Prof., Dr. Farkhad Karagussov,
chief researcher at the Scientific and Research Institute of Private Law
of Caspian University (Almaty, Kazakhstan),
associate member of the International Academy of Comparative Law
(ORCID ID: 0000-0002-9905-0811)

About the Law of Open Societies
(In memoriam Professor Jürgen Basedow)

1. In 2024 the centenary of the International Academy of Comparative Law / *l'Academie international de droit compare* (the "Academy" or "IACL") was commemorated.

As it is indicated on its official web-site, the Academy "was founded in The Hague (The Netherlands) on 13 September 1924", and its creation coincided "with the prodigious legal renaissance movement that followed the end of the World War I".[1]

It has been specifically emphasized that the location of the Academy, where the Permanent Court of International Justice and the Academy of International Law had already operated at that time, was chosen as a kind of "reaffirmation of the idea that The Hague was a symbol of protection of peace through law".

On the Academy's website it is also mentioned that the Academy is an organization of scholars focused on comparative study of legal systems. The Academy's main role has been formulated as to stimulate research in the field of comparative law throughout the World being interested in and promoting comparative legal research in all legal disciplines. It has been also accentuated that the Academy is engaged in the universal dissemination of the results of its research (through publications), which examine all legal orders and all legal systems of the Globe.

The Fifth Thematic Congress of Comparative Law, which took place on 15 and 16 November of 2024 in Paris at the Sorbonne School of Law / *École de Droit de la Sorbonne*, was dedicated to the centenary anniversary of the Academy. The program of the Congress included discussions of the history of comparative law, a current state of and prospects for teaching comparative law, as well as the future of comparative law.[2]

As it follows from the Congress's program, during its first plenary session a tribute was paid to Professor Jürgen Basedow who has to be named among outstanding legal scholars of modern time as a great researcher in the fields of private international law and comparative law studies as well as a recognized

---

[1] International Academy of Comparative Law: History. Official web-site of the IACL: https://aidc-iacl.org/en/lacademie/presentation/.

[2] Centennial of the IACL and 5th Thematic Congress: on the Theme of Comparative Law (programme). Official web-site of the IACL: https://aidc-iacl.org/wp-content/uploads/2024/11/Programme-2024-11-08-1-vert.pdf

contributor to the development of private international law instrumentalities and practice. [3]

During so remarkable and fruitful eight years, from 2006 to 2014, Professor Basedow was the General Secretary of the Academy. But in April 2023 he passed away, unexpectedly and suddenly …

On the official website of the Academy his name is listed among those four people who served as Secretaries General of the Academy in the past, and whose names have been perceived throughout the World as synonymous with the success that the Academy has achieved to date.

2. Professor Jürgen Basedow has become a very special person for me, the one who has played a significant role in my life and continues to be a bright pattern for me of how to fulfill professional duties, appropriately engaged in scientific research and development of legal practice, a perfect model of a person of high morality and culture, education and broad outlook, honesty, human dignity and generosity.

I knew about him in 2000 reading books concerning harmonization and unification of law. That period the Interparliamentary Assembly of the Commonwealth of Independent States ("CIS"), which is an organization of new sovereign States emerged in result of the collapse Soviet Union, was very active in developing model laws promoting a convergence of national legislation of former soviet republics. I also participated in that process of drafting model laws on securities market, insolvency of banks, joint-stock companies. What was interesting is that none of the model laws (except for the CIS Model Civil Code) has been serving as a real source of legal construction, or even inspiration, for making national laws. I was thinking why it is so, and I am proposing my view on this matter in this article below.

Thus, my first, at that time still not in person, acquaintance with Professor Basedow occurred when I was studying results of the collective efforts of legal scholars in Western Europe purported to create theoretical foundations of a European Civil Code. And I noticed repeated references to some important theoretical conclusions of Professor Basedow and his proposals for practical solutions to the problems discussed.

For example, some authors referred to his views that, in creating a European private law as a new *jus commune* (which, as it was assumed, could be achieved through full or partial codification in the style of continental Europe), experience of Germany and The Netherlands (where the theory of European private law at that time was especially developed) should be taken into account, and also that it is advisable to develop norms of the European private law in all aspects where the law allows for the autonomy of persons of civil legal relations.[4]

---

[3] Prof. Dr. Dr. h.c. mult. Jürgen Basedow, LL.M. (Harvard Univ.) (1949-2023). The web-site of the Max Plank Institute (Hamburg, Germany): https://www.mpipriv.de/1075943/juergen-basedow

[4] Towards a European Civil Code. Hartkamp, Hesselink, Hondius and others, Eds. Second Revised and Expanded Edition. Ars Aequi Libri and Kluwer Law International, 1998. – 652 p. P. 42 – 43, 46.

In addition, his respected colleagues specifically mentioned Professor Basedow's proposal concerning preferable introduction of a European contract law by either adopting mostly recommendatory provisions or through a formation of a such regulation which for a certain period of time would not replace national legislation but which would allow contracting parties to choose respective provisions to framework their private contractual relationships as an enforceable alternative to an applicable national legislation.[5]

It appears to be that the approach proposed by Professor Basedow was adopted in developing the document created by efforts of many representatives of the academic communities of the European Union Member-States, namely the "Principles, Definitions and Model Rules of European Private Law. Draft Common Frame of Reference" ("DCFR"). [6]

As Professors Cristian von Bar, Eric Clive and Paul Varul noted in the Preface to the Russian edition of the DCFR, those model rules represent primarily a comparative-law text, a source of inspiration for the modernization of national legislation and a set of means for improving law-making, but the rules can also be perceived as an optional instrument for regulating specific civil law relations allowing parties to such relations to choose the DCFR norms as a source of regulation of legal relations in which they participate;[7] (and, by the way, the concept of an optional instrument as a technique of private regulation of cross-border relations is explained in detail by Professor Basedow in his General Course of International Private Law).[8]

The idea of the CIS model laws was declared a kind of similar in terms of creating a source of reference to develop national laws. But two reasons I see to explain why it has remained (to my mind) not successful in achieving this goal.

First, is that the CIS has not become a really strong unity of countries each of which would share similar vision and interests: significant (I would even say, essential) domination of one country does not promote sincere desire to implement concepts which are not close to national interests of other Member States; and in such circumstances national legislators could be somehow influenced to maintain their national laws within the obvious policy of the dominating State. It relates to both cases, when a model law is developed under the strong influence of one Member State (like the Model Civil Code or the 2001 Model law on Securities Market; though having different results, *i.e.* from full reception of the model in first case or ignoring it in the second example), and when a model law is drafted based on legal concepts and experience of the

---

5 *Ibidem.* P. 47 - 48.

6 Principles, Definitions and Model Rules of European Private Law: Draft Common Frame of Reference (DCFR). Outline edition. Christian von Bar, Eric Clive, Hans Schulte-Nolke, Paul Varul and others, Eds. Sellier. European Law Publishers, 2009. - 642 p.

7 Модельные правила европейского частного права. Пер. с англ. Науч. ред. Н.Ю. Рассказова. М.: Статут, 2013. – 989 с. С. 17 – 47.

8 Базедов Ю. Право открытых обществ – частное и государственное регулирование международных отношений: общий курс международного частного права. Пер. с англ. Ю.М. Юмашева. М.: Норма, 2016. – 384 с. – С. 159 -171.

developed World (like the second version of the 2010 Model law on Joint-Stock Companies, also remained with no real interest of the CIS countries' national jurisdictions).

Secondly, the luck of true dedication to the idea of legal harmonization on both levels – the CIS and separate national jurisdictions off its Member States (likely, with the one obvious exception), is also noticeable. In such situation, the CIS model laws have been neither source of reference for national legislators, nor (especially) an optional instrument to regulate property and non-property relations between private persons.

Nevertheless, the CIS has still retained its significance because a body of acting international treaties between its Member States has been created prevailing their national legislation in certain matters of inter-state relations and, moreover, and these days it is even expanding.[9]

3. Later, I was blessed to meet Professor Jürgen Basedow in person during the conference on legal implants which took place in Tbilisi in 2012. I made my presentation and participated in a scientific discussion with him on the topic. Moreover, I have got the honor of being nominated as a member of the Academy by Professor Basedow and in June 2013 receiving from him (then the Secretary General of the Academy) an official letter with the notice of me been elected as an associate member of the IACL.[10]

During 10 years until early 2023 I was in occasional contacts with Professor Basedow, met with him in person at the international conference on the private autonomy held in Tbilisi in November 2018 and, the most importantly, we worked quite closely in preparation of my contribution to the four-volume Encyclopedia of Private International Law, published under his editorship in 2017 by Edward Elgar Publishing Ltd.[11]

That excellent publication of the Encyclopedia prepared with participation of dozens of legal scholars from around the World under the leadership of Professor Basedow was carried out with the aim of improving the availability of information on private international law ("PIL") and presents this field of knowledge (which once more than a century remained only one of the academic disciplines) from a global and comparative-law perspectives. In addition, the important purpose that the publication of the Encyclopedia has been supposed to achieve (and, no doubt, it did) has been also a stimulation of more comparative

---

[9] For example, the media published a report that on 28 April 2025, the President of Kazakhstan Kasym-Jomart Tokayev signed the Law of the Republic of Kazakhstan "On Ratification of the [CIS] Agreement on Free Trade in Services, Establishment, Activities and Investments" (see: Московчук А. Казахстан ратифицировал Соглашение о свободной торговле услугами со странами СНГ: a mass media Internet site https://www.zakon.kz/politika/6475597-kazakhstan-ratifitsiroval-soglashenie-o-svobodnoy-torgovle-uslugami-so-stranami-sng.html [03 June 2025]).

[10] Membership Directory. Official web-site of the IACL: https://aidc-iacl.org/en/membres/annuaire/

[11] The Encyclopedia of Private International Law (2017), Edward Elgar's web-site https://www.e-elgar.com/shop/gbp/encyclopedia-of-private-international-law-9781782547228.html?srsltid=AfmBOooZu6_m7F4Pzum-iD04Npc5xxTy61a3OAwvPuQs-78GweMtOP31 .

and functional discussions of issues of private international law as such, as well as the formation of a basis for future research. [12]

These days, colleagues and co-editors of Professor Basedow dedicate their time and efforts to update the Encyclopedia and make publication of its second edition possible quite soon. And I have been honored be offered to submit updated version of my contribution to the Encyclopedia.

4. The intellectual and, I would say, ethical or moral heritage of Professor Jürgen Basedow includes his ideas and concepts expressed in a huge number of books and other publications dedicated to PIL and comparative law studies. His monograph on private law of the European Union ("EU") seems to be one of the most important of them. In the preface to the monograph he emphasizes that this book delves into the EU private law specifically, and not into European private law in a broader sense; it focuses on the impact of the EU legislation on private law.[13] In that book he summarized, refined and completed his numerous studies previously published by him over the period since the late 1980s.

Taking into account the fact that all areas of private law are now increasingly governed by a body of norm of both a national law and the European Union law, the aforementioned monograph is not focused on any particular area of private law and is not structured according to its (*i.e.* the law) traditional concepts and institutions. Professor Basedow explained that with that book he wished to create a counterbalance to the growing specialization of law and lawyers reflected in many publications on private law of the European Union, which he considered harmful to the consistency of the legal system (and I share the same concern because it does not seem reasonable to attempting to justify existence or emergence of a special branch or sub-branch of law for some set of legal norms that are not distinguished by a separate method of regulation and specific social relations as an object of regulation).

In connection with that, Professor Basedow drew our attention to the fact that he focused to analyze precisely foundations of private law of the European Union, general principles enshrined in the EU legislation and reflected in the practice of the European Court, as well as the related procedural and methodological framework, that is, the external manifestations of the EU private law.

It is noteworthy that Professor Basedow unconditionally believed in the value and prospects of the European Union as a growing legal order.

The main motivation for his research was his conviction in the objectivity of the existence of a world of horizontal relations outside (although not independent of) vertical relations governed by the legal institutions of States and supranational entities. According to Professor Basedow, this world of social connections and changes has been based on existence of and driven by private

---

[12] Encyclopedia of Private International Law. 4 volumes. Basedow, Rühl, Ferrari and Asensio. UK: Edward Elgar Publishing Limited, 2017. Volume 1, p. vi.

[13] Basedow. EU Private Law: Anatomy of a Growing Legal Order. INTERSENTIA, 2021. 785 p.

initiatives and pursuit to realize private interests, and from a time immemorial this system of private relationships has been ensured by relevant legal regulation and public services the way that justice expected by people was achieved through harmonizing norms of private law with the fundamental orientation of the respective State.

This conclusion seems to be very important to understand in our countries which are member States of the Eurasian Economic Union ("EAEU").

Before the EAEU was created by Russia, Belarus and Kazakhstan in 2014, the Eurasian Economic Community ("EurAsEC") was functioning, and in 2013 the idea of developing of the EurAsES's Basics of Civil Legislation or even Civil Code was proposed by one of the member States.

I was a member of the interstate working group together with my teacher Professor Maidan Suleimenov and some of my colleagues. By that time, countries which participated in the EurAsES were developing a bit differently (sometimes in different directions), and in contrast to our colleagues from other EurAsEC member States we strongly opposed the idea of a supranational Civil Code. Later we also opposed the idea of a supranational Basics of Civil Law in the EurAsEC. The reason was that we did not share with Russian scholars some conceptual approaches to regulate corporations and corporate relations, civil law transactions and some other important issues.

The discussion ended with the transformation of the EurAsEC into the functioning nowadays EAEU. And now I can also say that our conceptual disagreement was based on our intuitive feeling (which now we can express in words using conclusions of Professor Basedow) that in all those efforts to create a supranational framework for civil relations in EurAsEC (and it appears to be also true in the EAEU) existence of horizontal relations has been neglected in many cases, but more reliance has been made to the vertical power and communication. This factor makes to think that the EAEU could have been created with the purpose which is a bit different from the declared purpose of it to function as an international organization of regional economic integration only.

5. Professor Basedow did not back down from his belief in the prospects of cooperation and interaction between people and a State based on reason and virtue, the need of taking into account objectivity of human nature and importance of forming such circumstances under which private and public interests would be coordinated and balanced. Based on this, the best (if not the only) prospect for the preservation and further progress of humanity, he put forward and justified "the cross-cutting idea of his research - the transformation of the State into an open society with the free movement of persons, goods, services, capital, information and, as a consequence, formation, along with the State, of private

regulation of cross-border relations with the participation of individuals and commercial companies".[14]

At the same time, Professor Basedow argued that "the current stage of development of modern history differs from previous ones in the sense that modern States can be called "open" not only as a matter of fact. Their openness also includes normative content, which is a characteristic of the perception of the inner essence of many concepts of international and constitutional law formed on the basis of the sad experience of the social existence of mankind in the first half of the twentieth century, from the one hand, and new directions in the development of political philosophy, on the other hand. This state of openness has reflected in the tangible changes that PIL has undergone over the past 50 – 60 years". Professor Basedow concluded that "in such circumstances, PIL becomes subject to a legal analysis of cross-border exchanges and contacts which are becoming increasingly intense. Consideration of this general topic serves as a kind of leitmotif of this work".[15]

Taking into account this transformation, Professor Basedow proposed (in essence, he justified) the advisability of treating PIL no longer as a simple method of choosing law (in its traditionally narrow understanding), but precisely as the law of an open society which "could be described as the key which would help national private law relations to be universally implemented in a world divided into many jurisdictions".[16] This idea (convincingly substantiated by him within the framework of the course on international private law, which he taught in 2012 at the Hague Academy of International Law and published in Russian in 2016 in the form of the referenced publication) is fully consistent with the goal of ensuring or achieving peace through law.

I fully share the idea of the outstanding Dutch historian and culturologist Johan Huizinga, he proposed in 1935, that cultivation and preservation of an international feeling as a high ideal can serve as the basis for an ethic in which the contradiction between collectivism and individualism will disappear, and it can help to save the World and civilization. He specified that such term ("an international feeling") by these words itself implies the preservation of nationalities, but nationalities that are capable of getting along with each other and not making a disagreement into disagreements / conflicts.[17]

In connection with that, and in the context of this topic of the law of open societies, I believe, that development of the international feeling should be based on true equality where stronger States would realize their responsibility for preservation and protection of such spirit and state of true internationality and

---

[14] Базедов Ю. Право открытых обществ – частное и государственное регулирование международных отношений: общий курс международного частного права. Пер. с англ. Ю.М. Юмашева. М.: Норма, 2016 г. – 384 с. С. 11.

[15] *Ibidem.* P. 13 -14.

[16] *Ibidem.* P. 12.

[17] Хёйзинга Й. *Тени завтрашнего дня*. Хёйзинга Й. Осень средневековья. Homo Ludens. Эссе. Перевод с нидерл. Д.В. Сильвестрова. – М.: КоЛибри, Азбука-Аттикус, 2019. – 1232 с. С. 867.

never impose their culture destroying other cultures (especially of weaker nations). Such ethical imperative seems to be crucial to promote equality of all States wishing to transform into the open society. And in such case PIL can offer reasonable and effective instrumentalities.

6. Here we should pay attention to the conclusion of Professor Basedow that at some point "the illusory of separating conflict of law rules from the legal policy of national legislators became clear. PIL has increasingly come to be seen as one of the instruments of foreign policy. Unilateralism begins to prevail over bilateralism in relations".[18]

It seems that the development of this trend is largely based on the subjective attitude of irresponsible rulers / governors to history and reality, and it does not consider the above-mentioned objective circumstances formulated by Professor Basedow regarding the coexistence of a sphere of horizontal connections and an area of implementation of vertical connections. As well as it neglects the advisability of a reasonable balance in the interaction of these two areas.

Modern wars waged against sovereign States and other similar events occurring in the World clearly show that the transformation of a modern State into an open society can be slowed down, stopped and even reversed by the subjectivity of political arbitrariness, imposition, with the help of brute military force and other resources, of ideologies that were developed without taking into account the objectively shaped picture of the World and that are marginal from the point of view of civilizational development.

At the same time, it is the objectivity of the circumstances noted by Professor Basedow that allows us to assert that the development of open societies (and, accordingly, the law of open societies) is the only alternative to archaism, degradation and dead-end path of development of humanity. It is this objectivity that gives reason to believe that good always triumphs over evil.

The problem, however, is that any effective mechanisms must be created both to accelerate such a victory of civilization with a long-term sustainable effect over, the almost absolute, evil of terrorism and the destruction of communities and cultures, and to prevent such deviations from the path of preservation and progress of human civilization. The existence of such mechanisms will make it possible to fairly reasonably answer the question (as well as assume some time frame) about how soon this victory will come, whether good will win at all, and if this victory is predicted, then when it will happen.

Continuing intellectual work on the search for and development of such mechanisms is a task not only for philosophers and politicians, but also for lawyers (and in their interaction). Effective tools are needed to achieve and maintain trust at all levels of social relations and ensure reasonable and conscientious behavior.

---

[18] Базедов Ю. Цит. соч. С. 8.

At the moment, most of these mechanisms require only the consciousness and good will of people (which at his time and in the vast majority of cases are stimulated only by economic factors). Moreover, philosophy, science and history show that behavior and cooperation between people and their communities based on repression and aggression do not contribute to the sustainability of civilized development of both individuals and human society as a whole.

The scientific heritage of Professor Jürgen Basedow serves as a fertile soil for mental and practical activity in the field of development of law, legal doctrine and legal culture.

3 June, 2025