

INTERNATIONAL LEGAL RELATIONS AND JUSTICE

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of the Kopaonik School of Natural Law – Slobodan Perović
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Dear colleagues,

Followers of just law and philosophy of justice,

You who make the thirty-sixth year in the life of the Kopaonik School of Law,

Distinguished guests coming from various parts of the world,

Esteemed participants,

Ladies and gentlemen,

Allow me, with feelings of highest regard, to bid you a heartfelt welcome and address you with words of great honour and professional responsibility before this Gathering of legal knowledge and conscience, before this atrium of scientific dignity and freedom of thought. Above all, I address you with words of faith into better days, the days that will bring justice to the lives of all peoples, regardless of their differences, whatever they may be.

With these words permit me to open the work of the Kopaonik School that has for 36 years now been placed under the general arch of the rational natural law. I am convinced that this Meeting, joined with the results of our preceding gatherings, will confirm the scientific and practical significance of our Hexagon of Natural Rights of this School, comprised of: Right to Life, Right to Freedom, Right to Property, Right to Intellectual Creation, Right to Justice, Right to a State Ruled by Law. At the same time, this year we bear witness to the permanency and

universality of the 2002 Kopaonik School of Natural Law Declaration, whose commands to attain the culture of peace and universal values of rational natural law preside over this year's Meeting.

I will not speak in great detail about the work and results of the School this time, as I have done so last year, which was a jubilee year, when I presented the entire work of the School through three dimensions: scientific achievements of the School, publishing activity of the School, bringing domestic and international legal communities together. However, for the sake of those who are attending the Kopaonik School for the first time, and by way of a reminder, I shall give a brief overview of our work and results to this day.

The most significant **scientific achievements** of the School include:

The tripartition theory, which explores the relationship between the natural and the positive laws, specifically the exemplary, subsidiary and corrective relationships;

Defining the degree of democracy as prerequisite of a state ruled by law, namely the democratic culture as distinguished from the simulated and vulgar democracy. Professor Slobodan Perović spoke thus about the democratic culture: “In truth, a rule of majority is the first letter of the alphabet of democracy, but if one should look no further than this letter, there would be neither alphabet nor literacy. Such democracy may jeopardise the rights of minority or even turn into its own opposite – a tyranny of majority over minority. A democracy where the majority declares truths and in the name of such truths penalizes all those who think differently should be called a vulgar democracy, a totalitarian democracy or democratic tyranny. Such a democracy has no necessary attributes, other than a rule of majority. And thus: only a democratic culture that implies tolerance as an essential attribute may truly be described as an order where the proclaimed freedoms have largely been attained;

Furthermore, a Draft Theory of Tolerance as a subjective right has been created. Under the principle of tolerance, no one may place themselves above another and by seizing power turn the pluralism of life into the monism or their own authority;

A discord between the proclaimed and non-realised human rights has been acknowledged and the causes of such discord have been identified (extreme poverty, anti-legal states, misuse and politization of human rights). The School has in this way pointed to possible ways out of the crisis engulfing the concept of human rights;

Establishment of a theory of misuse of human rights, which occurs when human rights are put into effect contrary to the purpose of their establishment, with the aim of achieving political, financial or military strategic objectives;

Application of the categories of commutative and distributive justice in the present-day conditions and setting the criteria for distinguishing statutory non-law from the supra-statutory law;

The School has formulated Twelve Tablets of Judicial Independence. These Tablets proclaim that in dispensing justice, a judge is independent of any kind of authority, except the authority of the legitimate law;

Voicing informed opinion against any kind of violence. Violence is an antipode to a state ruled by law and a democratic culture.

In addition to the scientific achievements, the **publishing activity** of the Kopaonik School is well worth mentioning. First of all, it includes publication of the papers submitted for each December meeting of the School. In the course of thirty-six years, over 9.000 papers have been published across six chairs and 23 sections, comprising over 150 volumes. The authors of these papers make a broad mosaic of the legal world, from leading authorities on law from the country and abroad, to practicing lawyers and young lawyers who are just starting on their scientific and professional path.

Esteemed colleagues, over 150 scientific and professional papers by domestic and foreign authors were submitted for this year's Meeting, of which 110 papers were published, distributed in 4 volumes, on over 2000 pages of printed text. I am taking this opportunity to publicly acknowledge all the authors of published papers, as well as those authors whose works could not be published this year.

The third dimension of the Kopaonik School of Natural Law implies **bringing together all ranks of legal community**, both from the country and abroad. Speaking of international participants, they come from over 40 different countries (Germany, France, the UK, Italy, Austria, the Netherlands, Greece, Poland, Hungary, Romania, Bulgaria, Portugal, Spain, Turkey, Switzerland, the USA, India, Russia, Belarus, China, Brazil, Lebanon, Mexico, Argentina, Australia...).

In this context, note should be taken of the huge recognition received by the School in 2005 in the form of moral auspices of UNESCO on the grounds that “the projects and publications of the Kopaonik School of Natural Law are of special interest to UNESCO and will certainly contribute to the advancement of human rights and strengthen the international law. The goals of the Kopaonik School of Natural Law are fully in line with the ongoing human rights process within the United Nations system”. Furthermore, UNESCO has sent message that the Kopaonik School

of Natural Law is an important international event and a natural ally of UNESCO in the joint efforts to promote fundamental principles of respect for human rights and human dignity.

It is also important to underline the valuable cooperation that the School has had with Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) for more than two decades as well as the cooperation with the Council of Europe which has been supporting the School for two years.

It is on these grounds that a unique scientific movement has been created under the auspices of the School, based on traditional philosophy of justice and rational concept of the natural law as codified by the United Nations and other peaceful associations and integrations. Dear colleagues, the Kopaonik School of Natural Law is today a venue where we endeavour, through universal values, to put faith in the law whose purpose is to serve justice as a fundamental human virtue.

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The general theme of the Kopaonik School this year is INTERNATIONAL LEGAL RELATIONS AND JUSTICE. It builds on the themes we have pursued in recent years: Unification of Law and Legal Certainty, Application of Law and Legal Certainty, Court Proceedings – Justice and Fairness, Natural Law and Morality, Natural Law and Dignity, Freedom and Natural Law and many others.

The gathering this year focuses on the issue of **how to achieve justice in international legal relations**. It is a complex issue, a delicate issue, an issue that is always relevant, and especially today, in the circumstances of deep discord, conflicts and aggressions that shake the modern world. In resolving this issue, we may consider aspects of different legal areas, legal branches and disciplines. For all these reasons, in devising a formula for the achievement of justice in international legal relations, it is extremely difficult to provide a unique and comprehensive solution.

Aware of the importance and weight of the issue raised, I suggest that we base the solution on the Declaration of the Kopaonik School of Natural Law, which represents a synthesis of natural rights (human rights) proclaimed and codified in documents of the United Nations. The creator of this Declaration, Academician Professor Slobodan Perović, in his capacity as the Founder and Chairman of the Kopaonik School of Natural Law, proposed the text of the Declaration at the Plenary Session of the Kopaonik School in 2002, when the Declaration was unanimously accepted.

Allow me, therefore, to present the basic concept of the Declaration, starting from the Hexagon of Natural Rights, which gathered all legal and social disciplines around six pillars of

general civilization (life, freedom, property, intellectual creation, justice, state ruled by law). It is based on the Hexagon of Natural Rights that the corresponding Chairs of the Kopaonik School were constituted.

FIRST CHAIR RIGHT TO LIFE

1. Life: Life is a part of the nature. Those statutes which are characterised by a higher degree of wisdom do respect this fact of nature and extend a comprehensive protection to the holder of the right to life. Just the contrary, those other ones, where sensuality is above the wisdom, protect the holder's right to life only to a degree allowed by their sensuality. Right to life is both a statutory and supra-statutory right. It is a prerequisite of existence and realisation of all other rights of man and of all other forms of man's sociability. No one may have the power over the life of another. Thus, the right to life is a *ius cogens* of national and international law.
2. Health and Ecology: Everyone has a natural right to health protection which is adequate to their needs of health. Everyone is entitled to a healthy life in accordance with nature. Healthy environment is a prerequisite of that right. Consequently, everyone, and particularly the state, is obliged to take adequate measures for the purpose of preserving, protecting and restoring the environment and the ecosystem unity of the Earth. Uncontrolled use and excessive exploitation of natural resources, large-scale application of various kinds of energy and uncontrolled utilisation of different technologies, bring about serious risks for the environment and endanger the biosphere, where man is a first victim.

SECOND CHAIR RIGHT TO FREEDOM

1. Freedom, as a natural attribute of man, is unalienable from life. The sphere of law is a sphere of freedom, however a kind of freedom which depends on the freedom of others, which is the way of achieving a proportion of freedoms. Exactly such kind of freedom should be the goal of every legal system. In this respect, two axioms are established: there is no freedom under violence and there is no freedom without responsibility. Violence, as a manner of behaviour or as a system of government, transforms the freedom of another into a slavish obedience. Freedom is proclaimed for all persons, regardless of differences in terms of their respective characteristics of birth, national origin or any other affiliation and belief whatsoever.

THIRD CHAIR RIGHT TO PROPERTY

1. Everyone is entitled to possess property, alone or jointly with others, and no one may be arbitrarily deprived of their property. The holder of property right is entitled to unhindered enjoyment of their property, the only restriction being imposed by public interest and solely under the conditions provided for by the law and general principles of international law.
2. Ownership as an absolute right of holding, using and disposing, gives to its holder the widest powers within the bounds of law. No one may be deprived of the right of ownership, except as required by an obviously established public need, and provided that a just and prior compensation be given to the owner.
3. Contract. Speaking of contracts, bearing in mind the theme of our gathering this year, I shall take the liberty to add to the statements of the Declaration and underline the importance of observing the general principles of contract law, especially in contracts of international character.
4. In the first place, there is the good faith principle, one of the fundamental principles of the contract law and the civil law in general in a large number of countries. In defining the good faith principle, it has been said that it is an inner moral code, that its purpose is to achieve the standard of decency, fairness and reasonableness, that it requires acting in conformity with basic moral and ethical standards. In international law it is regarded as a fundamental principle which is a source of the *pacta sunt servanda* rule, as well as other rules related to the achievement of fair dealing and fairness in legal transactions. As we know, the Serbian Law of Obligations promulgates this principle as one of the fundamental principles of the law, in a rule of imperative character of the following wording: “In establishing obligation relations and exercising rights and duties arising out of these relations, the parties shall observe the principle of good faith and fair dealing”. The good faith principle has also been widely accepted in international documents of uniform contract law. Other general principles that are well worth mentioning include the principle of equality of parties, the principle of prohibition of abuse of rights, the principle of equal consideration, the principle of party autonomy, the principle of full (integral) compensation, the *favor contractus* principle and other general principles which ultimately seek to attain justice in international contractual relations.

FOURTH CHAIR RIGHT TO INTELLECTUAL CREATION

Everyone has the natural right to create, with the strength of their mind, the work from the field of intellectual culture. Intellectual creations, whether expressed through creation of literary, scientific or artistic works, or creation of works in the area of industrial property, enjoy the protection of moral and substantive interests of the creator of the work. Everyone has the natural right to use, within the bounds of law, all the achievements of civilisation – scientific, artistic, technical, technological, cultural. Everyone is entitled to freely participate in the cultural life of the community, to enjoy the arts and to take part in scientific progress and have a share in the corresponding benefits.

FIFTH CHAIR RIGHT TO JUSTICE

Independence of judges and their impartiality is a crucial prerequisite of the institution of judiciary. The issue of a judge's independence is not only a legal issue. This is an issue of general culture of a given community. At the same time, the principle of independence of judges is a line of demarcation dividing the field of law from the desert of non-law. In the conditions of a state without the rule of law, where legitimacy and legality of law are below the permitted degree of social tolerance, where the rule of law is replaced by the rule of the arbitrary fact – *i.e.* government authority, passions or interests of the individual or the group, and where the principle of separation of power is eliminated, the independence of judges there is reduced to dependence on the party and not the legal decisions. A judge in such a situation is unable to apply the just law. Independence of judges, as crucial attribute of their function, represents an organic part of the state ruled by law. A concept of rational natural law warns and shows that it is necessary to open the doors wide to judicial independence, since the law is a phenomenon of the good and equitable, and not a fact of violent volition of the ones against the others.

SIXTH CHAIR RIGHT TO A STATE RULED BY LAW

Everyone is entitled to live in a state which is able to provide in its legal system for the rule of legitimacy and legality principles within the limits of social tolerance (a state ruled by

law). In a state ruled by law, the state authorities and the arbitrariness are held in check by the constitution and the laws, so that fundamental human rights and freedoms are fully protected through the tripartite division of power – legislative, executive and judicial. In the moment in which legality is replaced by the principle of appropriateness, in which someone's interests are placed above the natural rights of man, the state loses the attribute of an entity ruled by law. Conversely, when the law is understood and executed as part of justice, when the general constitution of a community accepts justice as a "core virtue", then the law of such community becomes legitimate in its source and legal in its application.

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Dear colleagues,

This concludes my Introductory Address.

May the words of the Declaration of the Kopaonik School of Natural Law, spoken from this peak of nature and the peak of legal knowledge and conscience, preside over our Gathering and bring us one step closer to the attainment of comprehensive Justice.