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THE SOCIAL NATURE OF INTERNATIONAL LEGAL COOPERATION

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Abstract

At the earliest stages of their development, States interacted with each other. In the modern world, States cooperate in the search for criminals, judicial and probate cases. International legal cooperation has gradually become an integral part of the States' foreign policy. When determining the direction of international cooperation, States are guided primarily by their national interests. The national interest of the state in implementing legal cooperation with other actors is manifested in the effective functioning of the judicial system and law enforcement agencies, the protection of property and family rights of its citizens. There is a lack of doctrinal development of issues of international legal cooperation, confusion with the concept of "mutual legal assistance". For many centuries, States have been implementing legal cooperation, but the social nature of this phenomenon has not yet been studied. The article examines the work of political scientists, international analysts, and lawyers. The article presents the social nature of international legal cooperation in the form of a three-dimensional spatial model of social relations that are formed: 1) when States interact in creating a model of future legal cooperation by fixing it in an international Treaty; 2) in the national legal space when justice institutions provide mutual legal assistance at the request of foreign States; 3) in the jurisdiction of a foreign state, the justice institution of which initiated the request for legal assistance.

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1. Introduction

As the practice of international cooperation shows, the main actors in this sphere of relations-States, cooperating and competing with each other, conclude international agreements and form alliances (providing for mutual coordination of political lines and representing a common interest), are guided primarily by their national interests. Analyzing interstate relations in General from the point of view of the theory of "political realism", the American political scientist G. Morgenthau's fundamental research "Politics among Nations" uses the concept of "national interest expressed in terms of power" and insists on the need for comprehensive and objective analysis in the science of international relations (Morgenthau, 1955). Creating his theory during the Cold War, the researcher outlined a very similar reality to the modern world, when in the process of disintegration, between States divided, into blocks and unions, there is a constant struggle for power and resources, and Nations strive to protect their physical, political and cultural identity in the face of external invasion (Duchina, 2013; Grigorieva, 2017).

Morgenthau's (1955) ideas about the national interest in international relations fit harmoniously into the system of views and ideas that justify the legal cooperation of States.

Neshataeva (2007) expresses the opinion that in the pan-European religious and cultural sphere, the law of almost all the European States was formed, including Christianity with its respect for a free, decent and responsible person; everyday traditions based on a monogamous family with the protection of its weak members-children and the elderly; the political structure of European States, preferring democratic forms of government and an economic structure based on the search for balance in the development of free market institutions and the protection of private property, the individual; cultural pluralism and freedom.

Note that the national interest is interpreted in modern literature as the awareness of the state authorities of the urgent needs to ensure national security and conditions for self-preservation and strengthening of the state and society, combining in this concept both foreign and domestic political aspects (Haas, 1958).

At any historical stage, the existence of opposing interests among different States and, as a result, conflicts between them was clearly shown. At the same time, States and their interests are not only inextricably linked, but also determined by external and internal challenges. In an effort to eliminate the possibility of armed violence and strengthen their positions, States begin a joint search for the possibility of realizing common interests, that is, they choose dialogue and international cooperation. Morgenthau (1955) emphasized that the existence of opposing interests and the conflicts they generate can be minimized "through a balance of interests, which, however, is always temporary".

Interests change depending on historical conditions. G. Morgenthau agrees with M. Weber that interests (material and ideal), and not ideas, determine the type of social action. At the same time, all types of interests that determine interstate relations arise in a specific historical period, within specific historical conditions.

2. Problem Statement

Thus, international cooperation for the sake of achieving their own interest, which has developed in specific historical conditions, involves joint actions (interaction) of stakeholders to coordinate positions, resolve common problems, and adopt and implement mutually acceptable solutions. A striking example of this is the economic cooperation between the USSR and Japan in the 30s of the XX century, which was not interrupted even during the military clashes between the two States on lake Hasan and the Khalkhin-Gol river. No less significant in this regard should be considered close cooperation in the military-technical sphere with Nazi Germany in the same 1930s. Accordingly, the goal of such cooperation is always to "get rid" of its extreme, crisis forms of open international conflicts. Both inter-state conflicts and cooperation most clearly characterize inter-state relations, which in General can be defined as a continuing state or process.

Modern scientists are exploring a variety of legal issues on international cooperation. Australian scientist Adams (2019) compared various models of international cooperation of space States. The scientist, having studied the legal basis of this kind of international cooperation, developed a number of recommendations for its improvement.

Hert and Kopcheva (2011) consider issues of international cooperation in cases involving the establishment of jurisdiction for Internet services by Belgian courts, as well as the role that mutual legal assistance procedures should play.

James and Gladyshev (2016) investigate international cooperation in the field of digital investigations, methods for exchanging digital evidence and requesting it. The authors draw attention to the practical problems of sending requests for mutual legal assistance related to digital evidence.

Accordingly, the basic features of the concept of "international cooperation" should be considered peaceful interaction of States and "joint search for ways to implement common interests". However, the apparent unambiguity of this concept has led to the fact that few researchers have tried to give it a clear definition, as well as to understand its social nature.

3. Research Questions

It should be noted that international legal cooperation of the Russian state took place at every stage of the development of law and the state, as evidenced by ancient legal monuments from the 10th century. During the Soviet period, international legal cooperation in criminal, civil and family matters was actively developed since the 1950s. Modern Russia became the legal successor of the Soviet Union under international obligations, and International legal cooperation became a common practice of courts, investigative bodies, notaries and lawyers.

The essence of the concept of "international cooperation" was most fully revealed by the French-Canadian political scientist Derriennic (1977) who noted that two actors are in a state of cooperation when each of them can be satisfied only if the other is satisfied, i.e. when each of them can achieve its goal only when the other can achieve it. The result of a purely cooperative relationship may be a situation in which either both actors are satisfied, or neither is satisfied.

The proposed definition sufficiently fully and clearly reveals the essence of international cooperation in General, so it can be used as a basis for further research on the social nature of international legal cooperation.

As evidenced by the historical process, interstate cooperation can be multilateral and bilateral, is enshrined in international treaties and agreements on the broadest subject of regulation, and involves the coordination of the parties' efforts to achieve their goals and objectives. Thus, speaking about the cooperation of subjects of international law on humanitarian issues, Shugurov (2015) considers the international legal regulation of cooperation as a "system of individual and collective actions", which in their success and effectiveness depends on the degree of coherence of these actions. He emphasizes that this cooperation can in no way be a policy of imposing the institution of human rights on other subjects of international law by some subjects of international law.

Of particular importance in this context are issues of political integration, which is inextricably linked with economic integration. The complexity of the process of international political integration from the position of "functionalism" was noted by the English scientist Mitrany (1943), who pointed out in his article "Peace and functional development of an international organization" that any preliminary model of political integration is untenable due to the fact that States see it as a threat to their sovereignty.

Back in 1943, this author drew attention to the greater effectiveness of cooperation between States in comparison with the regulatory role of international organizations. In his opinion, no international organization can guarantee peace or overcome state sovereignty. In order to maintain peace after the Second World War, it is first necessary to develop cooperation between States in a wide range of areas (economy, science, social security, etc.) and at the next stage to create global international institutions that would have power over the state, "supranational". It is the advantages and benefits of interstate cooperation that will contribute to the creation of supranational international institutions that will subsequently implement political cooperation (Zigankov, 1994).

Thus, in the second half of the twentieth century, the cooperation of the "people's democracy" countries led to the creation of the Council of Mutual Economic Assistance (COMECON) – a supranational body designed to coordinate their economic cooperation. At the same time, the main focus was placed on confrontation and rivalry with the United States of America.

Representatives of "neofunctionalism" Haas (1958) put forward the theory that the need for States to cooperate in one or another direction (economic, scientific, cultural or legal) should cause a chain reaction in other areas. This, in turn, will lead to the need to create and operate specialized international organizations to regulate such cooperation. At the same time, States are not required to give up their interests and policies, they are United by common interests and needs.

Milner (1992) offered his vision of the essence of interstate cooperation. In his view, some States build their policies and actions based on the perceived needs of other States through mutual coordination. By helping the "other actor", the state expects to achieve its interests.

To date, Russian and foreign science has generally developed an approach and understanding of such a category as "interstate cooperation" (Suzdalova et al., 2017). Scientists agree that mutual cooperation of States includes the following components: common goals and objectives of the contracting parties, their achievement of mutual benefits and interests, which make it possible to distinguish it from unilateral actions, conflict and other States of interstate relations.

Often the concepts of "international legal cooperation" and "mutual legal assistance" are used as synonyms. It is difficult to agree with this. Mutual legal assistance can be provided by judicial institutions on the basis of an international agreement (a bilateral agreement on legal assistance or the Hague Convention). But not all states of the world are bound by an international treaty on mutual legal assistance. International legal cooperation should be considered more broadly than mutual legal assistance. It is carried out in cases when States are not bound by a treaty on mutual legal assistance, diplomatic relations between States have not been established or have been temporarily terminated. There are such examples in history. Their formation took place in a progressive way, depending on many factors that took place at specific historical stages, including the tasks facing the international community, the attitude of the state and the world community to the problem of protecting human rights and freedoms, the state of international relations, foreign and domestic political tasks of the state, etc.

The development of international legal cooperation implies a high degree of trust and respect for the jurisdiction of a foreign state, providing legal assistance to foreign jurisdictions in resolving legal conflicts. It is no accident that one of the first forms of international legal cooperation in civil cases was established in the civil code of the RSFSR in 1923: a) proving in courts documents issued abroad, b) the application of foreign law by courts and the execution of foreign court decisions on the territory of the RSFSR. At the end of the Second World War, issues of international legal cooperation became particularly relevant, which was due to the movement of huge masses of the population across the territories of European States during the war. In modern Europe, active migration processes also encourage countries to actively cooperate on legal issues (in particular, civil, family, administrative and criminal cases).

The social nature of international legal cooperation should be considered not only from the point of view of doctrine and legislation but also from the point of view of the development of international relations and international law, diplomatic relations with specific countries against the background of public relations taking place in our state, as well as law enforcement practice.

International cooperation, as a process of peaceful interaction of actors in order to coordinate and implement mutual interests, usually goes through three classic stages: negotiations, where mutually beneficial decisions are made; development and adoption of relevant acts, which reflect the decisions made and determine the ways to implement them, and directly, the implementation of the decisions made. International cooperation can only be limited to negotiations if the parties are unable to work out mutually beneficial solutions. For example, this was the case with the draft multilateral Convention of the socialist countries on legal assistance in civil, family and criminal matters at the turn of the 1960s and 70s. Historical experience shows that international legal cooperation is often much more fruitful than political cooperation.

The social nature of international legal cooperation presupposes a complex set of relations that developed during the development and adoption of its international legal and legislative sources, during its initiation and implementation, the formation of a system of competent state bodies, etc., which can be represented as a three-dimensional spatial model of legal relations, due to the interaction of its subjects, reflecting the purpose and essential features of such cooperation.

The spatial model of this kind of public relations can be represented as a whole, a system of diverse public relations, the legal regulation of which, based on the state-territorial principle, is simultaneously subject to regulation by various jurisdictions - international, national, and foreign.

A large group of relations developing in the sphere of legal cooperation with foreign countries is included in the global legal space – international legal space. The relations that have developed in the international legal space as a result of the implementation of international legal norms are aimed at creating a model of future cooperation by its subjects-States and international organizations – by fixing it in an international Treaty.

For subjects of international law - States and international organizations-the principles of international law give rise to certain rights and obligations. Thus, the principle of cooperation of States enshrined in the UN Charter obliges them to maintain contacts and interact on important issues. Based on these provisions of the UN Charter, States should cooperate in providing legal assistance to protect civil and family rights of citizens.

Another group is relations that develop in the national legal space (constitutional, administrative, civil procedure, etc.), in which the competent state bodies, in order to implement such cooperation, carry out law-making and law enforcement activities (for example, the initiation by courts and other jurisdictional bodies of international legal assistance in the consideration and resolution of civil or criminal cases; the execution of relevant orders from foreign courts; the movement of such orders between competent authorities, etc.).

The third group consists of those relations that are formed in the domestic legal space of foreign countries, connected with the initiator state by mutual obligations for cooperation in this sphere, also aimed at its implementation (Davis et al., 2017).

4. Purpose of the Study

The purpose of the research is to identify and substantiate the social nature of international legal cooperation through the prism of public relations, which are formed in the process of interaction between the judicial authorities of the cooperating States. The concept of "international cooperation" as a political and legal phenomenon is taken as a basis.

5. Research Methods

The article is based on the analysis of the literature of political science, international Analytics, and international law. The historical method, the method of comparative law, and the method of formal logic were used.

6. Findings

The conducted research allowed us to identify and justify the social nature of international legal cooperation as one of the directions of international cooperation of States as a whole.

7. Conclusion

So, the three-dimensional spatial model of relations taking place in the sphere of international legal cooperation is due to the multidimensional and complex nature of such legal relations, which covered not only various branches of national law (private and public) and the rights of foreign partner countries, but also international law (Rebrina & Shamne, 2020).

The activity of any state is manifested through the bodies created by it. With regard to international legal cooperation, States designate Central competent authorities with the authority to further carry out relations in this area (for example, the Prosecutor General's office, the Ministry of Justice, the Supreme courts, etc.).

Legal cooperation with foreign States is multidimensional in its content. The presence of branch types of legal proceedings allows us to speak about international legal cooperation in civil, arbitration and criminal cases. The various tasks of judicial and non-judicial bodies (civil registry offices, guardianship and guardianship, notaries) explain the existence of international legal cooperation in the judicial and administrative spheres, respectively.

Thus, the social nature of international legal cooperation can be considered through the system of social relations that have developed in this sphere and is presented as a three-dimensional spatial model of such relations, determined by the interaction of its subjects, reflecting the purpose and essential features:

- social relations that were formed in the international legal space as a result of the implementation of international legal norms, which were aimed at creating a model of future legal cooperation by its subjects – States and international organizations, by fixing it in an international Treaty;
- public relations existing in the national legal space (constitutional, administrative, civil procedure, etc.), within which the competent state bodies for the purpose of implementing such cooperation carried out law-making and law enforcement activities;
- public relations that were formed in the domestic legal space of foreign countries, connected with the initiator state by mutual obligations for legal cooperation.

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