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About a system of international law principles

The great attention in the paper has been paid to the role of principles as the element of the system of International Law. In Ukraine, the study of the system of principles of International Law does not fully reflect the importance and relevance of this issue. Consideration of this theme can, to a certain extent, contribute to the further development of modern International Law.

Principles are a fundamental criterion for any system of national law, also International Law. Law according to its form has to be properly organized, internally balanced, in order not to turn itself into due to its internal contradictions. It means it has its own systemic character. Scholars in the sphere of jurisprudence understand International Law as a system of juridical norms governing relations between subjects of International Law, created by coordination the positions of participants in international relations and provided, if necessary, by individual or collective coercion [1, p. 105; 66, p. 1; 73, p. 81; 80; 135, p. 5].

A concept of “system” means that law is a certain integral entity, consisting of many elements that are in a certain connection with each other (subordination, coordination, functional dependence, etc.) [2, p. 168].

A system of law does not represent a set of all legal phenomena in their interaction, but only an internal construction of law as a system of legal norms. An internal form of law is characterized by the unity of its constituent parts, which is conditioned by a system of relations that define the content of legal norms, their creation and operation on the basis of common principles. It is well-known to consider that International Law is a special system of law, different from the internal state system of law, and is a complicated legal form consisting of a complex of legal norms, characterized by a principle unity and at the same time an ordered subdivision on relatively independent parts (branches, sub-sectors, institutes) [3, p. 98].

The general criteria of contemporary International Law are the basic principles of International Law. A word “principle” (from the Latin principium that is the beginning, the basis, the first principle) has the following meanings:

1. A basic, initial position of any science, theory, training;
2. Internal position, a view on things that determine the standard of conduct;
3. The main particularity in the ordering of something.

Principles of law are its main beginnings, initial ideas, characterized by universality, general significance, higher imperativeness and reflect the most important provisions of law [4, p. 61]. Principles of law are inherently abstract and universal assimilation of social reality, which determines their special role in the structure of a legal system, a mechanism of legal regulation, rulemaking activity and the implementation of law. Legal principles are criteria for assessing the legal nature

of subjects' of law actions, contribute to the formation of legal thinking and legal culture, "cementing" the system of law. Principles of law arise in the presence of appropriate objective conditions, have their historical nature, reflect the results of rational, scientific understanding of the development regularities of objective reality.

The system of International Law is based on a set of principles, has its own structure, certain methods of formation and functioning, develops in accordance with its regularities. The existence of this system is objectively determined since only as an organized system, modern International Law can perform its functions.

Understanding of International Law as a system is a relatively new phenomenon. There are disparate rules that existed in the past that regulated local relations (interstate agreements) or provided elementary diplomatic rules of conduct. International Law did not contain general objectives and principles, it was dispositive, and so states could cancel in their interrelations the force of any international-legal norm. The appearance of the International Law principles contributed to the unification, organization, creation of a hierarchy of International Law norms. It ceased to be only dispositive, there was a complex of imperative norms (*jus cogens*), that are, universally recognized norms, from which states should not deny in their relations, even on their mutual consent [3, p. 99].

It is important to admit that despite its peculiarities, International Law acquires the features of a mature legal system. This concerns the development of mechanisms for implementation and codification, the structuring of branches of International Law, and some other phenomena requiring separate analysis. In spite of the fact that nowadays there is no universally recognized system of International Law in science; every scientific school substantiates its own point of view; the fact of the existence of basic and sectoral principles as the most important element of the system of modern International Law has been recognized as indisputable.

The distinction between the basic principles of International Law and the general principles of law is often admitted by international lawyers, commenting Article 38 of the Statute of the International Court of the United Nation Organization as the general provision in relation to sources of International Law [5, p. 123-124].

What is the source of International Law? Lawyers-internationalists undoubtedly recognize international treaties and international customs as sources of International Law [6, p. 40; 135, p. 8].

The interpretation of the above-mentioned article 38 of the Statute of the International Court of the United Nation Organization is controversial, the main of arguments are:

- divergences in the matter if a treaty or a custom is the main source of International Law;

- an attempt to classify all sources of International Law into universal and special or basic and auxiliary;

- a position that the list of sources of International Law determined in Article 38 is not exhaustive, as well as the suggestion to consider, for example, resolutions of international organizations as sources of International Law;

- requirements to exclude the determined in the items 1 (c) and (d) of Article 38 general principles of law recognized by civilized nations as well as judicial decisions and scientific doctrines from the sources of International Law. The

principles of law are suggested to be excluded on the grounds that they do not contain specific rules of conduct for recipients of international legal norms [6, p. 41].

The most widespread view is that in this case, one is talking about the principles that reflect the general legal principles that are characteristic of different national systems of law and International Law. Most of them originate from Roman Law, for example, “consensus makes law” (*consensus facit jus*), “no one can give more rights than he has got” (*nemo plus juris transtere potest quam ipse habet*), “no one can be a judge in his own case” (*nemo iudex in causa sua*), “an equal one has no power under equal another” (*par in parem non habet imperium*), etc.

It should be noted that a term “civilized nations” is practically not used in modern International Law, but the doctrine of International Law interprets the item 1 (c) of Article 38 in such a way that the general principles of law used by different national systems of law may be used as sources of International Law if they are recognized by these states or by most states. It means that there is an agreement according to International Law since the states recognize the general principles of law applicable.

Moreover, even recognizing the unquestionable priority of treaties and customs as sources of International Law, within the framework of its developing system, the International Court will not always be able to use the necessary contractual or customary means to resolve the dispute according to their absence.

Unfortunately, international treaties do not always contain only legal norms, they can include political positions, express corporate interests, and even contradict the norms of morality and justice. Perhaps in such cases it is worthwhile to use the general principles of law, so that, based on their supreme power, by analogy, the existing dispute can be resolved.

Gaps arise in more developed systems of law than International Law. They are excluded by legal norms that are adopted by competent authorities. It is not always acceptable in International Law. In cases where social relations are not directly regulated by any legal norms and there are no rules regulating similar relations, an analogy of law is applied, that is the solving of a particular case on the basis of general ideas and principles of law (humanism, justice, equality, etc.).

A Russian lawyer, scientist and politician B.M. Chicherin wrote: “... a sphere of law is not limited to positive legislation. The legislation determines those legal rules that exist now and in a particular place. But legal laws do not remain eternal and unchangeable, as laws of nature, which only need to be studied and with which it is always needed to agree. Positive laws are the creature of human will and, as such, can be good or foolish. From this point of view, they require estimation. For the same reason, they change according to changes in needs and attitudes. What should be a rule for a legislator in determining rights and duties of an obeying to his instructions person? He cannot draw the guiding principles from the very positive law, because it is exactly what needs to be estimated and changed; this requires other, higher considerations. He cannot be satisfied by the directions of life practice, because it represents a significant variety of elements, interests and requirements that come into contradiction with each other and among which one needs to be clear. In order to determine their relative strength and dignity, it is necessary to have

general scales and a measure, those are the guiding principles ..." [7, p. 1-2]. It is possible that the very "measure" for International Law is the principles.

A set of basic principles is an important particularity of modern International Law. It is generally acknowledged that deviation from the basic principles of International Law is unacceptable even with the consent of the subjects of International Law, id est the basic principles of International Law are the rules of jus cogens. This ensures their universal character in the system of International Law, their applying in diplomatic and political practice

Objectively, the principles are conditioned by the necessity of functioning of the system of International Law and international relations, express the interests of individual subjects of International Law and of the entire international community, and on the subjective side, they show awareness interests and regularities of the system of international relations by states. Detailing of the principles is conditioned by the need for the International Law development of [8, p.19].

Violations of the historically determined basic principles of International Law lead to serious violations of the subjects' of International Law interests. Principles of International Law are a criterion for the legality of the International Law subjects' conduct and the normativeness of international legal acts.

The basic principles of International Law are determined in the Preamble, Articles 1 and 2 of the UN Charter, the Declaration on Principles of International Law concerning Friendly Relations and Cooperation between States in accordance with the UN Charter, adopted by the XXV Session of the General Assembly of the United Nations in 1970, in the Helsinki Final Act of the Conference on Security and Cooperation in Europe of August 1, 1975, the final document of the Vienna meeting of 1989, a number of principles are devoted to special resolutions of the UN General Assembly and other acts. Based on these documents, the following principles of International Law can be determined:

- equality of States and respect of rights inherent in sovereignty;
- non-use of force or threat of force;
- resolving international disputes by peaceful means;
- respect for human rights and fundamental freedoms;
- non-interference in the internal affairs of States;
- territorial integrity of States;
- inviolability of state borders;
- equality and self-determination of the peoples and nations;
- cooperation between States;
- fulfilment of obligations under International Law

They are universally accepted norms of the highest order, which express the behavior of subjects of international relations.

In addition, there is an opinion that there are different types of principles within the framework of International Law. For example, general and special principles of International Law. Among them, a significant place is taken by principles-ideas. These include the ideas of peace and cooperation, humanism, and others. They are reflected in acts such as the UN Charter, the Human Rights Covenants and many other documents. The basic amount of regulatory action of the principles-ideas is implemented through

specific norms, reflecting in their content and directing their actions. However, they themselves are the regulator of international relations.

The basic principles do not always show the unity of interaction. In particular, there are contradictions in the implementation of the principles of territorial integrity of States and self-determination of the peoples, and as a result, complicated conflicts. The concept of the so-called "humanitarian intervention" aimed at preventing a humanitarian catastrophe in the name of implementing the principle of respect for human rights, most likely, would be contrary to the principles of the inviolability of state borders and respect for the rights inherent in sovereignty. Finding compromises, mutual respect for the sides, observance of norms of International Law and the applying of so-called principles-ideas of International Law, in our opinion, will allow the sides to make acceptable decisions. The solution of these contradictions will be facilitated by the use of generally accepted norms of International Law and the use of the most authoritative international organizations such as the United Nations. It is obvious that the basic principles (the basic principles of International Law) are its cardinal provisions, which always contain certain rules of behavior, more concentrated in comparison with the usual norms.

The basic principles, as the basic norms, express qualitative particularities of the whole legal system. Moreover, normativity combined with the special significance of content provides leadership to the basic principles. The basic principles of International Law are universally accepted norms of universal character. All other norms of International Law have to be according to them.

It is important for us that the sectoral principles of International Law, supplementing and developing the basic principles, should not contradict them due to their imperativeness.

Conclusions. Law has to be properly organized in order not to deny itself due to internal contradictions, so it has to have its own systemicity. The system of International Law is based on a set of principles, has a characteristic structure with appropriate methods of formation and functioning, which develops in accordance with its regularities. Despite the fact that nowadays the universally recognized system of International Law does not exist in science, the existence of basic and sectoral principles as the most important element of modern International Law is recognized as indisputable. Principles of International Law are a criterion of legality of subjects' of International Law actions and normativeness of international-legal acts. Sectoral principles of International Law, supplementing and developing the basic principles, should not contradict them due to their imperativeness.

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