

FORM FACTORS OF INTERNATIONAL LAW STANDARDS: LEGITIMATION OF LAW OR LEGALIZATION OF THE CENTERS OF FORCE?

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Introduction

In a modern system of law international law standards are a legally significant reference point for a quality evaluation of the national law. They are created by legal formalization of a unified will (either by general, or multiple) of participants of the interstate relations by the conclusion of international treaties or by the adoption of acts of the interstate organizations.

As the Professor Oleg Tiunov notes, "globalization processes of legal space at the international level and internationalization of the international rules in interstate regulation are closely connected with category "international legal standards". For instance, among the rules of law incorporated in the Russian system of law are available such which by the nature belong to the international legal standards acting as a peculiar scale of measurement of the applied law at the international and interstate levels"[1].

Standards of international law operate within a global system of law (but rather within a normative system) or within narrower interstate legal relations (regional, sectoral, multilateral, bilateral, etc.).

In the science of international law, only the category "international legal standards" is examined, and there is no the concept another category which content exceeds category "international legal standards" the limits of possible ignoring by the national legislation.

The expected achievement of the research is the formulation of the concept of form factor of international law which allows the participants of international relations to make decisions in the political-economic, socio-cultural, etc. spheres in the context of their own national interests. Having the ability to make decisions in their own interest (political and economic mainly, and mental and cultural - to a lesser extent), states not only express their ideological position, but recognize the unity of their interests with the interests of the states-centers of power.

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The method used is extrapolation of concept of technical science to the sphere of international law. In addition, analysis of legislative acts of the Russian Federation, the European Union and of international organizations is used.

Main text

The goal of the task is researching standards of international law act as legal reference points both for the creation of a system of the national legal system, and for legally significant actions of the state and his actors in the interstate relations.

Significance of the task is that frequently need of the following to the international legal standards acts as tool of correction of the national legislation and in these conditions it is necessary to use another category which content exceeds category "international legal standards" the limits of possible ignoring by the national legislation, on the one hand, and with another - allows to research the selection's process of economically and politically reasonable option of participation in the interstate relations from the political and legal point of view.

The main provisions of this article will be of interest to representatives of the science of international law, as well as to the student community dealing with international law issues.

Standards of international law act as legal reference points both for the creation of a system of the national legal system, and for legally significant actions of the state and his actors in the interstate relations.

The legislator is guided by the rules of international law - both universal, and sectoral, and regional, while creating a national law. Frequently need of the following to the requirements of international law (international legal standards) acts as tool of correction of the national legislation.

For example, numbered paragraph 4 of article XVI of the Marrakesh Agreement Establishing the World Trade Organization dated the 15th of April, 1994, sets requirements to the WTO State Parties concerning the national legislation must be brought into line with this Agreement in compliance to this Agreement of the national legal system: " Each Member shall ensure the conformity of its laws, regulations and administrative procedures with its obligations as provided in the attached Agreements".

At the same time, global, regional or others bilateral or multilateral processes are not always assume forming of the international legal standard which owing to the fact of its existence is designed to be used by national legislators as a reference point.

For any state firstly, it is possible in consequence of optional rule of the international law owing to contents of the international treaty, and secondly due to establishment of a priority of the national legislation over the international law by the state (at least one regulatory legal act - Constitution).

The technology of international legal rule-making allowing a possibility of failure to coordination by subjects of the international law-making acts as an example for the first argument.

As for the second argument it is article 15 of the Russian Federation's Constitution and also its chapter X ("consideration of cases concerning conformity to the Russian Federation's Constitution to the Russian Federation's international treaties which didn't come into force"). Besides there is Chapter XIII.1 ("consideration of cases concerning a possibility of execution of decisions of interstate body for protection of the rights and freedoms of a person"). Actually, these last examples establish a priority of international law rules over the domestic legislation since the level of federal laws.

Thus, there is a reduction of the importance of international legal standards as obligatory for the national legislator.

Therefore, in these conditions it is necessary to use another category which content exceeds category "international legal standards" the limits of possible ignoring by the national legislation, on the one hand, and with another - allows to research the selection's process of economically and politically reasonable option of participation in the interstate relations from the political and legal point of view.

For this purpose, it is obviously possible to extrapolate technical category "form factor" to the sphere of international law. In the technical sphere it is accepted to understand the determined "standard setting overall dimensions of a technical product and also describing additional sets of its technical parameters, for example a form, types of additional elements placed to on the device, their position and orientation as a form factor".

Introduction in international law of this category will allow to differentiate legalization and legitimation aspects of international legal standardization. So, international legal standards are the essence of the requirement of a rule legalization – to be exact – national law should be brought into line with rules of international law. And form factors of international law are the essence of reference points for national law should be brought into line with international law, but exclusively in a format of facultative following to national interests.

Creation of multipolar international law order led to dependence of legalization of international legal processes on their legitimization that was expressed in appearance in the system of international law of form factors that actually acts as a certain justifying bases of joining in a position of the states which are centers of force.

In this way, on September 15, 2016, the Council of the European Union made the decision № 2016/1671 [2] concerning prolongation of restrictive measures against Russia.

The EU Supreme Representative for foreign policy and safety F. Mogherini highlighted that "Candidate countries Montenegro and Albania and also the countries of the European Free Trade Association Liechtenstein and Norway entering into the European Economic Area and also Ukraine were joining this decision of Council. They will ensure conformity their national policy to this decision of Council. The European Union takes into consideration this liability and welcomes it"[3]. The fact of joining in the decision of the international organization by the state which isn't her member just allows to consider the mentioned decision of the EU as a form factor. The named states, performing their economic and political activities taking into account national interests, chose the option joining in this decision.

The form factors of international law allow the participants of international relations to make decisions in the political-economic, socio-cultural, etc. spheres in the context of own national interests. It is no secret that the formation of a multipolar world currently meets very strong opposition to the global inter-state associations. Having the ability to make decisions in their own interest (political and economic, mainly, and mental and cultural – to a lesser extent), States not only Express their ideological position as recognize a unity of interests with the States centers of power. A good example is a well-known Resolution of the UN General Assembly A/RES/68/262 on the territorial integrity of Ukraine, which effectively trended political priorities of the States members of the United Nations, dividing them into three camps.

At the same time firstly the states supporters of the named Resolution didn't interest opinion of residents of the Crimea absolutely, as well as what actions of the Ukrainian extremist politicians led to the possibility of the similar decision; secondly joining in any position during the vote was put into dependence, first of all, on a position of the state center of force (in this case the USA or Russia). Imaging that the representative of the USA would support to joining in a position of Russia, it is possible to assume with confidence cardinal change of results of vote on the matter.

With this regard rather relevant form factor of international law for the states of the former USSR is the work of new integration consolidation locating on a space of Eurasia – the Eurasian Economic Union (EEU). "The Eurasian idea assumes consolidation of a number of the countries of the former USSR for joining of economic recovery to the level acceptable for further integration from the EU on the terms of equality"[4].

Conclusion

The differentiation between the international legal standards as general universal legalized regulations and the international legal form factors as following of the general political or economic line of the states-centers of force allows the understanding of the limits of legitimacy and legality in international legal system and the prediction of the political, economic and legal situation of the international relations both on global, and on regional level. Form factors of international law are the parameters established in the regulations of the national or international law for accession to interstate acts in compliance with national interests.

Notes:

[1] Тиунов О. И. Роль международно-правовых стандартов в регулировании взаимодействия международного и национального права // Журнал российского права. 2012. №12 (192). URL: <http://cyberleninka.ru/article/n/rol-mezhdunarodno-pravovyh-standartov-v-regulirovanii-vzaimodeystviya-mezhdunarodnogo> (дата обращения: 21.01. 2017).

[2] Published on 16.9.2016 in the Official Journal of the European Union no. L 249, p. 39.

[3] Declaration by the High Representative on behalf of the EU on the alignment of certain countries concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine // available at: http://www.consilium.europa.eu/press-releases-pdf/2016/10/47244649428_en.pdf (accessed 10 January 2017).

[4] Запесоцкий А. С. (2016), Борьба США за контроль над Евросоюзом // Современные глобальные вызовы и национальные интересы: XVI Международные Лихачевские научные чтения, 19-21 мая 2016 г. – СПб.: СПбГУП, 2016.

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(Zapessotzky, A. S. (2016), Borba SCHA za control nad Evrosousom// Sovremennie globalnie visovi I nationalni interessi: XVI Mezhdounarodnie Lihatchevskie nautchnie tchtenia, 19-21 maia 2016 g. – SPb.: SPbGUP, 2016.).

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Abstract

The article is devoted to the problems of international legal standards. Research objective is exploring the possibility of using in science of the category "form factor". The main results of the article are that form factors of international law are the accession parameters established in the regulations of the national law extending to the sphere of the interstate relations. A study of this category is conducted first.

Key words: form factor, international legal standards, national legislation.

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