Conclusion

In the rather slow but also quite free process of development of the law of nations, the first quarter of the 20th century brought a change with serious consequences. It was a product of the creation of the League of Nations and the related first permanent international court. The founders of the League of Nations, without being fully aware of this fact, opened the circle of subjects of international law, hitherto restricted exclusively to states. At the same time, creation of a permanent court to settle disputes with the power to bind litigants required precise determination of legal bases of adjudication. This was achieved in Article 38 of the Statute of the Permanent Court of International Justice, established in 1921. It stipulated that the established court would adjudicate on the basis of law of treaties and international customary law. Beside these two bases of international law, overlapping with its classical sources, it also mentioned general principles of law, without restricting them to those of an international nature. Because of this approach to general principles, international law was not limited only to treaty and customary norms created by states. It was also opened to other law-making processes. Therefore, in modern international law scholarship, one may encounter enumeration of several new, more or less convincingly argued sources of contemporary international law. Some of them enjoy recognition and function in the international law arena, causing growing confusion in the scholarship occupied with sources of the contemporary order of international law.

This study has conducted a closer analysis of several "supposed" sources indicated in the literature, apart from the unquestioned classical sources in the form of international agreements and customary law. These include unilateral acts of international organizations, unilateral acts of states, general principles of (international) law and judicial precedents, internal law of states, as well as scholarship of international law. The study made an attempt at determining the characteristics of the new sources, and how they contribute to our knowledge of the sources of contemporary international law. Where is the core of such a source?

The first two sources, *i.e.* unilateral acts of international organizations and unilateral acts of states, are most widely recognized as new sources of international law, both in scholarship and in judicature. Their common general trait is the lack of consensual basis of states, so important as a characteristic of the classical sources, *i.e.* those mentioned in Article 38 of the ICJ Statute. Both a law-making act of an international organization and a law-making act of a state has the nature of a unilateral act. It simply takes the form of an individual decision of one entity.

These characteristics emerge even more clearly in reference to a source of so-called judicial legislation. Both determination of a precedent as a source of law and derivation of a detailed legal norm from general principles of law, including general principles of international law, takes place by way of so-called legal reasoning or judicial reasoning. This process has nothing in common with negotiation. It consists in thorough expert inquiry of the perceived norm within the strict context of the binding order of international law. It is concluded by a decision adopted by a majority vote. This judicial source of law is also characterized by the fact there are no law-making competencies at the foundations of its formation. The capacity of an international court also remains doubtful as a rule.

Municipal law is unquestionably penetrating the system of international law increasingly broadly. However, upon incorporation into an international act, it loses its original character, becoming international law. Human rights law may serve as an example. A less obvious situation in this regard occurs in certain international courts, especially commercial and criminal ones, which apply national law subsidiarily. Yet the practice is too fresh and heterogeneous to draw any general reliable conclusions.

The status of international law scholarship also appears differently in this regard. It would be rather difficult to prove that it is a new source of international law; but on the other hand, its tremendous impact on the process of development and functioning of this law cannot be overestimated. Scholarship also determines the quality of law. It occurs in combination with the law everywhere: it initiates creation of new law, provides advice in negotiations thereof, and assesses the results and functioning. Scholarship consolidates and integrates the system of international law, and keeps watch over the values connected therewith. It is its soul, but not a source.

It should be kept in mind that international law today is not created in a vacuum. It is formed within a specific framework of the binding order of international law and has a systemic nature, as termed by A. Kozłowski. On the one hand, the current integrated system outlines the limits of creation thereof, while on the other hand the system itself provides new means and paths of development. Judicial legislation takes particular advantage of this fact. It is extracted, interpreted by way of legal reasoning, out of the binding legal order.

The new sources of international law, as mentioned above, have particular features distinguishing them not only from the sources mentioned in Article 38 of the ICJ Statute, but among one another as well.

The law-making nature of a declaration of an international organization is derived not from its own competence, but from one delegated by member states. The scope of this competence is determined in its statute. However, it should be stressed that to the

extent under consideration, this source of law is of autonomous nature. It also has another important feature. Apart from certain UN declarations, binding resolutions of other international organizations are a source of law elaborated in fields of international relations which have been determined in advance, being, in a certain sense, a law of particular, sectoral nature.

Unilateral acts of states should be regarded in two separate groups – acts of autonomous nature with regard to law-making, and acts dependent on other entities or international law acts in this regard. The former evoke the foreseen binding legal effects in their own right, without assistance from any other acts of law. It should be noted that such an act may only be a source of obligations to its author. However, such obligations may give rise to rights, and usually favourable ones, of the addressees of such acts (e.g. a promise). Under the basic assumptions of the legal system presently in effect, such an act may not take the form of a source of obligations for the addressee. The addressee is not even obliged to exercise the rights included in this act. In spite of such a systemic restriction, it is a source of law capable of regulating inter-state relations on a wide or even universal scale (e.g. the French declarations).

On the other hand, unilateral acts of a non-autonomous nature, combined with other acts of international law, may constitute a source of international law in the full sense. For instance, an act of accession to a multilateral international agreement without becoming a party thereto changes the legal situation between the author of the act of accession and all parties of the given treaty. It becomes a source of law and obligations in a given area on a multi-lateral scale.

On the other hand, a ruling of an international court becomes a component of the international legal order if it constitutes a precondition for supplementation thereof due to a need to materialize a systemic fairness, interpreted in accordance with the nature of international law. In this sense, a judgment of an international court plays the role of a substantial precedent constituting a source of rights and obligations. Obtaining of such a qualification by the ruling is enabled by use of the concept of a general principle of international law by the court.

Therefore, it seems obvious that the international law system in force consists of norms which are fairly diverse in their legal nature and of the related hierarchy of current sources of international law. It is shedding, with increasing clarity, its purely state nature although, but this happens essentially only upon the express or tacit consent of states. However, states themselves remain quite strongly bound in their actions by an elaborate legal system. The sources of modern international law may be diverse, but their core and essence lies within the system presently in force.

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