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DOI <https://doi.org/10.32849/2663-5313/2022.4.10>**Vasyl Chyzhmar,***Postgraduate Student at the Department of Constitutional Law of Institute of Law, Taras Shevchenko National University of Kyiv, 60, Volodymyrska Street, Kyiv, Ukraine, postal code 03067, [chyzhmar\\_vasyl@ukr.net](mailto:chyzhmar_vasyl@ukr.net)***ORCID:** 0000-0001-8001-1552Chyzhmar, Vasyl (2022). On the classification of international legal standards. *Entrepreneurship, Economy and Law*, 4, 56–62, doi: <https://doi.org/10.32849/2663-5313/2022.4.10>

## ON THE CLASSIFICATION OF INTERNATIONAL LEGAL STANDARDS

**Abstract. Purpose.** The purpose of the article is to provide the author's classification of international legal standards. **Results.** International human rights standards are based on natural law, which includes the ideals of freedom, justice and equality, as well as establishes: general principles of natural law; fundamental human rights and freedoms in various sectors of life; State duties to ensure and respect human rights without discrimination; liability for human rights violations; trends in the development and expansion of human rights and the strengthening of the monitoring mechanism for ensuring human rights to which States consented to be bound. A specific type of international legal standards is anti-corruption standards. It should be noted that corruption is a complex socio-economic and political phenomenon that negatively affects all aspects of the political and socio-economic development of society and the State and has negative effects for their development and functioning, harms people, forms their mistrust in the State, threatens the national security and democratic development of countries. This negative phenomenon is present in all countries of the world, therefore, States have begun to join forces in the fight against corruption. **Conclusions.** The human rights standards recognised by the international community are enshrined in the legal system of each State and if a certain human right is not constitutionally established by the individual State, it is recognised as such by international instruments, since the primacy of international law over the domestic law on human rights is a universally recognised principle of the international community. Therefore, human rights have been regulated by the international community and individual States, and the scope of human rights and freedoms in modern society is determined not only by the characteristics of a certain community of people, but also by the development of human civilisation, by the level of integration of the international community. International instruments enshrine universal standards of prevention of corruption manifestations in the world, play an important role in the fight against corruption, they provide an effective legal basis for defining the fundamental framework for anti-corruption policy of individual States, actively combating this negative phenomenon.

**Key words:** rights, freedoms, duties, person, citizen, corruption.

### 1. Introduction

Global trends towards globalisation, inter-State integration and internationalisation have a significant impact on the development of all socio-political institutions, including the State mechanism and the legal systems of individual countries. These processes require States to modernise their activities, taking into account the scientific and technological progress of our time, the advanced achievements in the field of management of individual countries, and the consideration of the ones developed by the international community, its individual entities, intergovernmental and non-governmental standards for the implementation of domestic and foreign policy, for ensuring human and civil rights and freedoms, for the exercise of people's power, etc.

The characteristics of the essence of the standards reveal that they are diverse and widespread in the activities of various actors in social relations. Similarly, their variant, international legal standards, is characterised by multifaceted, multi-level, multi-subject, non-public cooperation of members of the international community in the political, social, economic, environmental, cultural, law enforcement and other fields that determine the need to classify them.

The issues related to the concept, characteristic, classification of international standards have been considered by scholars such as M. Baimuratov, V. Bryntsev, S. Liakhivnenko, D. Martynovskiy, M. Rabinovych, K. Savchuk, and V. Shamrai. However, the question of estab-

lishing the types of international standards remains open, as there are several approaches to this problem.

The purpose of the article is to provide the author's classification of international legal standards.

## 2. Classification of international legal standards

In legal science, there are different bases and characteristics of varieties of international legal standards. For example, K. Savchuk groups them, according to nomenclologically objective criteria, into international standards in the field of human rights, environmental protection, self-government, combating offences, crime prevention, etc. (Shemshuchenko, 2003, p. 615). At the same time, other legal scholars provide a broader classification of international legal standards. For example, S. Liakhivnenko classifies international standards giving preference to the three most important groups: standards in the field of human rights and their protection, in the field of local and regional democracy, as well as the standards of the International Organization for Standardization (ISO). However, he observes that given the polyphony of the researchers' views on the classification of international legal standards, it should be noted that they can be classified by makers, by sector, by external form of enshrining, by legal importance, by action on the circle of persons, by the specific characteristics of the addressees of standardisation, by the method of implementation, by the content of capabilities, etc. (Liakhivnenko, 2011).

B. Brintz classifies international standards as follows: 1) general (on State structure, human rights and substantive law); 2) procedural (administrative, economic, civil, criminal trial standards); 3) standards of judicial system (Bryntsev, 2010).

A. Ihnatiev proposes to classify international legal standards as follows:

1) By scope of action into two groups:

- Universal, that is, standards produced by the United Nations;
- Regional, produced by the Council of Europe and other regional associations of States.

2) By specialisation of international instruments containing international legal standards into two classes:

- General acts containing separate standards but not intended to regulate;
- Acts of a specialised nature aimed at setting standards.

3) By the binding effect on States Parties into two main classes of international legal standards:

- Binding norms – principles and general provisions;

- Specific standards – non-binding recommendations (Ignat'ev, 1997, p. 37).

The domestic representatives of the legal doctrine of P. M. Rabinovych and M. I. Havroniuk classify international legal standards according to the following criteria:

1) Depending on ontological status:

- Nominal (i.e. Terminological, textual), such as the very titles, that is, a list of nomenclature (cadastre) of human and civil rights, freedoms and duties, which are used in a variety of international documents;

- Actual (substantive), that is, formally recorded in these sources, including the content, volume and quantity of such rights and freedoms;

2) By the scope (area) of action:

- Worldwide (universal, collective, global);
- Regional (including continental);

3) By nature of binding implementation:

- Legal, implementation of which is formally binding for certain States and is ensured by the application of international sanctions (on the basis of the binding compliance by States with their international legal obligations under the international treaties signed. – The author);
- Moral and political, non-binding formally (Rabinovych, Khavroniuk, 2004, p. 20).

O. Salenko proposes to classify international standards: 1) according to the content and method of establishment: objectives, principles, norms; 2) by scope: universal, regional, particular; 3) by legal force: mandatory, dispositive; 4) by functions in the mechanism of international legal regulation: substantial and procedural; 5) by way of making and form of implementation: customary, contractual and those contained in decisions of international organisations (Salenko, 2014).

According to N. Stavniichuk, regulatory and legal standards can be classified: by makers into the standards of the Council of Europe (CoE), the European Union (EU), the Organisation for Security and Cooperation in Europe (OSCE) etc.; by the sector into constitutional, civil, criminal, etc.; by the external form of establishment into provided for by international treaties, the case law of the European Court of Human Rights and the legal regulations of international organisations relating to sources of law (Stavniichuk, 2010).

Following M. Baimuratov and D. Martynovskiy, international legal standards can be classified also by focusing on the composition of actors, legal status or conduct thereof are regulated or harmonised by such international legal standards, or simultaneously regulated and harmonised, for example, international legal standards concerning children, women, persons with disabilities, pensioners, military personnel, pris-

oners, youth, foreigners, non-citizens, etc. These scholars argue that nomenclological features to identify the ILS are, first of all, a variety of titles of documents and acts that explicitly refer to the international standards contained in them:

- Basic Principles, for example, on the Independence of the Judiciary;
- Body of Principles, for example, for the Protection of Persons;
- Codes of Conduct, for example, for Law Enforcement Officials;
- Principles, such as the Principle of Cooperation in a certain field of medical ethics;
- UN Minimum Rules;
- UN Rules, for example, for the Protection of Juveniles Deprived of their Liberty;
- The Tokyo Rules, for example, on the Administration of Juvenile Justice.

At the same time, the same nomenclature enables to incorporate into the system of international instruments in force universal international instruments adopted by the United Nations, on the basis of the following classifications:

1. General acts:

- The 1948 Universal Declaration of Human Rights;
- The 1966 Covenant on Economic, Social and Cultural Rights;
- The 1966 Covenant on Civil and Political Rights;
- The United Nations Declaration on the Elimination of All Forms of Racial Discrimination, 1963;
- The 1971 Declaration on the Rights of Mentally Retarded Persons;
- The 1975 Declaration on the Rights of Persons with Disabilities.

2. Specialised acts:

- The 1975 Declaration on the Protection of All Persons from Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- The 1984 European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;
- The 1979 Code of Conduct for Public Order Officials;
- 1982 Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- The 1989 Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, etc.

In addition, it should also be stressed that a wide variety of international norms differ in legal force, in scope (Baimuratov, Martynovskiy, 2021).

To sum up, the analysis of doctrinal approaches to the classification of international legal standards reveals the lack of a common vision of their types, the diversity of approaches to their classification, including a large number of characteristics and depending on the purely subjective position of their authors, based on their understanding of the role and importance of international legal standards for individual States and the international community.

We argue that international legal standards can be classified as follows:

I) According to the nomenclologically objective criteria into:

- international standards in the field of human rights,
- international standards of local self-government,
- international standards in the field of health,
- international legal standards of environmental protection,
- international legal standards of combating offences and preventing crime;

II) According to action in space on:

- universal, applicable worldwide,
- regional, limited to a certain region of the globe;

III) Depending on the legal nature and specialisation of international instruments containing international legal standards, into:

- general standards;
- specific standards, representing standards in a certain field (sector);

IV) Depending on the effect on a certain group of persons, into:

- general standards concerning an undefined number of persons
- special standards for specific categories of the population;

V) According to legal importance:

- formally binding,
- recommendatory (so-called "soft" law);

VI) According to the sector, constitutional law, civil law, criminal law, etc.;

VII) According to external form of establishment, into provided for by:

- Declarations,
- International covenants;
- Conventions,
- Recommendations,
- Rules,
- Codes,
- Final documents adopted at inter-State conferences;

VIII) According to degree of certainty of content:

- *basic, absolutely definite,*
- *additional, clarifying (relatively defined);*

IX) According to structure:

- simple,
- complex.

### 3. International human rights standards

According to the nomenclologically objective criteria, international human rights standards are the most prevalent. They are reflected in a number of important international legal instruments that have established fundamental human rights and freedoms as universal human values, establishing boundaries beyond which States cannot transcend. These international instruments include the Universal Declaration of Human Rights (1948), mentioned above, the International Covenant on Civil and Political Rights (1966), the International Covenant on Economic, Social and Cultural Rights (1966), the Optional Protocol to the International Covenant on Civil and Political Rights (1966), and about 300 other instruments, constituting a universal set of fundamental rights and freedoms which should ensure the normal functioning of the individual. They proclaimed the natural human rights and incorporated general principles and concepts without defining their class characteristics, giving human rights a universal democratic and human meaning that is receptive to all States. The set of internationally defined human rights and freedoms initially covered civil, political, economic, social, cultural rights and freedoms, or so-called first- and second-generation human rights. It has been expanded to include third-generation human rights.

In general, international human rights standards are based on natural law, which includes the ideals of freedom, justice and equality, as well as establishes:

- General principles of natural law;
- Fundamental human rights and freedoms in various sectors of life;
- State duties to ensure and respect human rights without discrimination;
- Liability for human rights violations;
- Trends in the development and expansion of human rights and the strengthening of the monitoring mechanism for ensuring human rights to which States consented to be bound.

In addition, international human rights standards contain democratic principles and norms for the organisation and operation of State power, the main ones being the people's power, the recognition of the individual as the supreme social value, the distribution of power, the rule of law, the proclamation of the people as the sole source of power and the existence of justice institutions independent of authority, which are important factors in ensuring human and civil rights and freedoms.

The human rights standards recognised by the international community are enshrined in the legal system of each State and if a certain human right is not constitutionally established by the individual State, it is recognised as such by international instruments, since the primacy of international law over the domestic law on human rights is a universally recognised principle of the international community. Therefore, human rights have been regulated by the international community and individual States, and the scope of human rights and freedoms in modern society is determined not only by the characteristics of a certain community of people, but also by the development of human civilisation, by the level of integration of the international community.

Local government standards (local and regional democracy standards), derived from the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities of 21 May 1980, are a variant of international legal standards (European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities, 1980), European Charter of Local Self-Government of October 15, 1985 (European Charter of Local Self-Government, 1985), Worldwide Declaration of Local Self-Government of September 26, 1985 (Worldwide Declaration of Local Self-Government). Then the international community adopted the Helsinki Declaration on Regional Self-Government of 28 June 2002, the Utrecht Declaration on Good Local and Regional Governance in Turbulent Times: the Challenge of Change of 17 November 2009, the Strategy for Innovation and Good Governance at Local Level of 15-16 October 2007, the Council of Europe Committee of Ministers' Recommendation CM/Rec(2007)12 to Member States on Capacity Building at Local and Regional Level of October 10, 2007, the European Congress of Local and Regional Authorities' Recommendation 240 (2008) On the Draft European Charter of Regional Democracy of May 28, 2008, the Charter of the Congress of Local and Regional Authorities of the Council of Europe of 19 January 2011, the Additional Protocol to the European Charter of Local Self-Government on the Right to Participate in the Affairs of a Local Authority, Recommendation Rec (2001) 19 of the Committee of Ministers of the Council of Europe On the participation of citizens in local public life of December 6, 2001, Recommendation 113 (2002) of the Congress of Local and Regional Authorities of Europe on relations between the public, the local assembly and the executive in local democracy (the institutional

framework of local democracy) of June 4, 2002, Recommendation 139 (2003) of the Congress of Local and Regional Authorities of Europe On Non-governmental Organisations and Local and Regional Democracy of 26 November 2003, Recommendation 182 (2005) of the Congress of Local and Regional Authorities of Europe On public participation in local affairs and elections of May 17, 2005, etc. (Borodin, Kvitka, Tarasenko, 2019).

These acts regulate the approaches and principles jointly developed by States for the establishment, formation and functioning of the institution of local self-government in the territories of specific States. They reflected the integration processes in the territories of the Western European States and had begun with the establishment of the Council of Europe, which had proclaimed the principles of the organisation of local authorities respected by all the democratic States of Europe.

For example, the European Charter of Local Self-Government not only defines local self-government as the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population, exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them (this provision shall in no way affect recourse to assemblies of citizens, referendums or any other form of direct citizen participation where it is permitted by law) (European Charter of Local Self-Government, 1985), but also embodies the concentrated European experience of establishing an effective system of local and regional governance as one of the main pillars of the democratic structure of the State. The Charter obliges the parties to apply the basic rules guaranteeing the political, administrative and financial independence of local self-government bodies. Therefore, the development and adoption of the Charter, as well as other international instruments regulating standards of local self-government, according to some scholars, is a demonstration of the political will of European States to give practical significance, at all levels of territorial administration, to the principles for the protection of democracy developed at the time of the establishment of the Council of Europe. The principles of local democracy in the Charter are considered not in relation to the population of a particular territory, but through the prism of local self-government bodies, their competence, the manner of exercising powers and using funds. The document therefore contains the principles

of representative democracy, while the principles of direct democracy are implicitly enshrined. This is confirmed by the legal regulations of foreign States, most of which enshrine the principle of the autonomy of local self-government, but it is interpreted primarily as the autonomy of the organisational structures of local self-government. European Legal Standards of Local Self-Government are principles and methods of organisation and implementation of local self-government enshrined in international documents, treaties and agreements of European countries (Krylova, 2015).

A specific type of international legal standards is anti-corruption standards. It should be noted that corruption is a complex socio-economic and political phenomenon that negatively affects all aspects of the political and socio-economic development of society and the State and has negative effects for their development and functioning, harms people, forms their mistrust in the State, threatens the national security and democratic development of countries. This negative phenomenon is present in all countries of the world; therefore, States have begun to join forces in the fight against corruption. The researchers emphasise that the factors of successful anti-corruption are known and tested by the international community. These include, first and foremost, the openness of the authorities, the transparency and comprehensibility of public decision-making procedures, effective mechanisms for monitoring the activities of State bodies by civil society, freedom of speech, freedom and independence of the media. Moreover, combating corruption is under focus at the regional level. International legal instruments of both universal and regional have developed legal provisions, guidelines and principles that are necessary or recommended to be embodied in the national anti-corruption legislation (Zadorozhnii, 2016).

The important international instruments that set standards in the fight against corruption are, first of all, UN Resolution on Practical measures against corruption adopted at the VIII UN Congress on Crime Prevention (Havana, 1990), which defines the essence of corruption as "violation of ethical (moral), disciplinary, administrative, criminal nature, manifested in the illegal use of their official position by the subject of corruption", the United Nations Framework Convention against Organised Crime, the UN Convention against Transnational Organised Crime (2000), the Criminal Law Convention on Corruption, the UN Convention against Corruption (2003), the Civil Law Convention on Corruption, Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials (1989); the General



Assembly Resolution on Action against corruption (1996), the International Code of Conduct for Officials (1996), the UN Declaration against Corruption and Bribery in International Commercial Transactions (1996), Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. These instruments have become the basis for the creation of regional international legal instruments that have established universal standards for the prevention and combating of corruption. These include the Programme of Action against Corruption adopted by the Committee of Ministers of the Council of Europe (1996), the Resolution of the Committee of Ministers of the Council of Europe on Twenty Guidelines for the Fight against Corruption (1997), which was one of the first international instruments of a regional character, establishing international standards in this field, the Criminal Convention against Corruption, the Civil Convention against Corruption, the Additional Protocol to the Criminal Convention against Corruption (2003) and other Acts

of the Council of Europe, as well as regional international organisations, such as the Organisation for Economic Cooperation and Development, the European Union, the African Union, Organisations of American States, etc. These international instruments enshrine universal standards of prevention of corruption manifestations in the world, play an important role in the fight against corruption, they provide an effective legal basis for defining the fundamental framework for anti-corruption policy of individual States, actively combating this negative phenomenon.

#### 4. Conclusions

However, it should be noted that such a general characterisation of types of international legal standards does not exclude other varieties of them, which characterise the diverse legal nature of these standards, their role in the functioning of the international community on a democratic basis, emphasise the specificities of introducing legal values developed by the world community into the practice of State formation by individual countries.

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## ДО ПИТАННЯ КЛАСИФІКАЦІЇ МІЖНАРОДНИХ ПРАВОВИХ СТАНДАРТІВ

**Анотація. Мета.** Метою статті є надання авторської класифікації міжнародних правових стандартів. **Результати.** Основу міжнародних стандартів у сфері прав людини становлять норми природного права, що включають ідеали свободи, справедливості та рівності, та встановлюють загальні принципи природного права; фундаментальні права та свободи людини в різноманітних сферах життєдіяльності; обов'язки держави із забезпечення та дотримання прав людини без будь-якої дискримінації; відповідальність за порушення прав людини; напрями розвитку й розширення сфери прав людини та посилення контрольного механізму за виконанням державами взятих на себе зобов'язань у сфері прав людини. Особливим різновидом міжнародних правових стандартів є стандарти у сфері боротьби з корупцією. Слід відзначити, що корупція – це складний соціально-економічний і політичний феномен, який негативно впливає на всі аспекти політичного і соціально-економічного розвитку суспільства та держави і має негативні наслідки для їх розвитку та функціонування, завдає шкоди людям, створює у них недовіру до держави, реальну загрозу національній безпеці та демократичному розвитку країн. Це негативне явище присутнє у всіх без винятку країнах світу і тому держави розпочали об'єднувати зусилля у боротьбі з корупцією. **Висновки.** Визнані міжнародною спільнотою стандарти у сфері прав людини закріплюються правовою системою кожної держави і якщо певне право людини не отримало конституційного закріплення з боку окремої держави, воно визнається таким на основі міжнародних актів, оскільки пріоритет міжнародного права щодо внутрішньодержавного у сфері прав людини є загальновизнаним принципом міжнародного співтовариства. Таким чином, права людини стали об'єктом регулювання і міжнародного співтовариства, і окремих держав, а обсяг прав і свобод людини у сучасному суспільстві визначається не лише особливостями певного співтовариства людей, а й розвитком людської цивілізації загалом, рівнем інтегрованості міжнародного співтовариства. Міжнародні акти закріплюють універсальні стандарти запобігання корупційним проявам у світі, відіграють вагомий роль у боротьбі з корупцією, вони являють собою ефективну правову основу для визначення фундаментальних засад антикорупційної політики окремих держав, які активно борються з цим негативним явищем.

**Ключові слова:** права, свободи, обов'язки, людина, громадянин, корупція.

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