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HISTORY OF INTERNATIONAL LAW – A NECESSARY BASIS FOR INTERNATIONAL LAW

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Introduction

Today, the urgent need to study the problems of the origin and formation of international law is already evident. In recent years, international legal science has increasingly expressed its views on the insufficient study of this area of legal theory. However, most authors limit themselves only to the assertion of the need for an appropriate analysis. But even such statements concern either the history of international law, beginning with the New Time, or the ancient period, but only not such aspects as the origin of the international proto-right and its primary formation. As a result, the history of international law is the least developed branch of his theory. And to the period and peculiarities of its formation in antiquity, science in general turned less than anything, dating it to the appearance of a rather late epoch (a period of the European Middle Ages or even the 19th and 20th centuries).

There are several reasons for this state of science. First, international law itself became a recognized legal system at a rather later time. Secondly, in the theory of law, certain tendencies prevailed, which do not allow to fully reveal its essence (for example, exaggerated positivism and normativism, eurocentrism, etatism). These and other problems have for a long time conditioned the absence of the history of international law as a separate branch of science and to this day determine the absence of independent studies on the history of international legal doctrines.

Such a situation with the study of origin and the ancient period of the formation of international law can be traced to the example of the Roman jus gentium. This branch of Roman law has long been considered the direct predecessor of classical (European) international law, since Roman law itself and Roman legal civilization were the basis for the formation of a European civilization. Scientists also argued that during the formation of jus gentium already existed state. This was in accordance with the ethical vision of law, namely, the conviction that it was formed as a result of state lawmaking. However, jus gentium researchers criticized this approach, for example, V.E. Grabar` believed that jus gentium as a precursor of international law arises in the process of intertribal communication.

The existence of international law in non-European regions and in the previous historical stages (before the period of antiquity) was denied. At the same time, it was the interaction of these peoples (the ancient Egyptians, the Hittites, the peoples of the Middle East, China, India, etc.) that formed and formed international law. Therefore, the author selected a comparative legal method for studying the formation and formation of international legal norms, principles and ideas in various regions of the Ancient World.

Invaluable value for understanding the processes of historical formation and the formation of international law have authentic sources of international legal regulation of antiquity. So, since the second half of the XIX century, thanks to archaeological excavations, the scientific world has become aware of the diplomatic archives of ancient Egypt, Mari, Ugarit, the Hittite state, etc. The

diplomatic archive of Tel-el-Amarna, containing correspondence between the rulers of the region of the ancient Middle East and Asia Minor some of its documents can be considered, as will be shown below, by international quasi agreements in the form of an exchange of letters), is the original source of ancient international legal regulation and the material of primary importance cheniya for studying the processes of formation of international law.

However, this documentary base practically did not influence the level of study of international law of the ancient period. Firstly, the study of the history of international law was mainly carried out by positivist lawyers, who did not see positive forms in ancient legal sources and investigated mainly the ancient law that was in effect, not existing, "historical", ancient. Secondly, a rather late discovery of these sources led to the fact that they were introduced not only by representatives of legal branches, but historians, archaeologists, ethnographers, and anthropologists, who could not carry out their legal analysis. As a result, the science of international law knows only a very few international legal acts of antiquity (the treaties of the Mesopotamian cities of Lagash and Ummah in 3100 BC, the agreement of Pharaoh Ramses II and the king of the Hittites of Hattusilis III1276 BC and some others) .

The author's goal in no way is the affirmation of a nihilistic view of the state of the history of international law, that is, the author does not seek to prove that everything worked out in this sphere earlier is erroneous. Thus, the history of the study of international law, its nature and essence, and in particular such aspects as its inception, emergence, formation and formation, includes a number of very interesting works.

Specificity of the Process of the Origination of International Law

The question of the origin of international law is as poorly understood as its resolution - necessary for clarifying the very essence of this legal system. It is addressed mainly when the question of the binding force of international law inevitably arises. This usually happens as a result of the emergence of significant crises in international relations, like the First or Second World Wars, the "cold war", the international situation of the beginning of the 21st century. Such doubts about the existence, legal binding or effectiveness of international law arise whenever international relations pass through critical stages of their development. Therefore, the relationship "international law - international relations" makes it possible to understand the essence of each of these systems. As can be seen from the analysis of the process of the formation of international relations of antiquity and the specifics of their implementation, they inevitably entailed the emergence and development of legal regulation. By clarifying the mechanism and causes of the emergence of international law, it is thus possible to identify and understand the need for its existence in all historical periods, as well as the role it plays in critical situations arising in international relations.

Doubts in international law fall away if one looks at the process of its inception in the ancient period. Its emergence is an inevitable consequence of the existence of appropriate international social needs. But international relations at that time are formed under the influence of international legal requirements. In the system of the international order of the time, several main catalysts for the emergence of international law can be identified.

In the modern theory of international law, like law in general, there are two basic approaches to its emergence: one relates this process to the emergence of the state, while the supporters of the other claim that the MP existed before the emergence of the state. Depending on this, scientists also date the appearance of international law either by the ancient period (those who recognized the existence of states at that time) or by the Middle Ages (when the states themselves have already formed). Indeed, the solution of the question of the connection between the emergence of international law and the emergence of states is closely intertwined with the solution of the question of the essence of international law and law in general. Increasingly, the idea of the need to "revise the view taken earlier in the domestic state-legal theory of the origin of the state as a spasmodic process." According to the empirical field studies of archeology and ethnography, one can speak of the continuous evolution of pre-state and pre-state forms of social organization. " Often the opinions of even the most conservative researchers did not meet the historical, documentary data, and these researchers were forced to recognize the existence of legal regulation in the pre-state period.

The solution of the question of simultaneous with the state or the earlier emergence of international law depends on which stage of the process of its occurrence is being discussed: the stage when the social prerequisites that correspond to the requirements of international relations were formed, in fact about the emergence or formation and development three phases of development of law in the ancient period are most often identified by researchers). Most scientists for a long period adhered to the idea of the creation of law by the state, therefore, about its secondary nature with respect to the latter. Now these positions have begun to soften, but only with respect to law in the general sense: international law, these scientists continue to consider it quite late in time of occurrence. In particular, they say that law as a special system of legal norms and related legal relations arises in the history of society for the same reasons as the state. The processes of the emergence of the state and law go in parallel. The state association of tribes into single nations contributed to the establishment of legal protection of their foreign policy interests. So there were rudiments of international law. It is believed that international law not only can not arise together with domestic law and in parallel with the emergence of the state, but that later, with the emergence of the latter, one can speak only of its separate "beginnings."

The development of relations between states and state-like entities not only required a legal settlement for them, but also enshrined the latter in the relevant international legal instruments. Already at an early stage of international relations, rules and procedures for the creation of international customs, treaties, and oral agreements began to emerge. In one of the earliest international treaties of antiquity (the treaty of the king of the country, the Hittites of Tsidantas I (or II), with the ruler of Kitsuzavatna Pilias, beginning of the 15th century BC): "The sun, the great king, Tsidantas king, the king of the country of the Hittites, and Pilias, the king of Kitsuvatna, bound themselves by a treaty. "

Presenting different social formations, often different religions that forbade to enter into relations, let alone make agreements with foreigners, the subjects of such acts resorted to an extremely detailed procedure with the aim of securing legal force behind them. Thus, quite complicated rules for concluding international treaties and the procedure for establishing means of their provision (for example, determining the status of hostages, the size and conditions of paying tribute, recognizing the gods of the other party, etc.) arise, and the principle of observance of international obligations is established. Similar rules for the conclusion of an international legal act, closely related to rituals and rituals, were most customary. Therefore, for a long time it was he who was the main source of ancient international law.

However, with the development of ancient international relations, the lack of custom for their regulation became evident. As a result, they began to resort to the possibilities of other sources, which, in turn, gave rise to the corresponding norm-setting procedures. The need to recognize transactions with other public entities or their representatives aroused a number of concomitant international legal institutions: a contractual initiative (which was to meet the established procedure), the form of the treaty, the status and position of witnesses to the conclusion of the treaty, signing and ratification, the depositary, the guarantor of the treaty , the grounds, conditions and amount of responsibility for their violation, etc. The same purpose was also served by the indication in the texts of treaties on existing and long recognized by all parties on which helped not only to confirm the validity of the above customs, but also to enhance the authority of the treaty itself, especially at those stages when it had not yet received sufficient recognition in the ancient sense of justice.

Perhaps the main argument against the existence of international law in the ancient period was the assertion about the predominance at the time of the relations of hostility between peoples, the predominance of military relations in comparison with the peaceful ones. Mutual distrust and hostility between different peoples and states should be linked more likely with the religious, ethical, ideological and other social beliefs of ancient peoples. Proceeding from the reasons for the appearance and functions of international law, it would be more logical to speak not about the impossibility of its existence as a result of the spread of the ideology of hostile attitudes toward alien social groups, but about its emergence precisely as a means of preventing conflicts,

overcoming primitive hostility and ensuring international cooperation. Because of the inherently negative attitude towards foreigners and in the face of extreme need for economic contacts with them, international law arises in order to carry out such contacts and prevent large-scale conflicts.

It arose, among other things, to overcome a number of negative factors that exerted their influence on the relations between primitive social groups. "Already in ancient times people began to understand that the struggle, brought to irreconcilability, to such anger, in which the parties destroy each other or so lose respect for each other, that they are not able to negotiate and establish reconciliation, extremely harms both sides ... The goal of the archaic right was the reconciliation of the parties. " The history of intertribal communication contains many examples of how the law required to give preference to a peaceful, rather than military, resolution of the conflict.

This is also a function of law in general, which arises to mitigate aggressive behavior as individual members of the community, clans, or these collective entities as a whole, in order to establish the necessary cooperation and mutual assistance between them.

The Study of the History of International Law on the Modern Stage And Its Prospects

Today, among the shortcomings of the historical science of international law can be called the lack of research in it on the emergence of international law, its mechanism and features. On the example of the study of ancient international law, it is possible to show general trends that negatively affect the development of the history of international law. Among the most dangerous of them are the Eurocentric approach to international law, exaggerated positivism and normativism, the ethical vision of international law, and other tendencies that often not only replaced the subject of research but also led scientists outside the proper history of international law, forcing them to lean towards subjectivism . The most significant harm such approaches to the study of the history of international law brought to the study of its emergence and formation in the ancient period.

Eurocentrism In the History of International Law

One of the most important problems in the history of international law is the approach to its study from the perspective of Eurocentrism. The existence of this problem is explained by the fact that for a long period (the eighteenth and early twentieth centuries), even in scientific works on international law, the peoples were divided into civilized (peoples of European descent), barbarian (peoples representing non-Christian religion and having a non-European origin) and primitive (most of the peoples of Australia, Asia, Africa). Peoples who according to this classification did not fit into the framework of "civilized", the existence of international law by science was denied. More recently, in 1931, in the science of international law, it was generally accepted that international law does not concern all states. In the broadest sense, it concerns only those states that are members of the family of peoples. This idea was established in the XVI and XVII centuries. classics of international law, such as Vittoria, Suarez and Grotius. The family of peoples includes only those states that have reached such a level of civilization that their governments have been able to understand and of goodwill to respect international law. Only such states have legal capacity and are subjects of international law. However, quite often this position finds itself in international practice in the future. International law is still today regarded as a product of European civilization. Even in the UN Charter, there is the notion of "civilized nations", to which the document provides a priority in the definition, formation and creation of international law, without explaining, by what criteria these nations are singled out. However, today this "surviving legacy of the legal and cultural chauvinism of the nineteenth century" should be considered only as an appeal to different systems of law, legal traditions, significant religious and legal cultures, etc. Otherwise, international legal practice may get confused in the networks of Eurocentrism.

The Eurocentric approach led to the denial of the existence of international law in previous eras in other nations, while international legal developments of the ancient states of the Middle East, India, China and others remained outside of scientific research, although it was in these regions that the origin and formation of international legal norms occurred and the institutions of antiquity. And this tendency has never been particularly resisted, since the specialists in international law themselves were mainly of European origin and world perception, they were well

acquainted with European sources or sources from other regions, but in the European interpretation, they more trusted modern European values and in general were active apologists of Eurocentrism.

Eurocentrism as the ideological basis of the science of international law most fully manifested itself in the positive legal concept of international law, which existed in the late XIX - early XX century. At that time, international law itself was regarded by classical representatives of science as "the law of civilized nations".

That is why scientists from countries of non-European regions give extremely negative assessment to modern international law. Scientists of these states (R.P. Anand, A.B. Bozeman, M.L. Sarin, M. Haddouiri, Z. Hakuani, etc.) argue that modern international law is Eurocentric in nature, colonial and discriminatory by its nature and does not take into account the achievements in the science of international law of the more ancient cultures and civilizations: Egyptian, Mesopotamian, Hittite, Indian, Chinese, etc. Its origins, they believe, lie in the ancient Greco-Roman region of international cooperation, destruction of other regions cial crops, and therefore brought to the understanding of the international law aspects of the greater power than the specific mapping of human values and criteria. The Christian nations only considered themselves able to distinguish justice from injustice, what is allowed, from what should be prohibited.

Eurocentrism in international law, like any one-sided approach in the public sphere, causes a negative response. At the theoretical level, it entailed the exclusion from international legal science of the achievements of the legal regulation of international relations belonging to non-European peoples, and as a consequence - a simplified and incorrect understanding of the very nature of international law. Ignoring the deep features of different legal cultures in the process of international norm-setting causes even denial of certain norms and principles of contemporary international law. For example, the modern system of human rights and freedoms reflects primarily the ideas of the Great French bourgeois revolution of 1789, the War of Independence (1774-1783) and the constitutional process (1787-1791) in the United States, but takes little account of the characteristics of the Chinese, Muslim, African and other cultures. Moreover, today the opinions of European scholars are growing more and more like the fact that "the concept of human rights is the universal conquest of the Western (European-Atlantic) civilization. For the first time in history, it was enshrined in the American Declaration of Independence, the Constitution and the Bill of Rights. " Meanwhile, in the works of Confucius and other thinkers, in the international legal practice of already ancient peoples, elements of individual protection, humanization of conflicts, etc. are revealed. On the example of the category of human rights as combining positive and natural-legal aspects, the practical settlement of this issue and its theoretical explanation, one can see the shortcomings of the modern attitude to ancient international law, manifested in an exaggeratedly positivistic approach, etatism and the absence of a proper methodology AI to study the history of international law and its theoretical aspects.

Comparative Study Method of the History of International Law

The requirement of a comparative approach to the study of public international law, in particular its history, is not new in science. Many researchers believe that it is the key in the study of the humanities and social sciences, where the problem of comparing and contrasting objects, concepts and categories, figuring out what they have in common and what is different, is perhaps the only possible means of analyzing their essence. Especially on the need for a comparative method of research, insist, when it comes to the historical sphere. However, although recognized in historical science, the comparative method of research quickly began to decline: the comparison was not the object of historical development proper, but its individual manifestations, institutions, and phenomena. As a result, the study of the history of law was reduced to the search for the causes and consequences of certain legal concepts or processes without introducing them into their essence.

It can be said that the comparative method of research is not new for international law, since its main provisions were considered in a comparative aspect in the historical perspective. However, here it is rather possible to talk about the comparison of different epochs or periods of international

law (which was actually carried out sometimes) rather than a broad recognition of the comparative legal method in public international law.

The problematic of the comparative method of research in international law is also connected with the tradition established in science. So, no one denies the suitability of the comparative legal method of research for public-legal branches of domestic law (constitutional, judicial, administrative, criminal law, etc.) and even for the international sphere - for private international law. However, with respect to international public law, this method was not only not applied, but until recently its use was considered impossible.

To this, in particular, it was suggested that the comparative legal approach, which is generally accepted for private international law ("since the conflict rule often refers to foreign law, and" discoveries "made in the study of foreign law, almost always lead to a new understanding of law"), is not appropriate for international public law, which, on the contrary, is universal and supranational. However, the idea of "private traders" that "for comparative jurisprudence is of interest to study the differences in law, the legal order of two or more states, the definition of their exact content and the reasons for their specificity" could well be extended to public law, regional international legal subsystems, not to mention comparison with other legal systems or comparisons within the very system of international law (industries, institutions, institutions, their law-making processes, otsedur, etc.). Therefore, the denial of the comparative method in public international law was abandoned in the second half of the XX century. Y. Baskin and D. Feldman considered it unfortunate that this method is not applied in international public law, but is generally accepted only in relation to international private law. "It is becoming increasingly frequent the requirements of the science of international law to apply a comparative analysis of institutions, norms and categories (legal personality, sources) of international and internal law." True, the authors noted here the need to compare these two systems, not to mention the use of a comparative method in the history of international law, which they did not do in their "History of International Law".

The need for a comparative method in the study of legal phenomena scientists have noted for a long time. However, in the field of studying the theory of international law, this method has not become one of the main ones. P. Vinogradov, considering the formation of law and various legal institutions and categories, noted common problems of comparative analysis: "My task is to show that legal facts and ideas can be explored on the basis of combining questions of language, folklore and religion. Comparative research can bring order to the mass of phenomena and concepts that social life provides to us.

Comparison can be considered as 1) research method, 2) separate science and 3) academic discipline. Speaking of comparisons in the science of international law, sometimes the comparative legal method of research and comparative jurisprudence are confused. In this paper, the comparison will be used only as a method of investigation. Moreover, 1) the regions of ancient international law should be compared; 2) various institutions, norms or principles of ancient international law; 3) features of international law of antiquity with features of subsequent historical periods.

Comparative approach allows us to identify those international legal developments, elements, phenomena, which by their nature and regulatory nature are common to all legal civilizations and cultures. The prerequisites that influence the formation of international law "come from a social culture that can be called the main creator of law. And since all cultures have certain common goals (for example, protection of life and compliance with agreements), the same basic norms can be identified in all societies. However, each society has those norms that meet the specifics of its culture. "

The lack of a comparative method of research was due, in particular, to the dominance in the science of international law of the Eurocentrist tendency, which did not recognize the achievement of the legal systems of other regions and peoples. However, even when works on the history of international law of non-European regions or on the general history of international law, which no longer characterized the Eurocentric trend, began to appear, they still did not have a proper place for the comparative-legal method of research.

Conclusion

The structure of this work is subordinated to its goal - the preliminary section is devoted to an analysis of the current situation in science with the study of its formation and the formation of international law (in particular, the existing theories of its origin, problems and prospects for studying its history). The study of the actual international legal regulation, presented below, begins by clarifying the reasons that led to the emergence of international law. In particular, the process of formation and features of international relations of antiquity are being studied; beginning with the first contacts of social human groups, the proto-legal and legal norms that have arisen for their regulation are traced. Based on the analysis of the rudiments of international law that existed in inter-tribal relations and their further development in the form of proto-legal relations of pre-state public entities, one can trace the mechanism of the formation of international law proper. The peculiarities of its basic institutions in antiquity were dictated by the corresponding characteristic features of ancient subjects of international law and the laws of their relations. The study of the process of the formation of international law is being completed by an analysis of the formation of a theoretical explanation of its norms and institutions in antiquity. In particular, the features of the formation of international legal views, as well as the initial stages of the formation of the basic concepts of international law (natural law, positivistic, theological, etc.) are being explored.

The time frame for studying the process of the formation of international law is difficult to establish, because in antiquity in different regions (in the Middle East, China, India, etc.) the stages of the formation of international relations and law did not coincide chronologically.

In general, this study is aimed at clarifying the prerequisites, mechanism and features of the formation of international law in the ancient period, affecting its characteristic features throughout the next centuries. If we proceed from the fact that law as an objective phenomenon does not arise "out of nothing", it should be recognized that certain rudiments of international legal regulation, proto-legal elements arose even in the period of intertribal communication. Investigating these elements in their further development, one can see that international law has a number of features inherent in it as a legal regulator of international relations.

Legal regulation can not be separated from its theoretical perception, consolidation of its main provisions in the legal consciousness of peoples. No less in ancient times, the process of the formation of international law was accompanied by its interpretation, theoretical justification. Therefore, at that time, the beginnings of the basic international legal concepts emerged as such in subsequent historical periods. Unfortunately, the history of the formation and formation of international legal views still remains an unexplored area of legal theory. Therefore, in this work, attention will be paid, including the establishment of a theoretical foundation of international law among the ancient peoples. A revealing of the real mechanism and features of the genesis of international law and its theory is an essential element of its modern understanding and understanding of the prospects for its development.

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ГУГО ГРОЦИЙ – ОСНОВОПОЛОЖНИК МЕЖДУНАРОДНОГО ПРАВА

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Имя Гуго Гроцияхорошо известно юристам всех стран мира. Он—признанный основатель науки международного права. Гуго Гроций (настоящее имя Гуго де Гроот) − голландский юрист-международник, государственный деятель, философ, один из основателей теории естественного права; заложил базовые принципы международного права.

Г. Гроций родился в старинной, уважаемой семье 10 апреля 1583 г. в голландском городе Делфт. Первоначальное образование получил от отца − хорошо образованного и политически активного человека, который воспитывал сына с ранних лет, основываясь на учении Аристотеля.

Восьмилетним мальчиком Гроций уже писал латинские стихи. А когда ему было всего одиннадцать лет, поступил в Университет Лейдена. После окончания Лейденского университета в 1598 году Гроция пригласили сопровождать влиятельного чиновника провинции Голландия, Йохана ванОлденбарневелта, в дипломатической миссии во Францию. В возрасте пятнадцати лет Гроций попал на аудиенцию к королю Генриху IV, затем Университет Орлеана удостоил его степени доктора права. Вернувшись на родину, он занялся адвокатурой. В 1604 г. впервые исследовал проблемы международного права. В 1619 г. за участие в политической борьбе он был приговорён к пожизненному заключению, а в 1621 г. бежал во Францию. В 1634 г. был послом во Франции. В 1645 г. Гуго Гроций прибыл в Стокгольм, чтобы попросить отставки. Но, во время обратного пути через Балтийское море корабль, на борту которого находился Гуго Гроций, 28 августа 1648 г. потерпел кораблекрушение, во время которого великий юрист и философ погиб. Его останки