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INTERPRETATION OF INTERNATIONAL LAW BY INTERNATIONAL ORGANIZATIONS: CHALLENGES AND PERSPECTIVES

ІНТЕРПРЕТАЦІЯ МІЖНАРОДНОГО ПРАВА МІЖНАРОДНИМИ ОРГАНІЗАЦІЯМИ: ВИКЛИКИ ТА ПЕРСПЕКТИВИ

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The article analyzes the role of international bodies and organizations as subjects of the international law interpretation in the context of current challenges faced by the international community. It is proved that an important feature of the transformations of contemporary international law is a steadily growing role of international bodies and organizations in the process of international law interpreting. In this article, it is noted that the distinction between interpretation and law-making is not an easy task. The UN activity is particularly relevant in international law interpreting. Undoubtedly, the UN General Assembly plays a particularly important role in this realm, but this does not give reasons for recognizing the status of the UN General Assembly as a law-making body. It can be said that the results of its activity are more oriented to law-making, both within national and international legal systems. The Venice Commission in the field of interpreting international law has achieved a significant result in both doctrinaire and practical terms. It is argued that, although the Venice Commission is neither a law-creating nor a law-enforcement body, it influences law-making because of the specifics of its activities, because it engages in law interpretation in the process of the expert-advisory activity.

The rapid development of the practice of the WTO Appellate Body, as well as the growing interest of WTO member countries in settling disputes through the WTO dispute settlement mechanism, give reasons for believing that the subject of interpretation the treaties by the WTO Appellate Body is and will continue to be relevant. An important task for the WTO Appellate Body is to develop comprehensive approaches for studying the practice of interpreting contracts, which will allow timely and complete expert-consultative conclusions and recommendations to the parties to the dispute.

Key words: International Law, International Organizations, Subjects of Interpretation, UN General Assembly, NATO, Venice Commission, World Trade Organization (WTO).

У статті доводиться, що важливою ознакою трансформацій сучасного міжнародного права є роль, що неухильно зростає, міжнародних органів та організацій у процесі інтерпретації міжнародного права. Особливо актуальною в інтерпретації міжнародного права є діяльність Генеральної Асамблеї ООН, однак це не дає підстав визнавати за нею статус правотворчого органу. Доводиться, що, хоча Венеціанська Комісія не є ні правотворчим, ні правозастосовним органом, вона впливає на правотворчість у силу специфіки своєї діяльності, оскільки здійснює інтерпретацію в процесі експертно-консультативної діяльності. Важливим завданням у процесі інтерпретації для Апеляційного органу WTO є вироблення комплексних підходів до вивчення практики інтерпретації договорів, що дасть змогу забезпечити своєчасні й повні експертно-консультативні висновки учасникам спору.

Ключові слова: міжнародне право, міжнародні організації, суб'єкти інтерпретації, Генеральна Асамблея ООН, Венеціанська Комісія, World Trade Organization (WTO).

В статье доказывается, что важным признаком трансформации современного международного права является неуклонно растущая роль международных органов и организаций в процессе интерпретации международного права. Особенно актуальной в процессе интерпретации международного права является деятельность Генеральной Ассамблеи ООН, однако это не дает оснований признавать за ней статус правотворческого органа. Доказывается, что, хотя и Венецианская Комиссия не является ни правотворческим, ни правоприменительным органом, она влияет на правотворчество в силу специфики своей деятельности, поскольку осуществляет интерпретацию в процессе экспертно-консультативной деятельности. Важной задачей в процессе интерпретации для Апелляционного органа WTO является выработка комплексных подходов к изучению практики интерпретации договоров, что позволяет обеспечить своевременные и полные экспертно-консультативные заключения участникам спора.

Ключевые слова: международное право, международные организации, субъекты интерпретации, Генеральная Ассамблея ООН, Венецианская Комиссия, Всемирная торговая организация (ВТО).

A distinctive feature of contemporary international law transformation is a steadily growing role of international bodies and organizations as subjects of interpretation. The latter not only play a pivotal role in the implementation of international law norms, but such bodies and organizations also participate in their interpretation. In this context, it is worth noting that the borderline between this kind of interpretation and lawmaking is not an easy task. In interpreting their charters, international bodies and organizations, of course, also influence the content of other international norms.

The legal nature of international organizations, the organizational structure and functions of international organizations, forms of law-making activity became the subject of active research of such national scientists and "near abroad" countries as V. Butkevich, O. Butkevich, V Vasilenko, M. Girshovich, M. Hnatovsky, O. Kyievets, I. Lukashuk, V. Mytsyk, T. Neshtayeva, T. Habriyeva, O. Shpakovich and others. In the foreign doctrine of international law, some aspects of this issue were studied in one way or another by such scholars as G. Ab - Saab, D. Ancilotti, A. Aust, B. Condon, O. Elias, M. Fitzmaurice, M. Lennard, P. Merkouris, J. Pauwelyn, G. Schwazenberg, P. Van den Bossche, I. Van Damme, G. White.

It is worth paying attention to the study of theoretical and legal problems of interpretation, carried out by U. Linderfalk [8; 9]. A detailed analysis of the articles of the Vienna Convention on the Law of Treaties of 1969 (hereinafter referred to as the Vienna Convention) applicable to the treaty interpretation and used by international organizations was made in the work

of O. Corten and R. Klein [2]. However, it should be noted that the problem of interpretative activity of international organizations remains inadequately researched and debatable, especially in the context of delimiting the content of legal interpretation and law-making in their activities.

The aim is to analyze a steadily increasing role of international bodies and organizations as subjects of the international law interpretation in the context of current challenges facing the international community.

Ukrainian scholar O. Shpakovich points out that the positions of scientists on the law-making functions of international organizations can be grouped into two groups: 1) the denial of the possibility of international organizations to make binding decisions that are not directly provided for in the charter; and 2) recognition of the necessity of decisions of international organizations, directed to fulfill their functions [12, p. 34–47]. The author also emphasizes that the majority of international scholars are interested in such a phenomenon as the decision of an international organization, which more and more often sounds like a soft law category and examines its influence on the development of international law as a whole, by virtue of which the international organization ceases to be the second subject of international law.

O. Shpakovich does not agree with the opinion of T. Neshataeva in this discussion [12, p. 34–47] that the agreement between the subjects of international law is the only way to create legal norms. The scholar argues that, based on the practice of contemporary international organizations, attention should be paid to the resolutions of a number of regional organizations, primarily European mechanisms for the human rights protection, which by their legal nature, although they are "soft law" norms, at the same time they are "tough" judging from international legal consequences.

Particularly important in the interpretation of international law is the work of the United Nations. On the one hand, first of all, the interpretation of the purposes and principles of its Charter affects international law. On the other hand, any interpretation is carried out based on the purposes and principles of the UN Charter. The most convincing evidence of this is the *"Declaration of the General Assembly on the principles of international law relating to friendly relations and cooperation between States"* [3]. In the direct analysis of the document, first of all, its title, it is obvious that it does not just refer to the principles and their content, but to a large extent their in-depth interpretation is carried out.

The problem of interpreting the constituent acts of international organizations, and above all the UN Charter, has a great practical significance today. Acts of this kind – the Charters of its legal nature are international treaties. However, they have a significant specificity, which was reflected in the Vienna Conventions. The International Court of Justice also concludes that the general principles and rules for interpreting treaties can apply to the UN Charter, since the Charter is a multilateral treaty, which, however, has its own specifics. Interpretation of the Charter should be carried out by bodies and organizations in the part that falls within their competence and regulates their activities. During the development of the UN Charter, it was defined: "Each body will interpret parts of the Charter relating to its specific functions". Such an interpretation in the event of recognition by its states becomes binding. In this way, the content of the constituent acts of international organizations [3] is being developed. As can be seen from the very title, we are talking about the principles of the Charter, the statement of their contents, that is to a large extent about their interpretation. Moreover, in fact, the Declaration has become an act of progressive development of the content of the basic principles. By itself, the provisions of the Declaration were of a recommendatory nature. However, further recognition of the legal force of their content by the states gave it the status of rules of universal customary law. *Undoubtedly, the UN General Assembly plays a particularly important role in this realm, but this does not give reasons for recognizing the status of the UN General Assembly as a law-making body.*

It is worth noting that international organizations have the right to interpret the Charter, but such an interpretation is obligatory only for the organization itself and the lower bodies. Such interpretive activities also have a significant impact on the rights and responsibilities of the United Nations.

An example of an extremely important resolution for Ukraine is the Resolution of the General Assembly of the United Nations on the territorial integrity of Ukraine No. 68/262, which was adopted on March 27, 2014 at the 68th session of the General Assembly of the UN by open voting of the UN member states, 100 of them expressed "for", 11 – "against", and 58 countries "abstained". This session of the UN General Assembly was convened specifically to consider the issue of Russian armed occupation of the Ukrainian territory, namely the Crimean peninsula. The resolution does not contain provisions on the condemnation of Russia's actions, and the text does not even contain a clear statement that Crimea is an integral part of Ukraine. But along with this, the Resolution confirmed the recognition of the territorial integrity of Ukraine "at internationally recognized borders". Also, the resolution of the UN General Assembly has declared non-recognition of the so-called Crimean referendum. According to the draft, the UN General Assembly has urged all states and international organizations not to recognize any changes in the status of the Autonomous Republic of Crimea and the city of Sevastopol on the basis of the above-mentioned referendum and refrain from any actions or behavior that *may be interpreted* as recognition of any change in status [11].

As Daniel Costelloe and Malgosia Fitzmauric point out, there is another problem associated with adopting *a single set of interpretative principles* for secondary instruments. The only set of interpretative principles, by virtue of their nature, leaves little room for acceptance, political and technical contexts, since they may unreasonably restrict the interpretation or even lead to conclusions that are contrary to the true intention of the international body [1]. As an example, the authors refer to the UN Security Council resolutions, which are *sui generis*, and may well be too political, especially where they create "external" legal consequences [1]. In addition, a single set of interpretative principles can not fully take into account the fact that some non-contractual legal instruments may be subsequent agreements or practices. Moreover, Daniel Costelloe, Malgosia Fitzmaurice proposes to develop separate principles of interpretation by each treaty body or international organization or to create them in the practice of courts and tribunals [1].

There is a need to distinguish between the interpretation of such universal organizations as the United Nations and organizations with a limited number of participants, such as regional organizations. Universal organizations represent the international community as a whole, and in this capacity they can by means of interpretation make meaningful changes to general international law, including its imperative norms. According to the Vienna Conventions, such rules are created and changed by the international community as a whole.

Interpretation by organizations with a limited number of participants can not lead to the abolition or the amendment of the rules of general international law. With the help of interpretation, the effect of dispositive norms in the relations of the participants may be limited. As for imperative norms, they must be strictly adhered to when interpreted.

A rather new and actual problem in the context of our article is the study of the ***interpretational activity of the Venice Commission.*** Indeed, it is precisely at this stage of development that one of the special features of international law transformation, which reflects the main aspirations of the international community, is the growing influence of recommendatory norms, in other words, international standards. One can say that the interpretation by the Venice Commission of national law is

a new phenomenon of international and national nomocracy. Acts of the Venice Commission as a result of the interpretation of national law have advisory and explanatory nature, but differ in a number of non-standard characteristics and properties. It is evident that the in-depth study of the work of the Venice Commission as a subject of a legal interpretation is relevant from a scientific point of view, including the modernization of the theory of interpretation of law [7].

The features of the law-interpreting activity of the Venice Commission are due to the fact that the new phase of globalization and interstate integration, that came at the end of the 20th century, the corresponding trends in international law, the convergence of national legal systems have led to a change in the paradigm in which lawyers and state authorities previously practiced the interpretation of law, and the legal doctrine reflected the accumulated experience. The legal interpretation of the Venice Commission is, in the first place, is subordinated to the law-making objectives, although its results are also used in the realm of law, including enforcement. This feature should be emphasized in connection with the fact that the dogmatic theory of interpretation of law ties it with law enforcement, during which, as a rule, interpretation was carried out and continues to be carried out by a majority of authorized actors both at the national and international levels (for example, courts – both national and international), as well as lawyers and practicing lawyers [6, § 3, § 4].

An example of an active advisory activity is the Opinion of the Venice Commission regarding a new law on the educational language approved by the Verkhovna Rada of Ukraine on September 5, 2017. The Commission stressed that although the reform of the Ukrainian educational system is a positive step, the legal provisions on reducing the amount of education in minority languages are unjustified and even discriminatory. The commission proposed to add some new points to Art. 7 of the Law "On Secondary Education", which would make this provision more balanced. Referring to Article 13 of the Framework Convention, the Venice Commission recommended the launch of a new dialogue with representatives of national minorities on the linguistic issue in education so that the implementation of an abovementioned law does not prevent the preservation of the cultural heritage of national minorities and the continuity of language learning at national schools [13].

What are the prospects for the interpretation of the Venice Commission? It now seems entirely justified to state the role of the Venice Commission as one of the leading international legal interpreters. The role of the Venice Commission was gradually strengthened in the process of scientifically substantiated advancement of the legal norms and standards relating to democracy, human rights and the rule of law, as well as classical Western European understanding and interpretation of these values. At the same time, with the increase in the composition and the scope of activity of the Commission, regional European standards are increasingly integrated into international ones. At the same time, expanding the framework of constitutional law, especially in terms of human rights, also causes the development of the spectrum of activities of the Venice Commission.

In the course of its interpretation, the Commission performs at once in essence several of the legally significant functions. One of them is to participate in the national law modernization. Experts say that many changes in national law, especially in the constitutions, were due to the constant legal monitoring conducted by the Venice Commission [6, § 3, § 4].

Another function is expressed in the legal consolidation and legal harmonization by combining the legal positions of the Venice Commission, of the European Court of Human Rights or of other organs of the Council of Europe altogether with different methods of interpretation, European standards and practices or constitutional ideas and doctrines. Many experts are exploring the Commission`s focus on the wide reach of international organizations. The effectiveness of the Commission's activities was manifested, first of all, in such areas as the protection of human rights and essential freedoms.

Interpretation of international treaties by the WTO Appellate. The WTO Appellate Body (WTO) is guided by the provisions of Art. 31 and Art. 32 of the Vienna Convention, which reflects the rules of international customary law. At the same time, the flexibility of these provisions allows you to produce your own interpreting discourse, distinct from other international judicial bodies. At the initial stage of the activity, the Appellate Body used constant references to Art. 31 and Art. 32 of the Vienna Convention for the recognition for itself judicial functions [14, p. 605–607, 622–630]. On the other hand, R. Van Damme rightly believes that the early adoption and consistent application of interpretative rules were only one of the factors contributing to the strengthening of the role of the Appellate Body [14, p. 656–648].

M. Girshovich points out that this approach to interpretation includes two levels: 1) the relationship between means of interpretation; 2) the relationship between the processes and the results of the interpretation of the individual elements of the interpretative provisions. In other words, the process of interpretation becomes complex. On the other hand, the author notes that it seems somewhat premature to draw the final conclusion that the Appellate Body withdrew from the formal requirements of the provisions on the interpretation of the Vienna Convention [5].

An example and a consequence of sufficient formalism in WTO activities is the situation in which Ukraine on August 27, 2018 was, when it appealed to the WTO ruling on a dispute with the Russian Federation on the restriction of import of railway equipment [Russia]. Ukraine appealed against the WTO Panel report on Ukraine v Russia "Russia – Measures Affecting the Import of Railway Equipment and its Parts" (DS499). On July 30, the WTO published the expert group`s report on Ukraine's case against the Russian Federation regarding the import of railway equipment. Since the interests of Ukraine were only partially satisfied, the group of experts confirmed Russia's violation of certain provisions of the General Agreement on Tariffs and Trade 1994 (GATT) and the Technical Barriers to Trade Agreement. Also, at an unsatisfied point of view, a group of experts did not confirm the existence of systematic restrictions on imports from Russia, referring to the fact that during the period (April 2014 – December 2016) the situation in Ukraine in terms of security was unfavorable compared to the situation in other countries. In other words, Russia did not carry out inspection control due to the presence on the territory of Ukraine, stipulating this "anti-Russian sentiment and threat to Russian citizens". Experts stressed that the stated sentiment is the result of hostilities that Russia itself has unleashed [10].

We agree with the experts that the treaty interpretation is a serious tool in the hands of the Appellate Body, since it is obvious that, through the same interpretation of the agreements, it ensures the preservation and development of the WTO system. Despite the application of the interpretation of customary norms, enshrined in Art. 31 to Art. 32 of the Vienna Convention the Appellate Body had developed its own approach to the treaty interpretation. However, at this stage it is difficult to determine the specifics of the approach to interpretation based on the exclusion (or preferential use) by the Appellate Body of any particular category of interpretation methods [5].

In the context of current challenges facing the international community, an important feature of the transformation of contemporary international law is a steadily growing role of international bodies and organizations as subjects of interpretation.

The UN activity is particularly relevant in interpreting international law. The interpretation of purpose and principles of the UN Charter strongly affects international law. Undoubtedly, the UN General Assembly plays a particularly important role in this realm, but this does not give reasons for recognizing the status of the UN General Assembly as a law-making body.

The Venice Commission in the field of interpreting international law has achieved a significant result in both doctrinaire and practical terms. Although the Venice Commission is neither a law-creating nor a law-enforcement body, it has been influencing law-making because of the specifics of its activities. Its mission is to implement the interpretation in the process of the expert-advisory activity. It can be said that the results of its activities are more oriented to law-making, both within national and international legal systems. Lawmaking is a priority area for the Commission's legal position.

The rapid development of the practice of the WTO Appellate Body, as well as the growing interest of WTO member countries in settling disputes through the WTO dispute settlement mechanism, give reasons for believing that the subject of interpretation the treaties by the WTO Appellate Body is and will continue to be relevant. In this connection the important task is to develop comprehensive approaches to the study of the practice of interpreting contracts by the WTO Appellate Body, which will be able to provide timely and complete expert advice and advice to the parties to the dispute.

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СУВЕРЕНІТЕТ НАЦІОНАЛЬНИХ ДЕРЖАВ В УМОВАХ ГЛОБАЛІЗАЦІЇ

THE NATIONAL STATE SOVEREIGNTY IN CONDITIONS OF GLOBALIZATION

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Стаття присвячена висвітленню актуальної проблеми існування суверенітету національних держав в умовах посилення глобалізаційних процесів з погляду аналізу двох протилежних позицій і врахуванням їх сильних і слабких аспектів. Перша стоїть на засадах розмивання суверенітету та його поглинання глобалізацією, тоді як друга відстоює можливість їх безперешкодного паралельного існування.
Ключові слова: глобалізація, суверенітет національних держав, поглинання суверенітету, міжнародні організації, транснаціональні корпорації, нові суб'єкти світової політики.

Статья посвящена актуальной проблеме соотношения суверенитета национальных государств в условиях усиления глобализационных процессов с точки зрения анализа двух противоположных позиций с учетом их сильных и слабых сторон. Первая говорит о размывании суверенитета и его поглощении глобализацией, тогда как вторая отстаивает возможность их беспрепятственного параллельного существования.
Ключевые слова: глобализация, суверенитет национальных государств, поглощение суверенитета, международные организации, транснациональные корпорации, новые субъекты мировой политики.

The article is devoted to current issues of the national states sovereignty existence in conditions of globalization processes intensification. Due to the fact that globalization as a result of the postmodern era and the transition from the industrial to the post-industrial stage of economic development appeared several centuries later than the affirmation of the national states sovereignty, discussions as for the possibility of the parallel existence of these phenomena began at that time and prevail by this day . The scholars who studied this issue have two positions. The purpose of the article is to find out which one is more reasonable and promising. The position of first group of scholars is based on the destruction of