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POLITICAL AND MORAL ASPECTS OF GUARANTEEING THE PRINCIPLES OF INTERNATIONAL LAW

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POLITICAL AND MORAL ASPECTS OF GUARANTEEING THE PRINCIPLES OF INTERNATIONAL LAW

Svitlana ZADOROZHNA[1]

Abstract

International legal practice once again proves a leading role in regulating international relations, it is a political and moral component. In analyzing the basic principles of international law from the point of view of the mechanism for their implementation, one should proceed from the degree of absolute social and moral value to both the state separately, and for the entire international community as a whole. The subjects of the international community must realize their rights and responsibilities only within the limits that do not affect international peace and security, the basic principles of humanity and cooperation of states in vital areas of global coexistence. Modern positivists believe that the state assumes international legal obligations on its own accord (will), but then these obligations remain valid regardless of the consent of the state, due to the principle of good faith. The above-mentioned thoughts indicate rather that states are inclined to comply with international obligations that are in line with their public interests, while the general principles of international law are, first and foremost, a universally accepted interest of the global community. One of the elements of the moral and ethical mechanism for the implementation of the general principles of international law is international politeness. International courtesy (comitas gentium) - a set of rules of benevolence, correctness, restraint and mutual respect of participants in international communication, which are not legally binding. Only a holistic, coherent mechanism of legal, political and moral-ethical implementation of the implementation of the general principles of international law at the national, supranational and international levels can guarantee the realization of the goals and objectives of all humanity in the form of general principles of international law.

Keywords:

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the principles of international law, the moral aspect of guaranteeing the principles of international law, the political mechanism of guaranty of the principles of international law, international politeness, the comitas gentium, the good faith in international law.

Introduction

In a complex global system of international order, international law is not a completely independent normative system, but is in constant interaction with other social regulators of international relations. First of all, it concerns the close interaction of international law with political and moral mechanisms in guaranteeing the principles of international law on the basis of the doctrine of the primate of international law.

The Statute of the United Nations (hereinafter referred to as the United Nations Statute) was one of the first acts, which consolidated the main goals and principles of international law and gave them an imperative character. The consolidation in this document of the basic principles of international law - the norms of jus cogens - has attached great importance to the UN Statute, which is confirmed by the practice of resolving disputes in the constitutional jurisdictions of European states.

However, as convincingly proves O. Butkevich, the states «conclude many treaties, in which only their political intentions are fixed, and the laws of economic cooperation develop in their own way, not always coinciding with such agreements ... when political restrictions are removed and military tensions are reduced, the influence of economic interests that cannot be curbed is growing strong-willed decisions» [1: 42]. So, as we see international treaties today resemble more fixation of political intentions than voluntary commitments, therefore, only a political mechanism based on a positivist international treaty to ensure the implementation of international norms does not seem possible and requires an order to guarantee the principles of international law of other social systems.

Theoretical Background

The study of various aspects of ensuring the observance of international law, the place and significance of the political and moral aspects in international law has been paid much attention to domestic and foreign as international scholars and theoreticians alike. However, the issue of place, importance and interaction in the process of guaranteeing the principles of international law in the international legal order as a whole was

almost neglected. In particular, the question of international declarative acts was the subject of the study of L. Aleksidze [1], the problem of international courtesy was the subject of the study of H. Shack, other aspects of the problem under investigation - J. Goldsmith, E. Posner [2], M. Virally [3], D. Kozy [4], A. D'Amato [5] and Ukrainian theorists-internationalists, in particular, O. Butkevich [6], O. Merezhko [7].

Argument of the paper

Therefore, the purpose of this article is to analyze the interaction of various social systems in the process of ensuring the observance of universally accepted principles of international law and their role for international law and order in general.

Arguments to support the thesis

The basic principles of international law embodied in the Charter of the United Nations, received further recognition in a number of international treaties, covenants, conventions, including the UN General Assembly resolution 217 A (III) of 10 December 1948, the Universal Declaration of Human Rights; The 1966 International Covenant on Civil and Political Rights; The 1966 International Covenant on Economic, Social and Cultural Rights; The 1989 Convention on the Rights of the Child, international instruments concluded within the system of the specialized agencies of the United Nations, in particular the conventions of the International Labor Organization, etc.

According to L. Aleksidze, these international declarations «remain acts of the recommended nature» [1: 290], however, got its specification in several other declarations or political statements were declared official states (Declaration on the Granting of Independence to Colonial and dependent nations Declaration of legal principles governing the activities of States in the Exploration and Use of Outer Space, Resolution on recognition of the principles of the Nuremberg and Tokyo Tribunals). Such acts of a moral and political nature are of great importance for influencing the actual behavior of states that have to take into account the international situation and world public opinion.

Given the fact that most countries in the world are the Member States of the United Nations and the Declaration of 1970 on the principles of international law upon all States and calls to follow them in their international activities and develop their mutual relations on the basis of

strict compliance, guarantees the application of the general principles of international rights should be expressed by each individual state, and by the entire international community as a whole, since they consolidate the common interests of peaceful coexistence of all subjects of international legal relations.

Thus, the acts of international bodies and institutions, including a declaration of the General Assembly, although not the norm jus cogens, but are acts of a political mechanism for implementing the general principles of international law and holistic implementation mechanisms and the principles of international law occupy an equally important role.

A large number of political scientists [2, 8] who are trying to devalue international law, even speaking of international obligations, call their international principles, standards and rules as their lack of international obligations, and international law is called international politics. However, such calls, in our opinion, is not justified, but rather is evidence of social relevance and the need of legal regulation of international relations and in no way diminishes the political component in the mechanism of supply and security of the general principles of international law.

International legal practice once again proves a leading role in regulating international relations as a political component. In particular, due to the political position of one (Czech Republic) from 27 EU countries, the Lisbon Treaty on EU reform was blocked in 2007-2009, a similar situation occurs with the refusal of large and quite influential states of the world (USA, RF etc.) to accede to the Statute of the International Criminal Court, which was based exclusively on political considerations.

Only the combination of the legal, political and moral levels of international obligations can provide real guarantees and guarantees the implementation of the basic norms of international law. So M. Viralli aptly observes: «Only the general principles of international law and the most important international treaties cover all three levels of commitment» [3: 9].

In analyzing the basic principles of international law from the point of view of the mechanism for their implementation, one should proceed from the degree of absolute social and moral value to both the state separately, and for the entire international community as a whole. Practice shows that the principles deeply and comprehensively influence the legal consciousness, rather than simply norms. The subjects of the international community must realize their rights and responsibilities only within the limits that do not affect international peace and security, the basic principles of humanity and cooperation of states in vital areas of global coexistence.

In particular, as rightly stated by L. Aleksidze, «all of these morally-political fundamental rights and obligations, being the product of the progressive development of mankind, received today a legal form - they are enshrined in the basic principles of modern universal international law, designed to protect the foundations of each politically organized by the people and guarantee the strict observance of the obligations of States arising from this fact in relation to each other» [1: 318].

For his part, the American scientist L. Henkin explains the observance of international law through the concept of *international culture of compliance*, which is based on the «internal motivation» of states to comply with international law and external stimuli (external inducements) If *internal motivation* is based on moral considerations and respect for world opinion, then *external stimuli* are the «horizontal enforcement» of the offending state by other states [7: 27].

Modern positivists believe that the state assumes international legal obligations on its own accord (will), but then these obligations remain valid irrespective of the consent of the state by virtue of the principle of conscientiousness, which provides that «the basis of relations that are obliged "For the states, there is their will, which binds them» [4]. And vice versa, given the natural and legal nature of the fundamental principles of international law, their actions can and should be guaranteed not only by the positive fixation in the international treaty, but also by their moral and political significance, since they consolidate the interests of the entire international community.

An important aspect of this problem is the principle of good faith, which, as A. D'Amato rightly points out [5: 599-601], there are three important aspects of it in international law: first, states must comply in good faith with their international obligations stemming from international treaties. Such a concept is enshrined in the Vienna Convention on the Law of International Treaties in Art. 31 (1) and in art. 2 (2) of the Statute of the United Nations, which expressly provides that these commitments are to be performed in good faith. Secondly, the principle of bona fide is a prestigious place in international law in matters relating to the interpretation and implementation of treaties. According to Art 31 (1) of the said Convention, the treaty shall be construed in good faith in accordance with the usual understanding to be accorded to the terms of the contract in their context and in the light of its purpose and aims. And, thirdly, the additional notion of benevolence in the context of valid agreements refers to the obligations of the parties who signed the treaty before ratifying it. Art. 18 of the Vienna

Convention on the Law of Treaties does not explicitly refer to the principle of good faith, but provides that before ratification, the state is obliged to refrain from acts that would be deprived the contract of its object and purpose.

The political and moral aspects in ensuring the observance of the principles of international law play an important role in the implementation of unilateral acts by States. In particular, in the 1974 nuclear tests, the Court found that a number of French unilateral statements relating to France's intention to refrain from future atmospheric nuclear tests in the South Pacific region became legally binding to France [5: 601]. The conclusion on this subject was based solely on the principle of good faith, which is gaining new value in international law, as an additional guarantee of the provision of unilateral declarations of States. Consequently, the International Court of Justice extended the concept of bona fide to state statements, which in the past resulted in binding obligations. Such an expanded operation of the principle of good faith takes its origins in the concept of the natural law of international law. Subjects of international law should be able to rely on the statements of others, as well as seriously aware of their own declarations and the possible legal force to enforce them.

The above-mentioned thoughts indicate rather that states are inclined to comply with international obligations that are in line with their public interests, while the general principles of international law are, first and foremost, a universally accepted interest of the global community. However, as practice shows in recent decades, such principles are violated. Public interests are sometimes difficult to determine, since the state is a plurality of institutions and people, and state decisions, especially in the foreign policy arena, are taken by the political elite under the institutional influence of sometimes negative (for example, corruption). Consequently, the foreign political behavior of the state does not always correspond to its public interests. In particular, the idea was that international custom - it is also a coincidence of the interests of individual states [2]. The authors note that the main aspects of observance of the foundations of international law are co-interests, coordination and cooperation or coercion, with the key to respecting voluntariness based on commonality of interests, and coordination and cooperation are only directions for achieving such interests. The coercion, in the first place, is aimed at reporting to the offender the possibility of losing the authority and reputation necessary for the state to achieve its interests in co-operation and coordination.

The moral aspect of the mechanism for adhering to the general principles of international law is an authoritative place, since as long as politicians, officials and the general public consider compliance with the principles important, such confidence will have a significant impact on the state's decision-making on foreign policy.

One of the elements of the moral and ethical mechanism for the implementation of the general principles of international law is international politeness. International courtesy (comitas gentium) - a set of rules of benevolence, correctness, restraint and mutual respect of participants in international communication, which are not legally binding. The international politeness is based on the concept of equality of states and its compliance is predominantly reciprocal. International courtesy standards can turn into rules of international law within the framework of the international law-making process. For example, some rules of international courtesy concerning diplomatic privileges and immunities, eventually transformed into rules of international diplomatic law. On the other hand, the norms of international law may be the rules of international courtesy. An example can be the rules of international politeness, which were formed on the basis of the principle of sovereign equality of states. Among such standards of international politeness, in particular, include the following: respect for the national symbols of the state, respect for the legal acts of other states, the establishment of a certain order of seats at the negotiation table for diplomatic representatives from different states, rule of the alternate, etc. [7: 30]. International politeness is one of the oldest institutes of international law known to many legal systems. Back in the XVII century the international politeness was a prerequisite for the application of foreign law on the territory of each state.

However, today's content of this institution has a rather slim nuance on the legal nature and qualification of the concept of the principle of international courtesy. From the above, it is evident that here both the moral and the normative ones are present. Due to the principles, the legal obligation of the conduct is ensured, but outside the framework of special international agreements on mutual cooperation in rendering legal aid, the state has the right to rely on reciprocal assistance on request, on the basis of *international courtesy*.

In other words, reciprocity is not enshrined in the treaty, but falls within the framework of the rules of *international courtesy*. At the same time, according to the prevailing opinion, acts of international politeness do not necessarily entail similar actions, the termination of one or another of them

is not unfriendly and can not serve as the basis for retortion or even more reprisals.

In the position of, say, German lawyers, in the international courtesy, there is no international legal obligation of the requested state (Etat requis), which provides for a request for legal aid (commissionrogatoire, letterofrequest) such, in anticipation that the requesting state assistance (Etat requerant) in the right situation will go in the same way. At the same time, according to them, modern concepts of international courtesy (courtoisie Internationale) do not get rid of ideas about reciprocity [9: 80-3]. However, this reciprocity is recommended not to be confused with the more stringent requirement of reciprocity and to put them at one level. It is especially pointed out that with the help of this principle it is impossible to force a foreign state to cooperate. «In any case, - emphasizes H. Shack, - we must, as yet, show a good example, generously providing legal assistance, the requested State does not, in general, deny the German side the execution of requests for legal aid» [9: 81].

Conclusion: The peculiarities of the mechanism for implementing the general principles of international law are the result of the influence of the very nature of the principles, as natural-legal, universal and obligatory regulators of international legal relations. Despite the fact that international law requires States to comply with its basic principles, regardless of domestic law and specification in international legal acts, it is in them that the rules of secondary contain the effectiveness and guarantees of their observance. If the direct influence of the principles of international law, both universally recognized and natural law, exists outside the will of all subjects of international law and order, at least at the level of legal consciousness, moral and ethical and cultural level, then the norms providing it guarantee their fulfillment (secondary norms) should be consolidated and enforced in all the above-mentioned levels of legal systems. Only a holistic, coherent mechanism of legal, political and moral-ethical implementation of the implementation of the general principles of international law at the national, supranational and international levels can guarantee the realization of the goals and objectives of all humanity in the form of general principles of international law.

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