

DOI: <https://doi.org/10.34069/AI/2022.52.04.14>

How to Cite:

Osaulenko, A., Tarasov, O., Turchina, M., Sviderska, N., & Doroshchuk, N. (2022). Features of correlation between the rules of international and national law. *Amazonia Investiga*, 11(52), 135-141. <https://doi.org/10.34069/AI/2022.52.04.14>

## Features of correlation between the rules of international and national law

### Особливості співвідношення норм міжнародного та національного права

Received: March 10, 2022

Accepted: April 15, 2022

Written by:

**Osaulenko Andriy**<sup>54</sup><https://orcid.org/0000-0003-3125-1892>**Tarasov Oleh**<sup>55</sup><https://orcid.org/0000-0002-9070-5965>**Turchina Mariia**<sup>56</sup><https://orcid.org/0000-0002-1486-1122>**Sviderska Nataliia**<sup>57</sup><https://orcid.org/0000-0002-2366-5510>**Doroshchuk Nina**<sup>58</sup><https://orcid.org/0000-0002-7564-6055>

#### Abstract

The purpose of the article is to determine the nature and features of the rules of international and national law, as well as their differences. The subject matter of the study is the correlation between the rules of international and national law. The research methodology includes the use of the following scientific methods: analysis and synthesis, formal and dogmatic, system and structural, hermeneutic, synergetic. Results of the study. The concept of the rule of law is analyzed and its features are outlined. The concepts of rules of national law and rules of international law are provided. The differences between the rules of international and national law are revealed. The procedure for ensuring the implementation of the rules national and international law is considered. Practical implementation. Some problematic issues arising from the interaction of rules of international and national law are investigated. Value / originality. Emphasis is placed on the need for interaction of rules of international and national law to improve the national legal system.

#### Анотація

Метою статті є визначення сутності та характерних особливостей норм міжнародного та національного права, їх відмінностей між собою. Предметом дослідження є співвідношення норм міжнародного та національного права. Методологія дослідження включає в себе використання наступних наукових методів: аналізу та синтезу, формально-догматичного, системно-структурного, герменевтики, синергетики. Результати дослідження. Проаналізовано поняття норми права та наведено її характерні ознаки. Визначено поняття норми національного права та норми міжнародного права. Розкрито відмінності норм міжнародного та національного права. Розглянуто порядок забезпечення реалізації норм національного та міжнародного права. Практичне значення. Визначення проблемних питань, що виникають під час співвідношення норм національного (внутрішньодержавного) права з нормами міжнародного права. Цінність/оригінальність. Акцентовано увагу на

<sup>54</sup> Doctor of Legal Sciences, Associate Professor, Associate Professor of the Department of Constitutional Law and Human Rights of the National Academy of Internal Affairs, Ukraine.

<sup>55</sup> Doctor of Law, Associate Professor, Associate Professor of the Department of International Law of Yaroslav Mudryi National Law University, Ukraine.

<sup>56</sup> PhD in Law, Assistant of the Department of History of the State and Law of Ukraine and foreign countries of Yaroslav Mudryi National Law University, Ukraine.

<sup>57</sup> PhD in Historical Sciences, Associate Professor of the Department of History of the State and Law of the National Academy of Internal Affairs, Ukraine.

<sup>58</sup> PhD in Historical Sciences, Associate Professor, Associate Professor of the Department of History of the State and Law of the National Academy of Internal Affairs, Ukraine.

**Keywords:** implementation, interaction, international law, national law, rule of law.

необхідності взаємодії норм для удосконалення національної правової системи.

**Ключові слова:** імплементація, взаємодія, міжнародне право, національне право, норма права.

## Introduction

The dynamic development of international, integration and national legal systems at the present stage, expansion of the interface between national legal systems and international legal systems require effective legal means, which would take into account agreed ways of such interaction, contribute to a harmonious functioning of these systems in modern legal space. The study of this problem becomes especially relevant for the legal system of Ukraine, as the effectiveness of its functioning is largely determined by its integration into global economic and political processes.

The issue of the relationship between international and national law has recently become one of the most important among the scholars. This interest is closely linked to the rapid development of international law and its impact on the national legal system. In international practice, there is a generally accepted approach, according to which each State independently determines the mechanisms, by which it implements international obligations in the national legal system.

International and national law are independent legal systems characterized by their own subject matters, methods, goals, objectives. But rapid social progress and global processes (for example, the pandemic, which in one way or another affects all spheres of public life (Kharytonov et al., (2021, p. 158)) leads to the expansion of the scope of international norms – they begin to regulate not only interstate relations, but also relations within a particular State. This tells us that there is a symbiosis of norms of international and national (domestic) law within the State. This leads to the need to harmonize and correlate the norms of international and national law to determine the mechanism of interaction between them.

That is why the purpose of our study is to determine the nature and features of the rules of international and national law, as well as the differences between them.

## Methodology

The research is carried out using philosophical, general and special scientific approaches and methods of cognition, which are based on the principles of objective and comprehensive analysis of social processes and phenomena in the field of legal regulation and development of international and national law.

The use of such methods as analysis and synthesis allow to formulate the concepts of rule of law, rule of national law, rule of international law, principles of international law, etc.

Formal and dogmatic approach is applied in the analysis of current legislation of Ukraine to identify the methods of the implementation of international law in the national legal system.

System and structural method helps to establish the features of the rule of law, as well as to identify the principles of correlation between the rules of national and international law.

Hermeneutic method makes it possible to establish the relationship between the rules of international and national law.

Synergetic method allows to outline the problems arising from the interaction of rules of international and national law.

## Literature Review

Among modern researchers who have considered the relationship between international and national law, we can highlight Ivanchenko (2011), who considers the ratio of norms of international and national law in two aspects – as the ratio of international law and national norms and as the interaction of international and national law in the creation and implementation of international law and norms of national legislation. The Author also notes that the main directions of transformation of the national legal system are the universalization of national law and the growing influence of international law on national one.

Lekhniak (2013) analyzes the process of ensuring compliance with the provisions of the

international treaty – implementation, and considers incorporation and reference as the methods of the latter. The author emphasizes that the procedure for implementing international norms is determined by the norms of national law.

Kalienichenko and Slinko (2019) indicate that there are three concepts of the relationship between international and national law: the concept of supremacy (primacy) of international law; the concept of the supremacy (primacy) of national law; dualistic concept. Scholars point out that the relationship between international law and national law depends on the source of the international law (international treaty, international custom, general principles of law, binding regulations of international organizations).

Morina et al., (2011) explain the correlation between national and international law on the example of the Constitution of Kosovo, which uses a modern approach toward the regulation of the relationship between the two.

Kodra (2017) believes that the relationship between international law and national law is a controversial issue, which requires a comprehensive study, as many authors accept the supremacy of international law, but at the same time a number of States refuse to acknowledge this supremacy on constitutional principles.

Horn (2020) presented an overview of the international and constitutional law doctrines on the relationship between national and international law and provided the examination of concepts and strategies that determine this problem.

However, these works do not fully address the issue of differences between international and national law, which requires in-depth doctrinal study.

## Results and Discussion

The basis for understanding the process of the relationship between international and national law is the rule of law. All processes of any legal relationship arise and develop with the help of such norms. That is, they are the main mechanism of State influence on public relations – it is through them that they function. Thus, the rule of law is a central category of legal science.

Tsvik, Tkachenko and Bohachova (2002, p. 258) characterize the rule of law as a primary, separate

structural element of law, a rule of conduct recognized and protected by the State.

Sumskyi (1999, p. 22) considers rule of law a universally binding rule of conduct established or sanctioned by the State, which is formulated in the form of clearly defined rights and responsibilities and is guaranteed by the coercive force of the State.

According to Kirichenko and Kurakin (2010, p. 126) the rule of law reflects and enshrines the simplest rule of legally significant behavior. The rule of law is aimed at regulating social relations by giving their participants legal rights and imposing legal obligations.

Note that a single approach to determining the rule of law has not yet been established. But we agree with scholars on the interpretation of this concept in the following format: the rule of law is a universally binding, formally defined rule of conduct that is established, sanctioned, protected by the State and regulates public relations. The features of the rule of law are the following:

- it is enshrined in the normative legal act;
- it regulates certain social relations and protects the interests of the State and individuals;
- action in time, space, circle of persons and inexhaustibility by number of applications;
- terminated or revoked by a certain special procedure;
- generally binding, etc.

Analyzing the above, we can conclude that the rule of national law is a rule (behavior) of a general nature, established and sanctioned by the State, which regulates public relations, provides for liability for violations and is generally binding.

Instead, the rules of international law are universal form of international law. They have a special object of regulation – social relations between the actors of international law, sovereign States and their associations. Accordingly, the method of international legal regulation is determined due to the specifics of such relations.

Thus, the rules of international law are legally binding rules of conduct of States and other actors of international law in international relations. The rights and responsibilities vested in the parties to international law constitute the content of the rules of international law. When entering into international relations, the actors

exercise their rights and perform their duties under international law. The participants also adhere to the rules of “international morality”, which are not equivalent to international legal rules and are not generally binding. In the implementation of international law, the States act as sovereign and equal actors, and therefore their will is legally equal. This means that the majority of States cannot create norms for the minority and do not have the right to impose these norms on other States against their will.

Due to their importance and universality, some norms of international law are called principles (for example, the principle of peaceful settlement of disputes, the principle of inviolability of borders, etc.). Such principles are imperative and are the basis for international law. The process of forming the principles of international law determines the peculiarities of their application and implementation. Thus, the principles of international law cannot be revoked, as this requires radical changes in the entire system of international relations and the order of co-existence of its actors.

Thus, the foundation of the system of international law are the principles that are the fundamental rules of international law governing relations between its actors. The basic ones are enshrined in the UN Charter, as well as in the Declaration of Principles of International Law, adopted by the UN General Assembly in 1975, and in the Final Act of the Conference on Security and Cooperation in Europe (CSCE) and others (Opryshko & Shulzhenko, 2003).

The issue of the relationship between the rules of international and national (domestic) law is quite relevant in modern legal science. According to Ivanchenko (2011, p. 8) the relationship between international and national law is a stable system of interaction, mutual influence and interdependence of different rules of social behavior of legal entities.

To better understand the differences, let's start with the process of creating the rules of national and international law. International rules are created on the basis of voluntary agreements between the parties. That is, the States reach mutual understanding of certain rules of conduct through mutual concessions and compromises. At the same time, national rules are created within the State and are aimed at regulating certain homogeneous social relations. National rules are generally binding, while international rules are not the ones.

The rules of international law have special forms of existence – an international treaty, custom or individual acts of international organizations. The rules of national law are expressed in regulations and other sources of national law.

The next difference is the structure of the rule of law. The structure (internal form) of a legal rule is its internal organization objectively determined by the needs of legal regulation (Kravchuk, 2016, p. 222). National or domestic legal rules have the following structure: hypothesis – disposition – sanction.

Hypothesis is a part of the legal rule that indicates the circumstances and conditions, at which the rule becomes effective. Disposition is a part of a legal rule that contains a rule of conduct. It indicates the authorized or prohibited conduct of the actor. Sanction is part of the legal rule, which enshrines the measures of State coercion resulting from its breach (Bandurka, 2018, pp. 169 – 171).

International legal norms have a distinctive, specific structure – most often it is just a disposition (the very rule of due conduct). In some cases, only hypothesis and disposition are available, and there is no sanction. The reason for this structure is the following: sanctions are an independent institution of international law, they are applied by the affected States individually or collectively in relation to other wrongdoing States, are coercive and defined in specific treaties. It is often possible to find that the hypothesis and disposition of an international rule are in different articles of an international act, and sometimes in different interrelated acts.

Ensuring the implementation of legal rules, i.e. law enforcement, lies in practical implementation of legal norms in the lawful conduct of legal entities. Thus, in national law enforcement it is a managerial activity of public authorities, as well as State-authorized entities to issue specific individual instructions (Malyshev & Moskaliuk, 2010, p. 10). At the international level, enforcement of legal norms lies in observance, execution, use and application of international law by the States or their associations – international organizations.

If we talk about the classification of rules of international and national law, we can see some differences as well. National legal rules are divided by the subject matter of regulation (branches of law); by the method of establishing disposition – mandatory, dispositive, blanket; by the nature of the disposition – permitting,

binding, prohibiting; by functional purpose – substantive, functional and legal; by the range of actors – general, special, exceptional, etc. (Kravchuk, 2016, p. 220).

The rules of international law are classified according to a similar system, but have a slightly different interpretation. For example, by the scope, they are divided into universal, regional, local ones. Universal rules operate at the global level, are formed and repealed by the international community. The main form of existence is custom. Regional norms regulate any relationship at the level of a particular region, but can become universal ones. Local or particular rules are applied to the relations with a limited number of participants (between two States) and are established by international treaties.

By the way of creation and form of expression, the rules of international law are divided into customary, contractual (convention) ones and rules of decisions of international organizations, international courts and arbitrations, etc.

The principles of correlation between the rules of national and international law are: 1) the principle of priority of international law over national one; 2) the principle of priority of national law over international one; 3) the principle of dualism (interaction).

The first principle is that the State enshrines the priority of international treaties in its own legislation. If the norms of the international agreement contradict the national legislation, the norms of the international agreement are applied.

The priority of national law is expressed in the fact that the main rules are national law, and international rules can be applied only when they do not contradict them.

Dualism means the interconnection and interaction of international and domestic law. For example, enshrining the supremacy of international law over national law in the current legislation in order to unite them for the progressive development of the country.

If we talk about the interaction of norms of international and national law, it should be noted that it occurs through the harmonization of the content of national law with the provisions of international law. This is done by borrowing international rules from national law or by adopting national rules that are in line with international law. Such processes are called

transformation or implementation, but the latter term is more commonly used.

The implementation of international law is a set of purposeful, organizational and legal measures of the State, which are carried out for the timely and full implementation of obligations under international law (Haverdovskyi, 1980, p. 62). That is, the implementation is not in the transformation of international rules into rules of national law, but through the process of national law's perception of the rules of international treaties.

In the modern legal field, the following methods of implementation are determined – transformation, reference and reception.

Thus, reference is the establishment in national law of such a rule that “refers” to a separate rule of international law (international agreement, etc.), as a result of which the latter may operate in the legal system of the country in the unchanged form. Usually, reference has no disposition (rules of conduct) and is a conflict-of-laws rule that still needs to be studied. Reference is divided into two types – general and special one. The example of a general reference is Article 9 of the Constitution of Ukraine (Law No. 254k/96-VR, 1996), which stipulates that existing international agreements approved by the Verkhovna Rada of Ukraine are part of the national legislation of Ukraine. However, if an international treaty of Ukraine, which has entered into force in the prescribed manner, establishes rules other than those provided for in the relevant act of legislation of Ukraine, the rules of the international treaty are applied (Article 19 of the Law of Ukraine “On International Agreements of Ukraine”) (Law No. 1906-IV, 2004). For a specific reference, an example might be a reference to a specific rule or rules. Thus, in accordance with Article 15 of the Law of Ukraine “On Traffic” (Law No. 3353-XII, 1993), on the territory of Ukraine there are national and international driving certificates that comply with the Convention on Road Traffic are valid in the territory of Ukraine.

Reception means that the article of the legal act completely repeats the content of the selected international legal rule. For example, the provisions of the Constitution of Ukraine are the result of the reception of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, etc. That is, the rules of international law become the basis for national law.

Transformation takes place when a rule of international law is reproduced in an act of national law. An example is a number of articles of the Criminal Code of Ukraine, which were formed on the basis of international conventions. These include the Convention against Trafficking in Human Beings, the Convention on the Prevention and Punishment of the Crime of Genocide, etc.

### Conclusion

Thus, the rules of both international and national law are interpreted as formally defined rules governing public relations, which are the subject matter of the indicated branches. An important difference between international law is that it is not universally binding, unlike national law; have different forms of implementation, object and method of regulation, form of expression and structural features. But at the same time, one can observe the interaction of norms of international and national law in order to implement international obligations and improve the domestic legal system.

We can say that international norms serve as a kind of source of national law, provoking its “accession” to various branches of Ukrainian law – criminal, administrative, executive, civil ones, etc. That is, at present there is a dualistic concept of development – the interaction of international and national law in order to implement international rules in domestic law. But among the problems arising from the interaction of rules, the first priority is to resolve existing conflicts, contradictions and disagreements between the requirements of legal and international acts. This can be solved by bringing laws and by-laws in line with international law.

### Bibliographic references

- Bandurka, O., ed. (2018). *Theory of State and Law: a textbook*. Kharkiv: Kharkiv National University of Internal Affairs.
- Haverdovskyi, A. (1980). *Implementation of international law*. Kyiv: Higher School.
- Horn, H.-D. (2020). International and Constitutional Law Doctrines on the Correlation between National and International Law (pp. 7 – 21). In: H.-D. Horn and S. Bock (eds.), *On the Correlation between National and International Law*. Marburg: EPUB. <https://doi.org/10.17192/es2020/0005>. <https://archiv.ub.uni-marburg.de/es/2020/0005/pdf/jls.pdf>
- Ivanchenko, O. (2011). *Value of international and national law*. (Dissertation for a degree Candidate of Law) National University of «Odessa Law Academy». Odessa, Ukraine. <http://dspace.onua.edu.ua/bitstream/handle/11300/1818/%d0%86%d0%b2%d0%b0%d0%bd%d1%87%d0%b5%d0%bd%d0%ba%d0%be%20%d0%9e.%d0%9c..pdf?sequence=1&isAllowed=y>
- Kalienichenko, L. and Slinko, D. (2019). “Relationship of national and international law relating to adaptation of the national system of legislation to European legislation”. *Legal Scientific Electronic Journal*, No. 6, pp. 24 – 27. <https://doi.org/10.32782/2524-0374/2019-6/3> [http://www.lsej.org.ua/6\\_2019/5.pdf](http://www.lsej.org.ua/6_2019/5.pdf)
- Kharytonov, E., Kharytonova, O., Kolodin, D., Tkalych, M., Larkin, M., Tolmachevska, Y., Rojas-Bahamon, M.J., Arbeláez-Campillo, D.F., & Panchenko, O. (2021). Distance learning in the conditions of Covid-19: problems and prospects of their solution. *Amazonia Investiga*, 10(48), pp. 157 – 169. <https://doi.org/10.34069/AI/2021.48.12.17>
- Kirichenko, V. and Kurakin, O. (2010). *Theory of State and Law: modular course: textbook*. Kyiv: Center for Educational Literature.
- Kodra, L. (2017). The relationship between international law and national law. *Global Journal of Politics and Law Research*, 6(1), pp. 1-11. <https://www.eajournals.org/wp-content/uploads/The-relationship-between-international-law-and-national-law.pdf>
- Kravchuk, M. (2016). *Theory of State and Law (reference notes): textbook*. Ternopil: Economy opinion.
- Law No. 1906-IV. On International Agreements of Ukraine. *Bulletin of the Verkhovna Rada of Ukraine*, Kyiv, Ukraine, June 29, 2004. Recovered from <https://zakon.rada.gov.ua/laws/show/1906-15?lang=en#Text>.
- Law No. 254k/96-VR. Constitution of Ukraine. *Bulletin of the Verkhovna Rada of Ukraine*, Kyiv, Ukraine, June 28, 1996. Recovered from <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.
- Law No. 3353-XII. On Traffic. *Bulletin of the Verkhovna Rada of Ukraine*, Kyiv, Ukraine, June 30, 1993. Recovered from <https://zakon.rada.gov.ua/laws/show/3353-12#Text>
- Lekhniak, I. (2013). Implementation as a means of harmonizing the norms of international and domestic law of Ukraine (pp. 49 – 52). In the collection: *International readings on*

- international law in the memory of Professor Kazanskyi of the 4th international scientific conference. Odesa: Phoenix. <https://core.ac.uk/download/pdf/50593235.pdf>
- Malyshev, B. and Moskaliuk, O. (2010). Application of law (theory and practice): textbook. Kyiv: Abstract.
- Morina, V., Korenica, F., and Doli, D. (2011). The relationship between international law and national law in the case of Kosovo: A constitutional perspective. *International Journal of Constitutional Law*, 9(1), pp. 274–296. <https://doi.org/10.1093/icon/mor020>. <https://academic.oup.com/icon/article/9/1/274/902275>
- Opryshko, V. and Shulzhenko, F., eds. (2003). Jurisprudence: textbook. Kyiv, KNEU. <https://buklib.net/books/21888/>
- Sumskyi, D. (1999). Fundamentals of State and Law. Kyiv: Yurinkom-Inter.
- Tsvik, M., Tkachenko, V., Bohachova, L. et al. (2002). General theory of State and law. Kharkiv: Pravo.