

## EVOLUTION OF INTERNATIONAL FINANCIAL LAW IN THE CONTEXT OF GLOBAL FINANCIAL AND ECONOMIC CRISIS



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**Abstract.** The article deals with the historical roots of the oldest institutions of international financial law, which began to take shape during the Latin Monetary Union and the Paris Monetary Conference in the XIX century. The article studies the mechanisms of formation of some international legal institutions aimed at regulating individual parties to the international financial system, as well as identifies industries affected by the global financial and economic crisis of 2008-2010, and the corresponding gaps in international financial law. The most important sources of

international financial law at the universal and regional levels are analyzed. It studies not only the normative but also the institutional component of the international financial order.

**Keywords:** *international financial law, monetary and financial system, international legal norms, monetary and financial relations, balance of payments, currency zones, international banking system, financial instruments.*

### Introduction

In today's world there is a whole and complex phenomenon – the global monetary and financial system. On the one hand it is only part of the broad sphere of relations – the entire international economic space and the world order that emerged towards the end of the twentieth century. On the other hand the global monetary and financial system is an autonomous sphere of the States' society, of human civilization; this system is not only a reflection of what is happening in the world in the production, trade and other economic spheres, but it itself actively influences the international economy and the international economic order.

Real inter-State monetary and financial relations were within the scope of the set of international legal norms united in a certain normative system – international financial law.

The global financial and economic crisis that erupted in the world in 2008 revealed the imperfections of both the system of inter-State monetary and financial relations and the system of international financial law. The incoherence of these areas of relations among themselves. They are inconsistent with the more general principles of international relations. The crisis had shown that much needed to be changed in the global monetary and financial system including in institutional and regulatory mechanisms which inevitably led to a significant evolution in international financial law.

**The purpose of research** is to identify gaps in international financial law, international legal regulation, patterns and prospects based on an analysis of the current state of international financial law, under the influence of global monetary and financial crisis that began in 2008.

**Analysis of recent research and publications.** Depending on the direction of research and the nature of the crisis the

analysis of the world financial crises as a negative socio-economic phenomenon focused on the works of scientists such as: O. Baranovskyi (2009), V. Geyts (2009), K. Kindleberger (2011), P. Krugman (2008), J. Soros (2012), D. Saks (2000), M. Tugan-Baranovskyi (1997), A. Schwartz (2008), M. Fridman (2007), M. Andenas, J.J. Norton, J. Gold & R. Gold (2003), R.P. Buckley (2009),

O. Hieronymi & A. Vautravers (2009), D. Tarullo (2008) et al.

**Main research results.** Given the magnitude and impact of the 2008 global financial and economic crisis (still ongoing) the science of international law faces a number of questions, namely: which international legal challenges have been highlighted by the crisis; what gaps have emerged in the system of international legal regulation of inter-State monetary relations; by what means and methods is (or should) this system of international legal regulation being improved; the place and role of Ukraine in the global monetary and financial system and in the effectiveness of measures aimed at strengthening the international economic order (and its component – the international financial order) and its consistency with the principle of fairness.

The relevance of the research is due to a number of circumstances.

First there is increased competition, an increase in the clash of interests of States in the monetary and financial sphere which most often disrupts the international monetary and financial system, reduces the effectiveness of measures taken by States and violates the international legal order.

Secondly Ukraine still occupies a relatively modest place both in the system of monetary and financial relations and in the system of international legal regulation of these relations. Such a role for Ukraine does not correspond to its potential and objectives of involving the country in the international economic system while preserving its economic sovereignty and ensuring its long-term interests.

Thirdly the established institutions of international financial law have many gaps. They do not fully support the functioning of the monetary and financial system and require targeted development for which it is necessary to consider the directions and mechanisms of such development.

At present the global monetary and financial system established by international law serves to a greater extent the State interests of a group of States beyond the control of the law. The imbalance of interests between established groups of States should be redressed and an international legal instrument could be an effective means of doing so.

Fourthly the global financial and economic crisis of 2008 has not only exposed the problems of ensuring international legal cooperation among States in the financial and monetary sphere. But it also pushes them to a solution. It is important that the initiative to address the problems, the choice of means and mechanisms for this does not remain in the hands of the developed States of the West. Otherwise all adjustments to the existing international financial order will continue to favour the interests of a narrow group of developed countries.

Fifthly Ukraine must adapt domestic law to the requirements of international financial law taking into account the lessons learned from the 2008 global financial and economic crisis. In addition Ukraine should initiate appropriate harmonization of the domestic legislation of the country and the Eurasian Economic Community with a view to more effective interaction in the monetary and financial sphere of relations. For this work it is necessary to own the laws of development of the global monetary and financial system and international monetary law.

The legal foundations of today's international monetary and financial system are rooted in the Paris Conferences of the second half of the 19th century. At that time legal mechanisms were found to deal multilaterally with two main problems: a) determination of exchange rates between the national currencies of the interacting States; b) balance-of-payments equilibrium. During this period the extent of the sovereign legal personality of countries in the international financial sphere was clarified and consolidated through international treaty and customary international law (coinage, paper money issue, etc.).

The decision of the Genoa Conference contributed to the formation of an international legal custom according to which the US dollar became world – supranational – money. The creation of currency zones that compete with each other begins (pound sterling zone, US dollar zone, etc.). "Unfair financial practice" has spread. It was expressed in the competitive devaluation of national currencies by unilateral acts of States in order to gain advantages. New types of financial instruments (bills of exchange, securities) began to penetrate into international financial relations and two approaches to regulation of the international

financial system proved to be opposing: for strengthening the role of the state, inter-state agreements and against "excess" State intervention in this area. The global crisis pushed for strengthening the role of the state. It strengthened the status of the dollar as a world currency internationalized the problem of the international banking system (the Bank for International Settlements – International Organization of Central Banks was created).

The international legal formalization of the status of the US dollar as a world currency took place using both normative and institutional possibilities through both contractual and legal instruments. The institutional framework for dollar expansion has been the International Monetary Fund (IMF), whose activities are controlled by the United States under the IMF's statute and internal rules.

Under the impact of the financial crisis that erupted in the relationship between European countries and the US the text of the IMF Constitution was amended including the introduction of an artificial collective – supranational – unit into the world payment relations: "Special Drawing Rights" (SDR). The institution of SDRs' has emerged in international financial law, but the potential of SDRs has not yet been realized.

Analyzing the history of the creation of the international banking system maturing of preconditions for internationalization of problems of functioning of national banks the attention should be paid to the status of the Bank for International Settlements and its activities, to various interbank associations and systems, and to the Bank Supervision Committee under the auspices of the Bank for International Settlements.

Within the framework of this direction of development of the international monetary system a new supranational currency unit the euro is emerging and the euro zone is being formed. Along with the most "old" types of securities (bills and cheques) in the international financial system there is a huge number of new types of financial instruments – securities and their derivatives. Their volume is rapidly and uncontrollably increasing. This was one of the reasons for the financial and economic crisis of 2008-2010.

The global financial and economic crisis of 2008-2010 directly raised the question of the role of the dollar as a "world currency" and exacerbated the problem of the international

legal formation of alternative national currencies of other states or artificial, collective, supranational payment units of account in inter-State monetary and financial relations. The crisis has also shown that the IMF mechanism needs to be adjusted again.

The global financial and economic crisis of 2008 revealed significant deficiencies in the design and functioning of the international financial system and its legal enforcement. A crisis of this magnitude has become possible because of insufficient control by States and inter-State organizations over the flow of portfolio investment, the global credit sphere. The crisis quickly spread to a large number of countries deepening into all areas of the world economy as international financial law lacks regulatory and institutional mechanisms to prevent crises and their development.

The crisis raised the question of the adjustment of the established international financial order revealed the need for new changes in the organization of work and the IMF Constitution. It gave impetus to the formation of new institutions of international financial law. With the advent of the Bank for International Settlements (hereinafter referred to as BIS) in the institutional system of monetary and financial relations the formation of international norms began aimed at strengthening state control over national banking systems. This normative body is growing, the content of the rules is being clarified and their impact on States is becoming more and more imperative.

The IMF Agreement is the normative core of modern international monetary law. The global financial and economic crisis has raised the issue of the insufficiency of this Agreement for the effective and stable regulation of international financial relations as well as the inadequacy of some of its rules to the real needs and interests of the international community of States as a whole.

In particular the Agreement does not solve the problem of combating "unfair financial practices" (similar to "unfair trade practices" in the international trading system). There are practically no rules to combat "unfair financial practices" or very little and not enough. The global crisis has given rise to the creation and development of such an institution.

The current system of international financial organizations (intergovernmental and non-governmental) requires some adjustment in particular the competence of some of

them, as well as the decision-making mechanisms within them. In order to ensure stable and crisis-free future development of the entire global monetary and financial system a number of new organizations should be established at the regional and/or universal levels. Such organizations would take important directions of relations under state/inter-State (or supra-State) supervision in this area.

Some patterns in the development of a regional international financial system within the EU could provide a useful example and model for the creation of a single currency area. The internationalization of exchange rate and common currency issues has led to the internationalization of banking issues which has led to the establishment of a joint European Central Bank under the Maastricht EU Agreement and subsequently to issues related to the budgets of EU member states. International monetary law at the regional level has been supplemented by international banking law and international budgetary law. The institutions are structured on the basis of international legal norms (norms of international agreements) and norms contained in EU acts (directives, etc.). The EU pays attention to both substantive and international procedural law. All this requests the transfer of a significant part of functions and capabilities, i.e. a certain coordinated and conditional self-restraint of national sovereignty on these issues.

Global financial and economic crisis 2008-2010 has had a negative impact on the international financial system not only at the universal but also at the regional level, in integration associations, in particular within

the EU. On the one hand it can be stated that an independent branch of EU law has been formed – “European financial law”. This branch is systemically and substantively different from international monetary law as a subsector of international law. European financial law consists of many institutions: European budget law, European currency law, European banking law, European exchange law, etc. On the other hand global financial and economic crisis revealed deficiencies in the regulatory content, institutional system, gaps in European financial law. It gave impetus to the further development of all European financial law institutions and the European financial law industry as a whole.

The crisis is leading to significant shifts in the European financial order towards a more supranational regulatory approach and in international legal awareness both in Europe and in the international community of States; the further internationalization of new financial issues and the transfer of new functions from the public authorities of the participating countries to the EU bodies.

The global financial and economic crisis of 2008-2010 creates certain favorable conditions for Ukraine to become an international financial center, promotion of the Ukrainian hryvnia as a reserve currency or creation of an artificial supranational currency of payment and clearing within the framework of the Eurasian Economic Community. Taking into account the legal and international legal experience of the EU including the crisis Ukraine should initiate the creation of a regulatory complex with the conditional name “regional financial law” laying in it a supranational method of regulation.

## Conclusions

The modern international financial order reflects the peculiarities of different legal families, groups of countries of different civilizational types and Western-type states. International custom played an important role in shaping international financial law. At the same time there is still much room in the international system for unilateral action by States. The rules of soft law and the activities of international financial institutions (the Paris Club of Creditors? etc.) have a significant impact on the international financial order. Methods of supranational and transnational regulation have been incorporated into the legal provision of international financial relations.

One of the main results of the global financial and economic crisis of 2008-2010 at the universal level was the creation of the “G20” – the international economic “paraorganization” consisting of countries of different civilizational types, representing all continents and regional integration groupings. The “G20” will monitor the world economy and the global monetary and financial system to prevent crises like the current crisis. The international financial order is closely linked to the implementation of the international legal framework for cooperation, equality, mutual benefit and justice. It should be noted that the current financial order does not fully comply with these

principles. The financial and economic crisis is adjusting the international financial order to move closer to these international legal principles and it is leading to changes in international legal consciousness and increasing the impact of legal awareness on the international financial order and the world order as a whole.

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