Globalization And Development Of International Law

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Theses

The abstracts of my report were translated into English and German. You had an opportunity to familiarize yourselves with them.

I'd like to comment only on the points of my report which are briefly mentioned in the abstracts.

I. Will the globalization be able to change significantly the international law? The issue had been debated for a long time. It has been dealt in numerous books and articles. I have scrutinized the following book of the American professor: D. Bederman. Globalization and International Law. New York. 2008; the works of D. Fidler. Globalization and the International Law. 2005, F. Megref (Canada). Globalization and International Law. I have written several scientific articles on the topic and chapters in course books.

I would dwell on the latest scientific article being authored by Nico Krish. It is entitled "The Decay of consent: International Law in an Age of Global Public Goods". It is published in the "American Journal of International Law", 2014, № 1.

According to Krish, the globalism jeopardized the consensual structure of international law. Krish rejects the possible changes in international law taking into account decentralization of international system and different interests of states (sometimes opposing one another). The gradual departure from the consensual structure will be connected with the unilateral actions of states and certain organizations. The transition to the new structure of international law is extremely difficult and will not necessarily lead to greater democracy.

At the same time the author singles out the following trends which can lead to the gradual modification of the consensual structure of international law. These are: the reduction in the number of multilateral

agreements with increasing their inclusivity; development of informal structures; emergence of informal regulation (as opposed to classical international agreement).

Subsequently, the author analyzes the three spheres of action of international law: antitrust regulation; protection of environment and combating the financing of terrorism.

In conclusion, the author observes the following: if international law continues to uphold the consensual structure, it will run the risk of remaining on the margins of the international politics which is still evolving in other direction; if it prefers the departure from consensualism, it will run the risk of a fall in the estimation of states for which the principle of sovereign equality is still important and relevant.

II. The issue of the rule of international law. It has been discussed in greater detail at the UN and in scientific literature. A lot of attention to the rule of international law is being paid in the Concept of the Foreign Policy of the Russian Federation approved by the President of the Russian Federation V. Putin on 12 February 2013. The rule of international law is specified in that document as a priority problem. The renowned French scholar P.-M. Dupuy considered the rule of international law as a principle of international law.

I believe that the main purpose of the rule of international law in international relations should be as follows.

- The rule of law extends to all subjects of international law.
- All actors of international law must comply with fair, impartial and based on the equality rules and principles of international law.
- All actors of international law must have an equal access to the system of international justice.
- The rule of international law must play a key role in conflict prevention and peacebuilding and the resolution of post-conflict situations.
- The rule of law must ensure the strengthening of international cooperation.
- The rule of law must contribute to the elimination of terrorism in all its forms and manifestations.

III. The new challenges (threats) have emerged under the influence of globalization, meanwhile the traditional ones have become complicated, gained additional features. I have summarized the essence of some of these problems.

The concept of the "R2P" (Responsibility to protect)

The key element of this concept is as follows. The primary responsibility of population protection lies with the states. International assistance is possible and it must be peaceful by nature with the involvement, if it is legally and politically justified, of the capacity of Chapter VI of the UN Charter.

The use of military force may be lawful only in extreme cases and with the approval of the UN Security Council. The use of force must be in strict accordance with international law and the Security Council sanctions (proportionality, time limits, accountability to the Security Council, etc.).

Unilateral sanctions and international law

The legality of the unilateral enforcement actions in circumvention of the UN Security Council has been debated for a long time within the framework of the United Nations.

It is noteworthy that the United States of America and several other states imposed sanctions against Russia, Belarus, Syria and Iran. But the issue of unilateral acts is not being exhausted by the aforementioned examples.

It is clear that the state by resorting to sanctions pursue political goals. But the use of sanctions must be consistent with international law.

International legal prohibition of cyber attacks

There are many cases of cyber attacks on government sites in other countries. In 2012 the Pentagon created the United States Cyber Command (USCYBERCOM) – an armed forces sub-unified command subordinate to United States Strategic Command.

Recently, the President of Russia V. Putin noticed that lately, within the period of six months, the number of attacks on the Russian information resources increased significantly. Moreover, the methods, means and tactics of such attacks are improving, but their intensity is directly dependent on the current international situation.

Appropriate measures are being taken in the Russian Federation as well. There have been committed tens of thousands of cyber attacks on the infrastructure facilities of the President, the Government, the State Duma and the Council of Federation every day.

Without any doubts, cyber attacks are a form of aggression and they should be prohibited under international law through the adoption of an international convention or the update of the current concept of aggression.

The concept of imminent armed attack

As is known, Article 51 of the UN Charter recognizes the inherent right of individual or collective self-defense if an armed attack against a member of the United Nations occurs. But the self-defense is allowed until the Security Council has taken the measures necessary to maintain peace and security. The wording of the article suggests that the right to self-defense is only possible in response to an armed attack fait accompli. However, the UN Charter does not provide for the right of states to use force in cases where an armed attack is imminent. The UN Charter does not regulate the right to self-defense in case of attacks by non-state actors as well. A British lawyer D. Bethlehem elaborated the conditions under which the states may resort to self-defense against an imminent or actual armed attack by non-state actors. His proposals deserve attention.

The legal validity of UN Security Council resolutions

There has been actively debated the issue of significant transformation of the status and functions of the UN Security Council in western legal literature. This has been indicated by B. Fassbinder and C. Tomuschat. For example, the latter writes that constitutional system created for the international community by the UN Charter is far from being perfect. It has only the limited ability to ensure compliance with its basic rules. This has been elucidated in the following book: "Realizing Utopia. The Future of International Law" (Ed. by A. Cassese. Oxford. 2012. P. 52–61).

Article 25 of the UN Charter provides that the members of the UN agree to accept and carry out the decisions of the Security Council in accordance with the Charter. That provision misleads because the UN Security Council does not have a right to adopt binding decisions on all matters. This issue has been examined in my report by appealing to the materials of the International Court of Justice.

In my opinion, not all Security Council resolutions are binding. According to a number of articles of the UN Charter, the Security Council has the right to take certain actions (ad exemplum, the Articles 36, 37, 38, 40, etc.).

There is no doubt, however, that the resolutions passed in accordance with Article 41 of the UN Charter are binding. Therefore, the Article states that the Security Council may call upon the members of the United Nations to apply the relevant measures. The resolutions adopted under Article 43 of the UN Charter are also mandatory.