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INTERPRETACJA W PRAWIE MIĘDZYNARODOWYM: PODEJŚCIA I DYSKUSJE

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W artykule autor analizuje model interpretacyjny badań naukowych i prawnych w prawie międzynarodowym – model, który jest bezpośrednim rozumieniem międzynarodowej rzeczywistości prawnej w procesie poszukiwania jej prawidłowej interpretacji. Działalność prawno-interpretacyjna w prawie międzynarodowym to kategoria nie doktryny, lecz praktyki, której przedmiotem realizacji są międzynarodowe instytucje sądownicze i quasi-sądowe. Dlatego ostateczny cel interpretacji w prawie jako całości, a w szczególności w prawie międzynarodowym, nie ogranicza się do wyjaśnienia treści norm prawnych. Kluczową cechą interpretacji w prawie międzynarodowym jest to, że powstaje ona nie tylko przez akt poznania woli autorów w ich zewnętrznej formie – w tekście międzynarodowego aktu prawnego. Udowodniono, że z jednej strony interpretacja ma na celu ustalenie już istniejącego znaczenia prawnego międzynarodowego aktu prawnego, z drugiej – proces interpretacji ma wymiar twórczy.

Słowa kluczowe: system prawny, model interpretacji, doktryna i praktyka, międzynarodowe instytucje sądowe i quasi-sądowe.

INTERPRETATION IN INTERNATIONAL LAW: APPROACHES AND DISCUSSIONS

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Abstract. In this article the author analyses the interpretive model of scientific and legal research in international law is a model that is a direct comprehension of international legal reality in the process of finding its correct interpretation. While being a category of doctrine but of practice, interpretative activity in international law is carried out by international judicial and quasi-judicial institutions. Therefore, the ultimate goal of interpretation in law in general, and international law interpretation in particular, is not limited to clarification of the content of legal norms. The critical feature of international law interpretation is that it serves not only as an act of cognition of the will of the authors in their external form, the text of an international legal act. As a result, it has been proved that, on the one hand, interpretation is aimed at establishing the already existing legal meaning of an international legal act. On the other hand, the process of interpretation has a creative dimension.

Key words: law system, interpretive model, doctrine and practice, international judicial and quasi-judicial institutions.

ІНТЕРПРЕТАЦІЯ У МІЖНАРОДНОМУ ПРАВІ: ПІДХОДИ ТА ДИСКУСІЇ

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Анотація. У статті авторка аналізує інтерпретаційну модель науково-правових досліджень у міжнародному праві – модель, яка є безпосереднім осмисленням міжнародно-правової реальності у процесі пошуку її правильної інтерпретації. Правоінтерпретаційна діяльність у міжнародному праві – це категорія не доктрини, а практики, суб'єктом здійснення якої є міжнародні судові та квазісудові установи. Тому кінцева мета інтерпретації у праві загалом і міжнародному праві зокрема не обмежується з'ясуванням змісту правових норм. Ключова особливість інтерпретації у міжнародному праві полягає у тому, що вона постає не лише актом пізнання волі авторів у їх зовнішній формі – тексті міжнародно-правового акта. Доведено, що, з одного боку, інтерпретація спрямована на встановлення вже існуючого правового значення міжнародно-правового акта, з іншого – процес інтерпретації має творчий вимір.

Ключові слова: правова система, модель інтерпретації, доктрина та практика, міжнародні судові та квазісудові установи.

Introduction. The purpose of modern international law is to form a world order based on the rule of law (Rule of Law). In essence, international law under the rule of law is "the law of the court." The process of evolutionary development of international law from law of nature (natural law) to law of court (court law) has always been with the consent of the most direct participants in international cooperation. International law, acquiring a new quality "as the law of the court", becomes the law of the world community and goes beyond its positivist foundations, combining elements of objective action of law in its categories such as efficiency, truth, justice.

Formation of a new international legal order in the second half of XX century. accompanied by the emergence of new international actors in the interpretation of law, which also have an impact on national legal systems. Thus, the formation of a new international legal order in the second half of XX century. accompanied by the emergence of new international actors in the interpretation of law, which also affect national legal systems. The effectiveness of the modern international legal order, the improvement of legal practice largely depend on knowledge of the nature and functional role of interpretive practice as an activity to establish the content and form of legal phenomena, taken in conjunction with the accumulated interpretive experience.

Emphasizing that interpretation in law has different definitions and approaches to understanding it, Aharon Barak, Professor of Law, President of the Supreme Court of Israel, proposes the following definition: legal interpretation is a mental activity that gives meaning to the legal text (Barak, 2005: 3–4). Developing this point of view, Aldo Schiavello, a professor of legal philosophy at the Aldo Schiavello University (2006: 1–11), notes that there is a concept of interpretation considering all possible meanings of this term in various fields. Analyzing the European Court of Human Rights case law, Christian Djeffal, a professor at the Department of Law, Science and Technology at the Technical University of Munich, defines *interpretation* as attributing the meaning of a treaty (Djeffal, 2016: 176). Joost Pauwelyn, a professor of international law at the Graduate Institute of International and Development Studies, Switzerland, and Manfred Elsig, a professor of international relations at the World Trade Institute at the University of Bern (Switzerland), give a similar definition: treaty interpretation is an activity through which international tribunals give meaning to a treaty in the context of a specific case or fact (Pauwelyn & Elsig, 2012: 446).

Some aspects of this problem were considered in the works of such authors as R. Dworkin, T. F. Orman, W. F. Vallicella, Arrieta J. A. Pabón, Argüelles A. Torres, M. Jovanovic, T. Widfak.

Nevertheless, the study of the category "interpretation of international law" is possible only through the definition of its main philosophical and theoretical "parameters": nature, features, functions, principles, significance in international legal regulation (Karvatska, 2018: 151–156).

This **aim of article** is to analyze a single holistic doctrine of international law interpretation, taking into account regulations and approaches, theoretical sources, international practice.

The defined goal led to the formulation and solution of such tasks as a research dimension determination of international legal activity interpretation, new international subjects identification of law interpretation, a new interpretation model analysis in international law.

Methods. The methodology is based on a wide range of general philosophical, general scientific, special scientific, and namely legal methods. The use of the system-structural method allowed us to examine systemic connections in the formation and development of legal interpretational activity in international law. The logical method provided an opportunity to analyze the formation and development of a new model of legal interpretation, new actors of interpretive activities in international law. The anthropological one focused on the human-centredness of modern international law in general and the interpretive process carried out by international justice bodies in particular. As a qualitatively new approach in scientific cognition, the synergetic method allowed to determine basic principles and functioning patterns of interpretation subjects and the formation of their interpretive methodology.

Results and discussions

1. The interpretive model of legal knowledge of international law

The positivist model, which consists in the use of such legal concepts, which is a generalization of individual phenomena, and the explanation is formalized in the form of a deductive model, is substantially opposite to the interpretive model of scientific and legal knowledge. The disadvantage of the positivist model is the absolutization of experience in the process of cognition, the rejection of theoretical thinking as a source of new knowledge, the identification of natural and social, the mechanical transfer of the principles of cognition of the natural sciences in the humanities. The Soviet school of international law was based on strictly positivist principles. But in the near future the context of modern international law demonstrates that the categorical ideas of the positivist model of cognition and interpretation of international legal reality are increasingly weakened by the inability to substantiate from the standpoint of positivism fundamental norms of international law, which by nature can not be considered consensual.

Interpretivism in international law is a rather new category for the domestic science of international law. The Anglo-American legal system has long recognized an interpretive approach that reflects a conceptual trend toward the dominance of legal (judicial) custom and judicial discretion. Indicative is the fact that today the legal interpretation experience gained by the Anglo-American legal tradition is interesting and in demand as a continental doctrine and domestic legal science. The interpretive approach is an approach in which there is a "penetration" not only into external legal forms, but also into the internal subjective world of legal interpretation.

The interpretive approach was formed in the process of combating positivism. The interpretive model of legal knowledge of international law is a model that is a direct comprehension of international legal reality in the process of finding the right language for interpreting its meaning and a common understanding of its meaning. Its basic principle

is that there are no objective laws for the development of the international legal order, as international legal actions are constructed from situational legal interpretations. International legal reality is a kind of "text" that the subjects of interpretation "read" at different times. This paradigm realizes a direct comprehension of the international legal reality and is based on "methodology of understanding". The scheme of the "understanding" interpretive model of legal cognition works as follows: the researcher must find the correct interpretation of international legal reality, and come to what is called truth in law.

The disadvantage, even the research risk, in our opinion, of such an "understanding" interpretive model of legal knowledge is that the international legal reality can be "dangerously" reduced only to language (the text of a particular international legal document) and, as a consequence, in the process interpretation may "disappear" objective international legal reality, which does not depend on language. In addition, in the interpretive plane, the subjective side of legal perception is absolutized, the independence of the existence of legal phenomena from the subject of legal knowledge is denied; legal knowledge becomes quite relative. At the same time, the advantage of the interpretive model is the potentially permissible different legal ideas and legal interpretations. After all, the path to legal progress is not even in trying to find and reveal a clearly defined one correct idea, but in the desire to penetrate deeply into the content of phenomena of international law, in the desire to find the truth in international legal conflict or dispute.

Interpretivism is based on the idea that even the recognition by the parties of all empirical facts does not mean that they have defined what absolute law is and what its content is. Interpretivism explains this objective discrepancy by the existence of a conceptually pluralistic vision of what valuesunderlie law. For example, specific principles of international humanitarian law regarding precautionary measures during an attack are important in terms of allowing legal participants and non-combatants to act more safely. This rule (Rule 16, International Committee of the Red Cross) instructs States as follows: “Those who plan to carry out an attack must do their utmost to ensure that the objects to be seized are military, not civilian, and therefore not subject to special protection”.

For interpretiveism, the legal values underlying the normative document allow a better understanding of the practice of its application. The method used to identify the various values underlying the law, as well as the actual content of the law itself, is a constructive interpretation. Constructive interpretation is, in essence, a solution to the question of the relationship and interdependence of purpose and object.

In Anglo-American legal doctrine, interpretive theory of the interpretation of law is associated with the name of the Anglo-American philosopher Ronald Dworkin. In his conception of legal interpretivism, R. Dworkin denies the position of legal positivism and defends an alternative vision of law. His interpretive theory represents a system of ideas that reflect the impact of institutional practice on interpretation, and rejects the provision of the use of legal norms as the only source of interpretation. R. Dworkin (1986: 66) emphasized that the interpretation of law is a process that includes three separate stages: 1) pre-interpretation 2) interpretation and 3) post-interpretation. Pre-interpretation is the stage at which the interpreter defines a practice as well as any relevant standards, rules and templates that help determine the content of that practice (Dworkin, 1986: 62–71). The second stage is the interpretive stage, in which the interpreter formulates a general justification of the practice and its elements, which were determined during the previous stage of interpretation (Dworkin, 1986: 62). Although this justification should not take into account all aspects of the practice identified at the pre-interpretation stage, it should be sufficient to interpret this practice and not to create something new. At this stage, three results are possible: 1) there is no appropriate interpretation; 2) there is only one acceptable interpretation; or 3) there are several interpretations due to unregulated or contradictory practices. Finally, the post-interpretive stage is the stage at which the interpreter pays special attention, which sheds light on the practice in a positive way and thus establishes a legal obligation. Over time, or until new practices are established, this meaning, on the contrary, becomes the beginning of a new interpretation, and then the interpretive process can begin again (Dworkin, 1986: 67).

An important conclusion of R. Dworkin is that constructive legal interpretation (construction interpretation) uses heuristic notions of "suitability" (practice) and "justification" (purpose) to assess the relationship between practice, on the one hand, and its purpose – with another. The interpreter ultimately makes a "description" of the practice, which expresses reasonable conditions and principles to meet the rationale. This combination of practice and purpose (balance) gives balance to the normative rule. But this equilibrium is not constant – the reflexive process continues, as conditions and judgments often change over time, which contributes to further verification, which in turn initiates a new reflexive process that can create a new model of equilibrium (Dworkin, 1986: 67). Indeed, the modern international legal order, in contrast to individual national legal orders, is based on generally accepted social values and principles. These general principles of international law are at the same time common values within the international system, which make the method of constructive interpretation promising for international law.

Under the term "interpretation" R. Dworkin understood, above all, the understanding of the text and finding in it a semantic component. The philosopher of law emphasizes that the judge in the process of interpretation rethinks the normative act, not changes it. From the point of view of R. Dworkin, the interpreter of the normative act is limited to the text of the official document that is being interpreted. In this regard, we should talk about the correct and incorrect interpretation. The point is that the correct interpretation of the normative act, which occurs only if the interpreter conducts the process, taking into account the text in its integrity (integrity), considering all its fragments.

In complex cases, according to R. Dworkin, an important role in substantiating court decisions is played by principles. The judge's freedom of decision must be exercised in accordance with the general principles of law. In this aspect, the philosopher criticizes the legal positivist theory of the English philosopher and legal theorist Herbert Lionel Adolphus Hart, rejecting his approach to understanding the essence of law and judicial discretion, according to which in difficult cases the judge decides at his own discretion. this has new components in the legislation (Hart, 1961). R. Dworkin adheres to the view that it is the duty of the judge, even in difficult cases, to discover what the rights of both parties are, and not to "invent new rights." He argues that solutions to such incidents can be found on the basis of "principled" and "strategic considerations." This statement by R. Dworkin is a warning against undesirable and ineffective judicial activity (Dworkin, 1982: 527).

Modern interpretivism positions itself as a constructive alternative to the methodology of legal positivism and natural law, and as any postmodern concept, legal interpretivism recognizes the leading role of judicial discretion not only in the administration of justice but also in the rule-making process.

The interpretive model of legal knowledge of international law is a model that is a direct comprehension of international legal reality in the process of finding the right language for interpreting its meaning and a common understanding of its meaning. In the praxeological context, the effectiveness of this conceptual model brings the research procedure to a qualitatively different cognitive (think higher) level, will be tested for its ability only by temporal and applied "testers" and will become a real new constructive alternative (to the methodology of legal positivism and natural law). rights. After all, the semantic efficiency of any innovative (or revolutionary) proposition is heterogeneous over time. Thus, in the short run, a specific semantic model may not be effective, and in the long run – to take advanced scientific positions.

2. The dilemma of interpretation essential: international law interpretation in a broad and narrow sense

The impetus for the transformation of approaches in the theory of international law, which a priori affects international practice, may be the use of a qualitatively new methodology, the development of which is based on a promising scientific paradigm. The term *"paradigm"* (*from the Greek Paradeigma – an example*) was introduced by the American philosopher Gustav Bergman, who understood the paradigm as an unrecognized scientific achievement, which for some time gives the scientific community a new model of problem statement and solution (Vallicella, 2002). The definition of another American philosopher, Thomas Samuel Kuhn, is also quite popular in science – *Paradigm shift (*Orman, 2016: (6), 10, 47–52). This term refers to a situation where old paradigms (models, patterns, theories and methods) are replaced by new ones. Synonymous with the concept of "paradigm shift" is the concept of "scientific revolution" – a situation in which completely changes the perception of something in the scientific environment. According to Stephen Guest, a professor of philosophy at University College London, paradigms make sense because they act as stable platforms for making meaning based on arguments; in this sense, one who rejects the paradigm makes the mistake of "paradigmatic anchor interpretation." (Hest, 2014: (1/2), 36–52). At the same time, it should be realized that there are virtually no ideal paradigmatic arguments endowed with the universal potential of stereotypical effectiveness: as paradoxical as it may sound, the most rational view in another "scientific-methodological coordinate system" may be impractical.

The demand for qualitatively new research on legal interpretation in international law is due to a number of objective circumstances. First, epistemological and methodological changes, as a result of which scientific knowledge has become more than ever, socio-culturally and historically determined. Secondly, the state of the legal doctrine of international law, in which there is already accumulated experience that requires analysis and specification of existing knowledge. Third, the legal situation in Ukraine, as well as the practice focused on the consistent implementation of the ideas of the rule of law, requires a comprehensive study and explanation of the mechanisms that ensure the rule of law in domestic and international relations. Since all legal information is reproduced in language, the interpretation of international law can be an effective tool for finding new, in-depth knowledge of international law, as well as improve the textual form of international law. Developing this idea, it should be noted that in the content of international legal acts practically coexist two components: factual and interpretive, which is one of the most important differential features of this type of acts.

The theory of interpretation is considered one of the most complex in general theoretical jurisprudence. Realizing this, the Roman jurist Celsus warned: "To know the laws – means to perceive not their words, but their meaning and significance." According to the founder of German classical philosophy Immanuel Kant, the "conflict of interest" leads to a "conflict of interpretations", which belongs to the fundamental factors of modern legal understanding, so to resolve the "conflict of interpretations", in his opinion, not enough traditional formal and logical methods of interpretation. have only ancillary nature. The practice of interpreting texts originated in ancient Greece; in ancient Rome, the term "interpretatio" was used and the practice of legal interpretation was actively developed. Even then, it acquired a multifaceted character, was formed and existed at the same time as art, as a technique, and as theoretical (logically grounded) knowledge.

Structurally, the interpretation of law as a process contains the following objective elements: a) legal text (for example, the text of a normative act or agreement); b) certain contradictory or unclear provisions, the content of which needs to be clarified; c) an interpretative act (court decision), which motivates the use of a legal provision in a specific sense.

The primary source of the problem of interpretation is the process of transferring relevant information from one subject to another so that the objective act of communication takes place. Since in the process of information transfer

there is always a risk of its inaccurate perception, which can level the communication, objectively there is a need for effective interpretation to clarify the intention of the lawmaker. It seems interesting to think that legal interpretation is a spiritual work, it should be guided not only by scientific and legal techniques, but also by the humanities (Pabón Arrieta & Torres Argüelles, 2017: (32),227).

In simple (typical) cases, in the process of legal interpretation, the complete identity of the semantic text and legal meaning is traced: that is, all systems of interpretation come to the same meaning of the text. In complex cases, interpretation and semantics determine the set of meanings that a text can express by means of language for various potential facts. Interpreters (lawyers-translators) use the work of linguists who determine the language range. Interpreters transform language into a legal document, defining its unique legal meaning. Therefore, in fact, every interpreter of law is at the same time a linguist, but, on the other hand, not every linguist is an interpreter of law.

However, we are again faced with the problem that some factors in the process of interpreting international law are so obviously contradictory that they cannot but form a consensus format. It is necessary to find answers to the following conceptual and methodological questions: whether the interpretive approach is effective in international law; whether he has a future as a new alternative approach to positivism and the concept of natural law, not only within the Anglo-American legal system, but also continental. Continuing the discussion, Miodrag Jovanovic, Professor of Law (University of Belgrade), criticizing R. Dworkin's concept of international law, notes that the international legal system outlined by R. Dworkin suffers from a violent confrontation with the sovereignty of states. According to the author, R. Dvorkin's moral interpretation of international law creates a revolutionary gap with the institutional practice and standards of the international community, which in his theory is considered one of the key features of legality. M. Jovanovich emphasizes that if R. Dvorkin's "interpretive" theory is to be used in the field of international law, it must adhere to some other lines than those proposed by Dworkin himself (Jovanovic, 2015: (28), 2, 443–460).

It is difficult to disagree with the thesis of the Polish scholar Tomasz Widfak (University of Gdansk), who emphasizes the need to appreciate the intellectual courage of R. Dworkin in formulating bold proposals for the future of international law, which some dogmatists of international law try to downplay philosopher (Widfak, 2016: 1 (12), 64–77).

In support of this position we want to add: if the discourse operates with phenomena and processes that do not have (in a certain space-time dimension) scientific legitimacy in the doctrine of international law, it does not mean that the discourse is unscientific (pseudoscientific, absurd). After all, research confirms that science is a unique tool for understanding the meanings of new processes and phenomena of international legal reality. Discourse acquires scientific status not because of the object or subject of research, but as a result of various research procedures. The study of the category "interpretation of international law" is possible only through the definition of its main philosophical and theoretical "parameters": the nature, features, functions, principles, significance in international legal regulation.

First, the concept of interpretation of international law can be defined through its substantive-attributive features: 1) interpretation of international law – is an important, complex and multifaceted activity in the form of intellectual and volitional process; 2) interpretation of international law is an important element of the law enforcement process; 3) interpretation of international law is a specific activity aimed at disclosing the content of international regulations and explaining the will of the subjects (parties) expressed in them.

Secondly, the main functions of interpretation of international law are related to the need to penetrate with its help into the content of international regulations. Functions of interpretation of international law: 1) characterize its inclusion in the mechanism of legal regulation as one of the legal means by which legal influence on international relations is exercised, as well as the role assigned to it in the international legal order; 2) aimed at achieving the immediate goals of interpretive practice – to perform specific tasks of interpretation of international law.

Third, the principles of interpretation of international law mean the basic ideas, requirements that relate to it as a complex process of learning the content of law or the content of various international regulations (treaties, decisions of WMD, conclusions of international commissions, etc.). The principles of interpretation, such as objectivity, impartiality, comprehensiveness, reasonableness, good faith, efficiency, are interrelated and represent a certain unity that allows for a hermeneutic "penetration" into the meaning of the norm. The realization of one of them acts as a condition for the realization of the other, in the end they all form the ideological basis of legal interpretation. Deviation from certain principles inevitably leads to low quality of law enforcement decisions.

Fourth, the importance of interpretation of international law: allows to establish what conditions are necessary for adequate, correct understanding and implementation of the provisions of international regulations; identify the reasons for their misunderstanding; to fill existing gaps in international law.

Conclusions. The interpretive model of scientific and legal research in international law is a model that is a direct comprehension of international legal reality in the process of finding its correct interpretation. The inductive-empirical approach uses the target setting and terminology of the interpretive approach; they are specified in the process of empirical research.

Thus, due to the dynamism of the international law system, the threat of fragmentation of international law, the presence of significant political and ideological components of international legal processes, the growing role of national courts in interpreting international law, the presence of several powerful long-established legal traditions (including Anglo-Saxon and continental ones) and a number of other factors, the issue of interpretation in international law has become particularly acute, and as a result, experts in international law have actually become

leaders in the interpretation and methodological debate. But this is natural, because the problematic perspective of interpretation contains many interpretive "differences", each of which sets a unique vector of scientific and methodological conceptualization, and taken together they contribute to a comprehensive study of interpretive potential in international law.

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