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Abstract

The acceptances of the notion of international law has experienced different interpretations in the works of scholars in the field, but all of them lead to the conclusion that this notion designates the rules governing the inter-state relationships, idea that we agree with too. The mandating of international public law rules is put under a sign of great uncertainty. Although the international legal order is imperfect and incomplete, the international public law is part of a legal phenomenon and not of a moral one. No state denies the existence of the international public law as a branch in itself and all the states need to recognize its necessity as a condition of international order, for maintaining the peace and security in the world.

The development of international relationships national for the inception human society up to these days as well as the social and political global conditions have imposed a strong interdependence with the formation and the historical development of international law. International law must not be designed independently of the political factors just because they work or affect the sphere of international relationships.

The first regulatory tool of the international relationships was the international custom and only later these relationships were established by treaties. Therefore, we can say that there are two ways by which states have sought the establishment of an interstate or international law, and specifically: a customary way, created by the unwritten rules and a conventional way, objectified through written agreements called treaties, pacts, conventions, acts, chart.

Keywords:
international law, the international jurisprudent, doctrine, equity, resolution.

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I. INTRODUCTION

In international law, the creators of the juridical norms are the national states and, within certain limits, other international entities. In order to be governed by the rules of international law, the relationships between states must be, in regards to their content, relationships in which these are carriers of their sovereignty. Article 53 of the *Vienna Convention of Vienna of 1969* recognise the existence of the imperative norms of international law, as accepted norms of the community of the states as a whole[1]. There also co-exist the category of private rules, specific to certain states or groups of states, as an expression of the regional or bilateral cooperation that are integrated in the hierarchy of legal norms. Therefore, it appears that the international society, the international relationships and the international public law are in a permanent correlation given the evolutionary and the mutual interconditioning about each other.

The practice of the international relationships has created throughout history, and the juridical science has given it several categories of tools whereby certain norms of the human society take the character of international law rules or through which there are created new such rules.

Alongside the treaty and the custom as the main sources of international public law, we also meet subsidiary (secondary) sources, specifically indirect, such as: decisions of national legal courts, the domestic legislation of the states, some acts of the organizations and international courts, the unilateral acts of the states. They can also be considered as auxiliary means for determining the law: the international jurisprudence, the resolutions of the international organizations and the doctrine.

II. ADDITIONAL METHODS FOR DETERMINING THE INTERNATIONAL PUBLIC LAW

According to article 38 of the paragraph (1) letter (d) of the Statute of the International Court of Justice, the means for determining the rules of law are considered the legal decisions, the doctrine of the most qualified specialists from different states and international resolutions. They are not rules of law-makers, but take part at the finding
of the existence of law, contributing to the application of the rules of international law.

The international jurisprudence, whether it is about the decisions of the arbitrary Courts or about the decisions of the international courts, permanent or on an ad hoc basis, does not represent an international source of law, but merely an auxiliary means for determining the law. These decisions have power only for the solved cases. For example, the Status of the International Court of Justice, qualifying the legal decisions as auxiliary means for determining law and not as sources of law, states at art. 59 that „the decision of the Court is binding only in the dispute, and only for the cause it solves. More specifically, the Statute of the International Criminal Court, when establishing the applicable law, does not refer directly to its previous decisions, but to its previously interpreted principles and rules performed by these decisions. Through the judgments of the international courts law is applied and not created although it can contribute, to a certain extent, to the customary development of international law, constituting itself as a source of inspiration.

The jurisprudence\(^3\) is referential as a subsidiary means of determining the international legal rules and it comprises four categories of acts:

1. The Arbitrary decisions- express the references made by the International Court of Justice regarding the jurisprudence of the arbitrary tribunals and to particular precedents (famous decisions: *Alabama* 1872, *Canevaro* 1912, *The Palmas Island* 1928, *Amin oil*, 1982\(^3\) - that have marked the normative evolution of the international law).

2. The Decisions of the International Permanent Court and those of the International Court of Justice- that have an indisputable role in the development of international law. And here we can bring a wealth of examples of decisions and opinions of the Court, especially after 1947: *The Corfu Channel* (1948 and 1949), *The Reserves at the Convention for the prevention and punishment of the genocide murder* (1951), *The Right for traspasings the Indian territory* (1957), *Military and paramilitary activities in Nicaragua* (1986), *The Legal Consequences of the construction of a wall in the occupied Palestinian Territory* (2004)\(^4\). Many of these had a decisive influence on

\(^3\) For an analysis of Romanian jurisprudence, Liana-Teodora Pascariu, *An analysis of the effects the directive produce to internal jurisprudence*, in European Journal of Law and Public Administration, 2015.

the *Commission of International Law* in its activity of codification and development of international law. According to the article. 59 of the *Statute of the ICJ*, the decisions have legal force *inter partes*, i.e. relative and restricted to the question, but from the ICJ practice it arises that they often refer to their own precedents. Therefore, we can consider the ICJ decisions and the legal precedents as a means of determining the international law.

3. The decisions of the regional jurisdictions - they may be regarded as decisions of the Court of Justice of the European Community, the Inter-American Court on human rights, the ECHR, the decision of some special jurisdictions such as The Sea Tribunal, or some of the decisions of ad-hoc jurisdictions, the International Military Tribunals, the decisions of International Criminal Tribunals for the ex-Yugoslavia, Rwanda, Somalia or Sierra Leone. These tribunals and courts usually follow their own decisions and they don't mean refer to any precedent, but to a series of decisions that require the same solution. All of them refer to the jurisprudence of the ICJ by virtue of their material rational competence in the disputes between states.

4. The decisions of the national courts - which may constitute indirect evidence of a state’s practice in the field of the international law or may represent starting points for determining the general character of a legal principle.

*The doctrine of the most qualified specialists in the field of the public law of different states*, as it is formulated in the Statute of the International Court of Justice, is not a source of law. The doctrine of the international public law is not only made up of the work of the specialists in international law but also of the work of international research institutions. It does not have a creative role, but it also contributes to the interpretation, systematization and determination on the way of “lege ferenda” (as proposals) of the international public law. Therefore, the doctrine can play an important role in checking the new rules of the international law, the states and the international organizations having also the possibility to take into account the opinions of the specialists. At the same time, the international courts may use the doctrinal interpretations in their activity of solving the disputes, not as legal sources, but the opinions of specialists in the international public law.

*Equity* is a notion that appears quite often invoked in the arbitrary conventions, when the referees are invited by the parties to pass
a sentence in relation with the fundamental criteria and principles of the justice and equity, or with equity and good faith. Art. 38 men mentioned in the Statute of the International Court of Justice provides in paragraph 2 that, in certain real cases, if the parties in the dispute agree to it, the Court may have based its decisions also on the principles of equity. By the manner in which it is formulated, it results that, in the absence of a rule of law, the court may ground its decision on the principles of equity. Used in this way, the rules equity do not become themselves rules of law, therefore equity does not acquire the character of source of law, but purely that of basis for a legal decision judge in the absence of a rule of law. It can perform, however, a certain role in the avoidance of the formal application of some principles or rules of international law which would well lead to results contrary to justice.

The Functions of equity are:

▪ **The mediating function** – adapting the rule to the particularities of a given case. The *infra legem* solution [5] allows the non-application of the rules that would result in abnormal or unreasonable results in the case of its automatically application;

▪ **The suppletive function** - filling in some gaps of law. The application solution is *praeter legem* [6];

▪ **The political function** – the refusal of law enforcement deemed unfair. The application solution is *contra legem* [7] and is the most controversial, many authors considering the fact that equity cannot be placed outside the law [8].

In conclusion, equity has, for this reason, if not the value of a source of law, at least a significant role in the creation and application of the rules of law, which must always be based on the principles of equity and represent a means of interpretation of the rules of law.

*The resolutions of the international organizations*, with some exceptions, do not have the value of an international source of law, but can contribute, through the recommendations they have, at the creation of new international legal norms. This quality is determined in the doctrine by the phrase “predrept”. There are the well-known, in this regard, resolutions of the UNO General Assembly by which were adopted numerous statements and texts of some draft treaties which, subsequently, by an agreement of will of the states, have become important sources of international general public law. The majority of
the statements of the UNO General Assembly, in important areas of the international, resulted in conventional texts, such as:

- the resolution from 10 December 1948 through which the *Universal Declaration on Human Rights* was adopted and the resolutions from December 1966 that have been adopted and have been opened for signature, ratification and adoption the *Covenants on human rights in the United Nations system*, inspired precisely by the *Universal Declaration of human right* [9];

- the resolutions from November 23, 1963, by which it was adopted the *Declaration of the United Nations on the elimination of all the forms of racial discrimination*, and the resolution from 21 December 1965, by which it was adopted and opened for signature and ratification the International Convention with the same object;

- the resolution of 9 December 1975, by which it was adopted the *Declaration on the protection of all persons against torture and other punishments or cruel, inhuman or degrading treatments*, and the resolution of 10 December 1984, by which it was adopted and opened for signature and ratification the Convention that has the same object, etc.[10].

### III. THE INTERPRETATION OF THE CONVENTIONALLY NORMS. THE FUNCTION OF INTERPRETATION AND INTERPRETATION TYPES

The interpretation is a logical-judicial operation of decipher of the content of an international treaty in a correct and complete way. The interpretation is impose from clearly arguments: the assurance of a right application of the treaty, the interpretation defining the content of the clauses, assuring the observance of the obligatory force principle of that; the interpretation it’s realize by the competent organs; the mean and establish of the vagueness and of the content of those imprecise disposals. The mean of interpretation is to establish the exactly acceptation of the terms to determine the content of rule which must be applied in a concrete case or to determine the application domain of the judicial international norm.

Valentin Constantin, a famous specialist of international law, believe that the interpretation of the international norms must be done defer to three distinguish notions which has to do with interpretation. That notions are the application of the law, the qualification of facts

Consequently, result that the interpretation of an treaty is independent from his application and any application of a treaty became an explicit or implicit process of interpretation. On the other hand, if the interpretation is mean for define the sense of an form, than the qualification is an operation which precede the application of an norm which sense is admitted and constant to certain situation. With another words, the qualification is one decision through an fact established by probation is included in the application domain of an judicial regime[11].

In situation in which the parties of an treaty decide to bring improvements in rights and obligations mutual area, then that mean that had place a revision of that agreement. But the revision could be a consequence of an decision of an tribunal which interpret the norms of a treaty in a manner that modify the judicial situation of the parties. Concomitantly, the parties has the possibility to modify a treaty after had place the interpretation.

The doctrine of the international law classify the interpretation according to the competence of the subject of law which make the interpretation. Therefore, it’s distinguish the *authentic interpretation* and *jurisdictional interpretation*. The quality to interpret authentic a judicial rule belong to one who has the power to modify or to cross out, in other word, we refer to states, which in the process of the unilateral interpretation, involve so much the own engagements, and so the ones which assume the other subjects of law. The unilateral authentic interpretation it’s refer to the real content of norm which must be interpret. It can be happened that an interpretation in view of non-application of an act, to draw the international responsibility of the state. The international organizations had the competence to interpret the derived law which produce in the functional limits, and also the competence of interpret the integrant act together with the member states.

The jurisdictional interpretation is consider unauthentic, though is obligatory for the parties in process. The jurisdictions institute in the international organizations frame had competence of interpretation confer by the parties, usually through a clause of the institutive treaty, but not always is stipulate such as clause. The interpretation of the
International Court of Justice (IJC) or of the arbitral tribunals had normative value and it is relative from formal point of view. The notice of the Court had advisory character, and the effect of the decisions is relative, conforming with article 59 from the Statute of IJC [12].

In intern law system, the matter of the interpretation include an ensemble of rules and principles, named generic “the methods” of governed by a series of uncertainty which are in connection with normative intensity, with their relentlessness in accordance with type of the jurisdiction (constitutional, arbitral or of common law) and in accordance with their application to concrete cases.

Until the Convention from Vienna on 1969 concerning the treaties law enter between the states the situation in international law hasn’t be very different, meaning that the international jurisprudence of the two Courts from Haga (The International Court of Justice and the Penal International Court) and the arbitral decisions borrow the ensemble of rules and techniques of interpretation from the internal law, but don’t have an concrete system of interpretation. The Convention from Vienna clarify the terms of mean of interpretation and methods of interpretation, which represent in fact, a kind of directives of interpretation.

The application of interpretation went to delineation of many general rules: the “bona-fides” rule establish by Convention from Vienna on 1969; the clear sense rule; the usually sense (customary) of terms rule; the interpretation terms in a absurd unreasonable rule; the coordinate interpretation of treaty’s clauses rule; the clauses interpretation by the pledge object and mean rule; the useful effect of treaty’s rule.

If this 7 rules aren’t enough, the judicial organs which apply the treaty can invoke certain rules of public international law, which can be applied to relationships between the parties. In practice of the international law there is also certain complementary means. At those means it can refer to the confirmation of the sense who result from the application of the rules of interpretation and from elucidation of sense, when, despite the effort, the interpretation doesn’t reach to a clear result. The complementary means are preliminary works for the elaboration of the treaty.

Those 7 rules known an adjustment having a specific denomination, namely coded rules. To those it’s add un-coded rules established by the judicial practice:
• The interpretation less difficult is the one who it's done always in debtor favor;
• An unclear clause must interpret against the party who impose it;
• The inherent interpretation of those clauses which regard the limitation of state sovereignty, the competence of an international forum, exceptionally settlements.

Alongside this rules, the authors [13] mention the rule *in favorem validitatis*, allied to useful effect, which institute a presumption of good-faith, concordant whom the parties cannot contract rights and obligations on a object which is unavailable or the rule *contra proferentem*, according the doubt or the incertitude it’s interpret in detriment of the party who propose, edit or dictate certain clause because the responsibility for the text clarity lack is falls.

The Convention from Vienna on 1969 is the international document which concur to progressive development of the international law through formation of an judicial conventional norms named „general interpretation rule”, in sense of article 31, meaning a norm of positive law. Through the corroboratation with article 32[14], this recommendation norms became real judicial norms accomplished under quintessence which enfold the general rule of good-faith, which establish, for that matter, the obligatory character of treaty and delimitate the general system of law which it’s create through conventional norm, along with three criteria of interpretation: textual criterion, systemic criterion and teleological criterion, the norms achieving therefore value of positive law.

The general rule of interpretation institute by article 31 indicate an real system of interpretation, because through the usage of the criteria and the maintenance of interpretation in good-faith sense it’s arrive at establishing of the sense of judicial norm. This interpretation system is a combination of implicit norms and by interpretation directives. The article 32 of Vienna Convention institute in implicit way two norms which recommend in clear way when we must to consider that the result of interpretation is an valid judicial international norm [15]. These could be formulate in this way:
• It is valid only the interpretation which claim an clear sense (meaning lead to an applied norm);
• It is valid only the interpretation which claim an logical and reasonable sense.

This two norms can receive an negative interpretation also which is more close by the text of article 32: it is judicial invalid/null the interpretation which assert an confusing or obscure sense or it is judicial invalid the interpretation which assert an absurd and unreasonable sense. The article 32 embrace a set of two judicial norms, one classical interpretation rule (ordinary words sense rule) and these three interpretation directives (meaning the three criteria: textual, systemic and teleological). The international jurisprudence use, as a general rule, the negative interpretation, as example: it is voided of force the abusively interpretation or it is voided of force the interpretation which use another method than those indicate in norm. The abusively interpretation means conformation to letter of treaty, which permit to a party who abuse to do directly what the treaty forbidden in direct way. The utilization of an another method then the one indicate in norm enforce the judge or referee to limit to the methods or directives provided by Convention, but does not constrain to allow a predilection to an certain method in detriment of another one, meaning to not institute an primacy of an method over another. But, forbid that the judge to use another method then those involved in general rule institute by article 31 from Convention from Vienna on 1969.

This general rule corroborated with explicit conditions provided at articles 31 and 32 of Convention form the recognition system of valid interpretation of the international treaties. For to become to an clear and reasonable sense of application of the judicial international norm The Convention from Vienna from 1969 recommend in the process of interpretation complementary meanings also which it’s provide for the clearly establish the intention of parties and the mean of the treaty or norm.

The interpretation ways are:
1. The international way has a distinct force and assume that the interpretation is achieved by the treaty's parties. This way has two forms:
   a. the express interpretation is accomplished by the parties at the conclusion of an treaty for avoidance of distinct application of treaty by the parties;
   b. the tacit interpretation result from accordant execution of treaty by the parties.
2. The intern way is achieved by the international organs of parties-state and is not opposable to the other parties to treaty, enforcing only the state who accomplish the interpretation.

IV. CONCLUSIONS

The primordial roll in the creation and application of the judicial international norms it’s anneal to states. The state create the law as appanage of the political state power and as assembly of behaviour norms which achieve by time judicial character. It creates an instrument whereby the state to consolidate his power and to maintain the relationships from the society he operate. The state institute, step by step, the new rules which he dress in law’s coat for to settle the social relationships from inside the state and then, he extend the relationships area into a new formula named interstate society, meaning what we call now the international society. The settlement of the international relationships and the feeding of needs of international society members was, and it is, assured by the international law.

Not bare of importance are the manner of spontaneous formation of international law. These are the international tradition and the general principles of law. The manners of optional formation of the judicial international law are: the decisions of the national judicial courts, the intern legislation of states, some acts of the international organizations and international courts, states unilateral acts. Additional methods for determining the international law norms are represented by the international jurisprudence, the resolutions of the international organizations and the doctrine.

The application of the judicial international norms regard an variety of states obligations traduced in the relationships which are established in international community frame or in the conformation of third states’ rights or in conformation of foreigners rights.

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[15] Meaning a norm which we can incorporated in the international law system.

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