Crisis of the international legal system: Concept, features, classification*

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The article performs a comprehensive analysis of the notion of the "crisis of the international legal system". It has been demonstrated that the issue of crisis phenomena in international law holds a distinct position in the field of international legal science. Various approaches have been identified for studying this subject, encompassing both the theory of state and law as well as international law. Based on historical examples of the Westphalian, Versailles-Washington systems, as well as the United Nations system, such signs of a crisis of the international legal system are identified, as the degradation of the core principles that underpin the international legal system, the consistent disregard exhibited by the subjects of international law towards the principles and norms they previously established through consensus, the exclusion of key actors from the international legal system, the lack of a system of boundary agreements, the discrepancy between the evolving practical relations and the international legal regulations, the failure of subjects of international law to engage with international justice bodies during disputes, or the infrequent use of peaceful resolution methods for international conflicts, as well as attempts not to comply with the decision of the international court. The authors have coined the definition of a crisis of the international legal system. A classification of crises of the international legal system has been developed, containing examples from various stages of the development of international relations.

Keywords: international legal system, principles of international law, crisis, signs of crisis, United Nations, Versailles system, Westphalian system.

1. Introduction

The crisis of the international legal system is presently a topic of continuous discussion, and its interpretation gives way to two distinct perspectives. As per the first one, we are currently experiencing a significant crisis in international relations. However, the level of international legal regulation is relatively high, and the primary concern is the implementation and adherence to international legal principles and norms. Those who support the second stance argue that international law is currently experiencing a crisis as a unique legal system, which has not been able to respond adequately and promptly to new challenges, establish effective mechanisms for implementing international legal standards, and has become fragmented to the extent that fundamental international legal principles have been compromised.

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This phenomenon is caused by a whole range of factors:

— globalization and glocalization processes have led to a significant increase in the role of international legal and supranational regulation, while also promoting the growth of public relations spheres that are now subject to international law; the process of universalization entails both unconditional benefits and new risks; achieving an optimal balance between international and national interests is paramount;

— throughout the centuries, states and, to a lesser extent, international organizations have been the primary actors, however, at present, the number of international organizations, namely non-governmental ones, has increased significantly to over 4000 worldwide (Abidin 2016); additionally, international legal regulations now directly impact the lives of individuals, particularly in areas such as human rights;

— the United Nations (UN), at the center of the modern world order, emerged shortly after World War II; some nations are actively trying to reform the organization due to the changes that have taken place globally; nonetheless, these attempts do not always align with the position of other countries;

— the start of every new century, and particularly the beginning of a new millennium, is characterized by strenuous endeavors to determine the fundamental vectors of development for the long run; the 21st century was no exception; nevertheless, the unresolved issues of the previous century, such as social harm caused by wars, the collapse of several major states leading to numerous geopolitical issues, inadequate attention to the religious aspect, among others, have resulted in armed conflicts, escalated international tensions and non-adherence to international legal principles and norms;

— globalized economy, accelerated pace of life and digitalization of all aspects of life have rendered the modern international system highly mobile and instantly responsive to any changes; as such, maintaining stability and ensuring progressive development depend heavily on the goodwill of all parties involved.

The relevance of the study topic is that, at the present stage, the existing international legal regulation and international mechanisms for the implementation of the international law principles and norms do not fully ensure their main task — a mutually beneficial cooperation of states in various spheres, peaceful, progressive development of the world community corresponding to universal values, recognition and respect of mutual interests of states in the economy, trade, space exploration, security, respect for human rights, etc. Hence, it is imperative to evaluate whether the present state signifies a crisis of the international legal system or the system of international relations. Moreover, it is crucial to determine the extent of the crisis phenomena and analyze the efficacy of past measures in addressing them. It must be determined if these solutions suffice or if novel approaches are warranted.

The purpose of this article is to develop the concept of "crisis of the international legal system", its features and classification.

2. Basic research

In contemporary legal science, significant emphasis is placed on interdisciplinary occurrences, notably the notions of crisis and crisis phenomena. Furthermore, an assessment is made on the underlying reasons, developmental phases, and strategies to address their manifestation.

The analysis of crisis phenomena in law dates back to at least the 19th century. Nevertheless, while representatives of certain legal fields only find this subject pertinent during transitional phases marked by worldview crises that impact the legal sphere, others such as those with international backgrounds face it as a perennial issue. This is due to the fact that the problem of the crisis of international law was deliberated upon in the 19th century and has resurfaced at the onset of the 21st century. As the authors of the collective monograph "Crisis of Law: History and Modernity" rightly note, interest in the study of crisis phenomena does not weaken, and there is a clear polarization of opinions regarding the modern period: some declare practical overcoming of the crisis; romantically oriented researchers seek to make new diagnoses of the crisis and offer a variety of treatments; pragmatists and realists justify the persistence of the current crisis state, revealing the patterns of legal practice (Denisenko, Beliaev, Tonkov 2018).

The primary domains of scientific inquiry according to the general theory of crises are:

— determining the causes of crisis phenomena in law; they may be the most unexpected. Iu. K. Krasnov, by way of illustration, identifies the erosion of the state's monopoly role in legal regulation as the primary cause of the contemporary crisis (Krasnov 2016, 21);

— singling out the stages of the crisis. Thus, M. V. Ignat'eva posits that the system of norms undergoes a process of disunity, collapse and eventual reconstruction on a new basis (Ignat'eva 2021, 14);

— analyzing the correlation between crises in law and crises in other areas of life; the classification proposed by N. A. Vlasenko differentiates between organic (systemic) crisis phenomena in law, which are related to crises in the economic, social, and political domains, and those inherent in law as such (Vlasenko 2013, 43–44).

Examining this through the prism of an economic crisis is what makes it particularly interesting. Back in 2009, V. D. Zorkin established the following logical chain: the global financial and economic crisis — the threat of termination of humanitarian programs of food and medical assistance to the hungry — territorial, interethnic and interfaith conflicts in the territories of these countries — an increase in the flow of illegal migrants from Africa to Europe — an increase in human trafficking and an increase in crime in the countries of the European Union, The United States and the CIS — various deviations from the principle of the rule of law in the economy within individual states and at the global level: ineffective regulatory acts, unprofessional, illegal actions of officials, officials and corporations, including dubious and illegal financial pyramids, both domestic and transnational (Zor'kin 2009, 54–56).

The law can act to overcome the crisis. On the flip side, the law, its condition can stimulate the development of crisis phenomena within the economy. In 2014, a group of experts reached the conclusion that the main cause of the economic crisis was the crisis of law (Glinavos 2014). However, there exists an alternative viewpoint that attributes many legal crisis phenomena to global economic processes (Augenstein 2012).

General cultural crises have an impact on the legal sphere as well. It is interesting to note that during the 1920s, foreign researchers discussed the crisis of jurisprudence (Vinogradoff 1920), despite the fact that this was a time when the significance of the legal factor should have risen, particularly in the aftermath of the World War I. It is plausible that the reason behind this lies in the disappointment of the value system of "civilized peoples", where legal measures failed to prevent the incitement and horrors of the global armed

conflict, the heartache of losing loved ones, and the challenge of resolving issues for a large number of individuals who were left disabled as a result of hostilities, and lacked the necessary social protection from the state, among other factors. Additionally, the objective of diminishing the strength of neighboring nations such as Germans and Austrians, as observed in the Versailles, Saint-Germain and other international treaties signed during the Paris Peace Conference of 1919–1920[1], was widely perceived as a crisis for European civilization, paving the way for a new war.

At the current stage, legal crisis phenomena are also linked to the migration crisis (Matveevskaya, Pogodin, Wang 2021), which is helping to create a new image of the enemy (Burmistrova 2020, 108).

The analysis of crisis phenomena, both past and present, is of particular importance to international lawyers. This is the most comprehensive section of scientific literature dedicated to legal crises.

International law possesses unique characteristics that distinguish it from domestic law. International public law stipulates that a principle is established either through an agreement between equal entities or by way of proven practices that have been in existence for centuries and are fundamental to international customs. This creates the possibility of preventing crises in international law, as any international legal norm should derive from the explicit consent of the parties. Nonetheless, such norms are susceptible to vulnerability on account of two reasons. Firstly, the treaty among multiple entities can be perceived adversely by some, and secondly, the agreements must be in accordance with the universally accepted principles of international law, whose correlation is not always evident. An instance of varied interpretations of the principles of international law lies in the correlation between the principles of the integrity of state territory and the inviolability of state borders on one hand and the principle of reverence for the entitlement to self-determination on the other. The science of international law fails to offer a clear-cut response to this inquiry. The example of the Catalan crisis illustrates this point, whereby scholars observe that the struggle for self-determination is an inherent right of any people, yet every state must endeavor to maintain its unity and integrity (Sharipova, Konovalova 2018).

The crisis state of international law has been documented as far back as the 19th century. The occurrence led to the emergence of an entire scientific field, particularly among German legal scholars, who started to disclaim the fundamental concept of international law. Thus, A. and F. Zorn and A. Lasson, German lawyers, held the belief that international law is not a legal framework but can be regarded as a system of international morality at most (Durdenevskii, Krylov 1947, 7). As V. V. Pustogarov notes, in the 19th century: "…the very existence of international law is questioned. Supporters of this view argue as follows: in international relations there is no supreme legislator, there is no judicial and executive power capable of enforcing the decisions made. There is no coercive force behind the norms of international law, and their observance depends on the goodwill of states. So international relations are dominated by power, not law" (Pustogarov 1999, 17). Nevertheless, this direction failed to take root in Russia. In the Russian science of international law during this period, unlike in the West, there were no scholars who contested the validity of international law (Levin 1982, 10). Despite this, following the revolutionary events of

[1] "The Treaty of Versailles (signed on June 28, 1919), the Treaty of Saint-Germain (signed on September 10, 1919), the Treaty of Neuilly (signed on November 27, 1919)". *Yale Law School*. Accessed February 10, 2024. https://avalon.law.yale.edu/default.asp.

1917 and the conclusion of World War I, Soviet lawyers once again documented the crisis. Thus, in 1922, Professor of Moscow State University S. A. Kotliarevskii wrote an article "Crisis of International Law" (Kotliarevskii 1922).

Currently, the issues of the international law crisis are consistently being scrutinized by international lawyers.

The studies conducted by Russian scholars examine the rationale for the growing divergence in the methodology of international legal regulation and the features of present-day international relations established by the Potsdam-Yalta system (Iavchunovskaia 2017), trends in the development of certain branches of international law in the context of the crisis (Matchanova 2020; 2021), negative significance of selective recognition of the independence of individual countries when abandoning a single approach to this issue (Gus'kova 2020), the role of culture and law in overcoming crisis in the international arena (Aleksandrov 2014), etc.

It is of significant importance to note that a group of scientists regard the present state of international law as one of the principal factors responsible for the civilizational crisis that is presently unfolding.

One can single out the following signs of an international legal crisis: 1) the inability of many states to ensure the realization of the human right to a decent existence, and sometimes even the right to life; 2) the emergence of sources of international instability and tension in different parts of the world, which is due to the reluctance of some states to follow international principles; 3) violation by certain states or their associations of the fundamental norms of international law enshrined in the UN Charter[2] and conventions[3]; 4) impunity for committing international crimes, including military ones (Kurchinskaia-Grasso 2019).

Great attention is paid to crisis phenomena in international law by foreign scholars. As an illustration, Rafael Domingo, who serves as a professor of law at the School of Law of the University of Navarre in Pamplona, Spain, posits that the existing crisis of international law stems from its tendency to prioritize the artificial constructions of a national state over the primary actor — the individuals and their innate dignity. This approach accords the state with disproportionate power, reinforces the principles of sovereignty, and fosters an overreliance on territoriality (Domingo 2009).

To define the concept of the "crisis of the international legal system", it is essential to emphasize the distinguishing features that define this condition.

The first sign is the degradation of the core principles that underpin this system. Throughout the history of international law, numerous endeavors have been made to establish a structured framework for international relations. The Westphalian, Versailles, and UN systems established new principles for state interaction and cooperation. For instance, the system established at the Westphalian Congress of 1648 articulated the principle of state sovereignty, leading to the progressive independence of state power from religious influence and the establishment of its internal political and foreign policy functions. T. Abdyrakhmanov highlights that the Peace of Westphalia, signed by representatives of 145 European state entities, marked the decline of the papacy and the Holy Roman Empire, leading to the emergence of nation-states (Abdyrakhmanov 2016, 180). The end of

[2] "United Nations Charter (signed on June 26, 1945)". *United Nations*. Accessed February 10, 2024. https://www.un.org/en/about-us/un-charter/full-text.

[3] "United Nations conventions". *UN Treaty Collection*. Accessed February 10, 2024. https://treaties.un.org.

the Westphalian "era" is commonly acknowledged as 1914, as a result of the emergence of new empires, the escalating contradictions among them necessitated the outbreak of the World War I. Consequently, the principle established by the Westphalian system underwent a transformation and become obsolete.

The second sign of the crisis of the international legal system arises from the consistent disregard exhibited by the subjects of international law towards the principles and norms they previously established through consensus. Take the case of the Versailles-Washington system, which was initially destined for failure as it was built upon the principle of "the defeated — the victors" that did not contribute to the establishment of enduring peace. Furthermore, it allowed for the possibility of resorting to war as a means of addressing international disputes, albeit with the condition that peaceful methods should be used for a minimum of three months prior to military intervention (Kliuchnikov 1925, 7–15). The occupation of Manchuria, the most developed Chinese province, by Japan in 1931 revealed the world community's acceptance of aggression, thereby motivating the Axis countries to undertake further offensive actions aimed at reshaping the global order.

The exclusion of key actors from the international legal system is yet another sign of the crisis. The Versailles system again serves as an example, as it effectively excluded the Soviet Union and Germany, thus limiting their influence on the foreign policy environment that defined the course of international relations.

The fourth sign is the lack of a system of boundary agreements. During the 1970s, as the generation of politicians who had experienced the Second World War started to retire, they expressed their desire for the inclusion of the principle of state border inviolability in the Final Act of the Conference on Security and Co-operation in Europe[4] (also called Helsinki Final Act) on August 1, 1975. Regrettably, this desire was not fulfilled. The ongoing territorial disputes and absence of contractual activities during border disagreements are indicative of a severe crisis in the field of international law. To illustrate, territorial disputes have an impact on all border sections of the Russian Federation, excluding the border with Belarus, South Ossetia, Mongolia, and the Democratic People's Republic of Korea. Concurrently, South Korea asserts territorial claims against Russia regarding the island of Noktundo (Kharybin 2017, 88).

Moreover, the discrepancy between the evolving practical relations and the international legal regulations can be considered another sign of the crisis of the international legal system. Consequently, present-day experts posit that the relationship between international legal regulation of the digital sphere and the protection of human rights has become a paramount issue in international law. This is exemplified by the significant surge in the value of B2C online trading platforms during the COVID-19 pandemic, which has prompted discussions on the legal status of individuals and the means to safeguard their rights in the virtual realm (Cherniad'eva 2023, 165).

The sixth sign can be seen as the failure of subjects of international law to engage with international justice bodies during disputes, or the infrequent use of peaceful resolution methods for international conflicts, as well as attempts to disregard international court rulings. To provide an example, the International Environmental Court did not operate to its fullest extent due to the parties' preference for resolving the matter without litigation,

[4] "Helsinki Final Act (signed on August 1, 1975)". *Organization for Security and Co-operation in Europe*. Accessed February 10, 2024. https://www.osce.org/helsinki-final-act.

given the considerable expenses involved in environmental and legal examinations. There are examples of non-enforcement or partial enforcement of decisions of the International Court of Justice of the United Nations (decision in the dispute between United States of America and Iran over the capture and holding as hostages of US diplomatic and consular staff in the American embassy[5], decision in the dispute between United Kingdom and Iceland over fisheries jurisdiction[6], etc.).

The underdevelopment of the institution of international legal responsibility can be regarded as the seventh sign of the crisis of the international legal system. According to the figurative expression coined by the French international lawyer A. Pellet, no responsibility, no (international) law (Pellet 2010, 4). On one hand, remarkable achievements have been made in this field in recent decades. For example, in 2001, the UN General Assembly adopted the Draft articles on Responsibility of States for Internationally Wrongful Acts[7], in 2011 — Draft articles on the responsibility of international organizations[8]. Nevertheless, the current condition of this institution fails to align with the rapid advancements and sophistication observed in various sectors of international law. However, it possesses the potential to serve as a deterrent against detrimental tendencies in contemporary international relations (Sazonova 2014, 199).

However, there are certain phenomena that, upon initial observation, may seem to be suggestive of a crisis of the international legal system, but this is the case. As per present-day experts, the global economic crisis has demonstrated the inadequacy of a formal approach in addressing this phenomenon, as profound and enduring economic divisions cannot be solely attributed to the errors made by financiers, central banks, governments, or clarified by excessive production of goods, inflated credit, or any other factor (Koltashov 2018, 28). Given the objective nature of such crises and their varying frequencies, it cannot be concluded that the occurrence of these crises signifies a failure in the international legal system.

By summarizing the signs of a crisis of the international legal system, one can establish a broad definition of this phenomenon. A crisis of the international legal system is a limited time period when the existing generally recognized principles and norms of international law cannot regulate a significant complex of relations between States, States and international organizations, other actors, due to the fact that they do not correspond to real international relations, and therefore are systematically violated, or political decisions or other social regulators are priority (religious rules, customary law, etc.) or some actors are excluded from the international legal system, which leads to its fragmentation and destruction, or the subjects of international law do not use existing mechanisms of cooperation and dispute resolution and are not responsible for unlawful acts.

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[5] "United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran)". *International Court of Justice*. Accessed February 10, 2024. https://www.icj-cij.org/case/64.

[6] "Fisheries Jurisdiction (United Kingdom v. Iceland)". *International Court of Justice*. Accessed February 10, 2024. https://www.icj-cij.org/case/55.

[7] "Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries (2001)". *UN Office of legal affairs*. Accessed February 10, 2024. https://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf.

[8] "Draft articles on the responsibility of international organizations (2011)". *UN Office of legal affairs*. Accessed February 10, 2024. https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_11_2011.pdf.

Crises of the international legal system can be classified as follows.

Firstly, there are global crises arising from either the lack of universally recognized principles of international law that align with established public relations, or from the obsolescence of existing principles and norms. Additionally, crises can arise within specific areas of international law or fundamental institutions, such as the institution of international legal responsibility.

Secondly, in relation to the root cause, one can distinguish the crises of international legal system arising from the crises of national legal systems of states, and those ones that precede the crises in the state sphere.

Consequently, for instance, the process of globalization brought about a decrease in the ability of states to carry out their traditional obligations, including the protection of the population from external threats, yet this did not result in the establishment of a more robust international security system.

Thirdly, the crises of the international legal system can be categorized as either temporary or permanent. Temporary crises can arise due to subjective reasons. To provide an instance, the personal traits of heads of state that fail to facilitate dialogue (such as the repetitive threats issued by leaders from diverse nations at the UN General Assembly against other states, even pledging complete annihilation), resulting in domestic political decisions that greatly worsen the situation in the international arena (for instance, the adoption of national laws concerning the division of the Antarctic territory in the 1920s and 1940s, which were met with strong disapproval from other states, ultimately resulting in the signing of the Antarctic Treaty in 1959[9]).

Permanent crises are a characteristic of the international legal system that exists in conditions of instability. O. V. Vydrina posits that modern dynamics permits the evaluation of social reality as an enduring state of chaos and crisis (Vydrina 2010, 69). Hence, in such conditions, the crisis of international legal system assumes commonplace attributes, distinguished only by the magnitude and external manifestations of the crisis.

There could potentially be another classifications of crises of the international legal system.

3. Conclusions

Despite the fact that there has been a dedicated focus on the science of international law since the 19th century, it is still debated whether the international legal system is either non-existent or in a perpetual crisis. Nonetheless, this matter can only be comprehensively examined within a broader historical context, taking into account the accomplishments and oversights that define the present state of international law.

Every established international legal system (such as the Westphalian, Versailles-Washington and UN systems) has undergone a series of stages in its evolution, including formation, development, emergence of crisis phenomena, reform, or replacement with a new system.

The crisis of the international legal system can be talked about only if there are various signs of it, and not individual manifestations of crisis phenomena, that is why it is nec-

[9] "The Antarctic Treaty (1959)". *The Secretariat of the Antarctic Treaty*. Accessed February 10, 2024. https://www.ats.aq/e/antarctictreaty.html.

essary to balance the development of various branches and institutions of international law, the creation of generally recognized principles and norms of international law within the framework of universal international organizations and their implementation by all actors, as well as the constant improvement of mechanisms for cooperation between states and the resolution of international disputes.

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