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UNIFICATION AND HARMONIZATION OF NATIONAL LAW WITHIN THE LEGAL GLOBALIZATION*

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Abstract

Based on the examination of a wide range of sources, this article presents the author's opinion on the place of legal unification and harmonization in legal globalization. We consider it possible to define here legal globalization according to the block-modular principle as a process generated by general globalization, entailing the formation and universal recognition of the existence of harmonized and unified legal principles, norms, as well as legal theories, concepts, development models, which catalyzes the mutual influence and interpenetration of the national law of states voluntarily or as a result of indirect consecutive imposition. Considering that we consider globalization and its legal dimension both as a process and as a way, which, in turn, determines the direction of the process and its constituent sub-processes, for the purposes of a consistent, systematic and problem-oriented analysis of globalization-legal processes, we emphasize that the core in the integrated mechanism of legal globalization that conveys the integration energy driving legal internationalization to objective law with the help of means and methods is precisely the "way": unification and harmonization of national law. Within the stated problems, our research is focused on legal globalization, whose mechanism puts subjective characteristics to the critical place. These characteristics are transposed into politics, lawmaking, law enforcement, activities to form sustainable and operational, fundamental and applied doctrinal positions, ideas and ideology in the direction of risk presentation and the actualization of responsibility for the viability of sovereign actors in a globalizing world.

Keywords: globalization, harmonization, legal globalization, unification

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1. Introduction

The modern legal sphere, like national systems of legislation, operates in the environment of globalization and under the influence of its processes (Boni et al., 2021; Dang et al., 2021; Taghibeikzadehbadr et al., 2020). Law is no longer a repository and translator of norms, the source of which is closed by national borders, the capabilities and interests of individual sovereign subjects, respectively, acquires an essence that is expressed in the transformation of traditional approaches to its understanding: the classical regulatory and natural legal directions can no longer be isolated from the globalization factor, regardless of the turns and incarnations of the latter, which follows, among other things, from the diversity and versatility of doctrinal ideas about the corresponding processes (Aravindhan et al., 2021; Bozorgkhou et al., 2019; Douglas and Wind, 1987; Fischer, 2003; Hay and Marsh, 2000; Sassen, 2003; Ngwenya and Nkosi, 2021). Even the sociological direction of legal thinking, whose adherents proceed from the notion that "life" is much more dynamic than law, and the range of its sources is wide enough, including legal practice, can, in a certain sense, be closed from globalization, thereby losing its relevance. Although, of course, subject to broad and detailed interpretations, we see this direction in modern paradigms (Khamidovich, 2022; Mamghaderi et al., 2021; Nesmeyanova et al., 2018; Van Hoa et al., 2022) as promising.

2. Methodology

The authors relied on the model, according to which the method of scientific research is a system of philosophical, general scientific, and special legal means and methods of cognition that ensure objectivity, historicism and comparativeness in the study of the subject. Among them are the principles of the development of the subject of research, its logical certainty, historical concreteness and dialectical connection between the logical and historical methods of cognition, consistency and comprehensiveness of the research. This served as the methodological basis of the work, namely to ensure objectivity, historicism and comparative research, and allowed the use of material from various branches of knowledge as sources of research areas of state legal theory. The systematic nature of the research was expressed in the appeal to knowledge structured in blocks (general globalization, the state in the context of globalization, law and legal globalization, internationalization, legal unification, legal harmonization) based on the dialectics of general (globalization, unification, harmonization) and secondary (historical - with revision of the value of the benefits of globalization, organic - the reaction of systems to convergence and transformation, etc.) trends; Comprehensive nature was expressed in addressing to the "state-law" looped system of globalization.

The research applied the classical methodology of qualitative analysis of systems and processes, in particular, a system-analytical approach to the study of the research object and subject.

In addition, the research methodology is represented by modern tools. The study was conducted on the basis of the dialectical, as well as the widely used general scientific (analysis, synthesis, induction, deduction, analogy) and particular scientific methods of cognition of reality. The application of general scientific methods allowed the authors to comprehend scientific ideas about general and legal globalization, the internationalization of objective law and its ways, forms, means, to determine the factors influencing the content of the declared subject, to formulate provisions relating to the subject, and meet the requirements of modern conditions.

The application of private scientific methods has contributed to the study of the subject in order to systematize the source array in relation to the understanding of the essence and correlation of globalization, internationalization, unification, and harmonization in the state and legal hypostasis. The use of special methods such as a comparative legal method, a method of legal forecasting allowed us to holistically and comprehensively comprehend and disclose the subject of

research, based on and within the framework of the research object.

In our research, we also relied on the method of structural and functional analysis, statistical and other methods of cognition. We used linguistic research to facilitate the analysis of the studied phenomena.

3. Results and discussion

Law is evolving fast into a universal education, which includes the triad of axiology, teleology, praxeology, determined by global interdependence or the desire to form and strengthen it and, as a result, interstate and supranational integration, harmonization and unification, which can be presented as the main path of modern state and legal development. Accordingly, we consider it possible to define here legal globalization according to the block-modular principle as a process generated by general globalization, entailing the formation and universal recognition of the existence of harmonized and unified legal principles, norms, as well as legal theories, concepts, development models, which catalyzes the mutual influence and interpenetration of the national law of states voluntarily or as a result of indirect consecutive imposition.

Considering that we see the globalization and its legal dimension both as a process and as a way, which, in turn, determines the direction of the process and its constituent sub-processes, for the purposes of a consistent, systematic and problem-oriented analysis of globalization-legal processes, we emphasize that the core in the integrated mechanism of legal globalization that conveys the integration energy driving legal internationalization to objective law with the help of means and methods is precisely the “way”: unification and harmonization of national law.

Unification and harmonization can also be considered as external expressions (forms) of globalization internationalization. However, such an approach seems to be justified when considering internationalization as a separate process, which is a consequence of the general globalization. Within the stated problems, our research is focused on legal globalization, whose mechanism puts subjective characteristics to the critical place (the categories indicated above as “voluntarily” or “as a result of indirect consecutive imposition”). These characteristics are transposed into politics, lawmaking, law enforcement as at the discretion and legal management process (Makogon et al., 2020), activities to form sustainable and operational, fundamental and applied doctrinal positions, ideas and ideology in the direction of risk presentation and the actualization of responsibility for the viability of sovereign actors in a globalizing world. At the same time, we understand responsibility as relations between an individual, society, and states, conditioned by universal and national interests, subject to material and procedural legal regulation, within the framework of which mutually imposed requirements are deliberately actualized on the basis of the sanction of a legal norm provided by a legal mechanism for implementation. Thus, we consider it logical to talk about the ways the subjects of all the above-mentioned types of activity and the process as a whole go along (of course, in a certain direction).

We should especially point that the legal doctrine includes the conjugation of globalization and legal internationalization with such phenomena as reception and standardization. The latter are not included in the subject of this study, as the reception, expressed in the introduction of large legal arrays of other states into the national law, in addition to being quite rare in modern realities, even with stretching, seems to us, along with various variations of implementation, one of the means of achieving precisely the goals of legal internationalization; as for standardization, this category is too broad, meaningful and deserves a separate study with its object and unique subject.

Harmonization seems to be general in relation to the particular unification. For the purposeful convergence of legal systems, systems of law and legislation, leveling contradictions through the consolidation of general principles and institutions, the search for "adequate signs" (Markheim et al., 2015) of the latter, the regulatory arrays of states are transformed based on the specific historical, social, economic, and other conditions; while unification presupposes the

dissemination (adoption) of uniform norms and documents, which may be justified by operational reasons but not always effective and highly conflict-generating within a period, as systems are organically characterized by resistance to alien "artificial" elements. In this context, we emphasize that, although we consider conflict as a means of ensuring the dynamic stability of the system, we nevertheless find unacceptable an explosive growth in the strength and number of conflicts when they become self-sufficient and a goal in itself; we are convinced that the strong constitutional courts possess the greatest resource for the public administration of such conflicts (Markhgeym et al., 2019). The content of legal harmonization and unification is objectified through two main forms, reflecting the attitude of sovereign subjects to their own independence. The first of these are international legal acts, which include both classical treaties and decisions, resolutions, model laws. The latter, although they are non-regulatory, may appear as indicators of both the level of trust-based relations and international tension.

The second form we have identified is more independent and can be called “internal”, as it consists in a well-grounded perception of norms, principles, and doctrines originated in other countries, on the basis of planning and long-term actual goal-setting. In this case, there is no direct encumbrance with international obligations, and the room for maneuver expands, which is important in the face of fierce international competition, often bordering on outright aggression. The understanding of law as a tool for realizing global ambitions, in our opinion, cannot be justified.

The problem of veiled diktat on the part of the most economically developed states, their associations, transnational corporations, "information owners" is indeed urgent. The point is not even in this fact itself, as the centers of power will always form and collide, but in the fact that in modern conditions this dictate can intensify like an avalanche, gravitate towards decoupling from the need for veiling, and this is already a systemic problem that has every chance escalate into a highly uncontrollable crisis with consequences for all of humanity.

We do not try to judge the current stage of development of the human society. At the same time, it is safe to say that there are effective international mechanisms for the protection and defense of the sovereign equality of states. However, the subjects of international relations cannot always avoid the temptation to improve and strengthen their positions in the shortest possible way, which, in turn, is achieved at the expense of others. In the context of accelerating progress for developing countries, it is not always easy to timely qualitatively assess the risks of accepting aid from world giants, which with a high probability can develop into the emergence of the role of a strategic or, even worse, tactical appendage, which cannot be changed smoothly and without tangible shocks. We see a laissez-faire attitude towards the program component of state policy, including the legal one, as a key risk factor. We are talking about long-term scientifically-practically grounded programs, framed by legal ideology and built on a constitutional basis. While sustainable development in legal policy, legal life is impossible without the authority of law, the feeling of it, rather than the state breath. Corruption of teleology, impulsiveness, and callousness do not contribute to stability and progressive systematic development (Yuryevich et al., 2018).

Globalization is followed by the convergence of cultural models; however, this does not mean that the emerging space acquires (may acquire) legal, economic, socio-political, industrial homogeneity. While unifying, the world is forced to adapt to unilaterally distributed standards, finally, perhaps, without realizing it, following the path of harmonization. Blind adherence to standards and rules formulated from the outside puts the participants in international relations in a priori unequal conditions. Dependency is growing, the consequences of breaking the chains of cooperation are fraught with disastrous consequences.

And if sovereign actors do not deem it necessary and critical to identify and perceive such risks with the utmost caution, the threats of destabilization in all areas will become an objective reality that is not fertile ground for constructive cooperation for the benefit of man and civilization.

The states who consider themselves "developed", the already mentioned transnational corporations are pushing the authorities of sovereign states to implement the recommended set of

socio-economic reforms that promise the modernization of the economy, the development of a modern market economy, and the attraction of progressive technologies through foreign investment. A key element of any mega-project of this kind is excessive external borrowing, spent on the purchase of primarily goods and services of these entities (Webber et al., 2021). Highly-paid economic advisers prepare recommendations, following which will make the daily life of ordinary citizens of the country flow in exactly the same way, and not otherwise. Reforms are being implemented exactly as defined, regardless of the will of the population or even a change of government. Dzhon Perkins, in his book "Confessions of an Economic Hit Man", talks about the mechanism of scientific econometric substantiation of inflated growth rates, with the help of which the gifted is simply deceived. The author talks about the special operations of the United States to carry out large-scale economic and legal transformations in Indonesia, Panama, Ecuador, Colombia, Saudi Arabia, Iran, and other countries, which the United States has proclaimed as zones of its vital interests. Perkins talks about how he helped implement a secret scheme that funneled billions of Saudi Arabian petrodollars into the United States economy. He reveals the secret mechanics of imperial control behind some of the most dramatic events in modern history, such as the fall of the Shah of Iran, the death of Panamanian President Omar Torrijos, the US invasions of Panama and Iraq, and the failed attempt to overthrow the elected president of Venezuela (Perkins, 2004; Parkhomenko et al., 2020).

In the modern upsurge of globalization, the movement towards unification occurs purposefully and often through joining international organizations, the adoption of statutory documents of which requires the introduction of unified norms and standards of legal life into national law. However, states and their associations are contrasting, differing in culture, traditions, level of economies, doctrines, experience acquired over the entire period of their existence. All this can explain that the full-fledged trend towards legal unification mainly affects the countries of Western Europe and the United States, which are the main beneficiaries and locomotives in this process. Already initially restricting access to the space of freedom of movement of technology, finance, ideology with the help of powerful buffers, tools, such as trade restrictions, absolutization of specific financial standards, an integral framework has been created for imposing one's will on other states and nations.

We do not consider it possible, or even justified, to completely implant Western standards as an alien element into completely different systems that are reactive and will organically reject them. It is precisely in this regard that for countries not included by Western states in the circle of "developed", the unification of legal arrays, institutions under the specified standards cannot be absolute. It is appropriate to talk here about the harmonization of law as an alternative to unification.

The literature rightly asserts that "harmony is a harmonious, ordered consistency of the whole and its parts... we more often talk about the harmonization of legislation and law. In this process, the "whole" is the law and its parts" (Endarto et al., 2021). Law as a universal regulator of the real life of people with all its specificity and dialectics at the present stage of development cannot demonstrate its integrity and harmony. Positively assessing harmonization as the most inclusive way of internationalization of law, the authors say that "...if the state governing the affairs of society is a "conductor", then it cannot conduct without music, without law. Thus, harmony in law is nothing but a guarantee of the success of streamlining the "needs of life". It is possible to live according to the law, to enjoy the benefits of the rule of law, provided that an appropriate legal basis has been created" (Rubtcova and Pavenkov, 2018). Thus, it is argued that the convergence of law is crucial for social and state development. We fully share this position.

4. Conclusions

We should finally note that harmonization of the objective law of formally equal and independent sovereign subjects cannot be reduced only to solving the issues of legal technology, as

by its nature and for its purposes it requires a comprehensive assessment of the degree of compliance of the content, essence and predictive interpretations of the integrated norms with the already formed social ties.

A gross aggressive, transforming external influence from a totally different cultural environment can poison both juridical arrays and, with a high probability, other elements of the synergetic system. Harmonization objectively requires the existence of foundations, which favorably distinguishes this path from theoretical unification. With the already existing material, doctrinal, ideological, socio-cultural foundations - indeed, a significant burden falls on the legal technique, moreover, here too - the issues of compatibility of legal structures, approaches to definitions, terminology, concepts, categories will still be among the most advanced.

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