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**ECONOMIC SAFETY OF THE RUSSIAN FEDERATION AND**

**PRIVATE INTERNATIONAL LAW**

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***Abstract.*** *The paper analyzes some tools used by states to achieve advantages in global competition. One of them is the erosion of the foundations of the existing legal order by significantly limiting the role of a State in determining economic policy. Within the framework of the liberal paradigm of the world order, there is concept is being propagated increasingly. The concept proposes to change from the law formed by states to regulators created by the private participants of economic relations.*

***Key words****. Strategy of economic safety of the Russian Federation, private international law, globalization, open societies, not state regulators, global competition, economic domination, competition in the field of law and jurisprudence, economic integration organizations.*

The Strategy of Economic Safety of the Russian Federation 2030 was adopted on May 13, 2017. From the point of theoretical and practical development of private international law this document has a huge significance. Meticulous analysis allows to underline some fundamentals of the contemporary conditions of cross-border private relations legal regulations.

One of these questions is correlation of public international law, private international law and municipal law. This question seems to be theoretical only and barely has a connection with a real international private-economic practice. However, it is not true, and we can see how this problem is being interpreted with a special meaning lately. Under the framework of globalization and the liberal world order paradigm states should stay out of the economy so that market is able to establish itself. Whereas private economic actors have greater knowledge how to steamline their relations, states should interfere in those regulation less or not interfere at all.

This thesis is not only proclaimed but also justified scientifically. According to Yu. Bazedov’s, German scholar, the changes of priorities in regulation of private international relations is logically prescribed by pivotal transformation of international economic relations under the influence of even wider permeability of national borders, constantly growing interdependence of national economies and the internationalization of the lives of individuals. In the circumstances of manifoldness of jurisdictions cross-border relations cannot be oriented towards one state municipal legal order. Free movement of people**,** goods, services, funds and information establish open societies, which are supposed to be free to choose regulations of their relations.[[1]](#footnote-1)

Discussions about private relations regulation, the role of states in market and reduction such regulation arise more and more often. Due to globalization governmental regulation must be replaced with private legal regulations established by private actors directly. International contractual unification replaces with international treaties in private international law field.[[2]](#footnote-2)

However, there are some controversies in discussions concerning private legal regulation. An expression “private legal regulation” is considered inaccurately because the term is understood as an illusion that private persons create legal provisions. In troth the legal regulation monopoly has always been and will always be states' prerogative. Different forms of self-regulate exist from very ancient time, they are used nowadays and certainly will be used in future widely especially in cross-border commercial transactions. However, we have to consider the fact that forms of self-regulate do not establish a law in narrow sense of word. Self-regulation and its borders are acceptable in the frameworks established by a State only.

Using the term “private legal regulation” (or the same term “non-state regulation”) is also inaccurate because absolutely different kinds of regulations, from the legal point of view, are mixed into some unformed conglomerate excluding binding or non-binding character for potential subjects of such regulations. It is barely possible from the ground of legal nature to compare Incoterms, and for example, Uniform Customs and Practice for Documentary Credits despite the fact that both of them were prepared by International Chamber of Commerce (ICC).

In many cases it is very doubtful to classify certain regulators as "non-state". For instance, the UNIDROIT Principles of International Commercial Contracts (“UNIDROIT Principles”) are developed by International Institute for the Unification of Private Law, which is international intergovernmental organization. Within the framework of this union of states, not only the text of the document was developed, new versions are being prepared, but also an extensive work is being done to generalize the application of the UNIDROIT Principles. There is UNILEX program on the UNIDROIT web-site – a collection of judgements and arbitral awards based on UNIDROIT principles.[[3]](#footnote-3) This is the reason why it is incorrect to conside~~rate~~ the UNIDROIT principles as an instrument completely not connected with states.

Moreover, adherents of the point of view according to which a state-produced law must be replaced with non-state regulations forget the fact the most of non-state regulation documents have been developed long before the present “border-opening for unimpeded commercial activity” has started.

Incoterms first issue was published in 1936. There are more “old” instruments such as “Trade Terms” issued by the ICC in 1923 and the Warsaw-Oxford rules for SIF transactions adopted by the Association of International Law in 1928-1932. But we can make a reference to earlier examples of non-state regulations, for instance, to adopted in York in 1864, reconsidered in Antwerp in 1890 and existing now under the name of York-Antwerp Rules 1974, rules on common crash.

Incidentally, it should be noted that the documents listed above are only a codification of the rules of commercial activity that have developed in practice. These rules have been existing for centuries; they arose, improved, complemented, replaced with new ones, but the very possibility of their use by participants in cross-border trade and economic relations was never questioned. In other words, self-regulation, as a way to streamline international commercial relations, has been in existence since ancient times. Only the ways of appearance, reflection and fixing of the rules developed in the course of commercial practice, aimed at its streamlining, changed.

In this respect, two turning points in the history of self-regulation in international commercial activity can be noted. The first of them is associated with the appearance in the late XIX - early XX century international organizations and institutions that set as their goal the codification of international trade customs. Over time, the authority of both the centers themselves, formed to unify the rules of trade and economic activity, and the documents developed by them, was strengthened. With the advent of codified codes of unified norms, the application of such rules in practice has become much simpler.

However, over time, the codifiers gradually shifted from a simple fixation of the rules that were established in practice to their active formation. This was the second turning point in the development of self-regulation. T.N. Ivanova notes quite rightly that at present "international organizations developing uniform rules in the field of foreign economic activity do not simply follow the practice that has developed in international trade and navigation, but they themselves influence this practice with the aim of its further development and improvement."[[4]](#footnote-4) It is impossible not to agree with the conclusion of T.N. Ivanova: "Thus, there is a situation where the corresponding trade practice appears on the basis of recommendations or trade rules of international organizations, and not vice versa".[[5]](#footnote-5)

It is another matter that to the present moment an amount of different kinds of international and national centers and institutions ready to actively formulate rules for participants in commercial activity is growing. If in the XX century it was possible to talk about the inadequate regulation of international commercial relations, today there is a certain surplus of both institutions that take responsibility for the creation of such regulation, and the documents issued by them in this field.

There are even some kind of competition and conflicts between institutions which are proclaimed a goal to unification of rules on commercial activity as a whole and its different branches. For example, according to our counting, there are more than 20 international intergovernmental and non-governmental organizations which develop acts concerning e-commerce and electronic document management simultaneously.[[6]](#footnote-6)

Contract law is also a good example. Nowadays there is a concurrence between following documents in this field: UNIDROIT principles; Principles of European Contract Law, PECL;[[7]](#footnote-7) Principles, Definitions and Model Rules of European Private Law. Draft Common Frame of reference; DCFR;[[8]](#footnote-8) (CENTRAL List of lex mercatoria Principles, Rules and Standards;[[9]](#footnote-9) European Contract Code, ECC;[[10]](#footnote-10) and others.

To be true, nobody has canceled or has changed the legal nature of such codified acts. The vast majority of them can be used only if the parties to the transaction in one form or another have agreed to the application of the relevant document or do not object to use it. Anyway, the force of such codified acts is restricted by compulsory rules which must be followed by the parties to transaction. As a rule, such provisions are raised from municipal imperative rulings or have an international legal origin.

What has changed with the formation of “open” societies? Must be nothing. It is only interpretation. In the framework of liberal approaches, the idea that the state should release from its hands the reins of economic management has been articulated for a long time, now it just provides theoretical justification for the field of private international law.

Aforementioned scholar, Yu. Bazedov, with some reservations acknowledge there are some fields of social-economic activity which cannot be leaved by State control. Among such activities he mentions regulation in the labor market and capital flows, protection of the weak party of a deal or a dispute, counteracting discrimination, guaranteeing the rights of third parties, as well as enforcement of judicial and arbitral awards. In fact, the state control zone in sensitive areas is much wider than the German colleague describe, and of course it is obvious for any unbiased observer.

However, Yu. Bazedov is aimed to absolutely different approach. He is getting upset: “Despite the general trend towards a private settlement of international relations, the states have not abandoned their intentions to form social-economic relations”.[[11]](#footnote-11) It looks like Yu. Bazedov is living on another planet where a State in reality but not in imagination can abandon its intention “to from social-economic relations”. The reality is absolutely different: in the framework of highly taught competition on world markets States are becoming more active in interference into economic processes, including the level of private economic actors.

This can be approved by a statement of a well-known French scholar in Comparative Law, professor R. David: “the increasing importance of public law often puts private law in increasing dependence on it”.[[12]](#footnote-12) Nowadays this tendency is remarked by a lot of scholars.[[13]](#footnote-13) Yu. Bazedov also acknowledges this fact and points that even in open societies and on open markets States use their sovereign right to regulate important, of course for them, relations “by using compulsory rules more frequently than in the past”.[[14]](#footnote-14)

In recent years, we can observe not only the expansion of the State influence on economic processes, but, in fact, the transformation of the State into an active player defending the interests of economic actors that belong to it in the field of private-law trade and economic relations. In his time, while justifying the international concept of the legal nature of private international law, Professor S.B. Krylov pointed out that the specificity of cross-border private-legal relations is that for each business entity in one way or another, the figure of the corresponding State is seen.

S.B. Krylov wrote: “If an English firm buys a batch of meat products from an Argentine seller, then this contract of sale will not be just a contract of internal civil law, because if it provokes a dispute, it will affect the relationship of international order”.[[15]](#footnote-15) Further, S.B. Krylov concluded: “... for each individual firm, for each individual person, its domestic State stands in the international activity, and every dispute or conflict in this civil-law area, even a family dispute about divorce, can eventually develop into a conflict between states”.[[16]](#footnote-16)

It should be acknowledged, only lazy man did not criticize this statement and did not reproach S.B. Krylov for mixing private law and public relations. Meanwhile, it is difficult to imagine that such a large scientist did not understand the difference in the nature of the relations under consideration, or was naively mistaken about their true nature. Being authoritative scholar and practical specialist S.B. Krylov perfectly understood the difference in the relationship between states and between private individuals. His thought was much deeper, but not all were fully realized it. Perhaps, the reason was a not detailed argumentation.

It seems that S.B. Krylov had in mind and stressed that the relationship between the two economic entities within one State and the relationship between firms from different countries cannot be put on the same level. States actively influence economic relations through a variety of explicit and hidden instruments, and in exceptional cases can directly interfere with private law relations.

His thought was ahead of time. If we take a closer look at present situation in international relations, we are able to see open and not hidden State interference into private-law economic relations which actively gains.

We should recall the countless economic wars, when, in defending their economies, States are blocking access for certain goods to a particular market or introducing a variety of protectionist measures against the domestic producer. Even an institution such as the WTO, formally created to remove barriers to international trade, is sometimes skillfully used by states in competition.

And of course we should mention so called “economic sanctions” which are used to provide trade-economic expansion carried out under one or another plausible pretext. Such scholars are right who state a replacement of political and military domination by economic domination.

Transnational corporations and financial conglomerates trying to operate without any border take an absolutely special place in contemporary world economic order. For achieving their economic goals, they use the whole free market instruments. However, it must be marked, in the situation when the interests of such corporations are in controversy with the “free market rules” they count a breaking such rules as acceptable way to generate abnormal profit or prolong their monopoly control. Following instruments are used very widely: restrictive business practices, transfer pricing, tax evasion, currency control avoidance, currency speculation, use of differences in inflation rates, concealment of the real profit level of subsidiaries, etc. And of course, the States, which under these conditions are compelled to defend their economic sovereignty, are declared an absolutely superfluous player in economic policy. Hence, there is nothing to hide the desire to present the matter in such a way that States act only as a brake on normal economic activity, and, therefore, state regulation must give way to self-regulation.

But wait there is more: within the framework of the liberal economic concept, activities are being built in absolute terms to counterbalance the aspirations of States. Professor V. A. Belov raises an intimate question in his book on international trade law: whether is the state origin of law a part of its nature or is it just a character doomed to disappear? According to professor’s position, state-owned law must give way to such acts of private-law unification as UNIDROIT principles and etc. All these private-law acts, according to V. A. Belov, are “law”. And further he states that there are no obstacles to acknowledge “*obvious character of a tendency* when non-state rules and acts are the part of sources of law”.[[17]](#footnote-17)

Following this V. A. Belov sums up: “Their (acts of private-law unification – S.B.) quasi-state or even completely non-state nature changes thinking not only about the sources of law, but also about the law as a whole: a law that has been considered only a product of purely State origin and application, now it turns out to be built not only by the State, but also by other social forces, including those acting *contrary to the State*”.[[18]](#footnote-18) Unfortunately, V. A. Belov says no word what kind of forces are acting “contrary to State”. However, within the framework of liberal economic concept everything is quite clear.

If we consider as a fair a well-known V. I. Lenin’s statement that policy is a concentrate of an economic[[19]](#footnote-19), we should acknowledge a policy as mechanism, of shaping an economy. Some direction of a policy can change a direction of economic processes substantively. And one of the most important instruments of economic policy is a law.

In this sense making the system of law sources uncertain is one the main instruments using as weapon in a fight for economic domination. The same dangerous influence can be observed from analyzing such instruments as extraterritorial effect of law, the appropriation of jurisdiction, the formation of closed integration groups, the creation of various "supranational" structures that empower themselves or self-appropriately claim the right to adopt binding decisions without the consent of states and such popular tendency, especially last years, as appearance so called “transnational”[[20]](#footnote-20) and “supranational” law. All these points are like links in chain – in a chain of global competition which is around the whole world.

All these facts testify that seeming just theoretical discussion about private international law nature, subjects and sources, correlation between international and municipal regulation, the status of non-state regulators become into practical field. Moreover, nowadays all these questions become a topic of a rough ideological battle.

In connection with this it is very interesting to have a look on an exposition of these questions in the Strategy of Economic Safety of the Russian Federation. According to our analysis these questions are not regulated exhaustively in this document, but there are some principle accents in the text.

The global competition takes the first place among the list of calls and treats which Russia is expected to face. It is formulated with common words: “the desire of developed countries to use their advantages in the level of economic development, high technologies (including information technologies) as a tool for global competition”.

But we should underline that the arsenal used to achieve global domination is much broader than simply economic tools. And, perhaps, the Strategy is not appropriate source to describe this question in every detail. Nevertheless, it is quite obvious that in order to obtain unilateral advantages in the economic confrontation, the widest range of instruments can be involved, among which the law occupies not the last place.

We should underline a lack of legal studies in the field of law competition. An exclusion is only one aspect – clash between Romano-Germanic and Anglo-Saxon legal traditions. Last years, we notice a rough battle between these legal families which can be called (as analogy with “trade wars”) as a “legal war”. It is impossible not to admire how gracefully our French colleagues repelled a World Bank report, where the Bank attempted to analyze effectiveness of legal systems, including an attempt to show “a genetic erosion” of *civil* law and progressive role of *common law* from economic point of view.[[21]](#footnote-21)

However, the question on clashing legal approaches, doctrines and concepts, including in the field of private international law, is much more wider. Today we should notice how powerfully liberal ideology invades in law, law enforcement and law understanding through any way which is open for information spreading. Besides traditional dissertations, monographies, science papers, reviews, conferences, seminars and trainings, the whole media resources are used in such clash to spread all necessary content. Unfortunately, it is must be acknowledged Russia is not “a trend-setter” in the field of private international law science. Vice versa, often western liberal legal concepts are reproduced in Russia without any serious analysis and, moreover, without any critical understanding.

It creates a fertile ground for propaganda of a completely alien, for us, legal context, and for a veiled, but sometimes even unguarded, imposition of another legal tradition, legal formulas and decisions. Сconcurrently, national legal systems and legal science are proclaimed obsolete and distanced.[[22]](#footnote-22) Formation of such representations is carried out mainly through the system of legal education. The idea of a priori advantages of American legal education[[23]](#footnote-23) is introduced through special programs, grants and scholarships, as well as a skillfully built ranking system of leading universities, specially created for certain parameters.

This threat is absolutely real and this fact is underlined in the Strategy of Economic Safety. In particular, the Strategy refers to the lack of qualification and key competencies of domestic specialists, as well as to the strengthening of international competition for highly qualified personnel.

Total mistake should be acknowledged in the field of high education in Russia – one-sided orientation toward the Anglo-Saxon system of personnel training, Western programs, methods, citation indexes and methods for evaluating scientific activity. Unfortunately, that going through that way domestic legal schools and traditions are destroyed. The qualitative training of lawyers in the field of private international law, able to do business in international judicial and arbitration bodies is failed actually. It is telling that facing a high-profile case (as it was with YUKOS case) we have to press foreign firms and specialists into legal services.

Another threat underlined in the Strategy is formulated in a certain way: “the activity of intergovernmental economic associations created without the participation of the Russian Federation in the sphere of regulation of trade, economic and financial-investment relations that may harm the national interests of the Russian Federation”.

It seems that the economic associations in question can be of two kinds. First, they are closed associations of industrially developed countries, specially created for the implementation of certain economic standards, to these countries profitable. As an example of this kind of associations is the Organization for Economic Cooperation and Development (OECD), through the documents and activities of which the rules that are mandatory for participants in economic activities are introduced into circulation.

Secondly, we are talking about economic integration groups - associations formed to defend strategic trade and economic interests jointly. In this case, we are faced with a very interesting paradox of the process of globalization. On the one hand, it assumes the formation of a united world market and, accordingly, unified rules for conducting economic activity globally. On the other hand, the international community is moving in the opposite direction - the creation of close integration unions, within which separate legal systems are being formed.

We have already mentioned such uncertain situation from legal point of view when such integration groups as the EU begins to spread legal orders, set by them, to third States and their entities (to States which are not the EU members) ignoring universal international treaties. At the same time, it is declared that the EU legal order has a supremacy over international law.[[24]](#footnote-24)

Such an approach is accompanied by very serious consequences for the further development of the regulation of relations in the field of private international law. One must keep in mind that, based on the EU model, other integration economic groups are being created that will undoubtedly seek to use the EU's experience and the approaches it has developed.

There is no adequate legal analysis of such integration activity as the Trans-Pacific Partnership. In Russian legal science so called “integrational law” have just been started to observe. This tendency is assumed to give an explanation of a legal nature of these integrational groups and the nature of the law created by them. However, it is clear even now that we face a new phenomenon which is able to have a large influence on world economy and economic safety of States.

According to some scholars, there is a special legal order with a direction to restrict State regulation and give a serious privilege to trans-national corporations in the framework of the Trans-Pacific Partnership. In this regard, in Malaysia, for example, there was a clear concern that the Trans-Pacific Partnership “allows foreign corporations to circumvent the laws and regulations adopted by our government in the public interest, including provisions on natural resources, environmental protection, as well as policies in the healthcare field”.[[25]](#footnote-25)

Another serious reservation can be raised from an agreement, which is only planned to conclude, between the US and the EU, so called The Transatlantic Trade and Investment Partnership (TTIP). Nowadays, a formation of this document is abandoned for uncertain time, but, however, our view cannot avoid goals proclaimed by the TTIP which are the same as in situation with the Trans-Pacific Partnership - weakening the role of the state in regulating the economy in the public interest and expanding the scope for the activities of transnational corporations.

It is barely an accident, that two powerful intergovernmental economic associations, called for to influence on regulation of trade-economic and financial-investment relations, are established at the same time. This threat, which is absolutely actual for Russia, is described with just a few words in the Strategy of Economic Safety but, indeed, it is required very detailed exploration.

In this paper we have attempted to give a look on some questions of private international law through the prism of economic safety of the Russian Federation. This topic is quite huge and we have touched upon only such questions which are seemed more important. It is quite obvious the problems of private international law cannot be observed out of the common economic State policy in the circumstances of global competition. However, also vice versa: we should talk about formation of a new ideology in questions of private international law. Attempts to interpret private international law as a part of municipal law (in our situation – of Russian law) are disposed by real life. Consequently, there is a task to explain a nature of private international law and its place in a State economic policy before a science of private international law.

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