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Terminological definition of the category "Interpretation in international law": historical transformations of the definitions and new approaches

Abstract

The problem of transformations of the definition "Interpretation in international law" is analyzed in the article. Particularly acute and ambiguous is the question of differentiation of the concepts "interpretation" and "explanation", which are used in the domestic theory of international law. In Western literature, mostly, the term "interpretation" is used (from the Latin interpretatio). It is determined that two concepts, which Ukrainian lawyers often see as identical or synonymous, the national experts in international law often consider to be rather problematic. From the point of view of the Ukrainian legislation, the concept of "interpretation" is legal, and lawyers use in legal practice and theory such terms as interpretation of the law, interpretation of the legal act, legal interpretation, interpretation of the rules of law, interpretation of the norms of international law. The author notes that this not only does not introduce categorical unambiguity and clarity, but rather complicates the integration of Ukrainian legal science and the science of the theory of international law in the European scientific system.

Key words: interpretation in international law, correlation of interpretation and hermeneutics, an international treaty

Introduction

The question of interpretation has always been relevant and not easy for theorists and philosophers of law. Unlike the basic norms, the question of rules of interpretation, or so-called secondary norms, does not often attract the attention of society, but for legal science and practice, it is extremely important. It is the rules of interpretation or secondary norms that guarantee the autonomy of the legal system, and support the idea that the interpretation of law is based on objective principles. Secondly, the rules of interpretation contribute to the stability and reliability of the legal system, the actions of the courts become more predictable and, thus, strengthen the confidence that legitimate expectations will be realized. Also, the rules of interpretation protect the unity and integrity of the legal system: they eliminate conflicts between different primary norms, provide methods for filling gaps in the legal field, and limit the exercise of the judiciary by imposing restrictions on interpretation.[1]

1. The notion of "interpretation": the problem of categorical definition and bibliographic review

In international law, the rules of interpretation play similar functions, but they are obviously more important. They counteract the fragmentation of international law, provide some objectivity to the decisions of international courts and tribunals, and thus contribute to the elimination of legal and political conflicts at the international level. The overwhelming role of state institutions in coordinating social agreements, while making sources comprehensible and correcting interpretation of legal norms, has been the reason for scepticism regarding international law. The international community lacks a super state, including an over-legislative and a supra-judicial one.[2] Therefore, because of the absence of a single international legislative and „supreme interpretation" body, the threat of international law fragmentation[3], a significant political and

1 H.Ph. Aust, A. Rodiles, P. Staubach, *Unity or Uniformity? Domestic Courts and Treaty Interpretation*, "Leiden Journal of International Law" 2014, Vol. 27, p. 79, https://doi.org/10.1017/S0922156513000654 (06.12.2018).

2 J. Goldsmith, D. Levinson, *Law for States: International Law, Constitutional Law, Public Law*, "Harvard Law Review" 2009, Vol. 122, p. 10, https://web.law.columbia.edu/sites/default/files/microsites/law-theory-workshop/files/IL&CLColumbiawkshp.pdf (06.12.2018)..

3 *Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law. Report of the Study Group of the International Law Commission. Finalized by Martti Koskenniemi*, http://legal.un.org/ilc/documentation/english/a_cn4_l682.pdf (06.12.2018).

ideological component of international legal processes[4], the dynamics of the international law system, the growing role of national courts in the interpretation of international law, the existence of several powerful, long-established legal traditions (Anglo-Saxon and continental in particular) and others, the question of interpretation in international law has become particularly acute and international law practitioners have actually become leaders in interpretive-methodological debates.

The first question that Ukrainian researchers investigate is the question of differentiating the concepts of "interpretation" and "explanation" used in the domestic legal literature. In Western literature, the word "interpretation" is mostly used. The existence of two concepts that Ukrainian lawyers often consider as identical or synonymous is very problematic for domestic experts in international law, especially while translating scientific literature, and the lack of a clear distinction between these concepts does not allow us to define clearly the term interpretation (explanation). It is obvious that the question of terminology needs special analysis, and it goes beyond the scope of this dissertation, so we will make only a brief analysis. From the Ukrainian legislation point of view, legal is the notion of "explanation", and lawyers use in legal practice and theory such terms as the explanation of the law, the explanation of the legal act, legal explanation, the explanation of the rules of law[5], and explanation of the norms of international law. But, despite the legal and widespread use of the notion "explanation", its content remains ambiguous. Many scholars focus on this problem; among them are Yu. Vlasov, O. Kaplina, I. Serdyuk, Yu. Todyka[6], and they note that the term "explanation" itself needs to be explained.[7]

Recently, quite a thorough analysis of the historical transformation of the definitions of the concept „interpretation" was carried out by E. Zverev.[8] According to Y. Zverev, most representatives of the Russian (pre-revolutionary), Soviet and modern Russian, Ukrainian, Belarussian, and some other post-Soviet scientific schools think that legal rules clarification should be considered as legal interpretations. Article 93 of the Law of Ukraine "On the Constitutional Court

4 R. Bachand, *L'interprétation en droit international : Une analyse par les contraintes*, http://esil-sedi.eu/wp-content/uploads/2018/04/Bachand.pdf (06.12.2018).

5 І.А. Сердюк, *Методологічний аналіз інтерпретацій поняття тлумачення норм права*, "Науковий вісник Дніпропетровського державного університету внутрішніх справ" 2014, № 3, с. 36, http://nbuv.gov.ua/UJRN/Nvdduvs_2014_3_5 (06.12.2018).

6 І.А. Сердюк, *Термінологічна невизначеність категорії «тлумачення» в аспекті розкриття змісту об'єктивного права*, "Науковий вісник Дніпропетровського державного університету внутрішніх справ" 2014, №1, с. 44-49, http://nbuv.gov.ua/UJRN/Nvdduvs_2014_1_7 (06.12.2018).

7 В.В. Гончаров, *Динамічне тлумачення юридичних норм,* Львів: СПОЛОМ, 2013, с. 47, https://www.twirpx.com/file/1586675/grant (06.12.2018).

8 Є.О. Звєрєв, *Тлумачення міжнародних договорів національними судами: європейський досвід та українська практика : дис. ... канд. юрид. наук: 12.00.01*, Київ: Національний університет "Києво-Могилянська академія" 2015, с. 55-90.

of Ukraine" supports this position as well. At the same time, this approach is mentioned in the works of foreign scholars. Their general approaches differ mainly in the degree of importance of the first and second elements of this activity (clarification or explanation).[9]

V. Goncharov observes that the word "interpretation" has a number of heterogeneous connotations, and is a bearer of various meanings, that is to say a homonymous row. Consequently, we deal with various phenomena of "interpretation-understanding", "interpretation-explanation", "interpretation-meaning" and "interpretation-decision", which are united in a single notion not due to a common denominator, but rather a set of generic similarities.[10]

The analysis of the literature on this subject shows that most scholars can agree with them; they converge on the fact that the legal interpretation should be considered activity aimed at clarifying and explaining the rules of law. The same function is attributed to interpretation; in particular the "Legal Encyclopedia" states that the term "interpretation" (Latin "interpretatio" – "explanation", "interpretation") means clarification, disclosure of the essence of any phenomenon.

Just as in the domestic legal literature, they apply two notions – "interpretation" and "explanation": in Polish – "interpretacja", "wykładnia", in English – "interpretation", "construction". In French, the term "interpretation" (interprétation) has at least two different meanings: on the one hand, it is a matter of the research movement of this policy on legal situations, on the other, the answer or obtained result.[11]

Interpretation is always an interpretation of something (human practice, novel, work of art, statute, etc.), so one can add that the interpretation defines the relationship between the three elements: the intention of the author, the meaning of the subject of interpretation completely separate from the intention of the author, and the intention of the interpreter himself. The word "interpretation" refers to both the interpretation act and the product of the interpretation.[12]

Although as has already been noted, Ukrainian lawyers tend to equate the concept of "interpretation" and "explanation", there are other views as well. In particular, O. Kaplina notes that the etymology of these words does not give any grounds for this conclusion; the term "explanation" is more closely related to the words "clear", "understandable", and interpretation – with the words "assessment",

9 Ibidem, c. 64.

10 В.В. Гончаров, op. cit., c. 47-49.

11 *L'interprétation en droit international public. Extrait de Interprétation et droit publié sous la direction de Paul Amselek*, Bruylant, Bruxelles, 1995, http://www.sergesur.com/L-interpretation-en-droit.html, (06.12.2018).

12 A. Schiavello, *Some introductory remarks on legal interpretation and legal reasoning. A philosophical approach*, "Etica & Politica / Ethics & Politics" 2006, No 1, http://www.units.it/etica/2006_1/GUESTEDITOR.htm (06.12.2018).

"mediation".[13] After analyzing Ukrainian, Russian and Belarussian scholarly literature from various fields of knowledge, this author identifies four approaches to the correlation of these terms. The first approach is the identification of "interpretation" and "explanation", the second – the consideration of explanation as part of the interpretation, the third – the inclusion of interpretation as part of the explanation, the fourth - the consideration of these concepts as differentiated categories.[14] O. Kaplina concludes that, despite the semantic closeness of these concepts, it is inappropriate to identify them, explanation is narrower than interpretation. Explanation is a process of clarifying the content of the rule of law. It reveals the original content, which for some reason could not be detected by just reading the text, specifying, broadening, intensifying the content of a legal norm proposed by the legislator. Interpretation conversely, interprets and brings the actual vision into the process of elucidation simultaneously.[15] "Interpretation can be defined as the methodological method by which the explained (clarified) content is externalized, applied on the basis of the author's purely subjective experience and practice".[16]

Christian Djeffal, analyzing the practice of the European Court of Human Rights, defines an interpretation as attributing the content to the treaty.[17] Joost Powwelyn and Manfred Elsig submit a similar definition: the interpretation of an agreement is the activity by which international tribunals give the content to the agreement in the context of a particular case or fact.[18]

Analyzing key moments in the history (genesis) of interpretation in international law, it may be noted that domestic and foreign literature focused on this problem in the 1960s, and further jubilee years of the Vienna Convention on the Law of Treaties of 1969. However, the very history of the theory of legal interpretation can be deduced from the system of argumentation, developed in ancient Greece and Roman law. Unfortunately, in Ukrainian scientific literature, the history of interpretation, in both national and international law, has not been studied enough, although great efforts have been made. In particular, there is a thesis on the interpretation of international law, which has already been mentioned, and the monograph by O. Butkevich „On the origins of international

13 О.В. Капліна, *Правозастосовне тлумачення норм кримінально-процесуального права*, Харків 2008, с. 18.

14 Ibidem, с. 19.

15 Ibidem, с. 21.

16 Ibidem, с. 22.

17 Chr. Djeffal, *Dynamic and Evolutive Interpretation of the ECHR by Domestic Courts? An Inquiry into the Judicial Architecture of Europe*, [w:] *The Interpretation of International Law by Domestic Courts: Uniformity, Diversity, Convergence*, eds. H. Aust, G. Nolte, Oxford: Oxford University Press, p. 176.

18 J. Pauwelyn, M. Elsig, *The Politics of Treaty Interpretation: Variations and Explanations across International Tribunals,* [in:] *Interdisciplinary Perspectives on International Law and International Relations : The State of the Art,* eds. J.C. Dunoff, M.A. Pollack, New York 2012, p. 446, http://graduateinstitute.ch/files/live/sites/iheid/files/sites/ctei/shared/CTEI/Pauwelyn/Publications/Pauwelyn-Elsig%20Corrected%20Proofs%20(1).pdf (06.12.2018).

law", in which, besides general issues of the formation of international law, the formation of his interpretation is also considered.[19] In our opinion, O. Haydulin has made a significant contribution to the study of the history of interpretation recently. The object of his study is the interpretation practice in ancient Rome.[20] Other Ukrainian researchers should be mentioned here as well: V. Goncharova[21], M. Sadovsky[22], O. Pismenna[23].

The practice of the interpretation (hermeneutics) of texts originated in Ancient Greece, and in Ancient Rome – the term "interpretatio" itself and the practice of legal interpretation. Even then, it became multi-valued, formed and existing at the same time as an art, a technique and theoretical (logically grounded) knowledge. As I. Kretova rightly observes, various schools consider different historical periods as the starting point of legal interpretation theory formation and, accordingly mentions the names of various scientists who influenced this process.[24] American researchers, speaking about the formation of the modern theory of interpretation of law, often refer to the most cited works on this issue – the articles by D.B. Thayer, "Origin and Object of the American Constitutional Law Doctrine", 1893, and an essay by O. Holmes, "Theory of Legal Interpretation", 1899.[25]

In the scientific literature, the problem of legal norms' interpretation is investigated in a lot of theses and monographs. As the famous international lawyer A. Talalayev stated, "correct interpretation of an international treaty is to establish the facts the parties agreed upon at the time of signing of the contract, to find out their agreed will, expressed in the regulations of the treaty. Thus, the interpretation of an international treaty is the defining and explanation of the correct content of the treaty (its content) to apply it correctly, and thus implement it".[26] The Famous Ukrainian law scientist I. Lukashuk has a different opinion on

19 О.В. Буткевич, *У истоков международного права*, Санкт Петербург, 2008, 881 с.

20 О.О. Гайдулін, *Інтерпретаційна практика в Стародавньому Римі та виникнення інституту договорів доброї совісті (bonae fidei contractus)*, "Часопис Академії адвокатури України" 2012, № 17 (4), с. 1-6.; Гайдулін О.О., *Зміна інтерпретаційних стратегій як рушійна сила доктрини права: історія і сучасність*, "Право і безпека" 2013, № 1 (48), с. 7-12.

21 В. Гончаров, *Від старої теорії тлумачення до нової: основні виклики та рішення*, „Філософія права і загальна теорія права" 2014, № 1/2, с. 51-66.

22 М.М. Садовський, *Розвиток теорії доктринального тлумачення права (історіографічний огляд літератури),* „Науковий вісник Ужгородського національного університету" 2015, Серія: Право, вип. 32, т. 1, с. 76-79.

23 О.П. Письменна, *Зміст та витоки тлумачення права як складової частини юридичного дискурсу*, "Юридичний науковий електронний журнал" 2018, № 2, с. 20-23, http://lsej.org.ua/2_2018/5.pdf (06.12.2018).

24 І.Ю. Кретова, *Тлумачення права : доктрини, розвинуті європейським судом з прав людини: дис. ... канд. юрид. наук: 12.00.01*, Харків 2015, с. 13.

25 Ibidem, c. 14.

26 А.Н. Талалаев, *Право международных договоров. Действие и применение договоров*, Москва 1985, с. 78.

international treaty interpretation. He notes that this is the elucidation of the content of its object and aims, as well as other resolutions, considering the results of their application in a specific situation. Both he and A. Talalayev speak of an inextricable connection between interpretation and application.[27]

Defining the term "interpretation", experts in international law often connect it with an international treaty, which is considered as a form of implementation of the agreed will of states – sovereign subjects of international relations (Article 2 of the Vienna Convention on the Law of International Treaties 1969). In particular, I. Lukashuk notes: "The interpretation of an international treaty is to clarify the content of its object and aims, as well as other regulations, considering the results of their application in a particular situation. Interpretation is inextricably linked with application. However, there are differences between them. Interpretation is the process of clarifying the meaning of the norm, as well as determining the consequences of these circumstances according to the content of these rules. Application is the activity of the parties to implement the norm in accordance with the results of the interpretation. Clarifying the content of the norm, it is necessary to establish: a) its meaning; b) interconnection with other principles and norms; c) the connection of the norm with other normative phenomena, politics, ethics; special attention should be paid to the rules of so-called soft law, which is international bodies and organizations resolutions' form".[28] I. Lukashuk rightly points out that the problem of interpretation is mostly considered in relation to international treaties, but the interpretation of ordinary norms has its own peculiarities. The materials in practice do not always clearly define the position, can be incomplete, and often it is difficult to access them. Particularly difficult is the situation with the interpretation of the usual rules of general international law, when we need to generalize the practice of a large number of states, since this practice is extremely dynamic nowadays, and its constant observation requires considerable effort and the use of modern technical means.[29]

In recent years, Ukrainian scholars have written several detailed investigations and training manuals on interpretation issues, including international law. They are: V. Goncharov, "Official interpretation of legal norms as a means of establishing and transforming their content"[30], T. Druzhinina-Sedetskaya,

27 И. Лукашук, *Современное право межд. догов,* Т. 2: *Действие международных договоров*, Москва 2006, https://studfiles.net/preview/6332216 (06.12.2018).

28 Ibidem, c. 394-395.

29 Ibidem, c. 396.

30 В.В. Гончаров, *Офіціне тлумачення юридичних норм як засіб встановлення і трансформації їх змісту: автореф. дис. ... канд. юрид. наук: 12.00.01*, Львів: Національний університет «Львівська політехніка» 2012, 18 с., http://ena.lp.edu.ua:8080/handle/ntb/14766 (06.12.2018).

"Interpretation in law: features of the hermeneutic approach"[31], E. Zverev, "Interpretation of international treaties by national courts: European experience and Ukrainian practice"[32], O. Kostyuk "Theoretical and legal principles of normative interpretation"[33], I. Kostsova "Systemic interpretation of the law"[34], I. Kretova, "Interpretation of law: doctrines developed by the European Court of Human Rights"[35], S. Paleshnik "Interpretation in judicial practice: concept, features, types"[36], S. Pryima, "Principles of Interpretation of the Rule of Law"[37], M. Sadovsky, "Theoretical and legal foundations of doctrinal interpretation of law"[38], "Interpretation and application of the Convention for the Protection of Human Rights and Fundamental Freedoms by the European Court of Human Rights and the courts of Ukraine"[39], O. Tragniuk, "Interpretation of international treaties: the theory and experience of European judicial bodies"[40], and Z. Yudin, "Interpretation of the Contract".[41]

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31 Т.В. Дружиніна-Сендецька, *Тлумачення у праві: особливості герменевтичного підходу: автореф. дис. ... канд. юрид. наук: 12.00.01*, Харків: Національний юридичний університет імені Ярослава Мудрого, 2015, 16 с., http://dbms.institute/wp-content/uploads/2016/01/Druzhynina-Sendetska_TV.pdf (06.12.2018).

32 Є.О. Звєрєв, *Тлумачення міжнародних договорів національними судами: європейський досвід та українська практика: автореф. дис. ... канд. юрид. наук: 12.00.01*, Київ: Національний університет "Києво-Могилянська академія", 2015, 16 с., http://ekmair.ukma.edu.ua/bitstream/handle/123456789/5928/Zvieriev_Avtoreferat.pdf (06.12.2018).

33 О.М. Костюк, *Теоретико-правові засади нормативного тлумачення: дис. ... канд. юрид. наук: 12.00.01*, *12.00.01*, Івано-Франківськ: Івано-Франківський університет права імені Короля Данила Галицького, 2017, 221 с., http://iful.edu.ua/wp-content/uploads/2017/04/dis_Kostjuk.pdf (06.12.2018).

34 І.П. Косцова, *Системне тлумачення норм права: дис. ... канд. юрид. наук: 12.00.01*, Івано-Франківськ: Івано-Франківський університет права імені Короля Данила Галицького, 2016, с. 218.

35 І.Ю. Кретова, op. cit.

36 С.І. Палешник, *Тлумачення в судовій практиці: поняття, особливості, види: дис. ... канд. юрид. наук: 12.00.01*, Харків: Національний юридичний університет імені Ярослава Мудрого, 2016, 185 с.

37 С.В. Прийма, *Принципи тлумачення норм права: автореф. дис. ... канд. юрид. наук: 12.00.01*, Харків: Нац. ун-т "Юридична академія України імені Ярослава Мудрого", 2011, 18 с.

38 М.М. Садовський, *Теоретико-правові засади доктринального тлумачення права: дис. ... канд. юрид. наук: 12.00.01*, Запоріжжя: Класичний приватний університет, 2017, 245 с.

39 М.В. Мазур, С.Р. Тагієв, А.С. Беніцький, В.В. Кострицький, В.М. Карпунов (відп. ред.). *Тлумачення та застосування Конвенції про захист прав людини й основоположних свобод Європейським судом з прав людини та судами України : навчальний посібник,* Луганськ: РВВ ЛДУВС, 2006, 600 с., http://shron1.chtyvo.org.ua/Mazur_Mykola/Tlumachennia_ta_zastosuvannia_Konventsii_pro_zakhyst_prav_liudyny_i_osnovopolozhnykh_svobod_Yevropeiskym_sudom_z_prav_liudyny_ta_sudamy_Ukrainy.pdf (06.12.2018).

40 О.Я. Трагнюк, *Тлумачення міжнародних договорів: теорія і досвід європейських міжнародних судових органів: автореф. дис. ... канд. юрид. наук: 12.00.11*, Харків: Національна юридична академія України імені Ярослава Мудрого, 2003, 20 с.

41 З.М. Юдін, *Тлумачення договору: автореф. дис. ... канд. юрид. наук: 12.00.01*, Одеса 2004, 20 с.

2. Interpretation and hermeneutics: the history of interconnections and comprehension parallels

It is known that interpretation is often identified with hermeneutics. For example, T. Kokhanyuk notes that "such terms as interpretation, hermeneutics and explanation are meaningfully interconnected and may be interchangeable. To the same synonymic row should be referred such terms as comment (commenting) and semantics".[42] O. Haydulin supports the views of T. Kokhanyuk; he refers to a synonymous row of interpretation of such terms as comment (commentary), hermeneutics, semantics, explanation, clarification, awareness, analysis, and evaluation, but he observes that in the current legislation of Ukraine there is no such terminological diversity. Instead one legal term is used – the interpretation and its derivations; the interpretation of the content and the interpretation of the contractual terms.[43]

The problem of legal interpretation makes hermeneutics a central element of legal epistemology. Its peculiarity is in the pragmatic function; it is actually included in the day-to-day practice of lawyers.[44] But complete identification of the interpretation with hermeneutics, in our opinion, seems not entirely correct. Firstly, it should be considered that the interpretation of the legal text, apart from the hermeneutic, may also be analytical, and this point is often ignored, as the analytical philosophy of law, unlike the Western one, is not investigated enough in Ukraine, and is often identified with neo-positivism. In addition to the analytic theory of interpretation, one can distinguish the theory of argumentation, and the theory of originality, the theory of target interpretation.[45] Secondly, the term "hermeneutics" *(ερμηνεύειν),* which has an Old Greek origin and literally means explanation, clarification, translation, is rather ambiguous. Without entering into details, we note that hermeneutics is a rather heterogeneous multidimensional type of intellectual activity, which, on the one hand, can be regarded as an art, and on the other as a science. Under the word "hermeneutics" one can understand comprehension of contents and meanings of signs, and the theory and general rules of interpretation of texts, and the philosophical doctrine of the ontology of understanding and epistemology

42 Т.С. Коханюк, *Зміст поняття «тлумачення» у співвідношенні з іншими подібними поняттями*, "Науковий вісник Львівського державного університету внутрішніх справ" 2008, № 2.

43 О.О. Гайдулін, *Тлумачення правочинів в європейському контрактному праві як особливий вид юридичної інтерпретації: компаративний аналіз*, "Часопис Академії адвокатури України" 2012, № 16 (3), с. 1.

44 H. Rabault, «Le problème de l'interprétation de la loi: la spécificité de l'herméneutique juridique», *Revue de philosophie et de sciences humaines*, 2005, 15, p. 1, https://journals.openedition.org/leportique/587 (06.12.2018).

45 С.З. Опотяк, *Теорії тлумачення правових норм (юридична природа та підходи до тлумачення правових норм*, "Бюлетень Міністерства юстиції України" 2011, № 4, с. 122-127.

of interpretations.[46] In the very interpretation (hermeneutics) it is possible to distinguish many methodological approaches, often contradicting each other. There was a whole range of hermeneutic practices instead, among them the legal hermeneutics, which was systematized by G. Grotius. In the twentieth century hermeneutics underwent major transformations due to M. Haydegger and G. G. Gadamer. Hermeneutics received its holistic philosophical reflection, and a separate direction of research was formed - philosophical hermeneutics, which in many aspects does not coincide with modern legal hermeneutics. The dispute between E. Betty and G. G. Gadamer can be a good example of this statement.[47]

We can agree with the opinion of K. Shilina, who advises us to differentiate the concept of "hermeneutics" and "interpretation", as hermeneutics explains the texts considering socio-cultural factors which create legal norms, and the interpretation of law has to develop an unambiguous comprehension of the rules for its application in practice.[48] At the same time, we can assume that both approaches have the right to exist: the complete identification of hermeneutics and interpretation, as well as their distinction, but we should clearly understand in what sense we use this concept, in the broad sense mentioned above, or in the narrow sense, when under hermeneutics we consider only the interpretation of the norms of law, the international one in particular. In the latter case, one can distinguish between positivist and non-positivist methodological approaches, for example, by Robert Kolb. In his view, positivist hermeneutics is characterized by eight factors: judges are asked to seek legislative intentions, the syllogism formalizes the methods of interpretation, the law and facts are separated, the law is complete, the only real law is the written law, every law has one, obvious meaning, the legislative power has a monopoly to create law, the division of power, legal equality, judicial security. Non-positivist doctrines, by contrast, focus on "contextual interpretation", including the socio-political context.[49]

3. Interconnection of international law interpretation and application of international law

Many Ukrainian authors speak about the close connection between interpretation and application. For example, I. Protsyk notes the close connection between interpretation and application: "The task of interpreting an international

46 Д. Наливайко, *Вступне слово упорядника*, [в:] Г.-Г. Гадамер *Герменевтика і поетика*, Київ 2001, с. 5.

47 С.Б. Карвацька, *Засадничі принципи інтерпретації права як пізнавального акту*, "Вісник Південного регіонального центру Національної академії правових наук України" 2018, № 14, с. 16-24.

48 Є.О. Звєрєв, op. cit., с. 60.

49 M. Waibel, *Demystifying the Art of Interpretation*, "The European Journal of International Law" 2011, Vol. 22, No. 2, pp. 576–577, https://academic.oup.com/ejil/article-abstract/22/2/571/540735 (06.12.2018).

treaty is to clarify what the parties agreed upon at the time of the conclusion of the agreement, and to specify the parties' concerted will, embodied in the resolutions of the contract. Consequently, the interpretation of an international treaty is to clarify and explain the true nature of the treaty (its content) in order to apply and implement it correctly".[50]

British researcher of the problems of interpretation in international treaties, A. Orakhelashvili, supports these ideas. He notes that the interpretation is mandatory for understanding the content and consequences of international documents; interpretation makes it possible to identify the exact content and its application. The purpose of the interpretation is to define the scope of competence and the normative content of the relevant document. Interpretation is also indicated as a manifestation describing the content of the treaty and its consequences, identifying the intentions of the parties in the text of the treaty and their general intention.[51]

Researchers such as L. Huseynov, I. Kretova, I. Lukashuk, A. Lukashuk, I. Protsik, A. Talalayev, and O. Tragniuk rightly point out that the interpretation of international law is complicated, since the application of the general principles of interpretation has certain peculiarities.[52] I. Lukashuk and O. Lukashuk, in particular, note that interpretation is very important in the functioning of law. With the complication of law and the tasks that it solves, the process of interpretation becomes complicated. The more complex the legal system, the greater the tasks it solves, and the more difficult it is to interpret. It is clear that the interpretation of the rules of such a complex macrosystem as modern international law is particularly difficult.[53]

As M. Molyboga correctly notes, the interpretation of the norms of international law plays a significant role in the development of interstate cooperation and the establishment of friendly relations between different countries, and therefore involves not only law but also legal awareness, politics.[54] In addition to the problems arising in interpreting national law, there are a number of specific ones: the peculiarities of the legal systems of the states that have been agreed upon, the linguistic difference, certain paradigmatic differences in the theory of law, and others.

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50 І. Процик, *Тлумачення міжнародних договорів*, "Вісник Львівського національного університету. Серія міжнародні відносини" 2014, вип. 36, ч. 2, с. 182.

51 A. Orakhelashvili, *The Interpretation of Acts and Rules in Public International Law*, Oxford 2008, p. 286.

52 І.Ю Кретова., *Особливості тлумачення міжнародних договорів про права людини*, "Науковий вісник Міжнародного гуманітарного університету. Серія: Юриспруденція" 2015, вип. 13 (1), с. 25-28.

53 И.И. Лукашук, О.И. Лукашук, *Толкование норм международного права: учебное пособие,* Москва: NOTA BENE, 2002, с. 4-5.

54 М.П Молибог., *Теоретичні підходи щодо тлумачення норм міжнародного права в сучасних умовах*, "Альманах права" 2011, вип. 2, с. 282-285, http://dspace.nbuv.gov.ua/handle/123456789/63341 (06.12.2018).

The link between the interpretation of international law and the translation attracts the attention of many scholars. In particular, O. Kiyevets, using the example of the concept of "agreement", which was introduced into the Ukrainian legal system by the Civil Code of Ukraine in 2003, demonstrates the complexity of the translation.[55]

O. Butkevich, whose sphere of interests also falls under the theme of international treaties, notes that many Ukrainian scholars[56] and practitioners in the field of international law emphasize the discrepancy between the official translations in Ukrainian of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 and other documents adopted within the framework of the Council of Europe, the decisions of the European Court of Human Rights in English and French, which of course complicates the interpretation and application of these documents in Ukraine.[57]

I. Protsyk emphasizes the fact that there are practically no profound and consistent studies on the peculiarities of the interpretation of an international treaty stipulated in several languages and the system of principles for this case, and some authors generally do not recognize the specificity of the interpretation of treaties in many languages, and consider that it must be carried out in accordance with general rules.[58] O. Kiyevets also draws attention to the fact that the conclusion of international treaties is directly related to diplomatic activities, which often use phrases not having a meaningful ground, that is, traditional diplomatic phrases. Therefore, it is necessary to interpret the ordinary meaning carefully. If the words of the contract do not give a clear understanding, you need to refer to the general content of the contract, especially the preamble.[59]

Defects in the definitions of international law may also complicate interpretation. In this regard, I. Shutak notes that there are three main groups of definition defects: in the location of definitions in the text of the international legal act ("defects of saturation"); defects of the logic of the internal content ("defects of susceptibility"); and defects of conformity with reflected legal facts and public relations ("defects of objective relevance").[60]

Among the current definitions of the interpretation of international treaties submitted by domestic scholars, it is worth noting the definition proposed by

55 О.В. Київець, *Тлумачення міжнародних договорів*, "Часопис Київського університету права" 2011, № 2, с. 287.

56 Зокрема, В.Г. Буткевич, *Європейська конвенція про захист прав людини і основних свобод: ґенеза намірів і права*, "Право України" 2010, № 10, с. 83.

57 О. Буткеви, *Новий вимір навчання міжнародного права*, "Міжнародне право" 2012, № 2, с. 267.

58 І. Проци, op. cit., с. 178-179.

59 О.В. Київец, op. cit., с. 288.

60 І. Шута, *Дефекти дефініцій міжнародного права: теоретико-методологічні й техніко-юридичні аспекти*, "Вісник національної академії прокуратури України" 2009, № 4, с. 86.

O. Tragniuk: "This is a certain type of legal activity that has both auxiliary and independent value, and consists of clarifying and solving the actual content of international treaties by certain entities, not only at the application stage, but also during the creation of the agreement, with the aim of the most effective implementation of the normative prescriptions of the international treaty, taking into account political, legal and other consequences based on content standards, under specific circumstances".[61]

Regarding international law, it is also advisable to distinguish between interpretations in the broad and narrow sense. In the broad sense, the interpretation of international law is an act clarifying the very essence of international law and interpretive activity within it; in the narrow sense, the interpretation of international treaties, contracts, customary law, etc.

In general, in our opinion, the definition of interpretation (in particular, the contract) and understanding of its essence depends on those methodological guides that are followed by the one who defines, as well as on the sense in which we will speak about the interpretation - narrow or broad. For example, an approach that emphasizes the text postulating an interpretation as finding the value that exists directly in the text allows us to give the following definitions: "The purpose of the interpretation (...) is to determine the exact meaning and content of the rule of law, applied in the given situation". "The interpretation of legal norms is the search for their internal meaning and sense within the framework of international law and order". The second, quasi-textual, approach takes into account the interpretation of the light of the text (à la lumière du texte), but this time through the introduction of the value in the circumstances of the contract's implementation. "The contractual interpretation is intended to establish the true meaning of the contract". The third, subjective, approach gives great importance to the text, which is seen as a means for understanding the intentions of those who signed the treaty. "Interpretation is a process of determining the legal nature and consequences of the consensus reached by the parties (...) of carrying out the declared intention (...), this intention is expressed in words in the light of the surrounding circumstances".[62]

Conclusions

The notion of "interpretation" as a scientific category, as well as its history of formation and further development, relates to ambiguous and controversial issues (especially acute and ambiguous is the issue in Ukrainian science of international law). Proceeding from the fact that, like every scientific discipline,

61 О.Я. Трагнюк, op. cit., с. 9.

62 Lévesque J.-Fr., *Traités de verre : Réflexions sur l'interprétation*, "Revue québécoise de droit international" 2006, 19, p. 68, https://www.sqdi.org/wp-content/uploads/19.1_levesque.pdf (06.12.2018).

the theory of international law tries to maximally unify its conceptual categorical apparatus, to harmonize the definitions of key concepts, which allows us to adhere to the standards of scientific knowledge, it is expedient to use the concepts of "interpretation" and "explanation" not as synonyms, and start to use the concept of "interpretation", which permits us to focus on truly serious methodological problems of interpretation in the field of international law, and not to conduct somewhat scholastic debates about the relation between these terms. Another variant is possible, since the notion of "explanation" is narrower than "interpretation", to use the term "interpretation" in the case of broad understanding of interpretive activity, and the notion of "explanation" when we speak about the interpretation of international treaties, contracts, customary law, etc. Both the first and second variants have their own positive and negative sides.

With regard to international law, it is advisable to distinguish between interpretations in the broad and narrow senses. In the broad sense, the interpretation of international law is an act clarifying the very essence of international law and the interpretive activity within it; in the narrow sense, the interpretation of international treaties, contracts, customary law, etc. In Ukrainian general theory of law the term "interpretation of law" is still used, which is the legacy of trends in the development of the general-theoretical science of the Soviet period. In the last decade, in the scientific apparatus of the Ukrainian general theory of law and the theory of international law (which cannot exist in isolation from each other) a new term, "interpretation of law", has appeared, which is applied in the synonymic version with a double format – explanation (interpretation). In our opinion, this not only does not introduce categorical clarity, but, on the contrary, complicates the integration of Ukrainian general science and the theory of international law science in the European scientific system. It should also be emphasized, that Western authors in their publications and monographic studies have other approaches to the meaning-spatial analysis of interpretation. They use the Latin term "interpretatio" as the basis of the lexical form of the category "interpretation", thereby paying tribute to the search for the true semantic load, rather than the formal-legal comparison of the text forms (that is, analyzing the international legal act in the plane of modern civilized understanding, and not the positivist one).

In the context of euro-integration processes, the Ukrainian scientific legal terminology system is at a complex stage of transformation, and this primarily concerns the field of international law. It is also worth noting that Western scientists, doing research in the field of international law, use the term "interpretation in international law", while Ukrainian scientists use the categorical form "international law explanation" adopted in studies of the Soviet period and reflecting a formally dogmatic design with an ideological colouration.

That fact, in a certain way, impedes the unification of the Ukrainian science of international law terminology with European law and the integration of the Ukrainian terminology system and general theoretical science and the theory of international law science in European and international science. It is obvious that special investigations and the good will of the domestic legal community are needed to solve this question.

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Summary

Terminological definition of the category "Interpretation in international law": historical transformations of the definition and new approaches

Modern jurisprudence requires a continuous improvement of methodology from the general theoretical science. The analysis of the formation and essence of the definition of "interpretation of international law" has a particular methodological and conceptual importance in the science of international law. This position is due, first of all, to the fact that the study of this category indicates not only the relevance of the problem, but, more importantly, due to a theoretical maturity and at pace of research development of the research subject. Until recently, Ukrainian theoretical science has predominantly used a formal and logical approach in interpreting the rules of law in order to ascertain the intention or the will of the legislator. Despite the large number of scientific developments on the interpretation of law (mainly in the general theory of law), there is a lack of consistency in the Ukrainian doctrine of international law regarding understanding of the subject and the object and the functional role of interpretation. As the theory of international law tries to fully unify its conceptual-categorical apparatus and to harmonize the definitions of key concepts, which allows to meet the standards of scientific knowledge, it is advisable to consider the concept of "interpretation of international law" as a bivalent process: in a broad and in a narrow sense. This will allow to focus on the serious methodological problems of interpretative activity in international law, which intensifies the integration of Ukrainian general legal science and the science of international law theory in the European scientific system.