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DISCUSSION ON THE INFLUENCE OF GLOBALIZATION ON EMERGENCE OF INTERNATIONAL ADMINISTRATIVE LAW

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The article analyzes the possibility of formation of international administrative law in the globalizing world.

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In contrast to the ideas of E. T. Gaidar that the State is privatized by bureaucracy, in real the privatization of the State was conducted not by the bureaucracy, and by a group of natural persons, entities, later pompously named oligarchs. For he who pays the piper calls the tune. The origin of the term "oligarch" is due to the growth of free competition capitalism into imperialist stage, so clearly described by V. I. Lenin in his work "Imperialism as the Highest Stage of Capitalism". One of the 4 or 6 signs of imperialism V. I. Lenin called the emergence of oligarchs concentrating in their few hands the major financial flows of monopolistic capitalist market in the stage of imperialism now called the globalism. But those oligarchs of 19th century, who are described by Lenin, are pale in comparison with Russian oligarchs. Those grew up in the process of redistribution of the surplus product produced in the country, yet went by way of concentration of labor, until its transformation into a public interest. Our "oligarchs" evolved from non-labour enrichment, through appropriation the product of someone else's work, that is, through thievish method, privatization, secondly, our oligarchs, realizing their larcenous nature that is alien to the nation and harmful for the State immediately seek to take out all acquired to Israel or to another country, and not to allow former Soviet property to be at the

service of our country. That is, they are in some ways akin to the purely subversive group of competing enemy in the camp of opposing side. In this regard, there is a relevant speech of Gleb Pavlovsky May 16, 2005 in the TV program "Vesti-details" on the RF central television. G. Pavlovsky somehow bashfully said that the privatization of the State had been conducted by oligarchs; they stood between citizens and the State and distorted the essence of the State, depriving the Russian people of the State, since oligarchs had bought up and divided the State between each other, deprived citizens of sovereignty. He found out that M. Khodorkovsky was involved in buying up political system. Essentially, Pavlovsky confirmed that the idea of E. T. Gaidar, that the State was privatized by bureaucracy, had been implemented. Further, Pavlovsky put it so that if we want to be free, people should have a State. Democracy cannot exist without a strong State. Inconsistency of Pavlovsky's thinking is that, in his opinion, the mafia is a harmless word because is translated as "friends of friends". While mafia is a merging of crime with public power. And no State is proud of its links with the underworld.

Hopes to overcome total lawlessness and disorder in the Russian system of law through turning to international law are clear, but equally in vain [9, 164-170] as hopes to get welfare through connection to or entering into "the West" without properly organized labour and high labour productivity at home. It will not be sweet for idlers there because the competitive environment does not tolerate parasites. Welfare based on oil or gas speculation is a sign of parasitism in economy, I would call such a state of economy as a stage of wildness in the history of human civilization, since the main activity at the wildness period was gathering of finished natural product, while during further progressive stages of the civilizational development man turns from homo sapiens into homo habilis, an active man, that is such, who through its work creates not existing in nature artifacts transforms the nature.

N. A. Vlasenko offers comprehension of modern state of legal superstructure in the world: "The signs of the decline of international law in the context of postmodernism are uncertainties of prospects of some international formations (European Union, CIS); inactivity of a number of organizations; the UN's institutional stagnation; vulnerability of some institutes in terms of legitimacy (International Criminal Tribunals); dominance of functionalism concept" [6, 46].

A big destabilizing influence on the world order is carried out by the hegemon of the contemporary world – the United States. According to the V. D. Zor'kin, the crisis of the international justice system is associated with "the spread of the norms of Anglo-Saxon case law to the sphere of international relations".

"American and British legal systems increasingly allow themselves to go beyond national boundaries, using national judicial precedents to prosecute suspects outside the national territory" [11].

The Russian administrative-legal science has set the issue of finding an adequate response to globalization through the development of a "global administrative law" (GAL). Professor A. B. Zelentsov thinks that the task of our science is "to understand, obtain and streamline spontaneously rolling processes of legal transnationalization (globalization) and to rationally manage them with taking into account the Russian legal identity" [10, 26]. N. I. Pobezhimova encourages representatives of the science of administrative law to develop the concept and principles of "international administrative law (IAL)", its subject matter, sources, mechanism of international administrative-legal regulation "taking into account processes of globalization and integration taking place in the world" [18, 160], in particular the countries of the CIS.

It would seem, economic basis under the new legal superstructure in world administrative law already is already being created in the form of "free market", the Internet, the Eurasian Common Free Market Zone, but in reality, whether is this so? Whether does it give an excuse to talk about the emergence of international administrative law, whether does not other characteristics of States (choice of social way, socialism, beliefs and just nationalist associations of foreign citizens on the territories of other sovereign States: Huaqiao, colonies, for example, of the Jews, the Circassians in other States, the Indians in reservation areas, etc.) serve as opposable reality of the concept of integration? Hopes to get rid of corruption in the country, with the assistance of international administrative law, if there are not such forces inside the State – it is a wrong road.

Definition of the subject matter of international administrative law is the most difficult issue, if to discuss the formation of such a branch of law.

Whether does the institution of a case against Mr. Timchenko, millionaire and friend of Vladimir Putin [30], or Mikerin in November 2014, directly relate to the sphere of "international administrative law" [29, 31]? Or the announcement of the Investigative Committee of the RF November, 2014 about initiation of a case on the fact of shelling of school in Donetsk in November 2014 year [28], which has resulted in the deaths of schoolchildren? After all, in both cases initiation of a case required the possession of a particular authority, competence of a public authority for such action on initiation proceedings against citizens of not their jurisdiction. Or is this is unfounded claims of persecution any citizen of any country, even outside the borders of their State, outside their jurisdiction, what would not have a difference

with the international banditry. At the end of the 20th century in Western European countries such a power of own States was actively promoted, Israel pretends to administer its justice in the same way against citizens of any country, if Israel suspects such person of the genocide of the Jews. How far such claims are justified and whether are they relevant to the so-called "international administrative law"? Maybe application to Russia by a number of Western countries sanctions in protest against the policy of the Russian Federation in Ukraine also belongs to this type of emerging law? Or are all of these actions wrongful? It is known that the President of the Russian Federation advised to Russian billionaires suffering from Western sanctions to appeal against them in a court. And, do the activities of Interpol to trace criminals relate to the same international administrative law? Let's ask ourselves which of the mentioned incidents would relate to the proposed international administrative law?

Many provisions of this concept, for example, the term of "global management", in regard to administrative law require the highest attention and scientific discussion. Because there are enough examples of the least critical dancing to "West's" tune in the legal practice of the Russian Federation. That does not necessarily lead to harmony in corresponding relations. One day a correspondent of the radio station "Ekho Moskvy" O. Zhuravleva in conversation with Eugenia Albats, Editor-in-chief of the magazine "The New Times", held a long-standing assessment of the situation: "The world is unstable, everybody have their own interests. We just like do not understand our place and maybe that is why we have such a difficult relationship with everybody" [26]. In addition, we must also consider the possibility, in the presence of international administrative law, of emergence legal relations when "international administration" will apply the quasi authoritative powers to both individuals and legal entities of the Russian Federation abroad and to the entire State in general. That is, there will be the methods of authoritative impact on the Russian Federation like sanctions of the European Union countries and the countries of the American continent, the United States and Canada. In practice of the United States has long seen such traits of their sense of Justice, when they are actively referring exclusively to the provisions of their internal law apply detention and conviction of Russian citizens having their business outside of the Russian Federation (the case of But, arrest of accounts of Russian officials, etc.). And leaders of the breakaway states, for example, the Islamic State of Iraq and the Levant (ISIL), applying their own rules of administration and vision of public order, carry out executions of infidels, including citizens of the Russian Federation.

Some semblance of international administrative law is found by A. A. Ageev in the study of legal regime of the spaces not under state sovereignty, for example, high sea, and I would also add the specific legal regime on international space station. He writes: "Under the legal regime of high sea we will understand the system of legal means provided by all the sources of international law and the adopted, in accordance with them, acts of national law, which defines a set of permissions, prohibitions and positive obligations of subjects of international law with regard to ensuring their rights and legitimate interests in particular area of maritime spaces". To determine, first of all, the limits of "the permission of implementation national jurisdiction and its volume" [3, 77]. In fact, these dispositions of international public law are also implemented by the apparatus of a sovereign State, thus denying the existence of an "international administrative law", where "Greenpeace" hardly fits on the role of its custodian.

Speaking about the interdependence of states in all areas of their economic, social and political ties, A. B. Zelentsov writes: "...supranational regulation generates still poorly manifesting itself, but a very important and growing array of norms, which in the foreign literature is called "new administrative law" or "supranational administrative law" and most often "global administrative law". This new normative complex is designed to service management processes associated with the implementation and protection of public interest in the new trance national space and this differs it from "traditional domestic law" [10, 12-13].

Here we are forced to once again refer to the concept of subject matter of administrative law, as its scope in the given interpretation is uncertain, this time in relation to administrative legal relations involving a foreign element.

It is recognized that matter should be attributed to administrative law under two criteria: subject matter and method. The subject matter is a range of social relations governed by administrative law, and the method (in my definition) is a nature of the ties of legal relation subjects. Among the definitions of the subject matter of administrative law the position of L. L. Popov draws our attention, he writes: "The subject matter of administrative law is a system of social relations governed by administrative-legal norms" [19, 33], but I prefer more the view of D. N. Bakhrakh, who writes: "The subject matter of administrative law is a totality of social relations arising in the implementation of imperious activity of state administration and administrative court procedure" [4, 32]. It is important that in the subject matter of administrative law they distinguish such its characteristic as "administrative and coercive activity" [2, 28]. After all, the law is different from other forms of regulation of social relations (the rules of morality, intraorganizational norms, and tribal

customs) exactly by the ability of coercive exercising of legal norm with the help of specially created State apparatus. From this point of view, the actions of the authorities of the United States in August, 2013 aimed to punish Syria by intervention for alleged violation of the norms of international law (mistreatment of its own people and foreign mercenaries who want to overthrow the legitimate Government of the country, and the use of chemical weapons to suppress them) is a coercive activity, and, taking into account the position of A. B. Zelentsov, is a supranational administrative activity.

Euphoric notes of A. B. Zelentsov, who already foresees occurrence in some of its outlines "global administrative law", attract the attention. Alexander Borisovich writes: "…A legal space where national public administration operates is no longer confined to specification of national political directives and priorities, and is coupled with the sphere of normativity of supranational nature that streamlines management relations within the framework of national legal space" [10, 15]. In my opinion, A. B. Zelentsov puts down in the basis of his reflections a criterion of subjective composition of administrative legal relation: there, where there is a foreign element it is a supernational administrative law. Moreover, by analogy with the domestic administrative law, where legal relations are built between an authoritative subject of administrative law and subordinated one, A. B. Zelentsov believes that in global administrative law (GAL) or transnational administrative law we can find "the application of norms of this law as to private entities, and to public ones – states" [10, 17]. That is, the question of the sovereignty of such states cannot be raised, they are put on the level of a private subject of law, citizen and any other corporation. It seems to me that this is a bad basis for reflection. Although the current legislation in the RF gives reasons for this. V. G Ul'yanishchev estimates the already existing RF legislation as such, where the State is reduced to the level of a trading entity, one of a number of subjects of civil law: "...the State as a system of safety mechanisms, as the carrier of economic function... is reduced to the level of an ordinary subject of civil turnover, before which the citizens (carriers of inalienable natural rights) obtain widespread advantage" [22, 204].

Not a subject, but authoritative nature of legal relations is a specificity of administrative law. The criterion of subjective composition of a legal relation cannot be adopted unconditionally even in domestic law. In my opinion, a more stable criterion for structuring of law by branches is the adoption for basis the nature of the ties of subjects of legal relations, that is, the method of legal regulation. In international law, such a method is the method of "consensus" [12], the consent of sovereigns. And for administrative law is typical method of power and subordination,

the method of authoritative orders, administrative-legal method [8, 13-19]. That is, horizontal and vertical linkages of subjects of legal relations. It is quite clear that they are not compatible.

The issue of globalization and formation of a world State, in principle, is not new [5, 9-13; 13; 15; 24, 411]. Each new organizer of global world most often turns to it. And the Empire of Alexander the Great was a world one, however, until the demise of its organizer. And Roman Empire united all the space known by that time. Desire of modern imperialist states for the universalization of the world, both in terms of administration, and enforced by them own rules and values is quite tangible. This includes attempts to unite Europe. But why, then, in the age of globalization and integration such a great state as the Soviet Union in the context of globalization so inopportunely goes out of the common and is split into many pieces? Is it just the result of the machinations of imperialist competitors for the dispersion of enemy for further absorption it in parts or globalization should not be overestimated in the sense of an integrating factor for the population of the world? The same answer must be received in respect of international administrative law.

The attitude of the United States to norms of law made within the framework of the United Nations is known: they neither have ratified the Kyoto Protocol nor recognized it mandatory, nor other facts such a property, not to mention their understanding of international law as law only in interpretation the interests of the United States [23]. They even in case of use of chemical weapon to Syria in August 2013 saw a threat to the national interests of the United States. That is in the reality in the new integrated global community of former sovereign states, supranational law may occur only in the form of hegemony of a separate state that does not actually give an opportunity to create new administrative law of the world community in the interpretation of A. B. Zelentsov. Estimation of A. B Zelentsov, that "all this provokes dichotomy "traditional administrative law – new administrative law" [10, 14] is hardly correct.

The enshrining in the RF Constitution of the principle of primacy of international law over national law, the Russian Federation law, does not change the case not only because the text of the Constitution of the Russian Federation was written with help of American advisers. But also because the text directly refers international law to supranational, the main subjects of which are states, as sovereigns. In other words, a national State, as an institute for the protection of human rights and the protection of the rights of its people, seeking for shelter against the injustices of the competitive world, is not outdated. Time for the World State is constantly

growing, but it is doubtful whether it has come. At least, the Constitution of the Russian Federation that has proclaimed the primacy of international law over national law of the RF is still a document of national law, and recognition of the quality of international law is an own will expression of the sovereign State, therefore, such a sovereign State always has the authority to change the wording to any other. By virtue of the same sovereignty.

So globalization of administrative law is a destiny of weak and compelled to obey. And there is no heaven for a weak. As well as fair legal procedure. Gorbachev's globalization lead into breaching of national interests, the defeat of one nation in favor of another, the revision of outcomes of the Second World War and the surrender of Yeltsin. When French President Nicolas Sarkozy in 2010 evicted itinerant Roma, United Europe shouted slogans to stop discrimination [32], but the deportation took place.

Here's how carefully M. V. Nemytina writes about globalism: "It should be noted, that in the modern world, which continues the struggle for geopolitical influence, the borrowing of someone else's experience of legal development, the building of legal system and the legal regulation may turn out to be not so innocuous. In the context of globalization and international integration any State, on the one hand, has to enjoy the advantages of legal development of civilization, on the other hand, not to lose a sense of their own national interests, to keep their legal traditions. Therefore, there are two growing, competing among themselves trends in the modern world: one is associated with globalization and international integration, accordingly with the unification of legal orders, the other with the countries' pursuit of national identity, maintaining their historical state and legal institutes and peculiarities of legal system" [17, 21]. The impossibility of mechanical transfer of characteristics from one country to another country is vividly described by G. I. Muromtsev [16, 17].

There, where a state was weakened, human rights have always been under threat, because the State both establishes the norms of law, and defends them, there are no rights without a state. In modern conditions, acceptance of the presence or even need for international administrative law – is a position of surrendering national sovereignty and national interests for the sake of an imperialistic competitor. For example, the use by the United States of America of military suppression of Government of a sovereign state, Syria, could be seen as an application of administrative power to quell another country. And this situation does not add arguments in favor of world administrative law; it just shows a crisis of the system of international law, which is generally accepted to be based on consensus, voluntary consent

of subjects of international law, consent to join or not to join in relations with equal sovereigns on the political map of the world.

May be in the actions of the United States, you can see the beginnings of international administrative law? It's not so. When administrative law will become a world one, it will no longer qualify for the definition of "international". Since the concept of "international" applies only to relations between sovereign states, and not to any authoritative legal relation involving foreign element as one of its parties.

The theory of A. B. Zelentsov has appeared in conditions when also inside of a state the credibility of administrative law with its law-enforcement function fell. Because citizens resort to lynching, direct coercion of opposing party [20, 27] and do not rely on the effectiveness of the state system of administrative coercion to comply with norms of law. That is, deny either monopoly of the State on the established rights, or the monopoly of the State on court and use of violence. Examples of ignoring the state can include numerous "skirmishes" that substitute coercive function of the state, and sometimes in the absence of "political will" in the country, inaction of state administration institutes, private groups undertake events to restore territorial order in the country [21; 25].

By analogy. There is a known discussion of scientists concerning international private law (IPL), in which the very term is criticized, when some scientists recognized that international private law is not international, not private and not a law. Others included the relations of IPL in the subject matter of international public law. The first scholars are conventionally called "nationalists" (L. A. Lunts, I. S. Pereterskii), second ones – international jurists (A. M. Ladyzhenskii). "Nationalists" tried to prove that each state itself sets the norms of the so-called international private law and therefore it was not international, but domestic. "Its private-law nature is challenged on the ground that it not so much directly regulates legal relations between private individuals, but rather determines what norms public authorities should apply. The legal nature of the norms of international private law is negated because it does not regulate directly the powers of subjects of legal relations, doesn't create or delimitate rights in subjective sense of word, and provides guidance, what law norms of such a State should be applied on a particular case" [14, 15]. The scientific debate had a direct projection on the legislation: Higher Attestation Commission adopted as a criterion for structuring the branches of the Soviet, and now Russian law, the fact among legal sciences the specialty 12.00.03 refers to civil and international private law [1], i.e. IPL is moved to the category of domestic institutes of law.

While in Soviet times, specialty 12.00.10 included both international law and international private law.

The limits of the subject matter of the branch of law "international administrative law" are also affected by the judgment of A. M. Ladyzhenskii: "But if you stand on the point of view that L. A. Lunts and I. S. Pereterskii outline in respect of private international law, then the enumerated new branches of international law (international criminal, international administrative, international financial law) need to be considered as the embranchments of respective domestic branches of law, at that, each State could has its own international criminal international administrative law and so on. From this point of view, the prosecution of Nazi criminals by the International Tribunal would be nothing other than the trial of vanquished enemies under domestic laws of winners" [14, 11].

The projection of this debate on international administrative law may also lead to a methodological conclusion on insolvency of the term of international administrative law due to the blending of the spheres of international life with domestic law. About international administrative law, you can also say that it is not international, not administrative and not a law. Not international, since, in accordance with the existing today concepts, "international" means presence of sovereigns as the main actors of this law, and the proposed theory assumes that the norms of this administrative law will be binding for the States on an equal basis with individuals. The equation of a natural person and a State directly negates the idea that this law is an international one. It is not also an administrative one, since in this case the administration should mean a specialized apparatus for a coercive enforcement of law. And there isn't one. And not a law, since there is no subject that forms norms of this law.

The introduction by the Federal Law No. 97-FL from May 4, 2011 chapter 29.1 of the Code on Administrative Offences of the RF "Legal assistance in cases on administrative offences" regulating procedures for requesting foreign authorities for legal assistance does not make these procedures international. These are only procedures in legal relations with foreign element, although they are exercised by authorities of a corresponding state. To turn them into international ones they lack the quality of sovereign will of a subject of law. However, even an official acts on behalf of a state, otherwise it does not have independent authority. Sharing the stated opinion that managment relations are undergoing their evolution, and supranational bodies have been already created within the framework of the Eurasian Economic Community and Customs Union (the Eurasian Economic Commission, the Court of the EurAsEC), N. I. Pobezhimova still comes to the conclusion that

"we should not state this and make a conclusion that, thus, the content and nature of administrative law have changed. The modern science of administrative law has not yet formed the understanding of the legal nature of either the European or international administrative law" [18, 153].

In conclusion, we must think over the paradoxical conclusion of E. T. Gaidar: "There are authors, who believe that the trend of further development of the process of globalization is inevitable. There are those who believe that the world stands on the threshold of deglobalization. Both options cannot be proven" [7, 811]. However, the institute of a state remains unchanged, as the most important form of implementation the interests of publicly organized people. The time has not still come for the withering away of a state and the substitution of a national administrative law by international administrative law of a trans-state, the sovereignty of a publicly organized people still protects particularly small nations from abusing their alleged rights by some imperialist states.

Yes, without the activity of administration the norms of other branches of domestic law and norms of international law also hang in the air. But this hardly create a branch of law "international administrative law", and in the World State an administrative law will become not an international law, but a national law of a new World Association. Since an international law exists only between sovereigns, participation of a foreigner does not make such a transaction international, and only a transaction with foreign element under national law.

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