

INTERNATIONAL LAW – VECTOR TO UNIFORMIZATION OF LEGAL CULTURES

CLAUDIU D. BUTCULESCU*

Abstract

This article tackles the issue regarding the influence of international law over various legal cultures, as well as the subtle influences of these legal cultures on international law. The legal cultures are briefly analyzed from national level to European and international level. Some concepts firstly enounced by the Romanian scientist Andrei Rădulescu are also presented, as they have today an important significance for the comparative sociology of law.

The law represents a liaison between culture and civilization, because through law, the social functions of culture are put into effect. Seeing that the legal provisions at international level tend to uniformize, it is of interest to know how this will affect various legal cultures. Will most of these legal cultures blend, to give birth to a completely new, international legal culture, which will have some similarities with the initial legal cultures? Or, perhaps a more prominent fragmentation of legal cultures will occur? How various legal cultures will cope with the influence of international law?

The concept of legal culture, seen as a way of joining research on sociology of law and comparative law exerts a powerful attraction on the comparative sociology of law. Legal culture is regarded by some as the sum of public opinions regarding legal institutions, as well as the totality of legal ideologies and values.

One of the problems that comparative law encountered was its incapacity to demonstrate the theoretical value of doctrine comparison, without considering the entire political, economical and social frame of existing doctrine and legal proceedings.

It remains to be seen whether the ethnocentrism of the national legal cultures will prevail or we shall see a powerful influence of euro-centrism based principles or even a possible globalization of legal culture.

Keywords: International law, vector to uniformization of legal cultures.

The influence of international law on national legal cultures is both significant and undeniable. However, this is not a one way process, as both systems are interacting one with another. The national legal cultures are indirectly influencing international law, as the precepts of international law are implemented in national legislation. However, cultural identity demands that foreign legal concepts that are going to be embedded in the national legal framework must be properly adapted, in order to produce positive effects.

* Claudiu D. Butculescu, asistent univ. la Universitatea „Spiru Haret” din București.

By using a simplistic approach, we could find similarities between the relation of different legal cultures and norms of international and the psychological theories concerning collective systems dynamics. To that end, it is necessary to analyze the potential of integration and differentiation of legal cultures systems in front of the collective perspective of international law.

It is almost certain that legal ethno-centrism is, at least theoretically linked to a certain auto-stereotypy or hetero-stereotypy in perspective approaches regarding the influence of international law on legal cultures.

When referring to internal legal culture, which may be defined as an ensemble of professional legal knowledge, it is interesting to notice that because of the adherence of states to international conventions, internal legal cultures of the Member States to those Conventions are modified substantially. Usually, the provisions of international Conventions are both mandatory and of high priority to internal regulations. In light of the aforementioned allegations, it appears as certain that internal legal cultures suffer significant and continuous mutations in their structure and substance.

External legal culture is also influenced dramatically by international law. The concept of external legal culture comprises the totality of concepts by which common people relate themselves to national legal values and institutions. In this domain, there is a higher grade of dissolution of international law influence, because international provisions are perceived gradually, as they are entering public conscience in a more lengthy period.

Chronologically speaking, internal legal culture is the first to feel the influence of international law and sometimes, a conflict arises from the interaction of the international law macro-universe and the national legal culture micro-universe. It cannot be denied the existence of a legal culture at international level. Although a little bit harder to define, it is formed from the vast majority of fractions of national legal cultures which are compatible for implementation within international law. Both international law legal culture and national legal cultures may be defined as systems according to systemic theory. Moreover, they both are open systems, receiving inputs and generating effects. They are also auto-regulating, anticipative and rational systems.

It is interesting to notice that the existence of a conflict is not essentially based on the contrariety between international law and national legal cultures. The main issue stands with the difference between international legal culture that is complementary and correlatively to international law and national legal cultures.

At international level, we can identify, more or less transmuted elements of national legal cultures embedded in the legal culture of international law. Each of the two entities has different representations regarding each other, as both have differentiated auto-stereotypic and hetero-stereotypic approaches.

At international level, auto-stereotypic approach is based on the priority of international law, as well as the uniformization of legal regulations, in order to

make more efficient the legal processes. The hetero-stereotypic end of international law relating to legal cultures domain designates the resistance of national legal cultures to the uniformization trend and to the attempts of impregnation with international legal culture elements.

For the national legal culture, the auto-stereotypic perspective manifests itself as a form of resistance against influences of international law. This behavior is consistent with the intricacies of national legal culture and can be explained through a national collective psychological differential. In this direction, manifestation may well vary from active actions to passive hostile behavior, as maintaining appearances and non-direct elusion of international law precepts. The national hetero-stereotypic approach is founded on a collective feeling of defense against unwanted and unaccepted intrusions of international law regulations.

Legal culture represents a concept of essential importance to understanding the evolution of a legal system, although it has no clear definition. Generally, culture has been assimilated with civilization¹ by some authors, while others, like J.J. Rousseau considered that culture is related to virtue.

According to Romanian doctrine, legal culture constitutes an abstract concept regarding the good and just. Also, through legal culture, the members of a specific community live by the rule of law².

Nonetheless, through law are realized the social functions of culture³. To this end, we must observe that cultural values and patterns exert, in their historical framework a powerful influence on every day life.

Other authors⁴ view legal culture differently. Legal culture has three essential traits: a) the sum of all techniques of exposition and interpretation used by legal operators, both on theoretical and practical level; b) the totality of ideologies of law which are in accordance to the rules of law; c) the opinions and appreciations of the public regarding positive law; d) all the values, principles, ideologies relating to law and also the knowledge specific to the vocabulary of legal professions.

Culture has also been seen in doctrine⁵ as pivotal to notions like multiculturalism, cultural relativism, cultural diversity of cultural development.

Doctrinal definitions on legal culture and related concepts have been given by many noted authors like L.Friedman, R. Cotterell, Penissi, Blankenburg, etc.

¹ Edward Burnett Taylor, apud *Encyclopaedia Britannica*.

² Emil Gheorghe Moroianu, *Prolegomene pentru o istorie a civilizației juridice și a instituțiilor juridice*, „Revista română de filozofie a dreptului și filozofie socială”, 2005, nr. 2 și 2006, nr. 3, p. 24.

³ Sofia Popescu, *Quelques réflexions sur le rapport entre la vie juridique et la vie culturelle de la société*, în „Memoria del X Congreso Mundial Ordinario de Filosofía del Derecho y Filosofía Social”, vol. III, Mexico, 1982, pp. 297–306.

⁴ André-Jean Arnaud, *Dictionnaire Encyclopédique de Théorie et de Sociologie du Droit*, Paris, 1992.

⁵ Dominic McGoldrick, *Culture, Cultures and Cultural Rights*, in *Economic, Social and Cultural Rights in Action*, Oxford University Press, 2007, pp. 447–449.

However, in order to fully understand the mechanisms which founded the evolution of legal cultures, one must observe the sociological, anthropological and psychological aspects.

In most of the legal systems, legal cultures are evolving around a legal ethnocentric axe. Still, the situation is changing rapidly and dramatically. Nowadays, not even the most powerful states can afford to relate to international through a centrist approach.

Both international law and national legal cultures can be viewed as autonomous systems. Even more, both are open systems, as they have inputs and exits in relation to other systems. Moreover, both systems are auto-regulating, anticipative and rational. Legal culture has a dichotomous form, being related to the society and to the law. Although initially legal culture was a closed system, with only internal interactions, now it has a more broad appearance, as it relates to the realities of modern society. If we are to briefly analyze the interactions between national legal cultures and international law, we could easily observe that there are always imports and exports of paradigms and legal concepts which influence the legal cultures and international law.

It is easy to observe that between the two abovementioned entities – international law and national legal cultures there are always ideological and conceptual conflicts. Nevertheless, these conflicts do not relate to the contrariety between legal cultures and international law, but between the differences of legal culture of international law and national legal cultures.

Legal culture can be considered a sub-system of culture, but also a sub-system of law. National legal culture, viewed as a system, has the following characteristics: a) it is an open system; b) it's characterized by negative entropy; c) it is non-linear and d) it is a chaotic system, with some degree of stability.

Legal culture constitutes an open system because it has inputs and outputs of legal knowledge, relating itself to both the international law and the normative social system. It is also characterized by negative entropy, because it has a natural resistance to the uniformization influence of international law.

It's non-linear traits is founded on the structure which combines stable and unstable elements. The stable elements are the hard essence of national law and national identity of a state. The unstable elements are formed by the interferences and influences of international law on the national legal systems.

In light of the traits mentioned before, it is necessary to relate ethnocentrism to a certain auto-stereotypy, respectively hetero-stereotypy.

Chronologically speaking, internal legal culture is the first to be influenced by international law. But not only the national legal cultures are influenced by international law. Also, the legal culture of international law includes elements for national legal culture. Of course, both national legal cultures and international law have different representations of auto-stereotypic and hetero-stereotypic nature of one and another. On the auto-stereotypic approach, the goal of international law is

to prioritize its norms and uniformize them to national legal systems. The hetero-stereotypic element of international law regards the resistance of legal cultures to the attempt of interference and uniformization.

If the perspectives of international law have been described, the views of legal cultures are quite opposite. The auto-stereotypic perspective is revealed in terms of resistance to the influence of foreign law elements. The degree of resistance is variable from one legal system to another, as the key component to precisely pinpoint it resides in the collective psychological differential of every nation. To this end, manifestation may vary from active resistance to passivity, apparent (supunere) and indirect elusion of international law precepts. The hetero-stereotypic perspective is based on a collective sentiment of defense against unwanted and unaccepted (imixtiuni) of international law.

The concepts portrayed in this study can be utilized at European level and international level. For instance, the interactions of legal cultures of western European civilizations shall be very different in structure and form to those of Africa, Asia or America.

At European level, there are also signs of clashes between different cultures and also of the resistance of national legal cultures against infusions of foreign elements of culture. In Germany, the concepts of *Kulturation* and *Leitkultur* have proven increasingly significant when related to multiculturalism⁶.

For example, in African legal cultures, the perspective is group-oriented⁷, opposed to the individualist approaches of European cultures. International law manifested an influence on African legal system more from an empire building ethnology perspective, which conferred a relatively low level of resistance to inputs of international laws, but also a slower development of human rights.

In Asia, things are different. Although the principles of western culture are subject to formal rebuttal, most of the leaders of Asian countries are trying to find a way to mediate between the two conceptual systems⁸.

In China, legal culture is a complex of traditions, government traits and society's itself traits. Traditional values represent the basis for modern legal culture. Government is offering the framework for internal legal culture, while external legal culture is founded on the Chinese society. As it was shown in the doctrine⁹, between the two types of legal culture, there is a permanent and significant tension. The essence of internal (official) legal culture is built up around collective interests

⁶ Liad Orgav, „*Cultural Defence*” of National: *Cultural Citizenship in France, Germany and the Netherlands*, „*European Law Journal*”, Vol. 15, 2009, no. 6, November, pp. 719–737, Blackwell Publishing Ltd.

⁷ James Silk, *Traditional Culture and the Prospects for Human Rights in Africa*, *Human Rights in Africa: Cross-Cultural Perspectives*, The Brookings Institution, 1990, p. 309.

⁸ J. Phillip Eldridge, *The Politics of Human Rights in Southeast Asia*, Routledge, 2002, p. 5.

⁹ B. Pittman Potter, *The Chinese Legal System: Globalization and Local Legal Culture*, Routledge, New York, 2001, p. 8.

of the society, sometimes to the disadvantage of individual rights. For instance, property rights are viewed from a collective perspective¹⁰ more than from an individual one. Another example is the difference between the freedom of action in contracts which has become somewhat more restraint as a result of internal legal culture's influence.

In the same geographic area, a different type of legal culture has developed in Japan. According to one Japanese scholar¹¹, the cultural factors that have influenced legal thinking in Japan are : a) orientation towards the group, instead of the individual; b) mediation of conflicts in favor of litigation; c) sensitivity to sentiments like shame; d) indirect communication in tensed situations.

These are but a few examples of the differences between national legal cultures. It is quite a challenge to analyze them, as they all have different anthropological, sociological, psychological, geographic, historic and not the least legal backgrounds.

In conclusion, national legal cultures have an apparent character of cybernetic system. Nevertheless, we find in their structure elements pertaining to chaotic systems. The national legal cultures are evolving as an effect of influences from international law. If we integrate to this system a corresponding space phase, we might envision what will happen in the future, regarding the interaction of legal cultures and international law. Moreover, legal cultures are subordinated to preconditioned realities by law operators in internal legal culture and public opinion in external legal culture.

It is very important to approximate and predict the way in which legal cultures and international law will interact in the future. Seeing that the general direction is to uniformize legal concepts and ideologies, it cannot be doubted that in a certain measure, legal cultures shall suffer the same transmutations. However, national legal cultures must endeavor a efficient form of legal and legislative mimicry, by using and adapting international law principles, without affecting or endangering cultural identity of the legal systems in which it exists.

¹⁰ *Ibid.*, p. 61.

¹¹ Takeyoshi Kawashima, *The legal Consciousness of the Japanese*, apud. Eric A. Feldman, *The ritual of Rights in Japan : Law, Society and Health Policy*, Cambridge University Press, 2000, p. 8.