INTERNATIONAL LAW: PERFECT STATUS OF STATES, RELATIONS, MACHINERY

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Abstract

In this paper an enquiry is instituted into the idea of (positive) law in connection with which notice is taken of the nature, character, function and effect of law as well as of rights as the product of the law and not without reason. If we say that the positive law is the product of the supreme power of states as the main form of life of men, then the said power may not be restrained by the law, nothing may determine their actions and these actions should not be made strictly in accordance with any rules of law laid down by such states, but states are free to decide how to act. Such a freedom is natural and absolute. It is a fundamental right of all sovereign states, which may neither be waived nor abridged.

However, this power is exercisable within strict territorial boundaries. Within these boundaries such states are free to decide which conduct of their subjects is compatible or incompatible with the rule of law. Incompatibility is excluded when nothing precludes distinct subjects of law from using their rights, provided that this use does not come in conflict with the rights and interests of other subjects of law. However, beyond these boundaries, this supreme power of states is restrained by the supreme power of other states and may never be exercised without their free, clear and unequivocal consent to this end affecting the force and effect of their international obligations.

The world comprises a great number of states entering into different types of relations. These relations require that to ensure predictable cooperation and communication among them, they should act in accordance with the rules made by them specifically to attain the aim to ensure growth and development of the states, which take place in their contact and interaction with one another. But the question is what we may say of states as modern subjects of international relations governed by the international law? It is also important to know whether this law may ever be found useless in respect of questions arising between the states?

Amid the manifold discussion concerning the status, relations and machinery in the realm of international law, the one that we propose in the present paper should not be treated as vain. As a result of the present research the reader will know what the perfect status of sovereign states as subjects of international law is, how to distinguish perfect relations from the imperfect ones in this realm and how the perfect machinery of the international law should operate. This knowledge should be put to work in building harmonious international relations among the states and the whole international community.

In this paper we tried to gather and summarize many facts to illustrate as briefly as possible the truth or the way to this truth in this realm. This should save the space and time of all those interested in the study of different phenomena of international law as well as of the manner of operation of well-recognized rules and principles laid down in appropriate international treaties. Because the whole thing appears to be a kind of efficiency of international law, efficiency of international relations and efficiency of states as the main form of life of all men.

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1. Introduction to a problem of the status, relations and machinery in the realm of International Law

To prepare the way for a general treatment of the status of states, relations and machinery in international law as the law functioning based on a number of natural and positive law rules and principles, a preliminary discussion of the legal questions most discussed at present, is needed. We are inclined to believe that in determining a relation between different phenomena of international and domestic law giving life and strength to various types of relations, nothing new may be found. Everybody will agree upon the said point. However, there are many matters of controversy, upon which we would like to put particular emphasis. First, that is the idea of the rule of law, which we think should be treated properly by all in order to place these phenomena in their true position and to show how they should be held by sovereign and non-sovereign subjects of law.

The fact is that we simply cannot think differently on this subject of the rule of law, but the problem is that we do think differently. By way of illustration, please have a look at the text of the Preamble to the European Parliament resolution of 13 March 2014 on Russia: sentencing of demonstrators involved in the Bolotnaya Square events (2014/2628(RSP)), where it is given that: "whereas the Russian Federation, as a full member of the Council of Europe and the Organisation for Security and Cooperation in Europe, has committed itself to the principles of democracy, the rule of law and respect for human rights; whereas as a result of several serious violations of the rule of law and the adoption of restrictive laws during the past months, there are increasing concerns with regard to Russia's compliance with international and national obligations…".

Here it does not need to be explained that the law is the product of the sovereign power and as soon as the rule of law is laid down by a competent institution of a sovereign state, other competent institutions of such a state bear obligations to treat appropriate subjects and objects of law in pursuance of this rule of law and for the purpose of the said rule of law. And if this rule of law says that all national and foreign natural and legal persons should be treated as subjects of law, capable to enter into different type of relations, their normative status should be recognized by the sovereign state on an equal footing with other sovereign and non-sovereign subjects of law. Hence, we see that the problem of the violation of the rule of law is closely connected with a problem of misrecognition of natural and legal persons as subjects of law with a known scope of fundamental rights and duties.

For example, the rule of law says that A has a power when A is able to change his or other persons' status. If A is able to change his or other persons' status, then A has a power and the state that laid down this rule of law should recognize A as a holder of this power and should treat A appropriately. Other sovereign states know that this state should recognize A as a holder of this power, because thus it is given in a correspondent domestic legislative enactment of this state or its international treaty. It therefore means that the recognition of the power of A is the obligation of the sovereign state, which this state bears starting from the time when this rule of law was laid down by such a state in its domestic legislative enactments or international treaties.

But this recognition should not take place if the power of A when recognized by a sovereign state presents a great obstacle to the power of other subjects of law or the power of this sovereign state. Should this be the case, the said rule of law should not have

any effect, for it is the purpose and the main function of the said rule of law to ensure the balance of power and rights of all subjects of law. On this ground, the misrecognition is preferred by the sovereign states to recognition of the status of A as a subject of law and a subject of power. And this point is of particular practical value to all those dealing with such matters.

Next, it is quite natural that there is no superiority of one state over the rest and the main responsibility for maintaining world peace, premised on the idea of the rule of law, falls heavily on the states vested with the power of veto in the United Nations and accepting appropriate duties of founding members of this world organization set up specifically to build a better world through harmonizing the actions in the attainment of the said end. When taking up their duties the states assume that there is the United Nations represented by competent organs so having jurisdiction over the matters pertaining to their status as subjects of international law and exercising their functions with effect in any part of the world.

However, we must not attribute to this and other international organizations the most prominent role in the realm of the international law and international relations. This role belongs to those, who established it and whom this organization represents: these are sovereign states as distinct politically organized communities adapting this and other international organizations to secure the unity and continuity of their status as a number of elements like rights, duties and liabilities, making them what they really are and showing their true position in international law as well as in domestic law.

Most of the law dealing with various matters of international and domestic law is based on the natural law. This law is immutable and makes sovereign and non-sovereign subjects of law their duty to conform to this law and its principles, which may either be accepted or rejected by them in their actions. Both spheres presume the existence of many different subjects of law. The structure of these spheres is premised on the rights and duties of their sovereign and non-sovereign subjects, which may neither be granted nor given over by these subjects to other subjects by their exercise, but are used for the good of these subjects.

This brief is the summary of what is necessary to be known of the said problem. It has the beginning in its main aim, which is to elicit inquiry into the matter of the effect of any action in this realm on the status of states for the most part currently relying on the international trade and commerce (as the main cause), without which their wealth and power would not increase (as the main effect). To settle this problem we must study international law as the law binding the states to their commitments to one another and the international community and supplying the basis of certainty, which is necessary to maintain international peace and security.

Let us now proceed to consider briefly but inclusively a number of important points, which we have singled out in the present paper, giving clear explanations on them for the readers to be able to conceive them in a proper way. We hope that the name of all these points will be accepted by them as distinctive and appropriate.

2. The main function of sovereign rights

In the present part of the paper we would suggest to describe and define international law as a body of rules and principles (a) having reference to the nature, character, function and effect of sovereignty and correspondent rights produced by the law of nature and bearing its stamp and character; (b) giving explanations of many processes of different kind in the sphere of

international relations suggesting melioration or deterioration of the status of subjects of international law (sovereign states, international organizations) as well as subjects of domestic law (natural and legal persons) and (c) having implication for any portion of any processes we see around us in the world of politics, making them predictable for all.

Our aim in this part of the paper is to place the subject of our main concern, which is the law and the rule of law, in its true position in the sphere of international relations; the intention being to show a relation between such phenomena as (a) the law and the sovereignty; (b) the law and nationality; and (c) the law and the subject of law. To accomplish this aim, which is necessarily involved in the idea of international law, we have ventured to select the theory of sovereignty. The earliest systematic exposition of the said theory may be found in the work of the Author of the History of the Council of Trent: "The Rights of Sovereigns and Subjects". This theory is our guide in the study of international law. It may never appear to err when dealing with various forms of international law in their development, the interconnection of all these forms and their true value in this sphere.

Speaking of this relation between above-mentioned phenomena, it is noteworthy that the great idea of this world is that law as the product of the sovereign will and power is very well in its place generously accorded to it by the sovereign states. But let us think (a) what the law is considering that fact that every natural or legal person, sovereign state or international organization is subject to domestic or international law (as the case may be) and all their actions are generally viewed through the lenses of the lawful and unlawful conduct; (b) why it takes the first place in any politically organized community and (c) may the law be detached from the sovereign states? This discussion should serve as a sort of pretext for letting the readers understand conscientiously and industriously, what the whole thing appears to be from the beginning to the end and why it is so important to operate in this and no other way.

There is a close connection between the sovereignty and law. In the most extended sense, sovereignty is the most important power or authority of a person (like "le Roi de France et de Nauarre" in the correspondent Edicts of XVII century or His Majesty the Emperor of all the Russians in Declarations between Great Britain and Russia of the XIX century) or a group of persons (e.g. all modern states) to make laws, to execute them and judge according to them. This power is, otherwise, what may be done by its holder and suggests a plural possibility. Among the things possible are to legislate, to execute and to judge. Speaking of this power, it is for the sole and proper use in the interests of their subjects; it extends its influence over all persons and things being within their jurisdiction and is typically exercisable to the exclusion of the power of any other state. Should we consider states as distinct physical objects, this power (essence) is essential for the existence and identity of states as organized political communities (form) with distinct material, spatial and temporal properties.

The end of sovereignty as the essential quality of all states naturally belonging to them is the order as that truly difficult task undertaken only by those who desires and is capable to approach it. For the order, as that common interest of natural persons, they are brought together. For the order, states as assemblies of such natural persons make laws using different methods to dispose persons and things in our material world in proper relation to one another and permit many things to be done. For the order, these laws of sovereign states are binding upon

their subjects, or all those natural persons that comprise them and/or bear relation to them through the legal institutes of citizenship, domicile or residence, as the case may be. For the order, these laws of sovereign states may not bind subjects of other states within the jurisdiction of these other states.

So now it should be clear what this sovereignty is about. It is a part of states. Actually, it is an essential part of all states, without which they may neither exist nor act as politically organized communities. It is as important for the states as the soul for men. Sovereignty is a compound substance comprising a number of intrinsic properties and it is very well in its place. If to proceed and speak of the framework for cooperation, enabling the states to embark on joint activities to accomplish specific goals that is the first place generously accorded to the sovereignty by the states and the international community in general. And it is quite natural that we address the problem of sovereignty and functions of sovereign rights before entering into the main discussion of the perfect status, relations and machinery in the realm of international law.

Having examined the essence of this phenomenon of sovereignty, now it is time to proceed and speak of what it implies. But first it should be clear enough that different ideas serve as the meaning of different words. Thus, for example, the idea of sovereignty requires that states should be at liberty to do whatever things within their jurisdiction, which they find appropriate and necessary for all those comprising them. However, when there is one sovereign, the other is not; and when there is liberty, the necessity is not. This naturally means that speaking of sovereign subjects of law, these are the sovereign rights of states to legislate, execute and judge rather than their duties to do these things and these are only their rights. And the scope of this liberty is the same for all states. Leaving the states without this liberty, means their perishing.

Should we consider sovereign rights as property or that thing that the sovereign states own by the nature of things, this ownership will last forever. This property gives sovereign states the right to be subject only to the law produced by such states rather than to be subject to any other states, foreign or national natural and legal persons as subjects of law, no matter be it domestic or international law. And all these subjects of law are informed about the nature and effect of such sovereign rights and accept them, for there is nothing better in the world to meet their needs in different spheres of life. Therefore, all these sovereign and non-sovereign subjects of law have to abide as the necessity realized in the domestic or international spheres and do actually abide by the rule of law.

It should be noted further that speaking of the functions of sovereign rights, first, the question is of the main aim of such rights, which are not subject to qualitative change. Inside a system of international law wherein the presence of one sovereign state presents no obstacles to the presence of all other sovereign states, in our opinion, it is to make states exist in the fullness of their sovereign power and aid in building harmonious relations of states with one another. It is attainable when they do things what they can do alone and refrain from doing things, which they cannot do alone but jointly with others. This may be learned by us from different sources of international law as the law arising and abiding in the nature of states and relations between them. See, for example, Article 48 of the UN Charter. However, to ascertain what sovereignty is, we will try to render clear the issue who they are whom we call sovereign persons, what brings them into being and what this sovereignty gives them for production and action.

As it has already been said, states as politically organized communities of men cannot exist without sovereignty as the cause for the production of many different things, which may neither be produced by the nature nor may come into being of necessity. So we may say that having sovereignty is that fundamental property of all such communities as the most perfect form of life of men, necessary for their existence and identity in such a quality. And if sovereignty is for bringing many various things into being, which can either be or not to be; the law is for the action. For a natural person to be regarded as a national of a separate state (or a subject of appropriate domestic law), there should be a close and indissoluble connection of this person with this state. This close and indissoluble connection of this person with a distinct sovereign state is determined by the place where this person ordinarily lives and exercises his civil, socio-economic and political rights.

Hence, we see that the main idea of this part is to show that (a) states exercising their authority over persons within their territories premised on the idea of sovereignty and appropriate systems of law; (b) the law, whether international or domestic law, made for the action and rights as the product of law; (c) actions of appropriate subjects of law (whether of international or domestic law) and their consequences are the things closely connected by nature as the cause and effect. This relation between such phenomena as (a) the law and the sovereignty; (b) the law and nationality; and (c) the law and the subject of law should be readily accepted by the theory and practice as being the solution of many different problems, among which we may distinguish non-recognition (of the equal sovereign rights and duties of all states, fundamental human rights, and so on).

The conclusion is this: these sovereign rights are that thing causing many different things to happen, e.g. rights and duties of natural and legal persons, but may not be caused by such things without undertaking fundamental change leading to its perishing. For it should be clear enough that states are either sovereign or not states. To rephrase it, things which are not sovereign by their nature under no conditions may be found so and things which are sovereign under no conditions may be found lacking sovereignty. The loss of the attributes of sovereignty shall lead to the loss of sovereignty. There is a number of things that we speak of as the attributes of the sovereignty. These attributes are of the value for the states, because for the states to be sovereign, they must not have the same nation, the same territory, the same culture, the same religion etc., but they should have these attributes. Therefore, to alter these sovereign rights of states as direct, original rights of all politically organized communities is not in power of other states rather their unions when there is their consent to this end.

We have now elucidated what the sovereignty is. It therefore follows that sovereign rights of states cannot either alter or diminish with any activities, which are held in conformity with the rule of law, for that is not in their power to do. No law as the product of the sovereign power may turn their liberty of what may be done or accomplished into necessity of what must be done and accomplished in the international sphere. Next let us proceed to consider the equality models of the status and relations in the realm of international law.

3. The equality models of the status and relations in the realm of International Law

The significance of this part of the paper is that it unfolds a true part of international law in modern international

relations where nations confirm their equal sovereign rights and benefits in a domestic sphere:

a) When the State A has the power to legislate, execute and judge within its territory, then the State B may not be without this power or have limited power to legislate, execute and judge within its territory.

b) When the State A has the power to legislate, execute and judge within its territory, then the State B does not have this power to legislate, execute and judge within the territory of the State A.

c) When the State A has the power to legislate, execute and judge within its territory, then the State B may neither have nor exercise any power to the effect to limit this power of the State A to legislate, execute and judge within its territory;

And in the sphere of international law and international relations:

a) When the State A is a sovereign state, then the State A has the same rights as the State B, the State C, the State n as sovereign states to enter into international relations with respect to different things;

b) When the State A is a sovereign state, then the State B, the State C, the State n as sovereign states may never deny the sovereign power of the State A in matters of domestic or international law;

c) When the sovereign power of the State A in matters of domestic or international law is denied by the State B, the State C and the State n as sovereign states, it should be immediately restored by the international community to this State A in accordance with international law rules and principles.

This idea of the perfect equality of persons and their actions in this realm is what is necessary for the assembly of states united by the bounds of common rules and principles to be commonly applied to them all as well as common interests in the maintenance of international peace and security. This idea made international law what it currently is. It may never be more favorable for one state or a number of states and less favorable for the others. The power of this idea is in the appropriate equality-model of international relations and in the equality-model of the status of those entering into them that make sovereign states attain their aims in the international sphere. We cannot help noticing that these models, which represent persons and their actions in this realm, were built by the practice and tested by the time. And there is no reason to revise them, for they show what these persons and actions are, and which things they produce ensuring sovereignty, territorial integrity and political independence of all states.

To rephrase it, if we agree with what is stipulated in the text of the Article 2 of the UN Charter, it is true that:

a) All sovereign states possess and exercise equal sovereign rights; and these rights are inviolable;

b) All sovereign states as subjects of international law and international relations fulfill their obligations in good faith;

c) In case of disputes, all sovereign states ensure their pacific settlement;

d) No force is used against the territorial integrity and political independence of states;

e) All states cooperate and communicate with one another, be them members of the appropriate international organizations or not;

f) In matters being within the jurisdiction of states as sovereign rulers, no international sanctions are imposed and effected, for the main target of all such measures is the wealth and prosperity of natural persons comprising such states.

And taking into view that we may arrive at truth by way of negation, if that is true, the other is not. To put it another way, it is in discretion of all states that all other

rules (e.g. given below) are hereby repealed and may never have any effect on the states as subjects of the international community. Otherwise, this would mean that the sovereign power and rights of separate states appear to be a burden to other sovereign states, when it is not the case:

a) Sovereign states do not possess and exercise equal sovereign rights; the sovereign rights of one or a number of states are more perfect than the rights of other states.

b) Sovereign states as subjects of international law and international relations do not fulfill their obligations in good faith;

c) In case of disputes, all sovereign states do not ensure their pacific settlement;

d) Force is used against the territorial integrity and political independence of states;

e) States do not cooperate and communicate with one another be them members of the appropriate international organizations or not;

f) In matters being within the jurisdiction of states as sovereign rulers international sanctions are imposed and effected.

It is further evident that the purpose of sovereign states in this realm is neither more nor less than to set forth this truth in appropriate international treaties and other acts confirming their basic rights, duties and liabilities and/or establishing extended ones to perfect their status when there is a separate agreement to this effect. For it is necessary for the peace and prosperity of all nations. And in doing so they agree not to fail to honor their commitments, which may never be considered as a hardship. So too, such rules and principles may never require that the United Nations or separate states should intervene in matters, which may never be treated as international rather than domestic or national, because this will never be conducive to the strength and stability of sovereign states: see Article 2 of the UN Charter.

4. The main function of International Law as a perfect system of law

In the present part of this paper, we intend to proceed and speak of the thing, which cannot be allowed to pass unnoticed, namely, what the function of the international law is. First, it should be said that international law is the invention of sovereign states and the product of the sovereign will pertaining to and affecting the operation of appropriate domestic law institutions and instruments.

And the point on which our general view is put forward is that the elements of international law operate properly then and only then when they operate within a distinct system. As to this system, that is the system of international law, which role in the sphere of international relations is definable by its main function. It is to bring order to this sphere. The means by which this order may be brought is the consent or otherwise the act of recognition of the equal sovereign rights and duties of all states giving unity and comprehensiveness to this system. However, no sooner does any question as to the widening of this system arise, trespassing in other systems not their is most decisively avoided by the international law machinery.

The operation of the said machinery is treated as perfect when it suggests effective collective measures to be taken by the UN Security Council or the UN member states when they are called upon to take them. These measures referred to above shall be treated as effective then and only then when no other measures may produce any better result under particular circumstances. It is to attain the balance of power in international relations bringing order to this realm. That is what we mean by the expression “perfect

international law machinery" premised on the idea of the free choice and consent of the states in matters regarding the maintenance of the international peace and security.

If to refer to this idea, the main end of the free choice and consent as two closely connected instruments in hands of sovereign states in the realm of international law is to smooth their road to various peace and security agreements clothed in the language using the terms and notions predictable for all. This consent as determination of their free will with respect to a particular way of acting established in appropriate international treaties. That is the way of acting accepted in its completeness by all the parties to such treaties. Here it is necessary to say that sovereign states are free to agree or disagree with the terms of their cooperation as a "thing alterable", but may never disagree with the principles of their cooperation flowing from the nature of these subjects of law, their personality, which is a "thing unalterable", no matter, be these principles given in appropriate treaties or not, when thus they come into mutual contact to accomplish appropriate results of their cooperation.

In reference to the background of this cooperation, a little explanation is required. There is a firmly established understanding that international law should not cease to play the most prominent role in life of the international community. It is the law for peace and equitable relations established in the former times for all times to restore the equilibrium between sovereign rights and duties to be taken up by the states in fullness based on a number of assumptions, which sometimes seem to be completely forgotten:

(a) there is one system of international law and many different systems of domestic law with no legal rights and duties outside these systems;

(b) all sovereign states and their groups are subject to the same international law offering many different possibilities;

(c) all natural persons and their groups are subject to domestic law, which is different;

(d) there are situations which fall and which do not fall within the domain of international law: see, for example, the text of the Declaration between Great Britain and Russia relative to the disposal of the estates of the deceased seamen of the two nations signed in London in 1880 and of the Merchant Shipping Act Amendment Act of the Great Britain 1862.

International law is the law of nations producing very good results sometimes immediately affecting the status of states as parties to appropriate bilateral and multilateral international agreements. The only question is that when pursuing objectives common to all this law should be maintained within its domain that has been assigned to it by the states characterized by the highest sovereign status, comprising a number of elements. These elements are those things that touch each other in this realm either meliorating or deteriorating the status of states.

Taking this into account, all sovereign states are subject to the same law, which is international law, this comprehensive framework for the most constant protection and strengthening of the international peace and security, reduction of all international tensions and establishment of a continuing flow of trade and commerce as the main ends in which all nations generally share a common concern. If viewed through the lenses of a functional theory and a theory of systems, these subjects are otherwise the elements of the same system. The same qualities are attributed to this system like the equality, similarity and likeness. They are fundamental to these subjects and essential for the international law as the only system

of law to rule throughout the world composed of different nations and the only force to keep this world united.

Now the main question before our mind is that should this statement of the qualities of international law subjects, which may never be thrown into disfavor, be true, it is an error to think that they may ever have any extraordinary qualities and powers. In the realm concerned in which all the differences between states were prevented by virtue of the Peace of Westphalia 1648, the states have the same scope of treaty and non-treaty rights, privileges and immunities, nevertheless suggesting many different possibilities in respective spheres and participate in equal advantages of the international communication and cooperation. Associated with sovereignty, territorial integrity and political integrity these rights are neither more nor less fundamental than any other rights that states may have as subjects of international law whose status is confirmed by the international treaties and other acts of international and domestic law made, interpreted and applied to this effect.

International law is not the arena for insisting rules upon the weaker states by the stronger ones, because there is no prominent sovereign power to this end. As a result, no one may make such rules and regulations that will affect the status of other states, which may never be determined by other states. To add, no state may administer control over the other states' international trade and commerce; and no president or other person at the helm of a separate state may proclaim a right of an international police power by virtue of any doctrine produced by a correspondent school of thought and appropriately influencing the public opinion. No public interests of one particular state may so request and all the attempts to the opposite effect are expressly condemned by the international community as a real community of nations sharing some common beliefs in different matters and answering common needs in the unity of the legal action: see Article 48 of the UN Charter.

Therefore, the main function of the international law is to ensure the balance of power. Narrowly construed this balance of power is that state when sovereign states are able to meliorate and should refrain from deteriorating their and other states' status comprising a number of elements like rights, duties and liabilities. It is noteworthy that this balance of power requires that no state should have and exercise its sovereign power inconsistent with fundamental rules and principles of international law established by the states to promote the climate of enduring peace, sincere friendship and mutual trust throughout the world by means of appropriate international law machinery suggesting effective collective measures to be taken by the UN Security Council or the UN member states when they are called upon to take them.

By way of illustration, please have a look at Article 41 to be read in conjunction with Articles 1 - 2 of the UN Charter, where it is given that the Security Council as a competent organ of the international organization has the right to institute international economic sanctions because the UN member states have duties to other states represented by this international organization. This balance of power has been strenuously supported by many generations before us as a main condition of the world peace for which they have lived and died. This is the reason why the right to impose and effectuate sanctions as a right to make a ruling on a breach of the international obligation may never be conceded to one state or a number of states without being sanctioned by the international community based on the

principles on which international relations are commonly constituted.

5. Modern problems of international relations

When speaking of the perfect international law machinery we do not deem it advisable to separate the problems of the modern international relations from the main body of the present research. And if to proceed and speak of international relations, that is the state of being connected by mutual commitments of two or more sovereign states in the sphere of the international trade and commerce and other spheres closely connected therewith to a particular end. Now it is not difficult to perceive that there is something wrong in international relations between the states, when the great question of international relations to which the rules and principles of international law apply is that of their force, whether these are fundamental rules and principles, which prevail over the rules and principles of domestic law to ensure sovereign rights, liberties and privileges of states or not. It requires no great mental effort to see that a time has come to see the true condition of the international relations and to test this system of international law. We know that public utility and necessity require that the international law machinery at all times and in any circumstances whatsoever should show that ease and steadiness of motion that characterize perfect systems. However, the point is that at a time of conflicts, it is not always an easy task to find proper means to settle them in a peaceful manner. But to find them suggests to remove the cause of all such conflicts.

Among such causes without which removal the consequences of the said conflicts will never cease, is the intention of states to exercise control over other states. But it is obviously not the power of states to control the situation in other states because it is agreed by their unanimous consent that in the realm of international law sovereign states have equal rights and duties, while in the realm of domestic or municipal law they possess the exclusive rights to legislate, execute and judge to avoid all disadvantage and burden to their subjects. Hence, we see that either by constitutions of states and international agreements that these states enter into these are not the right persons to exercise this control; (b) no one may ever authorize them to act in such a capacity upon the matters of the national interest of other states even if they de-facto act in such a capacity[1]; and (c) this power may never be recognized by the international community, for it would be dangerous to enable such states to exercise this control, provided always that the aggregate power of a great number of states is superior to the power of a single state or a small number of states.

To denote this connection referred to above a number of special terms is in use. For the avoidance of doubt the term “international sanctions” is employed in this realm with respect to a specific way of acting which is established in international treaties and should (a) meet the purposes and principles of international law; (b) be premised on diplomacy in public views and shared experience; (c) be just, equitable, predictable, sensitive to human rights and proportionate to infringement; (d) ensure respect for the personal and social welfare of nationals of target states and (e) never depend on the factors being within the control and cognizance of those employing these measures, which may either promote or impede the climate of mutual

[1] See, for example, U.S. Policy and the Future of Cuba: the Cuban Democracy Act and U.S. Travel to Cuba: joint hearing before the Subcommittee on Economic Policy, Trade, and Environment; Western Hemisphere Affairs; and International Operations of the Committee on Foreign Affairs House of Representatives, 1993.

understanding and trust. Beyond all this, since these are the measures to reduce international tensions and strengthen the confidence among the nations, they may neither be imposed for some light or transient causes nor be premised on mutual ignorance and incorrect estimation of facts around their effectuation. So today when clarifying the exact meaning of the term of international economic sanctions, which should neither be changed nor enlarged with political, economic and social changes, it is associated with the reaction of the international community to gross violations of international law undermining its integrity.

Speaking of sanctions, the law governing appropriate relations between states and competent persons representing them, takes a separate part in this system of law exhibited in forms (a) generally standing apart from those of domestic law, for which states are directly responsible; and (b) bringing forth the idea of the general framework of rules and principles to define the nature of conflicts between the states that may bring them to war and ensure their settlement by such competent persons. The main idea behind sanctions law as a branch of the law of nations is to employ its perfect machinery to ensure (a) healthy coexistence of states in case of "threats to the peace, breaches of the peace, and acts of aggression" (see Chapter VII of the UN Charter) and (b) the supremacy of fundamental human rights over any other rights as the main pillar that our world rests upon (see the text of the Preamble to the UN Charter, the Universal Declaration of Human Rights and other acts). But in order that these fundamental human rights be fully exercised, the said acts should be all the more firmly observed by the states in whatever situation. It is therefore the law reflecting the interplay between violation of international commitments to principles of sovereignty, territorial integrity and political independence essential for their existence and identity as well as all those individuals comprising them, and the reaction of the international community to the said violation (see the text of the Preamble to the Security Council Resolution 2253 (2015), expressed by a competent organ of the UN, which is the Security Council: see Article 39 of the UN Charter. These fundamental human rights are otherwise the target object of the equality-models of international relations.

6. Domestic sanctions

We have ventured to select this topic of discussion, because we are convinced that (a) economic sanctions are employed by the international community to settle serious conflicts between the states without their sovereign rights molestation; (b) to observe the international treaties means to refrain from taking measures, which may give rise to differences in the status of subjects of international or domestic (municipal) law, so established and confirmed by the power of states acting as a single body in the realm of international law or by the power of a single state as the only ruler in matters that fall within the realm of domestic (municipal) law; (c) in order to avoid disadvantage and burden to the nationals of other states and hence put in execution what has been agreed to by the states, the effect of such already taken measures should be remedied by the states taking them; (d) to find a proper remedy all facts pertinent to the situation should be known and appreciated.

However, at a time when it has been found essential for the states that the international law is the starting point and the main rule of conduct in their open, just and honorable dealings with one another, domestic sanctions against separate states and their nationals are employed by such

states in a sense adverse to the idea of peaceful international law machinery pursuing the end to promote cooperation and keep the world peace and security[2]. To illustrate this point, through restrictions generally laid upon separate states as well as their natural and legal persons, they are made to coerce these states to a particular way of thinking and acting under a risk of economic disruptions, most notably, at a time of the international trade and commercial activities, which such states mostly rely on for the advantages accruing from them. To serve the end to coerce so as to spread suspicion and fear as between the nations the sanctions-making machinery of such states comprise the following elements:

(a) policymaking – decision making on the measures to be taken at the desired conditions achievable within the set timeframe;

(b) implementation – the process of selecting the type of activity and determining the extent to which it should be held to impede the economic growth and development of target states;

(c) operation – a number of instructions to pursue the end to allocate natural, financial and other resources of target states as a determinative factor in all recent international conflicts in a way the national interest and foreign policy of distinct states so request.

Among the restrictions referred to above we may distinguish the travel ban, an assets freeze, property blocking, exports restriction and other measures with respect to foreign property subject to jurisdiction of such states (see Sec. 203 the International Emergency Economic Powers Act of the United States 1977), which have shown themselves as interfering with foreign states and their nationals. The most arduous problem at this is that by legitimating trade war measures, the said sanctions have a strong counter-productive effect resulting in the internal financial instability beginning to surface immediately after the said measures being taken. Moreover, they tighten financial conditions of target states and weaken the ability of their political regimes to maintain themselves. Therefore, target states no longer domestically focused on trade and commercial issues, tend to be prevented to govern their affairs and try to straighten out the said difficulties in the way they deem adequate in such circumstances.

It has always been the belief of the majority of nations not willing to dissever the factual relations between nations from the law of nations: *"if a government could set up its own municipal laws as the final test of its international rights and obligations, then the rules of international law would be but the shadow of a name, and would afford no protection either to states or to individuals. It has been constantly maintained and also admitted by the Government of the United States that a government can not appeal to its municipal*

[2] "Let me say this is a very important hearing today because we feel that by imposing an embargo on Iran, the President has now fired the biggest economic weapon in our arsenal. In today's hearing we will consider the overriding question: "Will an embargo against Iran work for us or against us?"… An embargo is all about leverage, imposing economic pain to force Iran to drop its nuclear weapon program and stop its terrorism and subversion… In 1993, Iran's total trade was some $29 billion. U.S. exports to Iran were only $616 million, barely a few percent of the total. What is more, Iran's total GNP is some $300 billion. So the question is "where is our leverage? Now, if other countries joined this embargo, we would have a bigger stick. But the United States is still all alone. Iran's biggest trading partners are among our closest allies, but none of them has shown the slightest willingness to follow our lead: not Japan, not Germany, not Italy, not France, not South Korea – and these are Iran's five major top trading partners. Their total trade with Iran is some $13 billion, and they are all trying to increase their trade with Iran, not cut it back": see *U.S. Sanctions on Iran: Next Steps: hearing before the Subcommittee on International Economic Policy and Trade of the Committee on International Relations*. House of Representatives. One Hundred Fourth Congress, First Session, 1995.

regulations as an answer to demands for the fulfilment of international duties"[3]. But despite that, these are truly the measures the best adapted to the needs of separate sovereign states holding the reign of military power to afford immediate negative practical result to target states with rich natural resources subjected to national appropriation by claims of sovereignty. This gives us reasons to notice the character of laws in this realm.

7. The character of laws in this realm

When speaking of the character of laws in this realm, first, we venture to admit that some laws are made for peace; some laws are made for war. The laws comprising the first category are attributed to members of the international community after the First and the Second World Wars when they were generally regarded as a single body. The concerted action was taken then to preserve and increase the well-being of all nations and to perfect international treaties for the peaceful settlement of international disputes to eliminate the very possibility of war, assuming that*"…there is neither great nor small, rich nor poor, in the eyes of justice; that all are equal, that all have equal duties, that all have equal rights, and that the duties and the rights are the same for all; that is what is right for one can not be wrong for another, and that what is inherently wrong can not possibly be right, even although the republic involved be the most numerously peopled and the greatest in physical power"*[4]. At least thus it is kept in the Treaty on arbitration signed at Washington on October 22, 1928 by and between the United States and Albania, where they were *"determined to prevent so far as in their power lies any interruption in the peaceful relations"* necessary for the survival of all states.

Though we have a perfect international law machinery, these times are inevitably gone and states think differently on many affairs of this kind that actually concern all the states and their subjects. When we come to sanctions, we are told that distinct states affirm the supreme importance to be allotted to the rule of law, fundamental rights and freedoms of individuals. However, when measures are taken to the end to block and prohibit completely all transactions and interests in property under the pretext of threatened interests of other sovereign states with free and independent civil governments, when nationals of these states may not use of what is for them or experience any other risk to their freedoms and fundamental civil liberties abroad, we do not think it proper to say that they comply with the said rule of law, fundamental rights and freedoms. They fall into the second category of laws. These are the laws for war with the injustice as the evident principle running through them when showing the reasons for taking, implementing and approaching the results of the said measures in disregard of the fact that under Article 1 of the Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms 1952: "…the High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention. Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law

[3] Raoul E.Desvernine, "Claims Against Mexico", Private Edition. 1921.P. 18.

[4] The American Institute of International Law: its declaration of the rights and duties of nations. The American Institute of International Law, 1916, p. 2 – 3.

and by the general principles of international law".

However, such measures are sometimes felt particularly desirable for the states against the states taking all the efforts to prevent the use of force against the sovereignty, territorial integrity or political independence[5] of the states with rich natural resources being in complete and absolute property of their governments to exploit them in the interests of their populations or taking a very important geopolitical kind of part for the North Atlantic Treaty Organization (NATO) or other organizations. But it should be quite clear that for the inherent equality of all states of whatever extent or population and for their autonomy in matters of the national interest generally claimed by the sovereignty; reason, justice and fairness as well as dignity, equality and mutual respect should speak through all nations and no state may establish a practice of punishing other states in a way their internal and external policy so request[6]. Therefore, no punishment may be awarded for the advantage of states in violation of a good international practice of cooperation and communication established between all states. That being the case, the membership in the United Nations has its significance as a distinct type of relations that sovereign states may enter into in the realm of international law as a framework of rules and principles affording room only for the justice, reason, humanity and fraternity to require certain things to be done or rest undone in interests of all nations as a single body without hindering or causing disadvantage to any of its part either directly or indirectly.

8. Conclusions

All the points raised by us in the present research are given with particularity and precision, which this subject requires. We think that in the paper of this size we have succeeded in elucidating and illustrating the problem of the perfect status, relations and machinery in the realm of international law. This brief is our attempt to treat of the issues of special interest for the theorists and practitioners of law:

a) The problem of the status, relations and machinery in the realm of international law is the problem of efficiency of international law, efficiency of international relations and efficiency of states as a main form of life of all men;

b) The main function of sovereign rights is to make states exist in the fullness of their sovereign power and aid in building harmonious relations of states with one another. It is attainable when they do things what they can do alone and refrain from doing things, which they cannot do alone but jointly with others;

c) The idea of the perfect equality of persons and their actions in this realm made international law what it currently is. It may

[5] It is well-known from the history of international law and international relations that "the Russian representatives presented not only a perfectly definite statement of the principles upon which they would be willing to conclude peace but also an equally definite program of the concrete application of those principles. The representatives of the Central Powers, on their part, presented an outline of settlement which, if much less definite, seemed susceptible of liberal interpretation until their specific program of practical terms was added. That program proposed no concessions at all either to the sovereignty of Russia or to the preferences of the populations with whose fortunes it dealt, but meant, in a word, that the Central Empires were to keep every foot of territory their armed forces had occupied – every province, every city, every point of vantage – as a permanent addition to their territories and their power". See: *President Wilson's Fourteen Points of 1918.*

[6] Here it is worth to note that "…the American people are entitled to a foreign policy that seeks to preserve and increase their living standards, and to one that contributes to their sense of national pride". Alan Tonelson, "*The Real National Interest"*, Foreign Policy, 61 (Winter 1985/86): 69.

never be more favorable for one state or a number of states and less favorable for the others. The power of this idea is in the appropriate equality-model of international relations and in the equality-model of the status of those entering into them that make sovereign states attain their aims in the international sphere;

d) The main function of the international law as a perfect system of law is to ensure the balance of power. This balance of power requires that no state should have and exercise its sovereign power inconsistent with fundamental rules and principles of international law established by the states to promote the climate of enduring peace, sincere friendship and mutual trust throughout the world by means of appropriate international law machinery suggesting effective collective measures to be taken by the UN Security Council or the UN member states when they are called upon to take them;

e) When speaking of the perfect international law machinery the problems of the modern international relations should not be separated from the main body of the present research. We know that public utility and necessity require that the international law machinery at all times and in any circumstances whatsoever should show that ease and steadiness of motion that characterize perfect systems. However, the point is that at a time of conflicts, it is not always an easy task to find proper means to settle them in a peaceful manner. But to find them suggests to remove the cause of all such conflicts;

f) We are convinced that (a) economic sanctions are employed by the international community to settle serious conflicts between the states without their sovereign rights molestation; (b) to observe the international treaties means to refrain from taking measures, which may give rise to differences in the status of subjects of international or domestic (municipal) law, so established and confirmed by the power of states acting as a single body in the realm of international law or by the power of a single state as the only ruler in matters that fall within the realm of domestic (municipal) law; (c) in order to avoid disadvantage and burden to the nationals of other states and hence put in execution what has been agreed to by the states, the effect of such already taken measures should be remedied by the states taking them; (d) to find a proper remedy all facts pertinent to the situation should be known and appreciated;

g) When speaking of the character of laws in this realm, we venture to admit that some laws are made for peace, some laws are made for war.

References

- U.S. Policy and the Future of Cuba: the Cuban Democracy Act and U.S. Travel to Cuba: joint hearing before the Subcommittee on Economic Policy, Trade, and Environment; Western Hemisphere Affairs; and International Operations of the Committee on Foreign Affairs House of Representatives, 1993;
- U.S. Sanctions on Iran: Next Steps: hearing before the Subcommittee on International Economic Policy and Trade of the Committee on International Relations. House of Representatives. One Hundred Fourth Congress, First Session, 1995;
- Raoul E.Desvernine, “Claims Against Mexico”, Private Edition. 1921.P. 18;
- The American Institute of International Law: its declaration of the rights and duties of nations. The American Institute of International Law, 1916;
- President Wilson’s Fourteen Points of 1918;
- Alan Tonelson, “The Real National Interest”, Foreign Policy, 61 (Winter 1985/86): 69.