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# The legal framework of the foreign policy of the Byzantine in the era of Constantine VII Porphyrogenitus (945-959)

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## Abstract

The *aim of the article* is to determine the legal foundations. The *methodological basis* of the study is analysis and synthesis, systems approach, genetic and comparative methods. *Conclusions:* The Byzantine law can be traced to the legislation of Basil I and Leo VI. However, *jus gentium* (law of nations) did not have sufficient representation in their codes. Therefore, the legal basis of Byzantine foreign policy consisted of customs and traditions that had been formed in diplomatic practice in ancient times. The system of international relations of Byzantium was hierarchical. The legal status of each participant in this system was determined by military power, political potential, tradition and religious identity. The relations between Byzantine and Kievan Rus' can serve as a model of the application of international legal norms, which were based on the treaty of 944, which regulated the legal status of merchants, property rights, mutual military assistance and the use of territories on the coast of the Dnieper River estuary, Beloberezhye and the island of Saint Epherius (Berezan).

**Keywords:** international law; politics of the Byzantine Empire; Byzantium; Constantine VII Porphyrogenitus; Kievan Rus.

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## El fundamento jurídico de la política exterior bizantina en la época de Constantino VII Bagriano (945-959)

### Resumen

El objetivo del artículo fue determinar los fundamentos jurídicos de la política exterior del estado bizantino a mediados del siglo X. La base metodológica del estudio es el análisis y la síntesis, el enfoque de sistemas, los métodos genéticos y comparativos. Todo permite concluir que, el derecho bizantino se remonta a la legislación de Basilio I y León VI. Sin embargo, el *jus gentium* no tuvo suficiente representación en sus códigos. Por lo tanto, la base legal de la política exterior bizantina consistía en costumbres y tradiciones que se habían formado en la práctica diplomática en la antigüedad. El sistema de relaciones internacionales de Bizancio era jerárquico. El estatus legal de cada participante en este sistema estaba determinado por el poder militar, el potencial político, la tradición y la identidad religiosa. Las relaciones entre la Rus bizantina y la de Kiev pueden servir como modelo de aplicación de las normas jurídicas internacionales, que se basaron en el tratado de 944, que regulaba el estatuto jurídico de los comerciantes, los derechos de propiedad, la asistencia militar mutua y el uso de los territorios en la costa del estuario del río Dnieper, Beloberezhye y la isla de Saint Epherius (Berezan).

**Palabras clave:** derecho internacional; política del Imperio Bizantino; Bizancio; Constantino VII Porphyrogenitus; Rus de Kiev.

### Introduction

The reign of the emperors from the Macedonian dynasty (867–1056) is rightly considered the era of the “Byzantine encyclopedism” or “Macedonian Renaissance”, which is characterised by the flourishing of literature and science. The peak of this epoch takes place during the reign of Constantine VII Porphyrogenitus (945-959). He is credited with authoring, or at least partly concerned with, a series of works on Byzantine relations with neighbouring states and people.

The foreign-policy realities and motives of diplomatic actions described in Constantine VII's writings are often used as classic examples of the development of these spheres of life in the Byzantine state. However, the middle of the X century for international relations within the boundaries of the imperial ecumene was quite a transitional time because the old structures were abandoned while new ones were being formed. In Western Europe, the Carolingian Empire had ceased to exist, and its successor, the Holy Roman Empire, had still not emerged.

In the East, the Abbasid Caliphate lost its political authority and ceased to play the role of a centre of attraction for the Islamic emirates. A few months after the beginning of the independent rule of Constantine VII, the real power in Baghdad was taken by the Shiite Buyid dynasty. These events led to the breaking of familiar political ties within the Muslim world and caused the need for a legal understanding of the changes that had occurred.

The area north of the Black Sea in Eastern Europe was on the scene as well. Khazar Khaganate gradually lost its influence here. At the same time, the relations with the Kievan Rus' underwent sufficient changes in all spheres - political, economic, religious, and military. And therefore, their importance had increased dramatically.

Despite the continuing interest in the study of the foreign policy and diplomacy of Byzantium, as well as the literary legacy of Constantine VII, many of their aspects still cause lively discussions. The problem of the legal norms on which Byzantine foreign policy was based in this era received little attention from scholars. Neither the origins of international law, the extent of its codification, nor the role of custom had been thoroughly addressed.

Therefore, this study aims to determine the legal foundations of the foreign policy of the Byzantine state in the middle of the X century. In this regard, the authors plan to solve such problems as identifying the sources of legal norms of the Byzantine foreign policy and considering the features of their practical application in relations with neighbours, in particular with the Kievan Rus'.

## **1. Methodology of the research**

The methodological basis consists of both general scientific and specific scientific research methods. In considering international relations of the middle of the 10th century, a systematic approach is applied. According to the principles of this approach formulated by L. von Bertalanffy and R. Aron, the Byzantine Empire can be considered as the centre of a particular international system, the "Byzantine Commonwealth of Nations" by D. Obolensky (Obolensky, 1998).

Analysis and synthesis are used in the process of researching historical sources. The analysis detects references to the facts of the application of ordinary legal norms and legal traditions in the treatises of Constantine VII Porphyrogenitus. Synthesis makes it possible to systematise the identified facts.

The genetic method is practised to examine the origins of the legal norms on which the Byzantine elite relied in decision-making in foreign policy. This method traces the evolution of Byzantine international law from antiquity to Constantine VII.

The comparative method allows drawing parallels between the legal norms used in international relations in different epochs. The study compares the development of the principles of *jus gentium* (law of nations) in Western Europe and the Byzantine Empire.

## 2. Results and discussion

Legislative reforms became a landmark phenomenon during the reign of the first emperors of the Macedonian dynasty – Basil I (867–886) and Leo VI the Wise (886–912)—grandfather and father of Constantine VII. The codes “Basilika”, as well as the “Epanagoge” and “Procheiros”, represented the revision of the Code of Justinian. Since the X century, it is “Basilika” that has become the main legislative body, although *Corpus juris civilis* were still being used for educational needs.

The elements of international law were reflected even in Justinian’s Digest. The statements concerning the existence of *jus gentium* (the law of people) and the possibility of their application not only in relation to the peoples within the empire, but also to the neighbours of Pax Romana are contained in the quotations of Ulpian and Gaius (Merezhko, 2010).

However, the Code of Justinian regulated relations within a state, and therefore the rules it contained had little to do with the Roman Empire’s relations with its neighbours. It is significant that the extended treatment of *jus gentium* of Ulpian’s as the legal basis for international relations has survived in the West in the “Etymology” of Isidorus and has remained unknown to the Byzantine East (Grabar, 1901:15).

Therefore, the idea of *jus gentium* did not get further development in “Basilika”. The main task of the legislative codes of Basil I and Leo VI the Wise was to clear the law of obsolete norms. In addition, these codes covered a range of issues related to social and economic life (Kazhdan, 1958). It is also worth noting the works of Ukrainian researchers Roman Oleksenko, Yevhenii Bortnykov, Stanislav Bilohur, Nina Rybalchenko, Natalia Makovetska (2021) and Demian Smernytskyi, Kostiantyn Zaichko, Yurii Zhvanko, Malvina Bakal, Tetiana Shapochka (2021) which was published in 2021.

Foreign policy and diplomacy of Byzantium were practically not reflected in “Basilika”. Constantine VII’s work on international relations is based more on the tradition and experience of foreign policy existing since antiquity.

A certain stage of systematization of foreign policy experience and norms of the legal tradition of relations with other peoples is the treatise “About embassies” or “About Roman Ambassadors to Peoples”. The treatise

is included in the compendium of extracts (excerpts) from works of ancient literature, united thematically. The work on the collection had probably been completed until 945 when the independent rule of Constantine VII began.

Much of the excerpt “About embassies” was taken from the works of authors of the Late Roman Empire (IV-VI centuries). Some of them had diplomatic experience. The most famous in this sense was the author of “Gothic history”, Priscus, known for his participation in the East Roman embassy under the Hun chief Attila (448), and Peter the Patrician, the head of the Roman embassy who made peace with the Sasanids in 562.

Apparently, the purpose of writing the treatise “About embassies” is to create a database of information on the history of diplomacy and the legal aspects of foreign policy. The Treatises “On the Governance of the Empire” and the “De Ceremoniis”, written during Constantine’s VII independent rule, are thematically oriented to modern diplomatic needs and are intended for a small group of readers.

The place of the Emperor and Empire in the surrounding world is determined on the basis of biblical tradition in the form of quotations from the Old Testament. For this reason, Constantine VII Porphyrogenitus, while teaching his son and heir, Roman I, asserted the divine origin of the authority of the Byzantine Emperors, to whom foreigners must pay tribute and bow to: “The ones who inhabit the land” (Constantinus Porphyrogenitus, 1967: 46-47). The power of the Byzantine Emperor is universal. The ruler is to make “the best decisions” for the “common good” (Constantinus Porphyrogenitus, 1967:44-45).

The concept of the “Gob blessed” world leadership of the Byzantine Emperor, which was explained to us by Constantine VII Porphyrogenitus, puts him at the head of an extensive international hierarchy. This hierarchy has the characteristics of an international system. Its peculiarity lies in the existence of “hierarchically organized” sovereignty, i.e., the sovereignty divided between representatives of different hierarchy levels (Merezhko, 2010:63).

Certain ideas about the international hierarchy, headed by the Byzantine Emperor, are given in 48 chapters of the treatise the “De Ceremoniis” (Constantine Porfirogenito, 1828: 686- 692). It contains a list of introductory formulas to official messages sent by emperors to other rulers and ecclesiastical hierarchies. The list includes more than 60 recipients. The materials of the chapter allow us to distinguish several types of hierarchies of international partners of the Byzantines.

The first type of hierarchy is based on the principle of the spiritual kinship of the Byzantine emperor with other addresses. The Pope is seen as the spiritual father of the emperor. A number of rulers of Western Europe –

the kings of Gallia (France), Saxony (Germany) and Bavaria are considered spiritual brothers of the emperor. According to Naumenko, the “king of Bavaria” in this very case is Henry II, Duke of Bavaria (948-955), the younger brother of Otto I, King of Germany (939-973) (Nazarenko, 2001: 256). The status of a spiritual brother, apparently, meant a kind of equality among Christian rulers. However, bearing the title of the emperor already placed the ruler of Byzantine on a higher level in the international hierarchy compared to the kings of Western Europe.

A separate group of “spiritual sons” of the Byzantine emperor were the rulers of Armenia, Alanya, and Danube, Bulgaria. However, their full titles had differences, in which, evidently, one should see the disparity of relationship between the Byzantine emperor and each of them.

The second type of hierarchy was reflected in the value of gold seals (bulls), which were attached to imperial messages. Out of the total number of addresses, such seals are mentioned in relation to 31 rulers. In this group, the Emir of Egypt stands out separately for having received a seal worth 18 solidi. This seal significantly exceeds the cost of the seals for other addressees and, perhaps, is explained by the emperor’s attempts to establish closer relations with this ruler (Lugovoi, 2018).

The Caliph of Baghdad with the title of the First Counsellor is mentioned to have received a seal of 4 solidi. The group of rulers who received the message with the seal that cost 3 solidi were the patriarchs of Alexandria and Antioch, the kings of Greater Armenia and Vaspurakan, and the Khazar Khaganate.

The largest group consisted of rulers who received messages with seals worth 2 solidi. This group included 23 recipients from Eastern and Central Europe, Transcaucasia, the Balkans, and Italy.

An important criterion of the ruler’s independence or dependence on the empire was the status of the message he received. Messages to independent agents had the status of a letter (grammata). This fact is stated in the context of the description of the empire’s contacts with the Pechenegs (Constantinus Porphyrogenitus, 1967: 50-53).

The letters to conquered peoples had the status of an “order” (keleusis) (Stephenson, 2004: 35). Such letters were received by 38 addressees, i.e., almost two-thirds of the total number in the list.

To consider the whole complex of legal norms in their practical application, one can use the example of the relations between Kievan Rus’ and Byzantine of the middle of the X century. Contacts of Byzantine with Rus’ have a long history, which can be traced back to the first half of the IX century.

According to written sources, the campaigns of the troops of Rus' princes targeting the territories of the empire, as well as its capital, took place in 860, 907 and 941 (The successor of Theophane, 2009: 129-130, 262-263; Symeon the Metaphrast and Logothete, 2014: 186; Liudprand of Cremona, 1930: 185-186;). At the beginning of the X century Leo VI the Wise reported on the danger that came from the military flotillas of the Rus' ("the Scythians") going out along the rivers into the Black Sea (Leo VI the Wise, 2012: 305).

However, the military expeditions of Kievan Rus' aimed at Constantinople ended up with meetings of embassies and the conclusion of bilateral treaties. Kievan Rus' sought favourable terms of the trade on the route "from the Varangians to the Greeks", and its military forced participated in military operations as part of the Byzantine allied troops.

By the middle of the X century, these complicated relations between Constantinople and Kiev had been fully established. In 944, a few months before the beginning of the sovereign reign of Constantine VII, Byzantium concluded a treaty with Rus'. And it ended the conflict that had lasted since 941. The text of the treaty described in the "Tale of Bygone Years" is one of the most comprehensively preserved international legal documents compiled since the time of Justinian I (527-565) (Kuzovkov and Gorbenko, 2019).

On the Byzantine side, the agreement was concluded on behalf of three co-emperors. On the Rus' part, Prince Igor and his family members were represented by 25 ambassadors and 26 merchants. The preliminary statement contained the oaths taken by Rus' side.

A significant part of the articles regulated the trade relations between Rus' and Byzantium: the order of arrival and stay of Rus' ambassadors and merchants in Constantinople was determined, the protection of property rights (the return of runaway servants, compensation for losses, the redemption of captives). A separate group of articles dealt with punishments for crimes.

A number of articles defined the framework of military-political cooperation. The Prince of Rus' was not supposed to fight in the Kherson Thema (in the Crimea). Also, he had to ensure military assistance in the event of an invasion of the Black Bulgars here. Both sides have pledged to provide military help to each other.

Separately, they agreed on a special regime of actions of Kievan Rus' and the Byzantines in the mouth of the Dnieper and the neighbouring territories - Beloberezhye and the island of Saint Epherius (modern Berezan island). The Byzantine side did not claim that these territories were part of its administrative structures (themes), but fishermen from Kherson had the right to engage in their fishing here, and the Rus' could not prevent them from doing it. Kievan Rus' had no right to stay here for the winter.



Perhaps the latter requirement could be explained by the strategic importance of the region. The unlimited presence of Rus' in this region allowed its princes to create a potential stronghold against the maritime threat of Constantinople. Constantine VII himself tells us that Fr. Saint Epherius was used by Rus' travellers on the way "from the Varangians to the Greeks" to re-equip the ships (monoxyla) before the sea voyage (Constantinus Porphyrogenitus, 1967: 60-63). In Western Europe, a similar practice had the Normans who used isles in the river mouths as bases (Noirmoutier island at the river mouth of the Loire River) (Lebedev, 2005: 40, 46).

At the same time, Byzantium could support Rus' expeditions to the Caspian Sea. Probably, a significant part of these military actions took place on the Dnieper, through the Black Sea and the Sea of Azov, along the Don and Volga rivers, and finished off the southern coast of the Caspian Sea (Kuzovkov, 2021).

Archaeological research carried out on Berezan island made it possible to discover antiquities testifying to the presence of Rus' merchants and, probably, military forces here. The Berezan runic stone is an interesting discovery proving the visit of Scandinavians, who travelled along the trade route "from the Varangians to the Greeks". This stone also marked the visits of the Rus' ruling elite.

The memorial writings on the stone date back to the second half of the XI century (Melnikova, 2001:200-202). The Rus' merchant burial complexes date back to the XII century. (Smyrnov and Kuzovkov, 2020). Monuments related to Byzantine-Rus' contacts in the middle of the X century, have not been discovered so far, which may be explained by the poor preservation of the cultural layer of this time.

Apparently, the visit of Rus' Princess Olga to Constantinople should also be considered in the legal field of the treaty of 944. Written sources allow it to be dated to 955 or 957. (Constantine Porphyrogenito, 1828: 594 - 598; Rus Primary Chronicle, 1950: 44 - 46). Olga is given the title "Archont" in the treatise "De Ceremoniis". She was accompanied at the solemn reception in the imperial palace by close high-ranking ladies with the titles "archont" or "relatives of archont". The total number of participants in the Olga Embassy was 112 people (Constantine Porphyrogenito, 1828: 597). It is estimated that the total number of embassy escorts could reach 1,500 (Litavrin. 2001: 201).

The ritual of receiving Princess Olga reflected the Byzantium view of the international legal status of visitors. The receiving staff, apart from the Emperor and Empress, included courtiers, who were divided into seven ranks (vigil). Princess Olga and her companions were given the appropriate rank. Olga was at the reception with women-courtiers of the first rank (vigil) - zosts - patricies.

Thus, at the time of the reception, the high guest of the Byzantium rulers was symbolically included in the imperial court as the host of the highest rank. The court ritual of the reception emphasized the exclusive status of the emperor and empress. This procedure reflected the Byzantium view of their ruler as responsible for the fate of the entire ecumene, and occupying the highest position among other monarchs.

The author of “Rus’ Primary Chronicle” informs us of other aspects of the visit of Princess Olga to Constantinople (Rus’ Primary Chronicle, 1950: 44-46). In the centre of his attention is the plot of her baptism, full of folklore motives. According to the source, Olga, who arrived in Constantinople, was baptized from the hands of the emperor. Then, the princess was to receive the title of a god daughter. However, Byzantine sources do not mention her baptism or receiving the title. A possible explanation can be the semi-legendary character of the text “Novella”, the author of which exaggerates the international legal success of Olga’s visit.

In support of this, the Byzantine emperors Constantine VII and Roman III used the title of the ruler of Rus’ in official correspondence— “archon of Rus” costing 2 solidi (Constantine Porfirogenito, 1828: 690 - 691). Constantine VII Porphyrogenitus and his son reigned together from 946 to 959, and their addressee at the time could have been Sviatoslav I, the son of Olga. Thus, the godfather of Olga was Emperor Constantine VII himself. This fact did not cause the changes in the legal status of Rus’ in the relationship with the Byzantium. The Rus’ was still regarded as a pagan state and was not included in D. Obolensky’s conditional “Byzantine Commonwealth of Nations” by D. Obolensky (Obolensky, 1998).

### **Conclusion**

Thus, there are three sources of legal norms on which the foreign policy of Byzantine was based. The first is Roman law, which, through the code of Justinian, found its reflection in the legislation of Basil I (867-886) and Leo VI (886-912). However, the distinctive feature of these legislative codes was their focus on internal problems, and they hardly recorded international law. Jus gentium (law of nations) did not find significant development in Constantinople. It was the source of the division between the Byzantine legal tradition and the Western European legal tradition, which emerged in the XII century.

The second and more significant source of the law of Byzantine foreign policy is the biblical tradition. Biblical texts were used to legally justify the divine origin of the authority of Byzantine emperors and their exceptionally high status in international relations.

The third and most significant source was the ancient and early Byzantine traditions of foreign policy, fixed in customs and literary texts. Emperor Constantine VII Porphyrogenitus attempted to generalise and systematize his works on this basis. When it came to foreign policy issues, his treatises fixed legal precedents for the possibility of using them in diplomatic practice. It allows us to state that the case law can be considered a significant basis of Byzantine foreign policy.

The system of international relations that Byzantine diplomats justified and sought to act within existed in the form of a hierarchy. There laid the main difference from the traditional Westphalian system of international relations, one of the main principles of which was the equality of the participating states. In the middle of the X century, the Byzantine legal point of view considered the ruler of another state or nation as unequal to the Byzantine emperor. Almost two-thirds of the addressees of Constantine VII Porphyrogenitus received order messages (*keleusis*), which formally emphasized their dependent status. Other parameters of inequality were spiritual kinship, the value of the gold seal attached to the imperial message, and the title used in relation to the addressee.

The entire complex of the practical application of legal norms in Byzantine foreign policy can be analysed on the example of the empire's relations with Kievan Rus'. The treaty of 944 served as the legal basis of Rus'- Byzantine relations in the era of Constantine VII. The articles of the agreement covered a wide range of issues that needed legal regulation. Most of them were devoted to trade and property protection.

The peculiarities of medieval legal thinking were reflected in the special status of a number of territories along the northern coast of the Black Sea—estuaries of the Dnieper, Beloberzhya, and the island St. Epheria (Berezan). They were not administratively a part of Byzantium or Rus' in terms of administrative division, but both sides had limited sovereignty over them. The trade was active on the route “from the Varangians to the Greeks”, that went through these territories. But if relations deteriorated, Rus' could use these territories as a springboard for naval attacks on Constantinople.

Another important example of bilateral cooperation, including in the legal field, was the visit of the Rus' princess Olga to Constantinople. The rituals of her reception emphasised the high status of Emperor Constantine VII and equated the guest with the highest court rank of the Byzantine court.

The significant achievements of Byzantine-Rus' relations in the middle of the X century can be seen in a long period of peaceful interaction. However, the unequal legal status of Rus' in bilateral relations motivated its ruling elite to change it. In this context, Olga's baptism can be seen as an attempt to become part of the so-called “Byzantine Commonwealth of Nations”.

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