
General Principles of International Law concerning Law of Media

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Abstract

The destiny of history is based on the self-determination of nations. This process itself is nowadays based on democratic mechanisms which mostly have been appeared in the form of elections and voting-based system. The vote of people also is based on information they receive from media. Consequently, it can be expressed that world is controlled by media. On the other words, nothing is more powerful than media in managing nations and societies. Subsequently, media with this extent of power, logically may be abused by ambitious States. As the modern weapon at disposal of colonizers, media has shown us that how media can manipulate public minds and channelize them in favor of colonizer interests. Through the descriptive method, this article tries to investigate the most important general principles of international law, which are in association with subject of media generally and communicative tools specifically. Results are indicating that there is a definitive relation between the principles of international law and communications. On this basis, States sovereignty and independency principles, sovereign equality of States and non-use of force form the main framework of the internationally legal system governing on communications. Information ethics, information terrorism, freedom of information, racism, blasphemy, xenophobia and social media are some of the other subjects which are addressed in this article.

Key Words: International Law, Communications, Media, Sovereignty, Independency, Equality, Use of Force

1. Introduction

As a space in which the international relations are formed, International community is affected by communications and because of such an impressionability it must protect itself from the surrounding atmosphere. On the other words, it must be able to affect it. Accordingly, the relation between the communications elements needs to be clarified with principles of international law, because in the process of effectivity on communications by means of international law, nothing logically can be presented other than the principles governing on

international law. As a result, it can be stated that, communications in international community is not limited to its internal space, i.e. Cyber space or the created space by media tools, but it is operationalized in a factual space which is called international community in which, media in addition of obeying its specific rules, also must obey the international community rules which have been codified within the framework of international law. Strictly speaking, the informational community that is the cyber sample of people in physical society, must be based on both its technical rules and the rules of society in which it is formed. Moreover, it is obvious that the structure and format of international law is different from one of its special subcategories in field of international relations, i.e. law of communications and accordingly enjoys different principles. Therefore, the investigation of the ingredients of communications law from the perspective of communications law principles does not seem to be academically sufficient. For both applying the rules of international law of communications and realizing the objectives of general international law in the light of communications law as well, it is necessary that the elements of communications law to be analyzed by general principles governing on international law. General international law is composed of various principles. Some of these principles individually relate to States and some other collectively relate to international community. Since mentioning the relation of all these principles with elements of communications law is out of the patience of current paper, just some of them enjoying key role are explained; including sovereign equality of States, States independency, non-resort to force and freedom of information.

2. States Independency

Some decades ago, when there was a discussion over breaching States sovereignty and independency, the first thing that could be appeared in minds was military invasion. However, during the last decades and by arrival of communications technology, invasion is not limited to the physical affairs. The nature of invasion has extended its inclusion circle to the communications space and remarkably caused the sever tensions among the international powers¹. On

this basis, explanation of this principle and investigation of its relation with elements of communications law seems to be necessary.

2.1. Respect to States Sovereignty and independency and their Consolidation by Communications Tools

According to UN Charter Article 1 sec 2, one of the objectives of United Nations is to develop friendly relations among nations based on respect for the principle equal rights and self-determination of people. Naturally in relation to articles of Charter, States must perform the Charter purposes by good faith. Since based on the legal logic, accepting one thing signifies accepting the necessities of that thing, States have to legitimately act in perusing the above mentioned objectives. Generally in international scene, referring to the current documents and practice, there are two ways for making connection with the principle of States independency by media tools. A). Taking some measures in order to delegate independency for colonized States². B). non-breach of the principle of States sovereignty. In relation to the measures concerning independency delegation to the colonized States, it can be referred to the declaration of independency delegation to the colonized nations³. Second and Third parts of declaration refer to the cultural consolidation of colonized States, which is meaningfully effective in gaining the territorial independency. In the seventh part, declaration bans the colonizers and all subjects of international law from the measures that may neutralize the cultural measures concerning the anti-colonialization and States independency. Furthermore, according to joint plan of action for completed implementation of independency delegation declaration, all States generally and UN specifically are committed to navigate their media activities in favor of delegating independency to the colonized nations.⁴ In relation to the current plan, benefiting from the mass media must be put on the agenda, and news release to the people of colonized territories must be conducted, especially in the framework of de-colonialization policy. In this respect, in 1971, United Nations activities were pursued more meticulously, in a way that in a resolution entitled dissemination of information concerning decolonization⁵, great deal of measures for this purposes were considered, in which, in addition to the formation a committee that was responsible for providing the related periodical reports, some other measures also on behalf of United Nations- Department of Public Information were done to disseminate enough information to the colonized States. Along with the aforesaid measures which their aim was delegating independency to the

colonized States, some other measures also were taken for maintenance of States independency. These measures include the vast domain of affairs which caused raising tensions between two super powers, i.e. USA and former USSR in recent decades⁶. The main topic in this issue is not tension between two super powers, but that is the contradiction of two theses which were represented by two powers. First thesis was the superiority of free flow of information on States independency which was supported by USA and second was the superiority of States independency and sovereignty on free flow of information which was represented by USSR. According to USSR viewpoint, the free flow of information mostly has this potential to jeopardize States vital interests. This view believes that the free flow of information has caused many illegal wars and uprising in global level and created many obstacles in front of nation's path. In such a situation people are the principle victims of harmful information. According to USSR view, people has right to be protected from the harmful information. Accordingly States hold the right of protecting their people from the communications that breach their independency. Believers of this view affirm that States are not responsible only for material needs of people, but they have responsibility for the moral needs of people. On this basis, remarkable number of States in COPUOS⁷ act had consensus that the communications content may result in the harmful effects for States. They believe that the "principle of space freedom"⁸ must not be interpreted in an absolute form, because satellite broadcasting directly under shadows the States sovereignty. Accordingly jurists pursued the other kinds of internationally legal acts including the documents of human rights which guarantee "free speech". At least it can be said that in the information flow by satellites, there is no absolute freedom and States according to their internal status prevent to partially or fully broadcast them. In international relations, States ask the external agents not to interfere in their domestic affairs. Usually, States condemn any kind of propagations contradicting their interests, especially those that may lead to war or social anomy. Such issue has been investigated within various internationally legal instruments, and subsequently maintenance of States independency limits, as a well-known international principle, has been unanimously acknowledged. In this regard, the former USSR governors believed that creating any type of communications must be based on the principle of mutual respect and States are authorized to broadcast data to the other ones only in case of receiving the satisfaction of target States before broadcasting. According to USSR idea- which was isolated after its collapse- common

interests are of those affairs that should be precisely considered before making connection among those States⁹. It must be expressed that the breach of States sovereignty and independency in the field of communications, is not always along with content dimension, but it has been seen that some States, by transmission systems located at vicinity of other States territorial borders, try to make some waves disordering their internal activities. Such measures undoubtedly breach the States sovereignty and independency. Accordingly, international community has always condemned this kind of activities and has taken step in this direction. Such communications that idiomatically are called “terrestrial communications” include broadcasting any message and image, by means of tools which are installed on earth. Evidently, jurisdiction of States in these cases, are defined under the framework of territorial sovereignty. In such a case, according to the aforementioned principle, every State has the right to observe the installation and initiation of broadcasting tools in its internal territory and has the right to prevent States from interfering in internal affairs¹⁰.

2.2 Respecting States Independency and its Consolidation in Communications Space

One dimension of respecting States sovereignty and independency in communications space is respecting the mother tongue of nations and its consolidation by communications tools. As we know, various homogeneous factors can politically unify a nation and logically these elements form a society as a nation, in this respect; language and culture play the most significant role in shaping the country. Accordingly, it is evident that domination in communications and information paves the way of real exploitation of nations, specifically that the cultural invasion tools cumulatively develop. By such a way, the attacker States destabilize the nation’s population factor which guarantees State independency and sovereignty. Such a process can be recognized as a kind of exploitation which has always been condemned by Eastern Bloc States. This kind of exploitation which is supported by western States, under the cover of free flow of information, not only does not impose any cost on colonizers but also bring much financial output for them.¹¹ The reason of western States support from this process is such a privilege, because in this way, they are acquitted from direct interfering in States internal affairs.¹² To eschew from breaching States sovereignty and independency, the best way is developing the usage domain of communications tools and related technologies. In this respect, language diversity in relation networks is recognized as signs of States independency. To expand the

independency in communications space, one of best policies is multilingualism.¹³ Pluralism is the other subject of this policy, in a way that cultural diversity and language diversity have been considered as common heritage of mankind by international community.¹⁴ In addition to the mentioned issues which enjoyed the content dimension, the independency of States in usage of communications tools must be guaranteed as well, such that the independency of States must not be challenged by technological dependency¹⁵. Nowadays, poor and lesser-developed countries encounter serious problems regarding their sovereignty and independency concerning communications cyber, which is necessarily emanates from sufficient knowledge gap in benefiting from technologies of communications.

As was observed, States independency in communications field appears in various forms that may vary according to subject, place and time elements, and contain several principle of international law of communications including, principle of freedom, principle of connection right and some other related ones. At the present time, one of these principles, i.e. principle of freedom and its subcategories including free flow of information and freedom of access to communicative tools are recognized as the manifest form of States independency. According to this viewpoint that in which, access to the communicative tools contains various forms of States independency, the other subjects of international law must support them and not impede the progress of States willing to gain independency in this field. In this respect, the other States also must prevent from broadcasting information which is in conflict with States sovereignty and independency principle. Under the pretext of free flow of information, they also won’t entitled to politically support the opposition stream of States. Accordingly, any form of racism and xenophobia which are mostly used in propagation against nations, is forbidden under the tenets of international law of communications.

3. Sovereign Equality of States

One of the most significant principles of general international law, which is also listed in United Nations Charter is sovereign equality of States. There have been lots of arguments regarding this issues from the viewpoint of philosophy of law and logic. That is out of this paper’s scope to analyze these philosophical considerations. However, the explanation of this principle is briefly addressed here. In proportion to communications, principle of States equality enjoys various forms. These forms may

mostly not be in direct relation with States equality principle¹⁶. In this context, it can be pointed to the development of communications that may not be in direct relation with States equality principle specifically under international law. However, since one of the most principle objectives of development is establishing the infrastructures of communications in poor States and helping developing ones to expand communicative tools- to realize the principle of equality by receiving the equal opportunities- it is logically under the inclusion of sovereign equality of States principle¹⁷. Even though the abovementioned case includes the most issues concerning States equality in communications space, the existence of this principle's traditional alternatives are not out of mind as well. Since the measures like the activities of International Telecommunication Union for harmonizing the establishment of satellites in orbit and used frequencies, provide the interests of all States and reverberate the sovereign equality of States in international community.¹⁸ In this respect, it can be pointed to the indiscriminate possibility of access to the system of unified satellite, which is noted in the constituent objectives of INTELSAT Statute. Generally, in proportion to this principle, the technology of communications has double situations. Accordingly, it helps both to consolidate the States equality principle in international community and to be affected by it in its internal space, i.e. the cyber and informational space.

3.1. States Equality in Proportion to Communications

In international community, States may be in connection with each other in various forms. One of these forms among nations is a kind of connection in which communications has centrality. Since the principle of equality is only definable in communications domain, in a connection in which communications has centrality, the issue of States equality is presentable as well. According to the teachings of public international law regarding sovereign equality of States, the behaviors that involve any form of a discrimination are condemned and must not be occurred¹⁹. These behaviors may be appeared in various forms of connection-building including, using the tools of satellite communications, access to the computer networks, access to the terrestrial communicative tools such as, telephone, television and radio. Nowadays one of the most significant criterion of States equality in proportion to communication is considered through the State's development for creating the equal opportunities. For this reason, in this part of paper we focus on development and specifically the development of communications as the principle axis

of States equality. Regarding the previously mentioned words it can be stated that, communication in proportion to States equality may appeared in different forms and contain various types in international community. Two façades of those are as follow:

1. Issues concerning the development of communication among undeveloped States, with purpose of creating the equal opportunities

As the *raison d'être* of creating the equal opportunities and subsequently, practical realization of States equality in international community, by means of the communicative tools, development should be encouraged by two ways. These two ways are as follow: A). Development of the communicative tools among poor or undeveloped countries that such a matter is inherently considered as development.²⁰ B). Release of information and knowledge for acquisition of sustainable development in all fields.

First way includes the development of the communicative tools among the poor countries that fail to access and use the modern communicative tools, and it is derived from their technological limitations. In relation to this form of development, through some legal-technological measures, various international organizations have tried to create the necessary foundations among those countries that remarkably are placed among the African and South American countries. Second way also includes some methods which majority of them turn around the axis of education (in all related fields) among the various nations, by this way they may reach sustainable development. On the other words, through the communicative tools, the equal opportunities are acquired for the people who have been deprived from the educational possibilities. It must be noted that nowadays, on behalf of the active lawyers in the context of human rights, all subcategories of human rights have been affected by the title of right to development. Such an approach has paved the way of applying all subcategories of human rights for all people and at the same time helps them to be benefited from the facilities of development.²¹ Big projects including IPDC²² and IFAP²³ between United Nations and subcategory organs such as ITU and UNESCO are implemented to elevate the level of countries development to the usual and balanced limit and through, the vital context for countries development which is the principle axis of States equality is legally acquired.

2. The Measures Negating Sovereign Equality of States

Generally speaking, in field of communication, States must not behave in a way that breach the sovereign equality of States principle. Generally States appeared in the scene of international communications either as a surveillant element or as an information releasing element. In position of information releasing element, States must not be benefited from the communicative tools including satellites in a way that challenge the sovereign equality of States; and in position of a surveillant element, States must prevent from the releasing information which negates the sovereign equality of States. In position of communication management, the international surveillant element is committed to behave in a just way in allotment of possibilities as well. For example, one of the main tasks of the international surveillant elements like ITU and INTELSAT is the allotment of possibilities in a way that does not challenge the sovereign equality of States.²⁴

3.2. Sovereign Equality of States in Communication Space

Regarding the various levels of communicative technology variety in communication space, several forms of sovereign equality of States are imaginable. One of the most principle forms of equality principle is the access to the levels of science and knowledge and in this road, the sciences which enjoy the vital value are remarkably important. Stated differently, nations and States in communication space in which, not as a sovereignty but as communicative element attend, must be non-arbitrarily benefited from the communicative and informational tools and their existence also must be treated without any forms of discriminations²⁵. For example, their mother tongue must not be included by the limitation policy or their existence must be recognized in the several processes governing on international web. The way that some languages and nationalities -including Persian and Iran- are behaved is the best example of this regard. In the communication space, it must not be forgotten, regarding the application of sovereign equality of States, the economic criteria play an important role. It means, more the financial investment, more the benefiting by possibilities. However, if the topic of social and essential service is raised here, those principles need to be balanced somewhat. Because nowadays, the States equality in enjoyment of communicative tools, not only is benefited by the foundations of human rights but also is considered as an important prerequisite for globalization²⁶. For guaranteeing the interests of the developed countries and paving the way of them in reaching their financial purposes, the other States must be economically standardized and financially upgraded.

As mentioned, the equal view towards States in communication space, on behalf of States and international organizations, is one of the other symbols of sovereign equality of States in communication space²⁷. This equal view, not only is spiritually valuable under international law but leads to the balanced development and subsequently causes the real settlement of States equality. For instance, this equal view is very effective in remarkable decrease of internationally wrongful act of States including the racism based measures and xenophobia based approaches that somewhat challenge the equality of nations and States. In this respect, subjects like multilingualism and pluralism are of those that not only are in relation with States independency in communication space, but also overlaps with sovereign equality of States as well. Cultural diversity and generally, whatever relates to the variety of information, may be pursued and improved by homogeneous factors and regionalism. Such streams that are prevalent in Europe and Asia must be supported. Generally, for realizing sovereign equality of States on communications, various plans have always been provided by international organizations. The most comprehensive plans are proceeded with United Nations. It can be stated that, these plans have totally created the massive wave of new system of communication and information.²⁸ The principles of this new system not only must comply with United Nations Charter²⁹, but also must contain some specific peculiarities, according to the subject and purpose of new system. For instance, at moment, through a surveillant ingredient like ITU, for creating the equal opportunities in the access to communication space and for complying with States equality principle, the quotas of special range of radio frequencies have been specified for exploitation of communicative tools. The section 18/ article 4 of international convention on communications has addressed also the possibility of just benefiting from the communicative tools by reasonable costs. This privilege pave the way of all people to be benefited from the right to connection.³⁰ Regarding the new system of communication and information, it can be pointed to the shared plans which have been provided by the administrative committee of the representatives of ITU and UNESCO. These agendas relate to accessibility to communication and basic information with regard to fundamentals and principles of international law of communications.

4. Principle of Non-Use of Force

One of the other principles that is very significant in general international law and after the Second World War has been remarkably regarded by jurists is the principle of non-use of force in international

relations³¹. This principle contrary to what it apparently seems to be, doesn't have instances only in physical world, but includes many instances in cyber space including communications. Accordingly, the explanation of this principle along with its proportion to the elements of right and duty concerning communications is addressed here.

4.1 Principle of Non-Use of Force on Communications

During last decades, media has been playing the role of a weapon at the service of force imposing³². Through provoking people, media has provoked them into doing aggressive behavior against each other. In this regard it can be pointed to the release of information against Jews in early decades of twentieth century in Europe or the release of information against Muslims in the last decades of Europe. In such a situation, even though according to the definition which is supposed from the characteristics of force and the application of force through the armed conflicts is not supposable, absolutely the title of "coercion short of war"³³ is confirmable. The behaviors in this kind, undoubtedly are in conflict with international peace and security and in practice are in reverse direction of the objectives of UN Charter. In addition to the provoking role of communicative tools, nowadays they are massively used in favor of military purposes. Usage of spy satellite which idiomatically are called remote sensing, problem making in communicative networks and psychological war by means of media are some examples of military functions of media, which should be investigated in association with the principle of non-use of force³⁴. Because it can be claimed that, making problems in radio waves of a State, with purpose of breaching the sovereignty and independency of that State, actually is recognized as the use of force for its doer (attacker State). Mentioning this point is noteworthy that, every usage of communicative technology like usage of radio waves, may not be necessarily investigable under the provisions of international law of communications. Because in such affairs, the element of the release of information which is the fundamental ingredient of communications, is not necessarily and ubiquitously accessible. For example, making problem in radio waves of an airplane or a station of terrestrial control by communicative tools does not fit in the framework of international law of communications. Because such affairs, are the issues in relation with aerial law and since there is no any exchange of information, international law of communications has no jurisdiction for applying its authority upon those kinds of issues. Military functions of communicative tools may be appeared in several forms including the

functions in the context of espionage such as; remote sensing by spy satellite, eavesdropping and release of information with purpose of disturbing the system and security of a State. It must be stated that nowadays media are considered as the second language of States and releasing information by them seems to be officially authentic. However, in some cases that releasing some information from the legally formal sources may bring international responsibility for States, they prefer to release such information by media, because they have an excuse and under the pretext of the free flow of information, they release them. For example, if an official figure of a State unlegitimately threat the other States to the military operations, actually it has provided the grounds of breaching the provisions of UN Charter³⁵ and subsequently such a treatment will bring international responsibility for its State. As a result, it prefers to operationalize its threat by media which is considered as the indirect way of message transmission to the hostile State. In this case the media possessing State both is benefited from the privileges of the psychological war on one hand and also evades from international responsibility to the remarkable extents on the other. In this respect, after Yugoslav Wars, journalists tried to recognize the disagreements which media transformed them into the wars, as one of the samples of breaching the information ethics. After those years, many other related efforts were done by various communities.³⁶ Thus, according to these efforts it can be claimed that, use of force in viewpoint of international law of communications has been somewhat recognized as the example of acts against information ethics. One of the other issues concerning the principle of non-use of force on communications is the protection of journalists in war zones. This responsibility rests with the surveillant element and the other related people either to protect them or at least avoid from injuring them.³⁷ The stream of the protection of journalists, which has been known as the journalism practice, has been focused by General Assembly of United Nations from 1970 onwards and many sporadic and disorganized efforts have been done about it.³⁸ Issuance of numerous resolutions on protection of reporters and journalists in areas of armed conflicts by GA and measures like granting immunity to reporters from aggression of military and security forces, are the significant proceedings of international community in this respect. Presenting a broad interpretation, terrorism can be recognized as one of the samples of use of force as well.³⁹ The most evident sample of the use of force in total history of communications relates to the era of cold war between US and USSR. On that time the important role of communicative tools in management of

conflicts appeared for all and everybody understood that how a local radio has this potential to be more dangerous than an atomic bomb.⁴⁰ Accordingly, International community has come to believe that violence, inciting remarks and any form of information leading to tension, are the direct result of the isolation of States that have limited access to information and knowledge. On this basis, globalization and free access to information are the way that save nations from isolation and bring democracy, peace and public participation for them; in a way that they can disappear use of force from the communication space.⁴¹ Consequently, free access to information and providing possibilities for poor States have been put on the agenda of international communities; that matter is obtainable by the elimination of the centrality of use of force in international relations through increasing the level of States knowledge and culture.

Conclusions

Since communication is inevitably crystalized in the real physical world and this physical world is nothing other than the international community, it has no option except for complying with its rules and principles. This article investigated the rights and duties of communicative elements which were emanating from the most important principles of international law, i.e. the rules that govern on international community, including the principle of sovereignty and independency, sovereign equality of States principle and non-use of force principle. On this basis we can conclude that, the rights and duties of the communicative elements in physical world are remarkably different from the cyber world, specifically in terms of forms and samples. As a result, they have to be dealt by their own necessary rules. Also it was pointed that, there is a correlation between international law of communications and general international law, because each principle of international law of communication, in a special way is considered as a basis for each principles of general international law. Relying on what mentioned above, it can be expressed that the current structure of international law of communication severely suffer from the lack of cohesion and harmony, in a way that its important issues always encounter with many challenge which mostly arose because of being in conflict with interests of powerful States. Therefore, there must be a real cooperation among international organizations and specifically among their specialized organs on one hand and non-governmental organizations on the other, to be able to recognize and effectively frame the provisions of international law of communications. This may help international community to have a total control on

communications. For reaching a new structure of law in which the infrastructures of informational society has been desirably founded, it is suggested that States design a mechanism in which they can maximize the rate of the legal harmony between international law and domestic law. Such a practice consequently leads to the enlightenment in the context of

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