Topic of the Issue:

«Theoretical and Historical Issues of International Law»

I. General Theory of International Law

LEGAL STANDARDS: METHOD OF REGULATING INTERNATIONAL AND MUNICIPAL RELATIONS

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Contemporary international law is a system of provisions in the form of a comprehensive legal complex regulating not only inter-State and other international relations, but also municipal (intra-state) relations. The scope of application of international law is expanding as a result of the impact on the legal norms of a broad range of objective factors, including the globalization of international life, the internationalization of many domestic norms and institutes, the growing approximation of international law and a number of institutes of national law by reason of their regulating similar social relations; the development of democratic principles of safeguarding human rights and freedoms, and achievements of the scientific and technological progress — all of which create the proper environment for international law regulation of new areas of cooperation.

The objective factors also include multi-faceted international business, economic, and political integration; discontinuation of ideological warfare in the international arena that marked the end of the 'cold war'; the growing influence of international inter-governmental organizations on the development of international law; awareness by mankind of its unity in in addressing global issues (for example, tackling problems in energy supply, food supply, outer space and global ocean exploration; counteracting international terrorism and corruption); and an ever stronger impact on the entire international community of States on the resolution of international problems. One task of the international community of States is to develop the positive aspects of globalization and to counteract its negative manifestations. Along with certain benefits of expanding communications among nations and States, globalization conceals the threat of disruptions in the social sphere, facilitates in a number of

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cases the manifestation of the cult of crude force, cases of international terrorism, transnational crime, and corruption. Such manifestations of globalization run counter to the interests of mankind. Globalization is to be developed within the framework of principles and norms of international law without discarding the democratic foundations of the national law of States. «Globalization without the footing of law both within national States and in international relations gives rise to contradictions and violations of human rights provided in international treaties and constitutions, as well as in the legislation of different countries».[1]

Given the above, it is necessary for all States to create an environment conducive to the development of the globalization founded on the effective exercise of equality, fairness, guarantees of the interests of all States and nations, and shaping of a multipolar world governed by the rule of law.[2] In this way it will be possible to ensure the interests of the international community of States as a whole.[3] Moreover, this opens up opportunities for the efficient functioning of international law in an environment of globalization if it meets the needs of the globalization processes and the possibilities of the direct application of these processes to the needs of international law itself.[4] It is important to note that in an environment of globalization, one of its foundations being the operation of the general principle, the principle of the rule of law, generally-accepted international-legal principles and norms are developed as reflected in the most significant document of modern world, the United Nations Charter, and other international acts.

One such principle is the imperative requirement to comply fully with international obligations. This principle, along with the other imperative provisions of international law, occupies the highest position in the hierarchy of international law norms.[5] The content thereof is linked with such provisions as the binding nature of compliance with commitments assumed by parties to international-law obligations; good-faith performance of such obligations; compliance with treaty obligations in each agreement in force; impermissibility of a willful unilateral refusal of commitments assumed under an agreement; and legal responsibility for the failure to comply with international obligations. These provisions are fundamental for the establishment of the international legal order and security in the world. The problem in this sphere is the identification of the mechanism of coordination and power-related actions of States concerning the application of international law and compliance with its generally accepted principles and norms. It seems that making use of organizational measures regarding the exercise of international legal norms should be related to an ever increasing role of the national aspect of these norms. In this connection, the object of international-legal regulation as a comprehensive legal complex is not only inter-State and other international relations, but also, as has been mentioned, certain intra-State (municipal) relations. As pointed out by the renowned legal philosopher,

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[1] *E. A. Lukasheva* (ed.), Права человека и процесс глобализации современного мира [Human Rights and the Process of Globalization of the Modern World] (M., 2005), p. 7.
[2] *V. I. Dobren'kov*, Глобализация и Россия: Социологический анализ [Globalization and Russia: Sociological Analysis] (M., 2006), pp. 406, 411.
[3] *I. I. Lukashuk*, Глобализация, государство, право, XXI век [Globalization, State and Law: XXI Century] (M., 2000), p. 174.
[4] *A. Ia. Kapustin*, Международные организации в глобализующемся мире [International Organizations in a Globalizing World] (M., 2010), pp. 86–87.
[5] See: *O. I. Tiunov*, «Принцип добросовестного соблюдения международных обязательств» [Principle of Good-Faith Compliance with International Obligations], in Международное право и национальное законодательство [International and National Legislation] (M., 2009), pp. 208–224.

H. L. A. Hart, there exists a need to study the concepts and interests tied in by this law in their interaction».[1]

In the opinion of the outstanding scholar, I. Lukashuk, a substantive feature of the mechanism of the operation of the law of the international community is an expansion of its influence on national law and a significant increase of the role of national legal norms in effectuating international legal norms. The process of the internationalization of international law is complemented by the process of its «domestication» when a growing number of international norms are to be ultimately implemented within an area of national jurisdiction.[2] Therefore, the consolidation of a provision regarding inter-State collaboration in the globalized world keeps developing as a result of the interaction of the two systems of norms: those of international law and of municipal (national) law. Globalization intensifies this interaction, generating a more urgent need to apply such measures in order to develop means to manage global processes, which is a characteristic feature of the modern international legal order.

The category «world legal order», on one hand, may constitute a system of purely legal relations as a merely legal, ideal phenomenon; on the other hand, this may be an actual phenomenon as a result of the practical implementation of legal thinking. International legal order is to be viewed as the organizing foundation for the collaboration of States; one can get an idea of the operation of international relations from the level of its support and implementation. At the same time, the extent of the implementation of international obligations to which States have committed provides the opportunity to assess the effectiveness of the legal order across the world. International legal order is rooted in international law but, by semantic content and functions, is not identical to it.[3] In the current period, the status of the international legal order may also be affected by the provisions of domestic law, for instance, the norms safeguarding human rights, protecting the natural environment; and the norms dealing with counteraction to terrorism and corruption. However, these measures take effect through an impact of the corresponding domestic legal provisions on international law, which constitutes the basis underlying international legal order.

In his study on the interrelationship of municipal and international law, V. Butkevych, the well-regarded international lawyer, notes that the State, having entered into an international treaty, is supposed to make every effort to carry out the international obligations that it committed to. There should be a system of effective measures applied to implement international legal directives. Such a system of measures is implemented within the framework of reconciliation of the provisions of international and national (municipal) law, «combining the interests of States as to the strengthening of their system of national justice and the strengthening of international legal order».[4] In this connection, the objective identified by the United Nations Charter to develop progressively and codify international law (Article 13(a)) retains its actuality. However, along with the process of codification of a number of branches and institutes of international law, including those in the sphere of the law of treaties, diplomatic law, legal succession of States, and law of the sea, a certain slowing down of this process is observed in the contemporary period. For

[1] *H. L. A. Hart,* The Concept of Law (2 nd ed.; 1994), pp. 235–237.
[2] *I. I. Lukashuk,* Международное право. Особенная часть [International Law. Special Part] (M., 1997), pp. 345–346.
[3] *O. I. Tiunov*, Роль международного права в обеспечении правового порядка в мировом сообществе [Role of International Law in Ensuring Legal Order in the World Community] (M., 2009), pp. 45–64.
[4] *V. H. Butkevych,* Соотношение внутригосударственного и международного права [Correlation of Municipal and International Law] (K., 1981), pp. 277–278.

instance, there have yet to be codified to date in the form of a multilateral treaty the norms regarding State responsibility. In the meantime, lagging behind with regard to the codification and progressive development of international law slows down in the age of globalization the resolution of many problems in international relations and the strengthening of the legal order in the world. It is necessary to systematize officially a number of international legal norms in force, as well as to elaborate them in essence so as to exclude obsolete rules and to eliminate conflicts between the norms of international law in such spheres as the fundamental rights and obligations of States, international law-based recognition of States and governments, international fight against terrorism and corruption, the issue of international standards in international technical regulation, international-law control, neutrality of States in wartime, measures of trust in inter-State relations, ensuring compliance with international treaties, international security law, legal support of inter-State integration processes, international ecological law, peaceful settlement of international disputes, international criminal procedure law, monitoring of international treaties, as well as in a number of other spheres.

What is needed is not only the acceleration of the codification of modern international legal rules, but also their progressive development; that is, instead of their rephrasing, it is necessary to develop entirely new norms and rules, as had been the case as regards international space law and the regime of the Area (sea and ocean bed beyond the limits of national jurisdiction).

This codification and progressive development of international law may be facilitated by rules in the form of standards that had been shaped and established as a result of the practices of States in various areas of collaboration. Such standards are often included in the recommendatory resolutions of international organizations; for example, in the resolutions of United Nations bodies and specialized organizations. However, standards as rules of conduct are also present in the international treaties that are in force. Moreover, standards are established as international legal customs on the basis of the relevant practices of States. The terms «international legal standards», «international standards», «the Council of Europe standards» are often used in legal literature, although, regrettably, the authors of such publications are confined to merely using these terms without disclosing their essence and content. In the meantime, the processes of legal space globalization on the international level and the internationalization of international rules in municipal regulation are closely linked with the category «international legal standards». For instance, among the norms incorporated into the Russian legal system there are norms that, by their nature, belong to international legal standards acting as a scale of a change of the law applied on the international and municipal levels. The international law standards, being a part of the legal system of Russia, do not lose their international legal significance. At the same time, they impact the content of the normative municipal regulation, — on the basis of legal acts issued by the State's competent bodies. Thus, Order No. 160n of the Ministry of Finances of the Russian Federation (hereinafter: «Finance Ministry of Russia») dated 25 November 2011, implemented International Financial Reporting Standards (IFRS) and the Clarifications of IFRS on the territory of the Russian Federation. This Order of the Finance Ministry of Russia was issued on the basis of the Provision on the Approval of the International Financial Reporting Standards and the IFRS Clarifications as established by the International Accounting Standards Committee Foundation to be used on the territory of the

Russian Federation and was approved by Decree No. 107 of the Government of the Russian Federation of 25 February 2011 with agreement of the Federal Service for Financial Markets and of the Central Bank of Russia.[1]

International standards are typically used to regulate matters pertaining to the scientific and technological collaboration. International standardizing is envisaged by the Charter of the International Telecommunication Union dated 22 December 1992, which provides for the operations of a special body, the telecommunications standardization sector, in the area of in-depth studies of technical, operational, and tariffs-related issues, and for the approval of recommendations on these issues with subsequent implementation of these recommendations in the form of standards into the national practices of States. International standards as measures supporting rules and procedures are envisioned by the Convention on International Civil Aviation of December 7, 1944. Similar to standards are certain rules and notions presented in the form of principles whose practical implementation by States facilitates uniformity in addressing matters of cooperation. These, for instance, are the principles of remote sensing of the Earth from outer space, as specified in Resolution 41/65 of the United Nations General Assembly dated 3 December 1986.

The implementation of international standards may be facilitated by template acts approved by States pursuant to an international treaty. Such acts include rules that facilitate achieving uniformity in certain areas of legislation of States-parties to the relevant treaty. An example is the Treaty of 29 March 1996 between the Republic Belarus, the Republic Kazakhstan, the Kyrgyz Republic, and the Russian Federation on the intensification of integration in the economic and humanitarian spheres, its purpose being, in particular, the approval of template acts that facilitate the harmonization of their legislation.

International standards play a notable role in the area of human rights protection. Proceeding from the fact that compliance with the commitments of encouraging general respect for, compliance with, and protection of human rights and fundamental freedoms in conformity with the United Nations Charter and other treaties is a sacred duty of all States, the Vienna Declaration and Action Plan dated 25 June 1993 and approved by the Second World Conference on Human Rights point out the primary significance of abiding by the standards in the human rights sphere. Another document, the Declaration on Measures to Eliminate International Terrorism, approved by the United Nations General Assembly on 9 December 1994, evaluates compliance with international human rights standards as the fundamental proviso for the eradication of terrorism.

Principal provisions of international human rights standards have been reflected in many international acts, including the International covenant on economic, social and cultural rights (1996), International covenant on civil and political rights (1966), and the 1950 Convention on the protection of human rights and fundamental freedoms and the protocols thereto, whose contents were substantially influenced by the Universal Declaration on Human Rights approved in 1948 by the United Nations General Assembly.

The international human rights standards continue to be impacted significantly by resolutions of the United Nations General Assembly and of the other organs of the United Nations, such as the Standard Minimum Rules for the Treatment of Prisoners

[1] *Российская* газета [Russian Newspaper]. 9 December 2011.

(1957, 1977); the Code of Conduct for Law Enforcement Officials (1979); the Basic Principles for the Treatment of Prisoners (1990); and the 1990 United Nations Standard Rules for Non-Custodial Measures (Tokyo Rules).

Of great significance are the decisions of organs of the Council of Europe, as well as judgments of the European Court on Human Rights (hereinafter: ECHR), concerning international standards. The Parliamentary Assembly of the Council of Europe in Recommendation 1415 «Additional Protocol to the European Convention on Human Rights concerning Fundamental Social Rights» (1999), emphasized the need to develop general social standards and to have them approved by the Council of Europe member States. Similar norms in the area of social obligations came into being due to the fact that the globalization of the economy, trade, and financial markets stipulates the formation in this sphere of common values and standards specified in international conventions and the legislation of States.

In accordance with the assessment by the Parliamentary Assembly of the Council of Europe, the European Social Charter of 18 October 1961 and the revised European Social Charter of 3 May 1996, as well some other acts constitute one cornerstone of the European social model that is founded on general benchmarks and objectives of the social policy to be aspired to and implemented. These benchmarks and objectives cannot be achieved unless they are included in the national legislation of member states. This is why the meaningfulness of the European Social Charter lies in encouraging all States to adopt the corresponding legislation.[1]

Hence, international legal standards are primarily a kind of international norm that constitutes a component of the system of norms of international law. At the same time, some international general norms that are not in legal force but are definitely of interest to the competent authorities of States are applied. Such rules include the relevant provisions of resolutions by international organizations such as the United Nations General Assembly, the organs of International Labor Organization, and UNESCO that are, in accordance with their charter, of a recommendatory nature. Subsequently, rules of this kind may become binding in the capacity of norms of an international treaty or of an international legal custom. International legal standards regulate the collaboration of States on a bilateral and multilateral basis.

For the purposes of collaboration in strengthening the international rule of law and international legal order, a special role is played by standards of a regional and universal nature represented by generally-accepted principles and norms of international law jus cogens by reason of their being fundamental and generally-recognized and in view of the unacceptability of their renunciation, as dictated by the interests of international collaboration of States in general.

The above standards as top-tier norms are the most general form of expression. This applies, for instance, to the core principles of international law, the kernel of generally-recognized principles and norms, and all other norms of international law. The modern regulation of international relations is linked with the enhanced significance of such core principles as the sovereign equality of States, non-interference in internal affairs, equality and self-determination of nations, non-application of force or a threat of force, peaceful resolution of disputes, inviolability of frontiers, the ter-

[1] *Стандарты* Совета Европы в области прав человека применительно к положениям Конституции Российской Федерации: избранные права [Standards of the Council of Europe in the Domain of Human Rights as Applicable to the Provisions of the Constitution of the Russian Federation: Selected rights] (M., 2002), pp. 432–436.

ritorial integrity of States, respect for human rights and fundamental freedoms, collaboration of States, and thorough performance of international obligations.

By their characteristic features international legal standards are rules in the form of a certain model of conduct. Their content in many cases needs to be concrete and specific, whereas the components of the content of the model should be consistent with one another. This model of conduct applies to actions of a rigidly defined format or to refraining from an action, on the basis of which one typically gains a benefit. Characteristic of a standard are typicality, the benchmark nature of the rule of conduct, which often envisages no alternative for the action of a State. Taking into consideration of their type, relevant rules and obligations are formulated. An international law standard typifies the uniformity of the requirements it contains for all participants of the corresponding international obligation and is intended to serve them as a typical benchmark and to make sure that they have equal rights and behave identically within the given standard.

A comparison of international legal standards and international law principles leads one to conclude that the latter are legal provisions that determine the essential features and the main characteristics of the content of an institute, branch, or system of international law. In essence, these serve as fundamental norms that link within a single whole the above structural units, which make it possible for the norm of international law to function as a certain system. Such norms in the form of the core principles of international law constitute the kernel of contemporary international law, occupying a leading place in the hierarchy of its norms. It is conditioned by their generally-recognized nature and imperative character. Many States include in their constitution a provision stating that the generally-recognized principles and norms of international law that in particular embrace its core principles are an integral part of the legal system of the State.

As for international legal standards, they also belong to the core principles of international law but, unlike the core principles expressed in more general form, they have a higher degree of specificity and a narrower scope of application. Many international legal standards are supplementary in terms of the degree of their legal force, which means that States have the right to change, expand, or cancel such a standard in their mutual relations based on an international treaty or even to introduce a new standard to replace the current one. At the same time, along with supplementary international legal standards, States, acting on the basis of an agreement, may approve a standard in the form of a principle of an imperative nature. In conformity with Article 53 of the Vienna Convention on the Law of Treaties, an imperative norm of general international law as a norm that is recognized by the entire international community of States and does not permit any derogation, may not be changed other than by another norm of general international law of an identical nature. It follows from this arrangement that the difference between imperative and supplementary standards lies in the level of their position in the hierarchy of standards, which does not prevent the functioning of these standards in the capacity of the basis underlying modern international law.

In a number of areas of cooperation among States, the international legal standards they agree on are supposed to ensure at least the «minimal level» of these rights.

However, in principle, the above does not exclude altogether the possibility of establishing such a scope of the standard that constitutes the maximal possible level at the time.

With regard to the scope of standards in the area of human rights protection, it may be assessed in terms of the level of specific requirements of international law obligations, a major portion of which is represented by the provisions of international treaties.[1] Any derogation from this obligatory «minimum» required by existing norms are not permitted other than for the purpose of raising or for more detailed specificity of a given benchmark. Parties to an international treaty on human rights restrict themselves naturally to the possibility to declare objections when ratifying or signing this kind of international treaties dealing with specific rights and freedoms. A number of international conventions regulating human rights include no reservation provisions. For example, the 1987 European Convention on Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the 1989 Convention on the Rights of the Child.

The minimum level of international legal standards in the human rights sphere does not mean that they are not fully-fledged or that they result in an extreme deficiency of normative regulation of a certain area in international relations. Standards are based on the experience gained by countries and serve as a reference point for countries.[2]

Standards are optimal in their content. They serve as the framework in which States proved capable of reaching a compromise. This does not mean that there exists no possibility of follow-up steps to add new elements to effective international law standards and to enrich the content of standards. However, effective international legal standards in the human rights sphere are optimal in their 'minimality', which makes it possible for them to recognize them as binding upon a broad group of States. The optimality of the above standards reflects the needs of modern civilization, whose existence and development are inextricably connected with the recognition of the principles of respect for human rights and fundamental freedoms, the supremacy of law, the rule of law, and striving for democracy as core standards.

European international law standards are made up of regional norms representing, jointly with existing universal norms in the human rights sphere, the general system of norms. This testifies to the extensive support of these norms by States, which consider them to be a pan-human value, serving as a basis for the rules and benchmarks

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[1] See: *R. H. Vagizov*, Внутригосударственный механизм осуществления международных стандартов и норм в сфере гражданских и политических прав человека (Российская Федерация и Республика Татарстан) [Intra-State Mechanism for the Effectuation of International Standards and Norms in the Sphere of Civil and Political Human Rights] (Kazan, 1998), pp. 7, 15 (abstract diss. kand. iurid. nauk); *O. Chernyshova*, Право на свободу передвижения: стандарты Совета Европы [Right to Freedom of Movement], Конституционное право: восточноевропейское обозрение [Constitutional Law: Eastern European Review], no. 2(35) (2001), pp. 48–50; *E. Zakovriashina*, Принцип недискриминации в праве Совета Европы [Principle of Non-Discrimination in Legislation of the Council of Europe], Конституционное право: восточноевропейское обозрение [Constitutional Law: Eastern European Review], no. 2(39) (2002), pp. 113–134; *J. Limbach*, «Inter-Jurisdictional Cooperation within the Future Scheme of Protection of Fundamental Rights in Europe», Human Rights Law Journal, XXI (31 December 2000), no. 9–12, pp. 333–334; *Committee* on International Human Rights Law and Practice, The 70th Biannual Conference of the International Law Association (New Delhi, 2002), pp. 232–233; *K. Umesh*, «Protection of Human Rights During Emergency Situations: International Standards and the Constitution of India», Indian Journal of International Law, XLI (2001), pp. 601–602.

[2] *S. A. Gorshkova*, «Стандарты Совета Европы и законодательство России» [Standards of the Council of Europe and Legislation of Russia], Московский журнал международного права [Moscow Journal of International Law], no. 2 (1999), p. 161; *I. Yatsenko*, «Как мы приблизились к мировым стандартам» [How We Have Approached World Standards], Адвокатские вести [Advokat News], no. 2 (2002), pp. 6–9; *E. Mizulina,* «Новый порядок ареста и задержания соответствуют Конституции РФ и международным правовым стандартам» [New Procedure of Arrest and Detention Corresponds to Constitution of Russian Federation and International Legal Standards], Российская юстиция [Russian Justice], no. 6 (2002), pp. 14–15.

that are common to all members of the international community.[1] The treatment of core, fundamental rights and freedoms is «practically identical both in the conventions approved within the UN system and within the framework of regional international organizations, which permits one to define the norms of these conventions as international standards of individual rights and freedoms subject to mandatory implementation by a State through their implementation in its legislation».[2] The universal application of rights and fundamental freedoms is compatible with the national specifics and the traditions of States and with the culture and religion of their peoples.[3]

Universal approaches of States to the application of international legal standards reflect the trend towards the internationalization of social life that manifests itself in international relations, and this facilitates the process of integration and the joint resolution by States of general issues of the modern age.[4] One such problem is the resolution of issues of legal regulation of the natural environment related to the human impact on nature. This requires joint efforts within each State, the establishment of standards in the sphere of natural environment protection, and the rational utilization and restoration of the natural environment for purposes of ecological security and sustainable development. Joint efforts of States in this area come into being through international treaties as well as resolutions of international organizations adopted by States. In addition, an important factor in the regulation of natural environment protection is the development of national legislation in this sphere. A number of international acts, for instance, the Resolution «Permanent Sovereignty over Natural Resources» approved by the United Nations General Assembly on 14 December 1962, emphasize that the allocation by States of legal regulation of relations in the sphere of natural environment protection on the national and international levels is determined by their sovereignty within State territory.

In light of the above, the United Nations Framework Convention on Climate Change dated 9 May 1999, in conformity with the United Nations Charter and the principles of international law, specifies several standards as follows: States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.[5] At the same time, outside the jurisdiction of States are still many regions of the Earth, including waters of the high seas, outer space, sea bed resources beyond the boundaries of the territorial sea, and resources of the continental shelf, Antarctica, the Moon, and the other cosmic bodies, etc. Accordingly, being transformed into an object of legal regulation are relations between States regarding the protection of certain areas in the global ocean, the atmosphere of the Earth, the planetary environment and outer space, of fauna and

[1] *O. I. Tiunov*, «Международно-правовые стандарты прав человека: развитие и характерные черты» [International Legal Standards of Human Rights: Development and Characteristics Features], Российский юридический журнал [Russian Legal Journal], no. 4 (2001), p. 47.
[2] *L. V. Pavlova*, «К вопросу об универсальности международных соглашений в области прав человека» [On the Question of the Universality of International Agreements in the Domain of Human Rights], Проблемы конституционализма [Problems of Constitutionalism] (Minsk, 2000), IX, p. 19.
[3] Ibid., p. 21.
[4] *E. E. Ampleeva*, «Современная международная нормативная система» [Contemporary International Normative System], Юрист-международник [International Lawyer], no. 1 (2008), p. 3.
[5] *K. A. Bekiashev* and *D. K. Bekiashev* (comps.), Международное публичное право: сборник документов [International Public Law: Collection of Documents] (2006), II.

flora. Comprehensive norms emerge when States adopt laws to comply with their commitments under the international treaties in these spheres. Thus, the Federal Law of the Russian Federation «On Protection of the Environment» provides that «international treaties of the Russian Federation in the sphere of environmental protection that do not require the adoption of national acts for their implementation shall apply to relations arising directly in the course of performing activities in the sphere of environmental protection. In all other cases, together with with the international treaty of the Russian Federation in the sphere of environmental protection, the relevant normative legal act shall be applied for the purpose of implementing the provisions of the international treaty of the Russian Federation»[1]. The implementation of measures, including those specified by treaties on the preservation of wildlife, protection of the structure, functions, and versatility of the natural systems of the Earth, is facilitated by the concept of a sustainable development of the mankind supported by the United Nations and by other international organizations, thereby impacting the development of a new international standard. In accordance with this concept, sustainable development envisions satisfying the needs of the current generation without posing a threat to the opportunities of future generations to satisfy their own needs.[2] Measures are being studied to exert a lawful influence on States so as to have them join treaties on environmental protection.[3] The circle of parties to international treaties is enlarged, their object being legal relations in the sphere of resolving ecological problems. Simultaneously, this is conducive to an expansion of the regulatory framework for regulating the relevant relations.

The contemporary period also sees the emergence of standards in the area of international management of global processes. Thus, in the domain of environmental protection, a mechanism is being formed for international management of the United Nations system. It is being created by the United Nations organs and institutions possessing a different status. These entities have a targeted impact on international ecological relations. The United Nations entities include, in particular, the General Assembly, the Security Council, the Secretary-General, a number of supporting bodies, for instance, the Task Force on Environment and Human Settlements, and the International Law Commission. The key role in the coordination of international cooperation for environmental protection is played by the organ called the United Nations Environmental Program (UNEP).[4] The activities of United Nations entities in the above areas manifest themselves as a method (means) of cooperation of States aimed at the creation and development of groups of norms regulating social relations in the sphere of environmental protection («international ecological law») within the framework of a new, yet-to-be-formed institute, management in the environ-

[1] *Российская* газета [Russian Newspaper], 12 January 2001.
[2] *A. V. Krutskikh* and *A. V. Biriukov* (ed.), Инновационные направления современных международных отношений [Innovation Orientations of Contemporary International Relations] (2010), pp. 245–268.
[3] *E. F. Nurmukhametova*, «Способы воздействия на государства с целью вовлечения их в договоры в области охраны окружающей среды» [Means of Impacting States with a View to Involving Them in Treaties in the Domain of Environmental Protection], Государство и право [State and Law], no. 2 (2005), pp. 50–58.
[4] *N. A. Sokolov*, «Механизм международного управления системы ООН в сфере охраны окружающей среды» [Mechanism of International Management of the United Nations System in the Domain of Environmental Protection], Журнал российского права [Journal of Russian Law], no. 8 (2008), pp. 98–106; *N. A. Sokolov,* Международно-правовые аспекты управления в сфере охраны окружающей среды [International Legal Aspects of Management in the Sphere of Environmental Protection] (2010), p. 13 (автореф дисс ... д-ра юрид. наук); *M. N. Kopylov, S. M. Kopylov,* and *S. A. Mokhammad*, «ЮНЕП и международно-правовая защита морской среды» [UNEP and International Legal Defense of the Marine Environment], Евразийский юридический журнал [Eurasian Legal Journal], no. 11 (2010), p. 44.

mental protection sphere, which encompasses the rules of international law and the coordination and organization of collaboration in the environment protection sphere.

Of great significance for the international legal regulation of environmental protection are its principles, which, in many cases, as has already been mentioned, play the role of the standards of conduct of the «higher level». They may be broken down into general and special standards. General principles are the core principles of international law, its basic provisions that are characteristic of the regulation of relations between subjects of international law, irrespective of the specific nature of these relations. This is why the core principles regulate relations in any branches and institutes. They present an objectively necessary condition of the functioning of the legal system as a whole. Another part of the generally-recognized principles and norms of international law includes special provisions meant to ensure the functioning of individual branches of its system, rather than that of the entire international law system. They have their own specifics conditioned by the nature of relations being regulated by these principles. The general (core) and special principles are linked inextricably with one another, constituting thereby the framework of this system. Among the core principles of international law regulating the effect of the norms of the branch of «international law of environment» («international ecological law»), one should single out such principles as the principle of the sovereign equality of States, non-interference in internal affairs, non-use of force or threat of force, peaceful settlement of disputes, cooperation of States, respect for human rights and fundamental freedoms, and thorough performance of international obligations. These principles apply to all branches and institutes of international law. With regard to the special generally-recognized principles in effect in the branch of «international law of environment» («international ecological law»), one may single out the principle of environmental protection (ecological protection) as the basic factor in support of conditions for an ecologically safe existence. Along with this principle, it is worth identifying such special branch principles as the human right to live in a favorable environment; sustainable utilization of natural resources (sustainable development); inflicting no damage outside national jurisdiction; prudence as conservation and maintenance of diversity in the environment; prohibition of military or any other hostile use of means of influencing the environment; as well as the principles related to the specifics of supporting the regime of certain spaces: Antarctica to which the «principle of a specially-protected region» is applicable; the spaces and resources of the international Area of the seabed, where the principle of the «common heritage of mankind» is applicable.

Some international treaties on the environment protection make use directly of the term «international standards». For instance, it is used in the Agreement on International Humane Trapping Standards, signed by the European Community, Canada, and the Russian Federation and the Annex thereto of 15 December 1997. This agreement emphasizes that the standards it sets are meant to ensure the good condition of trapped animals and the further improvement thereof.[1]

Of note among contemporary universal issues is counteracting corruption. Corruption is defined as «bribery (receipt or offer of a bribe), any illegitimate use by an individual of his/her public status coupled with gains received (in the form of property, services, or benefits and/or preferences, including those of a non-property nature), both for oneself and for his/her relatives contrary to the lawful interests of

[1] *Бюллетень* международных договоров [Bulletin of International Treaties] (2009), pp. 27–45.

society and the State or an illegal provision of this gain to the relevant individual»[1]. A special feature of the legal regulation of combatting corruption is its links to the other types of crimes of an international and municipal nature, terrorism, organized crime, legalization of illegal gains (money laundering), and others. Accordingly, a number of effective norms applied by States, as provided for in various international treaties, regulate substantive matters of corruption of interest to all States; qualification of certain actions as being contrary to law; the grounds for accountability of individuals and juridical persons; measures to counteract criminal activities; monitoring of relevant norms, and so on. In all the above instances it is necessary, for the purpose of counteracting criminal activities, to apply binding international legal standards. This provision was set out in the Lima Declaration of Guidelines on Audit Precepts, approved in October 1997 by the IX Congress of the International Organization of Supreme Audit Institutions (INTOSAI). This document considers audit to be an integral part of the system of regulation aimed at identifying deviations from the established standards. A departure from standards is viewed as a violation that results in ignoring the principles of legality and thus to inefficient governance. The manifestation of a general approach by States to an assessment of acts of corruption came to be the United Nations Code of Conduct for Law Enforcement Officials dated 17 December 1979, which stresses that any act of corruption, just as any other abuse of authority, is incompatible with the status of a public servant. Another document of significance for understanding the international standards intended to contain corruption is a United Nations instrument prepared within the framework of the Global Program Against Corruption, the «UN Anti-Corruption Toolkit» (3d ed.; 2004). As standard types of corruption it specifies bribery, embezzlement, extortion, abuse of discretion, conduct creating or exploiting conflicts of interests, illegal transactions with securities, receipt of illegal financial assistance, benefits and illegitimate compensation, favoritism, nepotism, illegal donations and contributions. The following types of enforcement actions in combatting corruption have been developed within the framework of this Program: financial investigations, asset monitoring, control over money laundering, efforts to prevent legalization of illegal gains received through corruption, and others.

It has been noted that the development and approval of acts in the form of declarations and resolutions against corruption go hand in hand with the development and approval of international treaties dedicated to combatting corruption. Each group of these international acts is to be viewed in their close interconnection and not in isolation. The rules for combatting corruption formulated in recommendatory acts of international organizations often capture new approaches to addressing this problem, including conceptual provisions, for instance, a provision that combatting corruption should start not only after this phenomenon had been recognized as an accomplished fact, but be a continuous factor in preventive measures through the introduction of broad-scale counteraction against corruption in relevant regulatory acts and practices of governmental agencies. Moreover, a number of resolutions reflect the idea that corruption conceals a threat to the security of an individual State and to all members of the international com-

[1] *Модельный* закон «Основы законодательства об антикоррупционной политике» [Model Law «Fundamental Principles of Legislation on Anti-Corruption Policy», Article 2, Постановление Межпарламентской ассамблеи государств-участников Содружества Независимых Государств от 15 ноября 2003 г. [Decree of Inter-Parliamentary Assembly of States-Participants of the Commonwealth of Independent States of 15 November 2003], № 22–15.

munity. Resolutions of international organizations contribute to forming the content of legal sources: international treaties and international legal customs relating, in particular, to international law principles and standards in the prevention of corruption.

For instance, they found reflection in the United Nations Convention against Corruption (hereinafter referred to as the UN Convention or simply the Convention) of 31 October 2003. It included the provisions of many resolutions and declarations, as well as of certain international law acts, and proceeds from the fact that corruption in the current period is no longer a local problem because it has evolved into a transnational phenomenon affecting the society and economy of all nations. This fact presupposes an acute need for the collaboration of States in the area of preventing and combatting corruption. Of exceptional significance is the Convention itself, for its contents develop the idea that the eradication and prevention of corruption are the obligation of all States. Member states perform their obligations in conformity with the principles of sovereign equality, territorial integrity of States, and non-interference in internal affairs of other States. States agree as to the need to employ measures for effective prevention of corruption, rather than exclusively to combat this as an accomplished fact. To this end, the emphasis is on standards of encouragement and facilitation of the support of international cooperation and technical assistance to prevent and combat corruption, including the application of measures to recover assets. States-parties to the Convention are obligated to interact when implementing international programs and projects aimed at the prevention of corruption. Each State-party is to ensure, proceeding from the fundamental principles of its legal system, the operations of an authority or authorities responsible for prevention of possible violations, and coordination of pursuing relevant policies in this sphere. Standards have also been specified for the conduct of public officials, who are obliged to comply with those standards conscientiously and properly, including the obligation to submit to the relevant authorities declarations that include information about their extra-occupational activities, investments, assets, substantial gifts or benefits which give rise to a conflict of interests with regard to their functions as government officials.

The Convention also provides for the regulation of a number of other issues of an anti-corruption nature, including measures to prevent money laundering, matters pertaining to criminalization and law enforcement activities (abuse of authority, illegal enrichment, legalization of illegal gains from criminal activities, and others), consequences of corrupt actions, and other issues.

An important factor facilitating the establishment of general criminal policies for the sake of protecting society against corruption is the Criminal Law Convention on Corruption (ETS 137) of 27 January 1999. For a correct understanding of the requirements of this Convention, the States-parties provided an agreed definition of such standard notions as «public official», «public servant», «mayor», «minister», and «judge», that is, those persons that perform public functions. For instance, the term «judge», for the purposes of this Convention, covers not only persons that are holders of judicial offices, but also prosecutors. The Convention requires that States-parties develop, on the basis of international arrangements, norms that introduce an obligation to implement common legislation or legislation passed on a mutual basis, which concerns the performance of investigations in the sphere of criminal law violations specified as such by the Convention.

Therefore, the standards in the sphere of the prevention of corruption deal with a broad range of norms, including norms on the grounds for criminal responsibility for

corruption committed by individuals and juridical persons; on mutual legal assistance; on extradition of criminals; on the application of international procedural law, and so on.

The aforementioned scope of application of standards is in active demand in the practice of States. Specifically, these practices take into consideration the provisions on individual criminal responsibility of natural persons for international crimes; on the non-application of the statute of limitation to such crimes; on the prohibition against criminals invoking their official status for purposes of their acquittal; compliance of judicial bodies with the requirement to adjudicate cases within a reasonable period, on the fair and equal basis, providing an opportunity to everyone charged with a criminal offence to defend himself in person or through legal assistance of his own choosing, and so on. Empowered to apply the above standards is, for instance, the International Criminal Court (ICC) on the basis of the Rome Statute that came into effect on 1 July 2002; this instrument, in particular, emphasizes the ICC obligation make sure that «the trial is fair and speedy, with full respect for the rights of the accused and taking proper account of the need to protect victims and eyewitnesses».[1] The Rome Statute developed the indicia (or «constitutent elements») of genocide, crimes against humanity, and war crimes, which not only enriched the content of existing international legal standards in these spheres, but also expanded the scope of their application.

Impacting significantly the development of international legal standards are the judgments and decisions of the European Court of Human Rights (ECHR). The international legal standards developed by the ECHR are primarily certain provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms and Protocols thereto as interpreted by the Court and reflected in its legal holding in a concrete case. The ECHR interpretations of the provisions of the Convention and of the Protocols thereto that impact the legal holding of the Court in a case considered by the Court lead frequently to the formulation of a provision that expands the scope of the existing standards or is of great significance for the subsequent practice of States, based on which a new standard takes shape. This applies, for instance, to the criteria developed by the ECHR when considering the failure by a certain member-State to comply with relevant international obligations undertaken by the country due to failure of the country's judicial bodies to comply with the reasonable time period of adjudicating court cases. As for the reasonable time period for adjudication, the ECHR, in particular, drew attention to the need to take into account the complexity of a case and the significance of the time factor for satisfying the legitimate rights of an applicant.[2] In another document, ECHR Decision of 22 June 2006 concerning the notion of a «fair trial» (Article 6(1) and (3)(c) of the Convention), the ECHR pointed out that this notion is connected with the right of everybody charged with a criminal offence to stand trial and take an effective part in his trial by a lower court. When the case is considered by a higher court, a cassational instance court, the personal presence of the accused does not necessarily have the significance identical to that when the case is considered by a court of a lower instance, even if the second instance court is entitled to review the case both on the merits and

[1] *Международный* уголовный суд: сборник документов [International Criminal Court: Collection of Documents] (Kazan, 2004), p. 79.
[2] *E. S. Alisievich*, «Система правовых стандартов Европейского Союза по правам человека» [System of Legal Standards of the European Union on Human Rights], Юрист-международник [International Lawyer], no. 4 (2006), pp. 29, 31.

in terms of law. When assessing this issue, one needs to take into account, inter alia, characteristic features of a concrete trial and the means of representation and legal protection of the defendant at the court of cassation, primarily in light of the issues considered by the court and their significance for the person filing the cassation petition. To ensure the fairness of the criminal justice system, the decisive factor is the right of the accused to have adequate legal assistance both in the first instance court and in the court of cassational instance. This right means that both the prosecutor and the defender are to be able to study the objections and the evidence offered by the other party and to comment on those objections and evidence.[1] The ECHR also came to the conclusion that proceedings in the second instance court, of which the applicant had not been notified properly, did not meet the requirement of a fair trial. The ECHR decided that there had been a violation of the aforementioned provisions of Article 6(1) and (3) (c) of the Convention.[2]

It follows that international legal standards are basic provisions of international law expressed in the form of an international treaty, a custom of international law, a resolution of an international organization, and, in a number of cases, in the form of a court judgment, which ensure the functioning of the system of norms of international law in general and of its branches, as well as assist the interaction of municipal and international legal norms facilitating the regulation and development of international relations of different levels, whose implementation in national legislation is among the factors in the development of a municipal legal system.

Tiunov O. Legal Standards: Method of Regulating International and Municipal Relations

Abstract. The article deals with contents and legal nature of international legal standards and their influence on municipal legal systems. Correlation of both foundations of international law — international legal standards and principles of international law — is studied.

The role of legal standards in international human rights law, international environmental law and the territory in international law are shown.

Key words: legal standards, principles of international law, international-legal relations, international legal system, municipal law.

Тіунов О. І. Правові стандарти як засіб регулювання міжнародних та внутрішньодержавних відносин

Анотація. У статті аналізується зміст і правова природа правових стандартів як засобу регулювання міжнародних відносин та їх впливу на національні правові системи. Досліджується співвідношення міжнародних правових стандартів та принципів міжнародного права як засад міжнародно-правової системи. Розкривається місце правових стандартів у галузях міжнародного захисту прав людини, міжнародного права навколишнього середовища, міжнародного статусу територїі.

Ключові слова: правові стандарти, принципи міжнародного права, міжнародно-правові відносини, система міжнародного права, внутрішньодержавне право.

Тиунов О. И. Правовые стандарты как средство регулирования международных и внутригосударственных отношений

Аннотация. В статье анализируется содержание и правовая природа правовых стандартов как средства регулирования международных отношений и их влияние на внутригосударственные правовые системы. Исследуется соотношение международных правовых стандартов и принципов международного права как начал международно-правовой системы. Раскрывается место правовых стандартов в отраслях международной защиты прав человека, международного права окружающей среды, международного статуса территории.

Ключевые слова: правовые стандарты, принципы международного права, международно-правовые отношения, система международного права, внутригосударственное право.

[1] *Дело* «Метелица против Российской Федерации» *[Metelitsa v. Russian Federation]*. Постановление Суда. Европейский Суд по правам человека и Российская Федерация // Постановления и решения [ECHR Judgments and Decisions. European Court of Human Rights and the Russian Federation: Judgments and Decisions] (2006), I, p. 297.

[2] Ibid., pp. 298, 299.