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FUNDAMENTAL STRUCTURE OF INTERNATIONAL LEGAL ORDER
contemporary issues of normative, factual and axiological elements

Abstract: *In this paper, the author deals with theoretical issues of international legal order and its structure in general. Actual issues of legal nature specificity, fundamental basis and normative-factual-axiological relationship of international legal order constitutive elements are discussed in this article. The author analyzes the most important understandings and conceptions in the theory of international law, which have an impact on the contemporary international legal trends, with a focus on contemporary problems in terms of implementation of international cogent norms, progressive development of international law and the scope of international legal order in general. On the other hand, the political processes and the actual practice of international actors, i.e. subjects of international law, in respect of normative framework and axiological values are particularly discussed in this paper. These issues provoked the author to try to offer a theoretical perspective towards conceptual solutions regarding the foundamental structure of international legal order.*

Keywords: *international legal order, cogent norms, structuralism, legal objectivism, international voluntarism, international community.*

1. Introduction

Determination of international legal order fundamental structure is one of the most complex issues in (international) legal theory. This issue is folowed by the problems of nature and the basis of international law and its relationship with factual situation (power) and practice within international community, whereby the accepted axiological values have a significant effect on this complexity. It is well known fact, that the international law is a specific normative frame that does not recognize the well-founded hierarchy of (legal) norms. This is a very dynamic, positive-legal phenomenon that progressively evolves as one of the international legal order fundamental elements in general. The problem (absence) of the norms hierarchy also imposes great difficulties in the application and interpretation of international legal provisions. Consequently, the question of the legal basis for the law application arises. Another question is the application of the general principle of legality and the achievement of legal certainty in international law. Although a particular hierarchy is determined by Article 103 of the UN Charter, which defines that „in the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail”[1] this provision is not sufficient to define a general hierarchy of norms (acts) in international law. On the other hand factual situation is a question of potitics and power. In international relations there is a vast number of acts that depends ultimately on factual decision, not on the abstract norm.[2] Such factual acting often deviates from cogent norms of international law and international actors i. e. subjects of international law, from case to case come into the factual situation of violating international law, without any consequential sanctions. The lack of institutionalized (direct) sanctions is one of the main shortcomings of international law and certainly a major problem which the theory of international law is encountered with. In an institutional context, this problem is conditioned by the non-existence of a single international

[1] Charter of the United Nations, text available at: *https://treaties.un.org/doc/publication/ctc/uncharter.pdf* accessed on September 22 2017

[2] Further see, M. Koskenniemi, *From apology to utopia*, Cambridge University Press, 2005, 226

legislative institution and *implicite* contractual nature of international cogent norms. In this sence, states as a primary subjects of international law – in accordance with their foreign policies and interests create norms of international law. On this place we can see the thin line between normative and factual component of international legal order. „Consequently, modern doctrine constantly oscillates between an ascending and a descending perspective on statehood."[3] This perspective becomes even more complex when we introduce in this equation the issue of international law application and constitution of international legal order. Basically we open one of the eternal questions of legal theory - the question of the relation between international and domestic law.

The legal idea cannot translate itself into social action automatically, independently of factual decision. As C. Schmitt emphasizes „... in any transformation there is present an *auctoritatis interpositio*".[4] On the other hand we can asume that the legal order is prior to factual power, but that is the fundamental issue of legal objectivism and subjectivism of the states based on their factual power to influence (international) law.[5] These complex issues will be considered in the following chapters.

2. **Legal nature of international legal order**

International legal order is a specific universal order that on several levels encompasses normative legal system - international law, political processes - international politics, international legal and political relations along with the protected values. This manifests in three dimensions that intertwine and collide with each other: 1) international, 2) regional and 3) domestic and it is a question of relationship between state and international legal order and the issue of interconnection of law and power. Certainly, there is a symbiotic connection between the legal order and the state organization. The idea of law and justice as undisputed values survived, in spite of the continuous conflicts and the use of force in international relations turmoils, which led to the fact that all the modern sovereign states are ruled by their own constitutions, providing functional legal order as the stable one. In contemporary tendencies of international law development this connection is much more complex.

It is well known fact that international community today is supposed to function according to the mechanism of interdependence of states. This concept has led to a general internationalization of the state organization, its competencies and consequently (state's) legal order(s). Furthermore, state constitutions are more and more harmonized with accepted international law provisions to the extent that in some cases we can speak of the merging of international and domestic law.[6] But, global trends are not uniform and interdependence as a functional system is questioned in many regions of the world. Additionally, the idea of interdependence among the states implies the transfer of the state competences to the common international level. It is not just about contractual obligations, but it is about the institutionalization of international jurisdiction, and the process of integration as a whole. This means that, accepting integration processes, states willingly abandoned the concept of full sovereignty in the system of interdependence, declaring themselves *pro* international co-ordination and co-operation. However, they still tend to retain their exclusive competences, especially safeguarding sovereignty in a territorial sense. Regardless of the big changes in the understanding of the state sovereignty, armed conflicts of the today's world are driven

[3] M. Koskenniemi, ibid 225
[4] C. Schmitt, *Political Theology*, Cambridge, Mass, 1985, 31
[5] H. Kelsen, *Law and peace in international relations*, Cambridge, Mass, 1948, 241
[6] This is especially characteristic for European Union member states. The quality of integration and legal harmonization between EU members' constitutions is so great that *implicite* constitutes - *sui generis* legal entity of federal/confederal character that resembles the federation/confederation of states. Further see. *Brunner v European Union Treaty* CMLR [1994] 57 German Constitutional Court decision from 12 October 1993 supranational legal order. In this perspective, additionally, regional legal system of Council of Europe has ensured states integration and harmonization of constitutional provisions in field of human rights and freedoms. However, on the international level in general we can find many problems and the scope of legal harmonization, states integration and constitutional internationalization is questionable.

primarily due to the capital hunger, resulting in occupation of territory and resources. This is a simple evidence that the state sovereignty (especially the territorial one) transformation is taking a place.

In this sense, the symbiotic connection between the legal order and the state organization has become, in first place *integral*/*particular* - in some cases states are completely coherent with international community and actively oriented in participation (their state organization is more directional on international legal order),[7] and on the other place this connection is *international* - states without relative cohesion are under international community pressure and under an indirect influence of the participating states (their state organization is *a priori* delegitimized by the participating states, although it has the capacity for international legal order construction)[8]. The first are identified with international community in general, their legal orders has become an integral parts of international one - and the other are renegaded with disputable international status with (partially) unintegrated legal orders. This is the asymmetrical *realiter* of international legal order perception today - this is the political asymmetry of international relations that conditions development of contemporary international law.[9]

In the first two decades of the 21st century the fragmentatinon of international politics and the particularization of international law are the dominant trends within the internatioal communnity. These trends can be felt in all segments of international life. in general. In this regard, „the fragmentation of international political life has long been underway - new states, many with economic and military power surpassing the old great powers multitudes of splinter groups with access to weapons and media myriad private actors who play a role in global policy-making.“[10] In first place, the concept of great powers has been a paradigm of political realism, nowdays it is a post-realistic notion and it is compatible with contemorary volintarism in international law. On the second place the question of international law stagnation in the face of the new types of warfare arises.[11] This present conflicts represent the long going exeption in the system of international law, and the main factual menace for the contemporary international legal order.

Consequently, we have witnessed the constant particular and international collision of legal and political phenomena (in)between states, today. This collision is of such an extent that threatens to disrupt the international legal order cohesion in general and break up the symbiotic connection between the legal order and the state organization in particular sense. This is a trend of (re)affirmation of confrontation between the states and progressive international (state) voluntarism in act. Particular policies and interests are suppressing normative/legal provisions of general international legal order. In the scientific sense there is a paradoxical situation – while legal positivists turn to the Consent theory in respect to this contemporary voluntarism on one side, there are, on the other side, new, quite differing approaches to the main issues of international law and international legal order. Objectivism, as a theoretical concept and understanding of the international legal order is increasingly abandoned, with the flexible Functional approach to international law that is slowly becoming exclusively *translation* of sociological, or political paradigms. These tendencies create new numerous problems in the doctrine of international law.[12]

Contemporary challenges, with no any doubt, are huge and international law is today in kind of crisis it has never been before. That is why it is necessary to look for new methods and mechanisms according to which, at least in the scientific sense, we might overcome this situation of voluntarism. No matter how

[7] This is the main characteristic for the states of the *Political west* – most of the European countries.
[8] These are the states of the former third world and others. In this sense, R. Kuper, emphasizes that "life is taking place today in a divided world, where at the same time there is a pre-modern world, a modern world of states in a post-imperial chaos, and a postmodern world." R. Kuper, *Raspad nacija, Poredak i haos u 21. vijeku*, Beograd, 2007, 31-32
[9] Further see, M. Savić, *Sovereignity, independence and equality in the Context of basic rights (and duties) of states in contemporary challenges of International law*, Godišnjak Pravnog fakulteta, UNIBL, Vol. 37, No. 37, 2015, 203-233
[10] D. Kennedy, *Introduction to International symposium on the international legal order*, Leiden journal of International law I 6 Harward University, 2003, 839-847
[11] Further see, D. Kennedy, ibid
[12] Regarding this issues, further see, M. Savić, ibid

impossible and utopian this task might look, bearing in mind all the political and practical barriers we face with, we have to keep trying to offer new models and solutions that might be generally accepted. The new (pure) voluntarist approach to the theory of international law is in this sense extremely dangerous. It is coherent with development of post-realism and power politics which suppress international law and highlights the conflicts and constant struggle for supremacy in international relations. Law in western countries, particularly in the United States "is seen as a tool to effect changes in society and realist doctrine underlines this."[13] This is a particularly complex issue because the state in international law is found in the system of interdependence, where the effects of particular conflicts and turbulence transmit to the entire international community. The theory of international law, especially in the last few decades, meets huge methodological and substantive problems of the concept of power. In this respect the theoreticians of Critical legal studies emphasize that the power of the state and the international legal concept must be taken into account, as the legal framework that reflects political factors. Thereby, M. A. Koskenniemi states that "post-realistic theory attempts to solve the issue of the relationship of law and society, as well as the limitations of legitimacy in the world of sovereigns as the world of one problem - the problem of the concept of power."[14] The result is that within the Critical legal studies a concept is proposed, according to which there is no coherent international legal order, on the basis of which the existing system should, consequently, concentrate on *ad hoc* legal processes, which reflect the real state of affairs in terms of concentration of power. In fact, it is an attempt to turn the states into one pragmatic and, above all, an analytical (political) way segmented and determined in relation to the international legal order. Post-realism is in itself, almost in all (previous) modern forms, erroneous because it represents the primordial form of international voluntarism, adapted to contemporary international life and Koskenniemi is trying to propose the right methodological way to comprehend this, while he might be, from the practical point of view, on a very slippery terrain. Dealing with his approach, it is important to emphasize that he "…has drawn attention not only to the continuing tension between the universalist and particularist impulses in international law … but also to the contrast between rule-oriented and policy-oriented approaches."[15] Koskenniemi considers that, in its essence, policy-oriented approach might easily be utilized to support dominant political position.[16] The reality is such that, if we accept this approach and post-realistic concept, although today manifested as a sophisticated paradigm, we will just go back to the beginning of the 20th century in the years before the Great War.

Just like Koskenniemi, legal scholars are facing problems of determination the line between law and politics, the scope and causality of their mutual influence. But the line in contemporary processes is thin and it is well known that international politics and relations condition, in particular, the frame of foreign policies of the states. These policies created by leading states most often articulate and demonstrate (pragmatic) voluntarism in international law.[17] It is clear that law and politics cannot be, as Koskenniemi claims, "divorced". They are not identical units, but they interact on several levels. As M. N. Shaw emphasized, "they are engaged in a crucial symbiotic relationship. It does neither discipline a service to minimize the significance of the other."[18] Contemporary issues of international legal order as said above, are very complex and they reflect today mainly three real problems that give rise to a series of specific questions.

1) The problem of state organization exclusivity in respect of legal order foundation. The legal order in the modern theory of law is determined by institutionalised organisation that is exclusivety of the states. That means that, with restrictive approach, we can discuss about legal order only considering two fields - within state (sovereignity) jurisdiction and above state in the law of international trieties. This is the linear

[13] Ibid
[14] M. Koskenniemi, *The Politics of International Law*, Oxford, 2011, 21
[15] M. Eyskens, *International law – Theory and Practice*, Particularism versus Universalism, The Hague, 1998, 11
[16] M. N. Shaw, International law, Cambridge University Press, 2014, 69
[17] Here we mean, first of all on the United States and significant members of NATO, second, the Russian Federation and its allies which actively participate in international affairs, and PR China, especially regarding the ongoing crisis in South China Sea.
[18] M. N. Shaw, 48

- basic approach and it is insuficient in respect of international legal order comprehension. That put us back in the field of Dualism and fundaments of the Consent theory. Furthermore, Consent theory excludes any legislation other than the states (consent) acceptance of international rules. On the contrary, it may be necessary to establish institutional organization at the international level with legislative jurisdiction as the basis of the international legal order. Although the realization of this task, again depends on political interests and practice.

2) Second issue is the problem of international law and politics relations. This is the question of normative and factual dimensions of international legal order and their relationship. This normative-factual cohesion or collision determines the nature of international legal order, whereby this relation is defined by the particular power and practice in respect of the general cogent norms. The other side of this relation opens up the question of the state legal personality in international law - its fundamental rights, status and the (political) recognition, especially, regarding the international institutions jurisdiction. This is the issue of relationship between state and international institutions and the interconnection of law and power among the states within international legal order. In this sense, legal nature of international legal order is in many ways specific and wary complex to define. This complex definition is conditioned by the relationship and direct influence of normative and factual elements. It is because of this normative-factual cohesion and particularly collision that the existence of the international legal order is challenged from many angles. This *per se* creates an uncertain terrain, both in legal theory and in practice. Its complete denial prevents to legislatively set institutes of justice and equity at the international level and automatically limits these institutes strictly to axiological dimension of (international) law. There is no consensus regarding this question in international community. Though, one thing is certain – „international law is clearly much more that a simple set of rules.“[19]

3) Legal quality of international law as a normative element of international legal order, in addition to the above, perhaps is the most difficult question to answer. It is a question of implementation, i.e. creation, and enforcement of international cogent norms, i.e. a matter of providing legal certainty in the international order. In contemporary conditions international politics has much greater influence on the contractual legislation and implementation of international legal norms. On this place we must stress the normative-factual collision of the international legal order elements that in contemporary processes is increasing. Problem of applying cogent norms has been allways one of the most significant issues of international law. This situation was plasticized by L. Greene in 1956, who stressed: “When someone asks an ordinary man on the street how does he understand international law, he is likely to make a rough remark about its effect. Namely, this is a phenomenon called the law, which everyone is talking about, but which nobody sincerely cares about.“[20] This perceptive situation and the problem of applying cogent norms today appears to be a growing stumbling rock for contemporary international law, since political voluntarism brings an increasing uncertainty.

On this place, we must conclude that the international legal order is firmly complex and its legal nature is determined by the normative-factual elements relation. There is no doubt that this order is universal and that includes states and theirs particular legal orders, international institutions and international cogent norms and other legal provisions interlaced with international politics and political decisions. Consequently the nature of international legal order cannot be purely legal, it is about legal-political nature. However, in this concept law is continuously in danger of lapsing into an apology for politics.[21] “Just like politics, law is understood to exist for the pursuit of social goals and there is constant disagreement about the correct goals. The same is true of international law.”[22] This is the reason that international legal order has its normative and factual elements, and the first place in this relation belongs to law-normative dimension. In this sense international order is legal not a political one. International law as its normative element must be

[19] M. N. Shaw, 63
[20] L. Green, *La nature du droit international*, JRMP, No. 2, Beograd, 1956
[21] Further see, M. Koskenniemi, ibid, 17
[22] ibid, 17

accepted as a system of rules with independent control that effectively limits the conduct of the entities subject law and restrain the international politics - its factual element.[23]

3. Fundamental structure of international legal order

Is international law really the law? This is the question that arised long time ago, though it keeps bothering theoreticians even today, just as it was the case at the beginning of the 20th century, when, especially the political realists, and law theoretical protagonists of international voluntarism (in essence theoretical Dualists) like Triepel, Anciloti, and before them Jellinek and Austin, questioned the existence of international law, negating its title of law.[24] On the other side, a few decades later there were Monists, and protagonists of the primacy of international law like Kelsen, Guggenheim and Verdross with their point of view. Monists agreed on the existence of a single law as a hierarchical normative order from which the state norms arise in domestic law. In this sense, international law is the basis for the state legislature an even state competences.[25] Those great minds had their own theoretical and empirical misapprehensions that we can see now, from this time distance. Contemporary international reality - international judicial and arbitration practice and state legal orders cannot be fully integrated into any of these two concepts, although, this question is in the center of discussions between legal theoreticians even today. The issue of relationship between international and domestic law is very complex and the contemporary trend of legal development suggest that we cannot look at it uniformly. "The most obvious and, arguably, the most important difference between international law and domestic law is how they are enforced. International law lacks a common executive, which means that there is no power which can make a state or nation accept a court decision."[26]

Though often asked, this question of international law existence has no merits. Actually in today's terms, it indicates the width of ignorance of the one who asks. International law, certainly exists! However, in the first decades of the 21st century raises another important question – is international legal order really "legal"? In other words, essentially, what is the fundamental structure of international legal order? The answers are extremely various and complex, while on the other hand, the factual legal situation, and contemporary forms of international politics are uncompromising and pose specific problems regarding the quality of the international legal order.

Either way, in order to define the term of international legal order, it is necessary, firstly, to ascertain the meaning that lies behind the notion of legal order in general.[27] This is a very complex concept, which unites in general Law, Society and (axiological) Values in a present time. That is a concept of structural defining of the legal order, as an oneness of the normative, factual and axiological components. However, it is not a simple integration of these three components. On the other hand, legal order, with its structure is a special part of a universal, (general) social order - the set of all social actions, relations and rules. In this

[23] Further see. O. Schachter, *Hague Academy lectures*, RCADI 82/V, 25

[24] Here we must bear in mind the time and historical circumstances in which these authors lived. Chronologically; John Austin was one of the most influential Anglo-American lawyers, a noted British legal philosopher, Georg Jellinek was one of the first distinguished (continental) legal positivists, Heinrich Triepel was a German jurist and legal philosopher, one of the founders of Dualistic Theory in international law, Dionisio Anzilotti was an Italian legal philosopher and one of the main proponents of Heinrich Triepel's theory of dualism. Further see, M. Savić, *International legal order and the problems of state sovereignty in the 21. Century*, draft paper within an ongoing scientific study: Contemporary international law, Banja Luka, 2017. Faculty of political sciences, UNIBL

[25] Hans Kelsen was an Austrian jurist, legal philosopher and political philosopher. Kelsen is considered one of the preeminent jurists of the 20th century and has been highly influential among scholars of jurisprudence and public law. Alfred Verdross was an Austrian legal and political philosopher, one of the universalistic conception of international law founders. Paul Guggenheim was a Swiss scholar of international law. He was a judge at the Permanent Court of Arbitration in The Hague.

[26] T. Hall, *International Law VS Domestic Law*, text availabile at: *http://www.slayerment.com/international-law-vs-domestic-law* accessed on October 3 2017.

[27] See, R. D. Lukić, B. P. Košutić I D. M. Mitrović, *Uvod u pravo*, Beograd, 1999. S. Savić, *Osnove Prava*, Banja Luka, 2005. H. Kelsen, *General Theory of Law and State*, New York 1961, H. Kelsen, *Pure Theory of Law*, Berkeley 1967,

sense, we must make the difference between the sociological and political notions and categories in general. The structural concept of legal order is considering society in general – social relations and human behavior in accordance with legal norms. On the other hand, concerning the (structure of) international legal order the social element is determined as a part of the totality of international political component. The basic reason for this approach is found in the public nature of international law and political international relations.

Legal order is the specific part of a universal social order which is regulated by legal norms in accordance with the existing axiological values. In this sense legal order is also a universal one, but that raises another question: where can we find the fundamental source of this order? Three hypotheses determine the answer and the fundamental source is to be found in: 1) natural law, which was transformed into positive law, 2) meta-legal sphere, or in 3) fundamental social rules, that apply for everyone. These hypotheses are still valid in contemporary jurisprudence.[28] Also, these two universal orders have their boundaries in/between states, and if we methodologically observe them inside these boundaries they can be defined, on one side, as a state political system, and on the other, as a state legal order. Again, they cumulatively constitute The Universal Order – legal and social (political). This is also the question of relationship between international and domestic law. Based on this, we can say that the legal order in general is precisely the interconnection of these three components: legal norms, social relations (and political processes) based on these legal norms and common values that define civilized nations.[29]

The basis of legal order is a legal norm - a rule of conduct indicating that something must or must not be done. In short, legal norm represents the order for the subject to which it relates, therefore directing his behavior. However, it is not enough that a legal norm, as a single norm is law enforcing *per se*, because in that case it would constitute an exception – one norm without a coherence inside a system of norms, in this case extracted, can only pose a particular rule of conduct that may or may not be in to force. The application of this individual norm implicitly is not obligatory, and it can't be *lege artis* regarded as a (complete) legal norm. One legal norm without the other, without theirs harmonized standards, cannot effectively exist. For this reason, legal norms must be interconnected in a special way, because only then they can be valid, which means that norms "do" exist. We cannot simply claim that legal norms exist, because their legal life is determined by their validity. They can be valid or not, and thereby, legal norms can be applied (respected) or not! The validity of legal norms is a specific form of their existence.[30]

Consequently, we cannot talk about the legal order without the unity of legal norms that regulate human behavior, and in line with the values of the particular society at a given moment in history. The unity of legal norms within the legal order is materialized through the human - factual actions that are directly regulated by legal norms, where the present social values represent the axiological sources of law, according to which legal norms are created and that, at the same time protect.[31]

As a specific legal system, whose primary role is harmonizing relations and life in the international community, international law has in itself the elements of a compromise between different subjects (state and organizations). These trade-offs are the product of the willingness of the state governing structure. For this reason, international legal rules are rarely the maximum of vested interests of only one country or a certain group of countries. It is a compromise of interests which are formulated in a balanced consensus between the states.[32] However, as elements of coordination and compromise are not excluded from the state's (domestic) legal systems, also elements of forced imposition of rules are not excluded from the international legal order. A set of written laws in some countries was adopted after fierce class struggle and bear the characteristics of a compromise between the antagonistic classes. On the other hand, one should

[28] M. Savić, ibid
[29] Further see, ibid.
[30] M. Savić, ibid
[31] S. Savic, ibid. 200
[32] See, V. Đ.Degan, *Međunarodno pravo*, Rijeka, 2000, 3

not lose from his sight that the international rules are partially imposed to certain members of the international community. Thus, the UN system is the result of joint struggle of democratic forces during the Second World War against the fascist forces and principles that have emerged as a result of this ideology.[33]

Accordingly, we can say that the notion of international legal order is determined by the totality of 1) rules (norms) of positive international law arising from all its formal sources, i.e. all conventions in force, 2) all general and particular customary rules, 3) general principles of law that are valid, 4) interstate practices and politics, i.e. conducts in international relations, and 5) the relevant unilateral acts of states, international organizations and institutions. Simply put, we can state that the international legal order includes all cogent norms of international law, relations and conducts in the international community and general values that humanity as a whole, has built up to today. It is the totality of international life, of which the main actors are states and international organizations, while the individuals are the ultimate addressees. Although these individuals are members of internationally recognized states – they have their nationalities, and they are states' citizens, the international legal order, although special in its nature, is indirectly complementary to national legal systems. That means the international legal order indirectly addresses the individual persons, since the norms of international law regulate special status of those subjects of law. The question of relationship between international and domestic law appears to stay without an ultimate answer as long as it is questionable whether there is international legal order as a whole or not.[34]

4. **Conclusion**

International legal order differs from all other legal/constitutional (domestic) orders because of the specific legal nature of international law norms. Namely, these norms are not to be adopted by any kind of supreme authority (as it is the case with the norms of domestic legal orders), and there is no official legal frame they have to be part of. The main reason is quite simple and obvious - states, quite often, have conflicting interests and it is not easy to make them commit to a concrete application/obligation of legal standard. Additionally, the international legal order does not recognize institutionalized sanction. This does not mean that international legal order does not exist, as it is mistakenly assumed by John Austin, taking the view that international law is not really a law because its rules are not protected by an effective sanction.[35] Rather, it points to the shortcomings of the international legal order which are to be exceeded. The first half of the 21th century, in spite of all the turmoils going on, might be the right moment for such an undertaking. It is the fact that, without a unified and consented approach of all the internationally relevant factors, that mission might either fail or last for a long time.

The idea of the international legal order construction, no matter how appealing it might be, would be a very difficult task to achieve, since its assumption would be the reform of existing international institutions and building new ones, which would have a broader jurisdiction, considering the creation and application of international legal norms. On the other hand, we cannot trade the international legal order for chaos, that is inimical to justly and stable existence. As M. N. Shaw emphasizes "man seeks order, welfare and justice not only within the state in which he lives, but also within the international system in

[33] See, S. Avramov – M. Kreća, *Međunarodno javno pravo*, Beograd, 2008, 18

[34] Further see, M. Savić, ibid

[35] See, J. Austin, *Lectures on Jurisprudence of the Philosophy of Positive Law*, Fifth Edition, London 1885. pp. 182. According to him, international law cannot be considered as a law and in the first place due to lack of sanctions because these peremptory (imperative) norms are being created by the sovereign states among themselves. Austin believes that international law as an imperative law set up by a sovereign to a sovereign is not positive law, or a law strictly so called. Because it is determined by the volitional relationship of the sovereigns (sovereign states) therefore it cannot be positive law, certainly it cannot be considered as a law (at all). In his opinion, international law is nothing more than a positive international morality. International law …"amounts to a law in the proper signification of the term, although it is purely or simply a rule of positive morality." Further see: *https://archive.org/details/lecturesonjuris02austgoog* accessed on May 5, 2017

which he lives."[36] Among other things, on the international level there is no an institutional organization of any similarity to the state organization. That simple fact led many authors to start questioning the idea of *an* international legal order. While some of them tend to (still) deny international law existence in general[37], it cannot be ignored that international relations are determined by the rules of international law, as a (either we like it or not) normative part of the international legal order. It is well known that international law does not recognize the Constitution as its legal fundament and that it is a very dynamic positive legal system that continuously evolves. This evolvement is a driving force of the *progressive development* of international law that continually tries to codify and regulate the relationships and conducts of its subjects. This comprehensive conditionality between the normative and factual is one of the (structural) basis stones of the international legal order, and as such, it is clear that it determines the nature of the international community. However, the problem of constitution, fundamental principles and the effectiveness of this international legal order is still a great issue which legal science deals with. In this sense "it is the medium road, recognizing the strength and weakness of international law and pointing out what it can achieve and what it cannot, which offers the best hope."[38] Thereby, this approach must be taken into consideration while defining the fundamental structure of the international legal order.

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