the treaty rights has represented the accomplished of a marked objective in the development process of the international law.

The importance of that Convention is more highlighted; if we take considering the historical context in which took place both the project preparation by the Commission of International law and the negotiations from the Conference from Viena. Negotiators; delegates from the part of some states belonging of antagonistic social-politic systems; have managed beyond the said different positions; to elaborate a juridical regime for the most important source of the international law – the treaty – that instrument with fundamental role in the conduct of international relations.

The Convention also has the merit to include the first formal recognition of the concept of jus cogens initiating the process of its progressive development in international law system.

Consecration to plan conventional concept of mandatory rules of general international law as defined in Article 53 of the Convention is not the result of inspiration of the moment and no short term effect of factors in the

⁸ Cherif Bassiouni – Reprimer les crimes Internationaux: jus cogens et obligatio erga omnes – Comite International de la Croix-Rouge – Reunion d'experts Geneva 1997 pag. 31

⁹ Joe Verhoeven – Droit International Public, Ed. Larcier 2000, pag. 338

process of promoting the interests of some Member of the International Communion. Over domestic law; the concept of mandatory rules has come a period of evolution in international law; its development is supported both by doctrine and practice International Member. Relationship of mutual influence; as the company confirmed if the international high society at a time rules and the hierarchy problem depending the importance of regulatory relations and the international role in determining public policy.

Those views; expressed in the doctrine; which support equality between the main sources of international law as they are set out in Article 38 of the Statute par.1 International Court of Justice remain valid but without excluding the possibility of establishing a hierarchy between different categories of international rules.

There are so all norms of international law in a separate category of rules whose specificity separates them in terms of authority; mandatory rules; from which there can be no derogation. Recognized in a conventional plan this category of rules circumscribing the concept of jus cogens

Any rule of international law developed on the basis of freely expressed will of the Agreement obliges parties to a certain conduct. They were so binding; and their violation may attract penalties under.

Therefore in order to emphasize the specificity; both the Vienna Convention of 1969; and literature and Romanian foreign but use the notion of mandatory rules that are characterized by what belongs to why international law is generally recognized and accepted by the Community International and from a whole or not allowed any derogation. Any treaty in conflict with mandatory rules is a void and room effects cease. Mandatory rules occupy a position of major importance in the international regulatory system; they influence the configuration and consolidation of public policy at the International Society.

On the other hand; we can not ignore the doubts expressed by a large part of the doctrine of international law or in connection with the possibility to identify the mandatory standards or about their effectiveness; some opinions even sustunand these rules would endanger safety and stability of treaties.

But the majority view emphasizes the positive impact of mandatory rules in international law and practice also confirmed the international tribunals.

International instances such as the International Criminal Tribunal for former Yugoslavia¹⁰; the European Court of Human Rights¹¹; International

¹⁰ The case Anto Furundzija, convicted of TPIY for torture; international norms which incriminates the torture being considered norms of jus cogens

¹¹ Al Adsani v. United Kingdom Court of Human Rights Application no. 35763/97, 21 November 2001, www.echr.org

Court of Justice¹² pronounced sentences that was invoked the concept of *jus cogens*; emphasizing the difference between the obligations of a State against another State of any State and the International Community towards; the finally having a *erga omnes* character; them being regulated through imperative norms.

The development of the concept *jus cogens* in the public international law is closely related to the evolution of the international society and is the result of the interdependent complexes put on the job of Humanity and of the common patrimony values of that.

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¹² Constantly CIJ has statute that is about an obligation *erga omnes* then when a state assumes an obligation reported to the ensemble of the international community.

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