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WORLD ORDER: AFTER THE SECOND WORLD WAR AND NOWADAYS

Abstract: *The world order created by the nations of the winning side of the World War II exists until the present day. Its key trait is that the important decisions are made by several states, which hold a special place in the world thanks to their military power and their fixed position within the UN Charter as the permanent members of the UN Security Council. But the modern world has drastically changed, became multipolar, and thus it is necessary to change the methods of managing global situations, including rethinking the place and role of the primary branches of the United Nations. The novelty of this research consists in the fact that the authors note that the political world structure is moving towards the so-called multipolarity. Within the modern political conditions it is necessary to establish a direct connection between the results of the Second World War and the current world order. Demonstration of the necessity to make changes to the world order is substantiated by the changes in the set of values shared by the international community.*

Keywords: *Victorious powers, Second World War, permanent members of the Security Council, UN Security Council, UN Charter, United Nations, international law, world order, multipolar world, international relations.*

Аннотация. *Мировой правопорядок, созданный державами-победительницами во второй мировой войне, существует до сих пор. Его главная черта – важные решения принимаются несколькими государствами, занявшими особое место в мире благодаря своей военной мощи и закрепленное в Уставе ООН за ними как за постоянными членами Совета Безопасности. Однако, современный мир коренным образом изменился, стал многополярным, и потому требуется изменение и методов управления мировыми делами, в т.ч. нового осмысления места и роли основных органов ООН. Исходную методологическую основу исследования составляет комплекс научных методов, таких как, системный, логический, семантический, ретроспективный анализы. Нашли свое применение и историко-правовой, сравнительно-правовой, формально-юридический методы. Новизна заключается в том, что авторы отмечают, что политическое мироустройство движется в сторону так называемой многополярности (мультиполярности). В современных политических условиях требуется становление непосредственной связи между итогами второй мировой войны и существующим миропорядком. Демонстрация необходимости внесения изменений в мировой правопорядок в связи с изменениями в наборе ценностей, разделяемых международным сообществом.*

Ключевые слова: *Мировой правопорядок, международное право, Организация Объединенных Наций, Устав ООН, Совет Безопасности ООН, постоянные члены СБ, вторая мировая война, державы-победительницы, многополярный мир, международные отношения.*

An opinion is widely accepted that the contemporary world order dates back to the Westphalia peace treaty concluded in the XVI century and was completed at the middle of the XX century, when the second world war came to the end. The post-war regulation was a process of construction of an order which was to rise on the debris of the destroyed world. The United Nation Charter adopted in the spring of 1945 solemnly declared: “We, the peoples of the United Nations determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and ... to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained”.

Discussions on the structure of the future world started at the beginning of the second world war, in the autumn of 1941, when the main battles of the war were ahead, but it was clear that the Soviet Union was to be an ally of anti-Hitler coalition and would struggle on its side.

During the second world war several conferences of the allied powers took place where positions of the allies were negotiated and documents determining the future post-war construction of the world were formulated. Decisive documents were adopted at the last of the conferences, that is the Potsdam (Berlin) conference. The conference is a very special one for the future of Germany and, as it turned out later, of the whole Europe and even the whole world.

The documents adopted at the conference were of two categories: agreements on some particular questions, like administration over the German territory, reparations, the Control Council and others of the type, The second category comprises documents of non-legal character that is, the Protocol and the Report. These were not less, may be even more import-

ant than the above mentioned treaties, since they defined rights and competences of the parties of the conference.

One must remember that through all years of war some legal ideas have been developed and finally came into legal rules in the Charter of the United Nations Organization adopted right on the eve of the Potsdam conference. This fact gave the participants of the conference free hands to organize the subsequent world to their taste and to have put a legal basement to under the new building.

Since the decisions created the pattern according to which the mankind has lived during the past 70 years let us look at them more attentively.

The main question rising up in connection with the Conference is the legitimacy of the decisions taken by it. The validity of the decisions and the prospects of the contemporary world order stem from the answer to this question.

The principal documents taken by the Conference are titled “Protocol” and “Report”. The participants seem to avoid such terms as treaty or the agreement, even as simply an agreement. The titles of the both documents as if show an intention to simply lay down the course of events. This means that the status of the documents taken by the Potsdam conference was not determined by the participants.

There is no unified opinion as to if we can regard them as treaties. But there is no generally recognized notion of a treaty especially as regards stemming from it juridical obligations. Let us recollect that the Drafting Committee for the Conference on the law of international treaties said that it thought quite founded the position of the Commission of international law which declared unnecessary to include a reference to the juridical obligations into the definition of the treaty [1].

Let us try to appraise both the Protocol and the Report as to their form, contents and the participants’ positions.

Both the Protocol and the Report are not designed in the way treaties usually are: they have no preamble, neither concluding clauses to which we usually turn to interpret a treaty, they are not divided to articles. And the main thing – they are signed by the three heads of governments or heads of state, but not in the name of their states, but as if from their own, which of course is not so, they rather acted in the name of their General Headquarters.

What is very important, is the fact that they have not passed the procedures of ratification and were not officially published by their states, but only by some state agencies: in the USA – in the United States Department of State Bulletin. In Great Britain – in the Foreign State Papers (that is published by the Foreign Office). In the Soviet Union there existed an official state edition – “Sbornic deistvuiushchih dogovorov” [2] (Collection of treaties in force), but the Protocol and the Report were published in a newspaper “Izvestia narodnyh deputatov” (News of the people’s deputies), where usually documents were published which the party and Government wanted to communicate to the people’s knowledge.

That is, the publications were more or less official, but not in the name of the state, but in the name of the General Headquarters that had waged the war in the name of the states.

This positioning of the two documents as not fully legal is underlined by the fact that completely legal treaties were also adopted at the Conference as well, like The Agreement on Control Machinery in Germany and Zones of Occupation, including the Amending Agreements and the subsequent London Agreement of 26 July 1945. These treaties were properly ratified and officially published.

But let us turn to the core of a treaty – to the will of the parties expressed therein. The attitude of the parties concerning the juridical values of the obligations laid down in the treaty is the main criterium of the document status.

In principal, any document might be qualified as a treaty if the parties had been intending to fix their juridical obligations therein.

The International Court of Justice commented on this in some detail in the case of the *Aegean Sea Continental Shelf Case* [3] between Greece and Turkey. Greece contended that her unilateral application to the Court is sufficient for the beginning of the judicial procedure on the basis of a Communiqué by prime-ministers of the two countries of the 31st May 1975. The Court did not formulate a straight-forward qualification of the legal nature of Communiqué but held that the qualification of the instrument as a treaty depends on the nature of the act or transaction to which the Communiqué gives expression. The Court held that it should, first of all, pay attention to the factual conditions and particular circumstances of the decision making. As we can see this opinion of the Court does not substantially add to the solution of the problem and the decisive word belongs to the parties.

Let us now turn to the writers. Literature in the Russian language contains few material concerning Potsdam conference. Evidently it was supposed improper to discuss and even less so to assess decisions taken by the leadership of the Party and the Government.

This impermissibility of interpretation is reflected in one of the most comprehensive books published about Potsdam conference [4], which does not contain any legal analysis at all.

An indirect appraisal appeared in several articles concerning the Helsinki Final Act of 1975, the Act actually summarizing the post-war development of Europe [5].

In sum, the few works on the Potsdam conference published in the Soviet Union and the socialist states do not contain doubt as to the treaty character of the Potsdam documents and the legal character of the obligations taken by the parties.

Thus, the two volume book by a Polish professor A.Klafkowski maintains that, according

to the norms of international law the essence of a document is determined not by a title, but the contents. Not the title, but the agreement of the parties is the basis of the validity of an international treaty; Potsdam negotiators were, in his opinion, ready to implement the decisions taken [6]. The same position took I.I.Loukashuk [7].

Let us turn now to the positions of the parties to the Potsdam documents. Reference may be made to Art. 31 (3) (a) VCLT which provides that, in interpreting a treaty, account is taken of ‘any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions’.

First, analysis of the texts shows that some parts were regarded by the participants as legally compulsory. Section II of the Report reads: ‘The text of the agreement for the establishment of the Council of Foreign Ministers is as follows:...’ Then, in Chapter IX (b) it is stated: ‘The following agreement was reached on the western frontier of Poland’.

Evidently in both cases it was impossible to avoid a legal agreement, since the first instance was about creation of an international organ (Council of foreign ministers), the second – about determination of territory.

Partially the position of the parties as to the legal character of the documents is confirmed by the correspondence between the partners concerning implementation of the documents [8].

Soviet Union accused western powers in violation of Potsdam accords in the letter of 27 November 1958 [9] and because of this declared Protocol concerning occupation zones in Germany and administration of the “Large Berlin” of 12 September 1944 void.

Thus, documents with different measure of obligatory force: treaties and political documents. The parties were intended to implicate both. It was not the first, but very expressive case of adoption of important, far-reaching obligations in the form that are now so broadly scattered and that we name “soft law”.

The term “soft law” is used in the academic literature to denominate rules, principles and standards regulating international relation and coming not from the sources of international law [10], D.Shelton supposing a soft norm of law to be a rule of behavior with the most degree of generalization [11].

The amount of soft law grows because international relations grow very rapidly so that the traditional forms of creating international treaties by way of negotiation or in the framework on international conferences are not enough anymore, to say nothing of the complicated and slow moving customary law. Often adoption of the so called mutual understanding memoranda are way out with the goal to avoid politically acute moments, money waste and rigid formulas usually characteristic of formal negotiations.

In the course of development of soft law its two parts become distinctive: resolutions and recommendations of international organizations; non-binding rules adopted by states. In the latter case we found soft law norms in the international treaties *strictosensu*. Many treaties contain provisions of a very general character, not laying down particular obligations for the parties, e.g. about an intent to proceed with negotiations in future or laying down an appeal to the implementing bodies to take into account scientific data and so on. Subsequently such provisions may become a basis for renovation or completion of the treaty.

Decision making by principal world actors

A special place of the so called great powers has been fixed since centuries ago, beginning with the Vienna congress, but it was the Potsdam conference that showed and predetermined the trend for the XX century and further. By the time of the Potsdam conference the UN Charter was already adopted, providing for a very special competences of the five great powers. And we can see that the powers during the Potsdam

conference organize the future world order with free hands. The rest of the world were very near to simple spectators. In the following century this method of decision making turned out very productive and has been successfully exploited up to the present time.

The veto right is the most expressive. The process of adoption of the rule very well shows how the great powers were striving to guarantee themselves a special place in decision making.

The concept of a new international organization to substitute for the League of Nations was conceived in the time of Bretton-Woods conference and formulated as a result of Yalta talks, which means that preparations and negotiations on various levels were long; however, at San-Francisco conference debates were still quite vivid. They say, San-Francisco conference was nearly broken because of the question of the unanimity voting of the permanent members, in other words, of the right to veto. Other issues at San-Francisco though with some difficulties were successfully agreed; the veto right being an insurmountable impediment.

The great powers' intent to create that very organization that they supposed useful is quite clear from the declaration of the three leaders of the great powers after the Yalta conference in February 1945: they said, they decided to establish together with the allies in the nearest future a universal international organization for the maintenance of peace and security. They agreed that on 25th April 1945 in San-Francisco, USA, a conference of the united nations would be convened with the aim to prepare a charter of the organization according to provisions adopted during the official talks in Dumbarton-Oaks. The meeting at Dumbarton-Oaks took place in October 1944 consisting of the representatives of the Soviet Union, Britain, France, USA and China and worked out the principles of the future organization, but the question of the voting order remained open.

Now let us get back to the Yalta declaration. Both its tone and clauses leave no doubt, that the great powers reserved the exclusive right to create the new international organization in such a form as they supposed it useful for them. The veto right for the great powers at San-Francisco conference was successfully pressed through only because the great powers emphasized the reality of the war threat in future. The war at the Far East was going on and the USA who were preparing to the first ever use of the A-bomb underlined the gravity of the situation. The rumors of a new sort of weapons contributed to the sense of danger.

On the other side, the great powers leaning on their mutual victory over the Axes countries were eager to demonstrate that only they could be guarantors of the peace. In fact a bargain took place: the rest of the states agreed to the veto right for the great powers for the sake of the United Nations Organization creation; the great powers promising that they and only they could and would withstand the military threat.

Many authors noted that the provisions of the UN Charter which regulate functions and competences of the Security Council are formulated in beautiful and lofty and yet not quite clear expressions [12]. Discussions about the meaning of the central notions of Art. 39 – threattothepeace, breachofthepeace, actofaggression– arise very actively almost in every instance of the interpretation when the Security Council strives to exercise its competences according to Chapter VII.

Evidently the great powers had been not very anxious about legal accuracy, their main object was to prove that the veto right was an indispensable instrument to prevent a new world war.

In fact, how had the unanimity principle to work? If all states members of the United Nations shared the common values of the United Nations and were ready to keep to the principles declared in the Charter, who of them was to be awaited to become an aggressor? In the case

of the violation of the Charter – everyone of them. However the veto right could tie the hands of only a permanent member of the Security Council. From this we can see that the seeds of the future confrontation only between two sides were inserted in the Charter.

During the cold war it was frequently said that the veto right was paralyzing the Security Council. After the end of the cold war a trend to brighten the competences of the Council, to brighten by the own will of the Council. The Council seemed to become fully self-standing, presenting itself as a separate part of the United Nations Organization. The trend to brighten the competences was so clear that one cannot but accept that the Council sometimes acted *ultra vires*.

The trend began to arise not so long ago in connection with the noble concept of human rights which was receiving broad support in the world. South African Republic got under the sanctions in connection with the apartheid regime, which was recognized as a threat to peace. The Security Council adopted Resolution urging Member States to adopt a wide range of economic measures against South Africa [13].

Some of other, adopted later decisions of the Security Council were frequently criticized as based on doubtful arguments.

Thus on the wave of euphoria of the victory over a terrible enemy of the whole mankind the great powers not only took the right to talk in the name of the mankind, but fixed it as well in the most important document of the time, the UN Charter. Actually the veto right determined the split of the world into two camps. Use of the veto right by either the Soviet Union or one the western countries was presumed. This is the most expressive fixation of the colonialist ideas of vesting and keeping spheres of influence.

The experience of the Potsdam conference was repeated in a quite different situation, when

the task was not to fix the divide, but instead an effort to unite the world, that is in the moment of crash of the cold war. The instrument of the transfer from the cold war to a new structure of international relations became an informal Conference on the security and cooperation in Europe. The Conference adopted a non-legal yet extraordinary important document titled The Helsinki Final Act of the Conference on the security and cooperation in Europe. The pattern of the Potsdam conference was repeated: the Final Act was a political document, formally not creating legal obligations, and the Act was supplemented with very important treaties regulating the question of state borders in Europe.

The significance of the Final Act occupied a very special place in various countries, especially in my country. The provisions of the “third basket”, about human rights affected strongly the legal conscience of the society. The text of the Act was not freely acceptable, never the less the ideas have scattered widely and they were, beyond doubt, one of the vehicles of the perestroika.

In our time the great powers occupy the central place in the world management in the groupings of the “Great seven” and “great twenty”. The role and activity of the groupings very much remind the pattern of the Potsdam conference.

“Group of seven”, later labeled as “Great seven” was born by the will of several most powerful states, although their might now is measured not by an amount of weapons, but a level of economic development. The “group of seven”, initially the “group of six” appeared in the beginning of 1970s as a reaction to an energy crisis, that is in more or less extraordinary situation. Of course, there was no such gravity of the situation as in 1945, anyway, the countries of the whole world having scared by the great depression of 1928-1933, tried to gain control over the events, because the depression was one the factor leading to the second world war.

Declaration of Rambouillet announcing the creation of “group of six” indicated as a goal: to provide an alternative approach to further international crisis management by direct communication between policy-makers leaving aside diplomatic conventions and procedural restrictions. The format of the group was conceived as a limited number of leading industrial countries which would allow ‘productive exchange of views on the world economic situation, on economic problems common to our countries, on their human, social and political implications, and on plans for resolving them’ [14].

Meetings of the heads of state and heads of government not only were not formalized; they were to be like “talks at a fireplace” [15].

But let us pay attention to the composition of the group. The most economically powerful countries are the members, yet at the beginning of 1990s Russia was included though her economy could not be even compared with the economies of others. That was an incentive for the country to move into the market economy. Since formal criteria of membership are absent, the seven were free to exclude Russia in 2014. Not exploring the principal reasons for this let us note only that it shows the randomness of both the acceptance and exclusion. So the great powers keep the free hands to act.

The 2008/9 world economic and financial crisis, however, led to a change in policy: recognizing that effective policy-making would be impossible without involving future economic players, the G8 accorded industrialized countries and key emerging markets the observer status.

What is the real function of the seven? The group does not take obligatory decisions.

Authors indicate that the summits are usually occupied most of all with revelation of new threats and problems with the goal to draw attention of international organizations and other structures which would busy themselves with the particular decisions. The seven are

sometimes equaled to a committee of directors of the leading democratic economic systems.

Another very important group of states whose opinions and advice are accepted with great attention in the world is the “great twenty”. This informal grouping has grown out of some legal basis. The central part of the group, i.e. the “group of ten” are the countries – participants of the 1962 Agreement on credits for the IMF. Those were the countries with them ost developed economy, later those countries joined which possessed not the very large economies but who were ready to invest significant sums into IMF and receive a quota of voting voices, Russia among them. The composition of the G10 has expanded and now the group of 20 embraces countries various in their economic development, producing more than 85% of the world grossproduct.

The meetings have been held in the beginning at the level of finance ministers, since November 2008 in the format of the leaders of the countries though of course the leaders did not abstain fully: this informal grouping played a decisive role in suppression of the world financial crises of 1998 and later of 2008.

Nowadays the group expands by creating a body of active functionaries: observers, permanent guests, volunteers – groups of youth, business people, women. We can see democratization of the structure of the group, including its goal. According to Leaders’ Statement of 2009, their task is to be a forum for discussion of the problems of international economic cooperation. Still the decision making part of the G20 are the great powers.

Both “Great seven” and “Great twenty” do not take for their own such vast competences as the participants of the Potsdam conference did; still the formulated by them the guidelines played a not lesser role in the determination of the ways of development of our world.

Thus the Potsdam methods have been preserved and act vividly now. Of course, the

world has changed and the former dictatorship of the great powers in the global information society is impossible, but their decisive role is still there.

Conclusion

As we could see from the above, the order was formulated by the great powers, yet the world community has lived and more or less recognized it. The principles of United Nations were put into legal form in UN Charter, so the members of the UN are obligated by this treaty.

A whole massive of regulation lies outside the Charter. And new regulations have come forward all the time. Part of this regulations are crystalizing into the so called soft law. The sig-

nificance and amount of the soft law has grown as never before, and a part of it is the result of the direct regulation of the “great seven” or “great twenty”. What is the role of other states in the process? In part it is acquiescence that they keep and let the rules crystallize first into the soft law and then to the hard law.

Still the world does not stop changing as well as the management of the world affairs. We cannot do it with only organizational measures. If we only restructure the existing institutions, this will do no good, but will be a «band-aid» approach. For example, if we just expand the Security Council, this will mean simply to change the world elite. Here the terms democratization and mutual dependence are the terms of the time.

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