

Transformation of International Law in the Digital Age

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Abstract:

The author of the article argues that due to digitalization, the theory and practice of international law are enriched with a new range of issues. Today, we can talk about a new stage in the development of international law. It is at a crossroads - will it be the international law of the digital era, or will it be transformed into global law. Key issues are ensuring digital sovereignty, legal regulation of cyberspace and protecting human rights in the digital environment. The most important issue that will determine the fate of international law is the preservation or weakening of the role of the state as the main subject of international law. However, digital technologies, contributing to globalization, can negatively affect the role of the state and lead to the transformation of international law into global law. At the same time, there are a number of unresolved issues regarding the sources and mechanisms for implementing global law. Along with the concept of global law, the concepts of digital universalism and digital nationalism are discussed, concerning issues of legal regulation of digital technologies. The existence of such concepts indicates the existence of many unresolved issues in the theory and practice of international law and the absence of consensus among states regarding the future of both statehood and international law.

Keywords: digital technologies, international law, global law, cyberspace, Sustainable Development Goals, digital universalism, digital nationalism.

The current period in the world is characterized by fundamental changes and transformation processes. At the same time, the decisive factor in the development of the world is the transition to a digital economy, which is accompanied by the following processes:

Firstly, the Fourth Industrial Revolution has begun, it “will change not only what we do but also who we are. It will affect our identity and all the issues associated with it If” [1].

Secondly, there is an accelerated transition to the sixth technological order, characterized by the intensive development of nanotechnology.

Due to digitalization and other technological changes, humanity has entered a new era of global change. Like any other large-scale phenomenon, the development of the digital economy is associated not only with positive consequences, but also with various risks and threats.

In this regard, the development of digital technologies has become one of the factors on which global sustainable development depends. 17 global sustainable development goals are divided into three categories such as economic, social and environmental. In other words, the sustainable development goals are aimed at balanced development in three areas, such as economic growth, social justice and environmental protection. Digital technologies are a factor that can and should contribute to sustainable development. Digital technologies and ICTs are directly mentioned in SDG 4 (education), 5 (gender equality), 9 (industry, innovation, infrastructure) and 17 (partnership). ICTs are indirectly mentioned in SDG 8 (employment) and SDG 12 (production and consumption). But ICTs affect the achievement of other SDGs as well, of particular importance for achieving SDG 1 - eradication of poverty, since the level of development of digital information technologies is becoming one of the key factors in the competitiveness of the economy [2].

Digital solutions are expected to accelerate progress in achieving the Sustainable Development Goals. However, the positive impact of digital technologies is possible only if the following conditions are met: overcoming the digital divide; reducing digital inequality; increasing digital and computer literacy of the population; sufficient funding for the implementation of digital technologies in all spheres of life. Otherwise, digital technologies can become a factor hindering sustainable development. By their nature, digital technologies are not neutral. A digital divide is emerging and worsening between different countries and regions of the world that have and do not have access to the Internet. The UN aimed to provide universal and affordable access to the internet in the least developed countries by 2020 [2].

Thus, digital technologies have an impact on all aspects of sustainable development and spheres of life, including international relations and international law. On the one hand, digital technologies create new opportunities for expanding international cooperation, on the other hand, they create new challenges for states and international organizations, as well as security threats. In such conditions, each state and each international organization must determine its development strategy and place in the New World Order.

Digitalization has the potential to change law, including international law, in a fundamental manner. We are only gradually realizing the extent to which it could alter norm-application and even norm-creating processes as well as the functions of law [3]. Digital technologies and the digital economy have an impact on both the theory and practice of international law. Thus, as a result of digitalization processes, the theory of international law has been significantly enriched with new concepts and notions. The branches of international law have been enriched with new institutions. Thus, the concepts of "digital sovereignty" and "cyberspace" have appeared in international law, the concepts of "cybersecurity", "information security" and "digital security" have appeared in international security law, the concepts of "cybercrime", "cyberviolence" and "cyberterrorism" have appeared in international criminal law, "digital human rights" and "the right to the Internet" have appeared in international human rights law, "cyberwars" and "combat robots" have appeared in international humanitarian law, and so on.

As a result of digitalization, the system of international law is expanding and enriching. New institutions and sub-branches are developing within traditional and relatively new branches of international law, and new branches of international law are being formed. Thus, international information law is developing dynamically.

Digitalization also affects the practice of international law, setting new challenges for the international community and defining new areas of cooperation. Thus, the UN Secretary-General's Roadmap for Digital Cooperation has been adopted. It is important to note that one of the global goals, along with the 17 Sustainable Development Goals, is to achieve universal connectivity by 2030 and ensure universal coverage of digital technologies. International cooperation in the field of high technology is one of the priority areas of cooperation at both the universal and regional levels. Issues of particular practical significance in international law in the context of digital transformation include issues such as ensuring digital sovereignty of information security, legal regulation of cyberspace, and ensuring human rights in the digital space.

Various aspects of digitalization can be grouped into two subsets: an interactive space created by digitalization, and tools for the automatization of tasks. First aspect refers to cyberspace. A second aspect of digitalization looks more closely at the tools that can be created by digital technology. This includes the automatization of decision-making and of actions, in particular by using artificial intelligence based on (self-learning) algorithm [3].

The abovementioned dimensions of digitalization can relate to law in two ways. First, cyberspace and automatization can be the object of regulation. Second, in addition to being the object of regulation, digitalization can provide the means, or even the agents, for norm-setting and law application, including monitoring of legal obligations [3].

At the same time, digitalization creates new threats to the security of the global community and poses new questions for states. The most important issue facing states is how to ensure compliance with the principle of sovereign equality of states in the context of digital inequality, given that a digital divide is emerging and deepening between different states and regions of the world with and without access to the Internet. On the one hand, states are faced with the task of strengthening national sovereignty in the context of digital inequality, on the other hand, the problem of overcoming digital inequality requires close cooperation from states. The issue is complicated by the fact that in addition to digital inequality, regional integration processes are intensifying, which, on the one hand, are aimed at jointly overcoming crises, and on the other hand, pose a threat of limiting sovereignty, since integration processes are accompanied by the creation of supranational structures. The answers to these questions will determine what the international law of the future and the future of each state will be.

Thus, the digital era poses new challenges and questions for subjects of international law - states and international organizations. The further development of international law and whether it will become an effective instrument of international cooperation in the digital era depend on the successful resolution of these issues. As a result of digitalization in international relations, a new range of issues arises that require international legal regulation, which leads to the formation of new concepts and institutions, branches and sub-branches in the system of international law. This, in turn, marks a new stage in the development of international law.

In Western literature the history in international law divided into two periods – classical international law and contemporary international law. According to post soviet scholars' opinion, the history of international law distinguishes 4 stages in the development of international law - the international law of the Ancient World, the international law of the Middle Ages, the international law of the New Age, called "classical international law", when international law was recognized as a separate branch of science, and modern international law, the beginning of which is associated either with the creation of the League of Nations in 1919, the adoption of the Kellogg-Briand Pact in 1928, or the creation of the UN in 1945.

Nevertheless, we can talk either about the beginning of a new stage in the history of the development of international law in the context of digital transformation or about the transformation of international law into the so-called global law. Globalization has covered not only all spheres of

real relations between states and within them, but also the legal superstructure over these relations – thus, there is a globalization of law [4].

Strengthening of interrelations occurs in two directions: on the one hand, states transfer more and more new issues from domestic jurisdiction to international legal regulation; on the other hand, the norms of international law are being incorporated into domestic law on a broad front. International law and domestic law are becoming an inseparable duality. The inseparable duality of international and domestic law - although not all-encompassing, not yet noticeable to everyone - is a phenomenon in the 21st century that can be conditionally called Global Law [4].

The erosion of states' sovereignty is giving way to a global community and a new international power structure based on multilateral decision processes aimed at protecting fundamental interests and global values. These changes raise the question of whether the birth of a global community gave rise to a new set of international norms, and whether such norms amount to a system coherent enough to be called 'Global Law'[5].

Along with global law, the concept of transnational law is put forward. Its essence is that individuals (mainly multinational enterprises, banks, stock exchanges) of different countries create their own norms of relationships, their own – autonomous – legal order at the bilateral and multilateral levels [4].

As Professor Ribstein understandably pointed out during the Indiana University School of Law symposium, Globalization of the Legal Profession, it appears that the concept of global law is rather lacking the precision and formality one would normally expect from a classical legal system [6].

The analysis of the concept of global law is per se controversial. There are no clear answers to the following questions: Where does one access the information on the rules and regulations forming the global law? Who determines the contents of global law? Where are the courts sanctioning violations of global law? [7]

Proponents of global law argue that international law lobbies the interests of leading geopolitical players to seize territories, natural resources, and populations. This is what determines the need to change the world system and international law. According to UN documents based on the humanistic paradigm of human rights, this is true. But in the full sense, humanity does not have effective means of managing its own life activities, since it is not the source of its own powers. Supporters of global law put forward ideas about the adoption of a global universal constitution (Earth Constitution) [8].

Opponents of global law believe that global law is a threat to statehood, since it leads to the gradual formation of global governance mechanisms based on regional integration structures, through the unification of legislation and the convergence of legal systems.

In this regard it is also reasonable to mention two concepts: digital universalism and digital nationalism. Digital universalism proposes that digital globalization be regulated at the international level using international treaties. Digital nationalism suggests instead that domestic law [9]. Digital universalism implies development of global law while digital nationalism focuses on protection of national interests and further strengthening of states as the subjects of international law.

We also note that the global goal of sustainable development No. 17 sets as its goal “strengthening the means of implementation and intensifying work within the framework of the Global Partnership for Sustainable Development” [2]. SDG 17 is aimed at strengthening the global partnership, not the international one, which is primarily interstate. And the global goal of sustainable development 16 sets as a goal “Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.” SDG 16 is about strengthening societies, but not states. At the same time, digital technologies are

becoming one of the main factors influencing sustainable development. As mentioned above, digital technologies are mentioned in a number of SDGs as a necessary factor for their achievement.

Thus, the development of digital technologies has changed the nature of the global economy, affects the content of interstate relations, and therefore the development of international law. The further development of international law depends on the role of the state in the New World Order. If the role of the state as the primary and main subject of international law is preserved, we can talk about a new stage in the development of international law in the digital era and the increasing importance of international law. In the case of such a role by the state, international law can be transformed into global law. And digital technologies are considered one of the factors accelerating globalization, this transformation of international law into global law.

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