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CONTENTS

EDITORIAL

Dear Readers,

According to Decree of the President of the Russian Federation No 642 dated 01.12.2016 "On the Strategy of Scientific and Technological Development of the Russian Federation", great challenges create significant risks for the society, economy, and public administration system. At the same time, they play an important role for the emergence of new opportunities for scientific and technological development of the Russian Federation.

When the scale and complexity of the problems become too serious, the applicable mechanisms of legal regulation cannot resolve them. The last 2 years have given us a lot of examples. The global spread of COVID-19 and other threats to normal life have revealed the necessity for a rapid response of States and their authorities to great internal and external challenges, including the growing threats of global pandemics, the increase of risks of new infections and return of disappeared ones; the increase in anthropogenic pressures on the environment; a qualitative change in the nature of global and local energy systems; new external threats to national security caused by increased international competition and conflicts, global and regional instability. Overcoming these and many other obstacles constitutes the purpose of improvement of the legal regulation.

Foreign countries and the Russian Federation solve, at first glance, the same problems in different ways, taking into account their own law enforcement experience and the national peculiarities of their legal systems. Thus, it is necessary to look at great challenges from the point of view of representatives of other jurisdictions.

The Issue of the Journal includes researches carried out by experienced lawyers and scientists from various States. The involvement of a large number of authors in Kutafin Law Review allows us to consider different opinions on the resolution of theoretical and practical problems.

This Issue includes scientific and research articles, the review of scientific events, comments and notes, and book reviews. Most of the authors paid special attention to the problems of various areas of National and International Law. It also includes papers devoted to the study of the

features of the development of integration associations, the international legal regulations in the field of environmental protection, the role of small States in integration projects in the Eurasian space, the legal regulation of technologies of artificial intelligence and robotics, integration processes within the Eurasian Economic Union.

These research papers constitute an important stage for the researches of law in the face of great challenges. The results of the studies could stimulate the development of different sides of legal systems of the other modern States, international organizations and international integration associations.

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RESEARCH ARTICLES

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Evolution of the International Forest Regulation

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Abstract: In 2019, the World came face to face with the unprecedented challenges of the COVID-19 pandemic. While the immediate global priority has become to tackle the global public health emergency, the long-term response must also address the underlying causes of such a pandemic. Degradation and loss of forests is one of such contributing factors disrupting nature's balance and increasing the risk and exposure of people to zoonotic diseases. Worldwide deforestation and forest degradation are continuing at alarming rates. The underlying causes of deforestation and forest degradation include the lack of good governance at both international and national levels, the undervaluation of forest products and ecosystem services and the inadequate cross-sectoral policies (e.g. policies that encourage the conversion of forestland to other uses). In order to overcome these major obstacles in combating deforestation and forest degradation it is important to provide for forest-related policy consistency and for effective policy coordination. Up until now, although in general the need for consistency and coordination has been recognized, the extent to which various environmental regimes interact concerning forest regulation and/or may be in conflict with one another remains underexploited. In order in a later step of the research to investigate the interactions and identify conflicts, gaps and synergies with regards to forest regulation, this current article sets the background and investigates the forest regulation under the international environmental

law. The challenge for such investigation lies in the fragmentation of the international forest regulation: instead of a basis in a single convention or a protocol, provisions related to forests are scattered through the pieces of hard, soft and private international law. The objective of the current article is to grasp the overall scope of the international forest-related instruments and their evolution under various environmental regimes. The main methodology employed throughout the research is desktop research and legal analysis. In a chronological order the article investigates the evolution of the international forest regulation and reveals its current highly fragmented state.

Following the introduction is the essential scientific background for the purpose of the legal research: a brief explanation of what constitutes "forests", an overview of forests resources worldwide and of the current alarming rates of forests decline. In the following, the article looks at the evolution of the topic of forests in the international agenda from their first appearance up until today. For the purpose of the research three developmental stages in the evolution of the forest regulation at the international level are distinguished: the Foundational Period (i.e. before 1990) — when the scientific consensus about global deforestation and forest degradation developed and transformed from a scientific into a policy issue; the Fragmentation Period (from 1990 until 2011) — when forests entered the UN environmental agenda and gained attention as a stand-alone topic and the United Nations Forum on Forests (UNFF) was established; and the Pre-Constitutional Period (from 2011 — onwards) — when negotiations on the Legally Binding Agreement (LBA) on forests in Europe are taking place. Finally, the conclusions bring the findings of the article together and provide the ground for subsequent legal research.

Keywords: forests, deforestation and forest degradation, international forest regulation, interntaional forest law and policy, international forest convention, legally binding agreement on forests, fragmentation, environmental law

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Contents

I. Introduction

Deforestation and forest degradation amount to a global environmental problem that has long accompanied population growth and development throughout the world. There have been several attempts to address the problem and to provide for a comprehensive international forest regime based on a single legally binding instrument, although unsuccessfully. As a result, today the "international forest regime"[1] is

[1] Please note that there is an ongoing controversy among legal scholars as to whether a global forest regime currently exists in the absence of a legally binding comprehensive agreement covering this issue area. Some legal scholars (Abanina, 2013) argue that at present it is "…yet too early to assign international forestry law as a separate branch of law." Others (e.g. F. Lesniewska, 2015) refer specifically to "international forest law," which "is constituted by a diversity of treaties and agreements that are evolving relatively independent to each other." N. Srivastava (2011) comments that "a single binding forest regime has not yet emerged… there are several instruments that govern forest laws internationally." According to Desai (2011), "the current international regime, which guides the utilization and management of forests, is composed of numerous instruments, some of which are legally binding, such as CBD, the UNFCCC, the 1994 Convention to Combat Desertification and the… ITTA. The most important — soft law instruments relating to forests include Forest Principles and Chapter 11 of Agenda 21…" Some legal scholars (e.g. Tarasofsky, 1999) refer to the "international *legal* regime on forests" (emphasis added). The scholar defines such regime as "the sum total of international instruments and institutions

disconnected and multi-centric; it has developed at different speeds and in different directions, rather than strategically and holistically along a common front (Humphreys, 2006). Provisions related to forests are scattered through the pieces of hard, soft and private international law (Gluck, 2010; Eikermann, 2015; Bondarenko and Lukiyanov, 2015; Gordeeva, 2019). Different treaties and agreements of the international forest regime focus on different aspects of forests, their specific functions and services (Lesniewska, 2015; Srivastava, 2011; Brunnee and Nollkaemper, 1996). As of now, all the attempts to consolidate all forest-related issues within one individual treaty have remained unsuccessful (MacKenzie, 2012).

The objective of the present research is to grasp the overall scope of the international forest-related instruments and their evolution under various environmental regimes. Following the introduction to the article there is a brief explanation of what constitutes "forests". Next, the author gives an overview of forest resources worldwide and an introduction to the forest functions and ecosystem services. Then, attention in the article is paid to the current alarming rates of the global forest decline, including the major causes of the global environmental problem and its impacts. One of such impacts is the immediate global priority, i.e. the recent COVID-19 pandemic. In the following, the article looks at the evolution of the topic of forests in the international agenda from their first appearance up until today. For the purpose of the research three developmental stages in the evolution of the forest

that create the framework for international action." Other legal scholars (e.g. H. van Asselt, 2011 and 2014) refer to the forest regime as a "regime complex", i.e. "an array of partially overlapping and non-hierarchical institutions, governing a particular area." A regime complex exists somewhere towards the middle of a spectrum between a comprehensive regime based on a single legally binding instrument at the one end and a very loose and barely coordinated set of governance arrangements at the other. According to H. van Asselt "regime complex" for forests includes various initiatives within and outside of the UN context and there is a "need to study how the 'regime complex' for forests functions as a whole, and how its various elements interact with each other." There are also legal scholars (e.g. R. Macguire, 2013) who investigate the "governance" of the global forests. R. Macguire for "the concept of governance within forest resources," suggests that "environmental governance includes the various institutions and structures of the authority engaged in the protection of the natural environment."

regulation at the international level are distinguished: the "Foundational period" (i.e. before 1990) when the scientific consensus about global deforestation and forest degradation developed and transformed from a scientific issue into a policy issue; the "Fragmentation period" (from 1990 until 2011) when forests entered the UN environmental agenda, gained attention as a stand-alone topic and the United Nations Forum on Forests (UNFF) was established; and the "Pre-Constitutional period" (from 2011 — onwards) when negotiations on the Legally Binding Agreement (LBA) on forests in Europe are taking place. Finally, the conclusions bring the findings of the article together and provide the ground for subsequent legal research.

The investigation in this article is not intended to be exhaustive and serves the broader objective — in a further step of the research to evaluate the interactions of various instruments with regards to forest regulation (whether there are gaps, synergetic or conflicting interactions). Thus, for instance, due to the environmental focus of the present reserach, treaties specific to the rights of indigenous people and local communities, and the World Trade Organization (WTO) law is not included into the investigation. Other studies have as well provided a historical summary at different stages in the developemt of the global forest-related regime (Gordeeva, 2017; Eikermann, 2015; McDermott et al., 2007).

II. Forest Definition

Defining of what constitutes a forest is a challenging task. Some legal scholars have already referred to the process as "one among numerous and persistent problems inherent in forests" (Assembe-Mvondo, 2010). Worldwide forest types differ significantly influenced by factors including latitude, temperature, rainfall patterns, soil composition and human activity. Thus, for instance, people living in the European Union (EU) or in the Russian Federation might identify forests differently, for instance, from definitions adopted in Africa or in Brazil. The 2021 study (Lund, 2018) of different definitions of forests found that more than 1713 different definitions for forests and

wooded areas are in use around the world, with some countries officially adopting several of such definitions at the same time (Figure 1).

Figure 1: Summary of number of published definitions of "forest" found as of 8 June 2021

Definition Type	Scope				Total
	General	International	National	Local	
Administrative	21	0	110	21	152
Cover	245	104	559	106	1014
Use	63	53	220	112	448
Ecological/Miscellaneous	25	6	51	17	99
Total	354	163	940	256	1713

Source: adopted from Lund, H.G., (2018). Definitions of Forest, Deforestation, Afforestation, and Reforestation. Available at: https://www.researchgate.net/publication/324755790_2018_Definitions_of_Forest_Deforestation_Afforestation_and_Reforestation [accessed: 8 June 2021].

Different definitions are required for different purposes and at different scales (United Nations Environmental Program (UNEP), Food and Agricultural Organization of the United Nations (FAO UN), UNFF, 2009. Definitions may highlight various vantage points of forests, i.e. forest as a source of timber products, an ecosystem composed of trees along with various forms of biological diversity, a sink and/or a reservoir for carbon storage. A definition based on physical characteristics, such as the canopy cover,[2] will most likely be used for an assessment of the forest extent, whilst a definition based on botanical characteristics, i.e. variety of tree species, will be used for assessing various classes or types of forests. An assessment focusing on the availability of timber for commercial or industrial purposes may exclude small wooded areas and types of forest not considered to be of commercial value. An overall assessment carried out at a global level is unlikely to satisfy more detailed national level requirements. Conversely, a definition developed

[2] Canopy cover (also called crown closure or crown cover) — the percentage of the ground covered by a vertical projection of the outermost perimeter of the natural spread of the foliage of plants. Cannot exceed 100 % (FAO, 2015; Intergovernmental Panel on Climate Change (IPCC, 2003).

to suit the needs of any given country is unlikely to be applicable at a global level.

At the global level a number of common definitions of forests have been developed. As a rule, such common definitions are very broad in order to encompass all types of forests; these definitions reflect the various forest management objectives (Figure 2). In 1948, the FAO UN adopted the first forest definition in order to assess global wood harvesting potential after the World War II. It remains the most widely used forest definition up until today (Chazdon et al., 2021). Over time, conservation became increasingly incorporated into forest management objectives and new forest definitions have been developed (e.g. under the Convention on Biological Diversity (CBD)). The UN Framework Convention on Climate Change regime (UNFCCC) initiated a new forest management objective, i.e. forests as carbon sinks and/or reservoirs, and adopted its own definition of forests. As scholars note, "currently the multiple definitions of forests coexist, [...yet], aligning their objectives and roles in policy-making and governance remains a major challenge" (Chazdon et al., 2021).

This present paper, if not specified otherwise, adopts a wide definition of forest, including all areas with substantial tree cover, all types of forest composition in any geographical range and with any species structure. For the purpose of the present paper, it is also important to stress, that not only the forest types vary and, thus, the definitions, but also forest functions and services[3] differ on all spacial and temporal levels. The Millennium Ecosystem Assessment (Hassan et al., 2005), for instance, indicates that "some national classifications account for as many as 100 different kinds of forest services, such as delivery of industrial and fuel wood, water protection and regulation, ecotourism, and spiritual and historical values."[4] FAO distinguishes five

[3] The term "services" is used here synonymously with the term "functions". These terms are meant to comprise all performances provided for by forests.

[4] For instance, the Millennium Ecosystem Assessment distinguishes between resource services (production of fuel-wood; industrial wood and NWFP); ecological services (water protection; soil protection and health protection); biospheric services (biodiversity conservation; and climate regulation); social services (ecotourism and recreation); amenities services (spiritual; cultural; and historical).

broad forest ecosystem services: biodiversity conservation; productive functions of forests; cultural or spiritual values; protective functions; socio-economic functions (FAO, 2010). Some of these broad ecosystem services can be further split up.[5] Due to the physical location of forests within national boundaries most functions and services provided by forests are local and/or national in scope (e.g. timber production, water purification, tourism, etc.). However, as in the case of climate protection and/or climate regulation forests exert not only local, but also transboundary or even global effect. Furthermore, forest services and functions interact in many different ways, "ranging from synergistic to tolerant, conflicting and mutually exclusive." This interaction leads to the forest "multiservice paradigm," which is "quite clear in theory, but is often very difficult to implement, as it frequently requires difficult choices and trade-offs" in forest regulation (Hassan et al., 2005).

Figure 2: Forest Definitions at the Global Level

Food and Agriculture Organization (FAO) Global Forest Resources Assessments (FRA): are based on data, provided by individual countries, using an agreed global definition of forest: "land spanning more than 0.5 hectares (ha) with trees higher than 5 metres and a canopy cover of more than 10 %, or trees able to reach these thresholds in situ. Forest does not include land that is predominantly under agricultural or urban land use (FAO, 2015).[6]

[5] For instance, Biodiversity conservation: forests as the worldwide biodiversity storage; forests as a component of global biodiversity themselves; Productive functions of forests: production of wood; production of non-wood forest products (NWFP); Protective functions: local protective functions; global protective functions; water regulation; protections of soils; climate protection; etc.; Socio-economic functions: economic function associated with wood; economic function associated with NWFP; social function, e.g. employment in forestry; Cultural or spiritual functions: forest related tourism; spiritual; cultural; recreation; education; research; education; etc.

[6] FAO definitions of forest evolve. Thus, for instance, the first FAO assessment of the world's forest resources in 1948 defined "forested land" as "vegetative associations dominated by trees of any size, capable of producing timber or other products or of exerting an influence on the climate or the water regime." The use of different definitions leads to vastly different estimates of national and global forest cover and

Convention on Biological Diversity (CBD) regime: a forest is a land area of more than 0.5 ha, with a tree canopy cover of more than 10 %, which is not primarily under agricultural or other specific non-forest land use. In the case of young forests or regions where tree growth is climatically suppressed, the trees should be capable of reaching a height of 5 m in situ and of meeting the canopy cover requirement (CBD, 1992).

United Nations Framework Convention on Climate Change (UNFCCC) regime: forest is a minimum area of land of 0.05–1.0 ha with tree crown over (or equivalent stocking level) of more than 10–30 % with trees with the potential to reach a minimum height of 2–5 meters at maturity in situ. A forest may consist either of closed forest formations where trees of various storeys and undergrowth cover a high proportion of the ground or open forest. Young natural stands and all plantations which have yet to reach a crown density of 10–30 % or tree height of 2–5 meters are included under forest, as are areas normally forming part of the forest area which are temporarily un-stocked as a result of human intervention such as harvesting or natural causes but which are expected to revert to forest (UNFCCC, 1992).

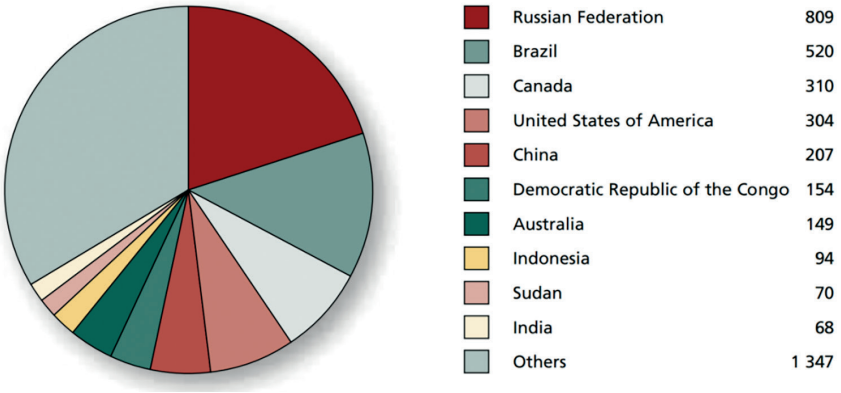
III. Extent of the World's Forest Resources

According to FAO, the current world's total forest area is just over 4 billion hectares, or 31 % of the total land area (FAO, 2020). Globally the area of forests is unevenly distributed. Europe accounts for 25 % of the world's total forest area, including the Russian Federation, followed by South America (21 %), and North and Central America (17 %; FAO, 2010).

observed rates of forest gain and loss. For instance, the estimate of global forest area increased by 300 million ha (approximately 10 %) between 1990 and 2000 simply because the forest resources assessment (FRA) changed its global definition of forest, reducing the minimum height from 7 to 5 m, reducing the minimum area from 1.0 to 0.5 ha and reducing minimum crown cover from 20 % to 10 % (FAO, 1948; Matthews, 2013).

At the country level, the Russian Federation alone accounts for 20 % of the total forest area in the world, i.e. 809 million ha. Nine world's forest richest countries account for 47 % of the world's total forest area (Figure 3; FAO, 2010). The remaining 33 % (i.e. 1,347 million ha) is spread among 213 countries and areas[7] have no areas that qualify as forests at all (FAO, 2010).

Figure 3: Ten Countries with the Largest Forest Area, 2010 (million ha)



Source: (FAO, 2010)

IV. Deforestation and Forest Degradation: Current Rates, Causes and Impacts

A reduction in forest area can happen through either of two processes: deforestation and natural disasters. Deforestation, which is by far the most important, implies that forests are cleared by people and the land is converted to another (usually more economically profitable) use, such as agriculture or infrastructure (FAO, 2010). Conversion of forests to other land uses is most destructive when it occurs in a

[7] The Falkland Islands (Malvinas), Gibraltar, the Holy See, Monaco, Nauru, Qatar, Saint Barthelemy, San Marino, Svalbard and Jan Mayen Islands, and Tokelau.

fragmentary pattern. Breaking up forests into smaller fragments, i.e. forest fragmentation, causes decay of forests functions and services (e.g. blocks corridors that wildlife use to seek food, mates, and refuge; increases tree mortality due to greater exposure to wind, fire, pests and other threats, etc.). Deforestation may be permanent, when forests are replaced by arable land, or temporary, when forests are harvested, but regrow naturally or being replanted. Natural disasters may also destroy forests (e.g. forest fires, hurricanes, wind storms, etc.). Both deforestation and natural disasters may cause forest degradation. This implies changes within forests, which negatively affect the structure of functions of the stands or site (e.g. decrease in tree cover; changes in structure of trees; reduction in the number of species that can be found there, etc., FAO, 2010).

Deforestation and forest degradation have accompanied population growth and development throughout the world for thousands of years (FAO, 2012). From an original forested area of more than 6.0 billion ha (i.e. 45 % of the earth's land area) the current estimate of the world's remaining forests is about 4 billion ha (i.e. about 31 % of the earth's land surface; FAO, 2012). Over a period of 5000 years, the cumulative loss of forest land worldwide is estimated at 1.8 billion ha — an average net loss of 360 000 ha per year (FAO, 2012).

Since then the rates of global forest decline have accelerated. In the period between 1990 to 2000 the net loss of forests was estimated to 8.3 million ha per year (FAO, 2010). Although at present the rate of deforestation globally shows signs of decreasing, it remains alarmingly high: annually humankind looses more than 5 million ha per year (FAO, 2020).[8] If global forests continue to decline at the present rate, it will take approximately 775 years to lose all forests on Earth (FRA, 2012).

The underlying causes of changes in the global forest area and their condition differ in spatial and temporal scales. As a rule, such changes

[8] 5 million ha per year is a net change in the global forest area. The figure is the sum of all negative changes due to deforestation and natural disasters and all positive changes due to afforestation and natural expansion of forests. The solely negative changes comprised around 13 million ha of forests lost globally due to deforestation and natural causes each year during the period from 2000 until 2010. However, afforestation and natural expansion of forests in some countries and regions have reduced the net loss of forest area significantly at the global level (FAO, 2012).

are the result of interactions among many factors — social, ecological, economic, climatic and biophysical. On a very broad scale causes may be distinguished as natural (e.g. climate change, forest fires, hurricanes, etc) or human-induced, the latter causing the most significant changes in forest area globally (Hassan et al., 2005).

During the deliberations of the United Nations Intergovernmental Forum on Forests (IFF), the global community agreed that the underlying causes of deforestation and forest degradation are interrelated and often socio-economic in nature. Both the causes and the approaches to dealing with them are often country-specific and, therefore, vary among countries (FAO, 2012; IFF, 2000). The underlying causes include: poverty; lack of secure land tenure patterns; inadequate recognition within national laws and jurisdiction of the rights and needs of forest-dependent indigenous and local communities; inadequate cross-sectoral policies; undervaluation of forest products and ecosystem services; lack of participation; lack of good governance; absence of a supportive economic climate that facilitates sustainable forest management; illegal trade; lack of capacity; lack of enabling environment at both international and national levels; national policies that distort markets and encourage the conversion of forest land to other uses (FAO, 2012; IFF, 2000). In order to overcome the major obstacles when addressing the underlying causes of deforestation and forest degradation, the UNFF stresses the importance of policy consistency inside and outside the forest sector and the need for effective policy coordination for addressing the underlying causes of deforestation (IFF, 2000).

In the coming years, due to demographic changes, economic growth and significant increase in demand for wood products deforestation and forest degradation are predicted to continue (FAO, 2012).

While the underlying causes of deforestation and forest degradation are complex environmental, social, economic and political processes, the consequences of deforestation and forest degradation are relatively easy to outline. Any impairment and/or loss of ecological functions and/or services provided by forests finds its expression through various environmental impacts. Deforestation disrupts normal weather patterns, creating hotter and drier weather; increasing drought and desertification, crop failures, coastal flooding and displacement of

major vegetation regimes. Deforestation also disrupts the global water cycle. With removal of part of a forest (i.e. forest fragmentation), the area cannot hold as much water creating a drier climate. Deforestation and forest degradation affect water resources, including drinking water, fisheries, and flood/drought control. Deforestation can also result into watersheds that are no longer able to sustain and regulate water flows from rivers and streams. Once the watersheds are gone, too much water can result into downstream floods, which have caused disasters in various parts of the world. Furthermore, deforestation and forest degradation can lead to severe impacts on soil resources. Whereas tree roots anchor the soil, without trees, the soil is free to wash or blow away, which can lead to vegetation growth problems. Scientists estimate that a third of the world's arable land has been lost due to deforestation since 1960 (Derouin, 2019). Deforestation and other land use changes have increased the proportion of river basins subject to erosion and over the longer periods have contributed to water siltation.[9] Furthermore, forests, especially those in the tropics, serve as storehouses of biodiversity and, consequently, deforestation, fragmentation and forest degradation destroy the biodiversity and habitats for migratory species including the endangered ones. Finally, in 2019 the World came face to face with the unprecedented challenges of the COVID-19 pandemic and one among other underlying causes of such a pandamic is the degradation and the loss of forests world-wide, which is "disrupting nature's balance and increasing the risk and exposure of people to zoonotic diseases" (FAO, 2020).

V. Evolution of the International Forest Regulation

For the purpose of the research, three developmental stages in the evolution of the forest regulation at the international level are distinguished:

The Foundational Period: before 1990. During this period the scientific consensus about global deforestation and forest degradation developed and transformed from a scientific into policy issue;

[9] Water pollution by silt or clay.

governments became involved in the international negotiations; first forest-related international agreements were adopted;

The Fragmentation Period: from 1990 until 2011. Forests entered the UN environmental agenda, gained recognition as a stand-alone topic, forest-specific soft law was adopted, the UNFF was established, isolated international processes highlighting individual forest functions and services were elaborated;

The Pre-Constitutional Period: from 2011 until present. Negotiations on the Legally Binding Agreement (LBA) on Forests in Europe take place. Please note that the term "Constitutional" here is used figuratively in order to indicate a period in the evolution of the international forest regulation during which a single agreement on forests, i.e. "Forest Convention" is being negotiated. The parties to the (draft) Convention recognize "...the need to establish a legally binding agreement to ensure or reinforce sustainable forest management (SMF), ensure multifunctionality of forests, avoid fragmentation of forest related policies and to complement and promote existing international, regional and subregional agreements, cooperation and initiatives to this end" (Forest Europe, 2013). If the LBA is adopted, the document may establish a fundamental set of principles according to which forests are governed. In addition, although the LBA is negotiated in the European context, among those who registered for the process are 46 "Forest Europe"[10] member countries (including the Russian Federation, and the EU), 14 observer states (including top four countries with the largest forest area, namely: Brazil, Canada, the USA and China) and 45 observer organizations (including FAO, International Tropical Timber Organization (ITTO), International Union for Nature Conservation (IUCN), International Union of Forest Research Organizations (IUFRO), United Nations Development Program (UNDP), United Nations Environment Program (UNEP) and UNFF).

[10] Forest Europe is the brand name of the Ministerial Conference on Protection of Forests in Europe. It is a voluntary regionally limited political process for dialogue and cooperation on forest policies in Europe. Up until now the Conference predominantly produced criteria and indicators for sustainable forest management, guidelines and resolutions.

V.1. The Foundational Period

The international forest regulation has a long history — a history, which has been termed by some legal scholars as "highly complex" (Cashore, Auld and Bernstein, McDermott, 2007).[11] For the first time forests and their management became an international issue in 1892 when, following a proposal for an international forest science research organ at the 1890 Congress of Agriculture and Forestry in Vienna, the International Union of Forest Research Organizations (IUFRO) was established (Humphreys, 2006).[12] Its mission (to promote global cooperation in forest-related research and to enhance the understanding of the ecological, economic and social aspects of forests and trees; as well as to disseminate scientific knowledge to stakeholders and decision-makers and to contribute to forest policy and on-the-ground forest management (IUFRO, 2021) brought forests to increased international monitoring and assessment. However, as with international environmental law in general, a lot of momentum for forest issues was lost due to the World Wars (Eikermann, 2015). The period before and in between of the two World Wars was not marked by great concern for the environment. Even when after the Second World War the UN was established, the UN Charter did not refer to the human environment and in general, there was little understanding of the global environmental problems (Valeev, 2020).

In 1945 the Food and Agriculture Organization (FAO) was created with responsibility within the United Nations system for forests (FAO UN, 1945). Its Constitution pronounced the FAO as the organization which collects analyses and disseminates information relating, inter alia, to forestry and primary forest products (FAO UN, 1945. Art. 1.1).[13]

[11] In particular, the legal scholars comment that the history of law and policy developed to address the environmental deterioration of the world's forests is highly complex. Partly this is explained by the regulatory differences, which exist within and across the developed and developing countries.

[12] Earlier the regulation of forest matters was done not on an international level, but rather through the means of national law.

[13] Please note that in the FAO UN Constitution, forestry and primary forestry products are referred to under the term "agriculture". According to the Constitution the term is collective, it includes also fisheries and marine products.

The core functions of the FAO with regards to forests are further specified in the "FAO UN Strategy for Forests and Forestry" and, among others, include: monitoring and assessing trends in forest resources; generating, disseminating and applying information and knowledge; and supporting the development of national legal instruments (FAO, 2010). In 1948, the FAO carried out its first Assessment of the World's forest resources. Since then the Organization has been assessing the World's forest resources at a regular intervals of every five years with the most recent assessment taking place in 2020 (FAO, 2020). Although, some critics argue that forest matters under the FAO were largely driven by foresters, and that the political significance of the FAO in forest issues remained minimal, the mere fact of the Organization's establishment laid the foundation to incorporate forest issues into the United Nations agenda (Humphreys, 2006; Eikermann, 2015).

The late 1950s onwards were termed by legal scholars as the "present ecological era." It is the period when the emerging international environmental concerns and specific environmental threats caused by technological change and expanded economic activities were recognized and addressed in the international arena: marine pollution from oil, nuclear damage from civilian use, and later — deterioration of wild animals and their habitats (Kiss and Shelton, 2007). Yet, the matters of forests remained a rather untouched issue, scarcely regulated by some international multilateral intergovernmental treaties and agreements indirectly.

In the 1960s with the increasing loss of wetland areas, their degrading, draining and conversion to other "more obvious [land] uses" (e.g. such as agriculture), wetlands became an international concern (Matthews, 2013). In 1971, the Ramsar Convention on Wetlands of International Importance especially as Waterfowl Habitat (Ramsar Convention, 1971) was adopted. It was among the first instruments seeking to conserve natural resources on a global scale (Matthews, 2013). Even though conservation of forests, as such, was not an objective of the Convention and forests remain "unidentified" under the Convention (Ruis, 2001), many of the Ramsar sites also contain forest ecosystems, namely "forested wetlands", including: Intertidal forested wetlands (mangrove swamps, nipah swamps and tidal freshwater swamp forests); Freshwater,

tree-dominated wetlands (freshwater swamp forests, seasonally flooded forests, wooded swamps on organic soils) and Forested peatlands (including, peatswamp forests (Ramsar Convention Secretariat, 2013). It is estimated that around 12 % of the total area of sites, designated under the Ramsar Convention in 74 countries around the world, are predominantly one or other of these three types of forested wetlands (CBD, 2010).[14] Countries with the largest number of such forested wetland Ramsar sites are: Mexico, Finland, Sweden, Australia, and the USA (CBD, 2010). In addition to the conservation of the listed Ramsar Sites, the Ramsar Convention, provided that the Contracting Parties "shall" as far "as possible" use wisely (sustainably) all the wetlands in their territory (Ramsar Convention, 1971, art. 3 para. 1). This includes as well the forested wetlands (i.e. forests on wet soils) beyond the listed Ramsar Sites (e.g. the extensive wet forests in Siberia of the Russian Federation). In general, forest and wetland ecosystems are inter-dependent: many wetlands are forests, and a significant proportion of the world's forests are in fact forested wetlands (CBD, 2011). Depending on the definition used and, thus, delineation applied forests and wetlands provide for multiple linkages and overlaps. Whereas forests fulfill the definition of wetlands, the Ramsar Convention provided for the maintenance of the forest cover.

In June 1972, the United Nations Conference on the Human Environment (UNCHE, "Stockholm Conference") took place. Then the international environmental issues in general received an upturn. The Conference drew attention to the problem of environmental deterioration and methods to prevent or remedy it. From 1972 onwards, the number and scope of international environmental agreements started growing at a rapid pace giving rise to the creation of a body of rules governing a wide variety of environmental issues (Weiss, 1993; Kiss and Shelton, 2007). The outcome of the Conference was the Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration, 1972). Yet, the forest issues remained without a formal acknowledgement.

[14] Of 1,886 Ramsar sites (covering 185 156 612 ha) 202 sites (covering 22 406 398 ha) i.e. 12 % of the total area are predominantly forested wetlands.

In November 1972, in the light of the fact that the "protection of [natural and cultural] heritage at the national level often remains incomplete" (World Heritage Convention (WHC), 19, Preamble para. 3), the General Conference of the UN Educational, Scientific and Cultural Organization (UNESCO) adopted the "Convention Concerning the Protection of the World Cultural and Natural Heritage" (WHC, 1972). The WHC was created with the aim to conserve and protect sites — natural as well as cultural — from natural and anthropogenic destruction. Viewing forest as cultural sites, as sites for the enjoyment of natural beauty, sites of aesthetic impressions and scientific significance, has brought some forests under the scope of the WHC. As of the year 2021, more than 110 World Heritage Sites are recognized as World Heritage Forest Sites (UNESCO, 2021). The size of each particular Forest Site varies ranging from 18 ha (e.g. Valee de Mai, Seychelles) to more than 5 million ha (e.g. Lake Central Amazon Conservation Complex, Brazil (UNESCO, 2021). The total surface area of the World Heritage Forest Sites is now over 75 million ha (UNESCO, 2021). Thus, the link between forests and the WHC becomes conspicuous. Given the significant figures of the total area of the World Heritage Forest Sites, it has to be highlighted that the definition of "forests" under the WHC has been developed and modified for the specific purposes of the Convention:[15] "A World Heritage Forest is a World Heritage site for which the nomination file provided by States Party or World Conservation Monitoring Center (WCMC) forest

[15] Initially, forest protected areas were included on the World Heritage List if "the nominations of the respective State Parties or [World Conservation Monitoring Center] WCMC forest data revealed a substantial amount… of forest cover within the site." The indication of whether or not the amount of forest cover within each site was significant was based primarily on two criteria: the first, and the most important, was information regarding the type and amount of forest provided by the State Party in the nomination for World Heritage designation; the second, was derived from the WCMC database for each World Heritage site and forest database files (whether a 8 × 8 km grid cell is more than 50 % forested). Furthermore, in order to make mangrove forests, mixed mountain forest areas, and island system forest areas visible on a global scale, any grid cell containing these categories was classified as being entirely forested. A site was included into the World Heritage List as Forest if either or both sources (i.e. a State Party and/or the WCMC) revealed 20 % or more forest cover within the site or if the extent of forest cover was a primary reason why the site was nominated and inscribed on the World Heritage List (Thorsell, Sigaty, 1997).

data reveal a substantial amount of forest cover within the terrestrial component of the site and for which forest ecosystems contribute to the site's Outstanding Universal Value" (UNESCO, 2005). Thus, by specifying that the forest ecosystems within a World Heritage Forest must be recognized as contributing to the site's Outstanding Universal Value, the definition creates a clear legal connection to the application of the WHC to the conservation of such forests. Sites that may contain forests, but have been inscribed on the World Heritage List for the values unrelated to forests are, thus, ruled out. Further, it should be noted that some of the sites recognized as World Heritage Forest Sites do not fully consist of forests. The most dramatic example is the Baikal Lake in the Russian Federation. The lake itself covers 3.15 million ha of the 8,8 million ha site (UNESCO, 2005).

In 1973 the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES, 1973) was adopted. It is an international environmental treaty concluded in the recognition "that wild fauna and flora in their beautiful and varied forms are an irreplaceable part of the natural systems of the earth which must be protected for this and the generations to come [...and] in addition, that international co-operation is essential for the protection of certain species of wild fauna and flora against over-exploitation through international trade" (CITES, 1973, preamble, paras 1 and 4). Forests species, including tree species (and also forest dwelling plants and forest dwelling animals) are included into the CITES Appendices and, thus, have been subjected to the CITES regulation (Groves and Rutherford, 2015).

During the evolution of the CITES since its adoption (over more than forty years) the inclusion of tree species in the Appendices of the Convention has undergone a "radical shift in attitudes" (Oldfield, 2013; Humphreys, 2006). When the CITES came into force in 1975, the Appendices included only eighteen tree species mostly of local or historical importance.[16] The listings of tree species with commercial significance was then limited because of their rarity and/or national protection status. Interest in using the provisions of CITES to regulate

[16] E.g. Honduras Mahogany (*Swietenia Humilis*) was one such species. Mainly occurring as scattered individuals, the timber of this species is generally used for wood carvings.

the commercially valuable international timber trade has developed during the 1980s in parallel with a rising awareness of the lack of sustainable forest management in tropical regions and growing concerns about the impact of logging as a threat to forest biodiversity.[17] The fundamental concerns with regard to listing considered during those times included: whether commercial timber species are ever likely to become biologically threatened with extinction because of international trade; and, furthermore, whether the CITES listing criteria could be validly applied to timber species (Oldfield, 2013). There were no new listings in the 1980s (although some species moved between appendices). In 1992 the CITES "was reactivated" with inclusion of various commercially valuable timber species in the CITES Appendices I and II (Humphreys, 2006).[18] According to Oldfield, listing the commercially important tree species takes considerably longer; even when "the perception of endangerment is high" and "the scientific case is strong, the economic interests are overwhelming" (Oldfield, 2013). Thus, for instance, it took ten years of international debate to achieve the CITES Appendix II listing for the Bigleaf Mahogany (Swietenia Macrophylla).[19] The challenges associated with this particular tree species included, inter alia, the high unsustainable logging practices and, the difficulty associated with implementation. Yet, the listing is viewed as a major CITES accomplishment with regard to forest species: not only "it is the

[17] These concerns were more generally expressed by environmental organizations in tropical timber importing countries of Europe and North America. Timber-exporting countries and timber trade interests were generally opposed to international regulation of the timber trade. See, for example, WWF, Tropical Forest Conservation: A Position Paper, 1981. The paper states that there were moves by conservation organizations in Germany, the Netherlands and the United States to call for a boycott on the import of tropical timber into the EU.

[18] The Appendix I listed Brazilian Rosewood (*Dalbergia Nigra*); the Appendix II listed Commoner lignum vitae (*Guiacum Officinale*), Afromosia (*Pericopsis Elata*) and American Magagony (*Swetnia Mahagoni*).

[19] The Bigleaf Mahogany is a tree endemic to the Neotropics that can grow up to 45 m in height and 2 m in trunk diameter. It is harvested for its highly-valued timber, to make furniture, paneling or musical instruments. Whereas the information on mahogany inventories and status is incomplete, there is evidence on the sharp decline of the original wild populations in the Neotropics and even its extinction in Costa Rica, parts of Brazil, Bolivia and South America.

first commonly traded timber species listed in Appendix II," but also its implementation will "undoubtedly shape how the Parties and industry view the role of the Convention in helping to control the international trade in timber in future" (Blundell, 2004). In total, today all the three CITES Appendices list more than 600 tree species, including some of the world's most economically valuable trees (CITES, 2016). Additionally, the forest-related work of CITES encompasses species other than trees, including "forest dwelling plants" and "forest dwelling animals."

In the 1980s, the focus of international forest policy has become the promotion of sustainable forest management, i.e. SFM[20] (Oldfield, 2013). According to some legal scholars (Eikermann, 2015), among the first explicit references to forests and their roles in the context

[20] The concept of SFM is a forest — specific concept. It attempts to incorporate and recognize all the multiple forests' values (i.e. economic, ecological and social); and, further, to give equal weighting to each value in such a way that all forest functions and services continue to flourish. Although a clear universal definition of the SFM concept has not yet emerged, the general meaning of the concept may be clustered in the context of the UN-forest institutions (e.g. UNFF, FAO UN): SFM "… is a dynamic and evolving concept that aims to maintain and enhance the economic, social and environmental value of all types of forests for the benefit of present and future generations" (Takoukam, 2011). The concept "aims to ensure that the goods and services derived from the forest meet present-day needs while at the same time securing their continued availability and contribution to long-term development. … In its broadest sense, forest management encompasses the administrative, legal, technical, economic, social and environmental aspects of the conservation and use of forests. It implies various degrees of deliberate human intervention, ranging from actions aimed at safeguarding and maintaining the forest ecosystem and its functions, to favoring specific socially or economically valuable species or groups of species for the improved production of goods and services" (FAO, 2010a). The initial discussions of the SFM concept at the international level took place in the context of "sustainable development". States, present at the 1992 UNCED, held in Rio, unanimously adopted the Rio Declaration and committed to "cooperate in good faith and in a spirit of partnership in the fulfillment of the principles embodied in [… the] Declaration and in the further development of international law in the field of sustainable development" (Rio Declaration, 1992, Principle 27). One of the central issues of this 1992 world forum was the management of the world's forest resources; within the rather general issue of sustainable development States also discussed the SFM concept. Thus, art. 2 (b) of the 1992 Forest Principles provide that "forest resources and forest lands should be sustainably managed to meet the social, economic, ecological, cultural, and spiritual needs of present and future generations". However, at the international level this basic idea did not receive further shaping within the SFM context, and the development of the concept has taken place at the regional level.

of sustainable development are those made, first, by the World Conservation Strategy (WCS) of the International Union for Conservation of Nature (IUCN) in 1980 (WCS, 1980) and later by the World Charter for Nature of the United Nations General Assembly in 1982 (UNGA, 1982). Along with the Stockholm Declaration, the World Conservation Strategy and the World Charter for Nature all play a role in the elaboration of the principle of sustainable development and confirming the issue of forests on the international political agenda (Kasimbazi, 1995). Yet, these documents are pieces of soft law and, despite the fact that even non-legally binding instruments are significant for steering the actions of states, these documents remain at large without legal consequences for forests (Eikermann, 2015).

In 1985 with the establishment of the International Tropical Timber Organization (ITTO)[21] under the first International Tropical Timber Agreement (ITTA, 1983), "...the importance of, and the need for, proper and effective conservation and development of tropical timber forest with a view to ensuring their optimum utilization while maintaining the ecological balance of the regions concerned and of the biosphere..." was recognized (ITTA, 1983, Preamble). Yet, under the ITTA the need to conserve forests has originated from the idea of conservation for their optimum utilization (Nagtzaam, 2014).[22] Moreover, the idea of tropical forests as providers of timber is emphasized by the fact of the ITTA's establishment under the UN Integrated Program for Commodities.

[21] ITTO's origins can be traced back to 1976 when the long series of negotiations that led to the first ITTA began at the fourth session of the United Nations Conference on Trade and Development (UNCTAD) as part of that organization's Program for Commodities. The eventual outcome of these negotiations was the ITTA, 1983, which governed the Organization's work until 31 December, 1996, when it was superseded by the ITTA, 1994. Negotiations for a successor to this agreement were concluded in 2006, again under the auspices of UNCTAD. The ITTA, 2006 entered into force on December 7, 2011.

[22] In comparison, other international environmental agreements of this time, negotiated parallel to the ITTA, simply recognize the need for protection of the environment against adverse effects, resulting from, or likely to result from human activities. See, for instance, the 1985 Vienna Convention for the Protection of the Ozone Layer, adopted 22 March 1985, entered into force 22 September 1988.

Thus, the early stages of the "international forest regime" development reflect several fragmented types of negotiations on the international agenda. Each fragment represents its own perception of forests: First, forests in the context of science and research; second, forests in the context of agriculture; third, conservation of forested wetlands; fourth, forests within the overall discussion on sustainable development; fifth, forests as protected sites under the WHC; sixth, forest species protection against overexploitation through international trade; and, finally, forests (yet, with a tropical only focus) as a valuable tradable timber resource.

V.2. The Fragmentation Period: International Forest Regulation from 1990 until 2011

In 1991, the World Wide Fund for Nature (WWF) along with some other NGOs, including Greenpeace and the Rainforest Alliance, formed a working group in order to develop a new approach towards achieving sustainable forest management. The working group agreed to develop an independent forest certification scheme, i.e. a process by which an independent third party certifies that a forest management process of forest product conforms to agreed standards and requirements. In 1993, the Forest Stewardship Council (FSC) was created. As the FSC standards are voluntary and the parties involved are private, non-governmental actors — a private perspective (or fragment) on forests has been introduced to the "international forest regime" (Cashore, Auld, Bernstein, McDermottt, 2007; Humphreys, 2006; Gulbrandsen, 2004).

During the preparations for and at the UN Conference on Environment and Development (UNCED) held in Rio de Janeiro in June 1992 a global convention for the conservation and sustainable development of the world's forests was negotiated. Widely these negotiations are regarded as a failure for the reason of not reaching its objective (Maguire, 2013; Davenport, 2005; Eikermann, 2015; MacKenzie, 2012; Lipschutz, 2000). Whereas the developed countries of the North (including the Russian Federation and the EU) along with FAO called for a global forest convention, the Group of 77 Developing

Countries (G77[23]), led by Malaysia and India, resisted. One of the main points of contention was the proprietorial status of forests. While some developed countries intimated that forests should be seen as a "global common" as all humanity derives benefits from them, the G77 insisted that the UNCED recognized forests as a sovereign national resource of the state. The opposition to the international forest convention feared internationalization of the resources under their sovereignty by the application of concepts such as "common good", "common heritage of humankind", or a "common concern of humanity." One more point of contention among negotiators centered around finance, with the G77 making it clear that if tropical countries were to agree to conserve their forests, then the developed North would have to pay compensation for the opportunity cost foregone from forest development (Humphreys, 2006). The negotiations resulted in the two forest-specific documents, namely: Chapter 11 on "Combating Deforestation" of Agenda 21 (Agenda, 1992) and the "Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests" — the, so called, "Forest Principles" (Forest Principles, 1992).

In addition, during the UNCED two legally binding Conventions, one aimed at preventing of global climate change (UNFCCC, 1992), and another at preventing the eradication of the diversity of biological species (CBD, 1992) were opened for signature. Although these instruments have not been initiated to apply a priori to forests, the lack of one authoritative document on forests, combined with the increased rates of deforestation and forest degradation commended States to use these alternative legal paths, inter alia, in order to reduce global forest decline.

[23] The Group of 77 is an intergovernmental organization of developing countries in the UN, which provides the means for the countries of the South to articulate and promote their collective economic interests and enhance their joint negotiating capacity on all major international economic issues within the United Nations system, and promote South-South cooperation for development. The G77 was established on 15 June 1964 by seventy-seven developing countries signatories of the "Joint Declaration of the Seventy-Seven Developing Countries" issued at the end of the first session of the United Nations Conference on Trade and Development (UNCTAD).

The path undertaken by the parties to the UNFCCC, includes a number of broad obligations related to mitigating the adverse risks of climate change associated with forests. Established by the UNFCCC, the international climate change regime has recognized the positive role of forests for climate change mitigation from the start. The ultimate objective of the regime is to achieve "stabilization of GHG concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system" (UNFCCC, 1992). The UNFCCC regime envisages policies and measures in order to "cover all relevant sources, sinks and reservoirs of GHG" (UNFCCC, 1992). Based on their common, but differentiated responsibilities,[24] all contracting parties have a commitment to promote and cooperate on practices and processes that control, reduce or prevent anthropogenic emissions of GHG in all relevant sectors, including forestry (UNFCCC, 1992). Furthermore, forests are explicitly included as sinks and reservoirs of GHG, which the parties are committed to conserve and enhance (UNFCCC, 1992). In 2015, the existing forest-related provisions, frameworks and decisions under the international climate regime were anchored into the Paris Agreement (article 5, Paris Agreement, 2015). In this context, the relationship with forests lies in the climate related functions and services of forests, which are directly addressed by the international climate change regime.

A number of mechanisms under the international climate change regime allow countries to account for the source/sink value of forest practices. These include the Land-Use, Land-Use Change and Forestry (LULUCF) guidelines, which developed countries can use in order to measure carbon stored by forestry and land management practices. There are also the afforestation and reforestation (A/R) guidelines of the clean development mechanism (CDM), which allow the developed countries to invest in forestry projects in developing countries. Besides,

[24] Since the adoption of the UNFCCC, the principle has been the cornerstone principle of the international climate change regime. The 2015 Paris Agreement recognizes and builds on the principles, established by the UNFCCC and notably on the principle of "common, but differentiated responsibilities and respective capabilities." However, in comparison to the UNFCCC, the Paris Agreement, specifies, that the CBDRC is to be implemented "in the light of different national circumstances."

there are the LULUCF guidelines for the Joint Implementation mechanism (JI), which allow the Annex I countries to implement forestry projects that increase removals by sinks in another Annex I country. One more important mechanism is the "REDD+" mechanism, which aims at incentivizing mitigation action in developing countries and at channeling the developed countries' financial resources to do so. The acronym "REDD+" aims at capturing under one heading the multiple activities such as reducing emissions from deforestation and from forest degradation (i.e. the "REDD"), as well as conservation and enhancement of forest carbon stocks and the sustainable forest management (SFM, i.e. the "+"). Similar to other forest-related mechanisms under the international climate change regime, the mechanism is built on methodological guidance and a framework for GHG emissions measuring, reporting and verification (MRV). Additionally, the international climate change regime encourages the use and development of renewable and sustainable energy production. Through bio-energy production forests provide for the benign alternatives to fossil fuels. In comparison to fossil fuels, wood biomass is viewed as a "less emitting" (or even arguably as a "carbon neutral") source of energy.

Another path in order to reduce global forest decline, undertaken in 1992 by the parties to the Convention on Biological Diversity (CBD), focused on the obligations related to the ecological functions and services of forests. Forest provide various forms of biodiversity, including "structural diversity" (i.e. areas of forests, natural and protected forests, species mixture, and age structure); "compositional diversity" (i.e. numbers of total flora/fauna species, numbers of endangered species); and "functional diversity" (e.g. the impact of major processes and natural and human-induced disturbances). Forests are a part of biodiversity and a home to biodiversity, harboring up to 90 % of the world's terrestrial biodiversity. Furthermore, forest biodiversity represents a cornerstone function with regard to ecosystem functions and services, performed by forests, other than biodiversity conservation. Although the CBD does not specifically refer to forests, its entire scope is potentially relevant to forests, as they fall within the definition of the term biological diversity. In addition, forest have become "very much a part of the scope of the

Convention, owing to… the subsequent decisions adopted by the CBD" (Srivastava, 2011). Forests are addressed under the CBD in a number of ways, including the CBD's Work Program[25] on Forest Biological Diversity (WPFBD) and the Aichi Biodiversity Targets.[26]

Parallel to the negotiations at the UNCED in Rio, the ITTO convened to reassess and review its Timber Agreement. The result of the negotiations was the revised ITTA of 1994 (ITTA, 1994).

In 1994 the UN Convention on Combating Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (UN CCD, 1994) was adopted. It was the first "sustainable development" treaty negotiated after the 1992 UNCED.

[25] The objectives of the WPFBD are, inter alia, to enhance Parties' abilities to realize the objectives of the Convention through… measures for enhancing the integration of conservation and sustainable use of biological diversity into their national forest and land use programs and forest-management systems, facilitate the implementation of the objectives of the CBD based on the ecosystem approach, identify traditional forest systems of conservation and sustainable use of forest biological diversity and to promote the wider application, use and role of traditional forest-related knowledge in sustainable forest management and the equitable sharing of benefits, contribute to ongoing work in other international and regional organizations and processes, in particular to the implementation of the proposals for action of the IPF and to provide input to IPF, contribute to the access to and transfer of technology, and identify the contribution of networks of protected areas to the conservation and sustainable use of forest biological diversity.

[26] Several of the Aichi Biodiversity Targets directly relate to forests: Target 5: The rate of loss of all natural habitats, including forests, is at least halved and where feasible brought close to zero, and degradation and fragmentation is significantly reduced; Target 7: All areas under forestry are managed sustainably, ensuring conservation of biodiversity; Target 11: At least 17 percent of terrestrial and inland water areas are conserved; Target 14: Ecosystems that provide essential services, including services related to water, and contribute to health, livelihoods and well-being, are restored and safeguarded; Target 15: Enhance the resilience and the contribution of biodiversity to carbon stocks through conservation and restoration, including restoration of at least 15 percent of degraded ecosystems, thereby contributing to climate change mitigation and adaptation and to combating desertification. The Fifteenth Aichi Biodiversity Target is further supported by the global initiative on forests, climate change and biodiversity — the "Bonn Challenge". As part of the Challenge parties and partners of the CBD announced the ambition to restore at least 150 million hectares of degraded forest landscapes by 2020. More recently, this target was endorsed by the New York Declaration on Forests, a voluntary and non-legally binding political declaration, adopted at the UN Climate Summit in 2014.

The declared aim of the Convention was to "combat desertification and mitigate the effects of drought" (art. 2 para. 1, UNCCD, 1994).[27] As, on the one hand, deforestation and forest degradation are among the main causes of desertification and drought; and, on the other hand, forests can help to stabilize soils, mitigating against desertification and drought, the Convention has consequently recognized a connection between desertification, deforestation and forest degradation. Recently, the UNCCD Strategic Framework for 2018–2030 provided a framework to achieve land degradation neutrality (UNCCD, 2018). Although forest biodiversity is not explicitly mentioned within this framework, enhanced synergies with the CBD and UNFCCC are a priority as reflected in expected impact 4.1: "Sustainable land management and the combating of desertification/land degradation contribute to the conservation and sustainable use of biodiversity and addressing climate change." Landscape restoration, including reforestation is clearly one of the means of achieving this.

In 1995, as aftermath to the high expectations and failures of the UNCED negations on forests, the CSD attempted to engage with forest issues and created the Intergovernmental Panel on Forests (IPF). It was functioning during the period of two years and deserves credit for negotiating more than one hundred proposals for action (and thereby adding to the body of instruments on forest issues) and for establishing the concept of national forest programs in international forest discourse, creating the link between forest issues and indigenous peoples' concerns and traditional knowledge (Eikermann, 2015). Unfortunately, the IPF did not manage to overcome the shortcomings inherent to the UNCED

[27] Please note that the Convention covers not only an environmental threat, but also socio-economic aspects of such a threat. The objective of the Convention is not only to combat desertification and mitigate the effects of drought, but also to do so "…in the framework of an integrated approach which is consistent with Agenda 21, with a view to contributing to the achievement of sustainable development in affected areas." Furthermore, it is shown that "achieving this objective will involve long-term integrated strategies that focus simultaneously, in affected areas, on improved productivity of land, and the rehabilitation, conservation and sustainable management of land and water resources, leading to improved living conditions, in particular at the community level."

forest negotiations, including the amplifying north-south divide in forest issues, financial matters and finding the right trigger to overcome the dominant economic interest in forests. Between 1997 and 2000, the Intergovernmental Forum on Forests (IFF) continued the work of the IPF. Similar to IPF, the IFF was charged with the mandate to engage in identifying options for a legally binding forest convention. Again, participants were unable to come to terms with the debate and, again, opted for a new forest forum instead: the UNFF. It was established as a subsidiary body to the ECOSOC in 2000. Facing the shortcomings of its predecessors, the UNFF has not created an international legally binding instrument on forests.

Yet, the UNFF deserves attention in the research as the "only universal, intergovernmental policy forum on forests" (ECOSOC, 2015a). It carries out its principle functions based, inter alia, on Chapter 11 of Agenda 21, Forest Principles, and the outcomes of the IPF/IFF processes and other key milestone documents of international forest policy. The purpose of the UNFF is "to promote the implementation of internationally agreed actions on forests at national, regional, and global levels, to provide a coherent, transparent and participatory global framework for policy implementation, coordination and development and to carry out principal functions based on the Rio Declaration on Environment and Development, the Non-legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All types of Forests (Forest Principles), Chapter 11 of Agenda 21 and the outcomes of the IPF-IFF process, in a manner consistent and complementary to existing international legally binding instruments relevant to forests" (ECOSOC, 2000).

In 2000 in order to support the work of the UNFF a Collaborative Partnership on Forests (CPF) was established. The CPF is chaired by the FAO and is serviced by the UNFF Secretariat. The Partnership unites international organizations, institutions, and secretaries that have substantial programs on forests: There are in total 15 members to the CPF: the Centre for International Forestry Research (the

CIFOR);[28] the CBD (Secretariat); the FAO; the Global Environment Facility (GEF Secretariat);[29] the ITTO; the IUCN;[30] the IUFRO; the UNCCD (Secretariat); the UNDP; the UNEP; the UNFF (Secretariat); the World Agroforestry Centre (ICRAF);[31] the World Bank;[32] the CITES;

[28] Center for International Forestry Research (CIFOR) is a non-profit, scientific facility that conducts research on the most pressing challenges of forest and landscapes management around the world. Member of the Global Consortium of International Agricultural Research (CGIAR) and lead the CGIAR Research Program on Forests, Trees and Agroforestry. The headquarters are in Bogor, Indonesia. CIFOR has offices in 8 countries across Asia, Latin America and Africa; works with more than 30 other countries.

[29] Global Environment Facility (GEF) is formally an inter-agency body. It was established in 1991 by the World Bank, UNEP and UNDP. The GEF's general function is to provide funds to enable developing countries to meet "agreed incremental costs" of measures taken pursuant to UNCED Agenda 21 and intended to achieve "agreed global environmental benefits" with regard to climate change, biological diversity, international waters, ozone-layer depletion, deforestation, desertification, and persistent organic pollutants. It has also been designated to act as the financial mechanism established by the Climate Change Convention, the Biological Diversity Convention, and the Persistent Organic Pollutants (POPS) Convention. GEF Secretariat is based in Washington D.C., the USA.

[30] International Union for Conservation of Nature (IUCN) — found in 1948 as the world's first global environmental organization. IUCN's mission is to "influence, encourage and assist societies throughout the world to conserve nature and to ensure that any use of natural resources is equitable and ecologically sustainable." IUCN's headquarters are in Gland, near Geneva, Switzerland.

[31] The World Agroforestry Centre, also known as international center for research in agro-forestry (ICRAF) is a research center associated with the Global Consortium of International Agricultural Research. ICRAF's headquarters are in Nairobi, Kenya, with six regional offices located in Cameroon, China, India, Indonesia, Kenya and Peru. The Centre's mission is to generate science-based knowledge about the diverse roles that trees play in agricultural landscapes and to use its research to advance policies and practices and their implementation, that benefit the poor and the environment. See, ICRAF.

[32] The World Bank is composed of the International Bank for Reconstruction and Development and the International Development Association. Together with other three organizations, i.e. the International Finance Cooperation, the Multilateral Investment Guarantee Agency and the International Center for Settlement of Investment Disputes, the World Bank comprise the World Bank Group. It is an independent specialized agency of the United Nations. The bank first became involved in the forestry sector in 1949 when it financed forest operations in Finland and the former Yugoslavia. Gradually, the Bank's role in financing forest projects evolved from one that focused on timber extraction to trial operations in social forest programs and agro-forestry — and, later, towards an approach that favored the conservation of

and, importantly, the UNFCCC (Secretariat; CPF, 2021). This has been pronounced by some legal scholars as a "matryoshka doll-syndrome" — a cooperation institution nested in a cooperation institution nested in a cooperation institution and so forth (Eikermann, 2015).

In 2007, the work of the UNFF led to the UN General Assembly adopting the Non-legally Binding Instrument on all Types of Forests (UN Forest Instrument, 2007). In 2015, remaining its voluntary, non-binding character, the instrument was renamed the "United Nations Forest Instrument" (ECOSOC, 2015; UNGA, 2016). The instrument is voluntary and non-legally binding. In its essence the Instrument is a set of principles, which are put forth in the eight parts of the document.[33] The scope of the Instrument is rather broad and includes "all types of forests." The Instrument covers all forests on a global level (and even in some cases trees outside forests) without limitation, for instance, to tropical forests or those forests that are declared protected or conservation areas. The core component of the UN Forest Instrument is the reference in its principle five, to the four Global Objectives on Forests, which have been already decided upon at the UNFF-6 as core objectives of the UNFF as an institution: "Member States reaffirm the following shared global objectives on forests and their commitment to work globally, regionally and nationally to achieve progress towards their achievement by [2030]:

Global Objective 1: Reverse the loss of forest cover worldwide through sustainable forest management, including protection, restoration, afforestation and reforestation, and increase efforts to prevent forest degradation;

Global Objective 2: Enhance forest-based economic, social and environmental benefits, including by improving the livelihoods of forest-dependent people;

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remaining forest areas. The Bank is now finalizing a new 5 year Forest Action Plan (2016–2020) that lays out how its work on forests and trees will contribute to resilient and sustainable landscapes.

[33] The eight parts are: I — Purpose; II — Principles; III — Scope; IV — Global Objectives on Forests; V — National Policies and Measures; VI — International Cooperation and Means of Implementation; VII — Monitoring, Assessment and Reporting; VIII — Working Modalities.

Global Objective 3: Increase significantly the area of protected forests worldwide and other areas of sustainably managed forests, as well as the proportion of forest products from sustainably managed forests;

Global Objective 4: Reverse the decline in official development assistance for sustainable forest management and mobilize significantly increased, new and additional financial resources from all sources for the implementation of sustainable forest management."

Among the more recent achievements of the UNFF is the fact that the process led to the adoption by the UN General Assembly of the UN Strategic Plan for Forests for the period until 2030 (UNGA, 2017). The Strategic Plan features a set of 6 Global Forest Goals and 26 associated targets to be reached by 2030, which are voluntary and universal. Inter alia, the Plan includes a target to increase forest area by 3 % worldwide by 2030, signifying an increase of 120 million ha.

In September 2015, the UNGA adopted its resolution "Transforming our World: the 2030 Agenda for Sustainable Development", including its 17 Sustainable Development Goals (SDG; UNGA, 2015). The 2030 Agenda is now guiding the development of policies worldwide, including those, aimed at tackling climate change and environmental degradation, and sustainably managing the World's natural resources for the period until 2030. Forests are at the heart of the 2030 Agenda. In particular, sustainable development goal 15 "Life on land" is of direct relevance to the conservation and sustainable management of forests (SFM), and their biodiversity. The goal is to sustainably manage forests, combat desertification, halt and reverse land degradation, and halt biodiversity loss.

To sum up, the forest governance beginning with early 1990s onwards is characterised by its increasing fragmentation, namely: the emergence of new forms of forest regulation through instruments such as forest certification, the failure to negotiate a global forest convention and the adoption of the forest soft law such as the Chapter 11 on "Combating Deforestation of Agenda 21" and the "Forest Principles"; the adoption of the UNFCCC, the CBD and the UNCCD, which include a number of broad obligations related to forests; the establishment of the UNFF

and the CPF processes, the adoption of the "UN Forest Instrument" and, finally, the UN Strategic Plan on Forests for the period up until 2030. Moreover, forests are at the heart of the Sustainable Development Agenda 2030. Thus, forest-related processes in this period developed in different fora, all deeply rooted into the fundamental principle of state sovereignty over natural resources. The development processes took place in parallel to each other, competing to occupy the forest issue area largely independently from one another.

V.3. The Pre-Constitutional Period: International Forest Regulation from 2011 until Present

As some legal scholars notice, it seems that currently the divergence of the "international forest regime" reached its peak; it is hard to envisage the involvement of ever-new actors (Eikermann, 2015). The contemporary "global forest governance is patched together with different international institutions regulating individual forest values" (Maguire, 2013) largely in isolation from each other (e.g. the international climate change regime regulates "forest carbon"; the CBD is concerned primarily with ecological forest functions and services; etc.). Yet, there is one more on-going forest-related process that deserves a further attention. In 2011 under the so-called Oslo Mandate the "Forest Europe" established "an Intergovernmental Negotiating Committee with the mandate to develop a Legally Binding Agreement on Forests in Europe"(Forest Europe, 2011). It was decided "that the Intergovernmental Negotiating Committee will [... complete] its work not later than 30 June 2013."

As such, the "Forest Europe" was created in Strasbourg in 1990, when Ministers from around 30 European countries and representatives from the European Community came together to discuss the need for a greater protection and conservation of forest areas. The meeting became known as the First Ministerial Conference on the Protection of Forests in Europe (MCPFE). The General Declaration (Forest Europe, 1990), adopted at the meeting, laid the foundation for the MCPFE ongoing

political process for dialogue and cooperation on forest policies in Europe. According to the 1990 Declaration the MCPFE is intending to:

> *"...promote and reinforce cooperation between European states in the field of forest protection and sustainable management, by developing exchanges of information and experience, and by supporting the efforts of the international organizations concerned;*
>
> *improve exchanges of information between forestry research workers, mangers and policy makers, both within and between the signatory countries, in order that the most recent advances can be integrated into the implementation of forests policies;*
>
> *encourage operations for restoring damaged forests;*
>
> *demonstrate, by way of an agreement on common objectives and principles, their will to implement, progressively, the conditions and the means necessary for the long-term management and conservation of the European forest heritage;*
>
> *examine the follow-up of decisions taken during the present conference and pursue the actions that will have been initiated, in the course of any subsequent meetings of government ministers of officials, and of international institutions, responsible for seeing that forests fully assume their ecological, economic and social functions."*

In 2011 with the Oslo Ministerial Decision on European Forests 2020 Forest Europe's signatories defined a shared vision: "To shape a future where all European forests are vital, productive and multifunctional. Where forests contribute effectively to sustainable development, through ensuring human well-being, a healthy environment and economic development in Europe and across the globe. Where the forests' unique potential to support a green economy, livelihoods, climate change mitigation, biodiversity conservation, enhancing water quality and combating desertification is realized to the benefit of society" (Forest Europe, 2015).

At present "Forest Europe" registers 46 member countries, including the Russian Federation and the European Union. Furthermore,

14 observer states (including the top four countries with the largest forest area, namely: Brazil, Canada, the USA, and China) and 45 observer organizations (including, FAO, ITTO, IUCN, IUFRO, UNDP, UNEP, and UNFF) are involved. The participation of various stakeholders in the process "contributes to enrich the dialogue within the process and to enhance cooperation on forests and forestry."

The ambitious Oslo Mandate of the "Forest Europe" to create a legally binding agreement on forests in Europe delivered a clear conviction "...that a legally binding agreement on forests in Europe is necessary to reinforce and strengthen implementation of sustainable forest management with the view to achieving balanced and stable continuity of all economic, environmental, cultural and social forest functions in Europe, and will contribute to achieving the vision, goals and targets for forests in Europe" (Forest Europe, 2011).

As it had been prescribed by the Oslo Mandate, the Committee concluded its work in June 2013 (it had carried out four sessions in the period from February 2012 until June 2013). Close to forty member countries participated in the negotiations (including the EU and the RF). On the scale of multilateral intergovernmental negotiations in a relatively short period "an enormous progress" (Heino, 2015) was made and the draft text of the legally binding agreement (Appendix 1) was transmitted to the Extraordinary Forest Europe Ministerial Conference "for consideration and appropriate actions" (Forest Europe, 2013). The draft consists of the preamble which gives a holistic introduction to the rest of the text; the normative part, divided into twenty-four articles and the two annexes to the draft agreement. The draft agreement is designed as a framework convention, so that "the Parties may at any session of the Conference of the Parties adopt protocols to the convention" in order to allow for further development of its provisions (art. 19).

Notwithstanding the overall enormous progress, some unresolved issues remained. Such issues as the design of the compliance mechanism (art. 15. Compliance); provisions on the participation of observers (art. 12. Conference of the Parties); voting rights (art. 13. Right to Vote) proved to be too complex for a solution to be provided within the timeframe given to the Negotiating Committee. Perhaps, the most "polarized" issue is the question on the institutional arrangement of

the future Legally Binding Agreement on Forests in Europe: whether such an agreement should be incorporated within the United Nations framework? And if yes, then how? Several options were negotiated, four of them are included into the final draft text of the Agreement: with the Russian Federation calling for the UN Economic Commission for Europe (UNECE) to host the LBA; the EU being a proponent of the joint secretariat for the Agreement, performed by FAO, UNECE, UNEP and European Forest Institute (EFI); Switzerland also being in favour of a joint secretariat, yet, composed of UNECE, FAO and UNEP; and the Norway's preference for adopting the LBA under FAO, having a joint secretariat of FAO (a leading role with administrative responsibility) in cooperation with UNECE and UNEP (art. 14. Secretariat). In the light of the research, the general agreement to bring the LBA on Forests in Europe under the "UN umbrella" is of particular significance, as it leaves a possibility to expand the LBA on Forests in Europe beyond the pan-European region in the future. Significant in this regard is also the fact that the negotiators have omitted regional references in the text of the LBA draft, thus, leaving open the window of opportunity to include states beyond European borders into the process.

At the Ministerial Conference held in Madrid in 2015, the "Forest Europe" signatories recognized that the Draft Negotiating Text for a LBA on forests in Europe "should serve as a basis for potential further consideration of a Legally Binding Agreement" and agreed to further "explore possible ways to find common ground on the Legally Binding Agreement at an appropriate time and at latest by 2020" (Forest Europe, 2015).

VI. Conclusion

At the early stages during the development of the international forest regulation, several fragmented types of negotiations took place on the international agenda. Each fragment represents its own perception of forests: forests in the context of the science and research; forests in the context of agriculture; conservation of forested wetlands; forests within the overall discussion on sustainable development; forests as protected sites under the WHC; forest species protection against overexploitation

through international trade; and, finally, forests (yet, with a tropical only focus) as a valuable tradable timber resource.

The forest governance beginning with early 1990s onwards is characterised by its increasing fragmentation, namely: the emergence of new forms of forest regulation through instruments such as forest certification, the failure to negotiate a global forest convention and the adoption of the forest soft law, such as the Chapter 11 on "Combating Deforestation of Agenda 21" and the "Forest Principles;" the adoption of the UNFCCC, the CBD and the UNCCD that include a number of broad obligations related to forests; establishment of the UNFF and CPF processes, the adoption of the "UN Forest Instrument" and, finally, the UN Strategic Plan on Forests for the period up until 2030. Moreover, forests are also at the heart of the Sustainable Development Agenda 2030. Thus, forest-related processes in this period developed in different fora, all deeply rooted into the fundamental principle of state sovereignty over natural resources. The development processes took place in parallel to each other, competing to occupy the forest issue area largely independently from one another.

The Pre-Constitutional Period, i.e. since 2011 onwards indicates a period in the evolution of the international forest regulation during which a single agreement on forests, i.e. "Forest Convention" may be negotiated. The parties to the (draft) Convention recognize the need to establish a legally binding agreement to ensure or reinforce sustainable forest management, ensure multifunctionality of forests, and avoid fragmentation of forest related policies and to complement and promote existing international, regional and subregional agreements, cooperation and initiatives to this end. If the Agreement is adopted, the document may establish a fundamental set of principles according to which forests are governed.

To conclude, the consideration of the evolution of the international forest regulation reveals its fragmented nature. Negotiations on forest issues take place in various fora. On the one hand, there are the forest-specific international political processes that have been initiated in the spirit to provide for a comprehensive regulation on forests, i.e. Chapter 11 of Agenda 21 on "Combating Deforestation", Forest Principles, the UN Forest Instrument, the Agenda 2030 and its SDG 15

and, finally, the UNFF and the CPF processes. On the other hand, there are the international environmental treaties, which have not been created to apply to forests directly, but may be interpreted "ex post to capture forests within their scope" (i.e. the Ramsar Convention, the WHC, the CITES, the UNFCCC, the UNCCD, the ITTA, the CBD). The fragmented nature of the international forest law has been countered by the emergence of the new forms of forest regulation through instruments such as forest certification (e.g. FSC). All the rules and processes aiming at reversion the loss of forest cover worldwide, forest protection and SFM and included as a vague aggregate in a desperate array of treaties and non-binding instruments may be considered as the international forest law. The question, which requires further research, is whether the interactions of the international forest-related instruments inspire gaps, conflicts and/or synergies.

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RESEARCH ARTICLES

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Sustainable Development of Rural Areas of the Russian State as a Strategic Task and its Legal Support

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Abstract: Systemic economic, environmental and social problems of rural areas in modern world make the issue of public policy for their sustainable development particularly topical. The socio-economic development of the Russian Federation, increased volumes of agricultural output, growing efficiency of the agricultural sector, full employment of the rural population and improving its living conditions, as well as achieving efficient land use require proper legal support. The main strategic planning documents regulating aspects of sustainable development of rural areas are represented by three groups of political and legal acts regarding their: 1) agricultural development, 2) sustainable development, 3) spatial development. Most research articles cover one of these aspects of facilitating the development of rural areas. The sources demonstrate the lack of comprehensive legal studies covering the issues of sustainable development of rural areas. The present article provides a comprehensive analysis of the legal regulation of facilitating sustainable development of rural areas in each of the aspects mentioned. The methods of comparative analysis and legal hermeneutics applied made it possible to reveal contradictions and gaps in the strategic planning documents. This precludes the possibility of specifying a single conceptual model of legal regulation of sustainable development of rural areas. The authors have considered the internal and external sides of the model of legal regulation, outlined the legal approaches to its formation in modern geopolitical, economic and social conditions. The article identifies the problems of legal support for sustainable development of rural areas and considers ways to solve them.

Keywords: rural areas; sustainable development; strategic planning; organic agriculture; rural tourism

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Contents

I. Introduction

Implemented in the early 1990s, land and agrarian reforms caused destructive changes in the economic, environmental and social conditions of rural areas. A high level of unemployment, rural exodus, low incomes, destruction of residential, road and engineering infrastructures can characterize the current state of rural areas.

It was until 2006 that strategic planning of social development of the village was carried out. The national project "Development of the agro-industrial complex" has been implemented since 2006 and has been transformed since 2008 into the State Program for the Development of Agriculture and Regulation of Agricultural Products, Raw Materials and Food Markets. Within its framework, the development of rural areas from the standpoint of economic, environmental and social indicators has been revealing closer connection with agricultural production, rural tourism and other economic activities in the countryside. Since 2019, the development of rural areas has been considered in the context of their spatial development. Conceptual changes in state policy in the field of sustainable development of rural areas make it relevant to specify the model of legal regulation of sustainable development of rural areas in modern geopolitical and geo-economic conditions. Thus, the purpose of the present article is to specify a conceptual model of legal regulation of sustainable development of rural areas.

The novelty is based on elaborating an academically defined conceptual model of legal regulation of sustainable development of rural areas, as well as consideration of its internal and external sides. This makes it possible to form a legislative basis for a consistent and comprehensive state policy in the field of rural development, taking into account the balance of public and private interests. The study undertaken is an academic contribution to the development of agrarian law and economic branches in terms of theoretical analysis of political and legal regulations determining state policy in the field of sustainable development of rural areas, aimed at solving the socio-economic problems of the Russian state. The article also provides important applications in prospective use of the research outcomes in the work of state bodies of legislative and executive authorities of the Russian Federation and the constituent entities of the Russian Federation.

II. Prior Research Studies

Russian legal literature addressing the subject of legal support for sustainable development of rural areas includes works by S.A. Bogolyubov, L.A. Bitkova, G.E. Bystrov, G.A. Volkov, B.A. Voronin, E.A. Galinovskaya, S.A. Lipsky and E.L. Minina. Meanwhile, the state program for the integrated development of rural areas adopted in 2019 necessitates the study of the legal support for sustainable development of rural areas from the standpoint of comparative analysis of strategic planning documents regulating the development of agriculture and ensuring food security, sustainable development of rural areas, and spatial development of rural areas in order to specify a conceptual model of legal regulation of sustainable development of rural areas. To specify a conceptual model of legal regulation for ensuring sustainable development of rural areas, certain scientific and methodological approaches published in foreign literature should be taken into account (Baldanov, Kiminami and Furuzawa, 2019; Chetvertakov and Chetvertakova, 2018; Kondolskaya, Vasilieva and Parsova, 2019; Kuzminov, Gokhberg, Thurner and Khabirova, 2018; Litvinenko, Solovykh, Smirnova, Kiyanova and Mironova, 2019; Loginova and Strokov, 2019).

III. Discussion

Decree of the President of the Russian Federation No 204 dated 07.05.2018[1] outlines national goals and strategic objectives aimed at the socio-economic development of the Russian Federation, increasing its population, improving the standard of living of its citizens, providing comfortable conditions for their living. With regard to rural areas, these objectives may become achievable through an enforcement mechanism for ensuring their sustainable development. Determination of the institutional and conceptual foundations for sustainable development of rural areas is an issue of relevance in the current period of development of the Russian state.

The goals of sustainable development of rural areas are achievable only on a systematic basis and through proper legal support. The relevant sources note that the set of essential features and characteristics of external and internal legal impact on the behavior of participants in public relations through interrelated legal means, methods and approaches aimed at effectively achieving goals and implementing tasks is a model of legal regulation of public relations (Voronina, 2016). It should be noted that the model of legal regulation of sustainable development of rural areas can be viewed both internally and externally.

The inner side of the model of legal regulation of sustainable development of rural areas is represented by the concept of legal regulation of sustainable development of rural areas. It includes a set of essential features and characteristics of legal impact on both internal and external relations ensuring agricultural production and sustainable development of rural areas. These relations are generally aimed at the socio-economic development of the Russian Federation, increasing the volume of agricultural production, as well as the efficiency of agriculture, achieving full employment of the rural population and improving its living standards, and rational use of land.

The set of political, legal and regulatory legal acts aimed at sustainable development of rural areas constitutes the outer side of the

[1] Decree of the President of the Russian Federation No 204 dated 07.05.2018 "On national goals and strategic objectives of the development of the Russian Federation for the period up to 2024" (2018), *Russian newspaper*, 5.

model of legal regulation of sustainable development of rural areas. The implementation of the abovementioned concept of sustainable development of rural areas is carried out through state policy. One of the directions of the latter is the legal regulation of public relations to ensure sustainable development of rural areas.

Currently, existing legal acts use the term "sustainable development of rural areas". Before, until 2006, the concept of "social development of the countryside," which was narrower in content, was used instead. It was an evolutionary way that made the state come to the understanding of the need for the development of rural areas from the standpoint of their sustainability. Although, when determining the state environmental policy, since the beginning of the 1990s, the term "sustainable development" has already been established in Russian legislation.

Initially, the main direction of the agrarian reform and state agrarian policy of the post-perestroika period implied the social development of rural areas. The RSFSR Law No 438-1 dated 21.12.1990 "On the social development of the countryside" stipulated that the social development of the countryside could be achieved by means of economic, legal and social policy of the state (Article 1). It undermined that the drivers of the social development of the village would be the reorganization of collective enterprises (collective and state farms), the privatization of agricultural lands, new forms of management (in particular, farms, agricultural holdings, etc.), and the land market. However, the practice of agrarian and land transformations has later shown, their consequences can be characterized as negative. Most notably, small forms of farming could not ensure food security; other consequences included failure to use of significant areas of agricultural land, the lack of a system for processing and marketing agricultural products, high rates of unemployment in rural areas, low income of rural population, weak social infrastructure.

In encyclopedic sources, stability is defined as the ability to maintain the current state in the presence of external influences. On the one hand, the use of the term "sustainable development" in relation to rural areas is rather controversial, since the current state of rural areas has not yet reached such a level that would be reasonable to define it at least as satisfactory. Inference should be drawn that, when

planning measures for further development of rural areas, the state, still provides, at least, the necessary means of maintaining the level of social development of the countryside already achieved. Nevertheless, this state is considered by many economists as unsatisfactory (Bondarenko, 2019). The strategic planning documents also mention the systemic economic, social and environmental problems of rural areas (section II "Current state and development trends of rural areas" of the Strategy for Sustainable Development of Rural Areas of the Russian Federation for the period up to 2030, approved by the Order of the Government of the Russian Federation No 151-p dated 02.02.2015). On the other hand, the term "sustainable development of rural areas" predetermines an integrated approach to the development of rural areas. Therefore, at present, sustainable development of rural areas is a combination of economic, environmental and social factors ensuring an appropriate lifestyle for rural citizens. Consequently, the legal support for sustainable development of rural areas should be carried out in these spheres.

According to Art. 4 of the Federal Law "On the Development of Agriculture" the sustainable development of rural areas means their stable socio-economic development, an increase in agricultural production, an increase in the efficiency of agriculture, the achievement of full employment of the rural population and an increase in their standard of living, and rational use of land.

The development of rural areas is connected with both the production of agricultural products and the implementation of other types of economic activities.

Sustainable development of rural areas is part of the state agrarian policy and is achieved through measures to improve the demographic situation and provide employment of the rural population, create new jobs, reduce poverty in the rural population; development of social infrastructure and engineering of the village; improvement of housing conditions of the rural population, support of integrated compact development and improvement of rural settlements; increasing the prestige of agricultural labor; development of local self-government and civil society institutions; preservation and improvement of traditional agricultural landscapes. Consequently, sustainable development of rural areas is conditioned, primarily, by the development of agricultural production.

Strategic planning documents regulating the development of agriculture are aimed at increasing the efficiency of agriculture and the contribution of rural areas to the socio-economic development of the country. The achievement of these goals is meant to be carried out by taking into account the development of rural areas as a single complex with its historically formed territories. Also, it will require using various forms of government support, collaboration among the state, local authorities, business and the rural population in order to ensure sustainable development of rural areas; expanding and deepening ties between rural areas and cities based on agro-industrial integration and cooperation; development of local self-government, civil society institutions, all forms of cooperation as the fundamental principles for the implementation of state policy for sustainable development of rural areas. However, the Federal Law "On the Development of Agriculture", which provides the definition of the state agrarian policy, does not stipulate for economic cooperation of agricultural producers. Nor is it indicated as a direction for ensuring sustainable development of rural areas in the State Program for the Development of Agriculture and Regulation of Markets for Agricultural Products, Raw Materials and Food. It leads us to assume that these documents need to be adjusted in terms of the principles and directions of state agrarian policy, and agricultural cooperation should be recognized as an object of state influence, including legal regulation.

Economic and climate-related risks of agricultural activities predetermine the need for government support. At the same time, the practice of providing budgetary assistance proves that it is being provided to large agricultural commodity producers. It results in their founders receiving added value while the income of their employees demonstrates no increase (Shagayda and Uzun, 2019). Hence, it obviously follows that the prospective social effect of the development of rural areas proposed by the strategic planning documents is not being achieved. N.I. Shagayda and V.Ya. Uzun quite rightly suppose that it is necessary to provide state assistance not to large, but to small forms of management. While agreeing with this position, nevertheless, we have to note that of all small forms of management, it is agricultural cooperatives that are most integrated into the mechanism of sustainable

development of rural areas. Agricultural production cooperatives do so through the creation of new jobs, distribution of cooperative payments in proportion to labor participation, maintenance of social infrastructure (housing, boiler houses, roads, etc.). Agricultural consumer cooperatives do so by combining the organizational and economic resources of their founders — agricultural organizations, farms, individuals leading private household plots, as well as by reducing costs and risks in the processing and marketing of agricultural products. Therefore, the need to develop rural cooperation is stated in the Decree of the President of the Russian Federation No 204 dated 07.05.2018 "On national goals and strategic objectives of the development of the Russian Federation for the period until 2024."

Sustainable development of rural areas is impossible without the rational use of land, and primarily, agricultural land. One of the current problems here is their non-use for their intended purpose.

In the 1990s, 11.8 million workers of former collective and state farms became the owners of 115.9 million hectares of agricultural land (FTP "Development of land reform in the Russian Federation for 1999–2002"). Then, land privatization failed to meet the reform expectations (Rumyantsev and Konopleva, 2016). The overwhelming majority of citizens owning land shares do not have either the intention or the ability to cultivate agricultural lands. Agricultural organizations own only 5 % of the land.[2] The rest of the land used in agricultural production is leased by them, which leads to an increase in the cost of agricultural products.

At some point, it was proposed to adopt a federal law on streamlining property relations that arose during the privatization of agricultural land (Volkov, 2006). This draft law provided that "if the owner of the land share has made a decision to dispose of the land share independently, then the certificate of ownership of the land share issued after performing this action cannot have legal force, since the right to the land share at that moment passed to another owner" (Galinovskaya, 2006), that is, to a legal entity.

[2] Report on the state and use of agricultural land in the Russian Federation in 2017, 2019, FGBNU "Rosinformagrotech", Moscow. P. 26.

The state used an alternative means, namely, through the conversion of non-demanded land shares into municipal ownership (Art. 12.1 of the Federal Law No 101-FZ dated 24.07.2002 "On the turnover of agricultural land"). Despite the fact that this article was introduced by the Federal Law No 435-FZ dated 29.12.2010 "On Amendments to Certain Legislative Acts of the Russian Federation in terms of improving the turnover of agricultural land" and entered into force on July 1, 2011, the situation has not improved. Therefore, the President of the Russian Federation in his Address to the Federal Assembly of the Russian Federation for 2016 drew attention to this problem.

From our point of view, the current federal land legislation is subject to certain conceptual changes. In particular, it is necessary to provide at the federal level for the provision of agricultural land to agricultural organizations on a preferential or non-reimbursable basis.

There is a positive experience regarding the provision of agricultural land to the ownership of farms on a preferential basis. The laws of the majority of constituent entities in the Russian Federation regulating the turnover of agricultural land provide for such a mechanism for granting land plots from state and municipal ownership to the private ownership of farms. Specifically, in 2011, the Law of the Vologda Region No 976-OZ dated 19.12.2003 "On the turnover of agricultural land in the Vologda Region" was supplemented by Article 6 (1). It is stipulated that agricultural land plots, considered as farm-owned agricultural land for the implementation of the activities of these farms on the basis of the right of permanent (unlimited) use or the right of inherited life possession, or provided to the specified persons on the basis of the right of permanent (unlimited) use or the right of inherited life possession and reregistered by them for the right to lease, are provided on a non-reimbursable basis to the specified persons in the event that several conditions are present in the aggregate. These conditions include the absence during the entire period of use of land plots of any established facts of non-use for their intended purpose or use in violation of land legislation. Besides, these conditions may take place when within the income received from the sale of goods (works, services) of farms, the share of income from the sale of agricultural products produced by them makes at least 70 %; or the obligation to pay taxes, fees, insurance

premiums, penalties and tax sanctions to the budgets of all levels is properly fulfilled.

Article 10 of Federal Law No 101-FZ dated 24.07.2002 "On the turnover of agricultural land" states that the procedure for providing agricultural land to individuals and legal entities is specified by the Land Code of the Russian Federation (Chapter 5.1) as well as by the laws of the constituent entities of the Russian Federation. Hereby, the federal government delegated the solution of this issue to the subjects of the Russian Federation. Certain subjects of the Russian Federation have found an opportunity to provide land plots from agricultural land on a non-reimbursable basis. In particular, on April 1, 2019, the Law of the Vologda Region No 4476-OZ dated 28.12.2018 "On the specifics of providing land plots from the fund for the redistribution of agricultural land in the Vologda Region" (hereinafter referred to as the Law on the Vologda Hectare) entered into force.

When developing the draft Law on the Vologda hectare, the federal experience was taken into account — Federal Law No 119-FZ dated 05.01.2016 "On the specifics of providing citizens with land plots in state or municipal ownership and located on the territories of the constituent entities of the Russian Federation that are part of the Far Eastern Federal District, and on amendments to certain legislative acts of the Russian Federation" (hereinafter referred to as the Law on the Far Eastern Hectare). At the same time, the Law on the Vologda hectare, in our opinion, offers a more competent legal solution to the land issue.

In contrast to the parties involved in legal relations for the provision of a Far Eastern hectare in the Vologda Oblast, not only citizens, but also persons running a farm and agricultural organizations have the right to a land plot. The area of the land plot provided is from 2.5 to 100 hectares. Property rights to land plots are also different. The Far Eastern hectare is granted on the right of use on non-reimbursable basis, while the Vologda hectare implies ownership.

The goals of the legal regulation of relations on the provision of the Vologda hectare indicated in the Law on the Vologda hectare include the involvement of agricultural land in circulation, the creation of conditions for the development of municipalities, taking into account the need for planning and organizing the rational use of land, developing

the economy, improving the organization of territories on the basis of territorial planning documents, as well as creating conditions for attracting citizens for agricultural production.

All land plots are to be provided from the land redistribution fund. Land plots must be state property of the Vologda Oblast, municipal property or state property, the right to which is not delimited, and be included in the state information system (hereinafter referred to as GIS).

The right to receive a land plot belongs to citizens of the Russian Federation residing in the territory of the Vologda region, or agricultural organizations carrying out agricultural activities in the territory of the region.

The maximum sizes of land plots depend on the purpose of the permitted use: 2.5 hectares for personal subsidiary farming, 10 hectares for citizens for other purposes, up to 100 hectares for legal entities. The minimum size of land plots is the same and is 1 hectare.

The procedure of providing a land plot is carried out in several stages. The first stage is an appeal of a citizen or legal entity through GIS about the choice of a land plot. The second stage is making an application for preliminary approval of the provision of a land plot through the portal of public services. The third stage is the implementation of cadastral works and cadastral registration of the land plot. The fourth stage is making an application for the provision of a land plot. The fifth stage is the decision-making on the provision of a land plot and registration of private property rights.

As the practice of implementing the Law on the Vologda hectare shows, on the first day of its operation, more than 230 applications for the provision of land plots with a total area of 1.5 thousand hectares were submitted. This proves that this legal mechanism is not only legal, but also in demand by individuals and legal entities.

The problem is that the legislation of a great number of subjects of the Russian Federation does not mention such a legal approach to the provision of land plots from agricultural land to the ownership of citizens and legal entities. This position is explained by the fact that the alienation of land plots from state and municipal property is viewed as a means of replenishment of the corresponding budget, which seems

undeniable. On the other hand, government agrarian policy direction is aimed at the production of greater volumes of agricultural products, allowing not only to ensure food security in Russia, but also to export agricultural products. Increasing the export of agricultural products is one of the national goals outlined by the President of the Russian Federation in the decree No 204 dated 07.05.2018 "On national goals and strategic objectives for the development of the Russian Federation for the period up to 2024" (paragraph 14). By 2024, the volume of agricultural exports should reach $ 45 billion per year. Therefore, the state should provide for the grounds for the free provision of land plots to agricultural organizations, without shifting the solution of this issue to the constituent entities of the Russian Federation. Art. 10 of the Federal Law "On the turnover of agricultural land" requires making appropriate changes by defining the grounds, conditions and procedure for the free provision of land plots into the ownership of legal entities, i.e. producers of agricultural products. The state sees a certain incentive in the development of rural areas, both from the standpoint of economic and environmental factors, in organic agriculture.

According to the concept of sustainable development and building a "green" economy, organic agriculture is a sustainable model of agricultural production. Its main principle is "production and circulation of organic products without damage to human health and without environmental destruction" (Voronin, 2013). In November 2017, the International Committee for the Development of Organic Agriculture (IFOAM) came to a decision to move to a new stage in the development of Organic 3.0. Now the focus of organic agriculture must be on overcoming problems such as minimizing the negative effects of climate change, preserving biodiversity, and hunger reduction (Zanilov, Melenteva and Nakaryakov, 2021).

The sources note that "the development of organic agriculture in our country creates a so-called 'vicious circle of advantages', including that for rural residents — due to the growth of household income, increasing self-employment, development of cooperation, social infrastructure, etc." (Polushkina, 2016).

In the concept of sustainable development and building a so-called "green economy" being implemented in the international space,

it is organic agriculture that is recognized as a sustainable model of agricultural production. As noted, "the main principle of organic agriculture is the production and circulation of organic products without causing harm to human health and without environmental destruction; the main function is to improve public health by producing high-quality and biologically safe products, reducing environmental pollution and improving the control system safety of agricultural raw materials and food products" (Burak,2014).

In the Russian Federation, the creation of a legal framework began with the adoption of a number of national standards (GOSTs) regulating the production, storage and transportation of organic products, their voluntary certification and labeling. Nevertheless, since these norms were of a framework nature, the issue of the development and adoption of the Federal Law regulating organic agriculture became relevant (Voronina, 2019). The comparative analysis conducted led to the conclusion that 87 foreign countries have a law rather than subordinate legislation. Meanwhile, two legal approaches can be distinguished — in some countries it is the law on organic agriculture, while other countries use the law on organic products (Voronina, 2019).

On 3 August 2018, the Federal Law "On Organic Products and on Amendments to Certain Legislative Acts of the Russian Federation" (hereinafter referred to as the Law on Organic Products) was adopted. This Act is a hybrid of organic farming and organic production laws. Its positive aspect is the expansion of the conceptual apparatus of agrarian law and legislation. It provides definitions for organic agriculture and organic products. It is noted that these definitions make it possible assess "the risks that bona fide manufacturers have in connection with the characteristics of such high-quality products, which make a positive impact on human health, and the conditions of production, which contribute to improving the environment and solving a number of social problems" (Mikhaylov, 2019). At the same time, unscrupulous producers may have an intention to unreasonably position their agricultural products as organic ones. Therefore, one of the tasks of legal regulation is to create legal mechanisms aimed at suppressing unfair competition and deceiving consumers. This may be achieved through the entry of information about the manufacturer of organic

products and the products themselves in a special register, as well as by labeling of organic products. Similar mechanisms are envisaged by almost all foreign countries.

The analysis of the law advances arguments for the framework nature of the legal regulation of organic agriculture. In particular, there are no government support measures. Federal Law No 264-FZ dated 26.12.2006 "On the Development of Agriculture" does not contain specific regulations on supporting organic producers. State aid is provided to the latter on an equal basis with other producers. The sources note that this approach is erroneous (Avarskiy and Taran, 2018). Agreeing with this position, we believe that the Law on the Development of Agriculture should be structured: measures for state support for organic producers should be separated into its separate articles. Another reason for this to be done is that European and other foreign markets are interested in the export of organic products. It is impossible to imagine the intensive development of organic production in Russia without government support.

It should be mentioned that strategic planning documents lack a uniform approach to defining the place and role of organic agriculture in the development of rural areas. In the Strategy for Sustainable Development of Rural Areas until 2030, it is noted that organic agriculture makes it possible to put into circulation a significant part of the cultivated area, provide employment for the rural population, increase the export of agricultural products, and ensure food security. The Concept for Sustainable Development of Rural Areas of the Russian Federation for the period up to 2020 makes no mention of organic agriculture. We come to the conclusion that it is necessary to bring the strategic planning documents for the development of rural areas in correspondence with the conceptual documents for the development of agriculture and the Address of the President of the Russian Federation to the Federal Assembly for 2019. Additionally, a form of "green" agriculture ensuring sustainable development of rural areas is the production of environmentally friendly agricultural products.

In the Address of the President of the Russian Federation to the Federal Assembly of the Russian Federation for 2019, it is noted that it is necessary "to create a protected brand of domestic clean, 'green'

products," which should "deserve high quality guarantees both in the domestic and foreign markets." Unlike organic products, agricultural products with improved environmental characteristics are products and raw materials whose quality and consumer characteristics comply with the requirements of the current legislation on agricultural products with improved characteristics.

This position is reflected in the Bill No 1087686-7 "On agricultural products, raw materials and food with improved characteristics" (hereinafter — the Bill) elaborated by the Ministry of Agriculture of Russia. The bill was originally referred to as the draft federal law "On agricultural products, raw materials and food with improved environmental characteristics and on amendments to the Federal law 'On the development of agriculture'". The key definition it contained was that of "improved environmental characteristics" as indicators of the quality and safety of agricultural products, raw materials and food, taking into account environmental factors defined by the standards in the field of circulation of agricultural products with improved environmental characteristics. This form of the project was met ambiguously by the professional community. The Union of Organic Agriculture of Russia mentioned the following shortcomings in the draft law: no criteria for ecologically clean products to meet international requirements; non-compliance of environmentally friendly products with international environmental standards based on the ISO 14000 system of standards; no certification mechanism recognized on the territory of foreign countries, excessive bureaucratization of the law, etc.[3] According to farmers, collisions and gaps in the bill prevent Russian environmentally friendly products from entering foreign markets and taking a leading position there. Hence, the professional community raised the issue of the need to adjust the title and content of the bill in accordance with the national experience of foreign countries and international documents. In this regard, the title of the bill and its content have also been adjusted.

A comparative analysis of the two bills leads us to the following conclusions. The first one concerns the change in the name of the

[3] Available at: https://soz.bio/?s=сельскохозяйственная+продукция+с+улучшенными+характеристика [Accessed 20.05.2021].

bill. The word "ecological" was removed from the title of the draft law regarding the characteristics of agricultural products, raw materials and food produced in accordance with the requirements stipulated by the draft law. Secondly, the requirements for products with improved characteristics have been changed. Earlier, the document mentioned requirements for agricultural products with improved environmental characteristics, such as the separation of manufacturing products with improved environmental characteristics from other agricultural products; the use of pesticides and agrochemicals with improved environmental characteristics; a ban on the use of cloning and methods of genetic engineering, genetically modified and transgenic organisms; a ban on the use of ionizing radiation and ultraviolet rays; the use of food additives, flavors and flavor enhancers; separate storage and transportation of agricultural products with improved environmental characteristics from other agricultural products; a ban on the use of packaging and containers that can lead to contamination of agricultural products with improved environmental characteristics. The current law now mentions only the following requirements for the production of agricultural products with improved characteristics: separation of the production of products with improved environmental characteristics from other agricultural products; a ban on the use of cloning and methods of genetic engineering, genetically modified and transgenic organisms; ban on the use of ionizing radiation; separate storage, transportation of agricultural products with improved environmental characteristics from other agricultural products; a ban on the use of packaging and containers that may cause contamination of agricultural products with improved environmental characteristics. Moreover, there appeared such requirements as the use of only agricultural raw materials with improved characteristics in the production of agricultural products with improved characteristics; application of technologies to meet environmental, sanitary-epidemiological and veterinary requirements; use of recyclable and biodegradable containers and packaging. In our opinion, these changes made it easier for Russian agricultural products with improved characteristics to enter foreign markets, but it is unlikely that they may contribute to the greening of agriculture, since the Bill does not contain any fundamental differences from other

agricultural activities for the production of agricultural products with common characteristics. In addition, excluding norms aimed at separate state support for producers of agricultural products with improved characteristics from the draft law should be viewed unfavorably: now the draft law stipulates that state support for manufacturers of products with improved characteristics should be provided on an equal basis with other agricultural producers. In our opinion, the manufacturing of agricultural products with improved characteristics is expensive, so government support should be provided on a separate basis. Otherwise, we will not be able to make the production of such products sustainable and ensure the growth of exports of just such kind of products.

Furthermore, an integral part of the legal regulation of the production and turnover of agricultural products with improved characteristics are GOSTs adopted during 2019 (6 GOSTs in total). In particular, these GOSTs use the term "agricultural products with improved environmental performance." Therefore, in case the law is adopted in a prepared version after entering into legal force, these standards are most likely to be renamed and their content to be changed.

Modern agricultural activities are closely connected with the use of digital technologies. Unfortunately, our country ranks only 15th in the digitalization of agriculture. The Russian President's Decree No 204 dated 07.05.2018 "On national goals and strategic objectives of the development of the Russian Federation in the period until 2024" provides for the accelerated introduction of digital technologies in the economy, as well as in the social sphere. The digitalization of agriculture will facilitate the growth of productivity and safety, it will also improve conditions for agricultural labor, improve the quality of agricultural products, and create job opportunities in industries related to agriculture (Skvortsov, Skvortsova, Sandu and Iovlev, 2018).

The issues of digitalization of the agro-industrial complex are of priority importance, since it is the level of development of agriculture that food security and state sovereignty depend on (Popova, 2018). The main document of strategic planning for building the digital economy in all its sectors is the National Program "Digital Economy of the Russian Federation," the passport of which was approved on June 4, 2019. Its part regarding the regulatory issue of the digital economy notes that it is

necessary "to create a system of legal regulation of the digital economy based on a flexible approach in each area, as well as the introduction of civil turnover based on digital technologies" (clause 4.1 of the National Program "Digital Economy of the Russian Federation"). Therefore, in the field of agriculture, the definition of digitalization directions should function as the direction of the state agricultural policy.

Specific features of agricultural activities (in particular, seasonal nature, dependence on natural and climatic conditions, etc.) also determine the special characteristics of the agricultural digitalization model. Strategically, digitalization should be aimed at ensuring food security, therefore, the Doctrine of Food Security until 2030 provides that the national interests are to improve the quality of life of Russian citizens through adequate food supply, provide the population with high-quality and safe food products, sustainable development and modernization of agriculture and fisheries and infrastructure of the domestic market, the creation of a highly productive sector developing on the basis of modern technologies. The State Program for the Development of Agriculture and Regulation of Agricultural Products, Raw Materials and Food Markets (hereinafter referred to as the Program) indicates the need to adopt a departmental program "Digital Agriculture" (Voronina, 2020) aimed primarily at introducing digital technologies in order to achieve a technological breakthrough in the agro-industrial complex by reduplicating labor productivity in 2024.

Since 2019, our country has been implementing a departmental project "Digital Agriculture" is being implemented in our country. Its main objective is to build a digital agriculture based on modern methods of agricultural production using digital technologies, which allow to increase labor productivity and at the same time reduce production costs. This requires the creation and further development of a national platform for digital public administration of agriculture "Digital Agriculture," the "Agro-Solutions" module, and the sectoral electronic educational environment "Land of Knowledge" (Voronina, 2020). However, one of the main conditions to regulate that is meant to be proper legal support. The analysis of the current political, legal and regulatory legal acts in the field of agriculture, forestry and fisheries

leads us to the conclusion about a certain unsystematic legal regulation of the digitalization of agriculture.

The Federal Law No 264-FZ dated 29.12.2006 "On the Development of Agriculture" fails to mention digitalization among either its goals, objectives, or directions of the state agricultural policy. The law contains a polysystem-mediated legal regulation of digitalization, specifically the one that is made through state support for certain sectors of agriculture (crop production, animal husbandry, etc.), and state support for sustainable development of rural areas. It seems reasonable to conclude that an objective need for amendments to the Law regulating the directions of digitalization of agriculture has already been revealed (Voronina and Shnorr, 2019).

International experience clearly demonstrates that digitalization of agriculture can be performed in the following areas: digital farming; center of excellence in the field of digitalization of agriculture; rural infrastructure development; collection of geodata, meteorological and data on the means of production (Zadvorneva, 2018). Similar areas of digitalization of agriculture should also become available in Russia. Specifically, it may be focused on digital farming. Generally, it includes the definition of agricultural land boundaries using satellite navigation systems, fertilization, digital mapping and yield planning, crop monitoring, soil sampling in a coordinate system, remote sensing, the use of unmanned agricultural equipment, etc. However, digitalization in agriculture is restricted by the lack of strategic land management planning and a proper inventory of agricultural land.

One of the areas which applies digital technologies in agriculture is tillage. The implementation of digital technologies in the field of tillage "makes it possible to improve the operation of arable units by stabilizing the position of the frame, changing the width of the plow body, the speed of agricultural implements, and the use of support-drive wheels" (Lobachevskiy, Starovoytov, Akhalaya and Tsench, 2019). In crop production, digital technologies are used to protect agricultural plants. These include digital diagnostics, digital phytosanitary monitoring, computer decision support systems, and robotic plant protection systems (Nemenushchaya, 2019).

When introducing digital technologies into certain types of agricultural activities, information resources, knowledge and technology banks formed by agricultural sub-sectors, objects, and by constituent entities of the Russian Federation are of paramount importance. These should definitely be open and timely updated.

Digitalization should also be aimed at ensuring the traceability of agricultural products, stimulating access to digital open platforms, implementing online trading platforms and systems for promoting agricultural products (Yurina, 2018), conducting electronic trading, creating portals to provide land plots, etc.

The financial burden for the introduction of digital technologies is vested in agricultural producers. Taking this into account, government support is definitely required. Providing this support necessitates the creation in a digital format of a unified model of industry data in the agro-industrial complex for the provision of state support. Though, neither the Law nor the Program provides for specific measures of state support for agricultural producers implementing digital technologies. In economically developed countries (such as Canada, Turkey, Australia, Germany, USA) this kind of support is currently provided. This leads us to the conclusion that the current legislation should be supplemented with appropriate measures of state support (Voronina, 2021).

The digitalization of agricultural production is inseparably associated with the digital development of rural areas. The Strategy for the Development of the Information Society in the Russian Federation for 2017–2030, approved by Decree of the President of the Russian Federation No 203 dated 09.05.2017 (hereinafter referred to as the Strategy), provides that "since 2014, rural settlements have been connected to the network in Russia." Therefore, their digitalization can be considered as the most important condition for ensuring sustainable development of rural areas. In addition, the Strategy provides that the use of information technology in agricultural organizations requires the development of a set of measures that should provide competitive advantages to organizations in the RF, ensure production efficiency, increase labor productivity and be correlated with state policy in the field of agricultural development.

Obviously, not all documents of goal-setting in the field of sustainable development of rural areas directly entail the use of digital technologies. The Strategy for Sustainable Development of Rural Areas of the Russian Federation for the period up to 2030 does not contain such regulation.

The state sees the economic and social effect in the development of organic agriculture in parallel with rural tourism (Litvinenko, Solovykh, Smirnova, Kiyanova, and Mironova, 2019). Exploring the prospects for the development of rural tourism, L.A. Bitkova mentions that rural tourism is not just a branch of the tourism industry, but it also performs important socio-economic functions to create attractive jobs, including those for rural youth and women; to arrange rural areas; to provide the integrated use of natural and cultural potential of rural areas. At the same time, the fundamental regulatory legal act in the field of tourism, Federal Law No 132-FZ dated 24.11.1996 "On the Basics of Tourist Activity in the Russian Federation", does not provide for either the concept of rural tourism or measures of its state support. There are no normative principles for regulating rural tourism mentioned in the Federal Law "On the Development of Agriculture". The only federal law that contains a reference to rural tourism is the Federal Law No 209-FZ dated 24.07.2007 "On the development of small and medium-sized businesses in the Russian Federation," Article 15 of which provides for the creation of centers for the development of rural tourism.

Meanwhile, strategically the state sees a certain incentive for the development of rural areas by means of rural tourism. The Strategy for Sustainable Development of Rural Areas of the Russian Federation for the period up to 2030, approved by the Order of the Government of the Russian Federation No 151-r dated 02.02.2015, notes that in order to develop rural tourism, it is necessary to create special agritourism clusters; conducting educational events for owners of rural guest houses, representatives of farms, individual entrepreneurs, rural residents involved in organizing and providing tourist services in rural areas; media coverage of leading practices and most successful rural tourism development projects. It is hardly possible to accept these provisions as conceptual. Even the terminology in the field of rural tourism has not been properly defined: in one section of the Strategy, the term

"rural tourism" is used, while the other one provides a different term with the same meaning, "agritourism". With regard to state support for rural tourism, the State Program for the Development of Agriculture and Regulation of the Markets of Agricultural Products, Raw Materials and Food, approved by the Decree of the Government of the Russian Federation No 717 dated 14.07.2012, provides for the only measure — partial reimbursement of the expenses of paying interest on loans and borrowings related to the development of rural tourism areas, including local industries and national crafts, rural (agricultural) trade, household and social and cultural services for the rural population, harvesting and processing of wild plants and medicinal plants. There are no other measures for state support of rural tourism. Relying solely on the rural population itself is inadequate, considering the low level of its income. Therefore, the development of rural tourism can be associated with the activities of agricultural producers. Still, since rural tourism also pursues a social effect, i.e. the creation of jobs and the development of social infrastructure, it is necessary to aggregate resources and share risks between public and private partners in the form of a public-private and municipal-private partnership mechanism. Strategic planning documents both in the field of agriculture and sustainable development of rural areas do not contain such provisions, therefore, they must be supplemented with appropriate norms. Thus, the strategic planning of the development of rural areas until recently has been carried out exclusively according to the sectoral principle.

Gradually, the development of rural areas began to be considered in the context of their spatial development. This is due to the approval by the Government of the Russian Federation on May 31, 2019 of the State Program of the Russian Federation for the Integrated Development of Rural Areas. This program was established following the instructions of the President of the Russian Federation V.V. Putin to the Government of the Russian Federation (minutes of instructions No. Pr-2014 dated 31.10.2018 (subparagraph "a" of paragraph 1).

The main goals of the state program for the integrated development of rural areas were to improve the quality of life and the level of well-being of the rural population; maintaining a balanced settlement system, including various types of settlements, taking into account

regional specific features (Lut, 2019). Therefore, the first direction of the implementation of the State Program is the development of promising areas of economic growth, where investment projects are currently being implemented or will be implemented, both of various sectoral focus, and all spheres of entrepreneurship. It is planned that the state program for the comprehensive development of rural areas will be implemented not only on the territories agricultural production predominates, but also in areas revealing considerable potential for the development of all sectors of the economy.

Another direction is the development of territories, primarily regional centers, to meet a certain standard. When developing the state program for the integrated development of rural areas, the basis was the Spatial Development Strategy of the Russian Federation until 2025, approved by the Order of the Government of the Russian Federation No 207-r dated 13.02.2019.

The spatial development strategy envisages improving the living conditions of residents of rural settlements, reducing the housing stock unsuitable for habitation, increasing the level of improvement of rural settlements, providing communal infrastructure; increasing transport accessibility of rural areas; increasing the competitiveness of the economy of rural areas, promoting the development of land reclamation facilities, involving unused lands in agricultural circulation, supporting measures aimed at preserving and increasing the fertility of agricultural lands, restoring forests and aquatic biological resources; promoting rural tourism.

IV. Conclusion

The results of the conducted analysis of strategic planning and legal support for sustainable development of rural areas demonstrate a certain shift in the concept of state policy regarding the development of rural areas, from the sectoral one to the spatial one. At the same time, it is necessary to take into consideration a combination of sectoral and spatial components of sustainable development of rural areas. This actualizes the issue of bringing the strategic planning documents of both sectoral and spatial development of rural areas in correspondence

with each other. Only a systematic and comprehensive legal approach makes it possible to form a multi-level system of strategic planning, interconnected in terms of goals, directions, activities and timing of their implementation, as well as an effective model of legal regulation of sustainable development of rural areas, ensuring its proper legal support.

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ARTICLES

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Ecological Migrants: International Legal Status and Prospects of its Consolidation

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Abstract: This article is devoted to ecological migrants, a category of persons that arose as a result of their displacement due to ecological reasons. At the present time ecological migrants do not have a legal status that would be enshrined in international law. This paper gives a definition of the content of the international legal status of ecological migrants, which reflects main characteristic of this category of persons. The article discusses prospects of establishing a protection of ecological migrants under a separate international treaty that would enshrine the international legal status of ecological migrants, lists advantages of an international treaty, proposes a concept of the treaty indicating prospective rights and obligations of ecological migrants and international legal obligations of Member States.

Keywords: ecological migrants, characteristics of ecological migrants, climate change, rights of ecological migrants, international legal status of ecological migrants

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Contents

I. Introduction

One of the main international environmental problems is a climate change, which is a priority on the global agenda. The intensification of international environmental problems led to the emergence of such a new category of people as ecological migrants. In recent years, the international community has begun to pay more and more attention to the problem of protecting the rights of ecological migrants and make attempts to solve it. The UN Secretary General constantly calls for solidarity in the fight against climate change (United Nations Secretary-General, 2021).

From the analysis of the international law doctrine and "soft law," it follows that the characteristics of ecological migrants can be classified according to four main criteria depending on: 1) reasons of displacement; 2) procedure for making a decision on relocation; 3) duration of stay outside the former usual place of residence; 4) presence of the fact of crossing the state border. Based on the presented characteristics of ecological migrants this category of people should be understood as people who were temporarily or permanently displaced or voluntarily migrated to areas outside the state of citizenship or previous habitual residence — which are safer and more favorable for life and health — due to environmental disasters (natural or anthropogenic), gradually or rapidly developing adverse consequences of environmental changes, in order to avoid the negative consequences of large-scale development projects and/or as a result of internal conflicts over disappearing natural resources, accompanied by massive violations of human rights, and/or other serious violations of public order.

II. Prospects of Determining the International Legal Status of Ecological Migrants

The term "status" (Latin *statum*) means the position, state of someone or something. Legal status determines the legal status of an individual in society. The basis of the legal status of an individual is his/her rights, freedoms and obligations, enshrined in international treaties, state legislation and other legal and regulatory instruments. The international legal status of individual includes the rights and freedoms of the individual, which are enshrined in the norms of international law. The international legal status covers the entire range of human rights that arise from international legal and domestic norms (Lukovskaya, 2007, pp. 34–36). The international legal status of ecological migrants is a set of rights, freedoms and obligations that are inherent in ecological migrants.

The doctrine of international law considers an option of adopting a separate international treaty that would consolidate the international legal status of ecological migrants and provide international protection to them. Harvard Law School professors Bonnie Docherty and Tyler Giannini point out that special characteristics of ecological migrants "are essential to achieving a comprehensive, integrated solution to the problem, demand the development of a new international convention" (Docherty and Giannini, 2009, p. 391). While amending existing international treaties may lead to the fact that the true nature of the problem of ecological migration would not be taken into account, and that such approach would not be able to provide full and adequate protection of ecological migrants. Despite the fact that the development and negotiation of a new international treaty is a more difficult option than amending existing international treaties, this approach may be the most practical and effective (Docherty and Giannini, 2009, p. 391). The adoption of a separate international treaty has a number of advantages.

First, a new international treaty will emphasize that ecological migrants are a separate group of people whose displacement deserves serious attention, and which cannot be resolved by analogy with the displacement of other categories of persons whose international legal status has been enshrined in international law.

Second, adoption of a separate international treaty "would establish that this problem is a multidisciplinary one that needs to blend different legal and normative principles, including those of human rights, humanitarian assistance, and international environmental law" (Docherty and Giannini, 2009, p. 392). In addition to its multidisciplinary nature, the problem of ecological migration includes relations between states and communities, and relations between states. The new international treaty provides an opportunity to combine and create tiered commitments (Williams, 2008). This option of providing protection will improve the existing mechanism for the international protection of refugees and migrants, allow to use the models of international environmental law for financing, ensure cooperation between members of international community and expand the joint responsibility of states. This type of interdisciplinary approach is necessary for solving the ecological migration problem (Docherty and Giannini, 2009, p. 398).

Finally, adoption of a separate international treaty on the protection of ecological migrants will ensure the participation of representatives of communities and civil society in its development — experiencing the adverse effects of climate change — and of the international non-governmental organizations dealing with the problems of displacement based on the environmental reasons (Docherty and Giannini, 2009, p. 398). The development and adoption of international treaties on international humanitarian law can serve as a successful example of the application of this approach. The Ottawa Process gave rise to a similar approach and ultimately led to the adoption of the 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction (Ottawa Convention). Later, a similar approach (Goose, 2008, pp. 217–218) was used in the development of the 2008 Convention on Cluster Munitions. In both cases, states initially attempted to address this issue in separate protocols to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects (Inhuman Weapons Convention). However, this process did not lead to positive results (Goose, 2008). Subsequently, when state and non-state

negotiators moved from proposals to amend the Inhuman Weapons Convention to negotiating separate and independent agreements, they were able to make great strides. For a couple of years of working on the development of agreements, the participants came to the signing of an agreement banning certain types of weapons, which is considered as very operational work (Goose, 2008).

A similar model can be applied to the work on an international agreement on the protection of the international legal status of ecological migrants. The participation of representatives of civil society in its development will help to draw attention to additional problems of ecological migrants that they may face as a result of displacement. The participation of interested states will provide an opportunity to develop possible options for solving such problems and to consolidate interests of states that will open their borders to ecological migrants (Docherty and Giannini, 2009). Together it will make the contract the most effective and consistent with its goals. Countries most vulnerable and affected by the adverse effects of climate change, such as small island states, could initiate work on an international treaty and involve civil society representatives who are experiencing the effects of climate change in its development (Docherty and Giannini, 2009).

According to professors B. Docherty and T. Giannini, an international treaty on the status of ecological migrants should include two types of measures. On the one hand, these are the measures to provide assistance to people who migrated for environmental reasons, and on the other hand, preventive measures aimed at preventing the onset of environmental disasters. The relief measures will directly enshrine the minimum set of human rights guaranteed to ecological migrants in accordance with an international treaty while preventive measures will help to prevent the onset of environmental disasters, preserve the integrity of the state, the unity of the people, and their cultural heritage. The inclusion of preventive measures for countries receiving ecological migrants on their territory can serve as an incentive for the signing of such an international treaty, since this can reduce the number of ecological migrants (Docherty and Giannini, 2009, p. 401).

III. Prospect of Adoption of an International Treaty Consolidating the International Legal Status of Ecological Migrants

The Draft Convention on the International Status of Environmentally-Displaced Persons (University of Limoges, Draft Convention 2013), prepared in 2008 by the Center for Interdisciplinary Research in Environmental Law, Land Use and Urban Development (Center Research) at the University of Limoges (France), is widely known among scholars dealing with the problem of ecological migration. The initiative to develop the Draft Convention began as a research project initiated by members of the Center for Research specializing in environmental law, particularly by Jean-Marc Lavieille. Human rights researchers from the Faculty of Law and Economics of the University of Limoges, led by professor Jean-Pierre Marguénaud, also worked on this project. In 2005, a symposium was held in Limoges on the problem of the situation of ecological refugees, the results of which were published in the European Journal of Environmental Law (Revue Européenne de Droit de l'Environnement, 2008). Symposium called for the development of a separate international convention for the protection of ecological migrants. In 2008 researchers presented the first draft of the convention to experts in the field of law, science and philosophy working in international, regional organizations, as well as in non-governmental organizations (NGOs). The final text of the Draft Convention was published in 2008 in the European Journal of Environmental Law and distributed to governments, international organizations and NGOs. This Draft Convention is more related to the protection of human rights than to environmental agreements.

One of the main developers of the Draft Convention of the University of Limoges, Michel Prieur notes the importance of adopting a new agreement is due, on the one hand, to a real need, as evidenced by an increase in the number of environmental disasters and global changes in the environment, which are accompanied by mass relocation of people, and, on the other hand, due to a legal gap in the regulation of this problem. The Draft Convention does not contradict existing international treaties and soft law documents.

The scientists involved in the development of the Draft Convention used to refer to the studied category of persons as "environmentally displaced persons". According to art. 2-2 of this Draft Convention, they are defined as follows, "Individuals, families and populations confronted with a sudden or gradual environmental disaster that inexorably impacts their living conditions and results in their forced displacement, at the outset or throughout, from their habitual residence and requires their relocation and resettlement."

The definition recognizes that migration can occur not only due to sudden environmental disasters, but also if the development of such disasters is gradual. Art. 3 "Scope of Application" also enshrined two other reasons for ecological migration of the population: armed conflicts and terrorist acts. However, the Draft Convention does not take into account such possible causes of ecological migration as: the conduct of large-scale state development projects, when the state carries out a planned, forced displacement of the population to another locality within the state borders, or an increase in the water level in the World Ocean, which threatens the complete flooding of small island states and low-lying coastal areas.

Art. 2.3 of the Draft Convention defines "forced displacement" as "any temporary or permanent displacement made inevitable by environmental disaster, either within a State or from the State of residence to one or more receiving States, of individuals, families or populations." In this definition, it was enshrined that ecological migration can be temporary or permanent, and also take place within the state or outside of it. Thus, the definition of ecological migrants covers a much larger circle of people. It provides protection for both internal and external ecological migrants; persons carrying out relocation both on a temporary and permanent basis. However, this definition has several disadvantages. First, it emphasizes that ecological migrants can only be persons whose displacement is forced, when the state of the environment does not allow them to stay in their usual place of residence without threat of harm to their life or health. As for voluntariness, it is allowed in the part that ecological migrants make such a decision on their own, without coercion from the state, but on condition that the environmental disaster inevitably influenced their living conditions, which ultimately

led them to move to another territory. However, art. 11 of the Draft Convention established an exception when the state can force a person to move — if a person is threatened with a grave and imminent danger. The definition does not take into account that ecological migration can occur in advance when environmental degradation is observed, leading to the inability to fully realize their human rights. Second, the definition includes only one reason for displacement — environmental disasters and does not take into account the fact that there may be other reasons for displacement closely related to environmental disasters. Gradually or rapidly developing environmental changes, negative consequences of large-scale state development projects, internal armed conflicts over disappearing natural resources that entail massive violations of human rights and/or other serious violations of public order can be a reason for ecological migration.

Initially, in the 2008 version of the Draft Convention of the University of Limoges, all rights of ecological migrants were divided into three groups: 1) rights guaranteed to all ecological migrants; 2) rights of temporarily displaced ecological migrants; and 3) rights of ecological migrants displaced on a permanent basis. However, in the 2013 version of the Draft Convention, all the rights guaranteed to ecological migrants were enshrined in chapter two and divided into the following two groups:

1) rights guaranteed to persons facing ecological migration: right to receive information and to participate in decision-making related to environmental threats (art. 9); right to move (art. 10); right to refuse to move (art. 11);

2) rights guaranteed to ecological migrants:

a) rights guaranteed to both internal and external ecological migrants: right to receive assistance (art. 12.1); right to food and water (art. 12.2); right to receive medical care (art. 12.3); right to recognition of legal personality (art. 12.4); right to preserve one's civil and political rights (art. 12.5); right to housing (art. 12.6); right to return (art. 12.7); prohibition of forced return (art. 12.8); right to family (art. 12.9); right to work (art. 12.10); right to education (art. 12.11); right to preserve one's cultural identity (art. 12.12); right to private property (art. 12.13);

right to preserve and transport pets (art. 12.14); right to renew status (art. 19.1).

b) rights guaranteed only to external ecological migrants: right to retain the citizenship of the country of origin (art. 13); right to receive an assistance from the host state in obtaining ecological migrants citizenship of the host country (art. 13).

The Draft Convention of the University of Limoges 2013 requires Member States to adopt at the national level a procedure for applying for an ecological migrant status (art. 16.1) and obliges Member States to include in the procedure of examining petition a person's right to receive free assistance and the services of an interpreter (art. 16.3). The applicant is guaranteed to be granted a temporary status that allows him to enjoy all the rights guaranteed to ecological migrants, while a final decision on his petition is pending (art. 16.2). The consideration of applications for granting the status of an ecological migrant should be handled by the National Commissions on Environmental Migration, that should be created within Member States (art. 17). Such consideration should be public and adversarial, when applicant's interests may be represented by a representative authorized by him (art. 16.4). The Draft Convention allows to individuals, who have received a refusal for grant of a status of ecological migrant to file an appeal within one month from the receipt of a notification of refusal to the Supreme Council (art. 18), which is an intergovernmental body consisting of 21 specialists in the fields of human rights protection, environmental protection and peace maintenance (art. 22.1).

The Draft Convention considers a creation of the World Agency for Environmentally-Displaced Persons (WAEP), which should have the status of a UN specialized agency. WAEP should monitor States Parties' compliance with the provisions of the Convention (University of Limoges, Draft Convention 2013, art. 21).

The Draft Convention of the University of Limoges defined the concept of "ecological migrants"; however, it does not provide protection for certain types of ecological migrants. The Draft Convention enshrined certain groups of ecological migrants rights, procedure for filing and considering applications for international legal status of ecological migrants, as well as bodies (at international and national levels) that

should deal with the problem of ecological migration. This Draft serves as a good example and model in the development and adoption of an international treaty on the protection of the international legal status of ecological migrants.

Some scholars, such as J. McAdam, W. Kälin, N. Schrepfer proposed to adopt a non-binding international agreement in the manner of the 1998 Guiding Principles on Internal Displacement. The Guiding Principles are not only a document that can help to define the rights of ecological migrants, but also an example of how norms and principles have to be adopted to provide the rights themselves. Gaps in international law exist in those areas of law where it is especially difficult for states to reach consensus. A lack of consensus at the stage of negotiations often leads to states' refusal in the treaty ratification. It weakens and undermines effectiveness of the treaty and leaves people in need of protection (Kälin and Schrepfer, 2012, p. 70). These scholars also emphasize that an attempt to include a provision that binds industrialized countries to accept more migrants (as an international responsibility for their actions that provoked significant climate change; and, thus, caused ecological migration) can only further complicate negotiation process (Kälin and Schrepfer, 2012, p. 70). It is likely that negotiations on a treaty on the international legal status of ecological migrants may become complex and protracted due to the incompatibility of interests between states of origin and host states of ecological migrants.

J. McAdam pointed out that "states presently seem to lack the political will to negotiate a new instrument requiring them to provide international protection to additional groups of people" (McAdam, 2011, pp. 15–16). She has also noticed the following disadvantages of treaty adoption.

The adoption of a treaty may shift attention "from the more immediate, alternative and additional responses that may enable people to remain in their homes for as long as possible (which is the predominant wish among affected communities), or to move safely within their own countries, or to migrate in a planned manner over time" (McAdam, 2011, p. 5).

In the present time the adoption of a treaty is premature, since in most cases ecological migration occurs within the same state (McAdam, 2011, p. 8).

The results of scientific research do not allow to reliably establish a causal relationship between climate change and cross-border displacement. The adverse effects of climate change are only one of several reasons for displacement, which raises a question of the feasibility of identifying ecological migrants as a separate category of people (McAdam, 2011, p. 14).

W. Kälin and N. Schrepfer proposed to accept a non-binding treaty, since a soft law approach is overall more appropriate "as it is flexible and allows scope to experiment with new ideas" (Kälin and Schrepfer, 2012, p. 71). They have noted the following advantages of the soft law approach.

Soft law rules outline a common vision or a project, requiring states only to work "towards achieving this goal in the near or distant future. The Universal Declaration of Human Rights of 1948, for example, originally had this character" (Kälin and Schrepfer, 2012, p. 71).

The soft law approach can be a precursor to treaty law. "An example is the 1967 Declaration on the Elimination of Discrimination against Women that became the Convention on the Elimination of All Forms of Discrimination against Women in 1979" (Kälin and Schrepfer, 2012, p. 71).

The rules of soft law can be 'interpretive' in nature, "i.e. restate existing obligations and highlight in more details what is inherent in more general treaty law. The 1998 UN Guiding Principles on Internal Displacement are an example" (Kälin and Schrepfer, 2012, p. 71).

The 1998 UN Guiding Principles on Internal Displacement are often cited in this regard as a model to be followed (Betts, 2010, p. 546). However, these Guiding Principles restate the "hard law" and emphasize the relevance and specificity of existing obligations towards internally displaced people. While the proposal to develop a soft law document on a cross-border displacement due to climate change will create new rules and principles, as well as address numerous gaps in existing international law. Thus, some scholars believe that — while there are conflicting interests of the states of origin and the host — the solution of the problem of ecological migration can be found in the adoption of a non-binding treaty.

François Crépeau, former Special Rapporteur on the human rights of migrants, proposed his solution of the problem of ecological migration. Despite the fact that F. Crépeau focused on the impact of the adverse effects of climate change on migration and on the fact that such impact is becoming more evident, he has noted that "it may not necessarily be ideal to single out those migrants who move for environmental reasons" (UN General Assembly A/67/299 (2012), para. 65). Instead of providing the international protection for ecological migrants separately, "the [former] Special Rapporteur encourages the development of coherent policies regarding the rights of all migrants, which takes into account the myriad circumstances which lead people to migrate, including the need for human rights protections, in particular for those who are 'induced' or 'forced' to migrate" (UN General Assembly A/67/299 (2012), para. 65). The former Special Rapporteur understands that in many particular situations of ecological migration "it will not always be possible to clearly delineate between the vulnerability of an individual, group or community to climate change and the social, economic and political contexts in which such movements occur" (UN General Assembly A/67/299 (2012), para. 39). F. Crépeau explains his position by the fact that it is difficult to prove a causal relationship between environmental change and forced migration, and that "environmental migration, like every kind of migration, is essentially a complex, multicausal phenomenon which may be driven by a multiplicity of push-and-pull factors" (UN General Assembly A/67/299 (2012), para. 32).

The international community has followed the path proposed by F. Crépeau, which can be noticed in the 2016 New York Declaration for Refugees and Migrants and Global Compacts (the 2018 Global Compact on Refugees and the 2018 Global Compact for Safe, Orderly and Regular Migration). The New York Declaration for Refugees and Migrants emphasizes that "it would present a framework for comprehensive international cooperation on migrants and human mobility" (New York Declaration for Refugees and Migrants, Annex II, para. 2). New York Declaration became a foundation for the beginning of work on the 2018 Global Compact for Safe, Orderly and Regular Migration (Global Compact for Migration) that covers all migrants, including ecological migrants.

The Global Compact for Migration is non-binding for its Member States. It is based on the commitments made by Member States in the New York Declaration. Despite the fact that the Global Compact is based on international human rights law, it did not highlight specific human rights that would be guaranteed to migrants, did not enshrine their international legal status. Nonetheless, Member States shall "ensure effective respect for and protection and fulfilment of the human rights of all migrants, regardless of their migration status, across all stages of the migration cycle" (Global Compact for Safe, Orderly and Regular Migration, 2018, para. 15(f)). The Global Compact is a mechanism for cooperation between UN Member States to effectively achieve the goals set in the treaty itself and fulfill obligations. The Global Compact for Migration sets out 23 objectives to ensure safe, orderly and regular migration. Each goal is accompanied by a statement of commitment and a listing of actions to be taken by Member States. The most important are Objective 2: "Minimize the adverse drivers and structural factors that compel people to leave their country of origin" and Objective 5: "Enhance availability and flexibility of pathways for regular migration," as they directly address the issue of ecological migration and the reasons for displacement. Objective 2 notes that the Member States commit themselves "to create conducive political, economic, social and environmental conditions for people to lead peaceful, productive and sustainable lives in their own country" (Global Compact for Safe, Orderly and Regular Migration, 2018, para. 18), and to fulfill the declared obligation, the states will "invest in programmes that accelerate States' fulfilment of the Sustainable Development Goals with the aim of eliminating the adverse drivers and structural factors that compel people to leave their country of origin… as well as creating and maintaining peaceful and inclusive societies with effective, accountable and transparent institutions" (Global Compact for Safe, Orderly and Regular Migration, 2018, 18 (b)), "establish or strengthen mechanisms to monitor and anticipate the development of risks and threats that might trigger or affect migration movements, strengthen early warning systems, develop emergency procedures and toolkits, launch emergency operations and support post-emergency recovery" (Global Compact for

Safe, Orderly and Regular Migration, 2018, 18 (c)), as well as take other actions to achieve this goal.

For Objective 5 the Member States of the Global Compact agreed to "enhance availability and flexibility of pathways for regular migration" (Global Compact for Safe, Orderly and Regular Migration, 2018, Objective 5). In fulfilling of this obligation, the Member States express their intention to develop new or improve existing national and regional procedures to "develop or build on existing national and regional practices for admission and stay of appropriate duration based on compassionate, humanitarian or other considerations for migrants compelled to leave their countries of origin owing to sudden-onset natural disasters and other precarious situations" (Global Compact for Safe, Orderly and Regular Migration, 2018, 21 (g)), to "cooperate to identify, develop and strengthen solutions for migrants compelled to leave their countries of origin owing to slow-onset natural disasters, the adverse effects of climate change, and environmental degradation" (Global Compact for Safe, Orderly and Regular Migration, 2018, 21 (h)).

In addition, in order to achieve Objective 7 and address and reduce vulnerabilities in migration, Member States have committed to take into account the needs of migrants in vulnerable situations. Within the framework of this objective, Member States will "facilitate transitions from one status to another" (Global Compact for Safe, Orderly and Regular Migration, 2018, 23 (h)), inform migrants about their rights and obligations in order to prevent them from falling into an irregular status in the country of destination.

Although the Global Compact does not provide a special international legal status of ecological migrants, it stipulates that Member States will cooperate on migration issues in general, which can contribute to the development of a mechanism for international protection of all migrants in the future, as well as help to develop the international legal status of ecological migrants.

The 2018 Global Compact on Refugees is not a legally binding document and does not replace the current asylum system under the 1951 Refugee Convention and its 1967 Protocol. The 1951 Refugee Convention sets out obligations for Member States to protect refugees; however, there is no indication of international cooperation or that all

states should be equally responsible for the refugees. These issues were reflected in the Global Compact on Refugees.

The Global Compact on Refugees has four objectives: to ease the burden on host countries; to improve the ability of refugees to support themselves; to expand the use of solutions providing access to third countries; and to help create conditions for safe and dignified return in countries of origin (Global Compact on Refugees, para. 7). Despite its non-binding nature, the Global Compact on Refugees is intended to serve as a roadmap for the international community to support refugees and host countries to better respond to the large influx of asylum seekers and contribute to an even distribution of the burden between countries.

Thus, both Global Compacts represent mechanisms of cooperation between states in solving the problem of mass displacement, they help to find a way to interact with other states in distributing the burden of responsibility for refugees and migrants. In particular, the Global Compact for Migration cannot become a substitute for regulating the international legal status of ecological migrants, but it can serve as a basis for the formation of cooperation between states in the development of an international treaty aimed to secure the rights of ecological migrants and to provide them protection.

Based on the analysis of prospects for the international protection of ecological migrants, the international legal status of ecological migrants must be enshrined in a legally binding international treaty at the universal level. In accordance with the characteristics of the category of ecological migrants, their rights and freedoms should be divided into the following groups:

1) rights and freedoms guaranteed to persons facing ecological migration (right to receive reliable information about the environmental situation; right to participate in decision-making regarding environmental threats; right to move; right to refuse to move);

2) rights and freedoms provided on an equal basis with the citizens of the receiving state (right to adequate food and water; right to receive food rations, if provided by the legislation of host state; right to receive medical care; right to adequate housing; right to privacy; right to legal personality; right to remuneration for work; right to work for hire; right to work in own enterprise; right to practice liberal professions;

right to receive government assistance; right to education; freedom of movement; freedom of religion; right to maintain cultural identity; right of associations; copyright protection; right to take legal action);

3) rights and freedoms provided exclusively to ecological migrants:

a) rights and freedoms provided to both temporary and permanent ecological migrants (right to administrative assistance; right to restore lost documents and obtain an identification card; right to receive travel documents; right to export property brought with him when leaving for settlement in another state; right to preserve and transport pets; right to retain citizenship of the country of origin; right to return; prohibition of forced return; right to renew status);

b) rights and freedoms provided exclusively to permanent ecological migrants (right to receive assistance from the host state in obtaining the citizenship of the host country by the ecological migrant);

4) rights and freedoms of ecological migrants arising from their personal status and family relations (rights enshrined in the International Covenant on Civil and Political Rights, and which were acquired by ecological migrant earlier in the state of origin, provided that that they are recognized by the laws of that host state).

The duties of ecological migrants should include the duties: 1) to comply with the laws and regulations of the host state, and 2) to pay taxes on an equal basis with the citizens of the host state.

In some international agreements, it is possible to find references to the displacement of persons due to natural or human-induced disasters, but there is no direct consolidation of the concept of ecological migrants, as well as of their international legal status.

The adoption of an international treaty will take into account the interdisciplinary nature of the problem of ecological migration, as well as include adaptation and preventive measures. Adaptation measures will guarantee the rights of individuals when they are displaced based on ecological reasons, and will also include measures aimed at reducing the impact of environmental changes on the lives of their populations. Preventive measures will be aimed at ensuring the conservation and protection of the environment, which will help to reduce the growth in the number of ecological migrants. Thus, we believe that within the framework of this international treaty it is necessary to consolidate

three groups of norms that establish obligations to protect ecological migrants, divided by the circle of persons to whom they are addressed: 1) norms that enshrine obligations of all members of the international community and reaffirm obligations previously assumed by states on the protection of the environment, as well as welcoming and encouraging the adoption of such obligations by those states that are not yet parties to the relevant international agreements; 2) norms addressed to the states of origin of ecological migrants, so that such states take additional measures to increase the resilience of the area and adapt the population to the adverse effects of climate change, as well as the obligations of the states of origin to provide their population with education, which will help increase their ability to adaptation on the territory of a foreign state after migration; and 3) norms establishing the obligations of host states, directly aimed at guaranteeing the granting of human rights to ecological migrants and at protecting their international legal status.

The consolidation of the international legal status of ecological migrants through the adoption of a separate international treaty has the following advantages.

1. The adoption of an international treaty will make it possible to eliminate a gap in international law in terms of securing the international legal status of ecological migrants and providing them with protection in accordance with it. Currently, certain categories of ecological migrants can count on receiving international protection in accordance with the Refugee Convention, Guiding Principles on Internal Displacement, other international agreements, as well as certain norms and principles of international law. However, such a regulatory framework cannot be applied to all ecological migrants, since not all of the ecological migrants fall under one or another category of persons with international legal status. Consequently, modern international law allows to solve only part of the problems associated with ecological migration, while ecological migrants may find themselves in a situation where they will not have legal grounds for obtaining international protection. The international treaty for the protection of ecological migrants will provide them with the legal status for staying on the territory of a foreign state, will secure a minimum set of human rights that enable such persons to ensure

a decent standard of living, and will also allow them to plan their movement.

2. Given the scale of ecological migration, as well as the severity of the impact of the adverse effects of climate change on human life and the realization of their rights, ignoring this problem may in the future lead to a larger-scale disaster, in which the flow of illegal migrants will increase, accompanied by an even greater violation of human rights in relation to migrants, manifestation of intolerance towards them in host countries and conflicts. While the adoption of an international treaty that enshrines the international legal status of ecological migrants will help to eliminate or reduce the risk of tensions between migrants and host countries, as well as prepare the international community for the adverse effects of climate change that affect the lives of the population and exercising of their rights.

3. Adverse consequences of changes in the state of the environment are unpredictable. It is rather difficult to determine in advance which countries may suffer from such consequences in the future, since the ecological reasons for displacement are manifested not only in Global sea level rise, drought, floods, but also in natural disasters, anthropogenic natural disasters. At the present time the level of human influence on the state of the environment is so high that such human influence accelerates and aggravates climate change, provokes environmental disasters. The entire international community is affected by climate change, any state can become a state of origin for ecological migrants, or such ecological migrants can arise within the state and move without crossing the state border. The adoption of an international treaty will make it possible to create a regulatory framework necessary in the face of unfavorable consequences of a change in the state of the environment for the entire international community to ensure that its population will receive protection, including on the territory of a foreign state.

4. Migration is the final step in adapting to the adverse effects of environmental change. The states that are currently experiencing such changes to the greatest extent are taking other adaptation measures, as well as measures aimed at reducing the impact of ecological changes on the lives of their populations. An international treaty establishing the international legal status of ecological migrants will make it possible

to consolidate not only the obligations of host countries to protect such persons, but also the obligations of the countries of origin to take additional measures to preserve the state of the environment, as well as to guarantee education to their population in order to ensure them the ability to migrate to the territory of a foreign state and to quickly adapt to new conditions and realities.

5. The international treaty provides an opportunity to reflect the interdisciplinary nature of the problem of ecological migration, to indicate that this problem should not be viewed only as a violation of human rights in connection with a change in the state of the environment, but should be considered as an obligation of the entire international community to reduce the level of impact on the environment through the fulfillment by states of their obligations in the field of environmental protection. The international treaty provides an opportunity to further emphasize the commitment of states to comply with their obligations in the field of environmental protection and fulfillment of the assumed obligations to reduce greenhouse gas emissions into the atmosphere, as well as to urge those states that are not yet parties to such international agreements to ratify the relevant agreements.

An international treaty on the protection of all categories of migrants according to the model proposed by F. Crépeau can be viewed as an alternative option for securing the international legal status of ecological migrants within the framework of a separate international treaty. This option provides for the provision of protection to all categories of migrants, including ecological ones, regardless of the reason for their movement. The advantage of this option is that such an agreement will avoid the problem of establishing a causal relationship, the need to prove that the primary reason for the movement was an environmental factor. This will ensure the provision of protection to all ecological migrants, which is of great importance, in an environment where it is difficult to prove that it was the environmental factor that was the primary cause of displacement. However, the disadvantage of this option is that within the framework of a treaty for the protection of all categories of migrants, it will be difficult to take into account many features and characteristics that are inherent in ecological migrants.

IV. Conclusion

As a result of the research of sources of international law regarding the protection of ecological migrants the author proposed a concept of the content of the international legal status of ecological migrants, model for its consolidation to ensure the protection of their rights.

The most effective option for establishing the international legal status of ecological migrants is not to amend international agreements on the protection of certain categories of persons, but to develop and adopt a separate international treaty on the protection of ecological migrants with a binding legal force for its Member States. This option allows to reflect the interdisciplinary nature of the problem of ecological migration.

Such a treaty should enshrine not only the obligations of host states to protect ecological migrants on their territory, but also the obligations of the states of origin and obligations addressed to the entire international community. This prospect of establishing the international legal status would allow to take into account special characteristics of the category of ecological migrants and guarantee the observance of a minimum set of human rights to all persons who move due to ecological reasons.

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ARTICLES

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International Legal Regulation in the Field of Environmental Protection: History, Currents Situation, Prospects for the Future

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Abstract: The international agreements and treaties in the field of environmental protection, concluded in the 19th — first half of the 20th century, resulted most commonly from the compromises of necessity; they merely intended to deal with urgent matters on a limited scale in the spheres where specific problems emerged or at least were a focus of attention (e.g. some species under the threat of extinction, pollution of a specific area of the marine environment). These cases were reasons for adoption of conventions, aimed at protecting endangered species or preventing marine pollution. Such a fragmented approach to the issues of environmental protection shaped a set of conventions, impressive by its amount, but extremely diverse in its content.

The understanding of the ecosystems' integrity resulted in the development of the principles, enshrined in the 1972 Stockholm Declaration and in the 1992 Rio Declaration, was to a significant degree driven by the spectacular advances in science and technology. As a result, the transition has been under way from the "spontaneous" formation of the international environmental standards to their consolidation around the special principles of international environmental law.

Also a notable feature of many international environmental agreements — their "framework" character — is further analyzed. The adoption of the framework agreements gives rise to the complex sets of the convention documents, consisting of several different, but in a certain way interrelated agreements.

Treating a question of the effectiveness of such a legal instrument as a framework agreement, the author concludes that the origins of the lack

of effectiveness of the environmental agreements lie in the foundations of the existing economic system.

Keywords: international agreement (treaty), environmental protection, effectiveness of international agreements, international environmental law, international framework agreement

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Contents

I. Introduction

The development of the international legal norms in the field of environmental protection (the term “environmental protection”, it should be noted, semantically speaking, refers both to environmental defense and environmental preservation: “Guard… control… protect… preserve… conserve… save” (Dal, 1979, p. 774) relies on the same legal forms as the other areas of intergovernmental cooperation — international agreement, customary international law, and, in some cases, resolutions by international institutions.

The isolated efforts to protect the environment by means of international law date back to the 15th century. Indeed, the first

ever-known international arbitration, that addressed the issue of environment protection and management, took place as early as in the beginning of the 15th century, with reference to resolution of various border disputes (Abashidze, 2012, p. 252). At that time such issues of environmental protection as transboundary water disputes and the relevant coordinated sustainable management of marine and river resources were addressed while arbitrating international disputes (Abashidze, 2012, pp. 252–253).

II. The Early International Treaties in the Field of Environmental Protection

It was not until the 19th century that the early international legal rules, aimed at sustainable use of the bioresources, first appeared. According to M.N. Kopylov (2007, p. 54), a prominent specialist in the field of international environmental law, "it is the bilateral Convention on ostreaculture and fisheries off the coast of Great Britain and France, signed on the 2nd of August, 1839, that can be treated as the first international agreement regarding the arrangement of the international environmental relations."

Since the second half of the 19th century — early 20th century the international agreements, aimed to preserve some species which were in danger of passing away due to the unsustainable utilization (virtually, extirpation), or forced to leave their man-modified habitats, have been concluded more often. Just to name a few, these are the Treaty concerning the Regulation of Salmon Fishery in the Rhine River Basin (1885), the Agreement between the United Kingdom and Russia for the Preservation of the Sea-lions in the North Atlantic Ocean (1893), the Agreement between Russia, the United States and Japan for the Preservation of the Fur-seals (1897), the Paris Convention for the Protection of Birds useful to Agriculture (1902). However, the protection of these species of fauna served as a matter of fact just as an instrument; the objective of all the agreements of this kind stemmed from the reasoning of a different — economical — order, namely from the intention to encourage some business activities (agriculture, fishery, hunting). For instance, the above-mentioned 1897 tripartite

agreement stipulates in article I, that "the High Contracting Parties agree to prohibit their respective subjects and citizens from killing the fur seal and sea otter... *for the period of one year* (emphasis added. — O.I.) from the date of this Convention..." It is obvious that the defined duration of prohibition was dictated by the need to maintain and restore populations of these species at levels which can produce the maximum sustainable yield. The aforesaid objective has been made explicit in the very title of the last-mentioned document.

The agreements, concluded in more recent times, which extended the protection to include particular environments, were thereby facilitative of the protection of the local flora and fauna. This is true with the issue of protection of both the land territories (e.g. the Convention on Nature Protection and Wild Life in the Western Hemisphere, 1940) and the water resources (e.g. the Treaty Between the United States and Great Britain Relating to Boundary Waters, 1909). The same holds true for the maritime spaces (e.g. the International Convention for the Prevention of Pollution of the Sea by Oil, 1954). The treaty sources in question, by protecting the territories, thereby ensured the protection of flora and fauna and provided, in our opinion, a breakthrough for the cause of the international legal environmental protection, as they revealed a greater, more ecology-minded perspective. In other words, the significance of the environmental conditions for the preservation of flora and fauna has finally been appreciated.

Nonetheless, norms of international environmental law, developed in haste, often in the aftermath of natural disasters or due to the anthropic activity, looked initially somewhat patchy. As a result of a forced compromise, rather than a yearned-for trade-off, these norms were intended to deal with the most urgent matters on a limited scale in the areas, where specific problems emerged or at least were a focus of attention (some species under the threat of extinction, unwarranted pollution of the specific marine environment). These cases were reasons for the adoption of conventions, aimed at protecting endangered species or preventing marine pollution. For instance, the shipwreck of the Liberian oil tanker "SS Torrey Canyon", that sank after running aground off the western coast of Cornwall, England, in 1967, initiated the world-wide presentation of a problem of an incident pollution control. This

issue is so nuanced, since in view of the urgency of the decisions to be taken, the closest coastal States, or the most threatened States, should be empowered to intervene, even if it is done to the detriment of the traditional prerogatives of the flag State, in the event that the latter fails to take the necessary measures. A major step forward was made in the wake of the adoption of the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969. This Convention affirms the right of a coastal State to take any enforcement measures in respect to any vessel on the high seas provided that the given conditions are met. The article I of this international legal act stipulates, "1. Parties to the present Convention may take such measures on the high seas as may be necessary to prevent, mitigate or eliminate grave and imminent danger to their coastline or related interests from pollution or threat of pollution of the sea by oil; following upon a maritime casualty or acts related to such a casualty, which may reasonably be expected to result in major harmful consequences." With regard to the above mentioned, article III (d) states that "in cases of extreme urgency requiring measures to be taken immediately, the coastal State may take measures rendered necessary by the urgency of the situation, without prior notification or consultation or without continuing consultations already begun (these notifications and consultations are mentioned in other paragraphs of the same article. — O.I.)."

This kind of a "fragmented" and "mechanical" environmental policy throughout the 19th century resulted in a set of conventions, impressive by its amount, but diverse in its content. It is also specific that the convention sources are for the most part regional (subregional), what can be explained, according to O.S. Kolbasov (1982, p. 216), by several interrelated reasons. First, the variety of ecosystems, inherent in the natural regions of Earth, results in the environmental problems, which differ in terms of their substance and significance. Second, different levels of economic development in different regions have an impact on the societies' environmental dimension as well as disparities in social conditions. And these agreements facilitate a solution to the great majority of the specific international environmental problems, and the regional arrangements' system itself "complements, pushes and

bolsters" the universal agreements. Certainly, it is difficult to disagree with this statement. Still, we must not overlook the fact that the ad hoc regulations, as described above, where a particular treaty source appears in reaction to the emerged environmental concern, may raise grave questions. As N.A. Sokolova emphasized (2014a, p. 12), "there are many agreements, dealing with the specific problems without regard to the rules and standards set by other agreements, resulting in the issues of their interaction and correlation in the way of the content and organization alike. This situation is bound to loosen the global system of environmental protection."

Giving his assessment to the process of formation of the branch of international law in question, as M.N. Kopylov pointed out correctly (2007, p. 240), that the history of international environmental law represented a series of less-than-prompt (at times ill-fated) responses to the sharply deteriorating situations of environmental crisis.

III. Shaping a System of Principles in International Environmental Law

The rapid progress of science and technology catalyzed the realization of the ecosystems' integrity, the fact evidenced in the elaboration of the entire system of principles, enshrined in the Declaration of the United Nations Conference on the Human Environment (the 1972 Stockholm Declaration) and in the Rio Declaration on Environment and Development (the 1992 Rio Declaration). It paved the way, as A.S. Timoshenko puts it (1992, p. 287), for the transition "from the spontaneous formation of the international environmental standards to their consolidation around the special principles of international environmental law and foundation of the sectoral research institutes." However, most of the principles, listed in the acts mentioned above, cannot be classified as regulatory ones (Kiss, 1997, pp. 34–35). In the capacity of optimization requirements they set out the objective of the optimum implementation of a specific "ideal task" (Vitzthum, 2011, p. 586). Still we cannot subscribe to the opinion, advanced by W.G. Vitzthum (2011, p. 583), who states that "the Rio Declaration on Environment and Development consists of 27 *non-legally binding*

(emphasis added. — O.I.) principles…" A similar estimation of the principles, enshrined in the 1972 Stockholm Declaration, the 1992 Rio Declaration, the World Charter for Nature, adopted in 1982, is given by Yu. S. Shemshuchenko (2009, p. 82), who argues that "the environmental principles, enshrined in them (afore-mentioned international acts), represent as a matter of fact the general guidelines for the respective countries." It is obvious that by no means all of the principles, listed in the Rio Declaration, can be referred to as "non-legally binding" ones. For instance, the principle of international law, whereby no damage can be caused to the environment of other States or areas beyond national jurisdiction, was cited as early as in 1938, in the arbitration award in the Trail Smelter dispute (a US-Canada dispute, caused by the fact that the harmful air emissions, produced by the smelter, processing lead and zinc in the Canadian town of Trail, damaged the environment across the US-Canada border in the State of Washington). The arbitral tribunal found that "under the principles of international law, as well as the law of the United States, no State has the right to use or permit the use of the territory in a manner as to cause injury by fumes in or to the territory of another or the properties or persons therein, where the case is of serious consequence and the injury is established by clear and convincing evidence."[1] The international legal norm, prohibiting the State to alter the natural conditions on its territory in a manner as to cause injury by this alteration to other State, was cited in the arbitration award on the Lake Lanoux dispute (France v. Spain), rendered in 1957.[2] The reasons for this arbitration were the French plans to construct a reservoir for the purpose of producing electricity at Lake Lanoux. Spain opposed the plan out of concern that the water diversion, envisaged by the French scheme, may have an adverse affect on the runoff volume of the river Carol that has its rise in this lake and flows across Spain. Reacting to Spain's objections France agreed to modify the original scheme, so that Spain could obtain comparable or even larger volume of water through its diversion from the river Ariège. This project was rejected by Spain as well, which led to the

[1] Trail Smelter Arbitration (United States v. Canada), (1957). *United Nations Reports of International Arbitral Awards*, 3, p. 1965.

[2] Lake Lanoux Case, (1957). *International Law Reporter*, 24.

arbitration after all. The Tribunal took the French side and pointed out that the Spanish complaints would have been justified only if the pollution of water or changes in its chemical composition, temperature or other properties were evident.

According to A.S. Timoshenko (1992, p. 294), the quoted decisions not only highlighted the applicability of the general law principle sic utere tuo ut alienum non laedas ("use your property in such a way that you do not damage others") to the interstate environmental relations, they also facilitated the formation of the special principle of international environmental law, prohibiting one State to change the natural conditions on its territory in a manner as to have a disadvantageous effect upon the environment of other States. The inadmissibility of the State's use of its territory to the detriment of the rights of the other States is articulated as well in the judgment of the UN International Court of Justice (ICJ), issued in 1949 in the Corfu Channel case (United Kingdom of Great Britain and Northern Ireland against People's Republic of Albania). The Court reiterated in particular the principle that "every State is obliged not to knowingly allow its territory to be used to commit acts against the rights of any other State."[3] The scholarly literature typifies this Court's finding as an acknowledgement of the existence of the generally recognized rule of international law (Sokolova, 2003, p. 101).

It should also be noted that many States have repeatedly expressed their conviction in the indispensability of the above-noted principle, incorporating it, often verbatim, in the international agreements. For instance, the article 3 of the Convention on Biological Diversity of 1992 contains the provision, whereby "States have... the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction."

The "polluter pays" principle, mentioned in the 1992 Rio Declaration, cannot be regarded as "non-legally binding" either. Its sources can be traced to the Recommendation of the Council of the Organization of Economic Cooperation and Development (OECD) on the "Guiding Principles Concerning International Economic Aspects

[3] Corfu Channel Case, (1949). *International Court of Justice. Reports*, p. 22.

of Environmental Policies" dated 26 May 1972. It should be noted that the OECD linked it to the idea of the following preventive measures: imposing the costs of pollution control and abatement measures on the polluter and limiting (or even prohibiting) the allocation of subsidies for these purposes which might distort competition. This provision is based on the idea that the economic incentives lack, if the third-party entities bear the costs, and the "polluter" is spared from taking these expenses into account (Vitzthum, 2011, p. 590).

For its part, the Council of the European Economic Community (EEC) adopted around the same time its first recommendations on the issue in question (November 7th, 1974 and March 3rd, 1975), the guidelines that were aligned with the OECD ideology and established direct connection between the competitive equality and the "polluter pays" principle. The single European Act, signed in 1986, and then the Maastricht Treaty, concluded in 1992, turned the mentioned principle into one of the cornerstones of the European environmental policy. Currently, the mentioned provision is enshrined in the Article 191, Paragraph 2 of the Treaty on the Functioning of the European Union: "Union policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Union. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay."[4]

Besides, the "polluter pays" principle can be found in many regional and universal agreements, where it is either just mentioned (for instance, the article 3 of the Convention on the Protection of the Marine Environment of the Baltic Sea Area, 1992 (Helsinki Convention)) or defined more specifically (for instance, article 3b of the Convention

[4] The Treaty originated as the Treaty of Rome (fully the *Treaty establishing the European Economic Community*), which brought about the creation of the European Economic Community (EEC), the best-known of the European Communities (EC). Its name has been amended twice since 1957. The Maastricht Treaty of 1992 removed the word "economic" from the Treaty of Rome's official title and, in 2009, the Treaty of Lisbon renamed it the "Treaty on the Functioning of the European Union". The paragraph is quoted after this latest version of the Treaty.

for Protection of the Mediterranean Sea against Pollution, adopted in 1976).

Even if it is too early to allege as a fact it has (i.e. the "polluter pays" principle. — O.I.) the universal character of an international custom," and many of its aspects are still controversial (Vitzthum, 2011, p. 590), it cannot be denied that the practices of the convention consolidation of the present principle definitely suggest the States' conviction in its indispensability.

Therefore, one can talk about varying degrees of the "normative maturity" of the principles, enshrined in the Rio Declaration: some of them are in fact forward-looking and can be rightfully qualified as the "principles-targets" (for instance, the Principle 8, whereby "...States should reduce and eliminate unsustainable patterns of production and consumption and promote appropriate demographic policies," Principle 21 proclaiming the necessity "to mobilize the creativity, ideals and courage of the youth of the world," etc.), whereas other principles (including those mentioned above) are applicable international legal norms.

IV. The role of Non-Governmental Actors

When analyzing the contractual practice of the states in the field of the environmental protection, it is possible to confirm that the subjects of legal relations themselves have a significant impact on it. It is obvious that the complexity of the influence over the pollution and its sources, the costs of the required actions, their economic significance, technical nature of the emerging challenges and their global dimension have an impact both on the ways to develop the treaties and on their contents.

One of the most noteworthy characteristics of international environmental law is connected with the role of the non-governmental structures in its development and realization. On the one hand, the economic entities are the principal polluters and holders of environmental protection technologies. In this respect, they are, directly or indirectly, principal addressees of the norms of international environmental law, whose technique should adapt to the situation, and this adaptation

appears to be most needed and most complicated in the questions of liability for environmental damage.

On the other hand, the environmentalists unite their efforts in powerful non-governmental organizations (including the most militant or, in any event, the best-known of them, like Greenpeace, Friends of the Earth International, World Wide Fund for Nature, Équipe Cousteau, formerly known as Fondation Cousteau). They do double service as non-governmental organizations for promoting sustainable development of the emergent nations and as pressure groups, aspiring to advocate environmental values and to facilitate their transformation into legal norms. As for their activities in the field of developing international standards, the most common of them would be the experience of the active presence at the international conferences dedicated to the adoption of the legal instruments, dealing with the protection of the environment. Indeed, the non-governmental organizations played an instrumental role in the United Nations Conference on the Human Environment, that was held in Stokholm in 1972, where the concept of sustainable development was first discussed, in the United Nations Conference on Environment and Development, held in Rio de Janeiro in 1992, and in all the subsequent diplomatic conferences they engaged in on an official basis. Although they do not sign the adopted acts, they are offered an opportunity to address the conferences and to circulate their documents. A.S. Timoshenko (1986, p. 39) singles out such an example. The International Union for Conservation of Nature and Natural Resources, using its consultative status at the United Nations, is in a position to express itself officially on the draft documents planned to be discussed at broad, representative international forums, in intergovernmental bodies (for instance, the third United Nations Conference on the Law of the Sea (UNCLOS III), the International Whaling Commission).

The observers for 400 non-governmental organizations participated in the Stokholm Conference on the Human Environment in 1972, and 1400 non-governmental organizations were accredited to the Conference in Rio de Janeiro (Lukashuk, 2005, p. 182). It is interesting to note that non-governmental organizations that participated in the Rio Conference, gained an observer status at the UN Commission on

Sustainable Development whose functions are "to enhance the dialogue… with non-governmental organizations" and "to receive relevant input… in the context of the overall implementation of Agenda 21."[5]

If a conference results in the adoption of an international agreement, then the representatives of the non-governmental organizations can participate in the activities of the agencies that control its implementation, when the agreement provides such an opportunity. For instance, the Article 12 paragraph 2 of the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, contains a provision according to which "representatives from non-governmental organizations concerned with straddling fish stocks and highly migratory fish stocks shall be afforded the opportunity to take part in meetings of subregional and regional fisheries management organizations and arrangements as observers or otherwise, as appropriate, in accordance with the procedures of the organization or arrangement concerned."

V. The Framework Agreements in the Field of Environmental Protection

As for another peculiar feature of the agreements in the field of environmental protection — their contents — this feature consists, above all, in the existence of a large number of the so called "framework agreements," representing the compacts, stating the principles, which should serve as a basis for the cooperation of the States parties in a particular sphere, and giving them an opportunity to specify in separate agreements the order and details of the cooperation with creation, if necessary, of one or several relevant agencies for this purpose. Therefore, the framework agreement represents the initial stage for the subsequent conventional or institutional activities. This kind

[5] UN Doc. A/Res/47/191. 29 January 1993. Available at: http://www.un.org/documents/ga/res/47/ares47-191.htm [Accessed 20 Apr 2018].

The functions of the Commission are described in the paras 3 (f) and 3 (g) of this Resolution: To receive and analyze relevant input from competent non-governmental organizations… in the context of the overall implementation of Agenda 21; To enhance the dialogue… with non-governmental organizations…

of activities can be expressed, in part, in the conclusion of subsequent specifying agreements or in the adoption of the protocols specifying the contents of the principles set forth in the original agreement. To sum up, the framework agreement is a rather lengthy negotiation process that obliges States to participate bona fide in the subsequent stages of negotiations, than a source of the specific obligations to be assumed by the States parties. Besides, in some cases the reference to the framework nature of such agreements is made in their titles. The United Nations Framework Convention on Climate Change adopted in 1992 can serve as an example. Its article 17 stipulates the adoption of the protocols, opened only for the parties to the Convention. According to this article, "1. The Conference of the Parties may, at any ordinary session, adopt protocols to the Convention... 4. Only Parties to the Convention may be Parties to a protocol." The 1997 Kyoto Protocol that elaborated the commitments taken in 1992, was signed on the basis of this article. A lot of other environmental agreements fall into this category of agreements. For instance, the Vienna Convention for the Protection of the Ozone Layer, signed in 1985 also had a provision regarding the adoption of protocols. According to the article 2, para 2 (c) of this Convention, the Parties "co-operate in the formulation of agreed measures, procedures and standards for the implementation of this Convention, with a view to the adoption of protocols and annexes." One of such protocols was signed in Montreal in 1987 (the Montreal Protocol on Substances that Deplete the Ozone Layer) and then was modified on several occasions. The Vienna Convention and its Protocol contain the annexes, their integral part. Similarly, the Bonn Convention on the Conservation of Migratory Species of Wild Animals of 1979 lists the species to be the subjects of separate agreements and provides the approximate frameworks for such agreements (articles IV, V). The article IV, entitled "Migratory Species to be the Subject of Agreements" inter alia stipulates, "Parties that are Range States of migratory species listed in Appendix II shall endeavor to conclude Agreements where these should benefit the species and should give priority to those species in an unfavorable conservation status." The article V that deals with the guidelines for such agreements, underlines that the object of each of them is to restore the migratory

species concerned to a favorable conservation status or to maintain it in such a status.[6]

In the same spirit, the preamble of the Convention on the Law of the Non-navigational Uses of International Watercourses of 1997, asserting this international act as a "framework convention," capable of ensuring the utilization, development, conservation, management and protection of international watercourses and the promotion of the optimal and sustainable utilization thereof for present and future generations, makes provision for the States parties to enter into "watercourse agreements," which apply and adjust the provisions of the Convention: "Watercourse States may enter into one or more agreements... which apply and adjust the provisions of the present Convention to the characteristics and uses of a particular international watercourse or part thereof" (para 3, art. 3).

Therefore, the adoption of the framework agreements results in the formation of the complex sets of the convention documents, consisting of the several different, but specifically interrelated international agreements.

Estimating the practices of the conclusion of the framework agreements, M.N. Kopylov (2007, p. 153–154) noted that "through the use of its comparatively broad statements and conditions the 'framework' agreements provide the base necessary for the interaction and cooperation of the greatest possible number of States, which have different political and economical systems. And as a first step of the co-operation of efforts they let engage instantly in the research and monitoring of extreme importance, as these are the accurate scientific data on various ecological issues and their consequences that provide the possibility to move to the level of assumption of more detailed obligations by the States." According to the Ukrainian scholar M.A. Medvedeva (2012, p. 81), the practices of the framework agreements have the following advantages: first, they facilitate reaching an interstate consensus on the complicated and controversial issues through fixing most general venues of cooperation in the agreements of this kind and addressing any ecological issues immediately; second, depending upon the level of development of science and technologies in a specific field of human activity they provide the possibility to make modifications in

[6] *United Nations Treaty Series*, (1991). Vol. 1651. I-28395, pp. 421–442.

the specifying protocols or their appendixes, without prejudice to the provisions of the framework agreement itself, thus providing for the relative flexibility of the legal regulation.

However, the "framework approach" has an inherent flaw, namely, according to M.A. Medvedeva (2010, pp. 219–247), the practice of expressing the State's consent to commit oneself to the framework convention with no serious legal obligations and at the same time its refusal to give consent to participate in the protocols containing such obligations, cancels out the result achieved at the international level. The case in view is the non-ratification by the US of the 1997 Kyoto Protocol to the UN Framework Convention on Climate Change signed in 1998.

As for the legal qualification of the norms enshrined in the framework agreements, they should be placed, beyond any doubt, into a category of the "programmed" ones. According to I.I. Lukashuk (1997, p. 198), these are, most notably, the norms, requiring the development or considerable specification. In addition, paying attention to some approaches in the academic literature, treating the program norms of international agreements as "flawed" (such is the attitude adopted, for instance, by the Italian jurist G. Arangio-Ruiz (1988, p. 82)), the scholar insisted for a very good reason that "the program nature of the norm does not deprive it of its binding force," and the non-observance of such a norm by one of the parties can be treated by another one as the rejection of the objectives of the treaty, the violation of its spirit (Lukashuk, 1997, pp. 198, 201). If there is a rejection of the program provisions of an agreement that require the conclusion of other agreements (as in above-mentioned examples), this situation should be treated as a breach of the agreement.

So, depending on the content of the program provisions of the international agreements (in some cases these may be the vague program-oriented and goal-oriented settings, while in others — program provisions are of a more specific nature), their violation can be treated either as "the rejection of the objectives of a treaty, the violation of its spirit" or as "a breach of an agreement."

While characterizing the framework environmental protection agreements, one should agree with M.N. Kopylov (2007, p. 152) that

they are capable of facilitating a real solution to the ecological problems, as they call upon the parties to take concrete steps, aimed at restoring and maintaining the certain natural resources. The conviction in efficiency of such a legal instrument as the framework agreement was clearly expressed by the States in the preamble of the Convention on the Law of the Non-navigational Uses of International Watercourses of 1997 that says that "a framework convention will ensure the utilization, development, conservation, management and protection of international watercourses and the promotion of the optimal and sustainable utilization thereof for present and future generations."

VI. The Improvement of the Effectiveness of the Rules of the International Environmental Law: Utopia or Reality?

All of the above should not, however, produce an impression that the sheer fact of concluding framework agreement succeeded by the adoption of a protocol (appendix, supplement etc.), specifying obligations of the parties, is a kind of a guarantee of achieving the intended effect. It should be noted that for the efficient implementation of international legal norms the favorable ratio between the goal of a norm and the means of achieving it is of great practical importance. It is worth specifying that not every international agreement articulates the goals of its conclusion in its text, but the intended result can always be deduced from the very content of the enshrined norms.

L.Kh. Mingazov (1999, p. 33) in his fundamental scientific research, devoted to the effectiveness of international law writes, "the effectiveness of the international legal norms would be high enough only in case, if the means to an end: 1) possess a real ability to materialize the goal in the objective reality; 2) ensure their most rapid, rational, full realization; 3) are compatible with the generally recognized principles of contemporary international law. In the absence of these conditions, international legal norm will surely be in effect, but this effect will not be the greatest possible one."

Speaking of the balance between the legal norms goals and the means to achieve them, the scholar notes for a very good reason that "these means include material costs as well. If the choice of means is right,

that is the methods of solution proposed in an international agreement do not involve considerable material costs…, then it is a key factor for the efficient implementation of the provisions of this agreement" (Mingazov, 1999, p. 46). Hence, the disregard of the economical factors, inappropriate (insufficient) estimation of the existing economic potential of the State, assuming international legal obligations, results in the fact that even an international treaty, which is perfect from the perspective of legal engineering, remains a "dead letter." L.Kh. Mingazov (1999, p. 46) points to the example of the Vienna Convention for the Protection of the Ozone Layer and the Montreal Protocol on Substances that Deplete the Ozone Layer signed by the Soviet Union on March, 22, 1985 and November, 10, 1988 respectively, without sufficient expertise, without regard to the real economic potential of the country at the time making conditions for the State's failure to take action with respect to the obligations under these agreements within the span of almost 10 years.

Therefore, as early as at the stage of the preparation of the international agreements, involving considerable material (financial) costs on the part of the State, it is necessary to forecast the reasonably practicable extent of their feasibility, given the fact that the partner nations can sometimes be on the disparate levels of economic development. As it is known from the legal theory, "one cannot place delusive hopes in the law as a practical matter — it is not omnipotent. It would be naïve to demand from it more than it could admittedly give…" (Matuzov and Malko, 2001, p. 266). As N.A. Sokolova (2014b, p. 391) correctly points out, "the success of ensuring environmental security depends on the effectiveness of the implementation of the norms of international law, this being connected not only with the application of law in a broad sense, but also with the international law-making process."

And yet, it seems, it is not only and not so much about the real economic potential of the States. Equally important is their political will concerning the assumption and — above all — fulfillment in good faith of the assumed international obligations. In the absence of this condition no international agreement, no matter how explicit it is, no matter which means of securing the obligations it stipulates (for details of the control in the field in question see: Valeev, 2001; Ilyinskaya, 2010), cannot be regarded as an effective remedy of the

legal regulation. According to L.Kh. Mingazov (1999, p. 78), "The limits (options) of the international legal influence are determined by the real conditions of the current system of international relations." That is why in the context of the motivation of industrialized States for the solution of environmental problems at the expense of developing countries it is challenging to discuss the effectiveness of agreements in the field concerned. The scientific estimation of the prospects of the reduction of the greenhouse gas emissions within existing international legal framework is quite revealing in that respect. Indeed, according to V.V. Golitsyn (2011, p. 31), these prospects "appear utopian," and "the mechanisms of the Convention (referring to the UN Framework Convention on Climate Change. — O.I.) and of the Kyoto Protocol to it do not work." This conclusion is based, in particular, on the fact that "the European countries, which have technically reduced greenhouse gas emissions, in practice exported them to the developing countries by way of outsourcing" (Golitsyn, 2011). In view of this, the scholar believes on reasonable grounds that "in the absence of the worldwide system of the greenhouse-gas emission reductions, obligatory for all countries, meeting targets of the Framework Convention would be extremely difficult, if not impossible" (Golitsyn, 2011, p. 32). As we can see, this difficulty (or even impossibility) is due not to lack of the required economical possibilities of the State. The reluctance of industrialized States to reduce the excessively high levels of production and consumption, their practices of addressing environmental issues at the expense of developing countries were described quite bluntly by M.N. Kopylov (2000, p. 8): "The pragmatic industrialists... in seeking to produce the quickest returns from the respective capital investments and to generate the dividend as soon as possible, as a rule... think of anything but the compliance with the strict 'western' standards and technologies on the territory of the developing countries to the same degree as on the territory of the developed States. In this case they tap into a new market (by way of the export of the faulty technologies, going beyond the scope of the above-mentioned technologies and standards) for an entirely different reason." In the light of such realities the words of the French scientist Ph. Saint-Marc (1977, p. 54), written in the 1970s, are even more relevant today, "It would be a strange self-deception to think that it is possible to preserve nature leaving intact the very economic system that

destroys it." This statement is quite clear. And here one can conclude that the talk of scope for doing more to improve the effectiveness of international legal rules in the field of the environmental protection by way of their codification in the specific international agreements, though well-argued and, besides, widespread in the scientific community, deals actually only with the technical legal matters. A.S. Timoshenko (1986, p. 33), for instance, wrote that "the codification of the environmental protection legislation in the special international treaties would raise its effectiveness thanks to the better mutual coordination of the norms, the feasibility of the combined effect... The codification of the rules of the environmental protection, both customary and agreement-based, in the universal convention of a comprehensive nature would be of fundamental importance for the development of environmental law as a branch of international law." The importance of the codification in this field is noted by P. Malanczuk (1997, p. 245), who points to the fact that it is impossible to talk about the consistency of the current international environmental law. Yu.S. Shemshuchenko (2009, p. 82) also emphasizes the need for codification. It appears to him that the founding act of the codification of the international environmental law, the top of its pyramid should be the Environmental Constitution of the Earth (optionally — The Environmental Codex of the Earth). And in the early 1990s it was Ukraine that came forward with an initiative of adopting the World Environmental Constitution (Repetski et al., 2012, p. 387). In this context one important thing is overlooked: the mainstay of raising the effectiveness of the norms of international environmental law (as well as all other international legal norms) is the political will of the States, and in its turn it is bound to be determined by the existing economical system. The States, in course of shaping and implementing their economic policies, should take into account the real capabilities of the nature to meet the needs of society and development. As M.M. Brinchuk (2010, p. 11) notes, this requirement for the economically developed States is becoming an imperative. In the meantime, he calls attention to the need of adjusting the very concept of the needs of States. The scholar is convinced that "in the context of the scarcity of natural resources, objective inability of the nature to reproduce them in at a scale appropriate for the 'needs' of the world market economy, what really needs adjustment and improvement is this

economy itself, is its modus operandi. This improvement should take place reflecting the development of the concept of public needs, to be met by the market; the combination of the principles of the freedom of the market and that of planning and managing natural resources. The 'hybrid' approach, combining the elements of the socialist and capitalist economies, should be applied. Acting in such a way, 'the global economy may build only on the limit on usage of such a volume of natural resources that the nature can reproduce during the relevant period'" (Brinchuk, 2010, p. 12). of course, addressing such issues can and should be based only on international law.

Unfortunately, however, we are obliged to admit that all the calls for the improvement of the economical system remain unheard. Speaking of the development of the existing economical system in its worst, destructive, manifestations, M.M. Brinchuk (2010) aptly describes it as a system that "submits all and everything, especially the nature as its principal resource, to its selfish interests." In our view, one cannot but agree with this statement. Indeed, without the improvement of the existing economical system the efficiencies of the norms of international environmental law are unlikely to be achieved. of course, the conclusions of this kind may seem too abstract, since they do not contain the precise answer to the key question here — who and how might be able to (if it is possible at all) initiate this process on a global scale?

VII. Conclusion

Once the Minister of Ecology and Natural Resources of the Russian Federation V.I. Danilov-Danilyan (1992, p. 69), interviewed by "The Moscow Journal of International Law," proclaimed, "Everything what is intolerable in terms of ecology, is ineffective in terms of economics." This assessment seems to be quite fair. Simultaneously, the question arises: do the States always comply with the decisions taken in the exercise of their powers, with their unconditional duty of the environmental protection? The answer to this question, as shown above, is negative. The fact of China's non-participation in the Convention on Long-Range Transboundary Air Pollution of 1979 could be an indication that not all industrialized nations are prepared to assume the international obligations in the field of the environmental protection, involving

certain (sometimes very significant) restrictions of the economic benefits of these countries (which means additional investment in the modernization of production facilities). Meanwhile, in the world list of countries producing most carbon dioxide emissions China ranks second after the United States.[7] It is worth mentioning here that in 2017 then-United States President Donald Trump announced that the U.S. would cease all participation in the 2015 Paris Agreement on climate change mitigation.[8] According to Trump, this agreement disadvantages the United States to the exclusive benefit of other countries, and, if implemented, it would cost the USA 2.7 million jobs by 2025. The US implementation of this accord would be, in Trump's opinion, "the draconian financial and economic burden" for the country. However, by now the US foreign policy regarding the participation of the State in the Agreement mentioned above has drastically changed. The newly elected US President, an ecologically conscious Joe Biden, signed an executive order to rejoin the Paris Agreement as early as on January 20, 2021, his first day in office. "We have lots of possibilities. We can overcome the climate change danger. I do believe in it," he said.[9] Surely, this move should only be commended.

So ultimately, we have to conclude that the root causes of the problem of the lack of effectiveness of international environmental agreements lay, as we see it, in the foundations of the existing economic system.

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ARTICLES

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The Role of Small States in Integration Projects in the Eurasian Space: The Case of Armenia

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Abstract: The geopolitical interpretation of political processes taking place in the South Caucasus region ignores the possibility of an independent external policy of the smaller states that do not possess considerable military or economic power. Nevertheless, small states build their relations with Russia, the EU and other actors in accordance with the national political discourse that does not often correspond to the realist paradigm of international relations. The case of Armenia exemplifies membership in integration projects often described in academic literature as competing ones. As a consequence, the importance of closer research of internal political processes and factors that influence the decision to join one or another regional project increases. Cooperation with the EU, which has been strongly connected to partners' commitment to democratic norms, human rights reforms and rule of law, was considered as an important part of their external policy by all the three South Caucasus countries. For the moment, the Eurasian Economic Union does not designate the normative component of cooperation with member countries. In this sense, the Eurasian project has still to define itself.

Keywords: European integration, Eurasian Economic Union, Armenia, EU, Russia

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Contents

I. Introduction

The very subject of the small state remains poorly defined. What regards the South Caucasus region, in 1990s the term has been mainly used by donor organisations when describing support programmes to developing countries. This paper uses the relational criterion — it identifies the state's position towards the bigger regional actors that initiate integration projects. Caucasus studies scholars raise concern that foreign policy of South Caucasian countries is often regarded as a by-product of East-West competition or geopolitical pressures exerted by regional powers (Mammadov and Chiragov, 2018). On the other hand, contrary to realist and neo-realist theories, several authors have claimed that the more powerful cannot impose their will on smaller states. Instead, negotiations are based on autonomy of both sides, thus allowing for manoeuvring space. For example, smaller states can act as gateways or intermediaries for flows of global knowledge, information, or trade. This way "smallness" engenders competitive advantage when offering high-order economic functions to the global network: in fact, smaller states might even have a level of control over their political, economic, institutional, and social environments which larger economies do not (Martinus, Sigler, Iacopini and Derudder, 2019). Academic literature also suggests that small states are fundamentally different political, economic, and social units, as compared to large states. Authors put forward the argument that smaller states are more inclined for building shelter relationships, namely that they need political, economic, and societal shelter (as well as strategic protection) in order to thrive (Bailes, Thayer and Thorhallsson, 2016). This has another implication:

small states benefit disproportionately from international cooperation, compared with large states.

Small states do not have significant economic potential and cannot position themselves as a global power, thus striving to align with other 'senior' partners. In case of Armenia the global powers in question are the EU and Russia. The following reasons are mentioned in the literature to explain the perception of European integration and the Eurasian Economic Union projects as competing ones: (i) participation in the Eastern Partnership program as a step towards potential accession to the EU (Arutyunyan, 2011); (ii) the alleged anti-Russian nature of the program; (iii) lack of political reason for membership in the Eurasian Economic Union; (iv) the actual entry of Nagorno-Karabakh Republic into the Eurasian Economic Union (EAEU) despite having no customs border with Armenia, which indicates Russia's strategic importance as a guarantor of Armenia's security (Minasyan, 2015).

In general, the situation in the region does not offer many opportunities for a multi-vector foreign policy: Armenia exists in the conditions of energy dependence, isolation from cooperation programs, and a constant risk of military escalation of the Nagorno-Karabakh conflict. Having signed the Agreement on friendship, cooperation and mutual assistance with the Russian Federation, Armenia cooperates with Russia in the implementation of military policy, provision of military technologies and weapons. In the event of an armed attack, the Russian military bases can be used by the Armenian armed forces to protect the borders. The document, signed in 1997, also mentions economic reforms, deepening of economic integration, and creation of conditions for a common economic space.[1] Thus, the goal of broad institutional rapprochement with Russia was set under the first President of Armenia, Levon Ter-Petrosyan, who signed the agreement. The fact that Armenia continues to cooperate with Russia, as an important strategic partner, demonstrates continuity of the policy designed when the country gained its independence.

[1] Agreement on friendship, collaboration and mutual assistance between the Russian Federation and the Republic of Armenia. *Collection of Legislation of the Russian Federation*, 1998, No 51, Art. 6274.

Nevertheless, in recent years, Armenia has successfully integrated into European structures. In 1999, Armenia signed the Partnership and Cooperation Agreement with the EU, which in 2017 was replaced by the Comprehensive and Enhanced Partnership Agreement between the EU and Armenia. Since 2004, Armenia has been participating in the European Neighborhood Policy, and since 2009 in the Eastern Partnership program. Armenia is a member of the CSTO, at the same time maintaining relations with NATO, in particular, participating in peacekeeping missions in Kosovo and Afghanistan. Since 2002, the country has been part of the Partnership for Peace program, which aims to not only cooperate in the defense sphere, but also in the area of legal reforms, counter-terrorism and fight against corruption.

The country's security policy concept sets the following objectives: strengthening the international authority of the Republic of Armenia, increasing the degree of international integration of Armenia, and preserving the Armenian identity.[2] Regardless of their ideological views, Armenian political figures tend to adhere to this agenda. Moreover, emphasis is placed on the importance of a peaceful resolution of the Nagorno-Karabakh conflict, as well as recognition of the Armenian genocide as a crime against humanity. With the change of power in 2018, when former President Sargsyan was forced to resign, the argument that "Armenia will not be under any influence" has become even stronger, despite the desire to cooperate with both the EU and Russia.[3] At the same time, Armenia's sudden refusal to sign the Association Agreement with the EU in 2013 suggests that uniform cooperation formats cannot be accepted by all partner countries, and integration requires a more flexible approach, taking into account internal political factors, as well as interests of other players.

Given the conditions of economic and foreign policy dependence, smaller states are still able to promote their own agenda. The Russian academic scholarship tends to see this from the dominant neorealist framework perspective, thus the chances for a partner country to divert

[2] National security strategy of the Republic of Armenia. Available at: https://www.mfa.am/filemanager/Statics/Doctrinerus.pdf [Accessed 05.06.2019].

[3] Deutsche Welle. Available at: https://www.dw.com/ru/пашинян-назвал-приоритеты-внешней-политики-армении/a-46671030 [Accessed 05.06.2019].

from policy of bandwagoning a greater power are taken as almost negligible. Nevertheless, recent academic publications apply a more multi-faceted approach, also discussing role of ideology in academic research and justification for the choice of methodology. Thus, an argument about dominance of geopolitical approach in studying Russian external policy is put forward. On the contrary, the EU is perceived mostly through the constructivist lense (Pavlova and Romanova, 2019). At the same time, there is understanding that multipolarity of the existing external environment, in contrast to bipolar world order, has influenced the behavior of the smaller states as well: they are now more likely to balance their external policy priorities (Skriba, 2014). This is not only due to the fact that multi-vector policy represents a way to diversify the risks associated with economic and political dependence on a single partner. The growing role of smaller states is also explained with lower risks of military confrontation, growing representations of the smaller states in the international institutions.

As behavior of smaller states is changing, a research question should be posed, whether growing ability to balance, put into practice by smaller states, also means greater level of interaction between different integration structures within one region. The Armenian case is often depicted as "integration of integrations", but the term is hardly applicable to the country's experience: both projects are developing in parallel with each other, there is little connection between the Eurasian Economic Union and the European Union as two independent entities. The main reason is the crisis of Russian-European relations, the absence of any expert dialogue on this issue at the level of departments and political leaders. On the other hand, Armenia did manage to combine Eurasian and European integration. The designation "reasonable Europeanisation" is used, which implies combining the benefits of both membership in the Eurasian Economic Union and conclusion of the updated agreement with the EU.

At the same time, Armenia's accession to the Eurasian Economic Union has resulted in drawing clearer dividing lines between Russia and the EU in the region. Armenia was claimed to have become a tool of Russian policy and involuntarily contributor to regional destabilization (Grigoryan, 2014). Despite hard regionalism policy pursued by Russia,

academic literature also provides evidence of existing adaptation strategies followed by local actors. This brings nuances into the prevailing picture of Eurasian integration, rather focusing on the malleable nature of the integration process (Delcour, 2018).

One could claim that the Russian interests are not threatened by the Comprehensive and Enhanced Partnership Agreement signed by Armenia and the EU: the obligations taken by Armenia practically did not affect the economic sphere, which is now regulated within the Eurasian Economic Union. On the other hand, the EU is able to influence the milieu goals setting in the country, having contributed to democratic reforms, which is considered by Russia as bearing little or practically no importance within the overall circumstances of Armenia's dependence on Russia in economic and military sphere.

II. Integration as a Modernization Project

For smaller developing countries, participation in integration projects offers the possibility of using external resources to modernize political and economic institutions: this relates both to exchange of best-case practices, as well as direct financial support in various areas of development, including small and medium-sized businesses, education system, and cultural programs.

Cooperation of the EU with neighboring countries is claimed by the EU to be based on the ultimate goal of achieving democracy, stability and security that underlie the history of the formation of the European Union itself. The agreement on cooperation between Armenia and the EU, like most agreements with partner countries, is accompanied by a preamble stating the importance of fundamental freedoms and human rights, development of democracy and a market economy. The fundamental chapter of the CEPA agreement touches upon political dialogue and reforms: it refers to development and consolidation of democratic institutions, the rule of law, justice reform, increasing effectiveness of law enforcement.[4] The EU invests in projects aimed

[4] Annex 1 to the Joint Proposal for a Council Decision on the conclusion, on behalf of the European Union, of the Comprehensive and Enhanced Partnership Agreement between the European Union and the European Atomic Energy Community

at the development of local communities, participation of citizens and young professionals in management.[5] Among the projects supported by the EU are regional development projects, implemented and funded jointly with the Armenian government,[6] reforms on decentralization and development of local self-government,[7] advisory assistance and trainings. Cooperation between the EU and Armenia in 2017–2020 was focused on the following areas: economic development and market development — 35 % of financial support received from the EU by Armenia; strengthening institutions and good governance — 15 %, infrastructure development, energy efficiency, environmental protection — 15 %, mobility and people-to-people contacts — 15 %, development of competences, organizational infrastructure, strategic communication — 15 %, development of civil society — 5 %.[8]

The main document justifying the provision of technical, financial, humanitarian and other assistance to neighboring countries by the Russian Federation is the Concept of the state policy of the Russian Federation in the field of assisting international development.[9] Its declared goal is sustainable socio-economic development of partner countries as a necessary element of collective security — the regulatory framework includes references to the UN Charter. Nevertheless, while the Russian federal authorities provide assistance in accordance with

and their Member States, of the one part and the Republic of Armenia, of the other part, Interinstitutional file 2017/0238 (NLE), Brussels, 25 September 2017.

[5] EU Supports Projects Encouraging Citizens' and Young Specialists' Participation in Governance. Available at: https://eeas.europa.eu/delegations/armenia/56742/eu-supports-projects-encouraging-citizens%E2%80%99-and-young-specialists%E2%80%99-participation-governance_en [Accessed 05.06.2019].

[6] EU4Regions: Support to Regional Development Policy in Armenia — PRDP project. Available at: https://eeas.europa.eu/delegations/armenia/42350/eu4regions-support-regional-development-policy-armenia-%E2%80%93-prdp-project_en [Accessed 05.06.2019].

[7] Citizens Voice and Actions on Local Development in Consolidated Communities in Armenia. Available at: https://eeas.europa.eu/delegations/armenia/57765/citizens-voice-and-actions-local-development-consolidated-communities-armenia_en [Accessed 05.06.2019].

[8] Delegation of the European Union to Armenia. Available at: https://eeas.europa.eu/delegations/armenia/896/armenia-and-eu_en [Accessed 05.06.2019].

[9] Decree of the President of the Russian President of 20.04.2014, No 259. Available at: http://kremlin.ru/acts/bank/38334 [Accessed 05.06.2019].

individual decisions of the Russian government, this interaction is not formalized as any form of an assistance program. The main priorities include socio-economic issues such as fighting energy security issues at national level, strengthening national health and social protection systems, increasing accessibility and quality of education, etc. However, it also refers to the development of political institutions, namely the promotion of democratic institutions at international level, and not at national one, as the EU programs do. In addition to interagency cooperation and intergovernmental commissions, Russia indirectly participates in the activities of organizations of the UN system, contributing to the socio-economic development of Armenia. At the same time, similar cooperation with the EU is much more detailed and focused: it includes within itself defined priorities, developed mechanisms, they are aimed at a wider range of interaction, including not only economic cooperation, but also educational and scientific programs. While for the EU support for institutional reforms in neighboring countries is of utmost importance, for Russia it is not paramount: priority is given to security issues and economic interaction. Partly, the lower priority of interaction in other areas is related to the perception of Armenia as a historically, culturally and socially close partner of Russia, which, however, cannot remain unchanged in the long term.

In a substantial matter, European and Eurasian integration projects as projects of political and institutional modernization differ conceptually. This, in particular, is reflected in the Armenian political discourse. In public statements by Armenian politicians, the EU is perceived as a driver of modernization, whereas Russia is indicated as a strategic partner and security guarantor (Petrova and Ayvazyan, 2018). While the former does not possess any essential tools for ensuring security in the region and emphasizes the mediating role of other international organizations (like the OSCE Minsk Group in the event of the Nagorno-Karabakh conflict), the latter does not offer any development program or model, relying on military-strategic cooperation and the alleged commonality of the historical destinies of both countries.

On the other hand, in academic literature, a point of view is expressed, that interaction with Russia might form an obstacle to the promotion of democratic values in the EU's neighboring countries

(Medico, 2014). This position implies that the EU's foreign policy as a regulatory force promoting the democratic norms and open market values opposes the geopolitical approach of the Russian side, which perceives the neighborhood as its sphere of influence. In its cooperation with the South Caucasus countries the EU largely relies on pressure towards political elites and statements revealing opinions about political situation in the countries. At the same time, practically no sanctions are used in case a partner country does not claim adherence to democracy, rule of law and peace.

Opinion polls in the EU show increasing demand among European citizens for the EU to play a greater role promoting human rights worldwide.[10] One could claim that promoting these values is a political project for the EU in the sense that it is aimed at gaining legitimacy inside the union itself. Contrary to this, a more pragmatic approach has also emerged: the EU started to develop new formats for those partners that do not wholeheartedly support the liberal and democratic agenda. A typical example is Azerbaijan: despite worsening records of democracy and human rights in the country after 2013, the EU started to negotiate a new cooperation agreement with the country that would prioritise the union's energy interests (Umudov, 2019).

In public perception in Armenia and in the Armenian media environment there is also an opinion that cooperation with Russia contradicts the general direction of rapprochement with European civilization and adoption of European values. In particular, the role of the Russian media in the formation of a negative attitude towards Western partners is mentioned; together with the "either-or" approach imposed by both Russia and the EU, implying no alternative choice between interaction with Russia and integration with the EU:[11] this point of view was specifically articulated by the Yerevan press-club, professional organization uniting journalists in Armenia. Despite the

[10] Protecting, promoting and projecting Europe's values and interests in the world. European Parliament. Available at: https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/652061/EPRS_BRI(2020)652061_EN.pdf [Accessed 03.03.2021].

[11] Erevan Press Club. Armenia's integration policy. Available at: https://ypc.am/upload/Analytical%20Pieces%205%20rus(2).pdf [Accessed 05.06.2019].

absence of any formally fixed value-driven agenda in the constituent documents of the Eurasian Economic Union, some Armenian researchers argue that there exist competition of conservative approaches used by the Russian side and the ideological system of liberalism. A similar point of view is also present in studies relating to Russian soft power in the countries of the South Caucasus: the ideological component of Russia's foreign policy is described as state-centric, focused on protecting sovereignty and non-interference in the internal affairs of neighboring countries. In this regard, both integration projects are endowed with an ideological component, one way or another creating the context of political partnerships pursued by Armenia. EU interaction in this framework means commitment to openness, market economy, democratic values. Cooperation with Russia, on the other hand, stands for autonomy, a closed economic model, and conservative social values. Both of these models have supporters and opponents and are combined by the Armenian political leadership that cooperates with both partners.

III. The Economic Aspect of Integration

Lack of political dialogue between Russia and the EU led to a diplomatic crisis, when the Armenian side forcedly interrupted negotiations with the EU and was considering not the economic factors of two integration projects, but rather their political aspects. In November 2013 Armenia stopped negotiations on signing the Association Agreement with the EU, announcing its intention to enter the Eurasian Economic Union instead. The EU-Armenia Comprehensive and Enhanced Partnership Agreement signed in 2017 excludes provisions on the creation of a free trade zone between Armenia and the EU. Economically, accession to the Eurasian Economic Union, as well as creation of a free trade zone with the EU was of equal importance for Armenia. Over the past decade, Russia's share in Armenia's foreign trade and a similar aggregate figure for the EU member states have been growing proportionately. For example, according to the official statistics of the EU, the trade turnover between Russia and Armenia in 2018 was 1.065 billion euros, the foreign trade turnover between the EU and

Armenia in 2018 amounted to 971 million euros. The EU is the second most important trading partner of Armenia after Russia. According to the same data, Russia is the fourth largest trading partner for the EU in 2018. Before accession to the Eurasian Economic Union overall share of the EU in the Armenian trade turnover was even larger that that of Russia. Statistical Committee of the Republic of Armenia provides the following data: in 2013, Armenia's export to the EU amounted to 494211.4 thousand US dollars, while the same figure for Russia was 334125.7 thousand US dollars. During the same period Armenia imported goods from the EU with the value of 1159143.3 thousand dollars, while imports from Russia comprised 1025159.7 thousand dollars.[12] The disturbing factor is inability of Armenia to produce and export competitive products to the European and Russian markets that would allow it to ensure positive trade surplus.

In the assessment of the benefits that could follow possible creation of a free trade zone between Armenia and the EU, which was conducted by the European Commission before the proposed signature of the Association Agreement, authors concluded that the economic effect of such an agreement for the European Union would be minimal. This is due to the low index of Armenia's share in the EU's foreign trade balance: less than one percent.[13] Thus, the main benefits and losses from signing of the agreement would fall on Armenia. This also explains the political interpretation of the project: the EU's motivation in this case is justified by the ability to prove in practice the effectiveness of the European open market model and its relationship with sustainable development. A free trade zone with the EU would give Armenian consumers access to high-quality goods at a low price; on the other hand, it would pose a threat to Armenian and Russian enterprises that would be forced to experience market competition from European organizations. A free trade zone with the EU would also stimulate convergence of trade standards and

[12] Foreign trade of the Republic of Armenia 2010–2013. Available at: https://www.armstat.am/file/article/ft_2nish_2014_3.pdf [Accessed 03.03.2021].

[13] Commission services position paper on the Trade Sustainability Impact Assessment in support of negotiations of a Deep and Comprehensive Free Trade Area between the European Union and the Republic of Armenia. Available at: http://trade.ec.europa.eu/doclib/docs/2014/july/tradoc_152653.pdf [Accessed 05.06.2019].

quality standards in Armenia and the EU. Before 2013, the average applied tariff, at 2.7 %, was among the lowest of WTO members, thus making Armenia's economies one of the most liberal in terms of external trade policy. Armenia and Russia, having initiated the creation of the Eurasian Economic Union, were not ready for this and chose a model focused on greater state regulation, protection of local producers, an increase in tariffs and duties and, thus, expected raise in revenues to the state budget.

On the other hand, the Armenian market is much less significant for Russia and the EU than Russian-European trade relations. From this point of view, the relationship with Armenia and the ability to determine the rules of the game manifest the Russia's ambition for regional leadership. As a result, the EU turned out to be more flexible and proposed a new relationship format. Russia, at the same time, being in a situation of a deepening crisis of the EU-Russia relations, was unable to enter into a full-fledged dialogue on the interaction of the Eurasian integration project and the European Union. Thus, Russia was able to protect its short-term interest in Armenia: a more favorable trade regime for Russian manufacturers and entrepreneurs. In the long term, the chance of convergence of the trading standards of the Eurasian Economic Union and the EU was missed.

Among the obstacles to the effective participation of Armenia in the Eurasian Economic Union are the absence of a common border with Russia, as most of the goods are exported through the territory of Georgia, which is not part of the union; and the small share of other member countries of the Eurasian Economic Union in trade with Armenia. Traders from EEU non-member states, including Georgia, do not have the privilege of VAT exemption and simplification of excise tax exemption procedures, which came into conflict with the Free Trade Agreement Armenia has with Georgia.[14] Further integration into the EAEU would require Armenia to develop a detailed plan on non-discrimination of non-EAEU external trade partners: trade relationship with Georgia is specifically sensitive in this regard.

[14] Agreement on Free Trade between the Governments of Georgia and Armenia (1996). Available at: https://www.wto.org/english/thewto_e/acc_e/geo_e/WTACCGEO4A1_LEG_23.pdf [Accessed 25.05.2021].

The Armenian side has proposed several directions in which it could further integrate into the Eurasian Economic Union. The first priority is formation of a common gas market within the Union: Armenia's leadership considers it necessary that not only common approaches to price and tariff setting within the gas market would be agreed in the framework of an international treaty, but also tariffs for transportation of gas from third countries for domestic consumption would be established on the basis of transparency and non-discriminatory approaches. Secondly, it is important for Armenia to continue identifying and removing barriers and restrictions to mutual trade. Apart from that, Armenian Prime-Minister Nikol Pashinyan pointed to the necessity of consistent implementation by EAEU-member states of key macroeconomic policy guidelines in 2021–2022 with the aim to restore national economies and recover entrepreneurial activity; development of mechanisms for financing integration projects by more actively involving state resources and supranational development institutions of the EAEU, including through the creation of Specialized Investment Funds; elaborating the issue of creating a platform for academic mobility in the field of industry and agro-industry within the EAEU.[15]

These suggestions largely fall into the category of institutional reforms that Armenia already undertakes with the support of the EU. More coordination between European and Russian donor organisations would be in the interest of the Armenian leadership, thus allowing for more concentrated effort put into country's recovery after the war. On the other hand, Armenia's dependence on Russian energy market makes energy market integration one of the most important goals of its membership in the EAEU.

While membership in the Eurasian Economic Union for Armenia has become in many respects declarative, with the main goal being to demonstrate priority of political relations with Russia as the main strategic partner, it is potentially to a large degree compatible with country's partnership with the EU. Both projects will have to offer a solution to country's demand for macroeconomic stability, energy

[15] Nikol Pashinyan: "We prioritize the formation of a common gas market within the EAEU" (2021). Available at: https://www.primeminister.am/en/press-release/item/2021/05/21/Nikol-Pashinyan-meeting/ [Accessed 25.05.2021].

security, labor and academic mobility. In this regard, informal and formal communication between experts, politicians and government officials on diverse levels is necessary to establish a sound political and economic strategy for country's development in the upcoming years, given its very fragile condition followed by the COVID-19 pandemic and general political and investment climate not conducive for a rapid breakthrough.

IV. Effects of the 2020 Nagorno-Karabakh War on the Integration Process

Over the past decade, the South Caucasus has been subject to fragmentation, which is reflected both in the foreign policy of the states and in the internal political situation in the countries. On the one hand, the political elites have reoriented themselves towards partnership with new players besides Russia and the EU. The influence of Turkey and the economic presence of China have become noticeable. Initiatives to normalize relations between the countries of the region have been unsuccessful: diplomatic relations between Russia and Georgia have not yet been established; the President of Armenia Armen Sargsyan in 2018 annulled the Zurich Protocols on the establishment of diplomatic ties between Armenia and Turkey; the potential for conflict between Armenia and Azerbaijan has been steadily growing and the military clash in 2020 came as a predictable result.

General instability has led to loss of confidence in international institutions and external actors that are engaged in integration projects and peaceful settlement of conflicts. The global crisis of 2020 caused by the coronavirus pandemic has once again shown that global players, including the US and the EU, are busy with internal problems and are rather interested in maintaining the status quo when it comes to de facto states in the South Caucasus region. The system of checks and balances, already weak enough, failed. The "Pandora's Box", opened during the military phase of the Nagorno-Karabakh conflict in 2020, significantly increased the risks of military clashes throughout the post-Soviet space. Being faced by ineffectiveness of the crisis management mechanisms, the South Caucasian republics started to search for security guarantees

among stronger players: now there is no alternative for Armenia to place cooperation with Russia over any other partnership, and Azerbaijan has military-political alliance with Turkey as an external policy priority.

The government of Nikol Pashinyan, who came to power in 2018, has faced problems that cannot be solved by a mere change in political leadership. These are: poverty, poor quality of Armenian exports, outflow of skilled labor from the country, as well as the need to ensure security in the face of the constant threat of hostilities. In fact, domestic political instability and vulnerability of political regimes amid the global economic decline were typical for all countries of the region in 2020 and still define political trends for the upcoming years. Georgia went through internal political crisis due to inability of the ruling party to engage into dialogue with the opposition about the constitutional reform; protests took place in July 2020 in Baku with requests being raised to resume the war with Armenia over Nagorno-Karabakh territory; Armenian opposition was continuously raising concerns over undemocratic nature of the new political leadership. Instability of state institutions, public discontent with general political climate posed the ultimate question for political elites: their actions and external policy should correspond to population's growing demand for a safer and better life, stronger adherence to national interests.

The idea of maintaining control over Nagorno-Karabakh has been central in the Armenia's foreign policy discourse for many years. Loss of territories was perceived as a threat to the existence of the Armenian nation. Armenian diplomacy failed to explain to the world community why Armenia fought for the independence of the self-proclaimed Nagorno-Karabakh Republic and the rights of the Armenian population living there. It is significant that, despite the call of the members of the European Parliament to take measures against Turkey in connection with the involvement in the conflict, the EU limited itself to statements of support for the actions of the OSCE Minsk Group.[16]

While the military actions came to an end, security threats remained. In May 2021 Armenia started consultations with members

[16] Is Armenia Expendable to the EU? Available at: https://www.evnreport.com/politics/is-armenia-expendable-to-the-eu?fbclid=IwAR265HiDhFCogzkVYTGLY003C6wmgcvGWd4-feojiJULf1sYnmMRw3Op1sk [Accessed 20.01.2021].

of the Collective Security Treaty Organizations to take measures to counter situation on the Armenian-Azerbaijani border. Armenian side reported that a group of Azerbaijani servicemen had crossed the state border of Armenia in an effort to take control of the area near Sev Lich and surrounding areas in Syunik Marz of Armenia.[17] The Acting Prime-Minister of Armenia claimed that the Azerbaijanis may have crossed the Armenian-Azerbaijani border in this area not to solve local problems, but to provoke a military conflict, having supported this statement with the claim that the representatives of the armed forces of Azerbaijan attempted to justify their presence in the given area with the help of falsified maps and that Azerbaijan announced the launch of large-scale military exercises involving 15,000 servicemen on May 16, 2021. Unfolding events, unfortunately, leave no grounds to claim that the long-waited peace in the region has now been established: on the contrary, the precarious balance is easily destroyed.

Despite the fact that in 2020 the country suffered from a pandemic, the general economic situation in Armenia was not favorable even before the war. The poverty rate in 2019 was 26.4 %. The unemployment rate in the same year was estimated as 18.3 %.[18] These figures are likely to increase due to the influx of refugees from the territories occupied by Azerbaijan. The burden of providing the newly arrived population with housing and social benefits fell on the state budget. A large number of families lost their breadwinners during the war. The Armenian side speaks of more than 4,000 dead and 8,000 injured, however, the real figures are most likely higher than this. Humanitarian assistance will depend on external aid from international organizations, the Russian Federation, the EU and other states.

The country is not attractive for foreign investment due to political instability. The probable unblocking of transport routes and, in particular, the restoration of the railway communication linking

[17] Nikol Pashinyan: "Early completion of CSTO procedures is needed to prevent further escalation and protect the territorial integrity of the Republic of Armenia" (2021). Available at: https://www.primeminister.am/en/press-release/item/2021/05/13/Nikol-Pashinyan-Security-Council-meeting/ [Accessed 25.05.2021].

[18] Statistical Committee of the Republic of Armenia. Available at: https://armstatbank.am [Accessed 20.01.2021].

Armenia and Russia through the territory of Azerbaijan, is unlikely to reduce the cost of Armenian exports. Azerbaijan is not a member of the Eurasian Economic Union, and therefore Armenia cannot hope for favorable tariffs and conditions.

Dependence of the Armenian statehood on the presence of Russian military forces has increased the importance of Russian-Armenian relations on the agenda for all the political powers in the country. The EU's reaction to the development of the situation in Nagorno-Karabakh gives grounds to assert that the vector of European integration is unlikely to be a priority for Armenia in the coming years. Given the circumstances, further evolution of the Eurasian integration project could serve as the basis for building Armenian-Russian relations in the economic sphere, offering the Armenian side a new socio-economic developmental model. In this regard, successful examples of cooperation are important, such as launch of pilot projects in high-tech areas, for instance.

V. Conclusion

The experience of Armenia's integration into European structures, as well as its membership in the Eurasian Economic Union, is motivated by the political leadership's intention to balance between global actors, while maintaining the international prestige of Armenia and the identity of the Armenians. The latter is part of the national security concept and serves to protect the interests of the population of Armenia and the Armenian diaspora throughout the world. The discourse of forming its own foreign policy, independent of other actors, has intensified in recent years, despite the risks of military actions and the unfavorable geopolitical position. The research agenda for scholars studying regional integration processes has thus been enlarged and now incorporates the issue of smaller states behavior that is no longer explained by bandwagoning policies only.

The EU and Russia are important economic partners of Armenia, the share of both is significant for the Armenian economy. Thus, both the creation of a free trade zone with the EU discussed earlier and the entry into the Eurasian Economic Union serve the interests of the Armenian state. At the same time, both of these models are conceptually different: the European one is more oriented towards the open market,

and the Eurasian one towards the autonomy and protection of domestic producers. In addition, both integration projects are endowed with an ideological component in the public perception, which posits the priority of certain social values that are not easily combined with each other.

Despite Armenia joining the Eurasian Economic Union, the EU continued to play an important role in supporting institutional reforms in the country. The sphere of assistance to the development of partner countries is new for Russia and is not currently a priority, but in the long run it can significantly affect its role as a global actor offering a particular development model.

The EU's reaction to the 2020 war in Nagorno-Karabakh has significantly undermined the image of international community and the European institutions in particular among Armenian population and gave grounds for Armenian political powers to stick to Eurasian integration vector as a priority in the coming years. Further development of the Eurasian integration project could offer the country a new basis for sustainable growth, for this purpose success cases should be amplified in competitive areas of the Russian — Armenian economic cooperation.

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ARTICLES

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Integration Processes within the Eurasian Economic Union: Kazakhstan's Narratives

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Abstract: Integration processes in the Eurasian space are ambiguously assess both by officials and an expert community of the member countries. Thus, there is still a discussion in Kazakhstan and various narratives are being formed concerning the expediency of the country's presence in the Eurasian Economic Union (EAEU), the advantages and challenges associated with this participation. The article deals with the main narratives that are presenting in Kazakhstan and describing the integration processes within the EAEU — official and expert (both critical about the EAEU and supporting Eurasian integration). The analysis conducted in the article is based on the understanding of the narrative as a "statement-result", defined by its structure (coherence between key concepts). The article shows that all narratives about the EAEU, present in the Kazakhstani discourse, have a similar structure, formed by the concepts of "independence", "integration", "politics" and "economics". The differences between the narratives are determined by the emphasis on either the "independence-politics" or "integration-economics" constellations (linkages), and the proposed format of regionalization of Kazakhstan within Central Asia or Eurasia.

Keywords: Eurasian Economic Union, Kazakhstan, weak state, discursive space, narratives, structure of discourse

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Contents

I. Introduction

Despite the fact that more than six years have passed since the establishment of the Eurasian Economic Union (EAEU), there is still a discussion about practicability (advisability) of Kazakhstan's participation in this international organization, the advantages and challenges associated with such participation. Accordingly, there are many narratives both criticizing the EAEU and Kazakhstan's participation in it, and emphasizing the benefits of cooperation within this union in the discursive field. At the same time, although according to the Treaty on the Eurasian Economic Union, the EAEU is "an international organization of regional economic integration," which "ensures free movement of goods, services, capital and labor within its borders, as well as coordinated, agreed or common policies in the economic sectors" (Eurasian Economic Union, 2014), not only the economic, but also political and geopolitical aspects of this organization are actively discussed. In a number of narratives, it is assumed that membership of Kazakhstan in the EAEU may threaten the sovereignty of the country. At the same time, it is postulated that in the modern world any integration processes are a boon by definition.

The polemic concerning the EAEU is aggravated by the fact that Kazakhstan is a weak state (Jackson, 2016) with weak society (Migdal, 1988; Saikal, 2016): in Kazakhstan there is no consensus on the idea of the State, the State is alienated from society, and society has no significant identification connection (Burnashev, 2015). One of the main features of a weak state is fragmentation: there is a multitude of interest groups that compete with each other to preserve and protect their own practices (including discursive ones), securitizing not the state interest, but group values and goals external to the state. Accordingly, there is a serious risk that in Kazakhstan, in the event of a shift of balance of power, discourses that are both extremely critical of the EAEU and uncritical of the organization may become dominant.

In this situation, understanding the logic of forming discursive practices in Kazakhstan regarding the EAEU and, consequently, narratives, becomes fundamentally important.

II. Methodology

The article is based on an understanding of a narrative as an "utterance (l'énoncé)" capable of "account for the appearance and development of all (and not merely verbal) signification" (Greimas and Courtés, 1982, pp. 209–210).

Both official documents and publications in the media have been used as material for analysis. In fact, it is the mass media materials that allow to identify the narratives about the EAEU and Kazakhstan's participation in the union at all levels — official, academic and expert. Everyday narratives (narratives produced by ordinary people) concerning the EAEU are practically not fixed in Kazakhstan. "The population does not see it [EAEU]," political scientist Lessya Karatayeva said (Iuritsyn, 2019). The same point of view is shared by Sultan Akimbekov, who believes that the discussions on Eurasian integration, which have been debated rigidly among intellectuals, "almost did not affect the general public" (Akimbekov, 2014), and by and Eduard Poletaev, who points out that "the EAEU remains largely the initiative of political elites." Although this organization is open to the media, the essence of the Eurasian Union's activities is poorly explained to ordinary people"

(Omarova, 2021). At best, there is a duplication of this or that expert narrative by Kazakhstanis.

The analysis of narratives is based on identifying key concepts and establishing structural links between them.

III. Official Narratives

Within the framework of the officially adopted discourse in Kazakhstan, the key point is that the EAEU is positioning as a logical development of the idea of Eurasian integration, expressed by the President of Kazakhstan Nursultan Nazarbaev in 1994 in his speech at Lomonosov Moscow State University. Then he suggested creating the Eurasian Union (President of the Republic of Kazakhstan, 2011). At the same time, the narratives that form in this field are characterized by several moments.

First, the official discourse field considers the concept of Eurasian integration as a certain continuity. There is a clear continuation from the idea of the Eurasian Union through the Eurasian Economic Community (EurAsEC, the agreement on the establishment signed in 2000) to the Customs Union of Belarus, Kazakhstan and Russia, launched in 2010, and the Common Economic Space of these countries (2012) and, finally, to the EAEU, that was established in 2014 (Mansurov, 2019).

Secondly, in this field there is a "singled out" and the main speaker — Nursultan Nazarbaev who is positioned as the founder of this project and a person who always supports the idea of integration. For example, as early as in 1994 Nursultan Nazarbaev points out that he "has always advocated integration, primarily considering the human relations that we have" (President of the Republic of Kazakhstan, 2011, p. 330). Moreover, the idea that Nursultan Nazarbaev is "the architect of Eurasian integration" and "its initiator and active proponent" is being actively promoted (Library of the First President of the Republic of Kazakhstan-Elbassy, 2020). In this regard, it is indicative that of the series of articles published in 2011 in the "Izvestia" newspaper by the leaders of Belarus (Lukashenko, 2011), Kazakhstan (Nazarbaev, 2011) and Russia (Putin, 2011), it was the article by Nursultan Nazarbaev that caused a serious resonance in Kazakhstan. Nursultan Nazarbaev's

highlighted position is also enshrined in the EAEU itself. Although he stepped down as president of Kazakhstan in 2019, he is the honorary Chairman of the Supreme Eurasian Economic Council, the highest supranational body of the EAEU.

Thirdly, the official discourse of Kazakhstan defines the structure of the articulation of the issues of Eurasian integration in general, and the EAEU in particular. Even talking about the Eurasian Union, Nursultan Nazarbaev pointed out that between the countries of the Commonwealth of Independent States "there is a need for a transition to a qualitatively new level of relations" — the formation of a union (emphasis on the concept of "cooperation" or, in a more rigid form — "integration"). The union involved the creation of supranational bodies designed to "solve two key problems: the formation of a common economic space and the provision of joint defense policy" (President of the Republic of Kazakhstan, 2011, p. 330) (nodal points of the application of cooperation — "economy" and "security", seen as "geopolitics"). It was assumed that supranational bodies should not address "all other issues relating to the interests of sovereignty, the internal state structure, and the foreign policy activities of each participant" (the concept of "independence") (President of the republic of Kazakhstan, 2011, p. 330). Later on, the attitude that cooperation within the Eurasian space should have, first, an economic character and not affect the sovereignty of Kazakhstan was strengthened. For example, in 2014, in an interview to the "Khabar" national television channel, Nursultan Nazarbaev noted that the EAEU is an exclusively economic union and, moreover, "Kazakhstan always has the right to withdraw from this union if its independence is threatened" (Sabekov, 2014). All these positions are also reflected in official documents, such as the Concept of Kazakhstan's foreign policy for 2014–2020, which specifies that the Eurasian economic integration is seen as "one of the effective ways to promote the country to sustainable positions in the system of world economic relations" and "Kazakhstan will strengthen the Customs Union and Common Economic Space in order to create on this basis the Eurasian Economic Union," while maintaining the principle of inviolability of political sovereignty (President of the Republic of Kazakhstan, 2014). In an article timed to the start of the

Common Economic Space of Belarus, Kazakhstan and Russia in 2012, Nursultan Nazarbaev once again notes that he "proposed to build integration primarily on the basis of economic pragmatism. Economic interests rather than abstract geopolitical ideas and slogans are the main driver of integration processes." Here he also notes that the Eurasian Union for him is "a union of states based on the principles of equality, non-interference in the internal affairs of each other, respect for sovereignty" (Nazarbaev, 2011). Later, after leaving the office as President of Kazakhstan, Nursultan Nazarbaev proposed the option of "sublation" the contradiction between the concepts of "cooperation" and "independence", noting that "only in cooperation with reliable proven partners and allies can we ensure the economic security and independence of our countries" (Nazarbaev, 2021).

Finally, the official discourse determines the need to fix Kazakhstan's regionalization. Usually the choice is between Central Asia or Eurasia, with the two concepts not being mutually exclusive. Official narratives about the EAEU use the idea of "Eurasianism", the content of which is not fixed unequivocally and is transformed depending on certain political or economic conditions. On the one hand, "Eurasianism" is presented as "the idea of integration, cooperation" in the post-Soviet space (Nazarbaev, 1995). On the other, "Eurasianism" is a project that allows Kazakhstan to take some specific, central position in Eurasia, to act as a connecting bridge between large Europe (including Russia) and East Asia, and as a mediator in this space. According to Nursultan Nazarbaev, the Eurasian Union is an open project, it "should be formed as a strong link connecting the Euro-Atlantic and Asian development areas" (Nazarbaev, 2011).

Thus, within the official narratives, the EAEU is positioned as the key integration process for Kazakhstan, but at the same time it is regarded as just one of the components of a wider project of "Eurasianism." Meanwhile, for President Nursultan Nazarbaev, the project of "Eurasianism", with all the references to the need to preserve Kazakhstan's independence in the framework of any integration association and to emphasize the economic nature of the EAEU, focuses primarily on the concepts of "cooperation" and "politics".

IV. Expert Narratives

The attention of the academic community in Kazakhstan to the processes of cooperation in the Eurasian space is quite weak and unsystematic. The country has practically no special publications on the EAEU subject. However, the EAEU is widely presented in the expert discourse. There are several significant expert forums with some regularity addressing the subject of Eurasian cooperation, such as Kazakhstan-Russia Expert Forum (Nur-Sultan), "The World of Eurasia" Expert Discussion Platform (Almaty), Center for Eurasian Studies of Al-Farabi Kazakh National University (Almaty). EAEU topics are discussed in mass media as well as on personal pages of experts in social networks. Obviously, the expert field is not monolithic and at the first approximation it breaks down into two large strata — those who have a positive attitude to Kazakhstan's participation in the EAEU ("eurasioptimists") and those who oppose the EAEU ("eurasosceptics"). At the same time, it should be noted that these strata, as well as the entire field of expertise with regard to the EAEU, remain uninstitutionalized. Neither opposition to the Eurasian economic integration, nor its support are significant factors of public policy debates in Kazakhstan (as far as policy debates can be talked about in a weak state with weak society). And if the activities aimed at a positive or neutral-critical assessment of the EAEU are held with some degree of regularity, for example, in the monthly meetings of "The World of Eurasia" Expert Discussion Platform [1]then attempts to hold an anti-Eurasian hearing (Radio Azattyq, 2014a, 2014b) have not become systematic.

Another peculiarity of Kazakhstan is that there is no discussion between supporters and opponents of the EAEU; their narratives practically do not touch and do not intersect with each other. Discussions are held in absentia, with no names of opponents.

The fragmentation of the expert field of "eurasioptimists" and "eurasoscopists," as well as the preferences of experts determine the nature of their discussion of the EAEU issues. In contrast to academic

[1] See materials on the website of the "Eurasia World" Public Foundation (http://wef.kz/).

research, usually it is not systematic studies, but a situational response. Splash of experts' interest, as a rule, is fixed in connection with one or another significant event, which is interpreted as able to significantly affect the EAEU and the place of Kazakhstan in it. Such events may include (1) the process of establishing the EAEU or the inclusion of new members into the organization; (2) the manifestation of certain contradictions between the EAEU members, for example, the "closure" of the border between Kazakhstan and Kyrgyzstan in the autumn of 2017; (3) statements by certain politicians about the situation with the EAEU or its transformation, for example, the comment of the Chairman of the Federation Council of the Federal Assembly of the Russian Federation Valentina Matviyenko about the possibility for Uzbekistan to join the EAEU (October 2019) (TASS, 2019) or the statement of the President of Kazakhstan Kassym-Jomart Tokayev on the country's reluctance to accept the Strategic Directions for the Development of the Eurasian Economic Integration for 2025 (May 2020) (President of the Republic of Kazakhstan, 2020b). Events not directly related to the EAEU, such as the military conflict over Nagorno-Karabakh in the fall of 2020 or the statement of TV host Vyacheslav Nikonov that "Kazakhstan's territory is a great gift from Russia and the Soviet Union," (Big Game, 2020) may also serve as a reason for interest in the union. Each such event serves as an occasion for expert assessments, which make it possible to highlight relevant narratives in Kazakhstan regarding the EAEU. Moreover, during the situational expert discussion of such events in the expert narratives all the nodal points of the Kazakhstan's discourse about the EAEU emphasize in one or another form.

IV.1. "Continuity" of the Development of Nursultan Nazarbaev's Integration Project

The issue of succession of various integration projects on the Eurasian space in expert narratives is practically not considered. Generally, by default, they accept the official discourse setting. This allows a number of opposition experts to criticize the EAEU and Kazakhstan's participation in it, exactly as Nursultan Nazarbaev's project. At the same time, this limits the criticism of the EAEU (Tolegenov, 2020).

IV.2. (Geo)politics versus Economy

Experts critical about Kazakhstan's participation in the EAEU are largely inclined to belittle the economic component of the organization and emphasize its low efficiency. For example, political scientist Dosym Sotpayev notes that from the very beginning the Kazakhstani authorities were caught in illusions, the main one being the belief that after joining the EAEU Kazakhstani commodity producers will have unimpeded access to the common market (Satpaev, 2021). Moreover, when analyzing the situation with the EAEU, opponents of the organization, as a rule, emphasize the great importance of some "underlying" factors. For example, on the eve of the signing of the Treaty on the EAEU in 2014 at the scene of the "Anti-Eurasian Forum", political scientist Dastan Kadyrzhanov said that Kazakhstan's entry into the EAEU is "a geopolitical mistake — to follow the tasks that the Kremlin sees as part of the implementation of the Eurasian Economic Union project" (Radio Azattyq, 2014a). According to public figure Aydos Sarym, "The trouble and the problem of these projects [of the Customs Union of Belarus, Kazakhstan and Russia and the EAEU] is that all three players [Belarus, Kazakhstan and Russia] that are included in them harbour a grudge, all of them have their undeclared goals, tasks, which often go to the detriment of the declared 'economic tasks'" (Kalashnikova, 2014). Political scientist Dosym Satpaev notes that "the optimism of official statistics is worth nothing, since one of the main viruses that initially infected the EAEU is... mutual distrust" and that "since the establishment of the EAEU, its weak point has been that different political games are constantly going on around this association" (Satpaev, 2017). This position is also shared by political scientist Aidar Amrebayev, who believes that "this association more often became an arena of 'trade wars', omissions and emotional strife, rather than a place of stable and rational agreements" (Isabaeva, 2017).

Moreover, the economic component of the EAEU and the processes going on within the union are sometimes simply ignored. For instance, in the fall of 2017, a conflict situation developed between Kazakhstan and Kyrgyzstan. On the eve of Kyrgyzstan's presidential election, Kazakh President Nursultan Nazarbaev met with one of Kyrgyzstan's

presidential candidates, oppositionist Omurbek Babanov, who has financial interests in Kazakhstan. In this connection, Kyrgyz President Almazbek Atambayev accused Kazakhstan of interfering in his country's internal affairs and made a number of harsh statements against Nazarbaev and the model of power he had established. In response, Kazakhstan imposed restrictive measures on the passage of cars across the Kyrgyz-Kazakh border. In addition to the political component, the measures taken by Kazakhstan had an economic basis: long before the conflict, Kazakhstan had accused Kyrgyzstan of violating EAEU customs regulations and smuggling. When discussing this conflict between the two EAEU member states, a significant number of experts who are negative about the union emphasized its geopolitical component. Aidar Amrebayev points out that in the conflict many "suspected the 'hand of Moscow', which seeks to use the old methods of making discord and confusion in the ranks of 'foreigners' to give a new impetus to the centripetal vector in the framework of the EAEU — an alliance that demonstrates quite weak dynamics, especially in comparison with other external vectors, such as the Chinese" (Isabaeva, 2017).

Critics of the EAEU associate the "political" component of the union, first and foremost, with Russia. For example, Dosym Satpaev believes that "Russia planted its bomb under this initially artificial integration project, and with its unpredictable foreign policy provoked a whole domino effect, from trade wars to mutual sanctions" (Satpaev, 2017) and, moreover, "Russia initially considered this project only as political, not economic one" (Danilin, 2018). In the opinion of public figure Aydos Sarym, "this alliance is not based on the economic interests of its member states. It is simply an alliance that Russia has created, and it is based only on Russia's interests and goals. I have spoken to both Kazakh and Belarusian economists, nobody can calculate at all and say what are the positive aspects of this union" (Grigoryan, 2015).

At the same time, there are also narratives in Kazakhstan, which emphasize not the foreign policy component of Kazakhstan's participation in the EAEU, but its domestic political vector. Thus, public figure Petr Svoik points out that "If we try to analyze what the real sovereignty of the state of Kazakhstan actually consists of... will have to come to the conclusion that this is mainly a personnel policy"

(Svoik, 2020). Political scientist Talgat Mamyraiymov, analyzing the risks facing Kazakhstan in connection with the EAEU, says, "The question is not that Kazakhstan may lose its independence as a state. The problem is that the [Kazakhstan] elite does not want to lose power. They are afraid to become puppets of Moscow" (Radio Azattyq, 2020). This position is also supported by other experts, who point out that the EAEU is, among other things, a political instrument used by various interest groups in Kazakhstan. For example, Dastan Kadyrzhanov says, "The EAEU... is an alliance of oligarchic regimes trying to create mutual foreign policy support for each other and to extend the years of their rule" (Tatilya, 2014).

Critics of the EAEU mainly see a political component in the expansion of the organization as well. Thus, according to Dosym Satpaev, "the inclusion of Armenia and Kyrgyzstan in the EAEU... had more of a political component than an economic one" (Satpaev, 2017). The possible entry of Uzbekistan into the EAEU is also seen as politically motivated: "It is important for the Kremlin to return this republic to the sphere of its geopolitical influence" (Satpaev, 2019). Dosym Satpaev gives similar assessments of the possibility of expanding the EAEU at the expense of Iran, indicating that "in this case, the EAEU will resemble a club of international outcasts, where not only Iran but also Russia are falling into a pit of sanctions wars and long-term confrontation with the West" (Satpaev, 2021).

Experts who are neutral in their attitude to the EAEU are also critical about widening the Eurasian integration at the expense of "weak participants". They tend to point out that all candidates should undergo appropriate preparatory procedures, and when Kyrgyzstan and Armenia were included in the EAEU, "political factors undoubtedly played a more important role than economic ones" (Akimbekov, 2014).

It is interesting that some supporters of the EAEU are also inclined to consider the process of EAEU expansion at the expense of Kyrgyzstan and Armenia as first of all politically motivated. Thus, public figure Marat Shibutov points out that "Kyrgyzstan's exit will only strengthen the EAEU. After all, everybody understands that it didn't fulfill the Roadmap for joining, where all the problems came from. If there are

only three countries in the EAEU, it will be easier for it to increase integration" (Isabaeva, 2017).

In general, stressing the economic component of cooperation within the EAEU is more typical for expert narratives of the Union's supporters. Thus, economist Aidarkhan Kusainov points out that "the EAEU is a clear economic platform. And political integration is the wishes or fears of other people, it's all fantasies" (Gusev, 2019). Moreover, in his opinion, conflicts within the EAEU are a normal process, since "Eurasian integration is a rather serious, problematic process, so in the short-term, immediate future, the normal behavior of each participant of integration will be to defend the interests of their own economy," but at the same time, "the association creates a platform for building up quality development potential" (Kusainov, 2016). Therefore, for example, unlike the opponents of the union, who believe that Uzbekistan's entry into the EAEU may happen very quickly on the basis of a "political decision," they believe, in particular, political scientist Eduard Poletaev, that "it would be foolish for Tashkent to agree or reject this idea without careful study. And this process is not a quick one" (Regnum, 2019).

The reference to economics is also present in the narratives of the EAEU opponents, but as a rule it is reduced to general critical statements. For example, economist Meruert Mahmutova said that "by deciding to join this union, Kazakhstan has worsened its relations with the whole world and improved them only with the Russian Federation" (Kolbaev, 2020). Deeper calculations of the economic consequences of Kazakhstan's participation in the EAEU, carried out by the organization's critics, allow them to conclude that the negative aspects are not so much related to the political aspects or the disadvantages of cooperation within the EAEU, as to the fact that "Kazakhstan joined the EAEU without proper preparation of its national economy, primarily its export potential" (Askarov, 2021). Some supporters of Kazakhstan's participation in the EAEU have a similar position. For example, Aidarkhan Kusainov points out that "the EAEU is a very strong and effective tool that can provide the opportunity for rapid development. However, today it does not bring benefits and is even negative for us due to the fact that we ourselves have formed the wrong policy" (Alibekova, 2021).

At the same time, there are also narratives in the Kazakhstani expert field that offer an option that combines "economic" and "geopolitical" nodes. For example, Askar Nursha notes that the positioning of post-Soviet countries regarding integration projects in the former Soviet Union area, including the EAEU, in addition to economic factors, is no less significantly affected by the perception of these projects through a geopolitical prism by key external geopolitical players and the post-Soviet countries themselves. Thus, a "relationship model based on the synthesis of the ideas of economic integration and geopolitical thinking" is formed (Nursha, 2017).

Finally, neutral-minded economists, in particular Daniyar Dzhumekenov, point out that in the EAEU "supranational institutions have practically no influence either on the political or economic policies of states" and, accordingly, "the merger of the EEU is too underdeveloped to be considered in terms of serious disadvantages or advantages" (Omirbek, 2020). Many neutral narratives focus on a comparative analysis of the situation in different EAEU countries or (Omirbek, 2021) a study of changes within the EAEU space (Taibekuly, 2021).

IV.3. Independence versus Integration

Experts who support Kazakhstan's participation in the EAEU tend to emphasize the benefits of cooperation, even if it goes beyond economic issues. Opponents proceed from the assumption that any integration restricts the sovereignty of the member states and that Kazakhstan should be careful in assessing non-economic initiatives put forward within the EAEU. Radical opponents of the EAEU believe that the economic vectors of cooperation are also dangerous for Kazakhstan's independence.

Discrepancies in assessments and, most importantly, in arguments typical for supporters and opponents of the EAEU are quite revealing when they comment on certain initiatives to expand and deepen cooperation within the EAEU. Thus, the proposal of Russian President Vladimir Putin to consider the issue of formation in the future of the currency union of the EAEU member states, announced in March 2015, caused a generally negative reaction in Kazakhstan. At the same time, supporters of the EAEU and government officials spoke moderately

enough and emphasized the economic unacceptability of this initiative. For example, Timur Suleimenov, a board member (minister) on economics and financial policy of the Eurasian Economic Commission, noted that "there are no objective economic prerequisites for the introduction of a single currency in the space of the EAEU member states" (Tengri News, 2015). Later, in 2021, referring to this issue again, economist Vyacheslav Dodonov noted that the issue of supranational currency in the EAEU has never been raised, "it is artificially pushed there from the outside, as a hot topic, as a hot information issue, for some other reasons, far from the real integration" (Dodonov, 2021). The expert notes that the costs of the introduction of the common currency far exceed the possible benefits. The reaction of opponents of the EAEU was stricter and focused primarily on sovereignty issues. For example, Mukhtar Taizhan, a public figure, linked the introduction of the single currency within the framework of the EAEU to "the loss of the rests of Kazakhstan's sovereignty" (Likhachev, 2015).

It is interesting that the narratives of the EAEU supporters are not homogeneous and include criticism of certain initiatives within the union. Thus, there may be a reference to the need to preserve the sovereignty of Kazakhstan. For example, Aidarkhan Kusainov, analyzing the issue of creating a single currency in the EAEU area, notes that "the issue of a single currency is always a question of a single political space... at the bottom line the creation of a single currency leads to the loss of independence" (Demidov, 2018).

In general, supporters of Kazakhstan's participation in the EAEU are more likely to focus on possible specific areas for expanding cooperation, primarily in the areas set out in the EAEU Treaty. For example, in November 2018, in the framework of "The World of Eurasia" Expert Discussion Platform, political scientist Eduard Poletayev noted that "the EAEU countries have not yet developed a unified social policy, and moreover — they are increasingly becoming different in this area," and the question of "whether there is a desire, the possibility of equalizing these social differences" remains open. Political scientist Andrei Chebotarev notes in this regard that "if we see that the common economic space is stalling, it is doubtful to expect that the common social space will work" (MK-Kazakhstan, 2018).

Some experts, analyzing Kazakhstan's place in the EAEU, tend to emphasize the "objective" nature of economic cooperation within the union. So, Peter Svoik, raises a question what will change if Kazakhstan leaves the EAEU, "what will it be free from and what will Kazakhstan gain in case of happy fulfillment of the aspirations of the supporters of 'exclusively sovereign development' of our state?" (Svoik, 2020). According to Peter Svoik, Kazakhstan "will not be released from anything and will not acquire anything," as the position of Kazakhstan's enterprises will not improve, the quality of goods and services produced by them will not increase, the potential for filling the national market will not increase either.

IV.4. Eurasia versus Central Asia

The expert narratives also address the issue of "Eurasianism". According to experts who are critical about the EAEU, this idea should be secondary to the processes of interstate cooperation in the format of Central Asia. For example, Aidar Amrebayev said, "The collapse of the EAEU will not be allowed, but at the same time... the multi-format integration trend in Central Asia will gain strength. This is an objective need" (Isabaeva, 2017). "The Turkic World" is also positioned as an alternative to the EAEU. For example, Aydos Sarym notes that "if a Turkic organization appears, it will be a market bigger than the EAEU one" (Tuleubekova, 2021).

Supporters of the EAEU, as a rule, are either not inclined to use the concept of "Central Asia" or record the difficulties that the EAEU forms for the implementation of any Central Asian project: "Kazakhstan and Kyrgyzstan are members of the EAEU. This is an integration association that offers advantages to its members and at the same time creates barriers to trade with third countries" (Kuzmin, 2019). Central Asian countries that are not members of the EAEU also act as third countries here.

In a neutral format, the assessment of regionalization issues related to the EAEU is presented by political scientist Askar Nursha, who points out that "there are no integration projects in this region that are comparable with the EAEU in terms of their impact, if not to take into account the Central Asian integration project, which began to

gain momentum in the 1990s, but it has not yet been able to acquire the necessary dynamics and is still in the agenda" (Nursha, 2017).

The clash of two groups of narratives — those that support the EAEU and that reject this model of integration, as well as their inclusion in the official discourse — led to a situation that political scientist Zamir Karazhanov described as follows: "Modern Eurasian integration is a version of a compromise between what we wanted and what we got" (Iuritsyn, 2019).

V. Change of Political Leader in Kazakhstan and Narrative about the EAEU

The change of the first official face of the state in Kazakhstan has led to a limited transformation of the official discourse on the EAEU, while retaining its basic meanings and structure. The Concept of Kazakhstan's foreign policy for 2020–2030 more clearly sets out the limited depth of cooperation within the framework of the EAEU. Noting that close cooperation with the EAEU member states is a priority of Kazakhstan's diplomacy, the Concept notes that this priority is significant only in "areas established by the EAEU Treaty" (President of the Republic of Kazakhstan, 2020a). This narrative was reinforced in the speech of Kazakh President Kassym-Jomart Tokayev at a meeting of the Supreme Eurasian Economic Council in May 2020, where he said that "The full inclusion of issues such as health, education and science in the competence of the Eurasian Economic Commission can significantly change its economic orientation, in other words, it will contradict to the essence of the Treaty on the establishment of the E[A]EU in 2015" (President of the Republic of Kazakhstan, 2020a). A little later, in an interview to the "Komsomolskaya Pravda" newspaper, the President of Kazakhstan once again stressed the importance of the "economics" node, noting that "the strengthening of the potential of the EAEU as an economic union is of great interest to us" (Sungorkin and al., 2020). And in an interview to "Ana tili" newspaper Kassym-Jomart Tokayev highlighted the node of "independence", noting that the integration within the EAEU will be supported by Kazakhstan "as long as it will not harm the sovereignty of Kazakhstan" (Ashmzhan, 2020).

An indication of the priority of economic issues was also made in the address of the President of Kazakhstan in connection with the presidency of the country in the EAEU bodies (President of the Republic of Kazakhstan, 2021). All five priorities, highlighted in this message, relate to purely economic issues: industrial cooperation; elimination of remaining barriers in mutual trade; fully use the potential of transboundary transport corridors and logistics hubs; digitalization of the economies of the Union countries; expansion of access to foreign markets. At the same time, the use of transit potential and the development of trade and economic relations with third countries obviously go beyond the EAEU space.

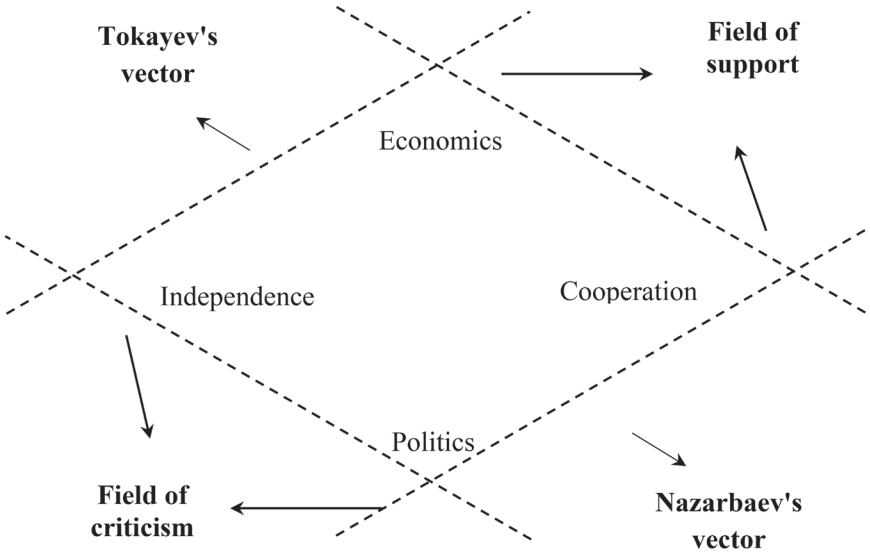
It is also noteworthy that the Concept of Kazakhstan's foreign policy for 2020–2030 does not fix the EAEU as a target setting for Kazakhstan's foreign policy for the next 10 years. At the same time, the importance of Central Asia is increasing. Although the Concept notes that "Kazakhstan needs to consolidate the status… a key element of the system of geopolitical and geo-economic coordinates of the Eurasian continent," at the same time, it is emphasized several times that Kazakhstan is "the leading state in Central Asia" and preservation of this leadership is positioned as one of the goals of the country's foreign policy. Moreover, even the Eurasianism of Kazakhstan is beginning to be read through Central Asia, and the Concept notes the importance of Central Asia in the Eurasian processes.

Thus, the official narratives under President Kassym-Jomart Tokayev remained within the framework of the field outlined by Nursultan Nazarbaev, but received a dotted but visible shift towards emphasizing the concepts of "economics" and "independence". The expert narratives have not undergone any changes, fully retaining the key dilemmas and their interpretations.

VI. Conclusion. "Nodal Points" of the Narratives about the EAEU in Kazakhstan

Narratives about the EAEU in Kazakhstan are structurally defined by the identification of the country as a subject of international relations (the concept of "independence"), as well as by the understanding of the

EAEU as an institution of "cooperation", in which the emphasis is either on "economic" or "political" issues. It is these four concepts in their relationship that determine the field of comprehension of the EAEU and the structure of narratives about the EAEU in Kazakhstan. Their different emphasis and perception determine the variability of narratives. At the same time, the narratives of the EAEU in Kazakhstan fluctuate between two poles: positive and negative.



EAEU narrative field in Kazakhstan

The official narratives cover the entire discussion field, emphasizing both the need for Eurasian cooperation and the need to preserve Kazakhstan's sovereignty. In this regard, the EAEU is viewed exclusively as an economic organization. At the same time, while in Nursultan Nazarbaev's project the "Eurasian" context dominated, which strengthened the concepts of cooperation and politics, in Kassym-Jomart Tokayev's project the meaning of this context is reduced, which leads to a more rigid position on the concepts of economy and independence.

Critical narratives view the EAEU as an international political organization promoted primarily by Russia and threatening

Kazakhstan's independence. Cooperation and economic issues are either ignored or remain in the background. In the latter case, both real and contrived negative consequences of cooperation are emphasized. The regionalization of Kazakhstan, as a rule, is not fixed. Sometimes it is stressed either its Central Asian component, or a broader one covering Eurasia or the "Turkic world".

Narratives that positively assess the EAEU focus exclusively on the benefits of cooperation (both regionally and globally), as well as the economic content of the union. Threats to independence are viewed as farfetched. Political issues recede into the background. Kazakhstan is regionalizing as a Eurasian state with strong ties to Central Asia.

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ARTICLES

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Digital Services Taxes: The International Experience and Relevance for the Russian Federation

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Abstract: The article deals with the problems arising in connection with the taxation of the digital economy, using the example of the proposals of the OECD and the EU on the introduction of a tax on digital services, as well as unilateral measures of national states in the area of taxation of the digital economy (on the example of the French digital tax). The main question for the study is whether unilateral measures imposing taxes on digital services represent a suitable solution to the tax problems that arise in connection with digitalization. Based on the legal analysis of both the EU Law provisions and domestic legal reality the author substantiates conclusions as applied to the Russian Federation

Keywords: tax law, digital economy, profit taxation, digital services tax, OECD, European Union, BEPS Action Plan, tax administration

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Contents

I. Introduction

The main characteristic of the digital economy is the reduction of the need for a physical presence in the markets. Value is created through user interaction and is concentrated in intangible assets that are easily transferred to tax havens in order to minimize taxable profits. Meanwhile, corporate tax systems are still based on the economic reality of the 1920s, when the current tax systems based on territorial and resident principles were created. As a result, there is a discrepancy between the places of profit creation and taxation. The main outstanding issues are the determination of the volume of intangible assets and the company's profit in a particular country, as well as the problems of double taxation.

Against this background, a debate is still ongoing amongst policy makers on the adoption of new tax measures at both the domestic and international level in order to adapt the 'brick and mortar' tax rules to the new digital landscape (Dimitropoulou, 2019).

The importance of the digital economy in the context of the OECD Action Plan on Base Erosion and Profit Shifting (hereinafter — the BEPS Action Plan[1]) is emphasized by the fact that the solution of the tax

[1] OECD Action Plan on Base Erosion and Profit Shifting — OECD Publishing. Available at: http://dx.doi.org/10.1787/9789264202719-en [Accessed 05.05.2021].

problems of the digital economy is presented as the Action 1 of the BEPS Action Plan.[2] In the era of the digital economy, new cost factors are coming to the fore, and physical distances are losing their relevance. In addition, digitalization increases the risks associated with base erosion and profit shifting and requires a review of a number of fundamental aspects of the international tax system, in particular the rules regarding where (the nexus concept) and how much (profit allocation) to tax.

The digital economy also raises broader tax challenges for policy makers. These challenges relate in particular to nexus, data, and characterization for direct tax purposes, which often overlap with each other. The digital economy also creates challenges for value added tax (VAT) collection, particularly where goods, services and intangibles are acquired by private consumers from suppliers abroad.[3]

Over the past few years, the Organization for Economic Cooperation and Development (hereinafter — the OECD), as well as the European Union (hereinafter — the EU) have made several attempts to find a solution to the tax problems of digitalization. However, so far, neither has succeeded in carving out proposals that would be acknowledged by a broad consensus (Geringer, 2020).

The relevant taxation options to address the challenges of the digital economy, discussed at the OECD, UN and EU levels, include broader and more radical tax policy considerations requiring a tax reform,[4]

[2] OECD, (2015). Addressing the Tax Challenges of the Digital Economy, Action 1-2015 Final Report, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris. Available at: http://dx.doi.org/10.1787/9789264241046-en [Accessed 05.05.2021].

[3] OECD, (2015). Addressing the Tax Challenges of the Digital Economy, Action 1-2015 Final Report, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris.

[4] See Auerbach, A., Devereux, M.P., Keen, M. and Vella. J., (2017). *Destination-Based Cash Flow Taxation, Oxford University Centre for Business Taxation, Working Paper* 17/01; Devereux, M.P. and Vella J., (2018). Debate: Implications of Digitalization for International Corporate Tax Reform. *Intertax*, 46(6/7), pp. 550–559. For some critical aspects of the proposed long-term solutions in the EU environment, see Björn, W., (2014). Taxation of the Digital Economy: An EU Perspective. *Eur. Taxation*, 54(12), pp. 541–544.

as well as more refined, short-term solutions aimed at adjusting the current international tax system to the digital reality.[5]

II. The OECD Concepts of Taxation in the Era of Digital Economy

As noted in the OECD BEPS Action 1 Final Report, the digitalization of the economy has caused a number of complex problems in the field of direct taxation, mainly related to the issue of the distribution among States of the right to tax profits derived from cross-border activities in the digital era.[6] For example, when it comes to a new relationship based on digital presence, it is not only about countering the base erosion and profit shifting, but also about a new allocation of taxing rights.

It is possible to agree with Martín Jiménez who points out that BEPS Action 1 and all the ongoing work on digital economy seem to reveal a sort of tension between, on the one hand, the source rules identified as a consequence, especially of BEPS Actions 8–10 (income should be allocated to where value is added) and, in general, the BEPS Project outputs, and, on the other, the wishes of some countries and groups to include market states within the source rules in a form not directly contemplated by the BEPS Project outputs. This tension is at the heart of the unilateral solutions adopted by States, in parallel and after the BEPS works (Martín Jiménez, 2018).

On 16 March 2018, the OECD presented an interim report on tax challenges arising from digitalization (hereinafter — the Interim Report).[7] The current work of the OECD on tax issues arising from the digitalization of the economy goes in two directions: pillar 1 and pillar 2.

Pillar 1 addresses the rules for the allocation of taxing rights, as well as the revised rules for the establishment of a tax reference (nexus), and namely:

— addresses the question of business presence and activities without physical presence;

[5] For example, an interim tax which covers the main digital activities that currently escape tax altogether in the EU.

[6] OECD BEPS Action 1 Final Report, p. 15.

[7] OECD, Tax Challenges Arising from Digitalisation — Interim Report 2018. Available at: https://dx.doi.org/10.1787/9789264293083-en [Accessed 04.02.2021].

— will determine where tax should be paid and on what basis;

— will determine what portion of profits could or should be taxed in the jurisdictions where customers and/or users are located.

Pillar 2 represents global anti-base erosion mechanism:

— will help to stop the shifting of profits to low or no tax jurisdiction facilitated by new technologies;

— will ensure a minimum level of tax is paid by multinational enterprises (MNEs);

— will level the playing field between traditional and digital companies.[8]

The solutions proposed so far include tax measures that indicate the jurisdiction of the source or destination. Relevant tax options for addressing the challenges of the digital economy, discussed at the OECD, UN and EU levels, also include short-term solutions aimed at adapting the existing international tax system to the digital reality ("quick fixes" or "interim measures") until a globally coordinated solution is reached.

III. Proposals of the European Commission in the Area of Direct Taxation

On March 21, 2018, the European Commission presented a digital tax package, which includes:

— Proposal for a Council Directive Laying Down Rules Relating to the Corporate Taxation of a Significant Digital Presence;[9]

— Proposal for a Council Directive on the common system of a digital services tax on revenues resulting from the provision of certain digital services;[10]

[8] OECD, Addressing the Tax Challenges of the Digitalisation of the Economy (2019). Available at: https: www.oecd.org/tax/beps/public-consultation-document-addressing-the-tax-challenges-of-the-digitalisation-of-the-economy.pdf [Accessed 05.05.2021].

[9] European Commission, Proposal for a Council Directive Laying Down Rules Relating to the Corporate Taxation of a Significant Digital Presence, COM (2018) 147 final (21 Mar. 2018).

[10] European Commission, Proposal for a Council Directive on the common system of a digital services tax on revenues resulting from the provision of certain digital services, COM (2018) 148 final (21 Mar. 2018).

— Communication from the Commission to the European Parliament and the Council — Time to establish a modern, fair and efficient taxation standard for the digital economy.[11]

The main task at the EU level is to prevent the fragmentation of the internal market and to establish new rules that would bring the taxation of profits in line with the standard of value creation. According to the EU proposals, this will be achieved mainly by taking into account the cost created by users of digital services when they interact with the digital interface through which they receive the taxable service.

IV. The EU DST Concept

Let us consider the EU proposal on the common system of taxation of digital services in the EU (digital services tax, hereinafter — DST) and its assessment in accordance with the primary EU law. The preferred interim solution to the task of reconciling taxation with value creation in the EU is to introduce a 3 % tax on the income generated for certain companies from the provision of specific digital services (Article 8 of the DST proposal). The subject of regulation is limited to the taxation of services for which the user's contribution to value creation is significant. According to Article 3 of the DST proposal, the contribution of users is considered significant in the following categories of services:

— the placing on a digital interface of advertising targeted at users of that interface;

— the making available to users of a multi-sided digital interface which allows users to find other users and to interact with them, and which may also facilitate the provision of underlying supplies of goods or services directly between users;

— the transmission of data collected about users and generated from users' activities on digital interfaces (Article 3 of the DST proposal).

From the above list, it follows that the services that fall under the DST:

— are aimed at the participation of users in the provision of services;

[11] European Commission, Communication from the Commission to the European Parliament and the Council — Time to establish a modern, fair and efficient taxation standard for the digital economy, COM (2018) 148 final (21 Mar. 2018).

— represent intermediary services provided through a digital platform.

Every service that is not associated with a significant user participation in the provision of this service is beyond the scope of taxation. In particular, the provision of digital content through a digital interface is not subject to the tax, while the provision of a multi-user interface through which users can download and share digital content is within the scope of the tax, since the latter rather consists of user-generated content (explanatory note to the DST proposal).

In addition, according to Article 4 of the DST proposal, a company will qualify as a taxable person for DST purposes only if:

— the total amount of global income for the last full financial year for which financial statements are available exceeds EUR 750,000,000; and

— the total amount of taxable income received in the EU during this financial year exceeds EUR 50,000,000.

Limiting the use of DST only to companies that meet these thresholds (in combination with taxable activities) is explained by the Commission by the fact that these levels of selected turnover thresholds reflect the large economic potential of these enterprises, which in turn indicates the ability to attract a large number of users to whom these enterprises prefer to carry out their activities.

Article 5 of the Proposal for a DST Directive determines the place of taxation of the revenues generated from the above taxable services and thus, allocate the taxing rights to the Member State where the user of the services is located. The location of the user is determined for each service received and is deemed to be the place indicated by the IP address of the user or the place indicated by any geolocation method. The place from where the payment for the receipt of the service is made is irrelevant for the nexus determination under the DST. The EU Member States debated the proposal at length, including considering various amendments. However, no further solutions have been made since then.

V. Unilateral Measures to Introduce DST

The discussion on the digital tax at the EU level has not progressed since the beginning of 2021 due to the pandemic, so in 2020 the French Government announced the introduction of a DST at a rate of 3 %, regardless of the presence or absence of international agreements. The French DST has been named the "GAFA tax" (by Google, Apple, Facebook and Amazon). However, despite the fact that most of the digital giants are obviously American companies, the GAFA tax targets not only American groups, but also other international groups, including French, Chinese, German, Spanish, and English groups.

The DST Law[12] applies to the relationships it regulates from January 1, 2019. In 2020, DST was also introduced in Austria,[13] the United Kingdom,[14] Hungary,[15] Italy[16] and Turkey.[17] The specifics of the DST vary from country to country. In Austria and Hungary, the digital tax applies only to online advertising services. In France, the scope of the tax is broader: it covers the digital interface and advertising services. The tax rate varies from 3 % in France to 7.5 % in Hungary and Turkey.

[12] Bill No 2019-759 dated July 24th, 2019 on the creation of a tax on digital services (1). Available at: https://www.impots.gouv.fr/portail/files/media/1_metier/5_international/french_dst_en_v2.pdf.

[13] Digitalsteuergesetz 2020 (DiStG 2020). StF: BGBl. I Nr. 91/2019 (NR: GP XXVI IA 983/A AB 686 S. 88. BR: AB 10251 S. 897.) [CELEX-Nr.: 32011L0016, 32018L0822].

[14] Finance Act 2020 // https://www.legislation.gov.uk/ukpga/2020/14/contents/enacted.

[15] Act XXII of 2014 on Advertisement Tax [AT Act], as amended by the Act XLVII of 2017 [Modification Act].

[16] LEGGE 30 dicembre 2018, n. 145 Bilancio di previsione dello Stato per l'anno finanziario 2019 e bilancio pluriennale per il triennio 2019–2021. (18G00172). (GU n.302 del 31-12-2018. Suppl. Ordinario n 62).

[17] The Law No 7194 on Digital Service Tax and the Amendment of Certain Laws and Law Decree No 375. *Official Gazette*, 07.12.2019, Nr. 30971.

V.1. General Characteristics of the French Digital Services Tax

Taxpayers are defined as French and foreign companies for which the annual income from taxable services exceeds both thresholds, namely 750 million euros of global income and 25 million euros received in France.

The DST applies to gross revenue collected in return for providing taxable service over the course of a calendar year in France.[18]

The tax is levied on two types of digital services provided in France providing a digital interface that allows one user to interact with others (intermediary services). The French Tax Authority has issued draft guidance on the scope and calculation of DST and related compliance issues. According to the document, the first category of digital mediation services includes digital interfaces that allow users to make transactions between them (delivery of goods or services), for example, Amazon or Alibaba. The second category includes network services that allow users to interact with each other without being able to make transactions through the digital interface itself. Examples of such services are social networks and online games.

However, this definition excludes certain services, such as when a company operating through a website sells the user goods or services that it owns. For example, Amazon, which sells books to a user from its own warehouse, will not fall within the scope of the digital tax. In contrast, if a company sells books using Amazon, such an Amazon service will be covered by DST, as it acts as an intermediary providing advertisers with services aimed at placing targeted advertising messages on a digital interface based on data collected about users and formed in agreement with such an interface. Advertising services on the digital interface that are not focused on user data are exempt from the tax.

The services of the digital platform are linked to the location of users. If one of the users of the platform is located in France during the tax year, the service will be considered provided in France. The user's location is determined by the IP address.

[18] Bill No 2019-759 dated July 24th, 2019 on the creation of a tax on digital services (1).

The GAFA tax does not apply to platforms for which the collection of user data is not the primary purpose:

— digital content (e-commerce, video or music on demand);

— communication services;

— payment services.

Thus, the tax base will depend on how much of the payments are related to France, the type of services and the type of platform. The reporting rules and the tax compliance system are established by analogy with VAT. The company or the responsible member of the group pays the tax in two parts: in April and in October. When calculating the income covered by the digital tax, companies can exclude the amounts of covered income that went to pay VAT.

The statute of limitations for DST is six years. The digital services tax will be deducted from the French corporate income tax base. In addition, it is possible to form a consolidated group of DST taxpayers. One company must be designated as a responsible taxpayer on behalf of all the companies in the group.

V.2. Comparison of the French DST and the European Commission's Proposals

The EU proposal imposes a 3 % tax on income earned by companies from providing three categories of services in the EU. According to Article 3 of the EU proposal, taxable services are:

a) user-oriented online advertising;

b) a digital interface that allows users to find other users and interact with them;

c) transfer of data collected about users and obtained as a result of user activities through digital interfaces.

Unlike the EU proposal, the French DST focuses only on two services: intermediary services and targeted advertising. On the other hand, the EU project excluded digital interfaces for content delivery, unlike the French DST.

The EU proposal excluded digital interfaces for content delivery, unlike the French DST. Based on paragraph 15 of the EU proposal, digital content should be defined as data provided in digital form,

such as computer programs, applications, games, music, videos or texts, regardless of whether they are available through download or streaming, with the exception of data provided by the digital interface itself. French officials said the Apple App Store would be covered by the DST, meaning the French tax would not exclude apps as excluded by the EU proposal.

The income thresholds proposed by the European Commission and France also differ. According to the draft EU directive, an organization is subject to tax only if the total amount of global income exceeds 750 million euros, and the total amount of taxable income received by the organization within the EU exceeds 50 million euros. The French thresholds are 750 million euros, and 25 million euros in France. The main difference is that the EU calculates the threshold of global revenue from the total revenue of the company, and not only from the services covered by the tax, as in France. Therefore, many multinational companies will not be covered by the French DST. The global income threshold under the French DST excludes many successful French companies that provide taxable services only as part of their business (for example, Carrefour, which operates through its online store, among other things).[19]

VI. DST and Double Taxation Issues

It is widely believed that DST is contrary to the principle of avoiding double taxation, since the tax is applied to revenue, not income. The OECD Model Convention on Taxes on Income and Capital (hereinafter referred to as the OECD Model[20]) applies to taxes on income and capital levied on behalf of a Contracting State. In this regard, it is important to talk about the legal nature of DST, which is close to turnover taxes.

The DST was designed that way as not to fall within the DTTs scope. But the goal of avoiding double taxation is to ensure that the

[19] Report on France's Digital Service Tax Prepared in the Investigation under Section 301 of the Trade Act of 1974, (2019).

[20] Model Tax Convention on Income and on Capital: Condensed Version, (2017). OECD Publishing. Available at: https://doi.org/10.1787/mtc_cond-2017-en [Accessed 23.04.2021].

same income is not taxed twice. However, taking into account corporate taxation, the picture is likely to be as follows. First, the profit will be taxed in France as income under the digital tax, and second, as income under the corporate income tax of the country where the company pays its corporate income tax. The reason for this is that the country in which the company is resident will not exclude DST-related income from its base or provide a deduction for any amount paid.

Besides, it should be noted that the French DST was designed to tax the largest digital companies, mainly American ones. Therefore, there are many questions about discrimination and the inconsistency of the French law with international tax principles.

VII. Relevance of the French Experience for Russia

The experience of foreign countries shows that there is a trend of introducing national digital taxes, but these taxes have many differences from each other, which leads to double taxation, lack of legal certainty and distortion of competition. In addition, the experience of France shows the risk of international tension with the unilateral introduction of a digital tax.

On the other hand, the provisions of the Tax Code of the Russian Federation on VAT and income tax do not allow to fully collect taxes on income of corporate groups that use digital business models when providing services related to Russian users. At the same time, Russian organizations that conduct similar activities face full tax burden, which allows us to conclude that Russian companies are discriminated against foreign ones.

Russian companies bear a large tax burden and cannot provide a competitive financial offer to content producers and service providers, so it is more cost-effective for them to work with foreign platforms. At the same time, Russian companies are required to withhold personal income tax when making income payments to individuals who are tax residents of the Russian Federation.

Foreign companies are not personal income tax agents, they do not pay insurance premiums when paying remuneration to individuals, and apply the income tax rates provided by the countries of their

incorporation. At the same time, their profits are generated at the expense of the user base located in Russia.

In addition, Russian companies that provide digital services to users in other countries may find themselves in a situation where their income will be charged a digital tax in these countries, which will lead to double taxation of the income of Russian companies from such operations.In this regard, it is advisable to consider the issue of taxation in Russia of the part of the profits extracted by foreign companies in the Russian market.

In 2020, the course of reforms was affected by the crisis caused by the COVID-19 pandemic. It remains unclear whether countries will move towards a multilateral approach or unilateral measures. The current situation, where citizens are increasingly using digital services for remote work and leisure due to self-isolation and quarantine, underlines the relevance of the OECD/G20 digital taxation project. Governments are mobilizing their tax systems to deal with the economic crisis, putting pressure on national budgets. This could create a dilemma for governments in the negotiations to tax digital companies, many of which will make super-profits in 2020: states will not be able to arbitrarily raise national taxes (which will almost certainly be the result of any G20/OECD agreement) during or after the economic crisis.

The experience of foreign countries shows that there is a trend of countries adopting their own digital taxes, but these taxes have many differences from each other, which leads to double taxation, reduced transparency and certainty for business, as well as distortion of competition. In addition, the experience of France and the Czech Republic shows the risk of international tension with the unilateral introduction of a digital tax.

Some countries (France, Italy) levy a tax of 2–3 % on the total income of MNEs from a similar list of services (online advertising, online mediation, sale of user-generated data) related to individuals and legal entities located on their territory, with similar methods of determining the location of users. At the same time, there is a desire to take into account the basic ideas of the OECD (focus on companies that remotely communicate with their users, for which an important

element of business is working with data and marketing, the presence of significant revenue thresholds for applying a digital tax).

The countries of the second group (India and Hungary) levy a tax of 5–7 % on income from the provision of advertising services, while establishing a different list of specific taxable services, tax agents, etc. The only thing that Indian and Hungarian taxes have in common is that they are charged conceptually from advertising services. The experience of this group of countries cannot be considered successful.

The existing Russian tax legislation on VAT and income tax does not allow Russia to fully collect taxes on the income of digital MNEs that provide services to Russian users. We believe that the need to prepare responses to the challenges of the digital economy in the new conditions at the level of Russian legislation is beyond doubt. The specific feature of Russia is that it is both a market-consumer of digital services and a provider of such services, having internationally competitive IT companies: Yandex, VKontakte, Wildberries, etc. However, Russian tax legislation has a number of features that allow foreign Internet companies to gain tax advantages in relation to Russian Internet companies.

Foreign companies are not tax agents for personal income tax (hereinafter referred to as personal income tax), they do not pay insurance premiums when paying remuneration to individuals, and apply the income tax rates provided for by the countries of their incorporation. Accordingly, Russian technology companies bear a large tax burden and cannot provide a competitive financial offer to content producers and service providers who are more economically profitable to work with foreign platforms.

In this regard, we consider it appropriate to consider the issue of assigning foreign digital companies (in particular, Facebook, Twitter, Apple) the functions of tax agents when paying income to individuals for services rendered by them.

We believe that the key challenges of regulating the taxation of digital companies in the Russian Federation are:

— protection of competition;

— ensuring equal conditions for all market participants, regardless of the origin of capital and the underlying jurisdiction; the

— presence of clear criteria for determining the range of regulated entities;

— effective enforcement mechanisms in place;

— introduction of a tax regime that encourages the development of the Russian market and national digital companies.

VIII. Conclusion

The meaning of the digital economy is growing day after day. The digitalization brings the whole world on the new level leading to the overall well-being. In 2020 digitalization helped businesses and the whole society to survive and to continue surviving the COVID-19 times. The development of the digital economy brings a lot of benefits, but at the same time gives rise to tax challenges. The issue relates to the question of how taxing rights on income generated by the digital companies from cross-border activities should be allocated among countries. The main characteristics of the digital economy from the point of view of taxation are the reduction of the need for physical presence in the markets, as well as a new model for creating value through user interaction.

The appearance of new business models makes it possible for companies to provide services to customers around the world and gain revenue without any physical presence in the countries and therefore, not allowing to establish the sufficient connection with country in order to have taxing rights over non-resident company.

Countries realize that the existing tax legislation can't ensure that profits of the digital companies are taxed where the actual economic activity generating the profit are performed and where the value is created. Thus, countries cannot get their fair share of the tax revenues pie from the non-resident digital companies, that are gaining big part of their profits in the jurisdiction of the countries.

Moreover, governments and society express growing concern about tax planning by massive multinationals that make use of the gaps in the existing tax legislation in order to reduce taxable income or shift profits

to low-tax jurisdictions. As a result, the rise of the digital economy derived the need to adapt existing tax systems and rules. The issue of taxation of digital multinational companies is on international agenda for a long time. Several attempts were made by the OECD, as well as by the EU in order to tackle the problem concerning the taxation of the digital businesses, but no coordinated solutions have been found yet.

As far as can be ascertained, the OECD and the European Union are pulling in the same direction, although it seems that the Commission has taken a decisive step forward in this respect. It remains to be seen whether these proposals will be successful. However, uncoordinated and unilateral interim measures, which have the same aims and measures of implementation, may be a disincentive for countries to pursue longer-term multilateral solutions. Nevertheless, issues of overcoming unilateralism should be identified by the international community (Ponomareva, 2019).

In response to the deadlock at the OECD and EU levels, some countries moved forward with introduction of uniliteral measures regarding the issue of a fair taxation of the digital economy (Geringer, 2020). France was one of the first countries that enacted the digital services tax.

According to the EU proposal, one of the characteristics of the DST is that it will not be subject to domestic or foreign corporate tax and applies without discrimination to domestic and cross-border services, on the one hand, and to domestic and foreign taxpayers, on the other. France, by contrast, allows businesses to deduct DST paid as an expense from the corporate income tax base, and therefore puts French companies in a better position. This will not discriminate only if DST is implemented by countries around the world.

It is currently problematic to equate international tax coordination with the traditional income tax treaty framework. That is why some countries have started to apply unilateral measures. The implementation of national digital tax is accompanied by many side-effects (Geringer, 2020). It will take long time to find a unified solution. Countries should be careful with designing and implementing new tax policies.

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BOOK REVIEW

Eduard L. Kuzmin "The Art of the Possible. Reflections on Diplomacy and Diplomats". Moscow: Avenue Publ.; 2021

Review by Azer K. Kagramanov
MD Engineering LLC, Moscow, Russia

"The Art of the Possible" is the traditional way of talking about politics and diplomacy, "the Possible" since both processes aimed at achieving specific results, go a long way to be completed by its participants at a specific point called a compromise — an outcome acceptable to all parties. For many years, the author of the monograph under review was engaged in diplomatic work at the Ministry of Foreign Affairs of the Russian Federation, providing for the international activities of the Supreme Soviet of the USSR and the State Duma of the Russian Federation, heading the relevant departments in the parliaments of the Soviet Union and the Russian Federation. Therefore, the author's fundamental work on diplomacy is perceived as the fruit of mature reflections of an experienced practitioner who did not severe the ties with jurisprudence — the theory of the State and International Law.

In the voluminous book under review (27 p.s.), everything is of interest to the reader: from the semantically meaningful images on the cover, bright and figurative epigraphs skillfully structured throughout the volume, excursions into fiction, lyrical digressions based on the author's memories to concise, laconic wordings, characterizing the main directions of multidimensional diplomatic activity.

Part I "World Order and Diplomacy" traces the main milestones in the formation and development of the world and Russian diplomacy, as

its integral part: from its inception in the Ancient World, through the Middle Ages to the present day. A special place is given to the Soviet period of diplomacy of a fundamentally new type based on a powerful ideological component, aimed at ensuring favorable external conditions for the construction of Socialism. A special place herein is occupied by Chapter 4 dedicated to the Minister of Foreign Affairs of the USSR Andrey A. Gromyko, and the school of Soviet diplomats created and fostered by him in the second half of the 20th century. Actually, the reader comes through a gallery of images of prominent representatives of this profession, who faithfully served their Fatherland, who made a significant contribution to solving the historical task of achieving strategic parity between the USSR and the United States, which made it possible to avoid the descent of humanity into the Third World War.

The author shares his experiences, comprehending the complex events associated with the well-known period of perestroika, a dramatic attempt to resist (August 1991) the destructive processes that took place in the Soviet Union, its ultimate collapse called by the President of the Russian Federation Vladimir V. Putin "a geopolitical catastrophe." Perhaps overly harsh but, on the whole, fair and, in our opinion, very convincing are the author's assessments of the diplomatic steps taken by the Gorbachev-Shevardnadze team, which, in fact, ended in the surrender of numerous positions in the field of disarmament and other areas of foreign policy. A critical, sometimes not without sarcasm and outright mockery, tone that describes the period of Andrey V. Kozyrev as the Head of the Ministry of Foreign Affairs of the Russian Federation seems quite justifiable. Andrey V. Kozyrev saw a role model in Western countries and was striving in every way to "westernize" Russia. One cannot but agree in this regard with the author's conclusion: "As a result of the surrender of the USSR by the once its 'natural allies,' gigantic voids were formed on the geopolitical map condemning Russia to the loss of influence in entire regions of the planet and thereby creating all the conditions for the transition from the usual bipolar world to the complete monopoly of the United States in the international arena" (p. 78).

Chapter 6, which bears the self-explanatory "Renaissance" heading, was written with great reverence for the personality of Evgeniy M. Primakov. Using specific examples and facts, the author describes how Evgeniy M. Primakov, who replaced the compliant Andrey V. Kozyrev as the Minister of Foreign Affairs of the Russian Federation, irritated the politicians of the leading Western countries, demonstrated through deeds that even in a crisis State with a meager foreign policy resource, talented diplomacy can sometimes achieve impressive success. He owns the honor of opening the Russia-India-China (RIC) format that originated from real life circumstances, laid the foundation for many trends in modern politics and became one of the foundations of the emerging multipolar world.

As the author of the book notes, the new minister, often relying on the experience of his great predecessor the "Iron Chancellor" Aleksandr M. Gorchakov, took non-standard, courageous, but carefully weighed and thoughtful steps to bring the country's foreign policy out of the crisis. The history of diplomacy textbooks will definitely include the "out-of-the-box" action undertaken by Evgeniy M. Primakov in 1999, when heading to the United States on an official visit (by that time Evgeniy M. Primakov was the Prime Minister of the Russian Federation), he interrupted his visit in protest against the aggressive actions undertaken by the NATO countries against Yugoslavia and made the famous "U-turn over the Atlantic".

Certain, however insufficient, attention is paid in the book to the activities of the current Minister of Foreign Affairs Sergey V. Lavrov and his colleagues. As a result, an important author's thesis that the modern generation of Russian diplomats is doing everything possible to preserve and strengthen in every way the traditions laid down by their outstanding predecessors (p. 90) is not properly substantiated.

It seems that every international lawyer with interest and undoubted benefit for himself will acquaint with the author's reflections concerning a close relationship between the basic principles of international law enshrined in the UN Charter and the real alignment of socio-political forces in the world arena, patterns of development in the second half

of the 20th century. In this context, the considerations concerning the importance of the concept of soft power that is more and more firmly included in the diplomatic thesaurus, the close connection and interaction between law, political and moral rules in the regulation of international relations, are also of primary importance (pp. 99–108).

The central part of the book consisting of ten chapters is written with both deep knowledge of the subject matter and great respect for the profession. It is devoted to the very phenomenon of diplomacy as a specific field of public life that has existed since time immemorial as a science and art, technology and skill designed to promote reconciliation of various, sometimes conflicting, interests, the development of ultimately friendly relations between states and peoples. The author of the book, as it were, guides the reader through the labyrinths of diplomatic life, highlights the main directions of the activities of domestic and foreign agencies that determine the foundations of foreign policy and ensure its practical implementation (Chapters 8–9).

A quite unusual heading of Chapter 10 "The Embassy: Behind the Scenes" will certainly catch the attention of a prospective reader. In a vivid, accessible form (this, however, also applies to the book as a whole), the author elucidates complex, sometimes delicate issues of interaction between foreign missions and the "center" directing the instructions — the leadership of foreign policy departments, — confidentiality in the work of diplomats exercising their functions "under the roof" of diplomatic institutions. The pages devoted to the "gender factor" are read with great interest as well. They are devoted to the role of women (heads of missions, as well as the wives of diplomats) ambassadors and others who play an important role in shaping the image of the relevant diplomatic institutions and the state represented by them as a whole.

For obvious reasons, successful implementation of foreign policy functions, to great extent, depends on the personality of a diplomat, his professionalism, intelligence, good knowledge of the problems of both the State he represents and the receiving State. In this regard, the author cites a large amount of facts, specific examples related to the activities

of prominent diplomats of the past and present, shares his personal experience of serving as Ambassador of the Russian Federation in Uganda and Croatia. The book pays necessary attention to "diplomatic recipes", i.e. such aspects of the diplomat's work as preparing and organizing negotiations, dealing with the drafts of the documents being prepared (pro memoria, memoranda, statements, etc.), the ability to conduct a conversation, including conversations in the language of the receiving State (when necessary).

A small but very informative chapter entitled "Coveant consules..." (with the reference to the beginning of the classic Roman formula "Be vigilant, consuls, so that the republic does not suffer any damage") is written with great respect for the painstaking and extremely important for any State work of consular institutions. The author shows the importance of the institution of the Honorary Consul revived in modern Russia. The author emphasizes the fact that with all the differences between diplomatic missions and consular institutions, both the former and the latter serve ultimately one common goal, namely: the development of friendly relations between States, the facilitation of trade, economic and cultural ties.

Attention is paid to such an important area as "economic diplomacy" covering interstate activities the participants of which, along with government agencies, are also economic entities (Chapter 14). The author highlights the task of creating the best, most favorable conditions for the participation of national economies in the world economy, international division of labor, ensuring the rights of domestic business access to existing and potential resources, including access to raw materials markets. In modern conditions, the goals outlined by the author are gaining great importance in promoting the renewal of the foreign economic specialization of the Russian Federation, minimizing risks in its further integration into the world economy, attracting foreign investment in the real sector and priority areas of the Russian economy, as well as decisively countering external threats to energy security, attempts to discriminate against Russian organizations of the fuel and energy complex on global trading platforms.

Part III "Ethics and Etiquette in Diplomacy" deserves special attention. It convincingly shows how, in the conditions of noticeably increased international tension in recent years, the tasks of more and more multi-vector, "network" diplomacy are becoming more complicated, and the problem of balancing foreign policy goals and diplomatic efforts with the criteria of democracy, moral categories and universal values becomes especially important (Chapter 18). The author does not avoid uncomfortable topics related to the ability of a diplomat, if necessary, as is commonly believed, to "conceal his thoughts", to master the art of maneuvering, to shift emphasis, to permit profound omissions, etc. At the same time, however, the reader has no doubts that lying as such is not just counterproductive, but sometimes dangerous, since it can become a mechanism for destroying trust, not to mention the permanently tarnished reputation of a diplomat (pp. 315–320).

I would like to support the author's proposal, that may be difficult to implement but still extremely important, to develop an international instrument of a non-binding (in a legal sense) nature that should consolidate ethical rules (i.e. the obligation to strictly follow the provisions of the international law, specifically concluded treaties and other agreements) and the highest moral values (the ban on unfriendly and, especially, offensive statements addressed to foreign colleagues, the ability to keep a word, etc.) (p. 326). Such moral restraints, red lines that cannot be crossed, would become an additional guarantee of strict adherence to the pacta sunt servanda principle organically complementing the rules of international legal responsibility with the obligations that are moral and political in their nature.

Chapter 19 with the expressive title "Sovereign Honor" is devoted to the meaning of State symbols, the formation and development of the protocol and etiquette, their role in ensuring international communication based on sovereign equality and mutual respect of the participants. At the same time, I would like to agree with the editorial annotation that emphasizes the importance of a thorough consideration of the norms and provisions of the diplomatic protocol and etiquette, many of which are applicable in civilized business and human communication. This

part of the book will undoubtedly be of interest not only to professionals, but also to entrepreneurs who have access to the international arena, as well as the widest audience of readers. It thoroughly discusses both the procedure for organizing visits, the peculiarities of conducting business and personal communication (private conversations) on the phone, and many other useful recommendations that are qualified by the author as the "formulas of politeness" (Chapter 20). Chapter 21 is devoted to the "ABC" of an official banquet — the types of diplomatic receptions, viands and drinks served at them, uniforms and other features, and the rules, non-observance of which may have negative consequences.

The core of Chapter 22 is made up of "forbidden fruits," a kind of dont's of behavior — actions that begin with the negative particle "not." In such an original form, the author reproduces the part of the book written by the patriarch of the state protocol of the USSR Fedor F. Molochkov, whose book has been republished several times.

In the postscript crowning the book, the author in rhymed lines, most likely of his own composition, pays tribute to diplomacy — a kind of symbiosis of the science, art and professional skill designed to guard the national interests of each state and contribute to the survival of humanity in the current turbulent world.

While highly appreciating the new book by Eduard L. Kuzmin, a diplomat and a scholar, I would like to note that he failed to succeed in every aspect to the same extent. For instance, one reads with great interest Chapter 7 discussing the need for military-strategic parity between the Russian Federation and the United States, the role of law and "soft power" in modern conditions, the reflections on this matter and the polemic with Sergey A. Karaganov — one of the masters of modern political science. However, unfortunately, such highly topical problems of the modern world order as sharply aggravated regional conflicts, the situation with Iran's "nuclear deterrence," sanctions pressure imposed on Russia by Western countries, etc., remain beyond the author's vision. It would be useful to know the author's opinion regarding the role of a diplomat in the CIS area in the light of the events of recent years in Georgia, Ukraine, in the context of the development of the Eurasian

Economic Union, the Union State of Russia and Belarus, along with other topical aspects of modern international relations.

The book pays some attention to obvious changes in the strategy and tactics of diplomacy in the 21st century, the work of protocol services, diplomatic etiquette. However, as far as can be judged even by media reports, innovations are rapidly gaining momentum in these areas, seemingly unaffected by winds of changes and tested by centuries of experience. "Diplomacy and Artificial Intelligence," "Diplomacy and Cybersecurity" are urgent innovative subjects that would undoubtedly make the author's research even more relevant.

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