

BOOK REVIEWS

Valentin Khonin, PhD in Law

Institute of International Relations, Taras Shevchenko National University of Kyiv, Ukraine

UNCHALLENGED NOVATION AND/OR CENTURIES BEHINDHAND ESTABLISHMENT OF THE SCIENCE OF INTERNATIONAL CANON LAW¹

The monograph “International Canon Law: Genesis, Development and Foundations of the Theory”, presented by Professor Anatoliy I. Dmitriev (Ukraine), is the first in Ukraine, and probably on the international scientific scene, positive experience of examining one of the most complex fundamental problems of nature, *pro tanto* of the real history and theory of international law.

The title of the monograph itself lays out the clear conceptual approach that allows the author to fully and soundly treat not only the innovative simulations analysis of the genesis and substance of international law, but also the naturally associated phenomenon of the periodization of the history of international law. The editor’s foreword to the monograph already discloses the author’s key prolegomena, the momentum of the scientificity that allowed him to make the present research thorough to the right degree. Among these are first of all: “the synergetic dualism” of the intercommunication between the secular arm and the Christian ideas within the process of establishment of the modern international law; “the civilizational level of the secular and canonical relations”; “the Peace of Westphalia of 1648 as the branch basis for International Canon Law”; the historical determinants of the international legal order; the concept of justice of the arrangement of life on our planet, which, according to the author, “is rooted in the ideas of the Holy Scripture”.

The monograph has a strictly logical structure and consists of four Sections. Section I “Theoretical and methodological foundations of the research of International Canon Law as a new branch of the science of international law” begins, as it can be expected, with the introduction of the definition of the International Canon law as such with its conceptual dualism: as a determined foundation of all in the international law; and as a branch of the modern international law, bringing under regulation the special, in their essence, secular and canonical relations in the current reality of all of the nations.

Scrutinizing the Evolution theory as the “doctrine of gradual genesis of phenomena from simple rudiment data”, the author not only introduces substantial differentiation between such definitions as “development, evolution and progress”, but also consistently realizes this approach in the analysis of the ascent of the international law from the Roman and Hellenic Law, through the rule-making of *jus gentium* to the Edict of Milan of the first Christian Roman Emperor Constantine I the Great, that in effect not only laid the foundation of the division of the post-classical Roman Law into *jus civile* and *jus gentium*, but also gave rise to the establishment of the International Canon Law as such, and through it to the whole future system of international law.

The author’s detailed analysis of the origins of international law lead him to conclude, that the “phenomena of the synergetic dualism of interrelated secular and canonical relations was received by international canon law” and, what is to be seen as reasonable, “the definitions of the international canon law should be based on both the critical characteristics of *jus gentium* and the special aspects of its’ canonical component”.

Thus the author believes that the period of the genesis of international canon law (313 A.D.) should be seen as *jus gentium canonicus*, i.e. “the legal regulation of the specific interdependent secular and canonical relations” with neighbor nations “that had been historically formed by the Romans”, which *per se* is a novation for the modern international legal research.

That being said the study of the “Periodization of the history of international law” is naturally to be seen as a novation as well, given that it is based both on the analysis of the common civilizational values of

¹ Review of the monograph of Anatoliy I. Dmitriev, Doctor of Law, Professor “International Canon Law: Genesis, Development and Foundations of the Theory” (Дмитриєв, А.І. (2015). *Міжнародне канонічне право: виникнення, розвиток і основи теорії*. Одеса: Фенікс).

the nations and on the acceptance of the “fact that in the beginning of the 21st century the Westphalian configuration of international law is still efficient” and its canonical basis is undisputable by the academic community anymore.

Obviously, the author’s innovative approach to creating the chronological periodization scale of the process of establishment of the modern international law divides the whole civilizational period of international legal regulation of international relations into two great epochs: the epoch of the local (regional) international law and the epoch of the universal international law.

“The epoch of the local (regional) international law” has its own periods, which is characteristic for the international law of the time of Mesopotamia and Egypt, China and India, European countries until the Congress of Westphalia of 1648, including ancient Greece, Hellenistic and Roman periods and the Middle Ages.

“The epoch of the universal international law” is, according to the author, the period of evolution of the “block of legal principles and norms that regulate the relations between the states and other subjects of international law in the circumstances of a certain historically determined universal legal order, [...] within the scope of which the international law develops as a moderator of all international relations, among them secular and canonical ones”.

In Section II of the monograph under review, having the title “The Genesis and Development of International Canon Law within the Period of Local (Regional) International Law”, the author makes special emphasis on the period of the 313 A.D. Edict of Milan, considering that it is the period of *jus gentium* when the secular and canonical basis of the International Canon Law was formed, namely when upon the dissolution of the Roman Empire “the nations of the newly formed states have adopted the legitimization of Christianity”.

The new historic period of the establishment of International Canon Law, which is defined by the author as the “Holy Roman Empire (800 A.D. to 1806)”, was characterized not only by constant turmoil in the lives of the nations, but also by constant ascension of international secular compromise and agreements, that were every time favored by a canonical blessing and in fact were based on the organizational and practical actions of the Church. The secular and canonical character of the peace between the nations within the period of “dispersal of sovereignties” has continuously filled and accompanied, according to the author, the establishment of the whole multidisciplinary structure of international law.

In the subsections of Section II the author, for the first time in international legal academic research, analyses the role of the Enlighteners of the Slavs – Cyril and Methodius – in the process of international Christian converse. The international secular and canonical phenomena of the Christianizing of the Eastern Slavs in also scrutinized. The results of the research corroborate the persistence of the expansion of the influence and the development of International Canon Law of that period.

The author pays special attention to the peculiarities of the development of International Canon Law in the period of the schism between the Latin and Greek churches (9th to 11th centuries). At that in corroboration of the thesis of the “unity and struggle of opposites” in the positions of the spiritual clergies, the most important is the widening of the factor space of the secular and canonical relations, that determined the coordination arrangements of both the split Churches and the States, which in turn reflected in a vast number of unilateral and bilateral international legal acts dating back to the said period. This and much more have been analyzed by the author and gave him grounds to state that “during that period of time the involvement of nations and their rulers in the legitimization and interrelation of secular and canonical relations, strengthened by international law, became irretrievable”.

If one should scrutinize the monograph in its entirety, it would be borne in on the reader that the most complex subject of research and most probably the central element of the work is the matter discussed in Section III “The International Canon Law of the Period of Universal International Law”.

The beginning of the new period of building the world is certainly marked by the signing of the Treaties of Osnabrück and Münster on October 24, 1648. The monograph scrutinizes the establishment of the Westphalian configuration of the universal international law that dominated from 1648 to 1815. It is without any doubt, according to the author, that the formalization in the Treaties of Westphalia of the right to spiritual autonomy, the principles of tolerance and pluralism, guarantees of the right to emigrate and further novation of explicit canonical nature, has become the real forceful basis of international law that was developing at that time and acquiring secular lineaments.

“Tolerance as a legal category was soundly and profoundly translated into the Treaties of Westphalia of 1648 and has for decades ahead determined the European legal order”. Along with that the author observes that the “palette of historical, social and legal prerequisites of the development of the category of

tolerance [...] are shifted from the religious and theological realm to the realm of secular and legal, as well as that of the political thought”, aiding the establishment of the new stereotypes of the international legal perception of reality.

The author devotes a separate subsection to the matter of the influence of the universalism principle onto the development of the International Canon Law within the period of the Westphalian configuration of international law. With the use of the “historical interpretation” approach, initially suggested by Hugo Grotius, the legal basics of the universal legal order of that time are being scrutinized.

Further in the subsection “International Canon Law under the 1815 Final Act of the Vienna Congress” the directions of the development of International Canon Law within the period of the “Pentarchy” (1815 to 1919) are distinguished. The author dwells on the legal consequences of the Holy Alliance Treaty and further of the resolutions and protocol of the Aachen Congress of 1818. “Under the conditions of the Pentarchy the novation of the International Canon Law stand out”, - concludes the author. “For the first time in international relations between states a special international legal act established the Christian ethical principle to be the essential priority of European international relations and to aim at providing peace, truth, faith and order in Europe [...], which were meant to evolve up to the dawn of the 20th century”.

Further, following a strict logical sequence, the author analyzes the International Canon Law of the period of the League of Nations, devoting special attention to the Lateran Treaty between the Kingdom of Italy and Vatican of 1929 that “was a comprehensive secular canonical international legal act that substantially strengthened the position of the Holy See in international relations, which remains legitimate also in the 21st century”.

Thereupon the author scrutinizes the formation of the theory of the International Canon Law within the period from the establishment of the United Nations and until nowadays. First and foremost the monograph deals with the object of the International Canon Law, namely the secular and canonical international relations. Being an expert in matters of the theory of international relations and international law the reviewer hereby admits that it is the monograph under review that for the first time in the world academic practice contains strong postulation of this special type of international relations. It must also be acknowledged that it is not a mere academic novation, but a centuries behind statement of a matter that has naturally and firmly been entwined with into the canvas of international being of the Humanity and that has sadly been left without proper notice until today. It can be said that this monograph fills the gap.

Subsequently the author scrutinizes the subject matter of the theoretical legal contents of the International Canon Law, the subjects of International Canon Law, the categories of goals in the sphere of international secular and canonical relations, the basics of “soft law” within the structure of International Canon Law and, finally, the analysis of the institutions of international legal regulation in this sphere. The author unravels the international legal grounds of the modern universal legal order the essential part of which is the international legal regulations under the norms of International Canon Law.

At the end of his reasoning the author states that the institute of the “electoral capitulation” (*capitulatio caesarea; Wahlkapitulation*) that emerged from the international canonical practice, as well as the idea of “autolimitation” of the state, have formed the theoretical legal forerunner of the elaboration of the United Nations Charter. “At that, - states the author, “the phenomena of the institute of “synergetic autolimitation” of the universal regulation of international relations has manifested itself in the shift of the center of gravity from the spiritual and moral strand to the branch of International Canon Law”.

All these statements can be seen both as absolutely correct or disputable, they can be accepted in full or partially, or not accepted at all, however after the publication of the monograph under review they cannot be ignored.

Even more so that the final section of this monograph, that is truly unconventional and bold for the modern science of international law, is named: “The Prognosis of the Development of International Canon Law in the 21st century”. The author addresses the engaged readers, among whom there will for sure be not only specialists and adheres of the science of international law: “The recently emerging divorcement of the ruling elite from the will of their nations demands for integrating efforts in the quest for a new universal formula of international relations management, which should definitely include the International Canon Law. [...] 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”, - concludes the author.

It is hoped that it shall turn out to be this way.

By the grace of God.