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PRINCIPLE OF THE RULE OF LAW IN INTERNATIONAL LAW: NATURE AND CHARACTERISTICS

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Abstract

The article analyzes the principle of the rule of law in international law considering ontological and epistemological aspects of its nature and interrelation with national law. Given the modern understanding of the tasks, purpose and nature of law, both domestic and international, the paper substantiates the view of the rule of law as a moral and volitional basis for the legitimacy of international law. The advantages of this comprehension and perception of the rule of law in the formation of international relations on the basis of anthropocentrism and ethicalcentrism in contrast to the positivist view of international law are considered. The perception of international law throughout the history of its development reveals the immanent characteristics that form an integral understanding of the rule of law in international law as a general principle and as one of its sources, along with international treaties and international customs, general principles, and a judicial precedent. Axiological, anthropological, phenomenological, comparative-historical, dialectical, comparative-legal, systemic-structural, hermeneutic and formal-legal methods were used for the research. The article makes a conclusion that due to the humanistic and valuable principles of the doctrine of natural law, which permeates the principle of the rule of law and is its core, the rule of law becomes capable of serving as the moral and volitional basis of the legitimacy of international law, which gives international law a humanitarian, human-centric and ethical-centric sound and becomes a means of overcoming purely formal, positivist vision of international law, turns it into an important regulator of international relations, an instrument of struggle for human rights and fair relations between states.

Keywords: rule of law, human rights, general principles of law, basic principles of international law, international courts, implementation, international organizations, natural law, international treaty, international custom, history of international law.

Introduction

Modern studies of the genesis of the rule of law focus mainly on its national roots. This is quite understandable given the determining influence of the idea of the rule of law in the formation of the most important social and legal values of a functioning democratic state, the center of which is a person and human rights. As for the international law, studies of the legal nature of the rule of law have spread mainly in recent

decades and often through the efforts of comparativists who sincerely seek to transfer the national legal understanding of the principle of the rule of law to international law and in this way justify the place of the rule of law in the system of international legal relations. This was also facilitated by the formation in international law from the second half of the 20th century of the doctrine of the rule of law for the purposes of application in domestic relations, the expression and characteristics of which were comprehensively reflected in the Universal Declaration of Human Rights with the proclaiming of obligations by states to contribute to the implementation of the requirements for the recognition of human dignity, equality before the law, natural human rights, the prohibition of discrimination, etc. (United Nations, 1948). As a result, for international law, the rule of law often looks like a completely borrowed idea. And in this context, the attempts to equate international legal and domestic relations based on a hypothetical "international legal state" are obvious (Fassbender, 2018).

This article solves the following tasks:

– analyzes the emergence of the idea of the rule of law as a general civilizational heritage in the historical conditions of the lack of separation of law into domestic and international;
– analyzes the idea of natural and volitional international law;
– defines the particularities of the rule of law in international law.

Literature Review

The principle of the rule of law is increasingly widely applied in international relations. It is becoming more common to apply it to international trade relations (Frensch et al, 2021) and international economic law (Peng, 2019), activities in the field of space (Kealotswe-Matlou, 2021), the role of universities in establishing the rule of law (Leyh, 2021), the contribution of the International Criminal Court to the establishment of the principle of the rule of law in international law (Tiehi, 2021) and international courts in general (Reinold, 2019), its influence on international organizations (Meerssche, 2019) etc.

Discussions about the legal nature of the rule of law in international law, the search for its content in basic international legal documents (Fassbender, 2018) are growing, gathering around both supporters (Arajärvi, 2021) and opponents who deny the possibility of any parallels of the rule of law with international law (Gorobets, 2020). Therefore, such increasingly frequent references in the most authoritative international acts to the importance of the rule of law for the development of "international law and relations between states" (Unuted Nations, 1970) force us to give an answer to the question of its functional dimension, namely, in what way the rule of law can be normatively ensured, and hence its influence on the international legal system.

Methodology

The conducted research is based on the modern philosophical and worldview understanding of law, its relationship with the state and role in society, which contributed to the correct choice of methodological tools and determined the way of learning the researched issues. Carrying out the research on a rationalistic basis made it possible to correctly assess the limits of knowledge of the principle of the rule of law in international law, which served as the subject of the study, to make the most of the positive achievements of the rational approach in its research, to avoid scholastic or purely empirical conclusions.

Such components of the methodology as the legal paradigm, theoretical concepts (state, law and their interrelation) and doctrines (natural human rights, rule of law), general scientific and special scientific research methods were chosen as methodological tools.

The research is based on an understanding of the modern paradigm of international law, which is based on open methodological diversity, the need to recognize the international legal personality of a person, the rejection of closed statism, the fight against anthropological and axiological nihilism, and not connected with a purely positivist point of view on its sources or a purely formalized and dogmatic perception of theoretical and methodological approaches, which ultimately brings together the understanding of the concepts of the rule of law in national legal systems and international law.

One of the components of the methodology was the doctrine of natural law, which recognizes the conditioning of law by the level of cultural development, the view of morality and justice as the closest basis of law, the nature of human rights, their inalienability and inviolability, the connection of state power with human rights, the recognition of a person, her\his life and health, integrity and safety as the highest value. This made it possible to substantiate the understanding of the rule of law as the moral and volitional basis of its legitimacy.

The work uses such general research methods as axiological, anthropological, phenomenological, comparative-historical, dialectical, comparative-legal, systemic-structural, and hermeneutic. The formal-legal special-scientific method was also used.

Axiological, anthropological and phenomenological methods applied in the research were used to substantiate the human-centric and ethical-centric perception of the rule of law as a scientific idea and its practical application, understanding the value aspect of the rule of law not only in national law, but also in international law, because precisely such values as freedom, justice, dignity, equality, human life, serve as the basis for the formation of tasks and functions of the state and determine the direction of its activities.

Comparative-historical and comparative-legal methods were used to reveal the process of formation of international law, the historical process of substantiating its division into natural and legalized (necessary and conditional), the process of formation and development of the idea of the rule of law in international law, and the historical change of views on its essence.

The dialectical method, as a general scientific method of knowledge, made it possible to show the complex and contradictory process of establishing the rule of law in international law, to reveal the contradictory trends in the formation of the modern vision of the principle of the rule of law in international law and its individual characteristics.

The hermeneutic method and its tools made it possible to reveal the concept of the rule of law in international law, to interpret it taking into account the specifics of modern international law. Cognitive and semiotic aspects of hermeneutics, as well as used hermeneutic canons (immanence of hermeneutic scale, totality of hermeneutic consideration, semantic adequacy and relevance of understanding) served this purpose.

The systemic-structural method was used for the systematic understanding and adoption of not only law as a holistic phenomenon that has a complex structure, where each element is in interaction with other elements, as well as elemental and structural analysis of the concept and its characteristics in national and international law.

The formal legal method was used for an in-depth legal comparison and analysis of the concept and characteristics of the rule of law in the national and international dimensions.

Results and Discussion

The emergence of the idea of the rule of law as a general civilization heritage in the historical conditions of the lack of separation of law into domestic and international

The idea of the rule of law arose in those times when the law did not have and could not be divided into domestic and international, since it itself was still at the stage of transforming ideas into legal meanings, when the basic generally accepted postulates of freedom and justice were still determined spontaneously in ancient human communities, which in the most general form created the basis of the understanding of law. As a unique socio-cultural phenomenon, it absorbed worldview values common to humanity, which currently ensured civilizational pluralism of the sources of formation of ideas about the law: "in every civilization, humanity sought to develop within itself a community of political units, the relationships of which were regulated by a number of norms and practices based on customs, and not to be one country with one authority and one legal system" (Horokhovska, 2014, p. 163). Once F.Martens, referring to J. Bacon, wrote that "international law has the same sources from which other departments of law originate" (Martens, 1882, p. 13-14). It is not by chance that legal historians quite often turn to the same monuments of the ancient world to explain the origin of the norms of domestic and international law, although traditionally they are not always ready to see the common socio-cultural nature of many legal concepts (Butkevych, 2019, p. 6). Another view of the origin of the idea of the rule of law simply cuts off a huge layer of human history, simplifies the origin and understanding of many international legal norms, institutions and principles.

The concept of the rule of law underwent a long process of crystallization from the emergence of the idea itself to the formation of doctrine and practical requirements for the legal regulation of social relations. Initially, this idea was perceived as the need to live according to rules common to all, based on a historically achieved understanding of social and personal values, ideas about proper behavior, and a set of appropriate requirements for the legal regulation of this behavior.

In this sense, it is worth mentioning the Torah, as the oldest of the known texts, which already contains the idea of the rule of law, which is translated through the obligation of the ruler (authority) to obey the highest source of truth and justice (the Holy Scriptures). And here we are observing not only the national-state context. In the states of the ancient world, religion, power, and law were strongly connected, and the

legitimization of power orders by appeals to divine power, as the highest truth, was equally important both for making internal decisions and for external relations. The march of Roman legionaries past the open doors of the temple of Two-Faced Janus was nothing less than the highest legitimization of the right to war. It is worth mentioning the oldest texts of international treaties with an appeal to the gods as the personification of the highest power and justice, in support of the parties' compliance with the terms of the agreement. Recognition of the sacred power of the law gave it a special social value and made one understand that the law cannot be arbitrarily changed. This created a historical basis for the perception and awareness of the idea of the rule of law as one of the most important tools for the functioning of society, provided the necessary historical potential for preserving the idea and strengthening it in the future. One can only agree with the opinion that "the content of the principle of the rule of law can be better understood through its strong continuous connection with its own past" (Palombella, 2013, p. 362).

Differentiation of norms of domestic and international law. The idea of natural and volitional international law

Early ideas about distinguishing the norms of domestic law and rules in international relations already existed in Ancient Greece (Plato in the "State" spoke about the inadmissibility of turning captured Greeks into slaves and condemned looting on the battlefield) and in Ancient Rome. In Ancient Rome, they existed alongside the understanding and distinction between the different statuses of Roman citizens and foreigners, which existed in Ancient Rome until 212 (according to the Caracalla law, all residents of Rome were equal in rights as citizens of the Roman state). And although these ideas did not develop into an understanding of international law (this happened only after the reception of Roman law in Europe), there was a stable idea in Ancient Rome about the nature of the norms of many relationships between nations. Cicero in the treatise "De officiis" called war "the last resort", since people can resolve disputes through negotiations, and therefore wars should be started with the aim of not committing illegality; after the victory one must preserve the life of those who during the war were not cruel and that the obligations given to the enemy must be observed (XII, 38; XIII, 39) (Cicero, 1913).

From the 13th century, the formation of the components of the doctrine and practice of implementing the principle of the rule of law were mainly related to the internal needs of individual states. Regarding international law, in the conditions of the dominance of politics and force in international relations, the idea of the rule of law could hardly have wide application for a long time, but it was undeniably preserved (it is enough to mention the development of the idea of "eternal peace", which was mostly built on the basis of international law, and numerous projects included some components of the ideology of the rule of law recognized by modern legal science) (Yanovskii et al, 1990), and not only in a general way. International law is a complex regulatory system and can not but have internal mechanisms that preserve its function as a social regulator. The rule of law is one of the most important of them. Therefore, the rule of law is not something that was invented or introduced, but something that must be explained by the nature of international law, which immanently belongs to it.

Following Aristotle, who divided the right into natural and legal, established by will, many of the classics of the science of international law saw in such a division a necessary tool for its legitimation, which was important in itself in view of the recognition of the possibility of "external" control of internal legal processes. In its general form, this idea was already present by H. Grotius, who considered this division of law to be the best (Grotsii, 1956, para. 9.2).

The division of international law and domestic law was justified by H. Grotius precisely from the standpoint of natural law (Zaiets, 2017), which is extremely important, as we will see later, for understanding the relationship between natural law and the rule of law. International law, which determines the relations between many peoples or their rulers, has its source in nature itself or is established by the laws of God (although the understanding of the divine nature of law weighed on Grotius, and even here Grotius did not dispute the divine revelation and the giving of the law by God, but he believed that this divine revelation cannot be the basis of international law, since it is not recognized by all nations, in contrast to international law, which is binding on all nations (Grotsii, 1956), or entered by a tacit agreement. Investigating the issue of war and peace from the point of view of natural law, Grotius resolved the question of whether war can be just and whether war is sometimes allowed. Grotius proposed to derive this question from nature itself, which meant that the natural does not reject war, because the primary motivations of nature are a sense of self-preservation, one's own good, avoiding death, preserving one's being, observing everything that is in agreement with nature, and avoiding what is contrary to it. Therefore, the purpose of war is the preservation

of physical integrity and life, the preservation of things useful for life, which corresponds to these motives. They are also responsible for the use of force if necessary to achieve these goals. Then there should be the knowledge of the correspondence of things with the mind itself, which is the most important property of a living being. It is the cognition of conformity, in which dignity consists, and which should be valued above all else, that attracts the direct aspiration of the soul (Grotsii, 1956).

Ch. Wolff also proposed dividing international law into necessary law *(necessaire)* and conditional law *(volontaire)*, where necessaire would be considered an immutable law (Proudhon, 1864, p. 109). J. Kluber, thinking at the beginning of the 19th century about the importance of natural law for international law, went a little further and expressed an opinion about the importance of natural-law "general principles" (Klüber, 1828, p. IX-X), which should be the criteria for the legitimacy of international law. Without excluding the possibility of the development of events under the influence of the majority of states or due to circumstances, J. Kluber insisted on the need to evaluate such events exclusively based on general principles of law: "... what is fair will inevitably be recognized as such over time" (Klüber, 1828, p. IX-X) "... no one can overshadow the dignity of the people's law with arbitrary assumptions. Honoring injustice ... is a crime against humanity" (Klüber, 1828, p. XI-XII). Summarizing the views of Vattel, Ch. Wolf and their contemporaries, P.-J. Proudhon wrote that "for peoples, in addition to the rules that follow directly from conscience, there are other rules that appear as a result of their antagonism, which are difficult for them, but which compel them to obey their own interest, correctly understood by them, and such rules become for them by principle or material, like law" (Proudhon, 1864, p. 110).

Such considerations of prominent representatives of international legal science over the centuries actually prove that "the reason for the emergence of the rule of law as a principle and ideal in our legal civilization is related to the maintenance of legality, its autonomy, its non-utilitarian function and its conceptual separation from even the legitimate exercise of the highest normative authority" (Palombella, 2013, p. 353).

The rule of law as the moral and volitional basis of the legitimacy of international law.

Perhaps the most significant result of using the doctrine of the rule of law in international law is the disclosure of the role of legitimacy in international law. The modern understanding of many concepts of law, which have been known since ancient times, is the result of their formation as legal and meaningful content in accordance with modern needs. The rule of law belongs to such ideas that have gone a long way to exerting a fundamental influence in many national legal systems and to acquire extraordinary importance for international law.

Emphasis on the importance of building a model of international legal relations similar to models of human interpersonal relations was quite common in international legal science. For example, L.A. Kamarovskii and V.A. Ulyanitskii insisted that "the internal, rational necessity of international law stems, like all law in general, from the social nature of a person" (Kamarovskii, Ulyanitskii, 1908, p. 5).

Therefore, it is not surprising to introduce a moral component to the understanding of international law. The search for sources of legitimacy criteria of international law usually led to the suggestion of involving moral principles in this capacity. A.N. Stoyanov, referring to James Kent, said that in the absence of legal norms, "relations between peoples can be determined on the basis of morality" (Stoyanov, 1875, p. 27). L. Kamarovskii and V. Ulyanytskii, reflecting on "necessary law" as one of the unchanging sources of international law, drew attention to the fact that at its base "there always remains one and the same ... the moral order of the universe" (Kamarovskii, Ulyanitskii, 1908, p. 15). The positivist views of those who "carefully separate positive law from impurities of morality and politics" (Kamarovskii, Ulyanitskii, 1908, p. 24) had many supporters in international legal science.

An appeal to the "legal consciousness of nations" is nothing more than a search for the moral basis of international law. V.P. Danevskii called the legal consciousness of nations "the internal source of international law" (Ivanovskii, 1892, p. 5). Similarly, L. A. Kamarovskii and V. A. Ulyanitskii directed the search for "necessary and reasonable international law in the legal consciousness of peoples" (Kamarovskii, Ulyanitskii, 1908, p. 15).

Legal consciousness, as the idea of what the law is and what it should be, is nothing more than a voice for the collective idea of good and evil, which is the core of morality. L. I. Petrazhitskii, bringing law as close as possible to legal consciousness, considered any emotional experiences related to ideas about mutual rights and obligations to be legal (Petrazhitskii, 1908). There is a widespread opinion that law has a moral meaning because legal awareness is oriented towards moral evaluations. This is true because there

are no social relations that are not subject to such evaluations, and therefore, due to such evaluations, the need for legal norms appears.

Establishing a moral context in international legal relations is decisive for establishing the place and role of the rule of law in international law. This brings it to the humanitarian plane, to the plane of competition between human-centrism and ethicalcentrism in international law with a purely positivist vision of international law. Therefore, it is important to observe the trends that testify to the strategic direction of the development of international law. A certain breakthrough here is connected with the formation and development of international humanitarian law, which determines the priority of the value of human life and health in the conditions of armed conflict. The consequence of such approaches was the establishment of international criminal justice, which under certain circumstances gives the International Criminal Court the power to overcome national jurisdiction (Gutnyk at al, 2021, p. 141), that is not at all typical for the international legal system. And this is evidence of international law's rejection of acts of massive gross violations of human rights, which was reflected in the approaches of the UN Security Council regarding the interpretation of the concept of "threat to international peace" in the UN Charter (Pickard, 1998, p. 3; Buromenskyi & Gutnyk, 2019, p. 189). It is also worth paying attention to the authority of the UN Human Rights Council to prepare national reports on the state of human rights compliance, including on states that do not participate in international human rights treaties (Asirian, 2016). It is worth mentioning the recognition in international law of the general principle according to which human rights issues do not belong to the sphere of exclusive internal competence of the state. The advisory opinion "Interpretation of peace treaties with Bulgaria, Hungary, Romania" (first stage) of March 30, 1950, was of decisive importance for the recognition of the statutory authority of the UN General Assembly to discuss human rights issues in member states (International Court of Justice, 1950). Subsequently, the relevant practice began to be interpreted as the lack of exclusive internal competence of states to respect and observe human rights (Arechaga, 1983, p. 265).

It is worth agreeing that the possibilities of the international legal system to act independently in the field of human rights are still significantly limited by the recognition of the state as the main responsible for the observance of human rights actors. However, one cannot underestimate the importance of the intervention of international law in this system of relations, including from the point of view of determining the place of the rule of law in international law as its source.

The recognition of international law as such, which is based on universal morality, which becomes the heart of the legitimacy of international law itself, makes it possible to look at its nature differently and to carry out a radical reassessment of its will-determined character, which many scientists have habitually claimed since the time of H. Grotius, not taking into account the fact that a significant part of the norms of international law (we emphasize that we are not talking here about the entire array of norms of international law) has a deep natural-legal character, was formed in ancient times, corresponds to high humanistic standards and universal human values. Since the doctrine of the rule of law is organically connected with the recognition of natural law, is based on it, therefore, at the conceptual level, it is possible to assert an organic connection between international law and the principle of the rule of law, which consists in the fact that due to these qualitative immanent characteristics of the norms of international law, international law fully deserves elevation, dominance, supremacy among all existing regulators of relations between states. Even the declaration of the principle of the rule of law in international law has a huge impact on the content of international legal norms, since it is inseparable from the recognition of human dignity, the recognition of people as free and equal from birth, the recognition of natural human rights and their guarantees by the state, fair justice. This is exactly what unites the understanding of the rule of law in both domestic and international law. It is really appropriate to look first of all for coincidences of these manifestations, and not for differences that are significant, which scientists talk about in almost every publication, paying attention to the difference in power structures, the presence in domestic law, as opposed to international law, of officials who are functionally and institutionally differentiated from subjects of law, the horizontal nature of international law. These circumstances cannot be ignored, but it is also true that the rule of law is really not a virtue of the legal system, but "the moral and political ideal that embraces principles and values which form an image of a better society" and it must be furthered "not only for the motives of legal certainty and predictability but also for the motives of higher values, such as human dignity, democracy, equality, justice, liberty, etc. (Gorobets, 2020, p. 230-231). Reducing the rule of law to formal aspects, emasculating the moral and natural legal content reduces it to a positivist and formal perception, and in this case, the search for its rule in international law loses its true value and meaning in general.

Conclusions

The idea of the rule of law emerged before the division of law into domestic and international law as a necessity for the coexistence of people on the basis of historically achieved social moral institutions and values, which can be clearly traced already in the oldest written sources. With the differentiation of domestic and international law, the latter incorporates more and more signs of the rule of law due to the gradual loss of the dominance of politics and power, and a significant part of it is formed on the basis of natural law, observance of the principles of human dignity, humanistic principles of justice, respect to a man, and mercy.

Due to the humanistic and valuable principles of the doctrine of natural law, which permeates the principle of the rule of law and is its core, the rule of law becomes capable of serving as the moral and volitional basis of the legitimacy of international law, which gives international law a humanitarian, human-centric and ethical-centric sound and becomes a means of overcoming purely formal, positivist vision of international law, turns it into an important regulator of international relations, an instrument of struggle for human rights and fair relations between states.

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