Международное право

International law

UDC 341

INTERNATIONAL LAW COMMISSION'S EFFORTS IN IDENTIFYING GENERAL PRINCIPLES OF LAW: REGIONAL PERSPECTIVES

T. N. MIKHALIOVA[a, b]

[a]*Belarusian State University, 4 Niezaliezhnasci Avenue, Minsk 220030, Belarus*
[b]*People's Friendship University of Russia named after Patrice Lumumba, 6 Miklukho-Maklaya Street, Moscow 117198, Russia*

The general principles of law, as outlined in Art. 38 of the Statute of the International Court of Justice, are a source of international law. Nevertheless, their precise scope and significance have been widely debated within legal doctrine and their application varies in practice. The recent endeavours of the International Law Commission have, in fact, raised more questions than they have answered. One contentious issue within the International Law Comission reports pertains to whether the commission's work is adequately representative of all regions to enable the formulation of primary approaches to general principles. This article offers an overview of the Court of Eurasian Economic Union practices concerning the application and identification of common legal principles within the Eurasian integration system.

Keywords: Court of the Eurasian Economic Union; general principles of law; international law; UN International Law Commission; International Court of Justice; regional integration; sources of international law.

Образец цитирования:
Михалёва ТН. О работе Комиссии международного права ООН над темой общих принципов права и региональными тенденциями их выявления. *Журнал Белорусского государственного университета. Международные отношения*. 2023;2:47–54 (на англ.).
EDN: BZTCIU

For citation:
Mikhaliova TN. International Law Commission's efforts in identifying general principles of law: regional perspectives. *Journal of the Belarusian State University. International Relations*. 2023;2:47–54.
EDN: BZTCIU

Автор:
Татьяна Николаевна Михалёва – кандидат юридических наук, доцент; доцент кафедры евразийских исследований факультета международных отношений[1)], доцент кафедры гражданского права и процесса и международного частного права юридического института[2)].

Author:
Tatsiana N. Mikhaliova, PhD (law), docent; associate professor at the department of the Eurasian studies, faculty of international relations[a], and associate professor at the department of civil law and procedure and international private law, Law Institute[b].
mikhaliovat@bsu.by
https://orcid.org/0000-0002-3729-7624

Журнал Белорусского государственного университета. Международные отношения. 2023;2:47–54
Journal of the Belarusian State University. International Relations. 2023;2:47–54

О РАБОТЕ КОМИССИИ МЕЖДУНАРОДНОГО ПРАВА ООН НАД ТЕМОЙ ОБЩИХ ПРИНЦИПОВ ПРАВА И РЕГИОНАЛЬНЫМИ ТЕНДЕНЦИЯМИ ИХ ВЫЯВЛЕНИЯ

Т. Н. МИХАЛЁВА[1), 2)]

[1)]*Белорусский государственный университет, пр. Независимости, 4, 220030, г. Минск, Беларусь*
[2)]*Российский университет дружбы народов им. Патриса Лумумбы, ул. Миклухо-Маклая, 6, 117198, г. Москва, Россия*

Общие принципы права являются одним из источников международного права, названных в ст. 38 Статута Международного суда ООН. Однако значение этого источника права широко обсуждается в доктрине, и существует различная практика применения общих принципов права. Недавняя работа Комиссии международного права ООН в этой сфере вызывает много вопросов. Одним из спорных моментов в отчетах Комиссии международного права ООН является то, достаточно ли репрезентативна работа комиссии, в том числе по всем регионам, для того, чтобы сформулировать основные подходы к общим принципам права. Представлен обзор практики Суда Евразийского экономического союза по применению и выявлению принципов права, общих для евразийской интеграционной системы.

Ключевые слова: Суд Евразийского экономического союза; общие принципы права; международное право; Комиссия международного права ООН; Международный суд ООН; региональная интеграция; источники международного права.

Introduction

General principles of law are referred to as sources of international law in para 1(c) of Art. 38 of the Statute of the International Court of Justice[1]. However, unlike treaties and customs, the standards and procedures for identifying these sources are not uniform in doctrine, practice or norm. Currently, the International Law Commission (ILC) is working on draft articles pertaining to general principles of law[2]. The results contain a great deal of elaboration on doctrine and empirical matters but seem to lack the necessary scope and regional representation to accurately reflect the regional context in which general principles of law are developed and applied. A closer analysis of the differences in the transposition of the principles, such as by borrowing from national legal systems based on similarities, indicates that transposition is most effective when it entails examining all regional approaches at the same time. Furthermore, a thorough analysis of these regional strategies points to the need to supplement national and international principles of law with a new class of general principles of law – those unique to regional legal systems.

The scope and meaning of general principles in public international law: from H. Lauterpaht to the ILC's current endeavours

Renowned legal scholar H. Lauterpacht highlighted the importance of general principles of law in the international legal system in 1927, referring to them as having "system-forming" properties [1, p. 74]. General principles of law were enshrined in the Statute of the Permanent Court of International Justice as early as 1929 and were subsequently embedded in Art. 38 of Statute of the International Court of Justice (ICJ) as one of the primary sources of law, alongside treaties and customs. Still, there has been ongoing discussion about the nature, purpose, and content of these principles [2–8].

In legal doctrine, the prevailing view – especially at present – is that general principles of law are binding but complementary to treaties and customs. Yu. S. Romashev argues that they are not a source of international law; rather, they are applicable law [2, p. 170]. Similarly, K. L. Chayka underscores that they form part of applicable law [3, p. 138]. From this perspective, these principles are significant for interpreting and understanding the law. Indeed, in their application, their role is focused on the interpretation and identification of the true content of norms, which, inter alia, maintains the integrativity of the law. Although the ICJ has only occasionally cited general principles as a source of law under Art. 38 of it's statute, there is a substantial body of case law citing general principles as a way to achieve a shared understanding of international legal norms. This source is particularly important for law enforcement, and specifically judicial enforcement, because, historically, general principles have been used to fill in legal gaps and for the consolidation of legal cases.

[1]Statute of the International Court of Justice [Electronic resource]. URL : https://www.icj-cij.org/statute (date of access: 23.10.2023).

[2]Analytical guide to the work of the International Law Commission [Electronic resource]. URL: https://legal.un.org/ilc/guide/1_15.shtml (date of access: 23.10.2023).

It is also of utmost importance to consider how these general principles correlate with the notion of fundamental principles of law. As argued by professor A. Kh. Abashidze, these principles are part of a broader framework of principles [4, p. 29]. We concur with this viewpoint. However, we disagree with K. L. Chayka's position that the general principles of law can be classed within generally recognised principles of law as a part of this larger domain [3, p. 140]. Generally recognised principles are a fully distinct phenomenon in international law, possessing the unique status of *jus cogens*, which denotes their special legal nature and primary legal force within the system of international law sources. In contrast, general principles of law do not hold the same status. As professor L. P. Anufrieva clarifies, general legal principles, basis principles, and generally recognised principles and norms of international law have recently been added to the previously mentioned list, which also included general principles of law, general principles of law recognised by civilised nations, and principles of general international law (Art. 11, para 1 of the UN Charter) in a particular field [9, p. 6]. For this reason, it is critical to define terms precisely to remove any potential for confusion, in addition to elaborating on the range and structure of the principles applied in international law. However, the purpose of this article is to examine the work of the ILC, so we use the terminology that it uses[3].

In any legal system, the principles of law hold a singular position. They represent the fundamental guiding precepts enshrined in law, characterising its essence and core regularities. Some legal professionals advocate for the consolidation of these principles of law into legal norms [4, p. 21]. Furthermore, in the realm of international law, norms may be referred to as principles owing to their more general and foundational nature. Regardless of the form in which it is enshrined, a principle of law constitutes a legal rule. In light of this conception of the fundamental nature of a principle as a source within a system of law, one may infer the following:

• a principle is the most potent part of everything (principium est potissima pars cuiusque rei);

• principle represents the highest level of legal expression *in abstracto* and possess a system-building character.

Principles are generally applied to address gaps in legal regulation in the absence of more specific norms [5, p. 365; 6, p. 560–561], or to interpret any norm, set of norms, legal regime, etc., in the name of integrativity and for the preservation of the legal system's unity [7, p. 97–98].

References to general principles of law can be found in numerous treaties made since the enactment of the statute. Their use is twofold: first, to establish the applicable law for courts and tribunals, and second, for determining substantive provisions. These general principles have found application in interstate arbitration and international judiciary, regional judicial bodies, and national courts [2, p. 153–154].

Still, the ICJ has regularly identified and relied on general principles, citing Art. 38 of the it's statute, even in the absence of uniform reference, label, or comparative analysis in many cases [9, p. 11]. The ICJ's reference to circumstantial evidence, as admitted in all systems of law and recognised by international decisions, was highlighted in the Corfu Channel case[4] shortly after the inception of the UN Charter. Moreover, the recognised principle that a judgment rendered by a judicial body is *res judicata* and has binding force for the parties to a dispute was underscored in the Administrative Tribunal case[5].

Therefore, despite being widely recognised and utilised per se, the principles' exact scope and grounds of application remain uncertain, as does their role in the system of legal sources. The UN ILC systematically works with various sources, including on formation, identification, and interpretation of the principles. Its endeavours led to the adoption of the 1969 Vienna convention on the law of treaties and the subsequent creation of several documents that further develop this area of law (Guide to practice on reservations to treaties, draft articles on the effects of armed conflicts on treaties, on the provisional application of treaties, etc.). In 2018, the UN General Assembly adopted a Resolution on the identification of customary international law that was founded on the UN ILC's conclusions. The ILC is currently drafting additional instruments, including non-binding international agreements, subsidiary means of determining international law, and general principles of law[6].

In 2017, the ILC included the matter of general principles of law in its work programme. In 2018, the commission appointed a special rapporteur, M. Vazquez-Bermudez, to address this topic. Following multiple working readings in 2023, the ILC approved a draft document comprising 11 conclusions and corresponding commentaries during its initial reading. In conformity with Art. 16–21 of it's statute, the commission resolved to transmit the draft, via the Secretary General, to governments for their comments and observations. Governments were requested to submit said comments and observations to the Secretary General

[3]Analytical guide to the work of the International Law Commission [Electronic resource]. URL: https://legal.un.org/ilc/guide/1_15.shtml (date of access: 23.10.2023).

[4]Judgment of 9 April 1949 [Electronic resource]. URL: https://www.icj-cij.org/node/103099 (date of access: 28.03.2023).

[5]Effect of awards of compensation made by the United Nations Administrative Tribunal advisory opinion of July 13th, 1954 [Electronic resource]. URL: https://www.icj-cij.org/sites/default/files/case-related/21/021-19540713-ADV-01-00-EN.pdf (date of access: 28.03.2023).

[6]International Law Commission [Electronic resource]. URL: https://legal.un.org/ilc/ (date of access: 24.03.2023).

by 1 December 2023[7]. The final version of the general principles draft is poised for adoption in 2024. This initiative has the potential to culminate in a comprehensive analysis and the establishment of an authoritative approach regarding the sources of law: their legal nature, identification and hierarchy. To what extent has this initiative succeeded thus far? Have the concerns of the juridical community regarding the legal nature of general principles and the clarity of their formation been adequately addressed?

Navigating the complexities of transposing general principles of law: a critique of the ILC's approach

The draft under discussion by the commission contains both positive and negative aspects, with some aspects being subject to further scrutiny. The replacement of the term "civilised nations" with the term "community of nations" in all authentic translations is a positive development and is widely supported[8].

However, the commentary to the initial draft of the conclusions on the general principles of law notes an omission: while the draft aims to clarify their relationship with other sources of law[9], it fails to address the relationship with generally recognised fundamental principles of international law. Although general principles of law may be attributed to a treaty or custom, their peremptory character and importance for the international legal order necessitates a clear statement in the draft document regarding the priority of generally recognised principles in international law, regardless of their method or time of emergence or identification. Furthermore, the document should also make reference to the position of *jus cogens* norms in the system of sources, drawing upon relevant acts and the work of the ILC.

Consistent with the established legal doctrine, the ILC has proposed a qualitative division of general principles of law into two categories: those derived from national legal systems and those derived from international law. To identify general principles of law that have been transposed into the international system from national legal systems, a two-step test is recommended for application. The first step is determining of the legal principle exists, essentially by comparative analysis of national legal systems. This process is more an information-gathering exercise than an in-depth review of the specific content of a principle. Additionally, the test should ascertain whether the principle is representative of various legal families and regions around the world.

The two-step test for determining the first category of principles, the "transposition" principles, acknowledges that the general principle of law identified through this analysis may not be identical to the principle found in various national legal systems[10].

This raises concern as it undermines the primary purpose of the process, which is to identify the precise content of a general legal principle. Such an approach poses significant risks to the fundamentals of a legal order, including stability, legal certainty, and justice. Effectively, this means that while different legal systems may meet the representation criterion of a principle *de jure*, in reality, the principle is interpreted in a way that does not represent the position of all legal systems. In other words, some legal approaches, interests, and traditions are still not given enough attention.

This discrepancy is particularly pronounced where different legal systems hold distinct views on legal categories and the role of courts or other bodies in legal relations. For example, differences in procedural approaches may arise due to variations in legal systems. Here are a few examples.

Example 1. All modern legal systems have measures in place to prevent competition between states in legal proceedings. One mechanism is the principle of *lis pendens*, which aims to avoid parallel proceedings by different courts or arbitrations on the same claims. The conditions for applying the *lis pendens* principle are the same claims, the same parties, the commencement of proceedings in one court before another, and the sequence of filing a claim and initiating a case. However, these conditions are interpreted differently in different legal systems, with the potential to decrease the effectiveness of *lis pendens* and lead to its dysfunctional use [10]. For instance, different legal systems have varying approaches to defining the identity of claims in parallel proceedings, which may be determined by the basis or subject matter of the claim, as well as by its object. The coincidence of the parties to the proceedings is also not an absolute condition, as the parties may change their procedural position in parallel proceedings. Additionally, the timing of commencing proceedings does not align across different legal systems.

Example 2. The principle of *Jura novit curia* (the court knows the laws) is interpreted and applied differently in common law and continental legal systems [11].

[7]Seventy-fourth session (2023) [Electronic resource]. URL: https://legal.un.org/ilc/sessions/74/index.shtml#a2 (date of access: 28.03.2023).

[8]Analytical guide to the work of the International Law Commission [Electronic resource]. URL: https://legal.un.org/ilc/guide/1_15.shtml (date of access: 23.10.2023).

[9]Chapter IV. General principles of law [Electronic resource]. URL: https://legal.un.org/ilc/reports/2023/english/chp4.pdf (date of access: 08.10.2023).

[10]Ibid.

There are many other examples of discrepancies, not related exclusively to procedural issues. These examples are presented to illustrate that even at the practical level of law enforcement, differences exist. As a solution, it is proposed to categorise such principles as either international legal principles, with appropriate rules to identify their content, or to recognise that such principles, despite their formal presence in most legal systems, are not general principles of law as defined in Art. 38 of the ICJ Statute.

Principles at the highest degree of abstraction, involving ethical, moral, and political layers, will be more difficult to "generalise" in this way. It is acknowledged that both the principle of humanity and the principle of equity exist as general principles in all legal systems. However, transposing these principles is inappropriate for several reasons. Firstly, approaches to the content of internal elements may vary, and, secondly, these principles fall within the domain of principles generated by the international legal system. When determining the existence of general principles derived from national legal systems or the international legal system, it is advisable to elucidate their content based on the authentic content generated in international law.

Towards jus inter regiones: a call for comprehensive representation of legal models in international law

Paragraph 2 of draft conclusion 5 emphasises the importance of conducting a broad and representative comparative analysis encompassing different "regions of the world"[11]. The commentary to this paragraph clarifies that the term "regions of the world" pertains not only to different legal families but specifically to diverse geographical areas. We fully endorse this stance and the corresponding clarification. Importantly, however, the draft itself does not adequately address the various legal models within different regions. While it primarily focuses on the European Union, the European Court of Human Rights, and the practice of implementing the Inter-American convention on human rights, it fails to sufficiently consider the legal practices within other regional associations (including the CIS or EAEU, in which holds membership), despite the richness of their experience regarding the application and identification of general principles of law. Examples include *non bis in idem*, procedural equality of parties in horizontal legal relations, protection of the weaker party in vertical legal relations, estoppel, res judicata, and legal certainty, among others [12; 13].

In our view, enhancing the diversity of approaches and promoting equality and solidarity within a multiregional context is essential for advancing international law. The interregional character of international law, or *jus inter regiones*, does not alter the fundamental notion of the sovereign equality of states as primary subjects of international law. However, it can facilitate security and sustainable development by formulating common value-legal concepts at the regional level and integrating them into a universal framework.

A more in-depth examination of regional and, specifically, Eurasian approaches reveals the emergence of a distinct category alongside national and international legal principles – the general principles of law of regional legal systems as independent systems of law.

Our analysis identifies three methods for establishing such principles, which are often interconnected and mutually reinforcing:

1) transposition from the national legal systems of principles applicable within all member states;

2) transposition from the international legal system;

3) identification of authentic regional principles specifically enshrined as principles of regional law.

In this context, the role of the Court of Eurasian Economic Union (hereinafter EAEU Court) cannot be overstated. At present, this judicial body provides a regional perspective on such principles, shedding light on the fundamental principles of justice administered within this region.

General principles in the case law of the EAEU Court

The principles of regional integration law may be derived or transposed from the international legal system. In this regard, the universally recognised principles and norms as referred to in para 50 of the Statute of the EAEU Court (Annex 2 to the Treaty on the Eurasian Economic Union)[12] include fundamental principles such as sovereign equality, non-interference in internal affairs, and *pacta sunt servanda,* and also universally recognised norms applicable to interpretation in international law. These principles and norms are regularly cited by the EAEU Court in its advisory opinions [14].

Interpreting this category broadly can enhance the effectiveness of integration law and is consistent with general legal canons and legal logic. The legal basis for the application of such principles in the administration of justice is directly provided by the norms of the statute, and the task is to consistently elucidate the content of each principle or generally recognised norm.

[11]Chapter IV. General principles of law [Electronic resource]. URL: https://legal.un.org/ilc/reports/2023/english/chp4.pdf (date of access: 08.10.2023).

[12]Treaty on the Eurasian Economic Union [Electronic resource]. URL: https://www.wto.org/english/thewto_e/acc_e/kaz_e/wtackaz85_leg_1.pdf (date of access: 24.10.2023).

One example of this is the principle of sovereign equality, embedded in various provisions ranging from the preamble to specific sectoral clauses. Nonetheless, the EAEU Court's practice has given it a more specific expression, shifting from an abstract principle to a norm of sector-specific regulation. An instance of this can be found in the advisory opinion of the Adilov case on 11 December 2017, where the EAEU Court cited the principle of sovereign equality of states as a universally recognised principle of international law[13]. By applying this principle, the EAEU Court emphasised the principle of equal representation of member states in the selection of candidates for positions within the EAEU Commission's bodies.

Additionally, the EAEU Court's jurisprudence frequently makes reference to universally recognised norms as procedural-legal maxims. For instance, in the judgment of the Tarasik case on 28 December 2015, the principle *ne eat iudex ultra petit a partium* was invoked[14], allowing the court to establish the boundaries of the proceedings and disregard arguments supporting claims that were not admitted to the proceedings.

The legal principle of *non bis in idem*, also deriving the norms, maxims and practice of international law, was central to the *non bis in idem case*, where it underwent thorough development through the court's interpretation. In its advisory opinion dated September 2017, the court employed dual rationale to establish the applicability of this principle to legal relations within the union, both as an international legal principle and as a constitutionally guaranteed right and freedom in the member states[15].

The EAEU Court has yet to compile a comprehensive list of human rights principles transposed from national legal systems. In doing so, it faces one critical task. Considering the general message articulated in the preamble of the treaty of the union, which emphasises the imperative of unwavering adherence to the supremacy of constitutional human rights and freedoms, and that this provision serves as a mandatory condition for the application of the principle of the precedence of union law, the Court will be required to ascertain the shared principles among the legal systems of the member states and ensure a consistent and precise comprehension of rights and freedoms by all states. Hence, the EAEU Court is expected to have a substantial amount of dedicated work in this area in the future, along with the constitutional courts and comparable bodies in the member states.

Remarkably, the principle of non-discrimination has emerged as a key element of the EAEU legal framework, particularly in human rights issues such as the professional athletes case and various labour-law disputes[16]. This principle not only emanates from the provisions of the treaty and other union acts but also serves as a general principle of law with direct integration. It is utilised to regulate non-tariff measures (Art. 46) and the financial markets (Art. 70), ensuring equal treatment for economic entities across the member states in energy resource markets (Art. 79) and industrial policy (Art. 92) among other provisions. Ultimately, it serves as a consistent theme embedded throughout the treaty[17].

The general principles of law shared by all the member states in a group of countries can also come from international law, and likewise, the principles of law in an integration association can come from union law, and reflect the values that are important to all the countries in the union. Accordingly, the court does not exceed its powers as prescribed in para 102 of it's statute, nor does it annul or modify existing norms of union law or enact new norms. Instead, it identifies instances where legal principles manifest within union law, crystallising norms that are not merely rules for specific legal relationships but also embody the character of a principle.

In this context, the court may rely on general principles of law both for interpretation and as a source of law.

However, for the establishment and applicability of these principles, it is essential to demonstrate two elements (the two-tier test): the manifestation of such a principle in existing norms of union law agreed upon by the states, and the applicability of the principle to any legal relationship regardless of the subject matter. Additionally, a supportive criterion for identifying the meaning of the norm is the use or recognition of such a principle in the legal systems of the member states.

Therefore, while the court can and should refer to general principles of union law as a source, it is important to note that the court does not create but rather identifies such principles. Moreover, there are established principles that serve as a widely accepted benchmark for evaluating the legality of actions or omissions [12; 13].

[13]P-5/17: Adilov case [Electronic resource]. URL: https://courteurasian.org/court_cases/eaeu/P-5.17/ (date of access 23.10.2023) (in Russ.).

[14]C-4/15: Tarasik case [Electronic resource]. URL: https://courteurasian.org/court_cases/eaeu/C-4.15/ (date of access 24.10.2023) (in Russ.).

[15]P-1/19: NPP "Atameken" case (non bis in idem) [Electronic resource]. URL : https://courteurasian.org/court_cases/eaeu/P-1.19/ (date of access 24.10.2023) (in Russ.) ; P-3/18: on professional athletes [Electronic resource]. URL: https://courteurasian.org/court_cases/eaeu/P-3.18/ (date of access: 24.10.2023) (in Russ.).

[16]P-3/18: on professional athletes [Electronic resource]. URL: https://courteurasian.org/court_cases/eaeu/P-3.18/ (date of access: 24.10.2023) (in Russ.) ; P-5/17: Adilov case [Electronic resource]. URL: https://courteurasian.org/court_cases/eaeu/P-5.17/ (date of access 23.10.2023) (in Russ.).

[17]Treaty on the Eurasian Economic Union [Electronic resource]. URL: https://www.wto.org/english/thewto_e/acc_e/kaz_e/wtackaz85_leg_1.pdf (date of access: 24.10.2023).

Violation of these principles can serve as a standalone ground for recognising a decision as inconsistent with the higher norms of the union. Notably, the principle of legal certainty has been pivotal in EAEU Court practice [12]. The panel's decision in the Sevlad case, advisory opinion in the Declaration of cash case[18], advisory opinion in the case of vertical agreements[19], and judgments in the "Dominantapharm" case, ratiopharm Kazakhstan case[20], and JSC "Alfa-Medica" case[21] all refer to it. The multitude of judicial acts and the application of this principle to various situations have enabled the identification and formulation of clear criteria for compliance with union law based on legal certainty, encompassing accuracy, unambiguity, and impossibility of alternative interpretations.

The term "general principle of union law" was initially employed by the EAEU Court in the 2021 advisory opinion in the public procurement case[22] concerning the principle of proportionality [15]. However, it had been previously invoked in earlier cases. The court emphasised, in various instances, that limitations on mutual trade in goods must not constitute arbitrary discrimination or covert restrictions on trade, and should align with the principle of proportionality (para 7 of the advisory opinion of 30 October 2017[23]). In the case of professional athletes, the EAEU Court, in its practice, illustrates instances of applying the principle of proportionality to safeguard not only economic integration but also fundamental human rights and freedoms[24]. For instance, in the advisory opinion of 15 October 2018 (declaration of cash case), the EAEU Court underscored the need to adhere to the principle of proportionality[25] when deciding whether to subject an individual to administrative or criminal liability in case of identified violations of the procedure for the movement of cash and (or) traveller's checks.

Conclusions

Henceforth, it is evident that both the identification and application facets hold significance within the court's purview. The court will persist and, to some extent, amplify both the identification and justification of its regional general principles of law. This endeavour is crucial for the consolidation and construction of the legal framework of the union, as well as for projecting the regional agenda onto the international stage, thereby fortifying the positions of the member states and the EAEU as subject of international law. A two-step test is suggested for this purpose, involving an evaluation of whether these principles are implemented within the union's law (special norms) and if they apply to legal relations irrespective of the subject matter.

The Draft on the general principles within the UN ILC will attain greater reliability and precision, aligning with the principles of legal certainty and equity, if it undergoes comprehensive amendments informed by the practices and legal values of various regions, including the EAEU. Moreover, a more cohesive system of sources with a clearly defined legal nature should be proposed, accompanied by specific examples illustrating the methodology for transposing these principles.

Библиографические ссылки

1. Lauterpacht H. *The Function of law in the international community*. Oxford: Oxford University Press; 2011. 477 p.
2. Ромашев ЮС. Общие принципы права в системе международного права. *Право. Журнал Высшей школы экономики*. 2021;3:148–174. DOI: 10.17323/2072-8166.2021.3.148.174.
3. Чайка КЛ. Международно-правовые подходы в практике Суда Евразйсокго экономического союза. *Журнал российского права*. 2018;11:138–151. DOI: 10.12737/art_2018_11_14.
4. Абашидзе АХ. Принципы международного права: проблемы понятийно-содержательного характера. *Московский журнал международного права*. 2017;4:19–30. DOI: 10.24833/0869-0049-2017-4-19-30.
5. Koskenniemi M. General principles: reflexions on constructivist thinking in international law. In: Koskeniemi M, editor. *Sources of international law*. London: Routledge; 2000. p. 359–402.

[18]C-5/15: LLC "Sevlad" case [Electronic resource]. URL: https://courteurasian.org/court_cases/eaeu/C-5.15/ (date of access 23.10.2023) (in Russ.).
[19]P-4/18: on criteria of transboundary markets [Electronic resource]. URL: https://courteurasian.org/court_cases/eaeu/P-4.18/ (date of access 24.10.2023) (in Russ.).
[20]C-2/21: ALC "Dominantafarm" case [Electronic resource]. URL: https://courteurasian.org/court_cases/eaeu/C-2.21/ (date of access: 24.10.2023) (in Russ.).
[21]C-5/23: JSC "Alfa-Medika", LLC "SiEsMedika", LLC "FirmaKosultingKommercia" case [Electronic resource]. URL: https://courteurasian.org/court_cases/eaeu/%D0%A1-5.23/ (date of access: 22.11.2023) (in Russ).
[22]P-3/20: on exemptions on the sphere of public procurement [Electronic resource]. URL: https://courteurasian.org/court_cases/eaeu/P-3.20/ (date of access: 22.11.2023) (in Russ.).
[23]P-3/17: on application of the provisions of the para 1 Art. 29 of the Treaty on the EAEU [Electronic resource]. URL: https://courteurasian.org/court_cases/eaeu/P-3.17/ (date of access: 23.10.2023) (in Russ.).
[24]P-3/18: on professional athletes [Electronic resource]. URL: https://courteurasian.org/court_cases/eaeu/P-3.18/ (date of access: 24.10.2023) (in Russ.).
[25]P-2/18: on the order of transit of cash by natural persons [Electronic resource]. URL: https://courteurasian.org/court_cases/eaeu/P-2.18/ (date of access: 30.10.2023) (in Russ.).

6. Wang Y. The origins and operation of the general principles of law as gap fillers. *Journal of International Dispute Settlement*. 2022;13(4):560–582. DOI: 10.1093/jnlids/idac018.

7. Roberts A, Sivakumaran S. The theory and reality of the sources of international law. In: Evans MD, editor. *International law*. Oxford: Oxford University Press; 2018. p. 89–118.

8. Kotuby ChT jr, Sobota LA. *General principles of law and international due process. Principles and norms applicable in transnational disputes*. Oxford: Oxford University Press; 2017. 281 p.

9. Ануфриева ЛП. Принципы в современном международном праве (некоторые вопросы понятия, природы, генезиса, сущности и содержания). *Московский журнал международного права*. 2021;1:6–27. DOI: 10.24833/0869-0049-2021-1-6-27.

10. Гетьман-Павлова ИВ, Филатова МА. Принцип lis pendens в международном гражданском процессе: проблемы идентичности исков и сторон. *Вестник гражданского процесса*. 2018;2:239–263.

11. Терентьева ЛВ. Общеправовая презумпция jura novit curia и отраслевая презумпция jura aliena novit curia международного гражданского процесса. *Право. Журнал Высшей школы экономики*. 2018;3:195–213. DOI: 10.17323/2072-8166.2018.3.195.213.

12. Энтин КВ. Правовая определенность как общий принцип права Европейского союза и Евразийского экономического союза. *Международное правосудие*. 2023;1:40–57. DOI: 10.21128/2226-2059-2023-1-40-57.

13. Энтин КВ. Общие принципы права интеграционных объединений как тайное оружие Суда ЕС и Суда ЕАЭС. *Международное правосудие*. 2022;2:64–83. DOI: 10.21128/2226-2059-2022-2-64-83.

14. Дьяченко Е. Методы толкования в практике Суда Евразийского экономического союза. *Международное правосудие*. 2019;2:77–92. DOI: 10.21128/2226-2059-2019-2-77-92.

15. Дьяченко Е. Суд Евразийского экономического союза: комментарий к консультативному заключению от 22 ноября 2022 года по делу № СЕ-2-2/1-22 о способах обеспечения в государственных закупках. *Международное правосудие*. 2023;1:21–28. DOI: 10.21128/2226-2059-2023-1-21-28.

References

1. Lauterpacht H. *The Function of law in the international community*. Oxford: Oxford University Press; 2011. 477 p.

2. Romashev YuS. General principles of law in the system of international law. *Pravo. Zhurnal Vyshschei shkoly ekonomiki*. 2021;3:148–174. Russian. DOI: 10.17323/2072-8166.2021.3.148.174.

3. Chayka KL. International legal approaches in the practice of the Court of the Eurasian Economic Union. *Journal of Russian Law*. 2018;11:138–151. Russian. DOI: 10.12737/art_2018_11_14.

4. Abashidze AKh. Principles of international law: conceptual and substantive problems. *Moscow Journal of International Law*. 2017;4:19–30. Russian. DOI: 10.24833/0869-0049-2017-4-19-30.

5. Koskenniemi M. General principles: reflexions on constructivist thinking in international law. In: Koskeniemi M, editor. *Sources of international law*. London: Routledge; 2000. p. 359–402.

6. Wang Y. The origins and operation of the general principles of law as gap fillers. *Journal of International Dispute Settlement*. 2022;13(4):560–582. DOI: 10.1093/jnlids/idac018.

7. Roberts A, Sivakumaran S. The theory and reality of the sources of international law. In: Evans MD, editor. *International law*. Oxford: Oxford University Press; 2018. p. 89–118.

8. Kotuby ChT jr, Sobota LA. *General principles of law and international due process. Principles and norms applicable in transnational disputes*. Oxford: Oxford University Press; 2017. 281 p.

9. Anufrieva LP. Principles in modern international law (certain issues of concept, nature, genesis, substance and scope). *Moscow Journal of International Law*. 2021;1:6–27. Russian. DOI: 10.24833/0869-0049-2021-1-6-27.

10. Getman-Pavlova IV, Filatova MA. Lis pendens principle in international civil procedure: actions and perties identity issues. *Herald of Civil Procedure*. 2018;2:239–263. Russian.

11. Terentieva LV. Common law presumption jura novit curia and branch presumption jura aliena novit curia in international civil process. *Pravo. Zhurnal Vysshei shkoly ekonomiki*. 2018;3:195–213. Russian. DOI: 10.17323/2072-8166.2018.3.195.213.

12. Entin KV. [Legal certainty as a general principle of law in the European Union and the Eurasian Economic Union]. *Mezhdunarodnoe pravosudie*. 2023;1:40–57. Russian. DOI: 10.21128/2226-2059-2023-1-40-57.

13. Entin KV. [General principles of la in integration assotiations as a secret weapon of the EU Court of Justice and the EAEU Court]. *Mezhdunarodnoe pravosudie*. 2022;2:64–83. Russian. DOI: 10.21128/2226-2059-2022-2-64-83.

14. Diyachenko E. Methods of interpretation in the case-law of the Eurasian Economic Union Court. *Mezhdunarodnoe pravosudie*. 2019;2:77–92. Russian. DOI: 10.21128/2226-2059-2019-2-77-92.

15. Diyachenko E. [The Court of the Eurasian Economic Union: commentary to the Advisory opinion of 22 November 2002 in the case No CE-2-2/1-22 on the methods of securing in public procurement]. *Mezhdunarodnoe pravosudie*. 2023;1:21–28. Russian. DOI: 10.21128/2226-2059-2023-1-21-28.

Received by editorial board 25.10.2023