

## LAW DURING WAR: CAN LEGAL SYSTEMS UNITE US?

BY MAURIZIO GARDENAL

In the middle of a war in Eastern Europe, western businesses are wondering how to cope with the new measures imposed by their governments regarding trade with Russia.

To cite just what this means it is enough to look at the slew of new trade restrictions provided by EU regulation n. 2022/428. Among other things it makes it “prohibited to sell, supply, transfer or export, directly or indirectly” a long list of iron and steel products that could be used for pipeline production or other heavy industry.

However, in the wake of this international economic scenario we are likely to see a split between two areas: those affected by these trade parameters, and those who are not.

The Shanghai Cooperation Organization (SCO) stands out as an example of the latter.

Established in 2001 as a means to ease the territorial disputes between its six founding countries - China, Russia, Kazakhstan, Kyrgyzstan, Tajikistan, and Uzbekistan.

You may not have heard of it, but this transcontinental Asian alliance has gradually gained more momentum. In 2017 it added India and Pakistan to its membership and intensified cooperation between its members on economic, energy, cultural, and security issues. At SCO's 2019 summit Pakistan's prime minister Imran Khan proposed it should “finalise arrangements for trade in local currencies” and “set up an SCO fund and SCO development bank to catalyse the trans-regional development agenda”. This would be a move to decouple trans-Asian trade from dollar dependency.

For whilst relations between the EU and the Russian Federation have never been worse, the

Chinese economy has been running business as usual. China's trade with SCO member States grew twenty-fold from 2001 to 2020.

In such a divided world, it would be good news to find out that there is actually something that brings us together.

Indeed, article 464 of China's new Civil Code which came into force on 1 January 2021 acknowledges the principle of contractual freedom between parties along the same lines as provided by both common law and civil law.

Accordingly, the parties are free to negotiate and regulate any aspect of their deals, such as the choice of the governing law (Chinese or foreign) as well as the authority overseeing possible disputes.

The parties have to commit to drafting and signing an appropriate agreement before engaging in business because if they do not, their deal will have no legal ground to stand on. But will this contractual freedom be able to coexist with a world where the conflicts seem to be more and more frequent?

Where does this leave us? War and political polarisation on the one hand, and legal globalisation on the other? How long can these trends coincide before they come into contradiction?

These will be questions that we will be forced to confront in the transnational legal community to understand if the law might really become a glue that helps to unite us.

*Maurizio Gardenal is a regular contributor to the NATO Defence College Foundation as editor of the column “Lawfare” and a member of its scientific committee. He is also an editor of the column “Observatory on international law” at “Il Sole 24 ore” and a member of the ABA and of the International Law Committee.*