стосовно впливу віртуальних активів на навколишнє середовище, адже питання стану навколишнього природного середовища, як ніколи, актуальне для України, особливо в контексті розвитку новітніх технологій. Вказані положення є важливими для забезпечення прав конституційних прав людини в Україні.

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DOI https://doi.org/10.36059/978-966-397-314-2-26

WHY INTERNATIONAL LAW ALWAYS SEEMS TO BE BROKEN AND WHAT DOES IT MEAN FOR HUMAN RIGHTS?

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As explained by H.L.A. Hart, the problem with understanding of international law as a law is just one another issue about meaning of terms «law» and «international law» [3, p. 210]. For J. Austin «international law» was just «positive morality» since there is no sanction [2, p. 201]. According to H. Kelsen «International law is law in the same sense as national law, provided that it is, in principle, possible to interpret the employment of force

directed by one state against another either as sanction or as delict» [4, p. 17]. For H.L.A. Hart legal nature of international law was not contentious because its rules are simply accepted – thus the binding power of these rules is different to legal systems of «advanced social systems» [3, p. 229]. In such legal systems acceptance is presumed when new (primary) rule meets the criteria laid down by rule of recognition (secondary rule). There are of course other approaches to the binding power of international law – for instance international law can be considered and a belief system [1, pp. 36 et seq.].

Leaving that aside, the key problem, which is actually related to epistemology, is fact that lawyers are well educated almost exclusively in specific branches of domestic law. For sure each branch of domestic law is different to each other. It is quite easy to enumerate numerous differences between civil, criminal and administrative laws. But at some moment, during legal education, domestic law becomes the proper sense of the word «law». All branches of domestic, in spite of their substance, share common criteria of validity and law making. Such approach is amplified by general legal theory. While i.a. its noble purpose is to equip lawyers in more coherent explanations of phenomenon of law, after law Wittgenstein preposition 5.6 («The limits of my language mean the limits of my world») [6, p. 149] is still applicable. Therefore they are focused on domestic law and domestic law is for them law in the proper sense, since eventually they deal with domestic law. That is why for instance sociological approach to law may encounter some issues in case of international law because international community is very different from society of people. Still that is tempting to boil down international community to society of people – that is quite trivial observation that at the very end states are just huge groups of people. But that means oversimplification and is just another instance of failed analogy.

That is why eventually the biggest drawback of international law is just fact that international law is not domestic law. Claims that international law is not effective and that it does not work have source in the biggest drawback. So how international law is different to domestic law? That is safe to admit that its key subjects are states and international relations, but states are primary subjects of international law. States are not legal persons one can encounter in domestic law – states are inhabitants of both – «sein» and «sollen» realms. That is because they are (social) fact being still so much legal relevant. Thus legality assessment of states is contentious issue.

The other unique feature of international law is that while nowadays positivist paradigm of law is universally accepted by overwhelming majority of legal systems, the international law sources is still confusing for lawyers trained in the realm of domestic law. States are primary subjects of international law so there is no *civitas maxima*. When one insists on existence of *civitas maxima* in international law that is connected with considering international community as such. Anyway all that means that rules of international law are made states for themselves. There is nothing like

legislative and executive power. Role of Security Council of the UN in that matter is very limited and in addition status of permanent members renders that organ virtually non-functional. Consensus between permanent members is after all not impossible (UN SC Resolution 1244/1999 is a good example). Thus self-regulation of members of international community is deeply embedded in the very idea of international law. However law of treaties, which seems to be fundamental, for system of international law is not free some serious ambiguity related to permissibility of reservations – that becomes a real issue especially in the case of human rights treaties.

Other challenge of international law is still enormous role of customary law – something what becomes rare in domestic legal systems. In such case, before rule can be applied it must be first reconstructed. But such «reconstruction» goes much further than just interpretation of statutory provisions – that is because rule of customary law has to be «discovered». It entails looking for practice and so-called *opinio iuris* – but eventually reconstruction of customary law rules is just vested to the ICJ [5, pp. 434 et seq], what makes case law of the ICJ (and other international courts) even more persuasive and close to binding.

The other thing being so awkward for lawyers being not too familiar with international law is lack of compulsory jurisdiction of international courts. Just like states make law for themselves, they decide by themselves whether to settle their disputs in international courts. While in substantive part of international human rights voluntarism seems be to (allegedly) obsolete due to e.g. concept of *ius cogens*, it is still fully functional in the realm of international judiciary (East Timor (Portugal v. Australia), Judgment, I.C.J. Reports 1995, p. 90). In case of the ICJ some solution allowing to circumvent these restrictions is procedure of advisory opinions (Legal Consequences of the Construction of a Wall in the occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004, p. 136 which was actually assessment of legality of acts for whose Israel was responsible).

Self-regulatory or even (at least) voluntarism seems to be a weakness of international law but it also opens up new possibilities. Actually current international law on human rights is an effect of law making by states. The result is overlapping of global and regional conventions. While in case of substantive law of human rights the number of international agreements is quite significant, the real issue is establishing institutional mechanism of enforcement of human right.

Multiplicity of human rights treaties is of course tainted by all defects of international law sources. Thus for instance there is quite extensive reservation of Bahrain to CEDAW. Vienna regime of reservation embedded in VCLT is by the very design just perfect for bilateral relations resulting out of an application of multilateral treaties – like for instance VCDR. In case of VCDR, which is one of the most widely accepted treaties, there is always a sending and receiving state. In such case objections to reservations still

matters since both states – one making reservation, the other making objection – can really shape treaty relations between themselves. In case of human rights treaties it does not work as intended because such treaties do not create bilateral relations.

In addition, reservations and ratification of international agreements are clear manifestation of principle that international law is mostly based on consent. Such approach seems however be somehow disappointing in the case of human rights. In-depth examination of all reservations made to CEDAW reveals for instance that for some states parties obligation to «eliminate discrimination against women in all matters relating to marriage and family relations» (article 16 of CEDAW) is too much for them. For states making such reservation the gain is ability to argue that they do not breach CEDAW since they made reservation and specific provision of CEDAW is excluded or modified in relation to them. ILC adopted in 2011 «Guide to Practice on Reservations» and some states seem to apply Belilos-like solution (Belilos v. Switzerland, application no. 10328/83, Judgment, 29 April 1988). Notwithstanding the very idea of making reservations by state is excluding or modification provisions of the treaty, such reasoning is however not fully convincing in case of human rights. If we assess e.g. protection of women rights in particular states do we really come to conclusion that in states A and B situation is satisfactory because states A and B made reservation to CEDAW and relevant provisions of it are not simply opposable against them?

Human rights are after all related to rights of individuals and have very firm axiological grounds – that is why consent based international law seems to not fit the idea that human rights are inherent to all human beings. That is quite common to talk about «standards» instead of «rules» in the realm of human rights. Rules supposed to be conclusive, also in terms of its formal validity, while standards not necessarily. Thus the human rights (but also international humanitarian law) is the branch of international law which since its emergence is still changing the paradigm of international law. That all is however related to substantive part of international human rights – international law is not prone to be changed soon in case of jurisdiction of international courts. Thus while one can talk about standards of human rights that does not entail right of individuals to sue state in international courts or inter-state claims. At some level of generality substantive provisions of different regional conventions on human rights are not so different, while dispute settlement systems vary a lot. Thus while individuals can sue state-parties of the ECHR to ECtHR that is not possible in case of American Convention on Human Right and Inter-American Court of Human Rights. Therefore while international law does entirely correspond to the needs of human rights being still the only way making international human rights working. Eventually flexibility and gradual development of international law are things used by international human rights.

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DOI https://doi.org/10.36059/978-966-397-314-2-27

ON SOME PECULIARITIES OF REGULATING THE RIGHTS AND FREEDOMS OF NATIONAL MINORITIES IN ROMANIA

ПРО ДЕЯКІ ОСОБЛИВОСТІ РЕГЛАМЕНТАЦІЇ ПРАВ ТА СВОБОД НАЦІОНАЛЬНИХ МЕНШИН У РУМУНІЇ

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В останнє десятиліття XX століття Румунія відновила міжвоєнну традицію культурних, політичних та економічних відносин із Заходом