

Neo-Kelsenian Theory of International Law (Description for the general public)

Hans Kelsen (1881-1973), an Austrian law professor, has often been referred to as “the best-known lawyer of the twentieth century”. His contribution to the science of law is not to be underestimated; the main achievement of this scholar was to create an extremely influential method of legal research and cognition, called the pure theory of law. He was one of the main authors of the modern concept of a constitutional court, and he also deserves credit for the development of the idea of the rule of law and democratic theory. However, Kelsen also highlighted the importance of issues of international law. The latter element of his scholarship is seldom studied. The first objective of this research project is to reconstruct the concept of international law from the rich heritage of Hans Kelsen, and to decide whether it can be considered to form a coherent scientific theory in the light of his own proposed methodological assumptions.

This is not, however, a research project in the history of legal thought. The goal is not to retrace the historical conditions of the development of Hans Kelsen’s views. Rather, the author’s aim is an analysis and synthesis of Kelsen’s theoretical arguments and philosophical–political ideas on international law in isolation from the context in which they developed. The next step in the research will be to examine whether and how the theory of international law of the Austrian scholar can be applied to modern legal settings at the beginning of the twenty-first century. A good scientific theory should on the one hand be descriptive (it should serve explanatory purposes), and on the other be normative (that is, it should answer the question of how to proceed or of what decisions to make in order to secure the phenomena provided for by the theory).

With regard to Hans Kelsen’s theory of international law, the legal phenomenon important to modern international law, which this theory could help to explain, is the issue of global law. This concept is associated with an attempt to name the complex transition to which international law is subject, along with the change in its character, from being the law among nations towards supranational law or a system of law detached to a large extent from the decision-making will of the states that constitute the main actors in international relations. One of the categories that tries to capture the meaning of the progressive changes in the structure of global international law is the concept of multi-centrism (legal pluralism). Multi-centrism is a theory of a global legal system, because it assumes that, on a global scale, there are many centres of power and decision-making, and many subsystems of rule creation. These all coexist within the framework of general international law, and can interact and collide with each other, especially in the dimensions of the application and interpretation of the law. The assumption in this part of the research is that Hans Kelsen’s theory of international law is an intellectual tool that allows one to observe and adequately describe the multi-centric global legal order, and also enables one to draw normative conclusions. The aim of the research is to verify this hypothesis.

In the course of the research the philosophical-legal method will be used; this is based on carrying out thought processes for the analysis and comparison of concepts. This method is widely used in theoretical studies of law. This project does not require empirical research to be conducted.

The results of this research project will be particularly important for the development of legal science and scholarship. Research on Hans Kelsen’s theory of international law has not yet been conducted in Poland. Internationally, this research topic has been undertaken mainly in a historical context, and seldom has the possibility of applying this theory in the solution of complex conceptual problems at the supranational (global) level been analysed. Moreover, the results will provide useful conceptual and analytical instruments that can be used to work with the increasingly complex transformations of international and global law. Such tools are currently lacking both in the science of international law and in the theory and philosophy of law. These disciplines do not always keep pace with the spontaneous processes of globalization that are also taking place in the field of law. What we first need in order to deal with the real legal and political problems are adequate theories. To paraphrase Albert Einstein, one must bear in mind that there is nothing more practical than a good theory. This study is an attempt to propose such a theory for the problems of tomorrow, by drawing from the European intellectual tradition of the last century.