THE SYSTEM OF THE INTERNATIONAL COURTS

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DOI: http://dx.doi.org/10.18662/eljpa.2014.0102.04


Published by:
Lumen Publishing House

On behalf of:
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Abstract

The abundancy, the diversity and the complexity of legislative texts and the regulations of various international documents contribute to the rendering of increasingly less difficult possibilities of solving the international conflict occurring in the interstatal relationships. We notice that the international justice, as well as the mechanisms that put it into action, made up of regulations and arbitrary laws, are a very important way for the application of international law norms, as well as of the creation and development of the international public order. The international justice has features derived from the international law teachings namely: consensual character - what signifies that the agreement of the parties in a dispute is necessary for the recourse to a legal, arbitrary court, non-mandatory character - meaning that the parties of a dispute are free to choose, in order to resolve it, the politico-diplomatic means or other peaceful means, at their choice and there is no obligation of solving it legally or by arbitration. According to the article. 33 para. 1 of the UN Charter, international laws and instruments for the solution of the disputes represent the arbitration and the judicial path, along with the negotiations, the mediation, the conciliation, the investigation or the recourse to organizations or regional agreements.

Keywords:

international justice, international laws, The International Court of Justice, The International Criminal Court, international, dispute.

JEL Classification: K20.
INTRODUCTORY ASSESSMENTS

From a terminological point of view, by international jurisdiction one understands the arbitration body or the judiciary set up under the agreement between states or other subjects of international law, in order to solve international disputes appeared or that could occur. This term can also refer to the authorization granted by the parties of a dispute to any such body to solve it or its skills to solve an international dispute. The roles and regulations of the international complaints are: the resolution of the international disputes (the most important role), the interpretation of the international law, the enforcement of the existing international law, the identification of the existing applicable international as well as existing as well as the new customary rules (we remind here article 38 of the Statute of the ICJ which defines the legal decisions, including those of the international jurisdictions as auxiliary means for the determination of rules of law; the international courts have a special role in the finding of the material and subjective elements of the customs, and their decisions become real evidence of the custom), the identification of the areas not covered by the international law (we are referring here to the international relationships which are not yet covered by the international law), the influence of the process of creating the international law and the amending and supplementing of the one existing (for example, the reasoning of the ICJ in the case of The continental shelf of the North Sea (Denmark and Netherlands vs. Germany in 1969) also effected the debates at The Third Conference on the Right of the Sea, completed with the adoption of the Convention from the Montego Bay in 1982), the accomplishment of the function of the international law of ordering the international relationships (because the international jurisdictions have a significant contribution for the performance of this function through the increase of trust in the international law, the removal of some problems for the solution of which through political-diplomatic means, it is necessary to take sensitive decisions in conjunction with the use of international law standards, ensuring and maintaining the international peace by the solution of disputes, through conservative means and advisory opinions of the ICJ in matters relating to the maintaining of peace and international security).

THE CLASSIFICATION OF INTERNATIONAL COURTS

By analysing the international law doctrine, we identify the following criteria for classifying the international courts:

6 Examples of cases of identifying the international customs appear especially in the ICJ jurisdiction: for bilateral customs such an example is the Cause of crossing the Indian territory (Portugal vs. India, 1960), that we mentioned in the current paper in chapter II, and for general customs exemplifying is the Cause of the continental Shelf of the North Sea (Denmark and the Netherlands vs. Germany, 1969) – to see in Aurescu, B., op. cit, p. 3.
1. According to the legal solving method:

- arbitrary courts (ad-hoc and permanent);
- legal courts in themselves.

2. According to the subjects who can participate in the procedure:

- classic-style courts (i.e. at the procedure can participate only states): The International Court of Justice, the Permanent Court of Arbitration, the Conciliation and Arbitration Court of the OSCE;
- courts of second generation (at the procedure can also participate other subjects of international law): the European Court of Human Rights (ECHR) (to whose procedure have access states, individuals, non-governmental organizations so legal entities), the International Tribunal for the Sea Right (ITSR) (to whose procedure have access states, international organizations and individuals who have contractual relations with the Authority), the Court of Justice of the European Union (CJEU) (available to states, individuals, legal entities and bodies of the European Union), the Permanent Court of Arbitration (PCA) (access for states, international organizations or private parties), the International Criminal Court (ICC) and special criminal courts to which have access only natural persons.

3. According to the rationale of the competence:

- courts with universal vocation such as: the International Court of Justice (ICJ), the Permanent Court of Arbitration (PCA), the International Tribunal for the Right of the Sea (ITRS);
- courts with regional vocation: the Court of Justice of the European Union (CJEU), the European Court of Human Rights (ECHR), the Inter-American Court of Human Rights (ICHR), the African Court of Human Rights (ACHR), the Court of Conciliation and Arbitration of the OSCE (OSCE/CCA) and other courts;
- courts with sub regional vocation: the Court of Justice of the Andean Communities (CJAC), the Court of Justice of ECOWAS, the Central-American Court of Justice (CCJ) etc.

4. According to the type of the material competence:

- courts with general competence: the International Court of Justice (ICJ), the International Criminal Court (ICC), The Permanent Court of Arbitration (PCA), etc.;
courts with specialized competence: the International Tribunal for the Right of the Sea (ITRS), the European Court of Human Rights (ECHR), the International Criminal Court (ICC) etc\textsuperscript{7}.

THE INTERNATIONAL COURTS - BRIEF PRESENTATION

According to our opinion, the most important international court is the International Court of Justice. From a formal point of view, the ICJ does not represent a continuation of ICCJ, but from the substantial point of view, the authors of the field consider that the new Court continues the previous Permanent Court of International Justice\textsuperscript{8}. Establishment of the Permanent Court of International Justice was laid down in art. 14 the Agreement of the Nations’ Society and has worked for 18 years since 1922, without being a body of the Nations’ Society, as opposed to the ICJ. Before the Permanent Court of International Justice, the first permanent legal court was the Centramerican Court of Justice that had been created by the Treaty of Washington in 1907 and functioned only as a court with regional vocation. The natural consequence, we might say, was the creation of the International Court of Justice, headquartered in the Hague, a classic-style court with general competence which, under art. 92 of the Charter of the UN represents the main legal body of this organization with universal vocation. The ICJ statute took in most of the statute of the old Court and the same happened with its jurisprudence. The element of novelty is that the ICJ was set up as the main body of the United Nations, the ICJ Statute is integrant part of the Chart, and the UN members have automatic access to the jurisdiction of the International Court of Justice. Under certain conditions, the access is also enabled to the States that are not members of the United Nations. What is specific to the international Courts is the international procedure that can make the majority vote to be an effective one, since it is the only procedure accepted as being compatible with the state sovereignty. In the vision of Hans Kelsen\textsuperscript{9}, the centralization could not start in the international system with the consolidation of a centralized executive power, for this had to follow a minimal persistence of the states ' consolidation. The ICJ has been institutionally endowed with a necessary autonomy for the exercise of the legal action, by virtue of its quality as the main legal body of the UN although it could not be organized as an effective legal court\textsuperscript{10}. The Court owns two functions: the contentious and the advisory function. The contentious competence/function: Ratione personae, the Court shall limit, in terms of the

\textsuperscript{7} To see details about the classification of the international courts also in Aurescu, B., \textit{op. cit.}, p. 7-8.
\textsuperscript{10} Romania is UN member since 1955, and Moldavia since 1992.
contentious procedure, only to the states-parties to the Court’ Statute, under art. 34. (1) of the Statute of the ICJ\textsuperscript{11}. Thus, the states that may be parties at the contentious procedure are: either UN member state (obviously automatically members of the UN Charter and implicitly of the Statute), or states which are not members of the UN, but who later became, under certain conditions fixed by the General Assembly and upon the recommendation of the Security Council of the UN, a party to the statute (e.g. Switzerland before becoming a UN member - Lichtenstein, San Marino\textsuperscript{12}) or non-member states of the UN and neither members of the Statute (in the conditions laid down by the UN Security Council). \textit{Ratione materiae}, the Court judges legal-litigation- the disputes submitted by the parties and all the matters specifically laid down by the Chart or the treaties in force. These are legal disputes that may have as their object: the interpretation of a treaty; any problem of international law; the existence of any fact which, if it would be established, would constitute a violation of an international obligation; the nature or the extent of the repair due for the violation of an international obligation\textsuperscript{13}. The sentence or the decision is pronounced at 3-6 months after the end of the oral proceedings and is definite and it can't be appealed, but it can be requested to review or to interpret it. The cases presented in the ICJ concern the delimitations of the borders, territorial delimitations, maritime delimitations, diplomatic and consular law issues and matters regarding the use of illegal force, causes relating to the commercial issues, environmental issues, or even private interests, including human rights.

Many decisions or opinions of the ICJ operate in the sphere of the Court’s competence, such as for example: \textit{The ICJ decision in the case of the Corfù Strait}, from 1949. As a result of the nuclear American experience from 1 March 1954 in the Marshall Islands limit, a Japanese fishing ship Fukuryu Maru and its crew have been affected by the radioactive deposits, situation in which the Japanese Government submitted an advertisement, demanding a refund of nearly 6 million dollars. Regarding this, the American Government has accepted to pay $ 2 million, without formally admitting its responsibility. It was therefore a favorable act, leaving untouched the issue of the state’s responsibility. The responsibility for environmental damage by polluting actions (including those resulting from nuclear accidents), is laid down by the general principle, which prohibits any state „ from using its territory for acts contrary to the rights of the states”\textsuperscript{14}.

By making a statistics of the cases resolved by the ICJ from 1947 until nowadays, we can notice that in the last years increasingly less disputes are subject to the Court’s jurisdiction. In fact, we can therefore reach the conclusion that the

\begin{itemize}
    \item \textsuperscript{11} Nastase, A., Aurescu, B., Gilea, I., op.cit., p.32 si p. 310.
    \item \textsuperscript{12} Constantin, V., op.cit., p. 383.
    \item \textsuperscript{13} Aurescu, B, op.cit., p. 60.
    \item \textsuperscript{14} Source:www.icj-cij.org. accessed at:20.11. 2014
\end{itemize}
states are increasingly more aware of role of the international law and, especially, of its role in the process of creating and implementing the international legal norms and its immeasurable role in the application of peace and international security by accepting and respecting those rules regulated by the diversity of the legal instruments.

The Permanent Court of Arbitration (PCA) represents a classic-style court with universal vocation and general competence just like the ICJ and was created by The Hague Convention of 1899 concerning the peaceful regulation of the international disputes, reaffirming its authority by The Hague Convention of 1907 concluded in the same field. We assess that the PCA started its activity in 1902, and after establishing the UN it became the observer at the General Assembly of the United Nations. Seat of the Court is in Hague in The Peace Palace, working there since 1913. The Court is the oldest institution, the universal vocation, of solving the international disputes. Currently it is made up of 115 states parties at one or the other of the two Conventions, or at both. The PCA has solved since 1902 until nowadays around 62 cases, of which 19 are still in progress. Initially, the Court solved only interstate disputes, and from the 1930s it was authorized to use the means available to it for the conciliation and arbitration of the international disputes, of commercial nature and the investments between states and private parties. The diversification and modernization of the procedural rules of the PCA made possible, starting with 1992, the enlargement of the competences of this Court, what has been transposed by the increase of the number of cases. Examples of cases: the Beagle Channel case from 1977, in which, in accordance with a Treaty of 1902, it was assigned as arbiter the Queen of England, for the solution of the territorial disputes between Chile and Argentina; the Rainbow Warrior case from 1986 in which New Zeeland and France appointed as the sole arbiter the UN Secretary-General - in brief, "the Rainbow Warrior", the admiral-ship of Greenpeace, moving towards the nuclear French sites from Murora, when two explosions shook up the vessel of the ship near the port of Auckland. "Rainbow Warrior" sank in the waters near the port. It was considered at that time that it was a sabotage and that the ship was sunk by the French secret services; the case of the Palmas island, Netherlands vs. USA in 1928 and the case British Goods from the Spanish Morocco, United Kingdom vs. Spain in 1925 where the sole arbitrator was designated lawyer Max Huber of Switzerland. The last case solved is the Achmea B.V. case (known as Eureko B.V.) vs. The Republic of Slovakia in 2013. The PCA provided administrative support to this arbitration conducted in accordance with

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15. This statistics was consulted on the official site of the Permanent Court of Arbitration www.pca-cpa.org.
16. Romania is party at the Hague Convention from 1899 since the 4th September 1900, and the Hague Convention of 1907 since 30th of April 1912
the arbitration rules of UNCITRAL\textsuperscript{18} with the implementation of the Agreement concerning the mutual encouragement and protection of the investments between Royaume des Pays-Bas and the federal Czech and Slovak Republic\textsuperscript{19}. The sentence is mandatory for the parties and only for the case in dispute, but it is not enforceable. It can be attacked in interpretation, in cancellation but not in nullification. In order to be valid, the sentence does not have to be formally accepted by the parties after the pronouncement, and its obligation results from the arbitration clause or the arbitrary agreement, according to the principle of pacta sunt servanda.

The International Tribunal for the Right of the Sea (ITRS) was established by the U.N. Convention regarding the right of the sea in 1982 at Montego-Bay as a permanent jurisdiction specialized in the solution of disputes related to the area of the sea right laid down by the Convention. It is a court of second generation, with universal vocation and having specialized competence. The ITRS headquarters is in Hamburg, Germany and it has operated there since 1996. Romania is party to the UN Convention regarding the right of the sea from 1996, ratifying this convention through law no. 110/1996\textsuperscript{20}. For Moldavia the Convention is in effect since 2007. The General Assembly of the UN has granted in 1996 to ITRS the status of UN observer and in 1997 the Tribunal concluded a cooperation agreement with the U. N. The contentious competence: can be parties in the procedures concerning the ITRS not just the states parties at the Montego Bay Convention from 1982, but also the non-statal entities such as the International Authority of the submarine territories, the enterprise, the natural or legal persons that have contractual relations concerning the economic activities developed in the Internal Area of the submarine territories. In general, ITRS has competence to solve all the disputes and the requests that are submitted to it in accordance with the Convention on the right of the sea or any other dispute concerning the interpretation and application of a treaty or convention regarding a problem cornered by the Convention, in accordance with article 22 of the ITRS Statute\textsuperscript{21}. For example, the first ad- hoc Chamber was established in the case regarding the conservation and sustainable exploration of the stocks of sward-fish in the South-East Pacific (Chile vs. The European Communities), initiated in 2000, the procedure being suspended following an arrangement between the parties. Another case solved by ITRS was the case Juno Trader from December 2004, Saint Vincent and the Grenadines-vs. Guinea-Bissau prompt eliberation. Until now the tribunal from Hamburg has solved 22 cases\textsuperscript{22}. The latest one is Case no. 22 The Arctic Sunrise

\textsuperscript{18} The Commission Of the United Nations for the International Trade Law.
\textsuperscript{19} The Permanent Court of Arbitration www.pca-cpa.org. On 7\textsuperscript{th} September 2012 the Arbitrary Tribunal reached a final decision.
\textsuperscript{20} The law ratifying the UN Convention on the right of the sea of 1982 from Montego- Bay no. 110/1996 on the official site of the Chamber of Deputies- www.cdep.ro.
\textsuperscript{21} To see Aurescu, B., op.cit., p. 93
\textsuperscript{22} The source http://www.itlos.org/index.phd?id=10&L=0- accessed at: 20.11.2013
Case, the Netherlands vs. The Russian Federation of 6 November 2013 concerns only provisional measures. In this case, the Netherlands has requested pursuant to article 290 of the Convention of the United Nations relating to the right of the sea from Montego Bay in 1982 for ITRS to recommend specific provisional measures in the dispute between the Netherlands and the Russian Federation regarding the Arctic Sunrise ship sailing under the Dutch flag. The dispute concerns the authority of the Russian Federation to take and retain the Arctic Sunrise ship in the exclusive economic area of the Federation and to retain the ship without the approval of the Netherlands. The decision taken in this case was based on the precedents created by the cause of Southern Bluefin Tuna, New Zealand vs. Japan, Australia vs. Japan from 1999 because of the Mox Plant cause, Ireland vs. United Kingdom in 200123. The court issues final decisions binding and which shall be enforceable within the territory of states parties in the same way as the sentences or the ordinances of the highest court of the state party24.

The Court of Conciliation and Arbitration of the OSCE (CCAOSCE) is a classic-style court with regional vocation and was created by the Convention regarding the conciliation and arbitration within the CSCE/OSCE, adopted on October 26, 1992, by consensus, within the Council of Ministers of the OSCE. The Convention was signed on December 15, 1992 in Stockholm and came into force on 5 December 1994. The CCAOSCE is part of the OSCE mechanisms to solve the international disputes, becoming operational in 1995 and its headquartered in Geneva, Switzerland. Its goal is to settle the disputes and conflicts that are submitted to it by the states signatories to the Convention. Any state party may submit unilaterally to the conciliation committee any dispute with another state-party, which could not be solved by negotiations in a reasonable time period. The Court is not a permanent body of the OSCE, gathering only when it has to solve a case. The decision of the Commission of Conciliation can be accepted or not by the parties (in this case), the parties having a 30 days’ time period in which they should decide. When the decision is not accepted the cause will be submitted Arbitrary Tribunal whose decision is mandatory. However until now the Court has not been asked to solve a case25. The Convention applies the principle of subsidiarity26. Art. 19 of the Convention27 stipulates the fact that the Arbitrary Tribunal or the Conciliation Commission can cease to examine a dispute submitted to them in the following circumstances: either before the notification of the Commission or Tribunal if the dispute had been submitted to

26 Aurescu, B., op.cit., p. 104.
a court or a tribunal that the parties in the dispute were obliged to accept or if such a court had already given a decision on the fund, either the parties of the dispute had previously accepted the exclusive competence of another legal body. The Convention brings a novelty item in the procedure of the Conciliation Commission which stays in the possibility of the unilateral notification of a Conciliation Commission for solving a dispute, the conciliation being mandatory. Where the parties invited to find a solution mutually acceptable do not reach an agreement, the Commission drafts a final report containing the proposals of the Conciliation Commission for the solution of a dispute, notifies the parties and they have 30 days to accept or reject it. The final report is submitted to the OSCE Council. This body has possibilities of political action on the parties involved in the dispute. Romania signed the Convention on 15 December 1992, and ratified it on 22 May 1996 in accordance with law No. 5/1996, which entered into force for the Romanian party on 22 July 1996. However until no dispute was submitted to the Court to solve because of the reluctance of the states towards the new methods for solving the disputes.

The International Criminal Court (ICC) is an institution of second generation having general and specialized competence. The idea of establishing an international criminal court with permanent character in order to establish both the responsibilities of the individuals as well as those of states dates from 1919 from the period of the Nations’ Society. There followed successive attempts in 1926, in 1927 of the International Association Criminal Law and then in 1937 it was attempted the adoption by the Assembly of the Nations’ Society of the Convention on the creation of an International Criminal Court in Geneva, but has not entered into force because of the restless political climate on the eve of the second world war. Barely on 17 July 1998 it was adopted at Rome by the Diplomatic Conference of the Plenipotentiary the Statute of the ICC by which it was established The International Criminal Court. The Statute was signed by 122 countries and is headquartered in Hague. Romania signed the Statute on 7 July 1999 and ratified it by Law no. 111/2002. Moldavia signed the ICC Statute on 8 September 2000. The ICC has jurisdiction to judge crimes of genocide (article 6 of the Statute), crimes against human beings (article 7), war crimes (art. 8) and the crime of aggression. According to article 77 of the Statute, the Court may apply the following punishments: either the jail punishment for not more than 30 years, either life imprisonment in case of extreme gravity, to which you can add fines or the confiscation of goods and assets in accordance with the rules of procedure must and the evidence. In sentencing, one must take into account the Regulation, the evidence, the gravity of the crime as well as the personal situation of the

accused. However until now, there were brought 20 causes in Court, in 8 situations relating to Uganda, Congo in 2009, Sudan in 2010, the Central African Republic in 2007, Kenya in 2010, Libya in 2011, Côte d'Ivoire in 2003, 2010 and 2011 and the last case of Mali from January 16, 2013. Mali urged the ICC to prosecute some crimes of genocide that took place on the territory of Mali, invoking in this sense article 14 of the Statute of the International Criminal Court from Rome and the fact that Mali was a member state of the Statute. In fact, in January 2012 in the North of Mali serious and massive violations of human rights and of international humanitarian law took place, and specifically rapid executions of the Malian army, rapes of women and young girls, massacres of the civilian population, the enrolment of children in the army, tortures, armed robberies, destroying symbols of the states, buildings, hospitals, courts, city halls, schools, headquarters of NGOs and other International Supporting Bodies, the churches, the mosques and mausolea.

The Court of Justice of the European Union (CJEU) represents a court of second generation with regional vocation and it was established at the same time as the Tribunal of First Instance (TFI) by the Convention regarding the common institutions from 1957, becoming a common institution for the 3 communities (the ECSC, EEC and EURATOM). We emphasize that the CJEU jurisprudence of that is part of the Community Acquis, having an important role in the development of Community law. In the competence of the Court enter the appeals in interpretation that are initiated by the national courts that may require the CJEU to interpret the EC Treaty, the acts of the Community, to determine their validity or to decide whether a provision of the Treaty or of a Community act has direct application. The Member States or the Commission may introduce actions to the Court against a member state. The decision of the Court is mandatory and enforceable.

CONCLUSIONS

We conclude that the solution and the principles assessed by the CJEC refer to the principle of the non retroactivity of the criminal rulings which is common to all member states and is laid down in the European Convention for the Protection of the Human Rights and Fundamental Liberties. It is also one of the general principles in the non retroactivity application of the criminal rulings. The Treaty of Lisbon composed the Court of Justice of the European Union (CJEU) of three courts: Court of Justice, Tribunal and Tribunal of the Civil Function. Regarding the establishment of specialized tribunals, the Treaty of

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32 The source: www.avocatnet.ro.
Lisbon also imposes the establishment of specialized tribunals in accordance with the common legal procedures. The procedure is also applied in the case of any amendment of the CJEU Statute, this being considered “project of legislative act”. The Treaty of Lisbon also brings amendments not only to organizations but also to the competences of the CJEU. Therefore, the CJEU receives general preliminary competence in the field of the area of freedom, security and justice. The Treaty of Lisbon also allows the CJEU notification regarding the police and the criminal justice, but this competence only gets into force 5 years after the ratification and enforcement of the Treaty of Lisbon. CJEU has the right to pronounce also in the case of the infringement of the rights provided by the Chart of Fundamental Rights. CJEU doesn’t pronounce generally on cases regarding the External Policy and the Common Security (EPCS), excepting two cases:

- In the case when the CJEU has the competence to make the difference between the legal EU responsibilities and the EPCS;
- After the Council’s pronunciation on decision regarding the individuals or legal entities with security risk, the CJEU has competence to pronounce in the actions initiated against these decisions.

We underline that the two important issues have a connection with the respect of the principle of subsidiary and with the mechanism of the pecuniary sanctions. Regarding the principle of subsidiary, the CJEU can be notified by a member state with an action in the annulment of a legislative act for its infringement. Regarding the pecuniary sanctions, in the case of the non-fulfillment of the obligations, the CJEU can apply pecuniary sanctions from the first decision of their discovery, in the case they are not communicated to the Commission the national measures of applying a decision. Alongside the European Council, the Treaty of Lisbon grants the statute of Community institution also to the European Central Bank, with great powers regarding the monetary policy in the Euro zone, being the only issuing institution of this currency.

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