

Editorial

The 5th Anniversary of Lex Portus Journal: Emerging Transnational Law of Supply Chains

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We believe it is the right time to pose and celebrate a tiny but essential fifth anniversary of Lex Portus, launched in the late fall of 2016. The journal employs the Dimond Open Access model granting OA to all published articles without charging any

publication fees, thanking the support of our founders – NGOs “Lex Portus” and “Marine association “Saint Nicholas”, and National University “Odessa Law Academy”. The journal is its contributors; thus, we are happy that we have a loyal community of authors, editors, board members, and reviewers, and we sincerely appreciate their commitment to the journal.

What does “Lex Portus” mean in terms of the concept of the journal and its aims and scope? The name “Lex Portus”, which literally reads as “the law of ports”, has been picked up for the journal after the historical document known as *lex portus Asiae*, inscribed on a monumental stele discovered at Ephesus, that dates to 62 A.D. but contains an original Roman customs law drafted in 75 B.C. (Lyte, 2007). It reflects the initial idea behind launching the journal to create a source covering a range of legal issues that arise throughout the functioning of supply chains that primarily comprise transportation (emphasizing maritime transport), taxation, customs, and border management. Indicatively, *lex portus Asiae* included the whole system of legal arrangements regarded customs duties, including locations of customs offices on land and in harbors, registration procedures, modalities of payments, and tax exemptions, thus setting up rules both for traders and then administration (Ogureau, 2012). This circumstance also makes the chosen name of the journal perfectly fitting our intention to review said problematics amid general trends of globalization and Europeanization of administrative law.

We want to reflect on the latter aspects, especially considering that we deal with the most internationally and transnationally harmonized legal orders with the most extended history. For example, some research traces modern concepts of transnational ocean governance as global commons to the notion of common goods adopted by Hugo Grotius in his *Mare Liberum* (1609), defending claims to the free seas and opposing claims on sovereignty over oceans (Schrijver, 2016). As well as a new *Lex Mercatoria*, as a product of private

transnational governance, employs some principles rooting in its medieval predecessor (Sweet, 2006). Nevertheless, the issues of trade and oceans have been going in a resembling manner through all modern governance and regulation models developments leading to the system of global legal accountability above, below, within, and without the nation-state (Martin, 2021, p. 473).

Hence, an enduring problem in this context for a long time has been an accountability. Transnational legal orders and transformation of governance mechanisms have caused several “shifts in governance” either vertical from national states upward to supranational institutions and downward to local institutions, horizontal within a public sector from legislative and executive powers to a judiciary, and from public to private sector (van Kersbergen & van Waarden, 2004). As a result, the body of administrative law has been quickly expanding both above and beyond nation-states while erecting issues of proper representation, the rule of law, and due process in rulemaking. And at this point the concept of global administrative law, as a tool providing connectedness between different transnational arenas of decision-making (Lauder, 2012), comes into play.

However, addressing those issues has proved more difficult in some regional legal orders, like functioning free trade zones within Association Agreements (AAs) between the EU and Eastern Partnership (EaP) associated states. Obligations on Europeanisation without membership have made associated states accept the hierarchical style of delegations with the EU (Austers, 2016, p. 19), including human rights and democracy suspension clauses and undertakings on approximation to EU legislation in exchange for extended market access. These clauses empower the EU to evaluate AAs’ implementation and define the ongoing trajectory of relations with associated states. In that respect, relations within AAs’ frameworks can be described as a particular “powershift” from national administrations of associated states to the EU institutions

and maintaining the latter's leading role because of such factors as 1) the extension of other party's obligations beyond DCFTA, 2) binding the access to EU market with other party's progress in the fields above DCFTA (Kormych & Zavalniuk, 2020).

In addition, the fact that many norms influencing national state governance in trade and maritime administration have been born within the legal systems of Western states has firmly tied the effectiveness of their implementation to the question whether national authorities share general principles common to said legal systems. In aggregate, the practical implementation of international standards at the national level reflects the agenda and concerns of decision makers, as well as the level of resources of an administration (Gayk et al., 2021). Otherwise, formal approach to alignment with EU legislation which distorts the very idea behind respective standards (Krill, 2021).

At this point, we should look at a completely different regulative and governance landscape emerging in the frameworks of the Chinese Belt & Road Initiative (BRI). Whereas a classical global governance concept roots in restrictions on powers of a modern national state through its obligatory participation in the interstate (international) system that develops along with the world economy (Wallerstein, 1984), the BRI processes look way distinct. First, the BRI is not necessarily concerned with market liberalization but rather with infrastructure construction and transport networks (Lee, 2018). The unconventional "infrastructure development first, institution next" approach (Zhou, 2020), turns governance developments upside down. Infrastructural and transport projects lead to a specific legal regime based on the so-called "secondary BRI legislation" consisting of a vast number of agreements aimed at implementing such projects (Wang, 2021). Thus, we can say that BRI's version of governance emphasizes utilizing a narrowed segment of the global economy, represented by supply chains, as its primary vehicle.

Besides, transaction-centered approach in expanding economic ties characterized by enhanced flexibility for both China and BRI countries (Zhou, 2020) may deliver a different solution for accountability issues, which consists in expected transition to the more relational governance than rule-based governance (Wang & Zhao, 2021). With that respect China claims that legitimization of the BRI rules comes from building trust and gaining confidence from local communities and local people (Chen, 2020). Moreover, BRI's focus on bilateral rule-making process, that expands to regional and multilateral levels for a significant extend relies on application domestically formulated and tested rules (Zhou, 2020).

Finally, unlike the Western conditional approach, focused on democratic transformations, China acts in a more pragmatic way supporting the existing institutions and political status quo (Nurgozhayeva, 2020), which in many cases creates a competitive advantage due to limiting obligations to specific projects completely justifying them by mutual benefits. However, Chinese policy is ideologically bound and said pragmatism appears mere a tool for Beijing to reform the global governance system and build a network of global partnerships with "Chinese characteristics" (Xi urges breaking new ground in major country diplomacy with Chinese characteristics, 2018). To that end, the BRI cannot be analyzed merely in the legal dimension, even if we discuss transport or trade law issues related. Instead, it is a multidisciplinary issue embracing policy, law, and economics. In aggregate, the BRI may reverse the role of law in global supply chains governance, and the issue may be formulated on how modern supply chains governance impacts a transnational law.

This editorial aims to flag some directions for future research in the field that, we think, are important both in theoretical and practical aspects. We look forward to receiving contributions on these and other topics related to the journal's scope.

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