ISSUES OF THEORY OF INTERNATIONAL LAW

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SHAW'S INTERPRETATION OF INTERNATIONAL LAW: THEORETICAL REFLECTIONS

INTRODUCTION. *The 8th edition of M. Shaw's textbook on "International Law" (2017) provides an opportunity to reflect on how the most "burning" and complicated issues of contemporary International law are interpreted in the West and in the Russian Federation.*

MATERIALS AND METHODS. *The materials for the article were the 8th edition of M. Shaw's textbook on "International Law" (2017) in the context of the earlier relevant publications of the Russian and foreign scholars in the field of international law . The methodological basis of the research consists of general scientific and special methods .*

RESEARCH RESULTS. *Honesty becomes an imperative feature of contemporary textbooks on International law, hiding or distorting relevant facts are unacceptable. Naturally, the English language offers its own advantage (in respect of the much wider market that can access such a work), but Shaw's textbook eschews the natural temptation to present an essentially anglocentric perspective in the work. It is imperative to avoid "International law" becoming "English International law" or "US International law" or "International laws", meaning (normatively) quite different things across continents and jurisdictions. There is room for a theoretical discussion of such notions as "the Common Heritage of Mankind" (for example, is this a part of general International law? Or just a notion provided by some international agreements?) or specific territorial issues of International law. Still International law remains a coherent and unique regulator of international relations.*

DISCUSSION AND CONCLUSIONS. *The events of 1989-1991 have presented certain opportunities for International law research, but also tragedies for peoples and challenges for the International community. The break-up of Yugoslavia and the Soviet Union engendered certain adjustments which, almost three decades on, are still not concluded. Perceived historical injustices have, in some instances, been attempted to be corrected. Inevitably, International law research includes consideration of the events in Ukraine since these events are the most important issue of the contemporary crisis in relations between the US/EU on the one side, and, on the other, the Russian Federation. The two opposite legal approaches are explained. According to Russian le-*

gal sources, the events of 2014 in Kiev are regarded as a coup d'état. According to Washington and the European Union (in contrast to the accusations provided in the book of the former Prime Minister of Ukraine Nikolay Azarov) the West did not intervene in the internal affairs of Ukraine in 2014 nor organize a coup in Kiev. Western legal sources ignore the very fact of the coup d'état in Kiev in February 2014.

There may be different legal qualifications of a given real-life situation. Dropping of atomic bombs by the US on the Japanese towns of Hiroshima and Nagasaki in 1945 was differently qualified by lawyers: some qualified it as a violation of International humanitarian law, while others, as a justified measure against Japan as an aggressor during World War II. The US military intervention in Iraq in 2003 without relevant UN Security Council resolutions was treated differently by the community of international lawyers.

However, there are limits for a State's Policy of International law, for practising International law. A message is suggested: the further organization from abroad of another coup d'état – in Kazakhstan, or in Belarus, or elsewhere – is unacceptable and contradictory to the Rule of Law. "Quieta non movere".

KEYWORDS: *International Law, Shaw, the events of 1989–1991, legal interpretations, general international law, the Common Heritage of Mankind*

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ВОПРОСЫ ТЕОРИИ МЕЖДУНАРОДНОГО ПРАВА

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ПРЕДСТАВЛЕНИЕ ПРОФЕССОРОМ ШОУ МЕЖДУНАРОДНОГО ПРАВА: ТЕОРЕТИЧЕСКИЕ ВОПРОСЫ

ВВЕДЕНИЕ. *8-е издание учебника профессора Шоу «Международное право» дает повод для размышлений о том, как наиболее «горящие» и сложные вопросы современного международного права понимаются на Западе и в Российской Федерации.*

МАТЕРИАЛЫ И МЕТОДЫ. *Материалом для исследования послужило 8-е издание учебника профессора Шоу «Международное право» в контексте относящихся к теме более ранних трудов российских и зарубежных юристов-*

международников. Методологическую основу исследования составили общенаучные и частнонаучные методы познания.

РЕЗУЛЬТАТЫ ИССЛЕДОВАНИЯ. *Честность становится императивным свойством современных учебников по международному праву, а сокрытие или искажение фактов – неприемлемым. Изложение на английском языке, понятно, дает свои преимущества (в отношении более широкого рыночного спроса на труд), но учебник профессора Шоу избегает естественного соблазна представить сугубо англоцентричное видение международного права. Необходимо не допускать того, чтобы международное право стало «английским» или «американским» международным правом, или стало несколькими «международными правами», что означало бы не одно и то же на разных материках и в различных юрисдикциях. Несомненно, в международном праве возможны теоретические дискуссии, например, в части таких понятий, как «общее наследие человечества» (является ли это понятие частью общего международного права? Либо только понятием, предусмотренным некоторыми международными договорами?), или в части специальных территориальных проблем международного права. Тем не менее международное право остается системно связанным, уникальным регулятором международных отношений.*

ОБСУЖДЕНИЕ И ВЫВОДЫ. *События 1989–1991 г. дали некоторые новые возможности для международно-правовых исследований, но также принесли трагедии народам и вызовы международному сообществу. Распад Югославии и Советского Союза породил определенные изменения в мире, которые по происшествии почти трех десятков лет все еще не выглядят завершенными. Были предприняты попытки исправить то, что воспринималось как историческая несправедливость. И неизбежно исследования международного права охватывают события на Украине, потому что они составляют стержневой вопрос современного кризиса в отношениях между США и Европейским Союзом, с одной стороны, и Российской Федерацией с другой. К его оценке обозначились два противоположных правовых подхода. В соответствии с российскими правовыми источниками, события в Киеве в 2014 г. рассматриваются как государственный переворот. Согласно Вашингтону и Европейскому Союзу (вопреки обвинениям, выдвинутым в книге бывшего премьер-министра Украины Николая Азарова), западные государства не вмешивались во внутренние дела Украины в 2014 г. и не организовывали государственный переворот в Киеве. Западные правовые источники игнорируют сам факт государственного переворота в Киеве в феврале 2014 г.*

Юридические квалификации конкретной жизненной ситуации могут быть разными. Сброс США в 1945 г. атомных бомб на японские города Хиросиму и Нагасаки квалифицировался правоведами по-разному: одними – как нарушение США международного гуманитарного права; другими – как оправданная мера, принятая против Японии – государства-агрессора в период Второй мировой войны. Военное вторжение США в Ирак в 2003 г. без соответствующей резолюции Совета Безопасности ООН также по-разному оценено сообществами юристов-международников.

И все же есть допустимые пределы международно-правовой политики государства, реализации им международного права. Предложено считать будущие организации государственных переворотов – в Казахстане, или в Беларуси, или где-то еще – неприемлемыми и противоречащими принципу верховенства права. «Quieta non movere».

КЛЮЧЕВЫЕ СЛОВА: *международное право, события 1989–1991 гг., юридическое толкование, общее международное право, общее наследие человечества*

ДЛЯ ЦИТИРОВАНИЯ: Вылегжанин А.Н., Потье . 2017. Представление профессором Шоу международного права: теоретические вопросы. – *Московский журнал международного права.* № 4. С. 7–18.

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Malcolm Shaw's "International Law" was praised by highly qualified publicists: by James Crawford – as "an indispensable resource for students of international law"; by Bruno Simma – as "an outstanding treatise"; by Christopher Greenwood – "as the pre-eminent textbook on international law for students"; by Stefan Talmon – as "the best textbook on international law"; by Urfan Khaliq – this "classic textbook continues to strike that difficult balance between detail and accessibility"; by Malgosia Fitzmaurice – as "one of the leading textbooks of international law in the world"; by Marcel Brus – as "a rich source that allows… not only insights into the details of the many areas of international law, but also to engage in current debates on how international law from a practical and academic point of view is challenged by many developments in international society". These words of admiration, reflected in the 6th and 7th editions are reproduced on the cover of the 8th edition of Shaw's textbook [Shaw 2017]. We are not prepared to join these exclusively admiring words for reasons noted later. In fact, we think that any author needs not only words of admiration relating to his textbook; more important for him are words of reasonable criticism which might stimulate his further law research and further improve the next edition of his textbook. Still we highly appreciate Shaw's monograph "International Law" and will recommend it for MGIMO students.

During the course of a generation many textbooks on law are published, but only a few develop almost a life of their own as the established works in any given field of research. The field of international law research, in this respect, is no different from any other and Malcolm Shaw should be justly proud that his monograph "International Law" (now in its eighth edition) has secured such a status, even beyond the English-speaking world.

It is a pleasure for the authors of this review, representing two different legal systems of the world and different schools of International law, to consider this magnificent piece of scholarship, as for one it has been a reliable companion throughout a long practical and academic career and for the other, much more junior, it has accompanied and inspired since life as a student. It speaks volumes when a work can speak for itself.

The preface of a textbook on International law is invariably the last item to be completed, providing the author with the opportunity to explain, justify and thank. Yet, it seems that Malcolm Shaw's preface could not be shorter. The book is of good size, having now got over some of the earlier binding difficulties. The type face is reader friendly, and both the table of contents and cases and treaties informative and accessible. A textbook such as this can be ruined by substantive text and footnotes unpleasing to the eye, but this danger has been avoided.

The structure of a book such as this is fundamental to its ultimate success or failure. As was shown earlier, the book is an ultimate success in English-speaking universities. Still, some observations relating to the structure might be expressed.

While Chapter 1 – "The Nature and Development of International Law" looks logical, Chapter 2 – "International Law Today" – in combination with the following Chapters – "Sources" (Chapter 3), "Subjects of International Law" (Chapter 5) – might raise a question: does the author want to say that "Sources" and "Subjects of International Law" are not within "International Law Today"? Perhaps, therefore, Chapter 2 could be moved to the very end of the book, providing, in the process, a concluding chapter, accompanied by reflections on possible future developments and innovations in the field of International law, which the work currently lacks.

Moreover, we in MGIMO University do not lecture on "Fragmentation of International Law" (in Chapter 2 in Shaw's textbook) before we explain what Sources of International Law are (Chapter 3 in Shaw's textbook) and Subjects of International Law (Chapter 5 in Shaw's book). In this respect the structure of the MGIMO textbooks on International Law, as suggested by Prof. Kozhevnikov F.I.[1], seems more logical.

Again, in contrast to MGIMO textbooks on International law, Shaw's textbook views the United Nations (Chapter 21) separately from "International Organisations" (Chapter 22). But the UN is an International Organisation; being the most important among them[2].

What is more notorious is that Shaw suggests considering "War Crimes, Crimes against Peace and Crimes against Humanity" in Chapter 11 – "Jurisdiction". These issues in MGIMO textbooks (and in other books [Evans 2006:712-752]) are considered in a Chapter devoted to International Criminal Law. Shaw's textbook suggests instead Chapter 7 – "Indi-

[1] *Mezhdunarodnoe pravo*. 5e izd. Pod red. F.I. Kozhevnikova [International Law. 5th. Ed. by F.I. Kozhevnikov. Moscow. 1987. (In Russ.) See also: *Mezhdunarodnoe pravo.* 3 izd. Pod red. A.N. Vylegzhanina [International Law. 3rd ed. Ed. by A.N. Vylegzhanin. 2016. Vol. 1 and 2. (In Russ.)

[2] This is reflected also in: [Evans 2006].

vidual Criminal Responsibility in International Law", which is certainly not legally identical to the notion "International Criminal Law". According to International Criminal Law not only individual responsibility is established for international crimes – such as acts of aggression, for example. Responsibility of the State which is legally qualified as aggressor is the important consequence. The International Law Commission in its very important legal document – "Principles of International Law Recognized in the Charter of the Nürnberg Tribunal and in the Judgment of the Tribunal" – noted three kinds of crimes which are punishable "under international law": a) "Crimes against peace" (including "aggression"; b) "War crimes"; and, c) "Crimes against humanity".

Again, in contrast to the MGIMO textbooks on International law, Shaw's textbook does not have a separate Chapter on the legal regime of airspace. Thus, a student finds nothing about the application and interpretation of the Chicago Convention on International Civil Aviation, the Warsaw Convention, or numerous bilateral intergovernmental agreements on the subject. There are some passages about "the status of the airspace above states and territorial waters" – in subchapter "The Law of Outer Space" – which seems in fact misleading for a student; s/he might think about identity of the term "airspace" and "outer space" which is not the case.

Shaw's textbook doesn't have a separate chapter on the legal regime of outer space, like MGIMO's textbook has. Instead, a subchapter "The Law of Outer Space" is within Chapter 9 – "Territory". According to the first subchapters of Chapter 9 – "The Concept of Territory in International Law" and "Territorial Sovereignty", Shaw's textbook speaks of territory in a narrow sense – that is a space where "a state is deemed to exercise exclusive power" [Shaw 2017:361]. Thus, introducing outer space in the Chapter "Territory", M. Shaw creates risks of misleading students: a state does not "exercise exclusive power" over outer space.

In light of these confusions (regarding Air Space and Outer Space Law), it is recommended that the earlier chapter, absent since the fifth edition, be restored.

As a positive evaluation of Shaw's textbook, it should be noted that, in general, the chapters are of the appropriate length.

The decision to combine, into one chapter, discussion on human rights does not seem to work. The chapter is too long and has the danger of exhausting any neophyte. It also might be worthwhile to give International Economic Law a much-deserved chapter, instead of finding itself relegated to the end of chapters such as the one on State Responsibility. Unlike other fields of law, International law textbooks are not encumbered by a natural or expected treatment of the material. Nevertheless, we do wonder why "Recognition of States" (Chapter 8) and "State Succession" (Chapter 16) are so separated.

The balance between substantive text and footnotes is fundamental. Footnotes can be off-putting to any potential purchaser and therefore must at least warrant their place and level of attention in the work. Compiling footnotes and keeping them up-to-date can be among the more tedious aspects of maintaining a work such as this. Some authors, including in the field of International law, have fallen into the trap of leaving them essentially unattended in subsequent editions. As a result, their purpose and utility can easily be lost. This is one of the areas, though, in which Malcolm Shaw excels and deserves special congratulation. Like any good textbook writer, he has acknowledged that in a vast field such as International law, its literature truly enormous, such a work can provide no more than an introduction to the subject. Even if only for reasons of space and a little concern for the well-being of the reader, the author should tender the essential information accompanied with the signposts for further and deeper scholarship. Surely, there can be few greater compliments to an academic author (particularly a textbook writer) than that the work inspired many of its readers to indulge further in the field and even to take up the subject (to whatever extent) professionally in their chosen career. Malcolm Shaw has taken considerable care in this sometimes neglected area of academic writing, to the extent that the footnotes in International Law are among the most impressive and enjoyable aspects of the book.

The academic field of International law suffers from various political pressures and tensions. Ultimately, its success depends, in large part, on the continued good will of nation states for which solidarity, collegiality, justice and proper international regulation should translate into stability, world peace and prevention of a new world war. All law is essentially political at heart, but international law can be burdened, even sometimes undermined by it. It is easy for the uninformed to scoff when it fails, but, at least for now, International law (as a field of law) can do what is written in the UN Charter: "to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind".

In this respect, one of the most refreshing things about Malcolm Shaw's book is its honesty: the failures are adverted just as much as the achievements. Such

sincerity is essential for the field if it is to continue to move forward during the coming decades. Naturally, the English language offers its own advantage (in respect of the much wider market that can access such a work), but Malcolm Shaw does his best to eschew the natural temptation to present an essentially anglocentric perspective in the work. He is conscious of the imperative to avoid "International law" becoming "English International law" or "US International law" or "International laws", meaning (normatively) quite different things across continents and jurisdictions. The entire international community (not just a part of it) has been concerned by the tendency, in recent years, for international legal scholarship somewhat to devise new standards independently from those desiring a more multilateral approach. For the latter this is not in any way to suggest that the development of new normative frameworks are any less important, but only that the method applied is inclusive and participatory. International law as a field of law has much distance still to make and Malcolm Shaw deserves thanks from those who have much to contribute but have sometimes felt (whether rightly or wrongly) that their good counsel and concerns have been overlooked.

Irrespective of any scholar's take on the matter, International law inevitably has some contact and influence on municipal or national law (or – if using the words of the Vienna Convention on the Law of Treaties, 1969, "internal law"). It is therefore logical that the chapter on International Law and National Law pays attention to the United Kingdom and the United States, and the national laws of those states familiar to the author. The subsection dealing with "Other Countries" is to be welcomed, despite limitations on space. Nevertheless, a separate section on a couple of selected West European counties, Russia and China may well now be warranted. Greater emphasis would indicate a greater level of appreciation of the challenges faced by national courts in other key jurisdictions. A similar point should be made in relation to the treatment of Sovereign Immunity. The national law response, from both the legislative and judicial perspective, beyond the UK and US, deserves greater attention in the English-speaking world. Therefore, equivalent and additional focus on the approach taken in a carefully selected range of countries would be invaluable. There is of course a counter-argument to such type of expansion. International law is enormous, compromises (in terms of content) will have to be made and thus space will always require that certain sacrifices, in terms of consideration, are made. On this, there is no quick answer, but what this challenge does flag-up are at least two things. First, the extent to which a textbook such as this one should employ opportunities online to broaden and expand the work. Second, the extent to which this could facilitate the employment of a small team of researchers to undertake such work, from collaborative institutions across the globe; thereby, at least to some extent, adjusting authors such as Malcolm Shaw much more into editors. Here perhaps a generational nerve will be touched. Nevertheless, there can be little doubt, as the academic textbook develops, in light of advances in information technology, that this will become an increasingly urgent consideration (and it probably already is) for publishers such as Cambridge University Press.

An author will appreciate that any reviewer might pay special attention to those parts of the work in which he or she is professionally interested. This can result in unfair/exaggerated comments, especially with the review of a textbook where a reviewer may have an expertise in one or more branches of International law far superior to the author. Such an apology having now been tendered, it is noted that, both in the chapters on "The Subjects of International Law" and "International Organisations", while the Commonwealth of Independent States (CIS) is given due notice and attention, no reference is made to the much more central and increasingly prominent Eurasian Economic Union (EaEU). This is, of course, neither to dispute the continued significance of the CIS across the Eurasian continent, nor ignore the fact that membership of the EaEU can most tactfully be described as ongoing. Nevertheless, in light of developments during the past decade, the absence of the EaEU from consideration does render at least this part of the work to the accusation of being out-of-date.

The events of 1989–1991 have presented certain opportunities, but also attendant challenges. The break-up of Yugoslavia and the Soviet Union engendered certain adjustments which, almost three decades on, are still not concluded. Perceived historical injustices have, in some instances, attempted to be corrected. Such has not come without its fair share of tragedy, upheaval and frustration. The book, of course, reminds the reader of a much wider list of examples, but inevitably, of significance for the purposes of this review, includes consideration of the events in Ukraine.

This is not a suitable space in which to discuss these troublespots in any detail. Still, Ukraine is the most important issue of the contemporary crisis in relations between the US/EU on the one side, and,

on the other, the Russian Federation. The two opposite legal approaches are deserved to be explained to International Law students, but they are not in Shaw's book. Political and legal estimations by the White House[3] and Kremlin[4] of changing Presidential power in Kiev in 2014 are totally different and relevant basic facts are to be noted. Perhaps, therefore, this provides an opportunity (for both the author and readers of this review hailing from the West) to hear why the recent events in Ukraine caused such deep concern in and an inevitable reaction from Moscow.

In February 2014, with the use of force, not via constitutional elections, against a background of shooting between the presidential guard "Berkut" and militants of "the Maidan", a group of armed people seized presidential power in Kiev, Ukraine. The constitutionally elected President of Ukraine Viktor Yanukovich had to leave the country. The "acting President of Ukraine" Alexandr Turchinov immediately emerged in Kiev, while the President of Russia granted the protection of life of the President of Ukraine Yanukovich at his request. Turchinov assumed responsibility for the new state leadership in Ukraine, relying on the will of "the Maidan". He was supported by a new Ukrainian Prime Minister Arseniy Yatsenyuk, a leader of one of the parties.

Shaw's textbook does not consider different estimations of these events within Russia[5] and Ukraine[6] and the EU[7]. His textbook is in line only with the official US and EU legal positions, which are shared by other Western scholars: Remy Jorritsma (Maastricht University)[8]; Nico Krisch (Institut Barcelona d'Estudis Internacionals)[9]; Robert McCorquodale (British Institute of International and Comparative Law)[10]; Alain Pellet (University of Paris)[11]; Christian Marxsen (Max-Planck-Institute for Comparative Public and International Law in Heidelberg)[12]; Greg Fox (Wayne State University Law School, Detroit)[13]; Jure Vidmar (Oxford University)[14]; Lauri Mälksoo (Tartu University)[15]; and, Anne Peters (Max Planck Institute for Comparative Public Law and Interna-

[3] See, for example: *Executive Order. Blocking property of certain persons contributing to the situation in Ukraine.* March 6, 2014. URL: https://obamawhitehouse.archives.gov/the-press-office/2014/03/06/executive-order-blocking-property-certain-persons-contributing-situation (accessed date: 12.12. 2017). See also: *Executive Order. Blocking property of additional persons contributing to the situation in Ukraine.* March 20, 2014. URL: https://obamawhitehouse.archives.gov/the-press-office/2014/03/20/executive-order-blocking-property-additional-persons-contributing-situat (accessed date: 12.12. 2017)

[4] See: White Book on violations of human rights and the rule of law in Ukraine (November 2013 – March 2014). URL: http://www.mid.ru/en/diverse/-/asset_publisher/8bWtTfQKqtaS/content/id/698433 (accessed date: 12.12. 2017).

[5] See: Open Letter of the Russian International Law Association to the Executive Council of the International Law Association. URL: http://www.ilawassociation.ru (accessed date: 12.12. 2017). See also: [Narishkin 2015; Voronin, Kulebyakin, Nikolaev 2015].

[6] See: [Azarov 2015].

[7] See, for example: Council decision 2014/145/CFSP *Concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine.* March 17, 2014. URL: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014D0145 (accessed date: 12.12.2017). See also: Adoption of agreed restrictive measures in view of Russia's role in Eastern Ukraine. July 31, 2014. URL: https://www.consilium.europa.eu/media/22019/144205.pdf (accessed date: 12.12.2017).

[8] Ukraine Insta-Symposium: Certain (Para-) Military Activities in the Crimea: Legal Consequences for the Application of International Humanitarian Law. March 9, 2014. URL: http://opiniojuris.org/2014/03/09/ukraine-insta-symposium-certain-para-military-activities-crimea-legal-consequences-application-international-humanitarian-law (accessed date: 12.12.2017).

[9] Crimea and the Limits of International Law. March 10, 2014. URL: http://www.ejiltalk.org/crimea-and-the-limits-of-international-law (accessed date: 12.12.2017).

[10] Ukraine Insta-Symposium: Crimea, Ukraine and Russia: Self-Determination, Intervention and International Law. March 10, 2014. URL: http://opiniojuris.org/2014/03/10/ukraine-insta-symposium-crimea-ukraine-russia-self-determination-intervention-international-law (accessed date: 12.12.2017).

[11] Crimée: une invasion, un référendum, une sécession?. March 14, 2014. URL: http://www.lemonde.fr/idees/article/2014/03/14/crimee-une-invasion-un-referendum-une-secession_4383329_3232.html (accessed date: 12.12.2017).

[12] Crimea's Declaration of Independence. March 18, 2014. URL: http://www.ejiltalk.org/crimeas-declaration-of-independence (accessed date: 12.12.2017).

[13] Guest Post: The Russia-Crimea Treaty. March 20, 2014. URL: http://opiniojuris.org/2014/03/20/guest-post-russia-crimea-treaty (accessed date: 12.12.2017).

[14] Crimea's Referendum and Secession: Why it Resembles Northern Cyprus More than Kosovo. March 20, 2014. URL: http://www.ejiltalk.org/crimeas-referendum-and-secession-why-it-resembles-northern-cyprus-more-than-kosovo (accessed date: 12.12.2017).

[15] Crimea and (the Lack of) Continuity in Russian Approaches to International Law. March 28, 2014. URL: http://www.ejiltalk.org/crimea-and-the-lack-of-continuity-in-russian-approaches-to-international-law (accessed date: 12.12.2017).

tional Law in Heidelberg)[16]. However, even the best of such publications contain errors of fact as far as the history and law of Russia and the USSR are concerned [Self-Determination 2014][17].

According to Russian sources, the events of 2014 in Kiev are regarded as a coup d'état[18].

According to Washington and the European Union, and in contrast to the accusations provided in the book of the former Prime Minister of Ukraine Nikolay Azarov[19], the US did not intervene in the internal affairs of Ukraine in 2014 nor organize the coup in Kiev.

Western sources ignore the very fact of the coup d'état in Kiev in February 2014. The fact is not mentioned in the documents adopted by the President of the US[20] and of the EU[21]. They present the situation as if Turchinov and Yatsenuyk and their supporters did not seize power with the use of force, but legitimately defeated the constitutionally elected President of Ukraine Yanukovich. Western governments, commentators and scholars have failed to pay sufficient attention to the Ukrainian Constitution. The manner in which President Yanukovich was removed from office, by the Ukrainian Parliament, was in violation of the Ukrainian Constitution. Indeed, none other than Radio Free Europe / Radio Liberty expressed its doubts, as to the constitutionality of Yanukovich's removal, at the time[22]. Further, the Maidan militants' seizure of the building of the Administration of the Ukrainian President with the use of explosives, snipers, attacks against the police and guards of the President, according to US and EU documents, is not a violation of Law.

Shaw's textbook also ignores the fact of the coup d'état in Kiev in February 2014, though in different terms: "Russian forces legitimately in the Crimean region of Ukraine under the treaty of 1997... moved beyond their permitted bases and areas to take control, directly or indirectly, of the peninsula in late February/early March 2014 following a period of upheaval in Ukraine". "[U]pheaval"? We ask the question: if militants in Washington DC seized the White House – with the use of explosives, snipers, attacks against the police and guards of the US President – would Professor Shaw describe this as nothing more than an "upheaval"?

Malcolm Shaw may not have read the book *"Ukraine at the Crossroads"* (mentioned above) which is written by the former Ukrainian Prime Minister Azarov who worked with President of Ukraine Yanukovich. We want to underline: this book is not written by a Russian scholar. Ukrainian Prime Minister Azarov accuses the US, in violation of International law, of interference in Ukraine's internal affairs. The instructions to the coupists Turchinov, Yatsenyuk, etc. as to how to overthrow the constitutionally elected Ukrainian President Yanukovich, according to the Ukrainian Prime Minister Azarov, originated from the US embassy in Kiev [Azarov 2015:476]. Indeed, the US involvement in the over through of the Ukrai-

[16] Sense and Nonsense of Territorial Referendums in Ukraine, and Why the 16 March Referendum in Crimea Does Not Justify Crimea's Alteration of Territorial Status under International Law. April 16, 2014. URL: http://www.ejiltalk.org/sense-and-nonsense-of-territorial-referendums-in-ukraine-and-why-the-16-march-referendum-in-crimea-does-not-justify-crimeas-alteration-of-territorial-status-under-international-law (accessed date: 12.12.2017).

[17] The western International Law specialists do not pay attention even to western publicists who take a different position in evaluating what happened in Kiev in 2014, for example, the words of Noam Chomsky widely broadcasted in INTERNET at that time: "The idea that Ukraine might join a Western military alliance would be qte unacceptable to any Russian leader. This goes back to 1990 when the Soviet Union collapsed. There was a question about what would happen with NATO. Now Gorbachov agreed to allow Germany to be unified and to join NATO. It was a pretty remarkable concession with a quid pro quo: that NATO would not expand one inch to the east. That was the phrase that was used". "Well, what happened? NATO instantly moved into East Germany and then Clinton came along and expanded NATO right to the borders of Russia".

[18] See: Open Letter of the Russian International Law Association to the Executive Council of the International Law Association. URL: http://www.ilawassociation.ru (accessed date: 12.12. 2017). See also: [Narishkin 2015; Voronin, Kulebyakin, Nikolaev 2015].

[19] See: [Azarov 2015].

[20] *Executive Order. Blocking property of certain persons contributing to the situation in Ukraine.* March 6, 2014. URL: https://obamawhitehouse.archives.gov/the-press-office/2014/03/06/executive-order-blocking-property-certain-persons-contributing-situation (accessed date: 12.12. 2017). See also: *Executive Order. Blocking property of additional persons contributing to the situation in Ukraine.* March 20, 2014. URL: https://obamawhitehouse.archives.gov/the-press-office/2014/03/20/executive-order-blocking-property-additional-persons-contributing-situat (accessed date: 12.12. 2017).

[21] Council decision 2014/145/CFSP - *Concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine.* March 17, 2014. URL: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014D0145 (accessed date: 12.12. 2017). See also: Adoption of agreed restrictive measures in view of Russia's role in Eastern Ukraine. July 31, 2014. URL: https://www.consilium.europa.eu/media/22019/144205.pdf (accessed date: 12.12.2017).

[22] See article: Was Yanukovych's ouster constitutional? February 23, 2014. URL: https://www.rferl.org/a/was-yanukovychs-ouster-constitutional/25274346.html (accessed date: 12.12.2017).

nian President Yanukovich is confirmed recently in US. As former US Vice-President Joe Biden in his recent book writes:

"I made the last of many urgent calls to Yanukovich in late February of 2014… I had been warning him for months to exercise restraint in dealing with his citizens, but on this night, three months into the demonstrations, I was telling him it was over, time for him to call off his gunmen and walk away... [Biden 2017]. Again we ask – is this telephone pressure to "walk away" from the vice-President of one State on the President of another State qualified as intervening "in matters which are essentially within the domestic jurisdiction" (article 2 of the UN Charter) of the second State?

As Ukrainian Prime Minister N. Azarov noted in his book cited above, the 2014 coup d'état in Kiev was supported by many Western leaders though the role of the US was leading[23]. Indeed, a considerable part of the population in Ukraine recognized the post coup d'état authorities in Kiev (with Turchinov as "an acting president" of Ukraine); but the inhabitants of the south-eastern regions of the country did not recognize the 2014 coup d'état in Kiev.

The coup in Kiev was the "final straw" for the people of Crimea, who had patiently (much to their disappointment) been forced (urged on by Moscow) to bury their frustration, since 1991, at having been placed in a newly independent Ukraine; and, unable, therefore, to reunite with Russia (with which it had for so long formed a part). Shaw's book does not consider applicability of the principle of self-determination to the Crimea case – especially taking into account that the majority of the local population in Crimea are ethnic Russians; they do not speak the Ukrainian language; that Crimea was a part of Russia from the 18th century till 1954; that President Yeltsin's consent in 1991 to the inclusion of Crimea into Ukraine was granted without the respective will of the Crimean people; that according to the 1995 Judgment of the International Court of Justice in the *East Timor Case (Portugal v. Australia)*, the right of peoples to self-determination is an *erga omnes* obligation, that is an obligation towards the international community as a whole; and, that the Crimean people are entitled to self-determination in accordance with the UN Charter (art. 1, etc.) since the principle of self-determination has been recognized as a peremptory international legal rule of the highest legal force.

Amidst all of the above, one fact and one statement speak louder than any others. For the West cannot simply overlook the fact that in 1945, when the United Nations was established, Crimea was part of Russia (albeit within the Union of Republics known as the Soviet Union). It must be stated, lest anyone forget, that Crimea was transferred from Russian Republic (part of the Soviet Union) to the Ukrainian Republic (also part of the Soviet Union) in 1954, in circumstances of doubtful legality under the Soviet Constitution. Still at that time this transfer did not have consequences under International law: for example, the territorial sea around Crimea remained as the territorial sea of the Soviet Union and remained governed and regulated from Moscow. The fraternity of the Russian and Ukrainian people is equivalent to that shared by the English and the Welsh. This should give the West pause. Moscow is not against Ukraine developing close and fruitful relations with Western countries, including with the European Union. Russia is anxious to develop the closest ties with the EU, also; but these are surely better done (including for Ukraine, as a member also) via the Eurasian Economic Union, rather than through other mechanisms.

Just to add (a few more items), in order to conclude on this point, Shaw's textbook doesn't mention that the reunion of the territory of part of North Schleswig with Denmark based on the plebiscites held in 1920 (despite the inclusion of that territory into Germany-Prussia that lasted 60 years) is a precedent. This speaks in favour of the view that the decisive international legal ground for a title to territory is an exercise of the right to self-determination.

Shaw's textbook doesn't note:

that pursuant to the 1970 Declaration on Principles of International Law, they shall be interpreted and applied as "*interrelated and each principle should be construed in the context of the other principles*". Consequently, in this case the principle of non-interference into the internal affairs of States shall be regarded as interconnected with the principle of

[23] Former Ukrainian Prime-Minister describes pressures on the Ukrainian President Yanukovich: "V.F Yanukovich was paralysed by numerous telephone calls of Western leaders... By this time militants of the putsch have already occupied buildings of the City Administration in Kiev... It was clear that United States were at the head of the process... Deputy State Secretary V. Nuland arrived in Kiev... US Embassy in Ukraine coordinated all the actions of the opposition... It is to the US Embassy that leaders of the opposition came every day as if that place was their place of job; it is from the US Embassy that leaders of the opposition went to negotiate with the Ukrainian President Yanukovich", [Azarov 2015:474–479].

self-determination of peoples (here, of the people of Crimea), and shall be considered in the context of all fundamental principles of international law.

We do understand that there may be different legal qualifications (also in textbooks) of a given real-life situation. Dropping of atomic bombs by the US on the Japanese towns of Hiroshima and Nagasaki in 1945 was differently qualified by different lawyers: some qualified it as a violation of International humanitarian law, while others, as a justified measure against Japan as an aggressor during the Second World war. The US military intervention in Iraq in 2003 without relevant UN Security Council resolutions was treated differently by the community of international lawyers[24].

A message should be conveyed to law students: the further organizations from abroad of another coup d'état – in Kazakhstan, or in Belarus, or elsewhere – are unacceptable and contradictory to the Rule of Law. Quieta non movere. Let peoples change their Governments or Heads of States according to their Constitutions; without foreign support.

Nevertheless, Malcolm Shaw should be congratulated for his evident efforts to limit his discussion to the facts, assuming that he is unable to read Russian or Ukrainian legal sources, whilst identifying the possible objections and indicating (for some of the conflicts indicated, besides Ukraine) the possible paths to accord in the longer term. Kosovo ruptured a decade of trust on both sides of the former ideological divide. It is a wound that remains unhealed. Therefore, his caution here will be received with gratitude in those places where anxiety has been most pronounced.

There are also academic remarks to be made, some of them – as a matter of legal accuracy, others – as a theoretical discussion.

1. According to Shaw's textbook, the Arctic region constitutes "a vast expanse of inhospitable territory between North America and Russia" [Shaw 2017:397]. The Arctic region is not only the territory "between" North America and Russia; parts of North America and Russia are within the Arctic region; and why such important countries as Norway and Denmark (Greenland) – which are neither North America nor Russia, and which are not "between" them – are not mentioned in Shaw's definition of the Arctic region? That is misleading for a student reading Shaw's textbook.

2. Shaw's description of "The Common Heritage of Mankind" raises a number of questions. According to Shaw's textbook, "the 1979 Moon Treaty emphasises that the moon and its natural resources are the common heritage of mankind" [Shaw 2017:397].

In fact, two legal terms are used in the 1979 Moon Agreement: "the province of all mankind" (article 4) and "the common heritage of mankind" (article 11). Shaw's textbook doesn't mention the first term. Moreover, according to Shaw, "the common heritage of mankind", as provided in the 1982 Convention on the Law of the Sea (UNCLOS), and the words of the 1979 Moon Agreement about "the common heritage of mankind", reflect the same "territorial regime" [Shaw 2017:396–397].

That doesn't seem accurate. UNCLOS (and specially its Part XI) provides for a specific legal regime for the "Area" (that is for the sea-bed and ocean floor and subsoil thereof, beyond the limits of National jurisdiction). According to UNCLOS, the Area and some of its natural resources ("all solid, liquid or gaseous mineral resources in situ", but not living natural resources) "are the common heritage of mankind" (article 136 of UNCLOS). UNCLOS provides not only for legal principles governing the Area and for development of resources of the Area but also for the International organization – "the Authority" – through which activities in the Area are organized and controlled (articles 156–191 of UNCLOS).

Neither the 1979 Moon Agreement nor 1957 Outer Space Treaty provide for such legal regime and for such institutional governance. The 1957 Outer Space Treaty doesn't use the term "the common heritage of mankind" at all, while the 1979 Moon Agreement uses this term and the term "the province of all mankind" as meaning the same.

In contrast to UNCLOS, both Outer Space Agreements of 1957 and 1979 refer to all "natural resources", not to some of them.

And no Authority is provided by the Outer Space Agreements for governance of the activities on the celestial bodies.

In sum, the legal regime of the Moon and other celestial bodies and their natural resources is different from the legal regime of the common heritage of mankind as provided in UNCLOS.

3. The legal positions and rights of the Arctic Coastal States in Shaw's textbook are presented without legal accuracy. "Norway has asserted sovereign

[24] The critics of the US policy are US citizens. As G. Friedman put it, "The United States, always excessively aggressive from the European point of view, will be stirring up unnecessary trouble in Eastern Europe as a threat to the Russians" [Friedman 2010:117].

rights over Spitsbergen and other islands", says the textbook. The term "sovereign rights" is used in a wrong way here: according to the Treaty relating to Spitsbergen of 1920, Norway has ("subject to the stipulations" of the Treaty) "full and absolute sovereignty of Norway over the Archipelago of Spitsbergen" (article 1 of the 1920 Treaty). The difference between "sovereignty" (over territory of a State within its boundaries) and "sovereign rights" (for example, of a coastal state over its continental shelf – see Article 77 of UNCLOS) is enormous.

And what does the author mean by "other islands" in this context – while referring to the 1920 Treaty? The 1920 Treaty relating to Spitsbergen provides clearly, that the Archipelago Spitsbergen comprises "all the islands situated between 10° and 35° longitude East of Greenwich and between 74° and 81° latitude North… together with all islands great or small or rocks appertaining thereto". All these islands and rocks are legally – according to the 1920 Treaty – "Spitsbergen". So, the words in Shaw's textbook "and other islands" are superfluous and even confusing for the reader.

Shaw's textbook also asserts without due legal accuracy: "The US and Canada both claim 'pie-shaped' sectors in the Beaufort Sea, Canada and Denmark (Greenland) have a dispute regarding boundaries in the Lincoln Sea" [Shaw 2017:398].

The Canada-US sector line is provided by the 1825 Convention (at that time – between Russia and Great Britain) and it serves now as a land State boundary between Canada and USA.

It is suggested by a Canadian scholar that this sector line is to be qualified as delimiting continental shelf between Canada and the USA in the Beaufort Sea [Frederick 1979:72]. The US, on the contrary, suggested that the equidistance principle is to be applied for the delimitation of the continental shelf in the Beaufort Sea. But neither US nor Canada "claim sectors" in the Beaufort Sea. Moreover, the equidistance principle is good for US for delimitation of the continental shelf in the Beaufort Sea only within 200 miles; beyond that distance equidistant delimitation of the arctic shelf between the two States is better for Canada, not for US [Byers, Osthagen 2017:12–14].

As for a dispute between Denmark (Greenland) and Canada, Shaw's textbook doesn't mention a tiny island the sovereignty on which is disputed by the two neighbouring states.

Another inaccuracy is Shaw's statement that "Norway and Russia disagree over the boundary between their continental shelves in the Barents Sea" [Shaw 2017:398]. Shaw's textbook is published in 2017. Seven years before – in 2010 – a Treaty between Norway and Russia was signed according to which the line delimiting their continental shelf was agreed upon. This Treaty entered into force in 2011[25].

* * *

Of course, International law, like any field of law, is a living thing. In its modern form, from the UN Charter of 1945, International law is a young discipline in comparison with National Laws (for example, Russian "Pravda Yaroslava" of 1054 or English "Magna Carta", 1215). Even a cursory glance at the great works on the subject from the early 20th century will confirm the strides that have been made during the past century. Therefore, it will be interesting, during the coming decades, to observe how international law responds to the new challenges it now faces, particularly because of sudden, spectacular and continued advances in technology. Inevitably, textbooks on International law, including this one, will have to respond accordingly. Naturally, it is not the job of the author to speculate and the work already lacks space to anticipate, but Malcolm Shaw may increasingly be required to reflect on the employment of hostile activities by state (as well as non-state) actors, for example, in cyberspace, and on the use of drones both for (positive) humanitarian purposes, as well as their use during times of conflict.

Recent years have seen several new titles in the field emerge on the market. Successive waves can sometimes lead to the displacement of established titles. As represented, though, by this eighth edition, Malcolm Shaw's International Law is yet to find itself under any threat. His book is a truly outstanding work of scholarship; being of a level, range and comprehensiveness only a tiny few can emulate. As a consequence, including in the Russian-speaking Universities, it is a text which demands unreserved attention and respect. Long may this continue.

[25] The official title of the Treaty is: *"Treaty between the Kingdom of Norway and the Russian Federation concerning Maritime Delimitation and Cooperation in the Barents Sea and the Arctic Ocean,* 2010". See about it: [Vylegzhanin, Young, Berkman 2018].

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