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THE THEORETICAL AND METHODOLOGICAL TRANSFORMATIONAL PROCESS OF MODERN INTERNATIONAL LAW DEVELOPMENT

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At the present stage of its development, international law is undergoing serious changes caused by the processes of globalization, the transformation of value and scientific paradigms [7, s. 151–156]. But the phenomenon of international law is that, despite its respectable age, international law is a «living» evolving legal system. One of the tendencies of modern international law is an increasingly convincing view of it not as a static, once defined by the legislator set of rules, but as a flexible system of legal regulation that can effectively change, adapt to the requirements of its subjects. In this dynamism of modern international law, its main function must remain an inviolable constant – respect for all subjects of international law to human rights, freedoms and dignity, which consists in the legal protection of human rights and freedoms at the international and national levels [2, s. 113].

Defining the nature and essence of modern international law, the French prof. F. Attar quite rightly stated that such a definition as «rights of states» is currently not self-sufficient, and therefore gradually goes out of scientific circulation. Conversely, a revived designation such as the «law of nations» used by jurists at the beginning of the last century is now seen as a definition that reflects the true meaning of the concept of «international law.» In other words, the etymology of this phrase is reflected in the linguistic construct «international law» – the law that operates «between nations». In the conceptual sense, the concept of *jus gentium*, as convincingly noted in this

regard at the beginning XX century prof. George M. Bourquin, manifests itself as the right of human society [6, p. 18]. For this reason, it is quite logical to define international law not through the term jus gentium, but through the concept of jus inter gentium [10, p. 56–63; 1, s. 187–194].

The well-known authority of the science of international law, Professor Yale University M. S. McDougall in the context of his conceptual position in favor of the formation of international law with a focus on human dignity in a free world community advocated a «politically oriented» approach to international law analysis [9, p. 137–142]. Modern international law aims to promote the construction of international law on the basis of the rule of law [5, p. 239]. In the parameters of the goals declared by the UN, the protection and protection of human rights at the universal level are already marked as postulates of proper behavior of the member states of the world community. And under these conditions, the creation of a qualitatively new in nature, politically oriented to the formation of the right to human dignity of international law, has become an urgent need.

Until recently, the provision that international law is an exclusively fundamentally positive law, ie a law that is effectively exercised by states and provided in the mode of existing international judicial and arbitration institutions, was considered well-established. Positivism in the doctrine of international law is manifested in the fact that it denies the very idea of the emergence of international law before the emergence of the state and appeals to the thesis that international law is nothing more than a set of principles and norms governing relations between states, thus removing from research history of international law is a valuable layer of the era of human development until its organization into a state institution. In other words, it is possible to state a certain incoherence of positivism (with all its advantages and disadvantages) to ensure a holistic and objective understanding of complex processes and phenomena that arise in the international legal reality. At the same time, different perspectives on the study of modern international law give rise to a wide range of its characteristics, which, it should be emphasized, are not so much competing as complementing each other.

Today, it is an indisputable fact that modern international law, as it appears in its real capacity as the law of the world community, does not fit into the conceptually illustrative «right of coordination» preached by such authoritative positivist scholars as Triepel, Antsilotti, Cavaglieri, Ellinek, Kaufmann, Hold-Femeck, and now has supporters. And Professor G. Lauterpacht was absolutely right in his reasoned critique of the «right to coordinate» when he said that in one case – (Tripel, Ancilotti, Cavagier) the theory of «the right to coordinate» leads to a «dead end of positivism», and in another – (Ellinek, Kaufman, Hold-Fernek) – to the denial of international law [8, p. 209–213].

Therefore, it is becoming increasingly clear that positivism, despite its achievements in history, no longer sufficiently meets the norms of modern international law. This view has been convincingly developed in the position that «the objective social reality and the current state of development of international law indicate that the source of legally binding force of international law is the agreement, the will of states and the general agreement of the international community with the basic imperative principle of international law, which is confirmed in international practice, including judicial.

Today there is a shift of the exclusively positivist concept of the nature of international law (voluntarism) towards a positive-objective concept, which indicates the regularity of its development. After all, it cannot be categorically denied that international law is of a mixed nature. On the one hand, the matter of international law mainly consists of elements of positive law in origin, and on the other – an integral part of international law are also categories of natural law theory. Therefore, as scholars note, the further development of international law will be carried out under the influence of active interaction of elements of positivism [4, s. 71–77].

But the core of the new research dimension is that at the present stage of development of international law and international law it becomes rational and promising not to find what divides the international legal order, such as contrasting the traditions of different legal systems, but rather to find a «common denominator «– those values that in the XXI century will serve the benefit of the international community. This conceptual emphasis demonstrates how convincingly Prof. Repetsky that the need for international law exists not for confrontation, but for cooperation, for the development of the most favorable conditions in the international arena and for the development of mankind in general. This is where the purpose and social value of modern international law manifests itself [3, s. 169–174].

Such a theoretical and methodological transformational phase of the development of modern international law is extremely necessary today, as it appears as a kind of «road map» that can provide meaningful actualization of the subject of study, and at the same time avoids ambiguous but quite common conflicts in legal sciences. the same phenomenon is given different semantic features, or different legal nature and essence of legal phenomena are denoted by the same semantic markers. This is also due to the fact that today, the accents in understanding the logic of cognition are changing dramatically: the previous logic of deductive synthesis and deductive following of accepted axioms and postulates is replaced by the logic of argumentation.

In this case, it is not a matter of overemphasizing priorities, but of revising the very hierarchy of contemporary values of international law. Modern

international law, created on the basis of the will of states in a mode of reciprocity, is no longer just a horizontally valid right of coordination, but an institutionally arranged law of the world community. In this sense, modern international law has in its positive legally regulated system of coercive measures, in particular the UN Security Council. The UN Charter, acting in an objective manner in relation to all countries of the world, objectively builds a new position of vertical-horizontal influence of law. Due to its creation, modern international law, as it identifies itself in the parameters of the law of the world community, establishes its binding force even in relation to states that have not yet directly agreed to it. In the objective understanding of its essence as the law of the world community, international law is represented in the legal system in accordance with the generally accepted conceptual understanding of law.

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