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# International Law A Review

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**Abstract**
Thanks to legal globalization, we are witnessing the establishment of a new international space characterized by the creation of an area of interaction between international jurisdiction and internal sovereignties, thus arising as a consequence of the internationalization phenomenon. This zone of interaction is governed and regulated by the human rights paradigm. This legal globalization is a systemic phenomenon, meaning a process that exerts organic effects on conglomerates, mechanisms, devices, institutions, agents, practices, values, and no longer on isolated structures. From this legal globalization, we have seen the internationalization of human rights expand, the impact of which on internal rights has operated thanks to a concomitant and correlative phenomenon that has been characterized as the constitutionalization of international human rights law.
***Keywords*** **:** legal norms; Right; Government; scenarios; interaction international; regulation

## Introduction

The globalizing processes, unleashed during the last decade of the last century, have given rise to the creation of a true zone of jurisdictional interaction where the public, the private, the national, the regional, and the international enter into complex dialectics, generating tensions such that they overflow the normative provisions of traditional Private International Law imposing an extension of them, which constitutes a key element to confer on the expansive transnational commercial activity a legal framework under which to regulate its activity and, likewise, the possibility of building an innovative international system and based on productive complementarities rather than exclusions, on selective distributions of wealth, or unilateral impositions on the part of economic groups[1].

The scenario of the problem, as we have been able to identify it, is traversed by two antagonistic conceptions: (i) a statizing conception that postulates a State as a leveling agent for the distortions produced by the market, and (ii) a private conception that postulates the unrestricted (unregulated) expansion of transnational commercial and financial activity, instituting the so-called new Mercantile Law as the normative system through which private interests are transformed into applicable universal law and assessment guideline in the resolution of controversies. Traditionally, General International Law has been divided into two large spheres: Public International Law and Private International Law. General International Law forms the original normative matrix that establishes the entire international legal order and whose fundamental purpose is to regulate relations between states. However, in the order of the notable expansion experienced by International Human Rights Law, its object was expanded, as was the regime of obligations and duties to which the

[1] Cassese, S. Administrative Law without the State? The Challenge of Global Regulation. N.Y.U. Journal of International Law and Politics. (37): 663-694. In: Palombella, G. The Rule of Law beyond the State: Failures, Promises, and theory, International Journal of Constitutional Law, 7, 3, 2009, pp. 442-467.

State is subject, displacing inter-statehood based on which Private International Law is structured towards intra-statehood, that is, towards State-subject-conglomerate-social relations[2].

General International Law can be defined based on four fundamental characteristics: a) As conventional law, in the sense that its sources come from conventions, treaties, agreements, etc. This section should include international human rights law and International Humanitarian Law. b) As a right of cooperation, in the sense of inter-state solidarity that is created at the request of compliance with the treaties. c) As a right of coordination since the international legal order forms the matrix that connects interstate relations with the devices, mechanisms, operators, agents, jurisdictional bodies, etc., necessary and functional to the fulfillment of the international obligations contracted. Said relationships are given (i); between states; (ii) between these and international organizations and (iii), those that are reciprocally established. d) As a right of integration-association-harmonization.

1. Controversies and analysis in International Law

Under the incumbencies that fall within the orbit of Private International Law, except criminal law, all legal disciplines and all inter-party controversies that may be raised in court must be included and provided that one of them is foreign[3] and because of the concurrence of legal orders and diverse legislations. The contradiction may arise between international natural or legal persons and on the most diverse matters, such as citizenship-nationality of children born in foreign territory; inheritance, marital, affiliate, patent controversies; intellectual property, trade uses, commercial, technological, productive, academic contracts[4].

The changing current scenarios, the interweaving of the different logics under which international private relations are framed today, (some of them exclusive, as we will see later), the uneven process of globalization and its expansion biased by the current economic powers, have come to shake the assumptions and regularities of Private International Law, as well as its areas of regulation[5].

2. Geopolitical Interpretation

The geopolitical concept of the national border, at least as an articulating category of sovereignty with a territorial axis, has been eroded in its foundations from the notable expansion experienced by transnational trade[6]. This has given rise to the creation of new global value chains with the capacity to replicate themselves beyond national borders and to what has been generated global spaces of interaction that were unprecedented and unthinkable just two decades ago. Hence, the legal and normative scope of traditional Private International Law, by the way, designed and conceived for an international system based on a territorial model, articulated around the center/periphery logic and the concept of sovereignty, saw its provisions exceeded regulations[7]. Indeed, the gap found between the intensity and expansion under which globalizing processes have been unleashed, and their expression in legal norms, surprise International Criminal Law in a certain state of normative

[2] Shaw, M., International Law, Fifth edition, Cambridge, Cambridge University Press, 2005.
[3] Donnelly, J. Theories of International Relations. New York: Edit. Palgrave Macmillan, 2005.
[4] Jennings, Robert and Watts, Arthur (Eds.). Oppenheim's International Law, 9 th Ed, Vol I, Peace, Introduction and Part 1. London: Longman Group, 1992. 2887 p.
[5] Cançado, A. Chapter: States as Subjects of International Law and the Expansion of International Legal Personality. In: International Law for Humankind. pp. 165-179, 2020.
[6] Hilty, R. Special Issue on Licensing Contracts. GRUR International, Volume 70, Issue 5, pp. 419–420, 2021.
[7] Schermers, H. and Blokker, N. International Institutional Law, Unity within diversity, 4th (Ed.). Boston, Leiden: Martinus Nijhoff Publishers. 1302 p, 2003.

insufficiency, which, necessarily, returns in the form of a regulatory vacuum, propitious, moreover, for the reproduction of endemic inequities and asymmetries at the global level[8].

All this does not occur in a vacuum, but in connection with convergent processes, among them the gradual abandonment of the regulatory and supervisory function of the State as an expression of the change in its functions, and that has favored the unrestricted expansion of the so-called conglomeration economy of transnational action[9]. Likewise, the emergence of significant non-governmental actors in the international arena, such as the Organization for Economic Cooperation and Development, the World Bank, and the International Monetary Fund, endowed, however, with decision-making[10] and discretionary power exercised in the representation of the transnational corporations that have given rise to them and, many times, venturing into the land of state management and concern.

An important aspect within this context is globalization, which in no way can be considered a synonym of globalization since it is a different process from globalization[11]. Indeed, while globalization would be restricted to the strictly economic, financial, and technological sphere, globalization, on the other hand, expresses a specific phase of the process of internationalization of capital and of its totalized location on a world scale that, in this case, not only implies the expansion of world trade but includes there the legal, institutional, regulatory, legislative and political redesigns that such expansion requires[12]. Globalization, in the sense described, can very well be used as the explanatory and interpretive key to the process of re-functionalization to which Private International Law is subject, for example[13].

3. Globalization as an important factor

The globalizing processes, and others, have affected the law in very different ways, not only impacting the internal regulations by weakening the concept of sovereignty and the redefinition of the Nation-State to which it is articulated but also and, particularly[14], in the International system. In effect, legal globalization has brought about a drastic change in the structuring of the system of sources of law, not only increasing them in quantity and quality but also shifting the mechanisms of production and application to transnational devices, as they are in the field of International Law Public, protection systems[15].

Undoubtedly, the phenomenon of internationalization of law, correlative to the phenomenon of constitutionalization of international human rights law, has given rise to a series of minimum

[8] Grant, J. Subjects of International Law. In: International Law Essentials. Published by: Edinburgh University Press, 2010.

[9] Crawford, J. Brownlie's Principles of Public International Law, 8th (Ed.). Oxford: Oxford University Press. 803 p, 2012.

[10] Hart, V. Constitution making and the right to take part in a public affair, in L. E. Miller and L. Aucoin (eds), Framing the State in Times of Transition, Washington, DC: US Institute of Peace, 2010.

[11] Abbiate, T., Böckenförde, M. and Federico, V. Public Participation in African Constitutionalism London: Routledge, 2017.

[12] Shany, Y. Sources and the enforcement of international law: what norms international law-enforcement bodies actually invoke?', in S. Besson and J. d'Aspremont (eds), Oxford Handbook on the Sources of International Law, Oxford: Oxford University Press, 2017.

[13] Crawford, J., Chance, Order, Change: The Course of International Law (Leiden: Brill, 2014).

[14] Sellers, M. Intervention under International Law, 29 Md. J. Int'l L. 1 (2014). Available at: http://digitalcommons.law.umaryland.edu/mjil/vol29/iss1/3.

[15] Heyns, C., Strasser W & Padilla, D. A schematic comparison of regional human rights systems, African Human Rights Law Journal, vol 3, 2003, pp. 76.

standards or parameters of guarantee, respect, and exercise of them, below which the National standards that do not meet them will be considered violating those principles[16]. In this way, the human rights paradigm, in the field of Public International Law, has become the criterion and the assessment guideline from which the degrees of compliance with these are regulated and measured according to them. standards[17].

The notable expansionism that international trade presents, basically of an inter-business nature, has given rise, in the field of Private International Law, to a concomitant and correlative phenomenon to that generated in Public International Law and to which we have called: interaction zone international private[18]. Here, then, is the continuity that can be highlighted between the two orders. The protection afforded to trade or investment treaties between state parties or between nationals of one state and another state-party revolve around the following points: the right to fair and equitable treatment; right to receive the same treatment as national investors. Right to receive compensation in the event of expropriation measures, direct or indirect; right to free transfer of income, profits, economic benefits, and the right to receive the same treatment as that granted to investments from the country that enjoys the most favorable treatment (most-favored-nation clause)[19]. Therefore, given the foregoing, the configuration of alleged violations of legal security in the field of domestic law and International Law, by force, differ from the alleged violations applicable to Private International Law, not only because of the subjects and objects protected but in the order of the rationalities at stake. Thus, while in the former we are witnessing a ratio founded on the preservation of the social group, in the latter case, we are witnessing a ratio founded on private and part interests.

Globalization, far from being effective in controlling or equalizing these inequities, has rather reproduced them with greater intensity[20]. It must be said that these do not affect only certain social sectors but also exert a systemic effect on the society as a whole and macroeconomic variables, affecting the levels of wealth distribution, employment, and equal access to goods and services.

The emergence of new contexts and scenarios, as well as the configuration of new tensions and the appearance of new actors, have redefined, or better, shaken the liberal assumptions on which the Western legal matrix rests, which, we believe, is beginning today to become abstract and diffuse[21]. Thus, the concept of a legal person, property, subject, individual damage, and the dimensions of the public and private that articulate them, must be reviewed in the light of the current scenario. It have seen that the delay in the necessary and peremptory review of our legal systems, particularly in the area of corporate and commercial law (also a matter of Private International Law)[22], generates

[16] Milorad, M. The International Public Law and the Use Of Force By The States. Journal of Liberty and International Affairs Volume 1, No. 2, 2015.

[17] Hadzi-Janev, M. International legal aspects of using force in the fight against global terrorism – authorized lectures, Faculty of Law Iustinianus Primus – Skopje, 2009.

[18] Shaw, Malcolm, International law, 6th ed., Cambridge, Cambridge University Press, 2008.

[19] Wilmshurst, Elizabeth. Principles of International law on the use of force by states in self-defence. Chatham House – The Royal Institute of International Affairs, 2005.

[20] Niemelä, Pekka, The Politics of Responsibility to Protect: Problems and Prospects, Helsinki, Erik Castrén Institute of International Law and Human Rights, 2008.

[21] Habermas, J. (2008). The Constitutionalization of International Law and the Legitimation Problems of a Constitution for World Society. Constellations, 15(4), 444–455.

[22] Thomas Nagel, The Problem of Global Justice, Philosophy and Public Affairs 33, no. 2 (2005): 113–47.

regulatory gaps conducive to an unrestricted and unregulated expansion of prevailing private interests. over the interests of the social group.

4. Contexts and scenarios

For example, a shift in strategy finds direct justification in the change in the concept of international security and the new vision of the role of the United States in international peace and security issues that the beginning of the Democratic Administration brought about. The proposals are based on a fundamental fact, as it is that despite having already fulfilled two decades since the two great nuclear rivals (the United States and the Soviet Union) formally ceased their struggle to dominate the arms scene, the world has not yet seen each other. free from the threat of these dangerous weapons[23]. As stated in the Strategy: The threat of global nuclear war is now more remote, but the risk of nuclear attacks has increased. New actors, including States that accumulate nuclear weapons in an uncontrolled manner and without international supervision (Iran, North Korea) or terrorist groups that see in it a new way of carrying out attacks with more serious consequences, have contributed to the formation of this new scenario.

Nuclear weapons are therefore considered under the new document, as the last resort, on the understanding that the US government has sufficient anti-missile defenses and conventional response capabilities to defend itself. Nuclear weapons will not be a priority option, not even in the case of a chemical or biological attack in any circumstance as it used to be, reserving for such attacks, as stated, a devastating conventional response[24].

In addition, respect for cultural diversity is basic in the fight against fundamentalism as an identity reaction (identity withdrawal) that seeks to rebuild a mythical community of original values in the face of the globalization process (economic, financial, and technical). This withdrawal grows as local cultures, through the action of the market and globalized communication, become both permeable and impervious to specific forms of culture that tend to be dominant, based on industrial reproduction and telecommunications facilities[25]. The promotion and protection of a diversity of cultural expressions that are channeled through the international trade of cultural products are essential in the fight against fundamentalism insofar as a more equal exchange of cultural goods allows to avoid such threat to the cultures produced in line with the trend of cultural homogenization, and in any case, the feeling that cultures are threatened.

If the promotion of cultural diversity is fundamental for the achievement of authentic intercultural dialogue and, therefore, for the construction of peace, it is, in turn, above all about the cultural diversity channeled through international trade of cultural products, of a difficult and thorny issue of International Relations wherever they exist, to the extent that interests of various kinds converge in it. It can refer to the problematic relationship between commercial interests on one side

[23] Wolfrum, Rüdiger, Commented by H. Neuhold, The Inadequacy of Law-Making by International Treaties: Soft Law as an Alternative?, in Developments of International Law in Treaty Making, Berlín, Springer, 2005.

[24] Cohen, H., Finding International Law: Rethinking the Doctrine of Sources, Iowa Law Review, vol. 93, 2008.

[25] Toope, S., Formality and Informality, in Bodansky Daniel et al. (eds.), The Oxford Handbook of International Environmental Law, Oxford, Oxford University Press, 2007.

and cultural interests on the other, a problem that is at the heart of the regulation of international trade in these products[26].

International Law has become a source of Constitutional Law. This new source is part of the concepts of globalization and interdependence that characterize today's world. This fact has led the modern Constitutions to normatively regulate not only the incorporation of International Law in internal Law but also the hierarchy and the way to resolve conflicts between the two legal systems. For example, in the dualist conception, there are two distinct and separate legal systems: the national and the international. Both legal systems have different sources since International Law regulates relations between States and domestic Law those that occur between persons or between the State and its subjects. Therefore, as the State is sovereign, the validity of the constitutional order is independent of its conformity or not with International Law[27].

The consequence of non-compliance with a treaty is to make the respective State internationally responsible. In addition, in the case of two autonomous systems, between which there is no dependency or subordination relationship, the international norm to receive an application in the internal order needs to be transformed or incorporated into it, using an act of will of the national legislator[28].

In the United Kingdom, the relations between International Law and Internal Law are based on the sovereignty of the English Parliament in the constitution or modification of rules that directly affect the subjective rights of citizens and the conclusion of treaties by the English Government. The basic principle is that the general rules of International Law are part of the law of the country and are applicable as long as they do not oppose a law of Parliament or a decision of the Supreme Court. It is the principle that comes from the 18th century, International law is a part of the law of the land. As for conventional law, if a treaty modifies the rights and duties of individuals affects public charges and the tax system or requires modification of the common law or written law, the Crown needs prior parliamentary approval before being ratified by the Government. In the event of a conflict between the treaty and later law, the latter prevails.

In the United States of America, regarding the general rules of International Law, these are part of North American Law and as such can be applied ex officio by the courts. Article 2.2. of the Constitution establishes that the power to conclude treaties corresponds to the President, duly authorized by a two-thirds majority in the Senate.

The status of the supreme law of the country that is granted to the treaties should be understood as equalization to the federal laws concerning which it is situated about the subsequent law. The highest hierarchy attributed to treaties is concerning the legislation of the member states. Treaties can be self-executing, that is, capable of producing direct effect and affecting individual

[26] Louka, E., International Environmental Law, Fairness, Effectiveness, and World Order, New York,Cambridge University Press, 2006.

[27] Peters, Anne & Pagotto, Isabella, Soft Law as a New Mode of Governance: A Legal Perspective, in New Modes of Governance, 2006.

[28] Branson, D., Teaching comparative corporate governance: the significance of soft law and international institutions, Georgia Law Review, vol. 34, 2000.

subjective rights, but as a general rule they require internal legislation that makes them capable of execution[29].

For its part, the French system is based on the relationship between International Law and French domestic law on the principle of the separation of powers and the preponderance of the law as a manifestation of popular sovereignty. Regarding conventional international law, three aspects must be distinguished: a) Applicability. The publication, reciprocity, and self-executing character of the international rule are demanded. b) Interpretation. Incompetence to interpret treaties is maintained. There is controversy in the relationships between conventional international law and internal law. However, recently the Council of State has accepted its competence to control the conformity of a French internal norm with a rule of conventional international law. Although there are Constitutions that establish the hierarchy of the treaty over internal law, some Constitutions add the reciprocity clause that reduces or may create conflicts in the application of the treaties. As for the doctrine, a good number of authors uphold the supralegal value of the treaties, but infra-constitutional.

In some European States, international treaties can serve as a parameter for Constitutional Courts to judge the constitutionality of laws[30]. In Slovenia, the Constitution gives an express competence to the Constitutional Court to control the conformity of laws and other regulatory acts with international treaties and with the general principles of International Law.

5. Conclusion

General International Law and conventional International Law are incorporated into internal legal systems by the provisions of their respective Constitution, or in their jurisprudence, or their international practice. International jurisprudence is uniform in that international law prevails over domestic law, and it is not possible to allege non-compliance with domestic law, including the Constitution, as a justification for not complying with a rule of international law, be it conventional or customary. The doctrine is not uniform, which is why the confrontation between the dualistic and monistic conceptions persists, although there is a trend towards a moderate monistic thesis. Regarding treaties, many States proclaim in their Constitutions that they prevail over the national legal system. But other states subordinate this pre-eminence to reciprocity. However, there are States that in their recent constitutions have abandoned this superiority. Although some States in their Constitutions are favorable to International Law, others prefer to refer to the Charter of the United Nations, to Regional Organizations, or principles of International Law elaborated by the United Nations. The perspective towards the future may be more favorable to International Law due to globalization and the internationalization of Law.

International economic relations are a vast and complex field of study of the different spheres of relations between nations, based on policies vis-à-vis other States, of an institutional and public nature, but also private and private. At present, international relations are understood not only those of politics and diplomacy or military, but also economic, commercial, cultural, geopolitical, among others, and not only in charge or head of the national State or governments or parliaments, but also economic and social agents such as domestic units, private corporations, multinational companies and multilateral or supranational entities.

[29] Sossin, Lorne & Smith, Charles, Hard choice and soft law: ethical codes, policy guidelines and the role of the courts in regulating government, Alberta Law Review, Vol. 40, 2003.
[30] Birnie, P. & Boyle A., International law & the environment, Second edition, Oxford, Oxford University Press, 2002.

International relations have a nucleus of legal, political, and economic components, as well as diplomatic, social, and cultural, and even elements of a religious, ideological, axiological, and idiosyncratic nature must be considered. Notwithstanding the foregoing, confusion persists to a great extent between international economic relations, international relations, international economics, internationalization, international business, and international trade.

At present, the relationship between the European Union and the Central Asian countries is situated in a tension between the promotion of European normative values and the safeguarding of certain economic and security interests (not necessarily complimentary), in a condition that has developed since two decades ago: from a critical perspective, this situation has been the product of a politically asymmetric approach justified in a set of preconceived ideas that have been elaborated from Europe on Central Asia. This is because European concepts about Central Asia have sometimes created an image that could be presented in an instrumental way for the interests and needs of Europe, which has produced a cognitive distortion concerning the objective characteristics of the countries of Asia. that region among the official media of the European Union.

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