Published by the decision of the Scientific Council
of Khachatur Abovyan
Armenian State Pedagogical University

Department of Philosophy and Logic
named after Academician Georg Brutian

W I S D O M

1(25), 2023

WISDOM is covered in Clarivate Analytics' Emerging Sources Citation Index service

ASPU Publication

YEREVAN – 2023

DOI: 10.24234/wisdom.v25i1.983

ONTOLOGICAL GROUNDS OF INTERNATIONAL LAW

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Abstract: International law being a complexly structured, hierarchically organized and multi-aspect political and legal phenomenon has dialectical interconnection with universal material and spiritual culture, its past, functioning and development trends and it has human existence as its deep sensational basis, which represents centuries-old civilized togetherness of peoples and nations between them and has specific significance in a specific historical era. Therefore from the cognitive-aware and subject-essential viewpoints international law shall be treated as a form of international relationships, covered by law – i.e. international relationships are the object of regulation of international law and should be considered as a dynamic phenomenon or a consecutive process which represents universal motion principle when its certain status.

International law is a dialectical process of a single causal chain of social phenomena which spreads through time and space. The main feature of implementing its basic principles (defined ontologically as universal) relates legally to the field of "oughtness" as a moral onus of subjective will of sovereign states. It is principally difficult to establish fair international relationships upon observance of interests of international relationships subjects as it is impossible to develop a uniform and extensive scale of moral values that are common for all states.

Keywords: international law, ontology and gnosiology of international law, state will, public interests, international legal system, principle of dialogue, interaction between international and national law.

Introduction

International law represents itself as a phenomenon of political and legal reality that is essentially different from national law with regard to the way of formation and implementation mechanisms. The basic grounds that lie at the root of international law determine its subject matter or essence that spreads through global space. At the same time the ontology of international law is determined by a number of principles that lie beyond the sphere of law and are associated with

axiological essence of interaction between the subjects of international relationships. The key idea of international law itself is the principle of dialogue, based on equality and subject-to-subject interaction model. The dialogue-based nature of international norms, laid down at their creation and further ratification, determines the ontology of international law. This ontology presumes consequent implementation of a number of basic principles that are then embodied in concluded international treaties of binding nature due to the mutual will of their subjects. This principally distinguishes the ontology of international law from the relevant parameters of effective national public law. At the same time they are similar in terms of expressed public interest, which is implemented through legal mechanisms. The comprehension of ontological grounds of international law requires a consecutive analysis of origins and basic stages of its genesis, including the evolution of doctrinal concepts. In the context of modern geopolitical transformations and complication of international relationships the revelation of essential characteristics and ontological grounds of international law is seen as valuable for the needs of doctrinal validation of its transformation into an efficient system able to operate in new conditions.

Methodology

The methodological basis of this study is represented by the principles and approaches of post-nonclassical science, which is based upon the interdisciplinary synthesis that implies using methods of various research spheres. The methodology of constructivism is used as well according to which legal regulation of international relationships gains its specific features not only due to objective development of their subjects, but also due to existing scientific approaches and concepts that construct the relevant type of legal regulation by the means of description and evaluation. Therefore a major contribution to the conceptualization of ontological grounds of international law is made by modern theoretical legal science, synthesized with the philosophy of law.

The research process features the dialectic laws which enabled considering the ontology of international law from the viewpoint of unity and struggle of opposites, showing its contradictive nature in the context of multidirectional processes that flow in the space of interstate interaction.

The formal legal and historical methods allowed researching dynamics of international legal norms and their implementation in the changing political and legal reality. The comparative method allowed making diachronic comparison of the development of international legal doctrine on various historical stages of implementation.

Main Study

The formation of dialogue-based ontological grounds of international law occurs along with the genesis of its norms. The well-known historical evidence of existing peace treaties in XXI B.C. between city-states of Mesopotamia and later – between ancient state-like formations from Mediterranean to Eastern Asia that preempted the emergence of jus gentum in Rome in III-II B.C. and are usually treated in science as a result of international trade relationships development – represents an amazing confirmation of close interconnection in relation to processes of origination of international law and global civilization which are the essence of human existence.

Biological and social aggregation of individuals while moving to the future covers past and present along the way and from the viewpoint of time serves as both abstract and certain, giving birth to various social phenomena. As primary and self-sufficient existence it serves as a deep substantial ground for material and spiritual life, including international law – which is a hierarchically structured, multifold and systematized political and legal phenomenon.

In frames of dominating gnoseological approach to the social phenomena international law gains a relatively independent existence and becomes an object of epistemological studies. Therefore, in the context of cognitive-aware and subject-essential approaches international law should be treated as a form of international relationships covered by law – i.e. international relationships are the object of regulation of international law and should be considered as a consecutive process which represents universal motion principle when its certain status in a specific timeline is actually the reality and an element of an integral causal chain. The possibility of treat-

ing the origins of international law like that is based upon the fact that the state itself serves as the most significant form of manifestation and demonstration of human existence.

That is why the genesis of international law should be considered taking into account the principle of historicism and the vector of its development will in the future determine the application of philosophical phenomenological methods and the scientific development of vital aims, which should reflect the essence of public policy covering all spheres of human, social and public activities. This factor determines unbreakable connection and the unity of policy, internal and international law that are constitutionally connected with the phenomenon of international relationships.

It is generally accepted that human society appears along with the transition to productive labor, while the genesis of world community originates from the activities of sovereign states, which inevitably affect each other's interests – so here is the source of infinite contradictions between states. International activities of states are vicarious in two aspects. Firstly, they are affected by means and mechanisms used by states in international communication. Secondly, they are influenced by relationships between states which form along with their interactions. So it becomes necessary to understand international relationships according to social and moral determination of a human being in nature and society (Malakhov & Aznagulova, 2021). We still have no such understanding – the market fundamentalism which has invaded the whole world, has turned a human being into an omnivore consumer of goods services and uncontrollable amounts of information with some far-reaching consequences i.a. the loss of historical memory, mind manipulation, renunciation of state identity, etc. i.e. the radical transformation of all human mental performance (Malakhov, 2020).

There are several paradigms in place to describe international relationships: geopolitical realism (which is equal to geopolitics in essence), liberalism, globalism (adjacent to radicalism).

There are certain philosophical concepts that bring forward rational ideas on justification of international relationships based on moral and ethical principles, primarily – the Immanuel Kant teachings on categorical imperative. However the practical implementation of those rational moral studies are opposed by obstacles born by pluralistic and market-based world view, which prioritizes personal interests and ignores moral and justice virtues.

It is widely believed that at the origins of geopolitical realism stood Italian politician of Early Middle Ages N. Machiavelli. In the times of fragmentation in Italy, the fall of religious consciousness, the loss of sovereignty on one side and the development of natural sciences medicine, arts and book printing on the other side it became necessary to reassess human existence, the ideas of motherland and strong independent state. The social and historical determination of political and legal views of N. Machiavelli looked like independence of state and its will from morals and the domination of state interests over the interests of citizens. He deemed that the interest is the one and only motive of human actions, while the comprehension of state or public interests is the task of science and politics taking into consideration the realities of political life. Therefore – the prosperity and strengthening of the state as well as its deterioration and collapse is determined upon the comprehension of state interests. Being an advocate for strong powerful state authority Machiavelli accepted using all possible means in order to reach final goals, including power but not morals. He deemed that politics is absolutely free of morals. He didn't consider human rights in politics as well as rejected civil obligations and human dignity.

In domestic legal science the most complete and independent analysis of Machiavelli's academic heritage from the viewpoint of state management and idealization of state interests within the beliefs of late XV-early XVI centuries was carried out by a famous lawyer A. S. Alekseev. He stated that "Machiavelli considered political matters not from a single-sided perspective of a practicing politician, but studied phenomena of public life in correlation with all influencing factors. He didn't reject morality, but instead saw moral norms as a must for a politician. He saw human virtues as the basic requisite for human coexistence and with steel logic proved the deteriorating impact of despotism upon national moral system, while the republic was seen as the only form which could mitigate varying social interests, secure wealth of the citizens and lead the way to moral enlightenment" (Alekseev,

2015, p. 9).

The attracting power of Machiavelli's ideas nowadays is that along with strengthening of state as a political status of a feudal state he drafted lines of world order – the world based on ideas of motherland, national sovereignty, freedom and equality.

The ideas of Kant concerning international law and international relationships have become more popular in the legal science of the recent decades. In his works "Metaphysics of morals" (1797) and "Perpetual Peace: A Philosophical Sketch" (1795) Kant has for the first time elevated international law to the level of philosophical interpretation in a wide context of social phenomena with the central idea of respecting human rights unconditionally.

While not rejecting the possible use of military force in international affairs, in contrast to traditions of political realism and geopolitics Kant moves to the foreground the rule of law, moral laws and the power of diplomacy. As a coherent advocate for the domination of law in mitigating contradictions Kant instead of balance of powers promotes the priority of legal norms, which should define the balance of powers of international law subjects.

The term "interest" is widely used in communication in order to describe various moments of all spheres of human activity. However no common theory of interest exists. Gnoseological roots of this issue are represented in a succinct formula of Hegel (1977): "the moment of subjective singularity and its activity is interest. Nothing can be fulfilled but the interest" (p. 321). In order to understand Hegel's formula we should consider that by the means of activity the subjective by nature content gains external manifestation in the objective world; in other words activity has transition of subjective into objective as a main goal. Therefore the unity of subjective and objective in entirety, determined by activity and allowing inner mutual transitions is of great interest. This duality represents the basic difficulty of categorically interpreting the concept of interest (Zdravomyslov, 1964, p. 6).

Seeing interest as a social phenomenon and concept is specific to philosophical and political teachings since the very early ages. The teachings allow us concluding that the presence of interest is a vital part of human and social essence and their very existence. Thus while elevating the idea of motherland above law and morality N. Machiavelli (2014) deemed that "since we talk about the interests of the motherland – we should not think about whether the relevant decision is fair or unfair, merciful or merciless, praised or shameful, so we should put aside all deliberation and accept the decision which contributes to saving life and preserving freedom" (p. 642), i.e. he sees public state interests as an absolute determinant of politics and law as well as criterion for their assessment. We may also presume that the founding father of the concept of state interest is the distinguished French politician and military man of the early XVI cardinal Richelieu (2008), who wrote: "State interests should be the only target for leaders and their councilors, or they should at least pay close attention to them to place them above all private interests" (p. 211).

The reality is determined upon the high hierarchical level of the significance of interest in the system of internal social relationships in the context of human rights transposed to the international level, where the rational combination of various interests faces a hard to solve contradiction between the absolute state sovereignty and the constitutionalization of effective international law, which is represented in dialectical counteraction between sovereign states in geopolitical activities. Therefore in order to analyze the issue if the interest we underline the significance of the relevant multi-aspect concept as a determinant factor of doctrinal setting of its analysis through the scope of worldview positions as well as approaches and means of practical implementation of geopolitical targets of sovereign states, which are woven into the whole system of modern international relationships with its main component – preservation of peace and security in the global world and the protection of human rights and freedoms. The main lesson of the world history is that the state being a subject of international relationships finds itself and its certain historical existence in fulfilling its own multifaceted interests and goals. The emerging question on the boundaries of legal regulation concerning relationships on the international arena is a subject matter of phenomenological studies.

The need to address general philosophical statements is determined by the fact that the law, being treated with regard to its special features only in conjunction with a certain idea (freedom,

justice, equality, supremacy, etc.) and saving its connection with philosophy in its united social and moral origins, gains universality. Only beyond the limits of legal methods the borders of legal perception may be defined, while the sense and essence of general philosophical concepts and categories may be defined through the scope of legal materia. N. I. Matuzov (1985) mentioned: "Interests gain complex and multifaceted manifestation in law at the stages of its geneses and formation as well as in the processes of functioning and implementation. They are reflected not only in the legal norms but also in all derivative phenomena – legal relationships, subject rights and obligations, enforcement acts, legal status of a person, rule of law, legal order, etc. Therefore the problem itself gains multifaceted and multi-aspect nature… Beyond politics, beyond the interests and will of the dominant class the law as a legal phenomenon is unimaginable" (pp. 76-78).

A vital distinctive feature of the international relationships is the lack of constitutional supreme power that would stand above the subjects of international relationships in comparison to internal relationships within the state, where the state itself is the supreme power. Therefore, since sovereignty is an integral feature of states – their rights in international communications are relevant due to the special will of those states. Thus the implementation of the international law principles, determined as general is legally related to the field of oughtness in contrast to obligations, provided directly in international legal acts is related more to the field human morality as onus. That is why the phenomena of good will and trust between states have great significance in international communications.

The ontological ground of international law is a set of so-called basic principles – general widely accepted norms of international law, which are considered in doctrine as universal, thus having supreme legal power while other international acts an internationally-significant actions of subjects must conform with them (Lukashuk, 2005, pp. 296-324).

Universality as a philosophical matter and as a moment or as a side of a subject or a phenomenon in logical sequence may be dialectically revealed only within a triad "singular-special-universal". In dialectical teachings of Hegel universal (common) determines the unity of separate singularities. The category of special is a method and instrument of summoning singular phenomena into universal unities and it determines the hierarchy of political and legal phenomena that play the leading role in regulation of relationships (Spirkin, 2011, p. 368).

Special, which from the viewpoint of international law may be recognized as the will of a certain sovereign state to implement and protect national interests should be treated as a unity of singular and universal – while universal represents a relatively stable combination of features and properties of a finite number of separate phenomena. Therefore the actual existence of universal as an object of reality is different from its concept (Hegel, 1975, p. 174). It is important that the boundaries between singular, special and universal are mobile (Kerimov, 2008, p. 197). It means that singular and universal comprise interactive unity by the means of special, which is manifested in international law as conformity between certain international legal acts and general principles of international law.

As Hegel (1990) notes, "the principle of international law as universal, which itself and for its own sake should be significant in relationships between states means (in contrast to special content of positive agreements) that treaties which serve as grounds for state obligations between each other must be fulfilled. However , since the relationships between states are based upon the principle of sovereignty… the mentioned universal definition remains as oughness" (p. 366). The lack of precise determination of relationships between states represents differences between gnoseological and epistemological aspects of interstate connections. Gnoseological analysis has international relationships as an object, which emanates from state activities and is not dependent upon sovereign will. Therefore, international treaties being subjective in nature are actually objective in their contents. The object of epistemological approach is the knowledge on international communication, so they are essentially different in their existence – i.e. if international relationships as a gnoseological object of international law exist independently, the knowledge thereof don't exist apart from the subject of perception.

In conclusion of international treaties oriented towards the establishment, regulation or cessation of legal connection or international relation-

ships – objective and subjective matters gain language expression with the use of definitions and eventually equalize – that is why one of the key issues in the science of international law is the interpretation of international treaties.

Substantial contents of international treaties (as vital legal basis of subjects interaction on international arena) is only represented by coincidental parts of separate unities i.e. the complex sphere of national interests , therefore it is less multifaceted than national society (Hegel, 1990, p. 36).

In international treaties the fulfillment of interest by one party immediately triggers execution of obligations by the other party and vice versa. That is due to the fact that in frames of international treaties the special will of parties equalizes with their universal will and creates a unity of a kind becoming substantial basis of the mentioned unity (Hegel, 1990, p. 207). Within the scope of the theory of interests powers may be seen as an opportunity to fulfill interests based on the relevant legal obligation.

Russian law scientist N. M. Korkunov (2013) wrote: "Various interests, being the content of social life are closely interconnected with each other, while legal relationships are based on the collision of those interests and are not seen as separate or detached, but make a whole" (p. 142). This statement is directly related to the field of international communication. It is worth mentioning that contradictions which inevitably arise from the conflict of interests of law subjects have according to Kant positive effect as they contribute to the development of international relationships upon being solved.

There is no reason to oppose morality and politics. Their correlation with law is clearly illustrated in legal science. Moral and ethical foundations of a nation, persisting in traditions and customs which are recognized as a source of law are being reflected in the national legal system.

International and national law is not a dichotomous division of law – moreover some lawyers see international law as an extension of national law. However international law, having closest connection with the public international policy has its own special features in relation to morality.

Firstly, the ethical unity of mankind means that nations endeavor to reflect moral values that are supported by the state in their national policies. However due to the principal inability to accept a single measurement scale in the theory of moral values, the relevant deliberations become abstract and masquerade true interests and goals, which is specific to modern western countries.

Secondly, the state international policy is intended to secure political, economic, spiritual, linguistic and other national interests, i.e. it must be effective from the viewpoint of implementing state interests on international arena. Therefore international policy becomes more and more pragmatic. In frames of geopolitics, international law is closely associated with politics and interests of sovereign states which becomes a reason for opposing morality and international law. However this point of view is not entirely true since one of the most important sources of law is a custom, which originates from morality and ethics. Reducing the origins of international communication customs to the principle of self-preservation would vulgarize Darwin's teachings and reject human social and ethical essentials. In national law the ethical origins of law is an obvious fact (Maltsev, 2015). According to Kant both international and national law are parts of the united system of law. That is why the state finds its law not in abstract, but in certain existence, while the moralizing approach may not serve as a principle of its activities. The view on alleged non-law in the mentioned opposition "rests predominantly upon the surface of concepts of morality, nature of the state and its relation to the moral viewpoint" (Hegel, 1990, p. 368).

Thirdly in frames of the unleashed hybrid war it becomes necessary to elaborate the theory of state interest and develop scientifically based state interests in modern conditions. The principle of historicism doesn't lose its relevance in this context, so it's necessary to ethically reconsider historical legal heritage (Pashentsev, 2021, p. 229), including laws of Mesopotamian kings, Indian Arthashastra, ancient Greek and Roman laws.

We can conclude that the state interest is reflected in legal acts of both international and national law. Features of reflecting this interest is determined by a number of factors, including technological development (Pashentsev, 2020).

The metaphysical principle of permanent materia development in relation to international law

as a complex social and political form of motion actualizes the issue of analyzing internal and external interactions in international legal system which plays the main role in the genesis of internal changes occurring along with qualitative transformation of hierarchical order and relationships between functionally associated parts. International law is a result of interaction between states. Those interactions, occurring in the international environment as an objective process of sharing all-human values represent a common cultural phenomenon in world progress and one of the aspects of law activity and whilst having social comprehension of objectively significant matters of stable and fair world order as basis of its existence are determined by fundamental development regularities and subjective factors of coordinating interests and special will of active subjects.

National legal systems are not separate and secluded phenomena. They exist and function as components of a single whole system which includes international law and are impacted not only by internal processes. The legal system of society, being a complexly organized system is an open one and it constantly interacts with other social systems and international law; on each historical development stage it comprises unity in the structure of social reality being a part of a whole and plays the role of significant factors in social dynamic stability. Therefore the formation of a system-structural unified image of legal reality (legal world image) may only be achieved by revealing essential and sustainable connections, their features, the sophisticated study of the impact of internal processes as well as variety of world phenomena, in the course of which certain relationships emerge objectively that represent the correlation of their essentials in the general theoretical context.

From the pragmatic viewpoint it is interesting to consider the creation of new interaction forms between international and national law via institutional, social-economic and political mechanisms that do not contradict international law for the fulfillment of state interests and goals.

Taking into account that the existence may be revealed in its interaction and motion, we should note the following peculiarities of modern international law:

1. The notable activation of discussions in legal science between the advocates of Kant's theory on global civil order and "realists" who presume social and ontological domination of power upon law. The notions of the latter originate from ideas of Carl Schmitt on "large territories" and international law, which have Nazi focus. His works, written in thirties – before the World War II served as justification for Nazi German conquest;
2. The redefinition of legitimacy of international treaties due to withdrawal of one or several states;
3. The shift in the balance of powers, which sets new hierarchy and triggers transformation of the international legal system. Even J. Soros (2021) had to acknowledge: "Maybe my statement will sound shocking, but the United States have turned into the largest obstacle on the way of establishing the rule of law in international relationships" (p. 424);
4. The acknowledgment of state sovereignty as a lasting value in international communications – while the major part of world jurisdictions are oriented towards strengthening their sovereignty, some EU member states wobble: on one hand they failed to adopt a uniform European convention – the common EU Constitution, on the other hand they are apparently solid in supporting color-coded revolution on post-soviet territories;
5. The use of power without its humanitarian-based and ethical assessment and humanitarian feedback, which intensifies contradictions and their dangerous aggravation;
6. The emerging trends to increasing advocacy of sovereign states to the ideas of state sovereignty transform the balance between national and international law, bringing the principles of national law to the foreground. Generally accepting the supremacy of the UN Charter and other relevant basic international legal documents, the states subject to multilateral treaties according to the Vienna Convention on the Law of Treaties 1969 often utilize stipulations for political and other reasons;
7. The practice of international relationships shows strengthening tendencies of utilizing coercive power (provided by international law) by western states for personal profit. Acknowledging that "coercive power is an organic part of prerogatives and obligations specific to state power in the field of international relationships" (Martens, 2018, p. 303)

we should consider it from the philosophic and legal viewpoints.

Breaking terms of an agreement by action or omission as well as failure to comply with terms – does already serve as coercion, which begets contradictions as a source of Hegel's development concept. The emerged contradiction is solved by a formula "coercion beats coercion" (Hegel, 1990, p. 142). Therefore it cannot remain totally (by its formal determination by law, while the action like second coercion is needed) in the field of its determination in law as defined by it but finds necessary expression in actions as the second coercion. Therefore, the first and the second coercion always remain in dialectic interconnection in conditions of their present existence. The causal connection between coercions may be intermediated by a third subject or several subjects due to the special will of which and because of their actions objective conditions of breaking the agreement terms may arise. So it is necessary and rational for the state to coerce in relation to the intermediate subject. "The attribution of an exclusive coercion power to the state is seen as very important for the whole social life" (Korkunov, 2013, p. 240).

Therefore the coercive power is "objectively a system of legal norms that must be observed by the state as a member of international community while protecting the state's legitimate interests and rights" (Martens, 2018, p. 203). It is known that the West utilizes this right as well as sanctions in order to apply political pressure on certain states while masquerading true interests with deliberations on democracy and human rights. "The United States aim to interfere with inner affairs of other countries in order to force them to follow the rules which they hesitate to follow… The current advocacy of the US to the principle of unilateral actions in international business may endanger the safety of the whole world. At the same time, the US could easily become a strong positive power" (Soros, 2021, p. 17). Along the recent two decades and the formation of a multipolar world order international norms are being more and more ignored;

8. More relevance is given to the activities of Russia and its friendly states aimed at preserving the status of the UN Charter and other basic international legal acts and international law in general – in contrast to unilateral activities, primarily the US-specific activities after the dissolution of the USSR and the Warsaw treaty. E. M. Primakov (2015) stated : "the right of veto, which may be utilized by the permanent members of the UN Security Council surely hinders American hegemony. But in such conditions the US stake on the NATO as an alternative to the UN. NATO has ceased being a European regional organization – it spreads far beyond European boundaries" (pp. 142-143). Western actions undermine the basis of international law and world order, established after World War II.

Conclusion

International law, emanating from international communication of sovereign states based upon equal dialogue represents a complex, multifaceted and hierarchically organized political phenomenon. From the philosophical viewpoint it reflects the level of culture in the civilized development of world nations, and from the positivistic point of view – the great variety of state interests gains practical expression in it. At the same time the alignment of those interests occurs on the basis of agreement and compromise, which serves as an ontological principle of international law.

The acknowledgment of values and ideals, provided by generally accepted principles and norms of international law by each state, the creation of normative and institutional mechanisms of their implementation at the national level serves as a ground for the "dialogue of civilizations" and actually represents the main political and legal content of the interaction process between national and international law. It is within that content the existence of international law unfolds.

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