

ON WHITE SPOTS AND MINEFIELDS IN INTERNATIONAL LAW

The globalization process has intensified international tensions because the states must defend their legitimate national interests as national egoism grows, which is fairly natural. But a special area of morality must have a place at the heart of international relations and international law. As relationships between people are regulated by legal and ethnic norms, so the fabric of international relations cannot be created only of legal provisions.

Therefore, at today's development stage of international law we must work on the method that blends conscience and consideration, morality and efficiency.

So is everything indeed as tragic, is the process of half-life of international law indeed underway?

I believe that all of us must have, as one very famous politician put it, "more of bull's tenacity and optimism."

I am convinced that nothing tragic will ever happen to the international law. We are currently in the process of recognizing the necessity to make our understanding of international law more complicated, which is very natural if not normal. The worldview of the legal world is getting increasingly more complex day after day. I believe that the world of scientific ideas created by the humankind, despite specialization of knowledge in many ways uses the same universal mechanisms. The law of inertia in its simplest form is a law of physics. But very similar theoretical ideas can be found in social sciences as well.

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If we assume that all ideas created by the humankind in various areas of inquiry are parallel in some way, we will conclude that even ideas in music or creative arts are not far removed by the world of philosophical or legal ideas.

Common cognitive structures can be found even in very different spheres of inquiry, as in mathematics and jurisprudence (the idea of balance above all). One distinguished professor of the Yale School of Law had also noted the close proximity of such spheres of knowledge as jurisprudence, economics, ethics, and political science, saying that they were simply “different names for the same sphere – human experience (“Farewell letter by A. Corbin to the faculty of the Yale School of Law”).

2. I recall in this regard a picture by a genius artist and philosopher Kasimir Malevich, entitled “Black Suprematic Square.” It was Malevich who predicted further developments in social sciences. The Black Square can be conceived of as a symbol of an important philosophical problem. The austere shape of the drawing and its simple reflection conceal the depth of Malevich’s idea. What this is not square but a rectangle! Optics describes the laws of human vision illusions. Illusions of simplicity can also be found in scientific worldview. It turns out that the Square isn’t in fact black – the artists had used thirty shades of gray! So basically what we find in Malevich’s picture is what scholars refer to as “cognitive dissonance,” a difference between perception and the real situation based on what we know. An average layman, standing before Malevich’s picture, would laugh and say that he, too, could draw something like this. Which is to mean, he fails the test for imagination.

The ability to see not the radical black but a range of hues is testimony to the ability to abandon simplified scientific ideas. A spectrum or a range can be detected anywhere, and this is an important philosophical axiom. Someone who had read Ernst Cassirer’s philosophy works – and Malevich did, especially his work on philosophy of symbolic forms - would understand Malevich’s philosophical message. The image acquires a clear philosophical subtext; it is for

this reason that the artist had penned philosophical reflections on the topic of art and being.

So, the Black Square is in fact a vivid metaphor that I use in my sketch of a speech (just several sketchy ideas) on which direction of change should international law take.

3. Russia, as the preamble of the Constitution says, “sees herself as a part of the global community.” And it is this awareness that guarantees Russia’s role to contribution to development of international law today as back in the times of Fedor Fedorovich Martens. In my opinion, it will consist of new ideas regarding human rights in different cultures, while the very idea of the supremacy of human rights, an undeniable civilizational achievement, will still stand.

Increased economic contradictions between countries are, in my view, the main but not the only risk for the system of international law. But its vast expanses have dangerous minefields: the absolution of human rights and ideas of justice in the system of international relations.

History and experience tell us that there had never been any absolutely fair models in this area, and they are not likely to appear in the future. Justice on the international stage can only be relative. Communist regimes had been looking for the absolute justice, to which end they even tried to destroy private property, yet at no avail.

Modern liberal scholars and politicians seek to find the ideal of the absolute freedom for all people, remove completely all prejudice and discrimination. However, this absolute idea is shattered against the limitations objectively existing for every nation.

The legal value, including legal principles, establish that universal human rights are not absolute, they are always a product of their optimization and weighing, i.e. the balance of interests, which are often contradictory, that is, binary. The contradictory nature of principles and rights reflect objectively contradictory aspirations of people, expression of their interests. Balancing them means that the value adopted in the society must co-exist. They exist in the interpretation of the

conflict of binary interests, when one value must be given preference. But a more rational (optimal) way of coexistence of legal values is to interpret one legal value in a way that creates new understandings (in fact, new experience!) which do not allow to weaken the overly regulatory potential of the other value in the binary opposition.

The idea of weighting equal yet antimonial legal principles is an approach that allows to resolve the tension between opposing opinions as a way of harmonizing relations between people (and peoples).

A basic consensus in that or other society could only be reached by weighing not the absolute but relative legal values. This is what is called historically colored justice.

Oliver W. Holmes, a renowned US Supreme Court Justice had once said that weighting legal values is not a simple logical operation based on the idea of the hierarchy of principles. He meant that there is a demarcation line running between these legal values. And this legal demarcation line serves as the metaphor of the newly created legal norm that provides for a compromise between the two provisions. Holmes compared these rights to discrete units in mathematics, and wrote that in fact, courts weighed in on social benefit issues. The discrete units that Holmes wrote about could be compared to discrete mathematics, a section of applied mathematics. which consists of the set theory, theory of combinatorics and graphs, coding and algorithm theories and the fuzzy sets theory.

The metaphor of the split West had appeared quite a while ago. Jürgen Habermas's book, "The Divided West," was published in Russia in 2008. In the book he wrote that the West was divided not by the threat of terrorism but by the US policy, which ignored international laws. John Rawls, an American philosopher, created preconditions for this policy.

In that he also used the Kantian project of overcoming the "natural state (of enmity) between countries." Rawls, in his *The Law of People*, recognized that the strict principles of justice that democratic states followed could be waived for their relationships with authoritarian regimes.

Surveying the radical collapse of international relations, which was the legacy of President George W. Bush, Habermas said that this policy was based on understandings of legal values that viewed human rights as the absolute value. He also noted that justice in international relations was not a debatable issue; the issue of the way in which it was enforced, was.