

**Galatasaray Üniversitesi**  
**Hukuk Fakültesi Dergisi**  
**2022/1**



# STRENGTHENING ENVIRONMENTAL SOFT LAW COMMITMENTS WITH THE PRINCIPLE OF PACTA SUNT SERVANDA<sup>(\*)</sup>

Doç. Dr. **Hakkı Hakan ERKİNER**<sup>(\*\*)</sup>

**Abdulkadir NACAR**<sup>(\*\*\*)</sup>

**Abstract:** The principle of *pacta sunt servanda* is a principle applied in both Roman law and international law. The significant difference in practice between these two disciplines is based on the judicial field in Roman law and the normative field in international law. Our study deals with the Roman law principle of *pacta sunt servanda* in the first chapter, and the international law principle of *pacta sunt servanda* in the second chapter. Theoretical discussions on ensuring the binding ground of the commitments are covered in the third chapter. While examining the different approaches, our study relates *pactums* that do not have a normative value in Roman law, but that are judicially recognized, with today's environmental soft law commitments. In the nuisance-based environmental law approach, the basis for judicial consideration is presented as environmental exigencies. Thus, it is aimed to lay the groundwork for judicially binding environmental soft law commitments.

**Keywords:** Pacta Sunt Servanda, Environmental Soft Law, Roman Law, International Law, Logic.

---

<sup>(\*)</sup> Makale Gönderim Tarihi: 01.04.2022 - Makale Kabul Tarihi: 28.04.2022.

<sup>(\*\*)</sup> Associate Professor in the Department of International Law of the Faculty of Law in the University of Marmara  
(ORCID no: 0000-0002-0779-6414; [herkiner@marmara.edu.tr](mailto:herkiner@marmara.edu.tr), [hherkiner@gmail.com](mailto:hherkiner@gmail.com)).

<sup>(\*\*\*)</sup> LLM., Research Assistant in the Department of International Law of the Faculty of Law in the University of Atatürk  
(ORCID no: 0000-0002-5763-0498; [anacar@atauni.edu.tr](mailto:anacar@atauni.edu.tr), [knacar2325@gmail.com](mailto:knacar2325@gmail.com)).

# ÇEVRESEL ESNEK HUKUK TAAHHÜTLERİNİN PACTA SUNT SERVANDA İLKESİYLE GÜÇLENDİRİLMESİ

**Öz:** *Pacta sunt servanda* ilkesi, hem Roma hukukunda hem de uluslararası hukukta uygulanmış bir ilkedir. Bu iki disiplin arasındaki belirgin uygulama farkı, Roma hukukunda yargısal, uluslararası hukukta ise normatif alana ilişkin olmasına dayanır. Çalışmamız ilk bölümde Roma hukukunda *pacta sunt servanda* ilkesini, ikinci bölümde ise uluslararası hukukta *pacta sunt servanda* ilkesini işlemektedir. Üçüncü bölümde taahhütlerin bağlayıcılığının temininde teorik tartışmalar işlenmiştir. Çalışmamız yaklaşım farklılıklarını incelerken Roma hukukunda normatif değeri bulunmayıp yargısal olarak tanınan pactumlar ile günümüzdeki çevresel esnek hukuk taahhütleriyle ilişkilendirmektedir. Mesele odaklı çevre hukuku yaklaşımında yargıçların nazarı itibara alacakları dayanak, çevresel aciliyetler olarak sunulmuştur. Böylece çevresel esnek hukuk taahhütlerinin yargısal olarak bağlayıcılığı için bir zemin hazırlanması amaçlanmaktadır.

**Anahtar Kelimeler:** Pacta Sunt Servanda, Çevresel Esnek Hukuk, Roma Hukuku, Uluslararası Hukuk, Mantık.

## INTRODUCTION

Roman law has brought pioneering concepts to international law. The different dynamics of the disciplines however, have led to different applications of common principles such as *pacta sunt servanda*. Our study will examine the differences of these two separate but related disciplines specific to *pacta sunt servanda* in a comparative way for the solution of the problems arising from today's environmental soft law.

Geographical discoveries have sparked relentless competition among European powers. Following this development, the scholastic jurists have grounded on familiar Roman law principles to determine the status of the seas, or to criticize Pope's alleged right to share out what he does not own.<sup>1</sup> These evaluations have also led to the introduction of other principles of Roman obligation law into international legal literature. *Hugo Grotius* and *Cornelis van Bynkershoek*, have emerged as important representatives of

---

<sup>1</sup> It refers to the *Tordesillas Treaty* and its basis *inter caetera*.

this process.<sup>2</sup> Because the works of post-glossators were their initial sources. The codification process of international law has given rise to the identity of this discipline. Thus, the current approaches are based on this ground.

Soft law is a thesis introduced by *Dupuy* as a non-binding field of law in 1977. The logic that “a soft agreement is better than a non-agreement” proceeds on issues which are thought to require to be accepted but which are encountered with various obstacles to be binding.<sup>3</sup> From a functional point of view, soft law is preparatory of hard law or states voluntarily comply with its normative value.<sup>4</sup> In this respect, soft law can be considered in a definite place among the sources of international law. Obviously, the characteristic of the soft law concept arises from its non-binding nature. Although there is a clear conceptual distinction between commitment and compliance, it should be noted that the term commitment is not the opposite of the term compliance, considering some soft law commitments have a compliance ground.<sup>5</sup> This study aims to examine the term commitment in Roman law and this manner, to use legal possibilities for environmental effectiveness.<sup>6</sup>

The soft law field is the most incomplete plane of binding ground in international law. Particularly the realists think that the law, in its nature, can be achieved by a force of power and thus, international law is shaped and limited by the power of the “state”.<sup>7</sup> This is the main reason, why

---

<sup>2</sup> NUSSBAUM Arthur, “The Significance of Roman Law in the History of International Law”, **University of Pennsylvania Law Review**, S. 100(5), 1952, ss. 678-687, ss. 685-686. *Bynkershoek*, in particular, has scrutinized his country’s legislation and practices as a guide for international law understanding. He was a pioneer of the trend called *courant des écoles nationales de droit international*, see GAURIER Dominique, **Histoire du Droit International**, Presses Universitaires de Rennes, Rennes, 2005; ERKİNER Hakkı Hakan, “Uluslararası Hukuk Düşüncesinde Klâsik Öğretinin Kuruluşu: Hugo Grotius ve Postgrotien Yazarlar Samuel von Pufendorf, Richard Zouche, Cornelius van Bynkershoek ve Samuel Rachel’e İlişkin İnceleme ve Değerlendirme”, **Marmara Üniversitesi Hukuk Fakültesi Hukuk Araştırmaları Dergisi**, S. 18(3), 2012, ss. 3-142, s. 118.

<sup>3</sup> KLABBERS Jan, **The Concept of Treaty in International Law**, Nijhoff Publication, The Hague, 2006, s. 160.

<sup>4</sup> CHINKIN Christine, “Normative Development in the International Legal System” in SHELTON Dinah (ed.), **Commitment and Compliance: The Role of Non-binding Norms in the International Legal System**, Oxford University Press, Oxford, 2010, ss. 21-42.

<sup>5</sup> SHELTON Dinah (ed.), **Commitment and Compliance: The Role of Non-binding Norms in the International Legal System**, Oxford University Press, Oxford, 2010, s. 4.

<sup>6</sup> For the definitions of the terms “compliance” and “effectiveness”, see *Ibid.* 5.

<sup>7</sup> STEINBERG Richard H, “Overview: Realism in International Law”, **Proceedings of the ASIL Annual Meeting**, S. 96, 2002, ss. 260-262.

international law is viewed as a legitimate means of “what states did”. Besides, the environmental aspect of soft law documents is that the envisaged environmental measures are based on future projections, and the precautionary principle takes effect in the case of scientific uncertainty.<sup>8</sup> Thus, soft law documents have been placed among the sources of international environmental law as “the words of the primary actors” towards the environment, which has no legal identity.<sup>9</sup> There is no doubt that environmental concerns require more efficient solutions.

*“The move from a world fragmented into sovereign States to a world fragmented into specialized “regimes” may in fact not at all require a fundamental transformation of public international law - though it may call for imaginative uses of its traditional techniques.”<sup>10</sup>*

In respect of the “traditional techniques”, Roman law references have an indispensable value in international law. Providing a nuisance-based<sup>11</sup>

<sup>8</sup> SCHÖMBERG René von, “The Precautionary Principle: Its Use within Hard and Soft Law”, **European Journal of Risk Regulation**, S. 3(2), 2012, ss. 147-157, ss. 151-152.

<sup>9</sup> Classic law perceives the legal personhood on both sides: rights and responsibilities. There is no option to charge the environment for any responsibility; however, the position of the environment in responsibility has extensive literature around *force majeure*, see ERKİNER Hakkı Hakan, **Devletin Haksız Fiilden Kaynaklanan Uluslararası Sorumluluğu**, XII Levha, İstanbul, 2010, ss. 174-176. Relating to the rights of the environment, the river *Whanganui* and the national park called *Te Urewera* have been given legal personhood by the New Zealand Parliament. This initiative has been followed by India’s *Uttarakhand* High Court, granting the personhood of the river *Ganges*. Available at <https://www.parliament.nz/en/get-involved/features/innovative-bill-protects-whanganui-river-with-legal-personhood/> (Access: 17.03.2022) It is based on the idea that there should be a place for the environment in our legal system. If we need a holistic perspective, it should be the sustainability of the future rather than the human-centered approaches such as sustainable development or intergenerational equity. Historically, there is a fundamental struggle between humans and nature. After the presocratic philosophers who prioritized nature, the idea of human well-being, salvation doctrine, and humanism changed the mainstream in relations between humans and nature. See ARSLAN Ahmet, **İlkçağ Felsefe Tarihi**, İstanbul Bilgi Üniversitesi Yayınları, İstanbul, 2008. Considering this dialectic, today we cannot deal with major challenges such as global warming merely by references such as human rights and development priorities.

<sup>10</sup> UNGA “Report of the Study Group of the International Law Commission Finalized by M. Koskenniemi, Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law” UN. Doc. A/CN.4/I.682, 13 April 2006, ¶ 487.

<sup>11</sup> It refers to the nuisance/polis distinction towards the precautionary approach. See MORAG-LEVINE Noga, “The History of Precaution”, **The American Journal of Comparative Law**, S. 62(4), 2014, ss. 1095-1132. While the polis-based approach has been adopted with environmental regulations, especially in continental Europe, the nuisance approach has gained judicial supremacy-oriented operability in Britain. Our study does not argue the regulatory and

binding ground to environmental soft law commitments by the basis of Roman law requires deep analysis. Because the “strength” of proposals hinges upon the consistency of the philosophical background.

The methodology of the study is dialectical logic. In this context, synthesis has been made after objectively determining the principles of the two terms.<sup>12</sup> The *major terminus* discussed in the study is the concept of *pacta sunt servanda* in Roman law, the *minor terminus* is the concept of *pacta sunt servanda* in international law, and the *medius terminus* is the nature of the concept of environmental soft law. Roman law and international law analysis are ordered historically in themselves. The essence of the *medius terminus* is that it “sublates”<sup>13</sup> the international law concept of *pacta sunt servanda* and produces a mechanism to respond to environmental needs. For this, logical inferences developed beyond an ordinary description will be revealed in the Third Chapter. In brief the study will try to find the answers to the following questions, avoiding unnecessary details as much as possible.

1. What are the sources and the basic dynamics of the *pacta sunt servanda* principle in Roman law and international law?
2. What are the differences between Roman law and international law regarding the principle of *pacta sunt servanda*?
3. What is the reason for these differences and how can they be explained?
4. What current value does this debate in the classical sense have in the needs of the future?
5. How can comparative solutions be systematized logically?

This study will first present the *pacta sunt servanda* principle in the sense of Roman law.

---

normative binding ground of soft law commitments. On the contrary, it proposes a nuisance-oriented binding ground based on the fact that the concept of *pactum* comes into force with a judicial practice in Roman law.

<sup>12</sup> NACAR Abdulkadir, “İnsanlığa Karşı Suçlarda Sosyal Kimlik Motivasyonu Üzerine Mantıksal Bir Yaklaşım”, **PPIL**, S. 41(1), 2021, ss. 329-383.

<sup>13</sup> For an evaluation of the concept of creative destruction and sublation (*Aufheben*) in Hegel’s logic system, see BERGANDE Wolfram, “The Creative Destruction of the Total Work of Art: From Hegel to Wagner and beyond” in RUHL Carsten/ HOEKSTRA Rixt, DÄHNE Chris (eds.) **The Death and Life of the Total Work of Art**, Jovis, Berlin, 2014, ss. 128-145.

## I. CONTRACTUS - PACTUM RELATION IN ROMAN LAW

Roman obligation law is the backbone of the civil law applied in continental Europe. The characteristics of the system require the empowerment of an empire to regulate all civic relations and the ability to respond to new needs. The codifications towards the practice and the fact that there is no moral or religious reference taken are the other technical details that provide a rational-legal system. What matters for this study is that *Gaius* emphasized the concept of consent, not the fidelity virtue for binding contracts.<sup>14</sup> While there are bilateral consent applications in Roman law such as *mandatum* and *stipulatio*, there is also the unilateral consent form called *pollicitatio* in which a citizen promises a public service in acknowledgment of given honor.<sup>15</sup>

Aristotle lists three values that establish the contractual ratio: promise-keeping, compensatory justice, and liberality. No matter how it is fair, he advocates compensatory justice, arguing that even a person who seeks the truth would be more correct if she/he has a profit.<sup>16</sup> These values are the basis of the contract doctrine established by scholastics later. *Synallagma*, emerged in ancient Greece, defined contractual and unlawful acts as voluntary and involuntary multilateral relations. Thus, this concept has a function that corrects the justice balance. The interaction leading to this corrective justice will then be treated as the abstract results of such a process. In the Roman Empire, *nexum*, which was used in the transition from the pre-classical period to the classical period, is regarded as the basis of debt. While this concept expresses an abstract connection in a relation, it prepares an old concept such as “*obligatio*” as *vinculum iuris* in the classical period jurisprudence.<sup>17</sup> The concept of debt used as “*obligatio*” in Roman Law derives from the verb “*obligare*” which means connecting, which is the version of the word “*ligare*” from ancient Greek in the same sense. The

<sup>14</sup> GORDLEY James, **The Philosophical Origins of Modern Contract Doctrine**, Clarendon Press, Oxford, 2011, s. 32.

<sup>15</sup> IUSTINIANUS DIGESTA, 50.12.3. See also GORDLEY, s. 32. To comprehend the Latin texts, *Gordley, Ibbetson and Zimmermann* have been referenced.

<sup>16</sup> ARISTOTLE, **Nicomachean Ethics**, Hackett Publishing, Indianapolis, 1999, 4.7, 1127a-1127b; GORDLEY, ss. 10-13.

<sup>17</sup> MASSARA Tomasso dalla, “New Europe-Old Values? Reform and Perseverance. Can Roman Legal Tradition Play a Role of Identity Factor Towards a New Europe?”, in BODIROGA-VUKOBRAT Nada/ RODIN Siniša/ SANDER Gerald (eds.), **New Europe - Old Values? Europeanization and Globalization**, Springer, 2016, ss. 1-14.

word “*obligatus*”, on the other hand, stands for “to be connected” in passive form. The term “*obligare*” also means to task someone besides its concrete sense.<sup>18</sup>

The term obligation is defined clearly in *Iustinianus Institutes*.<sup>19</sup> Accordingly, the combined use of *necessitate* and *adstringimur* in the definition has meant “to be limited by the necessity of payment under the civil law”.<sup>20</sup> A simple distinction has been made in the *Gaius Institutes* regarding the reasons that give rise to the concept of obligation.<sup>21</sup> This classification referred to as contract and unlawful act has been challenged in the *Iustinianus Institutes* with the addition of categories *quasi-contract* and *quasi-delictum*.<sup>22</sup> The prominence of these categories is that the obligation relationship can be recognized by the legal order and pursued by a suit (*actio*). In this respect, a mere agreement that does not fall into this category is not applicable.<sup>23</sup>

The verb *contrahere* has been used both literally and figuratively. Etymologically, it does not mean to make a contract but to influence, process, or find a reason to persuade oneself.<sup>24</sup> In Roman law, contracts are considered a source of obligation, and they are subject to strict conditions.<sup>25</sup> This is the most distinctive feature from contractual freedom in the modern continental European legal system.

The *numerus clausus* principle has been adopted regarding nominal contracts. Accordingly, contracts may arise from substance, word, letter, or consent. As a rule, contracts other than certain contracts in *ius civile* were not recognized by the legal order and could not be litigated. In this respect, the elements outside the *ius civile* contract system were called *pactum*. *Pactum / pactio* is a *pacisci / pacere* version and refers to the acquittance

<sup>18</sup> IBBETSON David, “Obligatio in Roman Law and Society”, in PLESSIS Paul J./ ANDO Clifford/ TUORI Kaius (eds.), **The Oxford Handbook of Roman Law and Society**, Oxford University Press, Oxford, 2016, ss. 43.1-43.8, s. 569.

<sup>19</sup> IUSTINIANUS INSTITUTES, 3.13.

<sup>20</sup> IBBETSON, ss. 569-580.

<sup>21</sup> GAIUS INSTITUTES, 3.88.

<sup>22</sup> IUSTINIANUS INSTITUTES, 3.13.

<sup>23</sup> IUSTINIANUS DIGESTA, 2.14.7; ZIMMERMANN Reinhard, **The Law of Obligations: Roman Foundations of the Civilian Tradition**, Oxford University Press, 2007, ss. 508-509.

<sup>24</sup> MASSARA, ss. 1-14.

<sup>25</sup> GAIUS INSTITUTES, 3.89.

and release of debt. In other words, there is a movement in which the perpetrator can avoid the victim's revenge.<sup>26</sup> While in the early periods it was accepted as an "*exceptio pacti conventi*", legitimate grounds were left to those who applied the law to respond to the changing needs of the Empire.<sup>27</sup>

As stated in *Iustinianus Institutes*, obligations may arise from the *civile*, or they may also arise from the *praetor's* law. Therefore, the legal treatments which do not actualize the strict conditions are legally recognized as *honorariae* with the *pacta sunt servanda* principle. Regarding the *bona fidei iudicia*, *pactums (pacta ex continenti adiecta)* which were not subject to *ius civile's* form could now an active litigation material, not merely an *exceptio*.<sup>28</sup> Thus, there is a distinction between *pacta vestita* and *pacta nuda* depending on whether the *pactum* based obligations are enforceable. The applicable *pacts* fall into the group of *pacta vestita*.<sup>29</sup>

The *pacta sunt servanda* principle has also commercial<sup>30</sup> and religious<sup>31</sup> senses apart from the law literature. Considering its rational basis, Roman

<sup>26</sup> MASSARA, ss. 1-14.

<sup>27</sup> IUSTINIANUS INSTITUTES, 3.13.1.

<sup>28</sup> ZIMMERMANN, ss. 509-511.

<sup>29</sup> ZIMMERMANN, ss. 538-539.

<sup>30</sup> "The long history of international trade agreements shows that international trade - historically one of the principal "sources" for the coming into being of international law - is based no less on the legal imperative *pacta sunt servanda* than on D. Ricardo's economic principle of "comparative advantages", and that intensive international economic integration requires a corresponding political, legal and social integration." See PETERSMANN Ernst-Ulrich, "International Governmental Trade Organizations GATT and UNCTAD" in PETERSMANN Ernst-Ulrich/ TOMUSCHAT Christian/ BLECKMANN Albert, **International Encyclopedia of Comparative Law, Volume XVII State and Economy**, Chapter 25 Universal Economic Organizations, Tübingen, 1981, s. 3.

<sup>31</sup> *Eahid* stands for testament in Arabic. The implied meaning in the name of "Old Testament" is the agreement that settled between God YHWH and the Israelites through the prophets. According to this agreement, the Israelites should accept YHWH as their God and YHWH will protect them. The entire text of this agreement that YHWH wishes from Moses is as follows: "And God spoke all these words: I am the Lord your God, who brought you out of Egypt, out of the land of slavery. You shall have no other gods before me. You shall not make for yourself an image in the form of anything in heaven above or on the earth beneath or in the waters below. You shall not bow down to them or worship them; for I, the Lord your God, am a jealous God, punishing the children for the sin of the parents to the third and fourth generation of those who hate me, but showing love to a thousand generations of those who love me and keep my commandments." **The Holy Bible: King James Version**, Brown Books Publishing, Dallas, 2004, (Exodus 20, 1-6). The Old Testament is the history and the content of these agreements. The origin of the insistence on the worship and belief in Allah (from 'Īlah which means God in Arabic, *El* and the plural form *Elohim* in Hebrew) is the *Eahid* basis of the Old

law has dwelled on this issue because a well-regulated trading system emerges by only complying with the contracts. On the other hand, Evangelist *St. Matthew's* Bible of Chapter 5 Verse 38 clearly says:

*“But let your communication be, Yea, yea; Nay, nay: for whatsoever is more than these cometh of evil.”*

Church leaders such as *Augustine* have also worked on the sanctity of promises. Keeping promises even given to the enemy is emphasized in *Decretum Gratiani*, the primary source of canonical law.<sup>32</sup> The Islamic doctrine has also accepted the promise as a trust, and it is stated that God will keep his<sup>33</sup> promise to the servants, and the servants need to keep their promise to God.<sup>34</sup>

In brief, *pacta sunt servanda* is considered both as a basic moral and legal norm. This principle, which is referred to in international law thereafter, has literally originated as summarized above. This chapter has explained how needs drive the changing function of the *pactum* in Roman law.

## II. A NEW FIELD IN THE MODERNITY: INTERNATIONAL LAW

Medieval Europe was the scene of a great revolution of thought, particularly in the fields of religion, law, geography, art, and military technology. In this period, the feudal system comprising a chain of contracts has undertaken a function that keeps the anarchy away. *Thomas Aquinas* takes *Aristotle's* value-oriented contract approach in the light of moral law.<sup>35</sup>

---

Testament. New Testament, however, is Jesus' "good news" to the believers rather than a New Testament. Thus, this Book which is written in Greek is called *Evangelos*. See ŞENGÖR Ali Mehmet Celâl, *Sosyal Bilimlerde Yöntem ve Bilimin Tarihsel Gelişimi*, İstanbul, 2010.

<sup>32</sup> GRATIAN, *Decretum Gratiani* Decreti Pars Secunda, Causa XXIII, Question 1, Column 3, available at <https://geschichte.digitale-sammlungen.de/decretum-gratiani/online/angebot> (Access: 26.03.2022).

<sup>33</sup> Common use in English, although the Islamic doctrine does not accept the gender of *Allah*.

<sup>34</sup> According to *Fikh*, the agreements between the servants such as marriage, are described with the testimony of God: "And they who are to their trusts and their promises attentive" see the Holy Quran, *Mu'minun* 8. Verse, *Mearic* 32. Verse, available at <https://kuran.diyinet.gov.tr/mushaf> (Access: 26.03.2022).

<sup>35</sup> *Aristotle* put forward the distinction between theoretical (*sophia*) and practical (*phronesis*) wisdom. Accordingly, the virtue of *phronesis*, which is related to the actions of the individual, is of diagnostic character. In other words, an intellectual capacity to discrete between good and bad is a *sine qua non* element for an understanding of virtue within the framework of *phronesis*. *Thomas Aquinas'* framework of *prudentia*, however, points to a moral virtue engaged in theological foundations. See ZELYÜT Solmaz, *İki Adalet Arasında*, Vadi Yayınları, İstanbul, 1997.

*Thomas Aquinas*, known as the baptized *Aristotle*, expressed that a promise refers to compensatory justice or liberty when he examined the elements that make a promise binding. This distinction explains how contractual equality has failed as a justification for compensatory justice. Therefore, he put forward a method that charges various obligations on the contractual parties. Although it is not valid in Roman law, he expressed that all words are binding accordingly the natural law.<sup>36</sup> In this context, the promise is defined as a law that one has made by oneself.<sup>37</sup> Aristotelian philosophy's direction of movement is related to human reason and will. In that case, the promisors have to agree with the consequences of the will that they have set in this direction. The Thomistic form for a promise is to communicate with words or other outward signs.<sup>38</sup> A promise made in this way will only be binding around the commitment of the promisor. According to *Aristotle*, since the laws apply to a variety of situations with a general framework, the cases will only arise when the events take place outside the intent of the legislator. *Thomas* has argued that the law is no longer binding in such cases.<sup>39</sup> In his opinion, an amendment that makes it necessary to conclude a contract justifies that the contract is no longer binding. This view also led to the development of the *clausula rebus sic stantibus* doctrine.<sup>40</sup>

*Ius gentium* has emerged in Rome, with a "demand of human necessity".<sup>41</sup> It derived from the natural *ratio*, and it is valid for all human beings.<sup>42</sup> The concept of *ius gentium* appears as a set of rules, which are binding also for non-Roman citizens. According to *Iacobus de Ravanis* and *Petrus de Bellapertica*, the medieval key jurists, while a *ius civile* typed agreement refers to an interior manner, a *ius gentium* based agreement refers

<sup>36</sup> GORDLEY, s.11.

<sup>37</sup> THOMAS AQUINAS, *Summa Theologica*, Benziger Bros., (Trans. Fathers of the English Dominican Province) New York, 1947, Treatise on the cardinal virtues, Question 88: Service by promise, Article 10.

<sup>38</sup> THOMAS AQUINAS, Question 88: Service by promise, Article 1.

<sup>39</sup> For the binding promise: THOMAS AQUINAS, Question 88: Service by promise, Article 10; Question 89: Of Oaths, Article 9; for the binding law: Question 120: Of "Epikeia" or Equity, Article 1.

<sup>40</sup> WEHBERG Hans, "Pacta Sunt Servanda", *The American Journal of International Law*, S. 53(4), 1959, ss. 775-786, ss. 776-777.

<sup>41</sup> "usu exigente et humanis necessitatibus", see IUSTINIANUS INSTITUTES, 1.2.1.

<sup>42</sup> "Quod vero naturalis ratio inter omnes homines constituit, id apud omnes populos peraeque custoditur vocaturque ius gentium" see IUSTINIANUS INSTITUTES, 1.2.1.

to a natural obligation. Because the *ius civile* is not the source of these contracts, rather it is the practitioner, which approves them.<sup>43</sup>

A thorough synthesis of Roman law and Thomistic- Aristotelian philosophy will wait until the end of the Middle Ages. Theologians and jurists who are known as “the Last Scholastics” or “the Spanish Natural Law School” have addressed this issue. The most important representatives are *Francesco de Vitoria*, *Diego de Covarruvias*, *Domingo de Soto*, *Luis de Molina*, and *Leonard Lessius*. The doctrine they established on Thomistic- Aristotelian philosophy was also elaborated and systematized by Roman law.<sup>44</sup> While searching for the equivalents of the compensatory justice and the liberty principles in Roman law, they found that in the texts they read, the *pollicitatio* corresponded to unilateral consent and *pactum* to reciprocity. Here, *Lessius* and *Molina* described the *pollicitatio* as a promise and the *pactum* as an agreement.<sup>45</sup>

*Machiavelli*, on the wide-ranging scale of the Middle Ages, considers a prince above the law.<sup>46</sup> In his point of view, this understanding of justice is a necessity for the state to exist. Accordingly, the law is an extension and practice of the power of the ruler. Therefore, a lawmaker is free to adhere to it.<sup>47</sup> Actually, *Machiavelli* has stated that if the public realizes that their prince will never violate the law under any circumstances, the situation would turn into an ultimate portrait of the prince’s personal power. However, breaching the law is also accordingly meaningful. Killing someone to defend oneself is an exemption not just because the law orders in this way. Because very ancient statutes that count killing as a crime do not include the self-defense concept. The main reason for this is that in such a case it is pointless to restrict a person by law.<sup>48</sup> Therefore, *Machiavelli*

---

<sup>43</sup> GORDLEY, ss. 42-43.

<sup>44</sup> GORDLEY, ss. 1-19.

<sup>45</sup> GORDLEY, ss. 71-72.

<sup>46</sup> *Machiavelli* has identified two moments on the actions of the “Prince” and of humans in general: *fortuna* and *virtù*. Although the word *virtù* comes from the same root (*vir/man*) as the word virtue, *Machiavelli* does not impose *phronesis* or *prudentia* based restraints regarding human actions. Contrarily, his *virtù* concept refers to the achievements that a person can achieve through his actions and talents. See MACHIAVELLI Niccolo, **The Prince**, CreateSpace Independent Publishing, Lexington, 2014.

<sup>47</sup> D’AMATO Anthony, “International Law from a Machiavellian Perspective”, **Northwestern University School of Law, Public Law and Legal Theory Research Paper Series**, S. 10-61, 2010, ss. 1-12.

<sup>48</sup> D’AMATO.

thinks that there is no sense of law and no longer binding in a serious emergency. *Thomas Cajetan*, on the other hand, has considered the force of the promise as a matter of truth and faith. *Cajetan* has argued that there is no binding promise in the name of justice unless the promisor is harmed. *Franciscus Connanus*, the French jurist, supported this view with the evidence that the agreements which are not mentioned in the *ius civile* are not binding. According to him, it would have been necessary for the *pactum* to be binding if it had been a requirement of justice.<sup>49</sup> However, this argument was rejected by *Sato*, *Molina*, *Lessius*, and later by *Grotius*, *Pufendorf*, and *Barbeyrac*, suggesting that “infidelity is also a kind of injustice”. The Spanish and northern natural law jurists have used the quotation of a statement by *Cicero* which has been firstly used by *Sato*,<sup>50</sup>

“*Good faith is the foundation of justice.*”

According to *Lessius*, an incomplete promise that is the subject of truth makes the truth a form of missing justice. *Molina* has emphasized the requirement of intention to bring about a conclusion for promises.<sup>51</sup> *Molina* applied his studies on free will from his theology origin to the discipline of international law. The basic idea of the Molinism movement which comes after him is that individuals can do whatever they wish. This idea has affected a progressive trend in international law from the transcendental understanding of the natural law to the understanding of the positive law.<sup>52</sup> Accordingly if there is an intention to be bound, the promisor is tied with the subject of justice, whereas it does not have such an intention, the promisor is tied with the subject of truth. At this time, a court should examine the intention of the promise according to the conditions of the case and test the conformity with Roman law principles. *Lessius* has criticized *Molina*'s approach expressing *Molina* did not realize that promises are binding because they are “promises”, not because of the intentions.<sup>53</sup>

---

<sup>49</sup> GORDLEY, s. 74.

<sup>50</sup> “*Fundamentum justitiæ est fides...*” GORDLEY, s. 74.

<sup>51</sup> GORDLEY, s. 74.

<sup>52</sup> ERKİNER Hakkı Hakan, “Grotius Öncesinde İlk Modern Uluslararası Hukuk Düşüncesinin Oluştığı Tarihsel Koşullar ve Erken Klâsik Dönemdeki Öğreti”, **Marmara Hukuk Araştırmaları Dergisi**, 18(1), 2012, ss. 51-146; ss. 110-111.

<sup>53</sup> GORDLEY, ss. 73-74.

Although *Jean Bodin* put forward the prominence of national sovereignty, he has considered princes to be bound by God's law and natural law. Even the Sicilian tyrant *Dionysius* is able to exempt his mother from *Syracuse's* customs but not natural law. Thus, the natural law is binding for princes. Therefore, when the magistrates in Rome brought a new law, they added customarily the following expression at the end of the texts;

*"If there was something unfair and unreasonable in it, they would not want it."*<sup>54</sup>

*Bodin* criticizes the idea that if you find a good reason, you can breach the law of God, with the question, "What if this reason violates God's law (or natural law)?"<sup>55</sup> *Bodin* has expressed the truth and fidelity as the basis of justice not only in terms of the contracts stipulated between states but in terms of general meaning. He has also made exceptions to the binding frame of law. This is just relevant to what *Pacatus* told the emperor *Theodosius*;

*"as much is permitted to you as is permitted by the laws"*<sup>56</sup>

In this case, the ruling prince is not even bound by a civil law principle unless he violates natural law. *Bodin's* approach leaves a wide range of interpretations for those who have the power. At this point, *Grotius* does not recognize kings a right to a reversal of civil law, a cancellation of the contract, or a return from the oath of the state. *Spinoza* and *Hobbes* on the other hand, have adopted the *raison d'état* doctrine above the *pacta sunt servanda* which is considered as a natural law principle.<sup>57</sup>

The guarantee clause, beginning with the defense and assault alliance between *Henry VIII* and *Charles V* in 1543 has been used quite often since the beginning of the seventeenth century as a special expression that binds the parties.<sup>58</sup> In the seventeenth and eighteenth centuries, northern natural jurists such as *Grotius*, *Pufendorf*, and *Barbeyrac* took over the teachings of the last scholastics. Regarding the debate between *Lessius* and *Molina*, these

<sup>54</sup> *"si quid vis non esset eius ea lege nihil rogaretur"*.

<sup>55</sup> BODIN Jean, **On Sovereignty: Four Chapters from the Six Books of the Commonwealth**, CreateSpace Independent Publishing, Lexington, 2004, s. 32.

<sup>56</sup> *"tantum tibi quantum licet per leges licebit"*.

<sup>57</sup> WEHBERG, ss. 778-779.

<sup>58</sup> SATOW Sir Ernest, "Pacta Sunt Servanda or International Guarantee", **Cambridge Historical Journal**, S. 1(3), 1925, ss. 295-318.

jurists adopted *Molina*'s position.<sup>59</sup> However, it is not obvious that they have been separated from *Lessius* or trying to explain his approach. Because *Grotius* and *Pufendorf*<sup>60</sup> have regarded the required form of the contract as a sign that the promise was given purposefully rather than a right of rescission is vested in the promisee or the promisor. In this respect, *Grotius* and *Pufendorf* are closer to *Lessius*.<sup>61</sup> *Grotius* has argued that the natural needs that require special promises should be supported by public power, considering the tension between old and new needs. His views have also been partially effective in the later development of private law.<sup>62</sup> *Emer de Vattel*, on the other hand, described the fulfillment of oaths and contracts in his work of *Droit des Gens* as the unique requirement for trade and security among nations. In his own words, *foi des traités* tells more than just the contractual sanctity between the parties.<sup>63</sup> Because the faith is about the promisors and their will, more than the promise given. Correspondingly, *Johann Jakob Moser*, one of the founders of positivist international law, states that an agreement can only be canceled with all the interested parties' consent.<sup>64</sup> In fact, the direction of the developments in this area shows that the binding ground is conceived as a consequence of free consent, but not natural law.

### III. EVALUATION

“Nature loves to hide”

*Heraclitus* B 123

One of the most important components of the law is that the legislated rules express an obligation in the context of influencing the behaviors. The development process, which has evolved from *ius gentium* to *ius inter gentes*,

---

<sup>59</sup> GORDLEY, ss. 74-75.

<sup>60</sup> While *Grotius*'s view is the consentient and positive binding ground of the “law of nations”, *Pufendorf* has a different approach which is based on the natural law of states. “*Pufendorf* implicitly subscribes, declaring that ‘there is no other voluntary or positive law of nations properly invested with a true and legal force, and binding as the command of a superior power.’” See WHEATON Henry, **Elements of International Law**, Oxford University Press, Oxford, 1936, ss. 6-7.

<sup>61</sup> GORDLEY, ss. 75-77.

<sup>62</sup> SHARP Malcolm P, “Pacta Sunt Servanda”, **Columbia Law Review**, S. 41(5), 1941, ss. 783-798, ss. 783-784.

<sup>63</sup> WEHBERG, s. 779.

<sup>64</sup> WEHBERG, s. 779.

shows that the rules of international law are formed by the commitments of states, which means auto-limitation.<sup>65</sup> In this respect, abiding by the promises provides the reliance which is the most essential requirement of “civilization”, or the original term “*kultur*”.<sup>66</sup> The *pacta sunt servanda* principle has been an axiom, hypothesis and categorical order of international law since ancient times. In principle, it has been considered as the foreground of international law.<sup>67</sup> Conversely, *Machiavelli*’s opinions mainly stem from the interests of the state or the position of the ruler of the state. At the same mainstream, the realist approach emphasizes the superiority of states to the “alleged” universal principles.<sup>68</sup> The realist approach conceives the state as a primary element and argues that anarchy, but not the responsibility, rules international relations. Thus, as a law-maker, states should not be binding with the law. However, accepting the state as a basic actor and above the law is only “any” proposition unless it touches the “reality”. It is obvious that the state is a stage of social evolution, and international law is an obligatory part of this chain. This evolution is a natural necessity; therefore, it points out the natural obligation of *ius gentium*, as *de Ravanis* and *de Bellapertica* stated. If an actor (state) becomes conceptually controversial when responsibility is charged, then the actor does not have a strong organism to be a primary element. Conversely, we can reconsider the position of “humans” at the international level. Today, if international law has been able to provide a planetary order that permeates every aspect of our lives, it has a “real” value. The reason why the name of this discipline is international law instead of states law or interstates law is based on the fact that the concept of *ius gentium* is more rooted than the modern understanding of sovereignty. The *ius gentium* concept, born in an ecumenical empire, has answered the most basic organizational needs which consist of private law relations. Historically, glossators, *Salamanca* School, and northern jurists have constructed their thoughts on this basis and passed into the European literature as “law of

---

<sup>65</sup> Regarding the theoretical views explaining the binding ground of international law, see TÜ-  
TÜNCÜ Ayşe Nur et al., **Toluner Milletlerarası Hukuk (Giriş, Kaynaklar)**, Beta, İstanbul,  
2019.

<sup>66</sup> SPENGLER Oswald, **The Decline of the West**, Vintage; Abridged Edition, New York, 1928,  
ss. 31-36.

<sup>67</sup> LAUTERPACHT Hersch, “Spinoza and International Law”, **British Yearbook of Internati-  
onal Law**, S. VIII, 1927, ss. 89-107.

<sup>68</sup> ROSATO Sebastian, **Intentions in Great Power Politics: Uncertainty and the Roots of  
Conflict**, Yale University Press, New Haven, London, 2021.

nations; international law; *droit des gens; droit international; Völkerrecht*".<sup>69</sup> Therefore, the actions and needs of the people at the international level should be based on. Because imposing people responsibility does not remove their existence conceptually or physically. Besides, people have different motivations such as the rights they want only for themselves and identities except for the group feeling "*asabiyya*" (expression of *Ibn Khaldun*)<sup>70</sup> which creates and maintains the state. Therefore, these motivations should not be ignored. The best example of this issue is a more explicit expression of the realist approach; the assumption of women and children as the common values<sup>71</sup> of what *Plato* called the beautiful city.<sup>72</sup> If *Plato* is in need of avoidance from different motivations in society in order to highlight the interests of the site, it shows that the presence of these motivations is acknowledged. There is no assertion that his system already reflects reality (not verity), and *Plato* presents it as an "idea". Here, the state-monopoly system, which is described as the "reality" by the realism itself, is a system that *Plato* knows and believes as an idea. While claiming to explain the "reality", realism hopes humans take into account only the state identity.<sup>73</sup> Eventually, it is not realistic to literally reject the concept of *pacta sunt servanda* by suggesting a state-based anarchy atmosphere.

<sup>69</sup> *Cemil Bilsel*, who produced the early works of modern Turkish international law literature, preferred the term "states law" (*hukuku dıvel*). See BİLSEL Cemil, "Devletler Hukuku mu Devletlerarası Hak mı?", *Journal of Istanbul University Law Faculty*, S. 6, 2011, ss. 631-644. *Bilsel* has used the title of "European and American States Law" (*Avrupa ve Amerika Hukuku Düveli*) while translating "*Elements du Droit International Public Universel, Européen et Américain*" by *Karl Strupp*. Although *Bilsel* exemplifies the British dominions such as *Australia* and *Canada* becoming independent states while explaining his preference, the prominence of the term "international" instead of "states" or "interstates" has not begun with the English dominions. Thus, their independence does not necessitate neglecting the acquis and dynamics that started with *ius gentium*. See BİLSEL s. 635.

<sup>70</sup> *Grotius*'s Stoic point, *appetitus societatis*, has more objective derivation. See SCATTOLA Merio, "Scientia Iuris and Ius Naturae: The Jurisprudence of the Holy Roman Empire in the Seventeenth and Eighteenth Centuries" in E. PATTARO Enrico et al. (eds.), *A Treatise of Legal Philosophy and General Jurisprudence Vol. 10: The Philosophers' Philosophy of Law from the Seventeenth Century to Our Days*, Springer-Verlag New York Inc., New York, 2009, s. 13; Regarding the social identity motivation, see NACAR, ss. 346-358.

<sup>71</sup> PLATON, *Republic Book V*, Penguin, 1974, s. Column 449c, available at <http://classics.mit.edu/Plato/republic.6.v.html> (Access: 21.03.2022)

<sup>72</sup> "*Καλλίπολις*", see PREUS Anthony, *Historical Dictionary of Ancient Greek Philosophy*, Rowman & Littlefield Publishers, Maryland, 2015, s. 216.

<sup>73</sup> The notion of state is a strong delusion among humans. The *realpolitik* is merely valid within the limits of this delusion. The collapse of this delusion in the process of globalization requires a psychological break, not an academic consistency.

There is a conceptual debate among those who accept the concept of *pacta sunt servanda*. This arises from the contradiction of whether the agreements are always binding or only the current treaties are binding. Additionally, some claimed that international law does not set rules for the validity of treaties and the concept became a *deus ex machina*.<sup>74</sup> It is necessary to take all these ideas into account to create a suitable ground for the reasoning. Essentially, this debate, as mentioned earlier, is a deep issue that goes down to the last scholastic roots. *Molina* has focused on the promisor's concluding consent and will. Such an approach is valued in the name of a rational establishment of the *pacta sunt servanda* concept, rather than moral and spiritual phenomena. Because an act, which breaches the previously accepted rule, is contrary to reason, and it would be expected to be explained rationally. A theory of law, which is based on the *ratio*, requires a reason, but not directly an intention.<sup>75</sup> Thus, there is no need for perfect intention or form to reach a point of rational explanation of a violation. Because the opposite logic requires defending that the cases occur outside the intention of the legislator, and here the law and the promise are no longer binding.<sup>76</sup> The argument discussed here is not the certainty of the promise, but the certainty of the intention and the form. As *Grotius* and *Pufendorf* noted,<sup>77</sup> intention and form are tools to test the accuracy of the promise. Making these tools a goal would provide a negative right for the promisor and allow for a dialectic that would disburden the promise. As *Lessius* stated, a promise is binding, since it is a "promise", rather than originating from a certain intent.

Free consent, good faith, and *pacta sunt servanda* were mentioned at the outset of the Vienna Convention on the Law of Treaties as concepts universally accepted by the Parties. It is necessary to accept these concepts as complementary parts supporting each other. As a matter of fact, *pacta sunt servanda* is meaningful with free consent and good faith as the 26th Article points out;

*"Every treaty in force is binding upon the parties to it and must be performed by them in good faith."*

---

<sup>74</sup> KUNZ Josef L., "The Meaning and the Range of the Norm Pacta Sunt Servanda", **The American Journal of International Law**, S. 39(2), 1945, ss. 180-197.

<sup>75</sup> This study argues that environmental facts can be a nuisance-based compelling "reason" for a binding ground. Regarding Simpson's opinion about the "consideration", see *infra* footnote 82.

<sup>76</sup> For the opinion of *Thomas Aquinas* in this direction, see *supra* footnotes 39 and 40.

<sup>77</sup> See *supra* footnote 60 and 61.

The stated good faith takes its origin from natural law rather than a positive concept. This is criticized as it allows a moral judgment.<sup>78</sup> Good faith is referred to the term “obligation” in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations<sup>79</sup> and the Final Act of the Conference on Security and Cooperation in Europe<sup>80</sup>. Because obligations both include rights and duties.<sup>81</sup> It is noteworthy that the term obligation, which is used in the discipline of Roman law, is used in the same way as the obligation of states. Taking reference from the ancient principles of the obligations stipulated in a specific debt relationship suggests that the *pacta sunt servanda* principle, which is found in both areas of liability, can be compared. First, considering the root of the *pacta sunt servanda* principle and to its sense, the principle stands for abiding by the promise, but not the perfectly formed contract.<sup>82</sup> Rivetingly, this principle has been applied only

<sup>78</sup> JEFFERY Renée, **Hugo Grotius in International Thought**, Palgrave Macmillan, New York, 2015, s. 96.

<sup>79</sup> UNGA Res. 2625 (XXV) 24 October 1970.

<sup>80</sup> 73 DEP'T ST. BULL. 323, 01 August 1975.

<sup>81</sup> LUKASHUK Igor I, “The Principle Pacta Sunt Servanda and the Nature of Obligation under International Law”, **The American Journal of International Law**, S. 83(3), 1989, ss. 513-518, ss. 513-514.

<sup>82</sup> Historically, Roman law has been a prominent source of international law and common law. “Strangely, there is no country which has done more for the utilization of Roman law in international relations than the common law country par excellence, England.” See NUSSBAUM, s. 683. This effect also manifests itself in the distinction of *contractus-pactum*, which is the basis of the *pacta sunt servanda* principle.

“In order to conclude a contract Anglo-Saxon law required numerous external acts, and several of these survived for many centuries. First of all there was the “wed” which after the Norman Conquest was called a “gage”, and consisted of a valuable object which was delivered by promisor either to the promisee himself or to a third party as security for carrying out the contract. Then too, there was the “borh” who after the Norman Conquest was called a “pledge”, and consisted of personal sureties.” See PLUCKNETT Theodore FT, **A Concise History of the Common Law**, Little Brown Co., Boston, 1952, s. 628. Formal contracts (*contractus nominati*) in Common law are based on the “seal”. “A contract under seal was enforceable in covenant or in debt, without any requirement of “consideration”. See LANGBEIN John H et al., **History of the Common Law: The Development of Anglo-American Legal Institutions**, Aspen Publishers, New York, 2009, s. 322. In the 1464 Common Pleas case, the “Court refused to recognize trust entitlement even when pleaded defensively.” See Y.B. 4 Edw. 4, fol.8, Pasch., pl.9 (1464), reprinted in KIRALFY Albert Kenneth Roland, **A Source Book of English Law**, Sweet& Maxwell, London, 1957, ss. 260-261, retrieved from LANGBEIN s. 306. The Court of Chancery, “developed in the response to complaints about failures in the administration of civil and criminal justice at [the medieval] common law,” heard the argument “that the defendant made his promise under pledge of faith, invoking Christian obligation, the case would be actionable in church court, and the Chancellor need not in-

tervene. The Chancellor, however, rejected the point, telling Jenney [the defendant] not to confuse Christian and secular obligation. Even though the plaintiff could sue in a church court under canon law, 'in this case because he is damaged by the nonperformance of the promise he will have a remedy here.' The message is that Chancery will enforce promises, although the Chancellor does not say why. The Promise 'will have a remedy.'" See LANGBEIN s. 312. Regarding enforcing a promise in Chancery, see Y.B. 8 Edw. 4, fol.4, Pasch., pl.11 (Ch.1468). The idea that informal contracts can be recognized in secular courts as a requirement of justice or equity, has a universal practice. From the common law perspective, "the enforcement of promises not under seal is a branch of the [Chancery] jurisdiction second in importance only to the enforcement of uses... The canon law provided both the theoretical justification for the equitable jurisdiction of the Chancery, and some of the principles applied by the court." See BARTON John L., "Equity in the Medieval Common Law" in CASSIN René/NEWMAN Ralph A, **Equity in the World's Legal Systems: A Comparative Study**, Établissements Émile Bruylant, Brussels, 1973, ss. 149-151, retrieved from: LANGBEIN, s. 311. "Almost all cases in Chancery can be reduced to this simple formula, and answer of conscience was a simple: promises have to be kept -pacta sunt servanda- as long as they do not violate the laws of God and reason, that is, unless they are against good conscience themselves." See METZGER Franz "The Last Phase of the Medieval Chancery" in HARDING Alan, **Law-Making and Makers in British History**, Royal Historical Society, London, 1980, ss. 79-89, s. 84, retrieved from: LANGBEIN, s. 311. According to A.W.B. Simpson, "It is extremely difficult to discover what theory of contract was acted upon in the Chancery to delimit the scope of actionable parole covenants, or indeed if there was a settled theory" See Simpson A.W. Brian, **A History of the Common Law of Contract: The Rise of the Action of Assumpsit**, Clarendon Press, Oxford, 1975, s. 278. C.H.S. Fifoot thought that Chancery "was adopting [the] central principle [of the canon law] -the inherent validity of a promise-while Common Law denied it" See FIFOOT Cecil Herbert Stuart, **History and Sources of the Common Law: Tort and Contract**, Stevens, London, 1949, s. 307. O.W. Holmes Jr. states "Our law does not enforce every promise which a man may make. Promises made as ninety-nine promises out of a hundred are, by word of mouth or simple writing, are not binding unless there is a consideration for them, unless the promisee has either conferred a benefit on the promisor, or incurred a detriment, as the inducement to the promise. See HOLMES Jr., Oliver Wendell, **The Common Law**, Little Brown, Abingdon, 1881, s. 253. Simpson argues that "the word 'consideration' originally meant the reasons or motives including the giving of a promise. A promise given without any proper reason or motive was not binding". According to Atiyah, Simpson dwelled on the "reason" and "motive" "because such a promise could not have been seriously intended, or perhaps more generally, because a promise given without any reason would be a senseless act, not one capable of creating an obligation." See ATIYAH Patrick S, **The Rise and Fall of Freedom of Contract**, Clarendon Press, Oxford, 2003, ss.139-140. However, it is striking that Simpson explains the requirement of binding condition as "reason" but not "intention" itself. One of the main ambitions of this study is to consider the sustainability of our civilization envisaged by the environmental facts as "reason". This reason does not provide a normatively binding ground for environmental soft law commitments. Instead, it allows a nuisance-based judicially recognition as in the examples of *Praetor* in Roman law and Chancery in Britain.

The Islamic law and the *Mejelle* domain confirm the *contractus-pactum* distinction by the *aqyt-eahid* classification. There are two kinds of *aqyt* which can be considered as *contractus nominati* and *contractus innominati*. Nominal contracts are based on *nass* that is *Quran* and *Sunnah*. According to the needs of the time and provided that it complies with the intendment of Islam, new *aqyt* types have been created (like *pacta vestita*) by *ijma* (consensus), such as *bey' bi'l-vefa*, *bey' bi'l-istiğlal*, *icāreteyn*, and *ferāğ*. See EKINCI Ekrem Buğra, **İslam Hukuku**, Arı Sanat, İstanbul, 2018, s. 469. The concept of the *eahid* is to promise *ex parte* while its bilateral form is cal-

to the treaty law in international law. To clarify this difference, the identity of the *pacta sunt servanda* principle is as vital as the identity of international law.

The information and arguments mentioned above have been assessed for the identity of the *pacta sunt servanda* principle. At this stage, soft law documents which can be considered as a “new concept”, will be included in the reasoning. The aim is to attach the content of environmental soft law to the nuisance-based responsibility under the *pacta sunt servanda* umbrella by considering these commitments as *pollicitatio* or *pactum*. One of the two fundamental factors which require this is that the historical and etymological origin and the law technique make this proposal acceptable. The second factor is human responsibility to the environment, to other living and future generations.<sup>83</sup> The issue that needs to be emphasized here is that concern for the future is an indispensable factor in making environmental soft law judicially binding. This is not a normative proposal that establishes a *pacta sunt servanda* based binding ground in general. *Hans Kelsen* put forward the norm *pacta sunt servanda* as *Ursprungsnorm* (originary norm) in international law. In his later works, *Kelsen* expressed the possibility that the rule *pacta*

---

led *mueahada*. An *eahid* is binding religiously, but not legally. In other words, abiding by the requirements of an *eahid* is a sacred duty, but someone cannot be forced legally for this. This approach overlaps with the argument that the promise is binding on justice or truth. An *eahid* is legally binding only if it is bound by an *aqyt*-sourced obligation. In this respect, the *eahid* can be considered as *pactum* and the *aqyt* as *contractus*. Indeed, *pacta sunt servanda* is a concept that finds practice in the area of *eahid* and is translated in this way. Theoretically, an *eahid* can be broken *ex parte* since it gives rise to an *ex parte* obligation. As a matter of fact, the agreements and capitulations made in the Ottoman Empire up to the Treaty of *Karlowitz* (1699) were mainly in the form of *eahidnâme*. One of the main arguments of *Mahmut Esad Bozkurt*'s doctoral dissertation titled “*Du Regimes des Capitulations Ottomane*”, (Freiburg University, 1918) is the thesis that capitulations can be terminated unilaterally because they are *ex parte* commitments. See YÖRÜK Ali Adem, “Kapitülasyonların Kaldırılması Sürecine Dair Bibliyografik Bir Deneme: 1909-1927 Yılları Arasında Yazılmış Kapitülasyon Kitapları”, **Türk Hukuk Tarihi Araştırmaları**, S. 5, 2008, ss. 97-130, ss. 127-128. In fact, the practice of capitulation is *Byzantine*, because it started with the *Byzantine*- Italian principalities. See TURAN Şerafettin, **Türkiye-İtalya İlişkileri 1**, Türk Tarih Kurumu, Ankara, 1990; THEUNISSEN Hans Peter Alexander, **Ottoman-Venetian Diplomacy; the ‘Ahd-names**, Utrecht, 1991. Exceptionally, the Franco-Ottoman capitulations in 1569 and the concessions given to the Russians in 1774 do not impose a unilateral obligation. See İNALCIK Halil, “İmtiyâzât” in **İslam Ansiklopedisi**, TDV, available at <https://islamansiklopedisi.org.tr/imtiyazat#2-osmanli-donemi> (Access: 22.03.2022).

<sup>83</sup> Babylonian laws to protect forests and Ancient Egyptian laws establishing nature preserves are the earliest normative indications of this responsibility, see TARLOCK A. Dan/ DERN-BACH John C. (eds), **Environmental Laws and Their Enforcement**, EOLSS UNESCO, Oxford, 2009, s. 268; ŞİMŞEK Galip Engin, **Uluslararası Hukukta Doğal Hayatın Korunması**, Beta, İstanbul, 2016, s. 10.

*sunt servanda* alone be the *Grundnorm* (basic norm) in international law.<sup>84</sup> This study, however, aims at establishing a logical *vinculum iuris* with the nature of the environmental soft law by putting forward the human responsibility for the future. These commitments are informal as “*pollicitatio*”s and can be recognized judicially. Although all parties (including future generations and the environment) are not represented physically, these commitments should be considered in pluralistic meaning, and the requirements of the commitments must be fulfilled as *Moser* stated.<sup>85</sup>

The globalized world, where the states are becoming more connected, faces great environmental, social, and economic problems at the same time. In this respect, the importance of international cooperation is inevitably increasing in every direction. The systematization of international cooperation requires international institutions. International institutions do not act with the mission of providing intergovernmental negotiations only. At the same time, they try to establish environments in which the international institutions can move more freely within the states. Proposals, notifications, codes of conduct, guidance, and action plans now have a special place to define concrete measures and best practices. Thus, the role of international institutions has also begun to change in this direction. The indefiniteness in the fields of application of the identified principles is politicizing the issue by bringing many debates on the subject.<sup>86</sup> On 10 May 2018, United Nations General Assembly has adopted the resolution entitled “Towards a Global Pact for the Environment”. The resolution reaffirmed the Charter of the United Nations and the *acquis* of sustainable development. The resolution also called for the establishment of an Ad-Hoc Open-ended Working Group.<sup>87</sup> This Group has been working on the Global Pact for Environment initiative. Such an ambition to develop a global pact for the environment is not new. However, this one can be counted as an effort from the global governance perspective.<sup>88</sup> The Group concluded the Preliminary

---

<sup>84</sup> RIGAUX François, “Hans Kelsen on International Law”, **The European Journal of International Law**, S. 9, 1998, ss. 325-343, s. 328.

<sup>85</sup> See supra footnote 64.

<sup>86</sup> FRIEDRICH Jurgen, **International Environmental “Soft Law”**, Springer-Verlag, Berlin, 2016, ss. 1-8.

<sup>87</sup> UNGA “Towards a Global Pact for the Environment” UN Doc A/RES/72/277 10 May 2018, ¶ 2.

<sup>88</sup> AGUILA Yann/ VIÑUALES Jorge, “A Global Pact for the Environment: Conceptual Foundations”, **Review of European, Comparative International Environmental Law**, S. 28(1), 2019, ss. 3-12, s. 2.

Draft of the Global Pact for Environment. The Pact consists of the Preamble and 26 articles. Although the human-centric thoughts (e.g., sustainable development and intergenerational equity) dominate the fundament of the content, the initiative represents the positive *acquis* towards the environment. According to *Aguila and Viñuales*,

“The term ‘Pact’ unequivocally [?] refers to a binding treaty. It was selected, among several other terms falling under the genus treaty (e.g., covenant, convention, agreement, treaty, protocol), both for its similarity in at least three UN languages (Pact, Pacte, Pacto) and in order to convey the generality of the instrument envisioned, which is to be a ‘Pact’ adopted by States but emphasizing the role of much wider body of stakeholders.”<sup>89</sup>

In order to make terminological inferences, it is necessary to have a command of the historical *acquis*. The term *pact* was used in Roman law for informal commitments outside the *ius civile* system. It has gained its binding ground not in a normative way, but in a judicial sense over time. The international law principle of *pacta sunt servanda* has been contradictorily used only for formal contracts, unlike Roman law. On the other hand, the term *pact* has not had well-established use in international law. Therefore, the term *pact* indicates a normatively binding ground neither in international law nor in Roman law. This study proposes an approach that will remove soft law commitments from the position of wishful thinking on the basis of the practice of judicial recognition of informal pacts in Roman law. Otherwise, soft law in today’s context could be fully integrated with the gray structure of international law considering the implementation has critical effects on the dominant discourse and the compliance.<sup>90</sup> However, international law seeks not only cooperation between nations but also includes violations and their consequences. Environmental soft law has a distinct nature because of its multidimensional relevance. It is not unreasonable to regard this concept as a *pollicitatio*. Although the Parties of these documents negotiate and sign them, it is naturally difficult for them to fulfill the requirements in the same circle. The fact that the signatories can unite against the short-term costs of their long-term

<sup>89</sup> AGUILA, VIÑUALES, s. 7.

<sup>90</sup> Regarding that international law may become fully relative because the interpretations can significantly be different, see SHELTON Dinah, “International Law and Relative Normativity”, in EVANS Malcolm D. (ed.), **International Law**, Oxford University Press, Oxford, 2014, ss. 137-165, s. 137.

commitments reveals that many sides have a character of one Party. In fact, the promisee Party consists of future generations and other living beings, which means environmental soft law commitment is a promise or *pollicitatio* to them. Considering that *Lessius* and *Molina* define *pactum* as agreement, and *pollicitatio* as unilateral consent, the judicially binding way is still evident even if the environmental soft law commitments are accepted as *pactum*- agreement. Because the main point here is the informal character of *pactum* and *pollicitatio*. The basic dilemma here is that *Molina* emphasizes a definite intention for the binding ground. Contrary to *Molina*, *Lessius* and partly *Grotius* and *Pufendorf* have tried to justify that the phenomena that make a promise binding are not the intention. As a compromise, *Simpson* proposes that judges may consider informal commitments if they have a reason or motive.<sup>91</sup> Soft law documents do not consist of definite intention, whereas they are definite promises. *Simpson*'s approach and the *Praetor*'s practices in Roman law lay the judicially binding ground of soft law documents, taking into account that sustainability of the environment is a good reason for consideration. Besides, the urgent necessities of future environmental challenges are obvious.<sup>92</sup>

---

<sup>91</sup> ATIYAH, ss. 139-140.

<sup>92</sup> Figure 1: Separating Human and Natural Influences on Climate (Fair Use), retrieved from <https://www.globalchange.gov/browse/multimedia/%EF%BF%BCseparating-human-and-natural-influences-climate#:~:text=The%20green%20band%20shows%20how,human%20and%20natural%20factors%20combined> (Access: 23.03.2022). See also HANSEN James E, **Storms of My Grandchildren: The Truth About the Coming Climate Catastrophe and Our Last Chance to Save Humanity**, Bloomsbury USA, New York, 2011. “Warnings that Earth’s stratospheric ozone layer could be at risk from chlorofluorocarbons (CFCs) and other anthropogenic substances were first issued by scientists in the early 1970s. Soon thereafter (in 1985), large losses of stratospheric ozone were reported over Antarctica with smaller but more widespread erosion of stratospheric ozone found over much of the rest of the planet. Subsequent studies clearly linked these ozone losses to the emissions of CFCs and other ozone-depleting substances and, at least over Antarctica, unique atmospheric conditions during winter that lead to ozone depletion... Although carbon dioxide, methane and nitrous oxide are the dominant greenhouse gases emitted by human activity, most of the ozone-depleting substances controlled by the Montreal Protocol (CFCs and others) are also potent greenhouse gases that contribute to global warming.” See BARNES Paul W. et al., “Ozone Depletion, Ultraviolet Radiation, Climate Change and Prospects for a Sustainable Future”, **Nature Sustainability**, 2019, ss. 569-579. Regarding climate change as a leading global risk, see the **Global Risks Report 2022, 17th Edition**, World Economic Forum, 2022, s. 14.

Figure 2: Links between stratospheric ozone depletion, UV radiation and climate change (Fair Use). “These links have consequences for the environment, food and water security, human well-being and the sustainability of ecosystems. Direct effects are shown as solid lines with feedback effects indicated by double arrows. Important effects driven by human action are shown as dashed lines. The climate change map indicates surface temperature anomalies for February 2017 compared with the base period of 1951-1980.” See NASA Institute for Space Studies. GISS Surface Temperature Analysis (GISTEMP) and HANSEN James et. al., “Global Surface Temperature

Scientists show that “*human activities and their effects on the climate and environment cause unprecedented animal and plant extinctions, cause loss in biodiversity<sup>93</sup> and endanger animal and plant life on Earth.*”<sup>94</sup> These observations naturally provide a reason to reconsider the judicial facilities towards the changing needs as *Praetors* did. Indeed, the *naturalis ratio* is an element of *ius gentium*.<sup>95</sup> In conclusion, this study reveals proof that the controversies of Roman law and the last scholastics properly maintain their actuality. Therefore, the idea that this controversy is exceeded or refuted is unfounded.

## CONCLUSION

No matter the law is based on natural law or positive theory, it becomes functional on logic. This logic provides an effective way of thinking in solving legal problems. This study strives on the more functional environmental soft law in the name of sustainability before environmental damage has yet occurred. Sustainability is both an environmental and a human issue considering that the planet has had its own cycle for millions of years.<sup>96</sup> Thereby sustainability is a human concern in the field of the natural sciences. Natural sciences, on the other hand, gained objectivity from the *Copernicus* and *Galileo* stages to the fact that man and our world are not the centers of the universe. Science today is built on refutable conjectures.<sup>97</sup> In this respect, sustainability cannot be ensured with purely human-centric and short-term

---

Change” **Rev. Geophys**, S. 48, 2010, ss. 1-29, RG4004. “*The image of stratospheric ozone shows total ozone over Antarctica for 6 September 2000, reproduced from <https://earthobservatory.nasa.gov/images/817/largest-ever-ozone-hole-over-antarctica> (accessed 14 May 2019).*”

<sup>93</sup> BARNOSKY Anthony D. et al., “Has the Earth’s Sixth Mass Extinction Already Arrived?”, **Nature**, S. 471, 2011, ss. 51-57; CRIST Eileen/ MORA Camilo/ ENGELMAN Robert, “The Interaction of Human Population, Food Production, and Biodiversity Protection”, **Science** s. 356, 2017, ss. 260-264; JOHNSON Christopher N. et al., “Biodiversity Losses and Conservation Responses in the Anthropocene”, **Science**, S. 356, 2017, ss. 270-275; PECL Gretta T. et al., “Biodiversity Redistribution under Climate Change: Impacts on Ecosystems and Human Well-being”, **Science**, S. 355, 2017, ss. 6332, retrieved from CAVICCHIOLI Ricardo et al., “Scientists’ Warning to Humanity: Microorganisms and Climate Change”, **Nature Reviews Microbiology**, S. 17, 2019, ss. 569-586.

<sup>94</sup> RIPPLE William J. et al., “World Scientists’ Warning to Humanity: A Second Notice”, **BioScience**, S. 67, 2017, ss. 1026-1028, retrieved from CAVICCHIOLI et al.

<sup>95</sup> IUSTINIANUS INSTITUTES, 1.2.1, We consider the *naturalis ratio* as the planetary perspective of natural sciences but not in an ideal law manner. In fact, human necessity and natural ratio still well reflect the syllogistic basis of international law.

<sup>96</sup> Figure 3: The past 542 million years of climate, (Fair Use) retrieved from: <http://ossfoundation.us/projects/environment/global-warming/natural-cycle> (Access: 24.03.2022).

<sup>97</sup> POPPER Karl R, **Conjectures and Refutations: The Growth of Scientific Knowledge**, Routledge, London, 2002, ss. 344-349.

pragmatic approaches.<sup>98</sup> Eventually, human and the environment are common components for a sustainable future. States are a synthetic delusion in comparison with these components. Because there is no ontological reason for states to prioritize environmental sustainability considering that they make decisions that mean nothing but waste the planet's resources, such as war. This study does not propose that states should "voluntarily" perceive the environmental soft law as binding normatively. Contrarily, it offers a nuisance-based solution under the guidance of Roman law considering that *pactum* has gained legal enforceability as *honoraire* in Rome. Thus, environmental law disputes would allow more contact with reality rather than a hypothetical norm understanding.<sup>99</sup> Normatively, it is essential to amend soft law commitments in accordance with the scientific method when the conjectures on which the commitments in environmental soft law documents are based are refuted. The alteration of soft law depending on scientific conjectures and refutations does not reveal a paradox in terms of binding ground. Because the scientific method is the basis for why environmental soft law commitments are binding and changing.<sup>100</sup> As a normative proposal, environmental soft law documents should be fully integrated into the scientific data and subjected to an urgent amendment procedure by the scientific methodology, if required. In other words, the "softness" that environmental soft law points must be due to its ability to easily<sup>101</sup> change according to testable scientific evidence, rather than a non-binding nature.

---

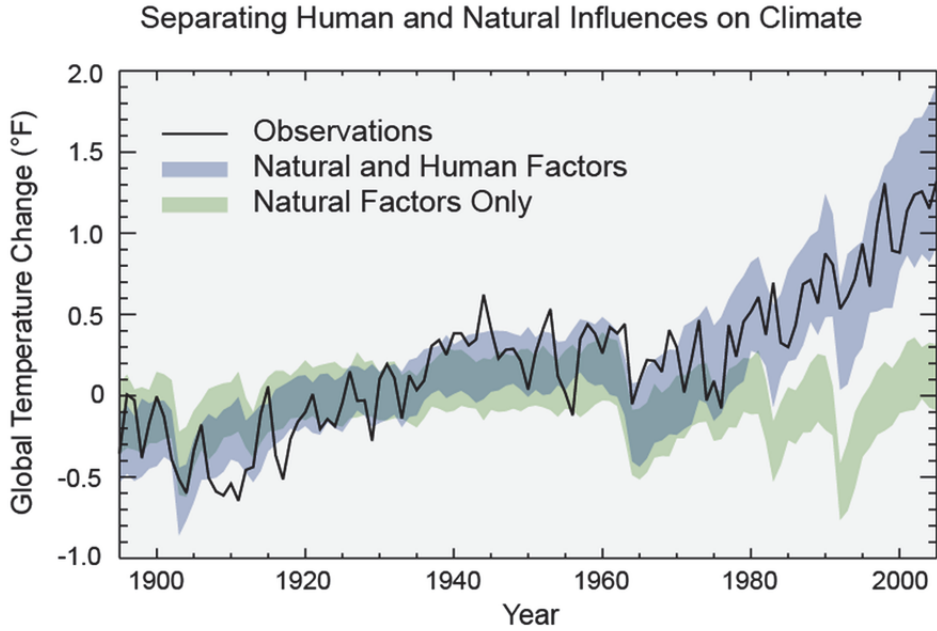
<sup>98</sup> Regarding the discussions towards the sustainable development idea, see SARİBEYOĞLU SKALAR Meltem, **Uluslararası Hukuk ve Sürdürülebilir Kalkınma**, Beta, İstanbul, 2015, ss. 87-96; see also NACAR Abdulkadir, **Sürdürülebilir Kalkınmaya Yönelik Kazanımlar ve Uluslararası Hukuki Uyuşmazlıklar**, Yayınlanmamış Yüksek Lisans Tezi, Marmara Üniversitesi Sosyal Bilimler Enstitüsü, İstanbul, 2018, ss. 45-58.

<sup>99</sup> Regarding the importance of judicial supremacy in legal realism, see GÜRKAN Ülker, **Hukuki Realizm Akımı**, Sevinç Matbaası, Ankara, 1967, ss. 35-38.

<sup>100</sup> In the Case of the *Gabčíkovo-Nagymaros* Project, Hungary's defense towards not imposing an "immutable norm" value on the Treaty of 16 September 1977 has led to the idea that the soft law could play an important role in the protection of the Danube, see NAKAMICHI Mari, "The International Court of Justice Decision Regarding the *Gabčíkovo-Nagymaros*", **Fordham Environmental Law Journal**, S. 9(2), 1998, ss. 337-372, ss. 364-366. Considering that the subsequent requirements of the international environmental law have also been discussed in the case, the above-mentioned environmental soft law concept which is judicially binding under the principle of *pacta sunt servanda*, and integrated into the scientific refutation, could have a critical function in protecting the Danube, see **Case Concerning the *Gabčíkovo-Nagymaros* Project (Hungary v. Slovakia)**, the judgment of 25 September 1997, ¶ 95-97.

<sup>101</sup> It refers to ease the amendment procedures when underlying scientific hypotheses are refuted. The issue of refutation is about scientific objectivity. In fact, it has been commonly recognized that contextual values such as the protection of the natural environment and biodiversity

The judicial application of our proposal towards the judicially binding ground of environmental soft law commitments is possible thereunder the article 38 § 1 (d) of the Statute of the International Court of Justice. Taking into account the fact that the *pactums* are binding by the *honorariae*, the international jurisdiction should decide whether a soft law refers to an obligation in favor of future generations and other livings, in other words, whether it is *pacta vestita*. The binding ground of the environmental soft law commitments -whether they are called *pollicitatio* or *pactum*- is a requirement of justice, but not of the truth. Because there are other livings and future generations on the other scale of justice. Humanity has made enough progress to make this judgment.

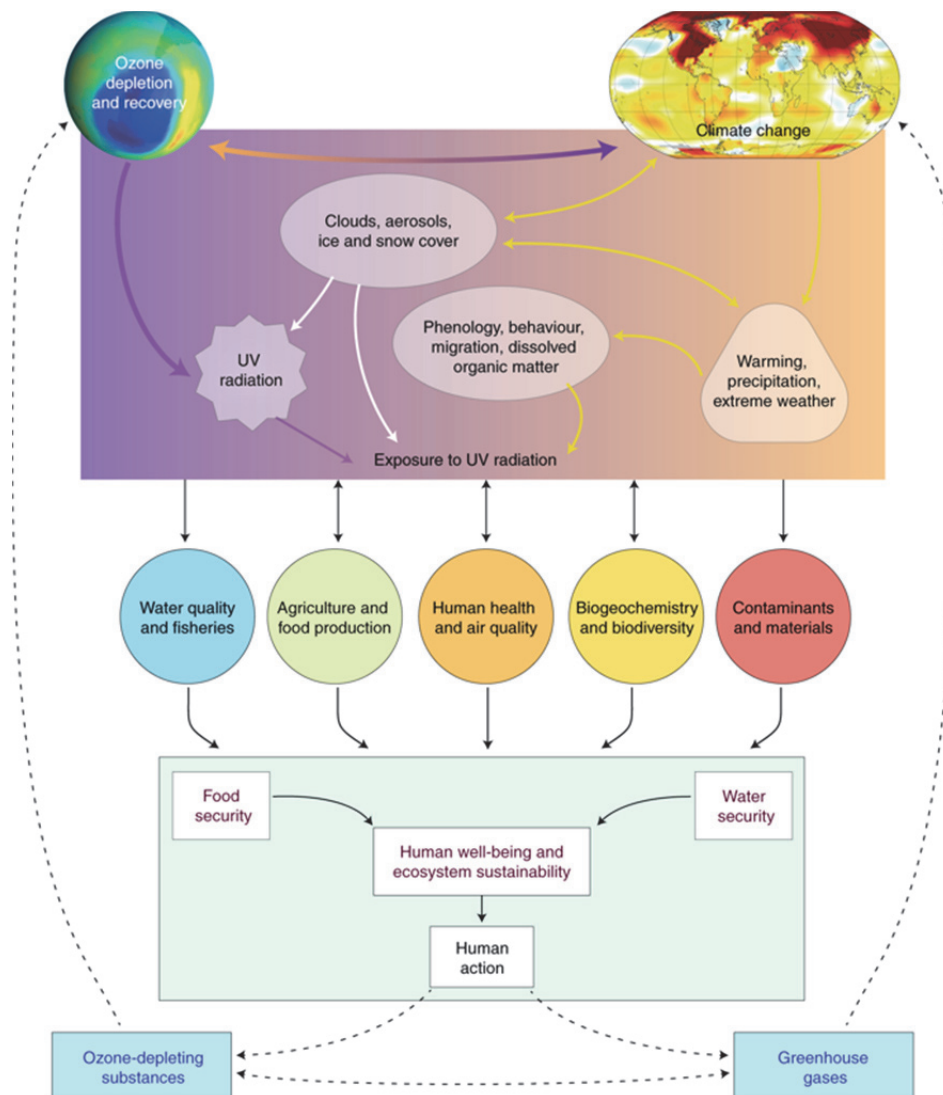


**Figure 1:** *Separating Human and Natural Influences on Climate (Fair Use)*  
retrieved from

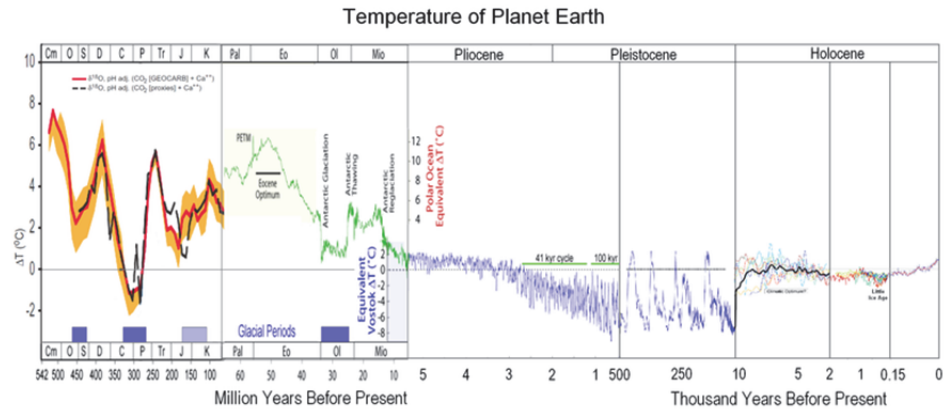
<https://www.globalchange.gov/browse/multimedia/%EF%BF%BCseparating-human-and-natural-influences-climate#:~:text=The%20green%20band%20shows%20how,human%20and%20natural%20factors%20combined>  
(Access: 23.03.2022).

---

threaten the objectivity and authority of science. However, as stated above, sustainability contains a subjectivity due to the human component. Detailed discussions of scientific objectivity available at <https://evrimagaci.org/bilimsel-nesnellik-bilimsel-objektiflik-nedir-8099> (Access: 25.03.2022).



**Figure 2:** Links between stratospheric ozone depletion, UV radiation and climate change (Fair Use) “reproduced from <https://earthobservatory.nasa.gov/images/817/largest-ever-ozone-hole-over-antarctica> (accessed 14 May 2019)”.



**Figure 3:** The past 542 million years of climate, (Fair Use) retrieved from: <http://ossfoundation.us/projects/environment/global-warming/natural-cycle> (Access: 24.03.2022).

**REFERENCES****Printed Materials**

- AGUILA Yann/ VIÑUALES Jorge, “A Global Pact for the Environment: Conceptual Foundations”, **Review of European, Comparative International Environmental Law**, S. 28(1), 2019, ss. 3-12.
- ARISTOTLE, **Nicomachean Ethics**, Hackett Publishing, Indianapolis, 1999.
- ARSLAN Ahmet, **İlkçağ Felsefe Tarihi**, İstanbul Bilgi Üniversitesi Yayınları, İstanbul, 2008.
- ATIYAH Patrick S, **The Rise and Fall of Freedom of Contract**, Clarendon Press, Oxford, 2003.
- BARNES Paul W. et al., “Ozone Depletion, Ultraviolet Radiation, Climate Change and Prospects for a Sustainable Future”, **Nature Sustainability**, 2019, ss. 569-579.
- BARNOSKY Anthony D. et al., “Has the Earth’s Sixth Mass Extinction Already Arrived?”, **Nature**, S. 471, 2011, ss. 51-57.
- BARTON John L., “Equity in the Medieval Common Law” in CASSIN René/ NEWMAN Ralph A, **Equity in the World’s Legal Systems: A Comparative Study**, Établissements Émile Bruylant, Brussels, 1973, ss. 149-151.
- BERGANDE Wolfram, “The Creative Destruction of the Total Work of Art: From Hegel to Wagner and beyond” in RUHL Carsten/ HOEKSTRA Rixt/ DÄHNE Chris (eds.) **The Death and Life of the Total Work of Art**, Jovis, Berlin, 2014, ss. 128-145.
- BİLSEL Cemil, “Devletler Hukuku mu Devletlerarası Hak mı?”, **Journal of Istanbul University Law Faculty**, S. 6, 2011, ss. 631-644.
- BODIN Jean, **On Sovereignty: Four Chapters from the Six Books of the Commonwealth**, CreateSpace Independent Publishing, Lexington, 2004.
- Case Concerning the Gabčíkovo-Nagymaros Project** (*Hungary v. Slovakia*), the judgment of 25 September 1997.
- CAVICCHIOLI Ricardo et al., “Scientists’ Warning to Humanity: Microorganisms and Climate Change”, **Nature Reviews Microbiology**, S. 17, 2019, ss. 569-586.
- CHINKIN Christine, “Normative Development in the International Legal System” in SHELTON Dinah (ed.), **Commitment and Compliance: The Role of Non-binding Norms in the International Legal System**, Oxford University Press, Oxford, 2010, ss. 21-42.
- CRIST Eileen/ MORA Camilo/ ENGELMAN Robert, “The Interaction of Human Population, Food Production, and Biodiversity Protection”, **Science**, S. 356, 2017, ss. 260-264.

- D'AMATO Anthony, "International Law from a Machiavellian Perspective", **Northwestern University School of Law, Public Law and Legal Theory Research Paper Series**, S. 10-61, 2010, ss. 1-12.
- EKİNCİ Ekrem Buğra, **İslam Hukuku**, Arı Sanat, İstanbul, 2018.
- ERKİNER Hakkı Hakan, **Devletin Haksız Fiilden Kaynaklanan Uluslararası Sorumluluğu**, XII Levha, İstanbul, 2010.
- ERKİNER Hakkı Hakan, "Grotius Öncesinde İlk Modern Uluslararası Hukuk Düşüncesinin Oluştığı Tarihsel Koşullar ve Erken Klâsik Dönemdeki Öğreti", **Marmara Hukuk Araştırmaları Dergisi**, 18(1), 2012, ss. 51-146.
- ERKİNER Hakkı Hakan, "Uluslararası Hukuk Düşüncesinde Klâsik Öğretinin Kuruluşu: Hugo Grotius ve Postgrotien Yazarlar Samuel von Pufendorf, Richard Zouche, Cornelius van Bynkershoek ve Samuel Rachel'e İlişkin İnceleme ve Değerlendirme", **Marmara Üniversitesi Hukuk Fakültesi Hukuk Araştırmaları Dergisi**, S. 18(3), 2012, ss. 3-142.
- FIFOOT Cecil Herbert Stuart, **History and Sources of the Common Law: Tort and Contract**, Stevens, London, 1949.
- FRIEDRICH Jürgen, **International Environmental "Soft Law"**, Springer-Verlag, Berlin, 2016.
- GAURIER Dominique, **Histoire du Droit International**, Presses Universitaires de Rennes, Rennes, 2005.
- GORDLEY James, **The Philosophical Origins of Modern Contract Doctrine**, Clarendon Press, Oxford, 2011.
- GÜRKAN Ülker, **Hukuki Realizm Akımı**, Sevinç Matbaası, Ankara, 1967.
- HANSEN James et. al., "Global Surface Temperature Change" **Rev. Geophys.**, S. 48, 2010, ss. 1-29.
- HANSEN James E, **Storms of My Grandchildren: The Truth About the Coming Climate Catastrophe and Our Last Chance to Save Humanity**, Bloomsbury USA, New York, 2011.
- HOLMES Jr. Oliver Wendell, **The Common Law**, Little Brown, Abingdon, 1881.
- IBBETSON David, "Obligatio in Roman Law and Society", in PLESSIS Paul J./ ANDO Clifford/ TUORI Kaius (eds.), **The Oxford Handbook of Roman Law and Society**, Oxford University Press, Oxford, 2016, ss. 43.1-43.8.
- JEFFERY Renée, **Hugo Grotius in International Thought**, Palgrave Macmillan, New York, 2015.
- JOHNSON Christopher N. et al., "Biodiversity Losses and Conservation Responses in the Anthropocene", **Science**, S. 356, 2017, ss. 270-275.

- KIRALFY Albert Kenneth Roland, **A Source Book of English Law**, Sweet& Maxwell, London, 1957.
- KLABBERS Jan, **The Concept of Treaty in International Law**, Nijhoff Publication, The Hague, 2006.
- KUNZ Josef L., “The Meaning and the Range of the Norm Pacta Sunt Servanda”, **The American Journal of International Law**, S. 39(2), 1945, ss. 180-197.
- LANGBEIN John H et al., **History of the Common Law: The Development of Anglo-American Legal Institutions**, Aspen Publishers, 2009.
- LAUTERPACHT Hersch, “Spinoza and International Law”, **British Yearbook of International Law**, S. VIII, 1927, ss. 89-107.
- LUKASHUK Igor I, “The Principle Pacta Sunt Servanda and the Nature of Obligation under International Law”, **The American Journal of International Law**, S. 83(3), 1989, ss. 513-518.
- MACHIAVELLI Niccolo, **The Prince**, CreateSpace Independent Publishing, Lexington, 2014.
- MASSARA Tomasso dalla, “New Europe-Old Values? Reform and Perseverance. Can Roman Legal Tradition Play a Role of Identity Factor Towards a New Europe?”, in BODIROGA-VUKOBRAT Nada/ RODIN Siniša/ SANDER Gerald (eds.), **New Europe - Old Values? Europeanization and Globalization**, Springer, 2016, ss. 1-14.
- METZGER Franz “The Last Phase of the Medieval Chancery” in HARDING Alan, **Law-Making and Makers in British History**, Royal Historical Society, London, 1980, ss. 79-89.
- MORAG-LEVINE Noga, “The History of Precaution”, **The American Journal of Comparative Law**, S. 62(4), 2014.
- NACAR Abdulkadir, **Sürdürülebilir Kalkınmaya Yönelik Kazanımlar ve Uluslararası Hukuki Uyuşmazlıklar**, Yayınlanmamış Yüksek Lisans Tezi, Marmara Üniversitesi Sosyal Bilimler Enstitüsü, İstanbul, 2018.
- NACAR Abdulkadir, “İnsanlığa Karşı Suçlarda Sosyal Kimlik Motivasyonu Üzerine Mantıksal Bir Yaklaşım”, **PPIL**, S. 41(1), 2021, ss. 329-383.
- NAKAMICHI Mari, “The International Court of Justice Decision Regarding the Gabčíkovo-Nagymaros”, **Fordham Environmental Law Journal**, S. 9(2), 1998, ss. 337-372.
- NUSSBAUM Arthur, “The Significance of Roman Law in the History of International Law”, **University of Pennsylvania Law Review**, S. 100(5), 1952, ss. 678-687.

- PECL Gretta T. et al., “Biodiversity Redistribution under Climate Change: Impacts on Ecosystems and Human Well-being”, **Science**, S. 355, 2017, ss. 6332.
- ROSATO Sebastian, **Intentions in Great Power Politics: Uncertainty and the Roots of Conflict**, Yale University Press, New Haven, London, 2021.
- PETERSMANN Ernst-Ulrich, “International Governmental Trade Organizations GATT and UNCTAD” in PETERSMANN Ernst-Ulrich/ TOMUSCHAT Christian/ BLECKMANN Albert, **International Encyclopedia of Comparative Law, Volume XVII State and Economy**, Chapter 25 Universal Economic Organizations, 1981.
- PLUCKNETT Theodore FT, **A Concise History of the Common Law**, Little Brown Co., London, 1952.
- POPPER Karl R, **Conjectures and Refutations: The Growth of Scientific Knowledge**, Routledge, London, 2002.
- PREUS Anthony, **Historical Dictionary of Ancient Greek Philosophy**, Rowman & Littlefield Publishers, Maryland, 2015.
- RIGAUX François, “Hans Kelsen on International Law”, **The European Journal of International Law**, S. 9, 1998, ss. 325-343.
- RIPPLE William J. et al., “World Scientists’ Warning to Humanity: A Second Notice”, **BioScience**, S. 67, 2017.
- SARIBEYOĞLU SKALAR Meltem, **Uluslararası Hukuk ve Sürdürülebilir Kalkınma**, Beta, İstanbul, 2015.
- SATOW Sir Ernest, “Pacta Sunt Servanda or International Guarantee”, **Cambridge Historical Journal**, S. 1(3), 1925, ss. 295-318.
- SCATTOLA Merio, “Scientia Iuris and Ius Naturae: The Jurisprudence of the Holy Roman Empire in the Seventeenth and Eighteenth Centuries” in E. PATTARO Enrico et al. (eds.), **A Treatise of Legal Philosophy and General Jurisprudence Vol. 10: The Philosophers’ Philosophy of Law from the Seventeenth Century to Our Days**, Springer-Verlag New York Inc., New York, 2009, ss. 346-358.
- SCHÖMBERG René von, “The Precautionary Principle: Its Use within Hard and Soft Law”, **European Journal of Risk Regulation**, S. 3(2), 2012, ss. 147-157.
- SHARP Malcolm P, “Pacta Sunt Servanda”, **Columbia Law Review**, S. 41(5), 1941, ss. 783-798.
- SHELTON Dinah (ed.), **Commitment and Compliance: The Role of Non-binding Norms in the International Legal System**, Oxford University Press, Oxford, 2010.

- SHELTON Dinah, "International Law and Relative Normativity", in EVANS Malcolm D. (ed.), **International Law**, Oxford University Press, Oxford, 2014, ss. 137-165.
- Simpson A.W. Brian, **A History of the Common Law of Contract: The Rise of the Action of Assumpsit**, Clarendon Press, Oxford, 1975.
- SPENGLER Oswald, **The Decline of the West**, Vintage; Abridged Edition, New York, 1928.
- STEINBERG Richard H, "Overview: Realism in International Law", **Proceedings of the ASIL Annual Meeting**, S. 96, 2002, ss. 260-262.
- ŞENGÖR Ali Mehmet Celâl, **Sosyal Bilimlerde Yöntem ve Bilimin Tarihsel Gelişimi**, İstanbul, 2010.
- ŞİMŞEK Galip Engin, **Uluslararası Hukukta Doğal Hayatın Korunması**, Beta, İstanbul, 2016.
- TARLOCK A. Dan, DERNBACH John C. (eds), **Environmental Laws and Their Enforcement**, EOLSS UNESCO, Oxford, 2009.
- The Global Risks Report 2022, 17th Edition**, World Economic Forum, 2022.
- The Holy Bible: King James Version**, Brown Books Publishing, Dallas, 2004.
- THEUNISSEN Hans Peter Alexander, **Ottoman-Venetian Diplomats; the 'Ah-dnames**, Utrecht, 1991.
- THOMAS AQUINAS, **Summa Theologica**, Benziger Bros., (Trans. Fathers of the English Dominican Province), New York, 1947.
- TURAN Şerafettin, **Türkiye-İtalya İlişkileri 1**, Türk Tarih Kurumu, Ankara, 1990.
- TÜTÜNCÜ Ayşe Nur et al., **Toluner Milletlerarası Hukuk (Giriş, Kaynaklar)**, Beta, İstanbul, 2019.
- UNGA Res. 2625 (XXV) 24 October 1970.
- UNGA "Report of the Study Group of the International Law Commission Finalized by M. Koskenniemi, Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law" UN. Doc. A/CN.4/I.682, 13 April 2006.
- UNGA "Towards a Global Pact for the Environment" UN Doc A/RES/72/277 10 May 2018.
- WEHBERG Hans, "Pacta Sunt Servanda", **The American Journal of International Law**, S. 53(4), 1959, ss. 775-786.
- WHEATON Henry, **Elements of International Law**, Oxford University Press, Oxford, 1936.

YÖRÜK Ali Adem, “Kapitülasyonların Kaldırılması Sürecine Dair Bibliyografik Bir Deneme: 1909-1927 Yılları Arasında Yazılmış Kapitülasyon Kitaplar”, **Türk Hukuk Tarihi Araştırmaları**, S. 5, 2008, ss. 97-130.

ZELYÜT Solmaz, **İki Adalet Arasında**, Vadi Yayınları, İstanbul, 1997.

ZIMMERMANN Reinhard, **The Law of Obligations: Roman Foundations of the Civilian Tradition**, Oxford University Press, Oxford, 2007.

73 DEP'T ST. BULL. 323, 01 August 1975.

#### Online Resources

GRATIAN, **Decretum Gratiani**, available at <https://geschichte.digitale-sammlungen.de/decretum-gratiani/online/angebot> (Access: 26.03.2022).

<https://evrimagaci.org/bilimsel-nesnellik-bilimsel-objektiflik-nedir-8099> (Access: 25.03.2022).

<https://www.parliament.nz/en/get-involved/features/innovative-bill-protects-whanganui-river-with-legal-personhood/> (Access: 17.03.2022).

<http://thelatinlibrary.com/law/> (Access: 27.03.2022).

<http://ossfoundation.us/projects/environment/global-warming/natural-cycle> (Access: 24.03.2022).

<https://www.globalchange.gov/browse/multimedia/%EF%BF%BCseparating-human-and-natural-influences-climate#:~:text=The%20green%20band%20shows%20how,human%20and%20natural%20factors%20combined> (Access: 23.03.2022).

İNALCIK Halil, “İmtiyâzât” in **İslam Ansiklopedisi**, TDV, available at <https://islamansiklopedisi.org.tr/imtiyazat#2-osmanli-donemi> (Access: 22.03.2022).

PLATON, **Republic Book V**, Penguin, 1974, available at <http://classics.mit.edu/Plato/republic.6.v.html> (Access: 21.03.2022).

The Holy Quran, available at <https://kuran.diyenet.gov.tr/mushaf> (Access: 26.03.2022).