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ON THE PRINCIPLE OF UNITY OF INTERPRETATION OF TREATY NORMS IN INTERNATIONAL LAW

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The principle of unity of interpretation is one of the fundamental but at the same time one of the ambiguous principles of interpretation of treaty norms in international law. Deviation from compliance with this principle entails consequences in the form of a different understanding and further application of the norms of international law, which in turn creates the possibility of contradictory decisions by international judicial and quasi-judicial bodies. *The importance of legal analysis* of this issue is evidenced by the fact that the "arbitrary" interpretation of the norms of international law casts doubt on the effectiveness of the principles and rules of interpretation of treaty norms enshrined in international law. Despite the fact that the rules and basic principles of interpretation are regulated by the Vienna Convention on the Law of Treaties, each interpreter can apply them in a peculiar way. *The purpose of this study* is a comprehensive analysis of the practice of interpreting the norms of international law by international judicial and quasi-judicial bodies, and to determine the reasons for the different approach of interpretation of the same rule of law. This goal can be achieved in 2 ways: by analyzing the legal nature of the principle of unity, and its law enforcement practice. This article does not analyze the observance of the principle of unity in interpretation by arbitration courts, since this is an issue that requires separate research.

Keywords: the principle of unity, rules of interpretation, legal understanding, law enforcement, norms of international law.

Introduction

The existing rules and principles of legal interpretation, although binding and established in legal science, are often ineffective in practice. Specifically, the issue of adhering to the principle of unity in interpretation remains unresolved. This in turn leads to varying understandings of international law norms and their subsequent application, thereby increasing the possibility of contradictory decisions by international judicial and quasi-judicial bodies.

Speaking of the facts indicating the lack of unity and the existence of different approaches to interpretation, we can consider the legal understanding of the principle *"Aut dedere aut judicare" – "Extradite or Prosecute",* which has found its enshrinement in various universal international documents. For instance in the case *"Questions relating to the Obligation to Prosecute or Extradite" (Belgium v. Senegal)*, the International Court of Justice of the United Nations (hereinafter referred to as the ICJ) ruled that Senegal must either extradite Hissène Habré, the former president of the Republic of Chad, to Belgium or prosecute him domestically [1, p. 463]. However the interpretation of this principle was somewhat different: the ICJ applied it as "Prosecute or Extradite," thereby altering the essence and primacy of existing obligations. Meanwhile, the practice of similar cases in the European Court of Human Rights prioritizes extradition based on the

primary formulation "Extradite or Prosecute." To ensure the proper observance of the principle of unity and strengthen the existing system of interpreting international law norms, it is necessary to develop and establish general recommended principles for their application.

Materials and Methods

To achieve the set goal of the research and realize the above-mentioned tasks, both general scientific and specific scientific methods were applied, that commonly used in the study of social relations and international law.

Comparative Legal Method: This method was utilized in the research by comparing existing decisions of judicial and arbitration bodies on the same issues. The aim was to identify similarities and differences in circumstances, thereby uncovering potential reasons for discrepancies.

Inductive Method: This method was applied to discern general trends in the interpretation of legal issues. It involved examining individual judicial and arbitration decisions to derive overarching tendencies and patterns.

Dialectical Method: This method was utilized to identify and explain the necessity of applying the principle of unity. It facilitated an exploration of the contradictions in certain legal issues, and through analysis, the reasons for these contradictions could be explored.

These methods collectively contributed to a comprehensive understanding of the issues under investigation, providing insights into the similarities, differences, and trends in the interpretation of international legal principles by various judicial and arbitration bodies. The analysis aimed to uncover the reasons behind divergent interpretations and contribute to the broader understanding of the unity principle in international law.

Research Results

Unity in interpretation as the basic principle of the rules of interpretation in international law

The rules for interpreting contractual provisions are regulated by the Vienna Convention on the Law of Treaties of 1969. However, for a more profound understanding of these rules and their adherence, it is advisable to conduct an analysis of the existing legal literature on interpretation. Considering that the interpretation of provisions in an international treaty constitutes the interpretation of legal norms, all known means of interpretation in legal doctrine and practice should be applied to it, except for those means that cannot be applied to an international treaty as a voluntary expression of sovereign entities [2, p. 83]. It is generally recognized that the basic principles (rules) of treaty interpretation include the principle of good faith, the principle of unity and the principle of effectiveness, which are in fact reflected in the provisions of the 1969 Vienna Convention on the Law of Treaties. The wording of articles 31 and 32 of the Vienna Convention defines the obligation to interpret a treaty in good faith, according to its object and purpose [3]. However, there is no explicit formulation of the principle of unity in the text, despite the implied obligation of uniform interpretation in all cases and with respect to all subjects. In this regard, M. Villiger in his Commentary on the 1969 Vienna Convention notes that paragraphs 2 and 3 of Article 31 provide for a uniform interpretation of the treaty by and for the parties, and in fact provides ex hypothesi "correct" interpretation of the norm between the parties, as it predetermines which of the meanings should be applied [4, p. 429]. This indicates that the principle of unity of interpretation is the basis for determining the unified direction in which international legal obligations arising from treaties are to be implemented. It is evident that the majority in the modern doctrine of international law recognizes this fact. Similarly, Professor G. Warnke asserts that in interpreting legal norms, the pursuit of unity is undoubtedly one of the appropriate guiding principles, which constitutes a standard of legal interpretation [5, p. 409]. It is necessary to acknowledge that adherence to the principle of unity in interpretation plays a significant role in the overall understanding and application of norms in international law. Failure to adhere to it raises questions about the legality of such divergent interpretations, which deviate from the established common - singular meaning of legal norm interpretation.

In turn Ronald Dworkin boldly proposes that the unity of interpretation is ensured by his three-stage theory of interpretation: firstly, by individualizing the practice and distinguishing between types of interpretation; secondly, by attributing a set of objectives to the type of interpretation determined in the first stage; and finally, determining the best realization in a specific case [6, p. 563], which serves as the basis for its subsequent application. This three-stage sequence can argue in favor of the unity of interpretation because it provides a structural sequence of interpretation and helps identify the best interpretation, which subsequently forms the basis for its establishment as a uniform practice. However, there is an opposing view on this issue. Lawrence B. Solum argues that this concept is not tenable because "an action is successful only when it achieves its goal" and according to the formulation of the three-stage sequence the best interpretation cannot always become the basis for establishing a uniform interpretation of the norm. B. Solum believes that interpretation of the norm comes after determining the semantic content of the legal text. That is interpretation defines the range of legal content and it is either constrained by the text or too extensive, which in both cases leads to different practical legal consequences [7, p. 565]. Thus, the existence of the principle of unity in law is not denied, moreover, there is its development as one of the fundamental principles of international law. However, there are different opinions on the binding nature of its observance. Taking into account the above the question arises: how is it possible to establish a uniform interpretation of the norms of international law, and what can lead to the evasion of its observance?

The basic concept of the principle of unity implies that rules of law must be interpreted uniformly in all cases. That is, the same entity, in a particular case a judicial or quasi-judicial body, cannot interpret a norm in one way in one case and in another way in a second case [8, p. 120]. Otherwise, the risks increase substantially: misunderstanding of international law norms, non-compliance with treaty obligations by the parties, conflicting decisions by judicial and quasi-judicial bodies on similar issues, all of which compromise the traditional understanding of international law. If, in fact, the legal community, in determining the importance of the role of international law, seeks to enhance compliance with it, it must, in its interpretation and application, through synthesis or deduction methods, reflect the legal vision, needs and aspirations of all components of that community.

It is quite evident that without adherence to the rules of interpreting legal norms, there is no proper understanding of the law, which subsequently leads to the impossibility of its application. However, in this aspect, unity in interpretation allows for determining the original meaning of the legal norm and establishes the conditions for its application, thereby limiting entities in arbitrary interpretation and application of the law. It is important to note that compliance with the fundamental principles of interpretation collectively enables the high-level interpretation of international legal obligations; otherwise, problems arise in understanding and applying norms of international law. Adhering to the principle of unity in interpretation enables international judicial and quasi-judicial bodies to properly apply international legal norms for the fair and objective resolution of legal disputes.

Discussion

Differences in the practice of applying the principle of unity in the interpretation of international law

Currently, due to the disparate understanding and different approaches in the interpretation of the same norms of international law, problems arise related to the issues of law enforcement in order to ensure fair resolution of legal disputes. From a practical point of view, it is possible to identify facts indicating the difficulties of such implementation, since the same rules and principles of law are interpreted and subsequently applied by each judicial and quasi-judicial body in its own way. Unity of judicial practice implies uniform application and interpretation by courts of norms of substantive and procedural law. It should be noted that when making a decision, judges take into account judicial practice, and on the basis of judicial discretion make a final decision [9, p. 31]. Thus, Korshunova P.V. emphasizes the need to determine a single vector in the legal un-

derstanding of the norm of law, because it affects its law enforcement practice. In the current conditions, the problem of maintaining unity is relevant and, therefore, requires proper regulation. The reason is the lack of a clearly developed mechanism for the implementation of the principle of unity in interpretation and judicial practice.

The analysis is based on a comparison of the legal understanding and application of the principle *"Aut dedere aut judicare" – "Extradite or Prosecute"* by various judicial and quasi-judicial bodies. This principle is enshrined in various universal instruments in the field of international peace and security and is an obligation for States. The principle of "extradite or prosecute" defines the common goal of States in the fight against crime, and sets out the alternatives for the requested State, upon receiving a request for extradition of a person present in its territory: either to surrender the person concerned to the requesting State or to try the case in its own courts [10, p. 47, 49]. Nevertheless, practice shows that extradition issues are paramount in this matter. For example, the Council of Europe Convention on the Prevention of Terrorism, articles 17 and 18, stipulate that all States parties to the Convention are obliged to extradite or prosecute the persons concerned if they have jurisdiction over the offences concerned [11]. Article 8 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment also establishes the obligation to extradite persons who have committed an offence and, where this is not possible, the obligation to establish the jurisdiction of the State in which the person is located for further legal proceedings [12]. That is, under the provisions of the above-mentioned treaties, the obligation to extradite individuals is a primary duty, and only in cases where extradition is not possible does the obligation to prosecute under the domestic laws of the state arise. The interpretation of the "Extradite or Prosecute" principle, as noted by researchers, depends on the circumstances of the case and may signify either a priority of extradition or prosecution, or be understood as imposing both obligations equally on the state [13, p. 21]. However, several questions arise: how to fairly assess the priority of one obligation over another, to what extent such an approach to interpretation is legitimate, and whether it violates fundamental principles and rules of interpreting norms of international law. For instance, in its judgment in the case of *"Ahorugeze v. Sweden",* the European Court of Human Rights ruled that the extradition of the applicant to Rwanda was lawful and upheld the Decision of the Swedish authorities dated July 7, 2009, according to which the applicant should be extradited to Rwanda to face trial on charges of genocide and crimes against humanity [14]. This decision is justified by Articles 1 and 4 of the Swedish Criminal Extradition Act, since "a person who is suspected or accused in a foreign state or found guilty of acts punishable there, may be extradited to that state by decision of the authorities" [15]. Similarly, the Oslo Court of First Instance in Norway on July 11, 2011 granted the request for extradition to Rwanda of Charles Bandora; the European Court of Human Rights in its Rulings in the cases of *Mamadaliev v. Russian Federation*, *Soering v. United Kingdom*, *Tadjibaev v. Russian Federation* and others, indicated the priority of the obligation to extradite persons suspected of having committed a crime, provided that there is no real threat of persecution against life or liberty.

The analysis of the practice of the International Criminal Tribunal for Rwanda (hereinafter – ICTR) in the decision on extradition cases of perpetrators also has a place in this paper, because according to 11 bis of the Rules of Procedure and Evidence of the ICTR and case law, the Chamber of the Court may order the transfer of the case to a state that has jurisdiction over the crime and is willing and ready to accept the case [14]. Thus, in the Uwinkindi Transfer Case, the ICTR for the first time ordered the transfer of a genocide suspect for trial in Rwanda who had been indicted. On similar grounds, the cases of V. Munyeshyaka and L. Busyibaruta were transferred to French national courts; the cases of B. Munyagishari and L. Ntaganzwa were transferred to Rwanda. Summarizing the above-mentioned practice, it should be concluded that the European Court of Human Rights and the International Tribunal for Rwanda, in interpreting the principle of "extradite or prosecute", have adhered to the principle of unity in its interpretation, indicating in their decisions the priority of extradition to the requested State of persons suspected or accused of having committed a crime.

However, the ICJ decision on Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal) was sensational, as the Court interpreted the principle of "extradite or prosecute" in the formulation "prosecute or extradite", without taking into account the existing practice of the Committee against Torture and other quasi-judicial bodies on similar issues. In the original definition, "Aut dedere aut judicare" establishes the duty to extradite as the primary and fundamental obligation of States under international law, and the duty to judge arises as an alternative in the event that extradition is refused. In this case, the ICJ seemingly altered the priority of obligations by stating in its decision that a state is obligated to prosecute a suspect located within its territory first and only extradite them if prosecution is not feasible [16], thereby leading to a reinterpretation of the traditionally established understanding of the international law principle "Aut dedere aut judicare". Until this moment, extradition was one of the international legal obligations of states, but now, in view of this ICJ decision, which changes the priority of obligations, the issues of bringing the domestic policy of states in terms of criminal justice in accordance with the norms of international law are of paramount importance, and may create new obstacles to the implementation of the rule of law. Moreover, based on this decision, it becomes impossible for States to grant discretionary political asylum to individuals, as suspects could be charged with violating international law and brought to trial in any country wherever they are hiding. This could then constitute an infringement of State sovereignty and therefore violates one of the basic principles of international law – the principle of non-interference in the internal affairs of another State. The above-mentioned circumstances lay the foundation for the global application of universal jurisdiction.

Taking into account the existing problems arising from the different approaches to interpreting legal norms, the following recommendations are proposed to affirm the application of the principle of unity in interpreting contractual norms in international law:

Firstly, given the heightened need for interpreting Articles 31 and 32 of the Vienna Convention on the Law of Treaties, it is suggested to request an assessment from the International Law Commission on the role and significance of the principle of unity in interpretation. Secondly, in light of the absence of an international legal document consolidating all rules and principles of interpretation, and based on existing practice and the arguments put forth by the Commission, it is recommended to codify the rules of interpreting contractual norms in international law. By adopting these recommendations, it is envisaged that a more consistent and harmonized approach to interpreting contractual norms will be established, thereby promoting greater coherence and effectiveness in the application of international law.

Conclusion

The conducted research allows us to conclude that at present, the lack of sufficient regulation of compliance with the rules of interpretation creates problems of legal understanding and further enforcement of international law norms. The principle of unity in interpretation plays a key role and serves as a basis for preventing different interpretation of the same norms by different bodies. Having analyzed the practice of interpretation and application of the principle "Aut dedere aut judicare" – "Extradite or judge" – by various judicial and quasi-judicial bodies, it should be concluded that in some cases there are deviations from the established practice of understanding this principle.

In order to properly adhere to the principle of unity in interpretation and strengthen the existing system of interpreting legal norms, it is necessary to develop and consolidate a generally recommendatory framework. Proposals formulated during the analysis of existing practices of interpreting norms in international law can be among the possible ways to address this issue.

А.Ж. Испергенова, Құқық жоғары мектебінің магистранты Maqsut Narikbayev University (Астана қ., Қазақстан Республикасы): Халықаралық құқықтағы шарттық нормаларды түсіндірудің бірлігі қағидаты туралы.

Түсіндіру бірлігі қағидаты халықаралық құқықтағы шарттық нормаларды түсіндірудің негізгі, бірақ сонымен бірге екіұшты қағидаттарының бірі болып табылады. Осы қағидаты сақтаудан ауытқу халықаралық құқық нормаларын әр түрлі түсіну және одан әрі қолдану түріндегі салдарға әкеп соғады, бұл өз кезегінде Халықаралық сот және квази-сот органдарының қарама-қайшы шешімдер қабылдау ықтималдығын тудырады. Бұл мәселені құқықтық талдаудың маңыздылығын халықаралық құқық нормаларын "ерікті" түсіндіру халықаралық құқықта бекітілген шарттық нормаларды түсіндіру қағидалары мен ережелерінің тиімділігіне күмән келтіретіндігі дәлелдейді. Түсіндірудің ережелері мен негізгі қағидаттары Халықаралық келісімшарттар құқығы туралы Вена Конвенциясымен реттелгеніне қарамастан, әр түсінік беруші оларды өзіндік ерекше түрде қолдана алады. Бұл зерттеудің мақсаты халықаралық сот және квази-сот органдарының халықаралық құқық нормаларын түсіндіру практикасын кешенді талдау және бірдей құқық нормаларын түсіндірудің әртүрлі тәсілдерінің себептерін анықтау болып табылады. Бұл мақсатқа 2 жолмен қол жеткізуге болады: бірлік қағидатының құқықтық табиғатын және оның құқық қолдану тәжірибесін талдау арқылы. Бұл мақала төрелік соттардың түсіндіруіндегі бірлік қағидатының сақталуын талдамайды, өйткені бұл жеке зерттеуді қажет ететін мәселе.

Түйінді сөздер: бірлік қағидаты, түсіндіру ережелері, құқықтық түсіну, құқық қолдану, халықаралық құқық нормалары.

А.Ж. Испергенова, магистрант Высшей школы права Maqsut Narikbayev University (г. Астана, Республика Казахстан): **О принципе единства толкования договорных норм в международном праве.**

Принцип единства толкования является одним из основополагающих, но в то же время одним из неоднозначных принципов толкования договорных норм в международном праве. Отступление от соблюдения данного принципа влечет за собой последствия в виде различного понимания и дальнейшего применения норм международного права, что в свою очередь порождает вероятность принятия противоречивых решений международными судебными и квазисудебными органами. О важности правового анализа данного вопроса свидетельствует тот факт, что «своевольное» толкование норм международного права ставит под сомнение эффективность закрепленных в международном праве принципов и правил толкования договорных норм. Несмотря на то, что правила и основные принципы толкования регламентированы Венской Конвенцией о праве международных договоров, каждый толкователь может применить их своеобразно. Целью данного исследования является комплексный анализ практики толкования норм международного права международными судебными и квазисудебными органами, и определение причин различного подхода толкования одной и той же нормы права. Данная цель достигаться 2 способами: путем анализа правовой природы принципа единства, и ее правоприменительной практики. Данная статья не анализирует соблюдение принципа единства в толковании арбитражными судами, поскольку это вопрос, требующий отдельного исследования.

Ключевые слова: принцип единства, правила толкования, правопонимание, правоприменение, нормы международного права.

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