

TRANSFORMATION OF INTERNATIONAL LAW IN THE CONTEXT OF GLOBAL CONSTITUTIONALISM: A CONCEPTUAL DIMENSION

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Annotation. In today's globalized world moving toward European integration, studying the interaction between constitutional and international law has become increasingly important. Constitutional law, as a fundamental branch of national law, is increasingly influenced by international legal norms and standards, necessitating a reevaluation of traditional approaches to understanding its place in the legal system.

This article provides a comprehensive theoretical and legal analysis of the constitutionalization of international law and the emergence of international constitutional law as an independent sub-branch. It examines key trends in the transformation of international law under globalization, including: the growing role of non-state actors, rethinking state sovereignty concepts, deepening interaction between international and national law, and the development of hierarchical structures in international legal norms.

The research analyzes the concept of shared values in the global community as a fundamental basis for the constitutionalization of international law. Special attention is given to human rights as a component of international constitutional law and their subsidiary function in relation to national legal systems. The phenomenon of transnational constitutionalism and its impact on shaping a new global legal order is examined.

The study explores the changing composition of subjects in international law and the transition from traditional sovereignty theory to multilevel constitutionalism. It argues for developing new research methodologies for studying international legal order that combine constitutional, administrative, and international law approaches.

Based on this analysis, the article argues for recognizing international constitutional law as an independent sub-branch of international law, given its unified legal regulation and distinct methodology. Particular emphasis is placed on the relevance of constitutional legal frameworks in international cooperation against aggression, terrorism, and genocide in the context of Russian aggression against Ukraine.

Key words: constitutionalization of international law, international constitutional law, global constitutionalism, human rights, state sovereignty, transnational constitutionalism, international legal order.

1. Statement of the question.

In the current conditions of globalization and European integration, the study of the interaction of constitutional and international law is of particular relevance. Constitutional law, being a fundamental branch of national law, is increasingly influenced by international legal norms and standards, which necessitates the need to rethink traditional approaches to understanding its place in the legal system.

The processes of constitutionalization of international law and internationalization of constitutional law are becoming defining trends in modern legal development. This is manifested in the growing role of international treaties in national law, the implementation of international human rights

standards, the development of supranational mechanisms for the protection of constitutional values and principles. The issue of the correlation of the norms of constitutional and international law, the definition of their hierarchy and mechanisms of interaction is of particular importance.

In the conditions of the formation of global constitutionalism, the need for a theoretical understanding of the transformation of constitutional law under the influence of international legal norms is becoming more urgent. This involves the study of both doctrinal approaches to understanding the place of constitutional law in the system of international law, and practical aspects of their interaction at the national and international levels.

2. Review of scientific sources.

The theoretical basis for the study of the interaction of constitutional and international law was the works of leading domestic and foreign scholars. In particular, the general theoretical aspects of the relationship between international and national law were studied by M. Baymuratov, O. Zaychuk, M. Kozyubra, V. Opryshko, P. Rabinovych. A significant contribution to the development of issues of constitutionalization of international law was made by Yu. Voloshyn, V. Denisov, A. Selivanov.

Certain aspects of the influence of international law on constitutional law were the subject of scientific research by O. Martselyk, who focused on the implementation of international human rights standards, and M. Savchyn, who studied the issue of constitutional justice in the context of international law. Of great importance are the works of V. Shapoval on the interaction of constitutional and international law in the context of globalization.

Among modern foreign studies, the works of A. Peters on global constitutionalism, J.-P. Jacquet on the constitutionalization of international law, and K. Tomushat on the influence of international law on national constitutional systems deserve attention.

3. The purpose of the study is a comprehensive theoretical and legal analysis of the place of constitutional law in the system of international law, identification of the main forms of their interaction and development of scientifically substantiated proposals for improving the mechanisms for implementing international legal norms in the constitutional law of Ukraine.

4. Presentation of the research material.

In the current conditions of global transformations, a significant modification of the system of international law is observed, which is manifested in several key trends: an increase in the role and influence of non-state actors in the international arena, a rethinking of the concept of state sovereignty and its correlation with the interests of the international community, a deepening of the processes of interpenetration of international and national law, an increase in the influence of decisions of international institutions on domestic legal systems, as well as the formation of new mechanisms of lawmaking and law enforcement that combine traditional international legal instruments with transnational social processes with the participation of non-state actors [1, 2].

In the conditions of modern development of international law, a clear tendency towards its constitutionalization is observed, which is manifested in the formation of a special supranational constitutional legal order. This is reflected in several key aspects: the emergence in international law of norms of a constitutional nature aimed at limiting state power for the sake of protecting human rights; the formation of a clear hierarchical structure of international legal norms; recognition by states of the priority of individual international norms over national legislation; the creation of a system of international bodies based on the constitutional principles of the rule of law and the division of functions, which is especially noticeable in the field of international justice; the growth of the independence of international law from state sovereignty; the formation of universal legal values common to most countries of the world. At the current stage of development of international law,

a fundamental question arises regarding the sufficiency of the level of its constitutionalization to distinguish international constitutional law as an independent sub-branch, as well as the uniformity of legal regulation in the process of such constitutionalization. The resolution of these problems is of particular importance for Ukraine in the context of the formation of effective responses to the global challenges of our time. For a comprehensive study of these issues, it is necessary to carry out a comprehensive analysis of three key aspects: first, to examine the generally recognized values of the international community as the fundamental basis for the formation of international constitutional law; secondly, to rethink the status of subjects of international law through the prism of the concept of sovereignty; thirdly, to analyze the specifics of international norm-making in the context of the formation of international constitutional law.

In the process of constitutionalization of international law and consolidation of the fragmented international legal system, the concept of common values of the world community plays a key role. This concept allows us to organically combine the principle of universality, necessary for the formation of a single international legal system, with the principle of pluralism of modern legal systems. However, determining the content of these common values and public interests of the international community, as well as establishing their sources - ethical or purely legal norms based on the principle of the rule of law, remains a complex and multifaceted issue that requires thorough research [3, 4]. It is proposed to consider the values of the individual (and further human rights) and public interests [5] as common values.

Human rights are considered as a component of international constitutional law due to their subsidiary function in relation to national legal systems, allowing to fill gaps in cases of improper implementation of constitutional rights at the national level. Although the implementation of human rights treaties has become a catalyst for the constitutionalization of international law, it is important to take into account the specifics of their interaction with domestic law. In the process of national implementation, human rights acquire a specific substantive content, which gives rise to the need to determine their "essential minimum" and forms the concept of "legal community" as the ability of law to generate universal normative values [6].

In the modern world, the concept of international law goes beyond the traditional relations between states and international organizations. The process of constitutionalization of international law is much broader than the simple transfer of constitutional values from the national to the international level. The phenomenon of transnational constitutionalism, which has been actively studied since the 2000s, reflects the formation of a new global legal order with its own subsystems, special subjects and processes. This order is characterized by the dynamic interaction of international and national legal systems, involving a wide range of participants - from states and international organizations to non-governmental organizations, individuals and transnational corporations - in the processes of lawmaking, interpretation and implementation of legal norms at both the international and national levels [7, 8]. They are based on the idea that international law cannot be considered in isolation from domestic law.

In the context of globalization and the complexity of social relations, the classical concepts of monism and dualism can no longer fully explain the interaction of international and national law. Instead, multilevel constitutionalism offers a new approach that goes beyond the boundaries of individual states and is aimed at protecting the interests of both the global community and individual individuals. In the modern world, effective constitutional protection of human rights and ensuring personal security are possible only under the condition of international cooperation of states, which actualizes the issue of the optimal distribution of powers between different levels of the multilevel system of constitutionalism.

The issue of the separation of international constitutional law is closely related to the problem of determining the subject composition of international legal relations. The traditional theory of sovereignty, which recognizes only states as subjects of international law (which is reflected in the Vienna Convention on the Law of International Treaties of 1969), complicates the process of forming international constitutional law. Although this approach emphasizes the independence of states in the international arena and their leading role in international norm-setting, it does not correspond to the modern realities of a globalized world, where the international community is characterized by

a complex social structure and the active participation of non-state actors in international relations [1, pp. 117, 148]. In addition, the modern international community is characterized by constant dynamics, caused by various social, economic, political and historical transformations. Along with states, non-state actors play an increasingly important role in international relations, including peoples, religious and racial communities, transnational corporations and individuals. All these actors actively interact with each other, with states and international organizations in the processes of making and implementing decisions at the supranational level.

In today's conditions, the international community and states form a complex system of relations in the international arena, where they can both cooperate and conflict, being in a state of interdependence. Such interaction has a symbiotic nature, which reflects the impossibility of the full functioning of one without the other in the modern system of international legal relations [10].

The formation of new theories on the subjective composition of international law, which act as an alternative to the traditional concept of state sovereignty, creates a theoretical basis for the formation of international constitutional law. These theoretical developments reflect the objective process of complication of international relations and serve as a catalyst for the formation of new sub-branches of international law that better correspond to the modern realities of the international legal order.

The question of the existence of international law is debatable, since it is not formed by the will of a single sovereign state, but through the consensus of a plurality of states. Modern international norm-setting is increasingly carried out by the bodies of international organizations according to procedures similar to parliamentary ones. Although formally international norms are adopted with the consent of the participating states, in fact this process is influenced by a wide range of subjects - from non-governmental organizations and transnational corporations to individuals who represent alternative positions. This leads to the fact that states lose absolute control over the processes of adoption and implementation of international acts, which is clearly demonstrated by the example of Protocol 11 to the European Convention on Human Rights [11]. Under the influence of non-governmental organizations, the accession of states to the Convention is unacceptable without guaranteeing the right to file complaints.

There is also a tendency in the system of international justice to expand the participation of non-state actors. International dispute resolution bodies are often formed from independent experts who act not as representatives of specific states, but as impartial specialists. Moreover, the decisions of these bodies may contain normative provisions, which actually turns them into a source of international law. The constitutionalization of international law is indicated by the formation of a hierarchical structure of international legal norms. In this system, norms of higher legal force have a special status, which include several categories: first, the provisions of the UN Charter as a fundamental document of the modern international legal order; second, imperative norms of general international law (jus cogens) and obligations to the international community as a whole (erga omnes); third, norms that enshrine fundamental human rights or reflect the collective interests of international communities [12, 13, 14]. The concept of a hierarchy of norms is of fundamental importance, since it allows us to consider international law as a holistic system with a formal constitutional structure. In the context of the paradigm of international constitutional law, the presence of such a hierarchy indicates the complex structure of international law, where certain norms acquire a special status, similar to constitutional norms in national law. At the same time, it is important to realize that the supremacy of such norms is not absolute - this applies to both their place in the system of international law and their priority in implementation in national legal systems.

Transformational processes in the field of constitutionalization of international law have necessitated the development of new methodological approaches both to the study of international legal order and to the implementation of international legal regulation. In the context of fragmentation of the global legal order and the need to harmonize different legal systems, traditional methods of institutional law are insufficient. The solution to this methodological problem is seen in a comprehensive combination of approaches of constitutional, administrative and international law, which will allow creating a more effective toolkit for the analysis and regulation of modern international legal relations [15], as well as a constitutional interpretative method - the defragmentation method [16].



The constitutionalization of international law is an indisputable reality of the modern world legal order, although this process faces a number of obstacles: the desire of states to preserve sovereignty, the diversity of legal systems, the need to preserve national legal specificity and the limited democratic legitimacy of international rule-making.

However, the process of constitutionalization continues to intensify, which is manifested in several key trends:

- transfer of constitutional principles to the international level;
- approximation of international norm-making to parliamentary procedures;
- expansion of the spheres of regulation of international law;
- formation of a hierarchical structure of international legal norms.

Given the homogeneity of legal regulation in the process of constitutionalization and the formation of a specific methodology for studying the international legal order, it can be argued about the formation of constitutional international law as a separate branch. Constitutional norms are not simply present in various subbranches of international law (law of international treaties, law of foreign relations, law of international organizations, international humanitarian law), but form a holistic homogeneous system that can be considered as an independent subbranch of international law.

In the context of Russian aggression against Ukraine, the constitutional and legal dimension of our state's participation in international efforts to counter aggression, terrorism and genocide of the Ukrainian people is of particular relevance. The fundamental principles of such international cooperation are the principles of human rights protection, prohibition of the use of force or threat of force, respect for the territorial integrity of states, democracy and transparency. Compliance with these principles acquires constitutional significance in the system of international law, forming the legal boundaries of countering international crimes and ensuring international security.

5. Conclusions.

1. The constitutionalization of international law is an objective process of modern world development, characterized by the formation of a special supranational constitutional legal order. This process is manifested in the emergence of norms of a constitutional nature, the formation of a hierarchical structure of international legal norms, recognition of the priority of individual international norms and the formation of universal legal values.
2. The constitutionalization of international law is based on the concept of common values of the world community, which allows combining the principle of universality with the principle of pluralism of legal systems. A special place in this system of values is occupied by human rights, which perform a subsidiary function in relation to national legal systems.
3. The transformation of the subject composition of international law is characterized by the growth of the role of non-state actors (non-governmental organizations, transnational corporations, individuals) in international relations, which leads to a rethinking of the traditional theory of state sovereignty.
4. The classical concepts of monism and dualism are giving way to multi-level constitutionalism, which better corresponds to the modern realities of the interaction of international and national law. This requires the development of new methodological approaches that combine the tools of constitutional, administrative and international law.
5. At the present stage, we can talk about the formation of international constitutional law as an independent sub-branch of international law, characterized by the uniformity of legal regulation and a specific methodology. This is confirmed by the presence of constitutional norms not only in individual sub-branches of international law, but also by the formation of a holistic system of such norms.

6. In the context of Russian aggression against Ukraine, the constitutional and legal dimension of international cooperation in countering aggression, terrorism, and genocide acquires special importance. The principles of protecting human rights, territorial integrity, and the prohibition of the use of force acquire constitutional significance in the system of international law.

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