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The Creation of International Law during the Feudalism

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Abstract

The major preoccupations of international law scholars and of national states were the holding and the strengthening of peace, getting the war outside the law, the promotion and the observance of the international law norms, the cooperation between states, the world security. From the father of the international law science, Hugo Grotius we have the ideas regarding rules and principles of international law, the importance of their respect of their, the need of the understanding and cooperation between states, rules regarding the carrying of war, the need for drawing rules, for eliminating the cruelties of wars, the importance of concluding some treaties between countries which must be observed and applied with good faith.

An important role in getting and strengthening peace is given to the multi-lateral cooperation through conventions, understandings, multilateral treaties concluded between states, with the aim of harmonising the international relationships. The areas of interest of peoples have gradually evolved, so that there appeared the need of extrapolating the consolidation of the interstate relationships, going beyond the framework of the bilateral agreement between states. By analysing the evolution of history, one can notice that the states have tried to adopt different ways and manners in order to prevent conflicts and to maintain peace. These ways have translated into practice by the need for the conclusion of agreements or multilateral treaties. Basically, the multilateral cooperation of states in the creation and the application of the norms of international law has resulted in the conclusion of peace, alliance and mutual aid treaties, military, commercial, political, economic, cultural, technical and scientific treaties, and the conclusion of international conventions, regionally and worldwide, through the participation in the international conferences or through international organisations. The purpose of this study is to identify the norms of international law that were created during the feudal age and the contributions of the time scholars to the international law.

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1. Introduction

The development of the international relationships at the beginning of the human society existence and until today and also the social and political conditions of the universe impose a power interdependence with the formation and evolution of the international public law. The international law must not be conceive independent of political factors because those act or influence the relationships area. The evolution of the international public law it's report at the formation of the human collectivities, at the relationships between these and at their arrangement as states and its totals several stages: the antiquity period, classic period, modern and contemporary period. The authors of international law divide the evolution of the international public law in: pre-state period – when it's appear many practices and customs yet before of the formation of states, determined by the good neighbourhood between the tribal communities; the antiquity, feudalism, modern age and contemporary age.

At the beginning of feudalism the separation of states as a result of the dissolution of the Western Roman Empire and the absence of strong central authorities have caused the stagnation of international law norms, even a strong setback in some areas. During the centuries IV and VIII have sprouted various states on the ruins of the former Empire which have concluded among themselves and with the Byzantine Empire, various peace treaties, alliances or armistice whose compliance was guaranteed by the hostage-taking. After the formation of the Holy Roman Empire of German origin in the year 962, and the affirmation of the Papal power, with centralize tendencies, the entities under their own authority have concluded treaties in different fields (commercial or sailing), they concluded armistices between them or with other states outside the Empire, such as England or Sweden, the Arab States, or countries in Africa and Asia, they even concluded diplomatic relationships with them. The growing feudal dissolution and the multiplication of wars from different little states existing on the European continent determined the Catholic Church to make use of its huge spiritual and moral authority in order to limit the damaging effects of the war. The religious ideas of humanism, based on the love towards people, have contributed to the creation of interpersonal and interstate relationships, the church being able to impose the so-called "peace of God", according to which there were established certain days when war was prohibited under the threat of the religious excommunication of those who infringed it and there were formulated some fighting rules of carrying the war and of protecting certain categories of persons in time of war. Thus, the Council of Lateran, from 1139, forbade the use of crossbows and the transformation into slaves of the Christian prisoners. As expected, the practice of the conclusion of treaties has grown and they pertained to certain rules of conducting the wars, the transmission of territories through inheritance, marriage or sale. The treaties were guaranteed through oaths, religious pledge, mortgages, castles, fortresses, jewellery or handing over hostages. There have also developed the trade treaties, they virtually became a frequent practice of the free Italian cities that concludes such agreements either between themselves, or they certified them with the Byzantine Empire or with the Hanseatic League, with the Arab sovereign, with the Sultan, or with other cities in the Netherlands, France, Spain. We can bring an example of such an agreement- *the Treaty of 1171* by which Ferrare obliged itself to Venice, Bologna, Mantua, Milan, Madena and Ravenna to ensure freedom of transit on the Pad river (Pivniceru, 2007, p.9). These treaties contained clauses withholding economic and trade privileges, clauses which took away the right of distress (i.e. the returning of property lost through shipwreck), the prohibition of piracy and, in some cases, clauses relating to the consular jurisdiction and extraterritorial arrangements for neighbourhoods inhabited by Italians. We could say that from this period it started to strengthen the idea of sovereignty although the war remains the primary means of resolving the conflicts, and also some institutions of the classic international law for using the force (the re-torsion, the retaliation, the peaceful blockade, etc.) and it was tried a circumscription of the reasons legally admitted as for starting the war. At the same time, the legal rules concerning the way of waging the military operations have met a more solid justification.

1.1. Outline of the new rules of international law

The laws as well as the customs of the war enrich now with two fundamental principles that will decisively affect the progress of international law in the area of the rules governing the armed conflicts:

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