

*Private international law rights of natural and legal persons**

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Introduction

As legal and jurisdictional questions come before us when the intercourse between national and foreign natural and legal persons for various purposes grows and becomes more developed and complicated, we all should bear in mind that they come from conflicting legal systems and jurisdictions. To manage them all there is a distinct field of law inside systems of private law, which is private international law (PIL). To promote the international trade and commerce and obviate all difficulties which may arise in them it performs its directing or coordinating work based on various laws passed by the states and their unions.

By virtue of these laws PIL is currently empowered to take care of all and any private rights of natural and legal persons including states and international organizations in any socio-economic sphere concerned and thus do everything to attain this goal. To discharge its duty expressly given in domestic legislation comprising rules of international treaties or agreements (multilateral or bilateral), PIL provides PIL rights as a distinct variety of rights in the PIL sphere, where private and public law subjects do only those things to which they are empowered. These are the starting points in the light of which all questions arising with respect to the said subject are studied in the present paper.

We have no intention to give exhaustive consideration to the subject concerned, rather to so present this subject by appealing to the theory and practice of dealing with it starting from the first PIL treaties forming a part of domestic legislation that the readers can acknowledge and understand what PIL rights are and what their function inside PIL systems is. Because, as the readers will see, the said rights are a key to predictable cross-border civil or commercial activities of natural and legal persons making them fully and completely realize their potentialities in various socio-economic spheres. And there is no part of digressive matter in the present paper.

1. PIL rights as a new notion of a PIL science

§ 1. We claim no new discovery in the meaning of the terms being already in use in the PIL realm. We rather intend to enter into the science of PIL such new terms as PIL rights of natural and legal persons, in our opinion, enriching and extending it in the right direction. And the first question, is what enters into this legal category. We believe, these are:

a) The absolute rights of all and any nationals, foreigners and stateless persons not to be subject against their will to the forum and law, which are irrelevant to their contentious and noncontentious matters: see article 2 of the Convention for the

* [Recommended bibliography.](#)

Settlement of Certain Conflicts of Laws in Connection with Bills of Exchange and Promissory Notes 1930.

b) The relevant rights of all and any nationals, foreigners and stateless persons to be subject to the forum and law specifically chosen by them when this choice is permitted by the state of their nationality or the state with which their relations are closely and substantially connected: see articles 2 and 6 of the Convention on the Jurisdiction of the Selected Forum in the Case of International Sales of Goods 1958.

§ 2. No doubt may be entertained with respect to the scope and meaning of such rights. By way of illustration,

a) The right of a person to determine his or her nationality by the place or territory where he or she was born or the right of a child to determine his or her nationality by the parents' nationality are two distinct varieties of PIL rights generally viewed through the prism of two main doctrines "jus soli" and "jus sanguinis" of the law of persons as a distinct part of PIL; and

b) The right of a person to subordinate a form of various legal acts, as well as contractual rights, duties and liabilities to the law of the place where they are made by virtue of a legal principle "lex loci" of the law of obligations forming integral part of PIL: see, for example, Chapter VI of the Convention on Private International Law 1928 ("Bustamante Code"), article 4 of the Inter-American Convention on Personality and Capacity of Juridical Persons in Private International Law 1984, article 2 of the Inter-American Convention on the Legal Regime of Powers of Attorney to be Used Abroad 1975; or

c) The right of a person to subordinate the exercise of his or her contractual rights to the place chosen by this person in appropriate agreement by virtue of another legal principle ("lex voluntatis") of the law of obligations: see, for example, article 7 of the Inter-American Convention on the Law Applicable to International Contracts 1994;

d) The limits of time for the exercise of rights generally viewed through the prism of the law of actions and determined by the law of the place, with which they are closely and substantially connected¹.

§ 3. But these rights may never be considered apart from:

a) The indispensable duties of competent judicial, administrative and other authorities of the state of the forum to ensure such rights;

b) The absolute rights of such competent authorities of the state of the forum to accept or deny jurisdiction and law;

c) The absolute rights of competent authorities of the state where protection is sought to accept or deny recognition of judgments thus rendered by competent authorities of other states.

¹ Thus, for example, the actions of recourse by the parties liable for the payment of a cheque issued in accordance with the terms of the Convention providing a Uniform Law for Cheques 1931 against the other party are barred after six months as from the day on which the party liable has paid the cheque or the day on which he was sued thereon: see article 52 of the Annex I "Uniform Law on Cheques" to this Convention.

§ 4. Now the question is, whether we may we say that these rights derive from the main principles of PIL regulation. In the answer to this question, we think that, yes, we may. Among such principles are:

a) The supremacy of the personal law over any other law in questions of the legal status and capacity of natural and legal persons;

b) The supremacy of the territorial law over the personal law in questions of any incapacities of natural and legal persons in distinct civil or commercial matters that may affect the international trade and commerce: see article 7 of the Convention Providing a Uniform Law for Bills of Exchange and Promissory Notes 1930 and article 2 of the Convention for the Settlement of Certain Conflicts of Laws in Connection with Bills of Exchange and Promissory Notes 1930;

c) The absolute liberty of states in matters concerned with jurisdiction over persons, things and actions²;

d) The absolute liberty of states in questions of acknowledgment and recognition of rights of foreigners and judgments rendered by foreign authorities: see, for example, article 18 of the Convention on the Unification of the Law Relating to Bills of Exchange and Promissory Notes, and Uniform Regulation 1912 (which has not entered into force) and article 5 (2) of the Inter-America Convention on International Commercial Arbitration 1975.

§ 5. Does that mean that this term “PIL rights”: a) equally applies to all natural and legal persons, either national or foreign (including stateless) recognized in such a quality³ by appropriate authorities competent under national or sometimes even international law; b) informs them their privileges in the present realm, proposes various solutions to the problems which have arisen or may arise, and c) encourages them in their cross-border activities? Yes, it does. Speaking of these problems it should be said that no such problems should adversely affect private rights of those carrying out such activities as well as public interests of states, with which they are closely and substantially connected: see, for instance, article 6 of the Inter-American Convention on General Rules of Private International Law 1979.

2. PIL activities of natural and legal persons

§ 6. With respect to treatment of persons, property, actions and obligations that fall within the scope of PIL, protection of private rights and interests of natural and legal persons is the primary consideration of all sovereign states. Persons eligible for the (court) protection are any natural and legal persons with legal capacity addressing their

² By way of illustration, should proofs be required by the place where the trial is held, they are admitted and weighed according to the law applicable to the juridical act as a subject-matter of the law of actions, this distinct part of PIL: see, for example, article 2 of the Treaty on International Procedural Law 1940.

³ Article 3 of the Inter-American Convention on Personality and Capacity of Juridical Persons in Private International Law 1984 forming integral part of domestic legislation of the following four states (Brazil, Guatemala, Mexico and Nicaragua) says that: “A private juridical person duly organized in one State Party shall be recognized by operation of law in the other States Parties. Recognition by operation of law does not exclude the right of a State Party to require proof of the existence of a juridical person in accordance with the law of the place of its organization”.



contentious and non-contentious matters to competent courts and other authorities. And no fundamental change in this sphere may ever occur, for it rests on a number of natural law rules and principles taken into consideration when laying down certain PIL rules and principles that are not subjected to alterations.

§ 7. But PIL rights mean nothing when they are not viewed through the prism of PIL activities as that condition in which natural and legal persons being under the authority and control of the states of their nationality are placed in those new circumstances in which they may act differently and have more powers (acquired powers and rights, otherwise taken by us as dynamic rights, as opposed to inherent powers or static rights). The only question arises is what PIL activities are? In our opinion, PIL activities are various types of civil or commercial relations closely connected with two or more sovereign states, when this connection leads to inconsistent understanding and even disputes among the parties to such relations over the substance and effect of their rights, duties and liabilities in such sovereign states. And there is always a question how to make, interpret and implement them so as to avoid such disputes and ensure rights.

§ 8. Let foreign natural and legal persons suffer no harm when they (intend to) enter into and carry out civil or commercial relations within our jurisdiction: that is the main idea of all modern legislative enactments of the supreme power pursuing the end to recognize such persons as subjects of law and subjects of PIL activities vested with a number of inherent and acquired rights in home and host states. However, these PIL activities may not be submitted to the legal system and jurisdiction irrelevant to them because all private rights depend on a system giving them rise and effect. And by virtue of a Latin maxim “Optima est legum interpret consuetudo” the best expounder of the applicable law, whether national or foreign law⁴, is the established usage or practice, otherwise known as a custom, which is both certain and reasonable. This law governs a number of issues (the scope of applicable law): see, for example, article 14 of the Inter-American Convention on the Law Applicable to International Contracts 1994⁵.

§ 9. Do natural and legal persons as parties to foreign civil and trade transactions have to demonstrate their commitment to complying with the rules and principles of the law closely and substantially connected with these transactions? Yes, they do, because all and any activities of natural and legal persons are constrained by the law to which they are subject as the law of the place where they are held. This law represents binding authority. Without this authority the law would amount to nothing. But states as having power from the law may never afford this state of things.

§ 10. What natural and legal persons should do when their home states command one thing, and host states with which their cross-border activities are closely and substantially connected, the contrary? In such a case the answer is evident they should never omit to obey the laws of the host states, for their actions are constrained by the

⁴ Please have a look at the text of the Inter-American Convention on Proof of and Information on Foreign Law 1979.

⁵ “The law applicable to the contract in virtue of Chapter 2 of this Convention shall govern principally: a) its interpretation; b) the rights and obligations of the parties; c) the performance of the obligations established by the contract and the consequences of nonperformance of the contract, including assessment of injury to the extent that this may determine payment of compensation; d) the various ways in which the obligations can be performed, and prescription and lapsing of actions; e) the consequences of nullity or invalidity of the contract”.



laws of the states where such activities are held and to which they are therefore subject.

§ 11. May natural and legal persons be ever deprived of their PIL rights if they commit something wrong? No, they may not, because even in the case of breach the problem of the applicable law and forum needs to be resolved. This lack of the ordinary sanctions attached to PIL duties is one of the major shortcomings in the PIL realm. But the following PIL rules may be treated as sanctions assigning distinct penalties for the breach of PIL duties: “The law of a State Party shall not be applied as foreign law when the basic principles of the law of another State Party have been fraudulently evaded. The competent authorities of the receiving State shall determine the fraudulent intent of the interested parties”: see article 6 of the Inter-American Convention on General Rules of Private International Law 1979.

3. The problem of the PIL status of natural and legal persons

§ 12. Now the question is, how to determine a PIL status of natural and legal persons for effective remedies? As regards PIL status determination, first, it is of note that all human rights in whichever sphere concerned are a product of the law of the state in which they are accorded or acquired. In other words, should law be taken as a system, rights are an element of this system tasked with discharging its main function. It is due operation of law within distinct territories. Depending on a case that is *lex fori* or *lex causae* as one of the most appropriate laws.

§ 13. What is the personal status in the PIL realm? The personal status in the realm concerned is the scope of such rights, duties and liabilities, which are necessary for the legal entry and presence in foreign jurisdictions. This personal status is generally determined by the law of the country of the person’s nationality and is respected by the laws of other states should they lawfully stay within the territories of such states according them appropriate treatment.

Considering the fundamental differences in legal frameworks among the sovereign states and their unions (for example, the Pan-American Union or the Organization of American States), many socio-economic statuses uncommonly shaped and filled with may be granted and withdrawn in other states⁶. But the application of private or public law rules of the person’s country of nationality to determine the scope of his or her rights, duties and liabilities in cross-border civil or commercial relations is ensured by constitutions of all such states sharing the same fundamental values.

§ 14. How may we briefly define the term “nationality”? Nationality is a lasting relation between a person and a state offering this person distinct rights, duties and liabilities, as a result of which such a person may avail of its protection in any relations with other persons and this and other states represented by competent authorities. Nationality may be acquired and lost. And it always makes sense the nationality of which state this person holds at the time when he or she seeks (court) protection to

⁶ “For the purpose of giving effect to the Uniform Law, it is within the competence of each of the High Contracting Parties to determine what persons are to be regarded as bankers and what persons or institutions are, in view of the nature of their activities, to be assimilated to bankers”: see article 29 of the Annex II to the Convention providing a Uniform Law for Cheques 1931.

know the full scope of inherent substantive and procedural rights (“static rights”), which are uncommonly filled with and exercised in different parts of the world with the limitation derived from the international treaties, like the Treaty on International Procedural Law 1940.

§ 15. And if natural persons may always reestablish themselves in any legal system (i.e., when their close connection with states is determined by their domicile⁷), the reestablishment of legal persons may take place when it is directly given in the corporate and PIL law of the country of their “nationality”. And it is of note that it is their right (PIL right) to be submitted to the law of the state that authorized them in such a quality or determined their functions, typically evidenced by the entrance into appropriate register, be it commercial, trade or public register, and not without reason.

As opposed to natural persons who are the source of all power and authority, legal persons do not have powers from themselves. They are those creatures of law, whose existence and power depend on those making and enforcing the law: see article 1 of the Inter-American Convention on Personality and Capacity of Juridical Persons in Private International Law 1984. As a result thereof, it matters where legal persons have their established place, otherwise known as the company seat to determine their *lex societatis* in PIL relations. This law gives answers to a number of questions inevitably arising in such relations. They are mentioned in the article 2 of the above-mentioned Convention.

§ 16. But although it is still very important with which states persons have substantial connection, the scope of their PIL rights appears to be equal in different parts of the world by virtue of universal or regional international treaties. These persons “are entitled to legal aid for court proceedings in civil and commercial matters in each Contracting State on the same conditions as if they themselves were nationals of and habitually resident in that State”. And “no security, bond or deposit of any kind may be required, by reason only of their foreign nationality or of their not being domiciled or resident in the State in which proceedings are commenced, from persons (including legal persons) habitually resident in a Contracting State who are plaintiffs or parties intervening in proceedings before the courts or tribunals of another Contracting State”: see articles 1 and 14 of the Convention on International Access to Justice 1980.

4. The nature of PIL rights of natural and legal persons

§ 17. In view of the increasing recognition of PIL rights and their importance in the international trade in services and goods, now we intend to consider their nature as a subject that requires a detailed study, which we will begin with the following question: May PIL rights be automatically vested in natural and legal persons? This point may never be unquestioned in the paper like the one being before the reader. PIL rights may not be vested in natural and legal persons involuntarily and not without reason:

⁷ “The domicile of a natural person shall be determined by the following circumstances in the order indicated: 1) The location of his habitual residence; 2) The location of his principal place of business; 3) In the absence of the foregoing, the place of mere residence; 4) In the absence of mere residence, the place where the person is located”: see article 2 of the Inter-American Convention on Domicile of Natural Persons in Private International Law 1979.

a) These rights are in use mainly when cross-border civil or commercial disputes arise;

b) The main purpose of these rights is to fulfil law, which is either the law of persons, the law of property, the law of actions or the law of obligations of the natural and legal persons' home or host states;

c) The rights in question are mainly claim-rights exercised in the competent forum.

§ 18. Do these PIL rights vested in natural and legal persons in one state have any effect in other states? These PIL rights are recognized abroad based on the idea of extritoriality of private rights put forth in domestic enactments and international treaties: see inter alia article 1 of the Convention on International Access to Justice 1980, the text of the Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards 1979.

§ 19. From which law (domestic or international) PIL rights derive their existence? We believe that no one may deny the private nature of all PIL rights. The main reason is that no public rights may be vested in natural and legal persons as subjects of private law, for they are needless in this realm and are contrary to its substance premised on the following general principles: to live honestly; to hurt no one; to give everyone his due. In the PIL sphere we may never get rid of domestic law terms “national” and “foreign” and replace them with the term “international” when speaking of any subjects or objects of law, even if this term is sometimes used to denote a cross-border character of any activities in the said realm⁸.

Besides, these rights never involve any international action and neither directly nor indirectly affect the international law except for those actions necessary to ensure and protect them. But it is not a matter of the general concern of the whole international community and these actions are taken by the way to “*modifier leurs lois dans tous les territoires placés sous leur souveraineté ou autorité auxquels la présente convention est applicable*”⁹, provided always that nothing may ever restrict the legislative power of sovereign states to make whichever laws and regulations they find appropriate on the subject-matter of any international treaty.

This realm operates based on such fundamental legal categories as the cause (a disputed –PIL– right) and effect (an appropriate forum and proper law) with respect to any right or wrong conduct of natural and legal persons (including states and international organizations), leading to consistent understanding as to which legal system

⁸ Thus, for example, article 8 of the Inter-American Convention on Personality and Capacity of Juridical Persons in Private International Law 1984 says that: “An international juridical person organized in accordance with an international agreement between States Parties or a resolution of an international organization shall be governed by the provisions of the agreement or resolution that established such person and shall be recognized by operation of law as a subject of private law in all the States Parties in the same way as private juridical persons, without prejudice to the right of such person to invoke immunity from jurisdiction where appropriate”.

See article 1 of the Inter-American Convention on the Law Applicable to International Contracts 1994 that says that: “This Convention shall determine the law applicable to international contracts. It shall be understood that a contract is international if the parties thereto have their habitual residence or establishments in different States Parties or if the contract has objective ties with more than one State Party”.

⁹ See article 1 of the Convention on the Stamp Laws in Connection with Cheques 1931.



and jurisdiction should operate in this or that contentious and non-contentious matter. This is the main line of argumentation on the said point.

§ 20. What is the age of this variety of private rights? Though the process of interpolation started more than a century ago with the first PIL treaties, like a Treaty on International Civil Law 1889, a Treaty on International Commercial Law 1889, the introduction of the said rights into domestic systems of law and their broad dissemination was not possible until the second half of the twentieth century. But now they are the means for the fullest realization of all natural and legal persons' intentions in the private sphere in any part of the world.

§ 21. Are these rights a product of human agreement? In the answer to this question, it should be admitted that these rights are very natural, because are always viewed through the lenses of whatever is correct or fault according to the nature (i.e. the nature of rights, the nature of laws, the nature of states etc.), no matter which issue is concerned, whether the choice of law or jurisdiction or recognition and enforcement of foreign judgments.

5. The character of PIL rights of natural and legal persons

Next we should notice other points of interest, which are as follows:

§ 22. Where do PIL rights have their roots? All human rights have their roots in the valid legislation, which should never go against the rules of natural law, as the law against which all other laws are powerless. PIL system is the living system of law comprising a number of rules of law giving rise and effect to private rights, duties and liabilities of natural and legal persons. These rules can be functionally organized according to which question they seek to answer within the legal system to which they belong: whether these are law or jurisdiction questions. This all falls into line with the practical aim that they are intended to pursue – by addressing the issue where (in which legal system and jurisdiction) to give answers to the disputed issues of substantive or procedural law and thus are limited to the territory of the states where they are claimed, protected and enforced.

§ 23. PIL rights are by far the most important rights in the private sphere forming a part of a legal system to which they are very naturally attached. The exercise of PIL rights carries with it the duties and responsibilities of the states. By way of illustration that is the duty of the states not to change that to which natural and legal persons have subjected themselves or their contentious and non-contentious matters, if it is not against the interests of such states with which these matters are closely and substantially connected. For this exercise is always subject to the law closely and substantially connected therewith.

§ 24. May PIL rights be ever considered apart from private rights? No, they hardly may ever. The unity of PIL and private rights, be them substantive or procedural rights make feasible the admission of natural and legal persons to foreign states. And that is their duty to conform to their laws and regulations necessary to maintain public policy, public security and public health in their relations with nationals of such foreign states.

§ 25. What is necessary for the protection, validity and enforcement of such rights? PIL rights are a specific quality of exercising any useful enterprise whatsoever with a distinct effect in different parts of the world from which natural and legal persons either gain or suffer losses. They are a product of law giving it necessary form and effect within appropriate legal systems and may never exist outside them.

§ 26. Which bodies are authorized to give rise, protect and enforce such rights? Only institutions competent to decide contentious and non-contentious matters are empowered to give rise, protect and enforce such rights. But this issue is not that simple. The main reason, as we conceive, is that PIL is the best system ever adopted and devised to accomplish this end and it would never manage these issues without such institutions which may neither be destroyed nor abolished inasmuch as law always involves them: see article 3 of the Inter-American Convention on General Rules of Private International Law 1979.

But these institutions may neither give these rights effect nor abstain from giving it without the law and necessary authority. They may never submit contentious and non-contentious matters to the jurisdiction and law irrelevant to them as they deem proper to them when it is not clearly given in domestic legislation and international treaties forming its integral part: see, for example, article 1 of the Convention Relating to a Uniform Law on the International Sale of Goods 1964.

§ 27. What may preclude PIL and private rights from being protected and enforced? The public interests of the country where protection is sought: see article 5 of the Annex to the Convention Relating to a Uniform Law on the International Sale of Goods 1964), which states that “The present Law shall not affect the application of any mandatory provision of national law for the protection of a party to a contract which contemplates the purchase of goods by that party by payment of the price by instalments”.

6. The value of PIL rights of natural and legal persons

When the topic of the value of rights in the PIL sphere comes up, the following questions arise:

§ 28. When do states have inherent and acquired jurisdiction to decide PIL cases? As provided for in domestic legislation, courts and other competent authorities have inherent jurisdiction in contentious and non-contentious matters with respect to inherent powers of natural and legal persons exercisable within or outside such jurisdictions. Other cases are submitted to the courts and other competent authorities with acquired jurisdiction.

§ 29. Which facts of the PIL case brought to court are essential? Each case brought to court must be decided on its own facts variably present in different cases in different places and at different times: see article 34 of the Treaty on International Commercial Law 1889. But in the PIL realm essential are the facts referring to separate legal systems and jurisdictions, with which each case is closely and substantially connected and it does not matter whether these facts fall within the region of the law of persons, the law of property, the law of actions, or the law of obligations as four main portions of PIL. It only matters, what the events upon the happening of which these

facts commenced and ended are. Because they answer the questions in which jurisdiction and by which law to determine disputed rights, duties and liabilities of natural and legal persons as parties to cross-border civil or commercial relations being in dispute.

§ 30. What may restrain the international trade in services and goods? May PIL rights restrain it? PIL encompasses many things that advantage the parties to PIL relations and may never damage the public. By answering the question where to deal with all contentious and non-contentious matters arising in the international trade in services and goods PIL lowers the probability of any unpredictable losses in disputes of all the persons concerned. Because in all such answers distinct logical inferences may be found as those generally made from the basic principles of operation of all legal systems known to be true and efficient. These are the principles of causality and essentiality.

§ 31. May any other subjects of law make a choice of the jurisdiction and law for the subjects of PIL relations? No, they may not. That is the general rule. In the PIL realm subjects of PIL relations are free to decide where and how to deal with the problems concerned, which do not touch or affect public interests of states closely connected with their relations. And no one may deny these rights, neither states nor their subjects, though it may otherwise be given in various acts¹⁰.

§ 32. Are there different modes of PIL rights exercise? There are different modes of PIL rights exercise: as it is provided in all domestic legislative enactments, natural and legal persons as PIL subjects may:

a) submit their contentious and non-contentious matters to the forum and law closely connected therewith; exclude the problem of the choice of forum and law by referring to the substantive and procedural law of the state closely connected with such matters and make other actions in the PIL real by their choice and consent, or

b) refrain from choosing the forum and law with respect to all such matters which may arise from time to time: see article 9 of the Inter-American Convention on the Law Applicable to International Contracts 1994.

And there are always persons or institutions, which are competent courts and other judicial authorities, to carry the exercise of PIL rights by natural and legal persons into effect based on necessary formalities that they should comply with: see, for example, the text of the Treaty on International Procedural Law 1940.

7. The effect of PIL rights on the legal status of natural and legal persons

Next by answering a number of questions we intend to introduce into the sphere of a PIL jurisprudence the issue of the effect of PIL rights on the legal status of all those natural and legal persons doing business on a cross-border basis:

¹⁰ See, for example, article 24 of the Intergovernmental Agreement on Nuclear Power Plant Construction of the Russian Federation and the Arab Republic of Egypt 2015, in which the choice is made by the public law subjects in favour of the jurisdiction and law bearing no relation to the matters concerned in this Agreement making PIL subjects difficult or even impossible to exercise their contractual and extra contractual rights and duties.



§ 33. May we say that the effect of PIL is the same as in other fields of private law? No, we may not, the main reason is that the choice of jurisdiction and law does not settle any dispute rather submits this dispute to the proper place where it may be settled so as to give effect to distinct rights, duties and liabilities touching conflicting interests of two or more sovereign states.

§ 34. Which effect the choice of jurisdiction and law may have on (PIL) rights? There is a maxim “*Conventio et modus vincunt legem*”, which is of particular weight and value in this realm, and not without reason. Various types of international contracts entered into by natural and legal persons contain choice of law and jurisdiction clauses. When it comes to such clauses, to become parties’ undertaking requiring them to address the problem of the disputed rights to one particular legal system and jurisdiction, they should be complete, final and binding. By such submission of international contracts the parties may extend or shorten their (PIL) rights.

§ 35. What is necessary for these clauses to bind the parties to appropriate legal system and jurisdiction? All intentions of natural and legal persons in the PIL sphere to have effect should be directed by their free will taking form governed by the law of the state, to which their formation is submitted. *Assentio mentium* is that *condicio sine qua non* of any and all agreements reached by their parties, including those precluding or resolving the problem of conflicting legal systems and jurisdictions. For in separate cases bearing relation to different places, legal systems and jurisdictions may not operate directly without the parties’ express permission.

§ 36. May the scope of dynamic legal rights and duties of natural and legal persons stay still without altering? No, it may not. The legal status of PIL subjects is almost entirely conditional upon bearing relation to one or another legal system and jurisdiction vesting in them these uncommon rights and duties.

§ 37. Natural and legal persons are thus favored and protected for the benefit of the states and their duly operating systems of law which should never be in conflict with one another for whichever reason of a private nature.

8. The problem of the choice of jurisdiction and law in the PIL realm

Now we will inquire into another subject, which is a problem of the choice of jurisdiction and law in the PIL realm. We all know that when the reason for a conflict ceases the conflict ceases, but conflicts between legal systems will never cease, because they are in the nature of all these systems and there is a field of private law to deal with the effect of such conflicts, which is PIL. In the systems of private and public law there is no other field of law productive of a like result. Many different matters relating to persons, property, actions and obligations are involved in the subject concerned, which is a problem of the choice of jurisdiction and law in the PIL realm where all contentious and non-contentious matters have contact with two or more states and are appropriately treated by them using specific language.

These are the following terms and notions, such as “nationals and foreigners”, a “foreign element”, “public interest”, a “close connection” and many others employed in domestic legislative enactments or international treaties: see, for example, article 5 of the Inter-American Convention on General Rules of Private International Law 1979



in which it is given that “The law declared applicable by a convention on private international law may be refused application in the territory of a State Party that considers it manifestly contrary to the principles of its public policy (ordre public)”.

Let us further consider this subject by answering a number of questions:

§ 38. Is the process of the choice of forum and law is the same or alike in all parts of the world. We may say that this process is nearly the same in all parts of the world. The main reason is that PIL as that field of law searching for the proper forum and giving way to appropriate legal system to be valid and binding is rooted in the natural law, its ideas and rules, which are immutable. There are no unimportant things in this realm. And all states around the world are bound by such ideas and rules and are subject to their application in whichever situation, whether it is well-defined or not, to make natural and legal persons benefit from their rights and comply with their obligations. And the main idea of the natural law is to advance the values of human dignity superior to those of all other creatures by means of appropriate rules and principles tasked with accomplishment of this objective.

§ 39. May we say that PIL is auxiliary law? No, we may not, it is one of the most important fields of law, directing where and by which law to govern PIL relations (conflict of law rules and international jurisdiction rules) and directly governing them in separate cases (directly applicable rules and uniform substantive law rules: see, for example, the text of the Convention on the Law Applicable to the Transfer of Title in International Sales of Goods 1958; article 2 of the Annex to the Convention Relating to a Uniform Law on the International Sale of Goods 1964 and article 1 of the Convention Relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods 1964).

§ 40. May we say that domestic legislative enactments comprising PIL rules (“PIL acts”) are currently the most comprehensive codification of PIL rights at the domestic level? PIL acts comprising distinct types of rules (directly applicable rules, conflict of law rules, uniform substantive law rules and international jurisdiction rules) are tasked with constructing particular relations between (national and foreign) public authorities and (national and foreign) natural and legal persons at the choice of forum and law and recognition and enforcement of (foreign) judgments making natural and legal persons fully realize their (PIL) rights.

Speaking of PIL rules, what demands our attention is that though they came down from the earlier ages, the substance and structure of these rules may never undertake any fundamental alterations. The main reason is that no new approaches may be put forward in this realm founded upon a number of natural rules and principles: see, for example, article 3 of the Inter-American Convention on the Law Applicable to International Contracts 1994¹¹. Only terms and notions are subjected to the process of development so as to meet distinct socio-economic needs, when it is required.

¹¹ “The provisions of this Convention shall be applied, with necessary and possible adaptations, to the new modalities of contracts used as a consequence of the development of international trade”.

Conclusion

Now we may draw up the following conclusion. Needless to say, that nothing may belittle a part of PIL in the system of private law and a role of PIL rights in the system of fundamental rights of natural and legal persons. The power of PIL is that it is very natural and need not be adapted to new conditions so as to meet modern challenges. Its existence points to a certain stage of law development. These are various systems of law, which boundaries may not be effaced even when the intercourse between natural and legal persons for various purposes grows and touches public interests of different sovereign states making PIL unfold its power.

As a result thereof, all natural and legal persons are provided with nearly the same level of PIL treatment in all parts of the world. It results in the same outcome: everybody may seek justice through litigation. They may claim protection of their rights and legal interests against unlawful interference and breaches of duty in courts and other competent judicial authorities. The only condition is that they should be capable by the *lex fori* or *lex causae* of commencing and conducting legal proceedings as distinct subjects of law. This all places PIL rights on a level with fundamental human rights, though they are not and make us think of PIL as the branch of study comparable to the civil law and international law in their complexity and importance.

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