

Some Reflections on the Address of Vice President Biden to the Verkhovna Rada of Ukraine

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The address of Joseph Biden, Vice President of the United States, to the Verkhovna Rada of Ukraine on 8 December 2015 was, so far as I am aware, the first occasion in history in which the Vice President of the United States has addressed the Ukrainian parliament in plenary session. He spoke with unusual candor in what is normally a diplomatic situation and he addressed issues that are awkward and complicated in the vast range of relations between Ukraine and the European Union and between Ukraine and the United States. His remarks were greeted with general praise in European and North American mass media, although some felt he should have been even more critical than he was.

Within the political leadership of the United States, including both major political parties in Congress and the executive branch, Ukraine has no more vigorous and eloquent a champion of Ukraine than Vice President Biden. This has been so for many years. And there can be no doubt that European and American impatience with the pace of Ukrainian economic and legal reform is intensifying. The Biden address was yet another "signal" of European and North American dissatisfaction on that score.

Nonetheless, the Ukrainian legislator who has attentively listened to and/or read the Vice Presidential address may be forgiven for asking: what precisely do the Europeans and the Americans want Ukraine to accomplish by way of economic and legal reform. Every Ukrainian is well aware, without being reminded by foreigners, that Ukraine is at a turning point in its history. That choices are required, that more changes are essential, that opportunities must be actively pursued, that improvements are desirable, that more sacrifices must be endured, and so on. But these are platitudes, however correct they may be in principle. None of them help the Ukrainian deputies determine precisely which choices, changes, opportunities, and improvements should be selected, on the basis of what criteria, in what sequence, for what purpose, or how they require to be coordinated.

The foreign relations of Ukraine have their complications, to be sure, but those complications are minor compared with the domestic relations of Ukraine. Vice President Biden doubtless reflected the European and North American sense of priorities when he singled out the following major areas of concern:

1 Corruption: corruption is as old in the human character as original sin itself, and no country is without corruption. But the Vice President did observe that in his perception what he called the "cancer of corruption" is not "prevalent" in a "single democracy" in the world. He is suggesting that in Ukraine the nature and degree of corruption is of an entirely different magnitude and he is implying that, for this reason, either Ukraine is not a normal democracy or is perhaps not a democracy at all – yet.

So far as I am aware, there has not yet emerged a branch of law called "comparative anti-corruption law". This means that the Ukrainian legislator does not have the benefit of comparative studies of the effectiveness of anti-corruption legislation. If such studies exist, they are at a very primitive level. What Ukraine can do is at least consider the adoption of standards and approaches being pursued in other countries to a greater degree than is being done. Whether these approaches would be effective under Ukrainian circumstances, or indeed whether they are effective in the countries which originated them, is another matter.

There has been an international and a transnational campaign against corruption underway for several years. At the international level this campaign has been reflected in the adoption of international treaties on the subject and in the adoption of national legislation strengthening the accountability of State officials,

including parliamentarians, for their financial status and assets, reducing tax evasion, strengthening criminal penalties for bribery, money laundering, and other economic crimes, and placing greater emphasis on enforcement. This legislation has greatly complicated the economic life of natural and juridical persons; whether there has been any material reduction of corruption no one seems to be able to prove by empirical evidence, although no doubt the legislation has strengthened the struggle against organized crime.

But there is another factor, the most challenging of all. What is characterized as "corruption" in Ukraine may in some measure actually be a collective human response to the rigidity and irrationality of legal structures in Ukraine that are part of the legacy of what I call the "Soviet legal mentality", or the "legal mentality of a Planned Economy". Ukrainians have been adept at making a system operate which is systemically flawed. Western jurists and politicians have never believed there was a legal system in Soviet Ukraine – simply repeal normative legal acts of the Soviet era and restore what used to exist is their simple and misguided advice to the Ukrainian legislator. For all his faults, the Ukrainian legislator knows that approach is impossible and would lead to absolute chaos. Europe and North America are impatient with the pace of change in Ukraine partly because they have no understanding of Ukrainian legal realities and contexts. And Ukrainians must cope with the economic realities: the hryvna is worth one-third today in foreign exchange of a year or so ago; budgetary cuts are reducing salaries and leading to staff reductions, closure of institutions, insolvencies, price inflation, and so on. One human instinct under such circumstances is to accept "gratuities" or to find other ways to survive, including on a systemic basis. The "financial discipline" that attends coping with economic crisis paradoxically encourages elements of corruption as people strive to cope with straightened economic conditions.

2 Procuracy: Ukraine adopted a new Law on the Procuracy in 2014. This was in fact a major event in Ukrainian law reform, although it has gone unnoticed in Europe and North America. The appointment of a Procurator General will offer leadership to the Procuracy but will not in and of itself resolve any other problems facing Ukraine. If the analysis of Vice President Biden is correct, the European and North American countries expect the Procurator General to aggressively investigate and prosecute senior Ukrainian politicians and oligarchs, and these countries further assume that such investigations will produce evidence that meets the standards of the Code of Criminal Procedure of Ukraine for a conviction. Whether that is either politically or legally realistic remains to be seen.

3 Conflicts of interest: For Vice President Biden, this is a crucial concern. He said that "senior elected officials have to remove all conflicts between their business interests and their government responsibilities. Every other democracy in the world – that system pertains". This is both an understatement and an overstatement. First, conflicts of interest need to be removed between all State officials, whether elected or appointed, irrespective of the level of their employment by the State. That addresses the understatement. Second, other democracies in the world are not uniform in their approach to conflicts of interest – alas. That is the overstatement.

But the Ukrainian legal system makes it difficult to achieve the full elimination of conflicts of interest because it is inherently flawed – the Ukrainian legal system lacks the Anglo-American trust that European and North American politicians correctly use to

minimize conflicts of interest and comply with strict regulations on this question. The Civil Code of Ukraine contains only the anemic concept of "management of property" (Chapter 70, Civil Code). If the Anglo-American concept of trust is deemed to be incompatible with Ukrainian concepts of civil law, the appropriate step would be to allow such trusts to be created under English or New York law pursuant to the Law of Ukraine on Private International Law by adjusting the applicable law and conflicts of law provisions. The Verkhovna Rada might consider establishing a general trust for all deputies in order to reduce legal expenses and address the issue.

4 International financial discipline: Ukraine has accepted financial assistance from the International Monetary Fund and will no doubt continue to do so as proves to be necessary. The reforms and internal financial discipline required to satisfy the conditions of these loans are formidable and painful, especially for the ordinary citizen of Ukraine. I can recall the impact on England in the early 1970s when such loans were essential to the survival of the economy and required draconian domestic economic measures. The financial discipline was successful on that occasion, but no Ukrainian citizen should be under any illusions about what lies ahead.

5 Ukrainian peculiarities: the Ukrainian political system is not a two-party system and the Ukrainian electorate is not a two-party electorate. For better or for worse, the Ukrainian political system is a "fractionalized

system" and comprises many political constellations, only some of which are represented in the Verkhovna Rada. This is a political reality that cannot fail to reflect the pace of change and direction of change in Ukraine – or lack thereof. And this is the ultimate source of European and North American frustration with Ukraine.

We Europeans and Americans literally cannot understand why under crisis conditions Ukrainians are reluctant to coalesce for the purposes of their joint survival, to find common ground in order to do what is essential. If not to unite, then at least to create the coalitions that enable the changes to be made. Some would say this explains why Ukraine is willing, after a quarter century of real, actual independence – an objective which Ukrainians have sought for centuries –, to surrender this independence by becoming part of the European Union and to make the necessary accommodations in order to achieve integration within another community. Perhaps Ukrainians, in this view, understand they cannot survive as an integral polity by reason of their own internal political rivalries and diversity. If this is correct, then the European and North American hopes and expectations that Ukraine will find itself and embark a path to a Ukrainian future is misplaced.

More likely is the explanation that Europeans and North Americans do not begin to understand Ukrainian domestic politics and underestimate how formidable a challenge the creation of coalitions is or the formation of consensus has proved to be. Patience, in this view, is what Europeans and North Americans must display in the interests of a cohesive and tenable result.

Patience, of course, also has its limits. The remarks of Vice President Biden contained both a profound expression of confidence in the statesmanship of the Ukrainian legislator and a strong dosage of impatience with the processes themselves.

Нагальність оптимального міжнародно-правового врегулювання глобальних біоетичних проблем сучасності*

Обрана автором рецензованої монографії тема наукового дослідження не тільки залишається конче важливою для суспільства, а й набуває дедалі більшої актуальності, бо коло глобальних біоетичних викликів та загроз невпинно зростає і потребує від міжнародної спільноти високого ступеня пильності й постійних пошуків нових радикальних шляхів для розв'язання цих проблем, вжиття оперативних і радикальних заходів для їх профілактики та подолання. А від міжнародної юридичної науки варто зажадати належних правових механізмів і профілактичних правових засобів для захисту фізичної та психічної цілісності людського генофонду, а також для максимального збереження його органічного середовища.



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Автор розглянув важливі біоетичні проблеми, які ні не набули глобального значення. Їх не тільки ґрунтовно досліджено, а й щодо кожної з них (із урахуванням особливостей та специфіки) зроблено висновки та введено конкретні пропозиції з правового врегулювання на міжнародному, регіональному, міжрегіональному та національних рівнях і запропоновано практикозастосовні механізми реалізації. Крім того, у книжці міститься чимало новацій загального характеру, які стосуються міжнародної біоетико-правової науки в цілому.

У роботі сформульовано чимало авторських дефініцій, представлено наукові аргументації формування нової пріоритетної для сучасного людства правової галузі – міжнародного біоетичного права й виокремлено її правові інститути.

Слушним вбачається підхід автора до запровадження безумовної біоетичної відповідальності за шкоду, заподіяну біологічній, генетичній, психічній цілісності людей результатами наукової та господарської діяльності. Автор наголошує на необхідності на планетарному рівні створити глобальний спеціалізований біоетичний судовий орган – універсальний Міжнародний біоетичний суд, а також ухвалити такі універсальні кодифіковані нормативно-пра-