The Impact of Transnational Corporations on the Regulatory Framework for the World Market for Space Services and Technologies

Dmytro Bezzubov

Doctor of Law, Associate Professor, State University of Infrastructure and Technology (Kyiv, Ukraine)
E-mail: dbezzubov@ukr.net
https://orcid.org/0000-0001-7183-5206

Olga Pravotorova

Doctor of Law, Professor, Kherson State University (Kherson, Ukraine)
E-mail: eschyk-o@ukr.net
https//orcid.org/0000-0002-7458-1595

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The article reveals the place and role of multinational corporations in the world market for space services and technologies. The authors highlight trends in globalization and cosmization of the world economy, which have both positive and negative effects. The advantage of the private sector's entry into space exploration is the recognition of high-tech companies contributing to economic growth as worthy of investment. The practice of transnational companies to affect the economic and legal sphere of the countries of their presence and violate the fundamental rights of its citizens is outlined as a negative trend. Theoretically, probable variants of the regulatory framework for the world market for space services and technologies with transnational corporations' participation are projected. It is proposed to create a global administrator in space activities — the World Space Union.

Keywords: transnational corporation, space, law, world market, space services, space technologies, global administration, global administrator.

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Introduction

The World Market for Space Services and Technologies (WMSST) is an important component of the global economic system, a component that becomes increasingly important. Considering the definition of the world market, the concept of "world market for space services and technologies" will be defined. As a specific economic and legal phenomenon, the WMSST is a component of space use related to the provision of space services and the sale and purchase of space equipment and technologies.

From a legal perspective, the WMSST is a system of international legal relations that arise (are inherent) in the field of turnover in connection with the provision of space services, sale, and purchase of space equipment and technology.

The world market for space services and technologies depends on many factors, but in this process, the main ones are investments and international cooperation. In addition, the existing threats to the world economy due to a pandemic should be noted. In the introduction to the World Investment Report 2020, UN Secretary-General António Guterres said that as a result of the pandemic and the application of various restrictive mechanisms by countries, the world market would face many challenges and consequences that could last beyond the immediate impact on investment flows. He further noted that "the crisis could be a catalyst for a process of structural transformation of international production this decade and an opportunity for increased sustainability, but this will depend on the ability to take advantage of the new industrial revolution and to overcome growing economic nationalism. Cooperation will be crucial; sustainable development depends on a global policy climate that remains conducive to cross-border investment" (Guterres, 2020).

Therefore, in the context of restrictions, international cooperation becomes increasingly important in space, which implies the development and implementation of international agreements governing relations arising in connection with exploration and use of outer space and celestial bodies.

Naturally, long before the beginning of the practical astronautic era, the issues of the legal framework for relations between States in the field of space activities is under the focus of world legal thought. As a result, in the first two decades of the space age, international space law was initiated — "a set of special provisions of modern general international law governing relations between States and international intergovernmental organizations in connection with all their space activities" (International Space Law, 1999: 7).

Today, the world is no longer bipolar but rather multipolar. Besides, while many States and non-state actors engage in commercial space activities, competitive interests have become more diverse. States become increasingly reluctant to comply with existing international space provisions, and the UN and its specialized agencies have failed to negotiate new space treaties. Instead, the number of optional soft law provisions has increased and the number of actors involved in their creation, sometimes in parallel and sometimes independently.

The inability to conclude new treaties within the UN does not preclude the adoption of space rules in commercial space activities on other platforms, such as the World Trade Organization (WTO) or the International Institute for the Unification of Private Law (UNIDROIT). However, the UN continues to promote the rulemaking process by encouraging the adoption of "soft laws" and national space legislation through the UN Space Committee. The UN General

Assembly has adopted several resolutions that have important implications for various aspects of space activities; moreover, other actors, such as the International Law Association (ILA) and the EU, have joined the process of adopting "soft laws" since the 1980s. Therefore, with more and more states becoming space-faring nations, the negotiations for new treaties under the UN framework are not easy (Zhao, 2018).

Given the difficulty in adopting legally binding rules at the international level, States engage in law-making, so national space legislation is important. National legislation provides appropriate guidance for space activities. Moreover, it is useful for international legislation. From a national perspective, several issues should be considered in regulating space commercial activities, such as licensing for commercial space activities (including the conditions for space projects, the qualification of the entity to conduct space activities and insurance requirement, etc.), responsibility and liability allocation between the government and the private sector (including restricting the power of government in claiming compensation from private entities, which is critical for relieving the burden of the space enterprises, especially small ones; third-party liability insurance, etc.)

The legal framework for space activities in the age of space commercialization develops in three areas and includes not only treaties and customs at the international level, national law, but also acts of international and intergovernmental organizations. This contributes to conclusions that space law acquires new features, that is, the meta-law derives from a complex branch of law (Yuzbashyan, 2009).

Therefore, space laws, adopted at earlier stages, focused more on the public aspect of space activities and were regulated primarily by the UN through the UN Space Committee. The rapid development of space commercialization has led to a decentralized process of space legislation. First, the UN is no longer the only platform to make space laws; other international organizations are increasingly in the legislative process. Second, space legislation involves the forms of both hard law and soft law. Finally, international space legislation is intensely supported and supplemented by national space legislation, which is mostly administrative law (Soroka, 2020).

Transnational companies and their role in the world market for space services and technologies

The world market for space services and technologies is an important component of the world economic system, the significance of which is constantly growing. The share of multinational corporations is also gaining in importance among the achievements of world market actors. Relations between States are the scope of public international law, while relations between legal entities and citizens of States are the scope of private international law. According to Mark Boguslavsky, when States enter into agreements, the relationship of public international law is established between them. When foreign trade organizations and other industrial enterprises enter into foreign trade agreements, relations of private international law arise (Boguslavsky, 2002: 14). However, considering the modern world space market, in our opinion, it is impossible to accept, as unconditionally as the well-known Russian lawyer, the conclusion of Permanent Court of International Justice of 1929, given in the judgment in France v. Brazil concerning Brazilian loans, which, in particular, stated that every treaty, unless it is a treaty between States — subjects of international law, shall be subject to some national law (Case, 1929).

It has been noted above that due to the processes of commercialization in space and due to the special features of modern space activities, which are increasingly characterized by the presence of a commercial element in this field, an increasing share of operations in the market for space services and technologies is carried out by international non-governmental organizations, private firms, and multinational companies. Space activities, international in nature and unique in both scale (including financial) and global application, have led to an unprecedented integration of these activities within international corporations with subsidiaries in different regions of the world, resulting in the urgent need for the legal framework for multinational corporations, on the one hand, and the legal framework for relations between space entities in the new conditions of the world space market (i.e., with the increasingly active participation of multinational corporations), on the other.

Mechanisms of international private and space law are no longer enough for an adequate legal framework for the relations of the expanded circle of subjects of the world space market. For example, a space service agreement is entered into by an international intergovernmental organization and a Transnational Corporations (TNC)? What law can be applied in this case? International public law? But the TNC is not governed by international public law. International private law? But here, the activities of an international organization cannot be regulated within the framework of any national legal system. International space law? But the TNC is also not subject to international space law.

According to the UN definition, TNCs are companies that are independent of their country of origin and ownership (private, public, or mixed) and have affiliates in two or more countries. These affiliates operate in accordance with a decision-making system for a coherent policy and overall strategy (Moran, 2009). The TNC's activities in industries such as automotive and aircraft, communications, oil production and refining and sales of petroleum products, as well as activities in the world space market of services and technologies (creation and sale of space equipment, provision of space services and technologies) are particularly noticeable.

Tagi Sagafi-Nejad and John Dunning argue that the most characteristic feature of TNCs is the discrepancy between the economic content, economic essence, and legal form; economic unity is formalized by a legal plurality (legal entities of local law, affiliates, etc.), which serves the interests of TNC's owners (Tagi & Dunning, 2008).

In the post-war period, the growth of TNCs' economic power enabled TNCs to have a strong impact on the host countries, which could lead to infringement of sovereign economic and political rights of these host countries (International Space Law, 1999: 431). As is well known, the Charter of Economic Rights and Duties of States (A/RES/3281, 1974) was one of the first international legal acts to enshrine the general principles of restricting the activities of TNCs. However, this act was not enough to develop a unified system of generally accepted rules of conduct for TNCs. At the request of developing countries, especially those suffering from the expansionary activities of TNCs, since 1974, the United Nations has established the United Nations Commission on Transnational Corporations. Commission's substantive servicing to the Secretariat of UNCTAD. Following General Assembly decision, Dec 1994, replaced by "Commission on International Investment and Transnational Corporations" of the Trade and Development Board of UNCTAD, currently, following UNCTAD IX, Apr-Jun 1996, U-XK1520 — Commission on Investment, Technology and Related Financial Issues (United Nations Commission, 2020).

As early as the 1970s, these international institutions began to develop a code of conduct for TNCs, aimed at a formal subordination of TNCs to certain rules. A number of the following

international documents were designed for the same: prepared United Nations Conference on Trade and Development (UNCTAD) and adopted in 1980, the United Nations Conference on Restrictive Business Practices approved the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices (the UN Set) for adoption as a resolution (A/RES/35/63, 1980), as well as UN General Assembly Resolution 3514 (XXX) "Measures against corrupt practices of transnational and other corporations, their intermediaries and others involved" (A/RES/3514, 1975). However, all these documents are recommendatory, i.e., they are not legally binding, and therefore the problem of TNCs' compliance with the current legal regulations remains unresolved.

Therefore, the principles of corporate responsibility were developed and proposed. The first is the Principle of legitimacy. All corporations operate within the limits of the powers granted by society and use their power for the common good, realizing that in violation of the established rules, they may lose trust and power. The second is the Principle of public responsibility, which implies transparency in the preparation of reports by corporations on the results of their activities. The third is the Principle of managerial discretion. That is, corporate managers are moral actors whose principles are consistent with socially responsible outcomes (Wood, 1991; Kolk et al., 1999: 151).

Therefore, these principles should cover and operate at three levels: institutional, local, and individual.

The importance of the Lex Mercatoria for the development of the world market for space services and technologies

At the current stage of the world market for space services and technologies, a number of contradictions between the qualitatively new status of this market and the inadequacy of existing mechanisms and methods of its legal framework. For example, the world market, as part of the global economy, provides services internationally. Similarly, space production is obviously international, while the legal framework for the world space market becomes increasingly national due to the private sector's growing importance in these market relations. In other words, a discrepancy arises between the content of the world market as a holistic, integrated structure and the decentralized form of its legal framework.

The second problem is that the rapidity of changes in the world economy requires efficiency and flexibility on the part of existing regulatory mechanisms that, unfortunately, national legal systems, the main purpose of which is to regulate sooner exclusively internal relations than international ones, fail to provide. At present, world trade, which is based on the system of international economic relations, is extremely complicated due to the failure of different countries' national legal systems to ensure a single and stable system of legal provisions capable of effectively regulating international economic relations.

Therefore, modern private international law, which is considered as a component of the national legal system of the State and which is based on the dispute method of the legal framework for property and private non-property relations burdened by a foreign element, actually found itself in a real crisis in the context of problems that arose in the process of development and globalization of the world economy. In our opinion, this crisis has caused an urgent need to find new, more adequate means and methods of the legal framework for foreign economic transactions in order to bridge the gap that exists and continues to deepen between the international trend of world trade and its main national regulatory forms.

In this regard, it should be noted that the participants in world trade have begun an independent search for regulatory means alternative to private international law. As a result, in the second half of the 20th century, a spontaneous process of formation of a new legal phenomenon, which in the legal literature is called "transnational commercial law," or Lex Mercatoria, began. It should be noted that at the beginning of the last century, a prominent domestic, international lawyer Volodymyr Koretsky, the founder of the Ukrainian school of international law, in his work on international commercial law managed to convincingly justify the objective need for international trade in the system of legal provisions, currently entitled Lex Mercatoria. He argues that "...once there are world economic relations, then there must be (and really are) rules governing these relations. And once there are rules governing this group of relations, then (provided the exclusive development of generalizing trends in law) the system of these rules was to be founded" (Koretsky, 1989: 120-121).

The analysis of the development of theory and practice has enabled Volodymyr Koretsky to conclude that "the conflict approach could less and less satisfy the task of regulating world economic relations. Specificities of the object of the regulation (international trade) resulted in specific legal provisions. Special dispute rules do little to help because referring to foreign law implies referring to a system of rules intended to regulate domestic trade. International trade requires other rules, arranged differently from existing provisions of commercial law" (Koretsky, 1989: 120-121).

According to Volodymyr Koretsky, since international trade does not find relevant provisions in official sources, it seeks non-state regulatory ways. Namely, he focuses on standard treaties, international customs and commercial practices, that all that is called today rules of transnational commercial law (Lex Mercatoria.) Moreover, it is important to emphasise Volodymyr Koretsky's conclusion regarding the advantages of the method of the single and direct legal framework in the field of international commercial relations.

The main reason why TNCs prefer the Lex Mercatoria to private international law is that the latter is more complex and less predictable than Lex Mercatoria. In addition, given the typical slowness in the adoption of unifying international conventions, only the Lex Mercatoria with its law and order enables one to find solutions that best meet the business world's needs, corroborated by many years of experience and practice of most States.

Proponents of the new (modern) Lex Mercatoria argue that a body of legal rules, separate from national systems of law, governing foreign economic transactions, which arose as a result of the spread of elements of self-regulation in the activities of trade, has occurred. The theory implies that the Lex Mercatoria is grounds for the autonomy, separation of regulatory international trade agreements from national legal systems (Toth, 2017).

However, no scientific definition of the Lex Mercatoria is generally accepted among legal scholars. For example, one of the founders of this concept, French lawyer Berthold Goldman, believes that the Lex Mercatoria is a body of principles, institutions, and rules derived from all sources of the legal structures and activities of the community of international trade (Goldman, 1980).

The Lex Mercatoria as a special autonomous legal framework occurred within the international trade (commercial) community (Societas mercatorum), which is a community of individuals and legal entities of international trade creating trade customs and habits governing their relationship (Toth, 2017). Members of the international trading community are both subjects of the Lex Mercatoria because they are the ones who create its rules, and the rules of the Lex Mercatoria are addressed to them. The main subjects of the Lex Mercatoria are TNCs,

banks, enterprises and individuals involved in foreign economic transactions, and the states (insofar as they are international economic entities and not holders of sovereign power).

Nevertheless, from a legal perspective, TNCs are not the only subject of law, but a set of formally independent legal entities established according to the laws of different states, it is necessary to develop new mechanisms and institutions that will regulate these issues of TNCs in both the global market of space services and technologies and in other fields.

Today, it is very difficult to predict how the relationship in the world space services and technology market will develop. The fact is that, despite the real and potential conflict between the dispute rules of private international law and the Lex Mercatoria, the latter still requires dispute rules because the Lex Mercatoria, similar to any other sector of law, has gaps, which can be filled only by provisions of national law. Dispute rules are necessary in such cases to determine the competent rule of law and order. Simultaneously, some aspects of international agreements are so closely related to a national law that the provisions of these systems should better regulate them. Moreover, dispute rules may be applied with the provisions of the Lex Mercatoria when the private international law of a particular state presupposes the application of the Lex Mercatoria to international commercial contracts in the space sector.

Furthermore, trade customs and international trade and commercial agreements are sources of private international law, Lex Mercatoria, and space law that argue certain unity and complementarity. Therefore, while on the surface the relationships between the Lex Mercatoria, private international law and space law are regarded as a conflict, in-depth, these relationships grow into a creative competition that promotes the development of all three legal systems.

Finally, the globalization of commercial space activities as a natural economic phenomenon requires this process to comply with agreed rules of conduct, which would, on the one hand, regulate the removal of obstacles to commercial space activities. On the other, the established rules should protect citizens and entrepreneurs from the negative consequences of the globalization of commercial space activities. In support of this postulate, it is worth quoting Ronald Coase, the Nobel Prize winner in economics. He argues that markets' functioning requires the establishment of legal rules governing the rights and duties of those who execute agreements. To understand all the benefits of trade, there must be a legal system and legal order (Coase, 2019).

Conclusions

Therefore, TNCs, like other actors in the world space market, can create their own rules of conduct, as well as develop standard agreements, implement international customs, facilitate commercial arbitration, and implement the commercial practice, that is, establish rules of Lex Mercatoria. However, while from the perspective of international law, TNCs are not "international actors" that raise a number of problems. Within the Lex Mercatoria, they can be considered such because their impact enables them to create and effectively apply rules of the Lex Mercatoria in commercial space activities.

In addition, in the context of globalization and the cosmization of our lives and given that nations can no longer regulate the activities of TNCs, the sustainable development of space activities requires corporations to voluntarily introduce "transparency" in reporting and to involve the scientific community and public institutions.

Therefore, it is possible to theoretically predict the probable options for the regulatory framework of the world market for space services and technologies:

a) further growth of the Lex Mercatoria's impact and the corresponding gradual decline in the authority of international private and space law;
b) if eventually private international law succeeds in overcoming its current crisis and, by rejecting "legal nationalism," follows a progressive approximation of national legal systems, then the concept of Lex Mercatoria, which has not yet fully formed, may decline;
c) or the peaceful coexistence and complementarity of the rules of the Lex Mercatoria and international private and space law that consequently will lead to the creation of a global space administrator — the World Space Union, which will be in charge of regulatory issues between global actors and other international space actors.

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