

**ECONOMY AND LAW: SYSTEM SHIFTS, CHALLENGES AND
CONTOURS OF THE FUTURE**

The XVIIth International Likhachev Scientific Conference “Today’s Global Challenges and National Interests” traditionally determines the legal aspect of the problem as one of the topics for discussion. When researching the global political, economic, social or humanitarian development processes and even when analyzing natural changes, there are issues involuntarily raised referring to the optimal regulation of relations of people, organizational structures and states as to the development of the said processes.

Globalization’s origination in recent history may be established by various signs, but two factors are unquestionable. In historical retrospect, this is, first of all, launching reforms and progressive reformation of China and, second, collapse of the bipolar world. In recent years, a new generation has grown up, and these people witnessed the said processes, they adhere to certain ideas that will have an impact on future generations. The globalization process itself that took place in recent years was rather contradictory: from infinite romanticism and belief in the benefits of universal liberalization and international economic, political and humanitarian integration to selfish deification of not only national interests but the requirements of national elites.

The changes that took place in the subjects of international relations touched upon practically all aspects of life. And these changes demonstrated lack of wish

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to either thoughtlessly repeat transatlantic development models, or build relations inside the transatlantic alliance focusing exclusively on the Anglo-Saxon development model in case of many countries that started reforms². As a result, the world has come to the full-scale confrontation via economic crises of the beginning of the 21st century, and this confrontation demonstrates not only infringement of the good-neighbour relation standards by states but also such basic principles of international law of imperative character as, in particular, obligations of states to cooperate in accordance with the UN Charter. The process of deviation from traditional fundamental principles of international law based on coordination of states' wills, which has begun, is replenished by the growth of national interests that can be attained, provided or defended in various ways. Political alliances, foreign and home economic policy, social policy of states are referred to them. The goals of national policy may in some cases be attained by a military solution. Unfortunately, the practice shows that use of armed forces is usually explained by "good intentions" – support and establishment of democracy. The aggregate of these circumstances makes one correct the legal picture of building international relations.

Singling out economic issues out of the aggregate problems, we have to emphasize that in case of Russia they are especially important as the sphere of economic relations of Russia is inseparable from international economic relations. This predetermines the objective necessity to provide legal regulation in the area of national economy in the context of foreign economic relations.

The legal politics on the whole should be built not on the division into home and foreign but taking into account their inevitable interaction, where the priority of external factors does not dominate. In this connection, it's advisable to refer to item 4 of article 15 of the Constitution of the Russian Federation stipulating that "The universally-recognized norms of international law and international treaties

² Les droits de tradition civiliste en question: à propos de Rapports *Doing Business* de la Banque Mondiale (Civil Law Systems in Question: On the World Bank's *Doing Business* Reports). L'Association Henri Capitant des amis de la culture juridique (Henri Capitant Association of Friends of French Juridical Culture). V.1, Moscow: Wolters Kluwer. 2007. P 171.

and agreements of the Russian Federation shall be a component part of its legal system. If an international treaty or agreement of the Russian Federation fixes other rules than those envisaged by law, the rules of the international agreement shall be applied". It directly follows from its content that not any sources of international law are meant, but only those universally recognized, i.e. jus cogens, and only those treaties and agreements which the Russian Federation is a party to.

The first are exclusively the principles fixed in the Declaration on Principles of International Law concerning Friendly Relations among States in accordance with the Charter of the United Nations, adopted by the General Assembly of the United Nations on October 24, 1970 (Resolution 2625 (XXV)). The second are treaties and agreements being a part of the legal system of the Russian Federations and regulators only in respect of states – parties to the said treaties and agreements, i.e. acquiring the *lex specialis* character.

Thus, it's important to analyze what international legal regulation, created in its time as a globalization tool, is at present becoming less important, and what can provide a certain balance of national and economic interests, and objective requirements of world trade. Otherwise international trade will return to the times of "gunboat diplomacy", but only in different forms.

Objective analysis of results of economic crisis, political confrontation, real military actions in Europe, Africa and Asia had a direct negative impact on the fundamental rules adopted within the World Trade Organization. These rules called first of all to provide liberalization of international trade and the most favourable environment as the universal principle for building international economic relations, become meaningless with extensive imposition of economic sanctions as a legal tool for attaining political and military goals as a background. In practice, sanctions as well as counter-sanctions or a threat of their imposition may refer to an unidentified number of people. They are connected not only with deliveries of goods, transfer of technologies and financing certain deals but also with long-term investments as such.

If we turn to the efforts in building new models of international economic legal orders, here we also have more problems than positive results. Thus, formation of the Transatlantic and Trans-Pacific economic unions can hardly be viewed as a prelude for development of international economic relations on a universal basis. First, they are definitely not of a universal global character. Second, they demonstrate evident internal contradictions. In case of the Transatlantic Project these are contradictions of internal elites, in case of the Trans-Pacific Project these are contradictions of two world economic leaders – the USA and China. Building legal order with known to be opposite goals of its participants can hardly be referred to the number of projects working for the universal benefit.

With this background, the legal policy of Russia in foreign economic relations issues is undergoing changes. This is setting up and development of the Union State of Russia and Belarus in the post-Soviet space as well as expansion of the international organization for regional economic integration – the Eurasian Economic Union (EEU). New initiatives in foreign economic legal policy include participation in various-format international organizations which do not satisfy traditional characteristics of either universal or regional ones. First of all, Shanghai Cooperation Organization and BRICS are referred to them.

Approaches to formation of principles for bilateral international agreements in economic sphere require certain changes. The first steps in this direction are already seen. They can be characterized as transfer from search of ideological unity of partners to sensible pragmatism based on economic and/or military and political interests.

Processes taking place on one of the backbone world markets – the European Union – raise major issues for global economy and consequently for formation of the legal model of international and legal regulation. Two contradictory trends are developing there: investment of the EU with authority limiting rights of national markets on the one hand, and real threats to continue changing its composition on the other hand, and that can lead to its disintegration. Both the first and the second

scenarios require better understanding in Russia. Importance of ties with Europe for Russia does not require explanations as it's evident. A possibility of close cooperation as well as strong confrontation is confirmed by more than one thousand years of common history, because of that both belief in inexhaustible optimistic prospects and pessimism based on the indestructible wall separating us, are extra maximalism. It's more important to soberly appraise the state of affairs and a possible development scenario.

This requires thorough all-round research. As for the legal aspect of this problem, objectively it looks as follows. The recent period of comprehensive flourishing of the Russia – EU relations, when long-term cooperation road maps were adopted, expecting real implementation within a legal framework, was replaced by confrontation with traditional accusations in violation of human rights, economic sanctions and even demonstration of military power. Possibilities of legal integration are unlikely with this background. Then there appears a necessity to carefully review the legal order established in the European Union. How much is it suitable for comprehensive integration and, what is more, how to build cooperation with it in the environment of legal isolation of each participant of the establishing relations?

From the time when the Common Market was set up and till the time of its transformation into the European Union, all legal models of this formation's internal arrangement were looked at as an objective reality by the world community, including the USSR and the Russian Federation. Finally, the member states set up an association which is not a state (either federative or confederative) and did not announce itself to be a state or an international organization. In essence, the European Union can be defined as a supranational formation. Actually, the European Union determined its legal capacity and legal standing itself.

In the environment of peaceful globalization this can be taken as an objective development of international law, as appearance of its new subjects.

However, in the period of political, economic, military crises it turns out that the internal arrangement of the European Union unilaterally changes traditional approaches to legal provision of the forming economic relations on the whole and commercial contacts in particular. If 30 years ago the legal models of the economically leading European states served to a certain extent as a standard providing legal stability of commercial relations, at present this feature is lost. The most impressive examples are events taking place round all gas pipelines, both operating and planned, from Russia to Europe. If the European Union is preserved, its development scenario will be preserved in many aspects as it was silently taken by other states including Russia. But it's hardly acceptable on a permanent basis as the problems connected with gas projects are inevitably connected with certain economic losses for Russia. Change of the state of affairs in the environment of confrontation is most probable via correction of Russia's national law, regulating the order, terms and conditions for entering the international market and protective measures not limited only to counter-sanctions or other measures of retorsion character.

Thus, in the environment of today's crises, working out the strategy for building bilateral and regional treaties and agreements is expedient for Russia in the chosen by it pragmatic approach to determining both potential partners and contents of contract terms. Working out the strategy for foreign economic ties should be built first of all on their acceptability from the point of view of the Russian legislation as well as protection of national companies and national interests as a whole.

It's important to emphasize that limitation economic measures against Russia are based not only on the recent "sanction laws", and these measures will not disappear even if annulled. The legal disposition of limiting legislation of foreign countries and first of all the USA is considerably more profound. It is based on the law on export control having a long application practice and supported by the majority of allies of the United States.

Taking into account the fact that such basic sectors of the economy as power engineering, mineral resources management, high technologies of military and double purpose are strategic for Russia, it's advisable to build their legal regulation including investment and privatization law, taking into account permanent preservation of limitation measures against Russia in the foreseeable future.