

ТЕОРІЯ ТА ІСТОРІЯ МІЖНАРОДНОГО ПРАВА

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INTOLERANCE TO EVIL AS A BASIC PHILOSOPHICAL AND LEGAL COMPONENT OF JUSTICE IN INTERNATIONAL PUBLIC POLICY (IN THE CONTEXT OF RUSSIAN WAR OF AGGRESSION AGAINST UKRAINE)

Summary. The article is devoted to clarifying the main features that should characterize the search for justice as a process, as a procedure and as a result in the context of interstate wars, using the example of the war waged by the aggressor State, the Russian Federation, against Ukraine. In the context of this war, the difficulty of defining the content of justice lies not so much in the prospects of achieving a certain level of fair law-based order as in the focus on finding real justice and in clarifying the sincere commitment of responsible global actors to a common goal: eradicating the practice of using terrorism, including murder and destruction, to legitimize the occupation of other people's land.

Sincerity of responsible actors in this case means not only verbal and emotional dedication of all civilized countries to the basics of international law but a willful behaviour to support and prove that dedication. The establishment of justice, especially at the level of large interethnic systems, will be fundamentally impossible, as the article has shown, without the responsible actors' adherence to the *value of intolerance to evil*.

The article grounds that compromise with justice, which is an ontological and legal *crime against truth*, poses real threats to the decline of current European and world cultural civilization due to the future numerous insurrections (tailored by dictatorial and terrorist states and/or groups around the world) against civilization as such. In this sense, a person and his or her rights might unfortunately get transformed from a value (as it must be in a civilized world) to a mere verbal declaration about devotion to "eternal things". This will inevitably entail chaos, fear and wars in the whole world. In view of this, the various states of the world, as sovereign entities, if they are full of self-respect and care about a stable and orderly basis for a peaceful life for future generations, should treat law and justice as the goal of geopolitics, not as its means. Thus the article substantiates that justice is the basis of order as well as the reason for it. And in order not to lose justice as the central idea of the concept of "world order", we must fight for it, and not only declaratively.

Key words: justice, principles of international law, international public policy, intolerance to evil, upholding law-based values, commitment.

Problem. The concept of *justice* is a cross-cutting concept in the theory of legal philosophy, in the theory of state and law. It is somehow objectified in each branch of legislation.

As for the substantive and philosophical content of the concept of “justice”, perhaps only the concept of love causes more controversy among ordinary people. Justice is viewed through different prisms and thus this category often looks as something unreachable. So the usual problem with justice, especially on the international scale, lies in defining *what is essentially needed so that one could feel that justice is at least closer to reality than it was yesterday*.

Objective. Article is aimed at clarifying the key feature of justice in the international ethical system on the example of the war of the aggressor state Russian Federation against Ukraine, as well as defining an inherent feature of the main implications (which are *process, decisions and results*) of the term “justice”.

Of course, it does not seem to be an easy (or even possible) task to define the boundaries of the concept of «justice» within a scientific article or even a doctoral dissertation. However, the task of this research in this sense may be different: to define the core philosophical and psychological idea of the concept of “justice” in the context of the search for modalities of counteraction to and punishment for aggressor states.

Analysis of previous research. The issue of justice is intensively thought and argued about for centuries (since Plato, Aristotle following by Thomas Aquinas, Hugo Grotius, Immanuel Kant, etc).

In recent times justice as a philosophical category became a strong focus of many humanitarian experts among which it is important to pay attention to works of John Rawls, Michael Walzer, Avishai Margalit, Serhii Yosypenko, Igor Panafidin and others.

Yet seeing intolerance to evil (as the main feature of virtue of justice) has not been emphasized in recent works, especially in the context of wars.

Discussion and results. Since the time of Ancient Greece, it has been believed that *four virtues are fundamental for human beings: prudence, temperance, fortitude and justice*. According to Plato, **justice** is the highest virtue, which keeps the other virtues in complete balance and harmony, both in material and non-material terms.

The purpose of justice is traditionally considered to be the maintenance and reproduction of equilibrium or equal measure. In other words, «justice is that which makes the most people happy and causes the least pain.» [1].

As Roman aphorism says, “law is the art of goodness and justice” (*jus est ars boni et aequi*). Therefore, in the ideal state and in the ideal world (which humanity must move to, unless it wants to roll back in its development) affirming the value of justice is the basic mission of law, of a state, and of every person. In fact, even non-democratic regimes declare the search for justice (for

example, so-called “historical justice” or some other verbal equilibristics) as a way to win the sympathy of the masses. Such regimes use manipulations with justice, as it turns out, to justify the devaluation of international law as well as killings of citizens of another country, stealing its property and occupation of its territories.

Justice should be perceived as a basic element of the nature of things, that is, as an element of order, the structure-forming concept of the universe. In this sense, justice is much closer to the concept of “order” than to the concept of “good”.

The Dutch lawyer Hugo Grotius (1583–1645) is often called the father of the current concept of international law. He is regarded to be the first to try to transfer the complex relations between states to the legal level (instead of the purely political dimension). Accordingly, Grotius fundamentally analyzes the concept of war as cruel reality that the world constantly, through centuries, had been plunging into.

Grotius, being committed to the concept of peace, divides wars into just (defensive, i.e., carried out to preserve the integrity of the state, protect people and property) and unjust (aggressive, committed to conquer other nations or seize other people’s property). Based on this understanding of the essence of jurisprudence, Grotius attached great importance to the division of law into natural and volitional law which was proposed by Aristotle. At the same time, he recognized natural law as “a prescription of common sense, by which this or that action, depending on its conformity or inconsistency with reasonable nature itself, is recognized as either morally shameful or morally necessary” [2, p. 22].

In his book “The Law of War and Peace” Grotius considers international law as a form of volitional law. In his opinion, “rights in the field of international relations” are created by mutual agreement of states for reasons of benefit.

The political and legal doctrine of Grotius, which extends to the sphere of domestic and international relations, is aimed at establishing legal principles in the field of foreign policy of each state and at achieving peace.

Justifying the need for legal formalization and regulation of international relations, and especially the problems of war and peace, Grotius criticized the widespread belief that war is completely incompatible with law. “It is impossible”, he emphasized, “not only to agree with the speculations of some that all rights cease during war, but it is not even necessary to start a war or continue a war other than within the limits of law and good faith” [2, p. 33].

Unjust wars (wars of aggression, for the purpose of seizing other people’s property, or subjugating other nations) are unlawful because they violate the requirements of both natural law and the law of nations. The organizers of an unjust war, Grotius emphasized, are responsible for everything that accompanies it, as well as for its consequences. Reflections on what belligerent countries are allowed and not allowed to do in relation to each other are combined with interesting remarks by Grotius on the position that neutral states, when military confrontations take place, ought to adhere to. The duty of neutral states is

to refrain from assisting an actor that wages an unjust war against the victim of its aggression. In this passage, Grotius (even without knowing – in “his” seventeenth century – the geopolitical and legal terminology of 2020’s), with this statement, directly draws attention to the fact that these «neutral» states [if they respect themselves – *author’s note*] cannot be truly neutral. Interpreting his position, we can say that international judicial and political bodies, sanctions and other restrictions, active arming of the victim of aggression for its proper self-defence, cultural and sports isolation of the aggressor and political condemnation of the aggressor on all possible platforms are the keys to the only effective (in addition to the ethical and legal side of the issue) reaction of mature (responsible to humanity and to their societies) states (nations).

In general, Kant gives three arguments in favour of the inevitable realization of the concept of eternal peace between nations: (1) emphasizing those many dangers arising from the continuous wars and the violation of peace treaties, which must eventually lead humanity to a union of states and a lasting peace; (2) appealing to the concept of human nature, the general design of nature in relation to the human race; (3) appeal to the “legal principle”. It is the third Kantian argument – the “legal principle” – that is of the most important in the context of considering the problem of eternal peace as a result of a global world agreement between nations [3, p. 120].

Moreover, even the utilitarian approach developed by the ideological opponents of the Kantian imperative pushes nations to ground their decisions not on situational interests but on the *great common good*. And “the greatest” common good is certainly the one which is global, which compromises world law-based order and countries (states) that comply with it.

Even utilitarians, who tend to choose more, so to say, practical forms of achieving the common good, such as David Hume, argue that the utilitarian approach must necessarily be based not on private utilitarianism, but only on the utilitarianism of the general public. In this sense, John Rawls, a researcher of the liberal-state concept of domestic and international law, comparing the contractual theory of John Locke and the utilitarian theory of David Hume, concludes that both of these worldviews do not contradict each other, but simply reveal the same paradigm in different ways: order and mutual respect (i.e., respect for the common good) are the only format for ethics of nations, states and international communities.

Locke’s doctrine represents, for Hume, an unnecessary shuffle: one might as well appeal directly to utility. But all Hume seems to mean by utility is the general interests and necessities of society. The principles of fidelity and dedication derive from utility in the sense that the maintenance of the social order is impossible unless these principles are generally respected. But then Hume assumes that each man stands to gain, as judged by his long-term advantage, when law and government conform to the precepts based on utility. No mention is made of the gains of some particular people or groups outweighing the disadvantages of others.

For Hume, then, utility seems to be identical with some form of the common good; institutions satisfy its demands when they are in everyone's interest, at least in the long run. Now if this interpretation of Hume is correct, there is offhand no conflict with the priority of justice and no incompatibility with Locke's contract doctrine [4, p. 29]. In this aspect it is essential to emphasize that some leaders of powerful states, including the USA, should re-read the ideas of utilitarian Hume (if Kant's or Rawls's considerations look too difficult or unattractive for these leaders) so that they could find out that private utilitarianism strategically works in a strong link with public good.

Based on the fact that wars of aggression are unjust, it can be argued that the very situation of one state attacking another is unjust and requires the restoration of justice (as a state of equilibrium) in international relations. Even if the invasion itself had not damaged any buildings or injured (not to mention killed) any civilians or soldiers. The mere creation of a threat of danger already requires the guilty party to take measures to restore peace and return "psychological national stability" to the victim of aggression.

Justice as a value category requires Ukrainians to feel, if not restore the pre-war status quo (which does not seem possible, given the physical impossibility of returning lives of the dead and returning health of the seriously wounded, both military and civilian), then at least create an emotionally tangible situation that justice can take place, be properly ensured, at least in the name of the fact that justice, like truth, should be considered categories from the forum of life, not the forum of death, while injustice and lies are categories from the forum of death, not the forum of life. "Being the first virtues of human activities, truth and justice are uncompromising" [4, p. 4].

It is difficult to find a formula for justice that would satisfy the vast majority of citizens equally – especially if you ask two completely different categories of citizens – those who, along with their relatives, did not suffer physically in the war, on the one hand; those who lost their families or homes, on the other. There will be no "single pill" here.

Since a human being is capable of critical thinking, of a comprehensive perception of reality at the level of feelings and on the basis of the ethical system chosen by him or her, it does not seem possible to achieve *universal perception of the single meaning of the concept of justice*.

Then a feasible and important task for us should be to find out *what feature should be inherent in the concept of justice as a meta-value*; what kind of feature can be understood on intuitive, psychological, legal, political or economic levels as something like "the world has at least an elementary idea of where it needs to go in order to have a hope of not losing itself.»

The axiomatic presupposition which the author of this article would like to deal with is the idea that justice is not a situational concept, but rather a time-stretched and multidimensional one. Therefore, there is no justice at a close distance, but justice is always present at a long (historical) distance. Therefore, if we share the approach that justice generally belongs to those who are closer

to reality, then the one is closer to reality who follows fundamental universals (transcendental values (which is rule of law as a concept)) rather than follows just-benefits (political or economic expediency).

The author of this article is inclined to think that *intolerance, not love*, can become such a *fundamental universal value*. Why *intolerance*? Because it can be felt on a material level, and this is an important factor in the people's world. After all, if we proceed from the position that "your values are worth the price you are willing to pay for them", then at the level of global systems, the process of *defending values* rests on the need to resist anti-values (evil) that have brought the strength of values (good) to test.

Therefore, if *the main instruments of love are a pure heart and a pure mind* (as means of transcendental expansion), the *main instruments of intolerance, instead*, are not a pure heart and a pure mind, but *a brave pure heart and strong hands* capable of restraining (with the intention of further elimination) the evil that has come to destroy "any good soul". Strong hands, coupled with a brave pure heart, are the resources (technical skills and weapons) that are called to eliminate or neutralize evil (the aggressor state) according to the legal standards of the category of "extreme necessity".

Moreover, *intolerance* has nothing to do with *hatred*. *Intolerance* means not being willing to accept *ideas or ways of behaviour* that are different from your own [5]. Instead *hatred* is a very strong feeling of dislike for *someone or something* [6].

Intolerance is directed against a person's (society's) style of behavior, but *not against the person himself*. Moreover, it is intolerance, unlike hatred, that can be a reflection of love, an active love that *affirms itself by upholding certain values through the negation of their opposites*: affirming courage through the rejection of cowardice; affirming respect for other people and international law through the struggle against those who disrespect international law as such; affirming life through fight against those who manifest and bring death; affirming culture of *dignity* through the negation of culture of *worthlessness*.

Undoubtedly, the right to a just war is embedded in the theory and practice of international law. "No other just cause for undertaking war can there be except injury received" [2, p. 109]. Quoting Lucius Annaeus Seneca, Grotius also writes that "because the preservation of each conduces to the welfare of the whole, so men refrain from injuring one another because we are born for community of life. For society can exist in safety only through the mutual love and protection of the parts of which it is composed". [2, p. 20]. As Serhii Yosypenko says, "to be able to make the right moral choice, the tools of analysis and the ability to analyze are not enough: one also needs the fundamental ability to distinguish between good and evil, as well as the desire and courage to confront evil in the world" [7, p. 110].

According to above mentioned John Rawls, *the rights secured by justice are not subject to political bargaining or to the calculation of social interests*. The only thing that permits us to compromise in an erroneous theory is the lack of a better

one; analogously, an injustice is tolerable only when it is necessary to avoid an even greater injustice [4, p. 4].

Thus, justice can be established *to the extent* that we are able to tolerate injustice and *as long as* we are able to tolerate injustice. The scheme of social cooperation must be stable: it must be more or less regularly complied with and its basic rules willingly acted upon; and when violations occur, stabilizing forces must exist that prevent further violations and tend to restore the arrangement. In the absence of a certain measure of agreement on what is just and unjust, it is clearly more difficult for individuals to coordinate their plans effectively in order to insure that mutually beneficial arrangements are maintained. Distrust and resentment corrode the ties of civility, and suspicion and hostility tempt men to act in ways they would otherwise avoid [4, p. 6].

In the author's opinion, the advocacy of *intolerance to evil* (which is an act of injustice) should embrace and permeate the entire triangle called «Justice», which includes such components as *fair process*, *fair decision* and *fair service*. As the current reality has demonstrated, there is no shortage of ways to show intolerance to the malicious and barbaric behaviour of the military and political leadership of the aggressor country. Moreover, *natural law*, which essentially stands above positive law (legislation), is not a purely legal phenomenon. It is in fact an interdisciplinary phenomenon, which implies the concept of justice as the key concept of natural law as such. In this sense, the noticeable emergence of a dismissive, hateful, and even mocking attitude of world self-respected leaders towards comments, habits, or threatening statements of representatives of the Russian political establishment ought to take place as an element of *cancel culture*. At the intuitive and cognitive levels, it seems that the fair way to treat the *bearers of absolute world evil* is essentially to “torture” evil with its own methods, but with *good* motives. Theoretically, evil is not ready for this, because evil actors suggest that it is only them who attack others, humiliate others and knock others out.

The typology of means for establishing intolerance to the aggressor state (which equals to establishing respect for other, dignified and civilized, people and nations) should be diverse, systemic, and without selectivity: *economic means* (sanctions and other financial initiatives), *legal means* (intensification of investigations and bringing Russians to justice in international and national (Ukrainian) courts), *cultural and sports levers* (exclusion of cultural and sports international competitions and other events), *moral and psychological condemnation* (formation – on a global scale – of a sense of guilt not in every particular citizen of Russia but in their nation as a whole).

It is logical that the affirmation of love to life, goodness and respect for the territorial integrity of each state is effectively possible *only through intolerance to cruelty, murders and occupation of other people's lands*. These things can only be affirmed if they are overwhelming, regular, systematic and jointly implemented by all states acting strongly and unconditionally (not in the spirit of the postmodern approach “not everything is so unambiguous”). And the criterion for finding

and establishing the truth here is to establish a rule that has long been described in almost all constitutions of the civilized world: to ensure the rule of law, not the rule of “realpolitik”, not the rule of narrow national interests or other political expediency. After all, the current war has demonstrated that treating the rule of law only as a beautiful metaphor (rather than as a strict guide) blurs the Truth and makes the whole world a dangerous place to live.

In the end, even from the point of view of any country’s strategic national interests, i.e. from the point of view of real long-term utility, as the author believes, following specific *value guidelines within the framework of a commonly agreed ethics* (which is not based on calculative economics, but rather on the rules of *peaceful collective coexistence*) provides a clear strategy, which, together with a clear plan to protect this strategy (by responsible national and international police as well as armed forces), promises prosperity to those multimillion nations that adhere to the relevant *ethics*. Ultimately, it is through the cultivation of civic virtues and moral imperatives that justice will become real [8].

But the war, by the very fact of its presence, by completely disregarding the norms of positive (written) law, sheds light on a necessity of natural law (*law as maxims, as ideas of justice and order*). After all, the mechanisms for seeking support from the West and other civilized countries, the creation of formal and informal associations around the war against the aggressor state as well as the systematic and abundant supply of weapons to a victim of armed aggression – Ukraine – these and many other things that embody the unity of the responsible world, are de facto a materialized aspiration to establish (as far as possible) *Justice as a symbol and condition of the legal order and of the existential logic of life, global life*.

In this sense, the notorious worldwide *realpolitik* looks really a ridiculous practise, sorry to admit. If a president or a foreign minister of the so-called strong country comments on a war from a seemingly advantageous political position (and not from a value-based position) then the vast majority of such states can be characterized as a snake that can sooner or later bite itself in the tail. This is what Avishai Margalit calls “a rotten compromise” which is the one that “consists in establishing or maintaining an inhuman regime, a regime of cruelty and humiliation, ultimately a regime that does not treat people as human beings” [9, p. 2].

Such selective behaviour can be considered what Martin Hähnel covers with the concept of criminal “moral complicity” [10].

Conclusions. Avoiding a full-fledged and consistent fight against armed aggression in Europe, Western politicians de facto invite it (aggression) to expand. As the former British Prime Minister Winston Churchill once said when assessing the actions of the countries-allies in World War II: “It is not what they do that makes me furious, but what they do not do”. The practice of intolerance to evil is perhaps the only way to form a sense of Justice in people’s minds and hearts. And the *sense* of justice is *what justice is* essentially about. At least in terms of justice as a virtue. “The priority of justice is accounted for, in part, by holding that the interests demanding the violation of justice have

no value. Having no merit in the first place, they cannot override its claims” [4, p. 28].

At the same time, it should be understood that if Ukraine wants to «break the spine» of cynical *realpolitik* approach in the global discourse and become a separate player of geopolitical and geo-legal thought (both in the wartime and in a post-war (or a mid-war) period, it (Ukraine a state and as a society) must become the *ethical standard* for Europe and for the world. The “right to legal intolerance” remains with the individual and the state as long as they have a moral superiority over their counterparts. On the other hand, if Ukraine happens to demonstrate a consumerist approach to foreign and international financial, military, or moral support, but does not purge itself of traitors and corrupt officials, Ukraine will at first lose *its moral advantage* and then, most likely, it will lose its *material support* from other countries. And along with the decrease in moral and material support from foreign partners, along with the loss of sympathy from those countries that have long hesitated and until some point considered Ukraine to be sufficiently virtuous in the face of war, Ukraine may find itself forced to negotiate terms favourable to the aggressor state. In this way, the loss of the moral high ground may lead to the loss of chances for Justice for the victim state and for its citizens.

At the same time the USA, Europe or other influential players might highly likely regret one day if their “value uncertainty” to supporting Ukraine turn into evil spreading across Europe and the world. This means that intolerance will be replaced by tolerance. And the chances for justice may vanish.

As a matter of fact, the concept of justice is an essential component of *the rule of law*, which is a basic principle of every democratic state. In the sense of the logic of politicians, the rule of law (which is a separate and perhaps the most fundamental problem in the world’s practical humanities that needs to be addressed in the interests of an individual, of states and of humanity as a whole) should resist turning *from an objective of politics into its means*.

Therefore, from an applied perspective, it can be argued that the *belief in the inevitable victory of good over evil* (on the part of those who will raise their children today and in the future and read them fairy tales with wise endings) will directly depend on whether and to what extent the so-called “world’s adults” will develop a *sense of ardent fight for justice-to-come-back-home*.

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Стецишин Р. Нетерпимість до зла як базова філософсько-правова складова справедливості в міжнародній публічній політиці (в контексті агресивної війни росії проти України)

Анотація. Стаття присвячена з'ясуванню тієї основної характеристики, якою має бути просякнутий пошук справедливості як процесу, як процедури та як результату у розрізі міждержавних воєн на прикладі тієї війни, що була розв'язана державою-агресором Російською Федерацією проти України.

У контексті цієї війни складність визначення змісту справедливості полягає не стільки у перспективах досягнення певного рівня справедливого правопорядку, скільки у націленості на пошук реальної справедливості та у з'ясуванні щирої відданості відповідальних світових суб'єктів спільній меті – викориненню практики використання тероризму, в тому числі вбивств і руйнувань, для легітимізації окупації чужої землі.

Щирість відповідальних суб'єктів у цьому випадку означає не лише вербально-емоційну відданість усіх цивілізованих країн основам міжнародного права, але й вольову поведінку, спрямовану на підтримку та доведення цієї відданості. Встановлення справедливості, особливо на рівні великих міжетнічних систем, буде принципово неможливим, як було з'ясовано у статті, без дотримання відповідальними суб'єктами цінності нетерпимості до зла.

У статті доводиться, що компроміс зі справедливістю, який є онтологічно-правовим злочином проти істини, створює реальні загрози занепаду європейської та світової культурної цивілізації через майбутні численні повстання проти неї з боку диктаторських і терористичних держав та/або груп по всьому світу. У цьому сенсі людина та її права, на жаль, можуть перетворитися з цінності (як це має бути в цивілізованому світі) на просту словесну декларацію про відданість загальнолюдським «вічним речам». Це неминуче потягне за собою хаос, страх і війни в усьому світі. З огляду на це різні держави світу, як суверенні суб'єкти, якщо вони сповнені самоповаги та дбають про стабільну та упорядковану основу спокійного життя прийдешніх поколінь, мають ставитися до права і справедливості як до мети геополітики, а не як до її засобу. Таким чином, у статті обґрунтовується, що справедливість є основою світового порядку, а також його причиною. І аби не загубити справедливість як центральну ідею поняття «світопорядок», за неї треба боротися, і при цьому не лише декларативно.

Ключові слова: справедливість, принципи міжнародного права, міжнародна публічна політика, нетерпимість до зла, відстоювання правових цінностей, рішучість.