CODIFICATION OF THE INTERNATIONAL PUBLIC LAW

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Abstract:

The idea of codification of international law arose from the need to give a methodical and ordered drawing of the law in force, with the inclusion of rules and resolving the differences between countries regarding the content of legal rules which, in order to have a binding effect in the relations, it should take the form of treaties.

Starting from this aspect, the present material emphasizes the importance of codification for the development of the international law and for the assurance of international legality. The purpose of codification is emphasized here, arguing that it also consists in the amendment or the repeal of some old rules and the creation of new ones, not only in establishing and systematizing legal rules in force.

Keywords

codification, international public law, synthetization of legal rules

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General notions

The idea of development of international law, with an overview of its rules written in an orderly and methodical way, including formation of new rules, was first asserted by lawyers in the informal plan (Diaconu*,* (2002) *:* 234).

The codification of international law has been proposed by the English philosopher Jeremy Bentham in the eighteenth century. This idea was also promoted in the work Introduction to an International Code in 1827, where the codification was conceived not only as a finding of some law rules already in force, but as an elaboration of new rules. J. Bentham was the first one to enunciate the concept of coding, without being concerned with a certain code, but having in mind a plan that could regulate the conduct of a nation against others. This idea was taken over by other lawyers throughout the nineteenth and early twentieth century.

The idea of codification of the international law arose from the need to give a methodical and orderly drawing up of the law in force, with the inclusion of rules and resolving the divergence between countries with respect to the content of legal rules which, in order to have a binding effect between states, should take the form of treaties (Diaconu*,* (2002) *:* 234).

The purpose of the codification is not only the set up and the systematization of legal rules in force, but the amendment or repeal of old rules and the creation of new ones.

Lawyers believe that aim codification is not only to establish and to systemize legal rules in force, but implicitly the abrogation or the modification of some old rules, and the creation of new rules. Codification is not purely declaratory and constitutive, it is not just *a lege lata* operation, but also a *de lege ferenda* one. Codification of international law in this case has not only a technical nature, but also a political one (Geamanu, (1981), : 110).

Codification is particularly important for the development of international law and the assurance of international legality.

By encoding one can facilitate an immediate adaptation of the rapid evolution of legal rules on international relations and the development of those rules in new areas of international relations, for which the creation of legal rules via a customary way would be too cumbersome and would not correspond to the urgency of subjecting the norms of these fields. An example is the use atomic energy for peaceful means, the exploration and the use of the cosmic space (Geamanu, (1981), : 110).

Codification is an advantage because it allows the participation of small and medium-sized states in establishing and creating the international law, in order to remove the customary rules established in the past.

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Brief history of the codification of international law

Over the centuries, many thinkers have tried to gather the international law rules into a single code. We mention here the English philosopher Jeremy Bentham, in which vision the codification is both, a declaration of the existing law and an elaboration of regulations aimed to ensure a perpetual peace.

An attempt to codify the general principles of international law was made by the Abbot Gr goire, on the assignment of the French National Convention in 1972 (Geamanu, (1981), : 111).

In the nineteenth century, under the influence of the French Revolution of 1789 and the code of Napoleon, several attempts to group the norms of international law as a unified code have been made.

Professor John Bluntschli from Heidelberg has made the most important informal codification in the nineteenth century, entitled "International law of modern civilized states in the form of code" (1868). Also in this century, the Italian Pasquale Fiore (1889) and the American David Field (1872) have prepared some code projects.

Since the beginning of the twentieth century, we mention the coding trials of Duplessix (1906), Cosentini (1937) and Internoscia (1910) (Geamanu, (1981), : 111).

All these attempts have sought a total codification of international law, very hard to achieve and therefore all remained with no result.

Given the impossibility of total coding, various international nongovernmental organizations have developed various informal projects dealing with various matters of international law (Geamanu, (1981), : 111).

These include the work of the International Law Institute (founded in Gand in 1873), having among its purposes the codification of international law, the International Law Association (founded also in 1873) and the American International Law Institute (established in 1912) (Geamanu (1981), : 111).

Forms of codification of international law

The codification of international law is a systematic process carried out by grouping and systemizing the international law rules, in order to ensure their unity, stating its content and to remove any indication of conflict between them.

The practice of international law reveals the existence of several forms of codification:

- *lege lata* codification and *lege ferenda* codification, operations that take into account existing rules and, respectively, the formulation of new rules; (Andronovici, (2005) : 72).
- *unofficial* codification and *official* codification.

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Official codification is carried out by states, giving expression to the will of their agreement on how to carry out the systematic international law rule and to ensure their coherence (Mazilu, (2001), : 116).

The unofficial codification is done by national and international scientific associations or institutions, or by scientists. For example, Celine Lorenzo (Florence, XIX century) has written "*Codice del gius delle genti in terra ed in mare"*, a work which he presented at the Congress of Vienna. Also, David Field Dudlay has published (New York, 1872) a project that included the 1008 articles, and Pasquale Fiore published (Rome in 1890) "*International law codified and its legal sanction*", amounting to 1340 articles (Mazilu, (2001), : 116).

- *general coding*, that includes all international law* and *partial* coding, which is concerned with certain areas of it; (Geamanu (1981), : 111).
- *codification of general principles* and *detailed codification,* as it deals with general principles or with rules having a special character; (Geamanu (1981), : 111).
- *universal* or *regional codification,* which mean either a codification of the general international law or a codification of its specific rules, with specific application to certain regions of the world (Geamanu (1981), 111).

Codification of international law in international congresses and conferences

The congresses and conferences have been and continue to have a determining role in the codification of international law.

Whenever a text is to be adopted, a Congress or an intergovernmental diplomatic conference is convoked, because in such a framework it is possible to express the will agreement of the states in an appropriate manner (Mazilu, (2001:117). Thus, at the Congress in Vienna (1815) the regime of international rivers was codified, at the Congress of Paris (1856) and the Geneva Conference (1864) some rules for maritime warfare and others for aid for the sick and wounded soldiers were codified.

A step in the process of codifying international law was made at the two Hague Conferences (1899 and 1907), regarding the law and the customs of war matters, as well as the legal means of international dispute resolution. Also at this conference, rules for starting wars, carrying out wars and the peaceful resolution of disputes between states were codified.

In Hague (1930), on the initiative of the Society of Nations, a conference on progressive codification of international law took place (Geamanu (1981), : 111).

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The conference was attended by representatives of 48 states. One of the themes of this conference was the codification of the rules related to nationality, territorial waters and the responsibility of states for the damages caused on their territory to persons or properties belonging to foreign territories.

However, the results of this conference were insignificant; only a draft convention and some protocols related to citizenship were adopted (Geamanu (1981), : 111).

Subsequently, some partial codifications were realized, among which we mention the Geneva Protocol of 1925, prohibiting the use of asphyxiating or toxic gases and of bacteriological weapons, and the Geneva Convention in 1929, on treatment of war prisoners, of the wounded and patients (Geamanu (1981), : 111).

After the Second World War, the codification, the progressive development of laws and the customs of war are carried out, through ad-hoc international conferences.

The diplomatic conferences convoked by the International Council of Red Cross (ICRC) led to the adoption of four conventions on the protection of war victims (1949), and to two additional protocols to these conventions (1977): the first one applicable to international conflicts and the second one to internal conflicts.

Codification of international law within the united nations

The United Nations has had and continues to play an important role in the codification of international law. According to the Article 13 letter a. from the Charter, the General Assembly shall initiate studies and make recommendations to encourage international law and its codification. The coding activity conducted under UN auspices has enabled many codification conventions (Constantin Andronovici, (2005), : 74).

On the 1st of November 1947, the United Nations General Assembly established the International Law Commission and adopted its statute, under which it has been given the task to "formulate precisely and to systematize the rules of international law in areas where a considerable legal practice already exists, previous or doctrinal views" (Mazilu, (2001), : 118). International Law Commission is a subsidiary organ of the UN General Assembly. According to the statute, the commission is tasked to "formulate precisely and systematize the rules of international law in areas where there is a considerable legal practice, precedent or doctrinal views" (Geamanu (1981), : 113).

On the 17th of December 1966, the United Nations General Assembly established a Commission on International Trade Law, responsible for developing "uniform rules on trade and relations in various fields." (Mazilu, (2001), : 118). The committee, which originally had 29 members and, from

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1973, it raised to 36 members, has the task to proportionate equitably the geographical representation of various parts of the world. Its members are representatives of these states.

Both bodies have made a substantial contribution in the field of codification of international law. We note in this respect projects developed by the International Law Commission, such as: recognition of states and governments, the sequence of states and governments, jurisdictional immunities of states and their properties, jurisdiction regarding the crimes committed outside national territory, nationality - including statelessness, treatment of foreigners, the right to an asylum, the Law of Treaties, international seas regime, the regime of territorial waters, diplomatic relations and immunities, consular relations and immunities, arbitrary procedure, the succession of states in the matters of treaties and in other matters than the treaty.

With all the difficulties inherent to such activities, the codification of international law was and is becoming a more insistent concern for states, having already gained notable achievements.

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