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UNPARALLELED ACADEMIC LEGAL RESEARCH UNVEILING A NEW BRANCH OF INTERNATIONAL LAW¹

The publication of the monograph, dealing with an underexplored subject, "International Canon Law: Genesis, Development and Foundations of the Theory" by the renowned Ukrainian lawyer, Doctor of Law, Professor Anatoliy A. Dmitriev is without any doubt an event of vast importance for the international law doctrine.

The author of the monograph has for the first time in the history of the national science of international law advanced and convincingly argued the concept of International Canon Law, laid bare the historical origins and civilizational preconditions of its genesis. The rationale of the subject of this monograph is conditioned by the circumstances of the secular and canonical relations in the modern society.

The foreword of the monograph reads as follows: "The beginning of the concept of justice is rooted in the ideas of the Holy Scripture. That is why the ancient formula *cuius regio, eius religio* has initially contemplated a synergetic dualism of the interplay between the secular arm and the Christian ideas to stand against forces, that are destroying civilization. Nowadays such interplay is induced by the necessity of intensification of international secular and canonical relations, the necessity of shifting them to a universal level of communication between nations, that holds a centuries-old code of self-preservation from the mistakes and delusions of their leaders, for the benefit of a common quest for building a new world order" (page 5). We cannot but agree with these statements.

The book under reviewed is to a certain extent the answer to a growing demand for the study of secular and canonical relations and spiritual values that form the core of the European civilization, in the context of a postsecular reality.

Within the last two centuries the theoreticians of secularization have been speaking of the inevitability of the loss of the role of religion. "The decay of traditional religious belief, bitterly bewailed by upholders of the Churches, welcomed with joy by those who regard the old creeds as mere superstition, is an undeniable fact" – wrote Bertrand Russel in 1912².

Today we witness an express surge of interest towards religion³. Religion returns into politics, substantially influences States and international relations⁴. At the same time the upholders of aggressive secularism tend to qualify the religious worldview as one of the "negative" traditional values and seek, among others, at international courts a direct or implied ban of its public display. With ever increasing frequency one can meet with a representation of European values as primitively interpreted liberal democratic ideas, based upon the principles of cultural relativism and aggressive secularism. At that such false representation of the "European values" is opposed to the traditional spiritual values that are the core of the European civilization.

It is commonly considered that for the first time the term "secularism" in its modern meaning was used during the negotiations on the Peace of Westphalia of 1648. "The French envoy Longueville used the term *seculariser* for purposes of reimbursement of damages inflicted to the Kurfürst of Brandenburg due to the transition of a number of his lands under the jurisdiction of Sweden. The term that was picked with a diplomatic providence turned out to be suitable to disguise the real state of affairs. F. Stenzper reconstructed the logic of the etymological constructions of that time as follows: in the 16th century the word *siecle* meant "century", theologically understood as "this world", hence *seculier* means "wordly, secular", which

¹ Review of the monograph: Дмитриев, А.А. (2014). *Международное каноническое право: возникновение, развитие и основы теории*: монография. Одесса: Фенікс.

² Рассел, Б. (1987). *Сущность религии. Почему я не христианин. Избранные атеистические произведения*. Москва: Политиздат. <<http://www.aquarun.ru/psih/relig/relig3.html>>.

³ See: Berger, P.L. (1999). *The Desecularization of the World: Resurgent Religion and World Politics*. ashington, DC: Ethic and Public Policy Center.

⁴ See: Toft, M.D., Philpott, D., Shah, T.S. (2011). *Century: Resurgent Religion and Global Politics*. New York and London: W. W. Norton & Company.

thereafter is applied to the Church, for example *seculariser un monastere*¹.

In the 19th century “secularization” from a narrow – political and legal – turns into a more common term, meaning a process of extrication of the culture as such under the influence of religion, first and foremost, of the Christian religion². The idea of the inevitable decrease of the influence of religion on the society due to the development of the progress became stronger at least beginning from the 18th century and became an axiom by the middle of the 20th century, when the term “secularization theory” asserted itself in the social sciences. The essence of this theory lies in the statement that modernization inevitably leads to the decrease of authority of religion both in the society and in the minds of the people³.

Nevertheless, the course of history suggests the trends to be multidirectional. Starting in October 2011, when the renowned modern philosopher Jürgen Habermas in his well-known speech “Faith and Knowledge” proclaimed the advent of an post-secular era, the term “post-secularism” itself received wide recognition and development. Jürgen Habermas welcomed the strengthening presence of “spiritual/religious” in the public life. This society can no longer be named secular, but is rather a post-secular society⁴.

Peter L. Berger, a well-known sociologist and philosopher, who used to be a strong supporter of the secularization theory, has represented the following conclusion in his article “The Desecularization of the World: A Global Overview” (1999): “...the assumption that we live in a secularized world is false”⁵. Brian T. Trainor, who claims that we are currently witnessing a highly significant departure from the ‘old’ model of liberal society, states the following: “The key task of the post-secular liberal state is to be the unifying principle that pervasively informs all aspects of its society. As in the case of the ‘old’ secular liberal state, the ‘new’ post-secular liberal state will continue to maintain an impartial neutrality on questions of world views, allowing each to bloom without interference, but it will also seek out threads of unity between them”⁶.

At the same time both in Western and in Eastern Europe a certain rise of the militant secularism is observed. Let us turn to the words of one of the most reputable and adamant anti-totalitarianism crusader of the 20th century – Pope John Paul II, who in his book “Memory and Identity”, that was published shortly before his death and became his spiritual testament, wrote the following: “The nations of Central and Eastern Europe have preserved their identity, and even consolidated it, despite all that was imposed upon them by the Communist dictators. For them, the fight to preserve national identity was a fight for survival. Today the two parts of Europe – East and West – are coming closer together. This phenomenon, positive in itself, is not without risk. ... During the struggle against Marxist totalitarianism, that part of Europe went through a process of spiritual maturation, thanks to which certain values essential for human life have not declines there as much as in the West. In Eastern Europe, for example, there is still a strong conviction that God is the supreme Guarantor of human dignity and human rights. So where does the risk lie? It lies in an uncritical submission to the influence of negative cultural models, widespread in the West. For Central and Eastern Europe, where such tendencies can seem like a kind of ‘cultural progress’, this is one of the most serious challenges today. This, I am convinced, is the area where a great spiritual confrontation is taking place, the outcome of which will determine the face of the new Europe which is being formed at the start of the millennium <...> If, on the one hand, the West continues to provide evidence of zealous evangelization, on the other hand anti-evangelical currents are equally strong<...>. Faced with all this, one may legitimately ask whether this is not another form of totalitarianism, subtly concealed under the appearance

¹ Данилов, Д.В. (2003). Диалектика секуляризации и ее проблемы. *VIII Международные Кирилло-Мефодиевские чтения, посвященные Дням славянской письменности и культуры: Материалы чтений (Минск, 23-26 мая 2002 г.)*. В 2 ч. Ч. 1, кн. 1 <<http://www.sobor.by/danilov.php>>.

² Узланер, Д. (2008). В каком смысле современный мир может быть назван постсекулярным. *Континент*, 136.

³ Синелина, Ю. (2012). Религия в современном мире. *Эксперт*, 1 (883). <<http://expert.ru/expert/2013/01/religiya-v-sovremennom-mire/>>.

⁴ Хоружий, С. С. Постсекуляризм и антропология. *Antropolog. Ru. Электронный альманах о человеке*. <<http://www.antropolog.ru/doc/persons/Horujy/Horujj1>>.

⁵ Berger, P.L. (1999). The Desecularization of the World: A Global Overview. *The Desecularization of the World: Resurgent Religion and World Politics*. Washington, D.C.: Wm. B. Eerdmans Publishing Wm. B. Eerdmans Publishing, 3.

⁶ Трейнор, Б. (2012). Теоретизируя на тему постсекулярного общества. *Государство, религия, церковь в России и за рубежом: научный информационно-аналитический, культурно-просветительный журнал*, 2, 180.

of democracy” – wondered John Paul II¹.

“The problematics of religious freedoms and religious and secular relations nowadays more and more shift towards the realm of international legal regulation”². The structure of the monograph under review is illustrative for such comprehensive doctrinal study and consists of four sections. Section I places special emphasis on the theoretical-methodological foundations of the research of International Canon Law as a new branch of the science of international law. The author claims that “the concept of International Canon Law stems from the rooted interlacing and interconnections of diverse philosophical and legal theories, history of state and law, as well as in the interrelation between the secular and canonical branches of common and legal regulation of the life of nations in different phases of the evolutionary development of civilization” (Page 7). It is to be deemed absolutely logical that in the beginning of the study the author addresses the examination of the historical conditions of the period of origin of international secular-religious relationships as a basis of subsequent thorough analysis of philosophical and legal phenomena, which characterize the evolution of such relationships.

For subsequent thorough analysis of philosophical and legal phenomena, which characterize the evolution of international secular-canonical relationships, Anatoliy I. Dmitriev deems it necessary to narrow down the time of their genesis, assuming that history provides us with an unmistakable answer to this question. “It is unquestioned that the genesis of International Canon Law is linked up with the publication in 313 A.D. of the Edict of Milan, proclaimed by Constantine I the Great and legitimizing Christianity in the empire” (Page 8).

The monograph under review focuses on the concept of “*synergetic dualism*” of the interrelated secular-religious relationships”. “Taking into consideration the reinforcement of the mental and legal ascendancy of Greek imperial tendencies in the Roman Empire of that time, such interrelation between secular and canonical powers can be characterized as *synergy* phenomenon (Greek: *synergos* – meaning “working together”). It is the very phenomenon of *synergetic dualism* of interrelated secular-religious relationships that was adopted by the International Canon Law”, – writes Professor A. Dmitriev (Page 17).

The author is distinct in intimate knowledge of the research issue. Undoubtedly not without interest is the scientific analysis of the peculiar confrontation between the Roman civil law (*jus civile*) and the law of nations (*jus gentium*), that emerged in the post-classical period of the Roman law, and the conclusion that as of the proclamation of the Edict of Milan by the first Christian emperor of the Roman Empire, Constantine I the Great, the International Canon Law has manifested itself in the natural mutual influence of secular and canonical elements of international relations.

Scrutinizing the 313 A.D. Edict of Milan as a secular canonical basis of the genesis of International Canon Law in the period of *jus gentium*, Anatoliy I. Dmitriev underlines the following: “When we speak of a “new evolving brunch”, we have to realize that such newness has to do with the modern theory of the sectoral structure of international law, consisting of different branches, that allows to determine the long-felt need to place emphasis on the secular and canonical relationships, that have civilizational significance, but went under the radar of the science of international law. One of the reasons for such lack of attention in academic analysis can be the conventional view on the two legal systems that have been formed separately, namely – secular and canonical” (Page 37).

The understanding of the content of *jus gentium* and the author’s concept of *synergetic dualism* allowed the academic to approach the definition of the concept of International Canon Law and its place in the intercourse between nations.

Professor A. Dmitriev argues the following: “In the period of publication of the Edict of Milan of Constantine I the Great the International Canon Law is marked by the following essential traits and development trends: (1) Primacy of the secular component in the process of legitimization of Christianity, which thereafter evolved into two antithetical forms of secular canonical relationships, namely the Byzantine ceasaropapism and Roman papal centralism. (2) Use of different Roman Law institutes for the regulation of incipient international secular canonical relationships (*jus civilis*, *jus gentium*, *jus naturae*). (3) Shaping of the synergetic dualism of international secular canonic relationships that underwent

¹ Иоанн Павел (2007). *II Память и идентичность*. Издательство Францисканцев.

² Митрополит Волоколамский Иларион (Алфеев). Религиозный фактор в международных отношениях. Лекция в Московском государственном институте международных отношений (Университете) Министерства иностранных дел России. 23 октября 2013 года. Служба коммуникации Отдела внешних церковных связей Московского Патриархата. *Патриархия.ru*. <<http://www.patriarchia.ru/db/print/3320088.html>>.

modifications and was influenced by indicative patterns of the historical determinants of the development of civilization. The evolution of synergetic dualism until nowadays used all the communicative means of international secular canonical relations. (4) The dawn of the Christian missionary work in the relations between nations. (5) The historical causality of the principle - *cuius regio, eius religio* (“Whose realm, his religion”). Thus in the period of its genesis International Canon Law is seen as *jus gentium canonicus*, in other words – as a legal regulation of specific interdependent secular and canonical relations, that were formed by the people of Ancient Rome and were directed at the evangelization of both the subjects of the Empire and the neighboring nations” (Pages 20 - 21).

Section II of the monograph contains valuable historical legal analysis of the genesis and development of International Canon Law in the period of local (regional) international law. Anatoliy I. Dmitriev lays emphasis on the characterization of the first ever international secular canonical act of the European nations – the 313 A.D. Edict of Milan of Emperor Constantine I the Great, which is justly to be acknowledged as the secular canonical basis of International Canon Law in the period of *jus gentium*.

Of utmost importance is the following conclusion of Prof. A. Dmitriev: “The Edict of Milan of Emperor Constantine I the Great, containing the phenomenon of synergetic dualism of Christianization, provided the human civilization with that supreme law, which by way of incorporation into *jus gentium* created landmarks, the sanctity of which guaranteed sustainable development of the mankind. Such supreme moral law of nations can be defined as *jus gentium canonicus* – an inalienable Christian right to freedom of faith and thereto related international communication, that was miraculously granted to the nations of the world (and as a synergetic result of international secular relations) and that aims at escorting the civilizational development of mankind in the process of worldly evolution” (Pages 40 - 41).

“The analysis of the genesis of International Canon Law within the period of local (regional) international law (namely before the Peace of Westphalia of 1648) allows to draw attention to the establishment of its main criteria, that distinguish it as a branch. At that it should be taken into consideration that international law of the Roman Empire (including its Western and Eastern parts) was literally understood as *jus gentium* – Law of Nations. Thus the aftermath of the 313 A.D. Edict of Milan influenced both the Empire itself and its neighbors. The rise of International Canon Law in 313 A.D. was accompanied by a gradual civilizational establishment of the first criteria that distinguish it as a branch.

Thus in the period of its genesis International Canon Law is seen as *jus gentium canonicus*, namely as the legal regulation of historically formed specific interdependent secular and canonical relations, that were formed by the people of Ancient Rome and were directed at the evangelization of both the subjects of the Empire and the neighboring nations (Pages 89 - 90).

Anatoliy I. Dmitriev underlines that the Peace of Westphalia after 1648 acknowledged the right of the estates of the Empire (including clerical orders) to international community and formation of diverse unions. But at that the peculiarities of the post-war constitutional nation building was marked by a simultaneous existence of fief laws and monarchy, nation states system and federalistic tendencies. The constitutional model of the Empire was jointly dominated by two elements: state legal and international legal (including International Canon Law). Thus the configuration of the Empire, determined by the Peace of Westphalia, can be arbitrary defined as being based not on the elective monarchy under the fief laws, but on the dual federative organizational structure of the sovereign powers and powers of the state (Page 63).

The monograph describes a unique historical phenomenon of the work of two outstanding Greeks – the brothers Cyril and Methodius. The said phenomenon of their work is a vivid example of the secular canonical relations of the period of Christianization of Slavic nations at the end of the 9th and at the beginning of the 10th centuries (Bulgarians, Serbs, Moravians and others), which without doubt attracts interest. The monograph under review emphasizes on the Christianization of the Kievan Rus’ (988). “For the Kievan Rus’ it was of great advantage to have assumed Orthodox Christianity in the times of the rise of the Byzantine culture, a remarkable place in which is filled by the Slavonic enlighteners Cyril and Methodius, the positive influence of which was felt up to the 12th century’, - writes A. Dmitriev. ‘The international legal communication in the period of Christianization of the Kievan Rus’ corroborates the sustainability of the special features of International Canon Law of these times”. The author includes on the list of such special features the following: “[i] The primary role of the secular vector in the organization of the international communication between Kiev and Constantinople regarding both the Baptism of Vladimir the Great and that of the people of the Kievan Rus’; [ii] the primacy of the canonical international vector of evangelization regarding the translation of the Holy Scripture into Old Church Slavonic, whereas

in contrast the Cyrillic was the script of the common secular use; [iii] use of the Old Church Slavonic language and script in international communication between Slavic peoples, which is a binding foundation for friendly relations between them even today” (Page 81).

Section III of the monograph deals with the problematics of the development of International Canon Law in the period of universal International Law. Of special scientific interest is the analysis of the impact of the universalism principal on the development of International Canon Law in the period of establishment of the Westphalian configuration of international law (1648 - 1815).

When analyzing the operation of the European legal order of the nations of the Old World, which was established by the 1648 Peace of Westphalia, the author rightfully argues that the meaning of the Peace of 1648 can be determined not only through the subject of the Treaties, no matter how groundbreaking the latter have been. The epochal value of the Peace of Westphalia, that influenced the establishment of International Law and created the European legal order, which in turn had a vast impact on the further development of International Canon Law, has to be determined not only by the scope of the Peace of Osnabrück and Peace of Münster, but also by the following four problematics, namely: (1) the problem of the end of war was particularly in Germany and the establishment of actual peace between the rival parties, that was incidental to such end of war; (2) the efficiency of the end of the Thirty Years' War and the survival of the treaties and their regulatory function directed at the development of the European legal order up to the dawn of the 19th century; (3) the efficiency of the common international legal principles and structures, that were effective both in times when the regulatory and the templating roles of the Peace of Osnabrück and Peace of Münster were vital, and in times when they became unfluctuating; (4) the legitimization of the 1555 Peace of Augsburg.

A separate Section of the monograph under review is dedicated to the examination of the development of International Canon Law under the 1815 Final Act of the Vienna Congress – the Act of the Holy Alliance, the international legal role of which can hardly be overestimated. By reference to the purpose of this document – “the determination, in the management of their respective States and in political relations to all other governments, to be guided not by any other rules and commandments than those of the holy faith, commandment of love, truth and peace” - Anatoliy I. Dmitriev consistently points out the acknowledgment by Russia, Austria and Prussia of the Christian moral canons during decision-making process on the international arena, which was an absolute novation of that period. The ideas of the Holy Alliance accepted the possibility of bringing the interstate relations to the level of secular canonic relations, which should be characterized by a respective interstate Christian union.

Of cast importance is the examination of the work of the League of Nations (1919 – 1946), which enabled the political authority of an international organization to influence historical processes and international relations. A particular attention is devoted to such a trait of the League of Nations as the association of governments, that is of outmost significance as far as it shifts the focus of international communication from *jus inter gentes* to intergovernmental communication. The governments, however, were at that times a merely obedient administrative managerial elite of the ruling forces and were nowhere near the goals of ensuring social, cultural, moral ethical and spiritual needs of the society, of real safeguarding of human rights. Fully justified is the conclusion that in the universal legal system of the League of Nation the Lateran Treaty between the Kingdom of Italy and Vatican dated February 11, 1929 was a comprehensive secular canonical international legal act that substantially strengthened the position of the Holy See in international relations, which remain legitimate also in the 21st century.

The monograph scrutinizes the formation of the theory of International Canon Law within the United Nations period, the Charter of which circumstantiates the ideological approach to the arrangement of the post-war world.

Of equal importance is the separation of the subject matter of the theoretical and practical content of International Canon Law. The author addressing to the synergetic dualistic components of the functions of Vatican as subject of international law is of vast importance, as well as is his characterization of diplomatic and political components of the Holy See.

While acknowledging that international law is operating in the modern international system, in the recess of which runs a continuous process of formation of international legal norms, including those of the branches of international law (among which is International Canon Law), a special notion should be made of the problem of the position of a subject of international law as the key element in the process of formation of norms in International Canon Law, which is scrutinized in the book under review. The concept analysis of such a category as “position” of the subject of international law, according to the author, enables

one to define in each given situation the attitude to certain actions of the subject of international law while achieving certain goals (Page 182).

Given that special goal-setting in the sphere of secular canonical relations is peculiar traits of Vatican, a special attention in Section III of the monograph is paid to the category of “goals”. The author underlines that even though the apparatus of the Vatican diplomacy doesn’t differ much of the apparatus of any secular State, there are substantial differences between them in two main levels – the level of goals and the level of means, which are available to the Papal representatives (Page 184).

The analysis of “electoral capitulation” (*capitulatio caesarea; Wahlkapitulation*) and “auto limitation” as the basis of effective implementation of the norms of International Canon Law is of special theoretical and practical interest. “It is our belief that the institute of “electoral capitulation”, as well as the idea of “auto limitation” of the state, has been the theoretical legal forerunner of the elaboration of the United Nations Charter. At that the UN Charter raises to a universal level the idea of social safety of nations in the face of the risks of war, natural and technogenic catastrophes, terrorism, famine and epidemics. It is the “Peoples of the United Nations”, who determined to unify their efforts in achieving the goals of the Charter of a universal international organization, to conduct international cooperation in eliminating international problems of economic, social, cultural and humanitarian nature, to reassure the faith in the basic human rights and fundamental freedoms for all, irrespective of race, sex, language or religion. Even though the word “religion” is the last on this list, given its civilizational meaning it plays not the least role in the modern international relations. It is the UN Charter, which with the help of its ideology enabled to the Vatican City State, as representative of one of the Christian denominations, to rise to the level of modern secular canonical relations, which aim at the promotion of the economic and social progress of all nations. At that the phenomenon of the institute of “synergetic auto limitation” of the universal regulation of international relations, manifested itself by shifting the center of gravity of moral and ethical elements of its regulator to the realm of International Canon Law” (Page 191).

Two landmark events of 2013, namely the 1700 anniversary of the 313 A.D. Edict of Milan and the 1025 anniversary of the Baptism of Kievan Rus’, – afforded grounds for the author to ponder on the development of International Canon Law in the 21st century. The final Section IV of the monograph “The Prognosis of the Development of International Canon Law in the 21st century” contains the author’s conceptualization of the future of such a development.

Prof. Anatoliy I. Dmitriev is consistent upholding the idea, that International Canon Law, as a legal regulator of specific, synergetically interdependent, secular and canonical international relations, is aimed at inspiring the secular relations between nations by postulates of canonization and reaching the goals of the UN Charter of settling international economic, social, cultural and humanitarian problems, as well as encouragement and development of human rights and fundamental freedoms for all, irrespective of race, sex, language or religion (Page 192).

In conclusion of the research, Prof. A. Dmitriev points out to the reader, that “International Canon Law within the period of universal legal order is marked by the intensification of the role of the subjects of international law (the states), that have taken an active part in enforcement of freedom of faith with the use of international legal mechanisms, and strengthening the secular vector of the synergetic dualism of international bonds” (Page 201). According to the author, “only by means of real international legal equality of the subjects of international secular canonical relations an early progress in achieving Christian unity that was disrupted with time, and through such a unity – influence (depending on the effectiveness of International Canon Law on the universal level) the international legal order, which is often subjected to criticism nowadays” (Page 203). Summarizing Prof. A. Dmitriev states: “Especially in the 21st century when pondering upon the future of international law we, on the platform of the UN, are confronted with the same processes and facts, which were faced by the peoples of Ancient Rome when conquering other nations – with the Law of Nations (*jus gentium*), but on a new, civilizational level of international community of nations (*jus gentium communis*), which, nevertheless, desperately needs a spiritual and ethical regulator of international relations, namely – International Canon Law” (Page 204).

A grand finale of the research is the following abstract: “It is obvious that the civilizational code of the synergetic dualism, safeguarding the humanity of catastrophes and destruction for thousands of years, shall remain forceful in modern times. And International Canon Law shall preserve its power not only to maintain, with the help of its higher regulatory influence, the civilizational equality, established by the United Nations Charter, but also to reveal new goals, criteria, and principles of the modern *jus gentium communis* in the context of the 21st century. Such moral legal element of international relations regulation

can become a criterion for true equality of these relations, their justice and evolutionary effectiveness” (Page 205).

The landmark book of Professor Anatolij I. Dmitriev is a spectacular achievement not only for the Ukrainian science of International Law, but for the global science of International Law as such. It is unparalleled both in national and international science of International Law.

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