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THE DEVELOPMENT OF THE UKRAINIAN LEGAL SYSTEM IN THE CONTEXT OF INFORMATION SOCIETY: THE USE OF THE UNESCO LEGAL MECHANISMS

Summary

The introduction of the UNESCO's idea of the concept of the knowledge-based society through the mechanism of the international cooperation between Ukraine and UNESCO on the legal support for the information society development in Ukraine is suggested. It is emphasized that the formation of knowledge societies requires the effective legal regulation of the social relations under the new conditions, the adaptation of the national legal systems to the priority provisions contained in the international documents on the development of the global information society. Therefore, this work places a particular focus on the need to ensure the interaction between the national legal system and international «soft law». It has been found that the concept of international «soft law» encompasses, firstly, the provisions of the acts of interstate organisations, which are passed on the main (external) issues of their activities (recommendations, declarations, rules, principles, etc.); secondly, the provisions of the acts of international conferences. It has been proved that it is expedient to consider the said concept in the law-making activity of Ukraine. At the same time the role of information law in the process of improving the national legal system is identified as well. It has been proved that the significance and scope of the international component of information law has an upward trajectory in the context of the development of knowledge societies. The feasibility of accounting for the characteristics and problems of international information law during the study of the international component of the sphere of legal support for the information society development in Ukraine is justified. The hypothesis regarding the elements of the specified component is proposed

and tested. The following elements are thoroughly investigated: the international legal instruments of UNESCO, the legally binding provisions; the UNESCO's non-binding international instruments; the non-binding instruments of the international conferences under the auspices of UNESCO. It has been proved that the international constituent of the specified sphere means for Ukraine «a source» of improving the national component, where both legal and material sources of law are the parts of such «source».

Introduction

The processes of integration and globalisation, which have been ocurring over the past few decades in the global society, require that Ukraine should direct the national and social development, and take the consistent and meaningful actions to ensure the rights and freedoms of man and citizen in a proper and efficient manner. The main stages, that Ukraine has to pass through, determine the society's transition from the industrial to information society and finally to the society based on knowledge. However, the existing positive and negative trends of globalization in the world should be taken into account while establishing the effective cooperation of Ukraine with the global community.

On the one hand, the realities of today show that a significant step towards the development of information society in Ukraine is the government awaireness of the need for the formation of the updated state policy, the appropriate legal regulation of the public relations arising at a new stage of the society development. On the other hand, this goes to prove the insufficient development of the mechanisms of implementing the objectives of the information society development in Ukraine, in particular, the mechanisms for the cooperation with international organisations.

Recognising the importance of the fundamental and applied research on the issues of the information society development, the Ukrainian legal scientific community makes an active scientific search in the specified direction (especially, search for specialists in the field of information law).

However, despite awide array of different scientific publications on legal issues of the information society development, it must be recognized the lack of a comprehensive approach to the definition of the organisational and legal framework of the Ukraine's cooperation with international organisations to form the legal foundations of the society based on knowledge, as well as the underdevelopment of the traditions of studying the experience of the United Nations Educational, Scientific and Cultural

Organisation (hereinafter – UNESCO) on the formation of the organisational and legal mechanisms of the development of knowledge societies, and the inadequate efforts aimed at implementing the provisions of international information law and the UNESCO non-binding provisions on the implementation of the new ethics of knowledge societies into the national information legislation. Thus, the need to make and improve the organisational and legal foundations of Ukraine-UNESCO cooperation in the sphere of legal support for the information society development in Ukraine (in the framework of information and administrative law), as well as the lack of substantial scientific works on these problems, determine the relevance of the research topic.

The concept «sphere of legal support for the information society development» (hereinafter – SLSISD) is introduced proceeding from the need to study legal support for the information society development in Ukraine in the framework of Ukraine-UNESCO cooperation [1, p. 79–82]. In this regard, given the specificity of the issues on legal support (this refers to the cooperation with the international organisation), it has been suggested that the specified sphere be represented as the unity (system) of two components [1, p. 81]. Firstly, the national component (the Ukrainian regulatory legal acts; the Ukrainian regulatory agreements (including the international legal instruments, ratified by the Verkhovna Rada of Ukraine); the Ukrainian acts of the law interpretation).

Secondly, the international component (the UNESCO international legal instruments, the provisions of which are legally binding; the UNESCO non-binding international instruments; the non-binding acts of the international conferences under the auspices of UNESCO). As part of our research we will focus on the analysis of the second component of SLSISD – international.

1. International information law: common features of rule-making

The issue on legal support for the information society development in Ukraine requires identifying and considering the entire system of the factors, which influence the information society development. Therefore, the study of the international component of the sphere of legal support for the information society development (hereinafter – SLSISD) in Ukraine should take into account the current challenges of international law. We believe it necessary to note that according to the theoretical and methodological foundations of Ukraine-UNESCO cooperation in the sphere of legal support for the information society development in Ukraine suggested in this paper

[1, p. 54–63], the essential feature of information law is the availability of the international component in its structure, the significance of which should be increased in the process of the development of the knowledge-based society in Ukraine [1, p. 41–53]. However, the new ethics of knowledge societies is based on knowledge sharing and cooperation that also implies a significant influence of the provisions of international information law on national information law. In this regard, additional emphasis should be placed on the development of a new institute of information law – law of international cooperation in the context of the information society development in Ukraine [1, p. 122].

Based on the subject of our study, special mention should be made on international information law as a branch of international law. Thus, many researchers point to the immaturity of international information law. For example, according to the FRG lawyer K.-H. Mellieh, legal science has lagged behind the requirements specified by the states in the sphere of information, and the situation can be changed only by the international legal regulation [2]. The famous researcher of the information problems, the former Minister of Information of Tunisia M. Masmoudi identifies the following problems that have not received the international legal solutions: firstly, the combination of individual and collective rights; secondly, the combination of freedom of information and freedom of expression; thirdly, the establishment and definition of the right of access to sources of information; fourthly, the optimisation of the application of the right to rebuttal; fifthly, the creation of the codes of ethics for journalists; sixthly, the development of rule-making in the sphere of copyrights; seventhly, fair radio frequency allocation, overcoming the inadequate consistency in the satellite use [3, p. 175].

In addition, the untapped opportunities of the international legal regulation of the mass media international aspects come into sharp focus of many lawyers. This is also conditioned by the trend to establish international control over the information exchange in the framework of the United Nations, UNESCO and other international organisations.

However, the international rule-making in the field of information and communication faces serious difficulties. So, we are determined to put an emphasis on the implementation of the balanced, well-reasoned approach, taking into account all important issues of international law (including international information law), while studying the international component of SLSISD.

In our opinion, the study of the specified component should be preceded by some explanations. Thus, the study of the SLSISD national component, as noted [1, p. 103–105], is based on the legal basis – the Constitution of Ukraine, the provisions of which are basic, fundamental for the information society development in Ukraine. We are of the opinion that it is essential to apply the same approach to the study of the international component of SLSISD. First of all, we should emphasize that despite the elements of the SLSISD international component, it is necessary to specify some common features of rule-making in international law.

First and foremost, in the framework of our work we consider it appropriate to lay emphasis on the universally recognized principles of international law and the concept «international legal objective», which will be further considered. So, the concept «international legal objective» which means the «model of the further desired state which the subjects of international law have agreed to implement through joint efforts and have brought into legal force» is important in the context of our work [4, p. 144]. Objectives are of key importance in the system of international law as they are the system-forming and system-organising factors: «acting as a part of the system, objectives provide for the availability of the principles and rules, the observance of which leads to objective, and the means of control over the compliance of the rules and behavior with objectives» [4, p. 146]. Thus, the principles and rules of international law are the means of their achievement.

It is worth mentioning that to achieve an optimum balance between objectives and means is one of the main tasks of the theory and practice of international legal regulation (including the SLSISD international component), and the alignment of objectives is the fundamental issue of global policy, international law. As noted by I. I. Lukashuk: «In fact, the whole mechanism of the political and legal cooperation between states is a complex of the alignment of objectives. Success in this matter depends largely on the correct understanding of the national and international objectives and their relationship by each state. The task of the active coordination of objectives and the achievement of agreement with a broad range of the overall objectives on this basis have come to the fore in solving the global challenges which the international community faces» [4, p. 147]. The problem of the globalisation process humanisation, the solution of which is associated with the knowledge society development is one of such challenges [1, p. 41–53].

It should be highlighted that the general socio-political objective of international law is to ensure the proper functioning of the existing system of international relations and its development. Formulating the objectives of the United Nations, the Charter of the United Nations identified the objectives of international law: 1) to ensure peace and security; 2) to develop friendly relations; 3) to achieve cooperation in solving international problems of an economic, social, cultural or humanitarian character and in promoting and encouraging respect for human rights and fundamental freedoms [5]. I.I. Lukashuk, in particular, notes: «The listed objectives are basic. They occupy a central place in the hierarchy of the objectives of international law. The objectives of branches, institutions and individual acts shall comply with the above-mentioned objectives. Specific objectives are intended to facilitate the implementation of the general objectives» [4, p. 155]. We should agree with the author's opinion.

It is worth noting that the conducted scientific research, namely the issues of the organisational and legal support for the commitment of Ukraine as a subject of national and international information law to develop information society (knowledge society) through the cooperation with other subject of national and international information law – UNESCO, contributes to the achievement of these objectives in a certain way. However, our research is primarily conducted under national information law, the interaction of which with international information law becomes more intense in the context of the development of information society in Ukraine towards knowledge societies.

Finally, the objectives of international treaty are the criteria for legality of the measures for its implementation. According to article 31 of the Vienna Convention on the Law of Treaties [6], a treaty shall be interpreted and executed in line with its objectives; the implementation of rule is manifested in the achievement of the objective which is set up [4, p. 155].

A particular attention should be paid to the means of achieving objectives in international law – rules and principles. It will be understood that the rule of international law means the rule of conduct determined by states and other actors of international law as legally binding. However, the most important rules of international law are called principles and perform two functions: 1) contribute to the stabilisation of international relations, limiting them to certain legislative framework; 2) enshrine everything new that appears in the practice of international relations, and thus contribute to their development.

According to the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, the basic principles are as follows: 1) prohibition of the threat or use of force, 2) peaceful settlement of disputes, 3) non-interference, 4) cooperation, 5) self-determination of peoples 6) sovereign equality of states, 7) fulfilment of obligations under international law in good faith. The Declaration emphasises the importance of maintaining and strengthening of international peace based on respect for fundamental human rights. On the threshold of a new millennium, the significance of the principles of international law is growing. The United Nations Millennium Declaration of 2000 states that the principles have proven their timeless and universal character: «Their relevance and capacity to inspire have increased, as nations and peoples have become increasingly interconnected and interdependent» [7].

Summarizing the above, it is worth noting that there are different types of principles under international law. An important place among them is occupied by the principles-ideas, which include the ideas of peace and cooperation, humanism, etc. It should be emphasised that despite the fact that the principles-ideas implement the bulk of regulation through specific rules (reflected in their content and directing their action), however, they in and of themselves serve as a regulator of international relations. The effective force of the regulatory ideas is emphasised in the international instruments, for example, the Charter of Paris for a New Europe of 1990 states that «the power of the ideas of the Helsinki Final Act» has opened «a new era of democracy, peace and unity in Europe» [8]. Therefore, the significance of both the objectives and principles of international law is regularly emphasised in the international practice. Determining the basics of the cooperation between states, the principles are characterised by their stability and gradual development, provided that the supplementation of the existing principles with new ones, and the development of their content rather than replacement of some principles with the other stake place.

In addition, it should be emphasised that the dynamism of international life has led to the situation in which the enhancement of the regulating action occurs not only due to the growth in the number of detailed rules, but also through the definition of the objectives and responsibilities of actors. The method of program-target regulation, which is implemented, firstly, through regulatory guidelines –programmes; secondly, legal acts – treaties, has gained widespread application on this basis. Besides, «there are even such treaties, the whole content of which is reduced to the coordination of

objectives. This way the coordinated policy of parties is enshrined in a particular area. In this context, it is not infrequently noted that the actors' objectives are imposed by certain obligations [4, p. 177]. Such a provision is contained e.g. in the Convention on the Recognition of Studies, Diplomas and Degrees concerning Higher Education in the States belonging to the Europe Region (1979) [9].

Having determined the objectives of international law (under the Charter of the United Nations Organization), among which the cooperation in solving international problems takes the leading place, we further suggest that the most important documents in the field of international law, which determine the development trends in the global information society, be examined. Being based on international objectives, rules and principles and, at the same time, having outlined the most important issues of the development of the global information society, we hope to obtain the legal foundation which is essential for our work.

So, first of all, it is necessary to emphasise the importance of the Okinawa Charter on the Global Information Society [10], adopted in July 2000. The document establishes the basic principles of the states' joining the global information society. Among these principles special mention should go to the following. Firstly, the development of the information and communication technologies (ICT), which provide the essential stimulus for the global economy development, and the factor that affects people's lives, education, employment, and the formation of civil society. Secondly, the ICT development should facilitate the use of knowledge and ideas by citizens and societies. Thirdly, all mankind without exception shall be able to enjoy the benefits of the global information society. Fourthly, the strengthening of appropriate policy and regulatory framework that should encourage competition and innovation, as well as promote the cooperation, abuses prevention, global network optimisation. Fifthly, the elimination of international gap in the field of information and knowledge.

The next important document is the United Nations Millennium Declaration, adopted by General Assembly Resolution 55/2 on September 8, 2000 [7]. The main thesis of the Declaration is the emphasis on the positive role of globalisation in the world and the declaration of the basic principles, values and ideas maintained and developed by the United Nations in the new century. The Declaration emphasises that a number of fundamental values will be essential to international relations in the twenty-first century. Firstly, freedom – men and women have the right to live their lives and raise their children in dignity, free from hunger and squalor and from the fear of

violence, oppression and injustice. Secondly, equality – no individual and no nation must be denied the opportunity to benefit from the development. Equal rights and opportunities for men and women must be guaranteed. Thirdly, solidarity – global challenges must be managed in a fair distribution of costs and burdens in accordance with the basic principles of equity and social justice. Fifthly, tolerance – human beings must respect each other, in all their diversity of faith, culture and language. Sixthly, shared responsibility – the responsibility for managing the global economic and social development, as well as eliminating threats to international peace and security, should be shared among all the world's peoples and exercised multilaterally. It is also important that the Declaration identifies key objectives of the United Nations activities in the future [7].

Finally, it is also worth mentioning that the most significant international documents on the information society development have been adopted at the World Summits on the Information Society (Geneva, 2003; Tunis, 2005). First of all, the Geneva Declaration of Principles was adopted on December 12, 2003 [11]. The document emphasises the main idea – the formation of information society as a global challenge in the new millennium. The analysis of the Declaration enables to distinguish three thematic blocks of questions: 1) common vision of the information society; 2) the information society for all: key principles; 3) towards the information society for all, based on shared knowledge.

The Declaration proclaims «common desire and commitment to build a people-centred, inclusive and development-oriented information society, where everyone can create, access, utilize and share information and knowledge» [11]. The challenge is to harness the potential of information and communication technology to promote the development goals of the Millennium Declaration [7], and the commitment to the achievement of sustainable development and agreed development goals, as contained in the Johannesburg Declaration and Plan of Implementation and the Monterrey Consensus, and other outcomes of relevant United Nations Summits are reiterated as well.

The Declaration reveals the essence of the following principles: 1) the role of governments and all stakeholders in the promotion of ICTs for development; 2) information and communication infrastructure: an essential foundation open for all information societies; 3) access to information and knowledge; 4) capacity building; 5) building confidence and security in the use of ICTs; 6) enabling environment; 7) ICT applications: benefits in all aspects of life; 8) cultural diversity and identity, linguistic diversity and

local content; 9) media; 10) ethical dimensions of the information society; 11) international and regional cooperation.

Finally, the Declaration determines the vector of further development of the information society towards an information society for all based on shared knowledge. Thus, the following commitments are set out. Firstly, to strengthen cooperation to seek common responses to the challenges and to implement the Plan of Action. Secondly, to evaluate and follow-up progress in bridging the digital divide, assess the effectiveness of investment and international cooperation efforts in building the information society. The final Declaration's provision is the provision that in this emerging society, information and knowledge can be produced, exchanged, shared and communicated through all the networks of the world [11].

The common vision and guiding principles of the Declaration are translated in the Geneva Plan of Action dated December 12, 2003 [12]. The Plan specifies that the information society envisaged in the Declaration of Principles will be realised in cooperation and solidarity by governments and all other stakeholders, and the Plan of Action is an evolving platform to promote the information society at the national, regional and international levels.

It is important that the Plan of Action contains objectives, goals and targets. Thus, the objectives of the Plan of Action are as follows: 1) to build an inclusive information society; 2) to put the potential of knowledge and ICTs at the service of development; 3) to promote the use of information and knowledge for the achievement of internationally agreed development goals, including those contained in the Millennium Declaration; 4) to address new challenges of the information society at the national, regional and international levels. Specific targets for the Information Society will be established as appropriate, at the national level in the framework of national e-strategies and in accordance with national development policies, taking into account the different national circumstances.

In our study it would be useful to draw attention to the fact that in the Plan of Action particular focus is placed on the issues of international and regional cooperation (paragraph C11) [12]. Therefore, the international cooperation of all stakeholders is crucial for the implementation of this Plan of Action and should be strengthened considering the promotion of universal access and bridging the digital divide, in particular through the provision of funds for the implementation.

The next, second stage of the World Summit on the Information Society was held in Tunis in November 2005, under which two documents such as

the Tunis Commitment and the Tunis Agenda for the Information Society were adopted [13]. Thus, analysing the Tunis Commitment, it should be emphasised that it reaffirms the importance of paragraphs 4, 5 and 55 of the Geneva Declaration of Principles and recognises that freedom of expression and the free flow of information, ideas and knowledge are essential for the information society. Moreover, the commitments made in Geneva are reaffirmed, and on their basis it is noted in Tunis that the main objective is to focus attention on the financial mechanisms for bridging the digital divide, the management of the Internet and related matters, and the follow-up activities and implementation of the decisions adopted in Geneva and Tunis, as stated in the Tunis Agenda for the Information Society [13].

The issues raised have received further development in the Tunis Agenda for the Information Society. For example, certain measures are proposed to address the issue of financial mechanisms to bridge the digital divide. First of all, a number of areas that require more financial resources and to which an insufficient attention is paid within the existing approaches to ICT financing for development have been identified. Secondly, the document identifies the following prerequisites for equitable and shared access to financial mechanisms, as well as to their best use: a) creating policy and regulatory incentives aimed at universal access and the attraction of private-sector investment; b) identification and acknowledgement of the key role of ICTs in national development strategies, and their elaboration, when appropriate, in conjunction with e-strategies etc. The third recommendation is to improve and update the existing funding mechanisms, including: a) improving financial mechanisms to make financial resources adequate, more predictable, preferably untied, and sustainable; b) enhancing regional cooperation and creating multi-stakeholder partnerships, especially by creating incentives for building regional backbone infrastructure etc.

2. International legal instruments of UNESCO: types and characteristics

Having identified the basic documents on the information society development in the twenty-first century, we will focus on the study of the first element of the international component of SLSISD – the international legal instruments of UNESCO, the rules of which are legally binding.

The analysis of the international legal instruments enables to distinguish their following types: 1) conventions, 2) declarations, 3) protocols, 4) resolutions, 5) rules, 6) treaties, 7) agreements, 8) principles and others. The need to identify the generalised concept for the international legal

instruments of UNESCO, the rules of which are legally binding, requires a thorough analysis of the above concepts. Thus, the term «convention» can have both general and specific meaning. For example, article 38 of the Statute of the International Court provides for «international conventions, both general and special» [14] as the sources of law. This common usage of the term «convention» includes all international treaties in the same way as the generic term «treaty». Universally recognised principles and rules of law are also traditionally referred to as «conventional law» in order to distinguish them from other components of international law such as customary law and the general principles of international law. The general term «convention» is thus synonymous with the generic term «treaty».

It is essential to clarify the special meaning of the concept «convention». If in the last century the term «convention» was traditionally used to refer to bilateral treaties, at present time it is usually used to refer to formal multilateral treaties with a large number of parties. Generally, the instruments negotiated under the auspices of international organisations are entitled «conventions» (e.g., the United Nations Convention on Law of the Sea of 1982, the Vienna Convention on the Law of Treaties of 1969). The same is applied to the instruments adopted by the international organisation body (e.g., the International Labour Organisation Convention (hereinafter – ILO) concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, 1951, adopted by the International Labour Conference, or the Convention of the Rights of the Child adopted by the United Nations General Assemblyin 1989).

The term «Charter» is used for particularly formal and solemn instruments, such as the constituent treaty of an international organisation. The well-known contemporary examples include the United Nations Charter (1945) and the Charter of the Organisation of American States (1952).

The term «protocol» is used for agreements less formal than those entitled «treaties» or «conventions». There are the following protocol types. Firstly, a protocol of signature is an instrument subsidiary to a treaty, and drawn up by the same parties. Such a protocol deals with ancillary matters such as the interpretation of particular clauses of the treaty, those formal clauses not inserted in the treaty, or the regulation of technical matters. Ratification of the treaty will normally involve ratification of such a protocol.

Secondly, an optional protocol to a treaty is an instrument that provides for additional rights and obligations to a treaty. It is usually adopted on the same day, but is of independent character and subject to independent ratification. Such protocols enable certain parties of the treaty to establish

among themselves a framework of obligations which reach further than the general treaty and to which not all parties of the general treaty consent, creating a «two-tier system». A famous example is the Optional Protocol to the International Covenant on Civil and Political Rights (1966).

Thirdly, a protocol based on a framework treaty is an instrument with specific substantive obligations that implements the general objectives of a previous framework or umbrella convention. Such protocols ensure a more simplified and accelerated treaty-making process and are used particularly in the field of international environmental law. Such example is the Montreal Protocol on Substances that Deplete the Ozone Layer of 1987.

Fourthly, a protocol to amend is an instrument that contains provisions that amend one or various former treaties, such as the Protocol of 1946 amending the Agreements, Conventions and Protocols on Narcotic Drugs.

Fifthly, a protocol as a supplementary treaty is an instrument which contains supplementary provisions to a previous treaty, e.g. the 1967 Protocol relating to the Status of Refugees to the 1951 Convention relating to the status of refugees.

Sixthly, a protocol (Proces-Verbal) as the document that establishes the specific agreements reached by the contracting parties.

Finally, the term «declaration» is used for various international instruments. However, in most cases declarations are not legally binding. The term is often deliberately chosen to indicate that the parties do not intend to create binding obligations but merely want to declare certain aspirations. This example is the 1992 Declaration on Environment and Development. At the same time, declarations can also be treaties in the generic sense intended to be binding under international law. In this regard, it is essential to establish in each individual case whether the parties are intended to create binding obligations. The clarification of the intent of the parties could often be challenging: some documents entitled «declarations», as originally intended, were not supposed to be binding, but later their situation could be a reflection of customary international law, or acquire a binding character as the rule of customary law. This has happened with the 1948 Universal Declaration of Human Rights [15].

Therefore, declarations which shall be binding can be classified as follows. Firstly, a declaration can be a treaty in the proper sense. A significant example is the Joint Declaration between the United Kingdom and China on the Question of Hong Kong of 1984. Secondly, an interpretative declaration is an instrument that is annexed to a treaty with the goal of interpreting or explaining its provisions. Thirdly, a declaration is also

known as an informal agreement on any unimportant matter. Fourthly, a series of unilateral declarations (statements) can constitute binding agreements. A typical example is the declarations (statements) in accordance with the optional provision of the Statute of the International Court of Justice that create legal relationship between the parties.

Thus, we understand conventions (with a special meaning), some types of protocols and declarations of UNESCO under the regulatory legal acts of UNESCO, which are legally binding.

Proceeding to the immediate determination of the content of the first element of the international component, we suggest that a list of the regulatory legal acts of UNESCO, which are legally binding, should be made. For example, the activities of UNESCO in education are reflected in the following conventions: 1) the International Convention on the Recognition of Studies, Diplomas and Degrees in Higher Education in the Arab and European States bordering on the Mediterranean dated December 17, 1976; 2) the Convention on the Recognition of Studies, Diplomas and Degrees concerning Higher Education in the States belonging to the Europe Region dated December 21, 1979; 3) the Convention on the Recognition of Studies, Diplomas and Degrees in Arab states dated December 22, 1978; 4) the Regional Convention on the Recognition of Studies, Diplomas and Degrees in Higher Education in Latin America and the Caribbean dated July 19, 1974; 5) the Regional Convention on the Recognition of Studies, Diplomas and Degrees in Higher Education in African states dated December 15, 1981; 6) the Regional Convention on the Recognition of Studies, Diplomas and Degrees in Higher Education in Asia and the Pacific dated December 16, 1983; 7) the Convention on Technical and Vocational Education dated November 10, 1989; 8) the World Conference on Education dated 1990 (for All Meeting Basic Learning Needs).

In the cultural sphere UNESCO has developed and adopted a number of conventions: 1) the Convention on the Protection and Promotion of the Diversity of Cultural Expressions dated October 20, 2005; 2) the Convention for the Safeguarding of the Intangible Cultural Heritage dated October 17, 2003; 3) the Convention on the Protection of the Underwater Cultural Heritage dated November 6, 2001; 4) the International Charter on the Protection and Restoration of Architectural and Urban Heritage (the Charter of Krakow (2000)) dated October 26, 2000; 5) the Mexico City Declaration on Cultural Policies dated August 6, 1982; 6) the Convention for the Protection of the Cultural and Natural World Heritage dated November 16, 1972; 7) the Convention on the Means of Prohibiting and Preventing the

Illicit Import, Export and Transfer of Ownership of Cultural Property dated November 14, 1970; 8) the Convention for the Protection of Cultural Property in the Event of Armed Conflict («Hague Convention») dated May 14, 1954.

In addition, the above-mentioned regulatory legal acts of UNESCO, which are legally binding, should include the following: 1) the International Convention against Doping in Sport dated November 18, 2005; 2) the Universal Declaration on the Human Genome and Human Rights dated November 11, 1997; 3) the Declaration of Principles on Tolerance dated November 16, 1995; 4) the Declaration on Fundamental Principles concerning the Contribution of the Mass Media to Strengthening Peace and International Understanding, to the Promotion of Human Rights and to Countering Racialism, Apartheid and Incitement to War dated November 28, 1978, etc.

Thus, the above-mentioned regulatory legal acts in and of themselves constitute the content of the first element of the international component of SLSISD. It should be noted that some of the above conventions have been ratified by Ukraine. For example, the Law of Ukraine dated August 3, 2006 has ratified the International Convention against Doping in Sport [16] (adopted on November 18, 2005 in Paris), and the Law of Ukraine dated September 20, 2006 has ratified the Convention on the Protection of the Underwater Cultural Heritage [17].

While conducting the research, it should be appropriate to define the second element of the international component of legal support for the information society development in Ukraine – the UNESCO's non-binding international instruments. It is worth noting that the theoretical and methodological basis for our further research is the concept of international «soft law». Complementing the general characteristics of the above-mentioned concept [1, p. 37–39], we consider it appropriate to pay attention to the following aspects of the concept «soft law».

As noted in the work of I. I. Lukashuk [4], the term «soft law» is used to denote two different phenomena: in one case we are talking about a particular type of international legal rules, in the other – non-legal international rules. In the first case we mean such rules, which in contrast to «hard law» do not give rise to clear rights and responsibilities, but provide only a general guideline, which, however, actors are required to follow. It is worth emphasising that in new areas of the international legal regulation it is often very difficult to come to a common agreement on the specific rules, and the rules of «soft law», which are more flexible, could be supportive in

such cases. Such examples include agreements on environmental protection, which use the following construction: «will make an effort», «to the extent reasonably practicable», «when appropriate» etc.

It should also be emphasised that there are different points of view regarding the validity of such rules. A plenty of lawyers evaluate «soft law» negatively, since its distribution is not supposed to promote the strengthening of the international legal system (P. Weil, France). We share the position of I.I. Lukashuk [4] that it does not seem to be acceptable, quite apart from the fact that since this phenomenon is widespread in practice, it hardly makes sense to deal with it. Therefore, the prevailing view is that the rules of «soft law» are international legal (this idea is reflected in jurisdiction of the states). It is believed that the rules of «soft law» are the essential element of the international legal system, by which it is possible to solve the issues which are not regulated otherwise.

The next types of the rules of «soft law» are the rules which interact with the rules of international law, doing the thing that for one reason or another the latter cannot do. They often provide preliminary legal regulation, «paving the way» to law. The rules of «soft law» are especially important for the activities of international bodies and organisations, which with their help make a large amount of regulation of the international relations, and influence the development of international law. It should be emphasised that they are contained in non-legal instruments, resolutions of international bodies and organisations, joint statements, communiqués. The documents of the Organisation for Security and Cooperation in Europe (OSCE), which have become the main instrument for restructuring the system of international relations in Europe, are indicative of the significance of the above instruments. Such rules are not legal, but moral and political.

The treaties pending the entry into force represent a special type of the rules of «soft law». As it is known, multilateral treaties have often remained in this condition for many years, and their provisions are taken into account when interpreting the rules of international law, they affect the practice of states and even the national legislation. The Report of the Secretary General of the ILO on the conventions of this organisation states that even without being ratified «they are able to influence legislation and national practice» [18].

It is expedient to quote the words of the Dresden University Professor (Germany) Ulrich Fastenrath: «The much-maligned phenomenon of «soft law» performs an invaluable function. It enables worldwide agreement on the content of «hard law», in that it limits the scope of acceptable subjective auto-determination. <…> «Soft law» is more capable of adapting to

changing national political realities. <…> We should not stay on the path of «soft law», but be armed with the necessary tools for movement thereon. In particular, we should include the instruments of «soft law» in the existing methodology of law» [4, p. 213].

Thus, «soft law» is a natural phenomenon that enables to provide statutory regulation in cases where this is impossible by means of «hard law». This proves once again that the regulatory tools by which international relations are governed, are diverse, and not limited to law only. The task is to learn how to use these tools, and not in all cases law is the best tool for solving problems. In many cases the result can be achieved by other regulatory means easier and at lower costs.

Complementing the general theoretical-methodological base of the research of the SLSISD international component, we make a point of focusing on the significance of the programming and non-binding rules in international law. The literature discusses the issue on the existence of the programming rules in international law [19, p. 39]. In this regard, we emphasise that most of the rules contain a program element, they not only enshrine what exists, but determine what should be; in many cases they are devoted to future behavior. The majority of treaties program the development of cooperation.

Thus, the Bulgarian lawyer of I. Genov have rightly emphasised that the programming and regulatory aspect is especially pronounced in imperative norms, principles [20]. The programming element in the basic principles has two aspects. The first aspect is that they are firstly recognised as international legal rules, and then gradually established in state practice. The second aspect of the programming element of the principles is that being legally binding they determine the main directions of the development of international law.

The rules, which provide for a programmatic way of their implementation, are of a particular interest. Thus, article 2 of the Covenant on Economic, Social and Cultural Rights has established that each state «undertakes to take steps, individually and through international assistance and cooperation <…> to the maximum of its available resources with a view to achieving progressively the full realisation of the rights recognised in the Covenant» [21]. It is understood that this wording introduces an element of uncertainty, requires solving the difficult task of establishing «maximum limits». However, this does not deprive the rule of its legal force. There is no escaping the fact that the question has been raised as follows: whether this rule or nothing. The programming method of statutory regulation has gained

widespread use. A new type of instruments which are called programs has appeared. They determine the directions and forms of cooperation in a specific area (e.g., the Program of Cultural and Scientific Cooperation between the Government of Ukraine and the Government of the Republic of Bulgaria for 1995–1997). The parties prefer not to define their legal nature, but nevertheless consider them to be binding, even in non-legal terms.

Many provisions of programs serve as guidelines, and are of advisory nature. The resolutions of international bodies and organisations are the most important form of non-binding rules. There are different opinions on the possible existence of non-binding rules in international law. Some authors allow for their existence (G. M. Veliaminov, G. V. Ignatenko, N. Bartosh (Yugoslavia)), others deny it (G. I. Tunkyn, N. B. Krylov). The concept of non-binding instruments of international law has been called into existence primarily by a desire to explain the nature of resolutions of international organisations. In such a case, the differences between the two phenomena such as non-binding instruments and recommendations as international instruments are ignored. In the first case we are talking about the rules that should regulate the relations in the non-binding manner by setting up the desired, appropriate behaviour pattern, without making it incumbent. In the second case, we mean the instruments which have the force of recommendations, such as the resolutions of the United Nations General Assembly, which may contain categorical orders, but have no legal force [4, p. 154–156].

Summing up the aforesaid, we will make a list of the non-binding international instruments of UNESCO comprising the content of the second element of the SLSISD international component: 1) the Recommendation concerning Technical and Vocational Education (revised on November 2, 2001); 2) the Recommendation concerning the Status of Higher Education Teaching Personnel dated November 11, 1997; 3) the Recommendation concerning Education for International Understanding, Cooperation and Peace and Education relating to Human Rights and Fundamental Freedoms (revised on November 16, 1995); 4) the Recommendation concerning the Recognition of Studies and Certificates of Higher Education dated November 13, 1993; 5) the Recommendation concerning Folklore Preservation dated November 15, 1989; 6) the Revised Recommendation Concerning the International Standardisation of Statistics on the Production and Distribution of Books, Newspapers and Periodicals dated November 1, 1985; 7) the Recommendation Concerning the International Standardisation of Statistics on the Production and Distribution of Books, Newspapers and

Periodicals dated November 1, 1985; 8) the Recommendation Concerning the International Standardisation of Statistics onPublic Expenditure on Cultural Activities dated October 27, 1980 etc.

The third and final element of the international component of legal support for the information society development in Ukraine – the non-binding instruments of the international conferences under the auspices of UNESCO. We will give a list of the non-binding instruments: 1) the Recommendation № 51 of the World Conference on Cultural Policies «Return of Cultural Property and Restoration of Historic Buildings dated August 6, 1982; 2) the Recommendation № 119 of the World Conference on Cultural Policies «Governance of Culture. The Establishment of Bodies Dealing with Cultural Issues» dated August 6, 1982; 3) the Recommendation № 58 of the World Conference on Cultural Policies «Conservation Methods» dated August 6, 1982; 4) the Recommendation № 56 of the World Conference on Cultural Policies «Return of Cultural Property and Restoration of Historic Buildings dated August 6, 1982 etc.

Conclusions

Thus, the conducted research allows to draw the following conclusions. The sphere of legal support for the information society development in Ukraine in the aggregate represents a systemic formation, the components of which (according to the criterion of legal binding) are: 1) legally binding force – the national regulatory legal acts, the regulatory treaties of Ukraine (national and international treates, the consent to the ratification of which is given by the Verkhovna Rada of Ukraine); the UNESCO conventions; the separate declarations and protocols of UNESCO; 2) non-legally binding – the national acts of the law interpretation; the separate declarations and convention of UNESCO; the resolutions and decisions of UNESCO; the recommendations of international conferences under the auspices of UNESCO.

At the same time, it is expedient to represent the sphere of legal support for the information society development in Ukraine as the systemic formation, the components of which (according to the criterion of types of rules) are: 1) legal rules – the national regulatory legal acts; the regulatory treaties of Ukraine (national and international treates, the consent to the ratification of which is given by the Verkhovna Rada of Ukraine); the national acts of the law interpretation; the UNESCO conventions (binding legal force) which are ratified or not ratified in Ukraine; the separate declarations and protocols of UNESCO (binding legal force), which are

ratified or not ratified in Ukraine; 2) non-legal norms (primarily moral and political) – the separate declarations and protocols, resolutions and decisions of UNESCO (non-legally binding); the recommendations of international conferences under the auspices of UNESCO (non-legally binding). As for the national acts of the law interpretation, then they have a legal nature, but have no standardisation (non-regulatory acts). So, they can be tentatively attributed to the first component of the sphere of legal support. At the same time, some acts of the law interpretation (e.g., certain acts of the Constitutional Court of Ukraine have the general standardisation, that is bindingness for an unlimited circle of persons) are directly relevant to the first component of this sphere.

It should be noted that the use of different criteria for the classification of the sphere of legal support for the information society development in Ukraine has contributed to the comprehensive study of this sphere and deepening the knowledge about its general legal characteristics.

In our opinion, the last classification of the specified sphere (according to the criterion of the variety of rules) has led to the following conclusions. Firstly, the purpose of the non-legal norms embodied in the material sources of law, which constitute the second component of the sphere of legal support, is to interact with the rules of international law doing the things which for one reason or another cannot be done by the latter. They often provide preliminary legal regulation, «paving the way» to law. Secondly, with time the UNESCO non-binding international instruments and the non-binding instruments of the international conferences under the auspices of UNESCO (the second component of the sphere) could become legal based on the needs of the global community to regulate new social relationships, the critical mass of which requires it. We believe that such transformation of the UNESCO non-binding instruments into non-binding legal acts will enable at least to give the overall orientation, which, however, the actors are required to follow (without the generation of clear rights and obligations).

Thirdly, it is expedient to study thoroughly the above non-binding instruments of UNESCO and the relevant international conferences in Ukraine. Although these non-binding instruments are not legally binding, they contain categorical provisions, in particular on the development of knowledge societies, by which the relevant state authorities and non-state institutions may be conceptually guided in the law-making process for the information society development in Ukraine. The appropriate organisational and legal measures to achieve such result may be: 1) the implementation of relevant parliamentary readings; 2) the promotion of non-binding

instruments (norms) in the media, at scientific conferences, «round tables», etc.; 3) the incorporation of non-binding instruments in the national information legislation, subject to the justification of such a step.

Fourthly, the conventions (or declarations and protocols) of UNESCO, which are not ratified by Ukraine, should draw deliberate attention of the Verkhovna Rada of Ukraine, the Cabinet of Ministers of Ukraine and the President of Ukraine, since legal support for the information society development in Ukraine should be adequate to the challenges of the information society. It is evident that after the process of ratification the relevant conventions will become part of the national legislation (including information legislation) that, in our opinion, would contribute to the improvement of the sphere of legal support for the information society development in Ukraine.

We believe that the international component of the sphere of legal support is the «source» for the improvement of the national component of this sphere for Ukraine, and the components of such «source» are both legal and material sources of law. The speed of the «transition» of these sources of law (especially legal) to the national component of the sphere of legal support for the information society development in Ukraine greatly depends on the awareness of the representatives of state authorities, civil society institutions, scientists and researchers (including experts in the field of information law) of the advantages of the UNESCO's concept on the development of knowledge societies and the need to introduce a qualitatively new approach to the creation of the legal foundation of such societies.

However, we consider it appropriate to note that international information law: 1) is the rapidly developing area of law; 2) is an integral part of the legal foundation of the knowledge societies; 3) has a significant effect on the national information law, which, in turn, forms the legal foundation of the knowledge societies in Ukraine. In our opinion, the definition of the concept of international information law will also contribute to the understanding of the need to refine the model of the sphere of legal support for the information society development in Ukraine. Therefore, international information law is the system of historically changing rules of conduct (conventional and customary norms) which regulate the international information relations. The features of this branch of international law are as follows: it is not included in the national system of law, and does not include the rules of national law; has conciliatory, coordinating character; it is not ensured by a special supranational enforcement mechanism etc. It is

expedient to emphasise the conciliatory, coordinating character of international information law that, in our opinion, should be inherent in the national information law for effective legal regulation of social information relations that must arise, change and cease under the new conditions of the information society development in Ukraine.

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