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ОСНОВНЫЕ ПРИНЦИПЫ МЕЖДУНАРОДНОГО ПРАВА: ПРОБЛЕМЫ ЗАКРЕПЛЕНИЯ И СОБЛЮДЕНИЯ

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Аннотация

В статье изучены некоторые актуальные проблемы, возникающие в связи с закреплением и обеспечением соблюдения основных принципов международного права. Основное внимание автором обращается на отсутствие закреплённого на уровне международного права понятия основных принципов международного права, что в условиях многообразия терминов, используемых для обозначения данного феномена, ещё больше осложняет его понимание. Некоторые проблемы, связанные с применением основных принципов международного права автор усматривает в национальном законодательстве, которое зачастую противоречит международному праву и ограничивает возможности применения последнего. Автором обосновывается идея о целесообразности применения основных принципов международного права постольку, поскольку они не противоречат национальным интересам. Применительно к России данная идея находит реализацию в судебной практике, на которую автор также ссылается. При этом приоритет национального права автором подчёркивается применительно не только к России, но и к любой другой стране, для которой ценно соблюдение национальных интересов. Однако данные идеи ни в коем случае не нацелены на отрицание основных принципов международного права или на умаление их значимости, о чем автор также пишет,

подчёркивая подчеркивая принадлежность основных принципов международного права российской правовой системе.

Ключевые слова: международно-правовое регулирование, международное право, нарушение международного права, международные санкции, национальное законодательство, ООН, права человека, принципы и нормы международного права

Original article

BASIC PRINCIPLES OF INTERNATIONAL LAW: PROBLEMS OF CONSOLIDATION AND OBSERVANCE

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Abstract

The article examines some of the current problems that arise in connection with the consolidation and enforcement of the basic principles of international law. The author focuses on the lack of a fixed concept of the basic principles of international law at the level of international law, which, given the variety of terms used to denote this phenomenon, further complicates its understanding. The author sees some problems related to the application of the basic principles of international law in national legislation, which often contradicts international law and limits the possibilities of applying the latter. The author substantiates the idea of the expediency of applying the basic principles of international law insofar as they do not contradict national interests. In relation to Russia, this idea finds implementation in judicial practice, to which the author also refers. At the same time, the author emphasizes the priority of national law in relation not only to Russia, but also to any other country for which respect for national interests is valuable. However, these ideas are by no means aimed at denying the basic principles of international law or at belittling their significance, which the

author also writes about, emphasizing the affiliation of the basic principles of international law to the Russian legal system.

Keywords: international legal regulation, international law, violation of international law, international sanctions, national legislation, UN, human rights, principles and norms of international law

Introduction

The purpose of this article is to study some of the most significant issues related to the consolidation and observance of the basic principles of international law.

The problems chosen for analysis are actualized, on the one hand, by the high significance of the basic principles laid down in the basis of international law, without which it is hardly possible to imagine it in its modern form; on the other hand, the lack of a single understanding of both the essence of the basic principles and a single approach to their systematization contributes to the actualization of the topic under consideration: neither the modern doctrine of international law Neither specific international legal documents allow us to give an unambiguous answer to the questions of what the basic principles of international law are, what is their main difference from other legal principles, and what exactly principles fall within their scope.

The main part

The question under study can be attributed to the number of fundamental ones. However, it is still not solved, and this is largely due to the lack of a generally accepted approach in the use of terminology denoting such principles. Moreover, the problem of official interpretation of the basic principles has not yet been solved in international law [9, p. 8].

The existence of this problem seems quite natural in the context of terminological diversity and lack of unity even in the choice and use of the term to refer to the phenomenon under consideration.

In the context of the above, it is appropriate to cite only some of the concepts used:

- general principles of law;
- generally accepted (generally binding) principles of international law;
- industry principles of international law [9, p. 8].

The question of choosing the appropriate term (s) in relation to the problem under consideration is definitely complicated by the consideration of legal norms along with principles. In this connection, the phrase "principles and norms" is often used in relation to international law, as well as related formulations presented above, but with reference to the norms.

It should be recognized that the issues under consideration have remained relevant for many decades, since they began to be raised within the framework of Soviet legal science and are unlikely to be resolved in the foreseeable future. Thus, back in the 1950s, V. M. Koretsky raised this issue as one of its first initiators and, as a result, came to the conclusion, in particular, that the general principles of law are essentially equivalent to the general (basic) principles of international law [5, p. 45]. Although, of course, this view is not reflected in legally significant international documents.

Nevertheless, the presented conclusion can be assessed as quite reasonable, but only if the principles of international law are generally binding on all countries. However, are they *de facto* such? In general, yes. Although there are some exceptions. Moreover, international law is not always the basis of national law, so it is premature to talk about the identity of these concepts. We believe that these concepts can be considered as identical only conditionally. In general, the general principles of law seem to be a broader concept.

B. I. Nefyodov holds a slightly different position, who believes that it is impossible to limit the generally recognized principles of international law to the concept of basic principles of law, since these legal categories are related to each other as part and whole. In this sense, an indication that the principles are "basic" means that there are other non-basic principles [9, p. 15]. It seems that this conclusion is fully

valid. Moreover, non-basic principles, as it seems to us, can also be generally accepted, but not have the same significance as the basic principles.

P. P. Kremnev, considering the generally recognized principles of international law in conjunction with norms, refers to them those principles and norms that have received recognition from the international community of states and have the highest legal force [7, p. 21].

It would be possible to support this position, but if we take into account the existence of national legislation, primarily based on the Constitution of the Russian Federation, then the reference to the highest legal force is misleading, because it is the Constitution that has the highest legal force, and not the general principles of international law. Moreover, there is no need to speak about the supreme legal force due to the fact that each state within its borders exercises power independently and on the basis, first of all, of national law, including constitutional law, which determines all other aspects of the legal system. Although, if we consider international law in an abstract way, without taking into account national law, then the reference to the highest legal force seems quite fair.

Yu. S. Romashev in the context of understanding the essence of international principles emphasizes the existence of two forms of their existence:

- forms of norms.
- forms of ideas [10, pp. 150-151].

In this sense, the consideration of the principles and norms of international law as a whole can be considered quite reasonable. Although, on the other hand, norms are usually more specific due to the presence of direct regulatory consolidation, which cannot be said about principles that do not always receive formal consolidation.

It should be noted that the subject of scientific discussions is often the question of the correlation of the principles of international law with norms. At the same time, there is an opinion about the difference between norms and principles, based on the understanding of norms as a phenomenon of a lower level, and the principle as a higher one. And in this regard, the norm can be understood as the implementation of the

principle. But there is another opinion that the principle is characterized by a broader scope of application. At the same time, within the framework of the practice of the International Court of Justice, there is a confusion of norms and principles, which characterizes them as a complex unified phenomenon, p.151]. Here it is obvious that the subjects developing the practice of the International Court of Justice are more focused on the practical component than on the scientific one. In this regard, combining principles with norms seems justified.

V. N. Kornev notes that the principles of law, including fundamental ones, are formed in the process of practical activity of subjects of legal relations, they determine its nature and content. At the same time, the principle of law has an independent meaning, like any other legal phenomenon [6, p.22]. It's hard to disagree.

At the same time, V. N. Kornev recognizes that the consideration of the principles of law and the norms of law as identical phenomena has no single reason. From the point of view of domestic legal science, the traditional view is about the application of legal norms. At the same time, it is not customary to consider the question of applying the principles of law, with the possible exception of two cases – the analogy of law and the analogy of law [6, p.22].

The problem of ambiguous understanding of general principles of international law can be partly attributed to the lack of a generally accepted definition of general international law. As P. P. Kremniev rightly writes, there is no such definition and general international law is accepted as a given [7, p. 22].

An important circumstance that causes problems in the field of normative consolidation and application of the basic principles of international law is the lack of a list of them both in the doctrine and in regulatory sources [3, p.21]. Therefore, even a normative definition of the essence of general principles of international law is unlikely to fully resolve the existing problems.

Nevertheless, certain principles are enshrined in certain international documents. For example, the UN Charter contains 7 peremptory principles, in particular:

- equal rights and self-determination of peoples;

- equality of states;
- settlement of international disputes by peaceful means;
- non-interference in internal affairs [1].

But this cannot be considered an exhaustive basis for international law, and in general, this list is not de facto closed, if only for the reason that they in no way contain one of the key values, namely the recognition of human rights and freedoms.

Moreover, the general principles of international law are considered more broadly in the scientific literature. Thus, Professor Yu. S. Romashev, emphasizing the extreme generality of the principles, refers to them:

- humanism.
- good faith;
- unity of rights and obligations;
- providing judicial protection of violated rights;
- equal rights;
- justice, etc. [10, c. 161].

And it is hardly possible to deny the need to recognize these provisions as basic principles of international law, at least from the point of view of doctrine. However, it is not necessary to talk about their normative, systematic consolidation yet, they are fixed only fragmentally.

The problem of the basic principles of international law is also somewhat mediated by the existence of national law, on which the recognition of a particular status of international principles depends. In this regard, in relation to Russia, the specific status of generally recognized principles and norms of international law consists in the fact that they have priority over international treaties, over the norms of domestic legislation, but are inferior in force to the Constitution of the Russian Federation [4, pp. 31-33; 8, p. 4-5].

The presented characteristics, which reflect the specifics of the status of generally recognized principles of international law, are somewhat conditional, since in general the question of the relationship between the norms of national and

international law remains the subject of acute discussions, especially in connection with the revision of Russia's attitude to international law over the past 2 years. Here, not the least role was played by unilateral restrictive measures taken against Russia by individual states, called sanctions [11].

Taking into account the above, it is necessary to note the priority of national interests – the interests of the Russian state and the Russian people – over formal recognition and compliance with the principles of international law. One of the expressions of this position is the principle implemented in judicial practice of the inadmissibility of applying the rules of international treaties in their interpretation, contrary to the Constitution of the Russian Federation [2]. That is, if we take into account this principle of national law, then other principles that are enshrined in international law are implemented only to the extent that they do not contradict the national Constitution.

Conclusion

The basic principles of international law are an extremely vague concept, and other terms are also used to denote it, the essence of which is neither formally nor doctrinally specified. This is one of the main problems associated with the consolidation and compliance of the principles under consideration. Another problem is that the list of basic principles of international law is not fully recorded. Different regulatory sources contain different lists; in many cases, certain principles are fixed in fragments. Therefore, there is no consistency in the international legal regulation of this issue, which makes it impossible to fully comply with the basic principles of international law.

Among the key barriers that complicate the application of the basic principles of international law are not quite good-neighborly relations between different States, as evidenced, for example, by the application of unilateral restrictive measures against Russia; the second obstacle is the contradiction of international law with national law. Therefore, international law in general and the basic principles of international law in particular are respected only to the extent that this is not contrary to national interests.

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