THE CONFLICT OF INTERNATIONAL RULES DEVICES

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Abstract:
The specific features of the international norm, both from the point of view of the subjects to which it is opposed, and of its elaboration, create many more premises for the emergence of situations in which the norms are in conflict. In this study, we aim to identify some of the causes of the emergence of conflicts of international norms, particularly the dispositive ones, as well as the way in which their resolution is regulated in international law.
Keywords*: International norm, conflict of norms, treaty law, UN Charter.*

The international norm

International doctrine and practice have established that international norms are ”legally binding rules that establish certain rights and obligations between the subjects of international law”[1]. The international norm is developed in the international legal system and designates a standard of appropriate behavior, accepted by states and intergovernmental organizations.

The set of international norms by which sovereign states are guided in their relations forms public international law. This field is strictly based on the mutual consent of sovereign states, proving its effectiveness by ensuring a balance and a generally accepted mode of conduct. [2]

As far as international norms are concerned, they can have two different identities/characters: *dispositive* norms and *peremptory* norms, respectively, both of which are used in the international legal system.

In accordance with the provisions of the 1969 Vienna Convention on the Law of Treaties, mandatory norms are defined as ”norms accepted and recognized by the international community of states as a whole” as norms „from which no derogation is permitted” and which cannot be modified only by a new rule of general international law having the same character (art. 53 and 64).

From this definition, it follows that imperative norms are norms of general international law, with universal value. The foundation of the imperative character of the norms is their recognition and acceptance by the international community as norms from which no derogation is allowed.

It can be stated that the imperative norms represent those norms of general international law located in a higher category, both compared to the norms of general international law, from which states can derogate - called dispositive norms, especially compared to the norms of a restricted nature - bilateral - which cannot be in conflict with the imperative ones.

The sanction for the violation of an imperative norm is the nullity of the act by which the states would try to derogate from it. Any existing treaty, which is in conflict with a new imperative norm of general international law, becomes *null* and *void*.

The imperative norms are therefore defined in relation to the norms of a restricted nature, through which some states would try to derogate from the imperative norms, therefore to establish another inter se international legal regime.

There are many more operative norms and they have as a feature the possibility of derogating through treaties between them. By means of dispositive norms, states can create different he concept of imperative norm does not take into account individual acts, violating the norms, which are illegal acts.

All norms of international law have a *binding character*, regardless of whether they are imperative, dispositive (norms of international law from which it is possible to derogate) or of a limited nature, and the acts of their violation attract the international responsibility of the state.

Acts of violation, however, *do not constitute derogations*, because a state cannot derogate by itself from a norm that it has accepted. With regard to the illegal nature of the acts of violation of the norms, what is specific to the concept of imperative norm is the illicit nature of the treaties by which the states would try to derogate from these norms, under the penalty of nullity.

No hierarchy or prioritization can be established between the imperative norms, as they have the same imperative legal force. Being legal concepts that have a not only legal, but also political and historical character, neither the international conventions nor

the practice of the states provide a simple criterion to allow the recognition of a norm of international law as an imperative norm, derogatory legal regimes in their relationships.

The conflict of norms in international law

Experts in international law, starting with Grotius, expressed the presumption to remove the occurrence of a conflict of international legal norms. This concern for avoiding conflict serves to promote the systemic integration of norms in international law and is based on the assumptions that states act consistently and do not enter into agreements that contradict pre-established rights or obligations.

Despite this fact, in the sphere of international law, there has always been the potential for a conflict of norms to emerge. This potential is undoubtedly greater today, in its current manifestation given the following aspects: its continuous expansion, the extent and diversification of the areas of applicability, the highly specialized nature, the multitude of factors involved in the negotiation and consent to international legal norms and the number international awarding institutions.

There is a limited set of rules and principles in treaty law, customary international law and in some treaties for the avoidance and resolution of conflicts. For example, art. 3 of the Vienna Convention on the Law of Treaties expresses some of these rules, such as *lex priori*, *lex posteriori*, while art. 53 indicates the *lex superior*.

Lex specialis maximum exists in customary international law for similar purposes, and clauses such as art. 103 of the Charter of the United Nations indicates the relationship of a treaty with other rules of international law.

The method of application and their efficiency would be dealt with, in more detail, later, as well as other ways of solving conflicts of norms, either by avoiding their occurrence, or by actually resolving them when they occur.

In general, there is an emphasis on harmonious interpretation and systemic integration and a preference for conflict avoidance rather than subsequent recognition and resolution in most global court decisions.

However, none of the techniques used for interpretation sufficiently address the types of incompatibilities that seem to arise with greater frequency in the current context of international law.

The application of the dispute resolution techniques supported by the Vienna Convention depends on specific criteria and is therefore of limited use, for example between rules and treaties with only partially identical parties and different subject matter. The differences in approach in managing a conflict of international norms arise from the different mode of regulation.

Device rules are created in two steps. The first, in which the agreement of the *will of the subjects* of international law involved must be achieved, with reference to the rule of conduct, while in the second stage the same subjects express their *consent* regarding the legal obligation of the rule of conduct.

Sometimes these two stages can coincide in time, for example, when the international treaty enters into force from the moment of its signing. In this case, the signing of the treaty signifies the definitive granting of the text of the treaty and its attribution to the legal force of conventional international norms.

Imperative norms, *jus cogens*, arise after three stages. The first is the one in which the subjects of international law express their *consent to the rule* of conduct that is the object of the regulation. The second stage is that in which the subjects of international law give the rule in question *ultimate legal force* in the system of international law. In the third stage, the subjects express their *consent* regarding the obligation of the respective rule of conduct.

Imperative norms thus become norms that have a superior legal force compared to the other norms of international law, and all new norms appearing in international law must be in strict accordance with the imperative ones.

The fundamental principle of international law that is the basis of compliance with any international norm, dispositive or imperative, is *pacta sunt servanda*. A series of norms of public international law are called principles, a name that emerges from their legal importance, such as the principles of sovereignty, non-aggression, peaceful settlement of disputes.

The first attempts to develop, to some extent, a code comparable to contemporary international law were those of the medieval Italian city-states. Certain Italian rulers developed a passport system, and in the case of military conflicts, established the

distinction between armies and civilians and established general rules for the conduct of wars. [3]

A general definition of the conflict of norms is that according to which the regulations generate difficulties in their implementation in a given situation, so that the application of one of them may lead to a certain form of limitation of the other. The situation can also extend to the level of the system, there are situations where a conflict of norms is counteracted by the other system of norms. [4]

In a narrower approach, which also faces criticism, a conflict of norms arises when a state has both an obligation and a right, and the exercise of the latter limited by the former. [5] Another definition is that a conflict of norms arises where there are two conflicting obligations, and to act in accordance with one obligation would be to violate the other. [6]

Causes of the emergence of the conflict of norms

In Joost Pauwelyn's understanding, the norms of international law can interact with each other in two ways, either to accumulate or to conflict. [7] Conflicts between norms are much more likely to occur in international law than in domestic legal systems, with some experts even stating “a normative conflict is endemic to international law” [8].

This is one of the reasons that international law *does not have a centralized legislative*, executive and judicial system. There is also no hierarchy in international law, with norms often covering specialized areas such as trade and being created as autonomous and separate systems of rules.

Complementary, the *lack of a centralized judicial system* with general and mandatory competence makes it difficult to coordinate the rules, and the existence of different non-centralized courts with different jurisdictions even gives rise to the possibility of a greater conflict between the findings of the courts when the competences overlap.

Also, another element that favors the emergence of the conflict of norms is the delegation of the exercise of some sovereign attributes of the states, by them themselves, based on the expression of their untainted agreement of will, in favor of cooperation in the chosen international organizations, given that the states can later be forced to accept

norms with which they did not expressly agree, if that organization establishes binding norms for which no consensus is needed.

It is expected that, with the globalism specific to the current world order, states will have to cooperate more to address cross-border issues, a fact that favors the emergence, in the future, of conflicts of norms.

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