

PRINCIPLE OF RECIPROCITY

In relation to the subject at hand, which at this moment is the principle of reciprocity in general, we must begin by recognizing that the principle of Reciprocity is an universally accepted principle in international relations between States.

So much so, that it becomes one of the fundamental principles of international law, both public and private, and implies, in the absence of applicable normative rules or as a consequence of the provisions of the rule applicable to a matter, the adoption by States of a certain conduct similar or proportionate to that adopted by the other States.

Based on a general concept of the Principle of Reciprocity, this principle implies that States assume rights and obligations on the basis of reciprocal treatment but without forgetting that this is not just a matter of mere formal recognition, but that we are faced with a principle that will require that, following a formal recognition, States act in such a way that they expressly recognise the rights of other States.

In a technical-legal point of view, and specifically, for Private International Law, reciprocity assumes that the application of the domestic law of a country to a natural or legal alien, namely who is not a national of that State, depends on the treatment given in that State to the national persons from that country.

In the framework of public international law, to which States are subject, reciprocity essentially refers to the notion of "application by the other party". In this case we are dealing with what has been called diplomatic reciprocity, which is different from the previous one, known as legislative reciprocity.

This principle of *Comitas Gentium*, or what is the same as "*international courtesy*" or "*reciprocal utility*", was born as a consequence of the restrictions that the recognition of territoriality imposed at that time on the growing international traffic. From this moment on, reciprocity becomes a maxim of the law that States assume in their international relations, in symmetrical response to the conduct of the other State. However, we cannot forget that reciprocity does not imply the requirement of absolute equivalence between the acts performed by the parties to each other; on the contrary, it aims at implementing mutual trust between States and should also serve as an incentive for States to comply with international standards and with the long-term obligations agreed between them.

This reciprocal treatment may or may not have a conventional origin, although there is an increasing tendency to incorporate it in certain types of international treaties, such as, for example, those referring to the procedure of extradition in the criminal field; or those that recognize judicial decisions issued by the courts of another State.

When there is no treaty obligation to follow a certain conduct of a State towards another State, this principle becomes even more important in the field of international cooperation.

Reciprocity in international law applies in many different areas, but it is not always the most suitable principle, for instance, reciprocity is an obstacle referred to human rights, being incompatible with the protection of these rights. On the contrary, there is no doubt that reciprocity in international relations has been considered the basis for such mutual recognition of judicial decisions between States.

However, at the present moment, it seems that the trend is to abolish the principle of reciprocity in the recognition of judicial decisions, as is the case in the Spanish legal system where, reciprocity principle becomes secondary. With this change in the accessory application of the principle of reciprocity, the States try

to prevent citizens from suffering the negative effects of the lack of reciprocity between the States.

In conclusion, we can say that reciprocity is nothing other than the application of two principles: the principle of security and the principle of sovereignty. Moreover, as PLANTEY affirms "*such reciprocity is neither mathematical, nor legal, nor moral, but political.*"

Finally, it should be noted that the principle of reciprocity is a prevalent principle in international law in States with a civil law tradition and that it has the effect of a binding covenant. However, in common law countries, reciprocity is not considered as an obligatory principle.