

Session of Wiesbaden - 1975

The Intertemporal Problem in Public International Law

(Eleventh Commission, Rapporteur : Mr Max Sorensen)

(The French text is authoritative. The English text is a translation.)

The Institute of International Law,

Whereas the general intertemporal problem both in the international legal order and in national law relates to the delimitation of the temporal sphere of application of norms ;

Whereas it is necessary to promote the development of the international legal system whilst preserving the principle of legal stability which is an essential part of any juridical system ;

Whereas any solution of an intertemporal problem in the international field must take account of the dual requirement of development and stability ;

Whereas a similar problem arises whenever a rule refers to a concept the scope or significance of which has changed in the course of time,

Adopts this Resolution :

1. Unless otherwise indicated, the temporal sphere of application of any norm of public international law shall be determined in accordance with the general principle of law by which any fact, action or situation must be assessed in the light of the rules of law that are contemporaneous with it.
2. In application of this principle :
 - a) any rule which relates to a single fact shall apply to facts that occur while the rule is in force ;
 - b) any rule which relates to the repetition or succession of identical facts shall apply even though only one or some of such facts should occur after the entry into force of the rule ;

- c) any rule which relates to an actual situation shall apply to situations existing while the rule is in force, even if these situations have been created previously ;
- d) any rule which relates to a certain period of time, or to the existence of a situation during a defined period, shall apply only to periods the initial and terminal dates of which lie within the time when the rule is in force ;
- e) any rule which relates to the end of a period shall apply to any case where the period has come to an end at a time when the rule is in force ;
- f) any rule which relates to the licit or illicit nature of a legal act, or to the conditions of its validity, shall apply to acts performed while the rule is in force ;
- g) any rule which relates to the continuous effects of a legal act shall apply to effects produced while the rule is in force, even if the act has been performed prior to the entry into force of the rule ;
- h) any rule which relates to the substance of a legal status shall apply even if the status has been created or acquired prior to the entry into force of the rule.

3. States and other subjects of international law shall, however, have the power to determine by common consent the temporal sphere of application of norms, notwithstanding the rules laid down in Paragraphs 1 and 2 and subject to any imperative norm of international law which might restrict that power.

This provision shall be without prejudice to obligations which may ensue for contracting parties from previous treaties to which they are parties and from the provisions of which they cannot depart even by common consent.

4. Wherever a provision of a treaty refers to a legal or other concept without defining it, it is appropriate to have recourse to the usual methods of interpretation in order to determine whether the concept concerned is to be interpreted as understood at the time when the provision was drawn up or as understood at the time of its application. Any interpretation of a treaty must take into account all relevant rules of international law which apply between the parties at the time of application.

5. The solution of such intertemporal problems as might arise within international Organizations is reserved.

6. In order to eliminate any cause of uncertainty or dispute, it is desirable that every international instrument should include express provisions indicating the solution which ought to be given to such intertemporal problems as might arise in the course of its application.

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(11 August 1975)