

THE SYSTEM OF INTERNATIONAL LAW

Oleg BONTEA ¹

e-mail: obontea@mail.ru

Abstract

International law represents the totality of its component elements - international legal norms. Its norms have visibly determined relations and connections, outside of which certain norms cannot act and be applied. Like a whole, the entire international law acquires determined integrative features of regulator of the international social relations. A norm taken individually, without links to other norms, obviously does not have such traits. The integrated features of international law as a system of norms really allow for its relatively independent and special existence and operation. It remains, however, to identify the relations and connections between international legal norms that bind them together in a coherent, relatively autonomous legal system. Unfortunately, the issue of the systemic constitution of the relations and connections within international law has not actually been approached in the domestic theory of international law.

Key words: international law, national law, legal system, legal ties, legal norms

According to the generally accepted definition of public international law, it represents a whole and a system of norms governing international relations (between states or other subjects of these relationships).

The fact that law - both the national and the international one - represents a whole and a system of norms, was never questioned in legal doctrine. Examining the definition of (domestic) law, S.S. Alexeev mentioned: "in legal literature, the dominant definition is that enumerating the fundamental characteristics of law and beginning with the words 'the system of norms...'; such definitions that revealed the normative power of law and demonstrated its vitality" (Alexeev S.S., 1981).

However, an important achievement of the general theory of law and of the theory of international law has recently become a systemic understanding of domestic and international law, resulting from the development of the theory of general systems. Domestic legal literature now emphasizes that international law is not only an entity, but also a system made of its own norms.

MATERIAL AND METHOD

Scientific investigations have generally focused on the analysis of legal literature. For this

process one has used the logical, quantitative, comparative, historical and sociological methods.

RESULTS AND CONSIDERATIONS

Summing up the ideas about contemporary international law, one notices that, among them, there are norms of general international law and conventional local norms, customary, general (likely for repeated use) norms and individual (designed to be used under specified conditions) norms, peremptory and dispositive norms. All these norms represent the content of international law.

However, an important achievement of the general theory of law and of the theory of international law has recently become a systemic understanding of domestic and international law, resulting from the development of the general theory of systems. Domestic legal literature emphasizes that international law is not only an entity of norms, but also a system made of its own norms.

In what sense is international law seen as a system of international law? Obviously, in the general sense of the concept of "system".

Sadowski V.M. interprets this concept as follows: "Among the various elements that make up a system, there are certain relations and connections. Because of them, the assembly of elements turns into an *entire whole*, within which each element is finally *in connection with* all the

¹ State Agrarian University of Moldova Faculty of Cadastre and Law

elements, and its features cannot be understood without considering this *connection*. In turn, the features of the system are not a simple sum of the individual features of the components that make it up, but the system is defined by the presence and specificity of the connections and relations between elements, namely they constitute integral features of the system as an *entire-whole*. The connections and relations between the elements of the system and which generate integrative, overall properties of the system, ensure a relatively independent, separate existence, a functioning (and in some cases, even a development) of the system". (Sadovski V.M., 1974)

This feature of the system is fully applicable to point out the systemic nature of international law.

International law represents the totality of its component elements - international legal norms. Its norms have visibly determined relations and connections, outside of which certain norms cannot act and be applied.

Like a whole, the entire international law acquires determined integrative features of regulator of the international social relations. A norm taken individually, without links to other norms, obviously does not have such traits.

The integrated features of international law as a system of norms really allow for its relatively independent and special existence and operation.

It remains, however, to identify the relations and connections between international legal norms that bind them together in a coherent, relatively autonomous legal system. Unfortunately, the issue of the systemic constitution of the relations and connections within international law has not actually been approached in the domestic theory of international law. Therefore, we shall present some ideas on this matter.

The basic requirements of the system of public international law are considered (Ushakov N.A., 2000) to be:

- the presence of common norms of international law which govern the relations between all its subjects; all local and individual norms must correspond with these norms;
- the presence as common norms of international law of its fundamental principles, having the character of *jus cogens* norms; all other common norms of international law and local and individual norms must correspond with these ones; Thus, in accordance with Article 53 of the Vienna Convention on International Treaties, 1969, it is null and void any treaty, which at the time of its conclusion, conflicts with a peremptory norm of general international law.
- the presence in international law (as well

as in national law) of the basic rules expressly enshrined or implied with respect to the interdependence and connection between norms: the requirements of international norms to correspond with the peremptory norms of international law, especially with the fundamental principles of international law; the rules on the validity of norms, the rules on the non-retroactivity of the norms, the rules about the modification or annulment of the norm through a subsequent norm analog content, the rules about the superior force of the special norm compared to the general norm.

CONCLUSIONS

The system of public international law includes: international legal norm (including *jus cogens*), the institutions and the branches of international law.

As a primary element of the system of international law, **the norm of international law** can be defined as a rule of conduct, established and recognized as peremptory by the subjects of international law.

The fundamental principle of international law is that rule of general conduct, abstract, impersonal, possessing the highest degree of peremptoriness, which defends the vital values characteristic of a particular stage of historical development of human civilization.

The institution of international law can be defined as an assembly of international legal norms, regulating a limited field of international relations, namely, determining the international legal regime of a particular area (e.g. the institution of the right of innocent passage through the territorial sea) or concerned with a specific object of legal regulation (e.g. the institution of consular privileges and immunities, the institution of minority rights, the institution of states recognition etc.).

The institutions, in turn, are divided into branch institutions and inter-branch institutions. The inter-branch institutions are those composed of legal norms which are part of two or more branches (e.g. the institution of international legal liability, the institution of successions). The norms of branch institutions are created within an specific branch and include certain compartments of theirs (e.g. in international maritime law can be highlighted groups of norms governing the legal regime of the territorial sea, of the exclusive economic zone, of the continental shelf, the legal regime of the free sea etc.).

The branch of international law is a set of conventional and customary legal norms, which regulates the relations of a certain type arising

between subjects of international law within a wider area of international cooperation, which is the object of regulation of public international law and has a high degree of universal coding, characterized by the existence of principles applicable to this specific area of international relations. International security law, cosmic law, the law of international organizations, the law of treaties, maritime law, air law, diplomatic and consular law etc. are considered branches of public international law.

The elements of the system of public international law may take the form of a legal

pyramid whose tip is the most important element. *Jus cogens* norms represent the tip of this pyramid.

REFERENCES

- Burian, A., 2009** - *Public International Law*, 3rd edition, Chişinău, p.260.
Алексеев, С.С., 1981 - Общая теория права. Т.1. Москва, р. 102.
Садовский, В.М., 1974 - *Основания общей теории систем*. Москва.
Ушаков, Н.А., 2000 - *Международное право*, Москва: Изд. «Юрист» , р. 12.