

Game with No Rules: “Legal Imperialism” against Russia

Part I

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The term legal imperialism was coined in relation to the Argentina’s public debt. A New York court admitted a number of private claims to hand down a verdict. By a stroke of hand a judge increased the country’s debt up to \$120 billion, according to experts’ estimates. The essence of legal imperialism is the support rendered by Anglo-Saxon legal system to financial vultures.

Financial vultures vs. Argentina under the cover of American Themis

It all started in 2001. Argentina had to declare a sovereign default on around \$130 billion. It was the biggest default on sovereign debt in history. The talks on restructuring started. As a result, the lenders agreed to write off the bulk of it (75%) and alter the conditions for paying off the rest. Some bondholders in possession of around \$4 billion of Argentinian bonds refused to comply with the agreements’ terms. This included a small group of hedge funds holding over \$1, 3 billion bonds headed by Elliott Management Corp. of billionaire Paul Singer. The hedge funds had already obtained the reputation of financial vultures. They acquired the bonds of the states that were on the verge of sovereign default or the ones already in default and then demanded 100% payments refusing to accept any compromises.

The audacity is supported by the fact that they normally win the trials demanding 100% payments on the bonds. The vultures went to the New York court to sue Argentina for the whole amount without restructuring. In October 2012 the United States Court of Appeals for the Second Circuit (New York) ruled on the pari passu clause that required they receive full payment. Moreover it forbade Argentina to pay off its restructured debts till it complies with the court’s decision. It was an uphill struggle for Argentina as it realized that other lenders would demand full payments too. The country was a hostage because its bonds were issued in compliance with the laws of the state of New York. According to the court’s decision, Argentina faced the June 31, 2014 deadline when it was supposed to pay the next installment of interest to all bondholders. No settlement had been reached so the leading rating agencies greatly lowered the country’s investment rating. The regular payments by Argentina to comply with the conditions of restructured debt were blocked by the court’s ruling. Argentina refuses to comply while the fines keep on growing each passing day...

Yukos case – first large-scale operation conducted by legal imperialism against Russia

The decision handed down by the Hague-based International Arbitration Court in the Russian oil giant Yukos case upon the claim of foreign shareholders is the example of how the legal imperialism works. Yukos ceased to exist as a legal entity in November 2007. For many

years it avoided paying taxes. The taxes debts were to be paid in accordance with the court's decision taken ten years ago. The company failed to comply. The bigger part of Yukos assets went to Russian oil producer Rosneft. Yukos foreign shareholders were disgruntled and went to courts abroad. Finally the claims were consolidated and sent to the Hague International Court. Initially the claimed sum was \$114 billion (much more than the Yukos assets at the time of company's liquidation). The Court let the claims be suspended, it was waiting for something. Finally it got what it was expecting. The West imposed sanctions against Russia in the spring of 2014. The court went back to the Yukos case and made public its verdict: Russia was to pay investors of the now non-existent company \$50 billion – the largest compensation ever paid to shareholders upon an international arbitrary tribunal. According to the Court's decision, Russia allegedly violated the Energy Charter Treaty and expropriated the company taking it from legal owners. A peculiar ruling in view that Russia never ratified the Charter. It is even more peculiar that the acquisition of the Yukos assets by another company is called «expropriation». In fact the verdict was an informal way of imposing sanctions by the West against Russia or the legal imperialism in force. As they say Russia was «put on the counter». After the ruling was announced Russia was given 180 days to comply. It did not. From January 15, the deadline set by the Court in the Hague for Russia to pay its fine, the fine will attract interest equal to the yield on a 10-year US Treasury bond. On January 15 the rate measured 1.91 percent. It means that the first year the sum of the debt will increase to \$956, 6 million. That's why over one billion dollars will surely be added to the \$50 billion in 2015.

The Hague Court ruling: what does it mean for Russia?

The appeals made by Russian lawyers brought about no result. The Hague Court's decision was not taken into account in the 2015 budget. The opposite side is very active. Right after the Court's decision the former Yukos shareholders were involved in interesting activities – they started to look for Russian assets to be used to pay the debt. Russia's state foreign assets could be confiscated. The Rosneft assets are to be arrested first, other companies with state participation (VTB, Gazprom, Aeroflot, VAB etc.) second and state agencies third. Embassies have immunity unlike ships visiting foreign ports.

Nobody cares about the fact that there are few companies with 100% state participation. There are non-state minority shareholders and the expropriation of companies' assets would constitute a violation of their property rights. This is a classic game without rules. Actually there is one – punish Russia at any cost.

Legal imperialism as effective informal sanction against Russia

There have been three packages of sanctions introduced against Russia. Experts believe that the fourth will also come into effect. I don't think so. The matter is – informal sanctions are more effective. There will be new claims to Russia, its companies and banks. Russian individuals and legal entities will be blacklisted; Western courts will hand down decisions on expropriating their foreign assets. The «case of Rotenberg» will be repeated. In the spring of 2014 Russian entrepreneur Arkady Rotenberg was blacklisted during the first wave of sanctions. In September Italian courts handed down a decision to arrest and confiscate his €30m assets. The March sanctions envisioned a ban on entering the territories of the countries that imposed sanctions and seizing the bank accounts of blacklisted persons. In the case of Rotenberg they took away his real estate that had no relation to business. I emphasize it to show that legal imperialism is a war without rules waged to satisfy the

desire to plunder. In general, that's how the algorithm of legal marauding works:

- 1) A Western vulture chooses an asset that belongs to a Russian legal entity of individual;
- 2) The vulture makes the Russian owner blacklisted;
- 3) A Western court hands down a decision to seize the asset;
- 4) The court's decision is carried out; the asset becomes the property of the vulture.

Black lists as an instrument of legal imperialism

There are different grounds for being included into black lists: «suspicion of corruption involvement», «complicity in the annexation of Crimea and aggression against Ukraine», «the violation of human rights», «ties with terrorists» etc. The US has already introduced special laws, for instance, «the Magnitsky Act» allowing making lists of those who had connection to the death of lawyer Sergey Magnitsky. The lawyer represented the investment advisory firm Hermitage Capital Management. In 2008 he was arrested accused of few billion roubles tax evasion. He died in a prison cell. The West made him a martyr and responded with black lists.

Not the United States is mulling a possibility to turn the Magnitsky Act into a universal instrument of fighting Russia under the banner of defending human rights. It is planned to include into the list not only those who did anything wrong to Magnitsky, but also Alexey Navalny and his associates in «the struggle against totalitarianism». Washington wants to kill two birds with one stone: a) to exert political pressure on Russia; b) to reap benefit by seizing the assets of the persons included into the black lists (the Magnitsky Act envisions a ban on entry into the country and arrest of bank accounts). They want to get more out of it. It is considered to go beyond seizing the bank accounts but also spread the sanctions on bonds and equity.

(To be continued)

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