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Theoretical and Methodological Problems of National Legal Implementation of Ukraine's International Obligations

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Abstract
The relevance lies in the fact that a faithful fulfilment of international obligations is a defining feature of the modern state, especially given the undermining of the common international order by acts of Russian aggression against Ukraine. Despite more than a century of scholarly research into the relationship between international and domestic law, no key theoretical issues or conceptual and categorical framework have been agreed upon, which complicates legal practice and teaching. The purpose of this article is to identify the main theoretical and methodological problems of the relationship between international and domestic law, to apply the latest legal methodologies to investigate their nature, and to harmonise the conceptual and categorical framework as it pertains to the methods of national legal implementation of Ukraine's international obligations. The methods of analysis are based on an interdisciplinary approach, incorporating the methodologies of legal systemology, morphology, axiology, anthropology, and temporology, which enable us to transcend the traditional normological methodology. The findings reveal that the numerous terms used to describe implementation mechanisms can be categorized into two main categories: transformation and reference. Transformation can take the form of repetition (verbatim reproduction), optimisation, or distortion. It is established that reference ensures synchrony with international law, while transformation always leads to a temporal lag in the national legal system. It is proposed to move beyond the dichotomy of monism and dualism by developing a synergistic legal perspective on the world that recognizes the unity of the legal system while acknowledging the relative independence of its components. Prospects for further research lie in the development of monographic foundations for a synergistic legal worldview, which would open up new theoretical and methodological horizons. It is necessary to initiate a substantive nationwide discussion on the

harmonization of the terminological and methodological issues related to the implementation of the law.

Keywords: *implementation law; international obligations; transformation; reference; synergistic legal worldview; legal axiology.*

Теоретико-методологічні проблеми національно-правової імплементації міжнародних зобов'язань України

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Анотація
Актуальність статті полягає в тому, що сумлінне виконання міжнародних зобов'язань є визначальною ознакою сучасної держави, особливо на тлі підриву універсального міжнародного правопорядку внаслідок російської агресії проти України. Незважаючи на більш ніж століття еволюції наукових досліджень проблеми співвідношення міжнародного та національного права, наразі все ще не узгоджено її ключові теоретичні питання та понятійно-категоріальний апарат, що ускладнює юридичну практику та викладання. Мета статті полягає у виявленні основних теоретико-методологічних проблем співвідношення міжнародного і національного права, застосуванні новітніх юридичних методологій для дослідження їхньої природи та узгодженні понятійно-категоріального апарату щодо способів національно-правової імплементації міжнародних зобов'язань України. Методи аналізу ґрунтуються на міждисциплінарному підході, включаючи методологію правової системології, морфології, аксіології, антропології та темпорології, які дозволяють вийти за межі традиційної нормологічної методології. Отримані результати демонструють, що численні терміни, які використовуються для опису механізмів імплементації, слід класифікувати на два основні способи: трансформацію та відсилання. Трансформація може відбуватися у формі репетиції (дослівного відтворення), оптимізації чи дисторсії (викривлення). Встановлено, що відсилання забезпечує синхронну дію міжнародного права, тоді як трансформація завжди призводить до темпорального відставання національного правопорядку. Пропонується вихід за межі дихотомії монізму і дуалізму шляхом розробки

синергетичної правової картини світу, що визнає єдність правопорядку при відносній самостійності його складових. Перспективи подальших досліджень полягають у монографічній розробці наукових засад синергетичної правової картини світу для відкриття нових теоретико-методологічних горизонтів. Необхідно ініціювати предметну загальнодержавну дискусію щодо узгодження термінологічних та методологічних проблем імплементаційного права.

Ключові слова: *імплементаційне право; міжнародні зобов'язання; трансформація; відсилання; синергетична правова картина світу; правова аксіологія.*

Introduction

A key feature of the modern state as a trustworthy subject of international law is the faithful fulfillment of its international legal obligations. A decentralised international legal system can only function effectively if every participant adheres to commonly accepted principles and norms, and if any violation thereof results in a swift application of the norms of international legal responsibility to the offender. This problem has become particularly relevant with the start of Russia's aggression against Ukraine, which has destroyed the system of collective international security, called into question the existence of a common international legal system, and thus potentially threatens the entire human civilisation.

One of the guarantees of a state's fulfilment of its international obligations is its national legal mechanism for implementing international law. Under the principle of non-intervention in the internal affairs of states, international law does not specify concrete mechanisms for its implementation into national legal systems. This is an area of exclusively national jurisdiction. Given that there are currently approximately 200 states and state-like entities, such a number of national legal mechanisms for implementing international law results not only in diverse legal practices but also in multiple doctrinal views on fundamental issues of the relationship between legal systems. Over the course of more than a century of scholarly research, starting with the classical works of Heinrich Triepel [1; 2] and Hans Kelsen [3], thousands of authors [4; 5] have written extensively on this issue. However, there is still no consensus, either globally or nationally, on some fundamental theoretical issues of the relationship between international and domestic law; indeed, there is not even a single conceptual and categorical framework, which leads to serious problems in legal practice, creates significant difficulties in teaching academic disciplines related to the implementation of Ukrainian legislation, and hinders mutual understanding among scholars.

The purpose of this article is to identify the central theoretical and methodological problems of the relationship between international (including European) and domestic law, apply the newest legal methodologies to study the nature, content, and functions, as well as harmonise the conceptual and categorical framework regarding the methods of national legal implementation of Ukraine's international obligations.

Literature review

An analysis of world literature, in particular, K. Aksamitowska [6], D.H.A. Alfathimy & R.P. Ardes, [7], M. Allcock [8], M.P.V. Alstine [9], A.R. Amandha, R. Arifin, C.A. Rahmayani, D.Purnomo and N.D. Nte [10], O.Ammann [11], J.M. Angstadt [12], O. Awawda [13], J.S. Ayetey & B.T. Erinosho [14], M. Baaz [15], G. Bartolini [16], E.B. Beenakker [17], E. Benvenisti & A. Harel [18], H. Birkenkötter [19], E. Bjorge [20], D.T. Björgvinsson [21], A. Blankenagel [22], A.V. Bogdandy [23], C.A. Bradle & L.R. Helfer [24], T.H. Brandes & N.R. Davidson [25], Th. Buergenthal [26], B. Bugarič [27], S.N. Bui & M.De Visser [28], A. Buser [29], S. Butt, Bisariyadi & F. Siregar [30], B. Çalı [31], A. Cassese [32], U. Ćemalović [33], Y.-J. Chen [34], W. A. Dewanto [35], S. Farber, N. Benichou, & R. Amer [36], M. Gillis [37], M. Glavina [38], E. Gonzalez-Ocantos & W. Sandholtz [39], J. Hohnerlein [40], S. Kaavi & T. Paloniitty [41], J. Kahn [42], M. Kanetake [43], S. Katuoka & G. Valantiejus [44], R. Kunz [45], R. Kusniati, P. Aekaputra & N. Pitpiboonpreeya [46], M. Leloup [47], M. Loja [48], L. Maret [49], M. Mendez [50], C. I. Nagy [51], A. Nollkaemper [52], B. J. Ong [53], H.D. Phan [54], A. Ploszka [55], C. M. J. Ryngaert & D.W.H. Siccama [56], FX A. Samekto, M.A. Mahfud & A.P. Prabandari [57], M.L. Taylor [58], Y. Won [59], H. Woolaver [60], as well as works by Ukrainian international lawyers, in particular, M.V. Buromensky [61-63], O.V. Butkevych [64-66], V.H. Butkevych [67-69], V.N. Denysov [70], A.I. Dmytriev [71], M.M. Gnatovskyy [72], V.V. Hutnyk [73], O.R. Ivashchenko [74], N.V. Kaminska [75], S.B. Karvatska [76], T.R. Korotkyy [77], A.O. Korynevych [78], V.M. Steshenko [79; 80], Y.J. Streltsova [81], O. V. Tarasov [82; 83], O.I. Vinglovska [84], T.V. Vovk [85], S.V. Voychenko [86], O.V. Zadorozhniy [87], including experts in EU law such as T.V. Komarova [88], V.I. Muraviov [89], R.A. Petrov [90] and others [91-93] over the last century turns up a lack of consistent terminology in the study of the relationship between international and domestic law, to which has been added the problem of the relationship between European law (including EU law) and Ukrainian law, the ambiguity of views on the nature, content, functions and even number of ways of implementing international obligations of states in national law, faulty methodology used in some studies, and so on.

Thus, the literature offers the following names for the methods (forms, types) of interaction between international (including European) and domestic law: adaptation, approximation, introduction, enforcement, reference, inclusion, enactment, compliance, harmonisation, borrowing, convergence, implementation, incorporation, integration, coordination, modification, bringing in line, transfer, conversion, adjustment, direct and indirect enaction, direct and indirect application, realisation, reception, authorisation, transmission, transposition, transformation, synchronisation, unification, etc. [94-96 and others]. Furthermore, according to the authors, some of these methods include several others, which creates additional confusion in understanding the very essence of the phenomena being studied. In addition, one may encounter a rather odd method of classification, wherein the same method (type, form) of national legal implementation is broken down into stages, which in turn are designated as separate methods (types, forms) of implementation. For example, N.B. Haletska, in her well-researched study, presents references to treaties ("formal integration", interpreted by the author as a component of national implementation lawmaking) separately from direct application thereof (as a component of implementation law enforcement) and makes no mention of them at all as a component of implementation law interpretation [97, p. 79]. Yet, such referencing remains the same method of national implementation in all its stages – both lawmaking and law enforcement, including the need for legal interpretation.

Materials and Methods

Arguably, the solution to problems in this area of research lies in the application of an adequate methodology. Thus, from the point of view of *legal systemology*, one should consider the level of abstraction when studying any legal phenomenon and avoid confusing it with others. The level of legal philosophy and general theory, which encompasses international and national legal components that are, in turn, subdivided into public and private law categories, and the branch of law, hinges on the availability of an appropriate methodology and a conceptual and categorical framework. The level of legal technicalities, where specific mechanisms of national legal implementation of states' international obligations function directly, should not be confused with philosophical and legal problems of the relationship between civilizations and the human world order. Sadly, the use of different-level components within a single conceptual and categorical framework is one of the most common methodological errors in domestic research.

Another theoretical and methodological problem is the confusion between form and content (sometimes the category "substantive characteristic"

is used instead of "content", but as a philosophical category, "form" correlates with "content", while content itself can be assessed by its legal characteristics – substantive or procedural, public or private, international or national, etc.) in studying the mechanisms of national legal implementation of states' international obligations. For example, the formal legal issue of treaty functioning in Ukraine's national legal system subtly transforms into a substantive legal discussion of the relationship between the peremptory norms (whether treaty or customary) of general international law (*jus cogens*) and the provisions of national law, which have varying legal effects. After all, from the perspective of *legal morphology*, which studies form and content in legal contexts, the formal subordination of treaties to the corresponding national laws does not negate the substantive subordination of the dispositive provisions of national law to the peremptory norms of general international law (*jus cogens*). Thus, when it comes to sources of national law, an international interdepartmental agreement formally ranks above departmental acts but below government resolutions. If they contradict one another, the technical legal solution is to go by the government resolution rather than the interdepartmental agreement. However, the government has no right to repeal the peremptory norms referenced in the interdepartmental agreement, as they derive from the UN Charter or customary international law. Therefore, in the event of a conflict, the government resolution should be applied only to the extent that it does not contradict the peremptory norms of general international law, regardless of its form.

In our view, the issue of how peremptory norms of general international law function in Ukraine's national legal system should be resolved by utilizing the methodological apparatus of *legal axiology*, the study of legal values. Reconciling universal human values, reflected in the peremptory norms of general international law, with the values of a particular civilisation, enshrined in the mandatory provisions of regional international law, and both of these, in turn, with an individual nation's values, which requires constitutional and legal regulation, demands an appropriate philosophical and legal reflection. The jurist's own worldview on this issue has a direct impact not only on the results of scholarly research and the training of future legal professionals, but also on practices. The Russian view of international law as a purely technical tool that should facilitate the implementation and consolidation of the results of aggressive policies, a tool subordinate to the domestic law of the Russian Federation, clearly does not match the level of modern civilisation achieved by humanity. The interests of humanity, individual nations, and individuals are inherently interconnected and must be mutually consistent. International and domestic law should serve these goals. Therefore, the normal state of affairs

does not require the supremacy or subordination of one legal system to another, but rather relies on cooperation to achieve common goals through the specific mechanisms of each legal system. This is very different from a situation when an offence is committed, and the offender intends to evade responsibility by constructing pseudoscientific concepts of "the priority of domestic law over international law". The principle of the inevitability of punishment for a crime should not be confused with the completely different problem of the relationship between legal systems.

The fundamental problem of the relationship between the individual, the nation, and humanity necessitates that researchers apply the methodological apparatus of *legal anthropology* as an integral part of general legal personology. The legal personhood of an individual, as recognized in Art. 6 of the 1948 Universal Declaration of Human Rights and subsequent international human rights treaties, implies consistency between the international (universal, interregional, regional, and subregional) and national legal statuses of a natural person. This should be facilitated, not hindered, by mechanisms for the national legal implementation of international obligations. If national implementation mechanisms are deficient, the international legal status of a natural person should be directly recognised and exercised under the national legal system. International human rights law occupies a special place in the system of modern international law and is not limited to classic interstate cooperation, as some anthropological nihilists who deny the international legal personhood of the human being believe. Accordingly, national implementation of fundamental human rights and freedoms is a particularly sensitive issue in research, education, and practice, requiring the utmost attention of scholars. In particular, any national implementation practice that results in non-recognition, negation, or annulment of human rights is considered a gross violation of international legal obligations.

Having identified the main theoretical and methodological problems of the national legal implementation of Ukraine's international obligations, we shall now offer our vision of how to solve them based on the methodology of legal systemology, morphology, axiology, anthropology, and temporology, which is, of course, not to say that we shall be ignoring the entire spectrum of traditional normological methodology.

Results and Discussion

The problem of classifying methods (types, forms) of national legal implementation of Ukraine's international obligations

It appears that the excessive conceptual and categorical "creativity" in this field of research calls for Occam's razor. There is no need to multiply entities

when one can clearly define the necessary and sufficient phenomena for further research. Thus, in domestic literature attempts have already been made to limit oneself to only three methods (types) of national legal implementation of Ukraine's international obligations: incorporation (sometimes also described as "transformation"), reception, and reference [98, pp. 66-69; 99, p. 34; 100, pp. 275-276, etc.]. Undoubtedly, such a classification looks more attractive than the hodgepodge found in most scholarly publications.

However, morphological analysis leads us to question even this three-component formula. In particular, while there is a fundamental difference between reference on the one hand and incorporation and reception on the other, when it comes to the form and content of international legal provisions implemented into the national legal system, no such difference can be observed between incorporation and reception. The nature of reference lies in the inclusion of a source of international law in its entirety – both in form and content – into the national legal system. A reference norm of national law performs at least three basic regulatory functions with regard to the source of international law. First, a reference norm *legalises* the application of a source of international law in the national legal system in general. Second, a reference norm establishes a source of international law within the hierarchy of national law sources, thereby resolving potential conflicts in the enforcement of international law. Third, a reference norm names the *subject of regulation*, i.e., it identifies the norms of international law that specify which social relations within the national system are subject to their regulatory effect.

Unlike reference, incorporation and reception rely on the same process in terms of their legal nature: the national legislator, government official or judge takes the source of international law as a model and, on its basis ("in its image and likeness"), creates a source of national law or an individual legal act at the legislative, executive or judicial level of powers. In this case, the international legal form is replaced by a national legal form, and the content changes depending on the practical goals of implementation, with minimal changes in the case of reception and more substantial changes in the case of incorporation.

Thus, incorporation and reception fall under one single method of national legal implementation of Ukraine's international obligations, and the difference between them lies in the degree of likeness between the content of the source of international law and the content of the corresponding source of national law. Domestic scholars have named this method of implementation "transformation" [101], given the process of "transforming" international legal form and content into national legal form and content.

We would add that the process of transformation is not limited to reception, when the content of a norm of international law is reflected almost unchanged in the content of a norm of national law, or incorporation, when the content of a norm of international law is adapted to the peculiarities of the national legal system and is not a carbon copy of the original source's content. Unfortunately, during the transformation process, the content of the source of international law may be distorted at the level of national law to such an extent that the implementing legislation may not comply with the state's international legal obligations at all. In our view, this extent of transformation should be referred to as "distortion". It would also be better to replace the term "incorporation" with the more accurate "optimisation", because the term "inclusion" can, by and large, refer to any method of national legal implementation when the norms of international law are, in one way or another, "included", "introduced", "transposed", "transferred", "imported" etc. into the national legal system. As for the term "reception", let us just say this: it is easily confused (especially by students during the learning process) with its homonym, which denotes the process of a state's borrowing and assimilating more advanced foreign legal forms, including those from past eras. An example is the reception of Roman law, which began in medieval Europe. This is the level of philosophical, theoretical, and historical conceptualization of the interaction between civilizations. To avoid confusion, it would be better to use the more accurate term "repetition" in the sense of a literal, verbatim, undistorted reproduction (reflection, copying) of the text of an international legal act in a national legal act.

The temporal aspect should also be considered when distinguishing between the functions of reference and transformation. It should be recalled that *legal temporology*, the study of time in law, uses two equivalent and complementary methodologies – diachronic and synchronic. Diachrony assumes only one legal temporal state, encompassing three temporal dimensions: past, present, and future. Synchrony has a more complex structure, with three legal temporal states, each of which has three temporal dimensions:

(1) Potentiality (pre-actuality), actuality, and post-actuality;
(2) Prematurity, timeliness, and lateness;
(3) Lag, simultaneity, and haste.

From the point of view of diachrony and reference, both transformation and reference operate in the legal dimension of the present. Yet from the point of view of synchrony, the situation already differs for each of the two methods of national legal implementation of states' international obligations. Whereas, in the case of reference, the national legal system always applies the current norms of international law, as if receiving a "live broadcast" from

the international legal system, in the case of transformation, something like instant "snapshots" or "copies" of the content of international law norms are made and enshrined in national legislation, which requires amendments to be made to national law every time the corresponding international law changes; i.e., transformation always deals with events that have already taken place, and the national legislator exists in a temporal dimension of constant lag.

In the language of legal temporology, referencing enables the national legal system to be in a constant state of legal temporal synchrony with the international legal system, particularly in the temporal dimensions of actuality, timeliness, and simultaneity. Transformation also implies a legal temporal state of synchrony; however, in the temporal dimensions of post-actuality, it necessitates lateness and lag on the part of the national legal system relative to its international counterpart. Of course, the national legislator may act proactively by adopting national legislation that will comply with the state's future international legal obligations (preliminary transformation) and thus enter the temporal dimensions of potentiality, prematurity, and haste. However, these temporal dimensions will only be temporary, and once these international legal obligations commence, they will gradually transition through the dimensions of actuality, timeliness, and simultaneity to post-actuality, lateness, and lag. This is one of the fundamental temporal differences between the functioning of reference and transformation.

Taking all of the above into account, we propose the following classification criteria for the typology of national legal implementation of international obligations:

- By method of implementation: transformation or reference;
- By degree of transformation: reception ("repetition"), optimisation or distortion;
- By degree of recognition of reference: (1) One-time, case-specific (*ad hoc*); (2) Temporary (*de facto*); or (3) Permanent (*de jure*);
- By time of commencement of international legal obligations (temporal criterion): diachronic or synchronic;
- By diachrony: past, present, or future;
- By synchrony: (1) Potential (pre-actual), actual or post-actual; (2) Premature, timely or late; (3) Lagging, simultaneous or hasty;
- Spatial criterion: subnational, national, or extranational (e.g., regarding overseas, associated or occupied territories);
- By the form of sources of international law and other international acts implemented in the national legal system (external formal normative criterion): (1) International legal customs; (2) Treaties;

(3) Resolutions of international intergovernmental organisations; (4) Decisions of international judicial and arbitration bodies, etc.

- By the content of sources of international law and other international acts implemented in the national legal system (external substantive normative criterion): (1) Peremptory norms or dispositive norms; (2) Substantive or procedural norms; (3) Direct or referential norms; (4) Regulatory or protective norms; (5) Binding, prohibitive or authorising norms; etc.;
- By scope of the system of sources of international law covered in implementation (referential or transformative) norms of national law (external systemological normative criterion): (1) General implementation (reference to or transformation) of all sources of international law without exception; (2) Particular implementation (reference or transformation) that only covers a specific category of sources of international law (e.g., only treaties); (3) Special implementation (reference or transformation) limited to a specific group of sources within a separate category of sources of international law (e.g., to a specific subset of treaties concluded at the highest political level); (4) Specific implementation (reference or transformation) of a single defined source of international law;
- By the form of sources of national laws and other acts implementing norms of international law (internal formal normative criterion): (1) Constitution; (2) Laws; (3) Decrees; (4) Resolutions; (5) Orders; (6) Judicial and arbitration decisions, etc.
- By the range of entities under national law to whom the implemented norms of international law apply (internal systemological personative criterion): (1) General personative national legal implementation covering all entities under national law without exception; (2) Particular personative national legal implementation covering certain categories of entities under national law (e.g., only natural persons); (3) Special personative national legal implementation, which applies only to a special group of persons within a separate category of entities under national law (e.g., natural persons of a certain gender, age, citizenship, religious beliefs, etc.); (4) Individualised personative national legal implementation, which concerns a specific entity under national law (e.g., when international legal sanctions are imposed by the UN Security Council and the relevant resolution is then implemented in national law);
- By the range of social relations subject to the implemented norms of international law (internal systemological communicative criterion): (1) General communicative national legal implementation covering basic, fundamental social relations within the domestic legal system

at the level of constitutional law; (2) Particular communicative national legal implementation covering certain types of social relations at the level of individual branches of national law; (3) Special communicative national legal implementation covering social relations at the level of sub-branches or institutions under individual branches of national law; (4) Specific communicative national legal implementation covering a single clearly defined social communication with individually named participants as parties to the legal arrangement;

- By the branches of powers implementing the norms of international law (cratic criterion): (1) Legislative; (2) Executive; (3) Judicial; (4) Supervisory;
- By the functional criterion: (1) Lawmaking; (2) Law enforcement; (3) Law interpretation;
- By position in the system of national and local authorities implementing the norms of international law (hierarchical criterion): (1) At the highest government level; (2) At the regional government level; (3) At the local government level.

Of course, this is not an exhaustive list of possible classification criteria for studying the problems of national legal implementation of states' international obligations. Nevertheless, it significantly supplements and improves the classifications proposed previously.

The problem of the direct (immediate) effect of international legal norms in the national legal system

The theoretical and methodological problem of the possibility or impossibility of directly effective international legal norms in the national legal system arises exclusively in relation to reference. Under transformation, the national legal system only applies the norms of domestic implementation laws, which must comply with the state's international legal obligations. Another issue is the extent to which implementation legislation actually fulfils its basic function of adapting the invariably compromising norms of international law to the unique features of a particular national legal system. So, it is precisely in the case of transformation at the level of distortion that referencing comes to the rescue, when the national legal system authorises the application of relevant norms of international law. However, the question arises: is such an application "direct" (or "immediate")?

According to legal morphology, the source of national law that contains the reference norm not only indicates the source of international law that must be applied in the national legal system, but also, through its national legal form, encompasses ("envelops") the international legal form and

then applies the resulting provision to regulate relations in the domestic legal system. The result is a complex normative construct in which the main ("parent") legal form is the national legal form, and the international legal form, although unchanged, acts as a subform ("filial" form) that is subordinate to the main form and cannot transcend it. Thus, the main national legal form restricts the functioning of the international legal subform within the domestic legal system by subjecting it to regulation and limiting its scope to entities under national law, as well as in terms of space and time.

At the same time, from the standpoint of legal systemology, the first subsystemic normative level in the internal structure of such a source of national law will include: (1) the national reference norm, and (2) the source of international law as a whole; while the second subsystemic level will include the substantive norm of international law itself, which should already have a regulatory impact on social relations in the domestic legal system.

Thus, an international legal norm is not directly effective, but rather defined by the opportunities provided by the source of national law, with a reference norm, i.e., through mediation, by authority, or by direct instruction in the national implementation law. However, in the event of distortion during transformation and the lack of a direct reference in the implementation law, our view is that the judicial branch of powers, through interpretation, in order to ensure the faithful fulfilment of the state's international legal obligations, is entitled to use a judicial reference to the international primary source, thereby granting permission for its use for specific purposes and applying it in the course of the judicial process. Of course, this would be a one-time application, i.e., an *ad hoc* reference, for a specific court proceeding. Nevertheless, all available means should be used to achieve the main goal: the efficient functioning of the mechanism for the national legal implementation of states' international obligations. In addition, there is always a possibility of further analysis and collation of implementation case law by the supreme judicial authorities, with recommendations being made, which would turn one-time, unforeseen *ad hoc* judicial references into established, generally acknowledged *de jure* judicial references.

The problem of conceptual rejection of the "dualistic/monistic" dichotomy for further research in the context of the relationship between international law and domestic law

Any theoretical construct must ultimately contribute to our understanding of reality. The highest level of philosophical abstraction, as well as the greatest heuristic effect, is found in the theoretical and methodological phenomenon known as the scientific worldview. When a scholar operates

within a clear, unambiguous, systematic, and logical worldview in their chosen realm, it is a sign of professionalism and allows for fruitful scientific discussions without the potential threat of misunderstanding, ambiguity, uncertainty, speculation, etc. It is precisely these generally accepted scientific worldviews, in their simplified form, that are presented in educational literature.

In studies of the relationship between legal systems, two classical theories have prevailed for more than a century: the dualistic and the monistic. Plenty of compromise options have been proposed based on these theories, leaning in one direction or another, but the essence has remained the same. Either you are a supporter of dualism in its various manifestations, or you are a supporter of various strains of monism. Yet legal practice provides examples that seem to confirm both opposing theories. According to O.O. Merezhko, "Perhaps we should consider both concepts non-existent in their pure form in real life; they are closer to 'ideal types' or models that do not fully reflect the complex and diverse practice of international relations" [102, p. 114]. A way out of this methodological dichotomy appears possible by recognising the existence of both particular scientific worldviews, but within a more general legal worldview.

Thus, the monist view of legal reality as a distinct, singular phenomenon, separate from politics, economics, religion, and so on, does not contradict the dualist view that legal reality itself encompasses various phenomena that may be relatively independent of one another. Moreover, the various components of legal reality are in constant flux, forming, changing, terminating, and re-establishing diverse interrelationships of coordination and subordination.

According to M.V. Buromensky, "In the modern world, the most widely accepted doctrine on the relationship between international and domestic law is the one based on a synthesis of the dualist theory and the primacy of international law. That said, one must proceed from the doctrine of the unity of law as a sociocultural phenomenon that generates an essentially single legal system which, in turn, consists of relatively independent international and domestic legal systems" [103, p. 64].

This legal worldview is more in line with an open synergistic vision than with a limited dualistic/monistic dichotomy. In particular, we posit that the turn of the 21st century saw a consensus emerge in the international legal system regarding the unconditional primacy of human rights and fundamental freedoms over all political, economic, ideological, religious, and other phenomena, even those formally enshrined in domestic law at the constitutional level. Of course, this only applies to democratic

regimes, because under totalitarianism, the state itself becomes the biggest criminal, whose goal is the consistent and systematic destruction of law as a phenomenon. We believe that the development of scholarly foundations for a synergistic legal worldview at the monographic level will make it possible to go beyond the classical theories of the late 19th and early 20th centuries without rejecting their achievements, opening up new theoretical and methodological horizons for studying various issues of the relationship between legal systems [104-106].

Characterising the mechanism of national legal implementation of Ukraine's international obligations

The current mechanism of national legal implementation of Ukraine's international obligations is characterised by the presence of both methods of implementing international law in the national legal system – reference and transformation. Thus, under Art. X of the Declaration of State Sovereignty of Ukraine of August 16, 1990, Ukraine recognises "the priority of generally accepted standards of international law over the standards of the domestic law" [107]. However, the document does not specify which international legal form these generally accepted standards of international law take, customary or treaty. Thus, the legislators emphasised the substantive rather than the formal component of the mechanism for the national legal implementation of Ukraine's international obligations.

In Article 9 of the Constitution of Ukraine of June 28, 1996 [108], the legislator adopted a formal legal approach, limiting it only to treaties in force, the consent to be bound by which has been given by the Verkhovna Rada of Ukraine (namely by ratification, acceptance, or accession). Such treaties are recognised as part of Ukraine's national legislation and, in terms of their legal effect, are inferior in the hierarchy of sources of national law to the Constitution of Ukraine but superior to the laws of Ukraine.

Also important are the provisions of Art. 22(1) of the Constitution of Ukraine, which mentions an inexhaustible constitutional list of human and civil rights and liberties, opening up the possibility of expanding this list through the implementation of customary and treaty human rights norms of international law at the level of the Constitution of Ukraine, rather than at a lower legislative level. In other words, we are again dealing with a substantive approach rather than a formal one.

A certain threat to the faithful fulfilment of Ukraine's international obligations can be found in the provisions of Art. 151(1) of the Constitution of Ukraine, which allows the Constitutional Court of Ukraine to recognise a treaty in force or concluded by Ukraine as inconsistent with the Constitution of Ukraine [109].

It is also prudent to note a possible interpretation of Art. 8 of the Constitution of Ukraine, which recognises the principle of the rule of law. By and large, the rule of law implies the supremacy not only of national but also of international law, including international human rights law, over all other types of social norms within the national legal system. Some potential for interpreting implementation law is also apparent in Art. 18 of the Constitution of Ukraine [110, p. 138], which is devoted to foreign political activity based on generally acknowledged principles and norms of international law, including the principles of respect for human rights, faithful fulfilment of international obligations, etc.

While the reference in Art. 9(1) of the Constitution of Ukraine is limited only to those treaties in force, the consent to be bound by which has been given by the Verkhovna Rada of Ukraine, Art. 19(2) of the Law of Ukraine "On Treaties of Ukraine" of June 29, 2004 [111] extends this list to include all treaties in force concluded by Ukraine. A relevant clarification on this matter was also provided by the Plenum of the High Specialised Court of Ukraine for Civil and Criminal Cases in Para 2 of the Resolution No. 13 "On the Application of Treaties of Ukraine by Courts in the Administration of Justice" of December 19, 2014 (hereinafter referred to as "the PHSCU Resolution No. 13 of December 19, 2014") [112]. Finally, the Law of Ukraine "On Lawmaking" of August 24, 2023, removes any ambiguity on this issue [113]. Thus, today, all treaties of the highest interstate level, all intergovernmental agreements, and all interdepartmental agreements are implemented into the national legal system of Ukraine by reference, respectively, in the Constitution of Ukraine, current legislation, judicial enforcement, and legal interpretation practice.

Accordingly, in the hierarchy of sources of national law, treaties formally and legally occupy the position determined by the reference norm of the relevant source of national law. Thus, treaties in force, the consent to be bound by which has been given by the Verkhovna Rada of Ukraine are superior to the laws of Ukraine but inferior to the Constitution of Ukraine. Treaties concluded by the President of Ukraine are superior to decrees of the President of Ukraine but inferior to laws of Ukraine and the Constitution of Ukraine. Intergovernmental agreements concluded by the Prime Minister of Ukraine are superior to the resolutions of the Cabinet of Ministers of Ukraine but inferior to decrees of the President of Ukraine, laws of Ukraine, and the Constitution of Ukraine. Interdepartmental agreements concluded by the heads of individual ministries and departments are superior to departmental regulations but inferior to resolutions of the Cabinet of Ministers of Ukraine, decrees of the President of Ukraine, laws of Ukraine, the Constitution of Ukraine, etc.

It should be noted that under international municipal law (also known as international law of subnational territorial units), international agreements are possible between subnational territorial units (federal subjects, autonomies, regions, municipalities, etc.) of different states, concluded both between these units and with foreign states or international intergovernmental organisations, which also calls for a determined position of the implemented international intermunicipal agreements in national legal systems.

The established hierarchy of treaties in force as sources of implementation law in Ukraine is based exclusively on a formal legal basis and does not incorporate a substantive legal approach. The presence of substantive legal provisions in specific articles of the Declaration of State Sovereignty of Ukraine of August 16, 1990 and the Constitution of Ukraine of June, 28 1996 gives hope that the customary and treaty peremptory norms of general international law (*jus cogens*), as well as the norms of international and European human rights law, will be implemented into the national legal system of Ukraine not just formally and legally, but also while making use of the findings of legal axiology, personology, systemology, morphology, temporology and other innovative legal technologies.

Thus, any peremptory norm of general international law (*jus cogens*) undoubtedly takes precedence over a dispositive provision of Ukrainian national law, regardless of the position in the hierarchy of sources of Ukrainian national law assigned by the legislator to the source of international law containing the peremptory norms. The example of the Russian constitution proves that it is technically possible to enshrine even international crimes at the highest national level, which is absolutely impossible in a value-based (axiological) approach. Therefore, if the content of any international human rights treaty signed by Ukraine includes a list of human and civil rights and liberties not recognised by the Constitution of Ukraine, such a treaty is substantively (rather than formally) equal to the level of the Constitution of Ukraine itself, since it acts as a supplement thereto.

Of course, the mere presence of a reference does not preclude the possibility of parallel transformation of international law norms into Ukrainian national legislation. This is especially true for the provisions of so-called non-self-executing treaties, which, by mere reference, do not result in actual implementation and require additional implementation through lawmaking and/or judicial interpretation. Still, even in the case of self-executing treaties, there is frequently a demand for additional transformation in the form of optimising the technically complex rules of international law to the specifics of a national legal system. The presence of a reference in this case

serves as an additional guarantee of faithful implementation of the treaty, whose provisions may have been deliberately or accidentally altered by the national legislator during transformation through complete or partial distortion.

Interestingly, Para 6(2) of the PHSCU Resolution No. 13, dated December 19, 2014, refers to the authentic text of Ukraine's treaties in force, even those not officially published in Ukraine, whereas Para 14(3) of the same resolution states that international human rights treaties have direct effect. To us, this is a good example of judicial awareness, aimed at establishing an effective national legal mechanism for the implementation of Ukraine's international obligations.

Yet we cannot fully agree with the exception outlined in Para 7(2) of the PHSCU Resolution No. 13 December 19, 2014, which states that "in accordance with Art. 57(2) of the Constitution of Ukraine, treaties of Ukraine that define the rights and duties of citizens may only be applied by courts if they have been officially published, i.e., brought to the notice of the population in the manner established by law". If we only consider the duties of Ukrainian citizens, this is indisputable. However, the rights of citizens protected by treaties in force that have not been published due to the state's fault are threatened precisely because of the state's improper behaviour, which then refers to its own delinquency as proof of the lack of citizens' rights, subsequently refusing to protect them in court. Moreover, a literal reading of Art. 57 of the Constitution of Ukraine suggests that these restrictions apply only to the rights of Ukrainian citizens and do not affect the rights of foreigners. In other words, foreign citizens or stateless persons are entitled to defend their rights in Ukrainian courts, protected by a treaty of Ukraine that has not been published in Ukraine, while Ukrainian citizens are deprived of this opportunity.

It appears that, in this case, the formal legal approach must be supplemented by the application of the substantive legal approach, utilizing the methodologies of legal axiology and personology. It should be recalled that the principle of the rule of law, apart from its formal aspect as reflected in the principle of legality with the recognition of the supremacy of the Constitution of Ukraine as the Fundamental Law relative to all other sources of national law, also possesses a substantive (value-based) dimension, where human rights are given priority regardless of their formal enshrinement. As S.V. Shevchuk notes, "The substantive (organic) characteristic of the principle of the rule of law is not limited to the formal provisions of legislation and evaluates legal norms and practices in terms of their compliance with value-based and moral criteria, as well as human rights and fundamental freedoms" [114, p. 17].

Conclusions

The study's findings on the theoretical, methodological, and practical aspects of the relationship between international law and domestic law in Ukraine enable us to formulate several key conclusions.

First, a fundamental methodological problem in domestic research is mixing up levels of legal abstraction and confusing the formal and substantive legal characteristics of implementation mechanisms. This problem can be overcome by applying the methodology of legal systemology and legal morphology. The application of these methodologies will enable us to optimise the classification of methods of national legal implementation, reducing them to two main types: transformation and reference. Transformation should be distinguished by the degree of change in content: repetition (almost verbatim reproduction), optimisation, and distortion.

Second, the issue of the direct effect of international law norms arises exclusively in relation to reference. From the standpoint of legal morphology, provisions of international law function indirectly even in this case, utilising the opportunities provided by the source of national law that contains the reference norm. The national legal form serves as the primary framework, defining the limits of the international legal subform's functioning within the domestic legal system. At the same time, thanks to the methodology of legal temporology, it has been established that reference ensures synchrony, while transformation creates a lag between the national legal system and its international counterpart.

Third, the existing dualistic/monistic dichotomy does not reflect the complex practice of interaction between legal systems. We propose to go beyond its limits by developing a synergistic legal worldview that recognises the unity of legal reality but allows for the relative independence of international and domestic legal systems that interact to achieve common goals.

Fourth, domestic legislation implements treaties mainly through references, clearly defining the position of treaties among the sources of national law. Yet legal axiology and personology require the substantive priority of the peremptory norms of general international law (*jus cogens*) and human rights over the dispositive norms of national law, regardless of their formal position in the hierarchy of sources.

Fifth, it is necessary to identify the most complex theoretical and methodological problems of implementation law that are common to all branches of both domestic and international legal studies, and to initiate a substantive discussion on this matter at the national level.

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