

State Law Policy within the Context of Changing International Economic Relations

Predictability, Controllability, Vectors of change, Community perspectives

The early twenty-first century was marked by unpredictable events and the uncontrollability of processes occurring in international relations. In less than twenty years, the world succeeded in proclaiming the triumph of globalization, while falling into a “global” financial crisis at the same time, in exalting national interests which challenged the ideas of unconditional globalization; it endeavored to launch the construction of a unipolar world, while doubling down the hardships facing nations due to the problems of terrorism and forced resettlement of peoples.

This supposedly incomplete list of phenomena, still similar to a chaotic one, was, however, invoked by the objective factors of economic, political, ideological, man-made, and natural character.

The first and decisive impetus for change was the collapse of the bipolar world. In terms of possible patterns of further development of the world community, the Western model might seem a single option. Such a perspective seemed justified at least because that pattern had been evolving for half a century and was grounded not only in the national systems of Western countries, but also in the explicit international rule of law.

In the context of global economy, the governance process was guided by such general international organizations as the World Trade Organization (WTO), the International Monetary Fund (IMF) and others. The European Union has become an example of regional alliance, both economic and political. At the national level

the South-Eastern “tigers”, except for Japan, can be attributed to global economic leaders who have largely adopted Western patterns.

At the same time, a pragmatic look at the economic, political and legal map of the world of the late twentieth and early twenty-first centuries makes the indisputability of the Western pattern as a guiding star for the development of the world law not that uncontroversial. The latter emerges from the interaction of states, their political and economic interests. These interests, in their turn, are not predetermined by a purely pragmatic policy. They are influenced by a range of non-economic factors and even by the civilization codes of nations¹.

These non-economic factors usually reflect the material and spiritual basis of the society of any state and shape the foundation for development in any historical era. They also determine the vector of legal policy of any state. The domestic legal literature rightly pointed out that law should reflect the objective situation rather than be a product of “fiction and invention” of the legislator². Following this idea, it should be noted that the national law will change in line with its traditions not only in its statics, but also in its development.

The diversity of national political systems, economic models and national legal regulations have intrinsically interacted throughout the history, which was inevitably complemented by contradictions, conflicts and wars.

¹ See: Non-Economic Facets of Economy: the Unknown Mutual Influence. /Ed. O.T. Bogomolov, M., 2010, p. 796; A.G. Lisitsyn-Svetlanov. The Universal Declaration of Human Rights – the Framework of Legal Development in the Modern World // The Universal Declaration of Human Rights: Universalism and Diversity of Experiences. M.: The Institute of State and Law of the Russian Academy of Sciences, 2009. p. 8–13.; E.A. Lukasheva Man, Law, Civilization: the Dimension of Regulations and Values. M.: Norma, 2009. – p. 384

² A.F. Shebanov Forms of Soviet Law. M.,1968, p. 3-9

In the second half of the twentieth century, still accompanied by contradictions, conflicts and wars, the world, however, found a remedy for a global war, first through demonstration of nuclear weapons, and later – through their accumulation on the two “poles of confrontation.” That fatal danger caused a new type of international law – that is the law of peaceful coexistence to emerge.

Now, looking back, it is possible to rather definitely outline the principles of construction of both bipolar world systems, while avoiding subjective political and ideological estimations, quite diverse at times. It became possible due to the fact that political processes in each of the countries and in the total global community are now reflected in the law, both national and international.

But the bipolar world collapsed, and thirty years of modern history have led to the conviction that global “mono-order” is not possible. Experts in any field of humanitarian and social knowledge can explicitly confirm it. But the question is: what is the outlook for the legal order pertaining to the twenty-first century?

It could be assumed that the international law, which was in effect as from Yalta, 1945, until the collapse of the Berlin wall, maintains its power and will serve the mankind for a second term at least. Nevertheless, the current political processes manifest the intent to destroy the existing pattern, rather than to improve it. The finality of such a judgement could be questioned, but operational policies of the leading states are supported and continued in their legal policies and, moreover, enshrined in their domestic law.

Referring to the examples of creation in modern international relations, we should mention the measures to build up regional cooperation, implemented in the form of new international organizations, such as SCO, BRICS, etc. With due regard to the unconditional benefits of the relevant efforts, it should be noted that the decisions taken in these organizations are more programmatic rather than regulatory for member states.

Thus, evaluating the current launch position for the development of the legal order of the XXI century, it should be noted that to this point they have been demonstrating a tendency of coercive development, rather than the principle of concordance of wills of states and their obligation to cooperate with each other in line with the UN Charter, which is explicitly enshrined in the Declaration “On Principles of International Law Concerning Friendly Relations and Cooperation among the states under the Charter of the United Nations”, approved by the resolution of the UN General Assembly on 24 October, 1970 (Resolution 2625 [XXV]). At that, the modern “coercive” is not identical to the traditional “military”. The intended effect can be achieved not only by weapons (*Non solum armis*), but also through economic measures.

Another factor complicating the formation of a new economic order is the intensive growth of a number of national economies. This seemingly positive factor in the global development has however its downside. New players on the global market are intrinsically developing competition. Competition is by itself a prerequisite for the existence of the market as such, but it is obvious that competition is inseparably accompanied by dishonesty and protectionism, if not plain manifestation of force.

With account to the current situation, the future regulation of international economic relations does not show in the most favorable light. Regular reports on the imposition of sanctions, the threat of setting and the actual setting of extra customs tariffs, the appointment and cancellation of trade negotiations, pressure set on the business world, based on the extraterritorial effect of national laws, gunboat policies in the crisis spots around the world, which threaten to destroy the energy market, – all these factors are more than enough to claim the collapse of the existing system of legal regulation of foreign economic relations. All of the factors enumerated mean confrontation, contrary to the international legal principle of the obligation of states to cooperate mentioned earlier. The principle considered as peremptory by the international law – *jus cogens*.

The global nature of crisis in the law governing foreign economic relations manifests itself in the destructive nature of legal policy, which has spread around the world without formation of any alliances. Thus, for example, changes in customs tariffs between the US and China, according to French officials, can lead to an economic downturn in Europe and job losses in France.

The acutely perceived confrontation with Russia over the Ukraine is by no means a source of a “total disease.” But the role of modern Russia on the global energy market and on the arms market is in itself an irritant for the world's leading economy of the United States. The cases in point are the Nord Stream 2 and the project of SS400 delivery to Turkey.

Exacerbation of the crisis may be triggered by the UK's exit from the EU. Currently, the United Kingdom is both a financial contributor and a consumer of goods within the EU. The role of this country in the European market can hardly be overestimated. Now there are apparent legal problems regarding the country's withdrawal from the Union and uncertainty regarding the proposed documents for further cooperation, while their final agreement, as well as their implementation still lies ahead.

China has already definitely declared its intention to extend its influence to the West, as illustrated by its two long-term projects – the Silk Road and the Arctic. This will inevitably increase the intensity of confrontation with the US. In this case, bilateral agreements are hardly feasible to achieve; therefore, multilateral negotiation procedures will be required, while their development with the participation of Russia is problematic for the United States.

In contrast to the previous years, including the Cold War fervor, the United States have cornered national sanctions regulation for the sake of its domestic political processes. The formerly effective legislation, while establishing well-defined justification for export control, used to empower the administration to impose and remove restrictions on three grounds: national security, foreign policy

interests and limited availability of goods on the market. The administration's authority also included determination of the range of controlled commodities (services), the procedure for granting special partial permits or lifting restrictions. The current package of laws deprives the administration of independent decision-making. This makes application of the American constitutional principle of separation of powers incomprehensible, as well as deprives of any confidence in the possibility of holding negotiations with the United States.

Violent interference with the internal affairs of the states in the Middle East and North Africa has become a form of destruction of the international legal order. The slogan of democracy promotion has been widely used to justify not only direct aggression, but also the support for anti-government movements from the outside, including financial support, which has grown into the sponsorship for terrorism. As a result, chaos and violence were brought to those countries, with the formation of ISIS as an apotheosis of the above.

The political and economic consequences of this crises can be traced in other regions too. For Russia, the destruction of markets, particularly those of Iraq and Libya, means the curtailment of foreign economic relations in the area of industrial cooperation, energy and military-industrial cooperation. For Europe, military operations in Libya and Syria have engendered enormous migration and labor market problems. The problem of migration has become one of the leading issues on the political and economic agenda of the European Union.

It is also difficult to predict further ways of regulating foreign economic relations due to the positive factor of the modern development of mankind – intensive technological development, shaping digital economy and providing undeniable advantages over the rest of the community for the leading states in this area.

The fact that technical progress throughout the history of the mankind fell primarily into the “hands of the War-God” gives ground for concern. The twentieth

century developed an international legal system prohibiting production and use of weapons of mass destruction. We may well agree with the assumption that the world owes its stable international security to the existence of nuclear weapons. But in the context of international law downfall what can we expect from future developments that do not formally fall under the definition of conventional weapons (weapons prohibited by international conventions), but can still cause significant harm to man?

A legal problem of unpredictability of future relations arising in cyberspace ought to be specially remarked. The existence of man and the society in this space can change the very idea of law reinforcement. National law used to be initially limited by state borders. Based on sovereignty over their territory, the states formed international law in order to leastwise ensure mutual interaction. Cyberspace was originally designed to develop beyond any borders, i.e. outside state sovereignty. Legal regulation in this space requires a new philosophy of law and its formation requires a genuine interest and openness of states in the real world.

Thus, the collapsing international legal system, including that in the area of foreign economic relations, supplemented by man-made and possibly natural factors, gives free scope to strong-willed political decisions based not on the force of law, but on the law of force. The danger of such a tendency is quite comprehensively discussed in Professor V.D. Zorkin's monograph *Law against chaos*.³

So where can the wind of change blow from? Attainment of sovereignty and pragmatism are the first step of any change. However, this process is by no means easy. According to Russian President Vladimir Putin, there are not many countries in the world that enjoy sovereignty, and Russia values its own.

³ V.D. Zorkin *Law against Chaos*. 2nd ed., M., 2018, p. 367

According to the estimation done by the Interim Commission of the Federation Council for the protection of state sovereignty and prevention of interference in the internal affairs of the Russian Federation, only three states – the United States, China and Russia – wield global sovereignty in the present-day conditions. In these circumstances, a key issue with regard to the prospects of building international legal relations between Russia and foreign countries is the restitution of sovereignty on the European continent.

This assumption can be proven by an example from the previous years. After the Soviet troops had been brought to Afghanistan, the United States imposed sanctions and demanded that Germany would impose a ban on the supply of wide diameter Mannesmann pipes for the Urengoy-Pomary-Uzhgorod gas pipeline. However, the German government did not succumb to the pressure, the supply was completed, and Mannesmann was not subjected to American sanctions.

The above case from the past, as well as the current opposition of Germany to sanctions with regard to the Nord Stream 2, at least for the time being, is hardly worth considering as a serious counteraction to the law of force that has developed currently in international economic relations. Within this context, a question arises as to what the process of building new relationship will be like.

The quintessence is as follows: whether determination of law will be the precondition for solving specific international economic problems or a significant change in the importance of global markets will shape conditions for reloading their legal regulation. These two similar issues manifest, however, the diverse assessment of capability of law to solve economic problems both within the country and in the world economy.

The analysis of pseudo-legal measures that destroy legal regulation of global economic relations comes from the world's leading economy – the United States. The imposition of any unilateral restrictive measures, any threats of sanctions, from financial to criminal, against foreign companies and individuals, currently

cause an extraterritorial effect. This extraterritorial effect can retain its importance in terms of its application to the extent that the interest of being present on the US market and the fear to lose it is a dominant factor for companies from other countries. The development of alternative markets, including the digital one, as well as the emergence of a viable alternative to the dollar will allow reformatting legal regulation of foreign economic relations.

Thus, from the objective point of view, political will alone is not enough to shape a new rule of law. In addition to making political decisions, it is necessary to change the ratio of “economic forces” and to devise the formation concept of new international mechanisms capable of developing new rules of conduct, both in the area of real external economic relations and in the cyberspace.